

MINUTES OF THE MEETING  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE SENATE

March 6, 1987

The meeting of the Senate Natural Resources Committee was called to order by Vice Chairman Cecil Weeding on March 6, 1987, in Room 405 of the State Capitol at 1:05 P.M.

ROLL CALL: All members were present with the exceptions of Senator Keating, who was excused, and Sens. Yellowtail and Walker, who were absent.

CONSIDERATION OF HOUSE BILL 308: Representative Joan Miles, District 45, introduced HB 308 which would exempt dams from the Dam Safety Act that are subject to the Montana Facility Siting Act (MFSA); such as, Colstrip III and Colstrip IV. Rep. Miles explained that two years ago when the Dam Safety Act was passed by Legislature, there were several exemptions--dams that are permitted under mine permits; dams that are permitted under the Federal Energy Regulatory Commission; and dams that are under the Corps of Engineers. What HB 308 does, Rep. Miles repeated, is to exempt dams from the Dam Safety Act that are subject to the MFSA. Rep. Miles reported that there was concern in the House Natural Resources Committee about oversight of dams that are constructed and the safety questions, but it was Rep. Miles' contention that permits issued under the siting act cover this area very well; in fact, Colstrip III and IV are doing more on a daily basis than the Dam Safety Act requires.

PROPOSERS: Art Wittich, Montana Power Company, testified in support of HB 308 and he assured committee that certified facilities under the MFSA are designed and maintained by professional engineers, and there is thorough oversight by the Department of Natural Resources (Exhibit 1).

Jo Brunner, Executive Secretary of the Montana Water Development Association (MWDA) said that MWDA helped draft the Dam Safety Act two years ago, and that duplication of permits was never intended. Ms. Brunner stated that MWDA wholeheartedly supported HB 308.

Lawrence Siroky, DNRC, clarified the department's position and said the proposed change in HB 308 would be consistent with other exemptions in the Dam Safety Act. The Dam Safety Act does not regulate dams that are licensed and subject to inspection by the Federal Energy Regulatory Commission anyway. (Exhibit 2)

OPPONENTS: There were no opponents.

QUESTIONS (AND OR DISCUSSION) FROM THE COMMITTEE: Sen. Halligan asked if a retroactive applicability is needed to cover Colstrip. Mr. Wittich said he had really never thought about that before, but bill emphatically states that the facility would have to have a certificate in effect at the time to be qualified for the exemption. Rep. Miles addressed Sen. Halligan's question by saying that permits for Colstrip were issued prior to the Dam Safety Act enactment which did not require retroactive permits.

CLOSING: Rep. Miles closed by asking that HB 308 be carried by Sen. Lynch.

CONSIDERATION OF HOUSE BILL 343: Representative Gene Donaldson, District 43, introduced HB 343 by explaining that the bill would make it a little easier to determine floodplains and allow establishment of boundaries of a floodplain by use of aerial photos, etc. This would save a lot of effort, time, and expense in establishing boundaries of floodplains. Mr. Donaldson explained that in populated areas, there are 100-year flood data to indicate where the floodplain would lie, but in sparsely populated areas where there are developments on small creeks, there are no historical data. Therefore, it would be less expensive to establish floodplains by the method as covered under HB 343 rather than sending out survey crews, etc. Rep. Donaldson quoted from the bill, "These designations shall be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the Federal Emergency Management Agency have a rebuttable presumption of reasonable hydrological certainty."

PROPONENTS: Gary Fritz, DNRC, stated that the bill would allow counties who desire to be involved in the floodplain regulation program to get into the program by use of approximate maps because maps would be the only ones available to identify the floodplain. HB 343 would allow counties to have floodplains designated through the Board of Natural Resources with the use of these approximate maps. Mr. Fritz listed two reasons counties would want to have floodplains designated:

- 1) Citizens at the present time are not able to develop on flood-prone areas if they need a loan from a bank because banks will not loan money to build improvements without proof of flood insurance. Developers cannot buy flood insurance unless their counties are enrolled in the National Flood Insurance Program.
- 2) It is to the benefit of the counties to be enrolled in the National Flood Insurance Program because counties can only receive disaster aid from the State if they are enrolled in the program.

Jo Brunner, Water Development Association, expressed support of HB 343.

