

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
February 18, 1985

The tenth meeting of the Senate Natural Resources Committee was called to order at 12:30 p.m., February 18, 1985, by Chairman Dorothy Eck in Room 405, State Capitol Building.

ROLL CALL: All members of the Senate Natural Resources Committee were present.

CONSIDERATION OF SB326: Senator Himsl, sponsor of SB326, submitted written testimony (Exhibit 1) and explained the bill is being introduced to prevent a party from usurping someone else's water rights. Senator Himsl explained the bill is the result of a situation where the members of a homeowners' association were deprived of their water rights by one of the residents.

PROPOSERS: Mr. Dennis Hemmer, representing the Department of State Lands, submitted proposed amendments to SB326 (Exhibit 2). Mr. Hemmer stated the amendments are needed, because the Department does not always own the development rights. Mr. Hemmer explained his amendments will allow for use of water with the consent of the proper owner.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Upon question from Senator Shaw, Senator Himsl stated he had no problems with the amendments proposed by the Department of State Lands.

ACTION ON SB326: Senator Mohar moved the amendments proposed by the Department of State Lands BE ADOPTED. The motion carried. Senator Christiaens moved SB326 DO PASS AS AMENDED. The motion carried.

CONSIDERATION OF SB410: Senator Keating, sponsor of SB410, stated this bill deals with the Montana Environmental Policy Act, which is extremely general in nature. Senator Keating feels permits for oil and gas exploration have been threatened by MEPA. In order to alleviate this problem, Senator Keating is requesting that issuance of a permit not be considered a major act of state government and not fall within the scope of MEPA.

PROPOSERS: Mr. Donald Garrity, attorney for the Board of Oil and Gas Conservation, submitted written testimony (Exhibit 3) in favor of SB410.

Chairman Eck requested that due to the lack of time, each person testifying should limit his testimony.

Mr. Donald D. Cecil, Vice President of Cardinal Drilling Company, submitted written testimony (Exhibit 4) in favor of SB410.

Senator Ed Smith, appearing as a landowner from an area with high oil development, does not feel it is necessary to have an Environmental Impact Statement (hereafter EIS) for oil drilling purposes. Senator Smith feels the State depends so much on oil development and the revenue it generates, that it should not do anything to hinder this development.

Mr. Darwin VanDeGraaff, representing the Montana Petroleum Association, stated if the landowner feels there is an intrusion, he can always request that an EIS be written. Mr. VanDeGraaff feels that if landowners are not showing any concerns, time should not be wasted drafting an EIS.

Mr. Patrick Melby, representing the Montana Oil and Gas Association, stated most wells are stripped wells which are economical. Mr. Melby feels the requirement of an EIS will make these wells less economical.

Mr. Mons Teigen, representing the Montana Stock Grower's Association, the Montana Wool Growers' Association and the Montana Cowbells, submitted written testimony (Exhibit 5) in favor of SB410.

Mr. Mike Micone, representing the Western Environmental Trade Association, stated he believes passage of SB410 will provide more employment opportunities for Montanans.

Mr. Jerome Anderson, representing Shell Oil Company, testified in favor of SB410.

Mr. William Ballard, representing Balcron Oil Company, urged the committee for a do pass recommendation on SB410.

Senator Gage removed himself from the committee for the purpose of testifying as a proponent of SB410. Senator Gage stated he knows of a situation where a company was going to drill for oil on federal land. However, since the land was considered to be the natural habitat for the grizzly bear and the grey wolf, it took the company one and one-half years to obtain the necessary permits. Senator Gage stated he knew of no one who had ever seen a grey wolf in this area. Senator Gage feels that since 26 percent of the state tax base is provided by the net proceeds tax, passage of SB410 is essential to keep potential developers from becoming discouraged.

Senator Tveit removed himself from the committee for the purpose of testifying as a proponent of SB410. Senator Tveit supports SB410, because the bill will allow for exploration of oil on private property as quickly as possible.

Senator Shaw requested to go on record as being a proponent of SB410.

There being no further proponents, the hearing was opened to opponents.

OPPONENTS: Mr. Don Reed, representing the members of the Environmental Information Center, submitted written testimony (Exhibit 6) in opposition to SB410.

Mr. Philip Davis submitted written testimony (Exhibit 7) in opposition to SB410.

Mr. Russ Brown, representing the Northern Plains Resource Council, stated he has not heard from the oil and gas companies that the requirements of MEPA are burdensome. Mr. Brown stated drilling permits should be granted on their merit. Mr. Brown opposes SB410.

Ms. Janet Ellis, representing the Montana Audubon Council, submitted written testimony (Exhibit 8) in opposition to SB410.

Ms. Mary Ann Kelly, representing Bridger Watch, Inc., feels quick profits shouldn't be realized at the risk of our environment. Ms. Kelly feels Montanans need the full protection of MEPA. Ms. Kelly also testified the EIS is prepared by an unbiased person and is the correct procedure for determining the impact that oil and gas wells will have on our environment. Ms. Kelly stated the oil and gas industry should not dictate to citizens what reasonable risks are.

Ms. Susan Cottingham, representing the Montana Chapter of the Sierra Club, stated MEPA is not a mandate for an EIS. Ms. Cottingham feels that if oil and gas drilling has no impact on the environment as the industry suggests, then MEPA will place no undue burden on the industry.

Mr. Dan Heinz, representing the Montana Wildlife Federation, submitted written testimony (Exhibit 9) in opposition to SB410.

