MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 23, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on March 23, 1987, at 12:30 p.m. in Room 405 of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

DISPOSITION OF HOUSE JOINT RESOLUTION 6: Senator Keating reminded the committee that HJR was sponsored by Rep. Schye and it was a request that the U.S. Environmental Protection Agency (EPA) revise its policy concerning underground salt water injection into the Judith River formation on the Fort Peck Reservation. There is a jurisdictional dispute as the Sioux-Assinaboine Tribe does not recognize the Board of Oil and Gas Commission for permitting purposes on any lands within the Reservation. The Oil and Gas Commission is informing the operators that they have to file with the State if they are private operators, and they have to file with the Tribe as well. The salt water disposal is not operated by anyone. The Judith River is a source of fresh water for drinking, and HJR 6 is necessary to establish policy and regulation so that there will be governance on the salt water injection program. Sen. Keating informed the committee that the State is seeking legislation for governance on salt water disposal in the State rather than EPA because the federal government is so slow and the Oil and Gas Commission has the expertise for making the judgement on salt water disposal. That program would be more efficient and faster with local control. Because the Board of Oil and Gas has no authority on reservations, Sen. Keating said that HJR 6 should be passed.

Sen. Yellowtail said the tribes are frustrated as well and have also petitioned the EPA.

Sen. Tveit moved that HJR 6 BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF HOUSE JOINT RESOLUTION 24: HJR 24 would allow extension of the Western States Forestry Task Force at a cost of $7,000. Sen. Severson moved that HJR 24 BE CONCURRED IN. Motion CARRIED by majority vote. Sen. Halligan voted "no."

DISPOSITION OF HOUSE BILL 718: Sen. Keating explained that HB 718 would reallocate environmental contingency account to the Environmental Quality Protection Fund for hazardous waste, etc. Gail Kuntz passed out an explanation sheet that was prepared by Hugh Zackheim at the request of the sponsor, Rep. Harper. (Exhibit 1)

George Ochenski,EIC, explained that HB 718 would provide a new earmarking of the RIT interest.

Sen. Lynch moved the amendments that were presented to the committee by Rep. Harper on March 20. Motion CARRIED unanimously.

Sen. Halligan moved that HB 718 AS AMENDED BE CONCURRED IN. Motion CARRIED unanimously.

CONSIDERATION OF HOUSE BILL 777: Rep. Ream, House District 54,introduced HB 777 as being a companion bill to HB 760. He said that HB 777 was a bill that would address the Superfund program, which allows for investigation and if need be, cleanup of substances that have been allowed to escape into the environment. Rep. Ream said that those responsible for the problem should help pay for the cleanup. He also stated that HB 777 does change the RIT interest income from 6% to 12% which was part of the Governor's package. It also establishes the Hazardous Waste/CERCLA Account. EPA provides 90% of the funding for remedial action sites and the State provides 10%. Rep. Ream asked a representative from DHES to explain more fully HB 777.

PROPONENTS: Katherine Orr, Attorney for DHES, distributed detailed handouts to the committee. Ms. Orr stated that HB 777 would put in place a funding mechanism for the hazardous waste program. HB 777 also allows for bonds to be sold if DHES deems it necessary. (Exhibit 2)

Stan Bradshaw, Trout Unlimited, supported HB 777.

Vic Anderson, Department of Health and Environmental Sciences, testified that HB 777 would provide the basis for the State to deal from a position of strength.

Don Engles, Montana Chamber of Commerce, entered support of HB 777.

George Ochenski,EIC, stated full support of HB 777 because without the bill, cleanups cannot be accomplished.

John Wardell, EPA, presented written testimony (Exhibit 3); and he verbally stated support.

Jim Flynn, Department of Fish, Wildlife and Parks, submitted written testimony (Exhibit 4) and supported HB 777. Mr. Flynn noted the $200,000 for damage suits. He also reported that DFWP had committed a project manager and 1/2 time staff attorney to the effort.

OPPONENTS: There were no opponents present.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: Sen. Stimatz wanted to know the purpose for the $200,000 that was designated in the bill and an explanation of why it was in the bill. It was explained that the money will go to develop technical data for the lawsuit that began in 1983 in Billings District Court. A stay was entered into by virtue of a settlement between the potentially responsible party and the State to stay all further action until RIFS (Remedial Investigation Feasibility Study) is completed. Based on that study, determinations will be made as to which portions of the areas are irrevocably lost. That is the basis for the damage claim according to Attorney Orr.

Mr. Wardell responded to a question and said that emergency situations referred to on page 5 of the bill are those emergencies that are immediate environmental concerns; such as, oil spills.

Mr. Anderson, Department of Health, said that the department is potentially duplicating EPA emergency response, but he hoped instead to complement it. If an emergency is too small of an accident, EPA would not act.

Sen. Keating explained that in other areas of State Government the State bills the federal government on that basis and he asked Mr. Wardell if EPA would respond in like manner if the State should react to an emergency. Mr. Wardell said probably not.

Sen. Keating wondered that since interest income is $13 million a year, why is there a need for a bonding mechanism since there is so much money from the corpus, and Rep. Ream answered that it may not have to be used, but a Butte site itself may cost $4 million to $5 million.

There was much talk about lawsuits in Silver Bow County, some of which were different issues than natural resource damage suits. It was stated that Natural Resource Damage Claims are intended to pick up from where the cleanup action left off to recover for permanent loss of resources that will never be able to be replaced.

Sen. Halligan then suggested that George Ochenski and Gail Kuntz develop a flow chart that would "pull together" HBs 777, 718, and 373 so that the committee could get a better understanding of where hazardous waste money will be spent.

Mr. Ochenski said the request would be honored. For clarification, Mr. Ochenski said the Anaconda Company had paid for remedial investigation. There is a step by step approach to figure out what the problem is, where it originated and what is the most cost-effective way to clean up. He reiterated that Superfund is a slow process--a step-by-step fund.

Sen. Keating said that there seems to be a two-fold purpose in HB 777: 1) Establishing a State match for Superfund money to clean up certain hazardous waste sites around the State where the responsible party cannot be found; and 2) Authorizing the Department of Health to locate known operators. Sen. Keating wondered to what extent would the State extend its arm.

Mr. Opitz explained that HB 777 would give the State the authority to go to the responsible party and have them start cleaning up. If they don't then the $200,000 is available for the State to proceed with cleanup and then sue for treble damages under the Superfund.

CLOSING: Rep. Ream elected to close on HB 777 when he closed on HB 760.

CONSIDERATION OF HOUSE BILL 760: Rep. Ream introduced HB 760 as an act that would authorize the issuance and sale of CERCLA General Obligation Bonds and appropriating the proceeds to the Hazardous Waste/CERCLA Special Revenue Account.

PROPONENTS: George Ochenski, EIC, stated that HBs 760 and and 777 were companion bills and EIC supported both of them.

Katherine Orr testified that HB 760 would give authority to the Board of Examiners to issue bonds, and she supported the bill.

OPPONENTS: There were no opponents present.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: In answer to Sen. Halligan's questions, it was stated that the bonds are General Obligation Bonds with the general fund to back them up. Marvin Eikels from the Department of Administration explained that the General Fund and RIT both back the bonds.

CLOSING: Rep. Ream said that the bonds would be used for CERCLA cleanup. HB 760 would be an enabling bill to the State. One of the reasons for the bonding bill was because no general bonding existed for the State. The Superfund program that has been in existence in the State had gone a long ways in getting started in cleanup areas. The State has identified another 135 sites. Rep. Ream said that the Superfund was reauthorized in Congress last October for another 5 years. The next 5 years will be an opportunity for the State to become involved in a major cleanup effort and do so with the major portion coming from the federal government. Rep. Ream said the State does "mean business and is serious in cleaning up sites." If HB 760 is passed, Sen. Halligan said he would carry it on the floor.

CONSIDERATION OF HOUSE BILL 629: Rep. Bob Ream , House District 54, introduced HB 629 as a bill that would address problems the State has had in administering metal mine reclamation. Rep. Ream stated that he was carrying the bill at the request of the Department of State Lands, and he gave Dennis Hemmer credit for identifying problems in existing law and in administering the law.

PROPONENTS: Dennis Hemmer, Department of State Lands, stated that HB 629 was drafted in order to provide more practical regulation for mining operations. HB 629 would require that any operator who uses a mineral processing reagent to acquire an operating permit; and the requirement of a reclamation bond would insure that the operation would be reclaimed in an environmentally acceptable manner. Mr. Hemmer explained that miners would be exempt from procuring an exploration license for very small disturbances however. HB 629 denies "Small Miner Exclusions" to operators who propose the exclusion within the boundaries of an operating permit or propose to use certain processing reagents that pose a high potential for environmental harm. (Exhibit 5)

George Ochenski, Montana Environmental Information Center, stood in support of HB 629.

Gary Langley, Executive Director of Montana Mining Association, said that the bill would do two things: 1) Small operator will not be allowed to use cyanide and 2) Exploration permit would not be required to merely do assessment work. If HB 629 is amended to place more restrictions on the small miner, however, Montana Mining Association would oppose the bill.

John Fitzpatrick, Montana Tunnels, testified that Montana Tunnels is the largest user of cyanide and will even be a bigger user in the future. Mr. Fitzpatrick said he realized it can be a problem and that cyanide should be handled responsibly.

Dave Conklin, Helena, spoke in support of HB 629 with one exception. Mr. Conklin said he lives in a mineralized area where small miners and mining corporations have active prospects and mines. Mr. Conklin stated that he is concerned about decreasing residential property values if HB 629 is passed as is. Lines 3-9 on page 5 that state that a small miner will be able to obtain an operating permit for a larger operation without jeopardizing his "exempt" operation on any number of smaller mines especially concern him. Mr. Conklin said that the residential property owners deserve reclamation, and he submitted an amendment. (Exhibit 6)

Tom Stephens, landowner in Grizzley Gulch, stated that he has a small pond in his backyard that is fed by several local springs as well as a stream that flows down the Gulch toward town. Mr. Stephens' residence is located downstream from a mining operation conducted by a "small miner." According to Mr. Stephens, the stream has been manipulated beyond recognition. Several times the "small miner's" holding ponds have breached which caused substantial erosion. Mr. Stephen said that small miners are not supposed to contaminate water, but they do, and residential property value is adversely affected. Mr. Stephens favors HB 629 only if it is amended as Mr. Conklin suggested. (Exhibit 7)

Tim Baker, Grizzley Gulch, Helena, presented an amendment to HB 629 (identical to Mr. Conklin's). Mr. Baker testified that the "small miner" exemption was a compromise in the 1971 legislature and that the "small miner" benefits in that he is free from financially burdensome regulation. In return, the "small miner" must remain small or meet the reclamation requirements which protect nearby landowners as well as citizens of Montana. Mr. Baker said that he and his family have borne the burden of the exemption granted to the "small miner." For example, heavy equipment damages the road and is operated at early hours on weekends and holidays. Mr. Baker said there is an aesthetic loss as well as the loss in property values, and he asked the committee to seriously consider his amendment. He concluded his testimony by inviting any and all to view the "small miner's" operation four miles south of Helena. (Exhibit 8)

Steve Pilcher, Water Quality Bureau, Department of Health, stated that the Water Quality Bureau tries to stay out of mining laws; however, the problems of cyanide had taken an increasing amount of Bureau's time and he supported HB 629 because anyone who uses cyanide should come under the Department of State Land's controls.

OPPONENTS: Russ Dugdale, owner and operator of Metallurgical Services, Incorporated, and a 1956 graduate from the School of Mines said that his livelihood depends on small miners and HB 629 would eliminate the small miners. Size of the bonds that must be posted prior to operation as well as the requirement of an operating permit resemble an Environmental Impact Statement, and Mr. Dugdale said that would cost time and money. Mr. Dugdale stated that HB 629 addresses all reagents and a small miner would not be allowed to even use soap and water in his panning operation without having an operating permit under this bill. Mr. Dugdale purported that HB 629 would reduce the small miner to the hobby status. Initially, a small miner employs from four to ten people with that number growing to thirty when the mine is in full production. Mr. Dugdale emphatically stated that purchasing an operating permit estimated at $50,000 would make it impossible to fund a small mine. (Exhibit 9) Mr. Dugdale presented amendments to require safety training to avoid bonds and permits. (Exhibit 10)

Ed Batterman, Butte, told the committee, "Don't kill the goose that lays the golden egg." Mr. Batterman earns his living by drilling and exploring for small "outfits" and he said that HB 629 would discourage exploration and undermine his business. (Exhibit 11)

Dennis Markovich, who represented a small mining firm, stated that if HB 629 is passed, it would put the firm out of business. He presented the committee with cost accounting figures to support his testimony. (Exhibit 12)

Koeler Stout, consultant in the mineral business, said that the Southwest Montana Mining Association lobbied long and hard for the small miner exclusion in 1971 for the reason that the ordinary small miner could not afford bonding requirements of the bill. Mr. Stout said the same is as true in 1987 as it was in 1971. Mr. Stout stated that HB 629 would greatly restrict the small miner and would practically do away with the small miner exclusion. Definition changes were proposed by Mr. Stout. (Exhibit 13)

Wayne Fletcher, professional chemist and Vice President of the Lewis and Clark Chapter of the Montana Mining Association, stated that HB 629 would find almost universal support in the mining community if amendments were incorporated to do the following:

1. Remove potentially enormous bonding requirements.

2. Remove the unnecessary restrictions on prospecting.

3. Address only the use of cyanide and other hazardous chemicals. (Exhibit 14)

Ian Hendrickson, Mining Consultant in Helena, said that HB 629 essentially "wipes out the small miner." Under this bill, a permit would be needed to use any chemical reagent. Mr. Hendrikson stated that Idaho is considering cyanide legislation with which he concurred. Taking exception to the definition of "abandonment," Mr. Hendrickson stated that as economic changes occur, there would be unnecessary loss of potential mines and cited Montana Tunnels, Butte's East Pit, and the mine at Winston as examples. (Exhibit 15)

OPPONENTS: There were no opponents present.

