

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 11, 1985

The meeting of the Natural Resources Committee was called to order at 3:40 p.m. in Room 312-1 of the Capitol Building by Chairman Dennis Iverson.

ROLL CALL: All members were present except for representatives Driscoll and Cobb, who were excused.

HOUSE BILL 676: House Bill 676 was introduced in committee by the sponsor, Rep. Gene Donaldson, District 43. He said he sponsored the legislation at the request of the department of health and environmental sciences. The bill would amend the Montana Hazardous Waste Act to allow the department to adopt rules setting requirements for underground storage tanks containing petroleum or other hazardous substances, and require tank operators to report leaks in those tanks. Rep. Donaldson said he was particularly anxious to introduce and support this bill after his district suffered serious groundwater pollution from an unknown source last year. He said that more than 40 leaks from underground storage tanks were discovered in Montana last year.

Vic Anderson, of the DHES solid waste management division, spoke in support of HB 676. He provided an information sheet to the committee, a copy of which is attached hereto as Exhibit 1. He outlined the need for storage tank regulation, and explained the necessary steps involved. He noted that hazardous waste is exempted under HB 676 because treatment and storage of such waste is regulated by the Montana Hazardous Waste Act.

Will Selser, representing the Lewis and Clark County Health Department, spoke in favor of the bill. He said the payback for such legislation is substantial, because it could prevent enormous clean-up expense and damage to public health in the future. He noted a growing national concern about toxic materials in the water supply, and praised this effort to allay that problem.

George Ochenski, of the Environmental Information Center, said that group supports HB 676 as "preventive medicine" against groundwater contamination.

Russ Brown, representing the Northern Plains Resource Council, said that group supports HB 676, but he was uncertain whether the regulations set forth in the bill would apply to

underground delivery systems attached to surface storage systems. If these delivery systems are not covered in the bill, he suggested that the committee consider amending the bill to make certain they are covered by the regulations.

No opponents spoke against HB 676, and the floor was opened to questions from committee.

Rep. Krueger asked Mr. Anderson to elaborate on the issue of the department's authority to adopt rules regulating "financial responsibility," as noted on page 7, line 7, of the bill. Mr. Anderson said the subsection would give the department the rule-making authority to require that an entity holding an underground storage tank must demonstrate the ability to cover the cost of clean-up, should a leak take place.

Rep. O'Hara asked Mr. Anderson if he thought the intent of HB 676 was also to cover possible leaks from underground piping to above-ground storage tanks, as questioned by Mr. Brown. Mr. Anderson said that specific language to that effect was not included in this bill because the bill was drafted to mirror federal legislation on tank leakage, and because the federal regulations do not contain such provisions, the proposed HB 676 does not contain them.

Rep. Ream asked Mr. Brown if he was referring to structures that were specifically excluded on pages 4 and 5 of the bill. Mr. Brown said his concern is not with those structures, which are adequately regulated under other statutes, but is with underground delivery systems to above-ground tanks.

Rep. Donaldson closed by saying that DHES has proposed funding for this legislation from a source other than the general fund, and that a fiscal note would be provided as soon as possible.

Hearing was closed on HB 676.

HOUSE BILL 695: Rep. Tom Asay, District 27, introduced HB 695, which he sponsored. He said the proposed bill would amend the reclamation act with regard to county-operated gravel pits.

John Bilbro, superintendent of roads for Rosebud County, spoke in favor of HB 695. He said the legislation would save counties and the state a considerable amount of money by eliminating unnecessary regulation. He said that because counties were different from private contractors, they should not be required to meet the same standards in creating and operating a gravel pit. Counties, he said, were not going

to abandon a poorly done project and be impossible to trace, as private contractors might. He said counties are a permanent entity, and the state has no problem locating them and requesting further action to reclaim a gravel pit site if problems occur in the future. Therefore, it is not necessary that counties go through as rigorous an approval process. He said eliminating the time necessary for that process would allow counties to take advantage of a good bid offered for such work, which might not be available after a lengthy application procedure. He passed out two exhibits (Exhibits 2 & 3 attached hereto) outlining the history of two projects in Rosebud County, in which state regulations created problems for the county.

Doug Smith, a planner for Sheridan County in Plentywood, also rose in support of HB 695. He said the application procedure required by the state, including the required reclamation plan, is often an "exercise in paperwork." Mr. Smith gave the committee a copy of a reclamation contract entered into by the state and Sheridan County, attached as Exhibit 4.

Gordon Morris, representing the Montana Association of Counties, supported HB 695. He said state regulations on gravel pits create a problem in almost all eastern Montana counties. He noted that the counties are subdivisions of the state, and are permanent entities. They should not be required to follow the same procedures as contractors who may leave the state after performance of a job, he said.

There were no further proponents of HB 695, and the floor was opened to comments from opponents.

Dennis Hemmer, representing the department of state lands, said the department opposes HB 695 not because the bill would threaten the department's budget by reducing revenues, but because it defeats the purpose of the state's reclamation act, which is to ensure that the land will be reclaimed. A copy of his statement is attached hereto as Exhibit 5. He also provided a copy of an open-cut mining reclamation contract entered into by the state and Sheridan County, which is attached as Exhibit 6.

George Ochenski, of the Montana Environmental Information Center, said HB 695 would set a bad example for private industry. He said allowing the counties to circumvent reclamation requirements is not fair to those entities that must follow those requirements. He also said MEIC opposes HB 695 because it is contrary to the intent of the reclamation act.

There being no further opponents, the floor was opened to questions from committee.

Rep. Smith asked if the bill was proposing one set of rules for counties, and another for private businesses, when both entitles are performing the same actions. Rep. Asay said the intent of HB 695 is to provide that for an on-going operation, such as those gravel pits maintained by counties, the contract with the state does not have to be renewed with each use. The bill does not propose a relaxation of reclamation standards, he said.

Rep. Ream asked Mr. Hemmer to explain the department's proposed amendments. (See Exhibit 5.) Mr. Hemmer said the department's proposal would exempt counties from submitting annual reports to the state for opencut mines that were not operated during the previous year.

Rep. Raney asked Mr. Hemmer about Rep. Asay's assurance that counties and private businesses were not being treated under a double-standard. Mr. Hemmer agreed that although there would be two policies, the final standards would be the same.

Rep. Asay closed by asking the committee to bear in mind that two levels of the same government were being discussed. He said that county commissioners are no less concerned with safe regulation than the state. The initial contract for an opencut mine would be the same, he said, and so would the final result. He said HB 695 was not a way to relax the standard of reclamation, but was a way to cut costs and red tape for counties.

The hearing was then closed on HB 695.

EXECUTIVE ACTION

HOUSE BILL 362: Rep. O'Hara made a DO PASS motion on HB 362, and also made a DO PASS motion on the amendments proposed by the DNRC. Rep. Garcia said he had several unanswered questions about HB 362, particularly the position of the Public Service Commission on the bill. He asked if DNRC has the power to grant a facility construction permit, but the PSC has the power to regulate the facility, if it might not be better to grant the PSC that original authority.

Chairman Iverson said the issue of which body should have that authority is not addressed in HB 362. He said the bill would not grant more power to BNRC, it would just allow that board to grant conditional approval for facility construction.

Rep. Krueger noted that a discussion of "used and useful" had taken place during the hearing on February 8, and that a Montana Power Company representative had said the issue was not addressed in HB 362. He requested that researcher Hugh Zackheim draft a statement of intent to be attached to HB 362 making clear that the bill has no bearing on the PSC's authority to determine "used and useful."

Rep. O'Hara withdrew his DO PASS motion, and the committee agreed to discuss HB 362 after an SOI is presented.

HOUSE BILL 695: Rep. Asay moved DO PASS on HB 695. Rep. Ream asked if the main reason for the bill was to eliminate paperwork or eliminate the requirement for reclamation of gravel pits. Rep. Asay said he had no exact figures, but said counties are not opening many new pits, they are re-filing on old ones.

Rep. Krueger said he thought review of opencut gravel pits by the state is a good idea. Rep. Raney said that lessening standards for counties leads to constant violations of state requirements.

Rep. Miles moved DO PASS on the amendments proposed by the department of state lands. The motion carried, with Reps. Asay and Grady voting no.

Rep. Kadas then moved DO PASS AS AMENDED on HB 695. The motion carried with Reps. Raney and Grady voting no.

There being no further business before the committee, the meeting was adjourned at 5:40 p.m.


Rep. DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 11, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John			X
DRISCOLL, Jerry			X
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

STANDING COMMITTEE REPORT

Page 1 of 2

February 11, 1935.....

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **595**.....

FIRST reading copy (**WHITE**)
color

**AN ACT EXEMPTING COUNTY-OPERATED OPENCUT GRAVEL MINES FROM
RECLAMATION PLAN REQUIREMENTS IN THE OPENCUT MINING ACT:
REQUIRING COUNTIES TO FILE ANNUAL REPORTS CONCERNING RECLAM-
ATION AT THEIR OPENCUT GRAVEL MINES; AND REQUIRING ANNUAL
INSPECTION OF SUCH MINES BY THE DEPARTMENT OF STATE LANDS;
AMENDING SECTIONS 62-4-403 AND 62-4-434, MCA.**

Respectfully report as follows: That **HOUSE** Bill No. **595**.....

BE AMENDED AS FOLLOWS:

- 1) Page 1, lines 5-10
Strike: "COUNTY-OPERATED" on line 5, through "LANDS"
on line 9.
Insert: COUNTIES FROM SUBMITTING ANNUAL RECLAMATION
PROGRESS REPORTS ON GRAVEL MINES THAT WERE NOT
OPERATED DURING THE PRIOR REPORTING YEAR.
- 2) Page 3, line 25
Strike: "(1)"
Renumbe subsequent subsections
~~XXXXXXXXXX~~
Relatter subsequent subsections

~~XXXXXX~~
DO PASS

February 11

35

19

- 3) Page 6, line 12
Following: "board"
Insert: ", except that counties are exempt from submitting
annual reports on opencut mines that were not
operated during the prior reporting year"
- 4) Page 8, lines 18-20
Strike: Subsection 2 in its entirety
- 5) Page 8, lines 21-25, through page 9, lines 1-20
Strike: New Section 3 in its entirety.
Renumber subsequent section.
- 6) Page 9, line 25, through page 10, lines 1-3
Strike: New Section 5 in its entirety.