Mr. Scott Ramsey, representing Bridger Watch, Inc., feels oil and gas development should be considered a major action and should fall within the scope of MEPA. Mr. Ramsey stated he is trying to understand what the impact will be from oil wells drilled near his home in the Bridger Canyon area. Mr. Ramsey feels MEPA will protect private individuals. Mr. Ramsey urged the committee to give a do not pass recommendation to SB410.

Mr. Jim Moore, representing SOHIO Petroleum Company, which intends to drill near Mr. Ramsey's home, stated SOHIO Petroleum Company is required to obtain a conditional use permit before commencing any drilling operations. Mr. Moore stated SOHIO Petroleum has tried to satisfy the concerns of the residents of Bridger Canyon. Mr. Moore also informed the committee that even though the drilling site is near residences, the area is considered to be rural. SOHIO Petroleum has withdrawn its drilling permit and asked the Board of Oil and Gas Conservation to determine whether an EIS is necessary.

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

Senator Mohar questioned whether SB410 applies only to private land or also to state and federal land. Mr. Dennis Hemmer replied the State issues leases rather than permits, and federal and Indian lands are under federal regulations.

Senator Weeding questioned Mr. Garrity about how many instances an EIS has been requested. Mr. Garrity stated, to the best of his knowledge, the Bridger Canyon instance is only the second one.

Senator Fuller questioned whether the situation would be different if the locality was different. Senator Keating replied that in some states, oil rigs are being operated in the middle of residential areas. Senator Keating reminded the committee that Bridger Canyon is a rural area and not a residential area.

Senator Keating closed the hearing by stating that the Oil and Gas Commission has been issuing permits since 1971, which is the same time that MEPA was enacted. Senator Keating stated that since this time, there have never been any real controversies. Senator Keating asked the committee to please clarify the actions of MEPA.

There being no further questions from the committee, the hearing on SB410 was closed.

FURTHER CONSIDERATION OF SB258: Mr. Bob Thompson distributed copies of proposed amendments to SB258 (Exhibit 10). Senator Gage had problems with No. 12 of the proposed amendments. Senator Gage wanted to know who would be liable if the permit was issued without the proper persons being notified. Senator Gage wanted to be assured the Oil and Gas Commission would not be held liable. Mr. Thompson reminded the committee the correct title is the "Board of Oil and Gas Conservation," rather than the "Oil and Gas Commission."

Senator Halligan questioned what the permitting procedure is now and how it is determined that notice is properly given. Senator Gage explained at the present time, oil and gas companies are not required to give notice to surface owners. Senator Tveit then explained this was the purpose of SB258. Senator Tveit feels SB258 will make the oil companies and surface owners work together.

Senator Halligan moved the committee pass consideration on SB258 until a later date. The motion carried.

CONSIDERATION OF SB369: Senator Neuman, sponsor of SB369, stated Montana's current law regarding dam safety is archaic. Montana is currently under pressure from the federal government to implement a dam safety act. Senator Neuman feels Montana should be attentive to unsafe dams before a tragedy occurs. SB369 provides new laws relating to dams in the areas of approving permits, structure and enforcement. The bill also provides for inspections and emergency repairs, permit cancellation, and penalties.

PROPONENTS: Mr. Kim Kelly, representing the Montana Water Development Association, stated the first bill regarding dam safety was introduced in 1973. The Montana Water Development Association supported the 1973 bill and every bill introduced since. The irrigation districts also support the bill. Mr. Kelly informed the committee that dam safety is a serious consideration in Montana, because inspections of dams have indicated Montana currently has 36 dams, located in 18 counties, which are unsafe. SB369 will allow five years from the time of inspection, for these dams to be repaired. Mr. Kelly submitted a letter he received from Glen H. Loomis, U. S. Department of Agriculture (Exhibit 11) and written testimony supporting SB369 from Women in Farm Economics (Exhibit 12).

Mr. Keith Williams, representing the National Water Resources Association, stated his organization is very concerned with dam safety in Montana. Many dams in Montana are not considered to be high-hazard dams until residents begin to occupy the area below the dam. At that time, the dam's status does change to high-hazard. Mr. Williams feels Montana must develop a program to meet dam safety requirements.

Mr. Roger Foster, a member of the Montana Water Development Association, stated Montana's current law regarding dam safety can only react to hazardous situations rather than work to prevent these situations from starting. Mr. Foster stated

deference is not a cost-saving effort. Mr. Foster feels savings can be realized through the maintenance programs provided by SB369. Of all the dams inspected, almost all require improvements. Mr. Foster stated 50 percent of the dam failures in Montana are due to a lack of maintenance. SB369 will provide for classification of dams, a permitting system, on-going inspections of dams, emergency procedures and enforcement. Mr. Foster feels passage of this bill will not result in the expenditure of any more money than would otherwise be spent.

Mr. Ted Doney, an attorney and former director of the Department of Natural Resources and Conservation, helped in the drafting of the legislation. Mr. Doney stated the current law contains no enforcement provision and, therefore, is inadequate. Mr. Doney explained under the current statutes, dam owners could be liable for injuries or deaths incurred as the result of a disaster. If SB369 is passed and the State of Montana puts its seal of approval on a dam, the State is responsible.

Mr. Russ Brown, representing Northern Plains Resource Council, stated the bill is necessary for high-hazard dams.

Mr. George Ochenski, representing the Environmental Information Center, stated he is a proponent of SB369.

