

MINUTES
NATURAL RESOURCES SUBCOMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 23, 1987

The meeting of the Natural Resources Subcommittee was called to order by Chairman Swift on February 23, 1987, at 8:30 a.m. in room 317 of the State Capitol.

ROLL CALL: All subcommittee members were present with the exception of Rep. Spaeth. Also present were Carl Schweitzer, Senior Fiscal Analyst, from the Office of the Legislative Fiscal Analyst (LFA) and Karen Vollstedt, Budget Analyst, from the Office of Budget and Program Planning (OBPP).

Tape 82A

HB 645

EXHIBIT 1 HB 645 and fiscal note
EXHIBIT 2 Proposed Amendments to HB 645

Chairman Swift said that on March 20 the House addressed HB 645 which was developed to clearly take care of the discrepancy and the problem that was arising between the Hard-Rock Mining Impact Board, the mineral interests, and the local communities. Chairman Swift explained that the bill was amended in accordance with the amendments on Exhibit 2. He said that Amendment II actually made the bill worse than it was in its original form. Chairman Swift said there is still some question as to what authority lies with the Hard-Rock Mining Impact Board, and what lies with the mineral operator and the local government. He said the subcommittee should be addressing today the validity of the appropriation level that the Hard-Rock Mining Impact Board was funded.

John Fitzpatrick, Montana Tunnels Mining Inc., said that his company is concerned about two issues: 1) a requirement that the Hard-Rock Mining Impact Board had promulgated that the mining industry will pay for secondary impacts of developments; and 2) to restore the impact act back to its original purpose as a planning process between local government units and the mining companies.

Mr. Fitzpatrick said that when the mining impact act was created in 1981, the mining industry thought that the legislature had developed a planning process whereby the companies would prepare a plan to take to units of local governments, negotiate settlements, and resolve differences. If a settlement wasn't reached, the Hard-Rock Mining Impact Board would settle any disputes that might arise between local governments and the mining companies. He said he wasn't aware of any action that took place on behalf of the Hard-Rock Mining Impact Board during that time.

Mr. Fitzpatrick believes the Board doesn't have any work to do and they set themselves up as a regulatory agency to audit transactions between the mining company and units of local government. He said that the Board and staff use technical compliance as their all-purpose regulatory tool. Mr. Fitzpatrick suggested that this subcommittee consider cutting the staff size and budget of the Board to stop it from interfering in ways not intended by state law.

Mr. Fitzpatrick distributed to members a letter from Alan Richardson, Centennial Minerals, Inc. to the Hard-Rock Mining Impact Board, EXHIBIT 3.

Mr. Fitzpatrick concluded by stating that the mining industry doesn't feel they have been fairly treated by the Hard-Rock Mining Impact Board.

Rep. Marks asked the subcommittee to review the budget of the Hard-Rock Mining Impact Board. Rep. Marks reminded members that the mining industry is the only bright spot in the state right now. He said that the Board is making it more and more difficult for people that are in agreement to progress. Rep. Marks suggested that the Board's budget be reduced.

Gary Langley, executive director of the Montana Mining Association, said that the Board perpetuates the mythology that mining companies "come into the state and rape it and take the wealth away". Mr. Langley said that current mining companies are part of a new generation that believes in taking care of socio-economic impacts they cause and cleaning up the environment after they mine. He urged the subcommittee to examine carefully the budget of the Hard-Rock Mining Impact Board.

Newell Anderson, administrator, Local Government Assistance Division, Department of Commerce, testified. The Hard-Rock Mining Impact Board is in the Local Government Assistance Division. Mr. Anderson said that

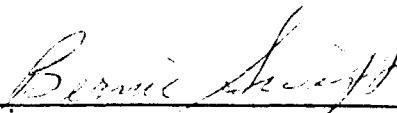
the Board endorsed HB 645 before the amendments. Mr. Anderson distributed copies of testimony given by Richard Weddle, Legal Council, Hard-Rock Mining Impact Board, at the hearing on HB 645, EXHIBIT 4. This testimony, according to Mr. Anderson, was the only input from the Board on HB 645.

Mr. Anderson disputed industry claims that the Hard-Rock Mining Impact Board staff does nothing. He said they keep plenty busy. Mr. Anderson said that the 1981 Hard-Rock Mining Act is complex. Mr. Anderson said the Hard-Rock Mining Impact Board's budget was submitted to this subcommittee with a legitimate amount of integrity by the Department of Commerce. Should members have some specifics within that budget they wish to question, Mr. Anderson said he would be happy to answer them.

Sen. Smith agreed with Rep. Marks' statement that the mining industry is one of the bright spots in Montana. Chairman Swift said that he didn't intend to act on this bill because he hadn't contacted the sponsor of the bill. The Chairman summarized that it is the sense of this subcommittee that if HB 645 passes in the present form, then the appropriation that this subcommittee has considered for the Board is inappropriate. Chairman Swift said that this was an informational meeting today. There will be an opportunity to review this bill later during executive action.

Sen. Smith said that it is unfortunate that state government has gotten to the point that sometimes the only way to control activity is through the budgeting process. Sen. Smith MOVED to delay taking executive action on this bill until the bill has followed the process, and until more information is received by this subcommittee. Motion passed unanimously.

Meeting adjourned at 9:25 a.m.



