

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
January 28, 1983

The House Natural Resources Committee convened at 1:30 p.m., on January 28, 1983, in Room 224K of the State Capitol with Chairman Harper presiding and all members present except Rep. Curtiss, excused, and Reps. Jensen and Quilici, absent. Chairman Harper opened the meeting to a hearing on HB 436.

HOUSE BILL 436

REPRESENTATIVE JOHN HARP, District 19, chief sponsor, said the bill has to do with the confidentiality of reports of stratigraphic test wells filed with the Board of Oil and Gas Conservation. He said he had one amendment which was to strike "REMOVE" on line 5, page 1 and insert "REVISE." He said the bill was at the request of the Oil and Gas Division. He said now the Oil and Gas Division must keep reports on the test wells confidential for three years. With this bill the owner would retain the information for three years and at the end of that time turn it over to the Oil and Gas Commission. He said Article 2, section 9, speaks to the public's right to know and at the same time we are asking the Oil and Gas Division to protect the confidentiality of these reports. This is a highly competitive business and if you can get hold of your competitor's information you would have an advantage.

DON GARRITY, Board of Oil and Gas Conservation, said he was available to answer questions.

There were no other proponents or opponents.

REPRESENTATIVE HARP closed.

Questions were asked by the committee.

Rep. Harp responded to a question by saying if someone wanted to push the issue of the public's right to know they could take the Commission to court and we are saving the Commission from that kind of problem.

Rep. Hand wondered if three years might be too long to wait on reporting. Mr. Garrity said stratigraphical information is expensive to obtain and has a definite value so they will not dispose of it so it will be available and filed within 3 years. The confidentiality portion of the statute might be tested and found unconstitutional - that of a public employee holding information worth a lot of money to somebody - and he said we don't need that.

Rep. Kelly asked why the Board has this information. Mr. Garrity said the Board maintains a library intended for the benefit of the industry on geology and assessing the development of minerals in Montana.

Rep. Addy asked if there would be any problem with gathering the information as in three years the developer could be long gone. Mr. Garrity said there is the possibility. Rep. Harp said it is like making sure anyone is a good and responsible citizen.

Rep. Addy asked how important it is for the state to obtain the information. Mr. Garrity said it is good to get it and they didn't care what the time period was as long as it could be open to the public when given to them.

Rep. Hand asked how much area was used in storing these records. Mr. Garrity said they now send the core samples to the Bureau of Land Management in Denver where cuttings are made and the state stores these smaller cuttings.

Rep. Ream asked if this would continue and Mr. Garrity said it would. Rep. Neuman asked if the driller would be required to keep the core samples for three years and the answer was yes. Mr. Garrity said they have spent the money to get the samples so they can look at them. Mr. Garrity said they can produce income as the companies can charge substantial fees to have other companies look at them.

Rep. Ream asked what Mr. Garrity's reaction would be to shortening the time period. Mr. Garrity said it didn't make any difference to the Board but the companies that spend the money want a reasonable confidential time so they can exploit the material.

Rep. Bertelsen asked if there would be any restriction on filing the cores early if they so wish. Mr. Garrity said none at all.

Chairman Harper closed the hearing on this bill and opened the hearing on HB 260.

HOUSE BILL 260

REPRESENTATIVE DAVE BROWN, District 83, chief sponsor, gave a little background on this bill. He said HJR 66 passed last session set up a study of the economic and social impacts of hard rock mining. He said he chaired the Revenue Oversight Committee and the Report to the 48th Montana Legislature on the Socio-Economic Impacts of Large-Scale Hard-Rock Mining, January, 1983, prepared by the EQC was the result of the study. He said this book contains some valuable information. He said this is one of the bills that was recommended from that report and clarifies that the Resource Indemnity Trust account may be used for mitigating mining impacts. He said the committee requested an Attorney General's Opinion to find which money's were available for this.

Rep. Brown read from this opinion, a copy of which is Exhibit 1 of the minutes.

GARY LANGLEY, Executive Director, Montana Mining Association, spoke in support of the bill and a copy of his testimony is Exhibit 2 of the minutes.

GEORGE BENNETT, ASARCO Inc., spoke in support. He said the life of his mine is estimated at 16 years and during that time ASARCO will pay \$3,000,000 into this fund. He said the ASARCO officials were surprised to realize that the fund was open to use by whatever group had a particular political clout. He said it ought to address tail-end impacts with HB 718 taking care of front-end impacts.

WARD SHANAHAN, Stillwater, PGM, spoke in support. He said he had been talking with the EQC for the past 18 months on the study. He said in the fall of 1982 he had received a list of what the fund was being used for and discovered all the money was being used to plug shot holes or to reclaim damages done by agriculture. He said if this is an indemnity tax it ought to be used for the damages caused by mining.

MARC LEDBETTER, NPPC, said he had not planned to testify but would like to address a couple of issues. He said money from the fund is being used for hard-rock mining impacts. He said a budget at the State Lands Department for 1982 received \$1,200,000 to use in their Hard-Rock Bureau for enforcement of their mining laws - so this money is presently being used on hard-rock mining impacts. He said the money comes from several different industries and only 8 percent comes from hard-rock mining and the majority comes from oil and gas. He said the money being collected should be allocated among industries according to how much money was collected from them. This would mean that 8% should be available to hard-rock mining, which is \$72,000.

