

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 18, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Tom Jones on February 18, 1987, at 12:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

EXECUTIVE SESSION

The committee began the meeting by starting with Executive Action before hearings began at 12:30 p.m.

HOUSE BILL NO. 718: Rep. Kadas moved HB 718 DO PASS. Question was then called, the motion CARRIED unanimously.

HOUSE BILL NO. 677: Rep. Smith moved HB 677 DO NOT PASS. Rep. Kadas made a substitute motion to TABLE HB 677. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 729: Rep. Kadas moved HB 729 DO PASS. Rep. Roth stated he would like to have the amendments considered in two groups, those being No.2 and No.10 together, because these deal with the effective date. The remaining amendments change the word "hearing" to "meeting", and he does not think these amendments are necessary. He then moved the No.2 and No.10 amendments DO PASS.

DISCUSSION

Rep. Addy spoke against the amendments stating he feels this is one of those bills that's here because they have a problem now, and when those people are not satisfied with those procedures, they feel they should have been entitled to, and he doesn't know if the problem is as severe as it seemed to be by the people in the neighborhood, but by not giving them the option, you just leave it all up to whatever their imaginations can conjure up.

REP. SIMON spoke in favor of the motion, stating he's attended these meetings, and a number of people were there, and he felt the issue was very carefully explained to them, and we do have a problem that people see we are passing this material, and immediately conjure up some very frightening things, and he felt that the hearing was very fair, lasting about three hours with informational exchange back and forth. He feels it's certainly the spirit of this

particular act that's been provided for at least the Billings facility, if not for the Butte facility, and he sees no reason to bring this in as an immediate effective date and force that facility to go through another process.

QUESTION was then called on the No. 2 and No. 10 amendments only. The motion CARRIED, with Rep. Addy, Peterson, Cobb, Raney and Cohen voting NO.

REP. ROTH stated he did not want the rest of the amendments even considered and Hugh stated this doesn't take a formal motion, they merely leave them unconsidered. Rep. Kadas moved HB 729 DO PASS AS AMENDED. Question was called, the motion CARRIED unanimously. Rep. Cobb moved the Statement of Intent DO PASS. Question being called, the motion CARRIED unanimously. See Standing Committee Report and attached statement of Intent.

HOUSE BILL NO. 642: Rep. Kadas moved HB 642 DO PASS. He distributed amendments (Exhibit 1). He then moved the amendments to the bill. The committee suggested taking the amendments in two different groups as outlined. Rep. Kadas then moved the Kadas I amendment. Question was called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-6.

REP. KADAS then moved the Kadas II amendment. He explained this amendment would mean these people have to pay everything in order of time. He feels this is the fairest way, and he feels we should just keep the order the way it is rather than getting in there and start to monkey around with things, and letting the Board monkey around with things. We shouldn't be changing the rules in the middle of the game.

REP. COBB stated he does oppose the amendment, and feels they should be allowed some leeway there to monkey around with the terminology, and there should always be some leeway left in which this can be done.

REP. PETERSON asked how could this be written in the bill, so we don't give them all that leeway, however, a range they might, in certain instants, take into consideration, if necessary.

REP. COBB stated you really can't compromise; you must either give them complete leeway or give them nothing at all.

QUESTION was called on the Kadas amendment, the motion FAILED, on a 9-9 tie vote by a show of hands.

REP. SIMON moved to amend the bill on page 20, line 18 strike new section 10, this being the repealer section. He feels it would not be that big of a problem for us to take a look at those reservations. He stated there is nothing wrong with taking a look at some of the projects, and he feels this is classified as a "sleeper" in the bill, and he stated he would merely like to put the "sleeper" to "sleep".

QUESTION BEING CALLED, THE MOTION CARRIED unanimously.

REP. KADAS moved the technical amendment. The committee stated they had just taken care of this, by removing the repealer section. Rep. Kadas stood corrected and withdrew his motion.

REP. COBB moved HB 642 DO PASS AS AMENDED. Question being called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-7.

CHAIRMAN JONES had to be excused to present a bill in another committee, so handed the gavel over to Vice-Chairman, Clyde Smith. Rep. Smith then closed Executive Session and opened the hearings at 12:30 p.m.

HOUSE BILL NO. 775: Rep. Gary Spaeth, District No. 84, sponsor, stated this bill at the request of the Department of Natural Resources. The bill transfers the water resources project engineering division in the Department of Natural Resources from DNRC to the Department of State Lands, and what that division does is handle the different numerous water projects from around the state that are owned projects and as far as administrative cost, engineering and other related items. Instead of your constituents going to what they may refer to as the old water board, they will now be going to the Department of State Lands and the Board of Natural Resources. The basic theory and reason behind doing this, is that the DNRC is involved in the adjudication process and the verification under that adjudication process, but they are also a holder of major water rights in the State of Montana, and there may be a potential conflict of interests as a result of being a waters right holder and being involved in the verification process, and that is why the bill is being introduced.

PROPOSERS: LARRY FASBENDER, Director, Department of Natural Resources and Conservation, stated this bill is very simple, and would like to add one thing, that this is not an attempt at empire building on the Department of State Lands, this was the intent of our problem that we thought we had relating to conflict. He stated whether or not that conflict rises to the level where it would challenge in court, as far as they are concerned, they don't really think it

does that, but because of the confusion of conflict there, we thought it was important to resolve that conflict and because State Lands is a land management function agency, when looking at the total scheme of things, it works out well to transfer them over there. He urged the committee to give favorable consideration to this bill.

DENNIS HEMMER representing the Department of State Lands stated they do support the bill. He emphasized that they have discussed this with the Department of Natural Resources, and feel this is the appropriate thing to do. He urged the committee to support this bill.

OPPONENTS: Rick Bondy, Chief of Engineering Bureau, for the Department of Natural Resources stated he does oppose this bill because he has difficulty seeing that this is a problem, and he asked the committee to consider the magnitude of conflict that may be involved. He feels that they should try to maintain the status quo.

NO FURTHER OPPONENTS

REP. KADAS asked Mr. Fasbender if there will be any money saved with this bill resulting from the transfer.

MR. FASBENDER stated the change has nothing to do with money. It would merely serve to resolve the conflict of interest. There is no dollar benefit for the State from the transfer.

REP. ASAY asked Mr. Bondy what the advantage of this bill would be to his division.

MR. BONDY stated it would merely give them more competent direction, which they feel is adequately existing right now.

REP. ASAY then asked Larry Fasbender what advantages will be gained from this.

MR. FASBENDER stated it would serve to resolve challenges in court, involving basic conflicts of interest, if in fact, it did go that far. It would also serve as a better land management function for the Department of State Lands, which would in essence, manage for the Department of Natural Resources.

IN CLOSING, Rep. Spaeth stated he doesn't think we are looking at any economic implications by this bill, and he doesn't think we need to worry that much about the disruption of this move, mainly because we are talking about involving many people for a long period of time, as far as the disruption is concerned. He stated the reason we have

to look at it, is the adjudication process. The Department is involved in this process as far as verification of water rights, and are called upon in several situations by the water court to go out there and investigate different water rights. He stated the Department has become an arm of the court, assisting and assuring in the whole verification process, and also at the same time, in the engineering bureau of the Department, you have people that are managing water projects out there that have substantial water rights in the State. It brings up a very interesting question, and whether it's a big or little question, we have to go through the process and determine whether there is any conflict of interest or not. He urged the committee to look favorably on this bill.

HEARING CLOSED ON HB 775

HOUSE JOINT RESOLUTION NO. 30: Rep. Earl Lory, District No. 59, stated this is a very simple resolution on behalf of the University of Montana. MCA 18-2-102, says that anytime the university system wishes to make any construction in the excess of \$25,000 they must get legislative approval. But it also says that in the event there is no appropriate money for the construction, it may be done by a Joint Resolution, and that is what this resolution does. The University of Montana wishes to put in a well so they can have their own water system. At the present time, they are supplied by Mountain Water System, however, they can make a principle savings if they put in their own water system. That would entail drilling a well which would not interfere with the groundwater, because all water from Missoula is obtained from wells, so they would just be going to draw from their own well rather than from Mountain Water. The project would cost around \$300,000 and the University would borrow this money, with the savings approximately \$76,000 and pay off time is about four and a half years. In order to do this, they do need this Joint Resolution and he urged the committee to give this a "do pass."

PROPOSERS: Bill Lannan, who has worked with the Board of Regents and the Commissioner of Higher Education, stated the Board of Regents has a policy that requires the campuses, if they are seeking a building project more than \$25,000, they must get legislative approval, and he stated that is the reason for the Resolution. He urged the committee to support its passage.

GLENN WILLIAMS, a Missoula resident, stated his support for HJR 30, commenting it will save a substantial amount of money.

NO OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

REP. ASAY moved to go into Executive Session on this Resolution at the present time. Vice-Chairman Smith has no objections to this. Rep. Asay moved HJR 30 DO PASS. Question being called the motion CARRIED unanimously. Rep. Lory closed by graciously thanking the committee.

HEARING CLOSED ON HJR 30.

HOUSE BILL NO. 746: Rep. Ray Brandewie, District No. 49, stated this is a simple bill, however, a much needed bill that is long overdue. HB 746 addressed licensing of on-site sewage treatment systems, and addresses the use of alternative systems, because there are good alternate systems out there that are available. It allows for the county to look at those and to license and monitor the operation of those systems. He stated he does have proponents here that know more about these systems who will explain, and asked if co-sponsor, Rep. Cohen could close on the bill for him, if the committee had no objections. He was required at another meeting.

PROPONENTS: DON ALLEY, representing Northwest Trout Unlimited stated they have made a lot of progress in this area in the last several years. He stated he felt this bill would also serve to help bring new treatment systems into affect, and by doing this, would in turn, replace many old septic systems that are inadequate and do not meet the necessary requirements.