Chairman
Natural Resources Subcommittee

Exhibit I
Natural Resources Subcommitt

50th Legislature

LC 0115/01

LC 0115/01

House BILL NO. *645*
INTRODUCED BY *Sen. Brian E. Hahn* *Marka Jefferson*
Speech *Sen. John Skirmond*

1 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THAT A
2 LARGE-SCALE MINERAL DEVELOPMENT MAY CAUSE AN INFLUX OF
3 PEOPLE DIRECTLY RELATED TO THE AREA OF THE DEVELOPMENT;
4 REQUIRING THAT A MINERAL DEVELOPER IN CONSULTATION WITH
5 AFFECTED LOCAL GOVERNMENT UNITS SHALL ENSURE THAT THE
6 HARD-ROCK MINING IMPACT PLAN MEETS STATUTORY REQUIREMENTS;
7 AND CLARIFYING THAT THE IMPACT PLAN IS APPROVED WITHOUT ANY
8 REVIEW BY THE HARD-ROCK MINING IMPACT BOARD IF NO OBJECTIONS
9 ARE FILED WITHIN THE 90-DAY REVIEW PERIOD; AMENDING SECTIONS
10 82-4-335, 90-6-301, 90-6-307, 90-6-308, AND 90-6-403, MCA,
11 AND RULE 8.104.203A, ADMINISTRATIVE RULES OF MONTANA; AND
12 PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE
13 DATE."
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Section 82-4-335, MCA, is amended to read:
16 "82-4-335. Operating permit. (1) No person shall
17 engage in mining, ore processing, or reprocessing of
18 tailings or waste material or construct or operate a
19 hard-rock mill or disturb land in anticipation of those
20 activities in the state without first obtaining an operating
21 permit from the board to do so. A separate operating permit
22 shall be required for each complex. Prior to receiving an
23 operating permit from the board, any person must pay the
24 basic permit fee of \$25 and must submit an application on a
25 form provided by the board, which shall contain the
26 following information and any other pertinent data required
27 by the rules:
28 (a) name and address of the operator and, if a
29 corporation or other business entity, the name and address
30 of its principal officers, partners, and the like and its
31 resident agent for service of process, if required by law;
32 (b) minerals expected to be mined;
33 (c) a proposed reclamation plan;
34 (d) expected starting date of operations;
35 (e) a map showing the specific area to be mined and
36 the boundaries of the land which will be disturbed,
37 topographic detail, the location and names of all streams,
38 roads, railroads, and utility lines on or immediately
39 adjacent to the area, location of proposed access roads to
40 be built, and the names and addresses of the surface and
41 mineral owners of all lands within the mining area, to the
42 extent known to applicant;
43 (f) types of access roads to be built and manner of
44 reclamation of road sites on abandonment;
45 (g) a plan which will provide, within limits of normal
46 operating procedures of the industry, for completion of the



1 plan approved by the hard-rock mining impact board, as
 2 provided in 90-6-307. If the permittee does not comply with
 3 that commitment within the time scheduled, the board, upon
 4 receipt of written notice from the hard-rock mining impact
 5 board, shall suspend the permit until it receives written
 6 notice from the hard-rock mining impact board that the
 7 permittee is in compliance.

8 (J) When the department determines that a permittee
 9 has become or will become a large-scale mineral developer
 10 pursuant to 82-4-339 and 90-6-302(4) and provides notice as
 11 required under 82-4-339, within 6 months of receiving the
 12 notice, the permittee shall provide the board with proof
 13 that he has obtained a waiver of the impact plan requirement
 14 from the hard-rock mining impact board or that he has filed
 15 an impact plan with the hard-rock mining impact board and
 16 the appropriate county or counties. If the permittee does
 17 not file the required proof or if the hard-rock mining
 18 impact board certifies to the board that the permittee has
 19 failed to comply with the hard-rock mining impact review and
 20 implementation requirements in Title 90, chapter 6, parts 3
 21 and 4, the board shall suspend the permit until the
 22 permittee files the required proof or until the hard-rock
 23 mining impact board certifies that the permittee has
 24 complied with the hard-rock mining impact review and
 25 implementation requirements.

1 operation;
 2 (h) ground water and surface water hydrologic data
 3 gathered from a sufficient number of sources and length of
 4 time to characterize the hydrologic regime;
 5 (i) a plan detailing the design, operation, and
 6 monitoring of impounding structures, including but not
 7 limited to tailings impoundments and water reservoirs,
 8 sufficient to ensure that such structures are safe and
 9 stable;
 10 (j) a plan identifying methods to be used to monitor
 11 for the accidental discharge of objectionable materials and
 12 remedial action plans to be used to control and mitigate
 13 discharges to surface or ground water; and
 14 (k) an evaluation of the expected life of any tailings
 15 impoundment or waste area and the potential for expansion of
 16 the tailings impoundment or waste site.

17 (2) Except as provided in subsection (4), the permit
 18 provided for in subsection (1) for a large-scale mineral
 19 development as defined in 90-6-302 shall be conditioned to
 20 provide that activities under the permit may not commence
 21 until the hard-rock mining impact board approves the impact
 22 plan is approved under 90-6-307 and until the permittee has
 23 provided a written guarantee to the department and to the
 24 hard-rock mining impact board of compliance within the time
 25 schedule with the commitment made in the approved impact

1 (4) Compliance with 90-6-307 is not required for
2 exploration and bulk sampling for metallurgical testing when
3 the aggregate samples are less than 10,000 tons."

