

MINUTES OF THE MEETING  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE

February 16, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on February 16, 1987, at 1:00 p.m. in Room 405 of the State Capitol.

ROLL CALL: All members were present.

Sen. Keating relinquished the chairmanship to Vice Chairman Cecil Weeding so that Sen. Keating could present SB 233 and SB 292 which Sen. Keating sponsored.

Sen. Weeding announced that proponents and opponents could present their testimony on both bills at one standing if they preferred since SB 233 and SB 292 both referred to the Major Facility Siting Act (MFSA).

CONSIDERATION OF SENATE BILL 233: Sen. Keating, Senate District 44, introduced SB 233 which would revise the MFSA by redefining utility and clarifying that a nonutility would not be required to demonstrate the need for a proposed facility. Sen. Keating explained that SB 233 would deal with the siting of major facilities, and a major facility is defined as a firm that would be involved with the manufacturing process of converting coal to some other use. Once again, Sen. Keating emphasized that SB 233 would not deal with any other industry except with a facility that converts coal to some other use. Sen. Keating cited an example of a major facility as being Colstrip 1, 2, 3, and 4 as reported in Montana Magazine, January - February, 1987, pages 12-16. (Exhibit 1)

Sen. Keating stated that the town of Colstrip is a thriving town and has won awards for its architecture and design. According to Sen. Keating, Colstrip is an example of economic good and environmental preservation. MFSA tightens the permit process to where it is almost impossible to build a facility at the present time. He continued that MFSA was written in 1975 at which time the Federal Energy Commission had released a study indicating that Montana was ripe for about 11 electrical generating plants, and it looked at that time that Montana would be faced with many investors that would be entering the State, mining coal, tearing up the land, building furnaces, and strewing pollution into the air, etc. There was fear!

Sen. Keating stated that Legislature has the responsibility to ensure MFSA does not interfere with wise investment and development and conversion of our natural resources. SB 233 would eliminate the requirement that developers prove that there is no other energy product to fill the need they propose to fill. To explain further, Sen. Keating said that generally, coal conversion is used for the generating of electricity; and there are reasons why public utilities should have to prove need for their product.

1. A public utility is a monopoly and is controlled by PSC as to its rate.
2. A public utility is limited as to its consumption.
3. All of the costs of that facility and management thereof go back into the rate that is charged to the consumer.

Sen. Keating said that private investors risk their own money on what they have already determined is a need in the market place and private investors should not be required to prove that need to State officials. "The proof is in the market place," said Sen. Keating. However, the private investor would still be required to go through the EIS, baseline data, etc.

PROPOSERS: James D. Mockler, Montana Coal Council, said that he appeared in support of SB 233. Mr. Mockler questioned why a facility should be required to go before a board who would determine the need for the facility's product. He explained further that before a private investor builds a multi-million dollar facility to produce a product made of coal, an elaborate study will have been made beforehand. The market study will prove the product is needed before the investor begins. Mr. Mockler said that the act requires that the facility go through 25 environmental permits that require hearings. After every environmental law is satisfied, the DNRC process is still allowed under the present law to make the "political" decision of whether or not a facility will be allowed to proceed. At this point, the private company would have spent in the neighborhood of \$25 million. In this instance, it is a fact that the State decides what a private business should do with its money. If SB 233 and 292 were to be passed, Mr. Mockler said that companies would probably come into Montana once again and build fertilizer plants, etc. He stated that 75% of the coal in Montana is lignite coal and is utilized in one way--conversion. (Exhibit 2)

Ed Bartlett, attorney from Butte, represented the Montana Power Company (MPC) and Western Energy Co., and he offered some amendments to the bill. (Exhibit 3) However, Mr. Bartlett said he would support the bill whether or not the amendments were included. Mr. Bartlett said that Western Energy Co. owns lignite coal reserves in Eastern Montana, and he believes that with the elimination of one step such as SB 233 provides, coal conversion would be much easier. Mr. Bartlett said that Montana Power also supported SB 233 even though it would not benefit from SB 233. However, Mr. Bartlett said he believed that SB 233 would be a positive move and pro-business for the reasons he already had stated. Mr. Bartlett explained the change would be minor, making it easier to develop coal-processing plants but would not take out the environmental protections. He said the change is in order and progressive and it was Mr. Bartlett's opinion that to require an out-of-State utility to prove need for use outside of the State is not only unfair and illogical, but also unconstitutional. SB 233 would remedy the situation. Mr. Bartlett stated that his amendments would "clean up" the definition of utility. If his amendments were to be adopted, the bill would read:

"Utility means any person furnishing energy within Montana from the proposed facility and subject to rate of return or rate regulation by the State of Montana or federal regulatory body."

Mr. Bartlett reiterated that both Western Energy and MPC were supporters of SB 233.

Mike Micone, Executive Director of the Western Environmental Trade Association, stated support for passage of SB 233. He stated that his organization was a strong proponent for jobs in the State, yet WETA still believes in protection of Montana's environment. Mr. Micone said that SB 233 would be a step in the right direction to start projecting an image that Montana does wish to do business. The laws that have been on the books have been inhibiting investments in the State. Investments that are being pondered should surely be made on an economic basis and not hindered by laws that are on the books. Mr. Micone said the change will not compromise the environment and he encouraged the passing of SB 233.

OPPONENTS: Larry Fasbender, Director of the Department of Natural Resources (DNRC), explained that the department opposed SB 233 because the bill would change the MFSA's definition of utility. Mr. Fasbender stated that SB 233 would significantly weaken the law and restrict the environmental reviews required. Mr. Fasbender also stated that even if a major power plant were financed by private money, it would still have an impact on public resources; and he cited the Beulah, N.D., coal-gasification plant that was built by American Natural Gas Co. He said that the plant had been abandoned after the federal government refused to give them additional subsidies, and the company defaulted on \$1.6 billion in federally guaranteed loans. That facility resulted in costing North Dakota citizens over \$65 million; and Montana cannot afford to expose itself to these types of risks in Mr. Fasbender's opinion. To be concise, Mr. Fasbender listed two defects with SB 233: 1) Definition of utility as amended on page 6 would exclude any wholesale power supplier from the definition of utility. 2) SB 233 on page 12, line 15, would eliminate the provision for the Board's looking at any factor that it would consider relevant from the the public interest criteria. (Exhibit 4)

Helen Waller, Circle, represented Northern Plains Resource Council and she stated that she had to travel 800 miles round trip in order to testify for or against a bill. Mrs. Waller said that the reasons MFSA was valid in 1975 are the same reasons MFSA are valid in 1987. Mrs. Waller emphatically stated that Northern Plains Resource Council opposed both SB 233 and SB 292. (Exhibit 5)

Rick Meis, Montana Environmental Information Center Action Fund (MEIC) said that the Center opposed SB 233 because it would extract the core of the act by redefining "utility" and exempting nonutilities from demonstrating need. Mr. Meis stated that the need determination is more than simply deciding whether an investment of a proposed facility is needed, but it is half of the question which BNRC uses in determining whether the investment of a proposed facility is a good one. Mr. Meis claimed that the balance was the heart of the Siting Act, and he asked the committee to give SB 233 a DO NOT PASS recommendation. Mr. Meis submitted written testimony with an attached article from Time Magazine, dated August 19, 1985. (Exhibits 6 and 6a)

Tom Tully represented. Tom Breitbach, a rancher from Circle and a member of McCone Agricultural Protection Organization, which is an affiliate of Northern Plains Resource Council. Mr. Breitbach's testimony was an attempt to educate the Senate Natural Resources Committee about the definitions of "need" and "want." He indicated that the State Legislature agonizes every session, determines needs of the people and how to meet those needs with the taxes that are available. Mr. Breitbach's testimony indicated that the question of "need" is always timely and necessary; therefore, he asked that the committee disapprove SB 233 so that Montanans can still ask and receive answers to the question of "need" rather than "want." (Exhibit 7)

Jeanne-Marie Souvigney testified that the League of Women Voters of Montana and the Montana Chapter of the Sierra Club opposed SB 233 and SB 292. Ms. Souvigney stated that both groups support MFSA as a means that meets the constitutional requirement of a clean and healthful environment. The organization also supported the policy that was behind MFSA, a policy already in law, to "protect the environmental life-support system from degradation and prevent unreasonable depletion of natural resources." Ms. Souvigney also stated that there is a big difference between "need" and "demand" and she asked the committee to defeat SB 233 and SB 292. (Exhibit 8)

Janet Ellis testified on behalf of the Montana Audubon Legislative Fund as being opposed to SB 233. Ms. Ellis submitted written testimony that supported previous opponents' statements. (Exhibit 9)

CLOSING: Sen. Keating explained that the whole synfuel "need" was based on a government study at some level. Oil industry had paid for those studies with the Windfall Profits Tax from oil into the synfuel fund at \$80 billion so all needs could be met. Sen. Keating said that coal is a privately owned resource. He also said that oil and gas are privately owned. Sen. Keating clarified that the subject is about private resources and not public property. The MFSA covers a certificate for environmental protection and SB 233 would not change that fact; however, Sen. Keating emphasized that SB 233 would interest private investors for entering into coal contracts with someone who owns the coal; buying land, and then building a facility. The explanation was made by Sen. Keating that Montana has had economic destruction since MFSA had gone into effect. Once again. Sen. Keating said that SB 233 addresses "need." and SB 233 had nothing to do with federal subsidies or ownership or State ownership.

CONSIDERATION OF SENATE BILL 292: Sen. Keating, Senate District 44, and sponsor of SB 292, asked the committee to recall his opening remarks about coal conversion. He said that when a person intends to build a facility for the conversion of coal under the MFSA, that person is required to choose a primary site and two alternate sites, provide baseline data and EIS on all three sites. SB 292 would eliminate the baseline studies of alternative sites from consideration; i.e., one study instead of three studies. Also, SB 292 would alleviate the requirement to prove that no other product would do the job better--striking lines 6 through 20 on page 39.