STEVEN MEYER, Montana Association of Conservation Districts, spoke in opposition. He said improving the agricultural productivity of the land is important to the state. A copy of his testimony is Exhibit 3.

JO BRUNNER, WIFE, said they oppose the bill. She said they agree with the comments of the previous witness.

REPRESENTATIVE BROWN closed. He said the opposition to the bill is concern over where the money in the RIT is spent. The

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Legislature decides to spend money on Muddy Creek and that is the way it is. He said he didn't feel this precludes that and is not germane in this discussion. He said this bill would clarify the statutes and protect the fund so that sufficient money is available when it is needed for these impacts.

Questions were asked by the committee.

Rep. McBride asked if Rep. Brown saw this bill as meeting all the needs coming from the extraction. Rep. Brown said no as there is not going to be a lot of money.

Chairman Harper said the bill goes a long way towards focusing the attention of the Legislature on what the money is being used for. He asked if some of the present uses were illegal or questionable. Mr. Shanahan said the Attorney General has already issued an opinion stating what the RIT funds may be used for and this bill simply incorporates that opinion into the statute.

Chairman Harper closed the hearing on this bill and opened the meeting to an executive session.

EXECUTIVE SESSION

HOUSE BILL 436 Rep. Hand moved DO PASS. He said the core samples recorded are used to analyze the strata. Rep. Addy asked if three years is the most appropriate time span. Rep. Hand felt this was a reasonable time.

Rep. Iverson said some of the ground water modification cores are extremely valuable.

Rep. Hand said this shouldn't be taken lightly as this portfolio of information is extremely valuable to the state of Montana.

The question was called and the motion carried unanimously with those present. It was then recalled that an amendment had been requested so Rep. McBride moved to reconsider and this motion carried unanimously. Rep. Bergene moved to amend by striking "REMOVE" and inserting "REVISE" in the title. This motion carried unanimously with all present.

Rep. Addy moved AND AS AMENDED DO PASS and this motion carried unanimously with those present (absent were Reps. Jensen, Curtiss and Quilici).

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HOUSE BILL 118 Chairman Harper recognized Ray Hoffman, Health Department. Mr. Hoffman had come to testify at the request of the committee (a copy of this letter is Exhibit 4). Mr. Hoffman had a quarterly breakdown of anticipated revenue using different fee amounts from \$30 to \$50. A copy of this breakdown is Exhibit 5. He went through this and also discussed and left a copy of testimony favoring the review of the state by the counties, Exhibit 6.

There was discussion among the members and invited witnesses, Dr. Drynen and Don Willems, Health Department, and Dennis Rehberg, Montana Association of Realtors. A few points brought up were that the number of lots reviewed are down from 8200 in 1981 to an expected 4800 this year and also FTE's are down from 6 in 1981 to 4 this year. The need for expertise in this area and careful review was stressed as the state would be held liable if anything went wrong with the water or waste systems. It was mentioned that this liability should be shared with the designer and the developer.

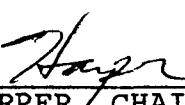
Ms. Debbie Schmidt, EQC, said that legislation proposing to provide general funds for this has been introduced and the committee might wish to hold the bill until they get to see some of the other bills.

The committee decided to do this.

HOUSE BILL 8 John Carter, researcher, passed to the members copies of a letter answering his request for information on royalty and severed interests from Louis R. Moore, Attorney. A copy of this is Exhibit 8 of the minutes. Mr. Carter had written the suggested changes from the letter and other suggested amendments into a copy of the bill and a copy of this is Exhibit 9 of the minutes. Due to lack of time the discussion was brief and Chairman Harper encouraged the members to look these items over and there would be further discussion at another meeting.

Meeting adjourned at 3 p.m.

Respectfully submitted,


HAL HARPER, CHAIRMAN

Emelia A. Satre, Sec.

Exhibit 7 is a letter from Lake County Commissioners favoring HB 118.

*Ex. 1
read*

STATE
OF
MONTANA

ATTORNEY GENERAL
MIKE GREELY

STATE CAPITOL, HELENA, MONTANA 59620 TELEPHONE (406) 449-2026

29 January 1982

Deborah Schmidt
Executive Director
Environmental Quality Council
1209 Eighth Avenue
Helena, Montana 59620

Dear Ms. Schmidt:

You have requested my opinion, on behalf of the Environmental Quality Council's Subcommittee on Hard-Rock Mining, on the following question:

Whether funds collected under the Resource Indemnity Trust Act, section 15-38-101, MCA, may be appropriated and expended for the purpose of mitigating the social and economic impacts created by the development of mineral resources in Montana.

Article IX § 2 of the Montana Constitution provides in part as follows:

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion.

This mandate was followed by the enactment of "The Montana Resource Indemnity Trust Act," 15-38-101 through 15-38-202, MCA. The policy of the Act is stated in 15-38-102, MCA:

It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of

our air, water, soil, flora, fauna, and also of those social, economic and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure.

