

FINANCE AND CLAIMS COMMITTEE  
MONTANA STATE SENATE

April 9, 1983

The 19th meeting of the Senate Finance and Claims Committee met on the above date in Room 108 of the State Capitol. Senator Hims1 called the meeting to order at 1:37 P.M.

ROLL CALL: All members were present except Sens. Lane, Story and Thomas who were excused.

Sen. Hims1 said this would be hearings only and there would be no executive action on the bills today.

CONSIDERATION OF HOUSE BILL NO. 724: Rep. Daily, Butte, said this is a bill that is a jobs bill. This bill is designed to put a number of people back to work. 30% interest income on Hard Rock Mining mitigation account. Allow grants to local governments affected by environmental impacts. This was established in 1972 in the new constitution which states that lands disturbed shall be reclaimed. In 1975 two articles. A RRD district. Now the money is being spent for operations. If it is not spent for what it was intended we will be questioned by those who are paying in. I would like to speak today to the closing of operations in Butte and Anaconda. (1) economy of the country; (2) labor problems in Butte and Anaconda; (3) environmental problems Anaconda has faced, and (4) the tax structure in the state of Montana and the taxes imposed on Anaconda Company. From points made by Mr. McDonald last year Anaconda, in wages and benefits of \$96 million to Montana. When the operations are suspended in June they will have a payroll of about \$300,000. In 1971, the tax payment to Montana was \$8.8 million. Three years investments of \$3 million mostly in Montana. We have been accused of taking our firm from Montana. If the Butte plant isn't operating as efficiently as possible, there is no way to stay in business. This large slush fund in Montana, the Montana Legislature can invade for any purpose. This is what happened.

Note: Rep. Daily read quite a bit of the information above and spoke too rapidly to get everything accurately. He did NOT turn in any information on the bill. (Information later turned in by Brown - Exhibit #1).

GARY LANGLEY, Executive Director, Montana Mining Association, said we produce every mineral of hard rock mining in Montana. The very title indicates it would be used to remedy the damage done by the industry. We feel the money has been misspent in the past and should be used for its intended use.

WARD SHANAHAN, Stillwater PGM said 30% money was removed to SB 409 for water development. It has nothing to do with nonrenewable resources. The position of our company is that the mineral industry has been charged with an indemnity fee for damage done to the environment. That is not being carried out. Chapter 497 of the laws of 1973 - there is approximately \$20 million in the account at this time. The earnings are about \$2 million a year. At the beginning of the year I was told the only monies being used to take care of the defacement

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was the \$60,000 used to plug shotholes and the rest for uses other than renewable resources. We think some attention should be given to this to see that the act is properly enforced.

ED BINGLER, Director, Montana Bureau of Mines and Biology, said this gives an opportunity to discuss ground water as a result of mining. Up to the past 2 years the water have been repowered. July 4 of this year we expect the water to begin to emerge from the bottom of the Berkeley Pit. That pit will fill to an elevation of 4800 feet. Seventy-seven billions of acid mine water. People want to know if it will flood basements. It is an unprecedented problem. One hundred fifty mining districts in Montana. A lot of them have perforated water tables. You have about 1500 hard rock mines in western Montana. The public comes to us and says- what is the real impact of the flooding at the Berkley Pit? I would like to review very briefly - we cannot redirect all the resources to one area of the state. EPA says money will be available for Silver Bow Creek only. In summary, I would urge your support of this bill.

DON PEOPLES, Chief Executive, Butte-Silver Bow. I would like to give you an example of how local government might do with this RIT money. A hard rock demonstration could be down in Butte.

DON REED, MEIC: There has been too much money appropriated out of the RIT. There is very little left and the 30% for the original purpose is now about 5%.

ALEC HANSON, Montana League of Cities said the League supports for five reasons. (1) The commitment of the Constitution and Legislature; (2) money is made available to reclaim land, investigate water; (3) this is a Butte-Anaconda bill. This can be applied to almost 1/2 of Montana; (4) the corporate responsibility for reclamation no longer exists and (5) there is a lot of mine work throughout the state that needs to be done with it.

There were no further proponents, no opponents, and Sen. Himsel asked if there were any questions from the committee.

SEN. SMITH: I have been watching and introduced an amendment to your range bill directed to this problem.

SEN. STIMATZ: Who is Argie McDonald? Answer: Vice president of Anaconda.

SEN. AKLESTAD: I thought we had a bill in the other day to take care of this.

SEN. KEATING: That was federal mining.

SEN. VAN VALKENBURG: What do you mean, nothing much we can do about it at this time. You did say that?

SEN. SMITH: It started 2 years ago.

SEN. KEATING: Who did the budget?

SEN. SMITH: We did it.

SEN. KEATING: 30% of a fund dropping to 8% of a funding?

REP. BROWN: I will leave some material with you on this for the use of the committee. (Attached, Exhibit #1).

SEN. HIMSL: Of the money going in this year, what will the source be?

REP. BROWN: Oil 74%, mineral 3% in 1981.

SEN. KEATING: Any coal tax money go into this fund?

REP. BROWN: Some. I am not sure how much. Some others on the balance.

SEN. KEATING: The fund is inviolate?

REP. BARDANOUVE: You can't spend it until it gets to a certain amount.

SEN. DOVER: This is correct. What was it about 1978 or 1979?

Answer: 1979 oil 50%, mineral 9%; in 1973, oil 56%, mineral 31%; in 1974, oil 59%, mineral 23%. It has come on down since 1979.

SEN. DOVER: You talked about the big payroll in 1973. What steps did they take to try to keep people on and keep the jobs?

REP. BROWN: No one thought it was as serious as it was.

SEN. KEATING: The companies have already posted bond. Is there a certain amount set aside for current expenses? What you are really looking at in this bill is old scars that were set aside before. Quite a bit of money from federal going into this. They just haven't been able to find new money.

SEN. SMITH: This is already built into the state lands money. That federal money is for coal mining, not for hard rock mining.

REP. BROWN: In closing, Article 9, paragraph 2 of the Constitution says the funds shall be used to improve the environment and rectify damage thereto. We were asked if we didn't know this would happen in Butte and Anaconda. It is a little like dying. Everyone knows it will happen sometime, but not when.

Sen. Himsl declared the hearing closed on HB 724.