Senator Keating announced that most of the "proponents" in his judgement as Chairman, were in actuality "opponents" because they had amendments to the bill. Also, he said executive action would not be taken on March 23, but he advised the people who had testified to place their addresses as well as their names on the visitor's roster so that committee members could be in touch with them. Also, Sen. Keating announced that there may be a possibility of a subcommittee's being appointed since there were so many people and issues involved in HB 629.

CONSIDERATION OF HOUSE BILL 642: Rep. Spaeth, House District 84, emphasized that HB 642 deals only with general revisions in water appropriation process and not with adjudication. He said that HB 642 would revise the permit and utilization provisions of the water use laws; altering the filing and issuance requirements of a certificate of water right. He said that wells that have less than 100 gallons per minute were exempt from the permitting process; but he understood that Mr. Doney was going to present an amendment to the effect that more than one well from the same source that brings 100 gallons a minute or more should also go through the permitting process. Also, the bill pertains to water reservations in the Missouri River below Fort Peck Dam that must be filed no later than July 1 1991. The controversial part of the bill is listed on the bottom of page 14 which gives the DNRC discretionary authority.

Gary Fritz, DNRC, commented on the "controversal" part of the bill. He said that existing laws make existing users subordinate to reservations adopted between July 1, 1985, and 1991. The section would allow the Board of Natural Resources to decide reservations on a stream by stream basis. The interim permits mean that users can go on as before if they don't interfere with the reservations. Mr. Fritz gave an example of a water user with reserving permit after July 1985--Romaine Cattle Company, 30 gallons per minute for stockwater purposes out of the Marias River. Mr. Fritz stated this water user would be "junior" to all reservations adopted by the Board in 1991. DNRC suggested that the Board be given the discretion to decide what uses would be more important and would take priorty (whether the reservation comes first or the permitting comes first). DNRC would now have the discretionary authority under HB 642 on a case by case basis.

Gary Fritz mentioned the new section 10 that would have been a repealer for an applicant applying for 3,000 acres of water, but the House had struck that section, and applicants must go to the legislature when wanting to apply for 3,000 acres or more.

Ted Doney, an attorney who specializes in water law represented the Water Development Association. He said that he supported the bill in general with two exceptions.

1. Amendment from the house, page 2, would create a legal problem. Mr. Doney presented an amendment to state that two wells that total 100 gallons or more would originate from the same source." (Exhibit 16)

2. Mr. Doney disliked the word "combined" because he didn't know what the word meant in the bill. He thought it meant that two wells that were irrigating the same tract but not physically connected. Mr. Doney would rather the bill would read "wells from the same source."

He also mentioned that if an irrigator has a priority date after July 1, 1985, he would have to object to all the Missouri River reservations and get DNRC to "subordinate" reservation to his permit. Mr. Doney stated that he felt most of the farmers and ranchers would not know the procedure. He said that he had talked to Mr. McIntyre who explained "subordinate" in the bill to mean that permits of farmers and ranchers would have the preference of use over the water reservations. Mr. Doney said "subordinate" has not been used in water law. However, he said he supported HB 642 if the bill were passed with his proposed amendment adopted.

Jim Flynn, Department of Fish, Wildlife and Parks, supported HB 642, but stated a concern with one portion of the bill on page 14, lines 20-25, which sets up two priority dates. A reservation allocates water availability to users and non-users. Mr. Flynn stated that the cumulative effect of many permits could interfere with reservations, then DNRC will have to sort out who gets the priority. He said that HB 642 sets up dual permitting, and recommended returning to the original language of the bill on page 14.

Don Jenni from Lewistown explained that he had written a letter to the committee expressing his opposition to the House's reinstating the repealer in section 21. He said that if 85-2-317, MAC, is not going to be repealed, then a change should be made increasing 3,000 acre feet of water to 4,000 acre feet of water in order to make the section consistent with otherprovisions of State law. Also, Mr. Jenni suggested that 85-2-317 (3) have the addition of "hydropower."

Stan Bradshaw, Trout Unlimited, agreed with Mr. Flynn's proposal of returning to original language on page 14.

OPPONENTS: There were no opponents.

Sen. Keating noted that although proponents supported the bill, they all had exceptions and opposed some section.

CLOSING: Rep. Spaeth said that he liked and supported Mr. Doney's amendment. Rep. Spaeth addressed the issue on page 14. The water reservation in the statute will not affect any permits, etc., prior to 1985. Rep. Spaeth stated that EIS on water reservations will deal with cumulative effects and will list all the existing users. If the DNRC is not given discretionary power which is "middle ground" approach, the only option of users would be to object to water reservations. Rep. Spaeth announced that he was committed to the language on page 14.

CONSIDERATION OF HOUSE BILL 661: Representative Spaeth, sponsor of the bill introduced the title: "An Act Further Defining the Term "Project" To Clarify that a Project Does Not Include Maintenance and Repair of Existing Irrigation Facilities. He said that the bill dealt with 310 Permits. The bill is very important to irrigation counties. Rep. Spaeth said the reason the bill was written was because for the first time since the 1975 bill, Natural Streambed and Land Preservation Act, it was interpreted by the Attorney General that historical usage had not been grandfathered out of the 1975 act.

As summer progresses, operations almost change weekly in putting in diversions, etc. Therefore, any ditch company who does any work in a stream would have to get a permit. There is a one-time emergency type of exemption. Rep. Spaeth said that in order to get a permit, a team of supervisors would have to go out and inspect the stream. HB 661 would re-establish the historical "grandfather" for the ditch companies and irrigators. Rep. Spaeth asked that the committee pass HB 661.

PROPONENTS: Ray Beck, Conservation Districts, DNRC, supported the bill. He said that the bill would cover the concerns and would preserve the "status quo."

Debbie Bremer, Montana Association of Conservation Districts, asked committee's concurrence of HB 661.

Jim Flynn, Department of Fish, Wildlife and Parks, supported HB 661 and submitted written testimony. (Exhibit 18)

Stan Brandshaw verbalized support of HB 661.

Jess Malone, Choteau, supported HB 661 and he said that farmers need the right to be able to do maintenance work in the areas of their diversions without undue limitations caused by the 310 permit system. In fact, Mr. Simon said his crops would depend on that. Water diversions have to be maintained and the job has to be timely because crops are dependent on opportune irrigation. Because of the time framework built into application for the permit, permits cannot be approved for three weeks. Therefore, Mr. Simon wholeheartily supported HB 661. (Exhibit 19)

OPPONENTS: Ted Doney, Montana Water Development Association, said that he liked the bill as it was introduced in the House, but not as it was amended. He stated that an irrigator now has to either submit an annual plan or go to the district board and receive approval. Mr. Doney explained that there is no structure in a stream. Every spring farmers and ranchers are in a stream replacing boulders or logs. He said that it is too burdensome to the irrigator to project an annual plan or to gain approval every time maintenance work has to be done in a stream. Mr. Doney mentioned that he had drawn up some amendments that would be a reasonable compromise, but since it would entail rulemaking, he had reconsidered and did not submit them to the committee. However, Mr. Doney emphatically stated that he would prefer that HB 661 go back to the original language.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: In response to a question by Sen. Halligan, Mr. Doney said that according to the amended bill, replacing logs or boulders that would divert the stream would require advance approval of the supervisors. Mr. Beck said that somebody has to make a decision on an alteration.

It was mentioned that supervisors have legal responsibility to oversee activities in a spring.

It was determined that HB 661 language tries to preserve the status quo--irrigator gets one-time authority from the district to conduct an annual operation. Once authority is received from the district (unless there are dramatic changes) the irrigator would not have to go back to the district. Most irrigators know what they are going to have on an annual basis.

CLOSING: Rep. Spaeth stated that there is a definite need for HB 661. At the present time, "everything out there requires a permit. We are trying to get it back in the middle."

There being no more business before the committee, Sen. Keating adjourned the meeting at 3:10 p.m.

Thomas F. Keating
THOMAS F. KEATING, Chairman

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ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 3, 1987

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.

DATE March 23, 1987

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Stan Bradshaw	Trout Unlimited	61 HB 629	✓	
Bill Spitz	DFES	HB-760 HB-777	✓	
Katherine Jones	DFES	HB-760 HB-777	✓	

DATE March 23, 1987

COMMITTEE ON HB 629 Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Oppose
Jesse Malone Jr	Eldorado Co-operative Canal	661	*	
Don Jenni	Don Jenni	642	X	
Koehler Stout	Koehler Stout	629		X
Russell McDugdale	1727 "A" St Butte MT Metallurgical Services Inc	629		X
WAYNE FLETCHER	L & C CHAPTER	629		X
Denis Mikesovich	USMI Inc	629		X
H Battermann 677 So Alabama Butte Mont	Battermann Drilling	629		
TIM BAKER	Self	629	X	
Tom Stephens	Self	629	X	
Dave Conklin	SELF	629	X	
Jo Lahti	Self + L&C Chapter MMA	629	as amended	
Jon Fondrillen	Self, 707 Dearborn Ave Helena, 59601	629	as amended only	
[illegible]	Self	629		X
MARY Conklin	Self	629	X	
Gary Fritz	DNRC	642	X	
Larry Holman	DNRC	642	X	
Vic Andersen	DHES	HB 760 HB 777	X	
Mark Jobe Thomas	self	629	X	
Dennis Hemmer	Dept of State Lands	629	X	
Gary A Langley	Mt. Mining Assn	629	X	
Debi Brammer	MT Assoc of Conservation Dist	661	X	
Ken Williams	Entech / Western Energy	629	X	
[illegible]	Pegasus Gold Corp	629	X	
Jon Angels	Mt Chamber of Commerce	760 777	X	
[illegible]	MT Sierra Club MT [illegible]	760 777	X	
GEORGE OCHENSKI	MT. ENV. INF. CNTR	760 777 629		
STEVE PILCHER	DHES Water Quality Bur	629	X	

DATE March 23, 1987

COMMITTEE ON HB 642 Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
~~Larry Hinman~~	DNRC			
Stan Bradshaw	Trout Unlimited	642	✓ with amendments	

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3-23-87
BILL NO. HB718

HOUSE BILL 718

Purpose:

To establish an ongoing program to cleanup hazardous waste sites in Montana.

Need:

There are approximately 100 hazardous waste sites in Montana that will not qualify for the federal Superfund program. These sites will only be cleaned up if the state takes the initiative.

Legal Framework:

HB 766, enacted in 1985, authorizes the health department to take remedial action whenever a release of a hazardous substance threatens public health or the environment. The law established a revolving fund (the Environmental Quality Protection Fund or "mini-Superfund") that DHES can use to respond to releases or cleanup waste sites if responsible parties fail to act; responsible parties are then liable to reimburse the fund for costs and damages. HOWEVER, THE LEGISLATURE DID NOT APPROPRIATE ANY MONEY TO THIS FUND, SO DHES HAS NOT SET UP THE NECESSARY PROGRAM TO ADDRESS HAZARDOUS WASTE SITES. HB 718 would provide the necessary allocation to get such a program going.

Relation to RIT Use:

HB 718, with the proposed amendments, does not affect RIT allocations for the 1988-89 biennium. The 4% allocation under HB 718 will not begin until FY90, just like the allocations provided for in SB 373.

HB 718 is highly consistent with the use of the RIT to address the impacts of mineral development. As indicated on the list of state sites, the majority of hazardous waste are mineral related.

Initiation of HB 718 Program:

Through an agreement with the Schwinden Administration, the health department will use $60,000 from its hazardous waste budget and about $40,000 from an RIT project grant (dealing with abandoned refineries) to hire a program manager to begin to address Montana's hazardous waste sites. During the upcoming biennium, the program manager will coordinate DHES work on the refinery cleanups and the Apex mill cleanup; prioritize other sites for future action; and identify, contact and work with potentially responsible parties to have these parties begin necessary studies and remedial action at hazardous waste sites. As a result of this work, DHES will be in an excellent position to come before the 1989 Legislature with a program of how it proposes to spend the newly allocated 4% of the RIT interest.

(Note: The 4% allocation to DHES under HB 718 is <u>not</u> a statutory appropriation, as was indicated at the hearing.)

SENATE NATURAL RESOURCES
EXHIBIT NO. 1 p. 2
DATE 3-23-87
BILL NO. HB 718

Earmarking:

HB 718 does provide a new earmarking of the RIT interest. The Schwinden Administration has stated its opposition to additional earmarking (although the administration has proposed the additional 6% allocation for Superfund participation in HB 777 and has not proposed to remove the existing earmarking for the water development program).