4 Section 2. Section 90-6-301, MCA, is amended to read:
5 "90-6-301. Declaration of necessity and purpose. The
6 large-scale development of mineral deposits in the state
7 causes may cause an influx of people into-the-area-of
8 larger--than--the--number-of-people-directly-involved-in-the
9 mining-operation. This influx of people and the
10 corresponding increase in demand for local government
11 facilities and services creates may create a burden on the
12 local taxpayer. There is a significant lag time between the
13 time when additional facilities and services must be
14 provided and the time when additional tax revenue is
15 available as a result of the increased tax base. In
16 addition, local government units in whatever jurisdiction
17 the development is not located may receive substantial
18 adverse economic impacts without benefit of a major
19 increased tax base in the future. There is therefore a need
20 to provide a system to assist local government units in
21 meeting the initial financial impact of large-scale mineral
22 development."

24 Section 3. Section 90-6-307, MCA, is amended to read:
25 "90-6-307. Impact plan to be submitted. (1) After an

1 application for a permit for a large-scale mineral
2 development is made under 82-4-335, the person seeking the
3 permit shall submit to the affected counties and the board
4 an impact plan describing the economic impact the
5 large-scale mineral development will have on local
6 government units and shall file proof of such submission to
7 the counties with the board. Whenever an environmental
8 impact statement on the permit application is prepared under
9 75-1-201, the lead agency shall cooperate to the fullest
10 extent practicable with the affected local government units
11 to eliminate duplication of effort in data collection. The
12 governing bodies of the affected counties shall publish
13 notice of the submission of an impact plan at least once in
14 a newspaper of general circulation in the county. The
15 impact-plan-shall-include mineral developer and the affected
16 local government units shall ensure that the impact plan
17 includes:

- 18 (a) a timetable for development, including the opening
- 19 date of the development and the estimated closing date;
- 20 (b) the estimated number of persons coming into the
- 21 impacted area as a result of the development;
- 22 (c) the increased capital and operating cost to local
- 23 government units for providing services which can be
- 24 expected as a result of the development;
- 25 (d) the financial or other assistance the developer

1 will give to local government units to meet the increased
2 need for services.

3 (2) In the impact plan, the developer shall commit
4 itself to pay all of the increased capital and net operating
5 cost to local government units that will be a result of the
6 development, as identified in the impact plan, either from
7 tax prepayments, as provided in 90-6-309, special industrial
8 educational impact bonds, as provided in 90-6-310, or other
9 funds obtained from the developer, and shall provide a time
10 schedule within which it will do so. The plan may provide
11 for funding from other revenue sources or funding mechanisms
12 if the developer guarantees that the amount to be provided
13 from these sources will be paid.

14 (3) Upon request of the governing body of an affected
15 unit of local government, the mineral developer, prior to
16 the end of the 90-day review period, shall provide financial
17 or other assistance as necessary to prepare for and evaluate
18 the impact plan. The governing body of the affected county
19 must contract with the developer to obtain the requested
20 financial assistance for each unit of local government
21 within the county. Any disbursements to a unit of local
22 government under this subsection shall be credited against
23 future tax liabilities, if any.

24 (4) The governing body of the county where the fiscal
25 impacts on local government units are forecasted in the

1 impact plan to be most costly shall, within 90 days after
2 receipt of the impact plan from the developer, conduct a
3 public hearing on the impact plan.

4 (4)(5) An affected local government unit shall, within
5 90 days after receipt of the impact plan from the developer,
6 notify the board in writing if that local government unit
7 objects to the impact plan, specifying the reasons why the
8 impact plan is objected to. During the 90-day period, an
9 affected local government unit may petition for one 30-day
10 extension by submitting a written request to the board
11 stating the need and justification for the extension. The
12 board shall grant the extension unless it finds there is no
13 reasonable basis for the request. If no objection is
14 received within the 90-day period or any extension thereof,
15 the impact plan shall be approved without any review by
16 the board. An approved plan is binding and may only be
17 altered under the amendment provisions of 90-6-311.

18 (5)(6) If objections are received from a local
19 government unit, the board shall, within 10 days, notify the
20 developer and forward a copy of the local government unit's
21 objections to the developer. The local government unit and
22 the developer have 30 days, or a longer period if both the
23 local government unit and the developer request an
24 extension, to resolve the objection. If the objections are
25 not resolved, the board shall conduct a hearing on the

1 validity of the objections, which shall be held in the
 2 affected county or, if objections are received from local
 3 government units in more than one county, shall be held in
 4 the county which, in the board's judgment, is more greatly
 5 affected. The provisions of the Montana Administrative
 6 Procedure Act shall apply to the conduct of the hearing. The
 7 impact plan filed by the developer shall carry no
 8 presumption of correctness at the hearing.

9 ~~(6)(7)~~ Following the hearing, the board shall, within
 10 60 days, make findings as to those portions of the impact
 11 plan which were objected to and, if appropriate, amend the
 12 impact plan accordingly. The findings and impact plan, as
 13 amended, shall be served by the board upon all parties. Any
 14 local government unit or the developer, if aggrieved by the
 15 decision of the board, is entitled to judicial review, as
 16 provided by Title 2, chapter 4, part 7, in the district
 17 court in and for the judicial district in which the hearing
 18 was held.

19 ~~(7)(8)~~ The developer shall, within 30 days of receipt
 20 of the approved impact plan, provide the board with a
 21 written guarantee that the developer will meet the increased
 22 costs of public services and facilities as specified in the
 23 approved impact plan and according to the time schedule
 24 contained in the approved impact plan.