The Act provides for an assessment and collection of a tax on mineral production (15-38-104, MCA) and for payment of those collections into a resource indemnity account (15-38-202, MCA). After the tax receipts and interest thereon reach the sum of \$10 million, the net earnings "may be appropriated and expended" by the legislature until the account reaches \$100 million. (Id.) Thereafter "all net earnings and all receipts shall be appropriated by the legislature and expended" provided that the balance in the account never falls below \$100 million. These funds "shall be used and expended to improve the total environment and to rectify damage thereto." (15-38-203, MCA.) The phrase "total environment" is defined as "air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens." (15-38-103(4), MCA.)

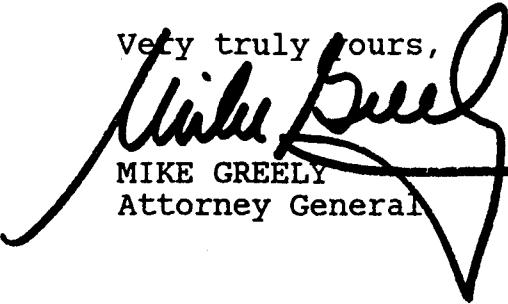
The Act clearly provides that the funds need not be expended until the trust account reaches \$10 million but that thereafter the available funds (that is, the excess over \$100 million) "shall be used and expended to improve the total environment and rectify damage thereto." (15-38-203, MCA). The contemplated use of these funds is to rectify loss or damage to the "total environment" caused by the extraction of nonrenewable natural resources. It is specifically recognized that part of that damage may accrue to the "social, economic, and cultural conditions that influence communities and individual citizens." (15-38-103(4), MCA.)

The constitution in Article IX § 2 does not specify the particular uses to be made of resource indemnity trust funds. That determination was left to legislative discretion. The legislature exercised that discretion by enacting 15-38-101 through 15-38-202, MCA, to provide funding to rectify damage done by the extraction of natural resources. There is no inconsistency between the constitutional mandate and the legislative response.

Deborah Schmidt
Page 3
29 January 1982

Therefore, funds made available by the Act may be expended to mitigate the social and economic impacts created by the development of mineral resources in Montana.

Very truly yours,


MIKE GREELY
Attorney General

TESTIMONY GIVEN BEFORE THE HOUSE NATURAL RESOURCE COMMITTEE,
JANUARY 28, 1983 BY GARY A. LANGLEY, EXECUTIVE DIRECTOR,
REGARDING HOUSE BILL 200.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS GARY LANGLEY, EXECUTIVE DIRECTOR OF THE MONTANA MINING ASSOCIATION.

THE MONTANA MINING ASSOCIATION REPRESENTS EVERY MAJOR PRODUCER OF NON-FUELS MINERALS IN MONTANA AND SEVERAL OTHER COMPANIES HOPING TO BECOME ACTIVE IN THE FUTURE.

WHILE WE AGREE PHILOSOPHICALLY WITH THE INTENT OF THE RESOURCE INDEMNITY TRUST TAX, WE OPPOSE THE IDEA OF A REGRESSIVE SEVERANCE TYPE TAX. HOWEVER, WE ARE WILLING TO PAY THIS TAX AT ITS CURRENT RATE AS A GESTURE OF GOOD WILL AND TO DEMONSTRATE THAT THE MINING INDUSTRY IS A GOOD CITIZEN THAT DESIRES TO INDEMNIFY THE STATE FOR ANY ENVIRONMENTAL DAMAGE IT MAY CREATE.

THE MONTANA MINING ASSOCIATION RECOMMENDS, THAT THE LAW BE CLARIFIED AS PROPOSED IN HOUSE BILL 250 OR THE TAX SHOULD BE ELIMINATED.

THE NON-FUELS MINERAL INDUSTRY HAS CONTRIBUTED MORE THAN \$2.5 MILLION TO THIS ACCOUNT SINCE IT WAS CREATED IN 1974, BUT THE REVENUE HAS BEEN USED FOR PROJECTS THAT HAVE LITTLE OR NOTHTING TO DO WITH RESOURCE EXTRACTING INDUSTRIES.

THE ONLY RATIONALE FOR A SPECIAL TAX OF THIS KIND IS TO PAY FOR PROBLEMS CREATED BY THE INDUSTRY PAYING THE TAX. THIS FUND COULD BE USED FOR WHAT IS GENERALLY REFERRED TO AS "TAIL END" IMPACTS ABOUT WHICH SOME SECTORS HAVE EXPRESSED CONCERN.

IF THE RESOURCE INDEMNITY TRUST TAX IS NOT NEEDED TO CARE FOR IMPACTS CREATED BY RESOURCE EXTRACTING INDUSTRIES, IT SHOULD BE ELIMINATED.



Montana Association Of Conservation Districts

Ex.3

7 Edwards
Helena, Montana 59601
Ph. 406-443-5711

HB 260

Mr. Chairman, Members of the Committee:

The real question raised by HB 260 is whether the Montana Legislature should use the Resource Indemnity Trust Account to enhance the state's resource base outside of a mining area or use the funds to mitigate adverse mining impacts, or both. In the New American Webster Dictionary (c 1972), indemnity is defined as "1. what is paid as compensation or reimbursement, 2. Security against damage or loss, 3. exemption from liability." And now the legislature must decide which definition to operate under as per the intent of the drafters of HB 97 in 1973 legislature.