PROPOSERS: Jim Mockler, Executive Director of Montana Coal Council, distributed several amendments to SB 292. (Exhibit 10) Mr. Mockler stated that he had talked with a representative of DNRC, and it was indicated that the department was not opposed to removing alternate site studies. The amendments that Mr. Mockler submitted would essentially take out the rest of SB 292, but would retain the portion that refers to nonrequirement of baseline and EIS studies for alternate sites. MFSA seemed ridiculous to Mr. Mockler in requiring alternate site studies when only one site would definitely be advisable. Furthermore, communities are pitted against each other when alternate studies are made, and it is a tremendous disservice to communities, Mr. Mockler indicated. He said that alternate site studies are useless, expensive data, especially when the company cannot use the sites, but simply gathers the data because the law requires it.

Ed Bartlett, Attorney from Butte and MPC and Western Energy representative, said he supported SB 292 without the amendments. However, after reviewing Mr. Mockler's amendments, Mr. Bartlett testified that he would still endorse SB 292. He said that the time frames in SB 292 are reasonable and not burdensome. Mr. Bartlett also offered proposed amendments which would expand the concept of SB 292 to transmission facilities. (Exhibit 11)

Van Jamison, Administrator of the Energy Division of DNRC, testified that DNRC opposed SB 292 because the bill would weaken the Siting Act and would strip away the public protection the act was designed to afford. Mr. Jamison summarized the reasons for his opposition.

According to Mr. Jamison, SB 292 would do the following:

1. Eliminate the comparison of alternatives to a proposed facility.
2. Eliminate the requirement that the public be provided with adequate information on the project, which virtually would eliminate any meaningful public involvement in the certification decision.
3. Decrease the information and analysis available to the Board in order to make its decision.
4. Make the Board's responsibilities less clear.
5. Increase the likelihood of litigation on a project.
6. Will in all likelihood result in decisions that are detrimental to Montana.

Mr. Jamison urged the committee to give SB 292 a DO NOT PASS recommendation. (Exhibit 12)

Jim Flynn, Department of Fish and Wildlife, stated that his department had three primary concerns with respect to the proposed revision to the MFSA.

1. Page 9, lines 10 and 11--requirement for baseline data in the permit application would be confined to the proposed location.
2. Page 14, line 10, whereby the review period would be reduced from 22 months to 12 months. The Department of Fish, Wildlife and Parks's participation in the process requires an assessment of the project's impacts, if any, upon fish and wildlife resources; and the resources must be observed over a 12-month period of time to determine impacts on their annual cycles.
3. Page 14, line 18. Deletion of DNRC's recommendation makes little sense. After months of reviewing studies and evaluations of a project, the technical administrators would not be able to make a recommendation to the decision makers. Mr. Flynn stated that SB 292 would lessen assurance of proper consideration of all facets of the projected project and not serve all the interests in Montana to the proper degree. (Exhibit 13)

Rick Meis, MEIC, explained that he had not had a chance to review the proposed amendments to SB 292 that were presented and he submitted written testimony concerning the bill as it was originally prepared. Mr. Meis gave the committee a DO NOT PASS recommendation. (Exhibit 14)

Jeanne Marie Souvigny, representative of the League of Women Voters and the Montana Sierra Club, said that those organizations support the Major Facility Siting Act as a means of complying with Montana's constitution for a safe and healthful environment. Ms. Souvigny reported that the groups oppose any revisions or deletions to MFSA, and she also declared that there is a big difference between "need" and "want."

Stan Bradshaw represented Trout Unlimited and he expressed a concern about maintaining water quality. Mr. Bradshaw said that shorter review periods would impair the ability of the DNRC and BNRC to do an evaluation of the impact. Mr. Bradshaw urged the committee to oppose the bill.

Janet Ellis, Montana Audubon Legislative Fund, stated that fair and reasonable decisions cannot be made without careful data gathering, analysis and interpretation; and SB 292 would prevent this from happening. Ms. Ellis said that a hurried analysis would move the decision-making process in the wrong direction, away from well-reasoned scientific procedures and towards rushed, politically motivated decisions. Therefore, Ms. Ellis recommended a DO NOT PASS to the committee. (Exhibit 15)

QUESTIONS (AND/OR DISCUSSION) BY THE COMMITTEE: Sen. Gage asked Mrs. Waller for clarification of her testimony when she said that SB 233 and SB 292 passage would result in "no assurance of environmental compatibility." Mrs. Waller responded that SB 233 would not cause an adverse effect; however, SB 292 would create an adverse impact in her opinion if in-depth studies are taken away from DNRC, giving the Board no basis for making a determination of which site would bring about minimal impact.

In discussion between Sen. Halligan and Mr. Fasbender, it was determined that conceptually there are areas where the Department could improve alternative siting studies. Mr. Fasbender had suggested that there should be an interim study by legislators, environmental groups, the Department, and business communities. He felt the study would be more appropriately made in between sessions and the results would then be consistent with all the groups; and then ultimately, the Legislature would make final decisions.



In response to a question by Sen. Halligan, Mr. Fasbender stated that applications had never been denied on need; however, there had been no applications other than Colstrip.

Sen. Weeding asked how amendments proposed for SB 233 by Mr. Bartlett would affect Colstrip when applications were for not only Montana, but other states as well. Sen. Keating explained that use of the product out of state does not put Montana at risk for costs and need. Consumers' rates in other states are determined by their own PSC's.

Sen. Weeding then mentioned Circle West had envisioned coal conversion for fertilizer, gasohol, and energy sidelines; and he said it seemed that need would have to be established for some and not for others under SB 233.

Senator Keating responded that under MFSA, environment of that area would be controlled under the act itself. As far as need for the product is concerned, it would be determined in the market place by the investor who intends to build the facility.

Sen. Hofman commented that during the 1985 session, there was discussion and a decision made to wait on rulemaking to make MFSA a little bit better for the business climate. He then asked why SB 233 and SB 292 were introduced. Sen. Keating replied that he sees MFSA as a vice on the State of Montana. In the past eight years, Sen. Keating said DNRC has not attempted to make any changes; and he felt that the only way to change the rules would be to change the laws. According to Sen. Keating, SBs 233 and 292 would not degrade the environment in any way.

Mr. Fasbender indicated that he was not sure whose obligation it was to initiate changes, and he said he would welcome further dialogue regarding changes in the law. But Mr. Fasbender wanted it known that DNRC had no input into SB 233 or SB 292. Mr. Fasbender stated that more parties should be involved in amending MFSA that just the business community. As Director of DNRC, Mr. Fasbender stated that current atmosphere is confrontative and not cooperative. Then he read a letter from Tenneco who liked the rules that went into effect in fall 1984. Furthermore, Mr. Fasbender explained that he felt that it is possible for the State to cooperate with business and still protect the environment and at the same time cut business expenses so companies would build in Montana. Mr. Fasbender concluded his remarks by saying that MFSA cannot bear all the blame that facilities have not located and built.

Sen Halligan asked what the other states do when it comes to "need" and "requirements" Mr. Fasbender said that North Dakota does not get into the "need" consideration at all. Mr. Fasbender stated that there is interest not only on the part of Montana, but also on the part of the citizens who pay for the services and will continue to support those services. Mr. Fasbender reiterated that's where public interest is important; and essentially, there must be a balance.


Sen. Halligan asked what more the department requires than a prospectus for investors. Sen. Keating replied that DNRC has specific criteria companies have to follow.

Sen. Walker asked about support costs of schools and infrastructure under the siting act. Mr. Fasbender said that it is important to balance those costs against the benefits the plan is going to provide for the State. He added that decisions made by the department are not "political," but they are based on specific criteria that have been analyzed.

CLOSING: Sen. Keating explained that infrastructure is paid by taxes, and the facility owner pays the taxes. All SB 292 will do is save time and money. He said that the more points of permitting in the law, the more points of obstruction there are. All permits are subject to challenge by the courts; and even if the company wins, there will have been a delay. Sen. Keating said each delay causes an increase in costs which are passed on to the consumers. Sen. Keating asked the committee to pass SB 292 so that business will be attracted to Montana.

Sen. Weeding closed the hearing on SB 292, and he submitted written testimony opposing SB 292 and SB 293 from Mr. Parks who could not stay for the meeting.

Sen. Weeding adjourned the meeting at 3:15 p.m.

  
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CECIL WEEDING, Vice Chairman

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-16-87

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.

DATE 2-16-87

COMMITTEE ON

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Dorey Abelin	Montana Oil & Gas Assoc	233 292	✓	
Helen Waller	Northern Plains Resource Cbl.	233 292		✓
Gordon Waller	self	233 292		✓
Jim Mockler	MT Coal Council	233 292	✓	
Tom Mungin	MT Farmer Union	233 292		✓
Rick Meis	MT Environmental Info Center	233 292		XX
Jim Flynn	DEPT FWP Helena	292		✓
Janet Ellis	MT Audubon	233 292		✓
Tom Tully for Tom Deitrich	MAPC-NPRC	233 292		✓✓
DAVE DARBY	DNRC	233 292		✓
Joni Lee Timmons	NE RC	233 292		✓✓
Jim Jansen	MEIC	233 292		X
Stan Bradshaw	Thort Unlimited	292		✓
Ronan	Self	292 233		✓
Larry Jacobson	DNRC	233 292		✓
Mike McNamee	CRETA	233 292	✓	
Connie Clarke	MT FORWARD COALITION	233 292	✓	
Kathy Sparr	Glendora Forward	233 292	✓	
Al Johnson	DNRC	233 292		✓
Gwen Marie Soudrey	Legal Women Voters MT	233 292		✓
Gwen Marie Soudrey	MT Chapter of Sierra Club	233 292		✓

# COLSTRIP

The boomtown that didn't bust

by Steve Devitt

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-16-87

BILL NO. SB 233

T ravelers often perceive eastern Montana as a harsh, unfriendly land. Sparse grass, prickling sagebrush, relentless sun or blinding drifting snow and, always, unremitting flatness.