AND AS AMENDED,

DO PASS

OUTLINE REGULATION OF UNDERGROUND STORAGE TANKS

- * Leaking underground fuel storage tanks have affected near—surface aquifers in virtually every corner of Montana**
- * Over forty petroleum and chemical—related groundwater contamination problems have been reported in the past two years**
- * Generally, when a toxic product is introduced into an aquifer, the Water Supply is irreversibly contaminated.**
- * Clean up is expensive, difficult and at best, about 70 percent efficient.**
- * Multiple sources of toxic products within a contaminated area and the time lag before detecting a leak makes it difficult, expensive and time consuming to segregate and identify a responsible party.**

Continued:

- * The U.S. Congress has established provisions for the regulation of under ground storage tanks nationwide**
- * Interim standards, in place, and final standards to be developed, are designed to prevent the release of products from underground tank**
- * Federal law allows the states to maintain program to regulate underground storage tanks in lieu of EPA**
- * Potentially thousands of Montana services, smaller industries and businesses may be involved with this program**
- * DHES is best suited to manage such a program:**
 - it is continually investigating and conducting remedial action of contaminated groundwater resulting from leaking tanks**
 - it already has a working relationship with many of the businesses and industries to be affected**
 - with changes in hazardous waste regulations, it will eliminate unnecessary duplication**

TECHNICAL INFORMATION FOR HB 676

Presently, the Montana Department of Health & Environmental Sciences-Water Quality Bureau is aware of more than 40 situations in Montana in which a shallow groundwater aquifer has been contaminated with various petroleum products. In each case, the suspected or confirmed route of contamination is leakage from or spillage near underground storage tanks. Generally the result is to virtually eliminate the aquifer for use as a domestic water supply and, in addition, to imperil deeper aquifers in that location. In 10-20% of the situations, an additional severe public hazard results from the seeping of the fuel contaminant into enclosed areas such as basements, manholes, etc., where fire or explosion can occur.

For reference, the following typical situation descriptions are provided:

- a. In Dillon, MT, fuel fumes began appearing in a commercial building near several businesses utilizing underground tanks for storage of fuel. Eventually more than a dozen domestic wells serving homes and businesses in the vicinity of Montana Avenue and Highway 41 in Dillon were found to be severely contaminated and the area of contamination continues to grow. At least five suspected sources are now being investigated,
- b. In Miles City, MT, diesel fuel was detected in shallow wells providing irrigation water to residents near the Chicago, Milwaukee, St. Paul & Pacific Railroad Company yard. An enormous clean up effort was begun in 1980 and continues presently. Approximately 420,000 gallons of fuel have been recovered to date. The groundwater resource is certainly eliminated for domestic use for at least five more years. The fuel was lost from leaking buried delivery lines, tanks, and from transfer accidents,

- c. During a sewer construction project in Lincoln, MT, fuel was discovered seeping into the trenches in the immediate area of three present retail fuel businesses which utilize buried storage tanks. Subsequent investigations discovered a large area of groundwater contamination in this community which relies exclusively on individual shallow aquifer wells for domestic water supply. To date, no well has experienced contamination, however, the presence of the fuel floating on the shallow aquifer represents a constant threat to the present user, future users, and the deeper aquifers,
- d. In Polson, MT, heating oil leaking from a buried tank was collected in groundwater building foundation drains and transported via the sewer system to the city wastewater treatment facility resulting in damage to the facility and discharge to the Flathead River.

In each case, the results of the undetected leak from an underground facility include: long term damage to the groundwater resource, the need for expensive mechanical corrective measures, and the requirement for implementation of long term, expensive groundwater clean up measures.

2-11-85 SLP/KDK

AREAS WITH GROUNDWATER CONTAMINATION
BECAUSE OF LEAKING UNDERGROUND TANKS
January 9, 1985

<u>City</u>	<u>Contaminant</u>
1. Bozeman	Gasoline
2. Sheridan	Gasoline
3. Darby (2)	Diesel & Gasoline
4. Dillon	Gasoline
5. Miles City	Diesel
6. Augusta	Fuel oil
7. White Sulphur Springs	Gasoline
9. St. Mary	Gasoline
10. Heart Butte	Gasoline
11. Kalispell	Gasoline
12. Polson (2)	Gasoline & #5 Green Diesel
13. Lewiston	Gasoline
14. Billings	Diesel
15. Helena (3)	Diesel & Gasoline
16. Unionville	Fuel Oil
17. Livingston	Gasoline
18. Laurel	Gasoline
19. Plentywood	Diesel
20. Cut Bank	Diesel
21. Butte	Pentachlorophenol
22. Lincoln (2)	Gasoline & Waste Oil
23. Missoula	Gasoline
24. Reed Point	Solvent
25. Big Fork	#5 Green Diesel
26. Wisdom	Gasoline
27. Polson	Gasoline
28. Garrison	Gasoline
29. Havre	Diesel
30. Lolo Hot Springs	Gasoline
31. Missoula (2)	Diesel & Gasoline
32. Butte	Creosote
33. Bozeman	Creosote
34. Bonner (Blackfoot)	Diesel
35. Judith Gap	Gasoline
36. Shelby	Diesel
37. Babb	Aircraft Fuel
38. Bozeman	Solvent/urban runoff
39. Columbia Falls	Gasoline

Underground Storage Tank Regulations Must Include:

- Release detection, prevention, and correction regulations
 1. leak detection systems
 2. recordkeeping requirements
 3. reporting requirements
 4. corrective action requirements
 5. proper closure

- Financial responsibility for:
 1. corrective actions
 2. compensating third parties for sudden and non-sudden accidental releases

- Ability to take actions against guarantors

- Performance standards for new tanks
 1. design
 2. construction
 3. installation
 4. release detection
 5. compatability

EXHIBIT 2
2/11/85

~~EXHIBIT 1~~

1. Amendment #22 dated January 4, 1983.
2. Amendment #23 dated January 7, 1983.
3. Agreement between Land Owner and Rosebud County Commissioners dated September 8, 1982.
4. Letter dated January 20, 1983 from the Dept. of State Lands rejecting Amendments #22 and #23.
5. Dept. of State Lands proposed type of amendments that they are suggesting to meet minimum specifications. (Notice Page 2, Section I of their recommended Reclamation Plan naming nine (9) species of vegetation).

ROSEBUD COUNTY
Amendment #22 to
Reclamation Contract # 00182

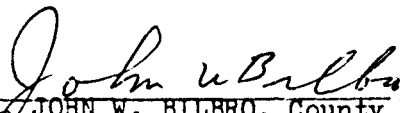
Reclamation Contract #00182, a contract entered into by and between the State of Montana through the State Board of Land Commissioners, and Rosebud County, is hereby amended to include the following tracts of land:

NW¹/₄, Sec. 35, T2N, R39E 4 Acres

The terms contained within Contract # 00182 apply to these tracts of land.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seal as of the 4th day of January, 1983.

January 4, 1983
Date


For JOHN W. BILBRO, County Highway Supt.
ROSEBUD COUNTY

Leo Berry, Jr., Commissioner
Department of State Lands

Contract No. 00182

Amendment No. 22

Company Rosebud County

MAP INFORMATION SHEET

1. Name, address and telephone number of surface landowner:

Burlington Northern - Meridian
First Northwestern National Bank Building
Billings, Montana

Phones: 657-8400 - 657-8377

2. Name, and address of mineral rights owner:

Burlington Northern - Meridian
First Northwestern National Bank Building
Billings, Montana

3. Size and legal description of area to be affected: (include county).

NW $\frac{1}{4}$, Sec. 35, T2N, R39E Rosebud County

Approx. 3 Acres

4. Distance and direction from nearest community:

11 miles West of Colstrip, Montana

5. Mineral to be mined, or quantity (yards) of: 14,000 yards Scoria

Topsoil

500 yds.

Overburden

0

Mineral

14,000 yds. Scoria

6. Estimated total acres to be surface mined? 2 Acres

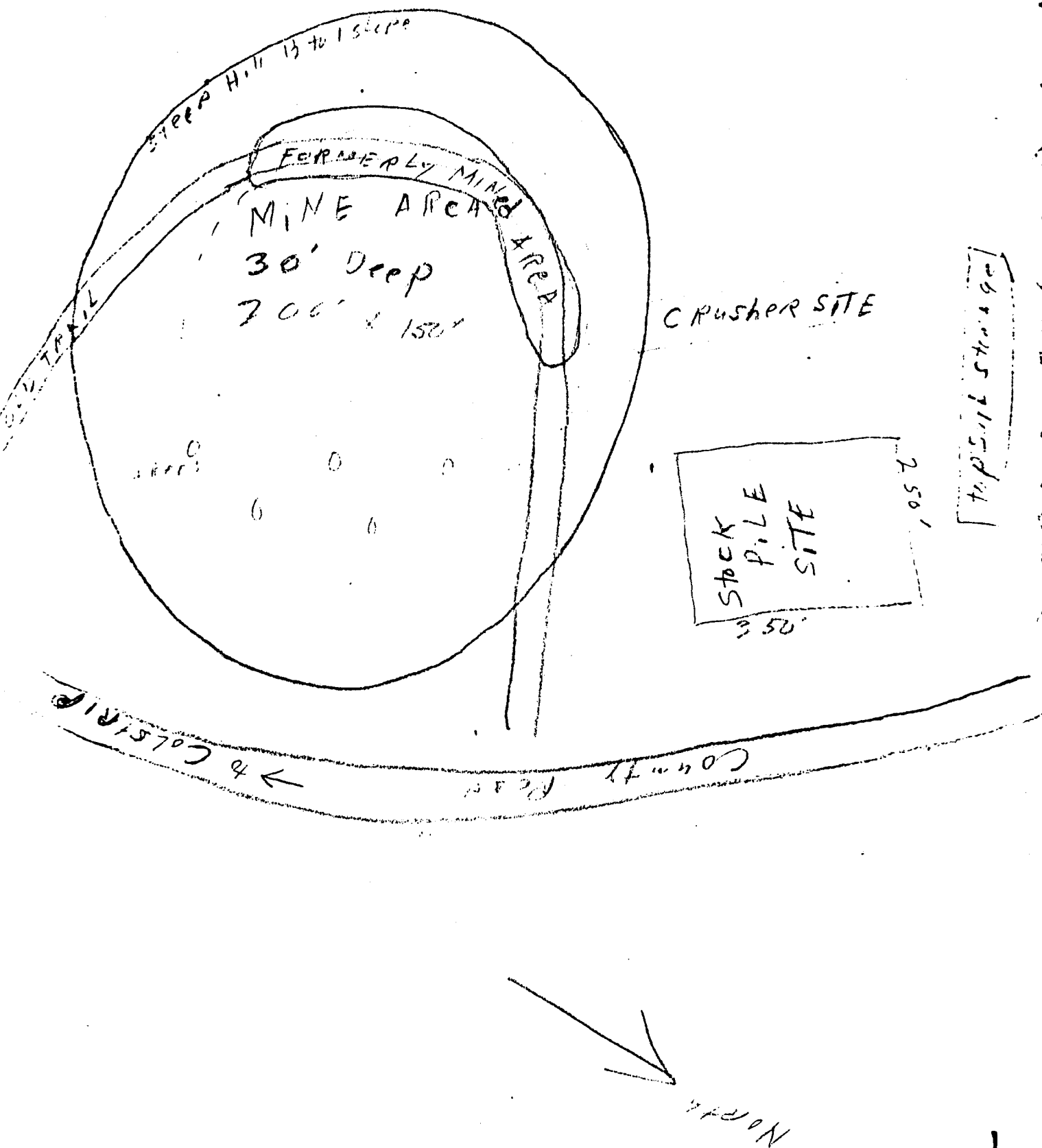
7. Estimated life of operation: 3 Months

8. Estimated maximum depth to be surface mined: 30 Feet

9. Date operation will be commenced: January 1983

10. Volume of material removed to date: None

M 1 R 12 N
NW 1/4 Sec 35 T 2 N R 39 E



Section I

Land Use - Pasture

Soil Type - Thin layer of top soil over Scoria

Scoria Depth - 30' or more

Site - No Surface Water
Water table below bottom of pit
Land is hilly

Annual Rainfall - 15.30 inches

Frostfree Days - 115 - 120 days

Vegetation - Native grass with some birds, rabbits and deer
in the area

Section II

After the scoria is mined the area will be reclaimed with a 3 to 1 or less backslope and available top soil put back over the area. A mixture of 25% each Wheatgrass Nordan Crested, Wheatgrass Oahe Intermediate, Russian Wild Rye and Manchar Smooth Bromegrass will be planted back at the rate of 10 lbs. per acre, seeded with Brillion Drill.