Larry Fasbender, sponsor of the original bill spoke about a "legacy fund" and that "we as Montanan's will have to answer to future generations." The policy statement of 15-38-102 contains the sentence "therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure." From these statements I submit that the legislature may appropriate these funds to guarantee future benefits of renewable resources for the people of Montana. And renewable resources include maintaining a quality water supply and productive soil base.

The proponents speak of the RIT funds as an insurance policy against adverse impacts directly related to extraction of non-renewable resources. This in fact is a provision of the policy statement in 15-38-102.

As for the third definition of indemnity, it is doubtful that the people of Montana would collect a small tax and then say to a mine operator "you are now exempted from liability for damage you do the environment."

We feel that the statement to be added by HB 260 is redundant and therefore not needed. It is up to the legislature to decide when it meets where the RIT funds can be used to best enhance the environment and do the most good for the people of Montana.

We recommend a "Do Not Pass" on HB 260.

Steven R. Meyer
Steven R. Meyer
Executive Vice President

Toni, 83

HB 260 FACT SHEET

This bill specifies that the Resource Indemnity Trust Tax (RIT) can be used to "mitigate adverse impacts directly related to the extraction of nonrenewable natural resources."

The RIT Tax is required by the Montana Constitution. A tax of 1/2% is levied on all nonrenewable resources extracted in Montana. Revenue from the tax is deposited in a trust fund until it reaches 100 million. According to the Constitution, the fund is forever inviolate. However, interest from the fund can be appropriated by the legislature, and after the fund reaches \$100 million, all earnings must be appropriated by the legislature.

The water development program passed by the 1981 legislature required that 30% of the interest income from the fund must be allocated to the water development program.

Funds made available by the RIT Tax must be used "to improve the total environment and rectify damage thereto." HB 260 would further define the uses to include impact mitigation.

HB 260 does not replace the need for a hard rock severance tax because it makes very little money available for mining impacts.

As of the end of fiscal year 1982, the fund totaled \$27 million. Interest earnings for that year were \$2,300,000, all of which is presently budgeted for various state programs.

Approximately 8% of the RIT Fund has come from the hard rock mining industry. Assuming that HB 260 equitably apportions impact money among the industries, and assuming that half of the interest earnings remaining after the 30% water program allocation is used for resource development impacts, the bill would have made available in 1982 only \$72,400 for hard rock mining impacts.*

RIT INTERST INCOME AND USES

	<u>82</u>	<u>83</u>	<u>84</u>	<u>85</u>
Beginning Fund Bal.	1,098,518			
Revenue	2,294,265	3,410,717	4,312,176	5,198,812
Uses:				
Water Program	688,279	1,023,215	1,293,652	1,559,643
DNRC	2,080,242	878,632	1,228,897	2,286,351
DSL	1,208,921	1,311,038	1,212,316	1,213,269
FWP	<u>87,500</u>			
	<u>-672,159</u>	<u>-474,327</u>	<u>102,984</u>	<u>242,533</u>

*Assuming that half will be available is a very generous assumption, given that there is intense competition for the money. It is presently budgeted for all kinds of environmental programs in the Dept. of Natural Resources and the Dept. of State Lands!



The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

January 26, 1983

John Drynan, MD
Department of Health and Environmental
Sciences
Cogswell Building
Helena, MT 59620

Dear Dr. Drynan:

On January 14 the House Natural Resources Committee conducted a hearing on HB 118. As you know, this bill seeks to raise the maximum per lot fee chargeable for subdivision review from \$30 to \$50.

The Committee has expressed support for the role that the Water Quality Bureau currently plays in the review of subdivisions under the Sanitation in Subdivision Act and wants to ensure that the Bureau's future activities in this regard are adequately funded. The Committee is not convinced, however, that the proposed \$20 fee increase chargeable to private applicants is justifiable and warranted. For this reason the Committee today unanimously passed a motion to suspend consideration of HB 118 until such time as your Department provides it with a concise, documented report explaining the need for the requested increase.

Please contact me if you desire additional information on this matter.

Very truly yours,

HAL HARPER, Chairman
House Natural Resources Committee

HP/es

Anticipated STATE Revenue FOR
SUBDIVISION BUREAU FY 84/85

Lots

FY 81

FY 82

FY 83

FY 81

FY 82

FY 83

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Lots Created

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INTRODUCTION:

In early November, 1982, the Subdivision Bureau of the State Department of Health and Environmental Sciences was closed, due to lack of funding and the subdivision review responsibilities were placed in the Water Quality Bureau. At the same time, it was learned that legislation was being drafted to turn the entire review responsibilities for all subdivisions, both major and minor, over to local health departments. This legislation, evidently, is being developed by several legislators, and not by the State Department of Health and Environmental Sciences or local health departments.

Several local sanitarians and health departments envisioned numerous serious problems developing, should such legislation pass. Therefore, in order to get the feelings and input from local Sanitarians and Health Officers with regard to such legislation, the Montana Environmental Health Association sent a fairly detailed questionnaire to all local sanitarians and health officers in all fifty-six (56) counties in Montana concerning this legislation.