MARK SPRATT, a hydrologist from Kalispell submitted a handout to the committee (Exhibit 2). He stated this is a drawing of the conventional system most people have. He stated if these systems are properly maintained, they will work well for an extended period of time. He stated HB 746 would enable people to update and obtain these systems, so they themselves would eventually be able to maintain them. He thinks this is a long overdue problem that is addressed in this bill, and urged the committee to support the passage of HB 746.

DEL LEONARD, a Whitefish resident, stated he thinks this is a needed bill for many people, and feels there is a degree of ignorance with some people, who actually think these systems require no inspections. He felt this would be a way of informing the people out there that are interested in learning about maintaining their systems and he urged the committee to give this bill as "do pass."

GEORGE OCHENSKI representing the Montana Environmental Information Center stated they do support this bill, and see

this as a way of informing people about their particular systems. He urged the committee to support this legislation.

STAN BRADSHAW representing Trout Unlimited submitted testimony (Exhibit 3). He stated HB 746 addresses a long-standing problem that current law has simply been unable to satisfactorily address. Old, existing systems which were constructed before there was any minimum criteria, have in many cases caused problems with ground and surface waters. Likewise, systems which have been properly permitted, but which have not been properly installed, have resulted in ground and surface water contamination. Under current law, there is simply no way to keep track of the performance of existing systems. HB 746 would provide a method of monitoring existing systems and upgrading them when necessary to protect ground and surface water. T. U. supports the bill and asks for the committee's support as well in passing HB 746.

NO OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

IN CLOSING, co-sponsor Rep. Ben Cohen, stated he feels in some instances, the alternative systems will be the only solutions and the counties have been real reluctant to allow these alternative systems to be used, again, because of vagueness of the rules. He stated the concerns addressed by Trout Unlimited had been addressed and he stated there are amendments coming, however, they are still being final drafted. Finally, if the committee feels that the language in here is mandating all counties to establish an on-site licensing system, it was felt they should have language that would make it possible for the counties to choose whether or not to establish an on-site licensing system, and we would only ask to mandate the on-site licensing if the county is going to allow the placement of alternative systems. He stated if they are going to allow these systems, he feels it is important that you go out and have some kind of monitoring for these systems. He urged the committee to support this bill.

HEARING CLOSED ON HB 746

HOUSE BILL NO. 750: Rep. Bob Gilbert, District No. 22, stated this bill is an act revising the employee Community Hazardous Chemical Information Act relating to the act under federal laws and specify the application of the act as distributed. He stated this act does three things; it clarifies that the act does not cover sealed containers of hazardous chemicals at a distributorship. He stated there

has been much confusion about whether or not distributors are in fact covered by the act. They are not specifically mentioned, although retailers are exempt from this act; it specifies that an employer with the work place is to provide federal hazard communication standards and shall be considered in compliance with the Montana Right-to-Know Act; finally, it replaces Montana's Community Right-to-Know provision with the new Federal Emergency Right-to-Know. He stated we have no funding for the Montana Right-to-Know Act and there is no agency in charge. No one is reporting the violations by amending this law. He stated Hugh Zachheim drafted this bill for him, and complimented Hugh on his expertise on this subject. Hugh was invited to attend the EPA Conference in Washington, D.C. and they invited only those people in the states that they considered most knowledgeable about this area. Rep. Gilbert request he be allowed to testify, because he was so knowledgeable about the bill.

PROPONENTS: HUGH ZACKHEIM, a member of the Environmental Quality Council submitted a summary of the Federal Superfund Reauthorization Act that was passed in October of last year. (Exhibit 4). He stated it does set up the new federal law called the Emergency Planning and Community Right-to Know Act. He stated the way this will work, is that the federal program has become a free standing law by instilling the Superfund Program and Congress has required the Governors in each state to establish a Statewide Emergency Planning Commission. At the same time, the Governor must appoint any local emergency planning committees. These committees are to develop and facilitate the implementation of emergency response plans with participation of facilities who produce, use, or store extremely hazardous substances. This then replaces, in the bill, the current Montana law which requires employers to record those hazardous chemicals to the County Clerk and Recorder. As Rep. Gilbert had stated, there has not been a lot of compliance with that provision of the act. Hugh stated it's important to note one thing that Congress did, including this program for EPA, has directed EPA to determine what chemicals are of community concern.

TOM LAGREE representing the Mountain Bell Telephone Company, stated they are in support of this act because it clarifies some of the cumbersome parts of the Montana Right-to-Know Act. He pointed out, they are not trying to avoid compliance with any of these acts, and urged the committee to support this act.

BEN HAVDAHL representing the Montana Motor Carriers Association stated they are in support of this act with the proposed amendments by the sponsor.

RAY BLEHM, State Fire Marshall, stated he does support this act, and feels it is very important for the community to have that right to know. He urged the committee to support HB 750.

ART WITTICH representing the Montana Power Company stated their support for this act, stating they felt the old system was much too costly and ineffective.

OPPONENTS

George Ochenski representing the Montana Environmental Information Center stated they don't support this act. He stated it's painful to listen to these people bad mouth the Right-to-Know law, when the feds felt it was so good, they copied it almost word for word. Now, they have decided these community right-to-know provisions are a great idea, however, they also copied one of our mistakes. They have not funded this federal Right-to-Know provision, therefore, there is no one out there to carry out the provisions of this act. He stated the Governor does not have an appropriation to do it. So, there are some questions as to whether or not, in fact, we are going to have an effective Community Right-to-Know Act, if this bill passes. If we do, and the Governor appoints these people and if there are local committees to know this information, then we do not have a problem and there is no need to duplicate the efforts. However, he will change his testimony from a opponent to a non-opponent, if in fact, this act does not become law, until the provisions of the federal Right-to-Know act are carried out by this state. If we do this, that will be fine, then we will have what we need. If we don't do this, then all we are doing is gutting our law and waiting for the feds. He thanked the committee for the time to testify.

NO FURTHER OPPONENTS

REP. ADDY asked Rep. Gilbert if he had discussed this with Rep. Driscoll, who was the one to carry the right-to-know bill in the first place, and wondered how this came out.

REP. GILBERT stated he did not discuss this with Rep. Driscoll.

IN CLOSING, REP. GILBERT stated he does have an amendment, stating that in drafting the bill they accidentally made an error. These amendments are necessary to clarify the federal distributor and not the chemical transporter are responsible for distributing the safety sheets and this is existing practice under most state and federal laws which apply to transporters, and would also be responsible for the safety as these are distributed. He stated he didn't intend

for this, it was merely an error in the drafting of the bill. He urged the committee to look favorable on HB 750.

HEARING CLOSED ON HB 750.

HOUSE BILL NO. 770: Rep. Al Meyers, District No.53, sponsor, stated he would quickly introduce the bill, and stated he does have some people who are much more knowledgeable about the bill than himself, who will tell you what the bill does. He stated HB 770 essentially does two things; it simply expands the authority of the Water Rights Compact Commission to do something that they haven't been able to do up until now, and secondly, it would authorize the Joint Board of Control to negotiate for and on behalf of a group of irrigators who are now excluded from this, and these irrigators do have reserved water rights, because many years ago, the water rights were reserved for their use by the federal government.

PROPOSERS: Dan Hogan, an attorney from Helena, who represents the Joint Board of Control and submitted testimony (Exhibit 5). He stated HB 770 has a dual purpose; first, it specifically authorizes the Montana Reserved Water Rights Compact Commission to negotiate with other representative public entities or corporations concerning (a) non-Indian federal reserved water rights, (b) water rights which have their origin in federal reserved waters or (c) water rights approved by the United States Secretary of the Interior. The second purpose of the bill is to specifically authorize Joint Boards of Control established under state law to negotiate on behalf of irrigation districts and their individual members on matters related to non-Indian federal reserved water rights, federal water rights which have their origin in federal reserved water or water rights which have been approved by the U.S. Secretary of the Interior. This legislation is supported by the Joint Board of Control.

CHUCK STIPE, member of the Flathead Irrigation District, stated his support for this bill, emphasizing the negotiation process is important, and urged the committee's support for HB 770.

JO BRUNNER, Executive Director of the Montana Water Development Association, submitted testimony (Exhibit 6). She stated the Water Development Association strongly supports HB 770. Many of their members are irrigation district members and feel this bill would be much to their advantage. She urged the committee to support the passage of HB 770.

OPPOSERS: RICHARD WHITESELL, Billings Area Director, Bureau of Indian Affairs submitted testimony (Exhibit 7). He stated the Bureau of Indian Affairs is aware of and

sensitive to the needs and interests of current water users within the exterior boundaries of Indian reservations. They recognize that water availability may very well depend upon a water users priority date. The real concerns of non-Indian asserting some reserved water rights, lie not with identification and quantification of their rights; but, rather the quantification of the federal or Indian reserved right and their subsequent administration. They believe the current compacting statutes are sufficient in addressing these concerns. Further, if the compacting statutes are amended, the result will be the addition of one or more negotiating entities. The Bureau believes there is a more logical and practical solution of identifying and quantifying reserved rights affecting non-Indians. Non-Indian water users can be given the opportunity to present and discuss with the Department of the Interior, the quantification of their water rights before serious negotiations of federal or reserved rights begins. In addition, these same water users are free to meet with or make their concern known to the Montana Reserved Water Rights Compact Commission. He stated we strongly urge the committee to defeat the bill.

DUE TO THE TIME LIMIT, THE REST OF THE OPPONENTS WERE ASKED TO SIMPLY STATE THEIR NAME, AND HAND IN WRITTEN TESTIMONY IF THEY HAD IT AVAILABLE.

