

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 9, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on March 9, 1987, at 1:00 p.m., in Room 405 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 388: Representative Tom Asay, District 94, stated that House Bill 388 was drafted at the request of the Department of Natural Resources so the department would be granted the ability to dispose of certain water projects when it becomes favorable to do so. Rep. Asay invited Rick Bondy to explain the bill to the committee.

PROPONENTS: Rick Bondy, Department of Natural Resources, explained that the bill clarifies that the Department of Natural Resources will be able to take such things into account as water purchase contracts outstanding on the project, ease existing easements, etc. The department would like to turn projects over to local users because projects are costly and inefficient for the state to own and operate, but before turning projects over to local users value has to be established. Mr. Bondy said that House Bill 388 would make it clear how the Department of Natural Resources is supposed to establish the value. DNRC projects have unusual encumbrances on them that don't exist on other property. At that point, Mr. Bondy distributed some proposed amendments to the committee because of a drafting error that was discovered by the Environmental Quality Council. (Exhibit 1)

Jo Brunner, Executive Secretary from the Montana Water Development Association, testified in support of House Bill 388.

OPPONENTS: There were no opponents.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: Sen. Weeding asked exactly what problems had caused the bill to be drafted. In response, Mr. Bondy stated two problems:

1) All of DNRC projects have water purchase contracts associated with them. The state owns the project, but is also obligated to deliver water through that project which substantially changes the value of the project to anyone who would want to buy it. According to DNRC attorneys, it is not clear that the department can take

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that fact into account when establishing the market value of a project in order to turn over to local users.

2) Each time DNRC wants to sell a project, there is disagreement in the legal department about the applicability of specific laws. Mr. Bondy said that there are specific statutes relating to how DNRC sells land and other assets that are in the projects. Other State Departments have specific laws relating to them, and it appears that the laws are in conflict with each other. HB 388 directs the DNRC to use applicable laws and not laws applicable to another department..

Senator Halligan expressed his concern about the inconsistency in the amendments referring to properties/projects.

Senator Weeding questioned how the Federal Government would deal with HB 388. Mr. Bondy said that if a project were sold to the federal government, HB 388 would apply to federal government also.

Senator Keating expressed his understanding that HB 388 would make it easier for the department to dispose of water projects, and asked how many at present DNRC was trying to dispose of. Mr. Bondy replied that six projects are on the list.

Senator Weeding asked whether the bill would preclude the department's giving away projects, and Mr. Bondy replied that the bill would be helpful in allowing the department to give away projects. Mr. Bondy explained the reason the department gives away projects is that the encumbrances that exist outweigh the value of the project.

CLOSING: Representative Asay closed by mentioning that there are two projects in Treasure County that would benefit from this bill. Rep. Asay said the bill is as valuable to the small users as well as to the DNRC.

CONSIDERATION OF HOUSE BILL 408: Representative Iverson, District 12, introduced HB 408 by reporting that the bill was recommended by the Water Policy Committee and the bill would do two things:

1) Because current language could be misinterpreted clarify existing Montana water policy--ban the intrastate transfer of water from basin to basin.

2) Make an exception--water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water could not be reasonably available for water leasing under 85-2-141 MCA.

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Rep. Iverson explained the bill would be made more clear if each committee member had a "water basin map" in his possession and Rep. Iverson said distribution of maps would be made to members in the near future.

Rep. Iverson gave the committee secretary a witness statement signed by Jo Brunner that states that the Montana Water Development Association supports HB 408.

PROPOSERS: Gary Fritz, Department of Natural Resources, explained the department supports the bill because clarification is made that reserve water cannot be used in the basin different than where water is diverted, with an exception. Mr. Fritz cited the exception that was made in the Milk River project where water was diverted from St. Mary's into the Milk River Basin. Mr. Fritz explained that exceptions are beneficial to the state as a whole and HB 408 clarified that this can be done under special circumstances.

OPPOSERS: None.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: None.

CONSIDERATION OF HOUSE BILL 645: Rep. Dave Brown, District 72, stated that in the last six months or so there has been a dispute brewing regarding operation of the Hard-Rock Mining Impact Board. In 1981 the Hard-Rock Mining Act was passed, and several modifications have been made since, and basically it is working remarkably well. The need for this bill came out of problems that developed last fall regarding secondary impacts. Rep. Brown said he felt the Code Committee went "too far too fast" last fall with its rule. Page 5, lines 7-11, did not change the intent, but the word "may" was included so as not to be a presumption on the impact plan. Page 6, lines 16-18 basically say that the impact plan will be developed by the developer and local government units at the local level. As long as there isn't any problem, the Hard-Rock Mining Impact Board would not get involved.

