48TH LEGISLATIVE SESSION

MINUTES OF
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

February 11, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order by Senator Harold L. Dover, Chairman, on Friday, February 11, 1983 at 12:30 p.m. in Room 405, State Capitol, Helena, MT.

ROLL CALL: Roll was called, all members of the committee being present.

SENATE BILL 369: Chairman Dover opened hearing and called on Senator Carroll Graham, Dist. 29, sponsor. Senator Graham said in 1979 the legislature had amended the reclamation act, however there was language left in that this bill will remove as it could prohibit operators from receiving another permit. There have been no actions filed for violation, however the possibility is there. The Dept. of State Lands is present to speak on the bill.

PROPONENTS: Dennis Hemmer, Dept. of State Lands spoke in favor of the bill, as the language contained in it will be more specific and easier to interpret and enforce relating to strip and underground mining operation violations. His testimony is attached, Ex. '1'.

James Mockler, Montana Coal Council, stated every operator has had a possible minor violation, however it doesn't mean that they are bad operators. Changing the language would protect those operators. Witness sheet attached, Ex. '2'.

Kenneth L. Williams, Western Energy Company said they would like to see the bill adopted to remove redundant and unnecessary language, his testimony is attached, Exhibit '3'.

OPPONENTS: There were no opponents to the bill.

Senator Eck inquired if this bill pertained to oil and gas operators. It was answered it applies to coal mining.

ACTION ON SENATE BILL 369: Senator Story moved that Senate Bill 369 Do Pass, all voted aye and motion carried.

SENATE BILL 368: An act to clarify the Montana Environmental Policy Act. Chairman Dover opened hearing by calling on Senator Gary Lee, sponsor, District 17. Senator Lee stated questions have arisen as to whether the act is substantive or procedural, and particularly since Judge Bennett ruled that portions of the act are substantive. Since MEPA was

(SB 368, cont.)
enacted from an administrative point of view it has been procedural. There is also a resolution which will address this point. He is requesting that for the next two years to maintain the program that it be considered procedural, and that the Environmental Quality Council be requested to study MEPA during the interim and come back to the 49th Session with a definition as to how it should be considered. The EQC has committed the staff and subcommittees to study other important issues, such as alternate energy, hard rock mining, environmental regulations and the economy, however this should be added. When MEPA first came about, there was much heated discussion, and he suggests that it remain procedural until the EQC has time to hold public hearings and to study the information. Senator Lee stated he would ask John North of the Governors office to speak on the bill.

PROPONENTS: John North, Governor's office, stated he is speaking on behalf of Governor Schwinden, neither as a proponent or opponent. The executive branch has considered MEPA to be procedural, as not adding to the existing statutory authority of an agency. In various cases the act has been before the courts, and one judge held MEPA procedural and another that it is substantive. It is their opinion that the decision should be made by the legislature. His entire testimony is attached, Exhibit '4'.

Senator Etchart chaired the meeting while Senator Dover was presenting testimony at another hearing.

Dave Suhr, ASARCO, Montana Mining Association, stated that he would just like to speak as a proponent of the bill.

Jim Mockler, Montana Coal Council, stated he would support the procedural question, and could see many problems if it is considered substantive. The Dept. of State lands has statutory authority to control strip mining, and that they don't need control of other functions that might arise in an EIS.

Don Allen, Montana Petroleum Association, agreed that the situation should be solved by the legislature making a policy decision, and that their decision should not be affected by the difference in the judge's opinions.

Tom Staples, supported that the act remain procedural so that there would not be a delay in the permitting process. He represented the Montana Trade Commission.

SB 368 (cont.)
Pat Wilson, MONTCO, stated this summer they had been asked to address some questions on the process by EQC, and so had given some thought to the process. The regulations which have undergone the MEPA process should be sufficient to satisfy EIS concerns and a permit applicant who has complied with MEPA regulations shouldn't have to go through the EIS process which is duplication of effort. Recent actions by the Board of Health have been in conflict with the act. Financial costs have been a burden to Montco, and a majority of the information from the EIS was duplication. Special interest groups used the comment period to delay the project and convey their attitude through the press to the general public. They ask for support of the bill. Her testimony is attached as Exhibit '5'.

Senator Dover returned to the meeting at this time.
OPPONENTS: Susan Cottingham, Montana Environmental Information Center, stated the MEPA act is 12 years old and is the cornerstone of policies and laws that govern how the state develops its resources, this law is important and the EIS should not be done away with. Her testimony is attached, Exhibit '6'.

James Goetz, Bozeman, Montana Wilderness Association, stated he felt it would be improper to refer to the bill as one that is procedural only, that the bill was designed for protection of the environment, and he urged the bill be rejected.

Bill McKay, Jr., Northern Plains Resource Council, opposed the bill because they believe it makes the EIS meaningless. It had not been intent of any processes to delay projects such as Colstrip, they had been out to stop them entirely. He urged rejection of the bill.

Jim Ellis, rancher from McCloud, stated he has a personal problem since resources are being developed, that he now has large trucks running through his yard and he doesn't believe this is fair. He should be able to do something about this.

Paul Smith, Env. Inf. Center, from Boulder, stated their organization believes this bill repeals MEPA, and is saying that an EIS will have no force or affect. The policy of MEPA should be as it has been to protect Montanans and save their surroundings. He speaks from experience due to what has happened in Boulder valley.

Mike Nye, stated the bill would be a reduction of information that would be gathered for the people of Montana. The mining companies would be able to eliminate the EIS.

(SB 368 cont.)
John Heberling, Kalispell, stated the EIS process is important to many areas, it shows whether or not anything is going to be installed, where, what and how it will be placed. People deserve to know the impact that will be placed upon them.

Bill Rossbach, Attorney for Cabinet Resource Group and Montana Wilderness Association , stated the action they had filed was responsible for Judge Bennett's decision in this matter. The decision of the judge is very well reasoned, and he could provide copies of that for interested persons. They feel the EIS should be required so that a good hard look is taken at all projects. He submitted the opinion as his testimony, attached as Exhibit '7'.

Nancy Harte, Montana Democratic Party, stated they oppose SB 368, because they believe that Montana's environment should be maintained in a clean and healthful condition, and that was why the Montana Environmental Policy Act was passed. The bill would allow only minimal enforcement of the act, and they urge do not pass. Her statement is attached, Exhibit '8'.

Dede Montgomery, representing Montana Public Interest Research Group, a non-profit organization of University of Montana students, stated they are concerned with our environment and its protection. They believe the MEPA should be strong and effective. Her testimony is attached, Exhibit '9'.

Cathy Campbell, representing Montana Association of Churches, stated they have adopted a position of energy and environment which urges the legislature to strengthen the Montana Environmental Protection Act, and oppose this bill for that reason. Her statement is attached, Exhibit '10'.

Keith Stewart, speaking for himself, said there should be no modification of the MEPA. He believes the tourist industry should be protected and the act is needed to prevent degradation of the environment. His statement is attached, as Exhibit '11'.

Other testimony is attached from persons who wished to enter comments into the record. Coalition for Canyon Preservation, Exhibit '12', Foy Boruch, LWV of Montana, Exhibit '13', Ward Shanahan, attorney on his own behalf, Exhibit '14'.

Hearing was then closed and committee members had questions. Senator Shaw inquired of Mr. McKay regarding their wanting to stop Colstrip 3 & 4, and the fact that the point has now been made that power wasn't needed after all. Mr. McKay agreed, however said that hadn't been the reason for their action, they just didn't want it in the area.

(SB 368 cont.)
Senator Halligan said it should be pointed out that the Environmental Quality Council has been studying this issue for the past 18 months and holding hearings on it as well. There was to have been a decision made, but industrial people said the act was working just fine and that was why EQC didn't take a stand.

Senator Van Valkenburg inquired of Senator Lee, saying he understood the difference between substantive and procedural, but didn't understand the challenging of the EIS. Senator Lee said it is not intention to eliminate the EIS, but the point is once a permit is given, to stop someone from coming back in and changing the situation. Senator Van Valkenburg inquired as to the parties involved in the latest lawsuit. It was stated they were the Cabinet Resource Group, Montana Wilderness Association, vs. Montana Department of State Lands and Montana Department of Health and Environmental Sciences and ASARCO. There was further discussion as to whether the lawsuit was final or would be appealed.

Senator Shaw asked Mr. Suhr of Anaconda as to the injunction filed against them and whether that had an effect on their decision to leave. Mr. Suhr stated that was a different issue.

Senator Lee then passed out to committee members copies of news reports regarding the issue. He stated that there should be checks and balances, that the agencies should not be able to just do whatever they want, even though there is important information contained in the EIS. He urged the committee to concur in the bill so that the legislative guidelines would be set for the agencies. Hearing was then closed.

SENATE BILL 362: To regulate construction of dams and reservoirs. Chairman Dover opened hearing and called on Senator Mark Etchart, sponsor. Senator Etchart said he was asked to sponsor this bill by the Montana Water Development Association. There had been a bill two years ago to require inspection on dams, that bill was killed. As a result, he has worked up amendments, which were given to the committee, attached as Exhibit '1'.

K. M. Kelly, Montana Water Development Association, said they support the bill and concur in the proposed amendments. Montana does not have an adequate dam safety law at present, and that without it, technical and financial support for dams will cease. His testimony is attached, Exhibit '2'. He also submitted a statement from WIFE, Exhibit '3'.

Robert Ellis, Montana Water Development Association, stated he also supports the bill, that they did help develop the amendments proposed and support those as well. The dam safety regulations are needed so that SCS does not take away its expertise.

(SB 362 cont.)
C. L. Gilbertson, administrator of Disaster and Emergency Services, stated that there is great concern for dam safety, and that we do need regulation.

Dave Suhr, Montana Mining Association, stated he has no problem with the bill where it deals with water dams and structures greater than 50 feet, however he would like to exclude tailings, as they are inspected by the Dept. of State Lands.

Gary Fritz, administrator of Department of Natural Resources, stated he is concerned with present inconsistent inspection. The SCS has informed Western states they will not be involved unless there is a safety statute and we do need this. He presented testimony which is attached, Exhibit '4'.

Rodger Foster, Water Resources Engineer stated as an engineer he has been involved in the increased awareness of safety due to some dam failures. Height may not make a difference. In Colorado there is a dam which has a long lake. It is only 34 feet high but holds 600 acre feet. There is need for inspection and an early warning system for persons downstream of any dam. Also to be considered is the fact that SCS will be withdrawing technical assistance unless there is regulation. His comments are attached, Exhibit '5'.

Steven Meyer, Montana Association of Conservation Districts presented testimony is favor of the bill, Exhibit '6'.

OPPONENTS: Earl Luvic and W. D. Grace, Libby, vermiculite operators, stated they have a tailings dam, and would have to oppose the bill as written, as their dam is inspected regularly by the Army Corps of Engineers. They are regulated by the Dept. of State Lands and Water Quality Bureau at present as well. There were no other opponents.

Senator Eck inquired if the amendments had been approved by the Soil Conservation Service, Mr. Kelly said they support the concept, however they didn't feel it was strong enough, but they would support it. There was short discussion of the amendments, Chairman Dover suggested the committee come back with suggestions during executive session on the bill.

There being no further business to come before the committee the meeting was duly adjourned at 2:30 p.m.

Harold L. Dover

SENATOR HAROLD L. DOVER, CHAIRMAN
SENATE NATURAL RESOURCES COMMITTEE

Patricia Hatfield

Patricia Hatfield
Committee Secretary

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2-11-83

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)	✓		
LEE, Gary P. (R)	✓		
MANNING, Dave (D)	✓	late	
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓	late ✓	
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

DATE 2/11/83

COMMITTEE ON Natural Resources BILL NO.