Responses were received from fifty-two (52) of the fifty-six (56) counties for a 93% return.

SURVEY RESULTS:

Below is a synopsis of the most pertinent questions asked and the responding results.

1. 52% of the counties currently review Certificates of Survey and minor subdivisions under contract with the State Department of Health and Environmental Sciences.

2. 75% of the counties regard the Subdivisions Bureau's assistance as being very important.
3. 73% of the counties felt that the State Subdivision Bureau having ultimate legal responsibility for administration of the Sanitation in Subdivision Act as being crucial.
4. 52% of the counties indicated they had no or limited access to an attorney for consultation on subdivision review matters.
5. 90% of the counties believe the current Sanitation in Subdivision Act is accomplishing its goals.
6. 96% of the counties believe the Act's goals are worthwhile.
7. 94% of the counties felt that there would be no method of insuring consistency in administering the Sanitation in Subdivision Act without the State Department of Health and Environmental Sciences being directly involved.
8. 88% of the counties indicated that they currently did not have adequate technical expertise for complete subdivision review without assistance.
9. 85% of the counties indicated they had no engineer nor access to an engineer for reviewing subdivisions having water and sewer systems designed by an engineer.
10. 83% of the counties indicated that they currently do not have the finances or personnel available to perform complete subdivision review.
11. 73% of the respondents indicated that their counties would not fund more personnel if subdivision activities increased, while another 23% indicated they did not know for sure.

12. 73% of the counties indicated that they foresee substantial problems should subdivision review be shifted entirely to local government responsibility.
13. 77% of the counties strongly oppose shifting all public health review of subdivisions and certificate of survey to local governments, while an additional 13% mildly oppose such action.
14. 60% of the respondents do not favor final approval authority for minor subdivisions.
15. 73% of the counties indicated a need to either retain a Sub-division Bureau or an agency within some other Bureau such as the Water Quality Bureau, while an additional 13% desired final approval for minor subdivisions placed at the local level, with State review and approval remaining at the State level.
16. Survey results showed the cost incurred by local taxpayers for subdivision review at the local level over and above current refund to local departments from the state ranged from \$3.00 to \$12.67 per hour or \$10.00 to \$50.00 per parcel.

CONCLUSIONS AND RECOMMENDATIONS:

From the above survey results, it can be concluded that a vast majority of counties, through their Health Officers and Sanitarians, feel that the subdivision review process and final subdivision approval is a function of State government and an area in which the State Department of Health and Environmental Sciences should be directly involved. The results show that, with current funding and the lack of available technical expertise in the form of engineering and legal resources at the local level, local health departments would be unable to perform proper and adequate total subdivision review functions.

However, several counties did desire final and total authority for review and approval of minor subdivisions only. Survey results indicated overwhelming that the current Sanitation in Subdivision Act is accomplishing its goals and that those goals are worthwhile. However, results indicate that there would be no method to insure consistency in administering the Act, without the State Department of Health and Environmental Sciences being directly involved, either through a Subdivision Bureau, as in the past, or through an adequately staffed section within some other bureau of the State Department of Health and Environmental Sciences, such as the Water Quality Bureau.

Therefore, based on the above survey results and conclusions, the Montana Environmental Health Association urges the 1983 Legislature to oppose legislation transferring total subdivision review and approval/denial functions under the Sanitation in Subdivision Act to local government entities. Further, it is strongly recommended that review fees per parcel be set at an adequate level to properly fund an adequate staff at the State level to provide final subdivision review and approval/denial functions, as well as properly offset the total review costs for minor subdivisions that may be incurred by local government and local taxpayers.

LX. 87

LAKE COUNTY, MONTANA

COUNTY COMMISSIONERS

DON CORRIGAN
Polson
HAROLD FITZNER
St. Ignatius
MIKE W. HUTCHIN
Polson
TREASURER
MARJORIE D. KNAUS
CLERK AND RECORDER
ETHEL M. HARDING
ASSESSOR
WILL TIDDY

**SHERIFF AND CORONER**

GLENN FRAME

CLERK OF COURT
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS
GLENNADENE FERRELL

COUNTY ATTORNEY
JOHN FREDERICK

JUSTICE OF THE PEACE
CHARLES C. MEYER
Ronan

COUNTY SURVEYOR

POLSON, MONTANA 59860

January 26, 1983

Honorable Hal Harper, Chairman
House Committee on Natural Resources
Capitol Station
Helena, Montana
59620

RE: HB 118

Dear Sir:

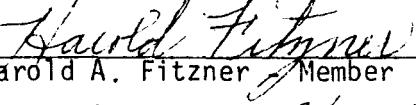
The Board of Lake County Commissioners would like to go on record in supporting a lot fee increase from \$30.00 to \$50.00 per lot for sanitary review. We feel this increase more adequately covers the cost for review. We do however feel that a graduated fee should be proposed for those major subdivisions which connect to existing municipal sewer and water systems. (i.e. \$50.00/lot minimum to \$250.00 + x dollars per additional lot)

We would ask for consideration of our comments, and a do pass recommendation for HB 118.

