

## MINUTES

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

#### COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on February 17, 1989,  
at 3:00 p.m.

#### ROLL CALL

Members Present: Thirteen members present

Members Excused: Rep. Cohen, Rep. Giacometto, Rep. Gilbert

Members Absent: None

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

Announcements/Discussion: None

#### HEARING ON HB 676

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

REP. RANEY, House District 82, Livingston, presented HB 676, proposing management standards for disposal of infectious waste (EXHIBITS 1 & 2). He stated that Livingston was the only city in Montana with a commercial incinerator, within which it disposes of solid waste in the city and its environs. He said that the trend nationwide is to not want to dispose of solid waste locally, infectious or not, but to transport it elsewhere for disposal. The bill establishes regions within which the cost for disposal is relatively low. If one were to cross from one region to another for the purposes of disposal, the cost would increase dramatically.

##### Testifying Proponents and Who They Represent:

Jim Leiter, Dept. of Health and Environmental Sciences  
Sue Weingartner, Executive Director, Montana Solid Waste  
Contractors, Inc.  
Chris Kaufmann, Montana Environmental Information Center  
Dan Porter, Livingston  
Carlo Cieri, County Commissioner, Park County  
Bill Leitch, Member, Citizens Against Pollution, Livingston  
Jim Ahrens, Montana Hospital Association  
Jo Brunner, Montana Doctors of Veterinary Medicine  
Joanie Miller, Montana Right to Life  
Netzy Durfey, Livingston

Proponent Testimony:

Jim Leiter, DHES, said that the department had not had time to prepare testimony on the bill. He said that he was neither proponent nor opponent, but was available to answer questions.

Sue Weingartner spoke in support with some suggested amendments (EXHIBIT 3).

Chris Kaufmann spoke in favor of the legislation, with concern that Montana not become the unregulated dumping ground for the nation's infectious waste. She stated that Montana is one of only 6 states without regulations in this area, which would invite interstate transport of this type of waste. MEIC's second interest was that a handle was needed on the type of waste generated in the state.

Dan Porter, Livingston, spoke in favor of the legislation, EXHIBIT 4.

Carlo Cieri, County Commissioner, Park County, spoke in favor of the legislation, stating that there was incomplete incineration of waste at present, and that the burning of infectious waste would produce even greater health and environmental hazards. He said that the bill would provide needed regulations and guidelines.

Bill Leitch, Livingston, member of Citizens Against Pollution (CAP) spoke in favor of the bill, with grave reservations, EXHIBIT 5. He also submitted a letter from Marc Montgomery, President of CAP, which had been sent to the Air Quality Bureau (EXHIBIT 5A).

Jim Ahrens, President, Montana Hospital Association, spoke in favor of the concept of the legislation. He said that hospitals had been handling infectious waste for years. He said that they had some problems with the bill, and were working with the sponsor on these to establish minimum impact on the providers of hospital services in the state of Montana.

Jo Brunner spoke in favor of the legislation with concern that the problems of veterinarians and the livestock industry might need more consideration.

Joanie Miller spoke in favor of the bill, EXHIBIT 6.

Netzy Durfey, Livingston, placed in the record the testimony of Lenny Gregory, EXHIBIT 7.

Testifying Opponents and Who They Represent:

Roger Tippy, Montana Dental Association  
Bonnie Tippy, Montana Funeral Directors Association

Opponent Testimony:

Roger Tippy submitted amendments, EXHIBIT 8, which would amend the legislation to avoid burdening small professional offices such as dental offices.

Bonnie Tippy stated that her organization did not want to go on record as against the concept or intent of the legislation, and that they felt that it was necessary. However, she felt that the bill would adversely impact funeral directors, particularly in the area of crematoriums, and was willing to work with the committee on this issue.

Questions From Committee Members:

None

Closing by Sponsor:

REP. RANEY closed, stating that it was new to Montana to start regulating waste in this manner, but was not new to the nation, and that there would be more regulations coming in response to the problems with the waste stream in general.

HEARING ON HB 680

Presentation and Opening Statement by Sponsor:

REP. GRADY, House District 47, introduced HB 680, stating that it addressed cyanide use in ore processing facilities, and puts them under the permitting authority of the Dept. of State Lands (DSL). He distributed two exhibits (EXHIBITS 9, 10), and invited John Fitzpatrick to explain in more detail the bill.

Testifying Proponents and Who They Represent:

John Fitzpatrick, Director of Community and Regulatory Affairs, Pegasus Gold Corp., and the Montana Mining Association.  
Gary Langley, Montana Mining Association  
Jim Jensen, Montana Environmental Association  
Stan Bradshaw, Montana Council of Trout Unlimited  
John North, Dept. of State Lands

Proponent Testimony:

John Fitzpatrick stated that he and the Health, Safety and Environmental Committee of the Montana Mining Association had been involved with the drafting of the

bill. He stated that it eliminated the small miner exclusion for any operator using CN (cyanide) or CN compounds for metallurgical recovery. By doing that, the operator would have to receive an operating permit from the DSL. In order to acquire an operating permit, the operator would be required to submit an operating and reclamation plan to the state, and minimally, an environmental analysis would be prepared. This process would allow for public review of the plan and project. There also would be a requirement for the posting of a reclamation bond. He spoke of the value of CN to the mining industry, its role in precious metal extraction, its availability, and toxicity when not managed correctly. This legislation would allow for looking at CN in mining operations in a preventative instead of a reactive mode. He stated that a prudent method of managing CN was in the best interest of Pegasus, the mining industry, as well as the people of Montana.

Gary Langley stated that the bill represented an attempt by the mining industry to correct, anticipate, and respond to a public policy concern about CN use before it became a compliance and operational problem for the mining industry. Mr. Langley introduced a number of small scale operators who were in favor of the legislation.

Jim Jensen urged support of HB 680, stating that it was a good faith bill coming from the mining industry.

Stan Bradshaw stated support for the bill.

John North stated that improper use of CN had adverse impacts on wildlife and livestock, and sometimes permanent effects on ground water. He said that CN leach operations needed to be properly designed, operated and reclaimed. He said that this was a narrowly drawn bill, amending the Montana Metal Mine Reclamation Act, and that it responded directly to the problem to be addressed.

#### Testifying Opponents and Who They Represent:

Rhodetta Sloan, Chickadee Mining Company  
Kevin Jones, Arcturus Resources

#### Opponent Testimony:

Rhodetta Sloan testified against the bill, EXHIBIT 11.

Kevin Jones testified against the bill, EXHIBIT 12, suggesting the problem was with enforcement and recommended a Small Miner's Assistance Program to assist with meeting the requirements of the act.

Questions From Committee Members:

REP. RANEY asked DSL to respond to the time and enforcement issues raised by the opponents, and MR. NORTH stated that a small operator would have to apply for an operating permit, a process which would generally take 6-8 months for a small operation, although there were never any guarantees. With regards to enforcement of existing laws, he said that there were water quality laws applicable to any CN operation. However, there would be no requirement for construction design, operation and reclamation planning.

REP. HARPER asked that if a permit were only required for the heap leach phase, wouldn't it be possible for an operator to start the mine, and have the operating permit in effect prior to CN loading. Mr. North answered yes.

Closing by Sponsor: REP. GRADY stated that even though the mining industry appeared to be split on this issue, the majority know that something must be done. He said there had to be some watch on toxic substances regardless of the size of the operation.

## DISPOSITION OF HB 680

Motion: REP. ADDY moved that HB 680 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: Rep. Addy's motion CARRIED unanimously.

## HEARING ON HB 241

Presentation and Opening Statement by Sponsor:

REP. HARPER, House District 44, stated that he had agreed to introduce this bill as an agency bill for the Dept. of State Lands and that it covered all reagents used in ore processing, not just CN. Since then, Rep. Grady's bill was worked on together with the mining industry. Rep. Harper thanked the Montana Mining Association and DSL for getting together and working out a bill that was acceptable to both the agency and the industry, thus saving the legislative body a lot of time. He withdrew HB 241.

## DISPOSITION OF HB 241

Motion: REP. HARPER moved to TABLE HB 241.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: Rep. Harper's motion CARRIED unanimously.

HEARING ON HB 679

Presentation and Opening Statement by Sponsor:

REP. GRADY, House District 47, presented HB 679, stating that he had been working on this issue for three sessions, and that his intent was to have the small operators clean up their mess when the operation was completed, or when they left. It addressed another area of the Small Miner Exclusion, wherein a placer or dredge operation would have to submit a plan of reclamation and to have a reclamation bond in place. He submitted some amendments, EXHIBIT 13, stating that he had worked these out with representatives of the industry that morning. With that, he turned the hearing over to the proponents.

Testifying Proponents and Who They Represent:

Gary Langley, Montana Mining Association  
Jim Jensen, Montana Environmental Information Center  
John North, Dept. of State Lands (DSL)  
Stan Bradshaw, Montana Council of Trout Unlimited

Proponent Testimony:

Gary Langley stated that this was a consensus bill, a product of the work of the environmental community, the mining industry, and the agency. He introduced a number of supporters of the legislation, 13 small scale mining operators.

Jim Jensen quoted the Montana Constitution in support of this bill, the essence of which was that all lands disturbed by the taking of natural resources shall be reclaimed. He stated that this bill would bring Montana's statutes into compliance with Montana's Constitution.

John North stated that DSL's first real involvement came the day prior to the hearing. He said that the bill was a product of work by the miners and Rep. Grady, and commended them. He said that DSL supported and would continue to work with the sponsors and the miners on this issue.

Stan Bradshaw urged support for the bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: REP. GRADY closed, stating that it was a good bill, and showed a willingness on the part of the state to work with small miners, to help them to protect themselves and Montana too.

DISPOSITION OF HB 679

Motion: REP. O'KEEFE moved the bill.

Discussion: None

Amendments, Discussion, and Votes: REP. O'KEEFE moved the amendments as proposed in the gray bill. The motion CARRIED unanimously.

Recommendation and Vote: REP. KADAS moved that the bill DO PASS AS AMENDED and the motion CARRIED.

HEARING ON HB 707

Presentation and Opening Statement by Sponsor:

REP. IVERSON, House District 12, distributed 3 exhibits, an explanation of the bill, a supplement, and a Statement of Intent (EXHIBITS 14, 15 and 16). He stated that the bill was a conservative pilot program which addressed the leasing of existing water rights for the purpose of enhancing or maintaining streamflows. He said that the Board of Natural Resources could choose up to 10 streams or reaches, on the basis of critical need for water, where leasing would be likely to enhance the fishery. He said that the Dept. of Fish, Wildlife & Parks could negotiate with the water right holder, and the contract thus arrived at would have to specify exactly which portion of the stream the water was intended to be in, and a specific measurement plan.

REP. IVERSON said that the only water that could be leased would be water that had been historically consumed. He said that the bill would not confiscate anybody's water, would not adversely affect other water users, would not force anybody

to do anything he/she didn't want to do and was not a radical change in water policy. The problem he sought to address was that if water for which you held the right were left in the creek, the water right could be lost. He stated that the legislation would expand the property rights of water rights holders, and would allow for compensation for the exchange in the use of property.

Testifying Proponents and Who They Represent:

Glenn Marx, Governor's Office  
Lorents Grosfield, Montana Board of Natural Resources  
Karen Barclay, Director, Dept. of Natural Resources and Conservation  
Peggy Haaglund, Montana Association of Conservation Districts  
George Ochenski, Alliance for Montana Water  
Ron Marcoux, Montana Dept. of Fish, Wildlife and Parks  
Stan Bradshaw, Montana Council of Trout Unlimited  
Paul Roos, Fishing and Floating Outfitters Association of Montana  
Jack Salmond, Western Environmental Trade Association (WETA)  
Chris Hunter, Montana Chapter, American Fisheries Society  
Janet Ellis, Montana Audubon Legislative Fund  
Jim Jensen, Montana Environmental Information Center  
Rep. Ed Grady, House District 47

Proponent Testimony:

Glen Marx spoke in favor of the bill as a positive move for agriculture, the backbone of Montana's economy. He said that it was a reasonable bill and represented a cooperative effort regarding water rights leasing that would not allow for confiscation of water rights.

Lorents Grosfield said that the Board of Natural Resources had met the week previous, and had approved the instream flow protection portion of the State Water Plan. Mr. Grosfield read from that portion, which was in agreement with the intent and provisions of the legislation. He also introduced into the record a letter in support of the legislation from the Chairman of the Board of Natural Resources, and a letter from a member of the Board, Mr. Terry Anderson, also in support of HB 707 (EXHIBITS 17 & 18). Mr. Grosfield supported the addition of the Statement of Intent, and indicated that he would support other language regarding "perceived adverse effects to other users", and also language to ensure consistency with the State Water Plan, especially with regards to leasing "during critical low flow periods".

Karen Barclay spoke in favor of the bill (EXHIBIT 19).



Peggy Haaglund spoke in favor of the legislation (EXHIBIT 20).

George Ochenski stated that his organization had worked long and hard to handle every possible objection brought to them regarding water leasing, and felt that those objections had been answered in this legislation.

Ron Marcoux testified for HB 707 as set forth in EXHIBIT 21.

Stan Bradshaw said that the bill added one more tool with which the state could address problems with water shortages.

Paul Roos stated that HB 707 was a positive step towards helping tourism without adversely affecting anyone.

Jack Salmond stated that although his organization, WETA, had been historically against water leasing, and although their membership was still not totally comfortable with the concept, they stood in support of this bill in light of recent factors, namely drought conditions and widespread impacts of water shortages. He expressed concern that as this bill moved through the process, the interest of the private landowner would not be compromised.

Chris Hunter testified in favor of the bill (EXHIBIT 22), and suggested some provisions for strengthening the bill, in particular with regards to off stream rights, and the limitation on number of reaches or streams.

Janet Ellis testified in support of HB 707 (EXHIBIT 23).

Jim Jensen said that the bill would prevent the acrimony that had developed the summer before with the adverse impacts of water shortages due to continued drought.

Rep. Ed Grady testified in support of HB 707 and the State Water Plan, stating that it was 20 years too late. He said that he was aware that ranchers had some fear about the legislation, but reminded the committee that water was often wasted because of the fear of letting it go down stream. He stated that the bill could benefit agriculture, allowing for better management of a scarce resource.

Testifying Opponents and Who They Represent:

Rep. Chuck Swysgood, House District 73  
Ron Waterman, Montana Stockgrowers Association, Montana  
Cattlemomens Association, Montana Association of State  
Grazing Districts, and the Agricultural Protective  
Association

Dave McClure, Montana Farm Bureau and self  
Jo Brunner, Montana Water Resources Association  
Walter Malone, Teton Water Users Association and self  
Rep. Vernon Westlake, House District 76  
Kay Norinberg, Women Involved in Farm Economics (WIFE)  
Rep. Bernie Swift, House District 64  
Rep. Francis Koehnke, House District 32  
Bob Saunders, White Sulphur Springs

Opponent Testimony:

Rep. Swysgood said that he was not as opposed to the leasing option itself as he was to the tool being used. He said that this was one option that agriculture could not live with in the water plan. He stated that agriculture had fear, because water was a precious commodity. The problems he had were: 1) There were adverse effects on agriculture and on off stream supply; 2) The only reason this bill was here was because of the drought; 3) He was concerned about the measurement methods being determined by the rule making authority of FWP and the cost; 4) The words "pilot project" were not contained in the bill; and 5) The bill substantially changed water law.

Ron Waterman spoke in opposition to Hb 707 as set forth in EXHIBIT 24, stating that the bill changes the concept of Montana Water Law.

Dave McClure spoke against the bill, quoting from the policy book of the Montana Farm Bureau (EXHIBIT 25).

Jo Brunner offered amendments addressing water storage (EXHIBIT 26).

Walt Saunders testified in opposition to HB 707, stating that the biggest long term impact was to the aquifer.

Rep. Westlake spoke in opposition to HB 707 (EXHIBIT 27).

Kay Norenberg testified against the bill as set forth in EXHIBIT 28.

Rep. Swift testified against the bill, stating that he was for off stream storage, and not this approach.

Rep. Koehnke, as an irrigator, went on record as opposing the bill.

Bob Saunders testified against the bill.

Proponents Submitting Testimony Who Did Not Testify:

Kenneth Osterman, Hi Line Sportsmen (EXHIBIT 29).

Questions From Committee Members:

REP. CLARK asked which 10 streams were involved, and Mr. Marcoux said that there were 10 stream reaches which could potentially involved, but that they were not identified at this time. He said that FWP would work with DNRC, who would then identify the reaches.

REP. MOORE asked if this bill would give the landowner the right to lease a portion of a stream, and who would get paid. Rep. Iverson answered that the person who owned the water rights would get paid, and that donations to FWP would be used for this purpose.

REP. O'KEEFE asked a series of questions of Mr. Ted Doney, Doney and Thorson Law Firm, about the problem mentioned on page 12, lines 11-16 of the bill, by Mr. Waterman, regarding the maximum amount of water that could be leased, that amount being the amount historically consumed. Mr. Doney said that he concurred with Mr. Waterman's concerns about that particular section, but said that could be amended. He said that the section could stay as it read in the bill, but that it was confusing.

REP. O'KEEFE asked about Colorado's Instream Lease Law, and stated that Montana was essentially a Colorado Appropriation Doctrine state. He asked about Mr. Waterman's assertion that this bill would undermine the basis of water law in the state, when in fact the state Montana was modeled after had such a law. He asked Mr. Doney if he agreed. Mr. Doney stated that he did have a problem with leasing water rights, since a leasing of rights implied that a person was not needing their water. However, he felt that with regulations under very controlled conditions, a lease could work and it did in other states.

REP. O'KEEFE asked if under Montana law, and the abandonment portion of that law, one still needed to prove intent to abandon, and has that intent ever been proven. Mr. Doney said that had been proven in recent case law, but that this bill would negate the problem.

REP. HARPER asked a series of questions of Mr. Waterman, one of which concerned the definition of appropriate and the addition of leasing by FWP, and asked if that concern could be addressed by having the leasing of a water right included under the section dealing with beneficial use. Mr. Waterman said that, offhand, that would work.

REP. HARPER asked about Mr. Waterman's concern on page 12 of the bill relating to the length of the lease and the termination date. He asked if the inclusion in the bill of language that would prevent any leasing of water past the effective date would address that concern. Mr. Waterman said that was possible, and suggested that one option would be to state that all leases regardless of their length would terminate at the termination date of this act; another option would address the renewal section.

REP. RANEY asked about Rep. Swysgood's question regarding the impact on ground water and the aquifer. Rep. Iverson said that the bill prevents any possible adverse effect any other water right holder, and that the renewal clause prevents any lease from being renewed that developed adverse impacts later in the lease period.

REP. ROTH asked if anything forces people to lease the water. Rep. Iverson said no, that it was voluntary, and just one more option or use for property.

Closing by Sponsor: REP. IVERSON closed, stating that he had no problem with Mr. Doney's or Mr. Waterman's language, although he did not think it necessary. He said that "adverse effect" appeared to be the biggest problem, and he assured the committee that the bill would not allow for adverse effects. He stated that the bill was for a pilot project, with a sunset on it. He agreed that off stream storage was the real answer, but that this solution costs much more, and the state does not have that money. He said that the issue was being worked on now, and this bill was not meant to be a replacement for water development. Rep. Iverson finalized his comments, referring the committee to the handouts, stating that the supplemental handout described the measurement process, a standard practice and one that was fairly accurate. He said that it was a good bill, progressive, and not a major change in water law.

#### DISPOSITION OF HB 707

Motion: REP. ADDY moved that HB 707 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. HARPER moved the amendments which addressed the concerns of the agricultural lobby. The motion CARRIED unanimously.

REP. HANNAH moved the Statement of Intent, and the motion CARRIED unanimously.

REP. HANNAH moved to change the length of the lease to 5 years, Rep. Swysgood's amendment. REP. HARPER said that he didn't see any need for this amendment, as the water right owner would choose the length of the lease or contract. The motion FAILED.

REP. HANNAH moved another amendment regarding the number of reaches, reducing the number to 5, and the motion FAILED.

REP. CLARK moved to TABLE the bill, and the motion FAILED.

REP. MOORE moved the amendment to include the concept of storage facility construction. REP. HARPER said that the point was covered, and REP. KADAS asked if the intent of the amendment was to state that donations would only be made for storage facilities, and Rep. Raney said no. REP. O'KEEFE stated that he would only support the amendment if there were two separate accounts, one for leases, and one for storage facility construction. Again, REP. HARPER said that the issue was covered, and the amendment was WITHDRAWN.

Recommendation and Vote: REP. ADDY moved that HB 707 DO PASS AS AMENDED and the motion CARRIED, with Rep. Clark voting no.

#### HEARING ON HB 702

#### Presentation and Opening Statement by Sponsor:

REP. JOHN COBB, House District 42, opened the hearing stating that this bill could stand on its own, and would not conflict with HB 707 if that bill were to pass. Rep. Cobb said that FWP or DNRC could get an option to lease water anytime within a ten year period. That lease could only be exercised if the Governor were to declare a disaster or emergency due to drought. He said that during the period of the lease, the water right would be considered to date July 1, 1973, thus avoiding any adverse effects. He said that he had gone through the Board of Natural Resources. He said that the leasing of water rights would extend for the length of time that the disaster or state of emergency due to drought existed. The monies paid from agency budgets or the governor's emergency fund would be payment for crop losses incurred during the time of the lease.

#### Testifying Proponents and Who They Represent:

Lorents Grosfield, self  
Peggy Haaglund, Montana Association of Conservation  
Districts

#### Proponent Testimony:

Lorents Grosfield testified that since the Board of Natural Resources had not reviewed this proposal, he was testifying on behalf of himself. He stated that the bill would be consistent with the State Water Plan with reference to temporary leasing of water rights. He stated that the bill addresses strictly emergencies, and that this bill could be in effect during the summer of 1989, while HB 707 would take up to 6 months to 2 years to go into effect. He said that the bill offered a different approach, but was not inconsistent with HB 707.

Peggy Haaglund stated that the association supported the bill and the concept of water rights leasing, but on a voluntary basis.

Testifying Opponents and Who They Represent:

Stan Bradshaw, Montana Council of Trout Unlimited  
George Ochenski, Alliance for Montana Water  
Rep. Francis Koehnke, House District 32, irrigator  
Ted Doney, Doney and Thorson Law Firm  
Rep. Vernon Westlake, House District 76  
Dave McClure, Montana Farm Bureau Federation  
Kay Norenberg, Women Involved in Farm Economics  
Bob Saunders, White Sulphur Springs

Opponent Testimony:

Stan Bradshaw stated that emergency leases were one option considered by the State Water Plan Advisory Council. It was decided that it would not provide much of a remedy in a drought situation due to the date of the water right (July, 1973).

George Ochenski stated that leasing a 1973 water right, or giving it a 1973 priority, almost assured you of having a lease without any water in it, and for that reason, would not provide for any enhancement of instream flows. He also objected to the use of general fund monies for the leases.

Rep. Koehnke testified against the bill, stating that he was against leasing because of the adverse effects on junior water rights holders.

Ted Doney stated that the bill, unlike HB 707, had major flaws, including lack of protection for Junior water rights holders.

Rep. Westlake stated that he was against the bill for the same reasons addressed by Mr. Doney. He said that the same problem would occur with leasing, and that would be adverse effects on junior appropriators. That would

result in litigation. He stated that the best solution was the long term approach for additional storage.

Dave McClure testified against HB 702, citing the Farm Bureau's policy statement.

Kay Norenberg testified against the bill.

Bob Saunders spoke against the legislation, stating a concern about adverse possession and the potential for lawsuits.

Questions From Committee Members:

REP. O'KEEFE asked Mr. Grosfield about the July 1, 1973 date, referring to water use permit holders after that date. His concern was that the bill ignored permit holders as well as agricultural reservations under the Yellowstone system. Mr. Grosfield said that he did not understand it that way, and in fact thought it had the opposite effect. He said that basically the bill allows for the department to pay people for not irrigating while protecting them from the abandonment clause.

REP. OWENS asked about shrinkage on the water, and Mr. Iverson said that it depended upon the stream. He said that he was familiar with some streams that lost water to the ground as the water proceeded downstream, and others that gained water as they moved downstream.

REP. BROOKE asked Rep. Cobb if he knew of farmers and ranchers in his area who would have opted for such a leasing plan as this last summer, and he said yes, because they would have been compensated for the loss of their hay crop which was being adversely impacted by the drought.

REP. BROOKE continued, asking if there had been a groundswell opinion or if a survey had been taken to ascertain interest or support of this legislation. Rep. Cobb said that it was his own idea.

Closing by Sponsor: REP. COBB closed, stating that if you are not going to adversely affect anyone, then you have to have the last water right. He stated that the only ones who got hurt were the permit holders, who got hurt anyway under existing law.

DISPOSITION OF HB 702

Motion: REP. ADDY made a motion to TABLE HB 702.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion to table CARRIED, with Rep. Hannah and Rep. O'Keefe voting no.

Motion: REP. HANNAH made a motion to RECONSIDER the tabling of HB 702.

Recommendation and Vote: The motion CARRIED unanimously.

Motion: REP. O'KEEFE made a motion to TABLE the bill.

Recommendation and Vote: The motion CARRIED, with Rep. Harper and Rep. Hannah voting no.

HEARING ON HB 721

Presentation and Opening Statement by Sponsor:

REP. HANNAH opened on HB 721, a subdivision bill, and declared that due to lack of support on the committee, he would withdraw the bill.

DISPOSITION OF HB 721

Motion: REP. HANNAH moved to TABLE the bill

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

HEARING ON HB 678

Presentation and Opening Statement by Sponsor:

REP. HARPER opened, stating that it was customary that a member of the house into which a bill was introduced would present the bill in committee. He then turned the hearing over to Sen. Halligan.

Testifying Proponents and Who They Represent:

Senator Mike Halligan, House District 29, Missoula, and  
Chairman, Environmental Quality Council (EQC)  
Don Allen, Montana Wood Products Association  
Gary Brown, Montana State Forester, Dept. of State Lands  
(DSL)



Mark Simonich, F.H. Stoltze Land and Lumber Company,  
Columbia Falls  
Janet Ellis, Montana Audubon Legislative Fund  
Jack Salmond, Western Environmental Trade Association (WETA)  
Jim Jensen, Montana Environmental Information Center (MEIC)  
Kim Wilson, Montana Chapter of the Sierra Club  
Keith Olson, Montana Logging Association (MLA)  
Gordon Sanders, Champion International  
Stan Bradshaw, Montana Chapter of Trout Unlimited  
Scott Snelson, Montana Wildlife Federation

Proponent Testimony:

SEN. HALLIGAN stated that this bill was the result of a 2 year study, with which EQC was charged during the last session in HJR 49. The nature of the study was to study the watershed effects of forest practices. He said that the conclusion of the study, the hearings over a year and a half period of time, and the audits by technical teams was that we could handle any regulations through voluntary efforts by the timber industry. He said that the study group decided that a continuum of voluntary programs was absolutely necessary before the voluntary approach could be effective. Best management practices (BMP) were being and needed to be developed, a lead agency had to be designated, and information and education had to be available.

SEN. HALLIGAN said that this bill dealt with the pre-sale notification part of the continuum of voluntary efforts needed. Without this part of the puzzle, the other parts could not fall into place. SEN. HALLIGAN said that the bill would tie into existing law that already required owners and operators to notify the department about forest practices. The meat of the legislation was contained in the section that required the owner/operator to notify the dept. before any forest practices were carried out. The dept. in turn would provide information on the best management practices (BMP's) within 7 days.

Don Allen said the Montana Wood Products Association supported HJR 49, and supported this legislation. He stated that they would have preferred an on site consultation on a request rather than the required basis. He mentioned they would have preferred to omit the requirement that DSL be notified if proposed operations were changed, but wanted to go on record in support of the bill.

Gary Brown testified in favor of the legislation as set forth in EXHIBIT 30.

Rep. Ed Grady stated that he had followed the EQC process, and supported the legislation. He stated that he knew the bad

and the good, having performed both kinds of forest practices himself, and realized that using good forest practices could save the landowner more money in the long run.

Mark Simonich stated that he had been part of the EQC HJR 49 Study and was in support of the legislation. He said that he was grateful for the EQC's inclusions of many of their recommendations in the bill. Regarding the educational effort for the landowners and the loggers, he stated that the industry would like to be involved. He said that by involving the private sector, the costs to the state could be minimized.

Janet Ellis testified in favor of HB 678 (EXHIBIT 31).

Jack Salmond stated WETA's support for the bill.

Jim Jensen testified in favor of the bill reluctantly and added that it didn't provide for enforcement authority. He also said that the riparian zones were not adequately provided for, and that there had to be a method for monitoring the voluntary process in the coming biennium. He suggested that other methods would have to be considered for the riparian zones.

Kim Wilson said that they supported the bill and shared the concerns voiced by Audubon and MEIC. Because of those reservations, Sierra Club would be supporting other legislation dealing with forest practices. He did point out that this was a consensus bill with unanimous support from the EQC, which indicated to him that they believed there was a problem with forest practices in Montana.

Keith Olson expressed reluctant support, with concern that the regulations would have stifling results. He said that like Mr. Jensen, he was concerned about the impacts on industry, stating that it wouldn't matter if you were gummed to death or shot in the head, if you're dead, you're dead. He mentioned that since the EQC study began, the MLA had added a third professional forester to their staff whose responsibilities included scheduling workshops throughout their 9 statewide chapters.

Gordon Sanders testified in support of HB 678, EXHIBIT 32.

Stan Bradshaw testified that the bill did not go as far as they would have liked, but supported the bill for as far as it did go.

Scott Snelson said that the legislation was an important first step.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. CLARK asked if the bill would affect firewood cutting, and it was answered that it would only if road building or creek crossings were required.

REP. RANEY asked Mr. Allen about the comments he had heard from a large mill owner, that voluntary BMP's were worth a chance, and that a time would come when mill owners would not accept logs from operations that do not practice BMP's. Mr. Allen agreed, and said that this decision would be up to the individual mill. He did say that there was a strong commitment or insistence on the part of mill owners and operators that BMP's be used. REP. RANEY asked if the mill owners would apply enough pressure to insure that the legislature would not have to come in to regulate the loggers. Mr. Allen said that there would be an effort in this direction on everyone's part; everyone in different segments of the industry understands that he/she is under the gun.

Closing by Sponsor:

REP. HARPER spoke of the meetings and hours of work and study on the part of the EQC study participants, with Hugh Zackheim deserving a large amount of the credit for the hours he devoted to the process. He said that it was a consensus bill and a challenge. If the legislature sees performance, he said, there would be no further regulation; if they don't, there would be a Forest Practices Act, like most of the states in the region.

DISPOSITION OF HB 678

Motion: REP. HANNAH moved that HB 678 DO PASS.

Discussion: REP. Hannah stated that although there was still some disagreement on the bill, it was a consensus and the product of an enormous amount of work. He encouraged the committee to give the bill a do pass.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

HEARING ON HB 715

Presentation and Opening Statement by Sponsor:

- REP. BOB REAM, House District 54, opened, stating that Montana was the only state in the region without a Forest Practices Act. He mentioned that the preceding bill led up nicely to this bill. The study referred to in that hearing, the EQC HJR 49 Study, was an excellent study, from which the most important thing discovered was that the vast majority of problems that occur in the management of forest lands occur in the narrow strip associated with streams, particularly in the headwaters areas.
- REP. REAM ran through the bill, entitled the Headwaters Conservation Act, stating that the Statement of Intent addressed the issue of rulemaking authority. He said that the heart of the bill was contained on page 7, in Section 4. He also offered an amendment (EXHIBIT 33) to delete subsection 7, Section 6, on page 12, stating that that subsection was controversial.

Testifying Proponents and Who They Represent:

Pam Hackley, soil scientist, OEA Research  
Chris Hunter, Montana Chapter American Fisheries Society  
Sanna Porte Kiesling, self and parents  
Jim Jensen, Montana Environmental Information Center  
Gus Glaser, Missoula  
Stan Bradshaw, Montana Council of Trout Unlimited  
Janet Ellis, Montana Audubon Legislative Fund  
Kim Wilson, Montana Sierra Club  
Scott Snelson, Montana Wildlife Federation  
Dana Field, self

Proponent Testimony:

- Pam Hackley, a consulting soil scientist in Helena, testified in favor of the bill (EXHIBIT 34) and passed around some photos to illustrate what she was talking about in her testimony.
- Chris Hunter testified in favor of the bill as set forth in (EXHIBIT 35).
- Sanna Porte Kiesling testified in support of HB 715 as set forth in the letter from her parents (EXHIBIT 36).
- Jim Jensen said that his organization, MEIC, stood in strong support of HB 715, stating that it was narrowly drafted. He said that it was shown clearly in the HJR 49 study that voluntary agreements with the forest products industry were not working in the stream zones,

and that the legislature must address this issue. The cumulative impacts of inaction were accruing, he said. Mr. Jensen reiterated that the bill was a reasonable approach and was not radical nor revolutionary, but was rather incremental and would move the state towards keeping the waters clean, and the zones around the streams pristine.

Gus Glaser supported the bill because it sought to inform the conduct of best management forest practices in streamside zones with environmental science and ethical principles. He said that he supported the bill because it was based on the ethical principle to preserve the biotic diversity, beauty and integrity of streamside zones.

Stan Bradshaw stated that this bill got to the heart of what TU was all about. He said that many of the tributary streams upon which logging practices were found were also the most important spawning and rearing areas for many of our trout. He said that when those areas silted up, they were, for all practical purposes, dead for the purposes of raising and spawning trout. He said that the bill filled the gap left by the previous bill and was good legislation.

Janet Ellis testified in support of the bill as set forth in EXHIBIT 37.

Kim Wilson testified as set forth in EXHIBIT 38.

Scott Snelson stated that MWF was strongly in support of the bill.

Dana Field stated her support for HB 715.

Testifying Opponents and Who They Represent:

Mark Simonich, F.H. Stoltze Land and Lumber Company  
Peggy Haaglund, Montana Association of Conservation  
Districts  
Don Allen, Montana Wood Products Industry  
Gordon Sanders, Champion International Corporation  
Keith Olson, Montana Logging Association

Opponent Testimony:

Mark Simonich testified that they felt that the BMP's were adequate, and that the efforts endorsed by the EQC as set forth in HB 678 should be given a chance to prove themselves. He said that the challenge was upon the timber industry to show that they can voluntarily comply, use the BMP's, and make them work. He said that the industry felt

that the BMP's, which the industry had voluntarily adopted, were good and were adequate to protect the streamside zones.

Peggy Haaglund testified against the bill as set forth in EXHIBIT 39. She included a copy of the 310 Model Rules from the Lewis and Clark County Conservation District (EXHIBIT 39A).

Don Allen stated that he opposed the bill. He said that the HJR 49 Study's conclusions show that the industry deserved the chance to make the voluntary program work. He did not think it necessary to require separate BMP's for streamsidess. He said that a strong disagreement occurred on page 3, regarding the development of guidelines by FWP. The sponsor's amendment was an improvement, he said, but the bill was still unacceptable to the industry.

Gordon Sanders said that the bill conflicted with the 310 law, and would complicate and contradict the HJR 49 report. He said that those affected, the private landowners, had had no input into the process of developing this legislation. He said that Champion International regarded the regulatory legislation as unnecessary.

Keith Olson said that the bill was a thinly disguised Forest Practices Act.