Top soil will be salvaged with a Dozer and Scraper and will be less than 500 cubic yards available.

Rosebud County
Amendment # 23 to
Reclamation Contract # 00182

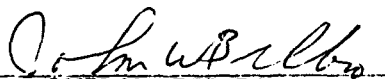
Reclamation Contract # 00182, a contract entered into by and between the State of Montana through the State Board of Land Commissioners, and Rosebud County, is hereby amended to include the following tracts of land:

Sec. 30, T2N, R43E

The terms contained within Contract # 00182 apply to these tracts of land.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seal as of the 7th day of January, 1983.

January 7, 1983
Date


For JOHN W. BILBRO
Rosebud County Highway Supt.
ROSEBUD COUNTY.

Leo Berry, Jr., Commissioner
Department of State Lands

Contract No. 00182

Amendment No. 23

Company Genie May Garfield

MAP INFORMATION SHEET

1. Name, address and telephone number of surface landowner:

Genie May Garfield
Rural Route
Forsyth, Montana 59327
Phone: 347-5473

2. Name, and address of mineral rights owner:

Genie May Garfield
Rural Route
Forsyth, Montana 59327

3. Size and legal description of area to be affected: (include county).

Sec. 30, T2N, R43E (3 Acres) Rosebud County

4. Distance and direction from nearest community:

21 Miles East of Colstrip, Montana

5. Mineral to be mined, or quantity (yards) of:

<u>Topsoil</u>	<u>Overburden</u>	<u>Mineral</u>
400 Yds.	0	20,000 Yds.

6. Estimated total acres to be surface mined? 3 Acres

7. Estimated life of operation: 4 Months

8. Estimated maximum depth to be surface mined: 25 Feet

9. Date operation will be commenced: September 1982

10. Volume of material removed to date: 20,000 Yds.

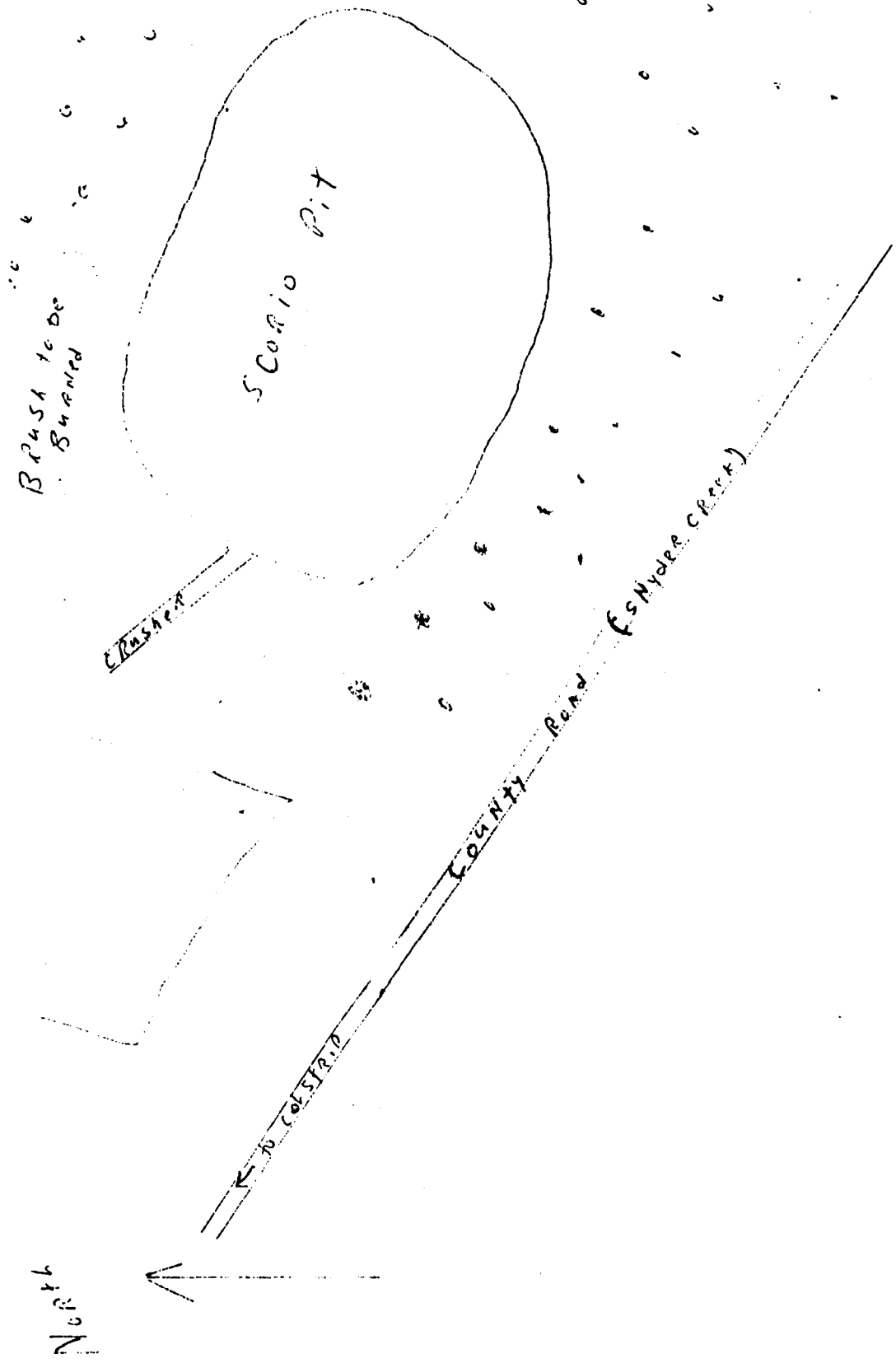
Goodfield

T 2 N

R. 43 E

Tip Seal Building

Product
stock pile



Section I

- Land Use - Pasture
- Soil Type - Layer of top soil over Scoria with trees on total area
- Scoria Depth - 30' or more
- Site - No Surface Water
Water table below bottom of pit
Land is hilly
- Annual Rainfall - 15.30 Inches
- Frostfree Days - 115 - 120 days
- Vegetation - Native grass and pine trees with birds, rabbits and deer in the area

Section II

After the scoria is mined the area will be reclaimed with a 3 to 1 or less backslope and available top soil put back over the area. A mixture of 25% each Wheatgrass Nordan Crested, Wheatgrass Oahe Intermediate, Russian Wild Rye and Manchar Smooth Bromegrass will be planted back at the rate of 10 lbs. per acre, seeded with Brillion Drill.

Top soil will be salvaged with a Dozer and Scraper and will be less than 500 cubic yards available.

This agreement entered into between Rosebud County Road Department and Genie May and Russell Garfield relating to the purchase of Scorio from the Garfield Ranch in Section 30, Township 2N., Range 43E., by Rosebud County outlines conditions agreed upon.

Rosebud County agrees to pay eleven cents (11¢) per yard for scorio and desires to purchase approximately twenty thousand (20,000) yards to be measured by the belt scale on the crusher and paid for after crushing is completed. The County will crush the scorio and stock pile it for present and future use. Rosebud County agrees to cut and haul the trees from the pit site. The tree tops and limbs will be piled and then burned this winter in the pit area. Available top soil will be stripped and will be used in the spring of 1983 to reclaim pit. Said pit will be reseeded with a dry land grass mix. The tree stumps will be buried in the bottom of the pit and covered before reclamation is done on the pit.

In addition to the payment of eleven cents per yard for the scorio, Rosebud County agrees to haul up to ten (10) belly dump loads of crushed scorio to the Garfield Ranch for the yard and the lane.

^{5 years}

Reasonable access will be provided to the stock pile by the Garfield's until the stock pile is used up.

This Agreement will be binding on heirs, successors, and assigns.

Garfields

Rosebud County Commissioners

Genie May Garfield
Russell Garfield

William W. McCar
Henry A. S. Velle
Ed McCar

Date 9/8/82

Date 2/17/82

DEPARTMENT OF STATE LANDS



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 449-2074
(406) 449-4560 RECLAMATION DIVISION
(406) 449-2711 EIS TEAM

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

1539 ELEVENTH AVENUE
HELENA, MONTANA 59620

January 20, 1983

Mr. John Bilbro, Superintendent
Rosebud County Road Department
P. O. Box 1117
Forsyth, Montana 59327

RE: Application for Amendments #22 & #23
to Reclamation Contract #00182

Dear Mr. Bilbro:

The Department has received applications for the above referenced amendments but finds them incomplete and unacceptable for the following reasons:

The reclamation plan does not meet the minimum requirements set forth in section 26.4.203 of the rules and regulations. Specifically;

Section I

- a) a discussion of the present condition of the area to be mined including the present land use of the site to be mined and of the land surrounding the site. Your application states land use as pasture. Which area does this refer to?
- b) information about soil type which may include a standard soil survey. Your application states only that a layer of topsoil exists over the scoria. What type of soil and how deep is it? The SCS office in Forsyth will supply that information.
- c) a topographic description of the site. This can be done by submittal of a topographic map or in a narrative description.
- d) a detailed description of the vegetation existing on the site. Again, the SCS could help here.

Section II

- a) a designation of the reclaimed use, i.e., grazing, cropland, etc.
- b) along with grass species you must state the time of year that seeding will take place.

Mr. John Bilbro, Superintendent
Rosebud County Road Department
January 20, 1983
Page Two

- c) a discussion of how newly seeded areas will be protected from grazing pressure until seed or seedlings are established.
- d) a topographic description of how the disturbed site shall appear after reclamation. This can be in narrative form, or by cross-sectional diagrams.
- e) a plan for the removal or burial of all metal, oversize material and other refuse. Also a commitment not to dispose of liquid based petroleum products in such a manner as to inhibit revegetation or cause water pollution.
- f) a detailed plan of how access, haul or other support roads shall be located, constructed and maintained.
- g) a statement containing the estimated dates upon which the reclamation of mined areas shall be commenced and completed. All reclamation shall be concurrent with mining operations. All grading and topsoiling shall occur within one year after mining and related activities have ceased on any significant area.
- h) an estimate of the reclamation cost per acre. Express in equipment time and costs, and seed and fencing costs.