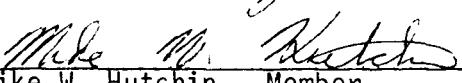


Don Corrigan - Chairman

BOARD OF LAKE COUNTY COMMISSIONERS



Harold A. Fitzner - Member



Mike W. Hutchin - Member

DC/HF/MH/vhd

cc: Representative William Ray Jensen
Representative Carl Seifert
Senator Jean Turnage

CROWLEY, HAUGHEY, HANSON, TOOKE & DIETRICH

ATTORNEYS AT LAW

500 TRANSWESTERN PLAZA II

490 NORTH 31ST STREET

P.O. BOX 2529

BILLINGS, MONTANA 59103-2529

TELEPHONE (406) 252-3441

January 24, 1983

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Mr. John E. Carter
 House Natural Resources Committee
 Staff Researcher
 Room 432 - House of Representatives
 Capitol Station
 Helena, Montana 59620

RE: House Bill 8
 Dormant Minerals

Dear John:

Pursuant to the request contained in your letter of January 19, I have reviewed HB 8 as amended in committee, and have a number of comments and observations which follow, but all of which assume it is the sense of the committee that the legislation apply to severed mineral interests and not to severed royalty interests.

I would suggest that the definition of "Severed Mineral Interest" in subsection 1(1) be altered to provide as follows:

"(1) 'Severed Mineral Interest' means an interest in minerals owned by a person other than the owner of the surface of the land in which the mineral lies, excepting royalty interests, leases and other contractual rights for development."

The above definition does not make much sense unless the words "minerals" and "royalty interests" are defined. Therefore, I recommend two additional definitional paragraphs as follows:

"(2) 'Minerals' means all forms and varieties of materials and substances formed or deposited in the crust of the earth by natural agencies alone, which have value when separated from the crust of the earth and excluding only water and common forms of sand and gravel.

"(3) 'Royalty Interests' means expense free interests in production of minerals which are not entitled to any share of bonuses or rentals under leases or other types of development agreements."

In my opinion, the definitions in subsection 1(3) are somewhat confusing and this results from the inability of the drafter (and myself) to adequately express the unitization or pooling concept in subsection (3)(c). In order to eliminate the problem, I suggest a redraft of the entire subsection as follows:

"(3) 'Unused severed mineral interest' means a severed mineral interest which is not used. A mineral interest shall be deemed to be used when any one of the following exists:

- (a) Minerals are produced therefrom or from lands pooled or unitized therewith or operations are conducted thereon, or on lands pooled or unitized therewith, in furtherance of development of any mineral interest including injection, withdrawal, storage, or disposal of water, gas, or other fluid substances;
- (b) The mineral interest is subject to a lease or other contract having as its object the development of such interest and which lease or other contract (or a memorandum thereof) is recorded in the office of the clerk and recorder of each county wherein the interest is located;
- (c) In the case of coal or other solid minerals, when there is production from a common vein or seam by the owner of the severed mineral interest or by the owner's lessee or permittee;
- (d) Taxes are being paid by the owner; or
- (e) A statement of claim is filed pursuant to [section 3]."

You will note that I have stricken the word "being" from subsection (a). This was done for the reason that it would seem that "use" could occur by any production during the 25 years. The word "being" implies that the production must continue or occur at the end of the 25 year period.

Section (b) was redrafted for the reason that existence of a lease or other contract of record should be much easier to establish than the fact of rental or royalty payments, most of which are paid to depository banks which are loathe to provide information to third parties or title examiners seeking to ascertain whether rentals or royalties were paid. It is recognized that existence of a lease does not prove or even indicate existence of an effective, or continuing, lease but at least the surface owner or the title examiner has a point of departure from which to determine whether the lease has been maintained by rentals or royalties. One might wonder whether a severed mineral owner might put a lease of record into a dummy lessee merely to preserve the interest but it seems unlikely that this will occur in view of the comparative ease in filing the statement of claim provided for in Section 3.

Mr. John E. Carter
January 24, 1983
Page 3

In my opinion, Section 2 should be amended by eliminating the phrase "coal, oil and gas, or other" before the word "minerals" on line 13 in view of the fact that the word "minerals" has been adequately defined. Moreover, on line 19, I would insert the word "continuously" after the first word on the line and delete the word "continuous" on the same line. The reason is grammatical since all years are continuous years.

I would suggest that Section 3 be amended on line 25 to insert after the words "must be" the following: "executed, acknowledged and recorded." My thought is that nowhere in the bill is it required that the statement of claim be signed or that it be acknowledged. The reason is merely that the statement is a significant legal document and a mere printed statement form might be indiscriminately filed if execution and acknowledgment is not required.

On the same line (line 25 on page 3) the committee has inserted the words "or lessee" after the word "owner." I believe that this insertion would be unnecessary if subsection 3(b) is amended to provide that leasing is a "use."

Section 3 should be further amended, in my opinion, to delete subsection (b) and to renumber as well as amend to some degree the two following subsections as follows:

"(b) A description by legal subdivision, township and range of the land on or under which such mineral interest is located; and

(c) A statement that the claimant intends to preserve and not abandon whatever severed mineral interest is owned by the claimant."