#### Questions From Committee Members:

REP. KADAS asked Mr. Olson how the legislature would know when to give the industry a push. He quoted the EQC report regarding the departures from acceptable ratings in streamside zones discovered in the audits, and asked if that level of damage was acceptable. Mr. Olson said that the industry didn't want any level of damage, and couldn't guarantee perfection, but could guarantee commitment to the voluntary process. REP. KADAS stated that the problem the committee had was whether they saw progress in the future, and that if they didn't, the committee and the legislature would have to enact regulatory legislation such as HB 715. Mr. Olson accepted that challenge.

REP. ROTH asked Ms Hackley about the location and age of the situations illustrated. Ms Hackley said that the sites had been harvested within 2 years of the audit. REP. ROTH asked if these harvests and/or forest practices had taken place after the 310 rule was in place, and Ms Hackley said yes. REP. ROTH asked if these were completed sites, and Ms Hackley said not necessarily, and that there was some intention of coming back on the

part of the operator to rectify the situation on the large private holdings.

REP. RANEY asked Ms Ellis if there were a difference between the contents of this bill and the 310 law. Ms Ellis said that it was within her testimony (EXHIBIT 37).

REP. RANEY asked of Mr. Allen why he would be opposed to protecting these tiny bits of land, after 40 days of discussing the importance of jobs, water, tourism, fisheries, etc. Mr. Allen answered that they did want to protect those streamside areas, but that with the educational effort and improved practices set forth in HB 678, they could do it without this bill.

REP. MOORE asked how much money is made out of the timber along side of a stream, and Mr. Allen answered that economics was not the only element in making a timber harvest decision, and that was not the question they wanted to address. REP. MOORE asked, from personal experience in the Swan Valley, if there was a need for this to get private landowners to be responsible. Mr. Allen said that he had no specific answer but that management decisions were made in the interest of protecting the resource. He said that not every land manager was perfect.

REP. KADAS stated that the legislature had a baseline now, and that without significant improvement, the industry would have failed the challenge. Something more stringent than voluntary BMP's would be needed. Mr. Allen stated that he agreed, and that the ball was in their court. He said that it would be premature to pass this bill at the same time that the other one would be passed, since the industry would not have had a chance to prove itself.

Closing by Sponsor: REP. REAM stated that HB 715 was not a radical piece of legislation, and that he was not anti-logging. He said that this bill would not replace or usurp the 310 law, and that it dealt with the banks of streams rather than the streams themselves. He said that there would be no impacts on the industry by this legislation if they were using the best management practices in streamside zones, and questioned the paranoia of the opponents.

#### DISPOSITION OF HB 715

Motion: REP. KADAS moved that HB 715 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. KADAS moved the amendments. MR. ZACKHEIM discussed the amendments, one as proposed by Rep. Ream, and others proposed by the Legislative Council editor. He said the latter were technical amendments and did not change the intent of the bill. The motion CARRIED to accept the amendments.

REP. RANEY discussed the possibility of amendments including lakes or increasing the footage in the bill, but there was little interest.

REP. HANNAH moved an amendment, on page 9, line 5, striking the remainder of the sentence following "protection" to the period following "operator". The motion CARRIED, with REP. RANEY voting no.

REP. OWENS said that the bill was a good idea, but wouldn't work. He said that sometimes you did have to log the streamside. Selective logging was needed as a best management practice along the streamside. REP. RANEY said that they could be snaked out.

Motion: REP. OWENS made a motion to TABLE the bill, and the motion FAILED, 9-7 on a recorded vote.

Recommendation and Vote: REP. ADDY moved that HB 715 DO PASS AS AMENDED. The motion FAILED in a tie, 8-8, on a recorded vote.

Motion: REP. HANNAH made a motion to RECONSIDER.

Discussion: REP. HANNAH stated that the HB 715 replaced the voluntary work that came out of EQC, and that was why he was voting against the bill, even though he was in favor of the concept. REP. BROOKE stated that she would abstain, since she has a conflict of interest with her husband's work.

Vote: The motion CARRIED, with Rep. Clark, Rep. Roth, and Rep. Smith voting no.

Amendments, Discussion & Votes: REP. HARPER moved an amendment, which would decrease the width from 50 feet to 25 feet, which was the width adopted by the EQC committee. The amendment CARRIED.

Recommendation and Vote: REP. ADDY moved DO PASS AS AMENDED, and the motion CARRIED, 9-6 on a recorded vote.

HEARING ON HB 697

Presentation and Opening Statement by Sponsor:



REP. MARK O'KEEFE, House District 45, presented on behalf of Rep. Ben Cohen, House District 3, who was ill. He opened with the quote "I will say blatantly and outright that 99% of the sediment that enters water is the result of road construction and activity infringing too close to the riparian streamside zones", Donald Potts, Hydrologist and Instructor, University of Montana, School of Forestry. This bill would be a licensing bill for the Dept. of State Lands (DSL) to license individuals who construct forest roads in critical watershed areas.

REP. O'KEEFE showed a short series of slides illustrating examples of forest road construction resulting in adverse impacts on riparian streamside zones. He then went through the bill, stating that it was an attempt by the sponsor to set up a procedure by which individuals building roads and operating earth moving equipment for the construction of roads in critical watershed areas would be licensed.

Testifying Proponents and Who They Represent:

Kim Wilson, Montana Chapter, Sierra Club  
Janet Ellis, Montana Audubon Legislative Fund  
Dana Field, self  
Jim Jensen, Montana Environmental Information Center

Proponent Testimony:

Kim Wilson testified that the bill would complement both the EQC bill and HB 715, addressing the other prime area of concern where BMP's were failing: steep, erosion prone areas. The bill identified the critical watershed areas for which the DSL would identify components, stipulate licensing, and make provisions for education for heavy equipment operators.

Janet Ellis testified as set forth in EXHIBIT 40.

Dana Field testified that she had participated in the EQC study committees. She said that BMP's were minimal standards for typical situations and would not apply to higher hazard sites (steep sites with more erodible soils) or more critical hazard watershed areas. Regarding licensure of operators, she said that this was a critical need and that education would go a long way in preventing problems on even less critical areas also.

Jim Jensen said that the bill was designed to accomplish the same goal as the previous bill from a different direction. He said that the industry had had its chance to develop good practices for the last two

decades and had failed. Regarding their willingness to meet the challenge now, he said that there would be no way to tell, as there was no mechanism to monitor practices, no HJR 49 Study for the next biennium. He stated that we should err on the side of protecting the resource since the industry had erred on the side of destroying the resource.

Testifying Opponents and Who They Represent:

Keith Olson, Montana Logging Association  
Steve Neilson, L. M. Neilson & Sons, Inc.  
Mark Simonich, F.H. Stoltze Land and Lumber Company  
Jerry Jack, Montana Stockgrowers Association  
Jack Salmond, Western Environmental Trade Association (WETA)  
Don Allen, Montana Wood Products Association  
Rep. Lum Owens

Opponent Testimony:

Keith Olson suggested that HB 697 was one of a series of bills to provide a Forest Practices Act. He said that it was determined by the EQC interim study to be unnecessary.

Steve Neilson, an independent contractor, commented on the slides, and stated that the wash photographed was probably a poor design, and not the fault of the contractor. Regarding the licensure, he said that a license would not insure that a contractor would be a good one. He suggested that the salting and sanding of highways did more damage to water quality.

Mark Simonich said that this bill would not insure that accidents such as those shown in the slides would not occur in the future. He said that he was on the audit team, and did not see such areas as pictured in the slides. He said that they appeared to have been photographed during spring breakup. He recommended a voluntary effort of education for operators, and opposed this legislation. He expressed a willingness to participate in an ongoing, periodic field audit, with DSL as the lead agency.

Jerry Jack stated that he was concerned that the bill would apply to grazing land and require them to come under the licensure process when road building. He also said that there would be instances that would require monitoring by the DSL, and wondered why there was not a fiscal note.

Jack Salmond echoed Mr. Jack's testimony and urged a do not pass.

Don Allen stated that all of the reasons for the bill not to pass had already been stated and that he urged a do not pass.

Lum Owens rose as an opponent, and asked what the union would think of this. He spoke of his experience as a road builder in the woods, and said that for nearly all of these roads, he had blueprints from experienced engineers, telling him and his operators how the road was to be built. He suggested that this bill went in the wrong direction to educate and license the equipment operators.

Questions From Committee Members:

REP. MOORE asked Mr. Simonich if they didn't have a hydrologist or geologist working on a road plan in order to preclude the possibility of "crack out". Mr. Simonich said that it could happen even with the best technical advice, and that for most forest roads, as much expertise as possible was used before the roads were built.

REP. KADAS asked Mr. Simonich to describe the field audits he suggested, and Mr. Simonich said that he envisioned the teams being similar to the ones that operated during the past interim. He said that his participation was his company's contribution to the process, as was the participation of other industry representatives. REP. KADAS asked the department, DSL, if there would be an ongoing overview of forest practices. Gary Brown of DSL said that the state members of audit teams' participation was paid for by per diem, and that there would be ongoing monitoring, as indicated by the EQC in their report and in their meetings. DSL offered its suggestion that the Cumulative Effects Watershed Cooperative continue the audit.

REP. KADAS asked the same question of Jim Jensen, and Mr. Jensen said that there was no appropriation proposed for any ongoing audit activities. From MEIC's and other nonprofit groups' points of view, they did not have the capital available that the private sector has; therefore, it would be difficult to ask people to volunteer to work on these audit committees for the next two years.

Closing by Sponsor: REP. O'KEEFE stated that this was important educational legislation.

DISPOSITION OF HB 697

Motion: REP. SMITH moved to TABLE HB 697.

Discussion:

Amendments, Discussion, and Votes:

Recommendation and Vote: The motion CARRIED, with Rep. Addy, Rep. O'Keefe, and Rep. Cohen voting no.

HEARING ON HB 727

Presentation and Opening Statement by Sponsor:

REP. BOB MARKS, House District 75, introduced the bill as a result of a disagreement between a couple of interest groups, engineers and those drilling the wells, in the past year. The bill has to do with the construction of monitoring wells. The groups got together to settle their problems, and this bill was the result. The bill provides for construction standards and licensure for installers, as well as a bond requirement.

Testifying Proponents and Who They Represent:

Wes Lindsay, Chairman, Montana Water Well Contractors  
Licensing Board  
Pat Byrne, Montana Water Well Drillers Association  
Ken Munski, Civil Engineer, Montana Section of the American  
Society of Civil Engineers, Montana Consulting  
Engineers Council, Montana Technical Council

Proponent Testimony:

Wes Lindsay spoke in favor of the bill, and said it was an amendment to the current law that provided for minimum construction standards and licensure. It was a slight modification to include a redefinition of monitoring holes in the regulations.

Pat Byrne said that his associations stood in support of the bill, which represented a consensus. The bill was an improvement of the existing legislation, in that it reduced redundant regulation and eliminated some contradictory regulations.

Ken Munski stated that his association participated in the preparation of the legislation and supported it.

Testifying Opponents and Who They Represent:

John Fitzpatrick, Director of Community and Regulatory  
Affairs, Pegasus Gold Corporation  
Ted Doney, ASARCO, Inc.  
Jim Jensen, Montana Environmental Information Center

Opponent Testimony:

John Fitzpatrick said that he did not oppose the entire bill, but three areas which he believed defective. He suggested the amendments addressing these areas (EXHIBIT 41). One objection was that the definition would include "pump-back well", or one used for recovery to take out pollutants. He said that these were already covered in another statute and that this was unnecessary and caused multiplication of licensing categories. The second objection dealt with the requirement for a licensed professional engineer on a geotechnical boring, which he considered unnecessary to be covered under this legislation. The third objection the bill should apply to future wells only, and not to the wells in place now.

Ted Doney said that Asarco opposed the bill for the reasons stated by Mr. Fitzpatrick, but would support it with the amendments he submitted.

Jim Jensen said that the bill added unnecessary, expensive regulatory duplication to the mining industry, and would support the bill with the amendments.

Questions From Committee Members:

REP. KADAS asked Mr. Fitzpatrick about the language on page 2, line 14, "monitoring well does not include geotechnical borings", and if that language did not take care of his objection with regards to pollutant recovery well, and Mr. Fitzpatrick said that geotechnical boring was not to recover pollutants, but was a test hole to look at rock and slope type.

REP. KADAS asked the proponents to respond to the amendments. REP. MARKS said that it appeared that he was in the middle of a family fight, and was not aware of the opposition. He said that the bill would do a lot either way in settling duplication of licensure that existed right now.

REP. O'KEEFE submitted an amendment on behalf of REP. COHEN, suggested in a letter from Bob Hafferman, Board of Professional Engineers and Land Surveyors, (EXHIBIT 42). The amendment essentially excluded investigations of shallow, non-potable, seasonal ground water.

Proponents said that they would not have objection, and opponents said the same.

REP. KADAS asked Mr. Lindsay and Mr. Munski to respond to the mining industry's proposed amendments. Mr. Lindsay said that pollution was pollution, and opposed the amendments. Mr. Munski said that he would have to speak only for himself since he had just seen the amendments. He said that he objected to amendment #2, assuring the committee that the professional engineers had not suggested this wording.

REP. KADAS asked Rep. Marks if this bill would fall under the sunrise law, and Rep. Marks said no, because it did not create a new board or license.

Closing by Sponsor: REP. MARKS closed, stating that the parties would be able to solve their differences, given more time. He suggested that the committee send the bill to the Senate in either form, for the disagreement to be worked out there.

#### DISPOSITION OF HB 727

Motion: REP. KADAS moved the HB 727 DO PASS.

Discussion: Mr. Zackheim introduced new amendments developed by the interested parties in response to the earlier amendments. The words "pollutant recovery or" would be stricken from amendment one, EXHIBIT 41, amendment two would remain, and an insert into amendment 3 would define geotechnical boring.

Amendments, Discussion, and Votes: REP. HARPER moved the amendments. The motion CARRIED.

REP. O'KEEFE moved the amendments suggested by Mr. Hafferman, and the motion CARRIED.

REP. RANEY moved an amendment to correct a spelling error, and the motion CARRIED.

Recommendation and Vote: REP. KADAS moved that HB 727 DO PASS AS AMENDED, and the motion CARRIED.

#### HEARING ON HB 672

Presentation and Opening Statement by Sponsor:

REP. O'KEEFE presented the bill for Rep. Cohen, who was ill. He said that the legislation would plug a hole in the Montana

Solid Waste Disposal Law. He said that the bill attempted to remove the provision allowing corporations to dispose of their solid waste on their property without falling under the law. This would be accomplished by substituting the word individual for the word person.

Testifying Proponents and Who They Represent:

Chris Kaufmann, Montana Environmental Information  
Center

Rep. Bob Raney, House District 82

Proponent Testimony:

Chris Kaufmann testified that the bill would address the ability of corporations to dump any garbage they wanted, as long as it was on their own land. Without regulations, ground water quality could be compromised.

REP. RANEY spoke as a proponent, telling the committee about a community in eastern Montana, where a corporation was dumping sludge into the community landfill. When the state stepped in to prevent the dumping, the corporation bought some property and proceeded to dump on that property.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. ROTH asked if the bill would apply to an incorporated ranch or farm, and REP. O'KEEFE said that an amendment had been prepared to ensure that the regulation would not apply to an incorporated farm or ranch (EXHIBIT 42).

REP. OWENS asked if the bill would apply to sawmill waste, and REP. O'KEEFE said that he did not believe so.

Closing by Sponsor: REP. O'KEEFE encouraged a do pass, stating that they would deal with the sawmill issue in executive action.

DISPOSITION OF HB 672

Motion: REP. MOORE moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. SMITH moved the amendments. Hugh Zackheim, in response to a question, stated that the current law considered sawmill waste as a solid waste, which would bring it under the bill. REP. O'KEEFE said that he would work with Rep. Owens and the sponsor to work out any needed floor amendments. REP. HARPER suggested inserting language to exempt sawmill waste.

REP. HARPER moved an amendment to exempt forest products waste, and for Mr. Zackheim to draft the appropriate language. The motion CARRIED, with Rep. Hannah voting no.

Recommendation and Vote: REP. MOORE moved that HB 672 DO PASS AS AMENDED, and the motion CARRIED.

HEARING ON HJR 29

Presentation and Opening Statement by Sponsor:

REP. RANEY, House District 82, presented the committee bill, which ensured that all water rights would be adjudicated before water could be used in coal slurry pipelines. He said that the resolution was initially brought forward by railroad people.

Testifying Proponents and Who They Represent:

Chris Kaufmann, Montana Environmental Information Center

Proponent Testimony:

Ms Kaufmann rose in support of the resolution.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None



Closing by Sponsor: REP. RANEY closed.

DISPOSITION OF HJR 29

Motion: REP. RANEY moved that HJR 29 DO PASS.


Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 10:35 p.m.

  
\_\_\_\_\_  
REP. RANEY, Chairperson

BR/cm

4112.min

## DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 2/17/89

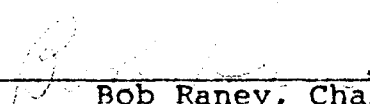
NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman			✓
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto			✓
Rep. Bob Gilbert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

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report  
that House Bill 680 (first reading copy -- white) do pass .

Signed:   
Bob Raney, Chairman

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 679 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Bob Raney, Chairman

And, that such amendments read:

1. Title, lines 5 through 7.  
Following: "TO" on line 5.  
Strike: "MEET" on line 5 through "ACRES" on line 7  
Insert: "RECLAIM LANDS DISTURBED BY THE OPERATIONS AND TO POST A  
PERFORMANCE BOND EQUAL TO THE COST TO THE STATE OF  
RECLAIMING THE DISTURBED LANDS"
2. Title, lines 7 through 9.  
Following: "ACRES;" on line 7  
Strike: remainder of line 7 through "DEGREES;" on line 9
3. Page 4, line 25 and page 5, line 1.  
Strike: ", or 2 acres if the operations are placer or dredge  
mining,"
4. Page 5, lines 4 and 5.  
Strike: ", or 2 acres if the operations are placer or dredge  
mining,"
5. Page 6, line 24.  
Strike: "The"  
Insert: "Except as provided in subsection (3), the"
6. Page 7, lines 7 and 8.  
Strike: ", and the construction of fences or barriers around  
opencuts with walls steeper than 45 degrees"
7. Page 7, line 8.  
Strike: "and"
8. Page 7, line 11.

Following: "department"

Strike: "."

Insert: "; and (d) if the small miner's operations are placer or dredge mining, that he shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas."

9. Page 8, line 12.

Following: "exemption."

Insert: "(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the cost to the state of reclaiming the disturbed land."

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that House Bill 707 (first reading copy -- white), with statement of intent attached, do pass as amended .

igned: \_\_\_\_\_  
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 7  
Following: "RECREATION"  
Insert: "DURING CRITICAL LOW FLOW PERIODS"
2. Page 1.  
Following: line 14  
Insert: " STATEMENT OF INTENT

A statement of intent is provided for this bill in order to give additional guidance to the board of natural resources and conservation and the involved state agencies concerning the review and processing of lease applications for the purpose of maintaining or enhancing stream flows for fish, wildlife, or recreation.

The legislature intends that the board designate stream reaches eligible for water leasing in areas where leasing is necessary or likely to be necessary to enhance or maintain fish, wildlife, or recreation. Upon receipt of a list of stream reaches from the department of fish, wildlife, and parks, the board shall act expeditiously to designate eligible stream reaches. However, the legislature also encourages the board to select stream reaches where leasing has a good chance of success and where all interests may be satisfied.

The legislature also intends that the review process for lease applications be thorough and provide ample opportunity for consideration and input by concerned persons. As required in [section 4], the process should involve notice and opportunity for objections and hearing in the same manner provided for proposed changes in appropriation rights. The legislature contemplates that the

department of fish, wildlife, and parks will meet with appropriators along each designated stream reach to assess and consider any concerns before filing applications for lease authorizations. The legislature also encourages the department of fish, wildlife, and parks to assemble lease applications for filing at the same time to minimize costs to potential objectors. Moreover, the legislature anticipates that the department of natural resources and conservation will review the proposed leases for a single stream reach in one proceeding, though the potential for another set of lease applications at a future date is recognized.

The accurate identification of the stream reach in both the application and lease authorization is critical to a successful leasing program. Upon issuance of a lease authorization with an identified stream reach, the legislature intends that the entire leased appropriation may be protected to the extent provided under Title 85, chapter 2, in any part of the stream reach that is above the lessor's point of diversion. However, only the historical consumptive use of the right, or a smaller amount if specified in the lease authorization by the department of natural resources and conservation, may be protected in any part of the stream reach that is below the lessor's point of diversion. Finally, the legislature intends for the lessor to be responsible for taking action, if necessary, to protect the instream flow amount specified in the lease authorization, though the lessor and lessee may specify otherwise by contract.

From a broad policy perspective, the legislature desires to emphasize that the department of natural resources and conservation should consider and, if potentially feasible, recommend supplemental or alternative strategies that provide long-term solutions to problems that are not or probably will not be addressed adequately by water leasing in the board-designated stream reaches. These strategies may include storage enhancement or development and recharge from ground water sources."

3. Page 2, line 8.  
Following: "uses;"  
Strike: "and"

4. Page 2, line 12.  
Following: "85-2-141"  
Strike: "."  
Insert: "; and"

5. Page 2.

Following: line 12

Insert: "(c) a use of water by the department of fish, wildlife,  
and parks pursuant to a lease authorized under [section 4]."

6. Page 11, line 21.

Following: "recreation"

Insert: "during critical low flow periods"

7. Page 12, line 2.

Following: "recreation"

Insert: "during critical low flow periods"

8. Page 12, line 12.

Following: "However,"

Insert: "of the amount leased"

9. Page 14, line 4.

Following: "recreation"

Insert: "during critical low flow periods"

10. Page 14, line 19.

Following: "fund"

Insert: "exclusively"

11. Page 14, line 21.

Following: "recreation"

Insert: "unless expenditure for a different purpose is  
authorized pursuant to 87-1-614"



STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report  
that House Bill 678 (first reading copy -- white) do pass .

Signed:   
Bob Raney, Chairman

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 715 (first reading copy -- white) do pass as amended .

Signed: Bob Raney  
Bob Raney, Chairman

And, that such amendments read:

1. Page 2, line 25.

Strike: "50"

Insert: "25"

2. Page 6, line 16.

Strike: "water course"

Insert: "watercourse"

3. Page 6, line 24.

Strike: "50"

Insert: "25"

4. Page 7, line 13.

Strike: "[section 7]"

Insert: "[sections 1 through 7]"

5. Page 9, line 2.

Strike: "[section 7]"

Insert: "[sections 1 through 7]"

6. Page 9, lines 5 and 6.

Strike: "and" on line 5 through "operator" on line 6

7. Page 11, line 8.

Following: "and"

Insert: "the"

8. Page 11, line 15.  
Strike: "After"  
Insert: "If, after"  
Following: "hearing,"  
Strike: "if"

9. Page 12, line 2.  
Strike: "(6)"  
Insert: "(4)"  
Strike: "(5)"  
Insert: "(3)"

10. Page 12, lines 5 through 14.  
Strike: subsection (7) in its entirety

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 727 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 17.

Following: "PROVIDING"

Insert: "AN APPLICABILITY DATE AND"

2. Page 2.

Following: line 7

Insert: "(4) "Geotechnical boring" means a hole drilled to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock."

Renumber: subsequent subsections

3. Page 2, line 9.

Strike: "certain purposes, including"

4. Page 2, lines 15 and 16.

Strike: "installed" on line 15 through "engineer and" on line 16

Insert: ", "

Following: "holes"

Insert: ", "

5. Page 2, line 18.

Following: "fields"

Strike: ", "

Insert: "or"

Following: "lagoons"

Strike: ", "

6. Page 2, line 19.

Strike: "both"

Insert: "or to investigate shallow, nonpotable, seasonal

groundwater"

7. Page 3, line 21.

Strike: "cosnstructor's"

Insert: "constructor's"

8. Page 13.

Following: line 11

Insert: "NEW SECTION. Section 10. Applicability. [This act]  
applies only to monitoring wells drilled on or after the  
effective date of [this act]."

Renumber: subsequent section

STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 672 (first reading copy -- white) do pass as amended .

Signed: \_\_\_\_\_  
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 6.

Strike: "AN INDIVIDUAL DISPOSING"

Insert: "THE DISPOSAL"

2. Title, line 7.

Strike: "THE"

Insert: "AN"

3. Title, line 8.

Following: "OPERATIONS"

Insert: "OR WITH A CORPORATION'S AGRICULTURAL OR FOREST PRODUCTS  
OPERATIONS"

4. Page 1, line 15.

Following: "(1)"

Insert: "(a)"

5. Page 1, line 22.

Following: "hazard"

Insert: "or violate laws governing the disposal of hazardous or  
deleterious substances"

6. Page 1.

Following: line 22

Insert: "(b) This part may not be construed to prohibit a corporation from disposing of its own solid waste that was generated in reasonable association with its agricultural or forest products operations upon land owned or leased by that corporation as long as the disposal does not create a nuisance or public health hazard or violate laws governing the disposal of hazardous or deleterious substances."

7. Page 1, line 23.  
Strike: "exclusion"  
Insert: "exclusions"

8. Page 1, line 24.  
Strike: "does"  
Insert: "do"

9. Page 1, line 25.  
Strike: "which"  
Insert: "that"

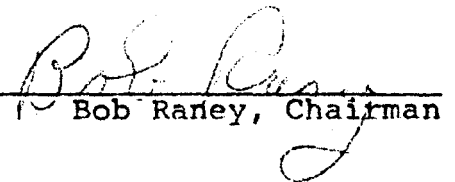
STANDING COMMITTEE REPORT

February 18, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report  
that House Joint Resolution 29 (first reading copy -- white)  
do pass .

Signed: \_\_\_\_\_

  
Bob Raney, Chairman



February 16, 1989

HOUSE BILL 676  
INFECTIOUS WASTE MANAGEMENT ACT

Sponsor: Rep. Bob Raney, D-Livingston

Status: Hearing in House Natural Resources Committee  
3 p.m. on Friday, February 17, 1989

Background:

Montana is one of only six states that does not regulate the treatment, storage, transport or disposal of infectious waste. This lack of regulation serves as an invitation for infectious waste generators from across the country to ship their garbage to the Big Sky Country -- especially given the strict regulations and high costs of disposal in midwestern, eastern, and west coast states.

In recent months, several out-of-state waste disposal firms have indicated strong interest in shipping large quantities of infectious waste to Livingston, the site of Montana's only commercial waste incinerator. One firm would like to bring in 20 tons or more of medical wastes per week for incineration, and at least one other firm is reportedly interested in disposing of similar or larger quantities.

The Montana Department of Health and Environmental Sciences has virtually no legal authority, funds or staff to monitor these operations or to ensure that public is protected from exposure to the wastes or from exposure to air pollutants released by the burning of infectious wastes and medical plastics. There are currently no applicable federal regulations.

House Bill 676 addresses these problems by giving the state control over infectious waste disposal, establishing stringent management and air quality requirements, and funding the regulatory effort. Although the proposed legislation does not ban the importation of infectious waste into Montana -- such an approach could be challenged as unconstitutional through the courts -- it does give Montanans the strong public health protections they need to respond to the growing national problem of infectious waste disposal.

### Purposes of HB 676:

To closely regulate the treatment, storage, disposal and transport of infectious waste in Montana

To establish a moratorium on the importation of infectious waste into Montana until state regulations are in place

To ensure that air quality is protected before any new commercial infectious waste incinerator can be operated and before any existing facility can expand its waste incineration capacity

To establish fees on infectious waste disposal facilities and transporters to support a state regulatory program

To require a public hearing before the issuance of a commercial permit for infectious waste disposal

### Effects of the Legislation:

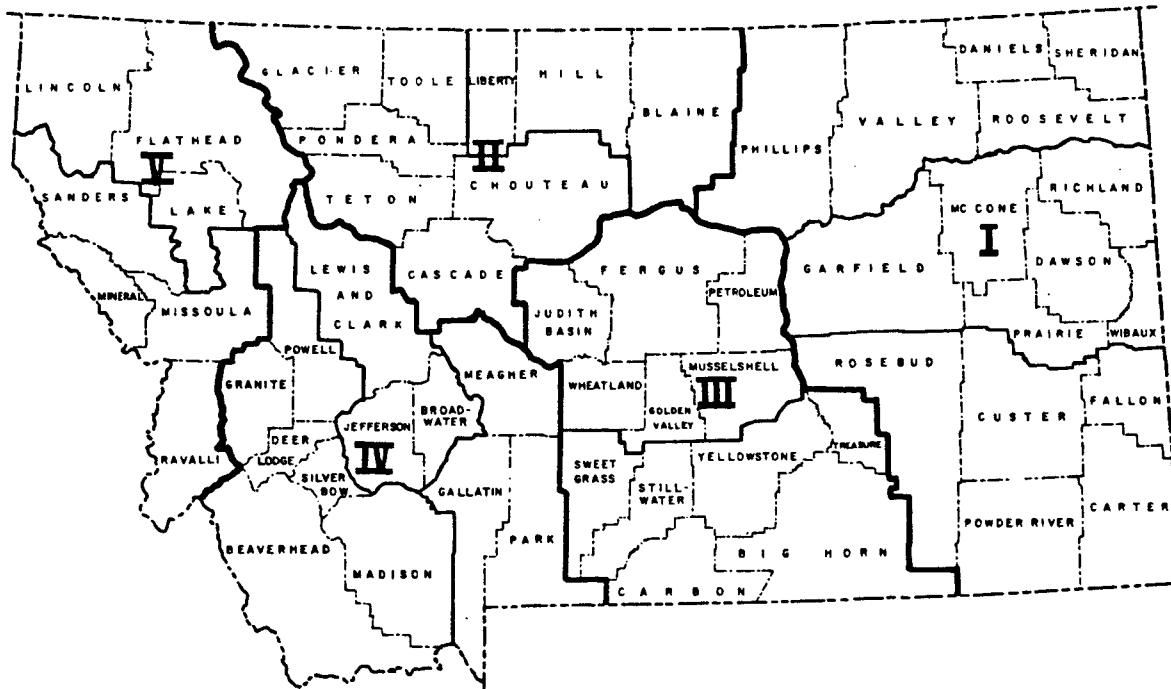
Importation of infectious waste for disposal in Montana would be prevented until state regulations on treatment, storage, transport, and disposal are in place and until the disposal facility receives a state permit. Additionally, new incineration of such waste would be prohibited until the incineration facility applies the best available pollution control technology and can demonstrate that its emissions present a negligible risk to public health, safety and the environment.

Persons involved in the handling or transport of infectious waste will have to comply with stringent standards designed to protect their health and the public.

Hospitals will generally be able to continue existing disposal arrangements (primarily incineration of infectious wastes generated on-site), but disposal of untreated infectious wastes in landfills would be prohibited.

Large Montana hospitals would be subject to an annual \$2,000 infectious waste management fee; small hospitals and some large medical laboratories would pay \$250 annually. Large commercial disposal facilities that import infectious waste would pay \$10,000 annually, plus 10 cents per pound of infectious waste treated. The funds would support a new state infectious waste regulatory program.

EXHIBIT 2  
DATE 2-17-59  
HB 1674



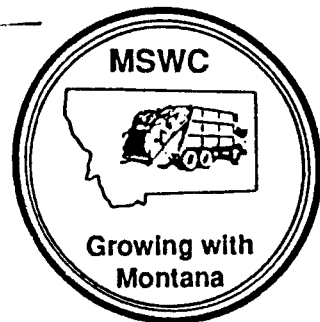
**I**

- REGION NO. & BOUNDARY

**LOCATION MAP**

FIGURE 1

EXHIBIT 3  
DATE 2-17-89  
HB 676



February 17, 1989

Representative Bob Raney and Members of the  
House Natural Resources Committee  
State Capitol  
Helena, MT 59620

RE: House Bill 676

Dear Representative Raney and Committee Members:

For the record, I am Sue Weingartner, Executive Director of the Montana Solid Waste Contractors, Inc., a trade association representing private industry engaged in solid waste collection and disposal in the State of Montana.

The Montana Solid Waste Contractors, Inc., supports House Bill 676, with amendments. Our proposed amendments are few in number, but they are significant to formulate outstanding legislation to protect Montana and its people. The proposed amendments address definitions, disposal requirements, the regional concept, and the moratorium.

Attached to this testimony are the proposed amendments and copies of two models of infectious waste legislation/regulation.

Sincerely,

MONTANA SOLID WASTE CONTRACTORS, INC.

By  
Sue A. Weingartner  
Executive Director

MONTANA SOLID WASTE CONTRACTORS, INC.

36 South Last Chance Gulch  
Suite A  
Helena, MT 59601  
Phone 406-443-1160

HOUSE BILL 676

SUGGESTED AMENDMENTS

1. Section 3(5) [page 5, lines 3-8]:

The definition of "Disposal" should be amended to read:

"Disposal" or "to dispose" shall mean the final placement of treated infectious waste in a properly permitted landfill.

Reason: Current definition is the usual "dumping" definition. The proposed definition is a cleaner, more concise definition.

2. Section 3(9) [page 5, line 21]:

Add word "contaminated" before word "bedding."

[page 6, line 1 and line 3]:

Add word "contaminated" before word "disposable."

Reason: Clarifies which materials are infectious waste. Non-contaminated materials can be handled as solid waste, with reduced disposal costs.

3. Section 3(13) [page 6, lines 18-20]:

Delete "sterilization" and definition.

Add: "Decontamination" - a process of rendering infectious waste noninfectious through autoclaving or incineration.

Reason: Sterilization is a process, not a function. Decontamination definition better dictates how infectious waste must be treated.

4. Section 3(16) [page 7, lines 3-7]:

The definition of "treatment" should be amended to read:

"Treatment" or "to treat" shall mean any method, technique, or process designed to change the character or composition of any infectious waste so as to render such waste noninfectious.

House Bill 676  
Suggested Amendments  
Page 2

Reason: "Treatment" definition in bill is not appropriate. "Reduced in volume" is merely compacting, which is not an adequate treatment of infectious waste. If this definition remained, Section 5(1)(c)(ii) would further allow compacted infectious waste to be placed in a landfill.

5. Section 3(17)[page 7, line 7a]:

Add definition:

(17). "Sharps" shall mean any discarded article that may cause puncture or cuts. Such waste includes, but is not limited to, needles, IV tubing with needles attached, scalpel blades, glassware, and syringes that have been removed from their original sterile containers.

Reason: Sharps are infectious wastes, but they must be handled differently than other infectious wastes to protect handlers from cuts and punctures.

6. Section 5(1)(a)(ii)[page 7, lines 19-21]:

Delete current paragraph, insert:

(ii). Infectious waste shall be segregated by separate containment from other waste at the point of origin.

(A). Infectious waste, except for sharps, shall be contained in double disposable plastic bags which are impervious to moisture and have a strength sufficient to preclude ripping, tearing, or bursting under normal conditions of use. The bags shall be securely tied so as to prevent leakage during storage, handling, or transport.

(B). Sharps shall be contained for storage, transportation, treatment, and subsequent disposal in leakproof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of the contents.

(C). Enclosures used for containment of infectious waste shall be secured so as to deny access by unauthorized persons and shall be marked with the "biological hazard" or "biohazard" signs.

Suggested Amendments  
House Bill 676  
Page 3

(D). All bags used for containment of infectious waste shall be red or orange in color and clearly identified.

(E). Rigid containers of discarded sharps shall be labeled "biomedical waste", or placed in the disposable bags used for other infectious waste.

Reason: Change better dictates proper containers and proper handling of sharps.