Section III

An annual progress report will be submitted to the Commissioner.

Section IV

All operations will be conducted so as to avoid range and forest fires and spontaneous combustion. Open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control.

Section V

All archaeological and historical values in area to be mined must be given appropriate protection. Should significant archaeological or historic values be found, the operations will be routed around the site of discovery for a reasonable time until salvage can be made. The State Historical Preservation Office will be notified promptly.

The reclamation plan must be signed and dated.

Also, the map must show those items on the enclosed sheet, drawn to scale or at best show dimensions and be dated and signed.

Mr. John Bilbro, Superintendent
Rosebud County Road Department
January 20, 1983
Page Three

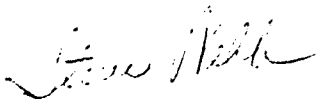
I have enclosed a copy of an acceptable reclamation plan and maps, a reclamation plan format and map content sheet you can use as a guide.

I realize you do not have a lot of excess time so I spoke with Eldon Rice and the Commissioners about assisting you in preparation of these applications, but I have not heard back from them.

In addition, the operation of any site before being issued an amendment is a violation of the Opencut Mining Act and subject to the penalty provisions therein. You must therefore allow us at least three weeks lead time to inspect the site and process the paperwork before you can anticipate operating.

I would also hope that you feel free to ask us for assistance in preparation of these applications; we will be glad to help.

Sincerely,



Steve Welch, Chief
Opencut Mining Bureau
Reclamation Division

sg

Enclosures

RECLAMATION PLAN

This plan is submitted for reclamation of approximately 10 acres of private land described as follows: NE $\frac{1}{4}$, SE $\frac{1}{4}$, Section -- Township 3 North, Range 50 East, Custer County, Montana. This location, approximately 35 miles south of Miles City, will be used for extraction of pit-run gravel material. (See Map 1)

Section I

The predominant land use in and around the above parcel of land is domestic livestock grazing of rangeland. Presently, there is no significant use of the area by wildlife.

Helder Tonn estimated that the same location was used as a gravel source in about 1939. Only faint scars remain from the original cuts, indicating the successful reclamation potential of the site.

The soil type is a sandy silt loam with a well developed 6" topsoil layer.

The site is located in the Deer Creek drainage. Deer Creek is an intermittent stream and a tributary of Pumpkin Creek. The estimated depth to the water table at times of low water flow is approximately 2 feet. At high water flow (flood flow) the site would be inundated since it lies in the drainage. A reproduction of the 7.5 minute, U.S.G.S. Beebe quadrangle is enclosed for topographic representation (Map 2).

The area lies within the Soil Conservation Service designated 10-14" precipitation zone and has approximately 126 average frost-free days.

5

The following list contains the vegetation species existing within the Silver sagebrush/Western wheatgrass community presently on site.

<u>Common Name</u>	<u>Scientific Name</u>
Western wheatgrass	<u>Agropyron smithii</u>
Blue grama	<u>Bouteloua gracilis</u>
Needle-and-thread grass	<u>Stipa comata</u>
Prairie sandreed	<u>Calamovilfa longifolia</u>
Sedges	<u>Carex spp.</u>
Fringed sagebrush	<u>Artemisia frigida</u>
Big sagebrush	<u>Artemisia tridentata</u>
Silver sagebrush	<u>Artemisia cana</u>
Greasewood	<u>Sarcobatus vermiculatus</u>

Section II

- (A) The seeding mixture for reclamation contains plant species which will provide fast, initial ground cover, thereby reducing the erosion potential in the drainageway. The seed will be drilled on the contour using a Brillion seeder/packer pulled behind a rubber tire tractor. All seeding will be completed in spring 1981, concurrent to grading and topsoiling.

Species to be planted and application rates are as follows:

<u>Species</u>	<u>Application rate</u>
Western wheatgrass	15 lb/ac
Thickspike wheatgrass	5 lb/ac
Canadian bluegrass	5 lb/ac
Cicer milkvetch	<u>8 lb/ac</u>
Total application of seed	33 lb/ac

- (B) Because of the availability of good topsoil (adequate organic matter and leached out salts in the drainage soils) and water, fertilizer will not be necessary. However, straw will be disced into the soil after retopsoiling at a rate of 2,000 pounds per acre to aid soil moisture retention and aeration.
- (C) Fence will be constructed to protect vegetation from grazing pressure if significant disturbance occurs during the first full growing season. All attempts will be made to establish a successful vegetative stand without fencing.
- (D) A wash plant will not be operated in this area.
- (E) All post-mining slopes will be graded to less than 3:1 slope. As shown in Figures 1 and 2, the post-mining topography will gradually slope downward toward the existing stream channel. After grading, stockpiled topsoil will be replaced to a uniform depth over disturbed areas.

A gravel stockpile will be located beyond the mining disturbance boundary on the bench above the drainage for future landowner use. A topsoil stockpile will be adjacent to the gravel to be used for redistribution once the gravel is depleted. This arrangement will

allow reclamation to proceed without additional disturbance within the bonded mining area.

- (F) The presence of harmful waste materials is not anticipated. If such wastes materialize, they will be transported from the site and dumped in an approved area.
- (G) The access and haul roads within the mining disturbance boundary will be topsoiled with material salvaged prior to their construction. They will be seeded with the vegetation species and application rates described in Section I (A). Straw will be applied as described in Section I (B).
- (H) Final reclamation will begin concurrent to issuance of a mining permit and will be completed at the cessation of seeding operations, or tentatively May 15, 1981. If by unforeseen circumstances seeding is not completed at that time, it will be accomplished during the next agricultural planting season, or after October 15, 1981.

(1) Estimated Reclamation Costs:

Equipment (includes labor)

D7 Dozer 8 da. @ \$ 75/hr. \$ 4,800

Scraper 4 da. @ \$110/hr. 3,520

Tractor + seeder/packer

2 da. @ \$ 40/hr. 640

+20% overhead costs 1,792

\$ 10,752

Seed and Straw

330 lbs. Seed @ Avg. \$3.00/lb. 990

10 Tons Straw @ Est. \$75/T 750

Total Cost of Reclamation \$ 12,492

Cost Per Acre \$ 1,249.20

Section III

An annual progress report will be submitted to the Commission.

Section IV

Proper care will be taken to avoid range and forest fires. No open burning will be conducted.

Section V

The State Historic Preservation Officer at the University of Montana will be notified if any significant archeological or historical values are found during operations at the site.


Signature TMR

Title

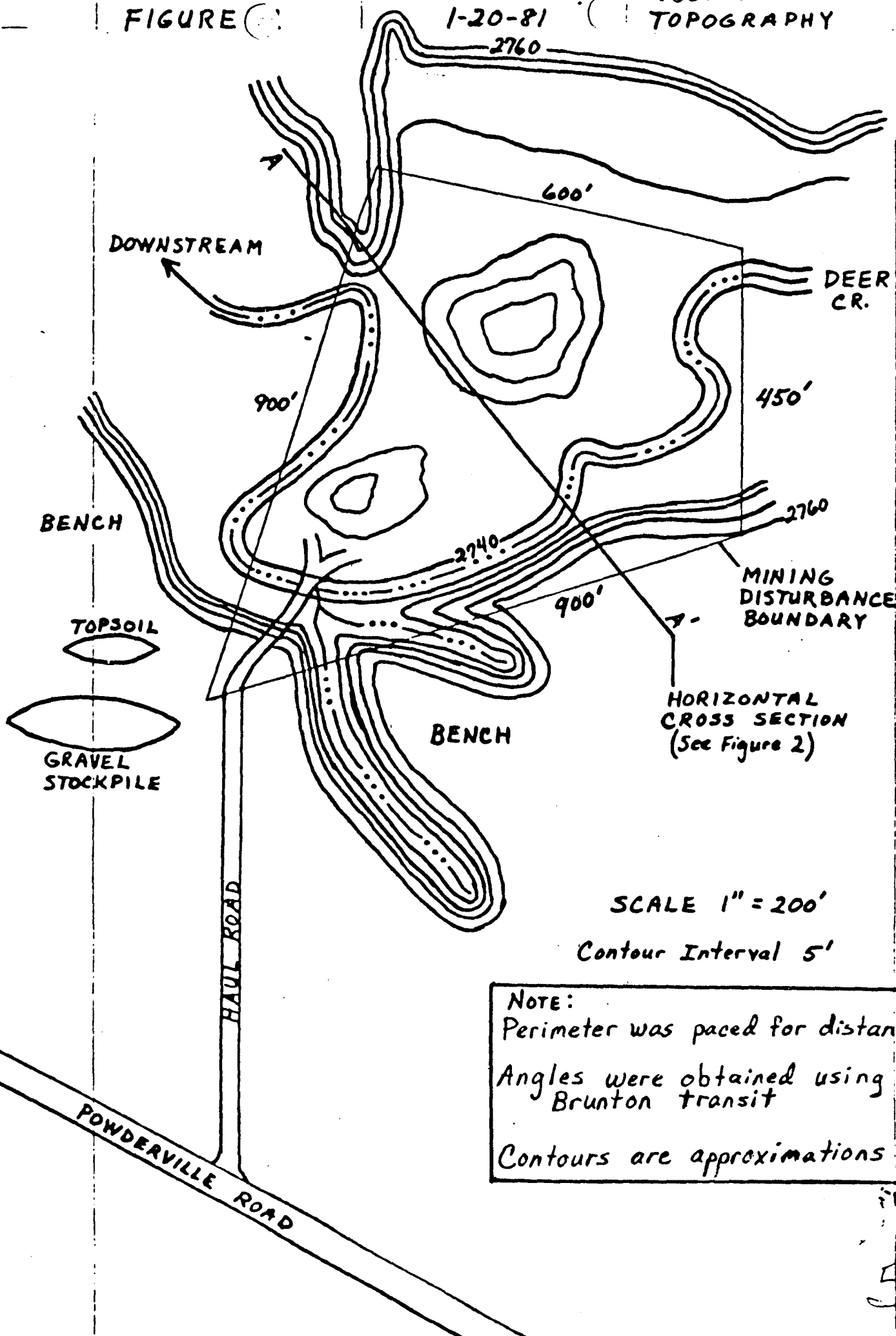
3/25/91

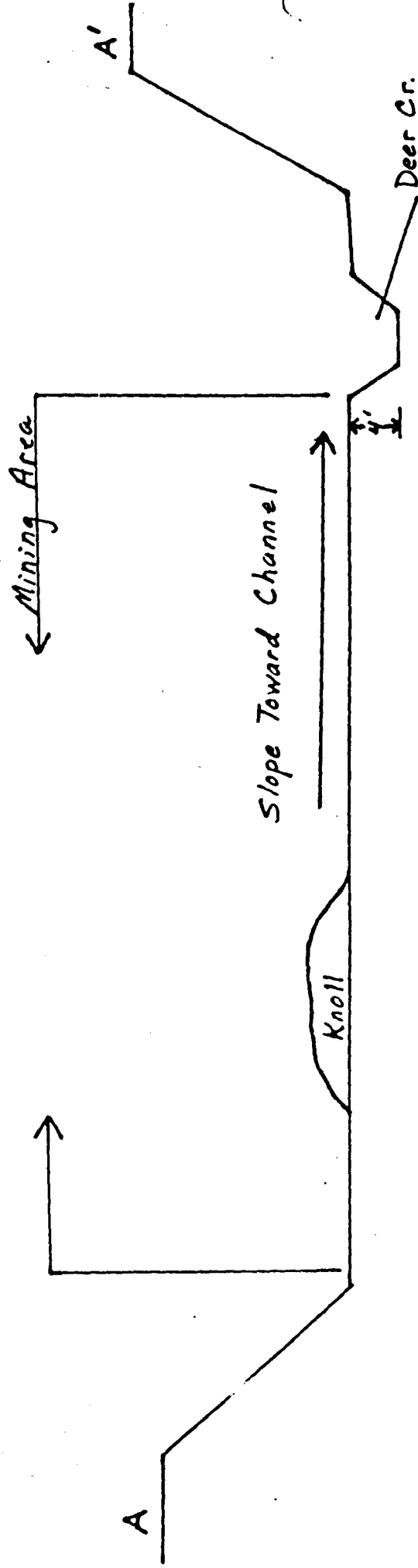
Date

FIGURE ()