The reasons for the above are to eliminate the necessity for the mineral claimant to hire an attorney or other advisor to accurately describe the nature of the reserved interest. The amendment of the description clause to add the description by legal subdivision, township and range merely insures that mineral claimants will not file a general statement to the effect that they claim all mineral interests owned in an entire township or even an entire county. The amendment to the final subsection merely makes clear that the statement need not be precise as to the nature of the interest but only that the claimant intends to preserve whatever he owns in the specific land involved.

Mr. John E. Carter
January 24, 1983
Page 4

I recommend that line 11 on page 4 be amended to read as follows:

"of the County Clerk and Recorder in each county in
which the".

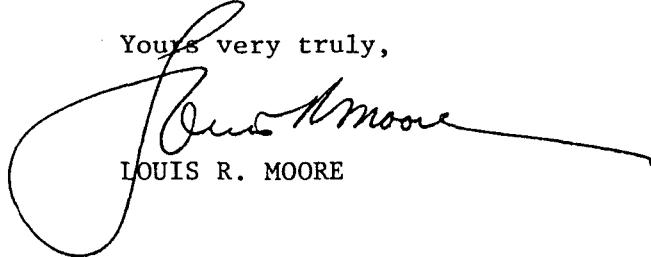
The reason for the change is that mineral interests may cover land in multiple counties and a single recording would be insufficient notice, in my opinion.

I have some real difficulty with the recording portion of the proposed bill (Section 6 on pages 6 and 7). I fully expect that the county clerks and recorders will have some difficulty in determining how the various statements must be recorded and indexed and for this reason I think the bill should be specific. In furtherance of this concept, I believe the following sentence should be added to the end of Section 6:

"The statement of claim shall be indexed in a separate index under the name of the claimant and, in addition, the clerk and recorder shall provide a plat book showing all county lands and there shall be noted therein by appropriate reference to the book and page of the Dormant Mineral Interest Records the portions of land affected by each statement of claim."

As I mentioned over the telephone, the views expressed herein are not those of any client of myself or of the Crowley Law Firm. In fact, no contact with any client or other persons, groups or entities was made excepting only that I conferred with other members of this law firm. I would be willing to discuss any of the above, either by telephone or by appearance at a hearing should that become necessary.

Yours very truly,


LOUIS R. MOORE

LRM:jss

1 the provisions of the Indiana act, in order that the owners
2 of fractionalized mineral interests may be determined and
3 chances for development of those minerals increased.

4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 . Section 1. Definitions. As used in [this act], unless
7 the context clearly indicates otherwise, the following
8 definitions apply:

9

10 'Severed Mineral Interest' means an interest in mine

10
11 WHEREAS, there exist in Montana many fractional
12 interests in severed minerals such as coal, oil and gas, and
13 other minerals; and
14 WHEREAS, difficulty in locating the owners of
15 fractional mineral rights may prevent or delay development
16 of scarce natural resources and the proper payment of taxes;
17 and
18 WHEREAS, the United States Supreme Court, in the case
19 of Texaco, Inc. v. Shori, — US — (decided January 12,
20 1932), recently upheld the constitutionality of the Indiana
21 Dormant Minerals Interests Act, which provides for a lapse
22 of severed mineral rights unless those rights are used or
23 registered by the owners.

24 THEREFORE, it is in the intent of the Legislature to
25 enact a dormant minerals Interests act nearly identical to

"(2) 'Minerals' means all forms and varieties of material and substances formed or deposited in the crust of the earth by natural agencies alone, which have value when separated from the crust of the earth and excluding only water and common forms of sand and gravel."

"(3) 'Royalty Interests' means expense free interests in production of minerals which are not entitled to any share of bonuses or rentals under leases or other types of development agreements.

15 15 "Person" means an individual or private corporation, association, partnership, joint venture, or other legal entity, but does not include the United States of America or the state of Montana or any political subdivision thereof.

16 16 "Unused severed mineral interest" means a severed mineral interest which is not used. A mineral interest shall be deemed to be used when any of the following exists:

21 21 21

(a) Minerals are produced therefrom or from lands pooled or unitized therewith or operations are conducted thereon, or on lands pooled or unitized therewith, in furtherance of development of any mineral interest including injection, withdrawal, storage, or disposal of water, gas, or other fluid substances;

(b) The mineral interest is subject to a lease or other contract having as its object the development of such interest and which lease or other contract (or a memorandum thereof) is recorded in the office of the clerk and recorder of each county wherein the interest is located;

(c) In the case of coal or other solid minerals, when there is production from a common vein or seam by the owner of the severed mineral interest or by the owner's lessee or permittee;

(d) Taxes are being paid by the owner; or

(e) A statement of claim is filed pursuant to [section 3]."

15 Section 2. Lapse of mineral interest — prevention.

16 Unless a statement of claim is filed in accordance with [section 3], or [section 4] is fulfilled, a severed mineral

17 interest in ~~coal-gas-and-gas-and-gas~~ minerals that is continuously
18 unused for a period of 20 consecutive years is extinguished
19 subject to the right of reclamation provided for in [Section 4],
20 and ownership of the interest reverts to the surface owner

21 of the land out of which the severed mineral interest was
22 carved.

