

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on January 25, 1989, at 3:15 p.m.

#### ROLL CALL

Members Present: All present except:

Members Excused: Rep. McDonough, Rep. Moore and Rep. Hannah

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: REP. RANEY requested further discussion on HB 143, and said that due to the probability of extensive amendments to the bill, it would be placed in a subcommittee. He named Rep. Gilbert, Rep. O'Keefe, and Rep. Brooke to the subcommittee, with Rep. O'Keefe to act as chair. He then asked to hear from those individuals who had worked up amendments to HB 143.

JEROME ANDERSON, representing Shell Oil Company, said there had been some discussions between members of the oil industry and other parties on the bill, but they had not yet worked out any specific amendments. He said the idea of putting the bill into a subcommittee was good and offered to work with them to arrive at some form of understanding.

REP. RANEY said Sen. Gage did present the committee with a statement of intent that would be considered in the subcommittee also.

#### HEARING ON HB 272

##### Presentation and Opening Statement by Sponsor:

REP. HARPER, House District 44, opened on the bill, stating that it was an act to revise the Montana Strip and Underground Mine Reclamation Act. He said the bill had been requested by the Department of State Lands, and was drafted under the previous administration. Rep. Hanson originally agreed to carry the bill, and had since changed her mind. He said the three or four concepts in the bill were worthy of discussion, and he had thus agreed to carry the bill, regardless of the presence of any proponents. He said if there were problems in this area, that the committee would

have the vehicle with which to address them. He said he knew of one witness with a problem that he believed could be addressed in the revised title of the bill.

REP. HARPER said the bill would clarify that a determination by the department on hydrologic impact could depend on existing hydrologic data that was currently in the possession of a federal agency. He said the act as currently worded seemed to say that a determination cannot be made until the hydrologic data has been developed and made available from an appropriate agency.

REP. HARPER said the next change referred to the assessment of the probable cumulative impact of the mining and the hydrologic balance. He said the requirement being proposed was that the assessment would also be done by the applicant to supplement the assessment by the department.

REP. HARPER said another change referred to notification of applicants of the environmental impact statement (EIS) requirements. He said the department had 90 days to decide whether an EIS was going to be required after receiving a complete application. In order to cover itself, the department, in all cases where significant impacts were probable, would require an EIS. He said that it may be that EIS's were being required where they were unnecessary. In response to this situation, Rep. Harper offered the concept of mitigated environmental assessments, a concept which would allow the department to offer the applicant the opportunity to avert the full-blown EIS process by modifying the proposal in specific ways. He said that could save everyone money, time, and could perhaps better protect the environment.

REP. HARPER continued with the proposed changes, noting that the limit of 360 days for completing an EIS was stricken. He said that some companies might be hesitant to see time frames stricken, but added that the opportunity for a mitigated environmental assessment could help all parties save time and money.

REP. HARPER said the last changes related to extending the time that the department had to conduct inspection and evaluation before the performance bond was released. REP. HARPER suggested that 30 days, especially in the winter, was not enough time to do that kind of work. He said the proposed change allows the department to notify the permittee of its decision within a period of 120 days instead of 60 days. If a public hearing was held, the time would be cut in half.

Testifying Proponents and Who They Represent:

H.S. Hanson, Architects and Engineers

Proponent Testimony:

MR. HANSON offered an amendment to add the words in the section referring to survey requirements "by a licensed land surveyor or a licensed professional engineer". He said the rules that had been implementing this particular law had not had that requirement, resulting in some problems in the act's implementation.

Testifying Opponents and Who They Represent:

John North, Interim Commissioner, Department of State Lands  
James Mockler, Montana Coal Council  
Jim Jensen, Montana Environmental Information Center

Opponent Testimony:

JOHN NORTH said when the bill was developed, the Commissioner of DSL, Dennis Hemmer, was working with the industry and the environmental groups on this bill. He said that the changes proposed were not crucial to the operation of the department, but that if all groups concerned felt it was a good idea, it should be introduced and passed. He said that the negotiations on the bill were not completed before the introduction deadline, but he had decided that the bill could be introduced. He said it now appeared that there was not general agreement, and asked that the Department of State Lands' name be deleted from the bill.

JAMES MOCKLER said spoke of the Coal Council's cooperative working relationship with the Department of State Lands. He said the council had no problems with the proposed changes to the hydrology section, and said the industry was doing that now. He said they did, however, have some significant problems with the deletion of the maximum time limit allowed to complete an EIS. He said the opportunity still remained to do a mitigated environmental assessment if the department should so choose, and said that was not an unreasonable time to be asked to make that decision. He said the threat of returning to the days when it took 2 years to complete and EIS was not appealing.