A provision was added requiring a public hearing by local governments. Typically, a local government unit will hold a hearing about the fiftieth day so that there is time to take into account any public reaction on the impact plan that is drawn up. Rep. Brown concluded his introduction by saying that Sen. Hammond would appreciate carrying the bill in the Senate.

PROPOSERS: Rich Weddle, Legal Counsel to the Hard-Rock Mining Impact Board, testified that HB 645 would redefine

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the roles of the participants in the review of impact plans under the Hard-Rock Mining Impact Act and thus, relieve the Board of its current responsibility to assure that impact plans comply with the technical requirements of the act. (Exhibit 3)

Gary Langley, Montana Mining Association, explained that delays have occurred due to administrative rules, and HB 645 would prevent some of these delays. Also, Mr. Langley said that HB 645 restricts the authority as originally intended. Mr. Langley was emphatic in saying that the mining industry in Montana is not a stepchild of the Anaconda Company and Standard Oil Company of a century ago, but of Montanans who earn their living with environmental responsibility and social concerns. (Exhibit 4)

Dave Suhr, ASARCO, Inc., Troy, MT, spoke in support of HB 645 because he felt the bill clarified legislative intent, and at the same time will protect individual communities from any adverse impact. ASARCO Troy Unit began prior to the enactment of the original Hard-Rock Impact Act. In the process, ASARCO hired as many local people as possible; however, technical people had to be brought into Montana from elsewhere. Many of the technical people are accustomed to sound governmental services--good schools, hospitals, etc.--and the local people are also desirous of these services. Therefore, it becomes in the best interest of the mining company if the company is either able to provide these services or support these services. As the Troy Unit was being developed, many services were provided by ASARCO that were not required; such as, payment to hospitals, equipment to schools, support to fire districts, etc. Projects are not unique even though they are not required. House Bill 645 would shift the requirement to the local units of government who are more in tune with the needs of the community; and for this reason, Mr. Suhr asked for passage of HB 645.

Ward Shanahan, Chevron Corporation, distributed testimony prepared by Mr. Joseph Dewey of Nye, Montana, manager of Stillwater Mining Co. (Exhibit 5) Mr. Shanahan commented that it is his belief that local developers and local governments should work together to solve mutual problems and the Hard-Rock Board should step in only to settle a dispute. Mr. Shanahan said the proposed legislation (HB 645) should not have been needed at all if the original intent of the Hard-Rock Mining Act had been given attention. A few vague words and phrases in the original law had been used for justification for tedious and unnecessary rulemaking. HB 645 is intended to clarify the role of the board so that the impact mining process can be improved.

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John Fitzpatrick, representing Montana Tunnels, Pegasus Coal Corporation, and Homestake Mining Co., stated that he supported testimony provided by the proponents and said he would be happy to answer questions.

Mike Micone, representing Western Environmental Trade Association, supported HB 645.

Art Wittich represented Western Energy Company and explained that the key issue on House Bill 645 is local control. Local government units are in the best position to ascertain impacts from mining developments and they also have the most to gain or lose. Costs of deals are enormous and Mr. Wittich cited the Chartam Project as an example. Mr. Wittich ended his testimony by urging the committee to support HB 645 in its unamended form. (Exhibit 6)

Joe Weggeman. represented the Helena Chamber of Commerce, and testified on behalf of HB 645.

Doug Schmidtz, Jefferson County Commissioner, supported HB 645, and said he feels fortunate that there are two mines in his county.

OPPONENTS: Richard Parks, representative of Bear Creek Council, said HB 645 would impair significantly the local governments ability to negotiate the impacts associated with a mining development. Mr. Parks stated that the Council was particularly concerned about the new Statement of Intent and suggested an amendment. (Exhibit 7)

Russ Brown, from Northern Plains Resource Council, stated that for six years the law was working well under the guidelines that had been established, and HB 645 is unnecessary; therefore, he expressed opposition to HB 645.

QUESTIONS (AND/OR DISCUSSION) FROM COMMITTEE: Sen. Lynch asked Rep. Brown to comment on Mr. Park's amendment and Rep. Brown said that the amendment would do no more than what is involved in the bill already.