MICHAEL PABLO, member of the Kootenai Tribes, submitted testimony in opposition to HB 770. (Exhibit 8).

CLAY SMITH on behalf of the Attorney General stated they do oppose this bill, and strongly urged the committee to not pass HB 770.

RICHARD REAL BIRD, Crow Tribal Chairman, submitted testimony in opposition to HB 770. (Exhibit 9).

CHRIS TWEETEN, Assistant to the Attorney General and Vice-Chairman of the Compact Commission stated he is here today neither as a opponent nor a proponent, because the Commission has not taken a formal position on this bill. He merely stated he is here and available for any questions that the committee may have.

NO FURTHER OPPONENTS

REP. ASAY asked Mr. Tweeten if the result of these negotiations will result in the water rights being owned by the tribe or by the interested landowners and wondered what the situation will be.

MR., TWEETEN stated that depends very much on the circumstances. The individual landowners own the water rights

that they are entitled to under federal or state law, and he felt the Compact Commission would not be willing to change that. What the compacts that they negotiate with the tribes and federal entities do, is portion waters between, or quantify, in essence, the amount of water that the federal reserve right includes. It will not make any difference in terms of how that water is apportioned among the non-Indian landowners on the reservations and the problem members on the reservation.

REP. ASAY asked him how will this adversely affect the negotiations if these people are allowed to participate.

MR. TWEETEN stated this is a good question, however, they do not know what the affect of this legislation will be on the negotiations. If the tribal members are to be taken for their word, as they testified, it's going to have some affect on their attitudes at the negotiating table, in terms of how willing they are going to be to negotiate. However, at this point, he doesn't know if this could be a serious problem or not. He pointed out, that there are a lot of impacts in this bill, they cannot pinpoint, therefore, they don't know if there will be detrimental affects or not.

REP. MILES stated that one of the people that testified brought up an interesting point, in that there must be other non-Indian groups or non-Indian interests, not just the irrigators, and she wondered as a Compact Commission if they were suppose to be taking into account all of these different interests.

MR. TWEETEN stated the Compact Commission has entered into negotiations with the understanding they are representing the interests of the state of Montana. They understand, that through the legislative process, whatever they negotiate is going to be studied by the scrutiny of this legislature, and is going to have to pass muster to all the people that are interested in compact, and they have the opportunity at that point to make their objections. The Commission tries to anticipate those problems and tries to take them into consideration during the course of the negotiations, but he feels the Fort Peck Compact, as an example, shows that we can do this quite effectively. He stated he is not aware of any specific questions that have been raised by the non-Indian water users on the Fort Peck Indian Reservation or in the disposition of the rights that were made in that compact.

REP. MEYERS closed by stating he felt they had heard some good testimony and urged the committee's recommendation of HB 770.

HEARING CLOSED ON HB 770.

HOUSE BILL NOS. 760 AND 777: Rep. Kadas, District No. 55, stated he is carrying the bills for Rep. Ream who was called away on an emergency and was unable to introduce the bills. Rep. Kadas stated the bills will be done both at the same time, because they are inter-related bills, and he indicated the Department is here and can walk the committee through the bills.

KATHRYN ORR, attorney for the Department of Health, submitted a set of handouts to the committee (Exhibit 10). She stated she would explain the interrelationship between the bills. HB 777 provides for use of RIT interest income to pay for Montana's portion of RCRA enforcement activities and CERCLA or Superfund clean-up and litigation costs. Almost all of the money here serves as a leverage for substantial federal contributions toward preservation of state natural resources. HB 760 is a bill which gives the Board of Examiners the authority to issue bonds, which the Department has deemed to be the most money saving device for raising money which the state may be required to pay in the form of matched money for clean-up costs for the Superfund sites that exist in Montana. In short, HB 760 is more of a house-keeping bill, that is necessary, that the Legislature has to provide and consent for any sort bonding, and the bonding is done by the Board of Examiners and that is by two thirds vote of each House. She stated therefore, what we have is revenue sources that go into a certain account called the Hazardous Waste CERCLA Account, and then ways that those monies may be spent. The bill says that up to one half of the 12% of the RIT interest money would be expended for hazardous waste underground, storage tank, the division of administration, Emergency Investigation for CERCLA Listing and she emphasized that most of the costs throughout the bill, are a spending leverage mechanism. She then explained the charts in detail to the committee and made herself available for any questions the committee may have.

VIC ANDERSON representing the Department of Health, stated they do support these companion bills and he urged the committee to support passage and approval.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support these bills, and he pointed out to the committee, that without them, this in fact, does take away any leverage we may have regarding the clean-up of hazardous waste. He urged the committee's support of HB 760 and HB 777.

HOWARD JOHNSON, Coordinator of the Clark Fork River Basin Project in the Governor's office, submitted testimony

(Exhibit 11). He stated these bills provide the State of Montana with the matching funds necessary to clean up certain Superfund sites in the Clark Fork River Basin and in other areas of the state that have been contaminated by hazardous waste. The bills dedicate 6% of the RIT interest earnings to a special Superfund trust to be used as state match when no responsible party can be found or when the state and EPA deem it necessary to commence clean-up before final negotiation with the responsible party can be concluded. The Governor and I believe that such a use of the RIT fund is exactly what the legislature anticipated when they passed the act. He urged the committee's support of these bills.

RON MARCOUX representing the Department of Fish, Wildlife and Parks, stated their department does support these bills and he urged the committee to give them a "do pass."

JOHN WARDELL, Director, U.S. Environmental Protection Agency, Region VIII Montana Office, submitted testimony (Exhibit 12). He stated he was not going to read through his testimony, however, he hoped the committee would consider his written testimony, and urged the committee to support HB 760 and HB 777.

JEANNE-MARIE SOURIGNEY representing the League of Women Voters and the Montana Sierra Club, stated both organizations support the passage of HB760 and HB 777.

STAN BRADSHAW representing Trout Unlimited submitted testimony (Exhibit 13). He stated TU supports HB 777 for two reasons: First, it focuses resources on remedial actions. Second, it recognized the need to support litigation initiated under CERCLA to assure adequate clean-up of hazardous wastes. These two areas of endeavor are at the heart of CERCLA - the recovery of the state's natural resources from the crippling effects of hazardous waste deposition in the state. Because of the tremendous benefits that it represents for the people of Montana, the State Council of Trout Unlimited urges the committee to give a "do pass."

NO OPPONENTS

REP. ASAY stated the only real question was, what is the shape of the RIT fund, and he stated he felt this should probably be addressed by the Appropriations Committee. He then asked if this is where this bill is going, in fact, to the Appropriations Committee.

GEORGE OCHENSKI stated the lead piece of legislation as the Governor mentioned in his State address, is the 6% he is planning on adding on top of the other 6%, and should be

included in his budget. Whether or not he gets it will in fact, be up to this legislative body. He stated the interest is certainly being generated and the money is there to do this.

NO FURTHER QUESTIONS FROM THE COMMITTEE

HEARING CLOSED ON HB 760 AND HB 777.

EXECUTIVE SESSION

HOUSE BILL NO. 760 AND HB 777: Rep. Kadas moved HB 760 and HB770 together as a pair, DO PASS. Rep. Simon stated he felt it was out of order to move both bills together and felt they needed to act on them separately.

REP. RANEY moved HB 760 DO PASS. Question being called, the motion CARRIED unanimously. REP. RANEY then moved HB 777 DO PASS. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 750: Rep. Asay moved HB 750 DO PASS. Rep. Smith then moved the amendments, and asked Hugh to explain. Hugh stated the amendments to HB 750 deal with section 1, the concern expressed was in the language as it appears before you in the bill, and would indicate that chemical transporters also are responsible for passing along material safety data sheets, rather than just distributors. The amendment would amend subsection (f) to read as follows: "the provisions of this chapter do not apply to steel containers of hazardous chemicals", sub (1) would be the language as the existing bill before it came to the committee, "during transportation or while in storage in transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals" and would then go on to sub (2). He stated again, the clarification would indicate the only person in that subsection responsible for distributing the chemical data sheet is the distributor, not the transporter. Question was then called on the amendments, the motion CARRIED unanimously.

REP. COHEN then moved the amendment by Mr. Ochenski and he explained it to the committee. Rep. Cohen stated it reads: "the site becomes effective upon implementation of the Federal Emergency Planning and Community Right to Know Act by the State of Montana." He stated that coordinates this bill with the federal bill. He then suggested perhaps changing this language slightly, and left it up to Hugh for the exact language.

QUESTION was then called on the amendment. The motion CARRIED unanimously.

REP. KADAS moved HB 750 DO PASS AS AMENDED. Question being called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-5.

HOUSE BILL NO. 775: Rep. Harper moved to TABLE HB 775. Question being called, the motion CARRIED, with Reps. Addy, Cobb, Raney and Grady voting NO.

HOUSE BILL NO. 770: Rep. Meyers moved HB 770 DO PASS.

REP. RANEY stated he has a problem with the bill, and felt it was ten times above what he could comprehend, and felt to bring such a major issue, such as this, this late in the session, he stated is a bad idea. This kind of a bill, should have been introduced sooner, because it should have had more time for discussion. The hearing was so pressed for time today, he felt the time limit on questions and discussion was so limited, how could they expect to make a good decision on this bill.

REP. ADDY stated that he agrees with Rep. Raney and stated this bill involves billions of dollars which will throw a monkey wrench into the negotiation process, which one side of the negotiating bargaining table told us it would. He stated he has a very tough time dealing with this major bill, at this late date in the session.

REP. RUSSELL, then offered a substitute motion to TABLE HB 770.

REP. ASAY stated this is an important bill, and feels it got a "hurry up" hearing, and stated it's too important to give it a "hurry up" Executive Session.