7. Section 5(1)(b)(i)(c) [page 8, lines 8-12]:

Change paragraph on disposal of liquid or semi-liquid waste to read:

(C). liquid or semiliquid waste shall be decontaminated by autoclaving and only disposed of in a sewer system.

Reason: Is more specific as to proper treatment and disposal of liquid and semiliquid waste.

8. Section 7(1)(c) [page 11, lines 18-20] and Section 7(4)(b)(i) [page 12, lines 19-20]:

Delete reference to transporting infectious waste from one state to another state through Montana.

Reason: May be illegal.

9. Section 13 [pages 17-18]:

Delete entire concept of infectious waste disposal regions.

Reason: (a). Regional concept will cripple health care industry. Regional concept will create great hardship on small hospitals, penalizing them to protect Montana from out of state waste. Pages 13 and 14, Section 8(1)(a) has annual fee of \$10,000 plus 10 cents for each pound of infectious waste disposed of in another region. This could force each facility to build their own incinerator; therefore, higher costs and requirement to meet incinerator requirements and pollution requirements, also creating more enforcement and regulatory problems. Actually, it could be cheaper for a facility to dispose of waste any way they can, and pay any resulting penalty, if caught. Opposite effect is created.

Ex. #3  
2-17-89

Suggested Amendments  
House Bill 676  
Page 4

(b). Inter/intra region concept should be changed to an inter/intra state concept and put the cost burden on out of state facilities and transporters.

(c). Inter/intra region concept also puts same cost burden on transportation (Section 7(4)[page 12, lines 12-25].

10. Section 15 [pages 19-20]:

Delete moratorium.

Reason: Make all infectious waste producers comply with standards on the effective date of the law. If a moratorium is included, put a date or time period on it, as time in which the department has to enact the rules. For example: "A moratorium shall exist for six months on additional..."



**MODEL STATE INFECTIOUS WASTE REGULATION**

Biomedical Waste Treatment Institute  
Adopted February, 1988

Conditions for Management of Potentially Infectious  
and Pathological Wastes (hereinafter Infectious Wastes)

**I. Definitions**

(A) Infectious waste shall mean and include the following:

- (1) Surgical waste shall mean all materials discarded from surgical procedures and includes, but is not limited to, disposable gowns, soiled dressings, sponges, casts, lavage tubes, drainage sets, underpads and surgical gloves.
- (2) Pathological waste shall mean all human tissues and anatomical parts which emanate from surgery, obstetrical procedures, autopsy, and laboratory. Such waste shall be exclusive of formaldehyde and other preservative agents.
- (3) Biological waste shall mean blood and blood products, excretions, exudates, secretions, suctionings, and other body fluids which cannot be directly discarded into a municipal sewer system, including solid/liquid waste from renal dialysis.
- (4) Isolation waste shall mean all waste emanating from the care or treatment of a patient on any type of isolation or precaution except reverse (protective) isolation.
- (5) Cultures and stocks of etiologic agents and associated biologicals including, without limitation, specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, and discarded live and attenuated vaccines.
- (6) Laboratory waste which has come in contact with pathogenic organisms. Such waste includes, but is not limited to, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come in contact with specimens or cultures.
- (7) Animal carcasses exposed to pathogens in research, their bedding and other waste from such animals.

- (8) Sharps shall mean any discarded article that may cause puncture or cuts. Such waste includes but is not limited to, needles, IV tubing with needles attached, scalpel blades, glassware, and syringes that have been removed from their original sterile containers.
- (9) Chemotherapy waste shall mean all disposable materials which have come in contact with all cytotoxic/antineoplastic agents during the preparation, handling, and administration of such agents. Such waste includes, but is not limited to, masks, gloves, gowns, empty IV tubing bags and vials, and other contaminated materials. The above waste must first be classified as empty and of such quantity that it is not subject to other Federal or state waste management regulations prior to being handled as infectious waste.
- (B) Person shall mean any individual, partnership, company, corporation, association, firm, organization, or any other group of individuals, or any officer or employee thereof.
- (C) Storage shall mean the containment of infectious waste in such a manner as not to constitute treatment of such waste.
- (D) Transport shall mean the movement of infectious waste from the point of generation to any intermediate points and finally to the point of treatment.
- (E) Treatment shall mean any method, technique, or process designed to change the character or composition of any infectious waste so as to either neutralize such waste or to render such waste noninfectious.
- (F) Disposal shall mean the final placement of treated infectious waste in a properly permitted landfill.

## II. Producers of Infectious Waste

- (A) This regulation shall apply, without regard to the quantity of infectious waste produced, to any producer of infectious waste to include without limitation, except as provided in (B), the following categories:

General Acute Care Hospital  
Skilled Nursing Facility or Convalescent Hospital  
Intermediate Care Facility  
In-Patient Care Facility for the Developmentally Disabled  
Chronic Dialysis Clinic  
Free Clinic  
Community Clinic  
Employee Clinic  
Health Maintenance Organization  
Surgical Clinic  
Urgent Care Clinic  
Acute Psychiatric Hospital  
Laboratory  
Medical Buildings  
Physicians Offices  
Veterinarians  
Dental Offices  
Funeral Homes

- (B) In no case shall a person be a producer of infectious waste if those wastes are disposed with residential solid wastes from a single-family residential premise or single-family dwelling-unit.
- (C) Every producer shall register with the State Department of Environmental Control or other appropriate government entity, on a form provided, a notice of intent to generate medical waste. Producers shall comply with this provision at least 30 days prior to the date on which they expect to commence production of medical waste.
- (D) Re-registration as an Infectious Waste Producer shall be at least once every three years.
- (E) Registered infectious waste producers shall notify the State Department of Environmental Control or other appropriate government entity in writing within 30 days, except as provided in (2), of the following occurrences:
  - (1) The producer changes majority ownership, name, or locations.
  - (2) Immediate written notification is required upon notice of loss of the liability coverage. A producer shall cease to generate infectious waste upon loss of liability coverage.

### III. Storage and Containment of Infectious Waste

- (A) Containment of infectious waste shall be in a manner and location which affords protection from animals, rain and wind, does not provide a breeding place or a food source for insects and rodents, and minimizes exposure to the public.
- (B) Infectious waste shall be segregated by separate containment from other waste at the point of origin.
  - (1) Infectious waste, except for sharps, shall be contained in double disposable plastic bags which are impervious to moisture and have a strength sufficient to preclude ripping, tearing, or bursting under normal conditions of use. The bags shall be securely tied so as to prevent leakage or expulsion of solid or liquid wastes during storage, handling, or transport.
  - (2) Sharps shall be contained for storage, transportation, treatment and subsequent disposal in leakproof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of the contents.
- (C) Enclosures used for containment of infectious waste shall be secured so as to deny access by unauthorized persons and shall be marked with the "biological hazard" or "biohazard" signs specified by 29 CFR 1910.145 (e) (4).
- (D)
  - (1) All bags used for containment of infectious waste shall be red or orange in color and clearly identified as specified by 29 CFR 1910.145 (e) (4).
  - (2) Rigid containers of discarded sharps shall be labeled "biomedical waste", or placed in the disposable bags used for other infectious waste.
  - (3) Etiologic agents must be labeled in accordance with 42 CFR 72.3 (d).
- (E) Unless approved by the local health officer or State Department of Health, infectious waste shall be treated within twenty-four hours, or 30 days if stored under refrigeration (48° F to 32° F) unless the infectious waste is pathological waste, then refrigeration shall be limited to four days, or 30 days if stored at or below a temperature of 0° C (32° F).

- (F) Sharps, even after treatment, shall not be subject to compaction. All other infectious waste may be subject to compaction or grinding by any device and placed for storage or transport in a portable or mobile trash compactor after treatment to render the waste non-infectious.
- (G) Infectious waste contained in disposable bags as prescribed above, shall be placed for storage, handling, or transport in disposable or reusable pails, cartons, boxes, drums, dumpsters, or portable bins. The containment system shall have a tight fitting cover and be kept clean and in good repair. The containers may be of any color and shall be conspicuously labeled with the international biohazard symbol and the words "Biomedical Waste" on the sides so as to be readily visible from any lateral direction when the container is upright.
- (H) (1) Reusable containers for infectious waste shall be thoroughly washed and decontaminated each time they are emptied by a method specified in (2) unless the surfaces of the containers have been protected from contamination by disposable liners, bags, or other devices removed with the waste, other than that outlined in III B (1).
- (2) Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:
- (a) Exposure to hot water of at least (180° F) for a minimum of 15 seconds.
- (b) Exposure to a chemical sanitizer by rinsing with or immersion in one of the following for a minimum of 3 minutes: hypochlorite solution (500 ppm available chlorine); phenolic solution (500 ppm active agent); iodoform solution (100 ppm available iodine); or quaternary ammonium solution (400 ppm active agent).
- (3) Reusable pails, drums, dumpsters or bins used for containment of infectious waste shall not be used for containment of waste to be disposed of as noninfectious waste or for other purposes except after being decontaminated by procedures as described in this paragraph and after the international biohazard symbol and words "Biomedical Waste" are removed.

- (I) Trash chutes shall not be used to transfer infectious waste between locations where it is contained.

#### IV. Treatment of Infectious Waste

- (A) Infectious waste shall be treated by one of the following methods:

- (1) (a) By incineration in an incinerator which provides complete combustion of waste to carbonized or mineralized ash.

- (b) Ash from the incinerator shall be sampled at least twice a year as follows:

- (i) The sample shall be analyzed by the Extraction Procedure Toxicity test or its successor test, or other equivalent test subsequently approved by the State Department of Environmental Control or other appropriate government entity to determine if it is a hazardous waste; if hazardous, it shall be managed by applicable federal and state regulations.

- (ii) The sample shall be analyzed for percent of putrescible matter by test procedures of the American Society of Mechanical Engineers, Standard for Large Incinerators Performance Test Codes, or other equivalent tests subsequently approved by the State Department of Environmental Control or other appropriate government entity to determine if it is still infectious; if infectious, it shall be retreated in accordance with this regulation.

- (c) Incinerators shall be capable of maintaining a minimum temperature of 1600° F in the primary chamber, and the exit gas temperature in the secondary chamber shall be maintained at a minimum of 1800° F. Secondary chamber temperatures shall be continuously monitored and recorded.

- (d) Charge rates shall be maintained and recorded.

- (e) Emissions shall be controlled as required by air pollution control standards established by the State Air Pollution Control Board or other appropriate government entity.
- (2) (a) By sterilization by heating in a steam sterilizer, so as to render the waste noninfectious. Infectious waste so rendered noninfectious shall be disposable as nonhazardous waste, provided it is not an otherwise hazardous waste.
- (b) Operating procedures for steam sterilizers shall include, but not be limited to:
  - (i) Adoption of standard written operating procedures for each steam sterilizer including time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, and maximum load quantity.
  - (ii) Recording of thermometers during each complete cycle to ensure the attainment of a temperature of 121° C (250° F) for one-half hour or longer, depending on quantity and density of the load, in order to achieve sterilization of the entire load. Thermometers shall be checked for calibration at least annually.
  - (iii) Use of heat sensitive tape or other device for each container that is processed to indicate the attainment of adequate sterilization conditions.
  - (iv) Use of the biological indicator *Bacillus stearothermophilus* placed at the center of a load processed under standard operating conditions at least once every 40 hours of operation to confirm the attainment of adequate sterilization conditions.
  - (v) Maintenance of records of procedures specified in (ii), and (iv) above for period of not less than one year.

- (3) Discharge to a sewage treatment system that provides secondary treatment of waste is permitted only if the waste is liquid or semi-solid and if approved by the local health officer responsible for the operation of the sewage treatment system.
  - (4) (a) Infectious wastes consisting of recognizable human anatomical remains shall be disposed by incineration or interment, unless such remains have been contaminated with a regulated hazardous chemical. Such contaminated remains shall be disposed at a permitted hazardous waste facility.
  - (b) Human fetal remains shall be disposed by incineration or interment.
  - (c) Chemotherapy waste, other than that defined in I(A)(9), shall be treated at a permitted hazardous waste facility.
- (B) In no case may infectious waste be land disposed prior to treatment.

V. Transfer of Infectious Waste to Off-Site Treatment Facility.

- (A) Any producer of infectious waste shall transfer custody of the waste only to a hauler who is registered as an infectious waste hauler by the State Department of Environmental Control or other appropriate government entity.
- (B) Infectious waste shall be transported to an off-site treatment facility in a leakproof, temperature-controlled, and fully enclosed vehicle compartment. Wastes more than 24 hours old shall be transported at or below a temperature of 48° F unless the infectious waste is pathological waste, then wastes more than 4 days old but less than 30 days old shall be transported at or below a temperature of 32° F.
- (C) No person may transport off-site a package containing over 4 liters gross volume of an etiologic agent. Smaller packages shall meet the shipping requirements at 49 CFR 173.387.
- (D) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leakproof



container within the vehicle compartment or unless all of the waste is to be treated as infectious waste in accordance with the requirements of this article.

- (E) Infectious waste shall be delivered for storage, including intermediate transfer, and treatment only to a facility or location for which there is a valid and appropriate operating permit as set forth in Section VII.
- (F) Persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall be provided by their employer with, and required to wear protective gloves, shoes and eyewear, and clean coveralls. Face shields and respirators may be required as deemed necessary by the State Department of Environmental Control or other appropriate government entity.
- (G) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures as described in Section III (H).
- (H) Vehicles transporting infectious waste shall be identified on each side of the vehicle with the name or trademark of the hauler.

#### VI. Standards for Registration as an Infectious Waste Transporter

- (A) A person desiring registration as an infectious waste transporter shall submit to the State Department of Environmental Control or other appropriate government entity each of the following:
  - (1) A completed and signed application on forms provided by the Department or entity. The forms shall contain the following:
    - (a) A statement certifying that the applicant understands and will comply with the applicable requirements of this Act, and
    - (b) A list of all vehicles and reusable transport containers. The vehicles listed must be registered to the applicant or under control of the applicant pursuant to a written lease or contract and included in applicant's required insurance coverage.
  - (2) Proof of ability to cover liability resulting from the operation of the persons' business such as a certificate of insurance, a bond of a licensed surety

company, or evidence of qualification as a self-insurer, shall be provided to the State Department of Health or other appropriate government entity which indicates that \$750,000 in coverage has been obtained.

- (3) Proof that all trucks, trailers, semitrailers, and containers which are to be used by the applicant for transportation of infectious waste on highways and which are subject to the provisions of this regulation have passed an annual inspection by the State Department of Transportation or other appropriate government entity.
- (B) Re-registration as an Infectious Waste Transporter shall be at least once every three years.
- (C) Any person who hauls or proposes to haul infectious waste on a highway shall comply with regulations set forth in 49 CFR or equivalent state regulations applicable to operation, maintenance, inspection and financial assurance.
  - (1) Each infectious waste hauler shall arrange for an inspection by the State Department of Transportation or other appropriate government entity of each truck, trailer, semitrailer, and reusable container to be used for the transportation of infectious waste prior to expiration of any certificate or date assigned for annual inspection.
  - (2) Make vehicles and containers available for inspection at a safe work location.
  - (3) Allow the State Department of Environmental Control or other appropriate government entity to inspect manifests, reports, permits, licenses, billing records and other documents related to the handling or hauling of infectious wastes when requested.
  - (4) When so requested by the State Department of Environmental Control or the Department of Transportation, as appropriate, an infectious waste transporter shall, within a reasonable period of time, perform any or all of the following actions:
    - (a) Decontaminate all surfaces of the vehicles that have been in contact with infectious waste by use of procedures described in Section III H (2) in order to make it safe to inspect.

- (b) Remove covers and take other steps necessary to allow inspection.
  - (c) Present the shipping paper for the waste last held in each truck, trailer, semitrailer, or container to be inspected.
- (5) Vehicles and containers pursuant to (1) shall be issued a certificate of compliance by the State Department of Transportation or other appropriate government entity if equipment is in sound condition and maintained to contain infectious waste including:
- (a) Each truck, trailer, semitrailer, or container used for shipping infectious waste shall be so designed and constructed, and its contents so limited, that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment.
  - (b) Any truck, trailer, semitrailer, or container used for shipping infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation.
- (6) (a) A certificate of compliance issued pursuant to (5) shall be placed on each truck, trailer, semitrailer, and container which has passed inspection as required.
- (b) The certificate shall be affixed on the front right hand side of the truck, trailer, semitrailer, or container, and shall be clearly visible.
  - (c) The certificate of compliance shall not be displayed by any person who is not registered with the Department of Transportation as an infectious waste transporter.
  - (d) The certificate of compliance shall expire simultaneously with the expiration date of the infectious waste transporter registration, unless the State Department of Environmental Control or other appropriate government entity determines in writing that a simultaneous expiration date would place an undue burden upon the applicant.

- (e) Equivalent certificates of compliance issued by other states shall be recognized as valid for purposes of this section.
- (7) Registered infectious waste transporters shall notify the State Department of Environmental Control or other appropriate government entity in writing within 30 days, except as provided in (d), of the following occurrences:
  - (a) The transporter changes majority ownership, name, or location.
  - (b) Ownership or control of a vehicle or container certified by the Department is changed.
  - (c) A truck, trailer, semitrailer, or container certified by the State Department of Transportation or other appropriate government entity is involved in any spill or in an accident which renders or may have rendered the vehicle or container in noncompliance with the requirements of this Section.
  - (d) Immediate written notification is required upon notice of loss of the liability coverage. A transporter shall cease to transport infectious waste upon loss of liability coverage.
- (8) Personnel on vehicles transporting infectious waste shall notify the permittee immediately if there is an accident or other mechanical or emergency delay in route.
- (9) All wastes shall be delivered to the treatment site within 36 hours of collection from the producer.

VII. Requirements for Infectious Waste Treatment and Storage Facilities

- (A) Any person who operates a facility for the treatment or storage of infectious waste shall have a valid and appropriate infectious waste management facility permit issued by the State Department of Environmental Control or other appropriate government entity.
- (B) Permits shall be valid for not more than three years after date of issuance.

- (C) The operator of any facility, used for the treatment or storage of infectious waste, shall have and shall adhere to an operation plan for the handling and treatment of infectious waste approved in writing by the State Department of Environmental Control or other appropriate government entity and shall include the following requirements:
- (1) A method of receiving wastes which ensures that infectious wastes are handled separately from other waste until treatment is accomplished and which prevents unauthorized persons from having access to or contact with the waste.
  - (2) A method of unloading and processing of infectious wastes which limits the number of persons handling the wastes and minimizes the possibility of exposure of employees and the public, using or visiting the facility, to infectious waste.
  - (3) A method of decontaminating by the use of procedures as described in Section III H (2), emptied reusable infectious waste containers, transport vehicles or facility equipment which are known or believed to be contaminated with infectious waste.
  - (4) The provision and required use of clean gloves and uniforms along with protective shoes and clothing, eyewear, face masks or respirators as necessary to provide protection of employees against exposure to infectious waste. Soiled protective gear shall be incinerated at the facility or decontaminated.
  - (5) The means of decontamination of any person having had bodily contact with infectious waste while transporting the waste to the treatment or disposal site or while handling or disposing of the waste at the site.
  - (6) A quantification of the maximum amount of infectious waste to be treated, stored, or disposed of per month.
  - (7) A description of emergency spill procedures to be used in the event of an accidental spill or breakage of containers.
- (D) A new or revised operation plan for treatment or storage of infectious waste shall be submitted for approval to the State Department of Environmental Control or other

appropriate government entity whenever there is an increase of more than twenty-five percent in the maximum quantity per month or when changes are otherwise made in an existing operation plan.

- (E) Approval for acceptance of infectious waste at a treatment or storage facility may be withdrawn by the State Department of Environmental Control or other government entity for noncompliance with the operation plan.
- (F) As a condition of approval for such permit, any person who operates a facility for the treatment or storage of infectious waste shall provide proof of liability insurance or other form of financial security, as in VI (A)(2), of at least \$1 million to meet all responsibilities.
- (G)
  - (1) In the event of an accidental spill or breakage of containers requiring the establishment of a secondary barrier, the permittee shall immediately notify the State Department of Environmental Control or appropriate state entity.
  - (2) Whether or not requiring immediate notification as described in Subsection (G)(1), the permittee shall keep a record of all spills, leakage or similar incidents involving the waste including the names of personnel involved, the nature and consequence of the event. These documents must be kept at the treatment or storage facility and available for inspection for a period of three years after the incident.
- (H) All employees involved with the handling and management of waste shall receive thorough training in their responsibilities and required performance of duties. A training protocol shall be submitted to the Department of Environmental Control or other appropriate State Department by "date", and training completed for existing employees by "date", and for future employees prior to handling wastes.
- (I) Permittees shall notify the State Department of Environmental Control or other appropriate government entity in writing within 30 days, except as provided in (b), of the following occurrences:
  - (a) The permittee changes majority ownership, name, or location.

- (b) Immediate written notification is required upon notice of loss of the liability coverage. A permittee shall cease to treat or store infectious waste upon loss of liability coverage.

#### VIII. Shipping Paper Control

- (A) The State Department of Environmental Control or other appropriate governmental entity, shall establish a system of shipping papers to accompany shipments of infectious wastes that are transported off the premise where they are generated that includes, without limitation, the following elements:

- (1) The name of the producer and address of the premises where the waste was generated;
- (2) A general description of the nature of the wastes being shipped;
- (3) An indication as to whether the wastes have been treated to render them noninfectious and, if so, the method of treatment;
- (4) If the waste has been treated to render it noninfectious, the shipping paper shall also include the name of the owner or operator of the treatment facility and the facility's address;
- (5) A method by which the person causing the transportation of a shipment of waste shall designate the off-site treatment or disposal facility, as appropriate, to which the transporter shall deliver the waste;
- (6) The requirement that when a shipment of waste is transported off the premises where produced to a treatment facility owned or operated by the producer, the shipment need not be accompanied by a shipping paper and that, after treatment, the producer shall prepare a shipping paper to accompany the further shipment of the treated waste to a disposal facility; and
- (7) A certification by the person causing the waste to be transported that the waste is packaged and labeled in accordance with the rules adopted under this section; the description of the waste and statement of whether the waste has been treated is accurate; and, if the

waste has been treated, that it has been treated in accordance with methods, techniques, and practices prescribed by the rules adopted under this section.

- (B) No off-premise treatment or disposal facility shall accept any infectious waste, treated or untreated, without an accompanying shipping paper.

## IX. Violations and Penalties

- (A) Civil and administrative sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by the aforementioned regulations, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order made pursuant to this title shall be liable in the case of a first violation, for a civil penalty not to exceed \_\_\_\_\_ and an additional penalty of not more than \_\_\_\_\_ for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed \_\_\_\_\_ for each violation and an additional penalty not to exceed \_\_\_\_\_ for each day during which such violation continues.
- (B) Criminal sanctions. Any person who, having any of the culpable mental states, shall violate any of the provisions of or who fails to perform any duty imposed by these regulations, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order made pursuant to this title shall be guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be punished by a fine not to exceed \_\_\_\_\_ per day of violation or by imprisonment for a term of not more than \_\_\_\_\_, or both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed \_\_\_\_\_ per day of violation, or by imprisonment for not more than \_\_\_\_\_ or by both such fine and imprisonment.



DATE 2-17-89

HB 674

Purpose

To encourage the proper collection, handling, treating and disposal of infectious waste materials.

Need

Hospital and medical waste materials over the past several years have been collected, transferred and disposed by two processes: incineration and land disposal.

Original medical incineration facilities constructed for treatment of infectious wastes were generally designed for destruction of pathological wastes and installed during the 1950's and 60's. With the addition of various disposable medical aids (tubing, syringes, culture dishes, etc.) complete thermal destruction of medical wastes is not being accomplished today in the majority of the older incinerators. Likewise, untreated infectious waste destined for land disposal have and continue to be a threat to collection workers; both through potential physical injury as well as exposure to infectious agents.

This regulation prescribes methods to control risks to health and environment through required methods presently being practices in several states and communities throughout the nation.

Summary of Provisions

- Infectious waste is defined to include surgical, biological, isolation, laboratory, and various other waste materials which by their nature, presence, or contact result in potential contamination with infectious agents.
- Specific storage and containerization is required to provide separation, attenuation, and a safe working environment for handlers of infectious waste material.
- Infectious waste material will be treated via incineration or steam sterilization prior to disposal. Liquid waste materials may be discharged to a sewerage system as approved or permitted by the state regulatory department.
- A system of shipping papers which provides for a method of tracking the waste from cradle to grave.
- Operators of infectious waste treatment storage and disposal facilities are required to meet certain operational and procedural criteria.
- Transporters of infectious waste must register all vehicles and meet specific loading and unloading requirements as well as containerization, liability, and workers' safety provisions.
- Violation and penalties are prescribed for noncompliance of the proposed legislation/regulation requirements.

## INFECTIOUS WASTE LEGISLATION/REGULATION

## I. Definitions

## A. Infectious waste shall mean and include the following:

1. Surgical waste - all materials discarded from surgical procedures and includes, but is not limited to, disposable gowns, soiled dressings, sponges, casts, lavage tubes, drainage sets, underpads and surgical gloves.
2. Pathological waste - all human tissues and anatomical parts which emanate from surgery, obstetrical procedures, autopsy, and laboratory. Such waste shall be exclusive of formaldehyde and other preservative agents.
3. Biological waste - excretions, exudates, secretions, suctionings, and other body fluids which cannot be directly discarded into a municipal sewer system.
4. Isolation waste - all waste emanating from the care or treatment of a patient on any type of isolation or precaution except reverse (protective) isolation.
5. All solid/liquid waste from renal dialysis.
6. All serums and vaccines not returned to the manufacturer or point of origin.
7. All laboratory waste which has come in contact with pathogenic organisms. Such waste includes, but is not limited to, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come in contact with specimens or cultures.
8. Animal carcasses exposed to pathogens in research, their bedding and other waste from such animals.
9. Sharps - any potentially infectious article

that may cause puncture or cuts. Such waste includes, but is not limited to, needles, IV tubing with needles attached, scalpel blades, broken glass, and syringes which may have come in contact with infectious agents during use in patient care or in medical research or have been removed from their original sterile containers.

10. Chemotherapy waste - all disposable materials which have come in contact with all cytotoxic/antineoplastic agents during the preparation, handling, and administration of such agents. Such waste includes, but is not limited to, masks, gloves, gowns, empty IV tubing bags and vials, and other contaminated materials.

- B. Person - any individual, partnership, company, corporation, association, firm, organization, federal and state government, or any other group of individuals, or any officer or employee thereof.
- C. Storage shall mean the containment of infectious waste in such a manner as not to constitute disposal of such waste.
- D. Transport shall mean the movement of infectious waste from the point of generation to any intermediate points and finally to the point of ultimate disposal.
- E. Treatment shall mean any method, technique, or process designed to change the character or composition of any infectious waste so as to either neutralize such waste or to render such waste potentially noninfectious.
- F. Landfill shall mean a disposal facility or part of a facility where infectious waste is placed in or on land and which is not a treatment facility.

## II. Requirements for Producers of Infectious Waste

All the requirements of this legislation shall apply, without regard to the quantity of infectious waste produced per month, to any producer of infectious waste to include, but not be limited to, the following categories:

General Acute Care Hospital  
 Skilled Nursing Facility or Convalescent Hospital  
 Intermediate Care Facility  
 In-Patient Care Facility for the Developmentally Disabled  
 Chronic Dialysis Clinic  
 Free Clinic  
 Community Clinic  
 Employee Clinic  
 Health Maintenance Organization (HMO)  
 Surgical Clinic  
 Urgent Care Clinic  
 Acute Psychiatric Hospital  
 Laboratory  
 Medical Buildings  
 Physicians Offices  
 Veterinarians  
 Home Health Agencies  
 POWER PLANTS  
 DENTIST OFFICES

### III. Storage and Containment of Infectious Waste

- A. Containment of infectious waste shall be in a manner and location which affords protection from animals, rain and wind, does not provide a breeding place or a food source for insects and rodents, and minimizes exposure to the public.
- B. Infectious waste shall be segregated from other waste at the point of origin in the producing facility.
- C. Unless approved by the local health officer or State Department of Health, infectious waste shall not be stored at a waste producing facility for more than four days above a temperature of 0° C (32° F). Containment of infectious waste at the producing facility is permitted at or below a temperature of 0° C (32° F) for a period of not more than 90 days without specific approval.
- D. Containment of infectious waste shall be separate from other wastes. Enclosures or containers used for containment of infectious waste shall be so secured so as to deny access by unauthorized persons and shall be marked with prominent warning signs on, or adjacent to, the exterior of entry doors, gates, or lids. Each container shall be prominently labeled with a sign using language to be determined by the department and legible during daylight hours from a distance of 25 feet.
- E. Infectious waste, except for sharps capable of puncturing or cutting shall be contained in double disposable plastic bags which are impervious to

moisture and have a strength sufficient to preclude ripping, tearing, or bursting under normal conditions of usage. The bags shall be securely tied so as to prevent leakage or expulsion of solid or liquid wastes during storage, handling, or transport.

- F. Infectious sharps shall be contained for disposal in leakproof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of the contents.
- G. All bags used for containment and disposal of infectious waste shall be red in color and conspicuously labeled as required in section III D. Rigid containers of infectious sharps waste shall be labeled in the same way or placed in the disposable bags used for other infectious waste.
- H. Compactors or grinders shall not be used to process infectious waste until after the waste has been rendered non-infectious. Infectious waste shall not be subject to compaction by any compacting device and shall not be placed for storage or transport in a portable or mobile trash compactor.
- I. Infectious waste contained in disposable containers as prescribed above, shall be placed for storage, handling, or transport in disposable or reusable pails, cartons, drums, dumpsters, or portable bins. The containment system shall be leakproof, have tight-fitting covers and be kept clean and in good repair. The containers shall be of any color and shall be conspicuously labeled as required in section III D. on the lid and on the sides so as to be readily visible from any lateral direction when the container is upright.
- J. Reusable containers for infectious waste shall be thoroughly washed and decontaminated each time they are emptied by a method specified by the Department of Health, unless the surfaces of the containers have been protected from contamination by disposable liners, bags, or other devices removed with the waste, as outlined in III, E.

Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:

1. Exposure to hot water of at least (180°F) for a minimum of 15 seconds.
2. Exposure to a chemical sanitizer by rinsing with or immersion in one of the following for a minimum of 3 minutes:
  - a. Hypochlorite solution (500 ppm available chlorine).
  - b. Phenolic solution (500 ppm active agent).
  - c. Iodoform solution (100 ppm available iodine).
  - d. Quaternary ammonium solution (400 ppm active agent).

Reusable pails, drums, dumpsters or bins used for containment of infectious waste shall not be used for containment of waste to be disposed of as non-infectious waste or for other purposes except after being decontaminated by procedures as described in part (j) of this section.

- K. Trash chutes shall not be used to transfer infectious waste between locations where it is contained.

#### IV. Treatment and Disposal of Infectious Waste

- A. Treatment or disposal of infectious waste shall be by one of the following methods:

- 1) By incineration in a controlled-air multi-chambered incinerator which provides complete combustion of the waste to carbonized or mineralized ash.

Incinerators shall be capable of providing proper temperatures and residence time and shall be properly interlocked to ensure that optimum operating parameters are maintained. Emission shall be controlled by best available controlled technologies (BACT).

- 2) By sterilization by heating in a steam sterilizer, so as to render the waste non-infectious. Infectious waste so rendered non-infectious shall be disposable as nonhazardous waste provided it is not an otherwise hazardous waste. Operating procedures for steam sterilizers shall include, but not be limited to the following:
  - a. Adoption of standard written operating procedures for each steam sterilizer including time, temperature, pressure, type of waste, type of container(s), closure on

container(s), pattern of loading, water content, and maximum load quantity.

- b. Check of recording and/or indicating thermometers during each complete cycle to ensure the attainment of a temperature of 121° C (250° F) for one-half hour or longer, depending on quantity and density of the load, in order to achieve sterilization of the entire load. Thermometers shall be checked for calibration at least annually.
  - c. Use of heat sensitive tape or other device for each container that is processed to indicate the attainment of adequate sterilization conditions.
  - d. Use of the biological indicator *Bacillus stearothermophilus* placed at the center of a load processed under standard operating conditions at least monthly to confirm the attainment of adequate sterilization conditions.
  - e. Maintenance of records of procedures specified in (a), (b), and (d) above for period of not less than one year.
3. By discharge to the sewerage if the waste is liquid or semi-liquid, except as prohibited by the local health officer.
- B. Cultures of viable etiologic agents shall be rendered noninfectious before disposal to land by heating the cultures in a steam sterilizer, by incineration or by another sterilization technique approved in writing by the Department.
- C. Infectious wastes consisting of recognizable human anatomical remains shall be disposed of by incineration or interment, unless burial at a landfill is specifically approved by the Department because the waste contains a hazardous chemical. Infectious human fetal remains shall be disposed of by incineration or interment.
- V. Transfer of Infectious Waste to Off-Site Treatment and Disposal Facilities
- A. Any producer of infectious waste shall transfer custody of the waste only to a hauler who is registered as an infectious waste hauler by the Department.

- B. Infectious waste shall be transported to an off-site treatment or disposal facility in a leakproof, fully enclosed container within a vehicle compartment.
- C. Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is separately contained as in "B" above or unless all of the waste is to be treated or disposed of as infectious waste in accordance with the requirements of this article.
- D. Infectious waste shall not be stored off-site for more than twenty-four hours at ambient room temperature. Additionally, storage shall not exceed 96 hours at a temperature below 48° F or for 90 days at a temperature at or below 32° F.
- E. Infectious waste shall be delivered for treatment or disposal only to a facility for which there is a valid and appropriate Infectious Waste Facility Permit.
- F. Persons manually loading or unloading containers of infectious waste on or from transport vehicles shall be provided by their employer with, and required to wear, clean, protective gloves and uniforms. Other protective clothing, face shields and respirators may be required as deemed necessary by the Department.
- G. Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures as described in Section III (j) of this Article.
- H. Vehicles transporting infectious waste shall be identified on each side of the vehicle with the name or trademark of the hauler.

#### VI. Standards Applicable to Transporters of Infectious Waste

##### Application for Registration as an Infectious Waste Transporter

- A. A person desiring registration as an infectious waste transporter shall submit to the Department each of the following:
  - 1. A completed and signed application on forms provided by the Department. The forms shall contain both of the following:
    - a. A statement certifying that the applicant understands and will comply with the applicable requirements of this chapter, and



- b. A list of all vehicles and containers. The vehicles listed must be registered to the applicant or under control of the applicant pursuant to a written lease or contract and included in applicant's required insurance coverage.
  2. Proof of ability to provide adequate response in damages resulting from the operation of the person's business. For the purpose of this section, adequate response means protection against liability for the payment of damages.
  3. A copy of the insurance policy, if insurance is the chosen financial alternative for the required coverage shall be maintained at the hauler's principal place of business.
  4. A Certificate of Insurance, a bond of a licensed surety company, or evidence of qualification as a self-insurer, shall be provided to the Department which indicates that the minimum coverage has been obtained.
  5. Proof that all trucks, trailers, semitrailers, vacuum tanks, cargo tanks and containers which are to be used by the applicant for transportation of infectious waste on highways and which are subject to the provisions of this chapter have passed an annual inspection by the Department of Transportation. Such proof may be submitted directly by the Department of Transportation.
  6. Fees for registration as required and fees for inspection as required.
  7. If previously registered, the applicant shall submit an application to the Department at least 45 days prior to the expiration date of the current registration.
- B. Registration as an Infectious Waste Transporter shall expire one year from the date of issuance.
- C. Any person who hauls or proposes to haul infectious waste on a highway shall do all of the following in order to ensure compliance with this chapter:
1. Allow the Department of Transportation to inspect jointly the person's trucks, trailers, semitrailers, vacuum tanks, cargo tanks and containers.