When Senator Halligan asked Mr. Shanahan about interaction between local government and DNRC if an unobjectionable plan should be submitted, Mr. Shanahan (representing Chevron) said the Board should be arbitrator and not a reviewer and in current law, there was no clarity on where to stop impacts. The original bill did not set up the board as a review. The Board's staff makes many suggestions that sow dissention. Mr. Shanahan said that HB 645 would remove openendedness,

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and would not prohibit the government units from talking with the board.

However, when the same question was addressed to Mr. Weddle by Sen. Halligan, Mr. Weddle explained that in his opinion the Board would not have authority to render assistance unless an objection were filed; but Sen. Brown reiterated that the bill would not prohibit informal interaction with the board.

Sen. Weeding asked who pays for the plan, and it was explained that the cost of the project is borne by the developer by statutory requirement.

Sen. Weeding then asked about the appeals procedure and Rep. Brown's reply was that the premise is that all input should go through local government units. Rep. Brown made it clear that HB 645 states a requirement for a public hearing.

Sen. Yellowtail asked for an explanation about delays in the projects in which several proponents made reference. Mr. Langley explained there were several in Montana Tunnels project. John Fitzpatrick reported that Montana Tunnels worked throughout the process in 1985, negotiated 12 different settlements with the county; and the plan was submitted to the board. The Board said there were flaws in the plan which were merely technicalities. For example, the Company agreed to pay a fixed sum of money for roads; the Board said the company was paying too much. Several months later Tunnels presented a financial guarantee, but had to rewrite the agreement before the financial guarantee could be approved. Montana Tunnels has never had any objection to technical assistance, but Mr. Fitzpatrick said the board and staff should not be involved in the negotiations process.

In response to Sen. Yellowtail's next question, Mr. Fitzpatrick said the Board's input was not relevant.

CLOSING: Rep. Brown stated that the Hard-Rock statute is a blank check bill for local government units.

H.B. 645 would make it clear that the developer and local government have to negotiate with each other without interference from the board unless there is an objection or subsequent amendment to the plan. The Statement of Intent is very clear that this bill would still retain the protections built into the original act and Rep. Brown urged support from the committee for passage of HB 645.

Senator Keating called the meeting to order for executive session.

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DISPOSITION OF HOUSE BILL 388: After some discussion, the Committee decided to disregard amendment No. 1 of the Environmental Quality Council. Sen. Halligan moved the amendments submitted by EQC, Nos. 2, 3, 4, and 5 and that they be renumbered accordingly. Motion carried unanimously. Sen. Weeding moved that SB 388 BE CONCURRED IN AS AMENDED. Motion carried unanimously. Sen. Weeding will carry the bill on the Senate floor.

DISPOSITION OF HOUSE BILL 408: Sen. Yellowtail moved that HB 408 BE CONCURRED IN. Motion carried by unanimous vote, and Sen. Galt will carry the bill on the Senate floor.

ADJOURNMENT: There being no more business before the committee, Sen. Keating adjourned the meeting at 2:35 P.M.


THOMAS F. KEATING, Chairman

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 9, '87

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

Each day attach to minutes.

HOUSE BILL NO. 388
THIRD READING
AMENDMENTS BY REQUEST OF ENVIRONMENTAL QUALITY COUNCIL

- disregard* 1. Title, lines 6 through 9
Following: "AN ACT"
Strike: remainder of lines 6 through 9 in their entirety.
1. 2. Title, line 10
Following: "VALUE OF A"
Insert: "STATE-OWNED"
2. 3. Title, line 11
Following: "PROJECT"
~~Strike: ", "~~
Insert: ", AND THAT THE DEPARTMENT'S AUTHORITY HEREUNDER
MAY BE EXERCISED WITHOUT REGARD TO OTHER LAWS
PROVIDING FOR DISPOSITION OF STATE PROPERTIES"
3. 4. Page 2, lines 1 and 2
Strike: "without regard to other laws providing for the
disposition of state property,"
4. 5. Page 4, line 5
Following: "and revenue therefrom"
~~Strike: ", "~~
Insert: "without regard to other laws providing for the
disposition of state property,"

D

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE: March 9, 1987
BILL NO. HB388

WITNESS STATEMENT

NAME

J. J. Runner

BILL NO.