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Susan Cottingham	Mt. Env. Info Center		368
Jim Mockler	Mt. Coal Council	368 369	
JOE LAMSON	Mt. Democratic Party		368
Bob Harrington	Mont PIRG		
Kathy Johnston	Mont Pirg		
Erika Kullman	Mont PIRG		
Cathy Campbell	Mt Assn of Churches		368
Marlee Miller	Mont PIRG		
Ken Williams	Western Energy Co	368 369	
C L Gilbertson	Mt DES	362	
Lucia Poriegh	MPUC		368
John F North	Governor's Office	Informational Testimony - SB-368	
Bill Bishop	SBCE		368
Jim McNally	AERO		368
Jay Lenick	LWV of Montana		368
J. M. Kelly	Mont. Water Development Assn	362	
Nancy J. Harte	Montana Democratic Party	[redacted]	368
Dede Montgomery	MontPIRG		368
Jamala Powell	Self		
Dave Trout	Self		
Jim Ellison	BVA		368
Miles Keogh	Stillwater Protective Assoc		368
W R MacKay Jr	NPRC		368
Mrs Kay Stewart	FAMILY		368
Jim Staples	Mont Trade Commission	SB368	
Dave Woodgerd	Dept. of State Lands	369	

(Please leave prepared statement with Secretary)

DATE 2.11.83

COMMITTEE ON Senate Natural Resources BILL NO.

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Dennis Hemmer	Dept. of State Lands	SB 369	
EARL D. HOVICK	W. R. GRACE + Co		#362
DAVE SUTTE	ASARCO Troy	368	~~368~~
"	"		362
Wm. J. McCAIG	W.R. GRACE & Co.	368	#362 ~~#369~~
Pat Wilson	Montco / Thermal Energy	868	
Don Allen	Mt. Petroleum Assn.	368	
Mary A Langley	MT. MINING ASSN.	368	
Ward Shanahan	Self	368 AMEND	
William C Clawson	self		368 369
Fred Swanson	self		368
Joanna Bornhoft	self		368
Paul B Smith	EIC - Boulder Mt		368
B A Ellis	Mont Water Develop	362	
Rodger Foster	Self	362	

William A. Rossbach, P.C.
ATTORNEY-AT-LAW

401 North Washington Street
P.O. Box 8988, Hellgate Station
Missoula, Montana 59807

(406) 543-5156

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

NAME Dennis Hemmer BILL No. 369

ADDRESS Helena DATE 2-11-83

WHOM DO YOU REPRESENT Dept of State Lands

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

2-11-83
Nat. Res.

DEPARTMENT OF STATE LAND'S TESTIMONY ON SENATE BILL 369

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

The Department of State Lands supports Senate Bill 369. The language which this bill seeks to repeal was contained in the Montana Strip and Underground Mine Reclamation Act as passed in 1973. In 1979 amendments were made to the act in order to comply with the federal Surface Mining Control and Reclamation Act. At that time, section 82-4-227(12) was added. This language accomplishes the same basic purpose but is more specific and easier to interpret and enforce. A copy of this language is attached. Therefore, the department is in favor of passage of this bill.

(12) The department may not issue a strip- or underground-coal-mining permit or major revision to any applicant which it finds, after an opportunity for hearing, owns or controls any strip or underground-coal-mining operation which has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of such a nature and duration and with such resulting irreparable damage to the environment to indicate an intent not to comply with the provisions of this part.

Nat. Res.

NAME: James D. MacKlet DATE: 3/11

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? Mt. Coal Council

APPEARING ON WHICH PROPOSAL: 368 & 369

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Nat. Res.

NAME: Kenneth L. Williams DATE: 3/11/83

ADDRESS: 107 East Granite

PHONE: [redacted] 723-4349

REPRESENTING WHOM? Western Energy Company

APPEARING ON WHICH PROPOSAL: Senate Bill 369

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

COMMENTS: Western Energy supports Senate Bill 369, Adoption would remove redundant and unnecessary language

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Nat. Res.

2/11/83

TESTIMONY OF KEN WILLIAMS

WESTERN ENERGY COMPANY

RE: SB 369

Mr. Chairman, Members of the Committee, my name is Kenneth Williams of Butte, Montana representing Western Energy Company.

Western Energy would like to express support for Senate Bill 369. In 1979, the Montana Strip and Underground Mine Reclamation Act was amended to allow the Department of State Lands to secure Federal approval to regulate coal mining in Montana. At that time, language was added to the Act in Section 3 of 82-4-251 to allow the Department to suspend or revoke an operator's mining permit if he has exhibited a pattern of violations. Additionally, Section 4 provides that should a permit be suspended or revoked, an operator may not receive additional permits until he complies with all orders and conditions regarding the first permit. Such language was sufficient for Federal regulatory approval.

Unfortunately, in 1979, redundant and unecessary language from the earlier Act was left untouched in Section 4. Senate Bill 369 proposes to delete the redundant language. Western feels there is adequate protection against bad operators in the remainder of the Act. Western Energy Company urges this Committee to recommend passage of Senate Bill 369.

371333

TESTIMONY SENATE BILL 368

My name is John North. I am appearing on behalf of Governor Schwinden, neither as a proponent or an opponent. I will first address the substantive/procedural portion of SB 368. On this issue, the governor urges that a public policy decision be made by the Legislature. When and if a hearing in the House is held on the substantive bill that Representative Vincent has requested, I intend to submit similar testimony that which follows.

The substantive/procedural issue has been around for a long time. In 1976, the Montana Supreme Court issued it landmark Beavercreek II decision. Based on the language of that opinion, the executive branch has consistently interpreted MEPA to be procedural - that is, as not adding to the existing statutory authority of an agency to deny a permit application. Of course, where the agency already has authority, as in an agency-initiated project or in an area of review already covered by the permitting statute, the EIS serves as a basis of information for the permit decision.

Beavercreek did not end the debate! Some interpret the Beavercreek decision differently, contending that the court did not address the substantive/procedural issue and that MEPA is substantive. In both the 1977 and 1979 Legislative Sessions, two bills (one to make MEPA substantive and one to make MEPA procedural) were introduced. In each session, both bills died.

The debate has also continued in the courts - but with no more definitive results. In 1980, one district judge in Helena stated in an opinion that MEPA is procedural; in 1982, another judge held that it is substantive!

The time has come for a definitive resolution of the issue. While debate has continued, so has state government. The executive has, to the best of its ability, interpreted MEPA as it is presently written and has administered the permitting statutes in accordance. But permit applications are pending, and with the advent of the 1982 court decision, agencies must now choose which court decision to follow. Directors and permittees can only hope that their choice is correct.

Clearly, in the interests of avoiding further uncertainty, delay, and expense, the matter should be resolved as soon as possible. And the decision, being one of public policy, must and should be made by the state's policy-making body, the Legislature. I commend Senator Lee for bringing the matter before the Legislature.

Whether the ultimate decision is that MEPA from this point forward is substantive or procedural, the executive branch will do its best to implement the will of people as expressed by the Legislature.

I do have one comment on the portion of SB 368 that eliminates any right of action other than one to require an EIS. This section would prohibit lawsuits over the adequacy of an EIS and might be construed to eliminate enforcement of the requirement that an EIS be done before a permit is granted or a project is undertaken. This goes beyond the substantive/procedural issue. While lawsuits over the adequacy of an EIS may result in

2-11-83

some delay, this provision goes too far. It deprives the public of its ablity to enforce its right to be informed of the environmental consequences of a state action, before the action takes place.

Thank you for allowing me to testify today.

p.3 ex. 4

NAME: John F. North DATE: 2/11/83

ADDRESS: Governor's Office

PHONE: 3111

REPRESENTING WHOM? Governor's Office

APPEARING ON WHICH PROPOSAL: SB 368

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

COMMENTS: Informational testimony submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME Tom Stapler BILL No. SB368

ADDRESS _____ DATE 2-11-83

WHOM DO YOU REPRESENT Mt. Trade Commission

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

Park One Building
2910 3rd Avenue North
Post Office Box 789
Billings, Montana 59103-0789
(406) 252-5208

Sen. Nat. Res.
2/11/83

Pat Wilson

MONTCO

Supporting SB368

In order for Montana to successfully chart a course for future environmental management, it must look at what it has done in terms of its legislation, regulation and policy decisions over the past ten years and ask, "Has it achieved what it intended, or has it exceeded the legislatures intent?" If after undertaking a comprehensive review, it is determined that Montana's regulatory agencies have exceeded legislative intent, are the legislature and state government willing to endorse corrective legislation to address this situation?

This summer we were asked by the Environmental Quality Council to express our opinions and perceptions relative to the Montana Environmental Policy Act regarding the costs, benefits, and effectiveness of the implementation of MEPA. Because these questions deal directly with the issue of this bill, let me share with you our answers to the EQC's questions.

- In light of there being other state laws that are designed to protect particular components of the human environment, i.e., air and water quality statutes, do you believe that there is a need for the Montana Environmental Policy Act?

There are actually two answers to this question. In the first case, MEPA can provide the necessary procedures to ensure that the promulgation of regulatory programs results in balanced regulations in terms of

economics, technology, and environmental quality. Such laws and regulations lay the real groundwork for the co-existence between man and his environment. Thus, those regulations which have undergone the MEPA process should be deemed as sufficient programs to satisfy EIS concerns. In other words, permit applicants who comply with "MEPA approved" regulatory programs should not have to undergo the EIS process.

This assumption leads directly into the second case. To require the preparation of an EIS on a project that must comply with "MEPA approved" regulatory programs is simply duplicative in terms of time and economics. Agencies responsible for the administration of such programs should be competent to determine whether or not the human environment will be protected without the preparaton of an EIS.

- In your opinion, how well has the actual implementation of MEPA satisfied the purpose for which it was passed?

Recent action by the Board of Health on the proposed PSD regulations is a prime example of neglect for MEPA. In its lack of wisdom, the Board adopted the most stringent regulations possible without examining the actual environmental, economic impacts. The Air Quality Bureau subsequently stated; "The major effect of the statewide baseline is that all emissions would consume increment and may exceed the available increment". This raises the question of whether or not the Bureau could legally issue a permit. In the case of Montco's permit application, we were told by the Board that this action would preclude us from receiving a permit. Surely this action was in direct conflict with 16.2.603(3)(b) which requires the preparation of an EIS on actions which may be either significantly growth inducing or growth

inhibiting.

Implementation of MEPA in regards to the preparation of an EIS on proposed Projects has also created negative consequences. The process has been used as a platform by special interest groups to display their emotionalism in an effort to delay and prevent any type of development.

MPEA should not expand the authority of a state agency to grant a permit based on environmental considerations. The purpose of the state's environmental laws are to provide the basis for reasonable regulations by which to review, approve or deny a permit application. If MEPA is to be considered an over-riding permitting authority, then the existence of environemental laws and personnel are meaningless. In several cases, MEPA has allowed special interest groups to antagonize applicants and agencies, resulting in permitting delays and unnecessary additional expenditures.

The costs associated with MEPA are excessive, duplicative, and uncontrollable with the burden of those costs falling on companies wishing to do business in Montana. Financially the burden to Montco has been $518,000 for the release of the Draft EIS, with additional monies required for completion of the Final EIS. These expenditures are <u>in addition</u> to the $5 million expended to collect the information necessary to satisfy the requirements of the Montana Strip Mining Act and Regulations. A majority of the information utilized in the DEIS was duplication of the data submitted in the Montco Permit Application to the Reclamation Bureau.

The release of the DEIS, public hearing, and comment period were seized upon by special interest groups to delay the project by displaying personal

emotionalism, requesting additional studies, demanding that Montco mitigate all impacts, and suggesting the preparation of supplements to the DEIS.

If MEPA is charged with the responsibility of creating and maintaining conditions under which man and nature can coexist in productive harmony, then those regulating growth must realize that the total burden cannot be placed on the company. Furthermore, establishment of the Coal Severance tax provides for a large majority of mitigative measures.

- What benefits, if any, do you believe are associated with MEPA implementation? Who enjoys these benefits?

Unfortunately, a majority of so-called benefits have been enjoyed by three distinct groups: special interest groups, a select group of state employees, and environmental consultants.