The earmarking provided for in HB 718 is necessary to provide a predictable funding source (about one-half million dollars per biennium) so the state can address hazardous waste sites in a programmatic way. Without this predictable source of funds, it would be extremely difficult to have the continuity needed for ongoing cleanup projects or negotiations with responsible parties. Also, the predictable fund source is crucial so that responsible parties will know that the state can take action. This provides a great incentive for responsible parties to undertake cleanup -- if they do not, the state will conduct the cleanup and the responsible parties are liable for double damages. This approach is exactly the theory behind the federal Superfund program. Without earmarking, the program suffers from a lack of continuity and responsible parties might delay cleanup action and hope that the next Legislature will not find funds for DHES to pursue work at a site.

Options:

If the committee opposes the new 4% earmarking in HB 718, there are two options that should be considered before killing HB 718.

(1) The committee could increase the existing earmarking for the hazardous waste management program, and include the state waste site program within this fund. The current allocation is 6%, and with HB 777 this will jump to 12%. Coordinating HB 718 with this format would be possible, resulting in a total hazardous waste allocation of 16%.

(2) The committee could approve the program elements of HB 718 without the earmarking. This would at least put in place a statutory program to address hazardous waste sites by using the substantial authority provided for through HB 766 in 1985. The Administration has committed to pursuing this program, and specific projects could be funded through future RIT grants.

Summary:

Approval of HB 718 with the proposed amendments would put Montana in a position to develop and undertake a long-term program that will result in the cleanup of abandoned hazardous waste sites across the state, allow the state to recover costs from responsible parties, and put people to work in this effort.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1 p. 3
DATE 3-23-87
BILL NO. HB 718

RIT ALLOCATIONS

PROGRAM	CURRENT LAW	SB 373	SB 373 & HB 777	SB 373, HB 777 & HB 718
Water Development Program	30%	30%	30%	30%
Hazardous Waste Mgmt. (RCRA, UST, CERCLA)[1]	6%	6%	12%	12%
Unspecified	64%	-	-	-
Reclamation and Development Grants	-	56%*	50%*	46%*
Renewable Resource Development Program	-[2]	8%*	8%*	8%*
Hazardous Waste Site Remedial Action Prgm.	-	-	-	4%*
Gov.'s Environmental Contingency Account (off-the-top alloc.)	5%	$175,000	$175,000	$175,000[3]

NOTES:

* These allocations will begin in FY 90.

1. RCRA, UST, CERCLA -- These are the major on-going programs of the Solid and Hazardous Waste Management Bureau of DHES. RCRA is the hazardous waste management program; UST is the underground storage tank program; and CERCLA is state participation with the federal Superfund program. None of these programs addresses the "non-federal" (non-Superfund) abandoned hazardous waste sites that are covered by HB 718.

2. The Renewable Resource Development Program is now funded by an allocation from the coal tax, and receives no RIT funds. SB 373 would add an 8% allocation of RIT interest funds to this program.

3. With the amendments proposed by Rep. Harper, HB 718 no longer addresses the emergency account issue. As a result, the allocations in SB 373 would apply.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3-23-87
BILL NO HB 777 (HB760

Overview of Funding and Bonding Bills for RCRA (Hazardous wastes) and CERCLA (Superfund) Activities

- HB-777 provides for use of RIT interest income to pay for Montana's portion of RCRA enforcement activities and CERCLA or Superfund clean-up and litigation costs.

- Almost all of the money here serves as a leverage for substantial federal contributions toward preservation of state natural resources.

- Up to 6% of the RIT interest income is allocated for RCRA program activities in a state-federal match ratio of 1 to 3 (1 state dollar to every 3 federal dollars).

- An additional 6% is allocated for any costs which the state may have to incur for clean-up of one or all of the 7 Superfund sites if the responsible parties or PRP's refuse to pay for these costs themselves.

- The way this works is that if the PRP walks away, the state has a choice about providing money as a match to federal dollars in a ratio of 1 to 9 (10% state to 90% federal money). If PRP's take no responsibility for clean-up, the state's match obligation could amount to $6 million in the next biennium.

- It is important that the state act agressively to leverage for scarce Superfund dollars.

- Also, the state has a limited period in which to participate in the clean-up which is anticipated to occur in the next five years.

- The bonding mechanism in the bill is advantageous because it would raise the necessary state match without raiding the general fund.

- The use of the RIT money as designated in the bill is consistent with the purpose of the RIT fund, which is to protect Montana's resources affected by the extraction of mineral and other non-renewable resources.

- Without the bill there would be no hazardous waste management program, and potentially Montana's dump sites would never be cleaned up.

- House Bill 760 is a technical bill which provides the authority to the Board of Examiners to issue bonds.

Funding for CERCLA Lawsuits

- State has filed an ongoing lawsuit for recovery of loss of natural resources in the upper Clark Fork Basin -- one of Montana's most precious natural resources.

- The potential for recovery in this geographical area and other areas is enormous and therefore warrants the full-time dedication of legal and technical staff for evaluation and pursuit of these claims.

- Time is of the essence here because of the need to protect the State's interests in the ongoing lawsuit, for instance for evaluation of settlement offers which have already been made, and because there is a statutory deadline beginning in 1989 for filing natural resource claims.

- The appropriation is essentially a loan because it is all recoverable for the defendants.

- Any future damages collected are by statute put into a trust fund to manage or to help restore natural resources. The trust fund could become a tremendous development asset for several depressed areas in the state.

- The funding is an especially appropriate use of the RIT fund.

- The $200,000 is for 2 full-time technical and legal staff, contracted services, support services, and office overhead, to be housed at the Department of Health and Environmental Sciences.

- The money is intended for preliminary work necessary for evaluating the size and availability of claims in the state; it is not sufficient for litigation costs.

- Anticipated technical activities of the staff are: assess impact of Department of Interior regulations and the new Superfund amendments; integrate existing data with damage assessment; monitor nationwide developments in the law; develop evidence; continue in settlement negotiations.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2 p. 3
DATE 3/23/87
BILL NO. HB 777

Superfund Fact Sheet

Superfund is a federal program to investigate and if need be clean up hazardous substances which have been dumped, spilled, or allowed to escape into the environment. If investigations determine an actual or potential threat to public health or environment, clean up or control is required.

A basic premise of the program is that those responsible for the problem should pay for the clean up. However, a large fund has been established to provide money for clean up at sites where responsible parties no longer exist or are financially unable to pay for clean up. The fund also supports administrative, oversight and investigative requirements; and litigation against responsible parties who refuse to participate. Punitative damages up to three times the total response costs can be assessed by a federal court against non-participating responsible parties.

The Superfund program depends a great deal upon state involvement. The EPA, the federal agency which administers Superfund, can conduct investigations; emergency actions; and even require cleanup of sites with a participating responsible party without active state participation. However no action can be taken at sites where responsible party funding is not available without substantive state involvement.

There are potentially several thousand sites in the country that are eligible for federal funding. Given the typical cost of a site response, the number of sites far exceeds the money available. Aggressive action on the part of a state tends to insure more applicable sites get on the priority list which inturn increases the proportional amount of monies expended on clean up in the state.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2 p.4
DATE 3/23/87
BILL NO. HB 777

2-18-87

Fact Sheet
HB777

-- Lateness of this bill because it is a very complicated program, and a lot of time went into the drafting.

-- Responsible parties are going to be tabbed for all costs including investigation and clean-ups. Only when no one can be identified will the Superfund itself and the state matching funds be used.

-- Clean-ups and investigations are very labor-intensive; involve well drilling, sampling, lab analysis, design of soil cover, dikes construction activities, including heavy equipment operations.

-- State must send a clear signal to responsible parties that we're serious about cleaning up sites.

-- Next five years are a window of opportunity for Montana to get a large contribution of federal funds to investigate and clean up these sites.

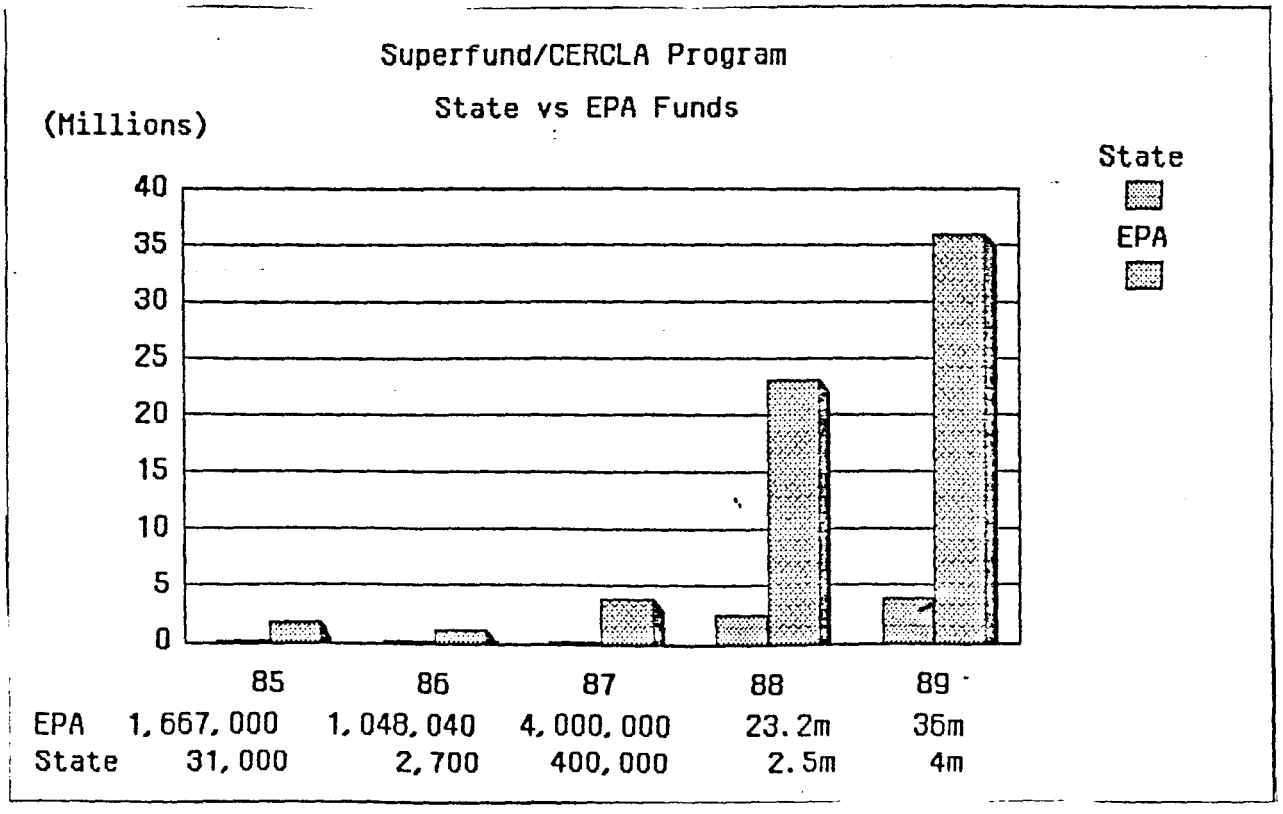
-- Superfund was reauthorized by Congress in October, 1986 for another five years. $8.5 billion was allocated for the program.

-- Currently there are nine National Priority List (NPL) sites in Montana. These are:
Asarco Smelter, East Helena
Anaconda Smelter, Anaconda
Idaho Pole, Bozeman
Mouat Industries, Columbus
Milltown, Missoula
Champion Paper, Libby
BN Somers Tie Treating Plant, Somers
Montana Pole, Bozeman
Silver Bow Creek, Butte-Deer Lodge

-- To date about 130 additional sites that may pose a contamination problem have been identified in the state. It is likely that some of these sites will prove to be eligible for federal funding.

-- Since 1983 it is estimated that over $10 million has been spent on Montana Superfund activities by the EPA, responsible parties and the state. To date the state's direct financial share has been about $33,000.

-- Several major sites are nearing completion of the investigative phase and the beginning of the corrective action phase. As a result, it is likely that state and federal costs will increase. The following table provides an estimate of these expenses.



-- Successful negotiation/litigation with responsible parties can substantially reduce cost to the state. Therefore, funding set aside for state match may be available for reappropriation by the legislature in the future.