1-20-81

POST-MINING
TOPOGRAPHY





*Graphic representation only - not to scale

FIGURE 2 Horizontal Cross Section of Drainage after Grading 1-20-81

EXHIBIT 3
2/11/85

~~EXHIBIT 11~~

1. Letter dated February 2, 1984 to Dept. of State Lands regarding opening of gravel pit.
2. Agreement dated February 3, 1984 with Landowner.
3. Letter dated February 24, 1984 and Amendment #31 to Dept. of State Lands.
4. Notice of Non-Compliance dated March 27, 1984 from the Dept. of State Lands.
5. Approval of Amendment #31 from Dept. of State Lands dated March 30, 1984. (This was five (5) weeks after the Amendment was sent to the Dept. of State Lands).
6. Letter of explanation to Lyle Manley, Attorney for the Dept. of State of Lands.
7. Letter from Lyle Manley that we received April 25, 1984 informing Rosebud County that we were being fined \$200.00 for non-compliance.
8. A release of non-compliance from Dept. of State Lands upon receipt of \$200.00.

Rosebud County Road

P.O. Box 1117
Forsyth, Montana 59327
406-356-2261

February 2, 1984

Ed Surbrugg
Department of State Lands
Reclamation Division
Opencut Mining Bureau
1245 North 29th Street
Billings, Montana 59101

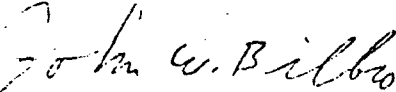
Dear Mr. Surbrugg:

We are contemplating on opening a pit in the SW $\frac{1}{4}$, SW $\frac{1}{4}$ Sec. 27,
T6N, R43E, within a week or two. This is on the Botts Place on
Sweeney Creek Road.

No paperwork has been done on this and there is nothing final
on the deal as of this date.

Sincerely,

ROSEBUD COUNTY ROAD



John W. Bilbro
County Highway Supt.

JWB:mle

SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 28 + NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 33 T6N R43E

Rosebud County Road

P.O. Box 1117
Forsyth, Montana 59327
406-356-2261

February 3, 1984

A G R E E M E N T

Agreement between Rosebud County and Mrs. Ed Bott, Sr. regarding purchase and storage of gravel:

Rosebud County agrees to pay Mrs. Bott the sum of twenty-five cents (25¢) per cubic yard for pit run gravel to be crushed by a contractor selected by Rosebud County. Volume will be measured in the stockpile after the gravel is crushed.

The County will use the major portion of the gravel on the Sweeney Creek Road but reserves the right to use said gravel elsewhere, if needed, since the County is buying the gravel.

Mrs. Bott agrees to give Rosebud County the right to store the gravel at the crushing site until it is used up.

Rosebud County agrees to strip and save available top soil and reclaim the area after crushing, reseeding with a grass seed mixture.

The volume will be approximately ten thousand (10,000) cubic yards.

Rosebud County will haul up to 100 cubic yards of gravel from the Road to Mrs. Bott's House.

Frances Bott
Mrs. Ed Bott, Sr.

John W. Bilbro
John W. Bilbro
County Highway Supt.
Rosebud County

Dated: February 3, 1984

Rosebud County Road

P.O. Box 1117
Forsyth, Montana 59327
406-356-2261

February 24, 1984

Ed Surbrugg
Department of State Lands
Reclamation Division
Opencut Mining Bureau
1245 North 29th Street
Billings, Montana 59101

Dear Mr. Surbrugg:

Inclosed please find Amendment #31 to Contract #00182.

This is a follow-up to our letter dated February 2, 1984.

Sincerely,

ROSEBUD COUNTY ROAD

for *Theresa L. Estman*
John W. Bilbro
County Highway Supt.

JWB:mle

Contract No. 00182

Amendment No. 31

Company Rosebud County

MAP INFORMATION SHEET

1. Name, address and telephone number of surface landowner:

Frances Bott
Rosebud, Montana 59347

Phone: 347-5490

2. Name, and address of mineral rights owner:

Same

3. Size and legal description of area to be affected: (include county).

4 Acres in the NE $\frac{1}{4}$ - NE $\frac{1}{4}$ Sec. 33 & SE $\frac{1}{4}$ - SE $\frac{1}{4}$ Sec. 28 T6N R43E Rosebud County

4. Distance and direction from nearest community:

6 Miles Southeast of Rosebud, Montana

5. Mineral to be mined, or quantity (yards) of:

Topsoil

400 Yds.

Overburden

200 Yds.

Mineral

10,000 Yds
Gravel

6. Estimated total acres to be surface mined? Four (4)

7. Estimated life of operation: 30 Days

8. Estimated maximum depth to be surface mined: 20 Feet (20')

9. Date operation will be commenced: February 22, 1984

10. Volume of material removed to date: None

NORTH



TOP SOIL & OVER BURDEN
SUCK PILE

002

TOP SOIL

350'
GRAVEL
HILL

TOP SOIL

DRAIN

DRAIN

COUNTY ROAD

SWEENEY CREEK ROAD

100'

75'

CRUSHED
SITE

PRODUCT
STOCK
PILE

100'

100'

RECLAMATION PLAN

Section 1.

- A. The top soil will be pushed to both sides of the pit with a D7 Dozer and the gravel will be removed to a depth of 10 to 20 feet. The top soil will be replaced and reseeded. There will be a slight crown in the terrain when finished.
- B. This is a sandy loam soil 3 inches deep.
- C. The area is covered with native grass. This is hilly pasture land used for grazing.
- D. There is no surface water on or near the site.
- E. The average rainfall is about 12 inches and frost free days are 115

Section 2.

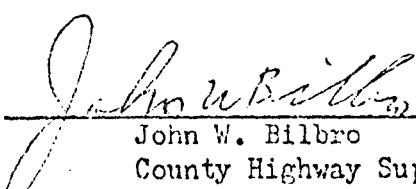
- A. The land will be used for pasture after reclamation.
- B. The land will be reseeded during recommended seeding time either spring or late fall with a mixture of one-third each Nordan Crested Wheatgrass, Western Wheatgrass and Russian Wild Rye.
- C. The terrain will be nearly flat when finished.
- D. There will be no waste products to dispose of.
- E. Reclamation will be finished in the spring or fall of 1984.
- F. Cost of reclamation will be caused by:

3 hrs. with D7 Cat	\$150.00
1 hr. with Disk	18.00
1 hr. with Drill	18.00
10 lbs. Grass seed	<u>11.50</u>
	\$197.50

Section 3. An Annual Progress Report will be submitted to the Commission.

Section 4. Proper care will be taken to avoid range fires.

Section 5. Archaeological and historical values in areas to be mined will be given appropriate protection. Should significant archaeological or historical values be found, the operations will be routed around the site of discovery for a reasonable time until salvage can be made. The State Historical Preservation Office will be notified promptly.



John W. Bilbro
County Highway Supt.
Rosebud County

Dated: 2/23/84

LANDOWNER CONSENT FORM

I, Frances Bott, am the owner of certain
(landowner)
land, described as NE $\frac{1}{4}$ - NE $\frac{1}{4}$ Sec. 33 and SE $\frac{1}{4}$ - SE $\frac{1}{4}$ Sec. 28 T6N R43E
(legal description)
which Rosebud County proposes to mine pursuant to
(applicant)
the Open Cut Mining Act.

I hereby state as follows:

1. I have read and do understand the reclamation plan for the proposed mine.
2. I have included all of my comments on the reclamation plan on this form.
3. I agree to allow the applicant access in order to complete the reclamation according to the reclamation plan.

February 23, 1984
(date)

Frances Bott
(landowner)

Rosebud, Montana
(address)

COMMENTS: (Attach additional sheets if necessary)

APR. 2 ENT'D

RECORDED

FEB 11 1984

ROSEBUD COUNTY ROAD

Box 1117

FORSYTH, MT. 59327

Rosebud County

RECLAMATION DIVISION

AMENDMENT # 31 to

Reclamation Contract # 00182

Reclamation Contract # 00182, a contract entered into by
and between the State of Montana through the State Board of
Land Commissioners, and Rosebud County,
is hereby amended to include the following tracts of land:

NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 33 & SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 28 T6N R43E

(Known as the Bott Pit)

The terms contained within contract # 00182, apply to
these tracts of land.

IN WITNESS WHEREOF, the parties hereto have subscribed their
names and affixed their seal as of the _____ day of _____,
19____.

John W. B. [Signature]
Signature
for: Rosebud County
County Highway Supt.

Approved by:
[Signature]
Commissioner
MT Dept. of State Lands

Mar 11 25 1984
Date

APR. 2 1984

DEPARTMENT OF STATE LANDS

ROSEBUD COUNTY ROAD

Box 1117



MT. 59327

TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

(406) 444-2711 ENVIRONMENTAL ANALYSIS BUREAU

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

1539 ELEVENTH AVENUE
HELENA, MONTANA 59620

CERTIFIED MAIL # 1019
Return Receipt Requested

TO: Rosebud County Commissioners
Rosebud County Courthouse
Forsyth, MT 59327

NOTICE OF NONCOMPLIANCE

On February 3, 1984, personnel of the Department of State Lands received a letter from Rosebud County stating that the County intended to open a new gravel pit "within a week or two." The letter did not state exactly when the County would begin operations, but it did state that, "[n]o paperwork has been done on this and there is nothing final on the deal as of this date."

On February 10, 1984, personnel from the Department inspected the site. The site had already been stripped of topsoil making a visual archaeologic inspection of the surface impossible. In addition, the inspector found that Rosebud County had previously mined the site without an amendment of their reclamation contract. At the time of the inspection the County had not amended their opencut reclamation contract to include the new site.

Including all of Rosebud County's gravel pits, they are well over the 10,000 cubic yd. jurisdictional limitation of the Opencut Mining Act. (Sections 82-4-401, et seq., MCA.) Rosebud County's actions violate this Act in that the County had not entered into a contract for the land affected. Section 82-4-431, MCA.