Special interest groups benefit by developing well rehearsed emotional presentations at public hearings, letter writing campaigns, and press releases conveying their attitudes as those of the general public. These factors further the state's reputation for "anti-business", permitting delays, and biased views of energy development.

A select group of state employees benefit by being provided with a forum (EIS) to expound upon their own personal beliefs, judge with little experience the results of data collected by well trained and experienced professionals, and request additional costly information which has little or not bearing on the impacts of the proposal.

Environmental consultants benefit by selling their expertise to

companys for collecting unnecessary information and conducting analyses on inadequate environmental impact statements.

On the positive side, MEPA has benefitted the people as a whole by ensuring the promulgation of reasonable regulatory programs. However, as indicated previously, this has not always been the case.

The resource industry who is accustomed to taking risk in making a "go" or "no go" decision regarding a project, must be able to access the cost and time that is required in gaining the necessary permits to put their project in compliance with state or federal laws. Business is entitled to a clear and manageable environmental policy that spells out the rules of the game at the front end.

Therefore we ask your do pass for SB368.

Exh 6
SB368
2-11-83

Susan Cottingham

SB 368. A bill to amend the Montana Environmental Policy Act.
Testimony presented in opposition by the Montana Environmental Information Center.
February 11, 1983.

The Montana Environmental Information Center was organized by Montanans ten years ago to provide research, information and advocacy on natural resource issues. During this decade our goals have been twofold: to maintain and enhance the quality of both our natural and human environments and to educate and involve citizens in decisions that will impact this environment.

The Montana Environmental Policy Act is the cornerstone of policies and laws that govern how our state will develop its resources. There is no law on the books of greater importance to the achievement of Montana's collective environmental goals than MEPA. It is the only law which fully implements our constitutional guarantee to a clean and healthful environment.

Now 12 years old, MEPA embraces a fundamental set of premises:

First, the recognition that we have the power to make decisions and develop projects, which can have serious impacts on the environment and on human health and welfare;

2-11-83.

Second, that we should endeavor to make such decisions not in the dark, from a position of ignorance, but with full knowledge of the consequences, having compared all of the available alternatives as to their effect;

Third, that we should make decisions that are this significant in a careful way, a way that involves the public, so that all Montanans can understand the potential effects of the proposed major decisions and can participate in the process of making those decisions; and

Fourth, that once we have studied and understand the effects of the proposed decision, the reasonable alternatives available, and possible ways to reduce or eliminate the major adverse effects, we should use that information to make a rational, intelligent decision.

SB 368 removes the major purpose of MEPA by requiring agencies to ignore much of the information gathered in this important public review process when it makes its final decision on a project. This would eliminate the purpose of MEPA which is to use a comprehensive and open analysis of all the interrelated effects of a major state decision so that impacts can be mitigated and the best possible decision can be reached. We believe the language of MEPA is clear and that agencies can and should implement this language with rules. This is the best approach to clear up uncertainty.

Instead we are presented with SB 368 which makes the EIS process mandated by MEPA largely a waste of time and money. It

ensures that information compiled under the Act will gather dust on a shelf. The realization that better decisions would come from the collection and use of more complete information led to MEPA in the first place. SB 368 which seeks so clearly to limit the applicability of MEPA is contrary to the original purpose of the Act and deceives the public--which expects MEPA to make for better decisions to protect the environment. MEPA allows an agency to consider all impacts of a proposed project and to use reasonable measures to reduce or mitigate those impacts. Instead of invalidating this process through passage of SB 368, we urge the administrative agencies to fully implement MEPA by adopting clear and consistent regulations which would clarify reporting and analysis requirements under the Act. These regulations would achieve the goals of reducing paperwork, defining time frames, clarifying agency authority and would provide industry, agencies and the public with a specific understanding of the requirements of MEPA.

SB 368 does not achieve these goals and serves only to make our most important environmental law meaningless. We strongly urge this committee to give a DO NOT PASS recommendation to this bill.

"clarification or reconsideration." These motions are addressed to Counts I, II and VIII of the amended complaint. In Count VIII plaintiffs allege groundwater will be polluted by discharge from the tailings ponds of the mine. Asarco's and DSL's motions for partial summary judgment on this count were granted during the hearing on the motions on the ground the count was not timely. The count may be revived, however, when timely.

Counts I and II involve DSL's assertion that MEPA does not provide it with authority to condition, reject or grant a permit under the HRMA. As to these counts we originally took the following action:

1.) Plaintiff's motion for partial summary judgment as to Count I, made on the ground DSL misinterpreted the effect of MEPA on its function under the HRMA, was granted.

2.) Plaintiff's motion for partial summary judgment as to Count II, made on the ground DSL relied upon an incorrect interpretation of the effect of MEPA on its function under the HRMA in granting the permit, was denied as there remained issues of material fact which were left unresolved.

Defendants Asarco and DSL present basically the same arguments as were made prior to our earlier decision, urging that their motions for summary judgment as to Count I should be granted, which would mandate a judgment in their favor as to Count II as well. These parties cite a 1980 decision by Judge Meloy which was not previously considered. We do not find that decision, Northern Tier Information Committee v. Northern Tier Pipeline Company (Lewis and Clark County, Cause No. 44987), controlling. The discussion in that opinion pertained to the eminent domain statute rather than the HRMA, and the issues in that case were determined moot.

We now address, for the second time, the contention that MEPA does not supplement DSL's permit authority under the HRMA. We reach the same conclusion as we reached in our first encounter with this issue but will discuss our holding in some detail in order to assure

complete understanding. We begin by noting that MEPA itself specifies that its policies and goals are supplementary to the existing authorizations of state boards, commissions and agencies. 75-1-105, MCA. Defendants, however, assert Montana case law mandates a contrary conclusion. We feel the major Montana cases on this issue, Montana Wilderness Association v. Board of Health and Environmental Sciences, 171 Mt. 477, 559 P.2d 1157 (1976), and Kadillak v. Anaconda Co., 36 St. Rptr. 1820, 602 P.2d 147 (1979), have been adequately distinguished in our earlier opinion. Those cases were decided on the basis of a direct conflict between the agency's specific regulatory statute and MEPA. Asarco and DSL contend a conflict can be found in this case in that the HRMA specifically enumerates the only basis for which a permit can be denied. 82-4-351, MCA. They say conflict would be created if MEPA were allowed to supplement these bases. A similar argument was made in Environmental Defense Fund, Inc. v. Matthews, 410 F. Supp. 336 (D.C.D.C.1976). Federal interpretation of the National Environmental Policy Act (NEPA) is relevant in interpreting MEPA. Kadillak, supra 602 P.2d at 153. The argument that a direct conflict was thus created was soundly rejected in Environmental Defense Fund, Inc. The following language seems pertinent:

> The FDCA does not state that the listed considerations are the only ones which the Commissioner may take into account in reaching a decision. Nor does it explicitly require that product applications be granted if the specified grounds are met. It merely lists criteria which the Commissioner must consider in reaching his decision. In the absence of a clear statutory provision excluding consideration of environmental factors, and in light of NEPA's broad mandate that all environmental considerations be taken into account, we find that NEPA provides FDA with supplementary authority to base its substantive decisions on all environmental considerations including those not expressly identified with the FDCA and FDA's other statutes. Environmental Defense Fund, Inc., supra at 338.

This line of analysis is buttressed by Zabel v. Tabb, 430 F. 2d 199 (5th Cir. 1970), in which NEPA and the Fish and Wildlife Conservation

Act were found to provide the Secretary of the Army with authority to refuse projects for ecological reasons despite the fact the project would not interfere with navigation, flood control or the production of power. In Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), the court discusses the fact that prior to NEPA the Atomic Energy Commission asserted it was not statutorily authorized to weigh the adverse environmental impacts of its actions. "Now, however, its hands are no longer tied. It is not only permitted, but compelled, to take environmental values into account. Perhaps the greatest importance of NEPA is to require the Atomic Energy Commission and other agencies to consider environmental issues just as they consider other matters within their mandates." Id. at 1112 (emphasis in original).

We are aware of other federal cases in which a different conclusion has been reached. In Natural Resource Defense Council v. Berklund, 609 F.2d 553 (D.C. Cir. 1979), for example, the court held the Secretary of Interior was without discretion to deny a lease to a qualified applicant.The statutory language, which the court called "unequivocal and clear,"id. at 557, was that a permittee, upon establishing the presence of 'commercial quantities' of coal, "shall be entitled to a lease under this chapter for all or part of the land in his permit." 30 USC §201(b)(1970)(amended 1976). Similarly, in State of South Dakota v. Andrus, 614 F.2d 1190 (8th Cir. 1980)cert. denied, 449 U.S. 822 (1980), the court noted the issuance of a mineral patent has been well established as a ministerial act and the environmental impact statement (EIS) requirement is usually not applied when a ministerial act is involved. In both of those cases the decision turns on the conclusion that the language of the statute removes discretion from the decision maker. In this case, however, a purely ministerial act is clearly not involved. The pertinent statutory language is: "A permit may be denied for any of the following

reasons. . . .". As opposed to a declaration that the applicant shall be entitled to a permit upon the establishment of certain conditions, the use of the word "may" in the statute indicates the decision maker does retain discretion. See American Electric Power Service Corporation v. Federal Energy Regulatory Commission, 675 F.2d 1226, 1241 (D.C. Cir. 1982). We think the language quoted above from Environmental Defense Fund, Inc., supra, is applicable here and conclude there is no clear statutory language barring consideration of environmental factors. There is, then, no conflict between MEPA and the HRMA and DSL can therefore reject or condition a permit on environmental grounds additional to those listed in Section 82-4-351, MCA.

Further support for this conclusion can be found in discussions of the purpose of an EIS. Asarco and DSL assert that their interpretation of MEPA as not supplementing DSL's decision making authority would not render an EIS meaningless as the EIS would still perform its function as a disclosure law. We conclude MEPA was intended to affect decision making as well as to disclose environmental consequences, and again refer to analysis of NEPA to support this statement. As recognized by the Council on Environmental Quality, "[t]he primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and action of the Federal Government. . . . An environmental impact statement is more than a disclosure statement. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions." 40 CFR §1502.1 (1981). In Weinberger v. Catholic Action of Hawaii, ____U.S. ____, 102 S.Ct. 197 (December 1, 1981), the United States Supreme Court noted that the aims of NEPA's EIS requirement are "to inject environmental considerations into the federal agency's decisionmaking process. . . . and to inform the public that agency has considered environmental concerns in its decisionmaking

process." Id. at 201. Environmental Defense Fund, Inc. v. Corps of Engineers, U.S. Army, 470 F.2d 289 (8th Cir. 1972), makes it clear NEPA "is more than an environmental full-disclosure law. NEPA was intended to effect substantive changes in decisionmaking." Id. at 297. See also Environmental Defense Fund v. Tennessee Valley Authority, 468 F.2d 1164, 1174-1175 (6th Cir. 1972) and Trout Unlimited v. Morton, 509 F.2d 1276, 1282 (9th Cir. 1974). As summarized in Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693, 697 (2nd Cir. 1972), ". . . the primary purpose of the impact statement is to compel federal agencies to give serious weight to environmental factors in making discretionary choices. . . ." The cases quoted above indicate serious weight involves more than merely disclosing environmental consequences. Those consequences must be considered in the agency's decisionmaking process, just as the agency considers other matters within its mandate. In this case, then, DSL must consider other environmental factors in making its decision to grant, condition or deny a permit just as it considers air and water quality and reclamation. It is not sufficient for the agency to note the presence of adverse environmental factors while denying authority to do anything about them. Nor can an agency "escape the requirements of NEPA [MEPA] by excessively constricting its statutory interpretation in order to erect a conflict with NEPA [MEPA] policies." Natural Resource Defense Council v. Berklund, supra at 558. We note the fact that other states have reached similar conclusions as to the impact of their state environmental policy acts. See Department of Natural Resources v. Lake Lawrence Public Lands, 92 Wash.2d 656, 601 P.2d 494, cert. denied, 449 U.S. 830 (1980); City of Roswell v. New Mexico Water Quality Control Commission, 84 N.M. 561, 505 P.2d 1237 (1972), cert denied, 84 N.M. 560, 505 P.2d 1236 (1973); Town of Henrietta v. Department of Environmental Conservation of the State of New York, 430 N.Y.S. 2d 440 (1980).