OPPONENTS: There were no opponents to HB 343.

QUESTIONS (AND/OR DISCUSSION FROM THE COMMITTEE): Sen. Weeding asked Rep. Donaldson what "presumption" means in terms of burden on landowner who would be disgruntled with a designation.

Don McIntyre replied for Rep. Donaldson and said that evidence can be put forward by the landowner to show that a map is incorrect.

Sen. Stimatz volunteered to carry HB 343 on the Senate floor if committee chose to concur.

Sen. Weeding called the meeting to order for an Executive Session.

DISPOSITION OF HOUSE BILL 308: Sen. Halligan moved that HB 343 BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 343: Sen. Gage moved that HB 308 BE CONCURRED IN, and motion CARRIED unanimously.

There being no further business before the committee, Sen. Weeding adjourned the meeting at 1:20 P.M.

  
Cecil Weeding, Vice Chairman

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 6, 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.



1/28/87

HB 308 - Act exempting certified MFSA facilities  
from the Dam Safety Act

The Montana Dam Safety Act (DSA) was enacted in 1985 to provide for the safe construction and maintenance of certain dams. The DSA presently recognizes exemptions for dams covered by a mining operation permit or those dams licensed by the Federal Energy Regulatory Commission. These types of dams are exempt because they are constructed and operated in accordance with good engineering practice and subject to on-going oversight by a regulatory agency. This House Bill adds a third exemption for dams certified under the Montana Major Facility Siting Act (MFSA), which are also operated under current engineering standards and subject to regulatory review by the Montana Department of Natural Resources and Conservation (DNRC).

An exemption for certified MFSA facilities is appropriate due to the extensive pre-construction and post-construction monitoring requirements of MFSA. Additionally, this exemption is consistent with the original intent of MFSA as a comprehensive "one-stop" permitting process. The DNRC has also recognized the validity of this position by exempting certified MFSA facilities in their rulemaking on the DSA (Draft Rule II).

The Montana Power Company retains a staff of competent engineers to plan and maintain its facilities. Even though only one of the dams at Colstrip impound only water (the other three and a planned fourth dam impound coal ash sludge), all dams were designed at current engineering standards for water dams. These dams are also continually monitored to ensure dam safety. Therefore, compliance with the additional permitting requirements of the DSA would only impose an unnecessary duplication of activities and costs on the Colstrip owners and their customers.

The Montana Power Company  
Arthur V. Wittich

## DNRC'S TESTIMONY

HB 308

The Department appears as a proponent of HB 308. The amendment would clarify and affirm the position taken by the Department in a letter to the Montana Power Company on September 10, 1986, after a review of the Major Facility Siting Act and the Dam Safety Act. The proposal would affirm that a high-hazard dam built as an associated facility to a major facility would be exempt from the procedural requirements of the Dam Safety Act. The dam safety aspects would be a part of the analysis and requirements for a certificate of environmental compatibility and public need under the Major Facility Siting Act.

This proposed change would be consistent with other exemptions in the Act. The Dam Safety Act currently does not regulate dams that are licensed and subject to inspection by the Federal Energy Regulatory Commission, such as MPC hydro-power dams.

The Department appears in support of the bill.

# STANDING COMMITTEE REPORT

March 6

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MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 343

THIRD reading copy ( BLUE )  
color

**GIVES A REBUTTABLE PRESUMPTION TO CERTAIN FLOODWAY AND FLOODPLAIN DESIGNATIONS**

**DONALDSON (Stimatz)**

Respectfully report as follows: That HOUSE BILL No. 343

BE CONCURRED IN

DD:PASS

Cecil Weeding, Vice-Chairman

DD:NDKPASS

SENATOR THOMAS F. KEATING, Chairman.



# STANDING COMMITTEE REPORT

March 6 19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 308

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color

**EXEMPTS DAMS FROM THE DAM SAFETY ACT THAT ARE SUBJECT TO THE MFSA**

**NILES (Lynch)**

Respectfully report as follows: That HOUSE BILL No. 308

BE CONCURRED IN

Cecil Weeding, Vice-Chairman

~~DO NOT PASS~~

~~DO NOT PASS~~

.....  
SENATOR THOMAS P. KEATING, Chairman.