

MINUTES OF THE MEETING  
SENATE NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE  
March 15, 1985

The twentieth meeting of the Senate Natural Resources Committee was called to order at 1:05 p.m., by Chairman Dorothy Eck, March 15, 1985, Room 405, State Capitol Building.

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

FURTHER CONSIDERATION AND ACTION ON HB680: Mr. John Thorson, of the Environmental Quality Council, submitted a proposed Statement of Intent (Exhibit 1) which was drafted by Mr. Ted Doney. This Statement of Intent spells out specifically that water may be preferentially priced for agricultural use in the state and attempts to set forth directions to the Department of Natural Resources and Conservation (hereafter DNRC) for water leasing.

Mr. Bob Thompson, staff researcher, reviewed amendments proposed by Representative Iverson (Exhibit 2). Senator Shaw moved these proposed amendments BE ADOPTED. The motion carried. Senator Shaw moved HB680 BE CONCURRED IN. Chairman Eck reminded Senator Shaw there were more proposed amendments which needed the committee's consideration. Senator Shaw withdrew his motion.

Mr. Thompson then explained the amendments proposed by Mr. Don MacIntyre, DNRC, would exempt Exxon's carbon dioxide pipeline from falling under the scope of the Major Facility Siting Act. Mr. Thorson explained further the proposed pipeline is pending before DNRC and should be exempt, since Exxon has already made application. Mr. Thorson feels Exxon will experience an undue hardship if it were required to reapply. Senator Christiaens moved the proposed amendment BE ADOPTED. The motion carried.

Senator Weeding moved amendments which strike references to removal of the ban on the use of water for coal slurry and strike section 23 (the repeal of the coal slurry ban) in its entirety (Exhibit 4) BE ADOPTED. Senator Shaw stated the ban on coal slurry is illegal and unconstitutional, and the interim committee was in agreement on this issue. Senator Shaw feels these amendments are proposed to protect the jobs of railroad workers and although Senator Shaw is sympathetic to their situation, he feels the committee should be concerned with the needs of the state. Senator Shaw then made a substitute motion that the proposed amendments (Exhibit 4) NOT BE ADOPTED. The motion failed by roll-call vote (Exhibit 5). The committee was in agreement this vote should be reversed to reflect that the proposed amendments BE ADOPTED.

Mr. James Goetz stated the constitutional arguments regarding the ban on coal slurry are not resolved. Senator Mohar stated

the ban could be defended on the water conservation issue; however, testimony did not concern water conservation but, rather, related to protection of jobs and economic protection. Senator Mohar feels the water conservation issue cannot be argued, since the record reflects economic protection as the issue.

Mr. Goetz feels water conservation can be argued since the courts will first look to the statutes and the coal slurry language contained therein, and then will look second to the legislative history behind the language. Mr. Goetz feels since the statutes reflect the ban as being a water conservation measure, the courts may not look at the legislative history at all.

Mr. Ted Doney stated that, in his opinion, the law is unconstitutional, but the issue will have to be decided in court. The interim committee looked at the statutes and decided they were questionable at at minimum. Mr. Doney does not understand how water will be conserved by prohibiting the use of water for coal slurry. Mr. Doney stated more water evaporates during one year than is used for coal slurry, and mine mouth generation will use more water in the long run.

Representative Iverson stated it has always been his contention this issue would have to be litigated to be resolved.

Mr. John Shontz, of Sidney, Montana, suggested referring this issue to persons who are knowledgeable about the issue and have no interest in the outcome.

Chairman Eck suggested the committee look at the report of the interim committee.

Senator Mohar moved HB680 BE CONCURRED IN. Senator Halligan made a substitute motion that the language "temporary preliminary decree, a preliminary decree under 85-2-231; or a" be stricken from page 40, lines 11-12, of HB680. The motion failed with only Senator Halligan voting in favor of the proposed amendment. Mr. Doney explained to the committee that since final decrees are dependent on a determination of Indian and federal water rights in the state of Montana, final decrees will not be available for another thirty years. Preliminary decrees will be available within five years. Representative Iverson stated he opposes this proposed amendment.

Senator Mohar moved HB680 BE CONCURRED IN AS AMENDED. The motion carried with Senator Halligan voting in opposition. Senator Mohar moved the Statement of Intent to HB680 BE ADOPTED. The motion carried.

Senator Gage questioned why the Statement of Intent allows agriculture to use water at a lower rate than industry. Senator Gage feels this is fine in light of the current economy; however, if the economy changes in the future, agriculture could be earning more income than industry. When asked by Chairman Eck if he would like to amend the Statement of Intent to reflect this concern, Senator Gage replied he did not.

There being no further questions or motions from the committee, the discussion of HB680 was closed.

CONSIDERATION OF HB860: Representative Dave Brown, sponsor of HB860, opened the hearing by stating he carried legislation in the 1983 session which set the groundwork for the Natural Heritage Program and the Natural Resource Information System. Representative Brown submitted written testimony (Exhibit 6) and a list of organizations which also support the Natural Heritage Program and Natural Resource Information System (Exhibit 7).

PROPONENTS: Written testimony was submitted by Gene Phillips, representing Pacific Power and Light (Exhibit 8); Mr. Donald M. Leuschen, The Montana Power Company (Exhibit 9); Mr. Mike Fitzgerald, Montana International Trade Commission (Exhibit 10); and Thomas Staples, Montana International Trade Commission (Exhibit 11) supporting the 1983 legislation.

Ms. Mary-Linda Kemp, representing the Northern Lights Institute, submitted written testimony (Exhibit 12) in favor of HB860.

Ms. Sara Parker, State Librarian, submitted written testimony (Exhibit 13) in favor of HB860.

Mr. Larry Weinberg, representing the Montana University System, is a proponent of HB860, because an analysis will give direction for faculty members.

Mr. Gary Langley, Executive Director of the Montana Mining Association, is a proponent of HB860 because it will help industry and the State identify sensitive areas.

Mr. George Ochenski, representing the Environmental Information Center, testified as a proponent of HB860.

Mr. T. M. Rollins, representing ASARCO, Inc., supports HB860 because it will enhance industry's ability to refer to data gathered by the natural resource information system.

Minutes of the Meeting  
March 15, 1985  
Page 4

Ms. Ann Humphrey, representing the Montana Audubon Council, Montana Wildlife Federation, The Nature Conservancy and Trout Unlimited, submitted written testimony (Exhibit 14) in favor of HB860.

Mr. M. Douglas Scott, Institute of Natural Resources of Montana State University, feels the Natural Heritage Program and the natural resource information system will coordinate with his efforts to set up a nation-wide system for fish and wildlife.

Mr. Jim Mockler, representing the Montana Coal Council, is a proponent of HB860.

Ms. Pat Wilson, representing MONTCO, stated her organization submitted a 5,000 page application to the Montana Department of State Lands, and she would like to be assured this document is placed where it will be protected and used.

Mr. Mike Micone, representing the Western Environmental Trade Association, stated he is a proponent of HB860.

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

Senator Gage wanted to know what "state resources" referred to on page 5, line 14. Representative Brown stated this is referring to documents which are spread all over the state and which will now be put into the system.

Senator Christiaens inquired about the necessary staffing. Ms. Sara Parker replied there would be a need for 6.5 full-time employees.

Upon question from Senator Christiaens as to why the bill will become effective upon passage and approval, Representative Brown explained the sooner they get started on the system, the sooner it will be implemented.

Senator Mohar was informed by Representative Brown that approximately \$472,600 will be received from the Legacy Program. Representative Brown closed the hearing by stating the money spent on preparing expensive state documents will be wasted unless they are put into some type of system.

There being no further questions from the committee, the hearing on HB860 was closed.