HB 408

ADDRESS

2015 1/2 9th Ave

DATE

3/9

WHOM DO YOU REPRESENT?

Mont. Water Development

SUPPORT

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE NATURAL RESOURCES

EXHIBIT NO.

2

DATE

March 9, 1987

BILL NO.

HB 408

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

MARCH 9, 1987

TESTIMONY OF RICHARD M. WEDDLE, LEGAL COUNSEL
TO THE HARD-ROCK MINING IMPACT BOARD

HOUSE BILL 645

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

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

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

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

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

TESTIMONY OF THE MONTANA MINING ASSOCIATION
BEFORE THE NATURAL RESOURCES COMMITTEE OF THE
MONTANA HOUSE OF REPRESENTATIVES
February 16, 1987
Gary A. Langley, Executive Director

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE March 9, 1987
BILL NO. 645

More than 20 years ago, Ralph McGill--then publisher of the Atlanta Constitution--won a Pulitzer Prize for his column, "A Church, A School."

In that legendary column, Mr. McGill described how blacks and whites in the South had worked together to build churches and schools. But, because of the policy of segregation and the landmark "Separate but Equal" ruling issued by the Supreme Court in 1954, Mr. McGill commented on the sad truth: That even though those folks had worked together to build churches and schools, they couldn't attend them together.

"A Church, A School" is appropriate to Montana today in the sense that we as a people must finally reject the mythology that large companies assault this state, rape the purity from Mother Earth and escape with the wealth.

The truth is that people, not companies, dig holes in the earth so that they can remove its bounty. A vast majority of these people are residents of the communities in which the mines are located. They dig the holes so they can earn good pay to feed and clothe their families and so they can contribute to the building of churches and other institutions important to the fabric of families.

With the money they've earned from digging the hole, they buy property and build homes. They then pay taxes on their incomes and their property with which to build schools, streets and highways, water and sewer systems that comprise the social, educational, civic and commercial needs of a community.

Together, the people of the community attend the churches and the schools and utilize the infrastructure that they collectively have built.

After the hole is dug and the wealth is removed, the people of the community reclaim the earth with modern technology and enlightened conservationism. They, like all others in Montana, want a clean environment and a stable family life in their towns.

They live here, too.

In most cases, whether they were born in Montana or live here by choice, they want to rear their children here, educate them in the school they have helped build and teach them spiritual and humanitarian values in churches they have helped build.

The mining company that hires these citizens to dig the hole in the earth must take a tremendous financial risk. In most

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cases today, many millions of dollars must be invested.

First, the company--or an individual prospector--must discover a mineable ore deposit on the limited amount of land that is open to economic development and which continually is being withdrawn from that purpose. These days, the miner must then convince both the public and those in government that his operation will be conducted with environmental care and social consciousness. He also is required to spend additional money and much time to assess the environmental and social consequences his activity may cause. In the case of the Hardrock Mining Impact Act, a company that employs a mere 75 persons is defined as a "large scale" mineral developer and must agree--not just to pay--but to prepay its taxes to provide communities the ability to adjust to any changes the mining operation may cause.

The mining company is the only industry, business or citizen required to prepay its taxes.

The mining company also pays severance taxes, among the highest in the nation, on its production--as some policy makers have put it--to "compensate the people for the loss of a nonrenewable resource." This compensation is paid even though the company owns the resource and even though it may be operating at a loss.

Before any exploration or development began, it ~~has~~ ^{has} claimed ~~HB 645~~ the resource under public laws meant to encourage productive development by the people for the public good.

Once the hole is dug, The People are compensated, wages are paid to the residents of the community who dug the hole, and those who loaned the mining company the money to make it possible for the churches and the schools to be built are repaid.

Then, if any profits are realized from the first activity, the people who work for the mining company explore for another deposit. If it is spared regulatory duress and excessive taxation and if land is available on which to explore and locate claims, the mining company may re-invest in Montana. The people of the community then will dig another hole so more churches and schools can be built.

About the same time that Ralph McGill won the Pulitzer Prize for "A Church, A School," a young heavyweight, previously known as Cassius Clay, was preparing to defend his title against Floyd Patterson, the former champion. Recently converted to the Moslem faith, the champion had changed his name to Muhammad Ali. During the ballyhoo before the match, Patterson continued to refer to his opponent as Cassius Clay in an apparent attempt to degrade the opponent. Ali tortured Patterson for 11 rounds

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before finally delivering a knockout blow in the 12th. Each time he sent a thunderous blow into Patterson's body, he asked, "What's my name?"