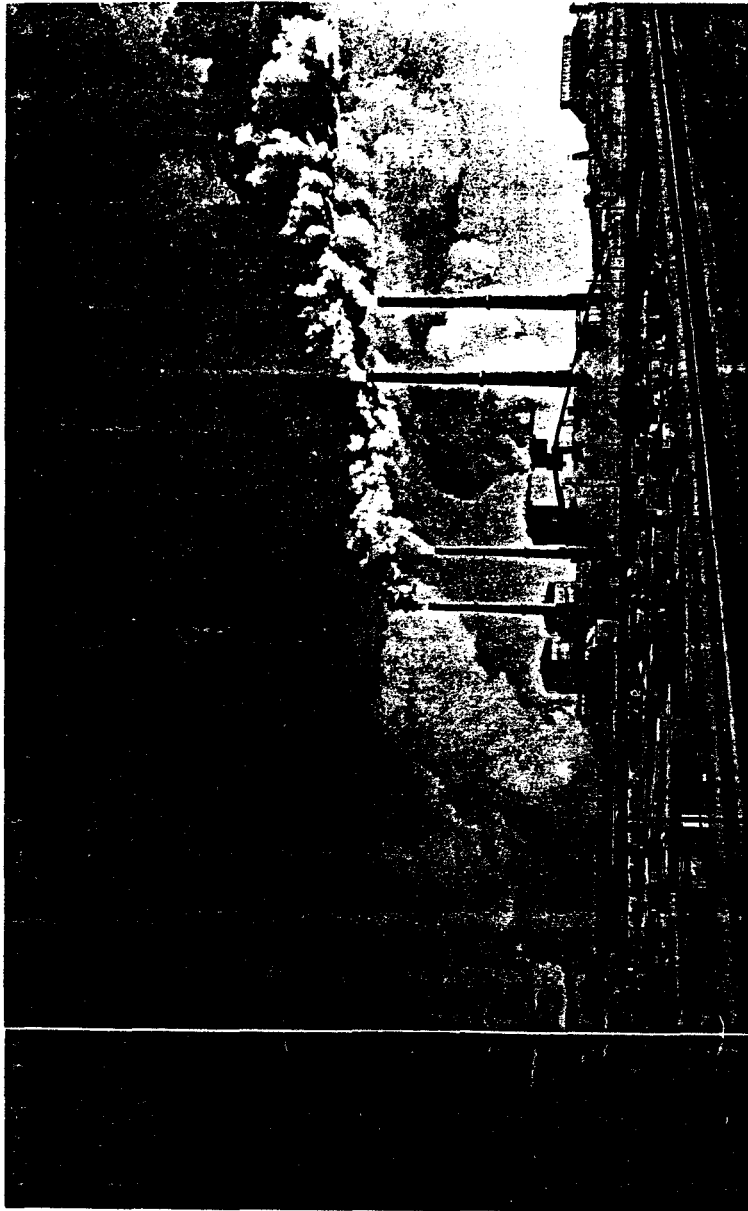
Those of us who were raised there have looked at it long enough to know that it is not flat. It rolls, bends and breaks in a myriad of drainage systems that reflect color: earthen browns and fiery reds. And in late afternoon, the shadows make it a different place yet.

Technically, eastern Montana is a desert. It was certainly a part of what American mapmakers labeled "The Great American Desert" for almost all of the last century. Yet, to visit Colstrip, eastern Montana boomtown turned respectable city, one would hardly recognize the "desert" atop which it rests.

Colstrip, located 120 miles east of Billings, came into being in 1924 when the Northern Pacific Railroad built the town to house the miners who worked the adjacent coal fields. From 1924 until 1958, when the railroad suspended operations there, about 44 million tons of coal were mined, and the town the railroad built consisted of 63 houses, two churches and a school. The demand for coal fell into a long decline with the increasing use of diesel fuel rather than coal to run locomotives, and in 1958 the



E. J. McNicol



E. J. McNicol

Colstrip is different from any other community probably in the U.S.

There are no cliques—after all, everybody here was new at one time.

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-16-87

BILL NO. SB 233

peaked at 1,450. When the work on the second two plants peaked in 1982, more than 4,000 people were employed in Colstrip, creating a virtual economic oasis that exists to this day. The town, however, has "shrunk" from its peak population

shock: the period of growth is over and now is the time for Colstrip residents to enjoy the results of years of planning.

The town is one of the nicest looking in the state, with one of the finest school systems. The trailers of years past are replaced with stately homes, well-paved roads and an abundance of parks, walkways and recreational facilities. The business area of Colstrip is, for the most part, contained in a single shopping mall.

Colstrip residents are obviously happy with their lot. When construction on Colstrip Unit 4 was finally completed in January 1986, the remaining 400 construction workers were laid off.

"They simply didn't want to leave," one resident said, "so we have our first unemployment problem."

If there are economic problems in Colstrip, they are definitely not visible.

"Colstrip is different from any



railroad suspended operations. In 1959, Montana Power purchased the mineral leases, mining equipment and the townsites of Colstrip from the railroad.

Western Energy, a subsidiary of Montana Power, was chartered in 1966 to develop the property. Five years later, Western Energy's Rosebud Coal Mine was the nation's third largest.

In the 1970s, Montana Power, in conjunction with one other power company, began building two coal-generated power plants. After they were completed in the mid-70s, work began on Colstrip Units Three and Four, initiating one of the longest debates in the state's history.

From this debate—questioning whether Montana Power should have been allowed rate increases to pay for these plants—came another: Western Energy, a mining subsidiary of Montana Power (Western Energy's profits do not contribute to the return which Montana Power is allowed by state law) was accused of making "sweetheart" deals with its mother company.

For the Montanans who worked there, though, Colstrip meant jobs. During the construction of the first two plants, employment



of 7,000 to what Montana Power Company officials say will be a stable population of about 4,500.

During the 1970s, Colstrip was a bizarre place—Billings residents, who reaped great economic benefits from their distant neighbors, called it the "great trailer parking lot." People who visited the "town" then and return now are in for a

had all over, but everybody up here had good jobs."

Another special aspect of the community is that it is a young town. Baracker estimated that the median age was 40 or less.

Colstrip is not an incorporated town, but services usually provided by city government are provided by the Colstrip Community Service Company, yet another subsidiary of Montana Power.

Community Service Manager Cliff Young doesn't believe that Colstrip is a "company town."

"We've been through that phase," he said. "This community is unique because it started as a 'boom town' and actually made it through. I came here in 1980 and there were 2,000 people. Three years later there were 7,000 people, and now we're leveling off at about 4,500."

Young wouldn't comment on whether the town would ever incorporate ("After all, that would be up to the people."), but did say that the community was changing.

"We're getting more and more private property owners all the time," he said, "and the people of Colstrip are really developing a sense of community."

Margie Rogers, the office manager of the Rosebud County Press, Colstrip's weekly newspaper, is a walking example of community spirit. A resident of Colstrip for 14 years, Rogers said that Colstrip is home: "This is no passing thing, I expect to be buried here."

To that end, Rogers was part of the group that got a cemetery created. Of her various community endeavors, Rogers regrets only that she became involved in the movement to incorporate Colstrip, an unpopular move in a community where energy production pays more than 90 percent of the taxes.

"People got real hostile," she said, "one guy even turned his nose on me."

Like most small-town newspaper people, Rogers is concerned that too much Colstrip business goes out of town.

"It's a matter of habit," she said. "In the early days, there was nothing here to buy so people just got used to getting in their cars and driving the 120 miles to Billings. Now we have the goods and services, but these small businesses in the mall are struggling..."

## Whether to incorporate has been a heated debate



The attitude of the rural community toward Colstrip has changed, too, according to Rogers. "Before, we were 'the new kid on the block' but that's changed."

It's hard not to admire the cleanliness and the facilities of Colstrip, and the friendliness of the people. About 5,000 people a year utilize the visitor center there, and that facility's coordinator, Jody Telkamp, said that Colstrip draws visiting school groups from as far away as Alaska.

The center, which is jointly sup-

ported by Montana Power, Western Energy and four other power companies, provides information concerning the mechanics of reclaiming land after coal is mined. Since mining began there in 1968, 5,500 acres have been reclaimed. Of these, 1,900 have been reclaimed and are being used as pasture for both livestock and wildlife.

The center also provides a touring bus, so visitors can see the operation at Western Energy's Rosebud mine and the 4.2-mile covered conveyor that brings the coal to the power units.

The staff at the center also likes to brag about their community. To Telkamp, Colstrip is a unique small town because there are no cliques. "After all, everybody here was new at one time."

And the town is almost crime-free. In the two years that Sergeant Harry Esslinger, the commander of the five officers of the Rosebud County Sheriff's Department in Colstrip, has been stationed there, no felony arrests have occurred.

## Memo to Self—VACATION IDEA

OBJECTIVE: To get to know my United States.

HOW TO: Pinpoint a region and explore it.

SAMPLE: Custer Country, Montana—A 13-county section in SE Montana containing the most famous battleground between the Indians and whites—Custer Battlefield—usual geology, famous dinosaur museum, Big Horn Canyon and River, working ranches, and Billings—that city with style and a country smile.

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SENATE NATURAL RESOURCES  
HIT NO. 1 (4)  
2-16-87  
LL NO. SB233

"We've had a few burglaries, some DUIs—mostly off the highway—and some juvenile problems," he said.

