

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
March 18, 1983

The House Natural Resources Committee convened at 12:30 p.m., March 18, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Reps. Quilici, excused, and Nordtvedt, absent. Chairman Harper opened the meeting to a hearing on HB 903.

HOUSE BILL 903

REPRESENTATIVE HARRISON FAGG, District 63, chief sponsor, said the bill is to appropriate funds to the State Lands Department to rectify environmental impacts caused by mining in the Stillwater-Boulder River complex. He said the RIT funds should be used. He said this is one of the most beautiful areas in Montana and it has been scarred in the past by mining. Rep. Fagg showed some slides to indicate this. Rep. Fagg said there has been a substantial effort to do some reclamation work but it is a big job and a lot of the damage was done before the Anaconda Company came.

MARC LEDBETTER, Northern Plains Resource Council, spoke in support. He said a lot of ranchers from that area belong to their organization. Mr. Ledbetter said they had visited the area and after seeing the kind of damage that had occurred, they became involved in seeing what could be done to see that this doesn't happen again as well as to reclaim. He said there is extensive damage, much of which does not show up on slides like old tailing ponds polluting ground water and roads going up steep mountain sides that are now a public hazard. He said while a lot can't be cleaned up, a certain amount can be. He said the RIT fund was set up for this specific purpose and there is no more proper use of the money. Mr. Ledbetter said we should also look very seriously at the Hardrock Reclamation Act to see that this type of thing will never occur again. He said the Act is in a state where a lot of this couldn't happen again. Mr. Ledbetter said that mining companies have been helpful in cleaning up areas they have not been responsible for.

KEN KNUDSON, Montana Wildlife Federation, spoke in support. He said the Stillwater was one of the first wildlife areas of the state. He said this is an excellent place to spend some of the RIT funds. He said it is close to Billings, which is a good-sized urban area. He said there is information available on the McLaren Mines and areas impacted. He said this had been worked on by the Fish, Wildlife and Parks Department when he was with them. He said this would be taking the next step - getting the funds to go ahead with some of the reclamation work.

DON REED, Montana Environmental Information Center, spoke in support. He said the subject has been well covered. He said there are a number of claims on the RIT fund this time around. He said this money comes from specific sources and it is right to deal with other areas that face somewhat similar situations that are scarred from old resource operations. Old oil drilling holes and other damages and also lots of other places in addition to the Stillwater. Mr. Reed said there is only 30 percent of this fund left to be claimed and there are a lot of people going for the money. He asked of the possibility of dealing with this from HB 724. He said he wasn't sure of the mechanics but he said it is an option the committee should consider. Mr. Reed said it is an appropriate use of the money.

DENNIS HEMMER, Commissioner of State Lands, said they neither support nor oppose the bill. He said some of this land is under bond by a company and he assumed the state would not reclaim anything that is so covered. He suggested priority be given to necessary reclamation to prevent damage to water supplies.

REPRESENTATIVE FAGG in closing said there are some active areas in there that are covered by the Hardrock Mining Act.

Questions were asked by the committee.

Rep. Hand asked where the money for this account comes from. The answer was 92% from oil and coal and 8% from hardrock mining. He said there is a big chunk of this money that is being requested. He said he hopes it spreads thin enough.

Rep. Ream asked if the current laws are adequate to keep things like this from reoccurring. Rep. Fagg said the laws should properly be looked at again in the future as the major bill was put in eight years ago.

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

EXECUTIVE SESSION

SENATE BILL 118 Chairman Harper said Senator Towe had requested an opportunity to appear before the committee on this bill again. The permission was granted.

SENATOR TOM TOWE said he appreciated having an opportunity to voice his concerns. He said one of his biggest concerns is that there is 2.6 million acres of BLM land eligible in this area.

Senator Towe passed for the committee's perusal a copy of a memo prepared by Luci Brieger, MEIC, detailing the requirements for public review of public land disposal projects. A copy of this is Exhibit 1 of the minutes. He highlighted different points of this memo for the committee. He said areas he understands that are considered for sale in the Forest Service area are the entire Crazy Mountain area, the back side of Lone Mountain and all the Little Snowy area. Senator Towe said this is just a beginning. He said we just don't know what will happen.