2. Make vehicles and containers available for inspection at a safe work location.
3. Allow the Department to inspect manifests, reports, permits, licenses, billing records and other documents related to the handling or hauling of infectious wastes.
4. Make available to the Department and the Department of Transportation when requested all records of inspection.
5. The Department of Transportation or the Department may require testing, under prescribed conditions, of trucks, trailers, semitrailers, vacuum tanks, cargo tanks or containers used to transport infectious wastes, in order to ensure compliance with this Chapter.
6. When so requested by the Department of Transportation or the Department, an infectious waste transporter shall, within a reasonable period of time, perform any or all of the following actions:
  7. Remove infectious wastes or materials from the tank's containers, pipes, hoses or other appurtenances of a truck, trailer, semitrailer vacuum tank, cargo tank or container in order to make it safe to inspect.
  8. Remove covers and take other steps necessary to allow inspection.
  9. Present the manifest for the waste last held in each truck, trailer, semi-trailer, vacuum tank, cargo tank or container to be inspected.
10. Each infectious waste hauler shall arrange for an inspection by the Department of Transportation prior to expiration of any certification or date assigned for annual inspection.
11. All vehicles and containers requiring certificates of compliance and any attached equipment must be in sound condition and containers must be designed and maintained to properly contain infectious waste.
12. A certificate of compliance issued by the Department shall be placed on each truck, trailer, semitrailer, vacuum tank, cargo tank and container which has passed

inspection as required. The certificate shall be affixed on the front right-hand side of the truck, trailer, semitrailer, vacuum tank, cargo tank or container and shall be clearly visible. The certificate of compliance shall not be displayed unless the truck, trailer, semitrailer, vacuum tank, cargo tank or container has passed its annual inspection.

- a. The certificate of compliance shall not be displayed by any person who is not registered with the Department of Transportation as an infectious waste transporter.
  - b. The certificate of compliance shall expire simultaneously with the expiration date of the infectious waste transporter registration, unless the Department determines in writing that a simultaneous expiration date would place an undue burden upon the applicant.
13. Registered infectious waste transporters shall notify the Department in writing within 30 days of the following occurrences:
- a. The transporter changes majority ownership, name, or location.
  - b. Ownership or control of a vehicle or container certified by the Department is changed.
  - c. A truck, trailer, semitrailer, vacuum tank, cargo tank, or container certified by the Department is involved in any spill, in an accident which renders or may have rendered the vehicle or container in noncompliance with the requirements of this chapter.
  - d. A registered infectious waste transporter shall notify the Department in writing immediately upon notice of loss of the liability coverage. A transporter shall cease to transport infectious waste upon loss of liability coverage.

#### E. Infectious Waste Containers

1. Each truck, trailer, semitrailer, vacuum tank, cargo tank or container used for shipping infectious waste shall be so designed and constructed, and its contents so limited,

that under conditions normally incident to transportation, there shall be no release of infectious waste to the environment.

2. Any truck, trailer, semitrailer, vacuum tank, cargo tank or container used for shipping infectious waste shall be free from leaks and all discharge openings shall be securely closed during transportation.

VII. Requirements for Infectious Waste Treatment Storage and Disposal Facilities

- A. Any person who operates a facility for the treatment storage or disposal of infectious waste shall have a valid and appropriate infectious waste management facility permit issued by the department.
- B. The operator of any facility used for the treatment, storage or disposal of infectious waste shall have and shall adhere to an operation plan for the handling and disposal of infectious waste approved in writing by the department. The operation plan shall include the following requirements:
  1. A method of receiving wastes which ensures that infectious wastes are handled separately from other waste until treatment or disposal is accomplished and which prevents unauthorized persons from having access to or contact with the waste.
  2. A method of unloading and processing of infectious wastes which limits the number of persons handling the wastes and minimizes the possibility of exposure of employees and the public using or visiting the facility to infectious waste.
  3. A method of decontaminating emptied reusable infectious waste containers, transport vehicles or facility equipment which are known or believed to be contaminated with infectious waste by the use of procedures as described.

4. The provision and required use of clean gloves and uniforms along with other protective clothing, face masks or respirators to provide protection of employees against exposure to infectious waste. Soiled protective gear shall be disposed of at the facility or decontaminated.
  5. The means of decontamination of any person having had bodily contact with infectious waste while transporting the waste to the treatment or disposal site or while handling or disposing of the waste at the site.
  6. A quantification of the maximum amount of infectious waste to be treated, stored, or disposed of per month.
- C. A new or revised operation plan for treatment, storage or disposal of infectious waste shall be submitted for approval to the department whenever there is an increase of more than twenty-five percent in the maximum quantity of infectious waste receiving treatment, storage or disposal per year by the facility or when changes are otherwise made in an existing operation plan.
  - D. Approval for acceptance of infectious waste at a treatment, storage or disposal facility may be withdrawn by the department for noncompliance with the operation plan.
  - E. As a condition of approval for such permit, any person who operates a facility for the treatment, storage and disposal of infectious waste shall provide proof of liability insurance or other form of financial security in section VI A.4. to meet all responsibilities in case of release of such waste causing damage.

#### VIII. Violations and Penalties

- A. Civil and administrative sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by the aforementioned requirements or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order made pursuant to this title shall be liable in the case of a first violation, for a civil penalty not to exceed \_\_\_\_\_ and an additional penalty of not more than \_\_\_\_\_ for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application

denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed \_\_\_\_\_ for each violation and an additional penalty not to exceed \_\_\_\_\_ for each day during which such violation continues.

- B. Criminal sanctions. Any person who, having any of the culpable mental states shall violate any of the provisions of or who fails to perform any duty imposed by these regulations or any rules and regulations promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order made pursuant to this title shall be guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be punished by a fine not to exceed \_\_\_\_\_ per day of violation or by imprisonment for a term of not more than \_\_\_\_\_, or both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed \_\_\_\_\_ per day of violation, or by imprisonment for not more than \_\_\_\_\_ or by both such fine and imprisonment.

## IX. Shipping Papers

- A. The Department shall establish a system of shipping papers to accompany shipments of infectious waste from the location where they are generated to the treatment facility and ultimately to the disposal site.

This system shall include but not be limited to the following:

1. The name and address of the generator.
  2. A brief, general description of the nature of the wastes being shipped.
  3. An indication of whether or not the wastes have been treated to render them non-infectious, if so, the method of treatment.
  4. If the waste has been treated, the paper shall include the name and address of the treatment facility.
  5. A method by which the person causing the transportation of a shipment of waste shall designate the off-site treatment or disposal facility, as appropriate, to which the transporter shall deliver the waste.
  6. A certification by the person causing the waste to be transported that the waste is packaged and labeled in accordance with the rules adopted under this section; the description of the waste and statement or whether the waste has been treated is accurate; and, if the waste has been treated, that it has been treated in accordance with methods, techniques, and practices prescribed by rules adopted under this section.
- B. No off-site treatment or disposal facility shall accept any infectious waste, treated or untreated, without and accompanying shipping paper.

EXHIBIT 4  
DATE 2-17-89  
HB 676

EX #4

2-17-89

afternoon. My name is Dan Porter and my contribution to the  
discussion deals with the emotional impact that a proposal to  
out-of-state medical waste has generated in the city of  
Wagston.

When I first read about those plans in the newspaper, I was  
alarmed by what seemed to me to be a risky proposal at best.  
I began to ask around as to what other peoples feelings were on  
the subject. When the subject would come up over morning  
break at a popular local restaurant, heads would pop up from  
the booths and people would join in on the conversation from  
all over the room. I was amazed (and relieved) by just how many  
people were opposed to the idea. Some of the words used to  
describe the plan were: shortsighted, foolish, unbelievable,  
and the word I heard most was "crazy".

There were, of course, a few (very few) who favored the

As conversations with these people developed, there were  
arguments about our opposition like "emotional flap", and "an  
outlet minority making a lot of noise", to which I politely  
replied that in this case they were indeed the minority.  
What struck me most of all was the fact that every single one of  
these people used the word "money" in the first or second  
sentence of their argument. Few of them mentioned health at all  
until that question was posed to them first.

All those opposed immediately expressed concerns about  
the environment, a healthy environment, their children's well-being,  
the quality of life! When money was mentioned, it was  
immediately in the form of concerns about property values and  
safety in the event of contamination.



2-17-89

[illegible][illegible]

My dear friend,  
I have just received your letter of the 11th inst. and am  
glad to hear from you. I am well and hope  
this finds you the same.

Yours truly,  
Wm. Lloyd Garrison

P.S. - I have just received your letter of the 11th inst. and am  
glad to hear from you. I am well and hope  
this finds you the same.

Rep. Bob Raney  
CHAIRMAN, NATURAL RESOURCES COMMITTEE

EXHIBIT 5  
DATE 2-17-89  
HB 174 February 17, 1989

My name is Bill Leitch. I am a resident of Livingston, and a member of CAP.

I support this bill, but with grave reservations. I support the bill because I emphatically believe that Montana needs the regulations that would be promulgated under authority of the bill. My reservations, however, stem from my opinion that the bill, as now written, will not prevent the eventual incineration of infectious waste in Livingston or Montana. And I am adamantly opposed to the importation, incineration, and disposal of infectious wastes in Livingston or anywhere else in the State of Montana.

I'd like to bring to your attention what CAP has learned with respect to hazardous chemical by-products that result from incineration of infectious wastes. Let me first point out that the Livingston incinerator is not located in a remote section of Park County, but rather in a residential area, not far from busy railroad workshops, and a few feet from a popular playground.

A substantial component of infectious wastes is plastic, in the form of PVC garbage bags, tubing, syringe bodies, packaging and packing materials, and so on. When these substances are burned, several hazardous compounds are formed, two of which are dioxins and hydrogen chloride (HCl, acid gas, or hydrochloric acid).

Dioxins are a class of organic compounds that are among the most toxic substances known to man. "They are very stable and fire resistant, often not decomposing until heated above 800° C. [about 1500° F]. Their resistance to burning with the potential for formation at lower temperatures . . . make municipal incinerators potential sources for dioxin emissions." (Source 1, below)

HCl is not particularly dangerous to humans at low concentrations. But unfortunately it cannot always be kept from escaping incinerators in high concentrations, and even at low concentrations, if it does not have harmful effects on humans, it succeeds in destroying the incinerators themselves.

A recent study that compared air emissions from both hospital and municipal incinerators in Canada indicated that a hospital incinerator emitted seven times more HCl than the two municipal incinerators with which it was compared. The levels of those hospital emissions of HCl was high enough to approach acceptable ambient air quality guidelines at ground level (90 ug/m<sup>3</sup>; acceptable limit established by Ontario: 100 ug/m<sup>3</sup>).

Finally, this study indicated that emissions of organic compounds were observed from both hospital and municipal incinerators even though combustion temperatures were in excess of 900° C. [about 1700° F].

While we are discussing HCl, I wish to call to your attention that the State of Washington, in cooperation with EPA, have recently forced the owners of an incinerator manufactured by the same company that built the Livingston incinerator to install acid scrubbers in the Bellingham incinerator. Why? Because that incinerator was discovered to be emitting 10 times more HCl than is considered to be a safe level of emissions by the State of Washington. [Washington's standard for HCl is 50 ppm at 7% O<sub>2</sub>; the incinerator was emitting 697 ppm at 7% O<sub>2</sub>.] (Source 2, below).

As you probably know, we in Livingston have recently discovered that we have a million gallons of diesel fuel floating on our drinking water aquifer. We certainly do not need to compound this problem by assuming any risk whatsoever of putting potentially hazardous amounts of dioxins and HCl into our atmosphere as well. It simply does not make good sense to import and incinerate infectious wastes in a facility in a community the size of Livingston, which cannot afford the high costs that will eventually and inexorably be associated with disposal of infectious wastes.

Thank you.

Attached:

Letter from CAP to Montana State Air Quality Bureau

Sources:

1. Characterization of Emissions from Vancouver Island B.C. Municipal and Hospital Incinerators, P. Beauchemin, P. Eng, BCMOE; B.B. Manna, P. Eng, BCMOE; E. Wituschek, P. Eng, EPS. Undated.
2. Personal Communication. EPA/Region X: Elizabeth Waddell  
Wash. State Air Quality Staff: John Grayback

January 7, 1989

Mr. Marc Montgomery, President  
Citizens Against Pollution  
426 South Yellowstone  
Livingston, MT 59047

5 A  
DATE 2-17-89  
HB 676

Mr. Jeff Chaffee, Chief  
Air Quality Bureau, Environmental Sciences Division  
Department of Health and Environmental Sciences  
Cogswell Bldg.  
Helena, Montana 59620

Dear Mr. Chaffee:

This letter represents the views of members of a Citizen's Committee formed in Livingston, Montana in December, 1988 in response to proposals to import and incinerate substantial quantities of infectious waste in the community's privately owned county incinerator.

After a series of meetings and inquiries, a number of facts emerged that we believe warrant further investigation by appropriate county, state, and federal authorities before any further consideration of importation or incineration of infectious waste be undertaken in Livingston or any other Montana community.

It is our view that there are two basic questions involved in this issue: first, is it appropriate that Livingston become a regional center for disposal of infectious waste imported from distant parts of the Nation, and second, does Livingston have the resources and facilities to deal effectively with existing or potential health hazards associated with disposal of these wastes? Although the first question, a matter of subjective and political judgement, does not lend itself well to rational analysis, we have obtained a measure of community sentiment by means of a petition (attachment I) that was distributed to several community businesses. Over 1,300 citizens saw fit to sign the petition within four days. The approximate populations of Livingston and Park County are 7,300 and 13,300 respectively.

The second question, however, deals with more objective matters, many of which fall within the purview of state and federal regulatory agencies. Our inquiries into these issues indicate that potential health hazards as well as community liability indeed appear to be associated with transportation, incineration, and disposal of infectious wastes. Further, we find that there does not appear to be a monitoring or inspection system in place that provides adequate assurance that community health is not presently jeopardized by incineration and disposal of municipal wastes. It follows that if we do not know what community health hazards may presently be generated by existing facilities, it would be most unwise to entertain proposals to dispose of additional hazardous wastes. We therefore respectfully request that you withhold approval to incinerate material other than municipal waste as required under Air Quality Permit #1629, Section II(C) until such time that these and other issues are satisfactorily resolved.

2-17-89

You are doubtless aware of much of the information available on disposition of infectious wastes. It may, however, be useful to apprise you of some of the information we have ourselves obtained, and further, to obtain information from your department. Although not experts on these subjects, we are rapidly becoming well informed, and are anxious to ensure that our information is accurate. Any assistance your department may give us in this respect will be sincerely appreciated.

1. At a time when Montana has neither guidelines nor regulations governing disposition of infectious wastes, most other states are frantically tightening their own regulations. Please see: 1) State Infectious Waste Regulatory Programs, 1988, published by the Council of State Governments, 2) States Adopt Tougher Laws For Infectious Waste Disposal, 1988, World Wastes Magazine, 3) Burning Issues, 1989, Sanctuary Magazine, and 4) Appendix: State Requirements for Incineration of Hospital Wastes, Hospital Waste Disposal by Incineration, 1988, JAPCA.

2. We have made a preliminary review of scientific literature related to disposition of infectious wastes. The first several articles we reviewed indicated that substantial health hazards may be associated with these wastes. A summary of excerpts from these articles and their sources is attached for your information (Attachment II). We are continuing our review of additional material as it becomes available.

3. We note that particulate emissions for the Livingston facility may not exceed 0.08 grains/dry standard cubic foot corrected to 12 percent CO<sub>2</sub>. Will you kindly provide us with the dates and results of the last four inspections on which particulate emissions were measured at this facility?

4. We note further that emissions from incinerators shall not exceed 10 percent opacity averaged over six consecutive minutes. While we can not yet provide you with specific dates and times, complaints have come to our attention that suggest that this permit stipulation may be violated on a regular and frequent basis. The nature of these emissions suggest that they are not uncombined water. We have just begun our own monitoring program, and would welcome suggestions from you on which parameters to measure, and precisely how to measure them. Please indicate to us how we, as concerned citizens, can determine if these complaints are valid, and if so, how they ought to be dealt with?

5. Complaints about odors created by the facility have also come to our attention. Again, we can not yet provide specific details, but again, we need to know how we should deal with these complaints, and how we should go about making measurements.

6. Section 16.8.704 of the Air Quality Rules gives the Air Quality Bureau authority to require installation of instruments and sensing devices to measure emissions of air contaminants at any facility in the State upon written request. Since the Livingston incinerator is located in close proximity to workshops, residences, and a playground, and since consideration is being given to incineration of potentially hazardous substances, it would seem prudent and reasonable to monitor emissions on a continuous basis to ensure that contaminants do not exceed safe levels. We request that the AQB give serious consideration to requesting that the Livingston facility install appropriate monitoring equipment, and insofar as possible include CAP in these deliberations.

2-17-89

7. We have learned that emissions of furans, dioxins, and especially HCl may increase dramatically as a result of incineration of plastics associated with infectious waste. Unfortunately, neither state nor federal standards yet govern the emission of HCl. Air pollution authorities for the state of Washington have indicated that emissions of HCl exceed by an order of magnitude the allowable limit in that state. No scrubbers, precipitators, or other emission control devices are presently installed at the Livingston incinerator, and we are understandably asking ourselves if hydrogen chloride emissions from our own facility might jeopardize community health here in Livingston. Can the Air Quality Bureau assure Livingston that such emissions would not in fact jeopardize community health, and if not, what steps need to be undertaken to provide such assurance.

Thank you for your assistance. We look forward to hearing from you promptly.

Sincerely,

*Marc Montgomery*  
Marc Montgomery  
President, C.A.P.

cc:

Dr. Sidney Pratt, DHES  
Larry Lloyd, DHES  
John Wardell, EPA  
Governor Stan Stephens  
Rep. Bob Raney  
Sen. Pete Story  
Sen. Orval Elison  
Park Cty. Commissioner Jim Hunt  
Park Cty. Commissioner Carlo Cieri  
Park Cty. Commissioner Larry Lovely  
Park Cty. Attorney Nels Swandal  
Mayor Rick Loftice, Livingston  
Livingston Rotary Club  
Livingston Kiwanis Club  
Sen. Max Baucus  
Sen. Conrad Burns  
Rep. Pat Williams  
Livingston Enterprise  
Bozeman Daily Chronicle  
Billings Gazette  
Missoula Missoulian  
Kalispell Daily Inter Lake  
Miles City Star  
Roundup Record Tribune  
Lewistown News  
Glasgow Courier  
Great Falls Tribune  
Helena Daily Record  
Big Timber Pioneer  
High Country News

ATTACHMENT I

WE, THE UNDERSIGNED ARE ADAMANTLY OPPOSED TO THE TRANSPORTATION AND BURNING OF INFECTIOUS MEDICAL WASTES IN THE PARK COUNTY INCINERATOR.

- (1) At present, the State of Montana has no state regulations governing the transportation and disposal of infectious medical waste; therefore long term dangers and health hazards have not been properly addressed.
- (2) A large percentage of medical wastes are plastics and recent studies have shown that burning plastics is hazardous to our health and environment. This danger is compounded because the incinerator is located in a residential area.
- (3) The Park County incinerator is owned by private investors called the Refuse Energy Corp. Therefore, a handful of private investors will monetarily benefit from burning infectious medical waste in Park County.
- (4) Infectious Medical Wastes means human body parts, aborted babies, hypodermic syringes, gloves, bandages, and other contaminated materials.

NAME	ADDRESS	PHONE
_____	_____	_____

etc.



Potential Health Hazards related to Infectious Waste Incineration: Summary of Views Expressed in Recent Scientific Literature:

- A. "... if the incinerator is not operating properly, viable pathogenic organisms can be released to the environment in stack emissions, residue ash, or wastewater." (Source, 1 below)
- B. "Municipal and hospital wastes are complex and their incomplete combustion can lead to complex and potentially toxic emissions." (Source, 2 below)
- "... incinerators are capable of emitting HCl [hydrochloric acid] in quantities sufficient to approach acceptable ambient air quality guidelines at ground level." (Source, 2 below)
- "Organics emissions were observed from both the hospital and municipal incinerator even though estimated residence times were near 2 seconds and combustion temperatures were in excess of 900°C [1677°F]." (Source, 2 below)
- C. Infectious waste incinerator design configurations should include:
- "Higher operating temperatures in the primary combustion chamber (1500 to 1800°F) to ensure good burnout and maximize destruction of pathogenic organisms." (Source, 3 below)
- "Higher operating temperatures in the secondary combustion chamber (1800 to 2000°F) with increased gas retention times (1.0 to 2.0 seconds) to ensure destruction of organic compounds and any pathogenic organisms." (Source, 3)
- D. "Members of citizens' groups and an array of environment watchers name case after case of air, water, or land pollution caused by incineration . . . throughout New England and the country. [Some] seriously question whether incineration should be used at all." (Source, 4, below)
- E. "As a general rule, it is impractical and uneconomical to incinerate hazardous and nonhazardous waste in the same incinerator." (Source, 5 below) [In Montana, hazardous waste is defined as follows: "a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may . . . pose a substantial present or potential hazard to human health or the environment . . ."] (Source, 6 below)

-----  
Sources:

<sup>1</sup>Environmental Protection Agency, EPA Guide For Infectious Waste Management, May 1986, Publication 530-SW-86-014.

<sup>2</sup>P. Beauchemin, B. Manna, and E. Wituschek, The Characterization of Emissions from Vancouver Island, B.C. Municipal and Hospital Incinerators, 1985.

<sup>3</sup>J. Tessitore and Frank Cross, Incineration of Hospital Infectious Waste, November 1988, Pollution Engineering Magazine.

<sup>4</sup>D'Angelo, D, Burning Issues, Sanctuary Magazine, January 1989.

<sup>5</sup>C. Brunner and C. Brown, Hospital Waste Disposal By Incineration, JAPCA, Vol. 38, No. 10, October 1988.

<sup>6</sup>Montana Hazardous Waste Act, Definitions, 75-10-403(7)(a)(ii).

My name is Joanie Miller and I am a resident of Livingston, Montana. I am here today on behalf of the Montana Right to Life. We support HB 676, the "Waste Management Act" which is sponsored by Bob Raney and feel that Montana needs regulation of infectious waste.

Each year in the U.S.A. over 1.5 million induced abortions are performed. Abortion is legal through the ninth month of pregnancy. Recently, Sure Way Medical Waste Firm from Seattle met with the Park County Commissioners and Refuse Board to negotiate a contract to bring in infectious waste from Seattle. This waste would come from hospitals, clinics and six abortion clinics. Abortion clinics in larger cities have been known to perform up to 500 abortions per month. This means that on a monthly basis, the Park County incinerator could receive up to approximately 3,000 aborted babies to incinerate at all stages of development. This situation could be compared to Hitler's reign when the Jews at Auschwitz, Germany were killed and incinerated because they were unwanted.

In 1982, a workman at a Wichita, Kansas incinerator was burning bags of pathological waste when he discovered that one of the bags contained bodies of dead babies. One such baby was eight months along in the developmental stage. I am including the pamphlet on this case as evidence.

We have no guarantee that aborted babies would not be imported for burning in sealed bags and boxes to Montana. We do not want the reputation for being the dumping grounds of unwanted babies whose innocent lives have been taken in one state and sent to us to dispose of. Strict regulations would certainly discourage this possibility.

Thank you.

EX. #6

2-17-89

ADDENDUM:

The following information is taken from the Washington Right to Life office in Seattle, Washington:

1987 - 12,882 abortions performed in King County (Seattle area)

1986 - 11,753 abortions performed in King County

82 facilities perform these abortions in King County

226 physicians in King county perform these abortions

During Hitler's reign, 17,280 people per day were executed for a total of approximately 6 million. Since Rowe vs. Wade made abortion legal, there have been approximately 22 million unwanted babies aborted.

# OUR THROWAWAY SOCIETY

# ARE CHILDREN THINGS WE THROW AWAY?

Wichita, Kansas, November, 1982

## THE DISCOVERY

In early November, 1982, a workman at a Wichita, Kansas incinerator was burning bags of unidentified "pathological waste" from Wesley Medical Center in Wichita when he discovered that one of the bags contained bodies of dead babies.

Horrified, the worker called a friend, photographer, Richard Augustus, and a local pro-life doctor to oversee the photographing of the grisly scene.

## BABIES BURNED WITH CATS AND DOGS

Later it was revealed that the hospital, under a contract with the City of Wichita had for several years been sending the bodies of aborted and stillborn infants to this incinerator which is owned by the City. There they were burned along with dog, cat, and other animal remains from the dog pound next door. Animal bones are visible, strewn in the background of the pictures taken that fateful day.

## "FETAL TISSUE?"

When confronted with the evidence, the mayor of Wichita commented "I know there needs to be a more dignified way to dispose of fetal tissue."

One of the "fetal tissues" discovered at the Wichita incinerator is pictured above! *Right to Life of Kansas* is convinced that this baby was a liveborn, handicapped child! Another child, probably about 16 weeks old photographed in a gloved hand (see inside) was killed by a saline abortion. His skin is shriveled and burnt by the saline solution used by the abortionist to kill him.

## OUR RESPONSE?

How will we as a society respond to the murder of helpless children? Every thoughtful and compassionate man and woman can only make one choice - the choice to **stand against abortion and infanticide** such as pictured on these pages.

EXHIBIT 7  
DATE 2-17-89  
HB 674

Read by  
Netzy Durfey

My name is Lenny Gregrey and I have been a resident of Livingston, MT for the past 15 years. I am concerned about the air pollution and ground pollution connected with the burning of large quantities hazardous medical waste.

At the present time, the Livingston incinerator is operating without the benefit of stack scrubbers or precipitators to remove the acids and or particulate generated with the regular refuse they are burning. Regular refuse contains a substantial quantity of plastic and this plastic produces HCL as a normal byproduct of incineration. This acid is being emitted freely into the surrounding air.

To protect the public from the hazards of incinerating plastics, which will increase substantially from the packaging surrounding hazardous medical waste brought into Montana from surrounding states, the Livingston incinerator and any other incinerator constructed in Montana should be required to have the following configurations:

1. The installation of stack scrubbers and precipitators to remove all the acids and particulate passing through the stack of an incinerator.
2. The installation of stack monitors which constantly monitor the emissions of an incinerator stack.
3. Incinerators should not be allowed to be sited close to a populated area.
4. The state office charged with monitoring and enforcing air quality standards should be required to make frequent and unannounced inspections of all incinerator sites in the state and not the token once a year visual inspections being conducted at the present time.
5. Incinerator operators should be required to maintain permanent records of hourly operating temperatures and stack emission values. This data should be available for review by monitoring officials.

The incinerator operating in Bellingham, WA is similar to the Livingston

Ex. #7

2-17-89

incinerator and was built by the same manufacturer. The Bellingham plant is emitting 10 times the allowable HCL into the air because of the increase in plastic they are burning due to the large amount hazardous medical waste they are processing. The Bellingham incinerator is equipped with an electrostatic precipitator - THE LIVINGSTON INCINERATOR ISN'T EQUIPPED WITH ANY POLLUTION DEVICES AND THE ACID EMISSIONS WILL BE GREATER.

Thank you for your time in this matter and I hope you do not sell the people and the state of Montana down the drain in the name of being pro business. Look what has happened to the city of Livingston and other Montana communities which were pro railroad - Livingston is left with a million gallons of petroleum based products floating on the ground water - this water is the supply of the drinking water for Livingston. Some of those chemicals polluting the water are known to cause cancer. Our lives are precious and to harm ourselves in the of being pro business is foolish - PASS LEGISLATION WHICH WILL PROTECT THE PUBLIC.

DATE 2-17-89  
HB 674

MDA Amendments

Amend House Bill 676, introduced bill, as follows:

Page 6, line 12

Following: line 11

Insert: "(10) Non-institutional facility" means the office or clinic of a health care professional licensed under Title 37, which is not within a facility as defined in 50-5-101 (11)."

Renumber: Following sections.

Page 5, line 25

Following: "autopsies"

Strike: ";

Insert: "excluding gloves, aprons, masks, and other disposable protective materials required by OSHA. Unless generated at a non-institutional facility, infectious waste also means . . . ."

Page 9, line 11

Following: "parts"

Insert: "(other than teeth)"

Page 9, line 13

Following: line 12

Insert: "(3) A non-institutional facility which generates less than 1,000 pounds per year of infectious waste per professional licensee which are subject to, packaged, and labelled in accordance with the rules of the occupational health and safety administration of the federal government may be stored, transported, and disposed of in the same manner as solid wastes which are not infectious."

Renumber: Following sections.

Page 17, line 3

Following: line 2

Insert: "(c) Each professional licensee practicing in a group or clinic which is a non-institutional facility is, for the purposes of this section, a separate facility. The appointment of the same individual as infectious waste manager by two or more professionals in the same building does not cause that building to become a single facility under this section."

# THE NEWS Gold mine tailings troubling

By JIM ROBBINS

New York Times News Service

HELENA — Last spring in the high desert of northeast Nevada, more than a thousand ducks, geese and other migratory birds flocked to what seemed an inviting habitat.

But the water they discovered was a tailings pond from a gold mine contaminated with cyanide.

More than 1,200 birds died before B.P. Minerals could chemically neutralize the water.

Since then, mines have begun covering waste ponds with nets or neutralizing them. A mining company in Montana plays heavy-metal rock music to scare birds away.

But environmentalists say that the problems related to mining in the West are growing as fast as the production of gold.

In the last decade, higher gold prices have caused production of the metal to quintuple, to more than five million troy ounces a year.

A recently developed process allows microscopic specks of gold to be removed from huge piles of low-grade ore. The result is "an earth-moving project in Nevada on the level of the Aswan Dam," said Philip M. Hocker, the executive director of the Mineral Policy Center, an environmental group based in Alexandria, Va.

"What we're seeing now is the boom," Hocker said. "No one thinks the bust will ever come. But it will and when it does it will be at the public expense."

Laws that govern reclamation are inadequate to deal with the scale of the problem, Hocker and other environmentalists say.

Agencies like the Bureau of Land Management, which regulates most mining on federal lands, concede that they are overwhelmed by the number of mines they must watch.

The most serious problems involve poisonous metals like cadmium and lead, which are released during mining and ore processing. The Environmental Protection Agency is writing regulations to control hazardous wastes from mines.

Cyanide contamination is caused by a technique developed in the 1970s to extract invisible gold specks from low-grade ore.

Rocks are broken into small pieces and stacked into piles, which are sprayed with a water and cyanide solution. As the cyanide washes through the rock it bonds with the gold, which is later stripped from the solvent.

The large-scale, inexpensive technique can be enormously profitable. Using ore from open-pit mines, companies can produce an ounce of gold for \$200 or less and sell it for about \$400. Deep mining and standard milling methods cost about \$300 an ounce.

In northern Montana, a company called Pegasus Gold released cyanide into ground and surface water that supplies a nearby town. The problem was discovered when an engineer noticed a funny smell in water coming from his tap. There were no reported health problems.

Jerry Crawford, an environmental affairs specialist for a mining company in Elko, Nev., said environmental regulation is more stringent than ever, especially with cyanide. "I don't think it's a hazard," he said. "If it's in the air or in shallow water, it breaks down very rapidly."

Small mining companies do some of the worst damage, environmentalists say. If they disturb less than five acres of land, they are exempt from reclamation requirements and are not required to obtain government permits or post bonds guaranteeing that they will clean up their sites.

"They're here today and gone tomorrow," said Jim Jensen, director of the Montana Environmental

DATE 2-17-89

HB 680

April 22, 1989

## Mining

From 3A

Information Center in Helena. "They dredge the bottom of a stream, ruin it and move on."

A 1986 report of the Government Accounting Office, an arm of Congress, blamed the Bureau of Land Management for rarely requiring bonds, even for mines over five acres. By comparison, the United States Forest Service almost always requires a bond on its land.

In a 1987 study, the accounting office looked at 30 abandoned mine sites under the bureau's jurisdiction and found that only six had been completely cleaned up; many of the rest posed hazards from chemicals or large open holes.

The bureau says its policy is applied judiciously so as not to hamper mining. "If you've been a bad actor in the past, we can force you to post a bond," said Bill Condit, who ad-

ministers the mining laws for the bureau. "But we're not going to require a bond in each and every instance."

Some see a reclamation measure as urgent. Workers at the Newmont Gold Co.'s Gold Quarry Mine near Elko are digging a giant crater 3,000 by 4,000 feet, and 500 feet deep. When the mining is over, although roads and leach piles will be bulldozed and buildings torn down, the company can simply walk away from the pit.

"Within 30 years, we'll have more than 200 open pits here, said Glenn Miller, an environmental chemist at the University of Nevada in Reno and a Sierra Club activist. "Part of the cost of doing business should be to bring the land back to productivity."



DATE 2/7-89

HB 680

Rep. C. Brady

# Cyanide research finds funds

Bureau of Mines  
has another project  
next in line for state  
source grants

By Eric Williams  
Standard Staff Writer  
Not enough is known about the ef-  
fects of cyanide heap leach tech-  
niques used in mining, some feel,  
the Montana Bureau of Mines  
and Geology wants to learn more  
about them.

It, of course, takes money, and  
the bureau is recommended to re-  
ceive \$101,789 from the state's Re-  
source Indemnity Trust (RIT) fund.  
Right now, Montana is certainly  
in an active mining era, particular-  
ly in copper mining," said Marvin Miller,  
bureau director. While the cyanide  
leaching process is used for other  
metals as well, the primary use is  
to break gold away from other  
metals in mined material. It liquifies  
the gold, making it easier to get the  
gold metal into an almost pure

Miller said several Montana mines  
currently using the process, and  
proposed operations probably

The main object in the project  
would be to determine how much of  
the cyanide is traveling out of  
the mine areas and into groundwa-  
ter as well as better ways to con-

Western mines must meet state  
standards on liners below the leach-  
ing process, but it is believed some  
leakage away. Miller said some cya-  
nide buildup has been found in wells  
drawing water from the mines.

However, there isn't much data  
available on the substance's move-

Miller said environmentalists and  
mining companies are interested in  
the findings. Miller said the bu-  
reau's hydrology section would pro-  
vide expertise in those areas, and  
that Montana Tech would also  
be involved. Rod James, an envi-  
ronmental professor, and John  
H. Bergeger, an expert in engineer-  
ing, will be "joint investigators"

of the bureau.  
It isn't certain the leaching proj-  
ect will be funded, through it stands  
a chance.

It is ranked sixth by a Depart-  
ment of Natural Resources and  
Conservation (DNRC) panel which  
evaluates proposals and submits recom-  
mendations to the Legislature. The  
decision will be made this  
legislative session.

The \$3.14 million is expected to  
be available for RIT projects, and  
could cover the top 13 of 35

proposals suggested by the DNRC  
group.

However, if more money comes  
in from oil and mineral taxes, addi-  
tional efforts may be funded.

And Bureau of Mines officials  
hope that is the case, or the order of  
some other projects is juggled.

That's because it has another pro-  
posal, which is ranked 13th, just out  
of the money.

That one is titled "use of natural  
zeolites in reducing heavy metal  
concentrations at mining operations  
and impacted lands."

Zeolites are a family of hydrous  
silicates which are similar to the  
feldspars with sodium, potassium,  
calcium and aluminum as their  
chief metals. While sometimes used  
as water softeners or absorbents,  
they can also be used to take hold of  
certain metals.