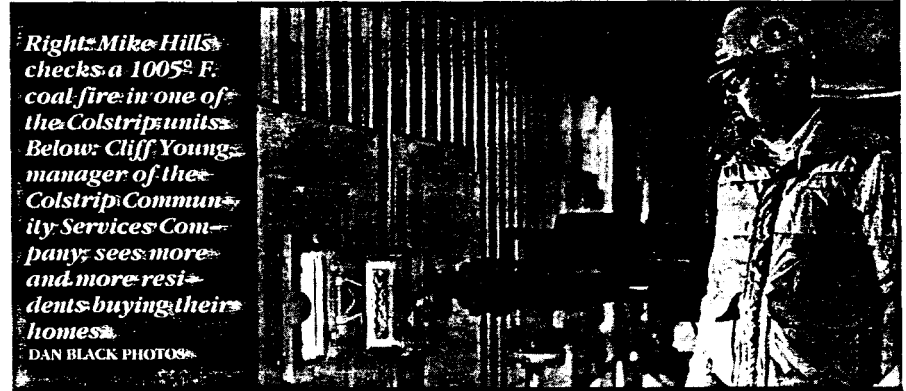
"I love it here," he said. "I traveled around the world for 23 years in the military, and I wouldn't want to leave. You've got good schools, you're close to Billings if you want the nightlife, and there are great outdoor activities."

At the edge of town stand the generating units, their immensity dwarfed by the Montana landscape. Yet the four units, each of which is 300 feet high, are taller than the 10-story Northern Hotel in Billings.

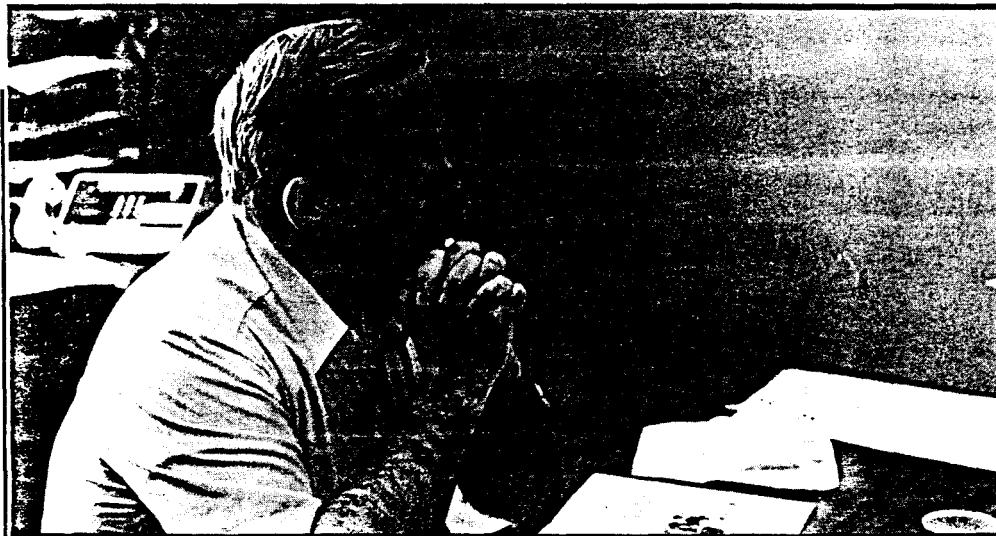
Mike Hills, a structure and facility engineer who worked temporarily in Colstrip during the early '70s and returned to stay in 1980, said each unit's furnaces generate more than 1,000° F. to heat a suspended water tank. Steam from this tank is pushed under intense pressure through

turbines at more than 2,645 pounds per square inch, equaling more than 964,000 horsepower. The water from the units is recycled through a man-made reservoir, known locally as Castle Rock Lake and stocked with northern pike for fishermen's pleasure.

Hills, born in White Sulphur Springs, noted some of the civic improvements unusual for a small



**Right: Mike Hills checks a 1005° F. coal fire in one of the Colstrip units. Below: Cliff Young, manager of the Colstrip Community Services Company, sees more and more residents buying their homes.**  
DAN BLACK PHOTOS



town, such as the outdoor and indoor swimming pools. It wasn't always like this, however.

"When I first came here," he said, "you couldn't find the town."

What Colstrip residents seem proudest of are the school and the "ideal environment" they have created in which to raise their children.

"When I first came to Colstrip [in 1973] there were 15 or 16 families living here," said John Williams, Montana Power's Manager of Administration. "Now we have three grade schools, a middle school

and a high school—all among the finest in the state."

Anita Forde, a dispatcher for the Colstrip sheriff's office and the mother of three children, reflected a common sentiment in Colstrip: "What I like about it here is you don't have to be constantly looking over your shoulder, worrying about your kids."

Five miles out of town, heading down the 30-mile-long two-lane highway that takes you back to I-90, Colstrip and any evidence of it disappears. The power plants will be operational for 50 to 60 years, and the coal—there is more low-sulfur coal in Montana than high-sulfur coal on the rest of the continent—will probably be mined for the next 500 years, or so the experts say.

And the children of Colstrip? Influenced by the economic opulence of their environment, the fine schools, the corporate debates, there also will be another, subtler presence in their lives: the land of eastern Montana. Having grown up on it, they will "see" it and appreciate it as the casual passer-by never can.

Steve Devitt, a resident of Missoula, is a regular contributor to Montana Magazine. ■

\_\_\_\_\_

DATE: 2/6/87

ADDRESS: 2301 Colma / 21.

PHONE: 442-6223

## SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2/16/87

REPRESENTING WHOM? MT. Coal Co. Inc.

BILL NO. SB 233

APPEARING ON WHICH PROPOSAL: SB 233 & SB 292

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

**COMMENT :**

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETAR



(This sheet to be used by those testifying on a bill.)

NAME: Ed BARTLETT DATE: 2/16/87

ADDRESS: 40 E. BROADWAY, BUTTE

PHONE: (406) 723-5421

REPRESENTING WHOM? MONTANA POWER & WESTERN ENERGY

APPEARING ON WHICH PROPOSAL: S.B. 233

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENT: see attached proposed amendments.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Revised by PROPOSER  
Ed Barlett SB 233

SENATE NATURAL RESOURCES  
BILL NO. 3 (attachment)  
BY 2-16-87  
BILL NO. SB 233

2/16/87

SENATE BILL 233 - INTRODUCED BILL

1. Page 6, line 15.

Following: "Montana"

Insert: "from the proposed facility"

2. Page 6, line 16.

Following: "state"

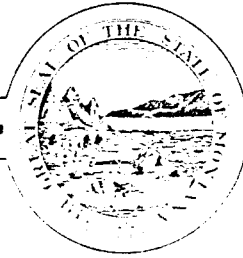
Insert: "of Montana"

3. Page 6, line 16.

Following: "body"

Strike: "or protected from competition by a guaranteed  
monopoly of service in a service area"

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



TED SCHWINDEN, GOVERNOR

1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699

SENATE NATURAL RESOURCES  
HELENA, MONTANA 59620

EXHIBIT NO. 4

DATE 2-16-87

BILL NO. SB233

My name is Larry Fasbender, Director of the Department of Natural Resources and Conservation. The Department opposes Senate Bill 233.

This bill changes the Major Facility Siting Act definition of utility. The bill removes the requirement of a finding of need for some applicants' facilities. These facilities currently are covered by the Siting Act, but are not built by entities that we think of as traditional utilities. The facilities are synthetic fuel plants or other facilities that produce energy as a marketable product, but whose sponsor is not regulated for rate of return or does not have a protected service territory, as do traditional utilities. This bill would also remove electric generating plants built by unregulated corporations to serve regulated utilities loads, which is the emerging trend for building major generating facilities in the United States.

Senate Bill 233 poses a policy question to the Legislature: Does the state have a legitimate reason to evaluate the need for facilities that are built with private financial resources and that are not built to serve regulated markets? Or should the state leave these decisions solely to the project sponsor?

Proponents of this bill will argue that these facilities are built to compete on the open market, not to serve a regulated market, and that the project sponsor is risking its own financial resources in building the project. They argue that this financial risk is sufficient incentive to ensure that the project is viable before building it; consequently, the state has no reason to be involved in or to second guess the sponsor's decision.

The Department and the Board of Natural Resources and Conservation are well aware industry feels that determining need for competitive utility facilities constitutes reviewing a decision that should only be made by the project sponsor. On the other hand, industry must realize that not all the resources committed to one of these projects are private resources. These projects involve a sizable commitment of public environmental resources and also public infrastructure resources, such as sewer and water systems, schools, and other improvements. They must be aware that the state, by making a resource commitment, becomes a partner in the project.

The public in Montana has every right to become involved in or to review a decision that impacts its resources. Montanans have a legitimate reason to ensure the project is financially viable and will continue to operate once the public environmental and infrastructure resources are committed. The public also should know the extent of risk it is being asked to bear should a project be approved for construction. Should these projects not turn out to be viable, local governments and taxpayers will be left "holding the bag" for the financial commitments to new infrastructure, such as new sewer and water systems and schools. This is a very real problem. I need only point to the aborted oil shale development in western Colorado that left local governments, taxpayers, and private developers with extensive losses when the oil companies walked away from partially constructed plants.

Public resources may also be committed to these facilities through public subsidies, which may include federal price supports or guarantees, loan guarantees or interest rate subsidies on loans. Many large energy projects are not viable without federal subsidies such as those offered by the now defunct Synthetic Fuels Corporation. Who gets these subsidies, what facilities are built, and where they are built are all decisions made by the federal government. These federal decisions can be made without concern for their implications on the general welfare of Montana. Therefore, the public in Montana has a legitimate interest in reviewing these decisions as to their impact on the welfare of Montana.

SENATE NATURAL RESOURCES

EXHIBIT NO. 4 p. 2

DATE 2-16-87

BILL NO. SB233

If you do not think the state and its citizens are at risk from these projects, I would like to point out the implications that the abandonment of one of these facilities is likely to have on our next door neighbor, North Dakota. American Natural Gas's (ANG) coal gasification plant in Beulah, North Dakota continues to run only because the U.S. Department of Energy (DOE) still hopes to find a buyer. This is because Tenneco and the other partners in the facility abandoned the facility after the Synthetic Fuels Corporations would not meet their demands for increased subsidies. These partners defaulted on \$1.6 billion in federally guaranteed loans issued to build the project, while at the same time claiming \$550 million in federal tax writeoffs.