REP. SMITH stated the only way they can postpone the bill, is to have Rep. Russell withdraw her TABLE motion, and could postpone the bill for the day. Rep. Russell stated he would not withdraw her motion to table the bill.

REP. SMITH stated a nondebatable motion was on the floor, to TABLE HB 770.

QUESTION WAS THEN CALLED, THE MOTION FAILED 10-8.

REP. MEYERS THEN MADE A MOTION TO POSTPONE THE BILL UNTIL FRIDAY. QUESTION BEING CALLED, THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT: There being no further business, the meeting was adjourned at 3:05 p.m.



TOM JONES, Chairman

DAILY ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEB 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	X		
CLYDE SMITH, VICE CHAIRMAN	X		
KELLY ADDY	X		
TOM ASAY	X		
JOHN COBB	X		
BEN COHEN	X		
ED GRADY	X		
JOHN HARP	X		
HAL HARPER	X		
MIKE KADAS	X		
AL MEYERS	X		
JOAN MILES	X		
MARY LOU PETERSON	X		
BOB RANEY	X		
RANDE ROTH	X		
ANGELA RUSSELL	X		
BRUCE SIMON	X		
BILL STRIZICH	X		
STAFF: EQC HUGH ZACKHEIM			

STANDING COMMITTEE REPORT

FEBRUARY 13

19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 718

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

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STANDING COMMITTEE REPORT

FEBRUARY 19

19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES
report HB 729

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. TOM JONES

Chairman

1. Title, line 7.

Strike: "IMMEDIATE"

2. Page 5, line 5.

Strike: "on passage and approval"

Insert: "July 1, 1937"


FIRST

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STATEMENT OF INTENT

Bill No. 729

It is the intent of the legislature that the department of health and environmental sciences adopt rules to specify that the public hearing requirements provided for in section 1 apply to the owner or manager of a proposed commercial facility for the storage, collection, or transfer of hazardous waste. It is the intent of the legislature that the rules apply equally to facilities subject to permitting under 75-10-406 and to facilities exempt from permitting by virtue of operational characteristics.

STANDING COMMITTEE REPORT

FEBRUARY 19

19 37

Mr. Speaker: We, the committee on

NATURAL RESOURCES

report **SB 642**

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

1. Title, line 17.

Following: "DEADLINES"

Insert: "FOR RESERVATIONS BELOW FORT PECK DAM"

2. Page 13, line 23.

Strike: "1991"

Insert: "1989, except that applications for reservation of water below Fort Peck dam must be filed no later than July 1, 1991"

3. Page 14, line 3.

Following: "(3)"

Insert: "(a)"

Strike: "1993"

Insert: "1991"

4. Page 14, line 5.

Strike: "1991"

Insert: "1989"

5. Page 14, line 6.

Following: "basin"

Insert: "above Fort Peck dam"

6. Page 14.

Following: line 6

Insert: "(b) Before December 31, 1993, the board shall make a final determination in accordance with 35-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam.

(c) The board shall determine which applications or portions of applications are considered to be above or below Fort Peck dam."

7. Page 20, lines 18 and 19.

Strike: section 19 in its entirety

Renumber: subsequent sections



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STANDING COMMITTEE REPORT

FEBRUARY 18

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report SJR 30

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

FIRST reading copy (WHITE)
color

STANDING COMMITTEE REPORT

FEBRUARY 20

19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 760

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

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STANDING COMMITTEE REPORT

FEBRUARY 20

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 777

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

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STANDING COMMITTEE REPORT

FEBRUARY 29

19 87

Mr. Speaker: We, the committee on

NATURAL RESOURCES

report **HB 750**

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

RFP. TOM JOHNS

Chairman

1. Page 2, line 5.

Following: "chemicals"

Insert: "(i)"

2. Page 2, line 7.

Strike: "or" through "distributor"

3. Page 2, lines 9 and 10.

Strike: "distributes" on line 9 through "and" on line 10

4. Page 2, line 11.

Following: "chemicals"

Insert: "or (ii) at a facility of a distributor, so long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-73-203(1)"

5. Page 6, line 16.

Strike: "passage and approval"

Insert: "implementation of the provisions of the Federal Emergency Planning and Community Right-to-know Act of 1986 in Montana"


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KADAS I.

1. Title, line 17.
Following: "DEADLINES"
Insert: "FOR RESERVATIONS BELOW FORT PECK DAM"
2. Page 13, line 23.
Strike: "1991"
Insert: "1989, except that applications for reservations of water below Fort Peck dam must be filed no later than July 1, 1991"
3. Page 14, line 3.
Following: "(3)"
Insert: "(a)"
Strike: "1993"
Insert: "1991"
4. Page 14, line 5.
Strike: "1991"
Insert: "1989"
5. Page 14, line 6.
Following: "basin"
Insert: "above Fort Peck dam"
6. Page 14.
Following: line 6
Insert: "(b) Before December 31, 1993, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam.
(c) The board shall determine which applications or portions of applications are considered to be above or below Fort Peck dam."

KADAS II.

1. Title, lines 15 through 17.
Strike: "SUBORDINATING" on line 15 through "AND" on line 17
[Following: "DEADLINES"
Insert: "FOR RESERVATIONS"]
NOTE: Bracketed material above not necessary if the first set of amendments (1 through 7) is adopted.
2. Page 14, lines 8 through 13
Strike: "If" on line 8 through "reservation." on line 13

TECHNICAL AMENDMENT

1. Title, line 18.
Following: "RIGHT;"
Insert: "ELIMINATING THE REQUIREMENT FOR LEGISLATIVE APPROVAL OF GROUND WATER APPROPRIATIONS IN EXCESS OF 3,000 ACRE FEET PER YEAR;"

CONVENTIONAL SYSTEM

EXHIBIT 2
DATE 2-18-87
HB 746

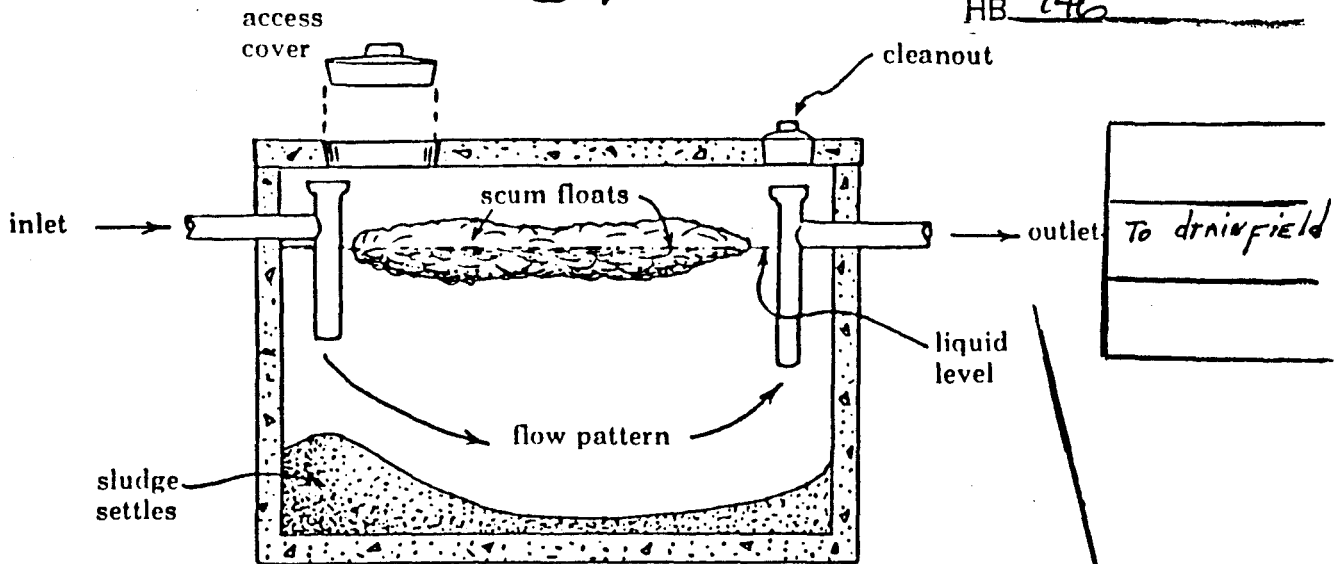
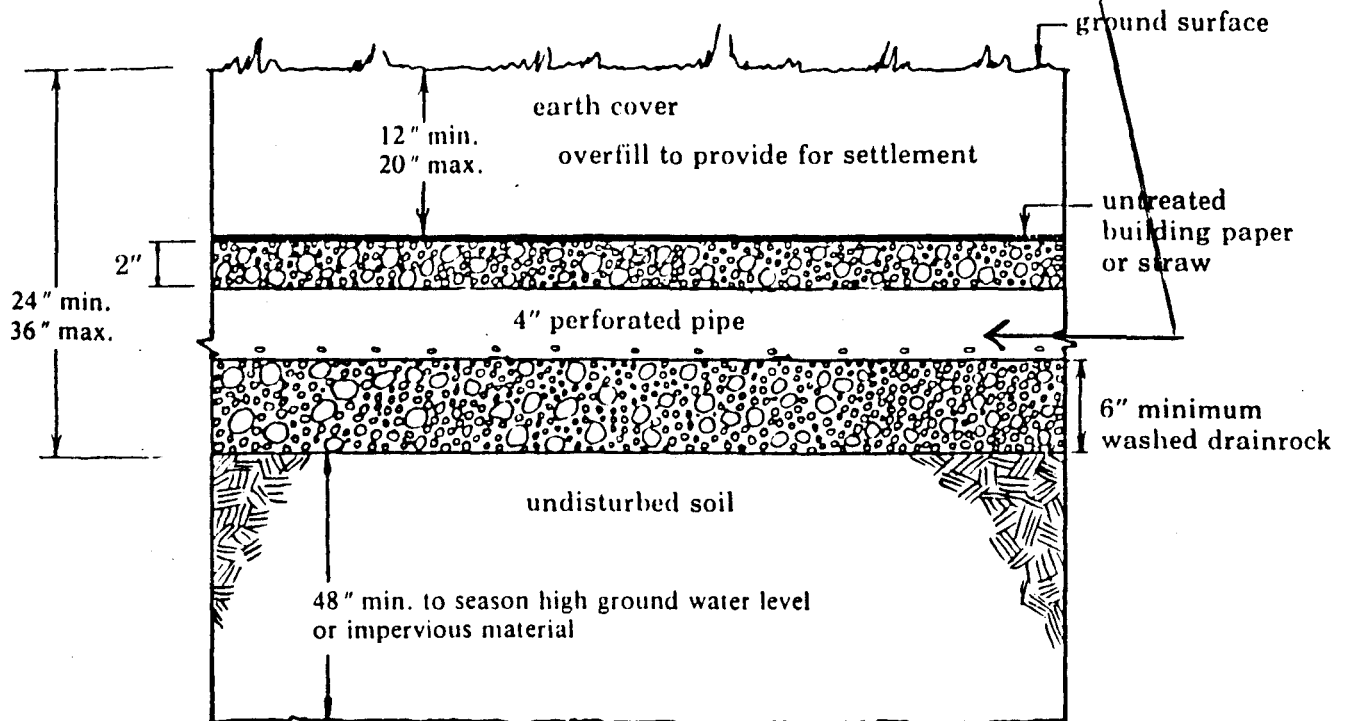