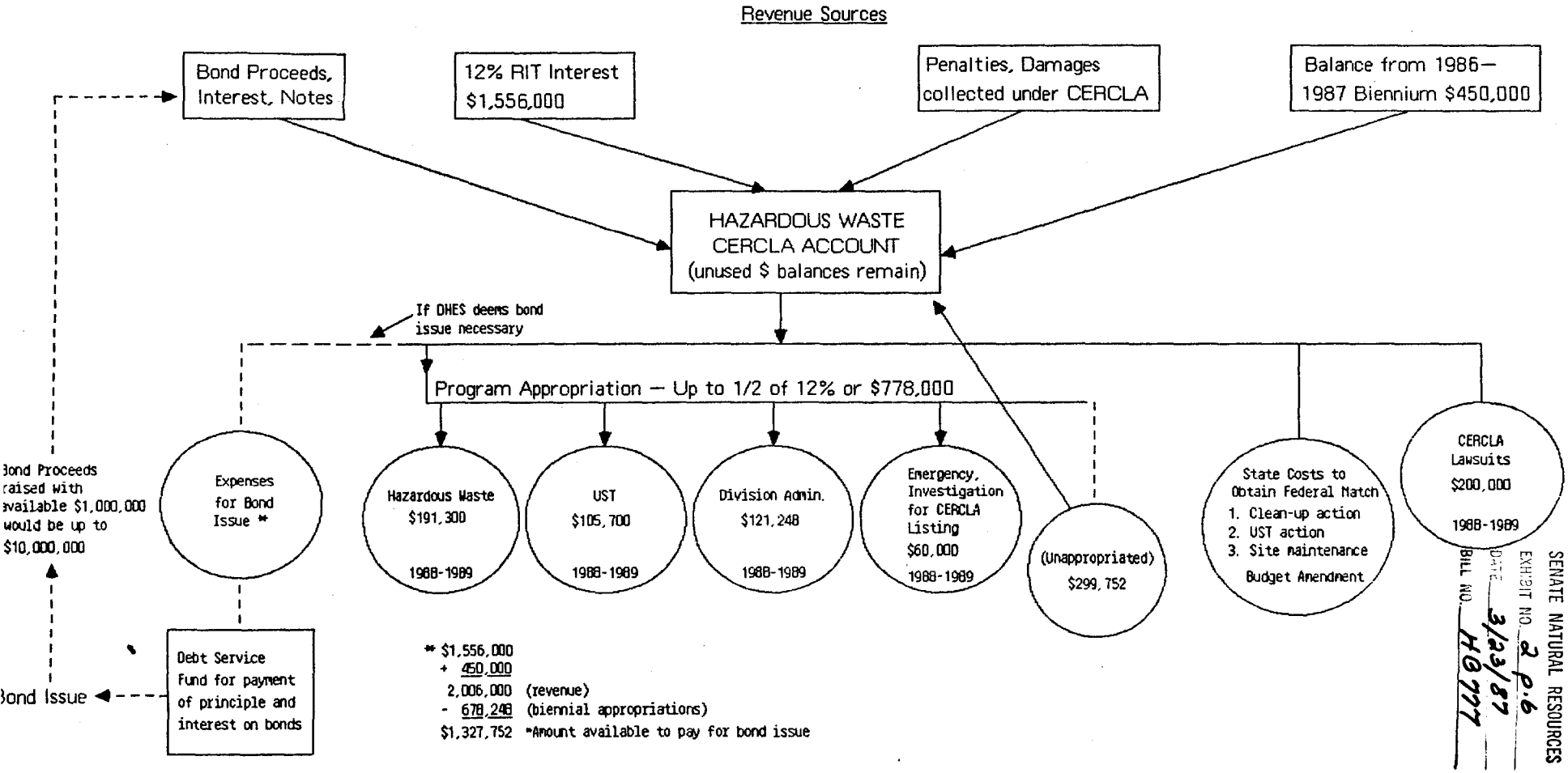
-- If fund monies are being used, the assumption of the lead role at a site by the state is virtually the only opportunity for the state to direct activities and for private businesses and professionals in Montana to participate in a site response. EPA maintains standing national contracts which makes it difficult for average Montana firms to be competitive.

-- Superfund projects require expertise in a variety of advanced technical and scientific disciplines. Active involvement by the state provides the opportunity for persons or firms with this training to stay or establish themselves in Montana.

HAZARDOUS WASTE/CERCLA (SUPERFUND) BILL

Section 1. Allocation of 12% of RIT Interest Income

Section 2. Creation of Hazardous Waste/CERCLA Special Revenue Account



SENATE NATURAL RESOURCES
EXHIBIT NO. 2 p.6
DATE 3/23/87
BILL NO. HB 777

United States
Environmental Protection
Agency

Region 8, Montana Office
Federal Building
301 S. Park, Drawer 10096
Helena, Montana 59626-0096

EPA

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-23-87
BILL NO. HB 777 (HB76

REF: 8MO

March 23, 1987

TO: Tom Keating, Chairman, Senate Natural Resources Committee
and Committee Members

FROM: John Wardell, Director, U.S. Environmental Protection Agency (EPA)
Region VIII Montana Office

I respectfully submit the following testimony regarding House Bills 760 and 777. The EPA supports the bills.

Since 1983 the State of Montana and EPA have investigated and corrected contamination problems affecting public health and the environment. Several million Federal dollars have been spent in support of the Superfund Program efforts. Noteworthy efforts included installation of a replacement water supply system for citizens of Milltown, expenditures of approximately $2.5 million to reduce discharges of wood preservatives to Silver Bow Creek in Butte, and construction of a dyke at Somers to prevent discharges of wood preservatives to Flathead Lake. In 1987, EPA will provide approximately 6 million dollars to continue these efforts at Superfund sites in Montana. Additional millions of dollars will be provided in 1988 - 1992.

The Superfund Program cannot only be a Federally funded effort. House Bills 760 and 777 will insure that there will be a strong State of Montana commitment. The State of Montana commitment is essential for several reasons.

1. The Federal program requires a 10 per cent state match to correct or clean up contamination problems. EPA will pay for 100 per cent of costs associated with investigation and selection and design of the remedy to correct or clean up contamination problems. EPA will, however, only pay for 90 per cent of the costs to implement the remedy. Without the 10 per cent State of Montana share, corrective activities cannot begin. Only in emergency situations will EPA pay for 100 per cent of clean up/corrective action.

2. At sites with responsible parties, i.e., parties responsible for causing the contamination problem, EPA asks the responsible party to clean up the site. EPA has learned from experience, however, that timely and complete responsible party clean up is most likely to occur when sufficient Federal and state match money is also available to undertake corrective activities or clean up.

3. EPA will be most likely to provide Superfund Program money to the states with strong commitments to implement the Superfund Program. One of the most visible indicators of the state's commitment is funding to provide state match to undertake corrective actions or clean up.

4. The Superfund Program is a significant environmental effort similar to the Clean Air or Safe Drinking Water programs. Montana eagerly assumed responsibility to implement these programs. The State of Montana should also assume a significant role in determining how the Superfund Program is implemented within the State. For the State of Montana to assume a significant role, it needs to commit State resources.

Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 p.2
DATE 3-23-87
BILL NO. HB777

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-23-87
BILL NO. HB 777

HB 777
March 23, 1987

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

The Montana Department of Fish, Wildlife & Parks supports this authorization and specifically endorses the $200,000 item to support the Clark Fork litigation. Under a provision of the "Superfund" legislation, the state was authorized to file suit to claim past damages for toxic waste disposal. We are all familiar with the history of the Clark Fork and the loss of the fishery in that river is well documented.

The state filed a $50 million law suit as authorized by the act. This amount was the maximum allowed by law. The law further specifies that any money recovered must be put in trust to correct problems caused by the waste.

The Clark Fork River has a tremendous fishery and recreational potential. Today it lies in a chronic state of biological depression from Warm Springs to Clinton. This legislation provides the opportunity to realize the river's biological, recreational and, in turn, economic potential for Montanans.

To achieve our goal of creating a viable reclamation trust, we must successfully pursue the litigation already commenced. Successful litigation will depend upon developing a strong case and presenting it in a convincing fashion. The Department of Fish, Wildlife & Parks has committed some of its current resources to this project; specifically, a project manager and a staff attorney, both on a half-time basis. The requested funds are essential to develop a sound technical case, a creditable economic analysis and a viable legal strategy.

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 3-23-87
BILL NO. HB629

TESTIMONY BY THE DEPARTMENT OF STATE LANDS
ON HOUSE BILL 629
(3-23-87, Rm 405, 1:00 P.M.)

Several changes to the Metal Mine Reclamation Act are being proposed in order to provide more practical regulation for mining operations under the Act. These changes will result in a more consistent and realistic regulatory approach regarding exploration, extraction, and beneficiation of these resources.

Under the current Act, if the mineral processing operation qualifies for the Small Miners Exclusion, the operation is excluded from review and reclamation bonding requirements by the Department, regardless of its potential for environmental harm. Amending the Act to require any operator who uses a mineral processing reagent to acquire an operating permit would reduce the number of small operations which contribute to environmental degradation. The Departmental expertise would assure the operation is designed and managed in an environmentally sound manner from the beginning. The reclamation bond requirement would insure the operation is reclaimed in an environmentally acceptable manner.

Another of the proposed changes relates to the federal mining law which requires a minerals claimant to perform a minimum amount of assessment work on unpatented claims each year. It is estimated that the occurrence of claimants within Montana who hold federal small claim groups (ten claims or less) number in the hundreds or thousands. Regulation of these small assessment activities under the exploration license as is currently required is unrealistic. If this Bill is enacted, it would allow miners to comply with federal laws, and yet, not be required to obtain an exploration license for a very small disturbance. The Department estimates that disturbance resulting from these assessment activities (16,000 sq. ft. per claim) would be comparable to mining disturbances currently excluded by the Act.

Finally, current regulation denies the Small Miner Exclusion for those operators who presently have an operating permit issued by the Department. Additional mines proposed by these operators are required to obtain an operating permit regardless of how nominal the mining impacts may be. This requirement creates an economic hardship and permitting burden on both the operator and DSL which is not commensurate with the level of mining activity. A more meaningful approach would be to deny Small Miner Exclusions only to those operators who propose the exclusion within the boundaries of an operating permit, or propose to use certain processing reagents which pose a high potential for environmental harm.

NAME DAVE CONKLIN BILL NO. HB 629

ADDRESS 1919 GRIZZLY GULCH DATE 3/23/87

WHOM DO YOU REPRESENT SELF

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: (ATTACHED)

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-23-87
BILL NO. HB629

SENATE NATURAL RESOURCES
EXHIBIT NO. 6 (2nd page)
DATE 3-23-87
BILL NO. HB629

HB 629
March 23, 1987 Testimony

Mr. Chairman and members of the Committee, my name is Dave Conklin and I speak in support of this bill with one exception. I live near Unionville at 1919 Grizzly Gulch 5 miles southwest of here. This is one of Helena's bedroom communities. It is also a mineralized area where both small miners and mining corporations have had and continue to have active prospects and mines.

Those of us who have built our homes and raise our children in this area never know where or when the next prospect or mine may be opened up or how much the cumulative effect will eventually be on decreasing our residential property values. However we have accepted the mining with the knowledge that the existing Metal Mine Reclamation Act will require these pits, scars and tailings to be reclaimed when mining is completed, except any developed by "small miners" who have limited financial resources.

House Bill 629 changes this. Under a subtle but very significant amendment on page 5 lines 3 - 9 a "small miner" can now obtain an operating permit for a larger operation, without jeopardizing his "exempt" operation on any number of smaller mines. Thus, contrary to the intent of the legislative history of this law, a "small miner" can be "big" as well as "small." Likewise, and importantly, a "big" developer could now also be "small." The change in the law appears subtle, but its impacts are not.

The 1971 legislature realized that it makes no sense to put someone out of business by attempting to regulate them. Accordingly, the "Mom and Pop" mining operation, which could not bear the regulatory burden, was exempted. In return, however, their operation had to remain small. Under HB 629, this is no longer the case.

I do not want to put these people out of business. I do not want to hinder their operations. Estimates place the number of "small miners" in Montana at several thousand, so they are not hurting under the existing law. We have tolerated their impacts in the name of fairness, and they have escaped the burden of regulation and reclamation. HB 629 will allow the mining corporation to take over where the "Mom and Pop" operation left off, and yet continue to escape any reclamation requirements.

The residents of this area have paid the price for these exemptions. We deserve better. We deserve reclamation. Therefore, we ask that you consider amending HB 629 on page 5 by reinstating lines 3 and 4 after line 9, and deleting line 7 as shown on the handout. This amendment would maintain the current requirements of the law.

I thank you for your consideration and invite you to come up and see these mines for yourselves if you wish.

HB 629

PROPOSED AMENDMENT

reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, ~~that holds no operating permit under 82-4-335,~~ from a mine complex area, that does not use any mineral processing reagents, that does not conduct an operation within the boundary of ~~an operating permit issued pursuant to 82-4-335 or within the boundary of~~ an area previously subject to an operating permit if the permit has been revoked and the area has not been reclaimed, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

~~(A) the only operations engaged in by the person, firm, or corporation;~~

~~(B)~~ (A) at least 1 mile apart at their closest point; and

~~(C)~~ (B) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction

SENATE NATURAL RESOURCES
EXHIBIT NO. 6 (page 3)
DATE 3-23-87
BILL NO. HB629

over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

~~(12)~~ (15) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

~~(13)~~ (16) "Underground mining" means all methods of mining other than surface mining.

~~(14)~~ (17) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas

NAME Tom STEPHENS BILL NO. HB 629

ADDRESS 1523 Grizzly Gulch DATE 3/23/87

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Attached

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 3-23-87
BILL NO. HB629

SENATE NATURAL RESOURCES
EXHIBIT NO. 7 (page 2)
DATE 3-23-87
BILL NO. HB629

HB No. 629

Testimony, March 23, 1987
Senate Committee on Natural Resources

My name is Tom Stephens, and I appear in support of this bill with one exception. I live on Grizzly Gulch, and have a small pond in my backyard which is fed by several local springs, as well as a stream which flows down the Gulch towards town. I am located downstream from a mining operation conducted by a "small miner."

I have lived with the impacts of these mining operations for several years. In several places along the Gulch, the stream which flows through my property has been manipulated beyond recognition. Further, these "small miners" have dumped their processed tailings on to the property upstream from my home, although they do not own this property. Finally, their holding ponds, on several occasions, have breached, causing substantial erosion. The result of these activities has been an unusually high amount of sedimentation and silt occurring in my pond, and that portion of the stream which flows through my property. I have had to hire an attorney to get my pond cleaned out. I have spent a great deal of time working with the people at the Water Quality Bureau trying to get some help. One of the few regulatory requirements placed upon these "small miners" is that they cannot pollute or contaminate streams. It seems that they cannot even meet these "minor" requirements.