Mr. Dennis Hemmer, representing the Department of State Lands, submitted proposed amendments (Exhibit 13) and suggested the bill exempt dams covered by the Hard Rock Mining Act.

Mr. Gary Fritz, representing the Department of Natural Resources and Conservation, stated it is important that Montana have a responsible dam safety act. Mr. Fritz feels passage of this bill will not create substantial additional expenses for Montana.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Upon question from Senator Shaw, Mr. Foster stated that basic dam inspections would cost between \$1,000 - \$1,500.

Upon question from Senator Halligan, Mr. Doney explained the Department needs flexibility to require additional data from dam owners if they deem it to be necessary.

Senator Gage had questions regarding Section 16, lines 18-19. Senator Gage feels that since a person may not be aware he is in violation for a substantial period of time, each day that he is in violation should not be considered a separate offense.

Mr. Doney stated he did not have any objections to amending this bill.

Senator Anderson inquired what funds would be available from the DNRC for districts concerned with dam safety. Mr. Fritz stated the Water Development Program would be a good source of funds for those districts requiring assistance. However, these districts would be required to compete with others who have applied for the same funds.

Upon question from Senator Weeding, Mr. Fritz stated before these funds are available, certain eligibility tests would have to be met.

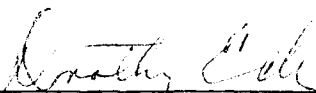
Chairman Eck questioned Mr. Doney about implementing a notification process into the bill for residents moving below a dam that is considered to be a high-hazard dam. Chairman Eck was concerned this situation might make the dam owner liable for any accidents. Mr. Doney stated this could be a problem. One possibility suggested by Mr. Doney would be to zone the area as a high-hazard area.

There being no further questions from the committee, the hearing on SB369 was closed.

ANNOUNCEMENTS: Chairman Eck asked the committee members who have problems with the proposed amendments to SB258 to discuss them with Senator Tveit before the committee meeting on Wednesday, February 20, 1985.

Anyone who has amendments to SB277, the Legacy Program, should discuss these with Mr. Bob Thompson. Chairman Eck intends to allow one-half hour at the beginning of the meeting on Wednesday, February 20, 1985, to discuss the Legacy Program.

There being no further business to come before the committee, the meeting was adjourned.



Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 02/28/85

SENATE
SEAT

#

NAME	PRESENT	ABSENT	EXCUSED
<u>ECK, Dorothy (Chairman)</u>	✓		
<u>HALLIGAN, Mike (Vice Chairman)</u>	✓		
<u>WHEEDING, Cecil</u>	✓		
<u>MOHAR, John</u>	✓		
<u>DANIELS, M. K.</u>	✓		
<u>FULLER, David</u>	✓		
<u>CHRISTIAENS, Chris</u>	✓		
<u>TVEIT, Larry</u>	✓		
<u>GAGE, Delwyn</u>	✓		
<u>ANDERSON, John</u>	✓		
<u>SHAW, James</u>	✓		
<u>HARDING, Ethel</u>	✓		

Each day attach to minutes.

DATE

C21885

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ronald D. Cecil	Cardinal Drilling	SB 410	X	
2 VANDEGRAAFF	Montana Petroleum Assn.	SB 410	X	
DON GARRITY	BOARD OF OIL & GAS	SB 410	X	
Momy Anderson	Shelton & Nelson LLP	SB 410	X	
Q Anderson		SB 410	X	
Janet Ellis	MT Audubon Council	SB 410		X
CHRIS Owen	Rimrock Drilling	SB 410	X	
Russell Thomas	1st State Bank	SB 410	X	
B. H. Ellis	Helena Valley Irr.	369	X	
Jusan Cottingham	Mt. Sierra Club	SB 410		X
RONALD SCHORFIELD	HELENA VALLEY IRR. DIST	369	X	
Bob Lepkowski	Mont. Wtr. Dev.	269	X	
Jerry Thorne	John Petroleum	410	X	
John Hein	Montana Wildlife Fed	410		X
Greg Foster	Mont. Water Dev. Assoc	369	X	
Dennis Hammer	State Lands	326/369	X	
AS HANSON	MT. TRAIL Council	369	X	
Kirk Williams	Mont. State Res. Bd.	369	X	
Don Reed	Helena, MEIC	SB 410		X
Paul Smith	Bozeman	SB 410		X
B. M. Kelly	Mont. Water Res. Assn.	SB 369	✓	
Lee Robinson	Board of Oil & Gas	SB 410	✓	
Pat Melby	Mont O & G Assn	SB 410	✓	
Russ Brown	NIPRC	410		X
" "	"	SB 369	X	
G. B. Coolidge	Shelton	410	X	

(Please leave prepared statement with Secretary)

DATE _____

021885

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

This bill provides that groundwater may be appropriated only by a person who has either exclusive property rights in the groundwater development works or the written consent of the person with those property rights.

This bill is prompted by a rather strange experience. A man (redpath) had a well drilled on his property in 1969 which tested 50 gal per min, it is pumped at a delivery rate of 19 gal per min to an 18260 gallon reservoir.

The subdivision, known as Hillside Homes and Home Owners Water Ass'n. filed a water claim in 1981 and has the acknowledgement with a court designation # 014232, all filed with the DNRC.

The water system supplies 15 permanent residences. One of the home owners filed a claim in 1983 on 6 gal per min. to operate a heat pump. The pump capacity of 19 gal per min, then gives the one owner 1/3 of the water leaving 2/3 for the other 14 residences.