FIGURE 1.
TYPICAL SEPTIC TANK (CUTAWAY VIEW)



LONGITUDINAL SECTION OF TRENCH

HB 746

A TYPICAL ALTERNATIVE
ON-SITE SEWAGE TREATMENT
SYSTEM.

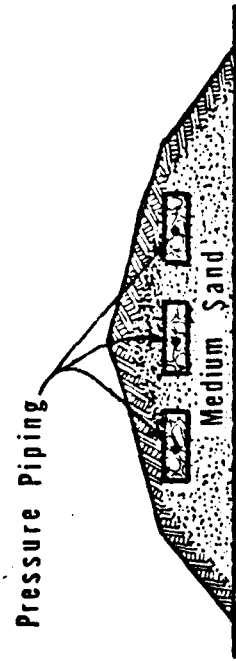
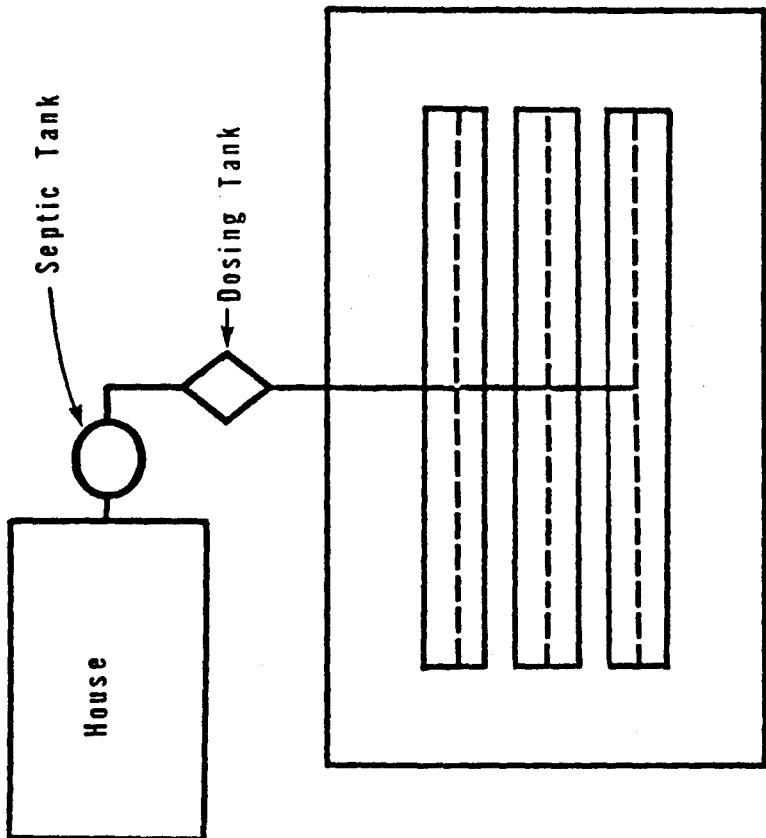


FIGURE 12-1. SAND FILL MOUND WITH PRESSURE DISTRIBUTION TRENCHES

H.B. 746
TESTIMONY OF STAN BRASHAW
MONTANA STATE COUNCIL OF TROUT UNLIMITED
FEBRUARY 18, 1987

Mr. Chairman, members of the committee, I am Stan Bradshaw, and I am here on behalf of the Montana State Council of Trout Unlimited. We wish to endorse an amendment to the bill and, with that amendment, support the bill.

H.B. 746 addresses a long-standing problem that current law has simply been unable to satisfactorily address. Old, existing systems which were constructed before there were any minimum criteria have in many cases caused problems with ground and surface waters. Likewise, systems which have been properly permitted but which have not been properly installed have resulted in ground and surface water contamination. Under current law, there is simply no way to keep track of the performance of existing systems. H.B. 746 would provide a method of monitoring existing systems and upgrading them when necessary to protect ground and surface water.

T.U. supports one amendment, however. As currently written, the bill would allow the placement of alternative systems in high ground water or high gradient areas where no previous systems have existed. As a matter of prudent public policy, the state should not encourage development of new sewage systems in such areas. We recognize, however, that in certain instances where a system is failing, replacement by an alternative system may be necessary. Therefore, T.U. supports amendments which would restrict the waiver of conventional systems to instances when an existing system is being replaced, and which

EXHIBIT 3
DATE 2.18.87
HB 746

would confine the installation of alternative systems to those areas which would otherwise meet the standards promulgated under the Sanitation in Subdivisions Act. With that amendment, T.U. urges the committee to vote DO PASS on H.B. 746.

OCTOBER 17, 1986

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

XI. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW (Title III)

Title III is a free-standing title (not part of CERCLA) which establishes four major authorities relating to 1) emergency planning, 2) emergency notification, 3) community right-to-know reporting on chemicals, and 4) emissions inventory. There are also other miscellaneous provisions which primarily address the administration and enforcement of this title.

A. Emergency Planning — Requires States to establish a State Commission, emergency planning districts, and local emergency planning committees to develop and facilitate the implementation of emergency response plans with participation of facilities who produce, use, or store extremely hazardous substances. The purpose of such plans is to prepare State local responses to releases of chemicals.

Substances covered by this provision are those "extremely hazardous substances" published in EPA's "Chemical Emergency Preparedness Interim Guidance" (CEPP list). Owners/operators of facilities with CEPP chemicals in excess of thresholds to be published by EPA are required to notify the State Commission that they are subject to this title. The National Response Team is required to publish guidance documents on the preparation and implementation of such plans and Regional Response Teams under CERCLA are authorized to review emergency response plans upon request.

B. Emergency Notification — Requires owners/operators of facilities to notify the State Commission and local committees of releases of both CEPP and CERCLA reportable quantity (RQ) chemicals. This provision establishes different notification requirements for chemicals that are 1) both CEPP and RQ chemicals, 2) CEPP but not RQ chemicals and 3) RQ but not CEPP chemicals. The threshold release levels which trigger the notification requirements are either the RQ amount or an interim level in excess of 1 pound until EPA sets notification quantities. The provision identifies what information is required to be included with the notification.

C. Community Right-To-Know Reporting — Requires owners/operators of facilities to provide information on the manufacture, use, and storage of chemicals present at their

facilities. This information is required to be provided to the State Commission, local committees, and local fire departments and must be made available to the general public. This information is submitted in two different forms: 1) the Material Safety Data Sheets (MSDS) or a list of chemicals for which MSDS are required by the Occupational Safety and Health Act (OSHA), and 2) the Emergency and Hazardous Chemical Inventory Form which include information on the amount and location of MSDS chemicals.

D. Toxic Chemical Release Forms (Emissions Inventory) — Requires EPA to establish an emissions inventory. Requires owners/operators of certain facilities to submit toxic chemical release forms annually to EPA if they manufacture, process, or use specific toxic chemicals in excess of certain threshold levels. Requires EPA to compile this information and make it readily available to the public through such means as computerized data bases.

E. Miscellaneous Provisions —

1) *Emergency Training* — Authorizes EPA and other appropriate agencies carrying out existing programs to provide emergency training with special emphasis on hazardous chemicals. FEMA is to be appropriated money for making grants to State and local governments and universities to improve emergency response preparedness.

2) *Review of Emergency Systems* — Requires EPA to conduct a review of monitoring and detection devices present at facilities as well as a study of the status of current technological capabilities in this area.

3) *Trade Secrets, Information to Health Professionals, and Public Availability of Information* — Authorizes persons to withhold trade secret information when certain tests are met, requires owners/operators to submit information to health professionals upon request, and requires governmental entities who receive information under this title to make such information available to the general public.

4) *Enforcement and Citizen Suits* — Establishes civil, administrative, and criminal penalties for persons (owners/operators), and authorizes citizen suits against persons (owners/operators and government entities) for failure to comply with various requirements in this title.

5) *Federal Preemption* — Nothing in this title preempts State or local law, or affects any obligations or liabilities under other Federal laws (except for MSDS requirements).

6) *Mass Balance Study* — Requires EPA to arrange for the National Academy of Sciences to evaluate the efficacy of requiring mass balance reporting relating to emissions.