There are other impacts. The Air Quality Bureau has put up a monitor because of the dust that is raised by the heavy equipment.

I would accept these "small miners" if they stayed within the limits of the law. Conceivably, my property values should not be affected, but they are.

Now, after bearing the burdens of their exemptions, these "small miners" are going to be allowed to operate large scale operations, without reclaiming their small operations. Further, large mining companies, despite their obvious financial resources, will be able to operate small, unregulated mines. This is unfair to me and my neighbors.

For these reasons, I urge your support of the amendment to HB 629 which has been proposed today.

Recd

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-23-87
BILL NO. HB629

HB No. 629

Testimony, March 23, 1987
Senate Committee on Natural Resources

My name is Tim Baker, and I appear in support of HB 629 with one exception. I live on Grizzly Gulch, approximately four miles southwest of the City of Helena. There is a lot of "small mining" activity on Grizzly Gulch. My wife and I live across the street from a "small mine."

We have accepted the impacts of these "exempted" operations. The impacts have been real. There is a small stream that has been manipulated beyond recognition. The heavy equipment damages the road, is operated at early hours on weekends and holidays, and the noise is often deafening. And of course, there is an aesthetic loss, in part resulting from having a pit the size of an average house, all less than 10 feet from the county road. Finally, there is the loss in property values. The property we own has lost approximately $15,000 in value in the last 3-4 years. This is our first home, and it represents our most important investment. While our property values plummet, our "small miner" makes money.

Nevertheless, we have willingly accepted these impacts. The 1971 legislature created the "small miner" exemption as a compromise. The "small miner" benefits, in that it is free from financially burdensome regulation. This protects the "small miner." In return for these benefits, the "small miner" must remain small or meet the reclamation requirements. This protects nearby landowners as citizens of this state. A history of the reclamation laws since 1971 is found in Part B of the documents distributed to you.

We have born the burden of the exemption granted to the "small miner." Now, they have received an operating permit for a larger operation. Our "small miner" has pulled his money from the ground and become a "large scale developer," all at our expense. Yet, under HB 629, reclamation will not be required.

I understand that HB 629 is a compromise between environmental and mining interests. Neither I, nor my neighbors, were parties to this compromise. I can say unequivocally that the interests of the people of Grizzly Gulch have not been represented. Therefore, as previously indicated, we offer a proposed amendment to HB 629. The "small miner" exemption, as revised by our amendment, is restated in Part A of the documents which have been distributed. Even with our amendment, the environmental and mining interests continue to receive most of the benefits of their compromise.

I urge your support for our amendment to HB 629. As Dennis Hemmer, the Commissioner of State Lands, testified before this same Committed in 1985:

> The Small Miner Exclusion statement was intended to help those truly small miners. These amendments will protect the exclusion statements from abuse while preserving the advantage for those who truly qualify.

Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 8 (attach 1)
DATE 3-23-87
BILL NO. HB629

PROPOSED AMENDMENT
TO HOUSE BILL NO. 629, SECTION 1

~~(11)~~ (14) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate from a mine complex area, that does not use any mineral processing reagents, that does not conduct an operation within the boundary of an area previously subject to an operating permit if the permit has been revoked and the area has not been reclaimed, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

~~(A) the only operations engaged in by the person, firm, or corporation;~~

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

B.

SENATE NATURAL RESOURCES
EXHIBIT NO. 8 (attach 2) pg 1
DATE 3-23-87
BILL NO. HB629

March 17, 1987

Senator Mike Halligan
Montana State Senate
Helena, Montana

Re: House Bill No. 629

Dear Mike:

As you know, I am very interested in a piece of legislation which will be considered by the Senate Committee on Natural Resources on Monday, March 23. Given your busy schedule this week, I thought it would be easier for both of us if I put my thoughts into writing. Hopefully, we can get together either later this week, or next Monday at lunch, so you can have an opportunity to come out to the house and view the situation for yourself.

Specifically, I am personally interested (along with a few neighbors) in House Bill no. 629, sponsored by Bob Ream and Ed Grady at the request of the Department of State Lands. While I generally do not disagree with much of the philosophy underlying this bill, there is one aspect of it which I must adamantly oppose. My dissatisfaction with this bill is based upon both philosophical and practical considerations.

On its face, this bill (attached for reference), in comparison to others, does not seem to bring about any major revisions in the laws relating to Metal Mine Reclamation. However, referring to the amendments to the definition of "Small Miner" (see pp. 4-5), one familiar with these laws recognizes a subtle but major change. Put succinctly, the requirement that a "Small Miner" not hold an operating permit for a larger scale operation is deleted (p.5, lines 3-4). Similarly, the restriction preventing the small miner from operating more than two mines is also stricken (p.5 lines 16-17). To better understand the nature of these changes, a review of legislative history is appropriate.

In 1971, the Montana legislature considered the enactment and revision of reclamation laws. House Bills numbers 243 and 244 were introduced by Rep. Harrison Fagg, and were substantially different from today's laws. For one thing, these proposals did not appear to exempt any mining activity from the operation of the reclamation laws. After a hearing in the House Committee on Environment and Resources, the original bills were scrapped in

their entirety. Many small mine operators had appeared in opposition. They generally testified that these laws were too restrictive and burdensome. Thereafter, proposed legislation was drafted which closely resembled the current laws. A "small miner exemption" was drafted and inserted into these bills. Further refinements were added at the hearing before the Senate Committee on Natural Resources, and these bills were enacted into law.

Several minor changes have been made to the definition of "Small Miner" since 1971 (1974, 1977, 1979, 1985). Most of these changes have resulted in further restrictions (in 1985, the definition was amended to include "reprocessing of tailings or waste"). Through these changes, there has been one common thread: the legislature has endeavored to keep the small miner "small." This is best reflected in the amendments to Section 82-4-305, M.C.A. in 1985, which severely restricted the ownership interests in exempt operations that any one small miner could hold. See § 82-4-305(2), Mont. Code Ann. See also Statements in Support from State Lands (attached). As an aside, the 1973 Montana Constitution states that "[a]ll lands disturbed by the taking of natural resources shall be reclaimed." Art. IX, Section 2(1) Mont. Const. (1972) (attached).

The end result of this legislative activity is the current body of law found at Title 82, Chapter 4, Part 3, M.C.A., entitled "Metal Mine Reclamation" (copy attached for reference). Essentially, the legislature has determined that mining is a basic and essential activity, and that proper reclamation is "necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state." § 82-4-301, M.C.A. Purposes behind this legislation include repeated references to aesthetic and scenic values, as well as an emphasis on the promotion of ground cover, soil stability, water condition, and safety condition. § 82-4-302, M.C.A.

Basically, all "disturbed land" must be reclaimed, unless resulting from an operation under the Small Miner exemption. Non-exempt activities must post reclamation bonds, file reclamation plans with State Lands, and meet other reclamation requirements. §§ 82-4-335, -336, -338, M.C.A. Operations within the definitions of "small miner" (§ 82-4-303(11), M.C.A.) must only agree in writing that they will not pollute or contaminate any stream, meet simple safety requirements, file an operating map with State Lands, and meet certain ownership criteria. § 82-4-305, M.C.A. "Small Miners" are not required to reclaim their mines when they are done. By current definition, "small

miners" may not also hold an operating permit for a larger operation. Further, they are limited in the number and size of the operations that they can conduct within a certain distance of each other and within a certain period of time. § 82-4-303(11), M.C.A. That is, since they are not required to reclaim their operations, they must be, and remain, small.

By existing practice, a "small miner" who subsequently obtains an operating permit for a larger scale operation, also has to meet the requirements of the reclamation laws for his smaller, previously exempted operation.

As I indicated earlier, HB No. 629 changes this. Under the amendment referenced above, a "small miner" can obtain an operating permit for a larger operation, without jeopardizing his "exempt" operation. Thus, contrary to the intent of the legislative history of these laws, a "small miner" can be "big" as well as "small." Likewise, and importantly, a "big" developer could now also be "small." The change in the law appears subtle, but its impacts are not.

The bright line between regulated and unregulated operations is being blurred. I would be interested to know if State Lands recognizes this, and will be able to handle enforcement responsibilities. As one who is employed in a regulatory field, I can tell you that distinguishing between those activities which are regulated and those which are not is a regulatory nightmare.

Further, the balance found by the legislature in 1971 is unsettled. Lawmakers realized that in part, the effectiveness of regulation depends upon its application to the proper entities. It makes no sense to put someone out of business by attempting to regulate them. Accordingly, the "Mom and Pop" mining operation, which could not bear the regulatory burden, was exempted. In return, however, their operation had to remain small. Under HB No. 629, this is no longer the case.

I am not solely interested in this legislation because of the inherent conflict with the philosophy underlying the existing laws. We have a "small miner" who is currently operating near our home on Grizzly Gulch. Because of the high gold prices, the proliferation of this type of activity in our area seems probable. We have tolerated these activities conducted under the "small miner" exemption. There have been impacts from the operations, including heavy equipment on the road, considerable road damage, early morning operations on weekends and holidays, aesthetic loss, destruction and manipulation of a small nearby stream, and a pit the size of an average house, located less than

ten feet from the road. These "small miners" have applied for an operating permit for a large operation on the other side of town. State Lands has indicated that it will be granted.

I do not want to put these people out of business. I do not want to hinder their operations. Estimates place the number of "small miners" in this state at several thousand, so they are not hurting under the existing laws. The point is this: we have tolerated their impacts in the name of fairness, and they have escaped the burden of regulation and reclamation. Now they are on the verge of no longer being a "Mom and Pop" operation. In accord with the compromise that was reached by the legislature in 1971, they should be required to comply with the reclamation requirements. We, the various residents of Grizzly Gulch, have paid the price for their exemption. We deserve reclamation. As a final attachment, you will find a proposed amendment to HB No. 629. This amendment basically maintains the current requirements, and retains most of the changes proposed by State Lands.

I would like you to come up and see the mine. It would be very important to myself and others. Bring other legislators who would be interested. If I cannot influence your opinion, then at least I insist that you fully comprehend what is at stake.

Thank you for your consideration. I am indebted to you just for reading this. I will contact you soon.

Sincerely,

TRB

Timothy R. Baker

SENATE NATURAL RESOURCES
EXHIBIT NO. 8 (attach 3)
DATE 3-23-87
BILL NO. HB 621

TESTIMONY FOR HOUSE BILL 638 - 1985

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports House Bill 638 to amend the Metal Mine Reclamation Act for the following reasons:

1. Section 82-4-303(10)(b) needs to be amended to eliminate the possibility of conducting exploration activities under a Small Miners Exclusion Statement. If exploration activities are contemplated, there is specific language in the Act (Section 82-4-331) to address those concerns. Exploration under the exclusion statement will result in a large number of unreclaimed disturbances not contemplated under the exclusion's original intent.

2. Section 82-4-305(2) needs to be amended to eliminate a current oversight in the Act that presently allows an individual to have several Small Miners Exclusion Statements which is in direct conflict with the definition of a "Small Miner." At the present time, there are numerous mining operations that are owned and operated by the same person or group of persons operating under multiple Small Miners Exclusions by simply changing the name of the mine owners, partners or corporate structure. This practice is clearly in violation of the intent of the Small Miners Exclusion provision and privilege under the Act. The result is disturbances in excess of those allowed going unreclaimed.

3. Section 82-4-361(1) needs to be amended to include violations of the Small Miners Exclusion Statement requirements under the general provision for violations and penalties as currently provided for in the Act. The present system for pursuing violation of the SMES under Section 82-4-305(2) requires that the County Attorney pursue misdemeanor which is a criminal offense against the Small Miner. This amendment would enable the Department to pursue a violation as a civil penalty, thus simplifying the current procedure. This would also relieve the County Attorney of the additional responsibility of pursuing misdemeanor offenses against Small Miners.

The Small Miner Exclusion statement was intended to help those truly small miners. These amendments will protect the exclusion statements from abuse while preserving the advantage for those who truly qualify.

SENATE NATURAL RESOURCES COMMITTEE
EXHIBIT NO. 1
DATE 032285
BILL NO. HB638

Water Courts, Title 3, ch. 7.
Environmental Quality Council, Title 5, ch. 16.
Coal severance tax, Title 15, ch. 35.
Oil and gas severance tax, Title 15, ch. 36.
Mining license taxes, Title 15, ch. 37.
Resource indemnity trust tax, Title 15, ch. 38.
Purpose of the coal tax trust fund, 17-6-303.
Report on potential uses of coal tax trust fund, 17-6-323.
Parks, Title 23, ch. 1.
Recreation, Title 23, ch. 2.
Health and Safety, Title 50.
Environmental Protection, Title 75.
Uniform Transboundary Pollution Reciprocal Access Act, Title 75, ch. 16, part 1.
State Lands, Title 77.
Agriculture, Title 80.
Livestock, Title 81.
Minerals, Oil, and Gas, Title 82.
Water Use, Title 85.
Fish and Wildlife, Title 87.
Renewable resource development, Title 90, ch. 2.
Renewable energy sources research and development, Title 90, ch. 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2938, 2939.
Committee report, Vol. II 550, 552, 554, 55[illegible] 561, 562, 931, 933, 935, 939, 1068.
Debate — committee report, Trans. 1199 through 1271, 1274, 1275, 1637 through 1640.
Debate — style and drafting report, Trans. 2210, 2211, 2928.
Delegate proposals, Vol. I 75, 96, 107, 108, 193, 240, 252, 261, 308, 309.
Final consideration, Trans. 2454, 2455.
Text as adopted, Vol. II 1099.

Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion.

Compiler's Comments

1974 Amendment: Constitutional Amendment No. 1 (see Appendix to 1975 Laws of Montana) inserted subsection designation "(1)" and added (2) and (3).

Cross-References

The Montana Resource Indemnity Trust Act, Title 15, ch. 38.
Environmental contingency grant program, Title 75, ch. 1, part 11.
Notice to surface owner of reclamation plan prior to commencement of mining operation, 82-2-303.
Reclamation, Title 82, ch. 4.
Restoration following plugging of oil or gas well, 82-11-123.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2938, 2939.
Committee report, Vol. II 552, 555, 556, 931, 933, 935, 939, 1068.
Debate — committee report, Trans. 1199, 1200, 1275 through 1301, 1353 through 1363.
Debate — style and drafting report, Trans. 2211 through 2213, 2928.
Final consideration, Trans. 2455, 2456.
Text as adopted, Vol. II 1099.

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

...ification in any application, record, report, plan, or other document filed ... required to be maintained pursuant to this part shall upon conviction be ...shed by a fine of not more than $10,000 or by imprisonment for not more ... 1 year, or both.

(4) Any person who except as permitted by law willfully resists, prevents, ...edes, or interferes with the department or its agents in the performance ... ...ties pursuant to this part shall be punished by a fine of not more than ...00 or by imprisonment for not more than 1 year, or both.

(9) No employee of the department performing any function or duty under ... part shall have a direct or indirect financial interest in any strip- or ...derground-coal-mining operation. Whoever knowingly violates the provi... of this subsection shall upon conviction be punished by a fine of not ... than $2,500 or by imprisonment of not more than 1 year, or both.

History: En. Sec. 23, Ch. 325, L. 1973; R.C.M. 1947, 50-1056; amd. Sec. 17, Ch. 550, L. 1979; amd. Sec. 5, Ch. 437, L. 1981; amd. Sec. 1, Ch. 499, L. 1983; amd. Sec. 1, Ch. 24, L. 1985; amd. Sec. 1, Ch. 217, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 24 in (2) near end of first sentence, before "the administration", inserted "or impairs" to "and does not impair". Chapter 217 in (1) near middle of subsection, after "$750 for each day", inserted "up to 30 days" and inserted last sentence.

1983 Amendment: At beginning of (1), inserted exception clause; and inserted (2).

1981 Amendment: Reworded the language of subsection (1) to clarify that "term or condition" refers to a permit.

Cross-References

"Willfully" defined, 1-1-204.

"Knowingly" defined, 1-1-204, 45-2-101.

Contested administrative cases, Title 2, ch. 4, part 6.

Appeal of contested administrative cases, Title 2, ch. 4, part 7.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Criminal responsibilities of corporations, 45-2-311.

Place of imprisonment when none specified, 46-18-211.

Disposition of fines and forfeitures, 46-18-603, 82-4-241.

"Person" defined, 82-4-203.

Part 3

Metal Mine Reclamation

Part Cross-References

Prospecting permits and mining leases on state lands, Title 77, ch. 3, part 1.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-301. Legislative findings. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in

this part will allow exploration for and mining of valuable minerals while quately providing for the subsequent beneficial use of the land to reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201.

82-4-302. Purpose. (1) The purposes of this part are to provide

(a) that the usefulness, productivity, and scenic values of all lands surface waters involved in mining and mining exploration within the bou ries and lawful jurisdiction of the state will receive the greatest reason degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entitie carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of lan a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, ground cover.

(2) Although both the need for and the practicability of reclamation control the type and degree of reclamation in any specific instance, the l objective will be to establish, on a continuing basis, the vegetative cover, stability, water condition, and safety condition appropriate to any prop subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202.

82-4-303. Definitions. As used in this part, unless the context indic otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presu when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such employee or state agency as may succeed to its powers and duties under part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water distu beginning at the date of the issuance of the permit, and it comprises that from which the overburden, tailings, waste materials, or minerals have removed and tailings ponds, waste dumps, roads, conveyor systems, dumps, and all similar excavations or covering resulting from the oper and which have not been previously reclaimed under the reclamation plan

(5) "Exploration" means all activities conducted on or beneath the su of lands resulting in material disturbance of the surface for the purpos determining the presence, location, extent, depth, grade, and economic vi ity of mineralization in those lands, if any, other than mining for produ and economic exploitation, as well as all roads made for the purpose of f tating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, tonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from b the surface or from the surface of the earth for the purpose of milling, centration, refinement, smelting, manufacturing, or other subsequent u processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines or minerals in commercial quantities for sale, beneficiation, refining,

processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

(12) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(13) "Underground mining" means all methods of mining other than surface mining.

(14) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(15) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 31, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. [illegible]; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 386 in (11)(b) near end, after "mining", deleted "or exploration".

Chapter 453 in (4) after "overburden", inserted "tailings, waste materials"; inserted (8); in (9) after "exploration for", deleted "or development" and after "earth", inserted "reprocessing of tailings or waste materials, or operation of a hard-rock mill"; in (11)(a) after "building", inserted "or reprocessing of tailings or waste materials".

82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. No provision of this part is applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at such a mill that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. [illegible]; amd. Sec. 2, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: At end of first sentence, after "82-4-321", inserted "relating to exploration and mining"; and inserted second and third sentences.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

(a) that he shall not pollute or contaminate any stream;

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) he shall provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) For small-miner exemptions obtained after September 30, 1985, no small miner may obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 591, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted present language for "Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners or operators of said project to a fine of not less than $10 or more than $100, payable to the department of revenue of the state of Montana or any board, commission, or person authorized to collect said fine."

Cross-References

Penalty for violation of conditions of small-miner exemption, 82-4-361.

82-4-306. Confidentiality of application information. Any and all information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under an operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the part or rules has been determined by

3-23-87 Opponent Russell M. DUGDALE

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3-23-87
BILL NO. HB629

Senate Hearing on House Bill 629

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO METAL MINE RECLAMATION and Amending Sections 82-4-303, 82-4-305, and 82-4-335, MCA

Ladies and Gentlemen, my name is Russell M. Dugdale. I graduated from Montana College of Mineral Science and Technology in 1956 with a B. S. Degree in Metallurgy, with Mineral Dressing option. I have worked in industry all of my professional career, with the last seven years dedicated to the handling of cyanide heap-leaching operations. I have worked for Anaconda Co., American Smelting and Refining Co., Cominco-American, Inc., Bunker Hill Co., Zortman-Landusky Mining Co., Grayhall Resources, Inc., and at present I am self-employed as owner/operator of Metallurgical Services, Inc. (providing services in problem solving, process design, waste management, heap leaching, precious metals recovery and magnetic water treatment.)

Assistng small miners get into production is my main goal. My livelihood stems from small miners and as such, anything that stands in the way of their being successful is important to me. HB 629 is going to impact the small miners in a dramatic way. The way the bill is written denies any subtrefuge but the outcome of it will be to eliminate small miners. Neither the way the bill is written, nor the MMA's interpretation of the bill, alludes to the fact that a sizeable bond will have to be posted prior to operation, as well as procurance of an operating permit which could resemble an Environmental Impact Statement before it is done and could cost excessive time and money.

A major complaint I have is that the bill does not state that the intent of the bill is to shut down small miners, thereby mollifying the immediate effect on people. If the bill passes and people find that it precludes small miners, a great deal of attention will be aroused. This bill addresses all "Mineral Processing reagents," including flotation reagents, and any chemicals such as cyanide, acids and Thiorea.

A small miner would not be allowed to use soap or water in his panning operations without having an operating permit. Effectively the bill reduces small miners to the hobby status who will be allowed to locate corners and hand sort rock and haul it to a smelter, but will not be allowed to use any machinery or reagents for the beneficiation of the ore.

SENATE NATURAL RESOURCES
EXHIBIT NO. 9 (p.2)
DATE 3/23/87
BILL NO HB 629

Initially a small miner employs from four to 10 people with that number growing to 30 when the mine gets in full swing. Purchasing an operating permit (estimated $50,000.00) would make it impossible to fund a small mine. The bill alludes not only to cyanide but also to any chemicals that can be used in any process, such as flotation.

Thank you for this opportunity to present this information to you, and I will do my best to answer any questions that you have.

Testimony before the Senate Natural Resources Committee asking that House Bill 629 be amended.

There are several here to testify on our behalf and we will point out to the committee that:

1. The bill can readily be amended to address the long range problem by simply requiring adequate training.
2. Mining chemicals in Montana are in their second century and have an excellent safety record. We need to keep our guard up. Excellent safety training is available.
3. The law abiding small miners need not be burdened by the actions of a few by the needless bonds and red tape that are needed for an operating permit.
4. The mining of precious metal, "Montana's sleeping giant" can be promoted to add economic stimulus to the state and push Montana farther away from the "we con't want business" syndrome.
5. This is very serious. You may well "throw the baby out of the bath water". You will burden the 95% or more who strive to be legal to control 1 or 2% of the 5% who are "slobs".
6. Working under the Small Miners' Exclusion already has adequate regulations to protect the public just abiding by the rules.
7. The part of the bill which we object to would require all who use the chemicals of mining to secure an operating permit. That permit will probably required a $50,000.00 bond which in today's market is a CD assigned to the State of Montana. It would also take from three to six months to secure the permit at whatever cost that would be - $10,000.00, $15,000.00 or possibly $20,000.00.

Mr. Chairman, with your permission I would like to call on my colleagues to address you and perhaps I could close by presenting our amendment.

SENATE NATURAL RESO
EXHIBIT NO. 9 p. 3
DATE 3/23/87
BILL NO. HB629

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3/23/87
BILL NO. HB 629

INFORMATION FOR THE SENATE NATURAL RESOURCES COMMITTEE

ON HOUSE BILL 629

March 23, 1987

COMPARISONS

ITEM	UNDER SMALL MINERS' EXCLUSION STATEMENT	UNDER HB 629 EQUIVALENT TO OPERATING PERMIT	UNDER HB 629 AMENDED FOR SAFETY TRNG	UNDER EXPLORATION PERMIT	GROUND WATER POLLUTION CONTROL PERM
1. Time Required for Permitting	About 12 hours	About 6 months	About 10 days	About 20 days	60 days
2. Bonding Required	None	About $50,000	None	About $10,000	None
3. Permit					
Cost	None	$25.00	None	$5.00	None
Cost of Preparation	None	$5,000-$50,000	None	$500.00	$500.00
Time to Receive Permit	About 12 hours	About 6 months	About 10 days	About 20 days	60 days
4. Options for turning Ore into Money					
Sell to smelters					
Permits	None	None	None	None	None
Est. Cost	140.00/ton	140.00/ton	140.00/ton	140.00/ton	140.00/ton
Milling or treating on site					
Permits	None	Operating permit	Safety training	----------	Ground water pollution control perm
Bond	None	About $50,000	None	$10,000	None
Violation Penalty	$10,000/day	$10,000/day	$10,000/day	$10,000/day	$10,000/day
Approx Cost/Ton	$10-$15-$20	$10-$15-$20	$10-$15-$20	$10-$15-$20	$10-$15-$20

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 3/23/87
BILL NO. HB629

FOURTH DRAFT

AMENDMENTS TO HOUSE BILL 629

BY REAM

PROPOSED TO THE SENATE NATURAL RESOURCES COMMITTEE

THE HONORABLE TOM KEATING, CHAIRM

MARCH 23, 1987

Room 405 - Capitol - 1:00 p.m.

BY

SOUTHWEST MONTANA MINING DEVELOPMENT & INVESTMENT COUNCIL
c/o Mary Ann Sharon, State Bank Bldg., Dillon, MT

LEWIS AND CLARK CHAPTER OF MONTANA MINING ASSOC.

AND

KOEHLER STOUT, PROFESSOR, ATTORNEY, MINING ENGINEER
Butte, Montana

1. Page 2, Line 11 following "in" reinstate"82-4-306"
2. Page 2, Line 11 following "82-4-310" strike "and work performed by prospectors"
3. Page 2, Line 21 through 23 strike "in their entirety"
4. Page 2, Line 24 following "operations," delete "including but not"
5. Page 4, Line 25 following "acids," insert "acid generating reagents"
6. Page 2, Line 24 strike "(B)" insert "(a)"
7. Page 3, Line 7 following "continguous" delete "unpatented"
8. Page 3, Lines 17 through 21 strike "in their entirety"
9. Page 3, Line 22 strike "(13)" insert "(12)" and renumber subsequent subsections.
10. Page 4, Line 25 following "of" insert "improving"
11. Page 5, Line 3 following "aggregrate," reinstate "that holds no operating permit under 82-4-335"

12. Page 5, Line 4 following "striken" "82-4-335," strike "from a mine complex area," and lines 6, 7, 8 and 9

13. Page 7, Line 19 following "reagents" insert "without first being thoroughly schooled and acquainted with the reagent's use"

14. Page 9, Line 3 following "reagents" insert "without thorough training in their use"

15. Page 12, Line 9 strike the new section Section 4 in its entirety

16. Page 13, Line 13 strike new section Section 5 in its entirety

A TESITMONY BEFORE THE SENATE NATURAL RESOURCES COMMITTEE
ASKING THAT HOUSE BILL 629 BE AMENDED

Mr. Chairman:

My name is Ed Battermann from Butte and I earn my living by exploration drilling for large and small outfits. House Bill 629 would certainly discourage exploration and undermind my business.