CONSIDERATION OF HOUSE BILL NO. 785: Rep. Dave Brown, sponsor of the bill, HB 83, said this bill grants a Montana Natural Heritage Program. He passed out a letter from Ray Arnett, Assistant Secretary for Fish, Wildlife and Parks, attached as Exhibit #1, HB 785. Twenty-eight states, plus Tennessee Authority, are using this program. I moved an amendment on the floor which would establish a planning framework rather than to provide for the actual collection. This changes the

appropriation from \$10,000 to a mere \$500.

GENE PHILLIPS, Pacific Power and Light Company said he would urge concurrence in the bill.

DON REID, MEIC, said this might be a duplication of services. The EIS has always been done.

BOB KIESLING, The Nature Conservancy, showed a map of the studies that had been made and several pages of information. (Attached as Exhibit #2)

There were no further proponents, no opponents, and Sen. Hims1 asked if there were questions from the committee.

SEN. DOVER: \$500 to get us into this and we could get into a cost of \$187,000 per biennium in the future. If viable, how do you intend to support it?

REP. BROWN: Page 5, line 5 - it says the committee, in essence, will tell us whether we can spend the money.

SEN. AKLESTAD: In the future, this data would be available for everyone?

REP. BROWN: That is basically the idea so that if you come in to put it into the computer, I can come in and pull it out to use it.

SEN. HIMSL: This is an information card system but why did you propose that it be cut to \$500? Why not others get it together?

REP. BROWN: Job shown only to the agencies but also to the Health Department and Fish and Game, etc. We thought later then we could have it put in the Department of Administration and it is presently a data carding.

MR. KIESLING: We are only asking them to coordinate information by carding the data and making it available to everyone. A member of each of the agencies to see who is carding what and in what format, etc.

SEN. HIMSL: A library program to show you where to get it.

SEN. SMITH: In 65 agencies, they said it is out of date on a yearly basis. They said before it was out of date. If you proposed it in 1975, they should have done it and it is high time you did it now.

SEN. KEATING: How would you proceed? Are you going to take a siding or go in a straight line or something?

SEN. KEATING: Did I miss something? There is support for this?

REP. BROWN: Yes, you were here.

SEN. VAN VALKENBURG: If this is funded from private funds in the

biennium, do we need authority for budget amendments? I guess this is \$10,000 or less. It would be private funding from a nature conservatory, etc.

REP. BROWN: Yes, Point 8 money, the Department of Administration money applied for etc.

SEN. KEATING: If we did have all this baseline data on a computer, could we streamline the Facilities Siting Act a bit?

REP. BROWN: Some came over to the Natural Resources and listened to my bill. They could cut down on the duplication and over duplication in the Siting Act.

SEN. VAN VALKENBURG: Mr. Kiesling, your organization runs this system in other states now. You answered Sen. Keating's question - what effect has it had in other states that have something like this going as to law and cooperation between industry and environment, etc?

MR. KIESLING: We have simply divested the information, etc. It has had all the bugs worked out. We do not run it. The state adopts the program. As to how it works, Wyoming would be a good example. They have had the program for four years. They took data carding duties and listed 39 plants that were on the undefined species list. Black Butte Coal Mine, in the early states, the permit was going to be terminated because of the species. It was discovered the species was more abundant than they thought. Northern Tier was another. There were 804 information requests received from Northern Tier. There was an average cost of \$2,000 per data that saved the state of Washington about \$500,000 through the use of already gathered data.

SEN. SMITH: The state sees the beauty of the system. Who sees it?

REP. BROWN: The legislature.

Rep. Brown closed by saying he would urge the committee to support the bill. If passed, I will work hard to try to produce the private funding necessary to come back in two years and try to implement the system.

Sen. Himsel declared the hearing closed on House Bill 785.

CONSIDERATION OF HOUSE BILL 898: Rep. Bardonouve said this is a fallout from the special session of 1982 when we passed a new level program which was not funded by the session but the Department of SRS was told the costs were unknown on account of the counties' program had changed. The Department was told to come back in 1983 and present a bill for a new revised level program. That is the bill. Section 2, line 5 - one year appropriation until June of 1983 at an estimated cost of \$4 million. We are not sure what that cost is or what the cost will be. Some of the counties have sent in claims that have not been qualified under the law. Some of these claims are being refuted and allowed, some disallowed. Also, a lawsuit in Missoula county, which claims, the suit says, the counties would be entitled to be reimbursed for certain expenses that the Department has not

agreed to pay for. The costs of administering workfare programs, etc., which by SRS rules, are not included in these costs. If that suit is successful, the \$4 million obviously will not cover it. If more money in this program than needed, any residue up to \$300,000 will be equally divided for in-home health services. This was a bill that was passed in the last session and initiated for the first time. It is a program to help senior citizens in their own home and provide certain in-home health services. The \$2 million figure we could not afford. This bill will pay for the cost of the welfare program as provided in the special session.

JOHN LaFAVER, Director, SRS, said we obviously support 898. This is the payment that needs to be made as a result of the passage of HB 13 in the special session. There is an urgency in this bill. The law mandates we make payments this year. We have been making it out of AFDC. We are out of money. Lewis and Clark County is out of money now and there will be several in the next week or so with no money in their poor fund. There are some arguments. Two of them deal with amendments put on 447. One concern is the Renal Disease Program. The other, a court mandate on eligibility technician staff. There are two amendments in HB 447 on those two topics and we can ask for the same type on this bill. One other; take a look at striking the \$300,000 for the home health care. By asking you to strike the language here, in no way does it mean we think it should not be funded. If there is any money left over, the Department would make a down payment on a discretionary in SRS Contingency Fund which is also a part of this bill on page 2, line 3. I would hope you would consider those amendments.

There were no further proponents and no opponents. The Chairman asked if there were questions from the committee.

SEN. AKLESTAD: John, I briefly went over this with you. I don't quite understand why this wasn't brought through the subcommittee.

MR. LAFEVER: This is not the bill I spoke to you about. The procedure that was put in place during special session, placed in the counties, cost \$4 million a year. This bill is for that \$4 million. It sun-sets in June of this year. Another bill creates another structure for next year.

SEN. AKLESTAD: This is a supplemental?

MR. LAFEVER: It is not an overexpenditure. It was clearly anticipated by the Legislature.

SEN. SMITH: Has new money been used for any other purpose than what it was intended for in special session?

MR. LAFEVER: There was nothing appropriated. The law mandated we start to pay when the counties got into trouble. We have been paying with the AFDC until we could get the appropriation in.