We find additional authority for our conclusion in the following

sections of the 1972 Montana Constitution:

> Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities. Art. II, §3 (emphasis added.)

> Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
> (2) The legislature shall provide for the administration and enforcement of this duty.
> (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Art. IX, §1.

The fact that Montana has given constitutional status to maintenance of a clean and healthful environment demonstrates the heightened importance which must be placed on actions which affect the environment of this state. There is no comparable constitutional protection afforded federal actions. The conclusion we reached above as to the impact of MEPA was based largely on federal interpretation of NEPA. The presence of these additional constitutional provisions provides authority for even stronger environmental protection in this state. See Tobias and McLean, Of Crabbed Interpretations and Frustrated Mandates, 41 Mt. L. Rev. 177 (1980). In the event we could not find support for our conclusion in NEPA interpretation, the combination of MEPA and the above constitutional sections would provide the necessary authority.

In the interest of thoroughness we respond to two additional arguments made by Asarco and DSL. The first is that the legislative background of MEPA and the HRMA provides support for their interpretation of MEPA's impact, or rather the absence thereof. The argument is since both acts were passed the same day, the

legislative intent could not have been to allow MEPA to supplement DSL's permitting authority. There would be no reason to specifically enumerate the bases for denial if these bases were already provided for and in fact enlarged by MEPA. We hesitate to attempt to conclusively ascertain the legislative intent on this issue from the fact of the simultaneous passage. We would point out, however, that in some instances, such as when no major state action is involved, portions of MEPA would not apply to DSL's actions. The provisions of Section 82-4-351, MCA, would operate in the absence of certain supplementary MEPA provisions in such a situation.

Secondly, defendants repeatedly refer to a statement in Montana Wilderness Association, supra 559 P.2d at 1161, which purportedly supports defendant's interpretation of MEPA. The statement is that MEPA does not contain any regulatory language. We repeat our observation that that case was decided on the basis of conflict between MEPA and the Subdivision and Platting Act, a factor which is not present here. We would also point out that MEPA is patterned after, and almost identical to, NEPA. A great deal of our authority for reaching our conclusion comes from federal case law interpreting NEPA. The federal courts have based their decision on statutory language almost identical to ours, and we therefore cannot agree that the statement from Montana Wilderness requires a change of decision.

For the reasons stated above, Asarco's and DSL's motions for summary judgment as to Count I are denied. In light of this decision it is not necessary to discuss Count II except to note material issues of fact still remain as to that count. We therefore also deny the motions for summary judgment as to Count II.

Dated this 29th day of September, 1982.

GORDON R. BENNETT
District Judge

cc: Counsel of record

Exh # 8

WITNESS STATEMENT

NAME Nancy J. Harte BILL No. 368

ADDRESS Box 822, Helena DATE 2-11-83

WHOM DO YOU REPRESENT Montana Democratic Party

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

see attached

FORM CS-34
1-81

Exhibit '8'
Sen. Nat. Res.
2/11/83

8

MONTANA DEMOCRATIC PARTY

February 11, 1983

TESTIMONY PRESENTED TO THE SENATE NATURAL RESOURCES COMMITTEE IN OPPOSITION TO SENATE BILL 368, TO RESTRICT DECISION-MAKING AUTHORITY AND RIGHT OF ACTION ENABLED UNDER THE MONTANA ENVIRONMENTAL POLICY ACT.

Mr. Chairman and members of the committee, for the record my name is Nancy Harte, legislative coordinator for the Montana Democratic Party.

We oppose House Bill 368. Montanans wanted assurances from the state government that their environment would be maintained in a clean and healthful condition -- that's why the Montana Environmental Policy Act was passed in the first place, twelve years ago.

MEPA verifies the relationship between people and the environment, recognizing that both have an impact on each other. It also recognizes that governmental policy should take into account the effect population growth, industrial expansion, technological advances and other human activities have on Montana's resource base. Without MEPA, government's view of environmental policy would have mankind living in a vacuum.

Having laws that state general policies and philosophies for government are good, but laws need to allow for authority to carry out those policies. As it is now, state agencies have authority to act based on MEPA, whose laws do not override already existing authority of state agencies to act in environmental activities, but supplement it.

Montana Democratic Central Committee • Steamboat Block, Room 303 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

House Bill 368 would change all that. This bill would allow state agencies to act in only the most minimal way to enforce the policies and goals set out in the Montana Environmental Policy Act.

It's not as if Montanan's want their environmental laws weakened, though supporters of this bill would have you believe that is the case. In a survey of Montana Democrats last summer, 88 percent said that they wanted Montana's environmental laws strengthened or at least maintained at current levels. A New York Times/CBS News Poll conducted in the autumn of 1981 showed that on a national level 67 percent of Americans supported environmental laws, even at a cost to economic growth.

Like most Montanans, Montana Democrats are concerned with attempts to weaken our environmental protection laws. At the party's Platform Convention last year, Democrats took a firm position on MEPA. Quoting from the platform, Democrats said, "We affirm our strong support of MEPA, as the central environmental law that guarantees Montanans the right to participate in and understand decisions that affect their environment. We affirm our solid resistance to any attempt to weaken this essential legislation."

Montanans want a clean and healthful environment, and they want laws to protect that environment. We urge a "do not pass" recommendation on House Bill 368.

Sen. Nat. Res.
2/11/83

MONTANA PUBLIC INTEREST RESEARCH GROUP
729 KEITH AVENUE
MISSOULA, MT. 59801
(406) 721-6040

TESTIMONY BEFORE THE SENATE COMMITTEE ON NATURAL RESOURCES - February 11, 1983

Good morning, Mr. Chairman and members of the Senate Committee on Natural Resources.

My name is Dede Montgomery. I am a student at the University of Montana and chairperson of the Montana Public Interest Research Group (MontPIRG). MontPIRG is a non-profit, non-partisan corporation funded and directed by students at the University. MontPIRG performs research, educational and advocacy work on issues that are important to students as citizens. Consumer protection, the environment and governmental responsibility are the major areas of focus.

I am here today on behalf of MontPIRG to support the Montana Environmental Policy Act (MEPA). Montana needs a strong, effective MEPA, one that contributes to the ability of our state agencies to make decisions that help preserve and protect our natural resources. As citizens, a strong MEPA will help maintain our constitutional right to a clean and healthy environment. Your support of a strong and effective MEPA will go a long way to represent the best interests of Montanans.

Thank you.

EX. 10
Sen. Nat. Res.
2/11/83

10

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601

February 11, 1983

MR. CHAIRMAN AND MEMBERS OF THE SENATE NATURAL RESOURCES COMMITTEE:

I am Cathy Campbell from Helena, representing the Montana Association of Churches. I am testifying in opposition to Senate Bill 368.

The Montana Association of Churches has adopted a position paper on Energy and Environment in which we specifically urge the legislature to maintain and strengthen, where necessary, the Montana Environmental Policy Act.

Our interest in this kind of legislation stems from our belief that the earth belongsto God and that all parts of it are involved with all others. The Christian faith sees the role of human beings in the world as that of a steward.

We share with the people of Montana a desire to see both social justice and environmental quality, and support legislation which promotes and maintains both. The achievement of this goal is most often threatened by an apparent and unnecessary conflict between economic health and environmental protection. However, there is mounting evidence to suggest that a commitment to environmental quality actually increases employment, and for a larger sector of the economy.

We have a profound respect for creative human labor and the limits of the earth. Because of this, we urge you to oppose SB 368.

WORKING TOGETHER:

American Baptist Churches of the Northwest

American Lutheran Church Rocky Mountain District

Christian Church (Disciples of Christ) in Montana

Episcopal Church Diocese of Montana

Lutheran Church in America Pacific Northwest Synod

Roman Catholic Diocese of Great Falls

Roman Catholic Diocese of Helena

United Church of Christ Montana Conference

United Presbyterian Church Glacier Presbytery

United Methodist Church Yellowstone Conference

ıited Presbyterian Church Yellowstone Presbytery

Ex. #11
Sen. Nat. Res.
2/11/83

rm CS-34
9

NAME R. KEITH STEWART BILL NO. SB 368

ADDRESS 7550 So. 19TH ST DATE 2/11/83

WHOM DO YOU REPRESENT FAMILY & TOURISTS (class 1)

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: as proposed by SB 368

there should be no modification of the MEPA. To do so is to alter this act in an unacceptable manner in that the act would be weakened. The MEPA should be a substantive act. Anything that deters from the substantive aspects of MEPA is a process of diminishing the Act; such actions likely would provide for substantial environmental degradation.

Agency decision-making authority should not be altered relative to MEPA, except to expand that authority wherein such expansion is in compliance with the Policy of the MEPA.

With the declining role of the U.S. EPA and its decrease of support (financial and other) to the States, about 60% during the Reagan Administration so far, there is every need to strengthen MEPA so as to help prevent environmental degradation, which Montana needs the Tourist industry & like the and my family will look to other areas where environmental degradation is less if the MEPA is weakened in any way

Sincerely,
R. Keith & Kay S. Stewart
& family

(the Council)

CCP

PROMOTING
COST EFFECTIVE HIGHWAY DESIGN
AND
BIO-REGIONAL PLANNING

DOWNSCOPE

February 11, 1983

RE: OPPOSE SB 368

TO: Senate Natural Resources Committee

MEPA ASSURES FUTURE MONTANANS A SAFE ENVIRONMENT

A clear need exists for a complete and unadulterated law such as MEPA which addresses an "aggregate of the ecological influences and the external conditions" affecting the human environment, including human living patterns, safety considerations, and other social and economic factors. Too often in these debates the focus falls upon air and water quality politics and we forget that our "environment" includes other important aspects of human living patterns and needs, such as safety. MEPA is a mechanism which also assures future Montanans of a safe and healthful environment. MEPA works to protect public safety.

MEPA CAN ASSURE SOUND DECISION-MAKING BASED ON SUBSTANTIVE DATA

MEPA expands data base requirements. Too often in the past, important decisions have been made by seat-of-the-pants decision-making. Soon the repercussions develop -- chaos, more problems created that cost more money to correct. It appears unreasonable to suggest that agencies not apply substantive information gathered in the MEPA process. The exact opposite is needed for sound long-range decision-making.

MEPA IS NEEDED TO INSURE THAT DECISIONS FOR MAJOR EXPENDITURES OF PUBLIC MONEY ARE COST EFFECTIVE AND BASED UPON SUBSTANTIVE DATA

State government cannot afford any more boondoggles and must become more sophistocated in philosophy. An unadulterated MEPA can assure Montanans that public expenditures are cost-effective.

More than ever, the excellerating problems facing our state, nation, and world increase the need for government decisions based on sound data. SB 368 is obviously a big step backward in this regard.

COALITION FOR CANYON PRESERVATION, BOX 422, HUNGRY HORSE, MT 59919
DOWNSCOPING FOR BETTER USE OF SCARCE HIGHWAY FUNDS.

Sharon L. Wellows
Coordinator

Jay Bruick
Law of Montana

SB 368 MEPA procedural

MEPA is the only statute that addresses itself to the environment as a whole. All aspects of the environment are interrelated, and if this bill passes, consideration of environmental issues would be discouraged, and would be back to the piecemeal approach before MEPA.

We have come a long way in making the importance of environmental concern, and in making decisions beneficial to the citizen, economy, and the environment. The passage of this bill would clearly be a step backwards. Therefore, the law of Montana

NAME Ward A. Shanahan BILL NO. SB 368

ADDRESS P.O. Box 1715, Helena, MT 59624 DATE 02/11/83

WHOM DO YOU REPRESENT On His Own Behalf

SUPPORT XXX OPPOSE _____ AMEND X X X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am a lawyer in Helena, and the thoughts expressed herein are my own and not those of any particular client of mine.