23 Section 3. Statement of claim — recording.

24 requirements. (1) The statement of claim provided for in
25 [section 2] must be filed by the owner of the severed

1 mineral interest prior to the end of the 20-year period set
2 forth in [section 2] or within 2 years after [the effective
3 date of this act], whichever is later, and must contain:

4 (a) the name and address of the owner of the interest;

5 (b) —~~the nature of the interest~~ ~~description~~ ~~of the interest~~ ~~and~~ ~~such~~
6 (b) a description of the land on or under which such
7 mineral interest is located; and

8 (c) a statement that the claimant intends to preserve
9 and not abandon ~~the~~ ^{whatever} severed mineral interest ~~is owned by the~~
10 ~~claimant~~ ~~recorder~~.
(2) The statement of claim must be filed in the office
11 of the county clerk and recorder in ~~the~~ ~~Account~~ in which the
12 severed mineral interest is located. Upon the filing of the
13 statement of claim within the time provided, the mineral
14 interest is considered to be used on the date the statement
15 of claim is filed.

16 Section 4. Exception to lapse of severed mineral
17 interest. Failure to file a statement of claim within the
18 time provided in [section 3] does not cause a severed
19 mineral interest to be extinguished if the owner of that
20 interest:

21 (1) was at the time of the expiration of the period
22 provided in [section 3] the owner of 10 or more severed
23 mineral interests in the same county in which the mineral
24 interest in question is located;
(2) made a diligent effort to preserve all of such

-4-

LC 0063/01

mineral interest in
severed interest by in
lapsed sever interest for in
lapsed that provided for the
of a redeem as provided for in
the owner may redeem 60 days +
interest within pursuant to section 4(1)(c).

1 interests as were not being used and, within a period of 10

2 years prior to the expiration of the period provided in

3 [section 3], preserved other mineral interests in the same

4 county by the ~~use~~ ~~means~~ of statements of claim as herein

5 required;

6 (3) failed to preserve the interest in question

7 through inadvertence; and

8 (4) ~~fails~~ the statement of claim required by [section

9 2] within 60 days after publication of notice as provided in

10 [section 5] if such notice is published and, if no such

11 notice is published, within 60 days after receiving actual

12 knowledge that the mineral interest in question had lapsed.

13 Section 4. Successor ~~in~~ interest — notice

14 requirements — ~~preserves~~ ~~interests~~ (1) Any person who

15 succeeds to the ownership of any severed mineral interest pursuant to this

16 part upon the ~~hand~~ ~~hand~~ that interest, give notice of same:

17 ~~same~~ ~~interest~~

18 (a) by publishing the same in a newspaper of general

19 circulation in the county in which the mineral interest is

20 located; and

21 (b) if the address of the mineral interest owner is

22 shown or record or can be determined by reasonable inquiry,

23 by mailing a copy of such notice to the owner of the mineral

24 interest within 10 days after publication.

25 (2) The notice must state:

26 ~~receiving~~ ~~in~~ the office of the mineral

27 interest in the county in which the newspaper

28 recorder is located, a copy of the newspaper with an

29 interest affidavit with subsection

30 (b) together with a notice, ~~and~~

31 affidavit with subsection

32 (b) together with a notice, ~~and~~

33 affidavit with subsection

34 (b) together with a notice, ~~and~~

35 affidavit with subsection

36 (b) together with a notice, ~~and~~

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39 (b) together with a notice, ~~and~~

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241 affidavit with subsection

242 (b) together with a notice, ~~and~~

243 affidavit with subsection

24

1 provisions of [section 2]. A lease or other terminable
2 interest that has expired, lapsed, or otherwise been lost by
3 its own terms or by operation of law is not revived by
4 rerecordation under [section 3].

5 Section 7. Waiver of [act] — time limit. The
6 provisions of this [act] may not be waived at any time prior
7 to the expiration of the 20-year period provided in [section
8 2].

~~End~~

Section 8. County not
required to conduct title
search. Nothing in this
part shall be construed
to require any county
official or employee to
conduct a title search
to locate any severed
mineral interest.

-End-

STANDING COMMITTEE REPORT

February 9,

19

83

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration no HOUSE **260** Bill No.

First reading copy (white)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT THE RESOURCE
INDEMNITY TRUST ACCOUNT MAY BE USED FOR MITIGATING MINING IMPACTS;
AMENDING SECTION 15-38-203, MCA."**

HOUSE **260**

Respectfully report as follows: That..... Bill No.

be amended as follows:

1. Page 1, line 14.
Strike: "and"
Insert: "or"

AND AS AMENDED

DO-PAGE-

..... HAL HARPER

Chairman.

STANDING COMMITTEE REPORT

January 20,

19

MR. SPEAKER:

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **436**

First reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 82-11-125, MCA, TO REMOVE THE CONFIDENTIALITY OF REPORTS OF STRATIGRAPHIC TEST WELLS FILED WITH THE BOARD OF OIL AND GAS CONSERVATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **HOUSE** Bill No. **436**

be amended as follows:

1. Title, line 5.

Strike: "REMOVE"

Insert: "REVISE"

AND AS AMENDED

DO PASS