Like Muhammad Ali, we the people of the mining industry in Montana, know who we are and who we are not. We are not the step-children of the Anaconda Company and the Standard Oil Company of a century ago, although we continue to do penance for their sins. We are the new generation of Montanans from Troy, Libby, Whitehall, Dillon, Jefferson City, Three Forks, Helena, Townsend, Nye, Jardine, Malta and, yes, Butte. We earn our living with environmental responsibility and social concern so we can build churches and schools. Like Muhammad Ali, we are proud of who we are and we are willing to fight to keep our good name.

This Legislature has within its power the ability to establish policy that will determine our future. We hope you will find in HB 645 a way for us to continue to build churches and schools in the communities in which we live, work and raise our families.

Thank you.

NAME WARD A. SHANAHAN BILL NO. HB 645

ADDRESS 301 First Bank Bldg. P.O. Box 1715, Helena, MT DATE 03/09/87

Tel: 442-8560
WHOM DO YOU REPRESENT CHEVRON CORPORATION

SUPPORT XXX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

Comments:

DATE March 9, 1987

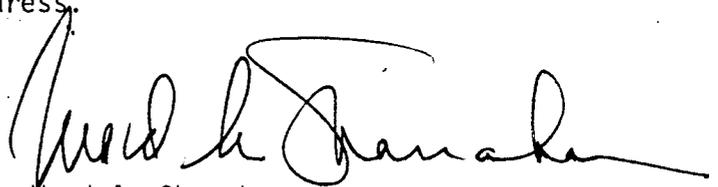
Mr. Chairman and members of the Committee:

BILL NO. HB645

I am the registered lobbyist for Chevron Corporation. I am pleased to present to you today Mr. Joseph Dewey of Nye, Montana who is manager of the Stillwater Mining Company project to mine platinum and palladium in Stillwater County.

Mr. Dewey's prepared remarks are hereby delivered to the Committee Secretary for distribution to the Committee.

If any of you have questions for Chevron following the hearing, please write or call me at the above address.



Ward A. Shanahan

NAME: Joe Dewey

BILL NO. HB 645

ADDRESS: Star Route, Box 365, Nye, Mt

WHOM DO YOU REPRESENT: Chevron Corporation

SUPPORT

SENATE NATURAL RESOURCES
EXHIBIT NO. 5 (p. 1 of Attach)
DATE March 9, 1987
BILL NO. HB645

Mr. Chairman, Members of the Committee:

My name is Joe Dewey. I'm here today representing Stillwater Mining Company, a partnership of Chevron, Manville and Lac Minerals. As many of you know, we are constructing the nation's first platinum and palladium mining operation in Stillwater County.

We expect our project to begin producing concentrate by April this year. Our current employment is over 220 workers--about half from the local area.

Before we received our operating permit, we were one of the first mineral developers to go through the community impact planning process set forth by the Hard Rock Impact Planning Act of 1981. It was a laborious process, fraught with uncertainty and, many felt, impossible to accomplish without long delays and outrageous costs.

We knew at the outset that the only way we were going to get through the impact plan development process was to be very "up-front" and open with local government. We were, and our plan was approved without a single objection filed with the Hard Rock Mining Board.

The Hard Rock Board itself had very little involvement in the planning process because we worked out all details of the plan with local government and we prepared the plan before many of the current regulations were adopted. The Board's staff made several comments of a very minor nature that had no effect on the substance of the plan. Their comments were handled through minor word-changes.

Even though we were able to work through the process, we have viewed with increasing concern the continuing expansion of regulations governing the impact planning process. Each of these rules further narrows the ability of a mineral developer to work in an open manner with local government. And, we believe, further erodes the underlying concept of the original law. That concept is that local government and mineral developers should mutually agree on a plan that sets up mechanisms for solving local problems potentially created by mineral development. The Hard Rock Board was to step in only if there was a dispute.

Now, we've got the Board deciding when a plan is a plan, defining the issues and impacts that have to be addressed, and otherwise constraining a process that we have demonstrated can work quite well without any state regulations.

The proposed legislation should not have been needed at all if the original intent of the bill had been given proper attention. Instead, a few vague words and phrases in the original law have been used as justification for tedious and unnecessary rulemaking.