It is my firm belief in support of Senator Lee's bill SB 368 that MEPA needs some clarification because of the recent tendency to try to expand its application beyond the clear statements of the statute. Section 75-1-105, MCA, now provides that MEPA is supplementary to existing authority. But, despite this clear statement, opposing parties have taken the following contrary positions in past years:

On one side, it is maintained that MEPA provides only the procedural requirement of doing an EIS and that it supplements the agency's authority in only this way. This is the side the Department of State Lands took in the recent Cabinet Wilderness case. The Department maintained that it had to presume that MEPA was constitutional. Therefore, if they concluded that it created new substantive rights, this would raise a serious problem because the act contains no specific standards set by the legislature. MEPA lists in general terms broad categories of

inquiry and requires the agency to "fill in the gaps." If the agency, by "filling in the gaps," creates new substantive rights, the act may be held to be an unconstitutional delegation of legislative power.

On the other side of the argument, the parties urge that MEPA not only creates substantive rights which extend the scope of the particular permit proceeding to the consideration of environmental values discovered in the EIS process, but, also, that these values may be paramount in importance to the private and property rights of people. Thus, following this rationale, the supplemental action of MEPA is to add these new rights to those things which are protected as part of the public health, welfare, and safety. (E.g., animals, trees, birds, and flowers have legal rights which may exceed or override human rights, including the property rights of the developer.)

This is the gist of the so-called "procedural versus substantive argument" which has been discussed in recent months by the EQC, the courts, and the press.

Both of these positions distort a reasonable application of MEPA, in my opinion. Environmental protection has real legal "substance," both in the Montana Constitution, Article II, section 3 (personal right to a "clean and healthful environment") and in MEPA (Section 75-1-103, MCA--"recognizing the critical importance of . . . environmental quality to the overall welfare and development of man . . . ."). Thus, it cannot be limited to the

academic exercise of merely drafting an EIS so that industry, government officials, and environmentalists can have a "spirited argument" before a decision is reached.

On the other hand, the enactment of MEPA should not be viewed as establishing rights beyond the personal rights enumerated in the Constitution and expressed in the act itself. Despite the insistence of ecologists, in my opinion, animals, trees, streams, and "eco-systems" do not and should not have legal rights of their own which are equal to, or superior to, the rights of humans. The "substance" of the act, if any, should be related to the duty of the agency to protect the public health, welfare, and safety, as well as the protection of private rights, including the economic rights of the developer.

I don't think the legislature should decide this "substantive versus procedural" argument because I think it should be left to the courts in each case. But you should clarify the clear statement already in the act that MEPA is "supplemental" and should re-emphasize that the inquiry under that act is limited as follows:

(a) To the proceedings conducted by an agency acting pursuant to specific statutory authority.

(b) To those considerations where MEPA does not conflict with the agency's specific statutory authority.

(c) To the citizens' reasonable opportunity to particiate in the decision-making process under Article II, section 8, of the Constitution, or protect private rights under Article II, section 17, of the Constitution.

(d) To a determination that protects the developer's constitutional rights so that if it is found that a substantive environmental value is paramount to the developer's property rights, so as to require denial of a permit, the agency is aware of its duty to compensate the developer for a "taking" and to award compensation or other equal protection.

It is my position, therefore, that MEPA does, under certain circumstances, expand the authority of the agency "substantively" so long as it does not interfere with the agency's primary mission and so long as it is confined to the proceedings brought before the agency. Subparagraph (2) of SB 368 would accomplish this if it provided as follows:

However, nothing in this chapter creates any rights of action in addition to those available within the scope of administrative and judicial proceedings held pursuant to such existing authorizations.

In addition, you should clarify the legislative policy further by adopting a statement of intent for this act as follows:

The intent of this act is to clarify the Montana Environmental Policy Act, Section 75-1-101 et seq., MCA, by re-emphasizing the supplementary nature of MEPA to the existing specific authority of state offices, boards, and agencies. The act was not intended to create new rights or rights of action in any person or thing. It is also the intent of this act to re-emphasize that the application of MEPA, if any, must take place within the existing administrative remedies provided by the Montana Administrative Procedure Act, Section 2-4-101 et seq., MCA, and the rights of judicial review allowed thereunder.

#14
2-11-83

The amendment and statement of intent will clarify the application of the law, preserve a concern and protection of the environment, and respect private rights.

Respectfully submitted,

Ward A. Shanahan
P.O. Box 1715
Helena, MT 59624
406/442-8560

0771W

rm CS-34

NAME Paul B Smith BILL NO. 360

ADDRESS Boulder, Mt DATE

WHOM DO YOU REPRESENT EIC

SUPPORT OPPOSE X AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EQC faces environmental questions

How much weight for those EIS's?

BY TOM COOK
IR State Bureau

The Legislature this session is likely to consider how much weight environmental impact statements should have in the state's decision making process, the Environmental Quality Council was told Tuesday.

John Carter, research writter for the EQC, suggested that the council hold a "full blown" hearing to help settle the dispute, which he said has resulted in conflicting decisions in the state's courts since the Montana Environmental Policy Act was created in 1971.

"It falls to tell agencies how they are to use an EIS once it has been prepared," Carter said.

The Supreme Court has ruled that the requirement for an environmental statement is procedural and shouldn't be used to expand an agency's statutory authority to grant permits or take other actions, Carter said. But the District Court in Helena has held that an environmental statement can be used to make such a determination — a decision that probably eventually will be appealed to the Supreme Court, he said.

Carter said the dispute has led to confusion at the agency level in state government and disparity in how much weight to place on environmental statements.

Sen. Harold Dover, R—Lewistown, said that environmental statements are a major factor discouraging economic growth of the state, and the entire question of whether they should be required needs to be re-examined by the Legislature, not the EQC.

But Sen. Dorothy Eck, D—Bozeman, said environmental statements have been effective in at least making the public and state officials aware of the environmental effects of their decisions, and the EQC should take a position in support of them. "By doing nothing we aren't doing a favor to the people concerned about the environment or the people interested in complying," she said.

Carter said that if the EQC doesn't make a decision on the use of environmental statements based on fact, the decision will be made on a political basis by the Legislature.

John North, who represents Gov. Ted Schwinden on the EQC, said the administration prefers that the Legislature, not the courts, make a decision on the matter. He said the governor wants the EQC to take a leadership role in developing legislation to determine the use of environmental statements.

Rep. Dave Brown, D—Butte, said there are "shades of grey" between elimination of environmental statements and complete reliance on them for granting permits. Brown convinced the council to put off a decision on any legislation until its next meeting when draft legislation defining specific roles for environmental statements can be created.

The Independent Record, Helena, Mont., Wednesday, November 24, 1982

Great Falls Tribune Friday, December 17, 1982

Environmental act revision sought

HELENA (AP) — The Environmental Quality Council has been asked by Schwinden administration officials to take the clout out of the Montana Environmental Policy Act.

EQC Director Deborah Schmidt said the request came last week from the directors of the departments of Fish, Wildlife and Parks, Natural Resources and Conservation, State Lands, Health and Environmental Sciences and Agriculture.

The agency directors want MEPA made "procedural." Environmental impact statements would merely list environmental problems and would not provide the basis for accepting or rejecting projects or actions.

Schmidt said that only the state agency heads say legislation is necessary to change the act. Environmentalists and industry want to maintain the status quo, she said.

The request is contrary to a recent ruling by District Judge Gordon Bennett of Helena, who ruled MEPA is substantive law that gives state agencies authority to reject, accept or accept with certain conditions developments based on environmental considerations.

John North, the governor's attorney, and his representative on the environmental council, said the department heads believe MEPA standards are not specific enough to guide agencies in making decisions.

North said MEPA should be procedural because state agencies have other authority to grant or deny development permits.

The Independent Record, Helena, Mont., Thursday, December 16, 1982

Top officials want MEPA 'narrowed'

By JIM ROBBINS
IR State Bureau

Schwinden administration officials have asked the Environmental Quality Council to draft legislation to narrow the focus of the Montana Environmental Policy Act (MEPA).

The request runs counter to a recent ruling by Helena District Judge Gordon Bennett, who said MEPA is a substantative law that gives state agencies authority to reject, accept, or accept with certain conditions developments based on environmental considerations.

The administration officials want legislation to make MEPA "procedural," meaning that environmental impact statements would merely be inventories of environmental problems and not a basis on which to accept or reject projects.

At a meeting last week, directors of the departments of Natural Resources, State Lands, Health, Agriculture and Fish, Wildlife and Parks met with EQC staff and requested that a bill be drafted to narrow MEPA's scope.

The meeting was one of a series the EQC staff has held with leaders of environmental and industry groups and state agencies to determine what legislative action those groups favor on MEPA.

The meat of the issue is the debate over whether the act should be procedural or substantive.

EQC director Deborah Schmidt said only state agency heads feel legislation is necessary to change the act. Both environmentalists and industry want to maintain the status quo, she said.

Schmidt added, however, that other less-significant changes may be made in MEPA.

John North, the governor's attorney and his representative on the council, said the state department heads feel MEPA standards are not specific enough to guide agencies in making decisions on developments.

North said MEPA should be procedural because state agencies have other authority to grant or deny development permits. He added that environmental considerations should be part of the permitting process each agency uses and not come from MEPA.

Gov. Ted Schwinden has said he doesn't think MEPA should be substantive. At one point Schwinden said that if Judge Bennett's ruling stands "it will lead to a legislative rearrangement of MEPA, and I'll be part of it."

Bennett's decision came in a lawsuit brought by the Cabinet Resource Group and the Montana Wilderness Association, which are opposed to a planned mine in the Troy area. They contended the State Lands Department incorrectly ignored aspects of MEPA while going through the permitting process, and limited its review to a narrow range of issues spelled out in the Metal Mine Reclamation Act.

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The Independent Record, Helena, Mont., Thursday, Feb. 11, 1982

Judge broadens environmental law

By GARRY J. MOES
Associated Press Writer

Montana's Environmental Quality Council has discussed the implications of the new teeth put in the state's major environmental policy law.

State District Judge Gordon Bennett ruled Jan. 25 that the Montana Environmental Policy Act (MEPA) gives decision-making powers to state government agencies that issue permits for industrial or other major activities effecting the environment.

The landmark ruling means state agencies must consider the findings of environmental impact statements when deciding whether to issue or deny permits.

The ruling, which was discussed Wednesday during a meeting of the Legislature's EQC, was handed down in answer to a motion during preliminary stages of a major lawsuit brought by two environmental groups. The Montana Wilderness Association and the Cabinet Resource Group are trying to force tighter environmental protection restrictions upon development of an underground mine proposed by Asarco Inc. in the Cabinet Mountains 15 miles south of Troy in northwestern Montana.

Bennett ruled that the Department of State Lands, which granted Asarco a permit for the mine in November 1979, was required to consider the broad environmental protection requirements of the Montana Environmental Policy Act in addition to the narrower requirements of the Hard Rock Mining Act.

The Department of State Lands contended it could issue the permit on the basis of a determination that the mining plan complied with the safeguards of the Hard Rock Mining Act. The agency argued it was not required to use the joint federal-state environmental impact statement prepared for the project in reaching a decision on the permit.

While Bennett ruled as a matter of law that MEPA must be considered, he said it is not clear what process the department used in reaching its decision to grant the permit and that still must be decided in a future trial of the case.

John North, an attorney for the department, said that, while the law has been clarified, it still must be determined whether DSL has complied with the law under the facts of the Asarco mine case.

Bennett's ruling runs contrary to much popular belief concerning the substantive character of the state's basic environmental policy law.

Bennett considered a Supreme Court ruling in his Jan. 25 decision on the Asarco mine, but he said the facts of that case could be distinguished from the facts in the Asarco case.

Bennett said the Supreme Court in the Beaver Creek South decision had ruled only that MEPA could not extend state control over subdivisions beyond matters of water supply, sewage and solid waste because to do so would conflict with the right of local government control as expressed in the Subdivision and Platting Act.