EXPLANATION OF HB 770

HB 770 has a dual purpose: First, it specifically authorizes the Montana Reserved Water Rights Compact Commission to negotiate with other representative public entities or corporations concerning (a) non-Indian federal reserved water rights, (b) water rights which have their origin in federal reserved waters or (c) water rights approved by the United States Secretary of the Interior.

The second purpose of HB 770 is to specifically authorize Joint Boards of Control established under state law to negotiate on behalf of irrigation districts and their individual members on matters related to non-Indian federal reserved water rights, federal water rights which have their origin in federal reserved water or water rights which have been approved by the United States Secretary of the Interior.

Why HB 770

Presently the Montana Reserved Water Rights Compact Commission pursuant to state law is conducting negotiations with the Confederated Salish and Kootenai Tribes and the Federal Government in an attempt to divide and apportion waters on the Flathead Indian Reservation. These negotiations are taking place to the exclusion of the Joint Board of Control for the Flathead, Mission, and Jocko Valley Irrigation Districts and their individual members, all of which reside within the boundaries of the Flathead Indian Reservation. There are more than 1700 individual irrigators represented by the Joint Board of Control and the individual irrigation districts. These irrigators possess non-Indian reserved water rights, water rights which have their origin in federal reserved waters, and water rights which were approved and recognized by the United States Secretary of the Interior. Because the irrigators have not been a party to any of the negotiations between the Compact Commission, the Tribes and the Federal Government, the Compact Commission is involved in a process of apportioning and dividing water to which these irrigators have a claim and right, but without irrigator participation in the process.

The legislation being presented specifically allows the Compact Commission to negotiate with other public representative entities such as the Joint Board of Control who represent people claiming non-Indian federal reserved water rights or other federal water rights. It is legislation designed to bring fairness and equity to the apportionment of federal waters by allowing all affected entities to be fully and fairly represented.

This legislation is supported by the Montana Water Development Association.

WITNESS STATEMENT

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2.18.87

1770

NAME J. Bruner BILL NO. HB 770
 ADDRESS 2015 1/2 9th Ave DATE 2/18
 WHOM DO YOU REPRESENT? Montana Water Development Association
 SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Montana Water Development Association strongly supports HB 770. Many of our members are Irrigation Districts and several of them are located adjacent to Indian Reservations. The Flathead Joint Board of Control is a member of MWDA, so we are greatly concerned with the problem contained in this bill - participation in the negotiation process by those so vitally involved, as is the Joint Board.

It's difficult to understand the reasoning ~~that~~ of the process does not take into consideration an entity as of such a magnitude. Our justice system allows ~~the~~ the perpetration of the most heinous crimes a day in court - a defence position. ~~What about the defence position?~~

Every one of us here will protest other parties making decisions concerning our welfare without allowing us to at least speak for ourselves - to have our concerns taken into consideration - yet we have here a party so critically affected, as is the Joint Board of Control, to sit by and let their future be decided by without the request opportunity to participate in those decisions.

We ask that you pass HB 770

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GOOD AFTERNOON - I AM RICHARD WHITESELL, BILLINGS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS. I AM HERE TO TESTIFY ON BEHALF OF THE
INDIAN TRIBES OF MONTANA AND THE BUREAU OF INDIAN AFFAIRS.

THE UNITED STATES DEPARTMENT OF THE INTERIOR SUPPORTS THE
NEGOTIATION OF INDIAN RESERVED WATER RIGHTS. MONTANA HAS PROVIDED
A FAVORABLE FORUM FOR SUCCESSFUL NEGOTIATION THROUGH ITS CURRENT
STATUTE AND ITS COOPERATIVE EFFORTS. WE BELIEVE THE CURRENT
PROCESS IS SUFFICIENT AND MONTANA'S COMPACTING LAWS DO NOT NEED TO
BE AMENDED.

THE BUREAU OF INDIAN AFFAIRS IS AWARE OF AND SENSITIVE TO THE
NEEDS AND INTERESTS OF CURRENT WATER USERS WITHIN THE EXTERIOR
BOUNDARIES OF INDIAN RESERVATIONS. WE RECOGNIZE THAT WATER
AVAILABILITY MAY VERY WELL DEPEND UPON A WATER USERS' PRIORITY
DATE. WE ARE ALSO AWARE THAT NON-INDIAN SUCCESSORS IN INTEREST TO
TRUST LAND MAY HAVE A PRIORITY DATE WHICH IS THE SAME AS THE
RESERVATIONS.

THE MONTANA COMPACTING STATUTES ARE DESIGNED TO QUANTIFY THE
FEDERAL OR INDIAN RESERVED RIGHT; WHICH IS GENERALLY YET TO BE
IDENTIFIED. NEGOTIATIONS CENTER ON QUANTIFYING AN AMOUNT OF WATER
WHICH WILL BE PUT TO USE AT SOME UNSPECIFIED FUTURE DATE WITH WHAT
WILL OFTEN BE A SENIOR PRIORITY DATE. CONVERSELY, QUANTIFICATION
OF ACTUAL WATER USE DOES NOT INVOLVE SUCH EXPERT SPECULATION AND
IS ADEQUATELY ADDRESSED IN THE STATE APPROPRIATION SYSTEM. ACTUAL
MEASUREMENTS ARE MADE AND HISTORICAL USE FACTS ARE SUBMITTED AS
EVIDENCE.

THE REAL CONCERNS OF NON-INDIAN ASSERTING SOME RESERVED WATER
RIGHT LIE NOT WITH IDENTIFICATION AND QUANTIFICATION OF THEIR
RIGHTS; BUT, RATHER THE QUANTIFICATION OF THE FEDERAL OR INDIAN
RESERVED RIGHT AND THEIR SUBSEQUENT ADMINISTRATION. WE BELIEVE
THE CURRENT COMPACTING STATUTES ARE SUFFICIENT IN ADDRESSING THESE
CONCERNS. FURTHER, IF THE COMPACTING STATUTES ARE AMENDED, THE
RESULT WILL BE THE ADDITION OF ONE OR MORE NEGOTIATING ENTITIES.

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2-10-87

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THIS WILL FURTHER COMPLICATE AN ALREADY INVOLVED PROCESS AND WILL OBVIOUSLY HINDER THE DEVELOPMENT OF A COMPACT.

THE BUREAU OF INDIAN AFFAIRS BELIEVES THAT THERE IS A MORE LOGICAL AND PRACTICAL SOLUTION OF IDENTIFYING AND QUANTIFYING RESERVED RIGHTS AFFECTING NON-INDIANS. NON-INDIAN WATER USERS CAN BE GIVEN THE OPPORTUNITY TO PRESENT TO AND DISCUSS WITH THE DEPARTMENT OF THE INTERIOR THE QUANTIFICATION OF THEIR WATER RIGHTS BEFORE SERIOUS NEGOTIATIONS OF FEDERAL OR RESERVED RIGHTS BEGINS. IN ADDITION, THESE SAME WATER USERS ARE FREE TO MEET WITH OR MAKE THEIR CONCERN KNOWN TO THE MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION.

WE BELIEVE THAT PASSAGE OF THIS BILL MAY JEOPARDIZE THE NEGOTIATION POSITION OF MOST, IF NOT ALL, OF THE MONTANA INDIAN TRIBES. THIS WILL LEAD TO COSTLY AND LENGTHY LITIGATION WHICH WORKS TO THE DETRIMENT OF THE UNITED STATES AND THE STATE OF MONTANA. WE STRONGLY URGE THE DEFEAT OF THIS BILL.

WITNESS STATEMENT

NAME Michael T Gable BILL NO. HB 770

ADDRESS PO Box 5, Missoula, MT

WHOM DO YOU REPRESENT? Confederated Salish & Kootenai Tribes

SUPPORT represent 6,000 tribal members OPPOSE ☒ AMEND ☐

COMMENTS: The C&KT of the Flathead Reservation
oppose HB 770. This Bill would put too much pressure
on the Compact Commission and ^{we believe} would cause all
tribes to reconsider their position towards negotiating
with the State, Compact Commission. The Tribes and
Compact Commission have gained respect for each
other and if this Bill is passed the Legislature
will have torn down the trust that has been
built. We went through this same process with
the State in regards to the Ft. Peck Water
Compact. We had to rebuild bridges torn down by
mis trust. Although the C&KT are now in negotiations
with the Compact Commission and we would like
to stay in talks with the State of Montana, if
this Bill is passed The Tribal Council will reconsider
its position. ^{to the C&KT withdraw from negotiations as soon as possible} Because of the short notice of
this hearing the C&KT will submit written
comments on HB 770. ^{Mr. Hoven stated:} JPA C. represents 113,000
acres of fee lands what about the fee owners of the other
48,000 of fee lands.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, MT 59022

RICHARD REAL BIRD, Chairman
JEROME HUGS, Vice Chairman
TRUMAN C. JEFFERSON, Secretary
CARLTON NOME, SR., Vice Secretary
Crow Country

Crow Country

February 17, 1987

House of Natural Resources Committee
Hearing for House Bill 770

Position Statement of Richard Real Bird
Crow Tribal Chairman
Crow Tribal Council

Dear Committee Members:

Thank you distinguished members of the committee for allowing the Crow Tribe to submit this statement regarding House Bill 770. The Crow Tribe is against any subdivision created by the State of Montana other than Montana Reserved Water Rights Compact Commission pursuant to the Court.

The reserved Water Rights of the Crow Indian Reservation is a matter of paramount importance to the Crow Tribe and the State of Montana.

The proposed House Bill 770 would cause confusion, distrust and uncertainty in the Crow Tribe's discussion with the State of Montana. The Crow Tribe is mandated to deal with the Montana Reserved Water Rights Compact Commission in its extension to continue negotiations with Indian Tribes in the State of Montana. The most essential requirements for any successful negotiation are mutual trust and confidence. Without that, there can be no agreement or even any worthwhile discussions.