There are certain operations with appealing potential that I drill for on shares. I would probably have to look to Nevada for such participation.

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 3-23-87
BILL NO. HB629

ana Standard Butte, Monday, March 9, 1987

Tourism, mining could lift economy

HELENA (AP) — Tourism and precious-metal mining are two bright spots in an otherwise gloomy economic outlook for Montana, the chief economist for Norwest Corp. of Minneapolis says.

Sung Won Sohn spoke Friday to a group of business and political bigwigs in Helena, and said Montana should spend more time and money promoting itself as a destination for tourists.

"Montana is really like the Switzerland of the United States," he said, but not many people know about the state's beauty and its tourist attractions.

Sohn also endorsed the idea of a hotel-motel "bed" tax that would raise money for tourism promotion. Montana should pursue tourists from elsewhere in the United States and foreign countries, he said.

The economist also said he is encouraged by the hard-rock mining potential in Montana, and cited proposed gold and platinum mines in the southwestern part of the state.

He said he was not encouraged by short-term prospects for oil, gas, lumber or coal production in the state.

A TESTIMONY BEFORE THE SENATE NATURAL RESOURCES COMMITTEE
ASKING THAT HOUSE BILL 629 BE AMENDED

SENATE NATURAL RESOUR(
EXHIBIT NO. 11 (p.2)
DATE 3-23-87
BILL NO. HB629

SENATE NATURAL RESOUCES COMMITTEE - March 23, 1987

Mr. Chairman:

Those heap leaching ore milling under the Small Miners' Exclusion are required to secure a Ground Water Pollution Control Permit from the Department of Health. This permit specifically details requirements to assure the ground water integrity, holds a $10,000.00 a day hammer over one's head and goes through a public notice. Oftentimes more than 60 days are required. These are no "pussycats".

This tells me that adequate controls are already in place.

B-4 Dillon Tribune-Examiner Tuesday, January 27, 1987

Virginia City firm seeks permit for gold mill

A Virginia City based gold mining firm has applied for a new ground water pollution control permit to operate a mill for recovery of precious metals.

United States Grant Gold Mining Company, Montana LTD, has applied for a permit that will expire in January 1992 to operate an existing flotation mill for recovery of precious metals, according to a public notice filed by the company Jan. 5.

The operation, according to permit, intends to process an estimated 25 to 30 tons of material per day. Ore will be crushed and milled and then a flotation process will be utilized to generate a gold bearing concentrate, the permit says.

Waste tailings and process solutions will be discharged to an existing surface impoundment. The surface impoundment is located in the valley bottom next to Alder Creek and is reportedly lined with bentonite.

A GROUND water monitoring well is installed adjacent to the impoundment, the permit says.

If there are no objections to the permit request the department will issue a final determination within 60 days.

DENIS MARKOVICH
415 MOUNT HIGHLAND DRIVE
BUTTE MT.
59701

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 3-23-87
BILL NO. HB629

I woulod like to introduce myself, my name is Denis Markovich. I am presently working far a small mining operation in south western Montana. At this company I am in charge of all cost accounting and the financies of this company.

Mr Dugdale has asked me to give to you a economical veiw of what House Bill 629 will do to the small mining company's.

If you look at the Start Up Cost sheet. You will see that befor we could even start to mine our cost amounted to $96,558.00. But if House Bill 629 was passed befor we started we would have needed another $50,000.00, bringing our start up cost to $146,558.00. My company would not have started up because we could only start with $100,000.00.

If the company that I am working for now, has to put this additional $50,000.00 into a bond the compant will close down.

The reason for is the financial strain the $50,000.00 will put on our company. The $50,000.00 will have to come out of the budget for some thinf else. Most likely the money would have to come from our exploration/core drilling program. If we take the money from the core drilling program, we will have to do with out it. If we do not have the exploration/ core drilling program and the result's from this program. We will not be able to obtain further financing for our company.

With out additional funding we will not be able to buy better equipment for the mine and mill. Without this equipment we will not be able to produce enough ore to bring the company into profit.

If we are forced to close down, the surrounding community will lose $263,031.98 in revenue from our company. If we close down most likely about 10 other small mines in the general area will also close because of this bill. So the community could an additional $2,630,000.00 in revenue.

I ask you, please consider what this House Bill 629, will do to the small miner's of Montana. And what the economical impact this will have on the already strained economic system in Montana

(12)

SENATE NATURAL RESOURCES
EXHIBIT NO. 12 (p.2)
DATE 3-23-87
BILL NO. HB629

START UP COST
BY: DENIS MARKOVICH
3-18-87

MILL PURCHASE	$38,000.00
MILL LAND LEASE	$3,000.00
NEW EQUIPMENT	
MILL	$7,558.00
	$26,500.00
BONDING	
WORKMENS COMPENSATION	$10,000.00
U.S. FORESTSERVICE	$8,000.00
ADMINISTRATION	
LAWYER FEES	$2,500.00
ACCOUNTING FEES	$1,000.00
	$96,558.00
HB 629 IF PASSED	
METAL MINE RECLAMATION	
BOND (ESTIMATED)	$50,000.00
	$96,558.00
NEW START UP COST	$146,558.00

TOTAL COST AS OF MARCH 1, 1987

EXPENSES	$313,077.20
START UP COSTS	$96,558.00
	$409,635.20

SENATE NATURAL RESOURCES
EXHIBIT NO. 12(p.3)
DATE 3-23-87
BILL NO. HB29

LOST REVENUE FROM THE CLOSURE
OF ONE MINE (6 PEOPLE EMPLOYED)

STATE TAXS	$10,829.00
LABOR	$136,800.00
MINE TOTAL	$37,580.00
HUALING TOTAL	$9,090.00
MILL TOTAL	$28,981.00
OFFICE TOTAL	$14,457.36
LEASE TOTAL	$25,294.62
	$263,031.98

FUTURE REVENUE FOR MONTANA BUSINESS
$1,500,000.00

LOST REVENUE FROM 10 MINES
$2,630,319.80

SENATE NATURAL RESOURCES
EXHIBIT NO. 12 (p.4)
DATE 3-23-87
BILL NO. HB629

SMALL MINING OPERATION
BY: DENIS MARKOVICH
3-18-87

LABOR		
MINE	$4,800.00	$57,600.00
HAULING	$1,600.00	$19,200.00
MILL	$4,000.00	$48,000.00
OFFICE	$1,000.00	$12,000.00
TOTAL	$11,400.00	$136,800.00
EXPENSES		
MINE		
CONTRACT LABOR	$834.00	$10,008.00
FUEL	$364.50	$4,374.00
MISCELLANEOUS	$270.00	$3,240.00
SUPPLIES	$1,548.00	$18,576.00
TIMBER	$556.88	$6,682.50
VEHICAL	$427.80	$5,133.60
REPAIR/MAINTENCE	$270.00	$3,240.00
FREIGHT/HANDLING	$31.50	$378.00
MINE TOTAL	$3,468.68	$41,624.10
HAULING		
FUEL	$195.00	$2,340.00
MISCELLANEOUS	$225.00	$2,700.00
SUPPLIES	$75.00	$900.00
VEHICAL	$150.00	$1,800.00
REPAIR/MAINTENCE	$112.50	$1,350.00
HAULING TOTAL	$757.50	$9,090.00
MILLING		
FUEL	$75.00	$900.00
MISCELLANEOUS	$270.00	$3,240.00
SUPPLIES	$1,548.00	$18,576.00
REPAIR MAINTANCE	$270.00	$3,240.00
FREIGHT/HANDLING	$64.50	$774.00
UTILITIES	$525.00	$6,300.00
LAB SUPPLIES	$75.00	$900.00
OUTSIDE ASSAY'S	$337.50	$4,050.00
MILLING TOTAL	$3,165.00	$37,980.00
OFFICE		
TAXS/FICA	$1,193.40	$14,320.80
TAXS/FEDERAL	$2,299.32	$27,591.84
TAXS/STATE	$902.45	$10,829.34
BANK CHARGES	$9.00	$108.00
TAXS, FEES	$52.50	$630.00
LEGAL/ACCOUNTING	$270.00	$3,240.00

OFFICE SUPPLIES	$248.28	$2,979.36
OFFICE RENT	$250.00	$3,000.00
TELEPHONE	$300.00	$3,600.00
UTILITIES	$75.00	$900.00
OFFICE TOTAL	$5,599.95	$67,199.34
LEASES		
EQUIPMENT LEASE	$3,750.00	$45,000.00
LAND LEASE	$750.00	$9,000.00
ROYALTIES	$1,000.00	$12,000.00
OFFICE EQUIPMENT	$150.00	$1,800.00
RADIO LEASE	207.885	$2,494.62
LEASE TOTAL	$5,857.89	$70,294.62
EXPENSES TOTAL	$18,849.01	$226,188.06
BUDGET TOTAL	$30,249.01	$362,988.06
CONTENDANCY	15%	15%
GRAND TOTAL	$34,786.36	$417,436.27

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 3-23-87
BILL NO. HB629

Senate Hearing on House Bill 629

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO METAL MINE RECLAMATION

and Amending Sections 82-4-303, 82-4-305 and 82-4-335, MCA

Ladies and Gentlemen, my name is Koehler Stout, A consultant in the mineral industry, dealing primarily with small mines and exploration projects. I am a registered professional Engineer and Land Surveyor in Montana and admitted to practice law in Montana. I have a B.S. in Mining Engineering and a M.S. in Geological Engineering from the Montana College of Mineral Science and Technology, an LLB from LaSalle University of Chicago, Ill. and an Honorary Doctorate in Engineering from the Montana University System. In 1971 when this act was first passed, I was an officer in the Southwest Montana Mining Association, the forerunner of the present Montana Mining Association. I was president of the Montana Mining Association in the middle 1970's, but I am speaking for myself and some members of the Silver Bow Chapter of the Montana Mining Association. I did however, not have time to contact other chapters of the association to solicit their feelings on this bill.

The Southwest Montana Mining Association lobbied long and hard for the small-miner exclusion in 1971. The reason was that the ordinary small-miner, developer and prospector could not afford the bonding requirements of the bill, and it would put him or her entirely out of business. This is as true in 1987 as it was in 1971. Even today, the small miner, developer and prospector simply cannot afford an expensive bond when he disturbes insignificant amounts of land and still does his necessary improvement work. The small-miner exclusion act has worked well for the past 16 years, and several of today's large scale production operations in Montana were either discovered and, or, promoted by small miners and prospectors. In 1971, there was only one large-scale mineral producer in the state. Now there are four active ones, two nearing construction completion, at least two or three more in the decision stage and several large-scale exploration projects. Let's not stop this progress by more restrictive legislation when the state so deperately needs added mineral development.

This proposed bill greatly restricts the small miner and practically does away with the small-miner exclusion because there are very few, if any, mines in Montana that can produce a salable product that does not need upgrading except for some placer mines. Other people at this hearing either have, or will, testify that the mineral processing reagents as defined in this law will raise havoc with many of the small mines that we have in Montana. It boils down to the front-end high bonding costs for a person that can hardly make ends meet as it is. I concur with their analysis of the situation and their recommendations.

There are, however, other parts of this bill that are likewise devastating to the small-mining industry. As one of the very few people present here who was at the initial hearings on the small-miner exclusion, we certainly meant that the small miner included the developer and prospector who was developing his claim and the person who was doing annual assessment work. Although I could not find my notes on that hearing, I remembered that I was one who wanted to include the word prospector in this definition, but the committee felt at that time that any small miner was

also a developer and prospector and it would be interpreted that way. Hence, I was surprised to learn only a few days ago that the definition of a prospector was included in this bill and the restrictions to the prospector were far greater than to the small miner. This concept does not make sense to me. Why? The whole basis of mining law when locating and patenting a claim is making a discovery. If a person doesn't make a discovery, he or she can claim no title to the ground.

What is a discovery? The most often quoted definition was made in the case of Castle v. Womble in the late 1800's where the Dept. of Interior stated it as a discovery of minerals, within the limits of the claim, which would justify a person of ordinary prudence in the further expenditure of time and money with reasonable prospects of success in developing a profitable mine. This is called the prudent-man rule. In more recent intrepretations of this definition while making the requirements more stringent, the Dept of Interior in expanding the above definition, now says that in addition to the old prudent-man rule, it is required that minerals have been found and developed with a reasonable expectation that a paying and profitable enterprise will result. They require quantity, quality and a market for the mineral so that a profit can be projected on the production of the mineral from the deposit. As one can see from these requirements, one must do a lot of work just to show that a discovery exists and before a mine can produce ore. What is this person called, a small-miner, a developer or a prospector? Certainly they are one and the same and the developer and, or prospector needs the small-miner exclusion as much as, if not more, than the small miner. The mining association of that time and ever since, until possibly now, considered the prospector, the developer and the small miner the same and they should be subject to the same law.

Not only is this proposed definition restrictive to the prospector, it puts the owner of a patented mining claim in a position that he cannot do any improvement work on his claim unless he posts a bond or meets the small-mining requirement. (What ever that is?) This concept, as well as definition (9) is certainly in conflict with section 82-2-103 (2) RCM where it says work to hold patented and unpatented contiguous claims may be done on a patented claim in the contiguous group. Of what purpose is the proposed 10 claim restriction to the prospector? In the original 1971 law, it said that assessment work could only be done on 10 contiguous claims and if a person had more than 10 claims, then they had to do assessment work on each 10-claim group. Even the environmental groups joined the mining association to get rid of this requirement because it caused much unnecessary digging and it defeated the purpose of reclamation and development work for the group mining claims. Let's not put unworkable provisions in again.