25 ~~(8)(9)~~ The developer may make payments as specified in

1 the approved impact plan directly to a local government unit
 2 or to the board. The governing body of a local government
 3 unit receiving payments shall deposit the payments into an
 4 impact fund. The developer and the affected governing body
 5 shall each issue to the board written verification of each
 6 payment and its intended use in compliance with the impact
 7 plan. The board shall deposit payments received from a
 8 developer into the hard-rock mining impact account
 9 established by 90-6-304.

10 ~~(9)(10)~~ The board shall notify the department of state
 11 lands of its receipt of the written guarantee of payment and
 12 of any failure of the developer to comply with this section.

13 ~~(10)(11)~~ Upon receipt of evidence that an affected
 14 local government unit identified in the approved impact plan
 15 is providing or is preparing to provide an additional
 16 service or facility provided for in the approved impact
 17 plan, the board shall, if the hard-rock mining impact
 18 account is used to deliver payments to the local government
 19 unit, pay to that local government unit, in one sum or in
 20 parts, the money from the hard-rock mining impact account
 21 identified in the plan as the increased cost to the local
 22 government unit of providing that public service or
 23 facility.

24 ~~(11)(12)~~ If it is determined that an objection filed by
 25 an affected local government unit under subsection ~~(4)~~ 5

1 or 90-6-311(3) is valid and it results in some remedial
 2 order by the board or court of competent jurisdiction, the
 3 local government unit shall be awarded and the developer
 4 shall pay reasonable costs and attorney fees associated with
 5 any administrative or judicial appeals filed under this
 6 section. Any attorney fees and costs awarded shall be in
 7 addition to any amounts paid by the developer under this
 8 part.

9 {12}(13) Upon a determination by the department of
 10 state lands that a permittee under 82-4-335 has become or
 11 will become a large-scale mineral developer, the permittee
 12 may petition the board for a waiver of the impact plan
 13 requirement. The board may grant a waiver or conditional
 14 waiver of this requirement only if it has provided notice
 15 and opportunity for hearing to the permittee and to all
 16 affected local government units. The board shall adopt
 17 criteria under which a waiver may be granted. A waiver
 18 issued by the board may be revoked as provided in the
 19 conditional waiver or if the permittee and contractors at
 20 the mineral development increase their payrolls from the
 21 date of the waiver by 75 or more persons, provided the
 22 revocation is requested by an affected local government unit
 23 and notice and opportunity for hearing are given to the
 24 permittee and all affected local government units. The board
 25 shall notify the board of land commissioners of any waiver

1 that has been revoked.
 2 {13}(14) When a person who holds an operating permit
 3 under 82-4-335 and who has filed an impact plan fails to
 4 comply with the review and implementation requirements in
 5 this part and part 4 of this chapter, the board shall
 6 certify to the board of land commissioners that the failure
 7 to comply has occurred and shall certify when a permittee
 8 who has previously failed to comply comes into compliance."

9 Section 4. Section 90-6-308, MCA, is amended to read:
 10 "90-6-308. Permit procedure and review of impact plan
 11 to run concurrently. It is intended that the procedure for
 12 fulfilling the permit requirement of 82-4-335 and the review
 13 of the impact plan by the board under 90-6-307 90-6-307(5)
 14 and (6), if review occurs, are to run concurrently."

15 Section 5. Section 90-6-403, MCA, is amended to read:
 16 "90-6-403. Jurisdictional revenue disparity --
 17 conditioned exemption and reallocation of certain taxable
 18 valuation. (1) When an impact plan for a large-scale mineral
 19 development approved by the board pursuant to 90-6-307
 20 identifies a jurisdictional revenue disparity, the board
 21 shall promptly notify the developer, all affected local
 22 government units, and the department of revenue of the
 23 disparity. Except as provided in this section and 90-6-404,
 24 the increase in taxable valuation of the mineral development
 25 that occurs after the issuance and validation of a permit

1 under 82-4-335 is not subject to the usual application of
 2 county and school district property tax mill levies. This
 3 increase in taxable valuation must be allocated to local
 4 government units as provided in 90-6-404. The increase in
 5 taxable valuation allocated as provided in 90-6-404 is
 6 subject to the application of property tax mill levies in
 7 the local government unit to which it is allocated.

8 (2) The total taxable valuation of a large-scale
 9 mineral development remains subject to the statewide mill
 10 levies and basic county levies for elementary and high
 11 school foundation programs as provided in 20-9-331 and
 12 20-9-333.

13 (3) The provisions of subsection (1) remain in effect
 14 until the large-scale mineral development ceases operations
 15 or until the existence of the jurisdictional revenue
 16 disparity ceases, as determined by the board."

17 Section 6. The Hard-Rock Mining Impact Board shall
 18 amend Rule 8.104.203A, Administrative Rules of Montana, to
 19 read:

20 "8.104.203A DEFINITIONS DEFINITION For purposes of
 21 these rules, the following definitions apply:

22 (1) the estimated number of persons coming into the
 23 impact area as a result of the development means:

24 (a) those immigrating persons who are or will be
 25 employed in the construction or operation of the development

1 and their immigrating family members,
 2 (b) those immigrating persons who will provide service
 3 or support to the development or to those persons
 4 encompassed by (a) and their immigrating family members, and
 5 (c) any other persons identified in an approved impact
 6 plan as being expected to move into the impact area as a
 7 result of the development;

8 (2) the term 'impacted area' means the jurisdictional
 9 area or areas of the affected local government units
 10 identified in an impact plan or in an amendment to an impact
 11 plan."