In 1983 the DNRC issued the man a certificate citing 85-2-306 with the opinion that they had no choice but to issue the certificate of appropriation and that a permit is not required before appropriating groundwater by means of a well developing less than 100 gal per min.

The man has an appropriation of groundwater from a well in which he has only a home owner association interest and can thereby deprive other members of the association their share of the water.

~~Appropriation of this class~~

Apparently this bill will not be retroactive but it may prevent anyone in the future from usurping someone else's right.

There is a postscript to this story: The heat pump exhausted the surplus water down hill, flooding the basement of another subdivision landowner below him, the harmed landowner got an injunction and the heat pump operation, I am told, has stopped---for at least the time being much to the relief of everyone concerned except the man with the major water right.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1

DATE 02-18-85

BILL NO. SB326

DEPARTMENT OF STATE LANDS'
PROPOSED AMENDMENTS TO S.B. 326
(Introduced Bill)

1. Title, line 5.
Following: "IS"
Insert: "OR HAS THE CONSENT OF THE"
2. Page 1, line 13.
Following: "has"
Insert: "either"
3. Page 1, line 14.
Following: "works"
Insert: "or the written consent of the person with those property rights"

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 021885

BILL NO. SB326

STATEMENT OF THE BOARD OF OIL AND GAS
CONSERVATION IN SUPPORT OF SENATE BILL 410

My name is Don Garrity. I am the attorney for the Board of Oil and Gas Conservation, which supports Senate Bill 410.

The Montana Environmental Policy Act, or MEPA, was enacted in 1971. The Board has consistently taken the position that the issuance of permits to drill oil or gas wells does not constitute a "major state action" within the meaning of that legislation. It has done so for several reasons.

First, since the creation of the Board in 1953, the issuance of a drilling permit has been considered a ministerial function. Permits are routinely granted by the staff upon determining that the applicant has the required bond, has paid the appropriate fee for the depth requested, that there is no other well permitted or producing from the target formation within the drilling unit for the applicant's proposed well, and that the location of the well is the distance required from the boundary of the drilling unit. Thus, the issuance of a drilling permit is ministerial or non-discretionary and every state agency has taken the position that such actions are not subject to MEPA.

Second, the crucial decision as to whether the oil and gas potentially underlying any tract of land in this state should be explored and developed is made at the time the owner of those minerals leases them to an oil company. Properly, the Department of State Lands complies with MEPA before issuing oil and gas leases on state lands. It would be a costly and unnecessary duplication of effort for the Board to then conduct its own review, addressing the same questions, before allowing a well to be drilled on state land. Where the land and minerals are privately owned, we do not believe MEPA was intended to give the Board a veto power over the decision of the private owner to develop his minerals.

In addition, there are other considerations which are more practical than legal. We do not have employees trained in identifying and evaluating what MEPA itself describes as "presently unquantified environmental amenities and values." I recently contacted the bureau in the Department of Natural Resources responsible for such studies and was advised that they would charge approximately \$7,500 to prepare a preliminary environmental review for a proposed well for which the company had already completed the basic research material necessary. I was further advised that this review could take two months to complete and, should it be determined that a full environmental impact statement was required, that would take not less than an additional six months and \$25,000.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 02/28/85

BILL NO. SB410

The fees authorized by section 75-1-202 would not begin to cover these costs for the average well in Montana. The Board's budget could not make up the difference for the over 900 wells permitted annually.

Also, in the nearly 14 years since MEPA was enacted, the Board has issued over 12,000 drilling permits and there has been no indication that any of the wells thus drilled have adversely affected the quality of the environment in any significant manner.

Certainly, the Board recognizes that some of our citizens view drilling rigs as ugly and unwelcome additions to the landscape of a state which rightly prides itself on its natural beauty. Of course, such a rig is in place for a short time and, if a commercial well results, is replaced by the relatively unobtrusive valve tree of a gas well or pump jack of an oil well. The storage tanks which accompany some oil wells are certainly no less aesthetically pleasing than grain storage bins.

If the well drilled proves unsuccessful, the statutes and Board rules require the drilling site to be restored to its previous condition and that is done quite adequately in most cases.

I need not elaborate to this committee on the importance of production of oil and gas to this state and nation. The budget problems facing this legislature have made you all aware of the vital contribution the oil and gas industry makes to Montana's economy and to the revenue of state and local governments and schools. The runaway inflation of recent and painful memory caused by our nation's over-dependence on foreign petroleum and the havoc that caused should make it clear that, by any standard, discovery and production of new petroleum reserves in this state and nation is a plus for the quality of the human environment.

Many of our state's farmers and ranchers have managed to survive the past few years of drought and low prices only because of their oil royalty and lease payments. To whatever extent this country lessens its dependence on the oil of the Mid East, the perceived necessity of armed intervention in that area of the world is also decreased. And surely war is the activity most destructive of the human environment.

Having said all of this, it is fair for you to ask if this bill is really necessary. I assure you that it is. As the search for oil and gas in the overthrust belt in western Montana increases, so does the potential for conflict. You may, of course, refuse to pass this bill and leave it to the courts to decide, and they most assuredly will. As you can see from the existing statute set out in this bill, the Montana Environmental Policy Act is, at best, vague and general. It is

virtually identical to the National Environmental Policy Act of 1969. The lack of detail in that act has been criticized by a number of legal scholars and all seem to agree that its lack of detail "gave rise to the need for innovative interpretation and implementation by the courts and agencies, and left these entities a clear field in which to act." Orloff and Brooks, The National Environmental Policy Act, p. 427 (1980).