CONSIDERATION OF HB913: Representative Dave Brown, sponsor of HB913, stated he has looked at this issue at great length. Representative Brown feels the use of the Resource Indemnity Trust fund needs to be restricted. Representative Brown stated the reason for HB913 is because after SB277 was introduced, many interest groups came back and said the issue should be looked at again. HB913 is carefully put together and is not a "Butte" bill. Representative Brown submitted a written explanation of each section of HB913 (Exhibit 15) and proposed amendments (Exhibit 16), which Representative Brown stated represents "fine tuning" for the bill. Representative Brown also submitted a list of projected funding allocations (Exhibit 17) and a newspaper article which appeared in the Montana Standard (Exhibit 18).

PROPOSERS: Representative Krueger, co-sponsor of HB913, stated it is the purpose of this bill to provide funds for projects to help the environment. HB913 is totally committed to this objective. Representative Krueger feels HB913 is a step in the right direction.

Representative Marks, co-sponsor of HB913, stated HB913 more clearly sets forth the use of the Resource Indemnity Trust Fund and also more clearly defines the intent of the natural resource tax.

Mr. Fritz Daily, an interested citizen from Butte-Silver Bow, stated this bill is very important to his community. Mr. Daily feels HB913 is like SB277--unconstititutional. Mr. Daily feels the Resource Indemnity Trust Fund was set up for a specific purpose and neither bill addresses this purpose. Mr. Daily feels the fund was set up to help communities like Anaconda. Mr. Daily stated a lawsuit was initiated to make sure the funds were being used correctly. Mr. Daily feels the funds are not being used correctly and neither HB913 nor SB277 correct this problem.

Mr. James Goetz, representing Butte-Silver Bow and Anaconda-Deer Lodge local governments, submitted written testimony (Exhibit 19) and a copy of the original complaint filed against the State of Montana (Exhibit 20). Mr. Goetz stated his clients may or may not renew litigation procedures against the State.

Mr. Ward A. Shanahan, representing Chevron Corporation, stated there should be prioritization of the projects to be funded. Mineral reclamation should, in Mr. Shanahan's opinion, receive priority funding.

Mr. Gary Langley, Executive Director of the Montana Mining Association, stated his association thought the money from the

Resource Indemnity Trust Fund would be used for mining reclamation, not water development. Mr. Langely feels the programs eligible for funding should be limited to reclamation.

Mr. Ted Rollins, representing ARARCO, believes HB913 is a step in the right direction towards orderly and responsible development of Montana's natural resources.

Mr. Mike Micone, representing Western Environmental Trade Association, stated he supports HB913, although he does have some reservations regarding Section 11, subsections (3) and (4).

Mr. George Ochenski, representing the Environmental Information Center, strongly supports HB913. Mr. Ochenski feels HB913 does a more equitable job of spreading out the funds available and is fair in ranking projects.

Mr. Larry Weinberg, representing the Montana University System, is a proponent of HB913 because it contains funding for a hazardous waste collection program. Mr. Weinberg stated most of these hazardous wastes are generated by the mineral industry.

Ms. Louise Kunz, representing the Montana Low Income Coalition, submitted written testimony (Exhibit 21) in favor of HB913. Ms. Knuz suggested HB913 give higher priority to projects which will employ currently unemployed persons.

Ms. Jeanne-Marie Souvigney, representing Northern Plains Resource Council, submitted written testimony (Exhibit 22) in favor of HB913, and a chart depicting program proposals presently being used, proposals of SB277 and proposals of HB913 (Exhibit 23).

Ms. Mary-Linda Kemp, representing Northern Lights Institute, stated her organization prefers HB913 over SB277.

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

OPPONENTS: Senator Blaylock, sponsor of SB277, stated there are many things which are similar between the two bills, but the difference is the way the money is allocated. SB277 leaves the way funds are spent wide open. Senator Blaylock does not feel we should tie the hands of the legislators by providing fixed ways the money should be spent. Senator Blaylock feels that because 37 percent of the fund will be used for mineral reclamation, including the Butte/Anaconda area, the bill is a "Butte" bill.

Mr. Gene Huntington, representing the Governor's Office, stated the Governor's intent was to limit the money to be spent

for mineral reclamation. Mr. Huntington feels SB277 is a compromise because it gives some priority to mineral reclamation.

Mr. K. M. Kelly, representing the Montana Water Development Association and Montana Irrigators, opposes HB913 because it takes money from water development and puts it in other areas. Mr. Kelly feels water development is one of the most important issues facing the people of Montana. Mr. Kelly feels minerals will be with us a long time; therefore, these projects should compete for funds.

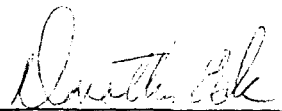
There being no further opponents, the hearing was opened to questions from the committee.

Senator Fuller stated he has seen a list of some of the programs that have applied for funding from the Legacy Program, and some of the requests simply do not make sense. Representative Brown agreed and stated HB913 will get the State a lot closer to the way the funds should be used. Priority projects include hazardous waste disposal and weed control. Senator Fuller stated he did not doubt whether these programs were worthwhile, but stated the committee must understand what it is doing. Senator Gage agreed, stating we will be funding all sorts of programs having nothing to do with what the original intent of the Resource Indemnity Trust Fund was set up for.

Senator Mohar stated the Montana Constitution is vague in regard to the use of the Resource Indemnity Trust Fund. Senator Mohar thought the Resource Indemnity Trust Fund Act should be researched. Senator Mohar feels the intent of the Act is the key question to SB277 and HB913. Representative Brown stated that under HB913, the government does not have to fund a program if it sees the money could be better used somewhere else. Representative Brown feels HB913 is a protection for Montana.

Senator Mohar stated if this is true, he does not understand why the money was earmarked in the first place.

There being no further questions from the committee, the meeting was adjourned at 3:00 p.m.



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Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 031585

SENATE  
SEAT

#

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

Each day attach to minutes.



DATE 3-15

COMMITTEE ON NAT. RES.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
GEORGE OCHENSKI	ENV. INF. CENTER	913/860	<del>X</del>	
KM. Kelly	Mont. Water Develop. Assn. Mont Irrigators, Inc	913		X
Sam Gardner	State of Montana	860	X	
Mike Trevor	Dept. of Admin	860	X	
Jane Brown	Sponsors of both bills - H. Dist. 72	860 913	X	
Larry Weinberg	Mont. Univ. Sys.	860 913	X	
May Linda Kemp	Northern Lights Institute	860/913		
Bill Purvis	Rosevelt Co.	913	X	
Jim Mockler	MT. Coal Council	860 913	X	
Ann Humphrey	Montana Audubon Council	860 913	X	
Hanno-Main Soapery	MPRC	860/913	X	
Pat Wilson	Montco/Thermal Energy	860	X	
TOM Eberly	Nexco	860	X	
Paula Fallon	Mont. Miner			
Gene Hutchinson	Governor's Office	913	X	
T.M. Rollins	ASARCO, INC	860 913	X	
Loren Jenkins	House Dist 13	913	X	
GARY A LANGLEY	MT. MINING ASSN	913/860	X	
Louise King	MT Low Income	913 Approved	X	
Kurt Krueger	Representative HD 65	CO SPONSOR 913	X	
Mike Johnson	WETA	860/913	X	
Paul Dair	Butte Silver Boxes			X
Jack H. Harty	Butte-Silver Box - Andover Valley	913		X
Bob Marks	House	913	X	
Edward Marabon	Chevron Corporation	913	X	
Dianne Donnelly	Mont Assoc. of Counties	913		X
Dr. M. Douglas Scott (Please leave)	Institute Natural Resources MSU prepared statement with Secretary	913	X	

STATEMENT OF INTENT  
HOUSE BILL 680  
SENATE NATURAL RESOURCES COMMITTEE

A statement of intent is indicated for House Bill 680 because section 21 extends the authority of the board and the department of natural resources and conservation to adopt rules relating to the provisions of the bill. Such extension of authority would include the authority to adopt rules relating to the implementation of water reservations on the Missouri River basin under section 15 and relating to the leasing of water under section 12.