12 NEW SECTION. Section 7. Extension of authority. Any
 13 existing authority of the hard-rock mining impact board to
 14 make rules on the subject of the provisions of this act is
 15 extended to the provisions of this act.

16 NEW SECTION. Section 8. Applicability. This act
 17 applies to all impact plans submitted after the effective
 18 date of this act.

19 NEW SECTION. Section 9. Effective date. This act is
 20 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB645, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act specifying that a large-scale mineral development may cause an influx of people directly related to the area of the development; requiring that a mineral developer, in consultation with affected local government units, shall ensure that the hard-rock mining impact plan meets statutory requirements; and clarifying that the impact plan is approved without any review by the hard-rock mining impact board if no objections are filed within the 90-day review period.

ASSUMPTIONS:

This bill will not affect the current level of operations of the Hard-Rock Mining Impact Board.

FISCAL IMPACT:

None.

David L. Hunter DATE 2/9/87
DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

Dave Brown

DAVE BROWN, PRIMARY SPONSOR

DATE 2/9/87

Fiscal Note for HB645, as introduced.

HB 645

PROPOSED AMENDMENTS TO HB 645)
REP. HARPER

I.

1. Page 8.
Following: line 3
Insert: "(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services which can be expected as a result of the development may object to the impact plan under the provisions of this section."
Renumber: subsequent subsections
2. Page 10, line 25.
Following: "under"
Strike: "subsection"
Insert: "subsections"
3. Page 11, line 1.
Following: page 10
Insert: "and (6)"

II.

1. Page 8, line 15.
Following: "approved"
Strike: "without any review"
2. Page 8, line 16.
Following: "board"
Insert: ", subject only to a technical review for clarity and enforceability of the plan"

Centennial Minerals Inc.

September 26, 1985

Montana Hard Rock Board
c/o Mr. Koehler Stout, Chairman
Community Development Division
Montana Department of Commerce
State Capitol Complex
Helena, Montana 59601

Gentlemen:

This letter is being sent to you in response to a series of technical compliance questions regarding the Montana Tunnels Project Hard Rock Mine Impact Mitigation Plan for Jefferson County, Montana (hereafter known as the Plan). The questions were raised by Ms. Carol Ferguson in her September 3, 1985, memorandum to Dr.'s John Fitzpatrick and Jeff Baker, the socioeconomic consultants serving Centennial Minerals Inc. and Jefferson County, respectively.

At the outset I want to thank both the Board and Ms. Ferguson for the courtesy extended to Centennial Minerals to date. We appreciate your willingness to assist our endeavor by scheduling a conference call to resolve the issues identified in the September 3rd memorandum.

The balance of this letter is divided into two sections. The first section outlines Centennial Minerals' general perspective toward the technical compliance memorandum of September 3rd; the second section contains answers to the five technical compliance problems presented in the memorandum's summary.

GENERAL COMMENTS

Centennial Minerals strongly disagrees with the content, analysis, and findings presented in the September 3rd memorandum. In our judgement, the memorandum is a substantive review of the Montana Tunnels Plan rather than a review to determine technical compliance with the Hard

Montana Hard Rock Board
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Rock Mine Impact Mitigation Act and applicable administrative regulations. The planning document was prepared explicitly following an administrative checklist provided by Ms. Ferguson and guided by the Board's findings of technical compliance for the Jardine Joint Venture Impact Mitigation Plan. Both of those documents address the structure or format of an Impact Mitigation Plan and do not address whether the findings presented in the Plan are valid or whether the mechanisms used to provide impact assistance are adequate. The latter issues are solely the concern and prerogative of local governments and are to be addressed by their review of the Plan during the formal review period. Local government has the option of accepting the Plan, formally objecting to it, or negotiating changes in the Plan with the developer. If the developer and units of local government cannot resolve their differences, the Plan is brought to the Hard Rock Board for review and adjudication.

The September 3rd memorandum is a critique of the Plan's substantive content notwithstanding its reference to "technical compliance questions." Thus, it violates the rights and responsibilities of both the developer and units of local government as provided in the law, and potentially prejudices the Board's responsibility as an impartial arbitrator.

This company has no objection to, indeed it endorses, the Board preparing and distributing educational materials to advise local jurisdictions of their rights under the Hard Rock Act or how to go about reviewing an impact plan once it has been submitted. We do object, however, to Board staff substituting its judgement for that of local governments regarding the Plan's content. In our judgement, the September 3rd memorandum attempts to extend the Board's authority to areas where it has no statutory standing.

The principal and overriding purpose of the Hard Rock Mine Impact Mitigation Act is to protect local governments from bearing the costs of governmental service delivery created by a large scale mineral development. It does so by providing a planning and negotiation process between the mineral developer and local government. The intent of the act is to solve problems and it provides both the local government and developer with the broad authority and discretion to achieve that goal. The law did not contemplate the Board or its staff judging the content of that process until an impasse was reached and adjudication was necessary. To date, Centennial Minerals and the units of local government in Jefferson County have enjoyed an amiable and constructive working relationship, and we are confident that the Montana Tunnels Plan

will be adopted to our mutual satisfaction. We cannot help but conclude that the September 3rd memorandum is a misinterpretation of both the letter and spirit of the Act and an impediment to the planning process established by Centennial Minerals and affected local jurisdictions of Jefferson County.