I believe that definition (9) would comply with the rest of Montana law if the word unpatented was struck out of the definition. The percieved problem on prospecting definitions and permits could be very simply solved by dropping the proposed definition in 82-4-303 (12) and 82-4-335 new section 4 and making the following definition change in 82-4-303 14 (a) "Small-Miner" means a person, firm or corporation that engages in the business of <u>improving</u>, mining or reprocessing the tailings or waste materials - - - - - - - - - - - - - - -. The addition of the word (improving) will take care of all assessment work requirements whether it be prospecting or developing as defined in both State and Federal statutes. With this simple change, everybody who prospects, develops or runs a small mine will have to file a small-miner exclusion statement which gives the

Dept. of State Lands the information that it needs, and the industry will not have to face another trial period of determining what definition of a prospector does to the industry and to the Department. The same protection exists in the reclamation law now as it has since 1971. Let's not tamper with a statute that has worked reasonably well by making it far more complicated and restrictive in this day when we need every incentive possible to increase our mineral potential.

Thank you for this opportunity to present this information to you, and I will do my best to answer any questions that you have.

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 3-23-87
BILL NO. HB629

SENATE NATURAL RESOURCES
EXHIBIT NO. 14
DATE 3-23-87
BILL NO. HB 14

TESTIMONY ASKING THAT HB629 BE AMENDED - MARCH 23, 1987

MY NAME IS WAYNE FLETCHER, AND I AM EMPLOYED AS A PROFESSIONAL CHEMIST. I AM VICE PRESIDENT OF THE LEWIS AND CLARK CHAPTER OF THE MONTANA MINING ASSOCIATION.

THE MINING INDUSTRY, IN GENERAL, FAVORS CONTROLS AND RESTRICTIONS ON THE USE OF CYANIDE AND OTHER HAZARDOUS MATERIALS. HB629 IS MUCH MORE THAN A SIMPLE BILL TO CONTROL HAZARDOUS SUBSTANCES. IT SEVERELY RESTRICTS THE ACTIVITIES OF PROSPECTORS AND DISCOURAGES DEVELOPMENT AND EMPLOYMENT, WHEN MONTANA NEEDS JOBS AND REVENUE.

IF THE BILL IS AMENDED TO REMOVE THE POTENTIALLY ENORMOUS BONDING REQUIREMENTS, REMOVE THE UNNECESSARY RESTRICTIONS ON PROSPECTING, AND ADDRESS ONLY THE USE OF CYANIDE AND OTHER HAZARDOUS CHEMICALS, IT WOULD FIND ALMOST UNIVERSAL SUPPORT IN THE MINING COMMUNITY.

(14)

SENATE NATURAL RESOURC[ES]

EXHIBIT NO. 15

DATE 3/23/87

BILL NO. HB 629

NAME Ian Henderson BILL NO. 629

ADDRESS 707 Dearborn, Helena DATE 3-23-87

WHOM DO YOU REPRESENT Self - Mining Consultant

SUPPORT ______ OPPOSE ______ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I feel that the bill essentially wipes out the small miner (I hold a small miner permit) - water using

For instance - page 3 ¶ 12 - under "prospector" refers to doing annual assessment work valued at less than $100. Federal regulations require $100 to be spent to satisfy annual work.

Under this bill a permit is needed to use any chemical reagent - not just those known to be deleterious to the [illegible] - a little Dove in a gravity operation or [illegible] perhaps even water itself might require control.

It would appear that one will be subject to proving to regulatory agencies that a [illegible] is not deleterious before it [illegible] [illegible].

I would note that Idaho is apparently considering a bill to control cyanide - with which I concur.

I believe HB 629 should at least be [illegible] [illegible] by my colleagues.

Also I feel that the definition of "[illegible]" might require unnecessary loss of a potential mine - as economic changes occur - note Montana Tunnels, Butte [illegible], [illegible] [illegible] which was failed dream mine currently considered economic.

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 3/23/87
BILL NO. HB642

PROPOSED AMENDMENTS TO HB 642

by

MONTANA WATER DEVELOPMENT ASSOCIATION

Third Reading Copy

1. Page 2, line 24
   Following: "APPROPRIATION"
   Insert: "FROM THE SAME SOURCE"

SENATE NATURAL RESOURCES
EXHIBIT NO. 16-A
DATE 3/23 87
BILL NO. HB642

HB 642
March 23, 1987

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

While the department supports this legislation, we have a concern with one portion of the bill.

Our concern is with the amended language in subsection 4 on page 14. That subsection originally gave a priority date of July 1, 1985 to any reservations granted under this section. The amendment gives priority over the reservation to any permit issued after July 1, 1985 if it does not substantially interfere with the reservation. The section as presented would appear to authorize two priority dates - one for reservation applicants and one for permit applicants.

The purpose of the reservation process is to determine water availability and allocate that water to consumptive and non-consumptive uses. If water is available for consumptive use as determined by the Board of Natural Resources, consumptive permit holders could obtain the 1985 priority.

In reality, there is little chance that any individual permit will substantially interfere with a reservation. However, the cumulative impact of a number of permits could affect a reservation. We then have the question of which permits are subordinate and which are not. It would seem this amendment only serves to complicate the process by creating a dual allocation process for selected water users.

Under the present law, over 200 permits have been issued in the past 18 months in the basin. All should have been conditioned to the reservation priority date. This process should continue as originally intended.

We would recommend a return to the original language and deletion of the amended language on lines 20 through 25.

SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 3/23/87
BILL NO. HB 642

NAME Don Jenni BILL NO. HB 642

ADDRESS Rt. 2, Box 2226 Lewistown DATE 3/23

WHOM DO YOU REPRESENT self

SUPPORT ~~X~~ OPPOSE X AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Wish to see Sec. 10 of HB 642 reinstated. This would repeal 85-2-317.

An alternate to this, I would like to see the limit changed to 4,000 acre feet to be consistant with other DNRC code. Also I would like to see appropriations for hydropower added to part (3) of 85-2-317. This would exempt hydropower as well as municipal use, public water supplies, and agriculture irrigation. Hydropower is a non consumptive, non polluting beneficial use of water.

HB 661
March 23, 1987

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

The Natural Streambed and Land Preservation Act of 1975 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions.

There have been differences of opinion on methods used to divert water, but to date no one has been denied the right to get irrigation water. In fact, the law states specifically that such a right cannot be denied.

Since 1975, this law has provided an avenue for landowners to obtain new ideas and thoughts regarding alternatives to existing methods of diversion - alternatives that are often better from the standpoint of providing long-term, stable water diversion projects and providing less costly alternatives. State agencies, conservation districts and landowners are currently working on several such projects. This department has supported these efforts through the Stream Protection Act process, as well as financially.

The conservation districts have done a commendable job over the years with the administration of this law. HB 661 should continue the progress being made in regulating streambed projects.

The department recommends approval of HB 661.

SENATE NATURAL RESOURCES
EXHIBIT NO. 19 (cont)
DATE 3/23/87
BILL NO. HB661

NAME Jesse Malone Jr BILL NO. 661

ADDRESS RR 2 Box 204 Choteau, 59422 DATE 3/23/87

WHOM DO YOU REPRESENT Eldorado Cooperative Canal Co.

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

TESTIMONY - HB 661

MONTANA SENATE NATURAL RESOURCES COMMITTEE

MARCH 23, 1987.

I am Jesse Malone, Jr., Choteau, MT., Teton County. I am the president of the Eldorado Co-operative Canal Co., a user of Teton River water.

Teton county ranks fifth in Montana in the total value of agricultural products. Compared with other Montana counties, Teton county is an irrigated county. A significant amount of our production is directly contingent on irrigation. In our county there are three large areas of irrigated lands:

1. Greenfield - Fairfield bench
2. Bynum - Brady district
3. The upper Teton River water users.

The last two areas encompass thousands of acres and include over 200 farms. These farmers all receive water from the Teton River. All are directly affected by this legislation and the 310 permit system. More of them would have liked to have been here today, however, the storm and calving changed their plans. We favor House Bill 661.

The upper Teton River is unique in its moving river bed. The water action is constantly moving the gravel that comprises the waterway. Periodically we have to remove the gravel that has been deposited in front of and in our water diversion facilities. It is particularly critical when there is an

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 3/23/87
BILL NO. HB661

unexpected and sudden flood of water that moves gravel into our facilities in late May or June. We have to maintain our water diversions. And the job has to be timely, because the year's crops are dependent on opportune irrigation.

That is why we have concerns about this legislation and the requirements pertaining to the 310 permit. Because of the time framework built into the application for the permit, more likely than not, the permit isn't approved for three weeks. The team members, charged with the responsibility of inspecting the 40 or so diversions on the Teton, find it a burdensome task and it is an unnecessary inconvenience when their own farms need attention. Our crops can't wait three weeks for irrigation water. We need the right to be able to do maintenance work in the area of our diversions, without undue limitations caused by the 310 permit system. We need the maintenance of the diversions defined as non-projects. We are in favor of House Bill 661. Our crops depend upon it. To a degree agricultural production in Teton County depends upon it.

STANDING COMMITTEE REPORT

March 23, 19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 718

THIRD reading copy (BLUE color)

REALLOCATING ENVIRONMENTAL CONTINGENCY ACCT. TO ENV. QUALITY PROTECTION FUND

HARPER (ECK)

Respectfully report as follows: That HOUSE BILL No. 718
BE AMENDED AS FOLLOWS:

1. Title, line 4.
Strike: "REALLOCATING"
Insert: "ALLOCATING"

2. Title, line 5.
Strike: "ENVIRONMENTAL CONTINGENCY ACCOUNT"
Insert: "INTEREST INCOME OF THE RESOURCE INDEMNITY TRUST FUND"

3. Title, line 6.
Strike: "75-1-1101, 75-1-1102"
Insert: "15-38-202"

4. Page 1, line 12, through line 8 on page 4.
Strike: sections 1 and 2 in their entirety
Insert: "Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance. (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 1-604.

XXXXXXXXX
DO PASS

XXXXXXXXX
DO NOT PASS

CONTINUED

Chairman.

(3) Beginning in fiscal year 1986, 6% of the interest income of the resource indemnity trust fund must be allocated to the department of health and environmental sciences to be used to implement the Montana Hazardous Waste Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with Title 75, chapter 10, part 6. The allocation in this subsection must be appropriated for each full biennium as necessary to obtain matching federal funds for the biennium.

(4) Beginning in fiscal year 1990, 4% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund, provided for in 75-10-704.""

Renumber: subsequent sections

5. Page 4, line 16.
Following: "may"
Insert: "only"

6. Page 4, line 19 through line 2 on page 5.
Strike: "as" on page 4, line 19 through "conduct" on line 2, page 5
Insert: ". Fund uses must include the conduct of the hazardous waste site remedial action program, which is"

7. Page 5, line 3.
Strike: "(i)"
Insert: "(a)"

8. Page 5, line 4.
Strike: "(ii)"
Insert: "(b)"

9. Page 5, line 13.
Strike: "(2)(b)"
Insert: "(2)"

10. Page 6.
Following: line 3
Insert: "interest income of the"

11. Page 6, line 4.
Strike: "interest account"
Insert: "fund"

12. Page 6, line 5.
Strike: "75-1-1101"
Insert: "15-38-202"

13. Page 6, line 10.
Following: "~~75-1-1101.~~"
Insert: "(5) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101."

CONTINUED

14. Page 6.
Following: line 6
Insert: " NEW SECTION. Section 5. Coordination instruction. If Senate Bill No. 373, including the section of that bill amending 15-38-202, is passed and approved, section 18 of Senate Bill No. 373 must read:

"NEW SECTION. Section 18. Coordination instruction. ~~If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved:~~

~~(1) the bracketed material in section 12(2)(d) of this act allocating funds to the reclamation and development grants account must read "50%", and~~

~~(2) the bracketed material in section 6 is void.~~

(1) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section of that bill amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "46%".

(2) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is not passed and approved, the bracketed material in section 12 must read "50%".

(3) If House Bill No. 777, including the section amending 15-38-202, is not passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "52%"."

AND AS AMENDED
BE CONCURRED IN

SENATOR THOMAS F. KEATING, Chairman

STANDING COMMITTEE REPORT

MARCH 23 67
..... 19.....

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE JOINT RESOLUTION No. 6

THIRD reading copy (BLUE color)

REQUESTS EPA TO REVISE UNDERGROUND SALT WATER INJECTION POLICY-JUDITH RIVER

SCHYE (KEATING)

Respectfully report as follows: That HOUSE JOINT RESOLUTION No. 6

BE CONCURRED IN

XXXXX
DO PASS

XXXXXXXX
DO NOT PASS

SENATOR THOMAS F. KEATING, Chairman.

STANDING COMMITTEE REPORT

MARCH 23 19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE JOINT RESOLUTION No. 24

THIRD reading copy (BLUE color)

EXTENDS WESTERN STATES FORESTRY TASK FORCE

SWIFT (GEVERSON)

Respectfully report as follows: That HOUSE JOINT RESOLUTION No. 24

BE CONCURRED IN

~~XXXXXX~~
DO PASS

~~XXXXXXXX~~
DO NOT PASS

SENATOR THOMAS F. KEATING, Chairman.