United States Supreme Court Justice Marshall observed that "this vaguely worded statute seems designed to serve as no more than a catalyst for development of a 'common law' of NEPA." Kleppe v. Sierra Club, 427 U.S. 390, 421 (1975). What the justice and the professors are saying is that Congress and this legislature, by their failure to be specific and to adopt criteria identifying precisely what behavior is thought to be harmful and thus forbidden, have abdicated their role of establishing policy in this vital area to the courts.

That may be your intention but I have heard so many legislators over the years complain that the courts are usurping their function that I do not think so. If you do not choose to pass this bill in its present form, I would implore you to amend it to provide us with the clear guidelines to make the judgments called for by MEPA. Without such guidelines, any determination we or the courts make, which may result in destroying the value of many individuals' property, can be nothing but arbitrary.

GREETING MADAM CHAIRPERSON AND COMMITTEE MEMBERS.

MY NAME IS DONALD D. CECIL, AND I LIVE AT 3816 PINE COVE ROAD, BILLINGS, MONTANA, 59102.

I AM VICE PRESIDENT-OPERATIONS, CARDINAL DRILLING CO. CARDINAL DRILLING CO. IS AN OIL WELL DRILLING CONTRACTOR. CARDINAL HAS BEEN BASED IN BILLINGS SINCE 1960. WE OPERATE 21 DRILLING RIGS IN 6 STATES. WE ARE CONSTANTLY COMPARING DRILLING OPPORTUNITIES IN ALL THESE STATES, AND I AM CONCERNED ABOUT THE FUTURE OF THE INDUSTRY IN MONTANA.

I AM ALSO HERE AS A MEMBER OF THE BOARD OF OIL & GAS CONSERVATION.

I AM HERE TO TESTIFY IN SUPPORT OF SENATE BILL 410.

SENATE BILL 410 READS IN PART "THAT THE ISSUANCE OF A PERMIT TO DRILL AN OIL OR GAS WELL IS NOT A MAJOR ACTION OF STATE GOVERNMENT UNDER THE PROVISION OF THE MONTANA ENVIRONMENTAL POLICY ACT..." IN EFFECT THE BILL WOULD EXEMPT THE PERMITTING PROCESS ONLY FROM M.E.P.A..

M.E.P.A. BECAME LAW IN 1971. FROM 1971 THROUGH 1984 THERE HAVE BEEN 12,905 DRILLING PERMITS ISSUED WITHOUT THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT. WITH A TRACK RECORD LIKE THIS, I DON'T FEEL THAT THERE IS A NEED FOR AN E.I.S. NOW.

IF IT IS FELT THAT THE BOARD OF OIL AND GAS CONSERVATION HAS OVERSTEPPED IT BOUNDS THERE ARE AVENUES THAT CAN BE TAKEN TO ADDRESS THIS.

THE FEDERAL GOVERNMENT AND THE STATE OF MONTANA, BOTH AS OVERSEER OF THE PUBLIC DOMAIN, CAN REQUEST AN E.I.S. SO UNDER M.E.P.A. AND E.I.S. FOR A DRILLING PERMIT WOULD APPLY TO PRIVATE LANDS ONLY. WHEN A LAND OWNER SIGNS A MINERAL LEASE WITH AN OIL COMPANY, WE HAVE A WILLING BUYER AND A WILLING SELLER. THE CONCEPT OF PRIVATE LAND OWNERSHIP HAS ALSO BEEN HELD SACRED IN MONTANA. I WOULD HAVE TO BELIEVE THAT IN TODAY'S MARKET PLACE EVERY MONTANA RANCHER OR FARMER WOULD WELCOME AN OIL WELL ON HIS OR HER PROPERTY. MANY OF THESE PEOPLE WILL BE DISAPPOINTED BECAUSE THE ADDITIONAL BURDEN OF AN E.I.S. WOULD PRECLUDE THE DRILLING OF MANY WELLS. IF DEVELOPMENT ON THEIR LAND WOULD AFFECT THEIR NEIGHBORS LAND AN E.I.S. WOULD BE REQUIRED. WE ARE THEREFORE TALKING ABOUT ONLY PRIVATE DEVELOPMENT ON PRIVATE LANDS. THE BOARD

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 4
DATE 2/18/85
BILL NO. SB410

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OF OIL AND GAS CONSERVATION TAKES THE POSITION THAT THE APPLICATION FOR A DRILLING PERMIT, BY ITS VERY NATURE IS A P.E.R. FOR EXAMPLE THE APPLICANT HAS TO STATE HOW HE WILL PROTECT GROUND WATER. WE FEEL THAT AN E.I.S. IS NOT NECESSARY TO ISSUE A DRILLING PERMIT.

THE REQUIREMENT OF AN E.I.S. FOR A DRILLING PERMIT WOULD BE ANOTHER NAIL IN THE COFFIN OF THE OIL AND GAS INDUSTRY IN MONTANA. WE NEED YOUR SUPPORT.

THANK YOU.

WITNESS STATEMENT

Name Mons Teyon ^{SEN.} Committee On Nat Res
 Address Holena Date 2/18/85
 Representing 415 Longmire, Woodhewers, Grazing Dist, Bw. 11-12 Support X
 Bill No. 410 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. as a representative of owners of land & minerals we do not want to see the type of costs & delays occasioned by this proposed forestall.
2. the OSG development of our properties.
3. Adequate safeguards are already in place to accomplish necessary environmental safeguards.
- 4.