SEN. SMITH: Have you monitored those expenditures to see that they

were only in the area they were supposed to be?

MR. LAFAVER: Every county will have a complete audit. We anticipate less than they are asking for.

SEN. HIMSL: If we appropriate the \$4 million necessary to cover the obligations and carry out the program, if new funds referred to in section 1, page 1, comes into place, then you don't want it committed to the \$300,000 program. You want it to be available to be used for contingency purpose in the big bill.

SEN. STIMATZ: Do you recall in State Administration we had a bill dealing with in-home nursing patients? Anything to do with this?

MR. LAFAVER: Indirectly. HB 424, the medicaid waiver bill. It allows us to use medicaid money for those eligible. This is to care for people who are not eligible for medicaid.

SEN. VAN VALKENBURG: Rep. Bardanouve, do you concur in the amendment Mr. Lafaver proposes to add \$300,000 to the contingency fund in the next time?

REP. BARDANOUE: I had quite a conversation with John. I do not support it. The amendment would insure that you have to spend this. This may or may not relieve part of that cost. If \$300,000 left over you would not have to spend any of the general fund in the other bill. No, I do not support this amendment.

SEN. HIMSL: This says any unspecified balance would be appropriated and they could very well see more money available.

REP. BARDANOUE: They can't use it themselves.

SEN. VAN VALKENBURG: They don't want to spend any more than they have to. This is what the lawsuit was.

SEN. HIMSL: Some counties want to put some money in that should not be there.

SEN. REGAN: The \$300,000 John wants loan of in HB 447 would become part of the contingency fund. The question I have is how bad is John hurting for money there?

MR. LAFAVER: This is a deficit I know will go on for two years. The bottom line on the contingency is for five specific things. The money does not get spent here or in the contingency will revert.

REP. BARDANOUE: But those five things is where those are.

SEN. AKLESTAD: How much money originally appropriated for this?

MR. LAFAVER: \$4 million was anticipated in the 1981 session. The Legislature did not appropriate anything. The clear statement was a \$4 million price tag to be paid in 1983.

Rep. Bardanouve said, in closing, he had checked and it would be an unlikely situation if more than \$300,000: the balance would revert to the contingency fund but he would support striking #1 on page 1, line 23.

SEN. SMITH: Actually, in regard to this amendment, it could partly hinge on what happens to HB 187 in this committee?

SEN. HIMSL: 187 makes a general fund appropriation for \$300,000 for a specific program. This one has \$300,000 only if a surplus to expand the program. They asked for \$2 million and we gave them \$300,000.

SEN. REGAN: If we don't strike, aren't we appropriating twice?

REP. BARDANOUE: If the second amendment is in the bill. As one of the senior citizens said, we might like a little more in there. If you pass \$300,000 you could have up to \$600,000 of the \$2 million.

SEN. HIMSL: In the \$4 million, unless no lawsuits, do you anticipate any unexpended part of this?

MR. LAFAVER: If we prevail in the lawsuit in Missoula, we should. If not, no.

Sen. Himsl announced the hearing closed on HB 898.

BRIEF RECESS.

HEARING RESUMED.

CONSIDERATION OF HOUSE BILL NO. 260: Rep. Dave Brown, District #83, chief sponsor of the bill, said this is the result of a mine sub-committee of EIC and the Revenue Oversight Committee that was looking at a variety of problems. He held up a green book which was a report and said it tells you what we did. We worked on the RIT account and what it should be used for. It was a question if you said the funds could be used for mitigating resources on mental health in Montana. This will create a better feeling about use of the funds and what they should be used for. All this bill really does is clarify the fund.

WARD SHANAHAN, Stillwater PGM, said he was in favor of the bill except for the amendment on line 16. If you take out what the House put in and put "and" back in this would put it back to the reason the bill was introduced.

DON REED, MEIC, said they are in support of the bill. In regard to the amendment Mr. Shanahan suggested, I am not sure of the effect of this amendment. It could have an impact on the ability of using the funds for some of the other things they are using it for now. I am not a legal expert and we do disagree.

There were no further proponents, no opponents, and the chair asked if there were questions from the committee.



SEN. SMITH: We were discussing earlier how a lot of the funds were being used by the DNRC and State Lands. Is this another new attempt to use it for other things?

REP. BROWN: The statute already sets out in the court that this is already available for this and other things.

SEN. SMITH: What is the purpose of the legislation?

REP. BROWN: There was a lot of questions raised that the money was used too broadly. It is simply to clarify.

SEN. SMITH: Mr. Shanahan, what do you feel is the purpose of this legislation?

MR. SHANAHAN: The total environment is in the grant. Under the defense of total environment - this adds to the language. It says total environment etc. and tied to the 724 and would specifically allow the reclamation in that bill.

SEN. STIMATZ: Attorney General. One or two I thought that have it.

SEN. SMITH: 724 was just matched. It said in the newspaper article that Mr. Barry said it stay on natural resources and recommended to the subcommittee that we use this money. It was not a recommendation of the subcommittee and we did not think we should take that amendment out and replace it with general funds.

SEN. VAN VALKENBURG: Mr. Shanahan, we heard this bill in Natural Resources Committee about a month ago. You did not propose that amendment in that committee then, did you?

MR. SHANAHAN: I think my recommendation was either kill the bill or have the "and" replaced in it.

SEN. REGAN: Perhaps some of the other committee members could do it. With the amendment in there it would practically kill the bill, wouldn't it?

SEN. VAN VALKENBURG: Mr. Shanahan, Rep. Brown got the Attorney General's opinion in support of the bill and he had given his opinion. I think you are saying otherwise. Are you saying that too, Dave?

REP. BROWN: No.

SEN. VAN VALKENBURG: The effect of what the Attorney General said here is nothing showing that what the Legislature had done was in violation to the constitutionally mandate in regard to the RIT. A couple things so there is a judicial or legislative remedy. They come in now and site the AG's opinion as a passage of this bill. The AG says I think you can take this bill right now and appropriate it for the purpose but you are not required to. If you pass this bill with Mr. Shanahan's amendment, the "may" then becomes "must" be appropriated for that purpose.

REP. BROWN: I don't necessarily think it should go back to "and". I think the RIT is used far too broadly. Much more broadly than originally intended.

Sen. Hims1 declared the hearing on HB 260 closed.