COMMENTS TO SPECIFIC QUESTIONS

Notwithstanding our belief that Board staff has no authority to raise, nor the Board to hear, substantive issues outside the context of the adjudication process, the balance of this letter will address the five specific conclusions identified in the September 3rd memorandum to explain Centennial Minerals' position on such matters.

Memorandum Comment #1

The Centennial plan does not address the potential for secondary population immigration and specifically denies responsibility for any impacts that might result from secondary population immigration. In this respect the plan does not comply with the requirements of 90-6-307(1) and (2).

Centennial Minerals' Response

The population projections presented in the Plan are a reasonable and valid projection of population change resulting from the Montana Tunnels Project and they comply with the provisions of the Hard Rock Act. The projections were developed using a five step process as follows:

1. Measurements were made to ascertain the size and skill mixture of the local labor market to identify the potential manpower pool available to staff both the construction and operation of the Montana Tunnels Project. Findings from that review are presented in Tables 3-4, 3-5, 3-6, 3-7, 3-8, and 3-9 of the Impact Plan (pages 58-68).
2. Centennial Minerals and its consulting engineers prepared manpower requirements by job classification for both the construction and operational phases of the project. Those requirements were then compared with the "manpower availability" data compiled in step 1 to identify the number

and type of positions that the developer likely would need to fill from outside the local area. That information is shown in Tables 3-1, 3-2, and 3-3 of the Plan, pages 50-55. The analysis showed the need to recruit only 17 workers, or 7.3 percent of the operating workforce, outside the local area. Among the construction crafts the Plan anticipated the need to recruit pipefitters, sheetmetal workers, and ironworkers outside the local labor market. Those conclusions remain valid today substantiated, in part, by the large number of unsolicited job applications submitted to the company. We have received almost 1,200 such requests for employment including 288 from Lewis and Clark, 236 from Silver Bow, 231 from Jefferson, and 106 from Deer Lodge counties.

3. The distribution of population, available housing, and the residence location of existing mineral industry employees were measured and mapped to develop assumptions regarding the likely locations where in-migrating project employees would settle. That information is shown on Table 3-10, page 70, of the Plan.
4. Using the information from the three steps identified above, assumptions were established regarding the number of workers immigrating to the project area. The Plan is based on a "worst case scenario" that assumes an in-migration factor of 20 percent. Thus, the Plan's population projections start off with a gross overestimate of the number of workers moving into the area. Instead of 17 in-migrating workers as identified by the analysis in step 2 above, the population projection assumed 46 in-migrants during the first three years of operations and increasing to 68 in-migrants in the fourth year.
5. Once the projected numbers of in-migrating workers was developed, they were multiplied by a population multiplier. The multipliers were 2.3 for the construction workforce and 3.84 for the operating crew. The multipliers were used to estimate the number of spouses, children, and other household members that likely would accompany the in-migrating employees. Thus, for every 100 in-migrating mine workers, the Plan projects a population increase of 384 persons, an amount "many times larger than the number of people involved in the mining operation."

Both multipliers used in the projections are well grounded in the research literature. The population multiplier of 3.84 persons per in-migrant project employee also is 18.5 percent larger than the size of the average Montana family (3.24 persons) and, again, reflects a likely overestimate of actual population increase.

The population projections, as presented on Tables 1-1 and 1-2, show the estimated population increase directly caused by the construction and operation of the Montana Tunnels Project and, in doing so comply with 90-6-307(1)(b) requiring the Plan to specify "the estimated number of persons coming into the impacted area as a result of development."

The September 3rd memorandum is erroneous when it suggests that the Plan is deficient because it does not include population change attributable to spin-off or secondary economic activity. That position is then justified by reference to the common practice of amplifying the effect of industrial investment by using secondary job and population multipliers. The staff's position takes license with a statement included in the Act's Declaration of Necessity and Purpose, as follows:

The large-scale development of mineral deposits in the state causes an influx of people into the area of development many times larger than the number of people directly involved in the mining operation.

Staff has apparently interpreted that clause to declare that all population changes taking place concurrently with or following large scale mineral development as being caused solely by the development notwithstanding the complete absence of any supporting documentation. In doing so, the interpretation overlooks the statutory requirement of 90-6-307(1)(b) that requires the Plan to estimate the "number of persons coming into the impacted area as a result of the development" (emphasis added). The use of secondary job and population multipliers violates the causal relationship required by the Act. While secondary or spin-off economic and demographic effects are frequently assumed to occur with mineral developments there is no empirical evidence to substantiate the certainty with which such effects will occur or in what degree. Furthermore, it is impossible to isolate secondary effects caused by a mineral project from those caused by other activities in the immediate area such as subdivision development, other forms of business

development, or the private decisions of local employers regarding the size and structure of their workforce, to mention just a few. The use of secondary job and population multipliers is a speculative endeavor and does not establish a specific causal linkage with the mineral development. The population projections contained in the Plan are based upon actions that are under the developer's control and are, thus, reasonable estimates of population growth that will, in fact, result from the development. The use of secondary multipliers does not.

In summary, Centennial Minerals considers the "technical compliance question" of secondary population growth to be fundamentally without merit and a misinterpretation of the statute.

Memorandum Comment #2

The plan proposes to use in-kind services and the donation of property as tax prepayments. This method of prepayment is not authorized by the Act (nor for local governments and taxpayers generally). To the contrary, 90-6-307(2) specifically requires monetary payment of capital and net operating costs.