Senator Towe said it is his contention that this bill is just as important knowing these facts as when he first introduced it. He said he would like to change a couple of things that might allay some fears and reduce some of the potential burden on the state which is to amend on page 1, line 22, after "hearing" to insert "or public meeting". Senator Towe said three things would have to occur now before the state would hold a hearing and these are: the Commissioner would determine the sale would have an adverse impact on the state; the Commissioner would determine the federal agency was not going to hold a hearing; and the commissioner would determine that further input would be desirable. Senator Towe said with the Commissioner held responsible and required to ask the federal agency to hold a hearing, it will be held. The hearings held by the state therefore, will be few but it is important to give the Commissioner that discretion. Senator Towe said a staff person could be assigned to watch over this and it should take only part of his time.

Senator Towe said he had written to Mr. Buford and had received an answer from James Parker, Acting Director, United States Department of Interior and copies were distributed to the members. A copy is Exhibit 2 of the minutes.

Rep. Ream asked if Dennis Hemmer, Commissioner of State Lands had any comment to make. Rep. Ream asked if this would give the Department more flexibility. Mr. Hemmer said yes, and they will do it if it is the wish of the Legislature; however, they will need sufficient staff and money to do it.

Chairman Harper asked if the federal government might try to pass this obligation on to the state. Senator Towe said he didn't think the federal government would refuse the governor's request to hold a public hearing especially if it came through statutory authority such as this bill would provide.

SENATE BILL 370 Rep. Mueller asked Jim Flyn, Director of Fish, Wildlife and Parks, about page 14, lines 3 and 4, which at the hearing seemed a problem to the department. Mr. Flynn said he didn't really care to comment

but under the present process even where the department does not have an actual water right they can still speak to a negative impact on fish or wildlife.

Rep. Ream expressed a concern that this would also affect private property owners.

John Carter was asked for an opinion and said it would have the same effect on the private individuals as on the department.

Rep. Ream asked of the possibility of eliminating section 10 from the bill and leave the law as it is now.

Rep. Mueller said he would resist that as it would gut the very thing the bill is trying to do.

Rep. Ream said he didn't quite follow that as section 10 just deals with filing an objection. Rep. Mueller said since this just deals with water rights it takes out property rights.

John Carter was asked for an opinion and said it isn't really a legal interpretation but by deleting the interest of property owners from this section it may have adverse impacts, and the reason is that water rights do have effects on other property rights and it is hard to separate the two.

Chairman Harper said how about reinstating "property" and "or interests". Would this be removing the nuisance provision?

Rep. Iverson moved to reinsert these words. He said he could see a problem for if an upstream landholder would have no right to object on the basis of anything and the water could be going through his yard. He felt the right to protect property rights should be reinserted.

This motion carried unanimously with all present (absent were Reps. Fagg, Veleber and Quilici).

Rep. Jensen moved SB 370 AS AMENDED BE CONCURRED IN and this motion carried unanimously with all present. Same absent as previous vote.

SENATE BILL 41 Rep. Mueller moved that the bill be TABLED. This motion carried unanimously with all present. (absent were Reps. Fagg and Veleber and Quilici).

HOUSE BILL 903 Rep. Mueller moved DO PASS.
Rep. Brown asked if the intent is to try to get some federal matching money.
Rep. Ream asked if the federal government had any money to apply on the federal land affected. Rep. Mueller said as

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district ranger he had tried to obtain some and he didn't think there was any available now.

Rep. Hand asked if we were going to prioritize all this type of claims. Chairman Harper reminded him the Appropriation Committee will have to do the prioritizing as this bill would go there if passed.

Rep. Brown said if Rep. Daily's bill does die in the Senate he will be in to put some of the money in Butte.

Rep. Hand asked if the committee shouldn't have a list of requests before them.

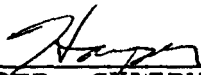
Rep. Fagg said he felt the Appropriation Committee should decide as they did on Muddy Creek.

Rep. Jensen said we recognize there is a problem and he said he would support Rep. Hand's bill if it were here, too.

Rep. Fagg said the bill is before the committee at his request. He said Rep. Daily's bill sets up a fund and this is in case it passes to be in line for some of the funds.

The question was called and the motion carried with Reps. Hand opposed and Reps. McBride, Asay, Quilici and Nordtvedt absent.

Meeting adjourned at 1:50 p.m.



