

MINUTES OF THE MEETING  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE

February 13, 1987

Meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on February 13, 1987, at 1:00 p.m., in Room 405 of the State Capitol.

ROLL CALL: All members were present.

DISPOSITION OF SENATE BILL 86: Sen. Gage, sponsor of SB 86, Uniform Dormant Minerals Interest, reported that he had talked to the Montana Uniform Commissioners; Dean Sullivan of the National Uniform Code Commission; and also to Ward Shanahan who proposed amendments to the bill at a previous meeting.

Sen. Gage presented the committee with amendments written by Gail Kuntz at his request. (Exhibit 1)

Sen. Gage said that he himself was not in favor of the first amendment. After repetitive questions and a lengthy discussion, Sen. Lynch stated that Sen. Gage seemed uncomfortable with the bill and the amendments; therefore, Sen. Lynch moved that SB 86 DO NOT PASS.

The attached Roll Call Vote was taken which resulted in a TIE VOTE.

Sen. Halligan then made a substitute motion that SB 86 BE TABLED. Motion CARRIED unanimously.

DISPOSITION OF SENATE BILL 221: Sen. Weeding described SB 221 as an act to require oil and gas developers to be required to compensate surface owners for loss of productive use and value when a well has been "temporarily abandoned." Sen. Weeding distributed a proposed amendment. (Exhibit 2) Sen. Weeding moved that the amendment to SB 221 be ADOPTED. Motion CARRIED unanimously.

Sen. Lynch moved to further amend SB 221 as follows:

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|--|--|
| 1. Page 3, line 7.<br>Following: "owner"<br>Strike: "\$1,000"<br>Insert: "\$500" | 2. Page 3, line 7.<br>Following: "and"<br>Strike: "\$200"<br>Insert: "\$100" |
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Motion by Sen. Lynch CARRIED unanimously.

Sen. Halligan questioned why a statute is necessary when action could be accomplished by contract or by going to court. Sen. Keating was of the same mind and told the committee that in a discussion with Mr. Lien, it was stated by Mr. Lien that the wells on his place were a part of the property before Mr. Lien purchased the land. The previous owner may have already received damages.

Sen. Keating said that SB 221 would open the door to interference with private contracts between two consenting parties. Sen. Weeding explained that he had talked to various mineral owners who had suggested the bill. Sen. Weeding said that there seems to be no way to reclaim holes. Sen. Weeding also said there was an omission in damage laws between production and final abandonment, and it can cost up to \$25,000 to fully reclaim a site.

Sen. Keating said that "temporarily abandoned" wells are undefinable.

Sen. Severson asked if there is a law that says when a well is abandoned, it must be plugged. It was clarified by those present that there are indeed laws and referred him to the statutes.

Sen. Gage stated the following four points.

1. If a landowner did not get ownership of the minerals when he purchased his land, he should have realized he was getting land that gave someone else the right of egress and ingress. In other words, Sen. Gage said the landowner is not being "put upon."
2. There are no specific rules for "old wells" to determine temporary abandonment.
3. EIC stated that there are many requests for RIT funds to take care of temporarily abandoned wells. Sen. Gage had EIC submit copies of these requests for RIT funds, and he found in his review that not one of them was a "temporarily abandoned well" but rather dealt with old wells that had been plugged previously and are now causing problems for various reasons.
4. Sen. Ed Smith confirmed that Northeastern Mineral and Landowner Association Directors had unanimously adopted opposition to SB 221.

Sen. Weeding moved that SB 221 AS AMENDED DO PASS. A Roll Call Vote was taken and the motion FAILED with five members voting "yes" and seven members voting "no."

At the request of Sen. Keating, motion was reversed, and Senate Natural Resources Standing Committee Report reads "DO NOT PASS."

CONSIDERATION OF SENATE JOINT RESOLUTION 9: Sen. Greg Jergeson, Senate District 8, introduced SJR 9 which requests the Department of Natural Resources and Conservation (DNRC) to give equal consideration to hydropower projects associated with agriculture projects for private grants and loans under the Water Development Program.