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

TESTIMONY IN OPPOSITION TO SB 410

By Don Reed, Montana Environmental Information Center
February 18, 1985

Madame Chairman and members of the Senate Natural Resources Committee, I'm Don Reed and I'm here on behalf of the members of the Montana Environmental Information Center in opposition to SB 410.

Montana EIC opposes a special exemption from the Montana Environmental Policy Act (MEPA) for oil and gas drilling permits. Such an exemption is both unnecessary and poor public policy.

MEPA is the cornerstone of Montana laws to implement the public's right to a "clean and healthful environment" under the Montana Constitution. MEPA is the only law that provides for comprehensive environmental foresight and public involvement in major government decision-making. MEPA emphasizes that the welfare of the people of Montana is best served in the long term by a state policy that "encourages productive and enjoyable harmony between man and his environment...."

To that objective, MEPA provides the process for a systematic, interdisciplinary examination of anticipated effects of a proposed action. This is the now familiar Environmental Impact Statement (EIS). An EIS examines the anticipated effects, presents alternative ways in which the same objectives could be accomplished, and documents ways in which the major adverse effects can be reduced or eliminated. It is a process based on public involvement from the effected party, government agencies, and the public at large.

The policy of MEPA is to ask serious questions about the consequences of state decisions. For starters, the decision-maker asks "Is this a major state action?" "Does it significantly affect the environment?" If the answer is "no," then MEPA does not require an EIS. In other words, MEPA does not waste time and effort on the insignificant. The decision about whether or not to do an EIS is generally made in a brief document called a Preliminary Environmental Review (PER). Agencies have rules that aid them in preparing PER's and deciding whether or not an EIS is appropriate.

SB 410 is a special exemption from MEPA for oil and gas drilling permits. SB 410 predetermines the answers to the key questions MEPA asks. This is bad policy, for we cannot know the answers unless we ask the questions. There is no harm in asking the question unless we fear the answer.

It may well be true that many drilling permits are not state actions which significantly affect the environment. MEPA

accounts for such situations by not requiring the preparation of an EIS when this is the case. But do we know that every possible drilling permit would not affect the environment significantly? We cannot know that. Would you say that permits for drilling a hundred wells on the grounds of the state Capitol had no impacts? I think not.

The example is absurd, but it does highlight the point that some drilling decision may well affect the environment significantly. If they do, the state should examine those affects systematically. That is all MEPA asks for.

There have been several agencies of state government which were not used to following MEPA. Other agencies are experienced in preparing EIS's and do so as a matter of regular operation. One good example of an agency which has not used MEPA frequently is the Department of Agriculture. Yet the Department of Agriculture did follow MEPA and did an EIS on its policies regarding re-registration of endrin. The EIS led to significant improvements in policy which the department would not have made without examining its policies in a comprehensive manner.

MEPA merely requires that state decision-makers ask a few basic questions. In most instances, it requires nothing more. In other instances, it requires the preparation of EIS's. That is not an onerous burden. EIS's have grown shorter and shorter with time.

SB 410 is ill-conceived and unnecessary. Montana EIC urges you to vote "Do Not Pass" on SB 410.

Testimony of Philip W. Davis
Before the Senate Natural Resources Committee.
In opposition to SB 410
February 18, 1985

My name is Philip Davis. I am a Lawyer in Bozeman and I do some environmental law. I serve on the Board of the Montana Environmental Information Center. MEIC endorses my testimony on this matter today, but I am here primarily as a member of a citizen's group comprised of residents of Bridger Canyon called Bridger Watch.

Bridger Watch stirred up this controversy back in December by suing the Board of Oil and Gas Conservation for failing to follow the Montana Environmental Policy Act when it issued a permit back in October to SOHIO to drill a well in Bridger Canyon. We were appalled to discover that drilling permits are routinely issued by the Oil & Gas Conservation Division on the same day they are received. Often within the same hour. No effort is made to comply with MEPA. No attention is given to possible environmental consequences.

So, we filed our case in the 18th Judicial District entitled Bridger Watch v. Board of Oil & Gas Conservation of the State of Montana. In apparent acknowledgement of the validity of our claim, SOHIO withdrew its permit application and we are advised that it will reapply and ask the Division to hold a hearing to determine whether a PER or EIS will suffice.

Our suit seems to have taken some people by surprise. I don't know why it should have since there is ample precedent for it. It is well accepted that oil wells on federal land must

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comply with NEPA (which provisions are nearly, if not entirely, identical with MEPA). The express words of the statute require the Division to comply with MEPA. This matter was explicitly raised (at pp. 49,50) by the Legislative Auditor in the September, 1981 Sunset Review of the Board of Oil and Gas Conservation and was never satisfactorily answered. The Montana Department of Fish, Wildlife and Parks raised this issue with the Board (in April, 1981) when Fish and Game sought an EIS for a well proposed to be drilled in Blackleaf Canyon. The Wyoming Oil and Gas Conservation Commission has placed mitigation requirements on oil wells as the result of environmental impact review. At least one state, the State of Michigan, has held that environmental conditions can be placed on wells on private land under enabling legislation similar to Montana's.

The proposed Bridger Canyon well is on private land adjacent to the residential area where I live. It presents a number of potentially disastrous threats to the human environment. I can think of no better example of a project to which MEPA should apply. Only after a MEPA review can the permitting agency have an accurate idea of the impact of its decision. MEPA review will help us understand the procedures to eliminate the avoidable impacts and the mitigations to lessen the burden of the unavoidable ones.