Section 82-4-441, MCA, of the Opencut Mining Act provides that a person who violates any of the provisions of the Act or rules adopted thereunder shall pay a civil penalty of not less than \$100 or more than \$1000 for the violation, and an additional civil penalty within the same limits for each day during which the violation continues. The civil penalties are recoverable by the Attorney General. However, the Attorney General has appointed the Department's legal staff as Special Assistant Attorneys General for the collection of civil penalties under the Opencut Mining Act. Rosebud County is, therefore, directed to respond to this notice in writing to Department of State Lands, Attn: Lyle Manley, Attorney, Capitol Station, Helena, MT 59620, within 15 days after receipt of this notice and therein to admit or deny the violation. If the violation is admitted, the number of days of violation and any circumstances in mitigation of penalty should be stated. Any questions regarding this noncompliance procedure may be directed to Mr. Manley.

Dated this 27th day of March, 1984.

Dennis Hemmer, Commissioner
Department of State Lands

DEPARTMENT OF STATE LANDS



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

(406) 444-2711 ENVIRONMENTAL ANALYSIS BUREAU

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

1539 ELEVENTH AVENUE
HELENA, MONTANA 59620

March 30, 1984

Rosebud County
Z Rosebud County Road
P.O. Box 1117
Forsyth, MT 59327

Re: Amendment #31, to Opencut Contract #00182

Dear Sir:

Enclosed is your copy of approved Amendment #31, to Opencut Contract #00182.

Thank you for you cooperation and if we can be of assistance to you at any time please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Steve Welch".

Steve Welch, Chief
Opencut Mining Bureau
Reclamation Division

encl.
tm

#31 (b.t)

Rosebud County Road

P.O. Box 1117
Forsyth, Montana 59627
406-356-2261

April 4, 1984

Department of State Lands
Capitol Station
Helena, Montana 59620

ATTN: Lyle Manley, Attorney

Dear Mr. Manley:

This letter is in response to the letter dated March 27, 1984 from the Department of State Lands to the Rosebud County Commissioners.

On or about February 1st, 1984 a contractor offered to crush gravel for Rosebud County at a very reasonable figure. It was decided at that time that the County could use more gravel in the Sweeney Creek area and if we could get all of the details worked out we would like to have some gravel crushed in Sec 33 T6N R43E. On February 2, 1984 we sent a letter to Ed Surbrugg, the State Land Representative in the Billings area, of our intentions, if it was possible to get the deal put together.

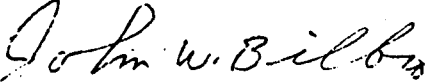
We had to get a comparable quote from another contractor, get permission from the land owner and find out what location the contractor would want to set his crusher equipment on the site. One contractor had much larger equipment so this would change the reclamation plan depending on who did the crushing. We did want to get started as soon as possible so we obtained permission from the land owner to strip the top soil and overburden and when we had all of the details worked out and obtained the landowners signature on the consent form on the 23rd of February, we sent the papers in on the 24th of February. We did not at any time hear from anyone from the Department of State Lands during this time. We received our amendment on April 2, 1984 just two months after we sent our letter of intent for the project. We did not have time to wait 60 days for the Department to get their part of the paperwork done and still get the gravel crushed.

Last year I talked with Steve Welch several times about hurry up situations such as this and at that time he told me if we would let the Department know a week or so ahead of time they could give verbal permission to go ahead. I sent the letter on February 2nd with this in mind and did not hear from Ed Surbrugg. I believe that I had followed the intent of our agreement with the Department. This was a rush situation but some of the paperwork could not be rushed.

Rosebud County does strip and save top soil. We do reclamation work with grass seeding. This is the intent of the law and Rosebud County does comply with that intent.

Sincerely,

ROSEBUD COUNTY ROAD



John W. Bilbro
County Highway Supt.

JWB:mle

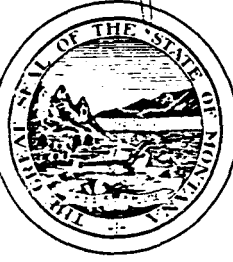
cc: Steve Welch, Chief
Opencut Mining Bureau
Reclamation Division
1625 Eleventh Ave.,
Helena, Montana 59620

Ed Surbrugg
Department of State Lands
Opencut Mining Bureau
Reclamation Division
1245 North 29th Street
Billings, Montana 59101

Rec'd Apr. 25, 1984

DEPARTMENT OF STATE LANDS

APR. 25 1984



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

(406) 444-2711 ENVIRONMENTAL ANALYSIS BUREAU

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

1539 ELEVENTH AVENUE
HELENA, MONTANA 59620

CERTIFIED MAIL # 81195
Return Receipt Requested

Rosebud County Road Department
P.O. Box 1117
Forsyth, MT 59327

Attention: John Bilbro, Superintendent

Dear Mr. Bilbro:

I apologize for the delay in responding to your letter of April 4th, but I have been out of town.

I will respond in order of the points raised.

1. The Department did receive the letter in which you stated the county was contemplating the opening of a pit on the Botts place. Mr. Surbrugg inspected the site seven days later and discovered the pit had been operated already.

2. The Department received the application on February 27, 1984, and approved it March 28, 1984. The amendment could have been approved sooner, however, the operation was already underway, so time did not appear to be critical.

3. You are correct in that Mr. Welch did inform you that under special circumstances verbal approval to begin operations prior to a formal approved amendment may be given.

However, in this instance the Department was not aware of an emergency type situation as your letter only stated you were thinking about operating the site, and we did not receive any final indication until Mr. Surbrugg witnessed the operation and until the application was submitted on February 27, 1984.

It is apparent that an unfortunate breakdown in communications has occurred, but that does not alter the fact that Rosebud County caused the site to be operated prior to receiving approval and therefore is in violation of Section 82-4-431, MCA of the Opencut Mining Act.

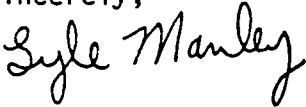
Section 82-4-441, MCA provides in part that any violation of the Opencut Mining Act requires that a penalty be assessed. This section also provides the penalty be not less than \$100 or more than \$1000 for the violation and an additional civil penalty within the same limits for each day during which the violation continues. Given the above facts, the Commissioner has recommended a fine of \$200 be assessed against the Rosebud County. This fine represents \$100 for the violation and \$100 for the day the

John Bilbro
Page Two

violation was noted by inspection.

Section 82-4-441, MCA provides that civil penalties under the Opencut Mining Act are collectable by the Attorney General. The Departments legal staff has been appointed as Assistant Attorney's General for the collection of penalties. Therefore, I am authorized to offer to settle the matter if Rosebud County pays \$200. If this settlement is agreeable to you, please submit to the Department a check for \$200. The Department will then send you a release from further liability for this violation.

Sincerely,

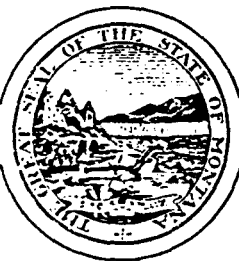


Lyle Manley
Attorney

bjo

c: Ed Surbrugg
Steve Welch
Gary Amestoy

DEPARTMENT OF STATE LANDS



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

(406) 444-2711 ENVIRONMENTAL ANALYSIS BUREAU

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

1539 ELEVENTH AVENUE
HELENA, MONTANA 59620

June 14, 1984

Rosebud County Commissioners
Rudebud County Courthouse
Forsyth, MT 59327

Re: Notice of Noncompliance #31

Dear Sirs:

Enclosed please find a signed copy of the release for the above referenced Notice of Noncompliance.

If there are any further questions please contact this office.

Sincerely,

Lyle Hanley
Lyle Hanley
Attorney

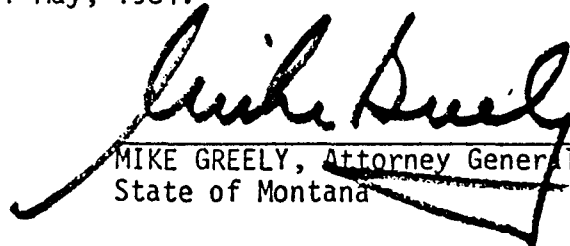
ee
Enclosure

*A copy of each
sent to Jim Hill
6/20/84*

RELEASE

In consideration of the payment of the sum of Two Hundred Dollars (\$200) by Rosebud County to the State of Montana, the State of Montana acting by and through its Attorney General and the Department of State Lands does hereby release Rosebud County, Forsyth, Montana and its agents from all manner of actions, suits, debts, claims, liabilities, damages or demands under section 82-4-441, MCA for actions by Rosebud County as set forth in the Department of State Lands' Notice of Noncompliance No. 31, dated March 27, 1984.

DATED this 31st day of May, 1984.


MIKE GREELY, Attorney General
State of Montana



DENNIS HEMMER, Commissioner
Department of State Lands

Exhibit 4
2/11/85

Amendment # 24 to
Reclamation Contract # 00200

Reclamation Contract # 00200, a contract entered into by
and between the State of Montana through the State Board of
Land Commissioners, and Sheridan County,
is hereby amended to include the following tracts of land:

2 acres in NE $\frac{1}{4}$, NE $\frac{1}{4}$, Sec. 5, T32N, R58E
known as the Nyby Gravel Pit

The terms contained within contract # 00200, apply to
these tracts of land.

IN WITNESS WHEREOF, the parties hereto have subscribed their
names and affixed their seal as of the 19th day of DECEMBER,
1984.

CS Nyby
Signature
for: Sheridan County
Company

100 - West Laurel
Plentywood MT - 59154

Approved by:

Annis Kinn
Commissioner
Dept. of State Lands

January 8, 1985
Date

SHERIDAN COUNTY

This reclamation plan is submitted for a parcel of land in the NE $\frac{1}{4}$, NE $\frac{1}{4}$, Sec. 5, T32N, R58E, Sheridan County. This site will be used for mining gravel by Sheridan County. The landowner is Kenneth Nyby and the site will be known as the Nyby Gravel Pit.

Section 1:

The present land use of the area and the surrounding area is predominantly cultivated field and field margin range. The soil on this site has a sandy loam A1 horizon about 4 inches thick with a white zone of calcium carbonate accumulation in a gravelly clay loam soil about 16 inches thick. Together there is about 1 $\frac{1}{2}$ feet of salvageable cover soil. The nearest surface water is Lake Creek about one mile east. The water table is about 30 feet below the premining surface and after mining will be approximately 20 feet below the surface. This gravel pit is in an outwash or terrace deposit left after the last glacial period.

The area receives 10-14 inches of precipitation and the frost-free days average 90-110 per year.

Existing vegetation would be classified as disturbed rangeland in fair to good condition, and cultivated cropland. Grass species of dominance on this site are crested wheatgrass and western wheatgrass. Deer and small mammals use the area to some degree.

Section 2:

The designated post-mining land use will be cultivated cropland and field margin rangeland.