DOE is currently operating the facility, but will probably have to close it since a buyer can not be found. Because of the significant financial implications to North Dakota, Governor Sinner formed the Governor's Task Force on the ANG Coal Gasification Project. Its report to DOE estimated the impacts to North Dakota of the plant shutting down. According to the report, North Dakota citizens will be left with \$50.8 million in infrastructure investments that will no longer be needed. North Dakota state government will incur \$15.4 million in costs through increases in unemployment compensation, AFDC, medical assistance, social services, and LIEAP payments. The increased costs to local governments will be \$1.3 million through increases in AFDC, medical assistance, food stamps, general assistance, and social services. The federal government's increased costs for these programs will be \$10.7 million. The pipeline companies in the midwest are still contractually obligated to buy gas from the ANG plant at over \$4 MCF more than they could buy the gas from other sources even though the ANG partners abandoned the facility. Basin Electric Cooperative, which also serves most of the electric co-op customers in eastern Montana, will have to raise \$315 million from its ratepayers over a 7 year period to pay for the unnecessary generating capacity built to serve the project. Even Basin's eastern Montana electric co-op customers may face a 7 percent rate increase as a result of the ANG partners abandoning the facility.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 4 p. 3  
DATE 2-16-87  
FILE NO. SB233

Montana can ill afford to blindly expose itself to risks of such magnitude, particularly when the state is currently facing significant budget problems. The investigation of need for these types of facilities under the Major Facility Siting Act is our best vehicle for understanding the risks to which the state and local governments are exposing themselves and to find ways to mitigate these risks.

The Department and the Board have recognized that need for these facilities means something very different than it does for traditional utilities. As a result, the Siting Act rules create a category called "competitive utilities," which requires a different type of need determination for these facilities. Rather than balancing future energy demand with energy supplies, as is done with traditional utilities, the competitive utility need analysis focuses on the certainty of marketability of the output of the proposed facility, and on the financial viability of the project. The need test in the rules is less stringent than the need requirements for traditional utility facilities and is the type of analysis the applicant does anyway.

Not evaluating the need for certain facilities, as provided for in SB233, would have a substantial impact on Montana. We would be accepting a commitment of public resources without any assurance that such a commitment is warranted by the public need for the output of the facility. The state would be placing itself, its environment and its citizens at risk without any idea of the extent of the risk or without any idea whether the benefits of the project merit such a risk. The state would be abdicating to the federal government responsibility for decisions that have profound impacts on the state and its citizens. We must retain the right to make an independent judgment on how these matters affect us.

I do not feel that the state should put itself in a position of committing substantial public resources and assuming substantial risk without a public review of such risks. If there is a public review of the need for such facilities and need is demonstrated, the general public probably will be more willing to accept the impacts of the facility than if no public review is done. This is a tremendous benefit to the project sponsor.

SENATE NATURAL RESOURCES  
COMMITTEE NO. 4 p. 4  
DATE 2-16-87  
BILL NO. SB233

I urge the committee to give SB233 a "do not pass" recommendation. I would hope we could learn from the experience of our next door neighbor, North Dakota, and not place ourselves in a similar position. The risk associated with these projects is not borne solely by the project sponsors. If it were, there would be no problems in North Dakota. As I have pointed out, this is simply not the case. These projects put the public at risk and by doing so the public is entitled to understand and review this risk. That is what the need provisions in the Siting Act are intended to do. They should be retained.

#### Technical Defects with SB233

1. The definition of utility as amended on page 6 would exclude any wholesale power supplier from the definition of utility. This would include Basin Electric Power cooperative, any generating and transmission cooperatives, or any corporation formed to build an electric generating facility that is a separate corporate entity from a regulated utility. (For example, if the five Colstrip partners had formed a jointly owned generating company, Colstrip 3 and 4 would not be subject to a need review under this bill.)
2. The bill on page 12, line 15, eliminates the provision for the Board to look at any factors it considers relevant from the public interest criteria. This change goes beyond the scope of the bill as it impacts all applicants, not just those that this bill is intending to exempt from the need finding. This provision provides flexibility to deal with changing circumstances that cannot be foreseen in advance.

STATE OF MONTANA  
LEGISLATIVE SERVICES  
4 p. 5  
2-16-87  
BILL NO. SB233

# NORTHERN PLAINS RESOURCE COUNCIL

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Testimony presented before  
Senate Natural Resources Comm  
February 16, 1987 in opposition  
to: SB 233 & 292

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 2-16-87

BILL NO. SB233/292

Mr. Chairman and members of the Senate Natural Resources Committee. For the record, my name is Helen Waller. My husband Gordy and I farm and ranch in McCone County, near Circle. This is an area that has been targetted for thermal generating plants and synthetic fuels facilities. Mr. Chairman, I am a past Chairwoman of the Northern Plains Resource Council, and it is on their behalf that I'm here in opposition to both SB 233 & 292.

The reasons are as valid today as they were in 1975, '77, '79 '81, '83, and 1985 when similar special interest legislation was heard and rejected by this body. Each time this type of legislation is introduced, I travel 800 miles round-trip to point out the folly of these bills, and I'm sure, given the problems you are facing in this legislative session, you have better things to do with your time, too.

I reaffirm that the purpose of requiring compliance with the Major Facility Siting Act is to ensure to the people of Montana that the negative impacts sustained was to satisfy a legitimate need.

To exempt synthetic fuels plants or facilities whose product is marketed out of state, or is a particular "grade" of product, or the elimination of/<sup>the</sup> alternate site study nullifies the intent of the Major Facility Siting Act and leaves Montana people with no assurance of environmental compatability or that we would achieve minimum adverse impact.

For those reasons I urge you to vote "no" on Senate Bills 233 and 292. Thank you.





The Montana Environmental Information Center Action Fund

SENATE NATURAL RESOURCES

COMMITTEE NO. 6

DATE 2-16-87

BILL NO. SB233

• P.O. Box 1184, Helena, Montana 59624

(406)443-2520

MEIC Testimony in opposition to SB 233, 2-16-87

Mr. Chairman, members of the committee, for the record my name is Rick Meis and I represent the members of the Montana Environmental Information Center.

MEIC stands in opposition to SB 233, an amendment to the Major Facility Siting Act because it would extract the core of the act by redefining utility and exempt non-utilities from demonstrating need.

It has only been two years since the Board of Natural Resources and Conservation adopted new rules which conservationists, industry and developers supported. One major change was to address developers' concerns about application and decision-making processes. These new rules have made it easier for all sides and the state government to work together. SB 233 is contrary to this progress.

This bill also tears the basic fabric of MFSA by eliminating the need evaluation for facilities which come under the Siting Act, but by definition are not regulated utilities. The need determination is much more than simply deciding whether a facility is needed. It is half of the equation which the Board of Natural Resources uses in determining whether the investment of a proposed facility is a good one, as the subsequent investments on the part of the affected community are substantial. This balance is the heart of the Siting Act.

The bill also redefines utility to mean only those which furnish energy "within Montana" and are subject to state regulation. For an energy exporter, as we in Montana are, that would exempt not only the pork-barrel synthetic fuels projects, but this could also mean new facilities to generate and send power out of state. So Los Angeles Water and Power could build a mine-mouth power plant and get less scrutiny than Montana Power. This is not a good idea because these are the kinds of projects we should be most concerned about.

An example of why this scenario is not good for Montana is that in 1982 the Colony Oil Shale Project cancelled construction on 48 hours notice and threw 4,000 employees out of work in Parachute, Colorado, a remote, rural area.

Beulah, North Dakota, has a synthetic fuels plant facing a similar fate of closing after barely more than a year in production. A thousand employees and as many as 5000 additional jobs are on the line.

Local governments were building up their infra-structures and expanding services to satisfy massive growth in the community. Local businesses were investing in expansions to capitalize on the new population. Both were left holding the bag, heavily in debt. The towns were left with the burden of providing welfare, unemployment, and social services. Under this bill Circle, Broadus or Wibaux could be next.

Proponents argue that the need for new facilities is determined on the open market. It would be wonderful if that were true. But the obvious type of project exempted here, synfuel plants, are heavily subsidized by the federal government, and subject to massive fluctuations at the whim of Congressional funding.

In 1980, Congress funded the federal Synfuels Program with an initial budget of \$15 billion, and by mid 1985 had eliminated all funding. With the economy as it is we should not depend upon an industry that is being built on tenuous federal tax subsidies before the necessary technology is even developed.

MEIC believes that there is far too much at stake here to gamble on unproven and unneeded technologies that are simply pork-barrel federal projects. We urge the committee to give SB 233 a "do not pass" recommendation. Thank you.

SENATE NATURAL RESOURCES

EXHIBIT NO. 6 p. 2

DATE 2-16-87

BILL NO. SB233

# Shattered Hopes for Synfuels

*A flagship energy project is threatened with a shutdown*

**F**or most of this century, Beulah, N. Dak., was a sleepy prairie town with two grocery stores and a pair of gas stations. Founded in 1913 and named for the niece of the region's largest landowner, Beulah was populated mostly by farmers and coal miners. Then, in 1978, the Department of Energy announced that it would finance a \$2.1 billion commercial synthetic-fuels plant, the first in the U.S., to be built on the outskirts of Beulah. Operated by a five-member consortium of energy companies, including Tenneco and Transco Energy, the 600-acre project would turn coal into natural gas and be the centerpiece of the Government's efforts to produce substitutes for expensive imported oil. When the Great Plains Gasification Project opened in July 1984, Beulah was booming. Its population had jumped from 1,300 in 1977 to 5,600, as \$100,000 houses and even a golf course appeared.