The bureau did limited experi-  
menting with zeolites last year at  
the baseball fields in Butte which  
were reclaimed. They were used to  
help separate heavy metals, and  
Miller said a zeolite layer was put  
down before the topsoil to capture  
any heavy metals before they pre-  
cipitate further into groundwater.

But, Miller said, there are 17  
main types of zeolites and "they  
have considerable variation. The  
bureau, if funded, would attempt to  
find which zeolites work best with  
taking hold of which metals. Field  
studies at contaminated sites would  
provide much of the information.

But other questions would be ex-  
amined as well.

For one, Miller said, most zeo-  
lites used in mine cleanup come

from Arizona and Oregon, but there  
are substantial deposits in Montana.

"We could actually be using our  
own zeolites," he said, if the study  
were to find that feasible.

Additionally, Miller said, the Jap-  
anese are using the substances to  
remove nutrients and other contam-  
inants, such as nitrates, from fertil-  
izers and other agricultural prod-  
ucts. Possibilities for other uses  
would be explored.

Ted Jordan, in the Tech metals  
department, would also do a consid-  
erable amount of the work with Ted  
Duaine of the bureau.

Again, this project is just outside  
those expected to be funded, but if  
money comes in, DNRC suggested  
it get \$169,568.

Three other proposals by the Bu-  
reau of Mines don't have much of a  
chance for RIT funding. They are:

- A computer model for, and the  
experimental application of, the  
treatment of Berkeley Pit acid  
water, ranked 27th.

- Continuation of a water moni-  
toring project in Eastern Montana  
coal areas. Miller said this is a  
long-standing effort which should  
continue, but other federal, state  
and private funds are getting tough-  
er to obtain. It is ranked 30th.

- Effect of initial moisture condi-  
tions on movement and residual sat-  
uration of hydrocarbons in Montana  
soils. That would examine the  
breakdown and staying capacity of  
hazardous spills such as fuels.

STANDARD

12/23/88

The short and long term development of a healthy mining industry in Montana requires both "large" and "small" mining companies. There are many ore bodies in Montana which require the focus, efficiency, and low overhead costs of a small mining company in order to be economically viable. Experience has shown that the small mining company can operate in full compliance with all applicable regulations.

The "Small Miner's Exemption" makes it easier and quicker for a small miner to start an operation in Montana. The "Small Miner's Exemption" does not put the public health or the environment at risk, since the small miner, operating under a "Small Miner's Exemption", is currently required to obtain a water quality permit to protect the public health and the environment from any activities carried out by the small miner. The small miner must currently comply with all applicable and relevant State, Federal and local laws, rules, policies, procedures, and regulations.

The proposed regulation change, HB 680, which would exclude operations which use cyanide from operating under a "Small Miner's Exemption", does not increase the level of regulatory protection. This proposed change places an arbitrary restriction on the small miner. If there is a problem with the use of cyanide by a miner, the problem is not with the current regulations, but the problem is with enforcement and control.

There are some people who think that small mining companies are less likely and less able than large mining companies to protect the public health and the environment. Size has nothing to do with the knowledge, attitude, and commitment required to operate a mining company in a responsible manner.

The current regulatory climate protects the public health and the environment, while still encouraging the rapid development

2-17-87

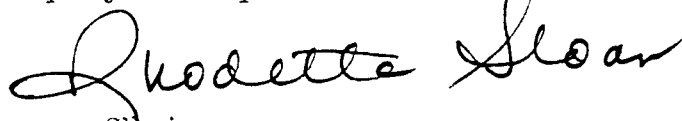
of small mining operations. A small mining company, struggling to get established, cannot afford to buy a property and then wait for one, three or five years for an operating permit to be issued.

Chickadee Mining Company operated the Silver Eagle Mine near Elliston during 1988 under a "Small Miner's Exemption". It is a cyanide heap leaching operation. We took measures beyond those required by the State to protect the environment. For instance, the State requires a liner under the pad. We put in a double liner, with a layer of geo-membrane fabric between, as well as a leak detection system.

We contributed over \$300,000 to the Montana economy, and employed six people. We plan to do the same this year, while working our way through the permitting process. We view the "Small Miner's Exemption" as a temporary permit, to begin operating, while waiting for an operating permit.

There is a real potential for 100 to 150 such well-run, environmentally sound small mining operations in Montana, with each operation employing six to twelve people and spending \$300,000 to \$500,000 per mine per year for wages, supplies, and equipment. We must encourage this potential.

May I emphasize again that it is not the size of the company, but the attitude of the company that protects the environment.



Chairman

Chickadee Mining Company

EXHIBIT 12  
DATE 2-17-89  
HB 680  
*Rep. Study*

A R C T U R U S   R E S O U R C E S   I N C .  
E X P L O R A T I O N   D I V I S I O N

314 North Last Chance Gulch, Helena, Montana 59601 (406)443-2031

February 17, 1989

Re: House Bill 680

My name is Kevin Jones. I am President of Arcturus Resources Inc., a mining, exploration, and environmental consulting firm located in Helena, Montana. A number of my clients have called to express concerns with the proposed bill. Their concerns can be summarized as:

- 1)The bill implies people operating under the Small Miners Exclusion Statement are not concerned about environmental protection. The attitude necessary to operate a mine in a sound manner is not a function of size.
- 2)The bill assumes that an operator under the Small Miners Exclusion Statement does not have to comply with any regulations, which is incorrect. An operator using an SMES must also obtain a discharge permit from the state Water Quality Bureau. As part of these permits, operators must meet design standards, construction standards, and routinely monitor for the release of solutions. Further if a Small Miner violates the Water Quality Act the operator has also violated the terms of Section 1 of the SMES Statement (attached). If the operator

violates the terms of the SMES he is required to comply with Part 3, Chapter 4, Title 82 MCA., which are the requirements for an operating permit. In addition, as stated on the SMES form, failure to comply shall result in the assessment of a civil penalty of up to \$1,000 and a similar penalty for each day of violation. These penalties and requirements are in addition to any penalties that might be imposed by the Water Quality Bureau.

3) The bill was introduced and the hearing held without adequate time for review and comment by people outside of Helena.

4) The bill focuses on a single type of reagent and operation. Other reagents that can have severe environmental impacts if not properly handled are not covered. Therefore it is felt that the bill is discriminatory and gives certain small miners a competitive advantage.

My own concern with the bill is that we are adding another level of regulations to attempt to solve what is really an enforcement problem. Rather, if a problem exists with the SMES and water quality programs, additional personnel should be added. This will help to insure that the currently required discharge permits receive adequate review prior to issuance, and will aid in the stringent monitoring and enforcement of the permit requirements. Further, additional mine inspectors should be added to the

Department of State Lands staff to insure that Small Miners are meeting the requirements to not pollute or contaminate any state waters (which include ground water).

I am also concerned that Montana is driving off the responsible small to medium size mining company. My firm does work throughout the western states and I see that this segment of the industry is largely missing in Montana. If the Bill is passed, it should direct the Department of State Lands to develop rules and regulations specific to the requirements for an Operating Permit under five acres. Such regulations should address the differences between operations of this size and a large operation that is currently covered under the Act. I would also recommend the establishment of a Small Miners Assistance Program to aid these operators in completing the work necessary to obtain a permit. While this program would be in direct competition with a segment of my business I feel that it would encourage growth in the missing segment of the mining industry, provide for greater environmental protection, and serve to stimulate the mining industry as a whole.

In closing I would like to thank you for your time, and ask for a delay in taking action on the bill to allow for written comment by those people outside of the Helena Area.

EXHIBIT 12  
DATE 2-17-89  
HB 676

**State of Montana**  
**DEPARTMENT OF STATE LANDS**  
Capitol Station  
Helena, Montana 59620  
Phone 406/444-2074

**Small Miner Exclusion Statement**  
Pursuant to Part 3, Chapter 4, Title 82, MCA



State of Montana

ss.

**AFFIDAVIT**

County of \_\_\_\_\_

The undersigned person, firm, or corporation, being duly sworn, states and agrees that he (it), in consideration for his (its) exemption from the permit and license requirements of Part 3, Chapter 4, Title 82, MCA:

- (1) Will not, from this day forward, pollute or contaminate any stream as a result of mining operations on his (its) part or under his (its) direction. The terms "pollution" and "contamination" are defined in Section 75-5-103 MCA;
- (2) will 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
- (3) will provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TITLE

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Residing at \_\_\_\_\_

\_\_\_\_\_  
Notary Public for the State of Montana

My Commission expires \_\_\_\_\_

**PENALTY**

Failure to comply with the above sworn statement shall constitute a criminal offense.

**SMALL MINER IS DEFINED IN SECTION 82-4-303(10) AS FOLLOWS:**

"Small miner" means a person, firm, or corporation that engages in the business of mining, 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.

ANY PERSON NOT MEETING THE ABOVE DEFINITION IS REQUIRED TO COMPLY WITH PART 3, CHAPTER 4, TITLE 82, MCA AND FAILURE TO COMPLY SHALL RESULT IN THE ASSESSMENT OF A CIVIL PENALTY OF UP TO \$1,000.00 AND A SIMILAR PENALTY FOR EACH DAY OF VIOLATION.

DEPARTMENT OF STATE LANDS  
Hard Rock Bureau  
Capitol Station  
Helena, MT 59620  
(406) 444-2074

EXHIBIT 12  
DATE 2-17-89  
BY 676

SMALL MINER EXCLUSION STATEMENT  
Plan of Operations

NAME AND MAILING ADDRESS OF SMES HOLDER

COUNTY(S) in which you plan to mine:

Phone Number:

Type of mining operation and equipment to be used:

Minerals to be mined:

What are your plans for the coming mining season and how many acres do you estimate will be disturbed?

Please give section, township, range and county(s) locations of your mine site(s) and the name of the claim(s) in the space below:

\* Please include a map that clearly shows your mining location.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE



Amendments to House Bill No. 679  
First Reading Copy

Requested by Rep. Ed Grady  
For the House Committee on Natural Resources

February 17, 1989

1. Title, lines 5 through 7.  
Following: "OPERATIONS" on line 5.  
Strike: "MEET" on line 5 through "ACRES" on line 7  
Insert: "RECLAIM LANDS DISTURBED BY THE OPERATIONS AND TO POST A  
PERFORMANCE BOND EQUAL TO THE COST TO THE STATE OF  
RECLAIMING THE DISTURBED LANDS"
2. Title, lines 7 through 9.  
Following: "ACRES;" on line 7  
Strike: remainder of line 7 through "DEGREES;" on line 9
3. Page 4, line 25 and page 5, line 1.  
Strike: ", or 2 acres if the operations are placer or dredge  
mining,"
4. Page 5, lines 4 and 5.  
Strike: ", or 2 acres if the operations are placer or dredge  
mining,"
5. Page 6, line 24.  
Following: "~~No~~"  
Strike: "The"  
Insert: "Except as provided in subsection (3), the"
6. Page 7, lines 7 and 8.  
Strike: ", and the construction of fences or barriers around  
opencuts with walls steeper than 45 degrees"
7. Page 7, line 8.  
Strike: "and"
8. Page 7, line 11.  
Following: "department"  
Strike: "."  
Insert: "; and"
9. Page 7, following line 11.  
Insert: "(d) if the small miner's operations are placer or  
dredge mining, that he shall reclaim all land disturbed by  
the operations to comparable utility and stability as that  
of adjacent areas."
10. Page 8.  
Following: line 12  
Insert: "(3) A small miner whose operations are placer or dredge  
mining shall post a performance bond equal to the cost to  
the state of reclaiming the disturbed land."

Gray hb679 -- Unofficial  
February 17, 1989

13  
2-17-89  
679

1 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A SMALL MINER  
2 WHO HAS PLACER OR DREDGE MINING OPERATIONS TO ~~MEET GENERAL~~  
3 ~~METAL MINE RECLAMATION REQUIREMENTS IF HIS OPERATION WOULD~~  
4 ~~DISTURB 2 OR MORE AGRES~~ RECLAIM LANDS DISTURBED BY THE  
5 OPERATIONS AND TO POST A PERFORMANCE BOND EQUAL TO THE COST  
6 TO THE STATE OF RECLAIMING THE DISTURBED LANDS; REQUIRING A  
7 ~~SMALL MINER TO AGREE IN WRITING TO CONSTRUCT FENCES OR~~  
8 ~~BARRIERS AROUND OPENCUTS WITH WALLS STEEPER THAN 45 DEGREES;~~  
9 AMENDING SECTIONS 82-4-303 AND 82-4-305, MCA; AND PROVIDING AN  
10 APPLICABILITY DATE AND AN EFFECTIVE DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 82-4-303, MCA, is amended to read:

14 "82-4-303. Definitions. As used in this part, unless the context indicates  
15 otherwise, the following definitions apply:

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

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

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

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

28 (5) "Exploration" means all activities conducted on or beneath the surface of  
29 lands resulting in material disturbance of the surface for the purpose of  
30 determining the presence, location, extent, depth, grade, and economic viability of  
31 mineralization in those lands, if any, other than mining for production and  
32 economic exploitation, as well as all roads made for the purpose of facilitating  
33 exploration, except as noted in 82-4-305 and 82-4-310.

34 (6) "Mineral" means any ore, rock, or substance, other than oil, gas,

Gray hb679 -- Unofficial  
February 17, 1989

13  
2-17-89  
679

1 bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below  
2 the surface or from the surface of the earth for the purpose of milling,  
3 concentration, refinement, smelting, manufacturing, or other subsequent use or  
4 processing or for stockpiling for future use, refinement, or smelting.

5 (7) "Mining" commences ~~at such time as~~ when the operator first mines  
6 ores or minerals in commercial quantities for sale, beneficiation, refining, or  
7 other processing or disposition or first takes bulk samples for metallurgical  
8 testing in excess of aggregate of 10,000 short tons.

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

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

15 (10) "Placer deposit" means naturally occurring, scattered or unconsolidated  
16 valuable minerals in gravel or alluvium lying above bedrock.

17 (11) "Placer or dredge mining" means the mining of minerals from a placer  
18 deposit by a person or persons.

19 ~~(10)~~(12) "Reclamation plan" means the operator's written proposal, as  
20 required and approved by the board, for reclamation of the land that will be  
21 disturbed, ~~which~~ The proposal shall include, to the extent practical at the time  
22 of application for an operating permit:

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

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

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

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

33 (e) the method of disposal of mining debris;

34 (f) the method of diverting surface waters around the disturbed areas where

Gray hb679 -- Unofficial  
February 17, 1989

13  
2-17-89  
679

1 necessary to prevent pollution of those waters or unnecessary erosion;

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

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

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

7

8 ~~(11)~~(13) (a) "Small miner" means a person, firm, or corporation that engages  
9 in the business of mining or reprocessing of tailings or waste materials that  
10 does not remove from the earth during any calendar year material in excess of  
11 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and  
12 that conducts:

13 (i) operations resulting in not more than 5 acres, ~~or 2 acres if the~~  
14 ~~operations are placer or dredge mining,~~ of the earth's surface being disturbed  
15 and unreclaimed; or

16 (ii) two operations which disturb and leave unreclaimed less than 5 acres per  
17 operation, ~~or 2 acres if the operations are placer or dredge mining,~~ if the  
18 respective mining properties are:

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

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

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

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

29 ~~(12)~~(14) "Surface mining" means all or any part of the process involved in  
30 mining of minerals by removing the overburden and mining directly from the  
31 mineral deposits ~~thereby~~ exposed, including but not limited to open-pit mining of  
32 minerals naturally exposed at the surface of the earth, mining by the auger  
33 method, and all similar methods by which earth or minerals exposed at the  
34 surface are removed in the course of mining. Surface mining does not include

Ex. #13  
2-17-89

Gray hb679 -- Unofficial  
February 17, 1989

1 the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or  
2 uranium or excavation or grading conducted for on-site farming, on-site road  
3 construction, or other on-site building construction.

4 ~~(13)~~(15) "Underground mining" means all methods of mining other than  
5 surface mining.

6 ~~(14)~~(16) "Unit of surface-mined area" means that area of land and surface  
7 water included within an operating permit actually disturbed by surface mining  
8 during each 12-month period of time, beginning at the date of the issuance of  
9 the permit, and it comprises and includes the area from which overburden or  
10 minerals have been removed, the area covered by mining debris, and all  
11 additional areas used in surface mining or underground mining operations which  
12 by virtue of such mining use are thereafter susceptible to erosion in excess of  
13 the surrounding undisturbed portions of land.

14 ~~(15)~~(17) "Vegetative cover" means the type of vegetation, grass, shrubs,  
15 trees, or any other form of natural cover considered suitable at time of  
16 reclamation."

17 Section 2. Section 82-4-305, MCA, is amended to read:

18 "82-4-305. Exemption -- small miners -- written agreement. (1) ~~No The~~  
19 EXCEPT AS PROVIDED IN SUBSECTION (3), THE provisions of this part ~~shall~~  
20 do not apply to any small miner when the small miner annually agrees in  
21 writing:

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

23 (b) that he shall provide protection for human and animal life through the  
24 installation of bulkheads installed over safety collars ~~and~~, the installation of doors  
25 on tunnel portals, ~~and the construction of fences or barriers around open cuts~~  
26 ~~with walls steeper than 45 degrees; and~~

27 (c) he shall provide a map locating his mining operations. ~~Such The~~ map  
28 ~~shall must~~ be to a size and scale ~~as~~ determined by the department: ; AND

29 (d) IF THE SMALL MINER'S OPERATIONS ARE PLACER OR DREDGE  
30 MINING, THAT HE SHALL RECLAIM ALL LAND DISTURBED BY THE  
31 OPERATIONS TO COMPARABLE UTILITY AND STABILITY AS THAT OF  
32 ADJACENT AREAS.

33 (2) For small-miner exemptions obtained after September 30, 1985, no small  
34 miner may obtain or continue an exemption under subsection (1) unless he

Gray hb679 -- Unofficial  
February 17, 1989

EXHIBIT 13  
DATE 2-17-89  
HB 679

1 annually certifies in writing:

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

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

5 (ii) no corporation of which he is an officer, director, or owner of record of  
6 25% or more of any class of voting stock has a small-miner exemption; or

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

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

9 (ii) none of the associates or partners is an officer, director, or owner of  
10 25% or more of any class of voting stock of a corporation that has a small-  
11 miner exemption; or

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

14 (i) holds a small-miner exemption;

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

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

19 (3) A SMALL MINER WHOSE OPERATIONS ARE PLACER OR DREDGE  
20 MINING SHALL POST A PERFORMANCE BOND EQUAL TO THE COST TO  
21 THE STATE OF RECLAIMING THE DISTURBED LAND."

22 NEW SECTION. Section 3. Extension of authority. Any existing authority to  
23 make rules on the subject of the provisions of [this act] is extended to the  
24 provisions of [this act].

25 NEW SECTION. Section 4. Applicability. [This act] applies to any placer  
26 or dredge mining operation for which a small-miner exemption has not been  
27 obtained before July 1, 1989.

28 NEW SECTION. Section 5. Effective date. [This act] is effective July 1,  
29 1989.

30 -END-

HOUSE BILL 707

STATEMENT OF INTENT

A statement of intent is provided for this bill in order to give additional guidance to the board of natural resources and conservation and the involved state agencies concerning the review and processing of lease applications for the purpose of maintaining or enhancing stream flows for fish, wildlife, or recreation.

The legislature intends that the board designate stream reaches eligible for water leasing in areas where leasing is necessary or likely to be necessary to enhance or maintain fish, wildlife or recreation. Upon receipt of a list of stream reaches from the department of fish, wildlife, and parks, the board shall act expeditiously to designate eligible stream reaches. However, the legislature also encourages the board to select stream reaches where leasing has a good chance of success and where all interests may be satisfied.

The legislature also intends that the review process for lease applications be thorough and provide ample opportunity for consideration and input by concerned persons. As required in [section 4], the process should involve notice and opportunity for objections and hearing in the same manner provided for proposed changes in appropriation rights. The legislature contemplates that the department of fish, wildlife, and parks will meet with appropriators along each designated stream reach

Ex. #14  
HB 707  
2-17-89

to assess and consider any concerns before filing applications for lease authorizations. The legislature also encourages the department of fish, wildlife, and parks to assemble lease applications for filing at the same time to minimize costs to potential objectors. Moreover, the legislature anticipates that the department of natural resources and conservation will review the proposed leases for a single stream reach in one proceeding, though the potential for another set of lease applications at a future date is recognized.

The accurate identification of the stream reach in both the application and lease authorization is critical to a successful leasing program. Upon issuance of a lease authorization with an identified stream reach, the legislature intends that the entire leased appropriation may be protected to the extent provided under Title 85, chapter 2, in any part of the stream reach that is above the lessor's point of diversion. However, only the historical consumptive use of the right, or a smaller amount if specified in the lease authorization by the department of natural resources and conservation, may be protected in any part of the stream reach that is below the lessor's point of diversion. Finally, the legislature intends for the lessor to be responsible for taking action, if necessary, to protect the instream flow amount specified in the lease authorization, though the lessor and lessee may specify otherwise by contract.

From a broad policy perspective, the legislature desires to emphasize that the department of natural resources and



Ex. #14

HB 707

2-17-89

conservation should consider and, if potentially feasible, recommend supplemental or alternative strategies that provide long-term solutions to problems that are not or probably will not be addressed adequately by water leasing in the board-designated stream reaches. These strategies may include storage enhancement or development and recharge from ground water sources.

How would an instream flow lease be applied on a "losing" or "shrinking" stream?

The existing law allows the department to condition its approval of a change in water use based on the existing circumstances and to avoid adverse affects to other water users. In the case of a losing stream, the department could reduce the amount that would be used for instream flow based on existing stream flow conditions. For example, if a stream naturally disappears at some point, the DNRC would not allow a change to instream flow beyond that point. If a stream naturally reduces by 20 percent, the DNRC could reduce the amount that could be used for instream flow by 20 percent.

Furthermore, a water commissioner on the stream is best qualified to allocate flows based on the specific factors that contribute to or diminish stream flow. The commissioner has discretion to allocate the flows based on the particular characteristics of the stream.

How is the consumptive part of an irrigation water right calculated?

Estimating consumptive use is not a new problem to water law. In western states where streams are highly appropriated, water right changes are more common than new water right applications. The central question in change application is often the amount of water consumptively used.

Many methods of estimating consumptive use are available. The consumptive part of an irrigation water right consists generally of the evapotranspiration (ET) and irrecoverable losses associated with the particular irrigation practices. ET is the sum of the water transpired by the crop and evaporated from the soil. DNRC generally uses the Blaney-Criddle method, which takes into account such factors as crop-type, mean monthly air temperature, monthly percent of average daylight hours, elevation, and growth stage of the crop. This estimates the potential water use of the crop, from which effective precipitation is subtracted to arrive at consumptive irrigation use.

Irrecoverable losses are associated with irrigation practices and hydrogeology. The losses include evaporation from conveyance systems or sprinklers and losses to deep percolation to groundwater.

## QUESTIONS AND ANSWERS ON THE INSTREAM FLOW LEASING BILL

### WHAT IS THE PURPOSE OF THE BILL?

The purpose of the instream flow leasing bill is to allow the Department of Fish, Wildlife and Parks (DFWP) to lease water rights from willing individuals or groups to maintain or enhance free-flowing water in certain streams for fish, wildlife, and recreation (Section 4(1)). Several of these points should be emphasized.

First, the only entity that is allowed to lease water for instream flow purposes is the DFWP. However, other public and private agencies are allowed to contribute funds and other resources to the DFWP for the purpose of leasing water for instream flow protection (Section 6).

Second, the DFWP may only lease water only from "willing" parties. No one will be forced to lease water to the DFWP for instream flow purposes.

Third, the DFWP may lease water from willing parties to both maintain existing resources as well as to enhance or increase instream flows in dewatered streams. While the bill provides the DFWP an alternative mechanism to maintain existing instream resources (in addition to the reservation process (Section 85-2-316, MCA) and water storage), it is most likely to be used to enhance instream flows in dewatered streams.

Fourth, the DFWP's opportunity to lease water for instream flow purposes is limited to only 10 stream reaches identified by the DFWP and approved by the Board of Natural Resources and Conservation (Section 5).

Fifth and finally, the DFWP may only lease water to protect and manage fish, wildlife, and recreational resources.

### HOW DOES THE BILL PROTECT EXISTING WATER RIGHTS?

First, the DFWP can only lease water from a "willing" party. That is, instream flow leases are voluntary; they are not required and do not result in the confiscation of water rights without compensation. Where the two parties cannot be mutually benefited, a lease arrange-

ment makes bad economic sense and is not likely to be entered into.

Second, according to the "Statement of Intent," it is anticipated that the DFWP will meet with appropriators along selected stream reaches to assess and consider any concerns before proceeding with an instream flow lease.

Third, the DFWP must provide the Board of Natural Resources and Conservation (BNRC) with a list of specific stream reaches on which leasing is desired (Section 5). The BNRC must then declare or designate only 10 stream reaches where instream flow leases may occur if it finds that leasing is necessary. Individuals or groups with existing water rights would have an opportunity to express their concerns before the Board regarding instream flow leases on particular stream reaches.

Fourth, a proposal for an instream flow lease must be processed through the same change of use proceeding as other water right changes and transfers (Section 2). In short, this means that individuals with water rights would have an opportunity to object to the lease and to provide evidence on how and why the lease would adversely affect the use of their water right. If a proposed lease would result in an adverse affect, it would not be allowed.

Fifth, the Department of Natural Resources and Conservation (DNRC) maintains jurisdiction to modify or revoke the lease during the lease period if third parties provide new evidence that the lease adversely affects the use of their water right (Section 4(6)).

### HOW WILL THE BILL AFFECT FUTURE WATER PERMITTEES?

An individual or group that applies for and receives a water use permit with a priority date after the date of the instream flow lease authorization would not be allowed to object to the exercise of the lease, the renewal of the lease, or the reversion of the appropriation right to the lessor (Section 4(9)). This is consistent with the prior appropriation doctrine ("first in time, first in right), and does not constitute a change in Montana's water law.

#### **HOW MUCH OF AN EXISTING WATER RIGHT IS LEASABLE?**

The amount of water that may be leased from an existing water user for instream flow purposes is generally up to the lessor and the DFWP. However, the maximum quantity of water that may be leased is the amount historically diverted by the lessor; only the amount historically consumed may be leased below the lessor's point of diversion (Section 4(4)). The DNRC may specify in the lease authorization that an amount of water smaller than that historically consumed by the lessor is leasable.

#### **HOW WILL THE LENGTH OF THE STREAM REACH TO WHICH THE LEASE APPLIES BE IDENTIFIED?**

The length of stream reach to which an instream flow lease applies is generally up to the lessor and the DFWP. However, specific information on the length and location of the stream reach must be included in the instream flow lease authorization (Section 4(3)). In addition, the BNRC may establish the streams and stream reaches where leasing may occur.

#### **HOW WILL THE INSTREAM FLOW BE MEASURED?**

The details for measuring a leased instream flow are up to the DFWP. However, a lease authorization must include an instream flow measuring plan that describes the points where and the manner in which the instream flow will be measured (Section 4(3)).

#### **HOW LONG IS THE LEASE PERIOD?**

An instream flow lease may be authorized by the DNRC for no more than 10 years (Section 4(5)). The lease

may also be renewed (for up to 10 years per renewal) if nobody objects to the renewal and provides new evidence showing how the lease adversely affects the use of a water right, and if the leasing statute is recodified after the 10 year sunset provision.

#### **HOW OFTEN MAY THE LEASE BE EXERCISED?**

The frequency with which an instream flow lease may be exercised is up to the lessor and the DFWP. It may be exercised every year out of a 10 year period, or it may be exercised only during "dry years."

#### **WHAT IS THE PRIORITY DATE FOR AN INSTREAM FLOW LEASE?**

As in any water right change, the priority date for an instream flow lease authorization is the same as the priority of appropriation of the water right that is leased (Section 4(7)).

#### **WHO MAY ENFORCE INSTREAM FLOW LEASES?**

According to the "Statement of Intent," the lessor is responsible for taking action, if necessary, to protect the instream flow lease. However, the "Statement of Intent" goes on to say that the lessor and the DFWP may agree to a different arrangement if agreeable to both parties.

#### **WILL A LEASED WATER RIGHT BE CONSIDERED ABANDONED?**

In leasing an existing water right, the lessor does not abandon any part of the right (Section 3(4)).



College  
of  
Great Falls

Sisters of Providence

1301—20th Street South / Great Falls, Montana 59405 / (406) 761-8210

EXHIBIT 17  
DATE 2/17/89  
HB 707

February 15, 1989

Rep. Bob Raney, Chairman  
House Natural Resources Committee  
Capitol Station  
Helena, MT 59620

Dear Rep. Raney:

On February 9, 1989, the Board of Natural Resources and Conservation approved four sections of the Montana State Water Plan. One of these sections is titled "Instream Flow Protection," and one of its recommendations is for the Legislature to change the law to allow leasing of off-stream water rights to maintain or enhance instream flows.

By the time this letter reaches you, a bill to accomplish this will have been introduced and referred to the House Natural Resources Committee (LC634/1663). An unproofed draft of this bill was reviewed by the Board on February 10, and a motion expressing the Board's support for this bill was unanimously approved.

The water leasing portion of the state water plan engendered much public discussion and controversy. The Board of Natural Resources and Conservation did not approve it lightly. Public comment has included nine public meetings, three public hearings, and receipt of over two hundred letters. Additionally, the Board conducted its own hearing. After carefully considering the alternatives, water leasing emerged as the preferred choice. The draft water leasing bill reviewed by the Board provides an additional method to protect Montana's natural resources that are dependent on instream flow without harming the economic interests dependent on existing water rights.

In sum, the Board supports the water leasing bill before your committee. It is a fair and balanced approach, and it includes clear protection for current water rights holders and safeguards against the uncertainties surrounding implementation of a new water management technique.

Ex. #17

2-17-89

Rep. Bob Raney      February 15, 1989      Page 2.

I am sure that as Chairman of the House Natural Resources Committee you will see that this bill receives the fair and timely hearing it deserves.

Sincerely,

A handwritten signature in cursive script that reads "William A. Shields".

William A. Shields, Chairman  
Board of Natural Resources and Conservation

cc: Governor Stan Stevens  
Karen Barclay  
BNRC Members

2/17/89  
707

Testimony to the House Natural Resources Committee  
by

Terry L. Anderson

In Support of H.B. 707

My name is Terry L. Anderson, and I am a professor of economics at Montana State University who has specialized in the area of water marketing and water rights. I have published two books and numerous articles on this subject and continue to do research on the potential for marketing instream flows. The views presented here do not necessarily represent those of Montana State University.

My testimony is in support of H.B. 707. I support this bill because it is an innovative mechanism for generating cooperation among water owners, land owners, wildlife officials, and recreationalists. The drought of 1988 made us keenly aware of the tradeoffs between water diversions and instream uses. As a result the state water plan recently approved by the Board of Natural Resources and Conservation calls for greater attention to instream flow demands and for leasing as provided by H.B. 707.

As it now exists, the prior appropriation doctrine and the water permit system do not adequately account for instream values. They allow for water to be diverted and for the point of diversion to be changed, but they do not recognize rights to instream flows even if both water owners and recreational advocates want to leave water instream. In fact, these institutions foster diversion through the "use it or lose it principle." This does not encourage water use efficiency and means that important instream values are ignored.

H.B. 707 is an innovative attempt at rectifying these problems. By allowing DFWP to lease water in voluntary transactions, it provides a mechanism for reallocating water to higher valued instream uses where both the DFWP and the lessor agree. This gives existing diverters control of what water is leased and an incentive to seek ways to conserve on water use. By encouraging efficiency the bill allows Montana to maximize the value of this important resource. Moreover, by letting recreational and environmental interests express their values through DFWP leasing, the bill gives a water use with increasing value a place in the allocation scheme.

It would be better to allow individuals and groups to lease water privately, thereby avoiding unnecessary bureaucratic red tape and ensuring timely action when instream flows may be critical. However, this bill is a good second-best solution because it at least allows leasing for instream purposes and allows individuals and groups to contribute funds to the state leasing process.

While some see this legislation as a radical departure from existing law, it is important to recognize that it is very little different from the process whereby points of diversion are changed. Suppose that an upstream diverter sells water to a downstream diverter. Only the portion of the water right which is consumed can be sold and only then if there are no objectors or if their objections are not sustained. Between the former

P.2  
Ex. #17  
2-17-89

upstream diversion point and the new downstream point, the water necessarily becomes an instream flow. Such a transaction is perfectly legal under current law and has all the necessary checks to prevent harm to third parties.

H.B. 707 is almost identical to the above type of transaction. Under this bill an upstream diverter can lease his consumptive right to DFWP. The transaction can only take place if there are no objectors or if their objections are not sustained. Between the upstream diversion point and the downstream end of the reach which must be specified by DFWP and approved by the Board of Natural Resources and Conservation, the water necessarily becomes an instream flow. The only real difference is that at the end of the reach, the water is freely available to any other users who can establish a claim to it. Since these two transactions are so similar, some believe that courts would approve of a DFWP or even a private lease for instream purposes. The advantage of this legislation is that it takes the decision out of the conflict ridden courts.

The bottom line is that instream leases provide a "win-win" institutional arrangement. Upstream diverters are compensated for any crops they forego; instream flow demands are met; and downstream water users get water paid for by DFWP. Unlike judicial settlements, H.B. 707 which requires voluntary transfers encourages cooperation between DFWP and water owners. At a time when most agree that landowner-sportsmen relations are at an all time low, this is very important.

The dewatering of the Ruby River in 1987 provides an excellent illustration of how the leasing could work. When low water in 1987 caused reaches of the Ruby River to dry up, there was no effective leasing mechanism to get diverted water back into the river even if both water owners and fishing advocates agreed. The water clearly belonged to farmers and ranchers who were diverting it, and trout fishermen had no way to purchase or lease this water. While water was returned to the river through negotiations between agricultural interests and DNRC, it was too little too late. If trout fishermen had been able to "put their money where their trout were," the dewatering problem might have been avoided. H.B. 707 would have provided this opportunity.

Some people contend that this bill should require that the legal fees of successful objectors should be paid by the party initiating the lease, DFWP. There is good reason for this since it puts the burden on DFWP to find water that will not raise objections. However, if this provision is good for this legislation, it is equally applicable to all water transactions where objectors are successful in sustaining their objections and therefore should apply to all water transactions.

A final reason to pass this legislation is that it marks a significant redirection from the litigious mood of the stream access cases and legislation. Few doubt that the stream access issue contributed greatly to deteriorating landowner-sportsmen relations. I agree with private landowners that stream access amounted to a taking of property without due process. Unfortunately the courts have found otherwise.

H.B. 707 is an improvement because the state is purchasing rather than taking water rights from water owners. Again I stress that it would be better to allow recreational and environmental interests to lease the water



2-17-89

directly, but at least state leasing is better than taking.

In closing let me point out the consequences of rejecting this legislation. Recreational and environmental interests have legitimate demands for instream flows; these are beneficial uses. If these demands cannot be expressed through voluntary water transfers, recreational and environmental interests will have no choice but to seek legislative or judicial redistribution of water. Since the public trust doctrine worked to get access to public water even when it flows across private property, many lawyers believe that the same doctrine can and should be used to maintain and increase instream flows. Let me quote from a leading legal scholar discussing "emerging forces in western water law."