In their implementation of this bill, the long-range goal of the board and the department must be to conserve and protect the water resources of Montana for the use of all Montanans. Since agricultural uses of water constitute the largest uses by far, and a healthy economy of the state depends upon agriculture, the agricultural uses of water in Montana must be particularly conserved and protected.

In developing rules implementing this bill, and in entering into lease agreements with potential water users under section 12, it is the intent of the legislature that the department establish leasing rates which are commercially reasonable and take into account the financial abilities of a particular sector of the economy to lease water at various rates. Accordingly, it is contemplated that leasing rates for agricultural uses of water will be considerably lower than rates for industrial uses, as an example.

It is further the intent of the legislature that water be made available through the leasing program at minimal cost to potential users who may wish to benefit from a water use project of a third party. An example would be an irrigation district or a municipality in Montana that may desire to tap into a pipeline conveying water out-of-state. Provision for such incidental beneficial uses is authorized under section 12(8) of the bill.

**SENATE NATURAL RESOURCES COMMITTEE**  
EXHIBIT NO. \_\_\_\_\_  
DATE 031585

PAGE 2

STATEMENT OF INTENT HB 680

In entering into a lease of water, the department shall include a provision in the lease that other existing or planned uses of water in Montana will be fully protected during a low water year. All of the criteria listed in section 85-2-311, MCA, must be applied and considered by the department before it decides to enter into a lease of water.

In the implementation of water reservations in the Missouri River basin, it is the intent of the legislature that applicants for agricultural reservations be given equal treatment and opportunity to reserve water as that afforded applicants for instream uses. To the extent possible, equal treatment and opportunity includes the provision of financial resources and technical assistance to such applicants.

PROPOSED AMENDMENTS TO HB 680  
THIRD READING COPY

1. Page 8, line 20.  
Following: "River"  
Insert: "and its tributaries"
2. Page 20, lines 21 and 22.  
Strike: "clear and convincing"  
Insert: "substantial credible"
3. Page 26, line 5.  
Following: "IN"  
Insert: "inside"
4. Page 29, line 4.  
Following "in"  
Insert: "inside"
5. Page 44, line 15.  
Following: "River"  
Insert: "and its tributaries"

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 2

DATE 031585

BILL NO. HB680

McIntyre amendments.

Proposed Amendments to HB 680  
Third Reading Copy  
March 15, 1985

1. Title, line 20

Following: "~~75-20-216~~"

Insert: "75-20-202,"

2. Page 33, following line 12

Insert: "Section 9. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) This chapter does not apply to a facility defined in 75-20-104(10)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to [the effective date of this act]."

Renumber: subsequent sections.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 3

DATE 031585

BILL NO. HB 680

Proposed Amendments to HB 680:

1. Page 1, lines 18-19

Strike: "REPEALING THE BAN ON THE USE OF WATER FOR COAL SLURRY;"

2. Page 1, line 24

Strike: "REPEALING SECTION 85-2-104, MCA;"

3. Page 6, line 1

Following: "purpose"

Insert: ", other than for the mixture of water for coal slurry pursuant to 85-2-104"

4. Page 56, lines 24 and 25

Strike: section 23 in its entirety

Renumber: subsequent sections

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 4

DATE 031585

BILL NO. HB680

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 031585 House Bill          Bill No. 680 Time         

NAME	YES	NO
ANDERSON, John	X	
CHRISTAENS, Chris	X	
DANIELS, M. K.	X	
FULLER, David		X
GAGE, Delwyn	X	
HALLIGAN, Mike (Vice Chairman)	X	
HARDING, Ethel	X	
MOHAR, John		X
SHAW, Jim		X
TVEIT, Larry		X
WEEDING, Cecil	X	
ECK, Dorothy (Chairman)	X	

Cynthia A. Peterson  
Secretary

Dorothy Eck  
Chairman

Motion: Senator Shaw's motion the amendments not be adopted.

Note: This vote is reversed to reflect the amendments were adopted.

NATURAL HERITAGE PROGRAM AND NATURAL RESOURCE INFORMATION SYSTEM  
TESTIMONY  
REPRESENTATIVE DAVE BROWN  
March 14, 1985

I sponsored HB 785 in the '83 session, which set the ground work for the Natural Heritage Program and the Natural Resource Information System, because I think the systems will encourage sound economic development while assuring Montanans a quality longterm resource base. We've wasted a lot of state government and private sector money by duplicating resource data for each EIS carried out. And in many cases we're operating in the dark about development siting impacts because we lack the kind of basic knowledge Heritage and NRIS would provide.

In addition, a great deal of time and money are wasted on conflicts over resource development that potentially could be avoided with the type of clear resource data Heritage and NRIS will give us.

It is essential for business and industry to support this issue to get it through the legislature this session. I believe it will aid industry directly in terms of cash benefits, which Gene Phillips from Pacific, Power and Light will now speak about.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 6

DATE 031585

BILL NO. HB860



MONTANA SUPPORTERS OF THE NATURAL HERITGE PROGRAM AND  
NATURAL RESOURCE INFORMATION SYSTEM

**Industry and Business**

Pacific Power and Light	ASARCO
Montana International Trade Commission	Montana Coal Council
Montana Mining Association	Burlington Northern Inc.
Montco	Montana Power Co.

**Government**

Governor's Council on Economic Development	Governor's Council on Management
University System	Dept. of State Lands
Dept. of Fish, Wildlife and Parks	Dept. of Highways
Dept. of Administration	Environmental Quality Council
State Library	Dept. of Agriculture
	Dept. of Health and Environmental Sciences

**Citizen's Groups**

Farmer's Union	Montana Assoc. of Planners
Montana Audubon Society	Montana Guides and Outfitters
Montana Wildlife Federation	The Nature Conservancy
Montana Bow Hunters Assoc.	Trouts Unlimited
Montana Walleyes Unlimited	Northern Plains Resource Council

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 7

DATE 031585

BILL NO. HB 860

NATURAL HERITAGE PROGRAM AND NATURAL RESOURCE INFORMATION SYSTEM  
TESTIMONY

March 14, 1985

Statement of Gene Phillips, Pacific Power & Light

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I testified last session in support of this bill, because I believe it will save a great deal of time and money to any industry that must provide EISs. Let me give you a few examples of this.

In Washington state's fourth year of its Heritage program, 248 requests for input on EISs were handled. The state estimates that this represents a savings of about \$496,000 for this one year alone. Although the savings were shared by the public and private sectors, Bob Robinson, head of the Energy Division of Montana's DNRC, believes that most of the direct dollar savings were realized by industry.

What about those other savings that are more difficult to put a dollar figure on? In the Washington state program, an oil pipeline was planned for a route that would have destroyed one of the few remaining populations of two rare plants and a rare prairie community. When the project planners checked with the Heritage program in the state, they decided to reroute the pipeline, and eventually the area was acquired as a natural preserve. With no litigation, little money spent by anyone, and no projects postponed, the exemplary area remains intact and the company is happy.

In short, once a Natural Heritage Program is established, the public and private sector in Montana will have access to a state-of-the-art coordinated natural resource data system - at a cost of about 17¢ per year per citizen. And the private sector will have a means by which to speed up the environmental review process and reduce its own costs.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 8

DATE 03/15/85

EXAMINER 48816



GENERAL OFFICES: 40 EAST BROADWAY, BUTTE, MONTANA 59701 • TELEPHONE (406) 723-5421

DONALD M. LEUSCHEN  
PRESIDENT

March 14, 1985

The Honorable Dave Brown  
Montana State House of  
Representatives  
Capitol Station  
Helena, Montana 59601

Dear Representative Brown:

The Montana Power Company supports and endorses your efforts to implement the Natural Resource Information System and the Natural Heritage Program which will establish an accessible natural resource data system in our state.