Today Beulah is a town in crisis. Great Plains has lost much of its Government backing. Moreover, its synthetic fuel is uneconomical because the price of imported oil is falling. The plant may be shuttered within a month, dealing a devastating blow to the community, the state of North Dakota and the future of synthetic fuels. Great Plains has an annual payroll of \$36 million, employing 973 people and generating more than 5,000 additional jobs in the area. Says Cynthia Lynk, executive director of Beulah's Chamber of Commerce: "If the plant closes, we'll have businesses shutting down, school enrollments off and houses left empty all over." Concludes Beulah City Planner John Rogers: "It would be a disaster."

The troubles of the synfuels industry deepened last month when the U.S. House of Representatives voted 312 to 111 to eliminate all funding for the Synthetic Fuels Corporation, which has financed several large-scale projects. The bill provides only \$500 million for a Department of Energy program of synfuels research. The Senate is expected to pass a similar measure. As Congress has grown increasingly skeptical of synfuels, so too has the DOE. Last month it decided to withdraw \$1.4 billion in aid to Great Plains. As a result, the plant's private consortium of owners announced that it was pulling out of the project.

Great Plains is now under the control of the DOE. Last week the department sent a team of investigators to inspect Great Plains and confer with plant managers. Some employees hoped the Government would find a way to keep the project running. Said Michael Mujadin, the operations director: "Once they see things for themselves, I'm confident the

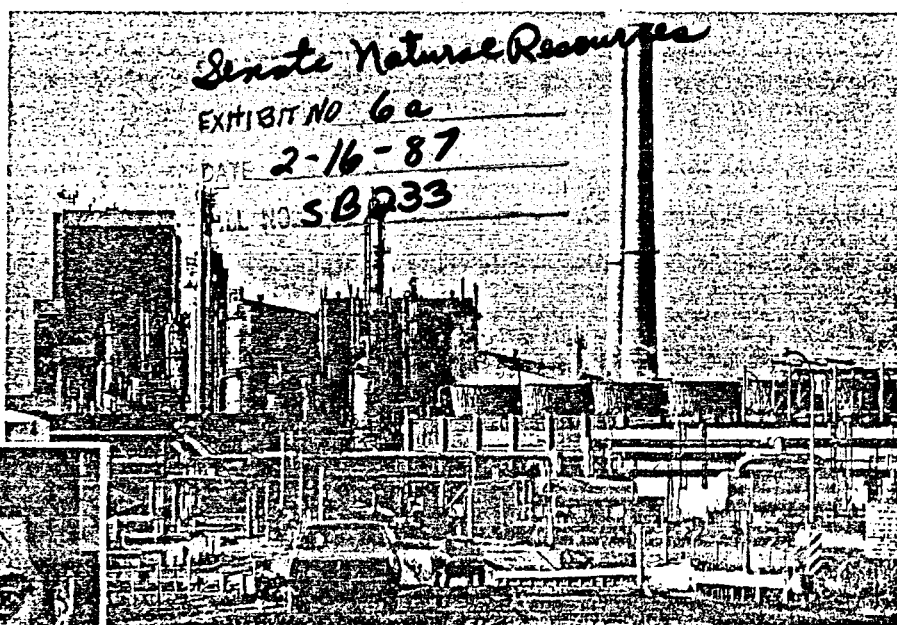
DOE will let us continue." But that may prove impossible if Congress decides to cut off synfuels funding.

Rarely, if ever, has a Government program grown so large only to face extinction in so short a time. Created in 1980, the Synthetic Fuels Corporation had a monstrous initial budget of \$15 billion. At the time, some experts expected the price of imported oil to reach \$60 per bbl. by the end of the decade. The only solution seemed to be a drive to convert coal reserves, like those underlying the Great Plains site, to synthetic gas or oil. The SFC's first grandiose goal called for the U.S. to produce the equivalent of 2 million bbl. of crude oil a day by 1992, replacing about 50% of imports.

But the program was doomed almost from the start. The price of oil peaked at

and Tosco pulled out of their Colony Oil shale project after having invested about \$1 billion. Home prices in Mesa County tumbled by as much as 50%. Unemployment climbed to 15%, and now stands at 9.8%, in contrast to the U.S. average of 7.3%.

While the economics of synfuels turned sour, mismanagement and improprieties within the SFC also contributed to the agency's political problems. Its first president, Victor Schroeder, resigned in 1983 amid accusations that he had improperly charged \$25,000 in mortgage payments on his home to the SFC. A year later his successor, Victor Thompson, stepped down soon after it came to light that a Tulsa bank he had headed had been the target of an investigation for securities violations. No criminal charges resulted from the investigation. Early on, the SFC earned a reputation for inefficiency and waste. Says Iowa Congressman James Leach, a Republican: "These are the only guys



DOE Secretary Herrington; Great Plains plant in Beulah, N. Dak.

*After one year and \$2 billion spent, the owners walked away.*



more than \$40 per bbl. in 1982 and has fallen steadily since, to about \$27 per bbl. today. It

has thus become much cheaper to import oil than to manufacture synthetic fuels. And that has made projects like Great Plains losing propositions. Says Energy Secretary John Herrington: "Oil and natural-gas prices have simply not proved high enough to make the [Great Plains] project economical. On balance, the costs outweigh the benefits."

Great Plains has been the only large synfuels plant to start production. Most other projects were halted in the planning stage, before construction began. The industry's increasing troubles have had the most serious repercussions in the West. In Colorado, the residents of four counties that sit atop shale-oil deposits still speak of May 2, 1982, as "Black Sunday." On that day, Exxon

in the world who make the Pentagon look streamlined."

Whatever the faults of the synfuels program, advocates argue that its purpose is still valid. Because world energy supplies are so volatile, they say, the price of oil could surge once again in the future. Says Thomas Haan, a Great Plains spokesman: "Just because it quit raining doesn't mean you stop fixing the roof. Just because energy is cheap right now doesn't mean we should stop trying to develop synthetic fuel."

The production of synfuels would indeed be a hedge against future energy shocks. But at a time when the price of oil is falling and the size of the federal deficit is ballooning, Congress seems set to decide that synfuels are a much too expensive form of insurance. —By Barbara Rudolph. Reported by Lee Griggs/Beulah and Gregory H. Wierzynski/Washington

# NORTHERN PLAINS RESOURCE COUNCIL

SENATE NATURAL RESOURCES

DEBIT NO. 7

DATE 2-16-87

FILE NO. SB 233/24

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Testimony in opposition to SB 233 and SB 292

2/16/87

Mr. chairman and members of the committee, my name is Tom Tully. I am here representing Mr. Tom Breitbach, a rancher from Circle and a member of McCone Agricultural Protection Organization, which is an affiliate of Northern Plains Resource Council. Mr. Breitbach could not be here today but was in Helena Fri. when this hearing was originally scheduled

As I was preparing for the trip to Helena a few days ago many things crossed my mind. I wanted a new car for the trip, but if I bought a new car I would not have enough money for gas, meals and lodging. What I really needed was merely transportation to Helena, so my wants and my needs were two separate and distinct things.

A few years ago the Bonneville Power Administration wanted to build several nuclear generating plants and nobody had the power to question need until they ran out of money. At that time the question of need was asked. Several of the plants under construction were abandoned and the people of western Montana are still paying for the wants of the BPA.

Another example, some time ago Montana Power had the question of need answered in the affirmative and built Colstrip 3 & 4. By some luck one of the plants was sold to a northwest consortium or the people of central Montana would be paying for the wants of Montana Power.

During the same period of the time, Basin Electric decided it wanted to build some generating plants, and did, because nobody had the right to question need. Now one of those plants is idle and Basin Electric sold power from another to California at bargain prices to keep the people of eastern Montana from paying additional dollars for Basin Electric's wants.

In past times the wants of Montana ~~people~~ people were a state government that was all things to all people. Today, you of the state legislature must agonize and decide what are the needs of the people and how to meet those needs with the taxes available.

Yes the question of need is always timely and very necessary. I urge you to consider the disapproval of this measure so that we in Montana can still ask and receive answers to the question of need.

The League of Women Voters of Montana and the Montana Chapter of the Sierra Club oppose SB233 and SB 292.

Both groups support Montana's Major Facility Siting Act (MFSA) as a means to meet the constitutional requirement for a clean and healthful environment. We support the policy behind MFSA, a policy already in law, to "protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources".

We oppose SB 233's attempt to exempt synfuels plants from ~~the act~~, and to ~~exempt~~ power and energy conversion facilities from meeting the requirements of environmental compatibility and public need. We suggest that profit does not indicate need, and citizens should not be expected to face the tremendous impacts from such facilities without a consideration of the need for such facilities. Particularly in the case of synfuels, there is no valid market to help determine need, because synfuels are based on massive government subsidies which distort any substantive market analysis.

We oppose SB 292's intensive restructuring of the siting act, and in particular, would like to address two points. First, we seriously question the rationale behind the amendments on page 14 of disallowing the department of natural resources from submitting recommendations to the board of natural resources on siting act applications, and of disallowing the department of health's and board of health's decisions on permits under their jurisdictions from being used as part of the final site selection process. DNRC is instructed under an earlier section to "commence an intensive study and evaluation of the proposed facility and its effects...and shall use valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency". Yet, this bill would remove the ability of the department doing such a thorough analysis from even making recommendations to the board! Those changes to the siting act severely restrict important input to the final decision, so that the final decision-makers lose the benefit of a great deal of time, effort and expenditures.

The second point we would like to make concerns the provisions throughout the bill to remove the requirement for alternative siting studies for generation, production and certain other facilities. We oppose restricting such important decisions by removing this requirement, and again, would refer you to the constitutional requirement to prevent unreasonable depletion and degradation. We require minimal adverse impact, yet we allow no comparison, or even alternatives, under this bill. We suggest this could lead to more denials of permits because there are no alternatives. We would also like to point out that under section 75-20-304, on pages 31-34, the board can already waive compliance with the alternative sites requirements under certain conditions, and feel this section allows substantial latitude in this area. We don't need to remove the alternative route requirement.