We understand that each impact plan that has been developed to date has been supported by the local governments. There hasn't been a dispute yet that has required Hard Rock board mediation.

For these reasons, we believe that HB 645 is needed to clarify the role of the Hard Rock Board. Regulatory zeal should not be allowed to continue to erode the ability of mineral developers and local governments to work out mutually agreeable plans for solving actual local problems. Let's let the impact planning process work as it was intended and quit wasting everyone's time in meaningless debate over issues that have little affect on "if" or "how" impact problems are solved.

We urge your support of HB 645 and thank you for this opportunity to comment.

Joe Dewey

4227W

SENATE NATURAL RESOURCES
EXHIBIT NO. 5 (p. 24 attach.)
DATE March 9, 1987
BILL NO. HB 645

WESTERN ENERGY COMPANY

GENERAL OFFICE: 107 EAST GRANITE, BUTTE, MONTANA 59701
(406) 723-4349



3/9/87

Testimony Presented Before the Senate Natural Resources
Committee in Support of House Bill 645

Western Energy Company is a diversified coal and hard rock mining company with extensive mineral holdings in western Montana. Western Energy has identified a possible gold/silver mine project south of Winston, known as the Chartam Project. In addition, Western Energy is conducting other exploration activities in the western part of the state. Therefore, it has a vested stake in Montana hard rock mining, including the administration of the Hard Rock Impact Act.

Western Energy is not critical of recent actions taken by the Hard Rock Impact Board. The Hard Rock Impact Act contains some ambiguity, and an honest difference in interpretation has arisen. Western Energy recognizes the Board's rule making authority for the administration of the act, however, the Board has significantly modified and expanded the original act and its authority under the act. Rules have been proposed and adopted that would allow the Board to unilaterally act on the approval (or disapproval) of an Impact Plan, even though no objection is raised by a local government unit. (Note: The Chartam Project impact plan may need to be negotiated with 10-20 local government units! If none of these units object to the plan, why should the Board have the power to determine a flaw exists, even though it may only be "technical," and in effect refuse to approve the plan?) Such unjustified action by the Board could not only cause a delay in the approval of the impact plan, but consequently delay the issuance of an operating permit and the ultimate development of the mine.

The drastic effects of a delay cannot be over emphasized. Factors already exist that stack the odds against the success of a mine development. Mineral prices on the international market are

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EXHIBIT NO. 6

DATE March 9, 1987

BILL NO. HB 645

highly dynamic. Additionally, the proposed Chartam Project is a "heap leach" mine operation and, therefore, both the construction and operation of the mine are affected by Montana's seasonal climate conditions. For instance, a delay of one or two months in obtaining a permit could delay the return on a heap leach operation for six months to a year. Gold mining is risky enough without adding the regulatory uncertainty imposed by the present interpretation of the Hard Rock Mining Impact Act by the Board.

The solution to the present problem is presented in House Bill 645. This bill limits the mining company's financial responsibility to those provable burdensome impacts identified between the local government units and the mining company. This bill encourages cooperation between the local government units and the mining company. If an agreement is reached between these parties, no involvement by the Board is necessary. However, if an agreement cannot be reached concerning the impact plan, the Board serves the vital function of arbitrating disputes, which protects both the mining company and the local government units.

Western Energy Company urges your support of HB 645.

Western Energy Company
Arthur V. Wittich

SENATE NATURAL RESOURCES
EXHIBIT NO. 6 (p2)
DATE March 9, 1987
BILL NO. HB 645

BEAR CREEK COUNCIL

BOX 448, GARDINER, MT. 59030

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE March 9, 1987

BILL NO. HB 645

Mr. Chairman, members of the Committee, for the record I am Richard Parks, owner of the Parks' Fly Shop in Gardiner and a member of the Bear Creek Council for whom I appear today. Our organization is a Gardiner-Jardine area citizens group affiliated with the Northern Plains Resource Council. Our members are land owners, small business people and tax payers. HB-645 could, as presently drafted, impair significantly a local government's ability to negotiate the impacts associated with a major mining development to the detriment of the taxpayer.

The Hard-Rock Impact Act, which this bill would amend, has been working quite well for several years. It has been suggested by industry proponents that the act has been "bad for business" but no one has produced any evidence of this alleged affect. I read the testimony presented by the members of the Mining Association on this bill at its hearing in the House, hoping to find in there a clue as to what might be wrong with the law. I was disappointed, but not surprised, to find that they have nothing in hand but a dissatisfaction with the Hard-Rock Impact Board's ability to read.