It is very difficult even under the best of circumstances to achieve that mutual trust and confidence. The State of Montana has to be absolutely clear about the path they wish to pursue.

It is our understanding the purpose of establishing the compact commission was so that the State and the tribe could be open and flexible and would be able to agree to a solution in one situation without necessarily setting a precedent for other situations. House Bill 770 is causing complications and apprehension for the Crow Tribe in its dealing with the State.

EXHIBIT 9
DATE 2-18-87
HB 770

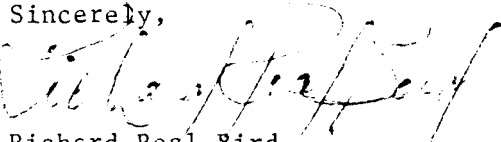
Position Statement of Richard Real Bird
Feb. 17, 1987

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2-18-87
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The Montana Legislature had wisely recognized that we do not necessarily have to approach our water problems as adversaries, pertaining to the development of the compact commission.

Based on the unique circumstances on the Crow Reservation, I believe that Water negotiations could be fruitful if mutual trust and confidence are restored.

Sincerely,



Richard Real Bird
Crow Tribal Chairman
Crow Tribal Council

Overview of Bonding Bills

- ° HB-777 provides for use of RIT interest income to pay for Montana's portion of RCRA enforcement activities and CERCLA or Superfund clean-up and litigation costs.
- ° Almost all of the money here serves as a leverage for substantial federal contributions toward preservation of state natural resources.
- ° Up to 6% of the RIT interest income is allocated for RCRA program activities in a state-federal match ratio of 1 to 3 (1 state dollar to every 3 federal dollars).
- ° An additional 6% is allocated for any costs which the state may have to incur for clean-up of one or all of the 7 Superfund sites if the responsible parties or PRP's refuse to pay for these costs themselves.
- ° The way this works is that if the PRP walks away, the state has a choice about providing money as a match to federal dollars in a ratio of 10% state to 90% federal money. If PRP's take no responsibility for clean-up, the state's match obligation could amount to \$6 million in the next biennium.
- ° If the state fails to put up any money, no clean-up will occur.
- ° It is important that the state act aggressively to leverage for scarce Superfund dollars.
- ° Also, the state has a limited period in which to participate in the clean-up which is anticipated to occur in the next five years.
- ° The bonding mechanism in the bill is advantageous because it would raise the necessary state match without raiding the general fund.
- ° The use of the RIT money as designated in the bill is consistent with the purpose of the RIT fund, which is to protect Montana's resources affected by the extraction of mineral and other non-renewable resources.
- ° Without the bill there would be no hazardous waste management program, and potentially Montana's dump sites would never be cleaned up.
- ° House Bill 760 provides the authority to the Board of Examiners to issue bonds.

Funding for CERCLA Lawsuits

- ° State has filed an ongoing lawsuit for recovery of loss of natural resources in the upper Clark Fork Basin -- one of Montana's most precious natural resources.
- ° The potential for recovery in this geographical area and other areas is enormous and therefore warrants the full-time dedication of legal and technical staff for evaluation and pursuit of these claims.
- ° Time is of the essence here because of the need to protect the State's interests in the ongoing lawsuit, for instance for evaluation of settlement offers which have already been made, and because there is a statutory deadline beginning in 1989 for filing natural resource claims.
- ° The appropriation is essentially a loan because it is all recoverable for the defendants.
- ° Any future damages collected are by statute put into a trust fund to manage or to help restore natural resources. The trust fund could become a tremendous development asset for several depressed areas in the state.
- ° The funding is an especially appropriate use of the RIT fund.
- ° The \$200,000 is for 2 full-time technical and legal staff, contracted services, support services, and office overhead, to be housed at the Department of Health and Environmental Sciences.
- ° The money is intended for preliminary work necessary for evaluating the size and availability of claims in the state; it is not sufficient for litigation costs.
- ° Anticipated technical activities of the staff are: assess impact of Department of Interior regulations and the new Superfund amendments; integrate existing data with damage assessment; monitor nationwide developments in the law; develop evidence; continue in settlement negotiations.

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Superfund Fact Sheet

Superfund is a federal program to investigate and if need be clean up hazardous substances which have been dumped, spilled, or allowed to escape into the environment. If investigations determine an actual or potential threat to public health or environment, clean up or control is required.

A basic premise of the program is that those responsible for the problem should pay for the clean up. However, a large fund has been established to provide money for clean up at sites where responsible parties no longer exist or are financially unable to pay for clean up. The fund also supports administrative, oversight and investigative requirements; and litigation against responsible parties who refuse to participate. Punitive damages up to three times the total response costs can be assessed by a federal court against non-participating responsible parties.

The Superfund program depends a great deal upon state involvement. The EPA, the federal agency which administers Superfund, can conduct investigations; emergency actions; and even require cleanup of sites with a participating responsible party without active state participation. However no action can be taken at sites where responsible party funding is not available without substantive state involvement.

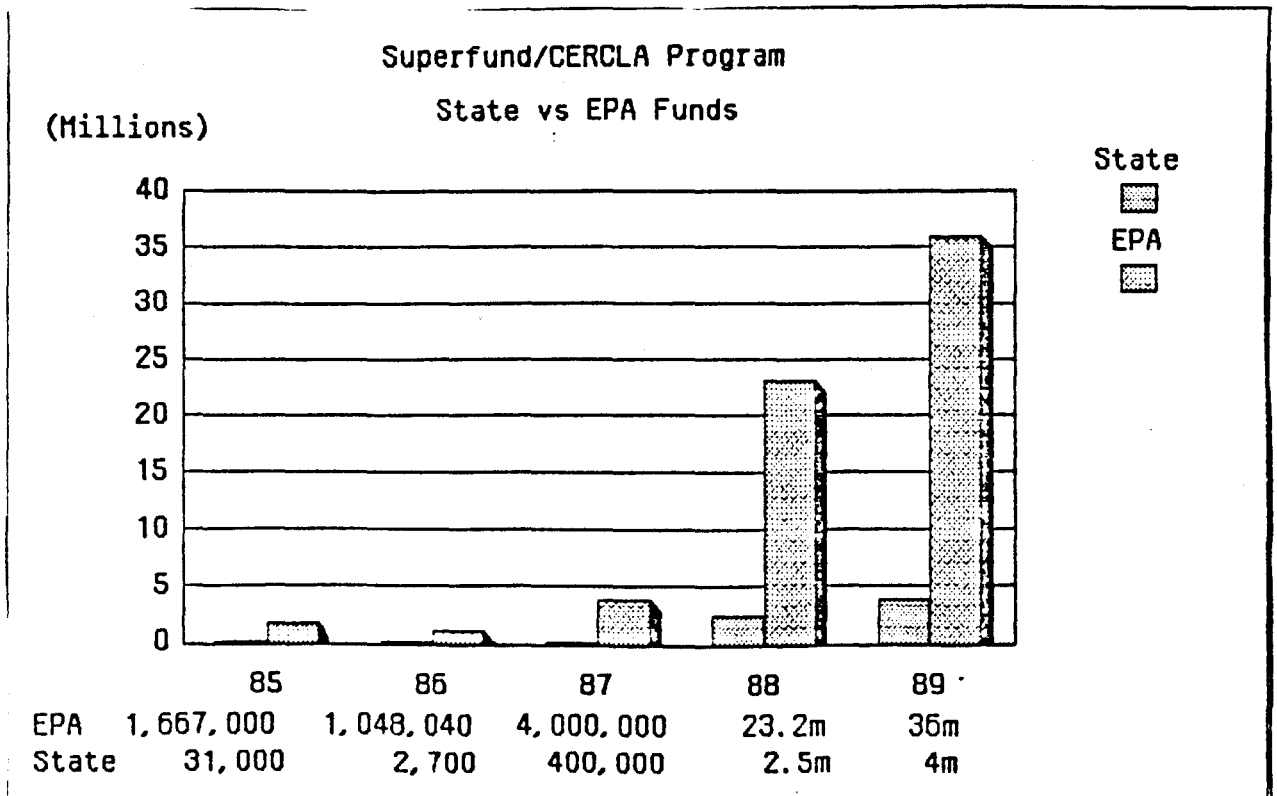
There are potentially several thousand sites in the country that are eligible for federal funding. Given the typical cost of a site response, the number of sites far exceeds the money available. Aggressive action on the part of a state tends to insure more applicable sites get on the priority list which inturn increases the proportional amount of monies expended on clean up in the state.

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Fact Sheet
HB777

- Lateness of this bill because it is a very complicated program, and a lot of time went into the drafting.
- Responsible parties are going to be tabbed for all costs including investigation and clean-ups. Only when no one can be identified will the Superfund itself and the state matching funds be used.
- Clean-ups and investigations are very labor-intensive; involve well drilling, sampling, lab analysis, design of soil cover, dikes construction activities, including heavy equipment operations.
- State must send a clear signal to responsible parties that we're serious about cleaning up sites.
- Next five years are a window of opportunity for Montana to get a large contribution of federal funds to investigate and clean up these sites.
- Superfund was reauthorized by Congress in October, 1986 for another five years. \$8.5 billion was allocated for the program.
- Currently there are nine National Priority List (NPL) sites in Montana. These are:
 - Asarco Smelter, East Helena
 - Anaconda Smelter, Anaconda
 - Idaho Pole, Bozeman
 - Mouat Industries, Columbus
 - Milltown, Missoula
 - Champion Paper, Libby
 - BN Somers Tie Treating Plant, Somers
 - Montana Pole, Bozeman
 - Silver Bow Creek, Butte-Deer Lodge
- To date about 130 additional sites that may pose a contamination problem have been identified in the state. It is likely that some of these sites will prove to be eligible for federal funding.
- Since 1983 it is estimated that over \$10 million has been spent on Montana Superfund activities by the EPA, responsible parties and the state. To date the state's direct financial share has been about \$33,000.