Centennial Minerals' Response

Staff comment is apparently based on the content of the draft Plan that was informally circulated to the affected jurisdictions during May and June of this year prior to the start of the formal 90 day review period that began in early July. Language in the draft document could be interpreted to suggest "in-kind" contributions for tax prepayments. That language was revised in the document submitted for formal review and it called for Centennial Minerals to monetarily prepay taxes against which it would receive a refund or credit against the company's tax liability at the close of the fiscal year.

At this juncture the entire issue of in-kind tax prepayments is moot. Centennial Minerals and Jefferson County have agreed to a tax prepayment/tax credit formula that provides for the monetary exchange of all tax prepayments.

The memorandum's additional comment about "donations of property as tax prepayments" is entirely in error. Centennial Minerals has never placed a dollar value on any proposed property donations, principally a proposed new road to the mine site. The company's commitment to deed

such property to the county was, and remains, a straight forward donation.

In summary, staff's comment is no longer applicable to the content of the impact plan.

Memorandum Comments #3 and #4

In the Centennial plan the developer proposes to prepay taxes annually for the entire operating cost of road maintenance. Section 90-6-307(2) authorizes tax prepayment only for net operating cost, not for the entire operating cost.

Section 90-6-307(2) requires the developer specifically to commit to pay the increase net operating cost resulting from the development. The Centennial plan does not identify and specifically commit to pay the net operating cost of road maintenance.

Centennial Minerals' Response

Questions three and four identified in the staff memorandum will be answered in a single reply since the two comments are very similar in content.

To fault the Montana Tunnels Impact Plan for failing to distinguish between operating costs and net operating costs is to engage in a semantic exercise that trivializes the intent of the Act. Furthermore, it betrays a complete lack of appreciation for the structure and content of the budgeting and accounting systems used by local governments.

The clause requiring the developer to pay "net operating costs" was included in the Act to protect the developer by insuring that it would only be required to fund the incremental increase in operating costs caused by the development and not for services provided prior to development. While that clause is fair to both the developer and local government, effecting its implementation is well nigh impossible. Local government budgets are organized on a line item basis; they do not include program "outputs" or measurements of service delivery costs. Few local governments, and those of Jefferson County are no exception, monitor the type and amount of service they deliver. Likewise, few local governments are engaged in any form of cost accounting and, there

are few records available that allow one to establish a realistic financial basis with which to estimate net operating costs except by the crudest of assumptions.

If you were to go to Jefferson County today and ask the county treasurer or road foreman how much money was spent last year on maintaining the Jefferson City-Wickes Road, the answer would be "I don't know." There are no records available documenting how many times the county plowed snow and/or graded the road, how many tons of gravel were used, or the cost of transporting staff to and from the work area. The almost complete lack of operating cost data for the road fund is mirrored in virtually every other service provided by Jefferson County, its municipalities, and service districts. And, Jefferson County is no different from any other county in Montana. The data simply does not exist to carefully calculate operating costs much less project net operating costs.

In the absence of such financial information, the Plan developed a series of cost estimates on an assumption basis and presented them to local government for review. The Plan's review resulted in several counter proposals from the local governments. Since then, both parties have negotiated a series of projected costs and a schedule of impact assistance payments that is mutually acceptable. At this point, Centennial Minerals does not know whether it has agreed to fund all operating or simply net operating costs and, frankly, it does not care what particular label is used. As negotiated, the Plan establishes a working arrangement between the affected jurisdictions and Centennial Minerals aimed at solving future problems. In the final analysis, that is the purpose of the Act, not to engage in financial hair splitting. Should subsequent events prove the assumptions or terms of the Plan in error, the Plan can and will be amended as provided for in the law. Accordingly, Centennial Minerals rejects the assertion that the Plan is flawed because it does not distinguish between operating and net operating costs.

Memorandum Comment #5

The plan does not appear to comply either with 90-6-307(2) or with administrative rule 8.104.203(1). The impact plan does not identify and commit to pay all increased net operating costs, as required by statute, and, as required by rule, the plan does not provide sufficient information to allow the reviewer to analyze the effect of tax crediting on increased net operating costs and the developer's commitment to pay those costs.

Centennial Minerals' Response

The developer disagrees with the staff's comment and suggest instead that it has more than adequately met the requirements of the Act and of applicable administrative rules to pay all net operating costs. Centennial Mineral's commitments include the following steps.

1. On page 22 of the Plan the developer explicitly commits itself to pay all increased capital and operating costs with the following statement.

Centennial Minerals Inc. warrants that it will pay all increased capital and operating costs incurred by units of local government within Jefferson County, Montana, as a direct result of the Montana Tunnels Project and as specified in the Hard Rock Mine Impact Mitigation Plan.

The statement is followed by the notarized signature of Mr. Alan Richardson, Centennial Minerals' Vice President for Operations.

2. Centennial Minerals and the affected jurisdictions have agreed to specific dollar amounts to cover projected capital and increased operating costs. In addition, language has been added to the Plan that establishes a formula basis for estimating costs in service categories where there is likely to be a fluctuating level of service, such as the schools.
3. Centennial Minerals and Jefferson County have agreed to establish an Impact Assistance Contingency Fund under the control of the county commission and open to all affected jurisdictions for the explicit purpose of adjusting small, mine related impacts. The fund is intended to serve as an intermediate measure to provide cost adjustments short of formally amending the Plan.
4. All jurisdictions have been advised of their rights to amend the Plan in the future should the Plan be materially in error and/or need adjustment beyond the scope of the Impact Assistance Contingency Fund.