Sen. Jergeson said it was his understanding that farmers and ranchers are encouraged to find another way to increase their income, and SJR 9 would give the farmers an alternative. He stated that there has been some confusion about the priorities established by DNRC for grants and loans under 85-1-6, MCA. The purpose of this resolution would be to resolve those misunderstandings. Hydropower projects would improve the cash flow of an existing operation; and Sen. Jergeson said hydropower projects should be considered equal to other agriculture projects that have been approved by DNRC. Sen. Jergeson urged the committee to give a DO PASS and he distributed a "housekeeping" amendment for the committee to consider. (Exhibit 1)

PROPOSERS: Dean Taverner stated that it had been recent policy of DNRC to exclude hydropower from the Water Development Loan Program. He said that the purpose of this resolution would be to redirect the DNRC to include as part of its loan program this untapped hydropower resource in Montana's agricultural community. (Exhibit 2)

Peter Gross, Montana Small Hydroelectric Association, stated that the organization comprises many irrigation districts, farmers, and ranchers who support SJR 9.

OPPOSERS: There were no opposers.

Sen. Keating permitted Larry Fasbender, DNRC, to state background information as neither an opposer or proposer. Mr. Fasbender explained that SJR 9 would clarify legislative intent. During the 49th Legislative Session, it seems that both Appropriations and Long Range Planning Committees had some concern that programs should favor agriculture and agricultural projects and not deviate. Therefore, when

farmers applied for loans for hydroprojects, DNRC denied the applications, keeping in mind that the money should be available for agricultural projects only. The Legislature had given DNRC \$10 million in bonding authority; and there is \$5 1/2 million remaining, although at a higher interest rate than in previous years. At a meeting with the governor it was determined that Legislative intent must be clarified, hence SJR 9 was written.

QUESTIONS (AND/OR DISCUSSION) OF THE COMMITTEE: Sen. Keating asked if low-head hydros used in connection with agriculture were electrical generators as well; that is, are the projects generating surplus electricity. Mr. Fasbender said that the power would be sold to MPC or some other utility.

Sen. Weeding asked if the pump storage concept--generate during the day and pump the reservoir full at night--could fit into the resolution. Mr. Fasbender replied that as the bill reads, as long as it is related to agriculture, the project would receive the same preference.

Sen. Gage stated that at the present time, there is an electrical surplus in his area, and he asked Mr. Gross if he would anticipate that fact as being a part of the delays that DNRC might possibly make. Mr. Gross responded that the Public Service Commission would be the determining agency. Rates from now until 1992 will not be as great as from 1992 upward. DNRC would have to review the economics based on the rates and rates reflect the need for power.

CLOSING: Sen. Jergeson closed by saying that the proponents had given adequate information and answered the questions accurately, and he asked the committee to give SJR a DO PASS vote.

DISPOSITION OF SENATE JOINT RESOLUTION 9: Sen. Gage moved that the amendment presented by Sen. Jergeson be adopted. Motion CARRIED unanimously. Sen. Walker moved SJR 9 AS AMENDED DO PASS. Motion CARRIED by majority vote. Sen. Keating voted against the resolution.

DISPOSITION OF SENATE BILL 184: Sen. Tveit moved that SB 184 DO PASS. Sen. Walker stated that he is a member of Long Range Planning. After he had heard that there had been over 13,000 wells drilled and there were only two PER's requested by DNRC, he said he felt there was no need to approve SB 184. Sen. Walker also read aloud a list of RIT grant requests to fix old wells, and he felt that perhaps drilling of oil and gas wells should not be exempt from MEPA.

Sen. Halligan agreed that no problem exists and he could see no need for SB 184.

Sen. Keating said that the reason that MEPA was not applied to more than the two wells cited and the reason more PER's were not required is because there is so little environmental impact. He said that MEPA is philosophical and that anyone could challenge. MEPA is like a hammer on the oil industry, and Sen. Keating said that there is no telling when the hammer is going to fall. Sen. Keating emphatically stated that MEPA is working adversely against private property in the State of Montana.

Sen. Weeding said that MEPA action is triggered by a controlling agency. EIS's have been written in Montana, but never on oil. However, there were PER's. Sen. Weeding also stated that the more rigid rules were imposed by the zoning board rather than a MEPA regulation in Bridger Canyon.

Sen. Tveit explained that the language in MEPA goes into harassment by its broadness and gives a right to sue in order to block development in the State.

Sen. Severson said that testimony had been given in the past concerning underground aquifers and he wanted confirmation of whether aquifers could be polluted.

Sen. Tveit cited the statutes concerning rotary drilling procedures to Sen. Severson.

Sen. Walker once again stated he had been learning much recently and he had heard testimony in Long Range Planning where an aquifer was inaccurately gauged and wells were ruined.

However, Sen. Keating stated that was a damage problem, and even MEPA would not address it.

Sen. Walker stated for the record that RIT reports show that all companies are not trustworthy.