Specifically, we support House Bill 860 which you have sponsored. Authorizing the Montana State Library to implement and operate the resource plans and programs will enhance the objectives and purposes of the Information System and Heritage Program.

As you know, these programs have been adopted in many other states. We are aware that utilities in those states have generally found the programs to be constructive, efficient and useful.

Availability of reliable resource information at a reasonable cost would benefit Montana Power in its planning efforts for our electric and gas facilities. Similar benefits through these programs would likewise benefit government agencies, other companies and the public. Therefore, we hope that HB 860 is passed.

Sincerely,

A handwritten signature in cursive script that reads "DM Leuschen".

cc: Chairman and members of the Senate Natural Resource  
Committee

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 9

DATE 031585

HR 860

Montana International Trade Commission

Suite 612, Power Building  
Helena, Montana, U.S.A. 59601  
Telephone 406-443-7910  
Telex (TWX) 910 963-2454

March 13, 1985

Representative Bob Thoft  
Chairman  
Long Range Planning Committee  
House of Representatives  
Capitol Station  
Helena, Montana 59620

Dear Representative Thoft:

I want you and the other Committee members to know that we support the Natural Heritage Program and Natural Resource Information System. Attached is a copy of our letter of support for HB 785 in the 1983 session which initiated these programs.

Our position and opinions are the same. Natural resources will be the basis of our economy for a long time. Developing and regulating the development of resources has been a controversial, fragmenting, polarizing, unhappy process in Montana over the past 15 years.

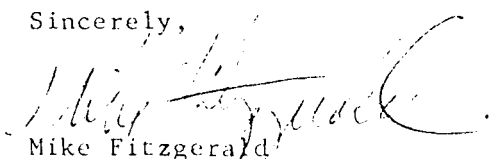
The confrontation, litigation and obfuscated public debate of resource development has contributed mightily to our present economic decline.

These programs may help us to move beyond the rhetorical blizzard and excesses by all sides that has held back Montana's economic progress.

These programs can provide a common information base for both government regulators and industry which could begin to loosen the present regulatory log jam.

On behalf of our entire membership I encourage you and your colleagues to support these programs.

Sincerely,

  
Mike Fitzgerald  
President & Managing Director

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 10

DATE 031585

BILL NO. H.B. 860


April 8, 1983

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

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

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

Sincerely,

  
Thomas Staples  
Vice President

SENATE NATURAL RESOURCES COMMITTEE  
EXHIBIT NO. 11  
DATE 031585  
BILL NO. HB 860

NATURAL HERITAGE PROGRAM AND NATURAL RESOURCE INFORMATION SYSTEM  
TESTIMONY  
HB 860  
MARY-LINDA KEMP  
NORTHERN LIGHTS INSTITUTE  
Senate Natural Resources Committee  
14 March 1985

Madame Chairman and Members of the Committee:

My name is Mary-Linda Kemp and I work for Northern Lights Institute in Missoula. I am here to request a "do pass" recommendation for HB 860.

Northern Lights is a non-partisan research and education institute; we have adopted this issue because we feel the Natural Heritage Program and the Natural Resource Information System are essential to producing reliable, neutral information for natural resource planning in the state of Montana.

The Natural Heritage Program and Natural Resource Information System are two parts of a program to coordinate the natural resource data in the state. The Natural Resource Information System would create a directory of all state agency studies on natural resources, while the Heritage Program would complement this by obtaining data on rare and exemplary flora and fauna. The Heritage data would then be used in a centralized data base system housed in the State Library. The Heritage Program has been implemented successfully in 43 states and regions around the country.

The two-part program would result in several advantages for the state. The Natural Resource Information System would help to point out -- and avoid -- the duplication of effort that now exists within and between state agencies.

The Heritage Program would:

\*Take the boxes of data on flora and fauna that sit in the basements of various state agencies such as DNRC, Dept. of State Lands, and the Dept. of Fish, Wildlife, and Parks, and process them into a usable form to prevent repetition of studies over the years to obtain the same data over and over again.

\*Provide the best, neutral information for decision-makers in the state to make timely, verifiable decisions in natural resource planning.

\*Speed up the environmental review process in state agencies, since it would provide baseline data on various sites at the outset of the process.

\*Reduce the costs of Environmental Impact Statements to the private sector.

\*Avoid litigation between citizen's groups and the private sector, since Heritage data is available to the general public. Opposition to a given site would be voiced prior to any major planning and construction effort on the part of the companies.

\*Aid the agricultural community in its contribution to genetic diversity, an important tool to successful agriculture, and in processing weed data gathered by the Dept. of Agriculture.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 12

DATE 031585

HB 860 is a "housekeeping bill" moving the Natural Heritage Program and Natural Resource Information System to the State Library from the Department of Administration. The move was suggested by the interim committee that reviewed the program, since the Library is considered a neutral agency with extensive experience in unbiased information dissemination. The bill is also necessary to set up the structure for the Library to administer funds for the program from federal grants, other state agencies, the private sector, and state appropriations.

I urge you to give a "do pass" recommendation to this bill. Thank you.

NAME: Sara Parker, State Librarian BILL NO. HB860  
ADDRESS: 1515 E. Sixth DATE 3/15/85  
WHOM DO YOU REPRESENT Montana State Library  
SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*The State Library Commission is pleased to be the designated agency for responsibility for the Natural Resource Information System - Natural Heritage Project. It and I support HB860*

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 13

DATE 031585

BILL NO. HB860



Testimony on HB 860  
Montana Audubon Council  
15 March, 1985

Madame Chair and Members of the Committee,  
My name is Ann Humphrey and I represent the Montana Audubon Council in support of HB 860. The Council is composed of 8 chapters, and over 2200 members statewide.

Presently information on the state's biological resources such as plant communities, plant and animal species, wildlands and unique natural features, is incomplete, and the information is often stored within several agencies, without a comprehensive system of organization.

The Natural Heritage - Natural Resource Information System Program will provide an inventory of the state's biological resources. It will also organize resource information in a comprehensive catalog system available to both public and private sectors.

This information, when collected and organized, will make a valuable contribution to responsible long range planning, and development of Montana's resources. The Program will do this by providing decision - makers with reliable resource information in the early planning stages of development. We urge your support of this bill to help preserve Montana's unique natural heritage. Thank you.

Additional groups organizations ~~are~~ supporting the establishment of the heritage Program are included at the bottom of the following page.

SENATE NATURAL RESOURCES COMMITTEE  
EXHIBIT NO. 14  
DATE 031585  
BILL NO. HB860

*RTX*

MONTANA SUPPORTERS OF THE NATURAL HERITGE PROGRAM AND  
NATURAL RESOURCE INFORMATION SYSTEM

**Industry and Business**

Pacific Power and Light  
Montana International Trade Commission  
Montana Mining Association  
Montco

ASARCO  
Montana Coal Council  
Burlington Northern Inc.  
Montana Power Co.

**Government**

Governor's Council on Economic Development  
University System  
Dept. of Fish, Wildlife and Parks  
Dept. of Administration  
State Library

Governor's Council on Management  
Dept. of State Lands  
Dept. of Highways  
Environmental Quality Council  
Dept. of Agriculture

Dept. of Health and Environmental Sciences

**Citizen's Groups**

Farmer's Union  
Montana Audubon Society  
Montana Wildlife Federation ✓  
Montana Bow Hunters Assoc.  
Montana Walleyes Unlimited

Montana Assoc. of Planners  
Montana Guides and Outfitters  
✓The Nature Conservancy  
✓Trouts Unlimited  
Northern Plains Resource Council

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 14

DATE 031585

BILL NO HB 860

House Bill 913  
Rep. Dave Brown

Section 1. Short title. "Montana Mineral Legacy Act"

Section 2. Policy and purpose.