## SENATE NATURAL RESOURCES

EXHIBIT NO. 8(p.2)DATE 2-16-87BILL NO. SB233/292

The Sierra Club in particular would like to question the amendment on page 4 regarding pipeline quality gas, and would ask that you determine exactly what coal gasification plants would now be excluded under this amendment. We question the amendments on pages 27, 29 and elsewhere regarding local laws - how does this impact local control and input? We question why the board can no longer revoke or suspend a certificate for failure to maintain safety standards (page 35). And finally, we question why the list of environmental factors to be considered by the board and department under the heading energy needs, on page 39, has been struck. We suggest there is a big difference between need and demand, particularly when they are no longer required to look at alternative energy sources. We do not want to see this section removed.

For these reasons, we ask that you defeat SB 233 and SB 292. Thank you.

*Jeane-Marie Souvigny*  
February 16, 1987

Montana  
Audubon Legislative Fund

9  
2-16-87  
SB233

Testimony on SB 233  
February 16, 1987

Mr. Chairman and Memebtrs of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund in opposition to SB 233.

The Major Facility Siting Act is designed to protect Montana - and Montanans - from the adverse effects of major energy facilities. It is designed to protect our constitutionally declared right to a "clean and healthful environment."

Today I would like to address one specific aspect of SB 233. I draw your attention to page 6, lines 11-18 and the redefining of the word "utility." The new definition exempts two types of energy facilities from MFSA that we cannot support:

1) Lines 14-15 state that "only utilities "furnishing energy within Montana" will be covered by MFSA. That means that a company that promises not to furnish Montana with energy would not be required to undergo review for environmental compatibility as required under MFSA. What kind of a policy is that? It is a bad policy.

2) Lines 15-16 specifically exempt non-regulated energy facilities from MFSA. Non-regulated facilities can sell to regulated facilities. I submit to you that non-regulated facilities have the potential to impact the environment and the local citizens as much as a regulated facility. There is no logical reason to exempt these non-regulated facilities from MFSA.

We believe that SB 233 threatens our right to a "clean and healthful environment" and that all major energy facilities should be covered by the MFSA. We ask you to vote "Do Not Pass" on SB 233.

Montana Coal Council  
Proposed Amendments to SB 292

SENATE NATURAL RESOURCES

EXHIBIT NO. 10

DATE 2-16-87

BILL NO. SB 292

Page 1, Line 5: Following "ACT;"  
Delete "DEFINING COST;"

Page 1, Line 7: Following "CONSIDERATION;"  
Delete balance of line

Page 1, Line 8: Delete "DECISIONMAKING"

Page 1, Line 8: Following "SECTIONS"  
Delete "75-20-104"

Page 1, Line 9: Delete "75-20-202, 75-20-205,"

Page 1, Line 10: Delete "75-20-220,"

Page 2, Line 6: Following "facility"  
Delete "located in Montana"

Page 3, Lines 16-18: Delete "(8) "Cost" means . . . in Montana."  
Renummer following subsections

Page 4, Line 12: Delete "pipeline quality"

Page 7, Line 9: Following "75-20-104"  
Delete "(11)(c)"  
Reinsert "(10)(c)"

Page 7, Line 16: Following "75-20-104"  
Delete "(11)(b)"  
Reinsert "(10)(b)"

Page 7, Line 17: Delete "(11)(c)"  
Reinsert "(10)(c)"

Page 9, Lines 4-11: Delete "(iv) for facilities . . .  
proposed location;"  
Renummer following subsections



Page 13, Line 4: Following "health,"  
Reinsert "if applicable, within an additional  
6 months"

SENATE NATURAL RESOURCE

Page 14, Line 10: Following "within"  
Delete "1 year"  
Reinsert "22 months"

EXHIBIT NO. 10 (p.2)

DATE 2-16-87

BILL NO. SB292

Page 14, Lines 12-15: Reinsert stricken language

Page 14, Lines 21-25: Reinsert stricken language

Page 15, Lines 5-7: Reinsert stricken language

Page 22, Line 10: Delete "(11)(a)(i)"  
Reinsert "(10)(a)(i)"

Page 24, Line 9: Reinsert "recommendations,"

Page 24, Lines 24-25: Reinsert stricken language

Page 25, Line 1: Reinsert "certificate."

Page 26, Lines 16-18: Following "technology"  
Insert "."  
Delete balance of sentence

Page 27, Line 19: Delete "(11)(b)"  
Insert "(10)(b)"

Page 27, Line 20: Delete "(11)(c)"  
Insert "(10)(c)"

Page 28, Line 19: Delete "defined in 75-20-104(11)(b) or  
(11)(c)"

Page 30, Line 13: Delete "(11)(b) or (11)(c)"  
Insert "(10)(b) or (10)(c)"

Page 30, Line 16: Delete "(11)(b)"  
Insert "(10)(b)"

SENATE NATURAL RESOURCES

EXHIBIT NO. 10 (p.3)

DATE 2-16-87

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Page 30, Line 19: Delete "(11)(a)"  
Insert "(10)(a)"

Page 32, Lines 13-18: Following "75-20-501(5)"  
Insert ":"  
Delete balance of paragraph

Page 33, Lines 13-22: Delete in its entirety

Page 41, Line 2: Delete "(11)(b)"  
Insert "(10)(b)"

Page 41, Line 3: Delete "(11)(c)"  
Insert "(10)(c)"

(This sheet to be used by those testifying on a bill.)

NAME: Ed BARTLETT DATE: 2/16/87

ADDRESS: 40 E. BROADWAY, BUTTE

PHONE: (406) 723-5421

REPRESENTING WHOM? MONTANA POWER & WESTERN ENERGY

APPEARING ON WHICH PROPOSAL: S.B. 292

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: amendments  
attached  
now

SENATE NATURAL RESOURCES

EXHIBIT NO. 11

DATE 2-16-87

BILL NO. SB292

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

BARTLETT  
Report SB 292  
2-16-87

113 AMENDMENTS

SENATE NATURAL RESOURCES  
EXHIBIT NO. 11 (attachment)  
DATE 2-16-87  
BILL NO. SB 292

2/16/87

SENATE BILL 292 - INTRODUCED BILL

1. Page 9, line 4-9.  
Strike: all lines
  
2. Page 9, line 10.  
Strike: "(v)"  
Insert: "(iv)"
  
3. Page 9, line 12.  
Strike: "(vi)"  
Insert: "(v)"
  
4. Page 9, line 14.  
Strike: "(vii)"  
Insert: "(vi)"
  
5. Page 26, line 16.  
Following: "technology"  
Insert: "i;"  
Strike: remainder of lines 16-18

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

SENATE NATURAL RESOURCES

EXHIBIT NO. 12

DATE 2-16-87

BILL NO. SB292



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699

HELENA, MONTANA

My name is Van Jamison and I am the Administrator of the Energy Division of the Department of Natural Resources and Conservation. The Department opposes Senate Bill 292. This bill weakens the Siting Act and strips away the public protection the Siting Act was designed to afford and with it, subverts the basic environmental review provided by the Montana Environmental Policy Act.

Let me briefly explain the major effects this bill has on the Siting Act that lead me to this conclusion.

The Major Facility Siting Act requires the state to review the need for major energy facilities proposed to be constructed in Montana and to minimize their environmental effects. The Siting Act was intended to provide a unified public review of the environmental effects of proposed major energy facilities in Montana. This unified review benefits both the public and the applicants by consolidating the complex processes and the many agency permits that would otherwise be required to site a major energy facility. To ensure this unified approach, the Siting Act supercedes other state laws or regulations that conflict with it. This includes the Montana Environmental Policy Act, which requires all state agencies to review and disclose to the public the environmental effects that would result from granting a permit or taking other actions.

The Montana Environmental Policy Act requires state agencies to evaluate "alternatives to the proposed action" and to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources". The Siting Act, as it is currently written, also requires the state to look at alternatives to the proposed facility, including alternate locations for the facility. Further, the Siting Act requires the state to strike a balance between the costs and the environmental effects of these alternatives to ensure that applicants do not spend inordinate sums of money to avoid rather small or insignificant impacts.

The bill eliminates the requirement that the applicant evaluate or consider alternatives to the facility. For all but linear facilities, this bill eliminates the requirement that the applicant consider or describe alternate locations for a facility. The bill goes so far as to eliminate the requirement that the Board evaluate or consider alternatives to a proposed facility in making its findings on a project. Since the Siting Act supercedes conflicting requirements of MEPA, this bill would eliminate the opportunity for public evaluation or consideration of alternatives. Alternatives are not necessarily the same as alternate locations for the facility. An alternative may be simply another way of doing what the applicant has proposed that is less harmful to the environment or poses fewer risks to public health, welfare, and safety.

For example, an alternative to a proposed facility could be a safer construction design for a storage pond or holding reservoir dam structure. Such important alternatives to protect the public could no longer be considered under this proposed law. The Committee should understand that the Siting Act has been interpreted to also supercede the Montana Dam Safety Act.

By weakening or eliminating the key provisions of the Siting Act regarding alternatives, this bill eliminates meaningful public review of energy facilities in Montana.

Notwithstanding this, the Board is still required to determine that the proposed facility would cause the minimum adverse environmental impacts. Without information about alternatives to the project or alternate locations for the facility, the Board's decision could only be arbitrary and capricious. This would undoubtedly subject Board decisions to lengthy legal challenges.

The bill retains the requirement that the Board find the basis of need for a facility. However this bill no longer allows the Board to consider growth of demand or projections of need in making that finding. Growth in demand is probably the single most important piece of information that is evaluated in determining the need for a facility. How would anyone decide whether their product is needed without looking at projections of future demand? I do not know how the Board can make the finding of need without looking at this essential information.