Sen. Severson wanted to know what triggers MEPA, and Sen. Keating replied that all major actions occurring in the State would trigger MEPA. Sen. Keating explained what the bill is addressing is simply surface disturbance and the real question is whether drilling an oil or gas well would hurt Montana's environment.

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A Roll Call Vote was taken on Sen. Tveit's motion that SB 186 DO PASS. Six members voted "yes," and six members voted "no," resulting in a TIE VOTE.

There being no further business before the committee,  
Sen. Keating adjourned the meeting at 2:42 p.m.

  
THOMAS F. KEATING, Chairman

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ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	X		
Sen. Cecil Weeding, Vice Chairman	X		
Sen. John Anderson	X		
Sen. Mike Halligan	X		
Sen. Delwyn Gage	X		
Sen. Lawrence Stimatz	X		
Sen. Larry Tveit	X		
Sen. "J.D." Lynch	X		
Sen. Sam Hofman	X		
Sen. William Yellowtail	X		
Sen. Elmer Severson	X		
Sen. Mike Walker	X		

Each day attach to minutes.





PROPOSED AMENDMENTS TO SB 86

1. Page 2, line 2.

Strike: "royalty, production payment,"

2. Page 7, lines 4 through 8.

Following: "action"

Strike: remainder of lines 4 through 8 in their entirety

Insert: "."

OPTION: Insert: "provided that the owner of the mineral interest appears before the court has recorded an order terminating the mineral interest."

3. Page 7

Following: line 8

Insert: "Section 8. Prima facie case -- appearance by mineral interest owner -- conclusive presumption. (1) If the following facts are established by a surface owner, they are sufficient to allow a court to conclusively presume that a mineral interest is dormant and that the surface owner has established a prima facie case of mineral interest abandonment:

(a) that none of the actions that constitute a use of the mineral interest as specified in [section 5] have been taken by or under authority of the mineral interest owner in the preceding 20 years; and

(b) that no notice of intent to preserve the mineral interest or a part thereof has been recorded in the preceding 20 years by the mineral interest owner or another person acting on behalf of the owner as specified in [section 6].

(2) A court may proceed and record an order terminating a mineral interest based on the facts specified in subsection (1), unless the mineral interest owner appears

[OPTION A: within      days after service of process pursuant to the Montana Rules of Civil Procedure has been completed

or

OPTION B: after service of process pursuant to the Montana Rules of Civil Procedure has been completed but before the court has recorded an order to terminate the mineral interest]

and:

(a) establishes that the mineral interest is not dormant because one or more of the actions that constitute a use of the mineral interest as specified in [section 5] occurred during the preceding 20 years; or

(b) records a late notice of intent to preserve the mineral interest as provided in [section 7].

4. Page 3, line 9.

Following: "title"

Insert: "pursuant to Rule 4, Montana Rules of Civil Procedure"

PROPOSED AMENDMENT FOR SENATE BILL 221  
SCRSB221

February 11, 87

Natural Resources

Senate Bill

221

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white

REQUIRES LANDOWNER COMPENSATION WHEN OIL/GAS WELLS TEMPORARILY  
ABANDONED

Senate Bill

221

BE AMENDED AS FOLLOWS:

1. Page 3, line 8.

Following: " on "

Insert: "other"

Following: " land "

Strike: remainder of line 8 through " animals " on line 9

Proposed Amendment to SJR 9

Senator Jergeson

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 2-13-87

BILL NO. SB 184

1. Page 2, line 3.

Following: "Montana"

Strike: "."

Insert: "; and"

Following: line 3

Insert: "WHEREAS, directly related to agriculture means that the sale of electricity from the hydropower project benefits an existing agricultural operation."

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SENATE NATURAL RESOURCES

EXHIBIT NO. 4

DATE 2-13-87

BILL NO. SB 184

SJ9

It has been recent policy of the Department of Natural Resources and Conservation to exclude hydropower from the Water Development Loan Program. Although this policy was initiated in reponse to a legislative directive to emphasize agriculture, the net effect of the policy has to been to discourage development in an area of agriculture that has substantial potential in the state.

The purpose of this resolution is to redirect the Department of Natural Resources to include as part of its loan program this untapped hydropower resource in our agricultural community.

Agricultural irrigation projects that are now being proposed include numerous projects with unmeasured hydropower potential. This hydropower resource, if not developed as these projects proceed, will become a lost opportunity for energy generation and will become a lost revenue source for the agricultural community. The effect of the recent DNRC policy has been to discourage investigation of the hydropower potential of gravity sprinkler systems, drop-structure reconstruction, canal improvement projects, and ditch-to-pipeline conversion projects. The fear is that inclusion of hydropower as part of these proposals will result in exclusion of these projects from the Water Development Loan Program.