- Several major sites are nearing completion of the investigative phase and the beginning of the corrective action phase. As a result, it is likely that state and federal costs will increase. The following table provides an estimate of these expenses.



- Successful negotiation/litigation with responsible parties can substantially reduce cost to the state. Therefore, funding set aside for state match may be available for reappropriation by the legislature in the future.
- If fund monies are being used, the assumption of the lead role at a site by the state is virtually the only opportunity for the state to direct activities and for private businesses and professionals in Montana to participate in a site response. EPA maintains standing national contracts which makes it difficult for average Montana firms to be competitive.
- Superfund projects require expertise in a variety of advanced technical and scientific disciplines. Active involvement by the state provides the opportunity for persons or firms with this training to stay or establish themselves in Montana.

HAZARDOUS WASTE/CERCLA (SUPERFUND) BILL

Section 1. Allocation of 12% of RIT Interest Income

Section 2. Creation of Hazardous Waste/CERCLA Special Revenue Account

Revenue Sources

Bond Proceeds,
Interest, Notes

12% RIT Interest
\$1,556,000

Penalties, Damages
collected under CERCLA

Balance from 1986-
1987 Biennium \$450,000

HAZARDOUS WASTE
CERCLA ACCOUNT
(unused \$ balances remain)

If DHES deems bond
issue necessary

Program Appropriation - Up to 1/2 of 12% or \$778,000

Expenses
for Bond
Issue *

Hazardous Waste
\$191,300
1988-1989

UST
\$105,700
1988-1989

Division Admin.
\$121,248
1988-1989

Emergency,
Investigation
for CERCLA
Listing
\$60,000
1988-1989

(Unappropriated)
\$299,752

State Costs to
Obtain Federal Match
1. Clean-up action
2. UST action
3. Site maintenance
Budget Amendment

CERCLA
Lawsuits
\$200,000
1988-1989

* \$1,556,000
+ 450,000
2,006,000 (revenue)
- 678,248 (biennial appropriations)
\$1,327,752 *Amount available to pay for bond issue

Debt Service
Fund for payment
of principle and
interest on bonds

DATE 2-18-87
HB 760-777

11
2-18-87
760-777

TESTIMONY ON HB 777 AND HB 760
BY HOWARD JOHNSON
OFFICE OF THE GOVERNOR

Mr. Chairman, members of the Committee, my name is Howard Johnson. I am the Coordinator of the Clark Fork River Basin Project in the Governor's Office and I am here to testify in support of House Bill 777 and House Bill 760.

These bills provide the State of Montana with the matching funds necessary to clean up certain Superfund sites in the Clark Fork River Basin and in other areas of the state that have been contaminated by hazardous waste. The bills dedicate 6 percent of the RIT interest earnings to a special Superfund trust to be used as state match when no responsible party can be found or when the state and EPA deem it necessary to commence clean up before final negotiation with the responsible party can be concluded. An example of such an effort would be the construction, in 1986, of a new water system for 35 residences at Milltown whose drinking water became contaminated with arsenic that came from mineral-related sediment behind Milltown Dam.

In addition, these bills would allow the state to conduct the preparatory work necessary to continue the state's Natural Resource Claims Damage Lawsuit against Anaconda Minerals Company and their parent company, Atlantic Richfield, for environmental and economic damage the state has suffered. It should be pointed out that all damages to the Clark Fork Basin from hazardous waste

2-18-87

760-777

releases won't be remedied by on-going Superfund clean up procedures. Some damages have already occurred; some will last for years and some will be permanent. Furthermore, all state costs from pursuing this lawsuit are recoverable under the Federal Superfund Act. Funds received from the defendants must be placed in a trust fund and it is anticipated that the interest earned from this trust fund will be dedicated to improving the environmental and economic resources damaged or lost due to hazardous waste release.

Since the Clark Fork River Basin Project's inception in 1984, continuous progress has been made to put into place a long term strategy, to correct some of the basin's mineral-related environmental problems. These bills provide the funds and flexibility necessary to move forward in the first phases of cleanup. They represent a prudent state commitment to match the cleanup dollars being expended by both the federal government and industry in the basin.

Both I and the Governor believe that such a use of the RIT fund is exactly what the legislature anticipated when they passed the act.

REF: 8MO

February 18, 1987

TO: Tom Jones, Chairman, House Natural Resources Committee
and Committee Members

FROM: John Wardell, Director, U.S. Environmental Protection Agency (EPA)
Region VIII Montana Office

I respectfully submit the following testimony regarding House Bills 760 and 777. The EPA supports the bills.

Since 1983 the State of Montana and EPA have investigated and corrected contamination problems affecting public health and the environment. Several million Federal dollars have been spent in support of the Superfund Program efforts. Noteworthy efforts included installation of a replacement water supply system for citizens of Milltown, expenditures of approximately \$2.5 million to reduce discharges of wood preservatives to Silver Bow Creek in Butte, and construction of a dyke at Somers to prevent discharges of wood preservatives to Flathead Lake. In 1987, EPA will provide approximately 6 million dollars to continue these efforts at Superfund sites in Montana. Additional millions of dollars will be provided in 1988 - 1992.

The Superfund Program cannot only be a Federally funded effort. House Bills 760 and 777 will insure that there will be a strong State of Montana commitment. The State of Montana commitment is essential for several reasons.

1. The Federal program requires a 10 per cent state match to correct or clean up contamination problems. EPA will pay for 100 per cent of costs associated with investigation and selection and design of the remedy to correct or clean up contamination problems. EPA will, however, only pay for 90 per cent of the costs to implement the remedy. Without the 10 per cent State of Montana share, corrective activities cannot begin. Only in emergency situations will EPA pay for 100 per cent of clean up/corrective action.

-2-

2. At sites with responsible parties, i.e., parties responsible for causing the contamination problem, EPA asks the responsible party to clean up the site. EPA has learned from experience, however, that timely and complete responsible party clean up is most likely to occur when sufficient Federal and state match money is also available to undertake corrective activities or clean up.
3. EPA will be most likely to provide Superfund Program money to the states with strong commitments to implement the Superfund Program. One of the most visible indicators of the state's commitment is funding to provide state match to undertake corrective actions or clean up.
4. The Superfund Program is a significant environmental effort similar to the Clean Air or Safe Drinking Water programs. Montana eagerly assumed responsibility to implement these programs. The State of Montana should also assume a significant role in determining how the Superfund Program is implemented within the State. For the State of Montana to assume a significant role, it needs to commit State resources.

Thank you.

H.B. 777
TESTIMONY OF STAN BRADSHAW
MONTANA STATE COUNCIL OF TROUT UNLIMITED
FEBRUARY 18, 1987

Mr. Chairman and members of the committee, my name is Stan Bradshaw, and I am here on behalf of the Montana State Council of Trout Unlimited. Trout Unlimited has over one thousand members who live in Montana, and is vitally in issues which affect the water quality of the state's rivers and streams.

Trout Unlimited supports H.B. 777 for two reasons. First, it focuses resources on remedial actions. Second, it recognizes the need to support litigation initiated under CERCLA to assure adequate clean-up of hazardous wastes. These two areas of endeavor are at the heart of CERCLA - the recovery of the state's natural resources from the crippling effects of hazardous waste deposition in the state.

The commitment expressed in this bill is especially important in light of ongoing studies of the upper Clark Fork Basin and the hazardous waste problems pervading that basin. I doubt that anyone would seriously argue that the aquatic and terrestrial productivity of the upper Clark Fork has not been seriously impaired by the historic activities which have gone on in that basin. It is only through a commitment such as the one expressed in this bill that we can hope to restore the Clark Fork Basin to its full potential.

Certainly, the Clark Fork is not the only area of the state in need of attention. H.B. 777 holds promise for the recovery of many areas around the state beset by hazardous wastes. The recovery of those areas can only be good for the well being of

EXHIBIT 13
DATE 2-18-87
HB 760-777

the state and its people. H.B.777 enables the state to fully participate in the benefits contemplated by CERCLA.

Because of the tremendous benefits that it represents for the people of Montana, the State Council of Trout Unlimited urges the committee to vote DO PASS on H.B. 777.

NATURAL RESOURCES COMMITTEE

DATE Feb. 18, 1987

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. 775; HJR 30

DATE Feb. 18, 1987

SPONSOR Spaeth LORY

[illegible]

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

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VISITORS' REGISTER

NATURAL RESOURCES

COMMITTEE

BILL NO. 746

DATE Feb 18, 1967

SPONSOR Brandewie

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National Resources COMMITTEE

DATE Feb. 18, 1987

[illegible]

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VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. 770DATE Feb. 18, 1987SPONSOR Meyers

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dan Hoven	Holswa, MT	✓	
John Plunk	(Hill)	✓	
John Tachia	Helena	✓	
Thomas E. Rott	Charls	✓	
Tom Blum	Bozoz	✓	
Boggy Ditt	St. Ignatius	✓	
Fitz Wipplinger	Dixon	✓	
Frederick Whittier	Belling		✓
Ed Skinnick	Boz		
Ed Skinnick	Boz		
Chris Tweeten	Helena		
CLAY SMITH	AG's Office		X
Wen Wecker	Confederated Salish & Kootenai Tribes		X
Michael T. Pabst	"		X
Mark Stchart	Glasgow	✓	
Laurence Kennith	Alma MT		X
Robert Dill	Belling		✓
James Musgrove	FT. Belknap Tribes		X

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Natural Resources

COMMITTEE

BILL NO. 770

DATE Feb 18 1987

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