"Some western state legislatures may be tempted to ignore instream flow needs and thereby avoid the constraints they place on other water uses. Such an approach, however, may prove implausible due to the recent reach of the Public Trust Doctrine . . . . [T]he Doctrine bars water diversions 'once it becomes clear that such diversions harm the interests protected by the public trust' . . . . Many parties . . . are considering how the Public Trust Doctrine could be innovatively asserted to further their positions. As a result, the Doctrine promises to be a factor in the future course of western water law. . . . The Public Trust Doctrine represents the potential for impacting western water users and diminishing the control of state government over the allocation of water."

The public trust doctrine may provide a way for instream flow interests to get their water, but it will not come without significant conflict.

If you want to lose control of Montana's water to the courts and to generate conflict that will make stream access seem like a Sunday picnic, vote against H.B. 707. But if you want a positive alternative that does not hurt agriculture (indeed it gives water owners another "cash crop") and allows instream demanders a way to express their interests through voluntary cooperation in water markets (as opposed to the conflict of courts), vote in favor of H.B. 707.

TESTIMONY OF THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
ON HOUSE BILL 707

---

A BILL FOR AN ACT ENTITLED: " AN ACT PROVIDING FOR LEASING OF EXISTING WATER RIGHTS FOR THE PURPOSE OF ENHANCING STREAMFLOWS FOR FISH, WILDLIFE, OR RECREATION, ETC.

---

The Department of Natural Resources and Conservation supports House Bill 707. The legislation would implement a recommendation of the state water plan that addresses streams having significant instream values and yet subject to regular or periodic low flow conditions. Other water plan recommendations to deal with this circumstance include pursuing local cooperative solutions, such as the sharing of water shortages and irrigation scheduling; providing for water storage releases, as is already being done from Painted Rocks Reservoir for the Bitterroot River; and evaluating the potential for developing additional water storage facilities to meet both instream and offstream water use needs.

None of these options is a panacea for solving stream dewatering problems. Rather, each should be considered as a tool for addressing the problem. Each of these tools has its own particular applicability and limitations. Water leasing may be the best tool for the job of solving dewatering problems in some areas.

The state water plan recommendation on water leasing was the result of considerable public input and debate. Participants in the discussion included a broad-based Instream Flow Technical Advisory Committee, the State Water Plan Advisory Council, the Board of Natural Resources and Conservation, the legislature's Water Policy Committee, several special interest groups, and about 2,500 people attending 12 public meetings on the plan.

This bill embodies a "walk-before-you-run" approach. It is purposely a constrained bill in that it doesn't allow private entities to lease water for instream flow purposes nor does it allow for the purchase (or permanent transfer) of a water right for instream uses. It further limits leasing to ten streams in Montana. Yet, the bill can make a difference and can accomplish the principle objective of protecting valuable instream resources at times when they are most threatened.

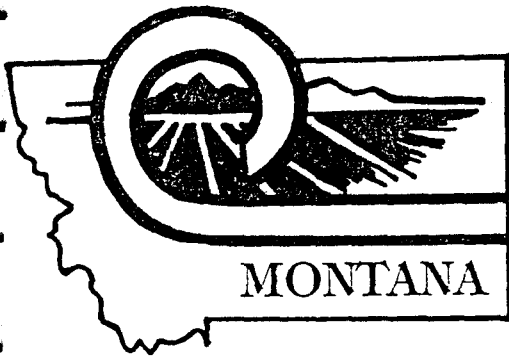
The bill amends existing Montana water law by allowing instream uses to be considered along other water uses. That is, existing water rights may currently be changed or transferred, but only from one offstream use to another. This bill would treat all water users more fairly by allowing instream flow purposes to be fulfilled when and where willing parties would enter into instream flow lease agreements.

Instream flow leases would be subject to the same change of use requirements that other transfers must satisfy, and additional requirements that are justified by the different nature of an instream water right. These will not be easy requirements to meet but they are necessary to protect all existing water users. I can assure you that such matters as quantifying the consumptive part of a water right or return flows are very complex and difficult, but they are matters with which the department has experience and ones that have to be carefully considered in any other change of use proceeding. If it were found that a proposed lease arrangement would harm an existing water right, the lease would not be authorized.

In conclusion:

1. Water leasing would operate within the framework of Montana's prior appropriation water rights doctrine.
2. All existing water rights would be recognized and protected.
3. Only willing parties would ever be involved in the leasing of water for instream flow purposes.
4. Like reservoir storage, leasing would represent a water management tool that may help sustain important natural resources during low flow conditions.
5. Also, like storage, leasing would not be a panacea and would not be applicable in all circumstances.
6. Finally, water leasing would be very limited in scope and allow the state to approach this matter in a positive, yet cautious manner.

EXHIBIT 20  
DATE 2/17/89  
HB 707  
*[Signature]*



MONTANA

Association of Conservation Districts

1 South Montana  
Helena, MT 59601  
February 17, 1989

443-5711

Testimony to the House of Representatives Natural Resources Committee  
on HB 707.

For the record my name is Peggy Haaglund, executive vice president of  
the Montana Association of Conservation Districts.

The MACD does support HB 707. In November of 1988 at our annual  
convention the delegation adopted the following resolution. I would  
like to read it to you.

Whereas in some cases streams are dewatered in low flow years to the  
detriment of instream values; and

WHEREAS MACD prefers storage built by investment of both instream and  
offstream users as a long term answer to Montana's water supply; but

WHEREAS in the meantime contractual leasing arrangements may be  
possible that serve the interests of both instream and offstream users;

THEREFORE BE IT RESOLVED THAT MACD supports voluntary leasing to the  
Montana Department of Fish, Wildlife and Parks of offstream water  
rights for instream flows as long as current water rights are not  
adversely affected and the volume of the water leased is not greater  
than the original depletion.

Thank you.

HB 707  
February 17, 1989

EXHIBIT 21  
DATE 2/17/89  
HB 707  
(*Rep. Owen*)

Testimony presented by Ron Marcoux, Department of Fish, Wildlife and Parks

The past several drought years have clearly demonstrated how water shortages can affect all of us and how difficult it is to resolve the problem. As a result the legislature has many bills this session addressing various water issues. This bill may be one of the most important for instream uses over the long term.

The hallmark of Montana's modern water laws, as they have evolved since 1973, is to provide adequate flexibility to address diverse needs while protecting existing users. HB 707 can provide a much needed mechanism to keep streamflows from reaching critically low levels in important streams. HB 707 provides that, as long as no other existing water users are affected, the department can lease water from a willing right holder. The consumptive part of that water right can be left instream for a specified reach.

Our experience in the Bitterroot Valley indicates this can be done. Although the instream water in the Bitterroot comes from storage, we have demonstrated our ability to work with local irrigators, conservationists and the district court to deliver the water downstream. In fact, the increased flow has also benefited irrigators along this reach of stream.

Under this bill, the department's authority to lease water is limited to 10 stream reaches as designated by the Board of Natural Resources and Conservation. In a trial period, this is a reasonable approach.

The bill contains a number of safeguards to protect existing water users and provides a limited scope of leasing while the program is being developed and evaluated. The department feels the ability to lease water for instream purposes is an important mechanism to alleviate some of the problems on our dewatered streams, and offers its support to HB 707.

EXHIBIT 22  
DATE 2/17/89  
HB 707  
*Rep. Hunter*

AFS Testimony - HB 707  
February 17, 1989

Chris Hunter, Montana Chapter, American Fisheries Society

I am representing the Montana Chapter of the American Fisheries Society. The American Fisheries Society is a professional organization for fishery biologists and scientists that includes nearly 8,000 members from throughout North America. The Montana Chapter consists of nearly 150 fishery professionals employed by the private sector, university system and state and federal government.

Members of the Montana Chapter of the American Fisheries Society would like to voice our approval for the spirit and intent of this proposed legislation because it provides some hope that streamflows will be enhanced during droughts such as we experienced the last two summers. However, we would also like to bring to your attention what we feel are several major limitations in this bill which we ask that you take into consideration.

The three fundamental elements of trout stream habitat are: (1) adequate streamflow, (2) good water quality, and (3) secure physical habitat elements that include the bed and banks of the stream and surrounding riparian areas. The loss or deterioration of any of these will result in loss or deterioration of a fishery.

This bill offers the opportunity for the Department of Fish, Wildlife and Parks to enhance streamflows through leasing of water

Ex. #22  
2/17/89

rights presently allocated for offstream uses. However, we see no reason to limit the scope of free market transactions between willing parties.

We recommend that you consider expanding the bill (1) to allow both leasing and purchasing of offstream rights for instream purposes, (2) to permit parties other than the Department of Fish, Wildlife and Parks to purchase or lease waters for instream uses, and (3) to remove limitations on the numbers of streams or reaches of streams that are eligible for such transactions.

As a property owner (and a water right is a form of ownership) I would not like being told that someone else can lease their property but that I cannot because I live along the wrong river or that I am restricted as to who I can sell my property to or whether I can sell it or lease it.

We urge your support of this legislation but we ask that you consider the amendments that we described. Thank you!

EXHIBIT 23  
DATE 2-17-89  
HB 707  
*Deplerson*

WITNESS STATEMENT

NAME Janet Ellis BILL NO. HB 707

ADDRESS Helena

WHOM DO YOU REPRESENT? Audubon

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: Water is a precious resource to all  
of us in Montana — including <sup>our</sup> fish and  
wildlife. This bill provides ~~the state~~ <sup>with</sup> an  
important too to protect our fish and wildlife  
resources.

Thank you.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



EXHIBIT

DATE

HB

24

2-17

707

R. J. L. L. L.

# TESTIMONY RE HOUSE BILL 707

I am Ronald F. Waterman, attorney at law, practicing in Helena, Montana. I appear on behalf of the Montana Stockgrowers Association, Montana Cattlemens Association, and Montana Association of State Grazing Districts in opposition to House Bill 707.

There are a number of reasons why these Associations oppose this bill. One deals with fundamental philosophies and the other reasons flow to the specific areas of the bill.

In opposing this legislation, these agricultural organizations do not ignore the problems the past drought has had upon Montana's streams. Livestock producers have been affected by drought. They know and understand the consequences the drought-like conditions caused, not only to their own operations, but also to the state's streams, its fisheries and wildlife. Nonetheless, a recognition of the drought does not justify approval of House Bill 707. The proposed bill contains numerous problems.

The first fundamental problem these agricultural organizations have with House Bill 707 is the underlying concept of allowing an individual who is not using a water right to lease the same to another party. Water rights are unique property rights. They rely exclusively on use to warrant their continued existence. A water user may assert a claim through court filings for a certain quantity of water or

period of water use. However, if the actual use is less, the actual use controls and determines the amount of the water right. A water right is exclusively a use right. Without actual use a water right does not exist. Likewise, when a water right is not used, the water becomes available to satisfy junior appropriators rights in the source of supply. This prevents waste and assures that water in a source of supply is continually put to a beneficial use.

Leasing contains the assumption that an individual owns a right which can be leased to another. A water user who does not put water to a beneficial use does not have a water right capable of being leased to a third party. When a water user declines to put water to a beneficial use, that water is then subject immediately to junior water appropriators' rights. A water user who does not place water to a beneficial use simply has no water right available to lease to a third party.

House Bill 707 contradicts this fundamental concept of water law. The bill suggests that a water user who does not place water to a beneficial use can nonetheless lease the water to a third party. A water user who does not put water to a beneficial use simply has no water to lease. For this reason alone, the concept behind House Bill 707 is contrary to applicable water law and for this reason the agricultural organizations resist the bill.

Further, these organizations oppose this bill because the

bill identifies as a purpose, the enhancement or maintenance of stream flows for fish, wildlife or recreation. Clearly, there is no need for this proposed legislation, except during those times when a severe drought occurs. Such was the finding of the water policy committee and was the principal reason Governor Stephens has used to explain his position he would support water leasing legislation. If, in fact, water leasing is appropriate during periods of drought, then the bill and all references throughout should not be to enhance or maintain stream flows for fish, wildlife or recreation but rather, should be to enhance or maintain stream flows "during critical, low flow periods caused by drought." Essentially, this bill proposes to have state government exercise emergency powers during a drought period. Under those circumstances, the bill should be specific that it does not authorize the general leasing of water rights but only allows those leasings during the specified emergency periods. All references to enhancing stream flows for fish, wildlife or recreational purposes should be deleted from the bill.

The agricultural organizations likewise object to the amendment contained in Section 1, amending Section 85-2-102(1)(c), MCA. A lease as described in the bill is the lease of an existing right. It should not be defined as a new appropriation by the Department, as suggested through this section. The suggestion that the lease becomes a separate

appropriation, rather than a continuation of the original appropriation, suggests that the Department of Fish, Wildlife and Parks acquires, through the lease, a separate property interest to the water. This amendment is inappropriate and should be deleted from any final bill.

We likewise question Section 4 and several of its sub-parts. Section 4, subparagraph 4 advances inconsistent and contradictory provisions. On one hand, it suggests the maximum amount of water leased is the amount historically diverted. On the other hand, the language suggests the maximum amount of water leased is the matter historically consumed. In truth, if leasing is a valid concept, the amount of water historically consumed by the lessor, is the only amount which could be leased to the department. If a lessor diverts more water than is actually consumed, the difference is a return flow. That return flow will always be available to junior appropriators to satisfy their individual water rights. Consequently, continuation of references to the historic diverted quantity of water only assures litigation over this issue.

Likewise, subparagraph 5 of Section 4 is in conflict with Section 9. According to Section 9, the act terminates on October 1, 1999. A lease entered into for ten years cannot be renewed thereafter because the underlying authorization for the leasing concept, this legislation will have expired by

then. All leases entered into regardless of when entered into, will by reason of Section 9 terminate on October 1, 1999. As a consequence it is unrealistic to insert in language of renewal, especially allowing renewals beyond 10 years from passage of the legislation. Further, the renewal language as written suggests a lease may continue in perpetuity subject to being renewed every ten years. Even if a water right lease is authorized, it should not continue forever without a periodic renewed application for the lease.

There is one final point with regard to the bill which these organizations object. Section 6(1) allows the department to accept contributions from public or private entities for the purpose of leasing and places those contributions in deposit in the fish and wildlife mitigation trust fund. Those contributions however, are not earmarked and as a consequence could be expended for any purpose. If private contributions for water leasing is approved, the money collected should be used exclusively for the acquisition of leases.

Further, there are several significant omissions from the bill which need be addressed in any leasing legislation. In the event leasing is permitted, one purpose of the leasing should be to fill offstream storage to avoid the reoccurrence of drought conditions. There is no mention of this important element of drought abatement. Without including language concerning offstream storage and the utilization of waters im-

2-17-89

pounded in such storage, any leasing bill will continue to have these agricultural organizations' strong objection to its passage.

Further, this bill does not state what role the Department of Fish, Wildlife and Parks plays in the event it becomes a lessee to waters on a stream reach. The Department of Fish, Wildlife and Parks should be required to waive the right to object to any other water use applications on the stream reach during the period of the lease. The Department of Fish, Wildlife and Parks, with its resources, should it become a lessee of water, could potentially fund broad objections which would prevent further development on a stream unless the department's ability to file objections is waived.

The concept of water leasing clearly is a new and unique way of addressing drought related stream flow problems. As set forth above, House Bill 707 advances this concept in an inappropriate manner. We recognize however, that there may be need to experiment with this concept on a few limited stream reaches. Accordingly, my clients would consider and evaluate legislation which was site specific and limited to only one or two stream reaches, with identified quantities of water to be leased and with disclosure of the parties who would be affected by the lease. This information is likely to already be in the possession of the Department of Fish, Wildlife and Parks. Any leasing bill would require specific sunseting to

2-17-89

assure that the experiment retained its character of an experiment and the bill did not provide an opportunity to expand the concept of leasing beyond its experimental stage until the full ramifications of a water leasing program could be evaluated.

A water leasing bill has been advanced by its advocates as an alternative to potential litigation over instream flows. While the agricultural organizations are not anxious to involve themselves in future litigation and the issue of whether instream flows are protected by the public trust doctrine, nevertheless, these agricultural organizations cannot in the face of such threatened litigation, give approval to House Bill 707 or the concept it advances. House Bill 707 will not resolve the controversy. House Bill 707 instead will only impose upon some water users an unwarranted experiment which should not be pursued by the State of Montana at this time.

For all of these reasons, the Montana Stockgrowers Association, Montana Cattlemens' Association and the Montana Association of State Grazing Districts oppose House Bill 707 and ask this committee to vote "do not pass" regarding this legislation.

7681R



**MONTANA FARM BUREAU FEDERATION**

502 South 19th • Bozeman, Montana 59715  
Phone: (406) 587-3153

EXHIBIT 25  
DATE 2-17-89  
HB 707  
*R. J. Carlson*

BILL # HB 707 ; TESTIMONY BY: Dave McClure  
DATE Feb. 17, 1989 ; SUPPORT \_\_\_\_\_ ; OPPOSE Yes

Mr. Chairman, members of the committee, I am Dave McClure, a farmer rancher from the Lewistown area and currently president of the Montana Farm Bureau, an organization of over 3600 member families. We oppose HB 707 because of policy statements established by our voting members who are active farmers and ranchers. We do want to cooperate and participate in solving problems regarding the use of our water resources in Montana. We recognize and share the concerns of many other groups and the legislature. Our policy states:

"We support the theory of additional water storage to increase availability of water for agriculture and recreational use as well as to increase instream flow".

"We oppose any instream flow legislation unless it is based strictly on additional storage".

As you can see, we support the idea of maintaining stream flows and feel that this is best done by storing, spreading and using water for Montana. This type of plan can benefit all Montanans with economic activity, development and future growth of our water resources for late-season stream flow.

We have genuine concerns about several issues contained in HB 707 and the concept of leasing water rights for instream flow. The possibility of litigation and costs to protect down stream or junior water rights is real because this is a major change in the definition of beneficial use. Also, since federal law does not recognize instream flow as a beneficial use, will this change cripple Montana when down stream states lay claim to unused flows? We are concerned about putting a leasing plan into effect before the adjudication process is complete.

During severe drought such as in 1988, we cannot solve all problems by moving a limited quantity of water around. We feel that current water projects, which provide much recreation as well as irrigation, held water

SIGNED: \_\_\_\_\_



EXHIBIT 25  
DATE 2-17-89  
HB 707

back for more late season flows than in past droughts, as in the 30's. By many accounts the 1988 drought was more severe than any other. Farmers and ranchers were severely harmed by the lack of water in 1988. They had to haul feed to cattle or haul the cattle to feed and water and in some cases haul water to the cattle that were not sold off. All this in addition to lost crop production. We more than any other group do not want to experience another year as dry as 1988. We sincerely hope that HB 707 is to some extent a knee-jerk reaction to the 88 drought and does not cause more harm.

Lastly Farm Bureau pledges cooperation and support in funding projects as in support of HJR 22 for Pick-Sloan funding. The support of water use efficiency as in HB 461. We do not feel that confrontation with other groups here in Montana is the best way to solve problems. However Montana Farm Bureau must represent the best interests of agriculture and we sincerely believe that water leasing for instream flow is not the best solution.

EXHIBIT 26  
DATE 2-17-89  
HB 707

HB707 Rep. Iverson Feb. 17, 1989

Support Oppose ☒ Amend ☒

Montana Water Resources Association

Jo Brunner, Executive Secretary

Mr. Chairman, members of the committee, it has been difficult for our organization to make the decision as to which side of this to come in on.

Our immediate past president is on the Advisory Council for the state water plan, and I sat on the Technical Advisory Committee for the Instream flow portion. I also participated in the informal committee discussion on leasing of instream flow, as did several of MWRA members. Not because our Association actively supports the leasing of waters, but because we felt that should leasing ever come about, we ought to have participated in the process--much like a 'the rats away and the mice might play' situation.

The Montana Water Development Association has protested and continues to protest the short length of time that we have been given for the instream flow, and for the Ag Efficiency portions of the Water Plan to be discussed. The Instream flow specifically is such a serious change in our historical water uses and laws that more time must be given for consideration by those effected, which ought to include information and education processes.

The Montana Water Development Association is in agreement with many of the opinions expressed here today, but we wish to offer amendments to this bill, addressing the specific inclusion of storage facilities as protection of instream flow for fisheries and wildlife.

MWRA is a very strong supporter of storage facilities, and it has to be recognized that despite original costs, many of them still being paid off, the greatest protection that fisheries have are storage facilities that store water for regulated release, protective to the fisheries in a great many ways. And it is our opinion that the costs of constructing such facilities should be shared, just as the benefits are shared. Consequently we offer these amendments.

Page 14, Section 6 (1) Line 11, after the words appropriation rights, insert a comma, and the words, ---for the construction of and participation in the construction of storage facilities,-----

Page 14, Section 6, (3) line 19, after the words existing rights, insert a comma and the words, ---for the construction of and participation in the construction of storage facilities,-----

Mr. Chairman, members of the committee, it is our request that you do adopt these amendments. We cannot support this bill in its present form.



*The Big Sky Country*

27  
DATE 2-17-89  
HB 707

## MONTANA HOUSE OF REPRESENTATIVES

**REPRESENTATIVE VERNON L. WESTLAKE**

HOUSE DISTRICT 76

**HOUSE ADDRESS:**

CAPITOL STATION  
BOX 122  
HELENA, MONTANA 59620

**COMMITTEES:**

AGRICULTURE LIVESTOCK &  
IRRIGATION  
HIGHWAYS & TRANSPORTATION  
STATE ADMINISTRATION

February 17, 1989

**House Natural Resources Committee:**

Rep. Bob Raney, Chairman  
Rep. Ben Cohen, Vice Chairman

Mr. Chairman, Members of the Committee, I am Vernon Westlake,  
Representative of House District #76 in Gallatin County.

I oppose HB707 for many of the same reasons that I am sure  
will be brought out by the AG groups this afternoon.

This bill is not just an act or pilot project for voluntary  
transfer of an existing water for instream flow, but will  
rewrite the entire water law in the State of Montana.

The bill will eliminate the prior appropriation doctrine  
in effect, because "diversion" for beneficial use will no  
longer be required. I believe this will bring about the  
biggest problem or conflict between water users that we  
have ever seen.

For example, let's say, there are 10 appropriators on a  
stream being considered for leasing. The oldest water rights

point of diversion is located at the head of the source.

Naturally, the Department would approach this party and make an agreement to lease for instream flow. Immediately the 9 appropriators are adversely affected. I believe most of you understand that junior appropriators have the right to use the water of the senior appropriator when he isn't using all or part of his right. The lease for instream flow would preclude the junior appropriators from using the senior appropriators water and thus are adversely affected so litigation would start.

Voluntary leasing of water rights for instream flow is not the answer for enhancing streamflows for fish, wildlife or recreation. Storage is the answer and that came out loud and clear this past summer and fall when DNRC conducted hearings throughout the state for water planning and development.

I shall conclude by saying this bill addresses so many concerns and the fact that today is the last day it could be heard, I urge the committee a "do not pass" and recommend leasing of existing water rights for instream flow be again considered by the Water Policy Interim Committee.

Thank you, Mr. Chairman.

707



# WIFE Women Involved In Farm Economics

HB707  
Kay Norenberg  
WIFE (Women Involved In Farm Economics)  
OPPOSE

Mr. Chairman, members of the committee. My name is Kay Norenberg, representing WIFE (Women Involved In Farm Economics).

We would like to go on record as opposing HB707.

We agree that there is a need and a vital use for instream flow for many reasons.

We believe that before we commit ourselves to leasing there should be more study to see how this would affect ground water and what it would do to other water users on the stream.

Irrigation practices are now what maintains the instream flow in the winter. Let's not just jump on the band wagon because of last years severe drought. Let's look things over and make a wise decision with facts in front of us.

We should look at some alternatives to maintain flow in dry years such as storage facilities. Let us work together for the good of everyone in the state of Montana. We believe that means the use of storage facilities for instream flow.

Thank you!

STATEMENT OF HI LINE SPORTSMEN  
IN SUPPORT OF HB-407

TO: House Natural Resources Committee

Hi line Sportsmen is a citizens' group from north central Montana interested in promoting hunting, fishing, and outdoor recreation in general in our area. We sportsmen have over 150 members who live in Chester, Havre and between Shelby, Conrad and Great Falls. A main area of concern is the Marias River above and below Tiber Dam - Lake Elwell. We sportsmen strongly support HB 407, Streamflow Leasing Act since we believe it would help maintain adequate minimum stream flows in our area and in the rest of Montana.

Some relevant facts:

For the last two summers, the lower Teton River has been a totally dry. This has been disaster for wildlife and outdoor recreation.

Last summer. The Marias River above Lake Edwell was almost dry. In every day of August, 1988, more water evaporated from Lake Elwell than flowed in at the from the Marias River at the uppers end.

Hi Line towns from Havre to Chester depend on the Marias for drinking water. In addition, there are many ranch-town water systems that depend on the Marias. Irrigators and ranchers below Tiber Dam need adequate flows.

The sportsmen have in the recent past been active in working with the Bureau of Recreation, irrigators, farmers, water use companies on a cooperative committee to regulate water flows from Tiber Dam. Since this cooperative effort, stream flows have been stabilized and maintained. Fishing has improved. Water quality is also improved. Irrigators can count on adequate flows.

We sportsmen are now very concerned about the minimum flows on the upper Marias River. A means of providing an adequate minimum flow of 200 CPPS is needed if this valuable river resource is to be properly protected.

Please approve HB 407, Streamflow Leasing Act to be considered by your committee. Help us protect the main recreation resource of north central community.

HI LINE SPORTSMEN  
Kenneth Osterman, President  
Charlie Frey, Legislative Relations

EXHIBIT 30  
DATE 2-17-89  
HB 678

TESTIMONY ON HB 678  
DEPARTMENT OF STATE LANDS

THE DEPARTMENT OF STATE LANDS SUPPORTS HB 678. WE BELIEVE THAT IT REPRESENTS A REASONABLE APPROACH TO ENSURING PROTECTION FOR MONTANA'S FORESTED WATERSHEDS. THERE IS INSUFFICIENT EVIDENCE OF A WATER QUALITY PROBLEM OF A MAGNITUDE THAT WARRANTS AN EXPENSIVE BURDENSOME REGULATORY SOLUTION. ON THE OTHER HAND, HOWEVER, WE BELIEVE THAT FOREST PRACTICES, SUCH AS TIMBER HARVESTING, HAVE THE POTENTIAL TO ADVERSELY AFFECT WATER QUALITY IF BEST MANAGEMENT PRACTICES (BMPS) ARE NOT PROPERLY PLANNED AND CARRIED OUT. THEREFORE, IT IS IMPORTANT AND NECESSARY THAT A BMP EDUCATION PROGRAM BE AUTHORIZED AND FUNDED IN MONTANA. SUCH A PROGRAM WILL COMPLIMENT THE EFFORTS OF THE CUMULATIVE WATERSHED EFFECTS COOPERATIVE. THE COOPERATIVE, WHICH IS COMPOSED OF FEDERAL AGENCIES, FOREST INDUSTRY AND THE DEPARTMENT, IS ALREADY WORKING TO INSURE THAT BMP'S ARE IMPLEMENTED DURING FOREST PRACTICES ON ALL LANDS MANAGED BY MEMBER ORGANIZATIONS. THIS BILL WILL DO THE SAME FOR PRIVATE FOREST LANDS NOT COVERED BY THE COOPERATIVE. WE BELIEVE THAT THE CONCEPT OF MANDATORY INFORMATION AND EDUCATION, COUPLED WITH VOLUNTARY COMPLIANCE BEST MEETS THE TOTAL NEEDS OF MONTANA.

THE KEY TO A SUCCESSFUL INFORMATION AND EDUCATION PROGRAM IS THE ABILITY TO TRANSFER INFORMATION TO THE TARGET AUDIENCE. FOR A WATER QUALITY EDUCATION EFFORT TO BE SUCCESSFUL ON PRIVATE FOREST LANDS, A SPECIFIC MECHANISM IS NEEDED TO INSURE THAT THE APPROPRIATE INFORMATION IS PRESENTED TO THE LANDOWNER OR OPERATOR AT THE APPROPRIATE

Ex. #30

2-17-89

TIME. IN OTHER WORDS, THE LANDOWNER OR OPERATOR MUST BE MADE AWARE OF THE VALUE AND NEED FOR BMPS PRIOR TO ACTUALLY SELLING OR CUTTING TIMBER. HOWEVER, IN THE PAST, VOLUNTARY INFORMATION AND EDUCATION PROGRAMS HAVE NOT BEEN ENTIRELY SUCCESSFUL. THE REASON HAS BEEN THE LACK OF AN EFFECTIVE VEHICLE FOR INSURING THE DELIVERY OF EDUCATIONAL INFORMATION TO THE LANDOWNERS AND OPERATORS WHO NEED IT MOST. THIS IS THE REASON THAT WE SUPPORT THIS BILL. MANDATORY NOTIFICATION, WITH THE OPTION OF AN ON SITE CONSULTATION PRIOR TO CONDUCTING FOREST PRACTICES SOLVES THE MAJOR PROBLEM EXPERIENCED WITH INFORMATION AND EDUCATION PROGRAMS -- <sup>that is</sup> INSURING THAT THE RIGHT PERSON GETS THE NECESSARY INFORMATION AT THE RIGHT TIME. MANDATORY NOTIFICATION IS THE ONLY WAY IN WHICH WE WILL EVER FULLY ATTAIN THE EDUCATIONAL OBJECTIVES NECESSARY TO INSURE ADEQUATE WATER QUALITY PROTECTION, USING AN ESSENTIALLY VOLUNTARY PROGRAM.

THE DEPARTMENT ALSO BELIEVES IT IS IMPORTANT TO PROVIDE FOR A FOLLOW UP EVALUATION TO DOCUMENT THE SUCCESS (OR FAILURE) OF THE VOLUNTARY PROGRAM. THIS IS PROVIDED FOR BY REQUIRING THE DEPARTMENT TO EVALUATE THE EFFECTIVE APPLICATION OF BMPS IN CONJUNCTION WITH THE ALREADY EXISTING, AND MANDATORY, HAZARD REDUCTION INSPECTION. THIS EVALUATION WOULD BE CONDUCTED ON A SAMPLE OF ALL PRIVATE FOREST LAND, INCLUDING INDUSTRIAL OWNERSHIPS PARTICIPATING IN THE CUMULATIVE WATERSHED EFFECTIVE COOPERATIVE.



Montana  
Audubon Legislative Fund

EXHIBIT 31  
DATE 2-17-89  
HB 678

Testimony on HB 678  
House Natural Resources Committee  
February 17, 1989

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine chapters of the National Audubon Society and has over 2500 members statewide.

Audubon supports HB 678.

HB 678 is the product of HJR 49 and concerns over the effects of forest practices on water quality and quantity. Audubon had several members volunteer their time to participate in this study.

We feel that HB 678 is an important first step in working to improve forest practices in the state by enabling the Department of State Lands to get the opportunity to educate operators and <sup>land</sup> owners about Best Management Practices (BMPs).

Although HB 678 is an important step toward solving problems with forest practices, we want to emphasize that it is a SMALL first step and a SMALL piece of a larger puzzle. We encourage members of this committee to also carefully examine other forest practice bills that will be seen before the legislature. Each piece will have a role in working to solve that problems with forest harvest on private and public land.

CHAMPION'S TESTIMONY ON HOUSE BILL NO. 678

My name is Gordon Sanders and my comments represent Champion's comments on House Bill No. 678 introduced by Representative Gilbert.

Over the past two years, Champion has fully participated in all phases of the HJR 49 Study which studied the effects of forest practices on watersheds in Montana. This participation by Champion personnel involved all EQC meetings, field tours, active participation on both the Best Management Practices Technical Committee and the Watershed Effects Working Group. Champion personnel participated in field audits, both as a team member and in the detailed review of nine areas selected for review on Champion land. Champion helped develop the BMPs and provided detailed input in response to the EQC's forest management practice questionnaire.

Champion fully endorses all of the preliminary recommendations of the final EQC report on the HJR 49 Study in regards to Best Management Practices, information and education, pre-sale assistance, oversight of BMP application, technical issues, and follow-up actions.

Since the very recent development of HB 678, we have suggested changes as appropriate to make this bill work and most of those suggestions were incorporated. A few additional changes would be desirable.

In your consideration of the bill before you, please consider that the intent of all of the public involved was not to create a paperwork or procedural nightmare for the State, the private forestland owner and the forest products industry. It was not the intent of the EQC and the two committees to create costly or unnecessary artificial or procedural delays in conducting forest practices. It was <sup>not</sup> the intent to increase the costs of the State, the private forestland owner <sup>and</sup> the forest products industry. The intent simply was to further educate those conducting forest practices and to encourage the use of Best Management Practices in all forest practices applied to Montana's forestland.

32  
DATE 2-17-89  
HB 678

Where problems were found on the ground, the EQC devised effective solutions to bring about the necessary improvement in current practice. The key point that all members of this committee and the legislature needs to be aware of is that the people conducting forest practices in Montana have been working hard to improve current practices. Not one instance of willful intent to conduct a damaging practice was found during the intensive on-site field audits. This fact and the continued progress that has been made under the current voluntary cumulative effects cooperative efforts led the EQC to conclude that a more costly, regulatory approach to forest practices is not justified.

In summary Champion supports HB 678.

EXHIBIT 33  
DATE 2-17-89  
HB 715

Proposed Amendments to HB 715  
Submitted by Rep. Ream  
House Natural Resources Committee  
February 17, 1989

1. Page 12, line 2  
Following: line 1  
Strike: "(6)"  
Insert: "(4)"  
Following: "Subsection"  
Strike: "(5)"  
Insert: "(3)"
2. Page 12, lines 5 through 14  
Strike: lines 5 through 14 in their entirety

Pam Hackley, Consulting Soil Scientist

My name is Pam Hackley. I am testifying in favor of HB 715. I am a soil scientist with OEA Research, which is a small consulting firm providing ecological services to a wide variety of clients. I was asked by the Montana Environmental Information Center to participate in HJR 49, the interim study on Forest Practices and Watershed Effects.

The results of the field audits showed that activities in the streamside management zone, regardless of ownership, often resulted in damage to streams, streamside vegetation, and soils. One of the most frequent problems was clearcutting up to the stream's edge thereby removing much of the vegetation that protects streambanks from erosion and provides cover and shade to the stream. A companion problem was operating tractors or other heavy equipment near the stream. This often disturbed lots of soil and in many cases this soil reached the stream to become damaging sediment.

A longterm effect of these poor activities is not only continued erosion to the stream but a longer recovery time for the native riparian vegetation. This is because valuable topsoil is lost and exposed subsoils are compacted and otherwise unfavorable for tree establishment. Damage to streamside areas is not just limited to the specific site. Sediment and warmer waters ultimately affect stream habitat many miles downstream.

These damages probably would not have happened if best management practices (BMP's) for streamside areas had been used or effectively applied. Right now the State and Federal agencies and large private timber landholders have agreed to use BMP's in many areas of forest practices. But as the HJR 49 audits showed there is plenty of evidence to suggest that voluntary implementation of BMP's is not enough to protect streamside areas. And we all know that good intentions have paved many roads to undesirable places.

EXHIBIT 34  
DATE 2-17-89  
HB 715

The definition of the streamside management zone (SMZ) and nine requirements for activities in the SMZ detailed in HB 715 do not propose anything new or radical. They are based on sound ecological principles and watershed management goals known for years. Most of the western States have already adopted comprehensive forest practices acts which include similar kinds of streamside management zone requirements. These requirements are often more extensive and restrictive than those proposed for HB 715.

HB 715 offers an opportunity to prevent watershed damages rather than trying to patch up severe damages caused by avoidable mistakes. As demands for timber continue to increase and we start roading and harvesting in our headwaters where the terrain and soils are more sensitive to erosion, it is essential that we act now. I feel that the provisions detailed in HB 715 are the very minimum we need to ensure protection of our streams.