- (A) A seed mixture which will provide a vegetative cover for retardation of erosion and supply forage is shown below. The method of seeding will be by broadcasting between October 15th and April 15th, concurrent to grading and topsoiling. Mechanical raking or harrowing to cover seed will be done following broadcast seeding.

Species to be planted and rates (in PLS) are:

<u>Species</u>	<u>Application Rate</u>
Fairway crested wheatgrass	8 lbs/a
Western wheatgrass	8 lbs/a
Bluegrass species	3 lbs/a
Alfalfa	1 lb/a

- (B) Recommended fertilizer application is 100 lbs/a of 11-48-0. This should be applied when planting and incorporated into the surface with a harrow or rake.
- (C) The area is not used for grazing, therefore fencing will not be required. The newly seeded area will not be grazed during April 15th - July 31st of the first year.
- (D) No wash plant is planned for this site, however, if a wash plant is needed in the future, the Department will be notified prior to its construction.
- (E) Approximately 20 inches of salvageable cover soil exists on this site. The top 4 inches are noticeably darker in color than the 16 inches below. The lower subsoil has some calcium carbonate accumulation and often appears whitish in color.

The entire 20 inches will not be salvaged because some of the clay subsoil material is to be mixed with the crushed gravel as a binding material for road surfacing in sandy areas. The darker topsoil will be salvaged separate from the whiter subsoil. After regrading the remaining salvaged subsoil will be replaced below the topsoil for a total replacement depth of approximately 14 inches.

All slopes will be 3:1 or less. Final grading will allow the pit to drain to the west. Topographically, the area will have a gently sloping to level pit floor with slopes on all sides of less than 3:1.

- (F) There should be no metal or other refuse to dispose of at this site. Any oversize rock material will be buried and covered with soil material that will support vegetation.
- (G) This site is directly adjacent to a county road, a section line access road will be relocated further north. No haul road will need to be reclaimed and the new access approach ditches will be seeded when the mining activities have ceased.
- (H) It is anticipated that this site will be closed when the gravel stockpiles have been removed as property lines and roads will restrict further mining. When the site is no longer needed for mining and related activities, it will be promptly reclaimed.
- (I) Reclamation costs per acre would approximate:

Dozer	4 hrs at \$65/hr	\$260.00
Seed	20 lbs at \$7.87/lb	157.40
Fertilizer	100 lbs at \$0.1275	<u>12.75</u>

Total	\$430.15
-------	----------

Section 3:

An Annual Progress Report will be submitted to the Commission.

Section 4:

Proper care will be taken to avoid range fires.

Section 5:

Archeological and historical values in areas to be mined will be given appropriate protection. Should significant archeological or historic values be found, the operations will be routed around the site of discovery for a reasonable period of time until salvage can be made. The State Historic Preservation Office will be notified promptly.

CS Hogg
Signature

Chairman, Sheridan County Commissioners
Title

11-5-84
Date

Contract No. 00200

Amendment No. 24

Company Sheridan County

MAP INFORMATION SHEET

1. Name, address and telephone number of surface landowner:

Kenneth Nyby
Dagmar, MT 59219

phone 483-5205

2. Name, and address of mineral rights owner:

Same

3. Size and legal description of area to be affected: (include county).

2 acres in the NE $\frac{1}{4}$, NE $\frac{1}{4}$, Sec. 5, T32N, R58E
in Sheridan County

4. Distance and direction from nearest community:

one and a half miles south of the unincorporated town
of Dagmar, Montana

5. Mineral to be mined, or quantity (yards) of:

<u>Topsoil</u>	<u>Overburden</u>	<u>Mineral</u>
200	0	8,000

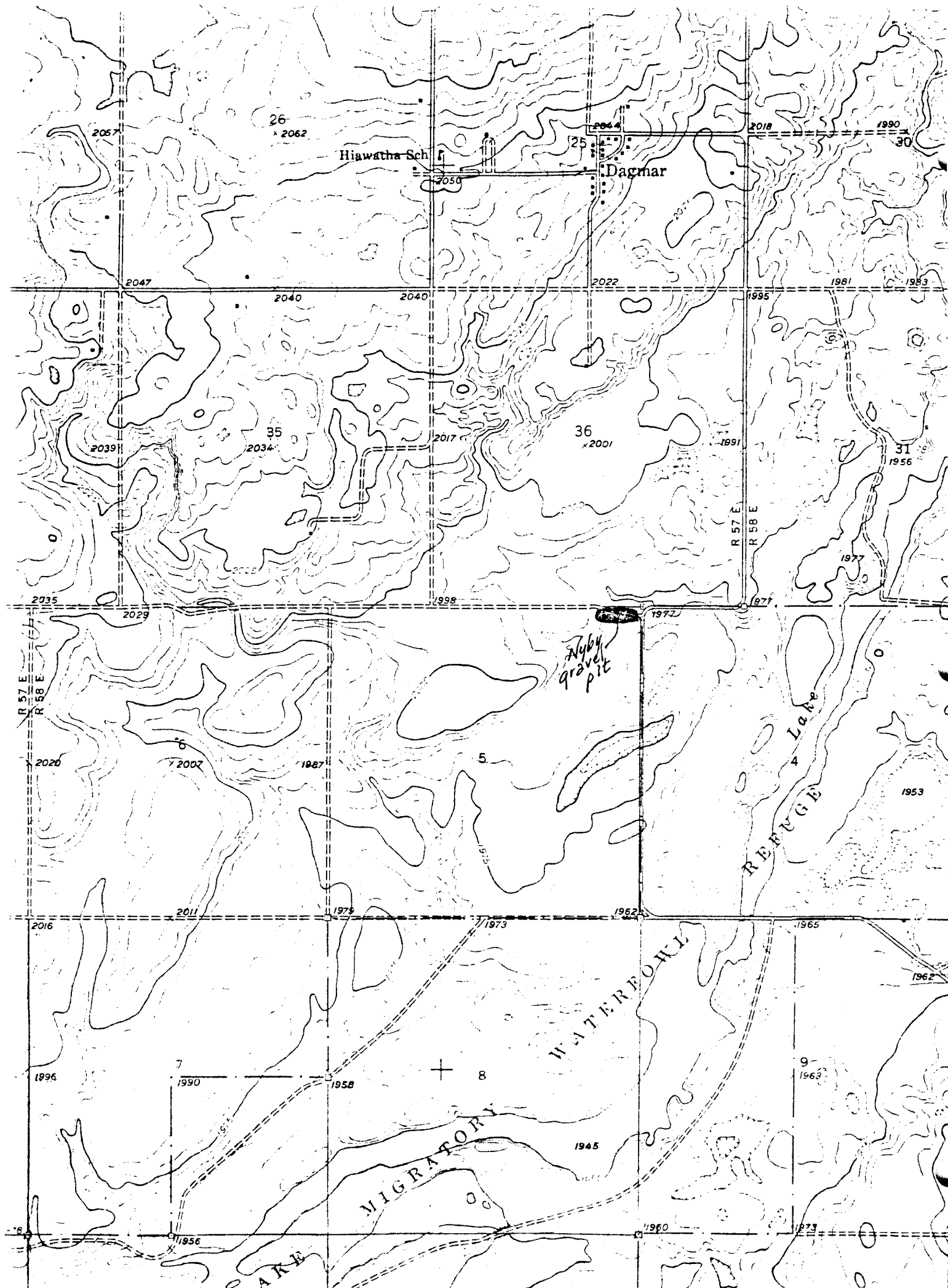
6. Estimated total acres to be surface mined? 1 acre

7. Estimated life of operation: 2 years

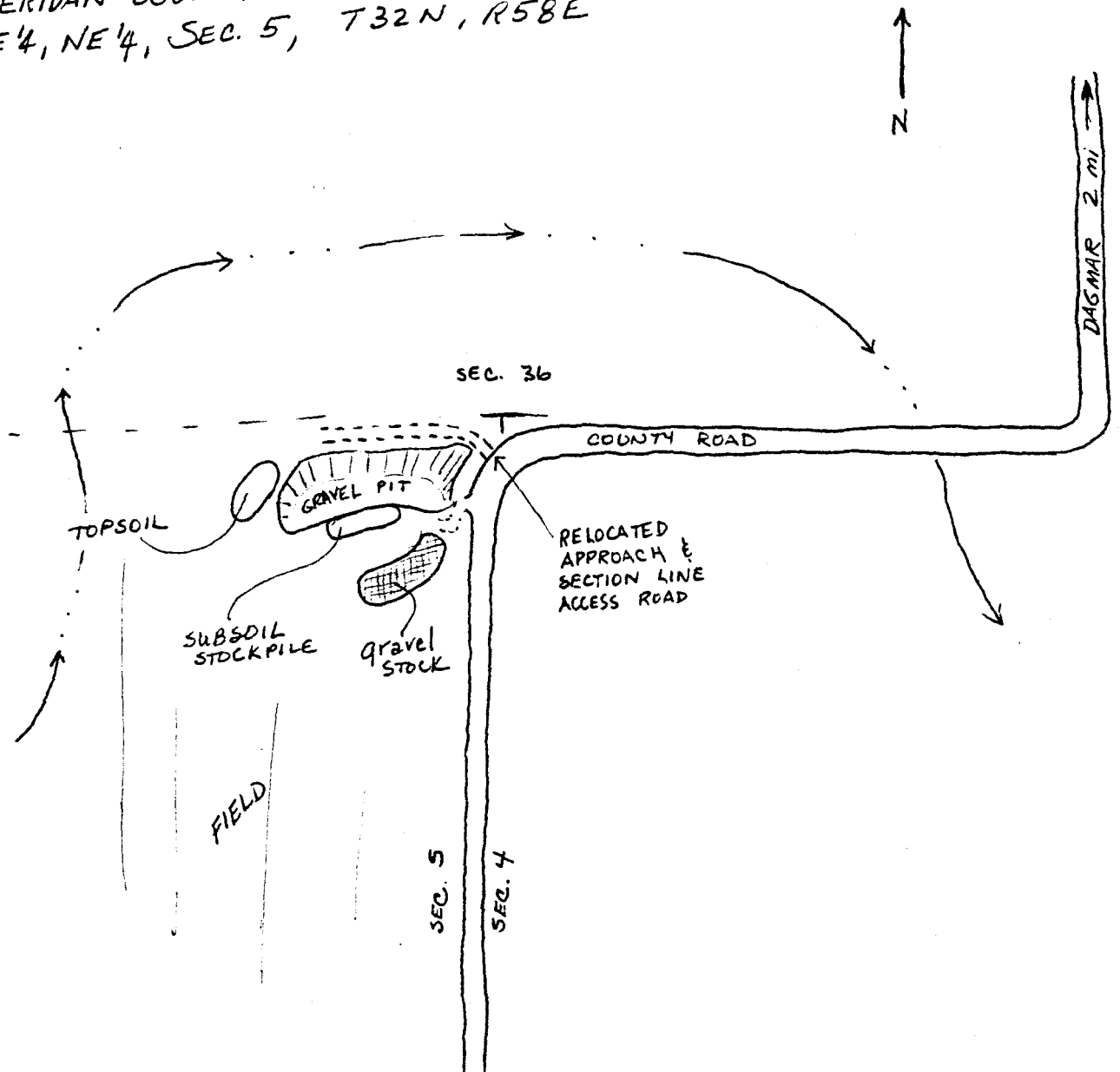
8. Estimated maximum depth to be surface mined: 12 feet

9. Date operation will be commenced: October 1984

10. Volume of material removed to date: 8,000 yards



NYBY GRAVEL PIT 00200
SHERIDAN COUNTY OPERATOR
NE 1/4, NE 1/4, SEC. 5, T32N, R58E



LANDOWNER CONSENT FORM

I, Kenneth Nyby, am the owner of certain
(landowner)

land, described as NE $\frac{1}{4}$, NE $\frac{1}{4}$, Sec. 5, T32N, R58E
(legal description)

which Sheridan County proposes to mine pursuant to
(applicant)

the Open Cut Mining Act.