- to benefit the people of Montana by promoting wise development of our renewable and nonrenewable resources
- supported by mineral taxes, so as our nonrenewable resource base becomes depleted we can ensure future Montanans of a healthy environment and diversified economy.

Section 3. Definitions.

Section 4. Operation of the Montana mineral legacy program.

The Montana mineral legacy program (MMLP) provides funds for 4 program categories:

- water development grants and loans (the current water development program)
- mineral reclamation and research grants (established by this act)
- renewable resource development program grants (maintained by this act)
- hazardous waste management (the ongoing DHES efforts)

The MMLP grant and loan program are administered by DNRC in a similar manner as current grant and loan programs. This bill, however, addresses the existing problem of applicants submitting grant requests to more than one program; here, DNRC is allowed to determine the appropriate program for each application.

Private parties, in addition to public agencies, are eligible for grants and loans. (SB 277 applies to public agencies only.)

As with current G&L programs, DNRC evaluates projects, submits recommendations to governor who then submits recommendations to the legislature for appropriation.

Section 5. Rulemaking.

DNRC is directed to make rules necessary to run the program. Specific language directs the department to define "liable party" (for use in section 12) so grants are not issued under the legacy program to relieve liable parties of their responsibility for reclamation.

Section 6. Montana mineral legacy account. (see handout)

The account gets money from 2 sources:

- all money available for expenditure from RIT
- the coal tax money (2.5%) now earmarked for water development and renewable resource development

A provision is also made to continue the Rangeland Improvement Loan Program for 4 years, as is already provided for in Montana law

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 15

DATE 031585

BILL NO. HR913

Section 7. Allocation of funds to project categories. (see handout)

After administrative expenses and an allocation to the environmental contingency account (discussed later in section 8), the funds are allocated as follows:

- 37.5% for water development
  - slight increase in current funding
  - operated under same statutes as now in effect
- 37.5% for mineral reclamation and research program
  - as described below sections 10-12
- 15% for renewable resource development
  - authorized by existing law, but in this bill (as in SB 277) RRD is a grant program only (the state has never issued RRD bonds for loans in the history of the program)
  - this would be a substantial increase in funds and could provide for weed control, conservation district water reservations, soil conservation, etc., that now are always searching for funds
  - eliminates specific earmarkings within RRD
- 10% for hazardous waste management
  - increase in funds to meet increasing needs and new federal responsibilities
  - meets ongoing needs for current program and LUST
  - for participation in 9:1 federal match for Superfund
  - for state construction/operation of facilities, like the badly needed hazardous waste collection and perhaps a future waste site

Section 8. Environmental contingency account.

- Designed to meet emergency or unanticipated contingencies consistent with the goals of the MMLP
- Coordinates with state superfund program proposed in HB 766
- Controlled by Governor's office, report to Leg. on use of the fund
- Annual allocation of \$200,000, capped if account reaches \$1 mill.

Section 9. Prohibition on benefits to officers or employees--penalty.  
Standard penalty language for internal corruption in program admin.

Section 10. Mineral reclamation and research program.

Establishes mineral reclamation and research grant program as part of MMLP administered by DNRC.

Section 11. Objectives of mineral reclamation and research program.

- mineral development reclamation
- investigation and remediation of mineral impacts
- replacement of recreation or natural areas in the vicinity of any such areas lost to mineral development
- mitigate social and economic impacts of mineral development
- support mineral R&D on new technologies for more efficient or more environmentally compatible extraction, processing, use, or development of Montana's mineral resources
- support research to assess the environmental impacts of mineral development and to improve reclamation
- implement natural heritage program and natural resource information system

Section 12. Evaluation of applications.

Provides criteria for the evaluation of grant applications (need, cost-effectiveness, demonstration of progress, matching fund availability) prohibits funding of projects that would relieve a liable party of liability.

Section 13. Amend coal severance tax allocations (15-35-108).

Places current earmarked coal tax money for water development and renewable resource development programs into Montana mineral legacy account.

Section 14. Amend RIT expenditure (15-38-202).

Places expendable RIT funds into Montana mineral legacy account.

Section 15. Amend Rangeland Improvement Loan Account (76-14-112).

Necessary amendment to insure continued funding of rangeland loan program through June 1989 as provided in existing statutes.

Section 16. Amend water development program introduction (85-1-601).

Specifies that water development program is part of MMLP.

Section 17. Amends water development income source (85-1-603).

Specifies that water development program receives its funding from MMLP and that this money be used first to cover bond debts incurred under the water development program.

Section 18. Amends water development income source (85-1-604).

Again specifies MMLP connection and removes some of the internal earmarkings within the current law on allocation of funds within the water development program.

Section 19. Amends water development income source (85-1-605).

Maintains consistency with above sections.

Section 20. Amends water development language on grants and loans to private persons (85-1-606).

Specifies that these funds come from the MML account.

Section 21. Amends law to on public and private party applications for water development grants and loans (85-1-608).

Maintains consistency with above sections.

Section 22. Amends law on report to legislature (85-1-621).

Connects requirement for report on water development program with requirement for report on entire MMLP.

Section 23. Amends RRD introduction (90-2-101).

Clarifies that RRD is a part of MMLP.

Section 24. Amends RRD to eliminate loan program (90-2-102).

Consistent with body of the bill and with SB 277.

Section 25. Amends section on constraints on development (90-2-103).  
Clarifies that vegetation is one of the renewable resources that shouldn't be significantly diminished through an RRD project.

Section 26. Amends list of projects specified for RRD grants (90-2-113).

Specifies that an RRD project can relate to vegetation improvements, and that up to 50% of RRD funds can be allocated for weed control.

Section 27. Amends funding source for RRD (90-2-124).

Maintains consistency and connection with MML account.

Section 28. Repealer.

Repeals unnecessary and duplicative language on administration of the water development and renewable resource development programs, which are now covered under the provisions of the MMLP. Also eliminates loan program under RRD.

Sections 29, 30, 31 and 32.

Housekeeping and effective date (which may have to be changed).

-END-

HB 913 Amendments  
Rep. Dave Brown  
Senate Natural Resources Committee  
March 15, 1985

Insure that the Legislature does not give funds directly to private parties; funds would first be appropriated to DNRC as is done for private projects under the existing water development program.

1. Page 5, line 13.  
Following: "appropriation"  
Insert: "to the department"

Remove requirement that DNRC make rules defining liability for mineral reclamation projects.

2. Page 6.  
Following: line 17  
Insert: "and"
3. Page 6, lines 18 through 25.  
Strike: subsection (7) in its entirety  
Renumber: subsequent subsection

Permit funds to be shifted between project categories if not enough qualified applications are received to utilize all funds allocated to a specific project category. Projects eligible for such a fund shift must be "exceptionally well qualified" or the unexpended funds will simply revert to the legacy account.

4. Page 9.  
Following: line 10  
Insert: "(4) If qualified proposals are not received to meet the allocations set forth for any category in subsection (3), remaining funds available for expenditure may be recommended by the department and allocated by the legislature for exceptionally well qualified projects in another category. If no such projects remain to be funded, unallocated funds in any category must remain in the Montana mineral legacy account."  
Renumber: subsequent subsections

Specify that any fees received by DHES from users of hazardous waste facilities be used for hazardous waste management.

5. Page 9.  
Following: line 14  
Insert: "(5) Any fees collected by the department of health and environmental sciences from users of any facility funded under subsection (3) (d) (ii) must be allocated to the department to pay operational costs of such facilities or, if such operational costs are adequately funded, to obtain matching funds under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Fees collected in excess of these needs must be deposited in the Montana mineral legacy account."  
Renumber: subsequent subsection

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 16

DATE 031585

HR013

Clarify details relating to the administration of the Governor's environmental contingency account; specify that interest from this account accrues to the entire mineral legacy account.