CONSIDERATION OF HOUSE BILL NO. 640: Rep. Dan Harrington, District 88, Butte, Silver Bow and chief sponsor of HB 640 said the original bill read \$1.4 million from metal mines licensing tax. On this particular year 90-some is gain out of the Senate bill. There is \$50 million in it. 90% to this time came out of Butte. \$300,000 was amended in the bill. We support it. We are in a condition now that we really can't see much more than that. This would be 80% to Butte and 20% to Anaconda. In Butte there would be \$70,000 to schools and \$48,000 to local government; in Anaconda, \$18,000 to schools and \$12,000 to local government for impact. We have a loss in less than two years of over \$5 million in actual tax dollars. Many social impacts and local government impacts. Testimony from the Executive Manager, Don Peoples and on the school district will be heard.

TOM STETZNER, Butte School District #1 and the business manager for the Butte School district said we recognize our duties to the tax-payers and schools. We have closed 8 schools in the past 10 years. Three of them this year. That is a budget reduction of 30% in staff mainly through retirements and family relocations. 3% increase in salary. \$400,000 reduction in taxes. 2% of all teaching status is non-tenured. We are reducing our present budget by 6%. This bill would give the school district a small boost.

DON PEOPLES, Chief Executive, Butte-Silver Bow, said he was in support of HB 640 for the school districts. The same is true in local government. We have cut back on our operations for the last five years. There has been a 25% reduction and we are looking at a larger reduction this year - four day work weeks, wage freezes and we have been in that situation for the past several years. The loss in Anaconda for tax for local government is \$480,000. We anticipate over three years \$2 million local government and \$5 million to school district. We ask you to support this HB 640.

DAVE BROWN, Representative, District 83, Butte-Silverbow, said he supports the bill which has to do with the impacts on school and local governments due to the mines closures. This bill originally had the money paid in the past year by ARCO as a request and that amount of money might have done some good.

SEN. STIMATZ: I have to go on record as unqualifiedly supporting this bill.

SEN. JACOBSON: I would make the same statement.

SEN. HAFLEY: I would also make the same statement.

There were no further proponents, no opponents, and Sen. Hims1 asked if there were questions from the committee.

SEN. SMITH: This is the present tax share? With all the state or

what? What does the fund go into?

REP. HARRINGTON: Into the general fund. It has been that way since 1925.

SEN. SMITH: This would take out so much from the general fund? This is just the levels of SB 94 that would take from some of the counties and share with the rest of the state.

SEN. JACOBSON: The original bill was a one-time basis for \$1.8 million back. The metal mines tax from 1982-83 we have paid in each year but never got anything back. There is the coal tax in eastern part of the state--this was never done back years ago; it was not anticipated. You know something is going to happen someday but it is like death - you don't want to think about it. We identified that particular source of money. We are not getting anywhere near that amount, just a little to help us. We have a higher unemployment and a lot more problems than most areas.

SEN. OCHSNER: What would you say was your loss in taxable value?

REP. HARRINGTON: Over the next 2 years, \$5 million loss. About \$6 1/2 million over the next three years. This is a conservative estimate - it was made before the Safeway Warehouse closed.

MR. PEOPLES: The district revenue loss, tax valuation about 6% that will go each year. The major portion is in plant and equipment. They are already moving all equipment, etc. They will be moving more if they are not using it. About 6% this year and each year until something positive happens or nothing left to value. About \$7 1/2 million in revenue over 3 1/2 years.

SEN. HAMMOND: How great an enrollment drop next year?

MR. STETZER: About 3%. That is a lot of the reason we have been unable to realize that increase because of the drop in A & B taxable valuation. SEN. HIMSL: Distribution 80% to Butte, 20% to Anaconda. The portion to schools is the same - 60% to schools and 40% to local government. That is about the same as set up in local government over the past years. Each local government to keep 40% retained for local government and 60% for schools by Regional Proportional method. Who is going to do that?

REP. HARRINGTON: We might have to change that.

There were no further questions and Rep. Harrington said in closing that the bill is very important. The amount is not great but it is very important that we look upon this bill as some type of impact added to the community. We will be faced with many problems

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financially and socially. One of the problems is that many of the people have been leaving and because of the seniority rate. Both areas will be faced with great impacts.

Sen. Himsl declared the hearing closed on HB 640 and adjourned the meeting until 9 a.m. Monday morning.

  
SENATOR HIMSL, Chairman

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date

4/9/83

NAME	PRESENT	ABSENT	EXCUSED
Senator Etchart, VC	✓		
Senator Dover	✓		
Senator Keating	✓		
Senator Smith	✓		
Senator Thomas			✓
Senator Van Valkenburg	✓		
Senator Stimatz	✓		
Senator Story			✓
Senator Ochsner	✓		
Senator Haffey	✓		
Senator Jacobson	✓		
Senator Regan	✓		
Senator Lane			✓
Senator Aklestad	✓		
Senator Hammond	✓		
Senator Tveit	✓		
Senator Boylan	✓		
Senator Hims1, Chairman	✓		

4/9/83

## Finances & Claims

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)



STATE OF MONTANA  
ENVIRONMENTAL QUALITY COUNCIL

STATE CAPITOL  
HELENA, MONTANA 59620  
(406) 449-3742

Deborah B. Schmidt, Acting Executive Director

GOV. TED SCHWINDEN  
Designated Representative:  
John North

HOUSE MEMBERS  
Dennis Iverson, Chairman  
Dave Brown, Vice Chairman  
Gay Holliday  
Dean Switzer

SENATE MEMBERS  
Harold Dover  
Dorothy Eck  
Mike Halligan  
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W. Leslie Pengelly  
Glen T. Rugg  
Frank S. Stock

December 14, 1981

440 1  
HB 724  
4/8/83

The Honorable Mike Greely  
Attorney General  
State of Montana  
Capitol Station  
Helena, MT 59620

Dear Mike:

As Chairman of the Environmental Quality Council's Subcommittee on Hard-Rock Mining I have become aware of a legal question that is fundamentally significant to the study currently being conducted by us pursuant to HJR 66. The question concerns the proper use of funds collected under the Resource Indemnity Trust Act, 15-38-101, MCA. Specifically we must ascertain whether or not these monies may be appropriated and expended for the purpose of mitigating the social and economic impacts created by the development of mineral resources in Montana.

Because there exists a conflicting point of view among the various interested parties in the state, I now find it necessary and do hereby request from you an official opinion on this matter. I am enclosing for your review a brief memo prepared by the EQC staff on this question.

Please feel free to contact me or the EQC staff if you desire additional information.