Compliance with MEPA is a very important means by which the state and the oil companies can avoid unexpected and costly litigation, as well as reclamation, arising from wells which do result in damage. As drilling activity increases in the more

environmentally fragile areas overlying the Overthrust Belt in Western Montana, it is to the benefit of the drilling companies to know in advance what impacts might be encountered and to take measures to avoid or mitigate them. Compliance with MEPA, then, can be seen as an important means of protecting the state from unforeseen liability losses.

I do not accept the contentions of those who support this bill that compliance will present an undue hardship on the Board or on the oil companies. Those agencies which have complied with MEPA have developed procedures which work smoothly and efficiently. Certainly the vast majority of wells will be drilled in non-sensitive areas and a pro-forma PER will suffice to assure the Board that no undue adverse impacts will result. I am informed that the Department of State Lands is developing a procedure to review appropriate mitigations under a PER for exploratory wells on state land near Glacier Park. Thus, there are ways for the Board to comply with MEPA which will have a minimum interference with its present procedures. In all probability, it will only be wells drilled in the most sensitive of areas which might require an EIS. Indeed, the eight Departments of state government which submitted EISs to the Environmental Quality Council submitted a total of only eight in 1983. So the fear of a flood of paperwork is apparently unfounded.

In conclusion, I emphasize that this legislative proposal is a dangerous precedent. We cannot afford to start exempting agencies whose work so intimately involves the

environment from the key piece of legislation protecting the environment. The landowners and adjacent landowners need the protection of MEPA for their land, their health and their property values. The state and the oil companies need the protection of MEPA to help anticipate and avoid possible environmental disasters.

Not only is it dangerous legislation, it is also unnecessary. Any number of agencies comply with MEPA as a daily matter. Procedures have been developed and are in place to avoid great hardship on these agencies.

I therefore strongly urge you to vote against this unfounded, ill-conceived, dangerous and unnecessary Legislation.

Thank you.

Montana Audubon Council

Testimony on SB 410

February 18, 1985

Madame Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Council. The Council is composed of 8 Chapters of the National Audubon Society and represents over 2000 members in the state.

The Council opposes SB 410.

A "major action of state government" is defined as an action "significantly affecting the quality of the human environment." Such actions require the preparation of an environmental impact statement - a process that allows alternatives to be examined and the public to have a voice when something "significant" is about to happen to their environment.

This policy makes sense. It allows Montanans to stop and think and plan for the future - and for their children's future. It is a good state policy to examine things closely when something "significant" is about to happen to our environment.

Generally, oil and gas drilling does not "significantly" affect our environment - and neither does the application of a pesticide on a winter wheat field. In 1983 the Department of Agriculture, however, completed its first EIS on a pesticide. That pesticide was endrin - a pesticide that became a household word when fish were killed and residues were found in waterfowl, nongame birds and big game animals.

I think that everyone here would agree that endrin "significantly" affected our environment. It was a relief to all when less toxic and less persistent chemical alternatives were found to control agricultural pests.

So what about oil and gas drilling? Is it prudent to decide that such drilling will never "significantly" affect our environment? We think not.

Planning is essential as Montana continues to grow. As we begin to prepare for our centennial celebration, clearly we need also be planning for our bicentennial.

Thank you.

SENATE NATURAL RESOURCES COMMITTEE

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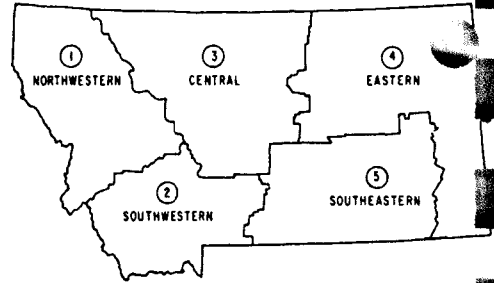
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BILL NO. SB410



Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION



Testimony on SB410
February 18, 1985

Mad Chairman, Members of the committee, My Name is Dan Heinz
I appear on behalf of the Montana Wildlife Federation

It is true that Oil & Gas development requires less earth moving
than other development activities. However, Oil & Gas development
can have profound ^{social} impacts, ^{both positive and negative} on nearby communities and the state as
a whole.

Social and Economic factors are as much a part of our environment
as air, soil, water or scenery or wildlife.

Information ^{on potential impacts} must be available before we can intelligently ^{make} development decisions
on resources.

If NEPA is vague Then lets address that problem ^{specially}. We do not serve the
intent of NEPA by exempting major activities such as Oil & Gas development.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 9DATE 02/18/85BILL NO. SB410

Proposed Amendments to SB 258:

1. TITLE, lines 6-7

Strike: "PROVIDING A PENALTY FOR FAILURE TO GIVE NOTICE OF PLANNED DRILLING OPERATIONS"

2. TITLE, line 7

Strike: "TRIPLE"

Insert: "DOUBLE"

3. TITLE, line 8

Following: "PAYMENTS;"

Insert: "REQUIRING THE BOARD OF OIL AND GAS CONSERVATION TO WITHHOLD THE DRILLING PERMIT UNTIL EVIDENCE IS PRESENTED THAT THE SURFACE OWNER HAS RECEIVED THE NOTICE OF INTENT TO DRILL;"

4. Page 1, lines 18-19

Strike: "seismic or other"

5. Page 1, line 22

Strike: "seismic or other"

6. Page 3, line 7

Strike: "triple"

Insert: "double"

7. Page 3, lines 8 through 11.

Strike: "(1) An oil and gas developer or operator who fails to provide notice as required by 82-10-503 is guilty of a misdemeanor and is punishable by a fine of not more than \$500."