The local government was not, of course, bound by MEPA, thus the impact of MEPA on subdividing in this state was virtually nullified, even though state agencies are involved and specifically required to apply MEPA policies, goals and procedures," Bennett said.

"But in this case, there is no conflicting statute. MEPA must be applied, and if properly applied, undoubtedly binds DSL to consideration of environmental factors beyond those specified in the HRMA (Hard Rock Mining Act)."

Under the HRMA, a permit may be denied if the plan of development, mining or reclamation is not in compliance with the state air and water quality standards or if reclamation could not be accomplished.

Bennett said MEPA, however, includes much broader environmental considerations — including anything that has an impact on the environment, be it a social, cultural, historic, aesthetic, economic, natural, health or welfare factor.

Bennett also said MEPA makes it abundantly plain that its mandates are "supplementary" to any other laws governing the actions of state agencies, boards or commissions.

Meanwhile, a staff researcher for the Legislature's Environmental Quality Council, John Carter, agreed in a report Wednesday that the Beaver Creek South decision of the Supreme Court was narrower than many have believed and MEPA may not be as toothless as thought.

"A more expansive interpretation of that decision may not only be erroneous but harmful and misleading to agencies as they proceed in implementing the act," he said, adding that many people, including some in state government, have broadly interpreted the Supreme Court ruling as gutting MEPA.

The Carter report was prepared for the EQC as background for a discussion on whether the environmental watchdog panel should give new guidance or seek legislation to help agencies determine whether MEPA is merely a goal-oriented, procedural document or a substantive law which must be applied to decisions.

North cautioned the EQC about treading too deeply into an area pending before a court.

Billings Gazette, Monday, Oc 1982

Environmental Policy Act gets backing

Gazette Helena Bureau

HELENA — State conservation groups reaffirmed their support of the Montana Environmental Policy Act as a substantive law at their recent conference in Helena.

Delegates from more than 40 conservation groups that met for the Conservation Congress over the weekend declared that the act is the cornerstone of the state's ability to achieve a healthy economy and clean environment.

An organizer of the conference, Ken Knudson, said corporate interests have hinted they'll try to weaken the act at the 1983 Legislature, but that the conservation groups' votes show many Montanans recognize the act as "the single most important law that gives citizens the chance to openly participate in decisions that affect their lives."

The Conservation Congress also adopted resolutions that:

- Call on land managers to recognize the income values of wildlands along with their aesthetic, heritage values and keep the ratio of roads-to-cover in accordance with wildlife needs.
- Advocate adequate funding for a non-game wildlife management program, and appointment of an advisory council for non-game programs.
- Ask the Legislature to set up a comprehensive program to collect and make available information on land use.
- Call for legislation to make incentives to keep the state's best lands in agricultural use.

Saturday, Oct. 2, 1982 Billings Gazette

Agencies can nix applications

HELENA (AP) — District Judge Gordon Bennett says state agencies have both the authority and the obligation to reject development applications if the proposed mine or other project is determined to be unduly damaging to the environment.

Bennett's ruling came in a 1979 case brought against Asarco and the state by Cabinet Resource Group and the Montana Wilderness Association, groups opposed to a planned mine in the Troy area of northwestern Montana.

The conservation groups contend the area in question is believed to be one of the last remaining grizzly bear ecosystems in the continental United States.

The lawsuit contended the Department of State Lands did not enforce aspects of the Montana Environmental Policy Act but instead limited its permit review to the much narrower range of issues contained in the Metal Mine Reclamation Act. The state contended that MEPA is procedural only, giving guidelines for state reviews but not to be considered a major factor in agency decisions.

Gov. Ted Schwinden last spring promised a "legislative re-arrangement of MEPA" is Bennett's ruling stands through anticipated appeals.

IR WATCHING

By TOM COOK
IR State Bureau

The Democratic Party hasn't changed its position on the Montana Environmental Policy Act, although some members of the Schwinden administration have indicated it may need some amending.

Some state officials have indicated they think environmental reports required by MEPA only should be used for information and not as a basis for turning thumbs up or down on project decisions.

But Joe Lamson, executive secretary of the state Democratic Party, said his party's platform holds that the environmental reports should be substantive and carry weight in decisions that could affect the environment.

Schwinden hasn't said for certain what, if any changes, he will recommend in the use of MEPA, which has been the subject of a lawsuit that hasn't been completely resolved.

"If there is a specific bill to make MEPA procedural instead of substantive, based on our platform we'd have to oppose it," Lamson said.

Such a party split would present an interesting dilemma for Democratic legislators, and open the door for some Republican pot-shot taking.

Independent Record, Helena, Mont., Sunday, January 2, 1983

MEPA has muscle

Bennett's ruling might stir weakening effort

By SALLY HILANDER
IR Staff Writer

Helena District Judge Gordon Bennett has ruled that state agencies have authority — and obligation — to reject development applications if the proposed mine or other project is determined to be unduly damaging to the environment.

Ironically, the Wednesday ruling that should be seen as a victory for environmental protection, may lead to a legislative attempt to weaken the Montana Environmental Policy Act.

Bennett's ruling came down in a 1979 case brought against Asarco and the state by Cabinet Resource Group and the Montana Wilderness Association, conservation groups opposed to a proposed mine in the Troy area of northwestern Montana.

Their concern is that the area in question is thought to be one of the last remaining grizzly bear ecosystems in the continental United State.

The lawsuit contends the Department of State Lands did not enforce aspects of the Montana Environmental Policy Act (MEPA), but instead limited its permit review to the much narrower range of issues contained in the Metal Mine Reclamation Act, the former "Hard Rock Law."

Bennett's new ruling — only a partial decision in the complex case and sure to be appealed — reaffirms his January ruling that MEPA is substantive, giving state agencies authority to condition, reject or deny a development permit based on environmental considerations.

The state argues that MEPA is procedural only, giving guidelines for state reviews, but is not to be a major factor in agency decisions. Gov. Ted Schwinden in March promised a "legislative re-arrangement of MEPA" if Bennett's ruling stands.

The Montana Legislature never intended for MEPA to broaden state agencies' permitting powers, a State Lands attorney, John North, argued in his request that Bennett reconsider his January ruling.

North characterized the Metal Mine Reclamation Act as a series of "compromises" between the environmental community and the mining industry.

State Lands contends that it was without authority to deny a mining permit so long as the applicant, in this case Asarco, meets the requirements of the reclamation act. Bennett disagrees. The law says the state may grant a permit if the requirements are met, but it doesn't say it must.

The state argues that environmental impact statements (EIS) that MEPA requires for major projects, are designed only to disclose possible environmental problems. But Bennett said the EIS is more than that, an important decision-making tool.

He cites extensive federal case law interpreting the National Environmental Policy Act, after which MEPA was patterned, to back his opinion.

"It is not sufficient for the agency to note the presence of adverse environmental factors while denying authority to do anything about them," Bennett said.

Montanans gave "a heightend importance to actions which affect the environment" when they adopted the state constitution, Bennett said.

The U.S. Constitution has no similar guarantee of a clean and healthful environment as an unalienable right." The Montana Constitution has three references to environmental quality.

Wednesday's ruling denies Asarco's and State Lands' motions for summary judgment on the issues of whether state misinterpreted the effect of MEPA on its functions.

The primary issue that prompted the lawsuit — whether or not the state inadequately reviewed Asarco's Cabinet Mountains mining applications before it granted the permit — is yet to be decided.

Independent Record, Helena, Mont., Tuesday, March 23, 1982

State takes run at MEPA ruling

By SALLY HILANDER
IR Staff Writer

The Department of State Lands has asked reconsideration of a recent court opinion that Montana's Environmental Policy Act (MEPA) requires the agency to consider environmental issues beyond those in the Metal Mine Reclamation Act when it considers mining permits.

Helena District Judge Gordon Bennett's Jan. 25 ruling is disputed in state government because it says MEPA grants regulatory authority. The state sees the act only as procedural — promoting and encouraging sound environmental practices.

But Bennett ruled that MEPA "binds State Lands to consideration of environmental factors beyond those specified" in the Metal Mine Reclamation Act.

If that interpretation stands, "it will lead to a legislative re-arrangement of MEPA and I'll be part of it," Gov. Ted Schwinden said in a recent interview with IR State Bureau Reporter Jim Robbins.

The ruling has broad implications for the state's future permitting actions because MEPA contains environmental protection provisions far more stringent than those of the Metal Mine Reclamation Act and other state laws.

In his request for reconsideration filed today, State Lands attorney John F. North argues that the Montana Legislature never intended for MEPA to broaden state agencies' permitting powers.

The Metal Mine Reclamation Act (formerly Hard Rock Law) is a series of "compromises" between the environmental community and the mining industry, North said.

"These comprises would have been meaningless acts if the legislators had already given State Lands comprehensive powers in MEPA," the attorney said.

Bennett's ruling came in a 1979 lawsuit brought by the Cabinet Resource Group and the Montana Wilderness Association, contending State Lands did not enforce mitigating provisions of MEPA when it granted Asarco Inc. a mining permit in the Cabinet Mountains.

The plaintiffs — concerned in part because the area in northwestern Montana is one of the last remaining grizzly bear habitats in the continental U.S. — say State Lands wrongfully limited its mine permit review to the narrower range of environmental issues in the Metal Mine Reclamation Act.

Bennett granted partial summary judgement in favor of Cabinet Resource Group and MWA. He has not yet ruled on whether or not State Lands incorrectly reviewed Asarco's hard-rock application and granted the mining permit.

North asks the judge to re-think his position, and either clarify his Jan. 25 opinion or reconsider the order.

He also asks the judge to dismiss the first two counts of the complaint — which allege that State Lands misinterpreted the effect of MEPA on its function under the Metal Mine Reclamation Act, and relied on that incorrect interpretation when it granted the permit.

Independent Record, Helena, Mont., Thursday, March 18, 82

Environmental Policy Act just procedural, Schwinden claims

By JIM ROBBINS
IR State Bureau

The Montana Environmental Policy Act is not a substantive law and never will be, Gov. Ted Schwinden said Wednesday.

The governor was responding to a question about a recent ruling by District Court Judge Gordon Bennett that held that MEPA is not merely procedural, but requires environmental factors to be considered when deciding whether a permit should be granted.

Schwinden disagrees and maintains the law is only to define the scope of a project and not to be a major factor in agency decisions.

"MEPA is not, was not and cannot be substantive in the sense it overrides other kinds of agency responsibilities," Schwinden said in an interview. "If it is (construed that way) it will lead to a legislative rearrangement of MEPA and I'll be part of it."

Bennett's decision was rendered in a lawsuit brought by the Cabinet Resource Group and the Montana Wilderness Association. The suit maintained the Department of State Lands, in granting a permit to ASARCO to mine in the Cabinet Mountains, did not enforce mitigating aspects of MEPA. Instead, the groups claimed, State Lands limited its review to a narrower range of issues contained in the Metal Mine Reclamation Act.

The area is of particular concern to environmentalists because it is one of the last remaining grizzly bear ecosystems in the continental United States.

The decision is expected to be appealed.

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SB 362 Ex. '1'
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PROPOSED AMENDMENTS TO SENATE BILL NO. 362

1. Title, line 6.
Following: "ESTABLISHING"
Strike: "AN INSPECTION COMMISSION"
Insert: "A TECHNICAL REVIEW COMMITTEE"

2. Page 2, line 1.
Insert: "(3) 'Board' means the board of natural resources and conservation provided for in 2-15-3302."
Renumber: All subsequent subsections in this section

3. Page 2, line 3.
Following: "(3)"
Strike: "Commission"
Insert: ""Committee""
Following: "the"
Strike: "dam inspection commission"
Insert: "technical review committee"

4. Page 6, line 12.
Following: "department"
Insert: "sufficient for supporting the design"

5. Page 6, lines 13 through 17.
Strike: lines 13 through 17 in their entirety.

6. Page 6, line 18.
Following: line 17
Strike: "(4)"
Insert: "(3)"

7. Page 6, line 19.
Following: "application"
Strike: "and any additional information requested by the department,"

8. Page 7, line 2.
Following: "construction"
Strike: "--"

9. Page 7, line 3.
Following: "construction"
Insert: "inspection"

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10. Page 7, line 5.
Following: "(2)"
Strike: "The engineer in charge shall provide for inspections"
Insert: "Inspections during construction shall be performed"

11. Page 7, line 10.
Following: "certify"
Strike: "and report"
Insert: "reports"

12. Page 7, line 11.
Following: "department"
Insert: "of"

13. Page 7, line 12.
Following: "inspection."
Strike: "The department shall set the time for reporting."
Following: "
Insert: "(4) The department may inspect the dam during construction to insure conformity with the permit."