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EXHIBIT NO. 12 (p.2)  
DATE 2-16-87  
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The bill shortens the length of time for the Department to conduct its studies and make a report to the Board from 22 to 12 months. For a major facility, twelve months is simply not enough time to conduct studies, prepare a draft EIS, conduct public hearings, respond to public comments and issue a final EIS. We should keep in mind that we are talking about facilities the size of Colstrip, WPPSS or the ANG plant in North Dakota.

Further, the Department of Health and Environmental Science's studies must be available to DNRC prior to preparing a draft EIS. Yet, DHES has 12 months to complete its studies. How can the Department prepare its report to the Board in 12 months when the required DHES studies would not be available?

The result of this shortened time frame will be that little, if any, meaningful analysis of the facility will be possible, which can only mean a Board decision will be based on inadequate or incomplete information. This not only increases the likelihood of the Board making a decision that is not in the best interest of the State, but also increases the likelihood of legal challenges to any Board finding.

This bill precludes the Department from making a recommendation on a facility to the Board. The bill also precludes other state agencies that do studies under the umbrella of the Siting Act from making recommendations on a facility, even though they administer substantive acts that are superseded by the Siting Act. State agencies are accountable to the public when they review the impacts of a proposed facility. It is therefore inappropriate to preclude them from offering an expert opinion regarding the advisability of granting, denying, or modifying a certificate. It is this expert opinion that the public relies on in the decision making process.

A recommendation synthesizes all the evaluations that have been conducted, considers all the possible tradeoffs and formulates conclusions regarding the need for and environmental compatibility of a project. It would be very difficult for the Board to make a decision without a recommendation given the complexities of the evaluations and the nature of the tradeoffs involved.

If the intent of the bill's sponsor is to exempt major energy generation and conversion facilities from the Major Facility Siting Act, then why not just remove these facilities from coverage under the Act, as opposed to the dismantling of the key elements of the Act that is contained in this bill. If the intent of the bill's sponsor is only to eliminate baseline data requirements and the comparison of alternate locations for a proposed facility, this bill greatly overshoots its target.

SENATE NATURAL RESOURCES

EXHIBIT NO. 12(p.3)

DATE 2-16-87

BILL NO. SB 292

SB 292

February 16, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The department has three primary concerns with respect to these proposed revisions to the Major Facility Siting Act.

The first occurs on page 9, lines 10 and 11 whereby the requirement for baseline data in the permit application is confined to the proposed location, as opposed to the current language requiring such data for the primary location and reasonable alternative locations.

A creditable review of any project requires the assessment of all baseline data available and at least that of the most viable alternative site. To require only data from the proposed location would seem to confine the review unnecessarily, or it would require the gathering of data which could just as easily have been provided with the application.

This amendment either ignores the reality that applicants consider more than one site before their decision to proceed is reached or it contemplates a duplication of effort to be built into the law.

Our second concern occurs on page 14, line 10, whereby the review period is reduced from 22 months to 12 months. Our participation in this process requires an assessment of the project's impacts, if any, upon the state's fish and wildlife resources. These resources must be observed over a 12-month period of time to determine the impacts on their annual cycles.

Such activities as migration patterns during different seasons, breeding seasons, and the spring calving season are annual occurrences which must be assessed before an analysis can be complete. While we monitor these conditions in our normal management program, we generally do not have such information site-specific for a proposed major facility.

This amendment does not acknowledge this need for proper information, nor does it acknowledge the reality that a period of time passes after the application is filed and before the assessment starts while the scope of the review is discussed and finally agreed upon. Nor does it acknowledge the need to prepare the data for the decision makers, once those data have been accumulated.

Our final concern occurs in the same page on line 18. The deletion of the department's recommendation makes little sense. After months of reviewing the studies and evaluations of a project, the technical administrators are to make no recommendation to the decision makers.



This amendment tends to ignore the relationship between any state agency and its quasi-judicial citizen board. That relationship is built upon the recommendation to that board and the board's modification, acceptance or rejection of that recommendation. To delete the recommendation of the agency would contemplate each board member becoming as knowledgeable of every facet and every bit of information on the application in order to make a proper decision. This would seem to promote less informed decisions.

In summary, the Major Facility Siting Act requires applications and information before decisions are made. Those requirements assure proper consideration of all facets of the proposed project. We fear these amendments will lessen those assurances and in the end not serve all interests in Montana to the proper degree.

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In summary, this bill:

- 1) eliminates the comparison of alternatives to a proposed facility;
- 2) eliminates the requirement that the public be provided adequate information on the project, which virtually eliminates any meaningful public involvement in the certification decision;
- 3) decreases the information and analysis available to the Board to make its decision;
- 4) makes the Board's responsibilities less clear;
- 5) increases the likelihood of litigation on a project; and
- 6) will in all likelihood result in decisions that are detrimental to Montana.

This bill clearly goes beyond generally revising the Montana Major Facility Siting Act as stated in the bill's title. In fact, the way this bill is drafted, energy facilities would be subject to less public review than they would receive under the laws the Siting Act supercedes. This bill can be characterized as laying the tracks on which major energy projects can be railroaded in Montana. The Governor has repeatedly stated his opposition to such proposals. I, therefore, urge the Committee to give Senate Bill 292 a do not pass recommendation.



## The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624

(406)443-2520

SENATE NATURAL RESOURCES

EXHIBIT NO. 14

DATE 2-16-87

BILL NO. SB292  
2-16-87

MEIC Testimony in opposition to SB 292,

Mr. Chairman, members of the committee, my name is Rick Mais and I am here representing the members of the Montana Environmental Information Center.

MEIC is opposed to SB 292 because it eliminates the substantive standards for review of a proposed facility by the Board of Natural Resources and DNRC, thereby eliminating the state's ability to balance the impacts against the benefits, and subsequently eliminates the ability to make an informed decision. This bill also eliminates the alternative siting requirements, making it impossible to determine the benefits of the proposed site or the values of possibly moving the proposal to a more sound location.

The removal of the baseline data from the process essentially leaves a hollow shell with scraps of information bouncing around within. This bill provides only a streamlined process by which industry would get proposed facilities approved. The years of work by the state to finetune the Facility Siting Act and the promise we must keep for the future of our state would be gone in one fell swoop.

Again, MEIC is totally opposed to SB 292 and asks that this committee give this bill a "do not pass" recommendation. Thank you.

Montana  
Audubon Legislative Fund

SENATE NATURAL RESOURCES

EXHIBIT NO. 15

DATE 2-16-87

BILL NO. SB292

Testimony on SB 292  
February 16, 1987

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund in opposition to SB 292.

Today I would like to address two specific aspects of SB 292. This bill reduces the time which the Department of Natural Resources (DNRC) has to analyze environmental impacts, and prevents DNRC and other departments of state government from making recommendations to the Board. This would severely limit the information available to the Board to make decisions.

SB 292 specifically:

- disallows DNRC from making recommendations to the Board.
- disallows other departments of state government from expressing opinions before the Board.
- reduces the time for DNRC to review applications from 22 to 12 months.

Fair and reasonable resource decisions cannot be made in the dark. They require careful data gathering, analysis, and interpretation. SB 292 would prevent this from happening. The Board needs professional expertise and advice which DNRC provides. Other departments of state government have expertise to offer as well.

The time available to DNRC to prepare its environmental impact statement and report back to the Board on a proposed project was reduced in the 1979 legislature. A 12 month limit guarantees that data collection will not cover a full year. A full year of data is necessary to check for seasonal variations. Hurried analysis will move the decision making process in the wrong direction, away from well-reasoned scientific procedures and towards rushed, politically motivated decisions.

Memo: Testimony Re. SB-233 & SB-292.

Mr. Chairman, members of the Committee; for the record I am Richard Parks, owner of the Parks' Fly Shop in Gardiner, Montana. While I am affiliated with numerous organizations including the Gardiner Chamber of Commerce, the Fishing and Floating Outfitters Association and Northern Plains Resource Council I am speaking on my own behalf as an offended citizen.

These bills are typical of a rash of legislation introduced in both houses that are based on two great errors. The first of these is an error of fact - that somehow the problems we are experiencing in Montana's economy can be traced to our "over zealous" environmental regulations or to "punitive" tax laws. The second is an error of fallacious, I am tempted to say felonious, analogy. Both of these errors are promoted under the general rubric of "improving the business climate."

The fact of the matter is that Montana's economy is sick because of a national agricultural policy that is driving our people off the land. The fact of the matter is that Montana's economy is sick because of the depressed nature of the global energy market. The environmental regulations targetted by these bills did not create the problems and their repeal will not change those economic facts. Once those facts of the larger economy change, as they will, we will merely be left with an inability to guide developments to the benefit of the citizens of this state.

I have had it up to here with the analogy equating these changes in our laws to an "improvement in the business climate." I am a small business person with as important a stake in the economy of this state as anyone and I am here to tell you that our real "business climate" is quite good - but bills such as these degrade that climate. If I were charitable I would have to assume that this analogy was based on ignorance of the difference between "weather" and "climate". "Climate" refers to average conditions, to expected sequences, but is not a predictor of specific events while "weather" is a report of events specific to time and place. When we examine these bills we find an effort to improve the "weather" for a particular segment of an industry to the total disregard of how that fits into the overall picture. Everyone has been much impressed with how "good" the weather has been recently but anyone with a need for water, such as an irrigator or a fisherman, has to be concerned about what this means for our summer water supplies. I urge a vote for our real business climate by giving **Do Not Pass** recommendations to these bills.

EXHIBIT NO.

17

DATE

2-16-87

BILL NO.

SB 233/292

NAME

Terry Murphy

BILL NO.

233 + 292

ADDRESS

P.O. Box 2447Great Falls59403

DATE

2-16

WHOM DO YOU REPRESENT

MT. Farmers Union

SUPPORT

OPPOSE

X

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MT. Farmers Union opposes any weakening of major Facility Siting act standards, but does feel the time frames for construction permits should be shortened somewhat.

(written but

not verbal)