6. Page 9, line 19.

Following: "(1)"

Insert: "There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the office of the governor. (2)"

Strike: "(3)"

Insert: "(5)"

7. Page 9, lines 22 and 23.

Strike: "controlled" on line 22 through "governor" on line 23.

8. Page 9, line 24.

Strike: "(2)"

Insert: "(3)"

9. Page 10.

Following: line 21

Insert: "(4) Interest from funds in the environmental contingency account accrues to the Montana mineral legacy account."

Renumber: subsequent subsections

Provide a standard of liability for DNRC to apply when determining whether a project should be eligible for a grant through the Mineral Reclamation and Research Program.

10. Page 14, lines 7 through 9.

Strike: "a" on line 7 through "liability" on line 9

Insert: "the obligations or liabilities of any person under federal or state law, including common law, with respect to reclamation of mined land or to releases of hazardous substances or other pollutants or contaminants"



THE MONTANA LEGACY PROGRAM AND THE MONTANA MINERAL LEGACY PROGRAM  
PROJECTED FUNDING ALLOCATIONS FOR 1986-87 BIENNIUM

A. FUNDING SOURCES

Resource Indemnity Trust Fund

Total interest earnings--\$13.52 million

Earmarked Coal Severance Tax Revenues

2½% of coal tax revenues--\$2.53 million  
 (half of this 2½% is now allocated to water development;  
 the other half is now allocated to RRD program)

Total Funds Available--\$16.05 million

B. FUNDING ALLOCATION

Allocation Scenario under the Montana Mineral Legacy Program (HB 913)

Governor's Environmental Contingency Account . . . . .	0.40 million
37% Water Development Program. . . . .	5.79 million
37% Mineral Reclamation and Research Program . . . . .	5.79 million
15% Renewable Resource Development Program . . . . .	2.35 million
11% Hazardous Waste Management Program . . . . .	1.72 million
<b>TOTAL</b>	<b>\$16.05 million</b>

Projected Funding Levels for 1986-87 under Current Law

36% Water Development Projects . . . . .	\$ 5.83 million
(1.25% coal tax earmark, plus 40% of 1.25% of RRD coal tax earmark, plus 30% RIT interest earmark)	
5% Renewable Resource Projects . . . . .	0.76 million
(60% of 1.25% coal tax earmark)	
5% Hazardous Waste Management Program . . . . .	0.81 million
(6% earmark of RIT interest)	
54% Unallocated funds . . . . .	8.65 million
(64% of RIT interest)	
<b>TOTAL</b>	<b>\$16.05 million</b>

Allocation Scenario under the Montana Legacy Program (SB 277)

Emergency Uses by Governor's Office	(unspecified)
41% Water Development Projects . . . . .	\$ 6.59 million
(current water development funds plus current RRD funds)	
*54% Legacy Program . . . . .	8.65 million
--Renewable Resource Development Projects	
--Mineral Reclamation Projects	
--Other Eligible Projects	
5% Hazardous Waste Management Program . . . . .	0.81 million
(plus recommended \$800,000 for haz. waste collection facility)	

\*Legacy funds would be allocated on a competitive basis for specific projects.

TOTAL \$16.05 million  
**SENATE NATURAL RESOURCES COMMITTEE**  
 EXHIBIT NO. 17  
 DATE 031585  
HB 013

## Opinion and comment

# Spending specifics make a better bill

A news report says legislative Democrats are engaged in a behind-the-scenes scrap over allocation of money available from the Resource Indemnity Trust Fund.

The trust fund was established in 1973 to provide money for the reclamation of land damaged by mineral extraction and other purposes.

The fund is expected to generate millions of dollars over the next biennium.

The Schwinden administration wants to give the Department of Natural Resources and Conservation wide discretion on how to spend the money. A bill to that end has been introduced by Sen. Chet Blaylock, D-Laurel.

Others think the Legislature should specify how the money should be spent. Rep. Dave Brown of Butte has introduced a bill that would earmark portions of the money for specific projects.

Specifying how the money should be spent isn't a bad idea. Critics of the way the money was spent in the last session say it went toward funding the everyday operations of government, not to reclamation projects.

Blaylock says earmarking money raises a risk that money will be unused, or spent for projects just because they fit a category. There's some truth in that, but in the case of this money, it's probably best for the Legislature to state its intent clearly at the outset.

According to Blaylock, Brown's bill has been called a "Butte bill." Says Blaylock, "you can guess for yourself who will benefit most from it."

Brown denies his measure is a "Butte bill."

A better way of judging the merits of the bills might be to take a look at who's supporting them.

Brown's bill is supported by the Montana Environmental Information Center, the Northern Plains Resource Council and mining lobbyists. That's a broad base of support.

Blaylock concedes that he can't name any group that supports his bill. But, he says, he thinks his bill is in the best interests of the state.

Butte does, however, have a history of involvement with the Resource Indemnity Trust Fund. During the 1983 legislative session, Butte legislators threatened to sue to force the state to spend money from the fund in accordance with the constitution. The Butte lawmakers were among those who claimed that the money was being spent, not for reclamation, but to support the government operations.

Butte representatives say that after the threat of a lawsuit was raised, Gov. Schwinden agreed to propose a reclamation-oriented spending program to be funded with the money.

According to Brown, though, efforts to reach a compromise with the governor over the past year-and-half have failed. "(The governor) did his own thing," Brown said.

The Legislature shouldn't be bound by that. It should do its own thing.

In this case, that means supporting the bill that has received expressions of support from environmentalists and mining interests alike.

And that's Brown's bill.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 18

DATE 03/5/85

FBI NO. 18012

GOETZ, MADDEN & DUNN, P.C.  
ATTORNEYS AT LAW  
35 NORTH GRAND  
BOZEMAN, MONTANA 59715

March 15, 1985

TO: Senate Natural Resources Committee  
Montana Legislative Assembly

RE: H.B. 913, "An Act Establishing the Montana Mineral  
Legacy Program, etc."  
Representing Butte-Silver Bow and Anaconda-Deer Lodge  
Local governments

COMMENTS:

We generally support the concept of the Bill establishing the Montana Mineral Legacy Program, and welcome the approach which dedicates a substantial portion of the funds generated by the Resource Indemnity Trust tax to true reclamation activities. We are in opposition, however, to those aspects of the proposed Act which would divert such revenues to activities which cannot reasonably be classified as reclamation.

Art. IX, Sec. 2 (Environment and Natural Resources) of the Montana Constitution provides as follows:

Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

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

(3) The principal of the Resource Indemnity Trust shall forever remain inviolate in an amount of One Hundred Million Dollars (\$100,000,000.00), guaranteed by the State against loss or diversion.

The terms of this constitutional provision leave little doubt as to its intent. The intent is that the legislature shall provide effective requirements and standards for the reclamation of lands disturbed through the taking of natural resources, shall provide a tax on the extraction of natural resources to be placed in trust, and that the funds in that

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 19

DATE 031585

trust shall be applied to reclamation of disturbed lands. While the constitutional provision does not literally say that funds from the Resource Indemnity Trust may not be used for purposes other than reclamation of disturbed lands, there is certainly a very strong implication of that result when the three subsections of Art. IX., Sec. 2 are read together.

In the past, the Montana Legislature has, to some extent, misapplied funds generated for the Resource Indemnity Trust. For example, part of the funds have been used for the general support of the operations of the Department of State Lands and the Department of Natural Resources and Conservation. Because of this misuse and the failure of the 1983 legislative session to remedy it, I was approached by Butte-Silverbow and Anaconda-Deer Lodge late in the 1983 legislative session to analyze the constitutional issue with a view toward filing a constitutional action, if warranted. I concluded that the funds were, in part, being unconstitutionally mis-spent and a complaint was drafted. A last-minute agreement was reached with the Schwinden Administration to avoid the filing of a lawsuit. There was a commitment to reform the State's approach to the use of resource indemnity funds in the future.