The affected jurisdictions have accepted these commitments and they are satisfactory to Centennial Minerals as well. Frankly, at this point, there is little more the company can do to clarify or enhance its expressed commitment to the principles of the Hard Rock Act.

The final assertion of the staff memorandum claiming that the Plan does not provide sufficient information to allow the reviewer to analyze the effect of tax crediting is puzzling in view of the complete lack of such comments or questions from local government and its consultants during the past five months while the Plan has been in public circulation. To estimate the effect of tax prepayments or tax credits on the financial health of any jurisdiction it is necessary to know three things, including:

1. The taxable value of the mineral development. That information and an explanation of its derivation is provided in the Plan on Tables 3-11, 3-12, 3-13, pages 73-77.
2. The estimated amount of tax prepayments. That material is available in the concluding sub-section of each chapter that discussed a specific governmental service. It also should be noted that a large portion of the funds committed by Centennial Minerals for impact assistance are donations and require no estimation of tax crediting or its effects. Tax prepayments were identified in only three areas: education, county law enforcement, and county roads.
3. An understanding of the fund and accounting structure used by each local jurisdiction. The Plan did not specifically address this issue. It may have proceeded on the erroneous assumption that the governing bodies reviewing the Plan were familiar with the fund structure of the jurisdiction under their supervision.

CLOSING

Centennial Minerals feels that the technical compliance issues raised by Ms. Ferguson in her September 3, 1985, memorandum are without merit and that the Plan meets the technical requirements of the law. The company further asserts that the Plan's substantive content is solely the jurisdiction of the developer and affected units of local government until such time as the Plan is brought before the Board for adjudication. That circumstance has not yet arisen and we therefore respectfully request that the Board dismiss the September 3rd memorandum from any further consideration.

Very truly yours,



Alan Richardson
CENTENNIAL MINERALS, INC.

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

FEBRUARY 16, 1987

TESTIMONY OF RICHARD M. WEDDLE, LEGAL COUNCIL
HARD-ROCK MINING IMPACT BOARD

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RICHARD WEDDLE, AND I AM LEGAL COUNSEL TO THE HARD-ROCK MINING IMPACT BOARD. I AM TESTIFYING ON BEHALF OF THE BOARD AS A PROPONENT OF HOUSE BILL 645.

HOUSE BILL 645 WOULD REDEFINE THE ROLES OF THE PARTICIPANTS IN THE REVIEW OF IMPACT PLANS UNDER THE HARD-ROCK MINING IMPACT ACT. THE BILL WOULD RELIEVE THE BOARD OF ITS CURRENT RESPONSIBILITY TO ASSURE THAT IMPACT PLANS COMPLY WITH THE TECHNICAL REQUIREMENTS OF THE ACT. BY DOING SO THE BILL WILL ELIMINATE ANY APPREHENSION THAT MAY EXIST ON THE PART OF MINERAL DEVELOPERS AND LOCAL GOVERNING BODIES THAT THE BOARD MIGHT UNDULY INFLUENCE THE SUBSTANCE OF A PLAN. THIS REASSIGNMENT OF RESPONSIBILITIES WILL, OF COURSE, PLACE A HEAVY AND SINGULAR BURDEN ON MINERAL DEVELOPERS AND AFFECTED LOCAL GOVERNMENT UNITS TO DEVISE PLANS WHICH ARE NOT ONLY FAIR BUT COMPREHENSIBLE AND LEGALLY UNASSAILABLE. THE BOARD IS CONFIDENT THAT THE PARTICIPANTS WILL MEET THIS CHALLENGE.

THE PUBLIC POLICIES REFLECTED IN THE HARD-ROCK MINING IMPACT ACT, WHILE STRAIGHTFORWARD IN CONCEPT, HAVE BEEN EXTREMELY COMPLEX IN THE IMPLEMENTATION. THROUGHOUT THE SIX YEARS THAT IT HAS ADMINISTERED THE ACT THE BOARD HAS FREQUENTLY BEEN CONFRONTED WITH QUESTIONS NOT EASILY ANSWERED BY REFERENCE TO THE STATUTE, ITSELF. THE BOARD HAS ATTEMPTED TO RESOLVE THESE MATTERS BY CONSENSUS OF ALL INTERESTED PARTIES, WHERE A CONSENSUS COULD BE REACHED, AND, IN ALL CASES, IN WAYS WHICH CONFORM TO LEGISLATIVE INTENT AS REFLECTED BY THE LANGUAGE OF THE ACT AND BY LEGISLATIVE HISTORY.

THE BOARD SUPPORTS HOUSE BILL 645 AS IT HAS ALL EFFORTS TO CLARIFY AND SIMPLIFY THE ACT. AT THE SAME TIME, THE BOARD RECOGNIZES THAT ANY REORDERING OF SUCH A COMPLEX STATUTORY SCHEME WILL LIKELY GIVE RISE TO A NEW SET OF QUESTIONS. IN RESPONDING TO THESE QUESTIONS THE BOARD WILL BE GUIDED, AS ALWAYS, BY THE PUBLIC POLICY ESTABLISHED BY THE LEGISLATURE.

THE BOARD AND I WISH TO THANK YOU FOR THE OPPORTUNITY TO PRESENT TESTIMONY ON THIS BILL.