Other projects, such as existing dams, constitute more agricultural energy resource that has not yet been tapped.

For a state that is searching for economic solutions, that wants to protect and develop its agricultural community and resources, and that is searching for environmentally sound alternatives to non-renewable resources, full and vigorous state support of small-scale hydropower in the agricultural community should be basic policy. This resolution will help set such policy.

P. Lee Javener

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES

Date February 13 1987 Bill No. 86 Time 1:25 p.m.

NAME	YES	NO
Sen. Tom Keating, Chairman	X	
Sen. Cecil Weeding, Vice Chairman		X
Sen. John Anderson	X	
Sen. Mike Halligan	X	
Sen. Delwyn Gage		X
Sen. Lawrence Stimatz		X
Sen. Larry Tveit		X
Sen. "J.D." Lynch	X	
Sen. Sam Hofman		X
Sen. William Yellowtail		X
Sen. Elmer Severson	X	
Sen. Mike Walker	X	

Nadine McCurdy  
Secretary

Senator Tom Keating  
Chairman

Motion: DO NOT PASS.

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\_\_\_\_\_ (tie vote)

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES

Date Feb. 13, 1987 SENATE BILL Bill No. 221 Time 1:50 p.m.

NAME	YES	NO
Sen. Tom Keating, Chairman		X
Sen. Cecil Weeding, Vice Chairman	X	
Sen. John Anderson		X
Sen. Mike Halligan	X	
Sen. Delwyn Gage		X
Sen. Lawrence Stimatz		X
Sen. Larry Tveit		X
Sen. "J.D." Lynch	X	
Sen. Sam Hofman		X
Sen. William Yellowtail	X	
Sen. Elmer Severson		X
Sen. Mike Walker	X	

Nadine McCurdy  
Secretary

Senator Tom Keating  
Chairman

Motion: AS AMENDED, SB 221 DO PASS.

Motion Failed.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES

Date Feb. 13, 1987 Senate Bill No. 184 Time 2:39 p.m.

<u>NAME</u>	<u>YES</u>	<u>NO</u>
Sen. Tom Keating, Chairman	x	
Sen. Cecil Weeding, Vice Chairman		x
Sen. John Anderson	x	
Sen. Mike Halligan		x
Sen. Delwyn Gage	x	
Sen. Lawrence Stimatz		x
Sen. Larry Tveit	x	
Sen. "J.D." Lynch		x
Sen. Sam Hofman	x	
Sen. William Yellowtail		x
Sen. Elmer Severson	x	
Sen. Mike Walker		x

Nadine McCurdy  
Secretary

Senator Tom Keating  
Chairman

Motion: SB 184 DO PASS.

Results: Tie Vote



# STANDING COMMITTEE REPORT

February 13 19 87

MR. PRESIDENT

We, your committee on..... **NATURAL RESOURCES** .....

having had under consideration..... **SENATE BILL** ..... No. **221** .....

first reading copy ( white )  
color

**REQUIRES LANDOWNER COMPENSATION WHEN OIL/GAS WELLS TEMPORARILY ARE  
ABANDONED**

Respectfully report as follows: That..... **SENATE BILL** ..... No. **221** .....

~~DO NOT~~  
DO PASS

DO NOT PASS

.....  
**SENATOR THOMAS F. KEATING,** Chairman.

# STANDING COMMITTEE REPORT

February 13 ..... 19 87

MR. PRESIDENT

We, your committee on ..... **NATURAL RESOURCES** .....

having had under consideration ..... **SENATE JOINT RESOLUTION** ..... No. **9** .....

first ..... reading copy ( white )  
color

## REQUESTS EQUAL CONSIDERATION FOR HYDROPROJECTS RELATED TO AGRICULTURE

Respectfully report as follows: That ..... **SENATE JOINT RESOLUTION** ..... No. **9** .....

Be amended as follows:

1. Page 2, line 3  
Following: "Montana"  
Strike: ", "  
Insert: "; and"  
Following: line 3  
Insert: "WHEREAS, "directly related to agriculture" means that the sale of electricity from the hydropower project benefits an existing agricultural operation."

AND AS AMENDED

DQ.PASS

XXXXXXXXX  
DO NOT PASS

.....  
SENATOR THOMAS F. NEATING, Chairman.