14. Page 7, line 14.
Following: line 13.
Strike: "(4)"
Insert: "(5)"

15. Page 7, lines 15 through 25.
Following: "Section 9."
Strike: remainder of lines 15 through 25 in their entirety.
Insert: "Operating certificate."

16. Page 8, lines 1 through 8.
Strike: lines 1 through 8 in their entirety.

17. Page 8, line 9.
Strike: "(3)"

18. Page 8, line 10.
Following: "permit"
Strike: "as determined under [Section 8] and this section,"
Insert: "and upon an operation plan"

19. Page 8, line 12.
Following: "issue a"
Strike: "permit"
Insert: "certificate"

20. Page 8, line 13.
Following: "inspections"
Strike: "."
Insert: "and recertification."

21. Page 8, line 14.
Following: "inspected"
Insert: "and recertified"

22. Page 8, lines 18 through 21
Following: "(2)"
Strike: the remainder of lines 18 through 21.
Insert: "Any inspections required in this section must be done by a qualified engineer."

23. Page 8, line 22.
Following: "shall"
Strike: "pay the costs of"
Insert: "be responsible for"

24. Page 9, lines 17 through 19.
Following: "inspection."
Strike: the remainder of lines 17 through 19.

25. Page 9, line 20.
Strike: "properties of the owner and"
Insert: "The costs"

26. Page 10, lines 5 through 9.
Strike: lines 5 through 9 in their entirety.
Insert: "take necessary steps to make these structures safe."

27. Page 10, line 25.
Following: "department"
Strike: "may"
Insert: "shall"

28. Page 11, lines 1 through 2.
Strike: lines 1 through 2 in their entirety.
Insert: "take necessary steps to safeguard life and property."

29. Page 11, line 14.
Following: "department."
Strike: "The costs are a lien upon the dam, reservoir, or other properties of the owner and"
Insert: "Costs"

30. Page 11, lines 18 through 25.
Following: "Section 14."
Strike: the remainder of lines 18 through 25.
Insert: "Technical review committee--membership -- duties."

31. Page 12, lines 1 through 24.
Strike: lines 1 through 24 in their entirety.
Insert: "(1) In case of a dispute between the owner and the department, a technical review committee may be appointed by the board to review the technical merits of a project. The committee shall be made up of 5 members appointed as follows:

(a) one member who is a board member and shall serve as Committee Chairman;
(b) one member who is a representative of the department;
(c) one member who is a representative of the county where the dam is located;
(d) two members from outside the department who have technical qualifications in the disciplines of dam design and/or construction.

(2) The committee may be called by any of the following methods:
(a) by the board on its own motion
(b) by the request of the department
(c) by the request of the owner

(3) The committee shall make recommendations to the board. The board shall make final decisions of approval or disapproval of permits and certification in the context of the dispute.

(4) The technical committee is entitled to a reasonable compensation for their services to be allowed by the board.

(5) The board shall set a schedule of costs of the technical review committee based on the project size and complexity to be paid by the person requesting the review process."
Renumber: all subsequent sections

32. Page 15, line 8.
Following: "through"
Strike: "23"
Insert: "22"

33. Page 15, line 11.
Following: "through"
Strike: "23"
Insert: "22"

Senate BILL NO. 362

INTRODUCED BY Eckhart Jensen Tyler Ellison

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE CONSTRUCTION OF DAMS AND RESERVOIRS; TO PROVIDE FOR INSPECTIONS AND PENALTIES; ESTABLISHING ~~AN INSPECTION COMMISSION~~ A Technical Review committee; AMENDING SECTIONS 85-15-101, 85-15-102, AND 85-15-104, MCA; AND REPEALING SECTIONS 85-15-103, 85-15-201 THROUGH 85-15-206, AND 85-15-301 THROUGH 85-15-304, MCA."

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

NEW SECTION. Section 1. Short title. This chapter may be cited as the "Montana Dam Safety Act of 1983".

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works appurtenant to a dam or reservoir, including but not limited to spillways, either in the dam or separate therefrom; the reservoir and its rim; low-level outlets; and water conduits such as tunnels, pipelines, or penstocks, either through the dam or its abutments.

(3) "Board" means the board of natural resource and conservation provided for in 2-15-3302.

(4) ~~(3)~~ "Committee" ~~"Commission"~~ means the technical review committee ~~dam inspection commission~~ established in [section 14].

(5) ~~(4)~~ "Construction" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(6) ~~(5)~~ "Dam" means any artificial barrier, including appurtenant works, used to impound or divert water with an impounding capacity of 50 acre-feet or greater.

(7) ~~(6)~~ "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) ~~(7)~~ "Emergency" means any threat to life or property caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(9) ~~(8)~~ "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67.

(10) ~~(9)~~ "Enlargement" means any change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(11) ~~(10)~~ "High-hazard dam or reservoir" means any dam or reservoir the failure of which would cause loss of life or serious damage to homes; agricultural, industrial, or commercial facilities; public utilities; main highways or

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railroad lines; or campgrounds.

(12) ~~(11)~~ "Inspection" means visual or mechanical checks, measures, borings, or any other methods necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(13) ~~(12)~~ "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(14) ~~(13)~~ "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or any other entity or any authorized agent, lessee, or trustee of any of the foregoing, except the United States or any agency thereof.

(15) ~~(14)~~ "Removal" means removing, taking down, or changing the location of any dam or reservoir.

(16) ~~(15)~~ "Reservoir" means any valley, basin, coulee, ravine, or other land area that contains 50 acre-feet or more of impounded water.

Section 3. Section 85-15-101, MCA, is amended to read:

"85-15-101. Dams and reservoirs -- how constructed. No person must may fill or procure to be filled with water any dam or reservoir which that is not so thoroughly and

substantially constructed as to safely hold any water that may be turned therein."

Section 4. Section 85-15-102, MCA, is amended to read:

"85-15-102. Construction in a secure manner. ~~(1)~~ A person, association, or corporation may not construct or cause to be constructed a dam, dike, or reservoir for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

~~(2) The department of natural resources and conservation may at any time on its own motion and it shall, upon complaint on oath being made to the department by three or more persons residing or having property in such location that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam, dike, or reservoir within the state and that they have reason to believe said dam, dike, or reservoir is in an unsafe condition or that it is diverting or is being filled with water to such an extent as to render it unsafe, immediately examine or cause to be examined the dam, dike, or reservoir. If, upon the examination, the department finds that the dam, dike, or reservoir is unsafe or is diverting or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the dam~~

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dikey-or-reservoir-is-located,-setting-forth--its--findings, and-the-county-attorney-shall-immediately-take-the-necessary steps-to-abate-the-danger-and-make-the-structure-safe.

(3)--If--either-party-is-dissatisfied-with-the-findings of-the-department,-it-may-appeal-to-the--district--court--of the-district-wherein-the-dam,-dike,-or-reservoir-is-located, and--the--court--shall--hear-and-determine-the-matter-at-the earliest-practical-time,-subject--to--the--right--of--either party--to--appeal--as--in--other--civil--cases;-however,-the judgment-of-the-department-shall--control--until--the--final determination-of-the-case."

Section 5. Section 85-15-104, MCA, is amended to read:

"85-15-104. Exemption of federal structures. The provisions of 85-15-102-and-85-15-103-shall this chapter do not apply to federal dams, dikes, and reservoirs which that are subject to federal-power--commission inspections under federal laws or to dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission."

NEW SECTION. Section 6. High-hazard determination. Any person proposing to construct any dam or reservoir shall make application to the department for determination of whether the dam or reservoir is a high hazard. The application must include the information required by the department. The department shall make the determination required by this section within 60 calendar days after a

complete application has been received by the department.

NEW SECTION. Section 7. Application -- construction permit. (1) A person may not construct a high-hazard dam or reservoir as determined under [section 6] without obtaining a construction permit from the department.

(2) An application for a construction permit must be submitted to the department and must contain:

(a) plans and specifications for the proposed construction, prepared by or under the direction of an engineer experienced in dam design and construction; and

(b) other data and information required by the ~~department~~ department sufficient for supporting the design.

~~(3) At the request of the department, the engineer responsible for the plans and specifications shall carry out any revisions of the plans and specifications or provide any additional information necessary to justify or clarify the design.~~

(3) ~~(4)~~ As soon as practicable after receipt of the application ~~and any additional information requested by the department,~~ the department shall:

(a) issue a construction permit or deny the application as filed; or

(b) issue a construction permit upon the terms, conditions, or modifications the department considers appropriate.

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NEW SECTION. Section 8. Engineer to be in charge of construction / inspection -- reports. (1) An engineer must be in charge of and responsible for the construction inspection of any high-hazard dam or reservoir.

(2) ~~The engineer in charge shall provide for inspections~~ Inspections during construction shall be performed at intervals necessary to insure conformity with the permit. The engineer in charge or a qualified designee shall perform the inspections. The engineer is responsible for the designee's work.

(3) The engineer in charge shall certify ~~and report~~ reports to the department of all information obtained from, during, or as the result of an inspection. ~~The department shall set the time for reporting.~~

(4) (5) ~~(4)~~ The department shall keep a copy of all reports.

NEW SECTION. Section 9. ~~Inspection by department -- cost -- operating permit. (1) If the department determines that inspections carried out under [section 8] are inadequate or that additional inspections are necessary, the department may inspect the construction of any high-hazard dam or reservoir. If after any inspection the department finds that amendments, modifications, or changes are necessary to insure the security and integrity of the work and structure or the protection of property or public safety, the department may order the owner of the high-hazard dam or reservoir to revise the plans and~~ Operating certificate.

(4) The department may ~~order its own motion~~ inspect the dam during construction to insure conformity with the permit.

~~specifications. No person may proceed with or continue such work until any revisions have been approved by the department.~~

~~(2) The owner of the high-hazard dam or reservoir shall pay the costs of any inspections required by this section, including but not limited to such work or tests as are necessary to fully provide any information or data required by the department or its appointed representative.~~

~~(3)~~ When construction is complete and if the dam or reservoir conforms to the construction permit ~~as determined under [section 8] and this section,~~ and upon an operation plan certificate the department shall issue a ~~permit~~ to operate the high-hazard dam or reservoir. and recertification

NEW SECTION. Section 10. Periodic inspections. (1) Any high-hazard dam or reservoir must be inspected and recertified at least once every 5 years or as often as considered necessary in order to insure the continued safe operation of the works or structure.

(2) ~~The department or its appointed representative~~ Any inspections required in this section shall be done by a qualified engineer. must be ~~perform inspections required by subsection (1). The department shall retain a copy of all information obtained as a result of such inspection.~~

(3) The owner shall be responsible for ~~pay the costs of~~ inspections required under this section.

NEW SECTION. Section 11. Requested inspections -- costs -- limitations against unsafe structures. (1) At its

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discretion or upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, maintenance, or operation of any dam or reservoir, the department may order an inspection of the dam or reservoir unless the data, records, and inspection reports on file are adequate to determine that the complaint is not meritorious.

(2) If the complainant insists upon an inspection regardless of the findings by the department on the merits of the complaint, the department may make the inspection upon requiring the complainant to deposit with the department money sufficient to cover the costs of the inspection.