MR. MOCKLER said the language in the current law regarding the time for the inspection and evaluation of a reclamation site was a direct copy of the federal law. The Coal Council saw no reason for the state to require additional time when the federal law did not. He said inspections were on-going, and that it was not a big surprise when a company came in for a bond release.

Regarding the licensed engineer language, MR. MOCKLER said he had never heard a complaint from the department that there were unqualified people signing these maps. He said it would be of no advantage to the industry to produce an inferior map.

MR. JENSEN said there was a substantive issue at hand regarding the Montana Environmental Policy Act with regards to the way that it was being administered at present versus the way it would be administered with the new rules which had been adopted state-wide. He said the issue was that the public would have a significantly reduced opportunity to testify on the effects of natural resource activity with the use of mitigated environmental assessments. The difference between an environmental impact statement and an environmental assessment with mitigation was that the requirement for the public hearing process would no longer exist. He said MEIC felt that the public should have the legal opportunity to be able to participate in these decisions, and that HB 272 was a move in the wrong direction. He said for that reason, MEIC would oppose the bill.

Questions from Committee:

REP. GIACOMETTO asked if the department wished the HB 272 to die, and MR. NORTH said that was correct.

REP. RANEY asked Jim Jensen where the bill took the public's right to testify. MR. JENSEN answered that the use of a mitigated environmental assessment as a device to avoid doing an Environmental Impact Statement was the concern that MEIC had under the new rules that had been adopted by the state. Under these new Montana Environmental Policy Act (MEPA) rules, the department could prepare a mitigated environmental assessment. He said this would not require a public hearing to review what the department or the applicant was doing, as would the requirement of an EIS.

REP. GILBERT asked Rep. Harper asked if, knowing that the MEPA rules were going to change, he was attempting to make the law fit the new MEPA rules with this bill. REP. HARPER said he felt the issues needed to be discussed. He also said that the new rules were not consistent with the language in the law as it currently was written. REP. GILBERT commented that the rule making-process in the state either superceded, circumvented or completely evaded statutes. He asked Rep. Harper if the MEPA rules would probably change what was in the law anyway. REP. HARPER replied that no matter what MEPA did, it would not be able to change one letter of the law in this particular statute. Even if the interpretation of MEPA were to change, it would have to come before the legislature for changes in the law.

Closing by Sponsor:

REP. HARPER closed, saying that he hoped the committee would judge that the issues raised were important enough to warrant bringing the bill before the committee.

DISPOSITION OF HB 272

Motion: REP. HARPER moved to TABLE the bill.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

DISPOSITION OF HB 285

Hearing 1/23/89

Motion: REP. GIACOMETTO moved the bill DO PASS.

Discussion: REP. GIACOMETTO said the bill addressed problems in certain areas with unknown mineral ownership. He said he understood the concern of the mineral and oil-producing companies that felt they had the title. He said he also understood the situation that had arisen in the coal mining industry, where a company that owned the mineral rights could do away with the land owner's rights on the surface. He said the bill provided a way to clarify and clear up those problems. South Dakota, currently, had a process that requires filing an affidavit every 10 years, as opposed to Montana's 20 years, showing ownership of the minerals. He added that he thought it unfair that the royalty money would go back into the company, rather than the state or the community.

REP. RANEY asked Rep. Giacometto if it was true that the dormant mineral interests would then wind up with the surface landowner, and if so, why it would be the surface landowner as opposed to the state or some non-profit organization, or the person who wanted to mine the mineral. REP. GIACOMETTO replied that, historically, the mineral interests started out with the landowner. Over time, those mineral interests had become separated from the surface and were now scattered. He said he agreed with the point made by the companies that they had an interest in the minerals, but said that interest would have to be weighed against the surface owners' rights. He suggested that minerals not developed were probably not worth much, and the best choice for the assigning of the mineral interests was with the landowner.

REP. GILBERT said the bill had appeared before the committee several times and had been killed for good reason. He said it would cause more problems than it solved. He said that currently, when someone wanted to lease an area for minerals, they had to contact the mineral owners. They make

extensive searches to find the true owners of the minerals. Under this law, a legal advertisement could be made in a local paper for 10 years, but an individual was not required to make a concentrated search. REP. GILBERT objected to Mr. Shanahan's amendment, which said someone could come in and steal the minerals, and thus become the owner. He called the bill a "Mineral Grab Act", and suggested killing the bill in fairness to the persons who were the true owners of the minerals.

REP. RANEY asked the committee if Mr. Shanahan could address his proposed amendments (EXHIBIT 1).