Sincerely,

A handwritten signature in cursive script that reads "Dave".

DAVE BROWN  
Chairman  
Subcommittee on Hard-Rock Mining

DB:ee  
Enclosure

STATE  
OF  
MONTANA

ATTORNEY GENERAL  
MIKE GREELY

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

28 December 1981

Dave Brown, Chairman  
Subcommittee on Hard-Rock Mining  
Environmental Quality Council  
Helena, Montana 59620

Dear Mr. Brown:

Thank you for your letter in which you request an opinion concerning:

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

I have assigned Allen B. Chronister of my staff to review and report on this matter. Upon receipt of that report, I will determine whether your request provides an appropriate basis for an official opinion.

Very truly yours,



MIKE GREELY  
Attorney General



STATE  
OF  
MONTANA  
**ATTORNEY GENERAL**  
**MIKE GREELY**

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

29 January 1982

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

Dear Ms. Schmidt:

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

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

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

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

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

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

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

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

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

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

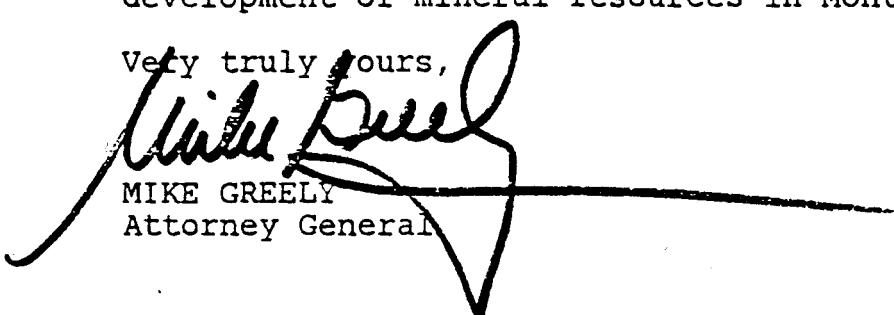
The constitution in Article IX § 2 does not specify the particular uses to be made of resource indemnity trust funds. That determination was left to legislative discretion. The legislature exercised that discretion by enacting 15-38-101 through 15-38-202, MCA, to provide funding to rectify damage done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

*Handwritten note:* This is a 2 in the margin.

Deborah Schmidt  
Page 3  
29 January 1982

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

Very truly yours,



MIKE GREELY  
Attorney General

FILED 3 1982



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

MAR 2 1982

44  
HB 785  
4/9/83

Mr. William D. Blair, Jr.  
President  
The Nature Conservancy  
1800 N. Kent Street  
Suite 800  
Arlington, Virginia 22209

Dear Mr. Blair:

I have become aware of the Natural Heritage programs being carried out by over half the State governments and the part your organization has played in helping them along. I understand that they have been extremely useful in collecting, organizing and making available some very carefully selected information on critically endangered species, habitats, natural communities, and other important ecological entities. This information, I have been told, has been put to very effective use by both private and public conservationists, resource managers, business and industry to enhance decision-making, more effectively allocate scarce resources, facilitate environmental reviews, and avoid unnecessary conflicts.

I want you to know that I have discussed these programs with Secretary Watt, FWS and NPS Directors and the Chairman of the Land Policy Group, and we feel these are good and useful undertakings. Their balanced objective scientific approach is perfectly consistent with the resource management philosophies of this Administration. The Secretary is urging those States with as yet unallocated Land and Water funds to consider using them to launch such programs and I will personally be encouraging the agencies of this Department to cooperate with them in whatever ways they can.

You and your organization are to be commended for your assistance to the State governments in this matter. This is the sort of private and public cooperation that we like to see.

Please let me know if I can be of any further assistance.

Sincerely,

A large, stylized handwritten signature of G. Ray Arnett is written over the word "Sincerely," and the typed name "G. Ray Arnett".  
for G. Ray Arnett  
Assistant Secretary for  
Fish and Wildlife and Parks

Int 785/1 pul #2

Material submitted for the record  
in support of H.B. 785

H B 785  
4/9/83

# The Nature Conservancy

104 W. Broadway  
P.O. Box 258  
Helena, Montana 59624  
(406) 443-0303



Bob Kiesling  
Director  
Big Sky Field Office

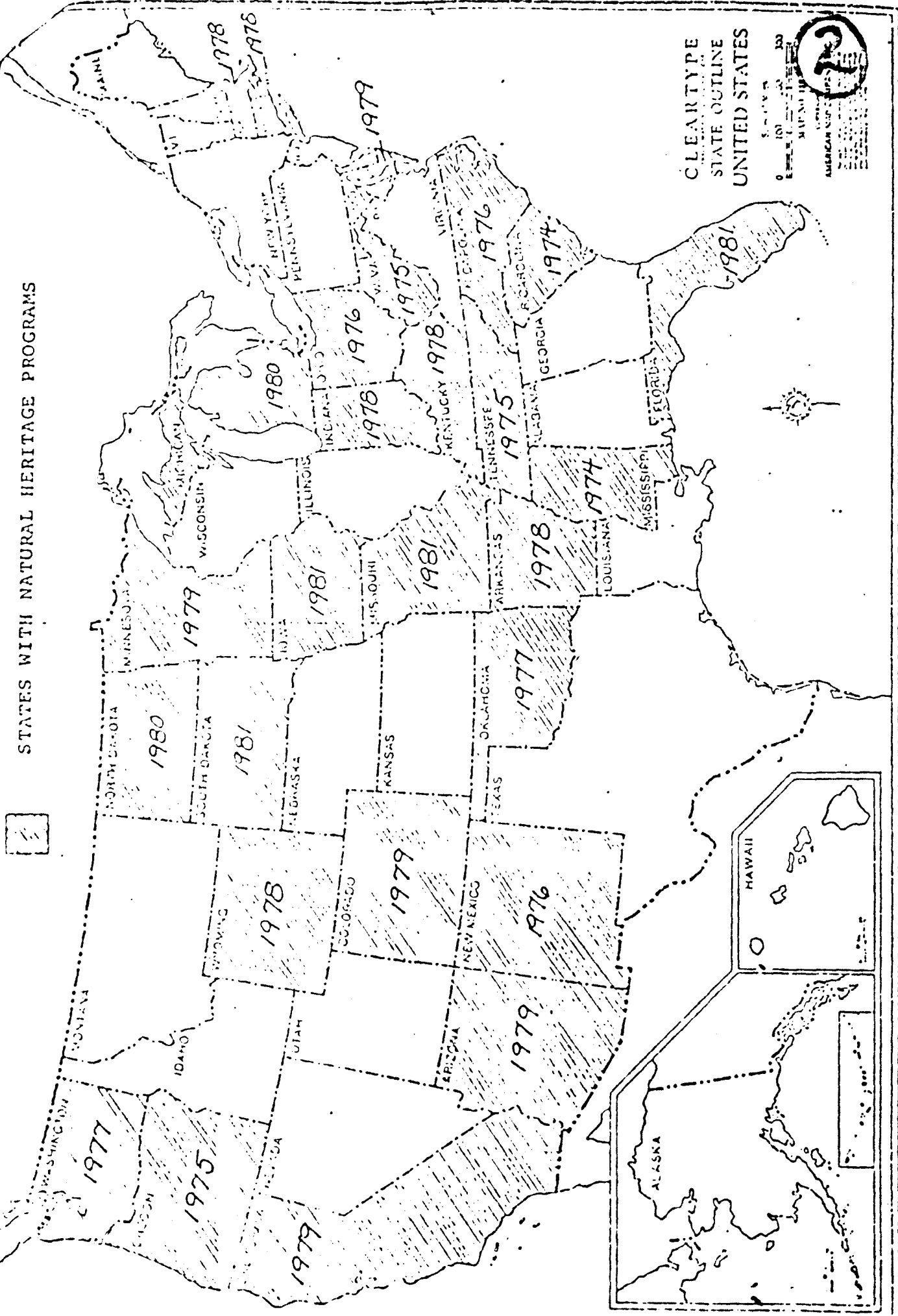
CLEAR TYPE  
STATE OUTLINE  
UNITED STATES