HAL HARPER, CHAIRMAN

Emelia A. Satre, Sec.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL HB 903

DATE 3/18/83

SPONSOR REP. FAGG

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Memorandum

To: All interested parties
Re: Requirements for public review of public land disposal projects
From: Lucie Brieger, NEIC

BLM - SALES

1. BLM distinguishes between public hearings and public "meetings". Whereas hearings are formal--minutes are transcribed and a hearing officer conducts the meeting, "meetings" are informal--more informational in nature, no records are kept, citizens can comment.
2. BLM is required to hold "hearings" only for their coal program, therefore not for land sales. They have the option to hold a hearing before land sales if "substantial" need is shown, but there is no definition of substantial, and no precedent has been set. No information is available on if/when hearings on land sales have been held in the past.
3. The decision to have a hearing or meeting is made by the district manager, but the grounds for granting either are unsure. Perhaps a request by the Governor, the Commissioner of state lands, or the local governing body would be adequate (?).
4. Opportunities for public comment on BLM land sales include:
 - a. State Director Guidance document--public comments accepted. Leads to b. Land use plan. Draft plan is open for review and comment. Public "meetings" may be held on the plan. Then comes the
 - c. Site specific activity plan which means that "notices of realty action" are released to:
 1. Federal Register --once
 2. Governor, Adjacent landowners and landusers, and local governing bodies-- 60 days advance notice
 3. Local paper--once/week for 3 weeks
5. When the Gov., etc, are notified it's not too late for citizens to comment. Plans can be changed up to the day of the sale.

BLM - TRANSFERS

Notification to the public of land exchanges and transfers is less specific. Public notice must be given, but the form of that notice can vary from case to case. BLM's policy is "to notify the affected parties and encourage their comment..."

Information was obtained from Jackie Olson and Dave Vickery, BLM in Billings, 657-6561.

Forest Service - SALES

1. Under current law, National Forest System Lands cannot be sold, except under 2 exemptions (both thoroughly scrutinized and passed by Congress):
 - a. Small Tracts Act--new law. Regs not completed. No cases yet. Value of transaction cannot exceed \$150,000; size cannot exceed 40 acres.
 1. mineral fractions-- for irregularities in mine claims
 2. tract "C's"-- access strips
 3. "encroachment" situations-- 10 acre max.
 - b. Townsite Act-- 40 acre max. Enables towns surrounded by Forest lands to purchase up to 40 acres.

(over)

2. The U.S. Congress would have to change current law for land sale provisions to change. Legislation is not yet developed, but we are practically guaranteed maximum citizen involvement--if Congress should change present law (and this may be very unlikely). Since changes in policy would affect forest plans, those changes to plans would have to be heard publicly.

Forest Service - TRANSFERS and EXCHANGES

Procedures include:

- a. Advertisement once/week for 4 weeks in the local paper
- b. No hearing, but comments are taken

Information obtained from Roger Johnson, USFS, Missoula.

Ex. 1

6X2

IN REPLY REFER TO:



United States Department of the Interior

2710 (321)

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240Honorable Thomas E. Towe
Montana Senate
Helena, Montana 59620

MAR 10 1983

Dear Senator Towe:

Thank you for your letter of January 28, 1983, concerning the open government policy of the Bureau of Land Management (BLM) as it relates to the sale of public lands.

You asked what sort of lands we expect to sell. In the Department of the Interior, we quickly eliminated from consideration for disposal lands in the National Parks, Refuges, Wilderness Areas, and other areas with high environmental and economic values. We are currently reviewing about 2.5 million acres of land under the administration of the BLM. Most of these lands had previously been identified through land use planning as potentially suitable for disposal according to criteria established in the Federal Land Policy and Management Act of 1976.

Public participation and State and local government consultation and coordination are integral parts of public land sale procedures. Formal sale procedures require that State and local government officials in the vicinity of lands to be sold be notified not less than 60 days prior to the sale. This two-month comment period is intended to allow the appropriate body the opportunity to review existing zoning and other regulations concerning the use of the lands prior to conveyance. In addition, the land use planning process prescribed by the BLM provides numerous opportunities for extensive participation for the public, State and local governments.

Sale of public lands and associated public meetings are scheduled by the State and District Offices in Montana. By copy of this letter, we are requesting our Montana State Director to provide your office with advance public land sale information and meetings in the State of Montana. In addition, we are asking the State Director to respond to the specific questions in your letter.

Sincerely,


James M. Parker
Acting

Director

Enclosure

STANDING COMMITTEE REPORT

March 18

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MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

Having had under consideration **HOUSE** Bill No. **903**

first reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE FUNDS TO THE
DEPARTMENT OF STATE LANDS TO RECTIFY ENVIRONMENTAL IMPACTS CAUSED BY
MINING IN THE STILLWATER-BOULDER RIVER COMPLEX; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE."**

Respectfully report as follows: That **HOUSE** Bill No. **903**

DO PASS

STATE PUB. CO.
Helena, Mont.

HAL HARPER

Chairman.

COMMITTEE SECRETARY