MR. SHANAHAN said the amendments did not create any right that did not already exist with respect to an operator on the property. He said the operator who had invaded the mineral interest already had the right to adverse possession under existing law. He said the amendments clarified specific language in the bill. One provided a standard of proof for the person who owned the dormant mineral interest that came into the action. The person who was trying to take the minerals would have to file a quiet title action, which would require a diligent search for the owner of the mineral. If that person were to come in and cause dismissal of the action, the person who had to file the action would be up against the costs. He said his proposed language provided that the court could grant costs and attorney's fees. His other amendment would give the dormant mineral owners until 1991 to make filings on their dormant minerals, rather than in December, 1989. He said he thought that more fair and reasonable than the original language.

REP. GIACOMETTO asked if the company invading the mineral interest had the same right as the landowner to try to get the dormant mineral interests of unknown ownership under the amendments. MR. SHANAHAN said that his amendment was a recognition that the right existed right now. REP. GIACOMETTO asked why the amendment was needed. MR. SHANAHAN said he did not want any confusion to develop. He said the bill also provided for a 20 year period before an action could be brought to revert these minerals to the surface owner. Under the present law, an adverse mineral claimant could obtain those minerals in five years. REP. GIACOMETTO asked if the amendments would change the intent of the sponsor. MR. SHANAHAN said they would not, but had not spoken with Rep. Steppler.

REP. OWENS asked if there was a difference in the price of land if the landowner kept the mineral rights. MR. SHANAHAN said there was a difference, and that the minerals would enhance the price.

Amendments, Discussion, and Votes: REP. GIACOMETTO moved the amendments, saying they would clarify some of the "gray areas" of the bill. He offered another amendment regarding

the notification time frame to make it broader. He added that the bill as amended would create some problems, but said there were problems now.

REP. RANEY said that due to the number of missing members of the committee, he would delay action on HB 285 until a later date.

REP. GIACOMETTO: WITHDREW his motions on amendments.

Recommendation and Vote: REP GIACOMETTO WITHDREW his motion that the bill DO PASS.

ADJOURNMENT

Adjourned at: 4:15 p.m.

  
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REP. BOB RANEY, Chairperson

BR/cm

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## DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 1-25-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough			✓
Rep. Janet Moore			✓
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah			✓
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

PROPOSED AMENDMENTS OF HB285

EXHIBIT 1  
DATE MB 285  
HB 1-25-89

To the House Committee on Natural Resources  
51st Legislature

Please amend House Bill 285 as follows:

1. Section 5, page 3, line 25.  
Strike: "not"
2. Section 5, page 4, line 2.  
Strike: "constitute"  
Insert: "include"
3. Section 7, page 7.  
Strike: Section 7 in its entirety  
Insert: "(7)Proof of intent to preserve a mineral interest. In an action to terminate a mineral interest pursuant to (this act), the record owner of the mineral interests must present clear and convincing evidence of intent to preserve the interest in order to obtain dismissal of the action and in that event the Court may in its discretion award to the surface owner reasonable expenses of litigation including a reasonable attorney's fee, attributable to the mineral interest or portion thereof as to which the proof is offered."
4. Section 8, page 7.  
Strike: Section 8 in its entirety  
Renumber: subsequent sections
5. New Section 10 (renumbered as 9), Page 8, subparagraph 2, line 12.  
Following: Section 8  
Strike: "1989"  
Insert: "1991"
6. Page 8, line 18.  
Following: Present new Section 10  
Insert: New Section 11 and renumber succeeding new sections.  
"Section 11 Adverse Claims by Lessees or as a Result of Mineral Exploration and Development. Nothing in this act shall prohibit the prosecution of claims for adverse possession by mineral lessees or by those engaged in active

EXHIBIT

DATE

HB 283

HB

1-25-89

mineral operations as defined herein, from bringing an action for adverse possession pursuant to Title 70, Chapter 19, Part 4 M.C.A."

Mr. Chairman and members of the committee, I would oppose a proposed amendment to strike section 5, subparagraph (2)(b) on page 4 (lines 5, 6, and 7) of the bill.

Payment of taxes on a mineral interest or on a mineral transfer or severance tax relating to the mineral interest indicates an active interest is present with respect to the mineral interest. It would be wholly wrong to subject the owner of a mineral interest the loss of the interest where there was clear evidence of the payment of taxes during the period of time prescribed in the bill.

Respectfully submitted

Ward A. Shanahan

7113W

## VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. HB 272DATE 1-25-89

SPONSOR \_\_\_\_\_

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Joan Toole	CPI		
Jim Mockler	MT. Cool Conc. 1		
Ken Williams	Entech		
Jim Jensen	MEIC		
John Smith	Dept of State Lands		
Ray Brustay	Dept State Lands		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.