Scale  
0 100 200  
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0 100 200  
KILOMETERS

AMERICAN NATIONAL MAPS

2

STATES WITH NATURAL HERITAGE PROGRAMS



ACCOMPLISHMENTS OF THE HERITAGE PROGRAM IN 1981

The Data System

1. A total of 304 information requests were processed by the Heritage Program in 1981. This included 248 requests for input on Environmental Impact Statements (EIS). Assuming an average savings of \$2000.00 per EIS<sup>\*</sup>, this represents a savings of \$496,000 to state, federal, local, and private agencies. Additional savings have undoubtedly been realized through reduction of legal fees and costly delays.

Some users of the system include:

Puget Sound Power and Light  
State Energy Facility Site Evaluation Council  
U.S. Forest Service  
Seattle City Light  
U.S. Fish and Wildlife Service  
Beak Consultants, Inc.  
Bureau of Land Management  
King County  
The National Audubon Society  
The Nature Conservancy

2. Developed computer graphic capabilities - working with DNR data processing, the Heritage Program has prepared map overlays showing occurrences of rare plants and animals. Overlays can be produced for any area. For example, forty-four such overlays showing rare plants on National Forests were produced under a contract with the Forest Service. These overlays allow Forest Service personnel to locate sensitive species locations and quickly compare them to project area boundaries. This is a rapid means of identifying potential impacts.
3. Increased use of Heritage data via DNR's TRAX data retrieval system. Area managers can now obtain Heritage data early in the planning process. Consultation with the Heritage staff provides them with the necessary information they need to avoid or, if possible, lessen impact on a natural heritage resource. DOW Nongame Program personnel provided advice on special animals. Increased requests for information from DNR Area Offices indicate that Area managers and planners find Heritage data valuable.

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<sup>\*</sup> Agencies have reported savings of from \$500.00 to \$5000.00 per EIS, depending on size of project.

## Natural Area Preserve Recommendations \*

1. Four Natural Area Preserves, based on Heritage site recommendations, have been dedicated by the Board of Natural Resources. These preserves are in Skamania, Franklin, Lincoln and Klickitat counties.
2. Three Natural Area Preserve recommendations are nearing dedication. These are in Jefferson, Mason, and Okanogan counties.
3. Three sites recommended by the Heritage Program have been purchased by The Nature Conservancy and eventually may become part of the state Natural Area Preserve System. These sites are on private land in Adams, Klickitat, and Lincoln counties.
4. Two new sites have been recommended to the Natural Heritage Advisory Council for inclusion into the Natural Area Preserve System.
5. One Preserve establishment report and management plan has been completed.

## Sensitive Species Projects

1. The Heritage Program has completed a two-year cooperative agreement with the U.S. Fish and Wildlife Service. Through the Heritage Program, Washington was one of the first states to enter into an agreement concerning rare plant work and it is considered a model in federal-state cooperative efforts on plants. The Program concentrated on those plant species that are on the Federal Register Notice of Review Species Act. The Heritage Program has recommended that 33 species be removed from the Federal Register as data from field work show them to be more common or less threatened than assumed.
2. All plants on the Washington rare plant list have been assigned a status (based on rarity and degree of threat) for the first time. Categories include Endangered, Threatened, Sensitive, and Extinct or Extirpated. The Heritage Program published this as the 1981 list of Endangered, Threatened and Sensitive Vascular Plants of Washington.
3. The Heritage Program prepared an illustrated guide to the rare plants of Washington. Based on the 1981 list, this book provides information on habitat, field characteristics, status, threats and ownership, as well as distribution maps and illustrations. It should prove to be especially useful to land managers in their planning activities.

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Examples of recommendations approved by the Heritage Council are in Appendix II.



4. The Heritage Program presented educational talks on sensitive species and natural areas to various groups throughout the state. These groups included the Washington Native Plant Society, The Wildlife Society and The Nature Conservancy.

#### Other Contributions by the Program

1. The Heritage staff contributed sections on endangered species and the Natural Area Preserves System to the Department of Natural Resources Forest Land Management Program EIS.
2. The Heritage Program provided input on the development of the U.S. Forest Service Region 6 Sensitive Species List (a subset of the Heritage list) for Washington. The staff contributed to the development of rare plant sighting forms for use in all Northwest forests. The Forest Service Regional Office contracted with the Heritage Program to maintain in its data base all of the sensitive plant records for Washington forests.