(3) If the dam or reservoir is found to be defective, the department may require the person owning the dam or reservoir to pay the whole or any part of the expenses of inspection. ~~If the department requires such payment, it shall present a bill of costs to the owner. The costs shall constitute a lien upon the dams, reservoirs, or other properties of the owner and~~ THE COSTS may be collected by appropriate action in a court of competent jurisdiction.

(4) If the dam or reservoir is not found to be defective after an inspection made on account of a complaint and the complaint is found by the department to have been without merit, any money deposited therefor is payable to

the general fund.

(5) If the inspection discloses defects in the works that, in the judgment of the department, constitute an immediate hazard to life or property, the department shall take the necessary steps to make these structures safe. ~~order the draining of the dam or reservoir involved or the limitation or cessation of its use or the use of any defective appurtenant works until such time as the dam or reservoir or appurtenant works have been made safe and approved by the department.~~

NEW SECTION. Section 12. Outlets -- drainage. (1) All dams or reservoirs constructed after [the effective date of this act] must contain a low-level outlet controlled by a headgate or other control works. The headgate or control works must be maintained in an operable condition at all times and in such manner that water impounded by or within the dam or reservoir may be evacuated or maintained at any water level as may be required by the department.

(2) All dams or reservoirs constructed prior to [the effective date of this act] that have no low-level outlet or means for lowering the reservoir water level in an expeditious manner must be drained by breaching at the owner's expense when the department determines that breaching is necessary to safeguard life or property.

NEW SECTION. Section 13. Emergency repairs or breaching. (1) In case of an emergency, the department ~~may~~ shall

2-1-83

take necessary steps to safeguard life and property.

~~declare that repairs or breaching of a dam or reservoir are immediately necessary to safeguard life or property.~~ Necessary repairs or breaching must be commenced immediately by the owner or by the department at the owner's expense if the owner fails to do so. The department must be notified immediately of any proposed emergency repairs or breaching to be instituted by the owner.

(2) After the emergency situation has passed and if the owner plans to repair the dam or reservoir, the owner shall make all repairs necessary to place the dam or reservoir in safe and usable condition.

(3) All costs incurred by the department during an emergency must be paid by the owner on receipt of the bill of costs from the department. ~~The costs are a lien upon the dam, reservoirs or other properties of the owner and~~ Costs may be collected by appropriate action in a court of competent jurisdiction.

Technical review committee -- membership -- duties.

~~NEW SECTION.~~ Section 14. ~~Dam inspection commission.~~ ~~(1) There is a dam inspection commission composed of five members appointed by the governor to serve 4-year terms. The dam inspection commission must be appointed as follows:~~

~~(a) two members who are board members of existing irrigation districts;~~

~~(b) one member who is a board member of an existing rural electrification cooperative board or rural telephone cooperative board;~~

~~(c) one member who is a consumer of a rural electrification cooperative or rural telephone cooperative agency;~~

~~(d) one member who is from the public at large.~~

~~(2) The commission members shall serve without compensation; however, they may receive travel and per diem allowances as provided in Title 2, chapter 18, part 5.~~

~~(3) The commission is allocated to the department of natural resources and conservation for administrative purposes only as prescribed in 2-15-121.~~

~~NEW SECTION. Section 15. Dam inspection commission duties. The dam inspection commission shall perform the following duties:~~

~~(1) determine the specifications to be utilized in dam or reservoir construction. The commission shall utilize the current United States army corps of engineer specifications as minimum criteria for dam or reservoir construction in Montana.~~

~~(2) review department determinations and orders made under [section 9]; and~~

~~(3) make final inspections of dams or reservoirs subject to [this act] and the inspections requested under [section 11].~~

~~NEW SECTION.~~ Section 15. City or county prohibited

2-11-83

from regulation. No city or county may regulate, supervise, or provide for the regulation or supervision of any dams or reservoirs in this state or the construction, maintenance, or operation thereof or limit the size of any dam or reservoir or the amount of water that may be stored therein. This chapter does not prevent a city or county from adopting ordinances regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that:

(1) are not within the state's jurisdiction; or

(2) are not subject to regulation by another public agency or body.

NEW SECTION. Section ~~15~~ 16. No limitation of liability. Nothing in this chapter relieves an owner of any dam or reservoir of any legal duties, obligations, or liabilities incident to ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

NEW SECTION. Section ~~16~~ 17. Permit cancellation. Failure to comply with the provisions of [sections 6 through 9, 11, or 12] subjects a permit to cancellation at any time during the progress of work. The department may cancel any permit if the provisions of such sections have not been or are not being complied with. The cancellation operates as a forfeiture of all rights acquired under and by virtue of any permit approved by the department.

NEW SECTION. Section ~~17~~ 18. Penalties. A person who violates or refuses or neglects to comply with the provisions of this chapter or any rule or order of the department pursuant to this chapter is guilty of a misdemeanor. Each day of a continuing violation constitutes a separate offense.

NEW SECTION. Section ~~18~~ 19. Deposit of penalty fees and costs. All penalty fees and costs collected under this chapter must be deposited in the state general fund.

NEW SECTION. Section ~~19~~ 20. Entry on land. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this chapter. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land.

NEW SECTION. Section ~~20~~ 21. Legal assistance. When requested by the department, the attorney general or the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the ourposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

NEW SECTION. Section ~~21~~ 22. Rules. The department may adopt rules to implement the provisions of this chapter.

NEW SECTION. Section ~~22~~ 23. Applicability. The

2-11-83

provisions of this act do not apply to dams or reservoirs for which construction has been completed on or before October 1, 1983.

NEW SECTION. Section 24. Repealer. Sections 85-15-103, 85-15-201 through 85-15-206, and 85-15-301 through 85-15-304, MCA, are repealed.

NEW SECTION. Section 25. Codification instruction. Sections 1, 2, and 6 through 22 are intended to be codified as an integral part of Title 85, chapter 15, and the provisions of Title 85, chapter 15, apply to sections 1, 2, and 6 through 22.

NEW SECTION. Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

2-11-83

SB362 EH (2)
2-11-83
Nat. Res.

NAME: K.M. Kelly DATE: 2/11/83

ADDRESS: Helena

PHONE: 458-5861

REPRESENTING WHOM? Montana Water Development Assn.

APPEARING ON WHICH PROPOSAL: S.B. 362

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: We support this bill for several reasons, not the least of which is because Montana does not now have a "dam safety" law as such. SCS notified ~~that~~ our Assn. that unless some sort of dam safety law was passed their Technical and financial support for dams would cease by June 1, 1985.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB362 Exh #2
Nat Res. 2-11-

WIFE Women Involved In Farm Economics

NAME JO BRUNNER BILL NO. SB-362

ADDRESS 563 3rd ST. HELENA DATE

REPRESENT WOMEN INVOLVED IN FARM ECONOMICS

SUPPORT X OPPOSE AMEND

COMMENTS:

We support SB362 concerning the dam safety legislation as proposed here. We believe that the present law is not adequate for state dam security and we are concerned that ~~the~~ any water sales in the future will be adversely effected by inadequate dam safety law.

"Hell has no fury like a woman scorned"

WITNESS STATEMENT

NAME Robert A Ellis BILL No. SB 362

ADDRESS _____ DATE 2/16/83

WHOM DO YOU REPRESENT Montana Water Development Assn

SUPPORT ✓ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

Gary Fritz

SENATE BILL 362

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES

AND CONSERVATION

AN ACT TO REGULATE THE CONSTRUCTION OF DAM AND RESERVOIRS...

The "Montana Dam Safety Act" as described in Senate Bill 362 is in reponse to growing concern about the safety of dams in Montana. The failure of Teton Dam made us aware of the terrible destruction a wall of water can cause. Recent dam safety reports have shown that many Montana dams have safety problems. The Water Policy Review Advisory Council, chaired by Gordon McGowan, recommended that a Montana dam safety program be adopted.

Existing dam safety statutes place jurisdiction with the county attorney where the dam in question is located. Lack of consistency between counties, lack of technical expertise, and the harassed schedule of county attorneys are potential problems with the existing system. As shown on the attached table our present law is the weakest of all the western states.

Senate Bill 362 establishes a dam safety program that would:

1. Require a permit to be issued by the Department before a high hazard dam is built to ensure that the dam is designed properly;
2. Require that an engineer supervise construction of a high hazard dam to ensure the dam is actually built as designed;
3. Require periodic inspections of high hazard dams to ensure that the structures remain safe, and that developing problems can be recognized and corrected prior to them becoming a major threat to downstream areas;
4. Allows the Department to require the draining or repairing of a reservoir under emergency conditions;

The major differrences between existing statutes and the proposed bill are:

1. SB 362 would provide for a consistent set of dam design and construction criteria;
2. SB 362 would take the monkey off of the county attorney's back and put it on the Department;
3. SB 362 would provide assistance to dam owners in making dams safe so that water can continue to be put to use from these structures.

As mentioned earlier, SB 362 requires a permit only for high hazard dams. A high hazard dam is defined as a structure whose sudden failure could endanger human life and cause extensive economic loss downstream. Being classified as a high hazard structure does not necessarily reflect on the structural stability of the dam. Also, just because a dam is a high hazard structure does not mean it is automatically unsafe. A high hazard dam can be safe if it is designed and constructed properly.

The Department would like to advise the committee that if the State of Montana does not adopt a dam safety law by 1985 simiilar to SB-362, (the SCS does support this legislation) they will not participate in the development of water projects associated with dams in the state.

The Department feels that some revisions are necessary to the proposed legislation:

Sections 14, 15 deals with the establishment of a dam inspection commission. The Department questions the need for a second review of a proponent's dam plans and specifications. This second review creates a bureaucratic redundency and subsequent increase in costs and delay to the proponent in completing a potential water project. If questions regarding the proponents submittals under any sections of SB-362 become unreasolveable with the Department the present judicial system provides an efficient, impartial vehicle to resolve these difficulties.

SB362 #7
2-11-83.

The idea behind this legislation was to create consistency within state government for administering a dam safety program. We believe SB 362 as proposed including the above amendment will accomplish this.

Section 24 exempts dams constructed prior to October 1, 1983 from this law. The Corps of Engineers program completed in September, 1982 identified many dams in this state in a serious state of despair. Many of these structures were high hazard and did not meet minimum dam safety standards. The Department recognizes a definite need to repair existing dams and has set a precedent by rehabilitating state-owned dams to current dam safety standards.

SB362 HS.
Nat. Res. p.1

WITNESS STATEMENT

NAME Rodger Foster BILL No. SB 362

ADDRESS 1918 Virginia Dale, Helena DATE 2/11/83
442-3050

WHOM DO YOU REPRESENT Self.

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

SB362 H. 5 p.2
2-11-83
Nat. Res.

Rodger Foster Sr. Water Resource Engr. MT
As an engineer - ~~Comment Address~~ direct my comments to
1. Public Safety
2. Technical Aspects

Events in recent years have led to increased awareness in Dam Design, safety and liability.

Dam Failures

Case Law - can't address but can address effects.

a new look at design standards to protect the public & owners.

Elements of Dam Safety

No safe Dams.

Consequence VS. Risk

Risk

outside influences

the Dam structure

the operation & maint.

Implementation and enforcement can be beyond by technical training but on a personal basis strong issues on both sides of private and public rights.

1. Existing reports of unsafe dams
2. State water development program
   Store it on Coose. if
3. SCS withdrawl of assistance

has put potential issues of dam safety on a collision course. We need a solution now to avert unavoidable disaster in the future.

2-11-83
Nat. Res.

Montana Association Of Conservation Districts

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

SB 362

Feb. 11, 1983

Mr. Chairman, Members of the Senate Natural Resources Committee:

The Montana Association of Conservation Districts would like to go on record as supoorting a "Do Pass" reccomendation on SB 362 for the protection of both the general public and the owner of the impoundment.

Steven R. Meyer

Steven R. Meyer
Executive Vice President

STANDING COMMITTEE REPORT

February 1, 19 77

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration Senate Bill No. 369

Respectfully report as follows: That Senate Bill No. 369

DO PASS

SEN. HAROLD L. DOVER, Chairman.

STATE PUB. CO.
Helena, Mont.