EXHIBIT 35  
DATE 2-17-89  
HB 715

AFS Testimony - HB 715  
February 17, 1989

Chris Hunter, Montana Chapter American Fisheries Society

My name is Chris Hunter and I am testifying today in favor of HB 715. I am representing the Montana Chapter of the American Fisheries Society. The American Fisheries Society consists of nearly 8,000 fishery biology and scientists from throughout North America. The Montana Chapter includes nearly 150 fishery professionals employed by the private sector, university system, and state and federal government.

Several of our members participated in the field audits of Forest Practices conducted as part of the HJR-49 study effort. The audits clearly showed that Montana headwater streams are suffering degradation due to forest practices -- particularly in the streamside management zone (SMZ). Audit teams found that the requirements for an adequate SMZ had the lowest overall rating, both for application of practices and effectiveness of water quality protection. Thirty seven percent of the sales audited (remember that these were randomly chosen) had departures in this category. Almost 10% of the sales were judged to be causing damage to streams characterized as extensive and long term.

Sale administrators for several of the timber sales that were audited were surprised to learn that some of their practices were detrimental to streams in the sale area. One administrator for a large timber corporation said he would welcome clearer guidelines

EXHIBIT 35  
DATE 2-17-89  
HB 715

for sale activities that occur near streams.

HB 715 would place reasonable sideboards on timber harvest activities that occur in streamside areas while also providing a mechanism to allow use of alternate practices in appropriate situations. This legislation also provides sensible administrative remedies for correcting problems resulting from poor practices and penalties for indiscriminate operators. We believe that these provisions are necessary to provide an incentive to use practices that will protect streams.

Protection of streamside areas, and water quality in headwater streams of western Montana is fundamental to preserving Montana's world famous wild trout resources. HB 715 recognizes that areas near streams should not be excluded from timber harvest but also that special management standards are required if stream resources are going to be protected.



February 17, 1989

To the House Natural Resources Committee:

We are writing in support of House Bill 715, the Headwaters Conservation Act of 1989. This measure to protect Montana water quality is greatly needed and long overdue. We would like to see the act amended in three ways: 1) It should specifically include lakes, since lakes are as susceptible to water quality degradation from logging as streams; 2) The 100-foot buffer zone is not adequate and should be extended to a minimum of 200 feet; and 3) There is currently no effective date on the bill; we urge that it become effective upon passage.

We have owned property on Lindbergh Lake in the Swan Valley for 32 years. We live there half the year. Recently we learned that Plum Creek Timber Co. intends to begin logging the west side of the lake this spring (hence our request that the bill have an immediate effective date). The slope they intend to log is quite steep. Erosion from logging will impact Herrick Run, a bull trout spawning stream. It also will degrade the water quality of Lindbergh Lake.

Lindbergh currently is a pristine lake. We homeowners on the lake use it as our water supply. We have seen what unregulated logging on private lands has done to the water quality in other lakes and streams in the Swan Valley and find it most discouraging. Sedimentation is ruining the fisheries in the valley. And it certainly doesn't take a trained eye to see the ugly scars caused by logging in the valley in the absence of sound, enforced regulations. The loss of aesthetic and water quality values in the Swan is not only heartbreaking to those of us who have known the area for decades, it also threatens the area's tourism economy.

We are extremely concerned about the degradation of water quality and aesthetic values that may result from unregulated logging on Lindbergh Lake. Private property values on the lake will suffer; so will public land values. (There is a good deal of public land around the lake, including a government campground and the Mission Mountains Wilderness.)

Lindbergh Lake was named in honor of the American hero Charles Lindbergh after he stayed at the lake in the 1920s. As one of America's early conservationists, Charlie Lindbergh would be horrified to see what logging has done to lakes and streams in the Swan Valley. He would turn over in his grave if he knew his beloved Lindbergh Lake was similarly threatened.

EXHIBIT 34  
DATE 2-17-89  
RE 715

It would cost the taxpayers and logging companies very little to protect Lindbergh Lake and other riparian areas like it. Clean water is such a precious commodity that any costs would be well justified. We therefore urge a Do Pass recommendation of HB 715, with our suggested amendments. Thank you.

Sincerely,

Richard A. and Neva J. Porte  
1401 Sibelius, Helena, MT

*Richard A. Porte*  
*Neva J. Porte*

Montana  
Audubon Legislative Fund

EXHIBIT 37  
DATE 2-17-89  
HB 715

Testimony on HB 715  
House Natural Resource Committee  
February 17, 1989

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of 9 chapters of the National Audubon Society and represents over 2500 members statewide.

The Audubon Fund supports HB 715.

1. We would like you to consider amending this bill to include riparian areas around lakes as well as the Streamside Management Zones defined in HB 715. Riparian Zones are used in Forest Practices Acts in Oregon, Washington, Idaho, California and the U.S. Forest Service. It doesn't make sense to exclude lakes from Best Management Practices (BMPs).
2. Requiring BMPs along streams and lakes makes sense. This small area is the place where the most devastating environmental damage occurs. Water is a public resource and practicing BMPs in riparian areas around lakes and streams will go a long way toward protecting that resource. Please note that the definition of Stream Management Zones (SMZ) does not prohibit logging in those areas - it requires that SMZs be areas of closely managed activity. These are fragile areas where a little management can go a long way toward protecting the resource.
3. HB 715 is a much needed piece of legislation. The study conducted through EQC on HJR 49 found that "an adequate streamside management zone (SMZ) had the lowest rating for both application of management practices and effectiveness of water quality protection. Eight of the 38 timber sales [audited during this study] had major departures in this rating category (21%), while another six sales (16%) exhibited minor departures. The audit teams judged that seven sales (18%) would have major detrimental impacts because of streamside management practices, including three sales (8%) where the damage was characterized as extensive and long-term." (p. 32-33)
4. The "310 law" administered by Conservation Districts in no way takes care of the Forest Practice problems in the state. The 310 law specifically addresses activities that result in the physical alteration/modification of perennial streams. Riparian areas are definitely helped by 310 permits, but there are many other problems that affect these areas that the 310 law has nothing to do with, including: improper management of logging slash, use of heavy equipment for harvesting and site preparation activities, broadcast burning through riparian areas, and logging right down to the bank of a body of water-leaving no buffer in areas of highly errodible soil or steep slopes. What good does a road that requires a permit under the 310 ~~permit~~ <sup>law</sup> do if other BMP in these fragile areas are not followed? HB 715 is a compliment to the 310 permit process.

The public has a legitimate interest in protecting water quality and quantity carried by forest streams. The citizens of Montana depend on water for their livelihood - as do our wildlife and plant resources. A small amount of mangement required in riparian areas will go a long way in protecting this most critical resource.

We strongly urge your support on HB 715.



# MONTANA CHAPTER SIERRA CLUB

EXHIBIT 38  
DATE 2-17-89  
HB 715

NORTH 17TH AVENUE • BOZEMAN, MONTANA 59715 • (406) 587-9782

## SIERRA CLUB TESTIMONY IN SUPPORT OF HB 715 KIM WILSON, LOBBYIST

The Sierra Club endorses HB 715 as an effective means of correcting the most severe problems arising out of forest practices in Montana.

Concern over forest practices in Montana and their effects on the environment focus largely on one area: water quality. Of critical importance to water quality is the treatment of streamside zones in any forest practice. Ironically, in the EQC study, management of streamside zones received the lowest overall rating for application and effectiveness of best management practices. Despite a growing understanding of the need for greater management of streamside zones, Montana has no specific regulation of forest practices in general, and in particular, no regulation of activities in the critical streamside zones. This is at the same time that other western timber producing states, all of which have existing forest practice laws, have begun implementing even stricter management guidelines in streamside zones.

It is time for Montana address this critical problem, and this bill will do just that. It requires the application of BMPs in the streamside zone and gives the Department authority to enforce them. It is important to note that while the EQC did not endorse this measure, its failure to do so resulted from a 6-6 tie vote.

In summary, the EQC study did not give the timber industry a clean bill of health. It showed that voluntary efforts simply are not adequate in streamside zones. Aggressive action is needed to protect Montana's headwaters from degradation due to logging practices and this bill will do that. We urge a do pass vote on HB 715.



# MONTANA CHAPTER SIERRA CLUB

EXHIBIT 38  
DATE 2-17-89  
HB 715

415 NORTH 17TH AVENUE • BOZEMAN, MONTANA 59715 • (406) 587-9782

## FOREST PRACTICES IN MONTANA: CAUSE FOR CONCERN

The Sierra Club believes that all is not well in Montana's forests. This fear is borne out by the recently completed EQC study and trends in the timber industry. Among the reasons for concern are the following:

(1) In 16 of 38 sales audited during the EQC study, (42% of the sales) audit teams found **at least one practice as having major detrimental impacts on water and soil resources.**

(2) In 5 of these sales, or 13% of the sales audited, impacts on soil on water were projected to be **"extensive and long term."**

(3) According to the study, Best Management Practices (BMPs) in streamside management zones (SMZs) received the lowest overall rating for application and effectiveness, with 21% of the 38 sales having "major departures" from established BMPs.

(4) Road drainage and erosion control were other areas where the timber sale audits indicated frequent departure from BMPs.

(5) Failures of BMPs, like those cited above, generally result in the movement of sediment into streams. Sediment increases with logging road density.

(6) Increases in sediment impact the survivability of trout and other fish.

(7) Currently, Montana, unlike the other timber producing states of California, Idaho, Washington and Oregon, has no laws directly overseeing forest practices on private land. There is little to no monitoring of water quality impacts from timber harvests.

(8) In 1986, the total cut on Plum Creek and Champion's private holdings in Montana exceeded the amount of all timber harvested on public lands in Montana.

In short, Montana needs stricter regulation and monitoring of forest practices.

# Roads erode water quality

By DICK MANNING  
of the Missoulian

**S**kidding logs with a tractor on mountain slopes is primarily an issue of regeneration, affecting the ability of the soil to reproduce new trees. When those same skid trails are made close to streams, then sedimentation, and hence water quality, become issues.

From a water quality standpoint, roads and such practices as operating machinery in or near streams become more important.

"I will say blatantly and outright that 99 percent of the sediment that enters water is the result of road construction and activity infringing too close to the riparian (stream-side) zones," says Donald Potts, a hydrologist and instructor at the University of Montana's Forestry School.



Roads' contribution to sedimentation depends greatly on how they are built. All things being equal, though, the greater the density of roads, the greater the contribution to stream erosion.

Critics say that, like skid trails, extensive road building on industrial lands is a problem.

"Roads and skid trails are where we get erosion and sedimentation in forest landscapes. More roads equal more erosion," says consultant Barry Dutton.

How serious the problem is, though, depends on what happens with the eroded soil. Critics suspect a good portion of it wends its way through the Flathead and Clark Fork basins, but proving it is tricky business, Dutton says.

"Soil erosion and sedimentation are extremely difficult to document, to measure, to substantiate and relate directly to forest practices," he says.

Proving that soil from skid trails winds up in creeks is made difficult by a lack of comprehensive monitoring for sediment. Also, erosion tends to occur infrequently — sometimes less than annually — during major storms, logging occurs in remote

areas and, if that isn't enough, experts disagree on how to monitor for sediment.

Nonetheless, in the few spots where officials have examined sediment in heavily logged areas, they have found significant increases. That was true in Forest Service studies of both Lolo Creek and the Swan River drainage.

"We found a significant relationship between road density and fine sediment in streams," said Mike Enk, who handled research of the issue for the Forest Service in the Swan River Ranger District.

In Lolo Creek, Forest Service officials used a computer model to conclude that sedimentation levels were 50-60 percent greater than what would occur in an undisturbed area, says Greg Munther, who helped conduct the studies for the Lolo National Forest.

The idea that roads mean sedimentation in streams generally goes unchallenged among people connected with the industry.

"I don't think there is any doubt. Research has indicated that is going on," says Joel Marshik, a road engineer for the Deerlodge National Forest and part of a state task force examining forest practices.

Aside from roads, though, there is a far less visible but far more immutable contributor to degradation of rivers and streams. Simply, the very act of cutting itself — no matter how it is done — causes erosion.

Living trees, through a process called transpiration, take groundwater and literally breathe it into the air, where it becomes part of the environment and, downwind, precipitation. When trees are cut, that water is no longer channeled into the air but into streams instead. The extra volume of water in streams eats away at banks and channels, hastening the natural erosion process.

Munther's study of Lolo Creek showed that where clearcutting removed about 40 percent of the tree cover, stream flow increased by 7-11 percent. The Forest Service considers an 8 percent increase acceptable.

Gary Brown, state forester, says a cooperative group made up of government and industry is trying to deal with that problem now by jointly agreeing not to cut in drainages where increased water yield will top 10 percent.

Aside from increasing stream flows, cutting, no matter how it is done, decreases wildlife cover.

Foresters have begun to pay increasing attention to that issue, as well.

For instance, Plum Creek recently agreed not to harvest 800 acres of elk habitat while adjacent clearcuts grow back. Bill Parson, head of operations for Plum Creek's Rocky Mountain region, said the company is paying more attention to buffering streams from clearcuts, in part, to protect habitat.

Nonetheless, UM forestry professor Bob Pfister and private forester Dutton say the key to sound forest practices is allowing professional foresters to call the shots, and Plum Creek critics say the company has trimmed its staff of foresters. In fact, the company's staff reduction coincided with its accelerated harvest of old-growth timber.

"You can't decrease your work force dramatically and at the same time increase your cut dramatically and still practice good forest management, and that's essentially what they have done over the past few years," Dutton says.

Parson acknowledges the "downsizing of our work force," but says it has not hurt the effort to protect the land. He says increasing efficiency made up for the loss of about 10 percent of its staff of 50 professional foresters.

Missoulian

(Missoula, MT) Oct. 19, 1988

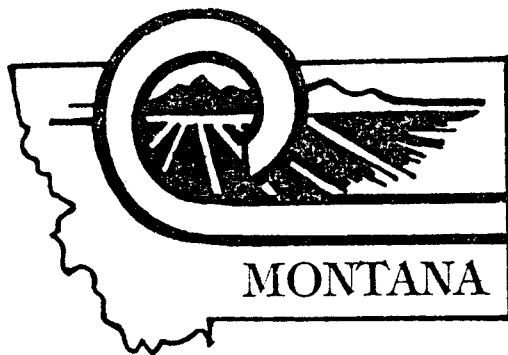


EXHIBIT 39  
DATE 2-17-89  
HB 715

## MONTANA Association of Conservation Districts

1 South Montana 443-5711  
Helena, MT 59601  
February 17, 1989

Testimony to the House of Representatives Natural Resources Committee  
on HB 715.

For the Record, my name is Peggy Haaglund and I am executive vice president of the Montana Association of Conservation Districts. Today I want to present you with information.

MACD does support the concept of streamside management. In 1975 the Montana Legislature passed SB 310, the Natural Streambed and Land Preservation Act. This law says that the natural rivers and streams and the lands and property immediately adjacent to them be protected and preserved to be available in their natural or existing state. The conservation districts were given the responsibility of administering the 310 law and have been actively doing just that for the last 13 years. The DFW&P is a part of this permitting process. Is HB 715 a duplication of 310 law or a possible extension?

The conservation districts are the agency designated by State Law to be responsible for the natural resource conservation on private lands. They do management plans on the pasture, range and forest lands for individuals as well as corporate lands and work closely with all State and Federal agencies in the planning process. Is this bill giving another state agency this responsibility on forested lands?

The conservation districts are local government working with local people and they have an very good record in working with the people in Montana. They are the agency responsible for working with local landowners in non-point pollution and riparian management.

Once again, the conservation districts are strongly committed to proper management of the streamside corridors on all streams. And if there is legislation to encourage landowners to protect these areas, the CD's should be involved.

I have copies of the 310 Model Rules from Lewis and Clark Conservation District which are the rules all conservation district work under for you.

I will be here to answer any questions you might have.

Thank you.

EXHIBIT 39A  
DATE 2-17-89  
HB 715

RECEIVED  
JAN 12 1989  
MACD

MODEL RULES  
FOR  
Lewis and Clark County Conservation District

To  
Implement the Natural Streambed and Land  
Preservation Act of 1975  
(Chapter No. 463, Montana Session Laws  
1975; Section 26-1510 et seq  
R.C.M. 1947; Senate Bill 310, 1975 Legislature

and Amended  
75-7-102, M.C.A. by House Bill 661, Montana Legislative  
Session - 1987

Compiled by  
Montana Department of Natural Resources and  
Conservation

1520 E. 6th Street  
Helena, MT 59620

and

Lewis & Clark County Conservation District  
FOB Drawer 10022, 301 South Park Avenue  
Helena, MT 59626-0022 Phone: 406-449-5278

Rules revised and adopted: 1988



Lewis and Clark County Conservation District  
310 Guidelines and Rules

INTRODUCTION

These standards and guidelines have been prepared to implement the Natural Streambed and Land Preservation Act of 1975 (also cited as Chapter No. 463, Montana Session Laws 1975; Section 26-510, et seq., R.C.M. 1947; Senate Bill 310, 1975 Legislature). The Lewis and Clark County Conservation District has adopted these standards and guidelines, after a public hearing, and final review and consideration by the board of supervisors. These standards and guidelines are for all projects with exclusions as stated on any natural perennial stream in the Conservation District. These standards and guidelines will meet or exceed the minimum standards adopted by the Department of Natural Resources. The effective date of implementation of the Natural Streambed and Land Preservation Act of 1975 will be January 1, 1976.

Any questions regarding this Act or its implementation should be directed to the Lewis and Clark County Conservation District, FOB Drawer 10022, 301 South Park Avenue, Room 106, Helena, MT 59626-0022, phone 449-5278 or the Soil Conservation Service 449-5278 or Fish Wildlife & Parks 444-5667.

## TABLE OF CONTENTS

Introduction . . . . .	i
RULE 1. Title. . . . .	1
RULE 2. Policy . . . . .	1
RULE 3. Purpose. . . . .	1
RULE 4. Definitions. . . . .	1
RULE 5. Prohibitions . . . . .	6
RULE 6. Application Process. . . . .	6
RULE 7. Arbitration. . . . .	9
RULE 8. Review Process . . . . .	9
RULE 9. Projects . . . . .	10
RULE 10. Construction Standards. . . . .	11
RULE 11. Exclusions. . . . .	13
RULE 12. Inspection or Projects. . . . .	14
RULE 13. Emergencies . . . . .	14
RULE 14. Compliance with other Laws. . . . .	15
RULE 15. Hearings. . . . .	15
RULE 16. Penalty-Misdemeanor-Restoration . . . . .	16
RULE 17. Complaints. . . . .	16
Notice of Proposed Project (Form 270). . . . .	19
Team Member Report (Form 272). . . . .	20
Board's Decision (Form 273). . . . .	21
Permit form. . . . .	22
Official complaint (Form 274). . . . .	23
Plan of Annual Operation (Form 276). . . . .	24
Certificate of Deposit Assignment. . . . .	25

RULE 1. TITLE.

These rules may be cited as the Lewis and Clark County Conservation District and Lewis and Clark County rules for implementation of the Natural Streambed and Land Preservation Act of 1975.

RULE 2. POLICY.

It is the policy of the Lewis and Clark County Conservation District and Lewis and Clark County that the natural rivers and streams, and the lands and property immediately adjacent to them within this District, and county are to be protected and preserved to be available in their natural or existing state, and to prohibit unauthorized projects, and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after it is the policy of this District and County to recognize the needs to irrigation and agricultural use of the rivers and streams of the State of Montana; and to protect as guaranteed by the constitution and laws of the State of Montana. 75-7-102 part 1, M.C.A.

RULE 3. PURPOSE.

It is the purpose of these rules to provide clear guidance to all concerned parties as to how the Natural Streambed and Land Preservation Act of 1975 is to be administered in the Lewis and Clark County Conservation District, and Lewis and Clark County; and to specify procedures for compliance with the policy contained in Rule 2 of these rules.

RULE 4. DEFINITIONS.

(1) The following definitions in the Natural Streambed and Land Preservation Act of 1975 and the state minimum standards and guidelines adopted by the State Board of Natural Resources and Conservation are applicable:

- (a) "Applicant" means any person presenting notice of a project to the supervisors.
- (b) "Department" means the Montana Department of Fish, Wildlife and Parks.

- (c) "District" means a conservation district under Title 76, Chapter 1, R.C.M. 1947 in which a project will take place; or the board of county commissioners where a district does not exist.
- (d) "Low Level Water Mark" means the lowest seasonal width of a lake or stream based on a typical flow rate or lowest season mean elevation level.
- (e) "Mean High Water Mark" means a water level corresponding to the natural or ordinary high water mark, and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural purposes.
- (f) "Natural Perennial Flowing Stream" means a stream which in its natural state, historically flows continuously at all seasons of the year and during dry as well as wet years.

For purposes of definition "f", the following streams within this district are designated as natural perennial flowing streams, and are therefore subject to the jurisdiction of these rules:

#### MISSOURI RIVER

Tributary	Sub-Tributary	Tributaries
Dearborn River	Flat Creek South Fork, Dearborn R. Middle Fork, Dearborn R. Cuniff Creek Falls Creek	West Fork East Fork
	Blacktail Creek Whitetail Creek Lost Cabin Creek	
Stickney Creek	North Fork South Fork	
Little Prickley Pear Creek	Wolf Creek	Rogers Creek Gladstone Creek French Creek Greenpole Creek N. & S. Fork, Lyons Creek
	Lyons Creek	

	Big Sheep Creek	
	Canyon Creek	
	Marsh Creek	
	Lost Horse Creek	
	North and South Fork,	
	Little Prickley Pear Creek	
Tributary	Sub-Tributary	Tributaries
Cottonwood Creek		
Willow Creek	Elkhorn Creek	
Beaver Creek		
Prickley Pear Creek	Silver Creek	
	Tenmile Creek	Sevenmile Creek
		Minehaha Creek
		Beaver Creek
		Ruby Creek
Trout Creek-York Area		

	<u>SUN RIVER</u>	
	(Cascade County Line to Headwaters)	
Tributary	Sub-Tributary	Tributaries
Elk Creek	Smith Fork	Ford Creek
	Blubber Creek	Goss Creek
Willow Creek	N. Fork, Willow Creek	Barr Creek
	Little Willow Creek	Cutrock Creek
Beaver Creek		
Patrick Basin Creek		
South Fork Sun River	Bear Creek	
	Prairie Creek	
	West Fork	Aborn Creek
	Straight Creek	Wood Creek
North Fork Sun River	Moose Creek	
	Rock Creek	Red Shale Creek
	Gates Creek	
	Lick Creek	
	Open Creek	

	<u>BIG BLACKFOOT RIVER</u>	
	(Powell County Line to Headwaters)	
Poorman Creek	South Fork	
Beaver Creek		

Stonewall Creek

Keep Cool Creek

Sucker Creek

Humbug Creek

Tributary

Sub-Tributary

Tributaries

Seven-Up Pete Creek

Landers Fork

Copper Creek

Snowbank Creek

Falls Creek

Ringeye Creek

Middle Fork Creek

Hogum Creek

Willow Creek

Alice Creek

Bartlett Creek

Shuve Gulch

Anaconda Creek

North Fork,

Blackfoot River

Dry Fork, Blackfoot R.

Cabin Creek  
Canyon Creek

East Fork, Blackfoot R.

Cooney Creek

Dabrata Creek

#### SOUTH FORK, FLATHEAD RIVER

Danaher Creek

Rapid Creek

Bar Creek

Limestone Creek

The above listing may not be all inclusive. Clarified that when there is a question if a stream or river is "perennial" for determination of the rules set out herewith, the Lewis and Clark County Conservation District will use the United States Geological Survey topography maps as a guideline.

- (g) "Navigable Streams" means any lake or streambed that has had a history of commercial use or navigations.

- (h) "Person" means any natural person, corporation, firm, partnership, association or other legal entity, not covered under Section 26-1502, R.C.M. 1947.
- (i) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of 75-7-102.
  - (1) Project does not include customary and historic maintenance and repair of existing irrigation facilities:
    - (i) That do not significantly alter or modify the stream in contravention of 75-7-102;
    - (ii) For which a plan of annual operations has been submitted to and approved by the district, the plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the District.
- (j) "Project Area" means the area within the jurisdiction of the Act and these rules. And includes the area within the mean high water mark on both sides of the stream. The term also includes the immediate banks to a stream as determined by the supervisors. For the purpose of this Act, the supervisors have determined that the entire bank will be included within the project area.
- (k) "Stream" means any natural perennial flowing stream, or river, its bed and immediate banks.
- (l) "Supervisors" means a board of supervisors of a conservation district; or the board of commissioners where a proposed project is not within a district.
- (m) "Team" means one (1) representative of the supervisors, one (1) representative of the Department, and the applicant or his/her representative.

(2) In addition to the above definitions, the following additional definitions shall also apply to these standards and guidelines:

- (a) "Channel change" means any visually discernible (or material) change in the alignment, cross-section or longitudinal slope of a natural perennial flowing stream within the project area as a result of any manmade physical alteration or modification of the stream.
- (b) "Debris" means any vegetational or refuse material in a stream channel which is interfering with a structure, and shall generally not include in-stream sand and gravel material unless the sand and gravel deposits are creating specific problems that warrant their removal.

RULE 5. PROHIBITIONS.

No work on a project under the Act and these rules may take place without the written consent of the supervisors as provided in the Act and these rules.

RULE 6. APPLICATION PROCESS.

(1) Notice of Proposed Project:

- (a) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place. The Notice of Proposed Project shall be made on Form 270 as provided by the District. The Notice may be either hand delivered to any member of the board of supervisors or its office representative, or mail to the board of the Lewis and Clark County Conservation District, FOB Drawer 10022, 301 South Park Avenue, Helena, MT 59626-0022. On projects that occur on the portion of the streams that border both Lewis and Clark County and other counties (Sun River - Cascade County; Dearborn River - Teton County) notice of proposed project must be submitted to both boards of supervisors and the decision will be made jointly. Notice of proposed projects will be officially received only at regular monthly meetings of the Lewis and Clark County Conservation District Supervisors (normally held the third Monday of the month); therefore, the official date of receipt of the Notice will be the date of the board meeting. The applicant may



request that the board call a special meeting to officially receive and consider the Notice in order to expedite action. The applicant may also appear before the board of supervisors at the meeting officially receiving the Notice in order to provide additional explanation of the proposed project. The supervisors reserve the right to reject any Notice of Proposed Project that is incomplete or contains insufficient information for review.

- (b) Where a single land use activity, such as a timber sale, involves multiple locations of a single overall project, such as the placement of several culverts, application for all foreseeable stream alterations in conjunction with the land use activity may be made on a single Notice of Proposed project (Form 270). The Notice shall include a map and legal description of all of the multiple locations of the proposed project. The application for multiple location projects may also make provision for necessary but unforeseen stream alterations, provided that the stream locations are identified in reasonable detail for purposes of review.
- (c) The supervisors shall within five (5) days after their regular monthly meeting determine whether the proposal is a project, and then shall send a copy of their determination on the Form 270 to the Department and to the applicant. If the supervisors determine that the proposal is not a project under this provision, the applicant may, upon receipt of written notice, proceed with the proposed activity without a 310 permit.

75-7-112 part 1, M.C.A.

(2) Formation of a Team:

- (a) If the supervisors determine that the proposal is for a project, the Department shall within five (5) days of receipt of such determination, notify the supervisors whether the Department requests an on-site inspection by a team.
- (b) The supervisors shall call a team together within twenty (20) days of receipt of the request of the Department for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after Notice of the call for an inspection of his waiver of

2-17-89

participation in the inspection. If the Department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans.

- (c) Each member of the team shall recommend, using the Individual Team Member Report (Form 272 R1/77) within fifty days (50) days of date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.
- (d) The supervisors may extend the request of any team member, and the time limits provided in subsections (2) (c) and (3) (a) of this rule where in their determination the time provided is not sufficient to carry out the purposes of the Act and these rules. The time extension may not in total exceed one (1) year from the date of receipt of Notice. The applicant shall be notified within sixty (60) days of date of Notice of the initial time extension and shall be notified immediately of any subsequent time extensions.

(3) Decision

- (a) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members within sixty (60) days of the date of application of their decision. The decision shall be made on the Supervisor's Decision Form 273 R1/77.
- (b) The decision by the supervisor's shall be made by a concurrence of a majority of the supervisors.
- (c) Upon written notice with any recommendation or alternative plan by the supervisors to the applicant, the applicant within fifteen (15) days shall notify the supervisors on Form 273 R1/77 if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project prior to the expiration of this fifteen (15) day period unless written permission is given by all team members on Form 273 R1/77. If the written decision of the supervisors approves the proposed project without recommendation or an alternative plan, the applicant may proceed with the project upon the expiration of ten (10) days after receipt of the decision.

RULE 7. ARBITRATION.

- (1) When a member of the team disagrees with the supervisor's action he may ask within five (5) days of receipt of the supervisors' decision that an arbitration panel, as provided in subsections (2) and (3) of this rule, be appointed to hear the dispute and make final written decision thereon. 75-7-113, M.C.A.
- (2) The arbitration panel shall consist of three (3) members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the policy set forth in Rule 2 of these rules. 75-7-114 part 1, M.C.A.
- (3) Cost of the arbitration panel, computed as for juror's fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.
- (4) Modification of Plan -- cost sharing. If the final decision of the arbitration panel requires modifications or alterations from the original project plan, as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant. Any of the involved entities may withdraw or modify required modification of the project within (10) days after the decision. 75-7-116 part 1, M.C.A.

RULE 8. REVIEW PROCESS.

- (1) The following items shall be among those considered by the district prior to making a decision on a proposed project:
  - (a) The purpose of the project;
  - (b) The necessity and justification for the proposed project;
  - (c) Whether the proposed project is a reasonable means of accomplishing the purpose;

- (d) Whether there are modifications or alternative solutions which are reasonably possible and which would reduce the disturbance to the stream channel and its environment and better accomplish the purpose of the proposed project;
  - (e) Whether the project will pass anticipated sediment loads without creating harmful flooding or erosion problems upstream or downstream; and
  - (f) Whether the project will interfere with public and private property.
- (2) Projects may be approved when reasonable efforts have been made, consistent with the purpose of the project, to:
- (a) Minimize the amount of stream channel alteration;
  - (b) Insure that the project will be as permanent of a solution as possible and that the method used will create a reasonably permanent and stable situation;
  - (c) Insure that the project will pass anticipated water flows without creating harmful erosion problems upstream and downstream;
  - (d) Minimize effects on fish and aquatic habitat;
  - (e) Minimize turbidity or other water pollution problems by the materials used or removal of ground cover;
  - (f) Minimize adverse effect on the natural beauty of the area;
  - (g) Insure that the project will comply with these rules; and
  - (h) Insure that streambed gravels will not be used in the project unless there is not reasonable alternative.

RULE 9. PROJECTS.

The following are projects subject to these rules if the construction or work on the same is to be carried out in the project area of a natural perennial flowing stream:

- (1) Channel changes;
- (2) New Diversions;
- (3) Riprapping and other streambank protection projects;
- (4) Jetties;
- (5) New dams and reservoirs;
- (6) Commercial, industrial and residential developments.

- (7) Snagging and dragging operations where debris not interfering with a structure is to be removed;
- (8) Dikes and levees;
- (9) Debris basins;
- (10) Grade stabilization structures;
- (11) Stream channel stabilization projects;
- (12) Bridges and culverts;
- (13) Recreational facilities, including boat docks, marinas and swimming areas;
- (14) Commercial aquaculture operations;
- (15) Brush removal operations by mechanical, spraying or other means along stream channels; (see exclusions on next page). This includes all areas twenty-five (25) feet from the stream bank.
- (16) Tree cutting on erosive sites along stream channels.
- (17) Recreational activities on erosive sites as determined by the district.
- (18) Sand and gravel removal or dredging operations;
- (19) Pipeline or utility corridor crossings;
- (20) Seismic survey and mining test holes where they involve a stream or streambank;
- (21) Logging operations;
- (22) Resource extraction.

RULE 10. CONSTRUCTION STANDARDS.

The following construction standards shall apply to all projects:

- (1) All projects shall be constructed in accordance with standards as adapted by the Lewis and Clark County Conservation District.
- (2) No construction equipment shall be operated below the existing water surface without specific approval from the district. Fording the stream will be permitted at one location only, unless otherwise specified.
- (3) Any temporary crossing, bridge supports, cofferdams or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All temporary structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance.

2-17-89

- (4) Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work. Any vegetation, debris or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot re-enter the channel during high stream flows. All new cut or fill slopes that will not be protected with some form of rip rap shall be vegetated or otherwise protected to prevent erosion.
- (5) The District may limit the period of construction as is necessary to minimize serious conflicts with fish migration and spawning, recreational use, and downstream uses.
- (6) In order to guarantee reclamation of projects on or in streams, a certificate of deposit shall be required for SB-310 permits which involve any significant disruption of a stream or streambank. Projects as listed in Rule 9 of these model rules that may require a certificate of deposit reclamation guarantee include, but are not limited to:
- 22.) Resource extraction;

Any certificate of deposit shall be conditioned on proper reclamation of the project and compliance with any conditions placed on the permit by the supervisors. The certificate of deposit shall be made payable to the Lewis and Clark County Conservation District and the applicant. Care will be taken by the supervisors, the Department and the applicant to be certain that permit conditions and reclamation requirements are clearly understood in advance by all parties. The certificate of deposit must be in place before work on the project commences. In order to facilitate collection of a certificate of deposit, an assignment form must be executed at the time the certificate of deposit is created.

- (a) Once an applicant has posted a sufficient certificate of deposit and prior to the release of that certificate, the supervisors shall inspect the applicant's completed project for proper reclamation and conformance with any conditions placed on the applicant's project permit. If the project passes inspection, the supervisors shall release the certificate.

(b) If an applicant's project is not properly reclaimed and does not properly conform to conditions placed on the applicant's project permit, and the applicant refuses after receiving a written warning containing notice of all deficiencies to properly reclaim the area in question or to conform the project to the conditions on the permit within a specified time, the supervisors shall, after granting the applicant an opportunity for a hearing before them, refuse to release said certificate and to use such certificate to the extent required to have the project properly reclaimed or to have all conditions of the approved project plan or permit conformed with.

(c) The amount of the certificate of deposit will be determined by estimating the cost of stabilization, rehabilitation and reclamation of the area. The job of estimating this cost will be done by the district with input from the Soil Conservation Service, the Department and other interested agencies. If there are significant changes in the project design, the applicant must notify the district in writing, and the district may adjust the amount of the certificate.

#### RULE 11. EXCLUSIONS.

The following are not projects and thus no Notice of Proposed Project is required for:

- (1) A water user or his agent to clean, maintain, or repair any diversion facility, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of water under a valid existing water right or water use permit so long as the action does not alter the existing stream channel; and
- (2) Removal of debris from stream channel, provided that all material removed will be disposed of at some point outside the channel where it cannot again re-enter the channel, and provided further that such removal does not constitute a project as listed in Rule 9.
- (3) The spraying of noxious weeds as determined by the Lewis and Clark County Weed District, along stream channels will be allowed in accordance with the chemical label instructions.

2-17-89

- (4) Customary and historic maintenance and repair of existing irrigation facilities for which a plan of annual operation has been submitted to and approved by the District. The plan is subject to future review and approval by the District at its option. Any modification to the plan must have prior approval.