#### 14. Coordinate the sharing of natural resource information.



Various departments of the state, including Natural Resources and Conservation; Fish, Wildlife and Parks; and State Lands, independently collect natural resource information for different purposes using manual and automated methods. Ideally, there should be an integrated natural resource information system. However, a sophisticated system would be extremely expensive because of its unique and distinctly different requirements. Therefore, discussions should continue to expedite the development of separate but compatible systems. In addition, each should be cataloged and data made available for department and statewide use. Coordination responsibility should be assigned to the administrative assistant in the Office of the Governor who is the natural resources liaison. Implementation will ensure rapid information retrieval while providing needed flexibility.



# Governor's Council on Management

## Final Report

Carolina Power & Light Company

Raleigh, N. C. 27602

March 3, 1981

COPY  
RECEIVED  
MAR 5 1981  
13

Mr. Howard Lee, Secretary  
Natural Resources & Community Development  
512 N. Salisbury Street  
Raleigh, NC 27611

Dear Mr. Lee:

Good stewardship with our financial resources is very much demanded today. Wasteful use of these resources is easily recognized in almost every facet of our lives. Some very tough choices will be made soon throughout the country, and North Carolina's state government is no exception.

Mr. Lee, you have responsibility for many programs which have been with us for some time. Additionally, some programs have grown beyond proportion to their original intentions. These are the areas that should be closely scrutinized for budget reduction.

There is a fledgling program under your direction which has made me proud of our state government's foresight. The North Carolina Natural Heritage Program has an excellent state and national reputation. This program is extremely well organized and operates frugally.

Reducing the program's budget would not constitute good management. The North Carolina Natural Heritage Program serves well its function as a central data agency. Their records are impeccable, and their personnel are highly professional. Carolina Power & Light Company consistently uses their services as a primary data source during our power plant, substation, and transmission location projects. Most other major environmental agencies (Wildlife Resources, Natural History, etc.) refer us to the Natural Heritage Program which is the most specific and consequently the most helpful.

It would be a great loss for us not to have the Natural Heritage Program. Our environmental reconnaissance capabilities would be greatly hampered since other agencies have neither the time nor the specifics to offer much help.

Thank you for your time and consideration in this matter.

Sincerely,

*David*

David G. Roberts  
Senior Scientist  
Carolina Power & Light Company

DGR:klp15

# energy fuels corporation

executive offices • suite 900 • three park central • 1515 arapahoe • denver, colorado 80202 • (303) 623-8317



April 22, 1981

The Honorable Leslie R. Fowler  
Colorado State Senate  
State Capitol Building  
Denver, Colorado 80203

Dear Senator Fowler:

In 1980, Energy Fuels Corporation gave a total grant of \$3,000 to The Nature Conservancy to assist in funding the Colorado Natural Heritage Inventory which The Nature Conservancy has helped to develop with the Colorado Natural Areas Program.

Energy Fuels Corporation supported the Colorado Natural Heritage Inventory because there is a critical absence in this state of a central repository for reliable data relating to threatened and endangered plant and animal species and the ecosystems which contain them. The absence of this data base has caused disagreement between the corporate community, the environmental community, and the state and federal government, resulting in costly and unnecessary delays in important mineral resources development and other development activities.

We believe the Colorado Natural Heritage Inventory is an indispensable tool which strikes a balance between the state's need to preserve the best remaining examples of Colorado's natural lands while permitting responsible development of the state's natural resources.

At the time we made our grant to this program, we did so with the understanding that the state intended to assume full management of the inventory at the end of the initial two year contract with The Nature Conservancy. Any departure from this objective jeopardizes the important accomplishments of the past two years.

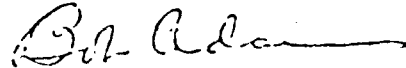
For a relatively nominal cost, the state has the opportunity to maintain a program of great importance to the future of Colorado. I earnestly support a \$50,000 General

The Honorable Leslie R. Fowler  
April 22, 1981  
Page Two

18

Fund Allocation for the Colorado Natural Areas Program with an addition of 4 FTEs and sincerely hope that the Colorado legislature will concur in my assessment of the importance of this program.



Sincerely,



Robert W. Adams  
Chairman of the Board

RWA/kc

cc: The Honorable Ruth S. Stockton  
Mr. Charles H. Collins



# Rio Blanco Oil Shale Company

2851 South Parker Road Suite 500  
Aurora, Colorado 80014 (303) 695-2400

A GENERAL PARTNER  
GULF CORPORATION • STANFORD, CALIFORNIA

June 22, 1981

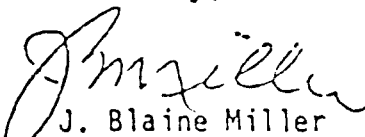
Senator Leslie E. Fowler  
Colorado State Senate  
State Capital Building  
Denver, CO 80203

Dear Senator Fowler:

On behalf of the Rio Blanco Oil Shale Company, I wish to express support for the efforts of those involved in the Colorado Natural Heritage Inventory. This program should provide reliable information pertaining to threatened and endangered plant and animal species, and their critical habitats. It is our hope that these data will aid both industry and regulatory agencies in planning the reasonable development of the State's natural resources.

I understand that some funding for the Colorado Natural Areas Program was recently made available through an allocation from the State's general fund. I would hope that such funding will be continued so that the inventory can be completed in a timely manner.

Sincerely,



J. Blaine Miller  
President

DAB:bgw

cc: Senator Tilman Bishop  
Charles H. Collins, Director  
The Nature Conservancy

bcc: D. Boyce  
T. Ten Eyck

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

MAR 2 1982

## Memorandum

To: Director, National Park Service  
Director, Fish and Wildlife Service  
Acting Deputy

From: Assistant Secretary for Fish and Wildlife and Parks (Sgd) Ric Davidga

Subject: State Natural Heritage Programs

At the present time, over half the State governments conduct Natural Heritage Programs. These programs are well-conceived, unemotional attempts to assess the real status of certain biological and ecological resources, referred to collectively as Elements of Natural Diversity.

A special virtue of these programs is their emphasis on existing occurrences and condition of these elements on the present-day landscape so that, insofar as possible, we know exactly which areas are most sensitive. It is of great value to have this information available in a carefully organized form before conservation or development decisions are made.

Natural Heritage Programs have received considerable attention from various Interior agencies at the field level. They have performed essential contracts cooperated on mutual fact finding, and supplied valuable information which helps the federal government in its management decisions. Many federal offices are among the most constant users of Natural Heritage Program data.