I hereby state as follows:

1. I have read and do understand the reclamation plan for the proposed mine.
2. I have included all of my comments on the reclamation plan on this form.
3. I agree to allow the applicant access in order to complete the reclamation according to the reclamation plan.

11-6-84
(date)

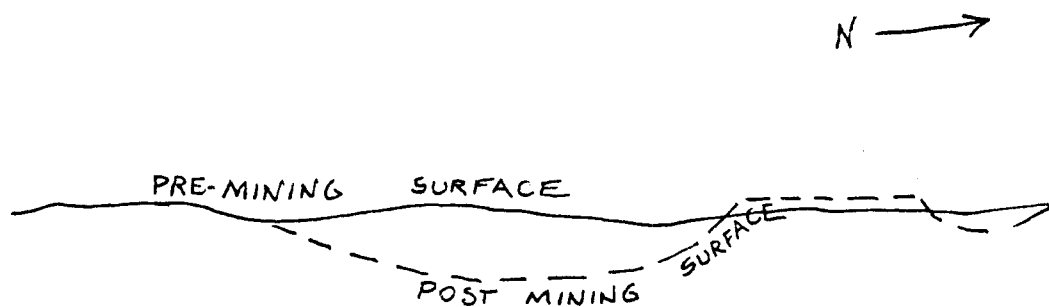
Kenneth Nyby
(landowner)

Dagmar, mt. 57219
(address)

COMMENTS: (Attach additional sheets if necessary)

NYBY GRAVEL PIT 00200-24
SHERIDAN COUNTY OPERATOR
NE'4, NE'4, SEC. 5, T32N, R58E

CROSS-SECTION OF MINING SITE



TESTIMONY ON HOUSE BILL 695

From Dennis Hemmer - Commissioner of State Lands

The Department of State Lands opposes House Bill 695. Exempting the counties from the permitting provisions of the act defeats the purpose of the act which is to ensure that the land will be reclaimed. The Department reviews the permit application for

1. Proximity of surface and groundwater.

Is the pit in the flood plain, or will it affect the groundwater in the area?

2. Compatibility with adjacent land use.

Does the pit impact homes, commercial sites, schools or recreation areas?

3. Will the plan salvage all available topsoil?

4. Has the applicant secured approval from the land owner?

5. Many other items which affect the impacts and reclaimability of the pit.

The counties are currently exempted from the permit application fee and bonding. I think that the main problem from the county's point of view is the time and paper work required to fill out an application. I have here a copy of an excellent county opencut application. It should take a maximum of 2 to 3 hours to fill out an application. All the information that is required is readily available from existing sources primarily the SCS. Since counties usually submit only three amendment applications per year, an inordinate amount of time is not required. In addition my staff is always available to help any applicant, and has virtually written the plan for many counties.

The number of counties experiencing problems is small. Many counties perform some of the best reclamation of any pits and take pride in their efforts.

I can understand the counties' concern with what they perceive as excessive paperwork that they feel has no effect on reclamation. In fact the application process can and does affect the reclamation. However, since counties usually operate many small pits that they may mine from sporadically, I do think some relief is in order. I would recommend that House Bill 695 be amended as follows:

1. Page 6, Line 12

Add: "except that counties are exempt from submitting annual reports on opencut mines that were not operated during the prior reporting year;"

2. Pages 8, and 9

Delete: new section 3

Exhibit 6
2/11/85

MAC 26-2.10(6)-S10180

OPEN CUT MINING RECLAMATION CONTRACT

00030

This contract, made and entered into by and between the STATE OF MONTANA, through the STATE BOARD OF LAND COMMISSIONERS, hereinafter referred to as COMMISSION, and Sheridan County an open cut operator in Montana hereinafter referred to as the Operator, on the following described land:

various tracts of land as attached and hereinafter approved.

as indicated on a map (maps) submitted by the operator and dated OCT 1 1974

(2) WITNESSETH

(a) WHEREAS, the mutual objective of the parties of this contract is to accomplish in the State of Montana the reclamation of land affected by open cut mining of bentonite, sand and gravel, and

(b) WHEREAS, this contract is entered into pursuant to the provisions of The Montana Open Cut Mining Act.

(c) NOW, THEREFORE, the signatory parties hereby enter into the following agreement:

(d) Definitions: Whenever used or referred to in this contract, unless a different meaning clearly appears from the context:

(i) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the area suitable for productive use including but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites.

(ii) "Overburden" means all of the earth and other materials which lie above a natural deposit of a mineral or minerals. "Spoil" is the overburden disturbed from its natural state in the process of open cut mining.

(iii) "Mineral" means and includes bentonite, sand and gravel.

(iv) "Soils Materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(v) "Open cut or strip mining" means the mining of bentonite, sand or gravel, by removing the overburden lying upon a natural deposit thereof, and mining directly from the natural deposit thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, sand or gravel.

(vi) "Affected land" means the area of land from which overburden is to be or has been removed and upon which overburden is to be or has been deposited.

(vii) "Refuse" means all waste material, including slack coal, directly connected with the open cut mining operations.

(viii) "Final cut" means the last pit created in an open cut mined area.

(ix) "High Wall" means that side of the pit adjacent to unmined land.

(x) "Commission" means the State Board of Land Commissioners.

(xi) "Reclamation Plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas and description of proposed reclamation of the land with appropriate maps.

(xii) "Progress Report" means a report showing the land which the Operator has affected by open cut or strip mining and related activities during the year. Such report shall show the number of acres of affected land and all reclamation accomplished

SECTION I

The Operator shall submit a reclamation plan to the commission before commencing any open cut mining, and may not commence mining before the plan is approved by the commission. The operator may request and receive a meeting with the commission prior to submission of the plan. If the commission does not notify the operator that it has approved or disapproved a plan within thirty (30) days after the commission has received the plan, the commission shall be deemed to have approved the plan. The commission, however, may for sufficient cause extend its period of consideration for an additional thirty (30) days if it notifies the operator prior to the end of the original thirty (30) day period. The commission shall submit all reclamation plans or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The commission may seek technical help from any state or federal agency. The commission must submit the plan immediately to the director, University of Montana, statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The commission may approve a reclamation plan only if the commission has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land shall be reclaimed to a productive use. Once the reclamation plan has been accepted in writing by the commission, it shall become a part of the contract but shall be subject to annual review and modification by the commission.

SECTION II

(a) The commission may not approve any reclamation plan unless the plan provides that:

(i) the land will be reclaimed for one or more specified uses, including but not limited to: forest, pasture, orchard, cropland, residence, recreation, industry, habitat (including food, cover or water) for wildlife or other uses;

(ii) to the extent reasonable and practicable, the operator shall establish vegetative cover commensurate with the proposed land use;

(iii) where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(iv) to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas if required by the reclamation plan after completion or termination of that particular phase of the mining operations at a depth sufficient for plant growth on slopes of 3:1 or less. Grading specifications shall be commensurate with the topography sought and land use designated;

(v) metal and other waste shall be removed or buried;

(vi) all access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion;

(vii) the operator shall submit annually to the commission a progress report;

(viii) all operations shall be conducted so as to avoid range and forest fires and spontaneous combustion. Open burning of carbonaceous materials shall be in accordance with suitable practices for fire prevention and control;

(ix) Archaeological and historical values in areas to be mined shall be given appropriate protection;

(x) except for rock faces, bench faces and excavations used for water impoundments, each surface area of the mined premises which will be disturbed shall be revegetated when its use for extractive purposes is no longer required. Seeding and planting shall be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock and retardation of erosion. All seed will be drilled unless otherwise provided in the plan;

(xi) reclamation shall be as concurrent with mining operations as feasible, and must be completed within a specified length of time.

SECTION III

(a) If reclamation according to the plan has not been completed in the time specified, the commission shall after thirty (30) days written notice order the operator to cease mining, and if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond or for both.

SECTION IV

(a) At any time during the period of reclamation the operator may for good reason submit to the commission a new reclamation plan or amendment to the existing plan including extensions of time.

(b) The commission may approve the proposed new reclamation plan, or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan, and

(ii) the proposed new plan, or amendments to the existing plan, will result in reclamation as desirable or more so than the reclamation proposed under the existing plan, or

(iii) it is highly improbable that reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan becomes a part of the contract.

SECTION V

(a) The operator shall provide a performance bond, or an alternate acceptable to the commission, in an amount commensurate with the estimated cost of reclamation, but in no case shall the bond be less than two hundred dollars (\$200) per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

SECTION VI

(a) The commission, or its accredited representatives, may enter and inspect the lands of the operator at all reasonable times to determine whether the provisions of this contract are being and have been complied with.

SECTION VII

(a) This contract, reclamation plan and amendments accepted by the commission, shall be public record and open to inspection.

SECTION VIII

(a) This contract shall become effective when signed by the commission and the operator, and shall remain in force until terminated by mutual consent or the commission upon six (6) months notice.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed
their seal as of the 30th day of October, 19 74.

Board of County Commissioners
Sheridan County, Plentywood, Mt.

By

FOR

Clifford Olson
Chairman of the Board

FOR THE STATE BOARD OF LAND
COMMISSIONERS (The Commission)

E. Schweitzer

Attest:

L. M. Muler
Clerk & Recorder

WITNESS STATEMENT

Name John W. Bilbro Committee On Natural Resources
Address Box 1117 Forsyth, Mont 59327 Date Feb 11, 1985
Representing Rosebud County Support Support
Bill No. H B 695 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Section 2 Section 82-4-434, M.C.A. IS AN unnecessary Burden AND Expense to County Government Because of Excess Paper work & time Involved. R.E. Rosebud County with 20 pits in 2 1/2 yr time
2. County Govern Mont is Unlike A Contractor, will Always Be Available to modify Reclamation if necessary
3. Contractors add the cost of the Paper work to the contract price. Counties add it to the tax-payers ~~cost~~
4. the Elimination of the paper work would Relieve the state of travel Expense For ~~the~~ PreInspection & Extra Office Help thus saving tax Dollars.
One Annual Inspection would save times & money & would Accomplish the Intent of the Law

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HB 695

DATE 2/11/85

SPONSOR REP. TOM ASAY

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL HB 676

DATE 2/11/85

SPONSOR REP. GENE DONALDSON

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.