Explanation

Sections (1) and (2) Mandatory, because are required by the state's minimum standards. Section (3) and (4) added upon modification of 75-7-103, MCA.

RULE 12. INSPECTION OF PROJECTS.

The supervisors or their designated representative may inspect any project during or after construction to insure that proper construction practices are being employed and to provide technical assistance to the applicant. The District shall notify the landowner prior to entering land to inspect a project, either orally or in writing.

RULE 13. EMERGENCIES.

- (1) The provisions of these rules shall not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for any project under this rule shall notify the supervisors in writing within fifteen (15) days of the action taken as a result of an emergency.
- (2) The supervisors shall send one (1) copy of the notice within five (5) days to the Department.
- (3) A team, called together as described in Rule 6 (2) shall make an on-site inspection and individual written reports to the supervisors within thirty (30) days, giving their observations and opinions on the emergency project.
- (4) If the same or similar emergency occurs to the same applicant more than once within five (5) year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to that emergency action.



- (5) The supervisors shall determine the feasibility of a more permanent solution and shall recommend within thirty (30) days that the person put the solution into effect within a reasonable period of time as determined by the supervisors. Failure of the person to put the solution into effect is not a violation of the Act and these rules unless a subsequent emergency action results from this failure.
  - (6) When a member of the team or the applicant disagrees with the supervisor's recommendation, he may ask that an arbitration panel, as provided in Rule 7, be appointed to hear the dispute and make a final written decision thereon.
- 75-7-113 part 1, M.C.A.

**RULE 14. COMPLIANCE WITH OTHER LAWS.**

- (1) Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility to comply with the Title 89, Chapter 35, R.C.M. 1947, floodway management and regulation where designated floodplains or designated floodways have been established in accordance with that chapter.
- (2) No action under these rules shall impair, diminish, divest, or control any existing or vested water rights under the laws of the State of Montana or the United States.

**RULE 15. HEARINGS.**

- (1) The District may hold a public informational hearing when a proposed project appears to be controversial, or where additional information is desired prior to final action by the supervisors.
- (2) The District shall conduct a public hearing before adopting any major changes in these rules.
- (3) Notice of a public hearing to be conducted under subsection (1) and (2) of this rule shall be given in writing at least ten (10) days in advance to all directly affected parties in the case of a hearing under (1) above, and by newspaper article in the case of a hearing under (2) above.

RULE 16. PENALTY-MISDEMEANOR-RESTORATION.

- (1) As provided by Section 26-1523, R.C.M. 1947, any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for each day that person continues to physically alter or modify the stream and in addition, that person shall restore at the discretion of the court, the damaged stream as recommended by the team and approved by the supervisors, to as near its prior condition as possible. 75-7-123 part 1, M.C.A.
- (2) Any person or entity who violates the time provision of the Act is guilty of a misdemeanor and upon conviction shall be punished by a fine of five dollars (\$5.) per day. 75-7-124 part 1, M.C.A.
- (3) Any person may report a violation of these rules directly to the county attorney or to the board of supervisors, in accordance with Rule 17 of these Model Rules.

RULE 17. COMPLAINTS

## (1) Complaints

- (a) Any person may file a complaint alleging a violation of the Natural Streambed and Land Preservation Act. Verbal complaints shall be substantiated by a written and signed complaint on Form 274 - Official Complaint, delivered to the district office. The Official Complaint shall specify: (a) the name and address of alleged violator, (b) the name of the stream and location of the alleged violation by legal description, (c) the date(s) of the alleged violation, and (d) the nature of the complaint. The complaint will become public record at the district office.

(2) Action Initiated by Complaint

- (a) The Supervisors or their designated representative shall, upon receipt of an official complaint: (a) notify, by certified mail, the alleged violator that a complaint has been filed and request that he/she cease further action, (b) within five (5) days arrange to conduct an on-site investigation and notify the alleged violator of such, (c) as soon as practical, but within 20 days, conduct said investigation to determine whether a violation exists. The complainant shall be notified of the investigation.

(3) Determination of Violation

- (a) If the Supervisors determine that no violation exists, they shall, within five (5) days of the inspection, notify the alleged violator and the complainant of such determination, and that the alleged violator may proceed with the activity.
- (b) If the Supervisors determine that a violation has occurred, the Supervisors may recommend mitigative measures be implemented in lieu of seeking a penalty against the violator. If the violator fails to comply with the recommended mitigative measures, the District will refer the matter to the County Attorney for prosecution.
- (c) If the Supervisors determine that a violation is occurring, they shall (a) within five (5) business days of the investigation provide written notice to the violator that he is in violation of the Act, and demand that all activity cease and to apply for a permit as required by the Act or face misdemeanor penalty, as noted in Rule 16, for noncompliance under 75-7-123 MCA, (b) attempt to obtain voluntary compliance with the Act and advise the violator of recommended modifications and/or corrective measures to be undertaken within 20 days. All violations should be reported to the Water Quality Bureau, Department of Health and Environmental Sciences and the Department of Fish, Wildlife and Parks by the Supervisors.

(4) Review of Decision

- (a) If the violator disagrees with the decision of the Supervisors he shall, within five (5) business days, notify the board to be given the opportunity to meet with them at their next regular meeting to review their decision. If the supervisors find insufficient reason to reverse their decision, they shall, within five (5) business days notify the violator by certified mail that he has 20 days to demonstrate, to the satisfaction of the Supervisors, his intention to proceed voluntarily toward correction of the violation, after which time, if there remains no indication of definite action to initiate corrective measures, the Supervisors may refer the violation to the county Attorney in accordance with 75-7-123 part 1, MCA.

NATURAL STREAMBED AND LAND PRESERVATION ACT  
NOTICE OF PROPOSED PROJECT

App No.

EX 39A

Date Rec'd

2-17-89

NOTE: SEE REVERSE SIDE FOR ADDITIONAL INFORMATION REQUIRED

1. a. Name of Applicant \_\_\_\_\_  
 Address \_\_\_\_\_ City or Town \_\_\_\_\_  
 State \_\_\_\_\_ Zip Code \_\_\_\_\_ Telephone No. \_\_\_\_\_
- b. Name and address of owner of site: (If different from applicant)  
 \_\_\_\_\_ Telephone No. \_\_\_\_\_  
 \_\_\_\_\_
- c. Name, address and title of applicant's authorized agent for permit application coordination: (attorney, business manager, etc.)  
 \_\_\_\_\_ Telephone No. \_\_\_\_\_
2. Name of stream at location of activity: \_\_\_\_\_ County: \_\_\_\_\_  
 Location of the proposed activity: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_
3. Describe proposed activity, type of structure, method of construction, materials and equipment to be used:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
4. Date activity is proposed to commence: \_\_\_\_\_ Date activity is expected to be completed: \_\_\_\_\_
5. Names and addresses of surrounding property owners and those whose lands adjoin the stream near the point of activity: (upstream, downstream, across)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
6. Has any agency denied approval for the activity described herein or for any activity related to the activity described herein? \_\_\_\_ Yes \_\_\_\_ No If yes, explain further on separate sheet.
7. THE APPLICANT CERTIFIES THAT THE STATEMENTS APPEARING HEREIN ARE TO THE BEST OF HIS KNOWLEDGE TRUE AND CORRECT, AND HEREBY AUTHORIZES THE INSPECTION OF THE PROJECT SITE BY INSPECTING AUTHORITIES.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

RETURN COMPLETED FORM TO YOUR LOCAL CONSERVATION DISTRICT OFFICE

Form 271 R/B2

THE FOLLOWING ITEMS ARE TO BE COMPLETED BY THE CONSERVATION DISTRICT BOARD

The application proposal (is) (is not) a project as defined by the Natural Streambed and Land Preservation Act.

Reasons: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If the application is not a project as defined in this act, applicant may proceed with proposal.

CONSERVATION DISTRICT BOARD SIGNATURES:

 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date: \_\_\_\_\_

Date this determination forwarded to applicant and to  
the Montana Department of Fish, Wildlife, and Parks: \_\_\_\_\_

**INSTRUCTIONS FOR COMPLETING AND SUBMITTING  
FORM 270 "NOTICE OF PROPOSED PROJECT"**

**A. Along with this form submit the following required attachments:**

1. Aerial photo or tracing from aerial photo showing:
  - (a) location of the project site and existing structures
  - (b) name of waterway involved and direction of flow
  - (c) north arrow
  - (d) names of any communities or significant identifiable landmarks in the area
  - (e) scale, e.g. 1" = 100 ft.
  - (f) existing shorelines
  - (g) property boundaries adjacent to the project
2. Submit plans and drawings with this application.

**B. Remarks (on separate sheet):**

1. List any and all information which you feel would add to the understanding of the proposed project.
2. Explain any denial for approval of this project which has occurred under other regulations that may apply to the project; see question #6. Example of laws which may pertain: Floodplain and Floodway Management, Title 76, Chapter 5, MCA; Water Use, Title 85, Chapter 2, MCA; Short-term construction activity as required under ARM 16.20.633(3)(a); Land Underlying Navigable Streams, Title 77, Chapter 1, Part 1, MCA, and U.S. Corps of Engineers in Title 32, Section 209.120 of the Code of Federal Regulations.

Form 270 A482 (cont.)

**PERMIT GUIDE**

(You may need one or more of the following permits for your project)

LAWS	ACTIVITY								
	Work In or On Stream Channels or Banks			Discharging Water Into Live Stream			Water Use or Diversion		
	Fed. Land	State Land	Priv. Land	Fed. Land	State Land	Priv. Land	Fed. Land	State Land	Priv. Land
Coal and Uranium Reclamation	7,9,11	7	7	—	—	—	—	—	—
Open Cut Mining	7,9,11	7	7	—	—	—	—	—	—
Metal Mine Reclamation	7,9,11	7	7	—	—	—	—	—	—
*General Mining Law	9,11	—	—	9,11	—	—	9,11	—	—
Water Pollution Control	8	8	8	8	8	8	8	8	8
Water Rights	—	—	—	—	—	—	5,15	5	5
Natural Streambed & Land Preservation - "310"	9,4,11,1	4,1	4,1	—	—	—	9,4,11,1	4,1	4,1
Stream Protection - "124"	9,4	4	—	—	—	—	9,4	4	—
*Water Pollution Control Act - "404"	13	13	13	—	—	—	13	13	13
Flood Plain & Floodway Management	—	5,2	5,2	—	—	—	—	5,2	5,2
Lakeshore Protection	2	2	2	—	—	—	2	2	2
*Wetlands-Flood Plain E.O.	9,11,13	10,13	10,13	9,11	10	10	9,11,13	10,13	10,13
Local Zoning Laws	—	2,3	2,3	—	2,3	2,3	—	2,3	2,3
State & Federal Environmental Act	9,5,11,16	5,10,16	5,10,16	6,9,5,11,16	6,5,10,16	6,5,10,16	9,5,11,16	5,10,16	5,10,16
State & Federal Archeologic & Historic	8,9,11,12,13	7,4,8,13	8,12	9,11,8,12	7,4,8	8	9,11,8,12,13	7,4,8,13	8,13
*FERC Regulations	—	—	—	—	—	—	9,11,14	—	—
*River and Harbor Act	13	13	13	—	—	—	13	13	13

\*Federal Laws

\*\*Agencies Involved (Contact agency or organization owning or administering land if multiples are listed.)

**Local**

1. Conservation Districts
2. County Commissioners
3. City

**State of Montana**

4. Dept. Fish, Wildlife and Parks
5. Dept. Natural Resources & Conservation  
Water Resources Div.
6. Dept. Health & Environmental Sci.
7. Dept. of State Lands
8. MT State Historic Preservation Office

**Federal**

9. USDA, Forest Service
10. USDA, Soil Conservation Service
11. USDI, Bureau of Land Management
12. USDI, Fish & Wildlife Service
13. US Army, Corps of Engineers
14. Fed. Energy Regulation Commission
15. Agency Administering Fed. Land
16. Environmental Protection Agency

**STATE OF MONTANA**  
**NATURAL STREAMBED AND LAND**  
**PRESERVATION ACT**  
**TEAM MEMBER REPORT**

1. Applicant \_\_\_\_\_

Address \_\_\_\_\_

Name of Stream \_\_\_\_\_

Location of Stream at location of activity \_\_\_\_\_ County \_\_\_\_\_

Location of proposed activity \_\_\_\_\_  $\frac{1}{4}$  \_\_\_\_\_  $\frac{1}{4}$  \_\_\_\_\_  $\frac{1}{4}$ , Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_

2. An on-site inspection has been requested. You and your representative are required to meet at the project site

on \_\_\_\_\_ at \_\_\_\_\_  
(date) (time)

3. Recommendation (check one):

☐ Approval

☐ Denial

☐ Approval with modifications

☐ Waiver of participation

☐ Request time extension \_\_\_\_\_  
Date

Reasons:

4. TEAM MEMBER'S SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

5. Date this report transmitted to Conservation District Board \_\_\_\_\_

**TO BE REVIEWED BY TEAM MEMBERS  
BUT COMPLETED BY DEPARTMENT OF FISH, WILDLIFE, AND PARKS PERSONNEL ONLY**

I have reviewed the above project pursuant to MONTANA SURFACE WATER QUALITY STANDARDS SHORT-TERM TURBIDITY EXEMPTION ARM 16.20.633(3)(a) as it applied to TURBIDITY ONLY:

☐

This project will not result in a significant increase in turbidity. Upon recommendation of DFW&P, the Department of Health and Environmental Sciences, Water Quality Bureau hereby grants this turbidity exemption for the above-described project in accordance with all attached recommendations.

☐

This project will result in a significant increase in turbidity. A turbidity exemption will not be granted using the proposed construction plan. The APPLICANT should immediately contact the Department of Health and Environmental Sciences, Water Quality Bureau, A-206, Cogswell Bldg. (406-449-2406), Helena, MT 59620 to discuss options for compliance with Montana Surface Water Quality Standards.

DFW&P Representative's Signature \_\_\_\_\_ Date \_\_\_\_\_



Ex. 39A  
2-17-89

STATE OF MONTANA  
NATURAL STREAMBED AND LAND PRESERVATION ACT  
BOARD'S DECISION

Name of District (or County if applicable) \_\_\_\_\_

Address \_\_\_\_\_ Telephone Number \_\_\_\_\_

Name of Applicant \_\_\_\_\_

Board Decision (circle):                      Approval                      Denial                      Approved with Modification

Board's Signatures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Transmitted to Applicant and Department Team Members \_\_\_\_\_

"Approval" permits applicant to proceed with project 10 days after receipt of this decision unless arbitration is requested by the Department of Fish, Wildlife, & Parks within five days.

No work may begin on any project "approved with modification" unless written permission is given by all team members within 15 days or if arbitration is requested by the Department of Fish, Wildlife & Parks within five days.

.....

To be filled out by applicant and returned to the supervisors within 15 days. (Please sign and return entire form. A copy will be mailed to you.)

☐ I hereby agree to proceed with the project in accordance with the approved application contained herein and will permit follow-up inspection.

☐ I hereby agree to proceed with the project in accordance with the proposed board modifications contained herein, and will permit follow-up inspection.

☐ I prefer to go to arbitration (notice within five days).

Signature of Applicant: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Ex. 39A  
2-17-89

# NATURAL STREAMBED AND LAND PRESERVATION ACT

DATE OF ISSUE: \_\_\_\_\_ **PERMIT** APPLICATION NO. \_\_\_\_\_

Name of Applicant \_\_\_\_\_

Address \_\_\_\_\_ City or Town \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_ Telephone # \_\_\_\_\_

The provisions for the issuance of permit are outlined in the following documents.

☐ Approved without modification to the Notice of Proposed Project - Form 270. Refer to Item #3 - Description of proposed activity. NOTE: Any activity, type of structure, method of construction, materials and equipment to be used that are not specifically described in this section - Item #3 - are not allowed under this permit.

☐ Approved with modification by the board of supervisors and accepted by the applicant. Reference is made to Form 273 and attachment (if any) which outlines in detail those items that are acceptable under the provisions of this permit.

This permit is viable for a period of one year from date of issue. If the project is not completed in this time period, a request for extension or a new application must be submitted before any further work can be started.

The Lewis and Clark County Conservation District reserves the right to follow-up inspections of and access to all projects to ascertain adherence to all program provisions.

Questions regarding the provisions of this permit can be directed to the Conservation District by calling 449-5278.

Lewis and Clark County Conservation District  
FOB Drawer 10022  
301 South Park Avenue  
Helena, MT 59626-0022

\_\_\_\_\_  
David Donaldson, Supervisor

\_\_\_\_\_  
Reed Lommen, Supervisor

\_\_\_\_\_  
Richard Grady, Supervisor

\_\_\_\_\_  
Charles Melaney, Supervisor

\_\_\_\_\_  
J.T. Hamm, Supervisor

\_\_\_\_\_  
Roland Mosher, Supervisor

\_\_\_\_\_  
Ronald Schatz, Supervisor

VIOLATION #

Ex. 39A  
2-17-89

APPLICATION #

## STATE OF MONTANA

## NATURAL STREAMBED AND LAND PRESERVATION ACT

OFFICIAL COMPLAINTALLEGED  
VIOLATOR:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

PHONE: \_\_\_\_\_

LOCATION (INCLUDING LEGAL DESCRIPTION): Name of Stream

NATURE OF COMPLAINT:

PLEASE FILL IN SKETCH ON REVERSE SIDE SHOWING AREA OF ACTIVITY.

## COMPLAINANT:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

PHONE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

DISPOSITION (For Office Use Only)

**STATE OF MONTANA  
NATURAL STREAMBED AND LAND PRESERVATION ACT  
PLAN OF ANNUAL OPERATION  
FOR MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITY**

**PART 1: TO BE COMPLETED BY OPERATOR**

1. Name of Operator: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

2. Name and address of owner, if different: \_\_\_\_\_

3. Name of Stream: \_\_\_\_\_

4. Location of proposed activity: \_\_\_\_\_<sup>1</sup>/<sub>4</sub> \_\_\_\_\_<sup>1</sup>/<sub>4</sub> \_\_\_\_\_<sup>1</sup>/<sub>4</sub>, Sec. \_\_\_\_\_, T \_\_\_\_\_, R \_\_\_\_\_

5. Describe the proposed maintenance or repair activity, the type of structure, method to be used, and materials or equipment to be used. Include drawings if necessary.

6. Date activity is to begin each year \_\_\_\_\_

Date activity is to be completed each year \_\_\_\_\_

7. Has any agency or jurisdiction denied approval for the above described activity?

\_\_\_\_ Yes

\_\_\_\_ No

If yes, explain on separate sheet.

**PART 2 ON REVERSE TO BE COMPLETED BY CONSERVATION DISTRICT**

**PART 2: TO BE COMPLETED BY CONSERVATION DISTRICT**

8. ( ) The proposed plan of annual operation for maintenance and repair of existing irrigation facility is **APPROVED**. The conservation district has the option of reviewing the plan at any time. This plan is in effect for a maximum of ten years.
9. ( ) The proposed plan of annual operation for maintenance and repair of existing irrigation facility is **NOT APPROVED**. The operator is required to apply to the conservation district for a permit under the Natural Streambed and Land Preservation Act.

\_\_\_\_\_/\_\_\_\_\_  
Conservation District (authorized representative) Date

\_\_\_\_\_/\_\_\_\_\_  
Landowner or Authorized Representative Date

Concurrence by Department  
of Fish, Wildlife and Parks: \_\_\_\_\_/\_\_\_\_\_  
Date

=====

**TO BE REVIEWED BY TEAM MEMBERS  
BUT COMPLETED BY DEPARTMENT OF FISH, WILDLIFE, AND PARKS PERSONNEL ONLY**

I have reviewed the above project pursuant to MONTANA SURFACE WATER QUALITY STANDARDS SHORT-TERM TURBIDITY EXEMPTION ARM 16.20.633(3)(a) as it applied to TURBIDITY ONLY:

☐

This activity will not result in a significant increase in turbidity. Upon recommendation of DFW&P, the Department of Health and Environmental Sciences, Water Quality Bureau hereby grants this turbidity exemption for the above-described activity in accordance with all attached recommendations.

☐

This activity will result in a significant increase in turbidity. A turbidity exemption will not be granted using the proposed construction plan. THE APPLICANT should immediately contact the Department of Health and Environmental Sciences, Water Quality Bureau, A-206, Cogswell Bldg. (406-449-2406), Helena, MT 59620 to discuss options for compliance with Montana Surface Water Quality Standards.

DFW&P Representative's Signature \_\_\_\_\_ Date \_\_\_\_\_

THE CONSERVATION DISTRICT SHOULD FORWARD  
A COPY OF THIS FORM TO THE WATER QUALITY  
BUREAU AT THE ABOVE ADDRESS.

CERTIFICATE OF DEPOSIT ASSIGNMENT

1. For value received, \_\_\_\_\_, Assignor, does hereby assign, transfer and set over to the Lewis and Clark County Conservation District, Hereinafter called the District, all rights and interests in a Certificate of Deposit No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, payable on or after \_\_\_\_\_ issued by \_\_\_\_\_, hereinafter called Bank, and payable to \_\_\_\_\_, the Assignor herein.
2. The Assignor makes this assignment in consideration of the District issuing to the Applicant SB-310 permit number \_\_\_\_\_. The purpose of this assignment is to provide the District with security for the reclamation of the streambed and land involved with the Applicant's SB-310 project.
3. The Assignor may not withdraw or otherwise dispose of any earnings attributed to the Certificate of Deposit while the same is assigned to the District.
4. The assignor may, with the consent of the district, replace or renew a Certificate of Deposit once it has expired, or is voided by the Bank and the Assignor shall be entitled to the rights as laid out in Clause 3 with respect to the new Certificate of Deposit. A new Savings Certificate Assignment shall be executed if the Savings Certificate is replaced.
5. The District may at any time after the Assignor fails to fully comply with all requirements and conditions of permit number \_\_\_\_\_ and the Rules of the District, and after giving written notice to the Assignor, surrender the Certificate of Deposit to the Bank in exchange for money.
6. The Assignor is entitled to any earnings or interest upon the cash proceeds after the District has surrendered the Certificate of Deposit.
7. The Certificate of Deposit shall be held by the District during the term of this Assignment.
8. The Assignor hereby authorizes and directs the Bank to pay the above-described Certificate of Deposit as instructed by the District until such time as the Bank shall receive the Release provided for below. The Bank shall not be liable to inquire whether there has been performance by Assignor or to see to the application of any moneys paid on instruction of the District, and in such matters the Bank may rely upon the instructions of the District executed over the signature of the person, or his designee, appearing under the District Acceptance below without the need to verify the authority of such person. Nothing herein shall prevent the District from designating a person authorized to act for it in another lawful manner.
9. Signed and dated at \_\_\_\_\_, Montana, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(Assignor's signature)

BANK ACCEPTANCE

10. The \_\_\_\_\_ Bank, as witnessed below by the signature of a duly authorized officer, hereby recognizes this above assignment of Certificate of Deposit No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Bank)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Address)

DISTRICT ACCEPTANCE

11. The Lewis and Clark County Conservation District, hereby accepts the foregoing assignment of the Certificate of Deposit No. \_\_\_\_\_ drawn on \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Authorized Signature)

\*\*\*\*\*

RELEASE

12. The above assignment of Certificate of Deposit No. \_\_\_\_\_ drawn on \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is hereby released. The authorized signature below shall witness the termination of the District's interest in the Assignment.

\_\_\_\_\_  
(Authorized Signature)

13. I, \_\_\_\_\_, Assignor in the above Agreement, recognize by my signature below the release of this assignment.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Authorized Signature)

Montana  
Audubon Legislative Fund

EXHIBIT 40  
DATE 2-17-89  
HB 697

Testimony on HB 697  
House Natural Resource Committee  
February 17, 1989

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Society and represents over 2500 members statewide.

We support HB 697.

The need for HB 697 is summarized in the following paragraph of the publications House Joint Resolution 49: Forest Practices and Watershed Effects, on page 61, paragraph 3:

"The best written BMPs, education efforts, and timber sale planning can be undone in a few minutes by a careless operator. This was evident on several of the audited timber sales, where sale administrators were dismayed to find that practices used by an operator did not conform with the administrator's expressed desires. Logging contracts which include BMPs are one way to improve compliance, but in many cases it is neither practical nor cost-effective for a landowner to seek legal redress for a contractor's failure to apply BMPs."

A little education to operators through a licensing program could go a long way toward avoiding damaging situations as a result of not following BMPs. We encourage you to support this bill.

Thank you.



EXHIBIT 41  
DATE 2-17-89  
HB 727

Amendments to HB 727  
Proposed by Rep. Marks  
February 17, 1989

*Frank J. Fitzgerald*

1. Page 2, line 9  
Following: line 8  
Strike: "certain purposes, including pollutant recovery or"
2. Page 2, lines 15 and 16  
Following: line 14  
Strike: "installed under the direction of a licensed professional engineer and"  
Insert: ", "  
Following: "holes"  
Insert: ", "
3. Page 13, line 12  
Following: line 11  
Insert: "NEW SECTION. Section 10. Applicability. The provisions of [this act] do not apply to monitoring wells drilled prior to the effective date of [this act]."

42  
DATE 2-17-89  
HB 727

MEMO

TO: Ben Cohen, Vice-Chair, House Natural  
Resources Committee  
FROM: Bob Hafferman, Board of Professional  
Engineers and Land Surveyors  
SUBJ: House Bill 727  
DATE: February 17, 1989  
CC:

A #3  
A

---

Dear Representative Cohen:

I would like to make a suggestion for an amendment to HB 727:

SECTION 1, 37-43-102(4) ADDITION TO THE END OF SUBSECTION (4);

or-bath-, or investigation of shallow, non-potable seasonal groundwater.

The Board of Professional Engineers and Land Surveyors has been working with the Board of Water Well Contractors regarding this section. We thought the wording was fairly finalized, but this amendment would clarify subsection (4).

Please note that non-potable means not drinkable, and does not need to be defined.

## Natural Resource

BILL NO. HB 676

SPONSOR Rep Bob Ramey

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

CS-33

## VISITORS' REGISTER

1062

Nature Resources COMMITTEE

BILL NO.

HD-680

DATE

2-17-89

SPONSOR

Grady

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Lee Reynolds	Hebera	✓	
Kurt R. Shull	Missoula	✓	
Elle Hopkins	LI	X	
Ben S.	"	X	
Dave Thompson	Townsend	X	
Bob Paddock	Butte	X	
Jim Jensen	MEIC	X	
Shodella Sloan	Hebera		X
Don Jager	Missoula	✓	
Rasmus Rasmussen	Hebera	✓	
John Fitzpatrick	Pyramid Gold Hebera	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

Natural Resource COMMITTEE

202

BILL NO. HB 680DATE 2-17-89SPONSOR Ed Grady

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Kevin Jones	Helena		X
Netzy Duffay	Livingston #676	X	
Elmer Jones	Lala	X	
Ken Murski	Great Falls		
Edith M. J.	Missoula	✓	
Bill Clayton	Townsend	X	
W. Clayton	Townsend	X	
Harold Finkler	Mt. Mining Assn.	X	
William Hampton	Townsend	X	
Dana Field	Msia	X	
John North	Dept of State Lands	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITOR'S REGISTER

Natural Resource ~~BC~~ COMMITTEE

AGENCY(S)

HS BillDATE 2-17-89

DEPARTMENT

679

NAME	REPRESENTING	SUP- PORT	OP- POSE
Lee Rogers	Helena.	X	
James Rogers	Lolo	X	
Off. Hopper	Mission	X	
Jim Sullivan	Butte	X	
Wanda Skell	Mission	X	
Warren Davidson	Helena	X	
Wanda Skell	Butte	X	
John Wright	Townsend		
John Wright	Townsend	X	
John Wright	Mission	X	
John Wright	Mission	X	
John Wright	Townsend	X	
John Wright	Townsend	X	
John Wright	Mission	X	
John Wright	Townsend	X	
John Wright	Townsend	X	
John Wright	Butte	X	
John Wright	MEIC	X	
John Wright	Mt. Mining Assn.	X	
John Wright	Regulus Gold Helena	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.  
 IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

103

## VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. HB 702DATE 2-17-87SPONSOR IVERSON

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Robert A Ellis	Helena V G 129 MWRH	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
J. Brannen	MWRH		<input checked="" type="checkbox"/>
J. H. Hinkle	Townsend		<input checked="" type="checkbox"/>
John Selwood	WETA	<input checked="" type="checkbox"/>	
Dave McClure	Mont Farm Bureau		<input checked="" type="checkbox"/>
Vernon L. Westlake	SELF & APA		<input checked="" type="checkbox"/>
JOANIE MILLER	LIVINGSTON #676	<input checked="" type="checkbox"/>	
June L. Linn	LIVINGSTON #676	<input checked="" type="checkbox"/>	
Roger Linn	LIVINGSTON #676	<input checked="" type="checkbox"/>	
Dr. E. Linn	W.S.S.		<input checked="" type="checkbox"/>
Bill WEITCH	LIVINGSTON #676	<input checked="" type="checkbox"/>	
Walter D. Malone	Chatham, Mont #107		<input checked="" type="checkbox"/>
Marvin Barber	A. P. A.		<input checked="" type="checkbox"/>
GEORGE OCHENSKI	ALLIANCE FOR MT. WATER	<input checked="" type="checkbox"/>	
Stan Bradshaw	Treat United	<input checked="" type="checkbox"/>	
Jim Jensen	MEIC	<input checked="" type="checkbox"/>	
Marvin Barber	A. P. A. (202)		<input checked="" type="checkbox"/>
Steve Adams	Townsend MTHB679		
Garet H Ellis	Helena	<input checked="" type="checkbox"/>	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

2063

## VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. HB 707DATE 2-17-89SPONSOR IVERSON

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Jerry Jack	Mt Stockgrowers		✓
CHRIS HUNTER	HELENA	X	
Ray Smith	Canyon Creek	X	
Paul S. Roos	Helena - FF OAM	X	
Peggy Hauglund	MT Assoc. of Cons. Dist	X	
David F. Wetmore	MSGA		✓
James Barclay	BNRC	✓	
Chuck Sengstacke	St Rep Dist 73		✓
Kay Norberg	WIFE		✓
Glen Mary	Gov's office	✓	
Ron Marcum	FWP	✓	
Barrett Saunders	W. SS		✓
Leventis bus filed	Big Tender (BNRC)	X	
Carol Masher	Mt. Gattie Masher		✓
Ray Halperin	Helena	✓	
Scott Eubank	MT Wildlife Federation	✓	
Dana Field	Ulsia	X	
Kim Wilson	Sierra Club	✓	
Kirby Lippert	Hamilton		✓
Roll Alford	Office of the Governor		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## VISITORS' REGISTER

Natural Resources COMMITTEE

3 of 3

BILL NO. 707

DATE 2-17-89

SPONSOR Iverson

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. HR 702DATE 2-17-89SPONSOR COBB

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Robert A Ellis	MWRN	<del>Friend</del>	<del>Friend</del>
F. Boehmke	Self		✓
Vernon L. Wattale	SELA + APA		✓
Dave McClure	Mont Farm Bureau		✓
Ric. Jaccard	MC Pres. Assoc		✓
Janet Ellis	Andubon		✓
Lesley Hauglund	MT Assoc. of Cano. Dist	X	<del>✓</del>
Steve Spackman	Self		✓
David F. Wilkin	USCA		✓
Kay Norenberg	WIFE		✓
Donald Saunders	Self		✓
Lorents Gostelil	Self	X	
Guy Helgerson	Helena		✓
Anna Field	self		X
Jim Jensen	MEIC		X
John McGuire	<del>WSS</del> Self		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER  
Natural Resources COMMITTEE

BILL NO. HB 721

DATE 2/17/89

SPONSOR Hannah

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Janet Ellis	Helena		✓
<del>Lee T. Smith</del>	<del>Butte</del>		✓
<del>Harriet Alalay</del>	<del>Helena</del>		✓
Gay Halgerson	Helena		✓
Robert Rossmussen	Helena		✓
LINDA STOLL-ANDERSON	Helena		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

Natural Resources

COMMITTEE

BILL NO.

HB 678

DATE

2-17-89

SPONSOR

Gilber

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kim Wilson	Sierra Club	✓	
Gary G. Brown	DSL	✓	
Jim Jensen	MEIC	X	
Don Allen	National Pol. Assn	✓	
Mike Atwood	Bland S Lumber	✓	
Gus Glaser		X	
Ganet Ellis	Mudubon	✓	
Jim Bradshaw	S.I.	✓	
Ray Halgerson	Walter Anderson	✓	
Dana Field	self	X	
MARK Simonich	F.H. Stetson	X	
GORDON SANDERS	CHAMPION INTERNATIONAL	X	
KEITH OLSON	MT. LOGGING ASSN	✓	
John North	Dept of State Land	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

Natural Resource COMMITTEEBILL NO. HB 715

DATE

2-17-89

1082

SPONSOR Reem

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kim Wilke	Sierra Club	✓	
Jim Jensen	MEIC	X	
Stan Bradley	T.U.	✓	
John Johnson	WETA		X
Mike Atwood	Board S. Jensen		X
Don Allen	MA. Wood Lumber Assoc.		X
Gus Glaser		X	
Janet Ellis	Audubon	✓	
CHRIS HUNTER	MT- Chapter Amer. Fish Soc.	X	
Paul S. Roos	Paul Roos Outfitter	✓	
Daggy Haaglund	MT Assoc. of Cons. Dist.		Amend X
Sanna Porté Kiesling	self and parents	X	
DIMITE		✓	
Gay Halgimont	Nelson	✓	
Dana Field	self	X	
Robert Rasmussen	Self	X	
GORDON SANDERS	CHAMPION INTERNATIONAL		X
RAY MCKINLEY	MCKINLEY CONSTRUCTION		X
MARK Simonich	F.H. Stoltze Land & Lumber		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# Natural Resources

BILL NO.

DATE \_\_\_\_\_

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. HB 697DATE 2-17-89SPONSOR Cohen

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kim Wilson	Siorr. Club	✓	
Jim Jansen	MERC	X	
<del>John Stelmach</del>	<del>W.F. ...</del>		X
<del>Frank ...</del>			
MIKE ATWOOD	BRAND S. COMMISSION		✓
Don All	MT. Wood Ind. Assoc.		X
Luis Glaser		X	
Janet Ellis	Audubon	✓	
Ray Seligman	Helena	✓	
Dana Field	self	X	
MARK Simenich	F.H. Steltzer Land & Lumber		X
Steve ...	I.M. The ...		X
GORDON SANDERS	CHAMPION INTERNATIONAL CORP		X
Ray McKinley	McKINLEY CONSTRUCTION		X
KEITH OLSON	MT. LOGGING ASSN.		X
Kerry Jack	MT. Stockgrowers		X
John ...	Dept of State Land		

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BILL NO. 727

DATE 2-17-89

SPONSOR Rep Bob Marks

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



# ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 2-17-89

BILL NO. 715

NUMBER 1

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

TALLY

7

9

Claudia Montagne  
Secretary

Bob Raney  
Chairman

MOTION: to table HB 715 (Rep. Owens)  
Motion failed 9-7

# ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 2-17-89 BILL NO. HB 715 NUMBER 3

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

TALLY

8 0

Clarkin Montagne  
Secretary

Bob Raney  
Chairman

MOTION: do pass as amended HB 715  
mde by Rep Addy

# ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 2-17-89

BILL NO. HB 715

NUMBER 3

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

TALLY

Clayton Montagna  
Secretary

9 6  
Bob Raney  
Chairman

MOTION: HB 715 do pass as amended  
motion made by Rep Addy.