In this time of fiscal austerity, many of these Heritage Programs are "feeling the pinch." State governments and private sources are digging deep to keep them going so that the cumulative data bases may become even more comprehensive and of greater value to themselves and other users. It is in our own interest to use these programs. To that end, I request that you:

- \* encourage cooperative field data collection activities (resource inventories) between NPS/FWS Regional and/or park/refuge staffs and the State Heritage Programs;
- \* consult with the State Natural Heritage Programs on proposals for information acquisition to avoid any federal expenditure of money for data that already exists;
- \* assure, where practicable, that data collected are compiled in formats that are compatible with the inventory formats used by the State Natural Heritage Programs;

- \* take advantage whenever possible of the data now available (it is often free or available at minimum cost);
- \* use the State Natural Heritage Programs as repositories for data collected in field and other studies so that these data can be added to the State Programs' data bases and can become available to other users both federal and non-federal (an additional benefit is that the States' data can sometimes eliminate the need and cost to establish and maintain such data bases in your offices);
- \* (To NPS) Since LWCF grants generally made possible the development, operation and data maintenance of these State programs, they continue to be an important element of the State's SCORP. Even with the prospect of no LWCF funding, at least 1/3 of the States and possibly more are committed to continuing the maintenance and updating of the SCORPs. Thus, you should take every measure possible to ensure that State Natural Heritage Program efforts continue to be coordinated with and are consistent with the SCORPs and to encourage the States to maintain those plans.





# United States Department of the Interior

(15)

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

MAR 2 1982

Mr. William D. Blair, Jr.  
President  
The Nature Conservancy  
1800 N. Kent Street  
Suite 800  
Arlington, Virginia 22209

Dear Mr. Blair:

I have become aware of the Natural Heritage programs being carried out by over half the State governments and the part your organization has played in helping them along. I understand that they have been extremely useful in collecting, organizing and making available some very carefully selected information on critically endangered species, habitats, natural communities, and other important ecological entities. This information, I have been told, has been put to very effective use by both private and public conservationists, resource managers, business and industry to enhance decision-making, more effectively allocate scarce resources, facilitate environmental reviews, and avoid unnecessary conflicts.

I want you to know that I have discussed these programs with Secretary Watt, FWS and NPS Directors and the Chairman of the Land Policy Group, and we feel these are good and useful undertakings. Their balanced objective scientific approach is perfectly consistent with the resource management philosophies of this Administration. The Secretary is urging those States with as yet unallocated Land and Water funds to consider using them to launch such programs and I will personally be encouraging the agencies of this Department to cooperate with them in whatever ways they can.

You and your organization are to be commended for your assistance to the State governments in this matter. This is the sort of private and public cooperation that we like to see.

Please let me know if I can be of any further assistance.

Sincerely,

for G. Ray Arnett  
Assistant Secretary for  
Fish and Wildlife and Parks

72 Nov 3

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
FACILITY SITING DIVISION



TED SCHWINDEN GOVERNOR

32 SOUTHEWING

STATE OF MONTANA

14061449-4600

HELENA, MONTANA 59620

MEMORANDUM

TO: Bob Robinson

FROM: Larry Thompson

DATE: February 16, 1982

RE: Memo to Gail Kuntz of August 28, 1981  
Memo to Randy Moy of December 3, 1981

This memo is a follow up to our recent conversation regarding the usefulness of a statewide natural resource data base and planning system. The attached article describes a system, developed by the New Mexico Department of Natural Resources, which could serve as an excellent model for the Montana effort. Note that this system has a number of independent components, including a scientific bibliographical package, a map information system, a geographic information system, and the New Mexico State Heritage Program. This article explains very well some of the advantages of such a system, but it might be useful to summarize some of the major "selling points" here, especially as they pertain to the Major Facility Siting Act.

(1) As pointed out in the article, such a system "provides information in a form so that decision makers will have the necessary data and analytical systems to make timely, verifiable decisions as natural resource issues arise."

(2) A centralized natural resource system would prevent duplication of effort, continual "re-invention of the wheel," and loss of valuable information as projects wind down and personnel leave.

(3) If such a system were available, it would greatly speed up the EIS process and processing of Siting Act and other applications.

(4) After the initial cost of setting up the system, costs of processing applications (including both costs incurred by applicants in gathering required baseline data and by the Department in analyzing the application) would be greatly reduced, and the system would probably pay for itself in a few years.

To: Bob Robinson  
Page 2  
February 16, 1982

(5) A natural resource planning system is a necessity if state government is to get out of a reactive posture toward development, and provide an opportunity to comprehensively identify and address issues in a long-range planning perspective.

(6) Such a system should be attractive to industry because it would reduce the possibility of unpleasant surprises (e.g. an endangered plant or animal unexpectedly being found on a power plant site).

(7) It could result in the delisting of supposedly rare or endangered species which are not actually rare but are simply poorly known. (In Wyoming, for example, the state heritage program has been able to reduce the list of rare plant species from 37 to 6, simply by gathering more data on distribution and abundance.)

(8) It would allow priorities to be set for preservation of critical, unique, or exemplary habitats, and ensure that such habitats are not destroyed before they are even identified.

(9) It would ensure that the best available data are used in decision making and that all decisions are fully documented, thereby preventing delays due to lawsuits regarding inadequacy of data or an analysis.

(10) It could be used on a subscription basis by all interested state, federal, and local agencies, as well as consulting firms, utilities, and the mining industry.

(11) It would allow better decisions to be made. I think that this is one of the most important selling points, since the land use allocation decisions made by state government affect vast areas of the state—often in perpetuity--and should be based on the best possible information.

I would be glad to discuss this issue further with you at your convenience.

LST/jb

Attachment

cc: Kathy Hadley  
Dennis Hemmer

# MONTANA INTERNATIONAL TRADE COMMISSION

cfh  
785


April 8, 1983

Senator Matt Hims1  
Chairman Finance & Claims Committee  
Montana State Senate  
Helena, Montana 59601

Dear Senator Hims1 and Members of the Senate Finance  
and Claims Committee:

The Montana International Trade Commission would like to go on record supporting House Bill 785 to establish a planning framework for the development of a Natural Resource Information System and to establish an ongoing Montana Natural Heritage Program. Natural Resources will continue to be an important part of Montana's economy so we believe that it is necessary to continue to find better ways to develop our natural resources while minimizing impacts on the natural environment. We believe that a Natural Resource Information System could be of great benefit to both industry and those responsible for regulating and protecting the environment. If you pass this measure we will be committed to assisting with the implementation of such a system and program during the interim.

Sincerely,

  
Thomas Staples  
Vice President