H.B. 913 does not sufficiently redress the problems. In particular, it allocates a substantial portion of the Resource Legacy Fund to "water development projects". This allocation is inconsistent with Art. IX, Sec. 2 of the Montana Constitution. Also, its provisions are so loose with respect to the other purposes of the fund that the fund may well be used as a catch-all for all kinds of pet projects. For example, grants are allowed for renewable resource development projects and research. Without further definition, there is a possibility of abuse of the program.

While the purpose of the Resource Indemnity Trust, as established by the Montana Constitution, is limited to the reclamation of "disturbed land", the proposed legislation takes a rather expansive view of that purpose. I recognize that on January 28, 1982, Attorney General Mike Greely gave an Attorney General Opinion to Debra Schmidt, Executive Director of the Environmental Quality Counsel. The specific question addressed was as follows:

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

After reviewing the constitutional provision and "The Montana

Resource Indemnity Trust Act", Attorney General Greely concluded:

The Constitution in Art. IX, Sec. 2, does not specify the particular uses to be made of Resource Indemnity Trust Funds. That determination was left to the legislative discretion. The legislature exercised that discretion by enacting 15-38-101 through 15-38-202, M.C.A. to provide funding to rectify damage done by the extraction of natural resources. There is no inconsistency between the constitutional mandate and the legislative response. Therefore, funds made available by the Act may be expended to mitigate the social and economic impacts created by the development of mineral resources in Montana.

I believe that General Greely's conclusion is questionable in light of the constitutional provision that specifically refers to reclamation of "disturbed land".

The more important question, however, is the one not addressed in the Greely opinion. That is the question of whether Resource Indemnity Trust funds may be used for purposes other than mitigating the impacts (social, economic or otherwise) of mineral development in Montana-- such as to fund water development programs. Clearly the Greely opinion does not answer this question. I respectfully submit that such use of Resource Indemnity Trust funds is not consistent with Art. IX., Sec. 2 of the Montana Constitution.

While grants for water development programs and research and the like may be laudable, they may not be financed in the way the bill proposes.

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF MONTANA, IN AND FOR THE COUNTY OF BUTTE-SILVER BOW

\*\*\*\*\*

CITY OF BUTTE, COUNTY OF BUTTE- )  
SILVER BOW, COUNTY OF ANACONDA- )  
DEER LODGE, FRITZ DAILY, BOB )  
PAVLOVICH, and DENNIS IVERSON )  
Plaintiffs, )  
-vs- )  
STATE TREASURER OF MONTANA, )  
DEPARTMENT OF REVENUE OF MONTANA, )  
Defendants. )

No. \_\_\_\_\_

BACKGROUND

1. This is a declaratory and injunctive action to challenge the acts of Defendants in expending earnings of the Montana Resource Indemnity Trust for purposes other than for reclamation of lands disturbed by the taking of natural resources.

2. Article IX, Section 2 of the Montana Constitution provides for the reclamation of lands disturbed by the taking of natural resources, requires that taxes shall be levied on extraction of natural resources and placed in trust, and provides that funds in such trust shall be applied to the reclamation of lands disturbed by the taking of natural resources.

3. The Constitutional mandate of Art. IX, Sec. 2 was ostensibly implemented with the enactment of "The Montana Resource Indemnity Trust Act", Sec. 15-38-101 et seq. M.C.A.

1           4. "The Montana Resource Indemnity Trust Act" reflects  
2 the State legislative policy of providing security against  
3 loss or damage to the Montana environment from the extraction  
4 of nonrenewable resources, Sec. 15-38-102 M.C.A.

5  
6           5. "The Montana Resource Indemnity Trust Act", in order  
7 to carry out its purposes and in accord with Constitutional  
8 intent, provides for a tax on mineral production, Sec. 15-38-  
9 104 M.C.A., and the creation of a "resource indemnity trust  
10 account in the trust and legacy fund", Sec. 15-38-201 M.C.A.,  
11 for the deposit of all revenues derived from the tax.

12  
13           6. The "Montana Resource Indemnity Trust Act" further  
14 provides that once the Resource Indemnity Trust account has  
15 reached the level of \$10 million, the net earnings from the  
16 investment of the monies in the account (invested in corporate  
17 bonds at the discretion of the Board of Investment) but not the  
18 principal of the account, may be appropriated by the legis-  
19 lature. Such net earnings may be so appropriated until the  
20 level reaches \$100 million, at which time both earnings and  
21 principal may be appropriated as long as the principal remain  
22 at least at the level of \$100 million.

23  
24           7. In or about May of 1978, the balance in the Resources  
25 Indemnity Trust account reached \$10 million. It has not yet  
26 reached the level of \$100 million.

27  
28           8. Since approximately 1978 the legislature of the State  
29 of Montana has appropriated the net earnings from the Resour  
30 Indemnity Trust account for various uses.

31  
32





1 this action on their own behalf as government entities and on  
2 behalf of their individual residents.

3  
4 14. Plaintiffs Fritz Daily and Bob Pavlovich are, and  
5 at all times herein mentioned have been, residents of Butte-  
6 Silver Bow County, State of Montana, and are duly elected  
7 members in good standing of the Montana Legislative Assembly.  
8 Plaintiff Dennis Iverson resides at Whitlash, Montana, and is  
9 a duly elected member in good standing of the Montana  
10 Legislative Assembly.

11  
12 15. Defendant, Treasurer of the State of Montana, is the  
13 custodian of the monies in the Trust and Legacy Fund provided  
14 for under Section 17-2-102(8) M.C.A., which Fund includes  
15 the principal and accrued interest of the Resource Indemnity  
16 Tax trust account, Section 15-38-201 M.C.A.

17  
18 16. Defendant, Department of Revenue of the State of  
19 Montana, is the administrator of the interest accrued from the  
20 Resource Indemnity Trust account, dispersing such interest  
21 monies to State entities in accordance with legislative  
22 directions.

23  
24 17. Plaintiffs and the individual citizens of the govern-  
25 mental Plaintiffs are beneficiaries of the Resource Indemnity  
26 Trust Fund who stand to gain by the proper application of the  
27 Resource Indemnity Trust. They are situated in areas which  
28 have been for years severely and adversely affected by mining  
29 activities and which are in need of massive reclamation  
30 efforts, but which massive reclamation efforts are not  
31 presently being undertaken, largely for lack of funds.  
32 Plaintiffs and the individual citizens of the governmental

1 Plaintiffs are suffering adverse environmental, aesthetic,  
2 health and economic consequences resulting from the  
3 lack of a meaningful reclamation program in their areas.  
4

5 18. Plaintiffs have been deprived of the benefits which  
6 they deserve as beneficiaries of the Resource Indemnity Trust  
7 fund in that reclamation has not been undertaken of lands  
8 vital to the interests of Plaintiffs which have been dis-  
9 turbed and damaged by the taking of natural resources.  
10

11 COUNT ONE

12 19. Plaintiffs reallege the allegations contained in  
13 Paragraphs 1 through 18 above.  
14

15 20. Legislative appropriations of Resource Indemnity  
16 Trust interest monies for purposes other than reclamation of  
17 lands disturbed by the taking of natural resources are made in  
18 violation of the Constitution fo the State of Montana.  
19

20 21. Defendant, Treasurer of the State of Montana, and  
21 Defendant, Department of Revenue of the State of Montana, are  
22 each inherently involved in the disposition of the Resource  
23 Indemnity Trust account interest in violation of the Constitu-  
24 tion of the State of Montana.  
25

26 COUNT TWO

27 22. Plaintiffs reallege the allegations contained in  
28 paragraphs 1 through 18 above.  
29

30 23. The Resource Indemnity Trust is a public trust  
31 established by the Montana Constitution, and the Defendants,  
32 in collecting and dispersing trust funds act in the capacity

1 of trustees which have fiduciary duties to, among others, the  
2 Plaintiffs.