In our view the new requirement that the local government hold a public hearing on the Impact Plan is an improvement but we are very concerned about the new statement of Legislative Intent. It seems to us that the language in lines 12 through 15 on page 1 could act to place the local government unit at a severe disadvantage vis-a-vis a developer in the process of negotiating an impact plan. This is certainly intended by the industry to restrict what can be considered an impact by the local government units. We assure you that an impact requiring the expenditure of public funds in any county is just the same whether it is caused by a miner or by a person or business which follows the miner to service him or his project or simply shows up on a prospect. We think it is a particularly perverse kind of property tax reform to shift the burden of such impacts from the development which caused them to the innocent citizen who did not. We have no desire to make the modern mining industry pay for Anaconda's sins but by the same token we have no wish to be made to pay for a new hangover just because an industry is unwilling to internalize its true costs.

We suggest that HB-645 should be amended on line 15 following "local governments" with the insertion of the following - WITH FULL RECOGNITION THAT THESE CHANGES MAY NOT BE RESTRICTED TO THE PERSONNEL OF THE DEVELOPER. Unless the bill is so amended we request that HB-645 recieve a **DO NOT PASS** recommendation. Thank You.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
JOE WEGGEMAN	HELENA CHAMBER OF COMMERCE	645	✓	
Dave Suhr	ASARCO, INC	HB 645	✓	
T.M. Rottins	" "	HB 645	✓	
Ward. Shavanoan	CITICORP	645	✓	
Novell Anderson	Dept. of Commerce	645	✓	
Richard M. Weddle	XAT. Herd Rock Mining Trap	HB 645	✓	
TERRY ANDERSON	SHELL WESTERN EXP HPH	SB 102	✓	
Doug Allen	MONTANA OIL GAS	SB 95 SB 102	✓	
Yung Schmidt	Jefferson County	645	✓	
RICHARD BONDY	DNRC	HB 388	✓	
William Felt	"	HB 408	✓	
Maryland Langley	MONTANA MINING ASSN	HB 645	✓	
John Brown	MUDA	388 408	✓	
Richard Park	BCC	HB 645		✓
Mike McNamee	WETA	HB 645	✓	
John K... ..	Pegasus Gold Corp	HB 645	✓	
Russ Brown	NPR Council	HB 645		✓
DAVE BROWN	sponsor - Rep. ^{Ross} HD 172 (Butte)	HB 645	✓	

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

NAME: Richard M. Weddle DATE: 3/9/87

ADDRESS: Dept. of Commerce, Loc. Gov't Asst Division

PHONE: 444-2718

REPRESENTING WHOM? Mont. ~~Dept.~~ Hard Rock Mining Impact Bd

APPEARING ON WHICH PROPOSAL: HB 645

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 9

37

19.....

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 408

THIRD reading copy (BLUE)
color

**PROVIDES THAT RESERVED WATER MUST BE USED IN THE BASIN OF DIVERSION
IVERSON (Galt)**

Respectfully report as follows: That HOUSE BILL No. 408

BE CONCURRED IN

~~BE CONCURRED IN~~

~~BE CONCURRED IN~~

SENATOR THOMAS F. KEATING, Chairman.

STANDING COMMITTEE REPORT

March 9

19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL

No. 388

THIRD reading copy (BLUE)
color

CLARIFIES THE DETERMINATION OF MARKET VALUE OF WATER PROJECTS

ASAY (Weeding)

Respectfully report as follows: That HOUSE BILL

No. 388

BE AMENDED AS FOLLOWS:

1. Title, line 10

Following: "VALUE OF A"

Insert: "STATE-OWNED"

2. Title, line 11

Following: "PROJECT"

Insert: ", AND THAT THE DEPARTMENT'S AUTHORITY HEREUNDER
MAY BE EXERCISED WITHOUT REGARD TO OTHER LAWS
PROVIDING FOR DISPOSITION OF STATE PROPERTIES"

3. Page 2, lines 1 and 2

Strike: "without regard to other laws providing for the
disposition of state property"

4. Page 4, line 5

Following: "and revenue therefrom"

Insert: "without regard to other laws providing for the
disposition of state property"

AND AS AMENDED
BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

SENATOR THOMAS F. KEATING, Chairman.