8. Page 3, line 12

Strike: "(2)"

9. Page 3, line 13

Strike: "make"

Insert: "timely pay any installment under"

Following: "annual"

Insert: "or single-sum"

Following: "damage"

Strike: "payment as required by any damage"

10. Page 3, line 15

Following: "owner of"

Insert: "twice"

11. Page 3, line 16

Strike: "such payment"

Insert: "the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 10

DATE 02/18/85

BILL NO. SB258

12. Page 3, following line 16

Insert: "NEW SECTION. Section 4. Withholding of drilling permit. The oil and gas commission shall withhold the drilling permit until it has received evidence that a notice of intention to drill has been received by the surface owner."

13. Page 3, following line 16

Insert: "NEW SECTION. Section 5. Codification instruction. Sections 3 and 4 are intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5 apply to sections 3 and 4."

14. Page 3, following line 16

Insert: "NEW SECTION. Section 6. Extension of authority. Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act."



United States
Department of
Agriculture

Soil
Conservation
Service

Federal Building, Room 443
10 East Babcock Street
Bozeman, MT 59715

February 4, 1985

K.M. Kelly
Executive Secretary
Montana Water Development Association
P.O. Box 5744
Helena, MT 59604

Dear Mr. Kelly:

As you requested, following is the information pertaining to SCS policy on dam safety. The following four paragraphs are national policy:

"SCS supports strong State dam-safety programs. A strong State dam-safety program is imperative because SCS lacks operation and maintenance (O&M) authority and does not have continuing responsibility for the nonfederal dams installed under SCS programs. It is SCS policy to complement and not compete with State dam safety programs."

"Each state conservationist is to assist the State in developing a strong dam safety program as needed."

"The owner of a dam is responsible for potential hazards created by the dam. The States are responsible for safeguarding the lives and property of their citizens. SCS is responsible for making sure that the assistance it provides for dams is technically sound and meets applicable state regulations and criteria."

"Each state conservationist is to establish needed working arrangements with the State for SCS assistance in maintaining a strong State dam-safety program. It is recognized that a few years may be required for some States to implement such a program. State conservationists are to consider progress being made by their respective states in determining whether or not to continue technical and financial assistance for the installation of inventory-type dams."

SCS in Montana is prepared to institute a policy of phasing out assistance on dams if no progress is made by the State during the 1985 legislative session in instituting an acceptable dam safety program. Our policy will be: "In 1986, SCS will no longer assist in planning new dams, but will continue to provide design, repair, rehabilitation, and construction inspection assistance. In 1987 SCS will no longer provide design assistance on new construction, but will continue to provide repair, rehabilitation and construction



The Soil Conservation Service
is an agency of the
Department of Agriculture

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 11

DATE 2/18/85

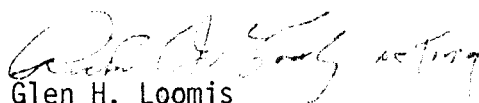
BILL NO. SB369

K.M. Kelly, February 4, 1985

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inspection assistance on dams for which SCS provided initial engineering assistance. In 1988 SCS will no longer provide any technical assistance to any dam except where a prior written agreement exists committing such assistance.

Sincerely,


Glen H. Loomis
State Conservationist



WIFE Women Involved in Farm Economics

NAME Jo Brunner COMMITTEE S.N.RES. 8

ADDRESS 1469 Kodiak Road, Helena DATE 2/18/85

REPRESENT Women Involved in Farm Economics BILL NO. SB369

SUPPORT X AMEND OPPOSE

Mr. Chairman, members of the committee, for the record, my name is

Jo Brunner and I represent the members of the Women Involved in Farm Economics organization in this testimony on SB 369.

Mr. Chairman, W.I.F.E. is in support of SB 369. We believe that it is more than adequate in its new provisions to the existing laws to satisfy concerns relative to dam safety and inspections and for the necessary rules of new construction.

We have a concern, however, for dams that were constructed in a determined, and safe manner and were not considered high hazard until development below the dam appeared. We believe that such situations should be taken into account, and although we realize that such matters are better provided for in other sections of law, we wish to go on record as being concerned of this matter.

We ask a do pass on SB 369.

Thank you.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 12

DATE 02/18/85

BILL NO. SB369

DEPARTMENT OF STATE LANDS'
PROPOSED AMENDMENT TO S.B. 369

1. Page 5, line 10

Following: "Exemptions."

Insert: "The provisions of 85-15-102(2) and (3), 85-15-103, and this act do not apply to dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit."

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 13

DATE 02/18/85

BILL NO. SB 369

STANDING COMMITTEE REPORT

FEBRUARY 18,

1985

MR. PRESIDENT

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE BILL**

No. **326**

FIRST reading copy (**WHITE**)
color

CLARIFY APPROPRIATION REQUIREMENTS FOR SMALL GROUNDWATER DEVELOPMENT

Respectfully report as follows: That **SENATE BILL**

No. **326**

be amended as follows:

1. Title, line 5.

Following: "IS"

Insert: "OR HAS THE CONSENT OF THE"

2. Page 1, line 13.

Following: "has"

Insert: "either"

3. Page 1, line 14.

Following: "works"

Insert: "or the written consent of the person with those property rights"

AND, AS AMENDED

DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

SENATOR DOROTHY ECK

Chairman.