3  
4 24. Defendants, in expending Resource Indemnity Trust  
5 monies contrary to, and in violation of, the purposes for  
6 which the trust was established, and in allowing the trust  
7 fund monies to be commingled with other monies of the State  
8 of Montana, have breached their fiduciary obligations as  
9 Trustees.

10  
11 COUNT THREE

12 25. Plaintiffs reallege the allegations in Paragraphs  
13 1 through 18 above.

14  
15 26. The Montana Resource Indemnity Trust Act, Section 15-  
16 38-101-203 M.C.A., insofar as it purports to authorize  
17 expenditures of Resource Indemnity Trust Funds for purposes  
18 other than reclamation of lands disturbed by the taking of  
19 natural resources, and as applied for the expenditures of  
20 such funds in such manner is unconstitutional and in violation  
21 of Article IX, Sec. 2 of the Montana Constitution.

22  
23 COUNT FOUR

24 27. Plaintiffs reallege the allegations in Paragraphs  
25 1 through 18 above.

26  
27 28. Defendants, in allowing expenditures from the Resource  
28 Indemnity Trust Fund to exceed the total amount of net earnings  
29 available, have violated Section 15-38-202 M.C.A. which  
30 allows expenditures only of the net earnings of the fund until  
31 the balance reaches \$100 million.

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GENERAL

29. Plaintiffs have been compelled to hire the services of an attorney, specifically the undersigned, to rectify the improprieties complained of herein and have, by that reason, have expended and will continue to expend monies for attorney's fees. Plaintiffs are entitled to recover their reasonable attorney's fees so expended under general principles of trust law and because, if successful, Plaintiffs will have benefited other beneficiaries which merits recovery of attorney fees under the common fund theory.

30. The acts of Defendants complained of have resulted in, and continue to cause irreparable injury to the Plaintiffs for which they have no adequate remedy at law or otherwise.

WHEREFORE, Plaintiffs pray that the Honorable Court:

1. Issue a preliminary injunction enjoining Defendants from dispersing funds from Resource Indemnity Trust account interest for purposes so appropriated by the 48th Legislature of the State of Montana for the 1985 Biennium, pending full hearing on the merits.

2. After full hearing on the merits, enter a permanent injunction and a declaratory judgment declaring the acts of Defendants in dispersing Resource Indemnity Trust account interest for purposes other than reclamation of lands disturbed by the taking of natural resources illegally and enjoining Defendants from such misappropriation of such funds in the future.


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3. Award Plaintiffs reasonable Attorney's fees and costs occasioned by the illegal acts of Defendants.

4. Provide such other relief as is appropriate under the circumstances.

DATED This 24<sup>th</sup> day of August, 1983.

GOETZ, MADDEN & DUNN, P.C.  
35 North Grand Avenue  
Bozeman, Montana 59715  
(406) 587-0618

By   
James H. Goetz  
Attorneys for Plaintiffs

NAME Louise Runz

BILL NO. HB 913

ADDRESS 109 LAWRENCE

DATE 1/15

WHOM DO YOU REPRESENT MT. Hood Income

SUPPORT  OPPOSE  AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: We support HB 913 - it will create jobs while reclaiming damaged lands. We ~~also would like to suggest~~ an amendment that would earmark a portion of the monies allocated for employment be earmarked for the long term unemployed + those eligible for general assistance. I have no written amendment but would

refer you to SB 277 page 9 Sec. 6 - line 22

# NORTHERN PLAINS RESOURCE COUNCIL

Field Office  
Box 858  
Helena, MT 59624  
(406) 443-4965

Main Office  
419 Stapleton Building  
Billings, MT 59101  
(406) 248-1154

Field Office  
Box 886  
Glendive, MT 59380  
(406) 365-2525

Madam Chairwoman and members of the committee, I am Jeanne-Marie Souvigney, with the Northern Plains Resource Council. We come today to support HB 913.

Essentially, HB 913 funds the same types of projects as SB 277, which you already heard and passed to the House. The difference between the two, and the reason we would prefer HB 913, is illustrated on this graph, and quite simply boils down to the sources of funding and priority system.

You will remember that much of the testimony on SB 277 was in support of the bill, but most supporters offered amendments to narrow the scope of activities in the program, wishing to tie those activities pretty closely to the source of funding, namely, a resource indemnity tax, a tax to indemnify the state for the extraction of nonrenewable resources. However, the scope of SB 277 was not narrowed.

Under HB 913, instead of using just RIT interest to fund some of the non-mineral-related projects included under the program, such as weeds and soil and water conservation, the program would also receive coal tax proceeds that have been going to water program and renewable resources projects. It seems only fair that if we're going to include such projects, we should also include the historical funding for such projects.

HB 913 puts all the water projects under one program, so that applicants know where to apply for funding. It also guarantees that at least some percentage of the funds will go to each of the areas within the bill, such as water, or mineral reclamation and research, and allows projects within each category to compete with projects in the same category.

Thank you for your consideration of HB 913. We hope that you will approve the bill.

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 22

DATE 031585

BILL NO. HB 913

TESTIMONY OF THE MONTANA MINING ASSOCIATION  
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE  
ON HOUSE BILL 698

March 18, 1985

Mr. Chairman, members of the committee:

For the record, my name is Gary Langley. I am executive director of the Montana Mining Association. The Montana Mining Association is a trade association that represents 1) Every major producer of hard-rock minerals in Montana; 2) Companies that hope to operate mines in Montana in the future; 3) Individuals with an interest in mining, and 4) Companies that supply goods and services to the mining industry.

The Montana Mining Association neither supports nor opposes House Bill 698.

House Bill 698 represents a compromise between the Northern Plains Resource Council and the Montana Mining Association.

The Montana Mining Association believes House Bill 698 is unnecessary because mining companies already are meeting its provisions. The requirements in House Bill 698 duplicate administrative rules and regulations enforced by other state agencies. We caution that the provisions in House Bill 698 are implemented with care to avoid confusion and conflicts with existing regulations. In addition, House Bill 698 will allow individuals who believe they have been aggrieved by a mining operation to take administrative action against that company.

In the last decade, the mining industry has faced strict regulatory proposals in nearly every session of the Legislature. House Bill 698

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 5

DATE 031885

HB698



represents yet another layer of regulation on an industry that faces the most restrictive requirements in any state in the nation.

Modern mining in Montana operates in respect to laws and regulations that were designed to protect Montana's environment. The people who produce minerals are just as concerned with sound environmental practices as those who pass the laws and enforce them.

As a second generation Montanan, I am concerned about our state's environment. But I also want to see development of our mineral resources with the jobs the mining industry provides and the taxes it pays. For years, I hunted elk near the site where a mining development will be in operation within the next few years at Jardine. Those elk are still there to day and will be for many years to come. Given an acceptable state policy, mineral resources will be developed at Jardine and elsewhere with social and environmental concern.

In his state of the state message, Gov. Ted Schwinden referred to a Chicago Tribune reporter who had recently visited our state.

"Montana wants the best of both worlds," the reporter wrote, "More jobs and better business without endangering the mountain wilderness, the clear trout streams, the clean air under the big sky."

Montana will have the best of both worlds and the mining industry-- which is just as basic to our state as scenic beauty, harvesting timber, growing wheat or raising cattle--will contribute.

But the mining industry will thrive only if it is spared regulatory duress. I sincerely hope this compromise, reached in good faith between individuals that care deeply about Montana, will represent the final restrictions placed on the mining industry. Otherwise, those of us who produce minerals in Montana will be forced to question the sincerity of those who have promoted House Bill 698.

Gary A. Langley  
Executive Director  
Montana Mining Association