

## MINUTES

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

#### COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on March 15, 1989, at 4:10 p.m.

#### ROLL CALL

Members Present: All present except:

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

Members Absent: None

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

Announcements/Discussion: None

#### HEARING ON SB 327

#### Presentation and Opening Statement by Sponsor:

SEN. KEATING, Senate District 44, opened on the bill which dealt with the Montana Environmental Policy Act (MEPA). He told the committee that Montana had been involved in mining, timbering, and oil and gas operations, and yet, even after that 100 years of development and exploitation, the state still had 3 million acres of designated wilderness, another 3 million acres meeting wilderness criteria, outback lands and recreation lands throughout the state. He suggested that the presence of a beautiful environment despite 100 years of resource exploitation represented a dichotomy.

SEN. KEATING continued, saying that in 1971 the Legislature decided to protect all of this, and passed the Montana Environmental Policy Act, the Major Facility Siting Act, the Air Quality Act and the Water Quality Act. As a result, he said the robust economy in the state began to slow down. He suggested that the loss of industries was due to the fact that all of a sudden it had become too costly and too difficult to do business in Montana. As a consequence, he said the state had lost 40,000 jobs in the last 10 years, as well as refineries, smelters, and sawmills.

SEN. KEATING said that part of the problem was with the Montana Environmental Policy Act because the law, as it was written, implied that all permits were major actions, unless designated by the Department of Natural Resources and Conservation (DNRC) to be a minor action. He said that if

the department deemed something to be a minor action, which would not require an environmental impact statement (EIS), a disinterested third party could challenge in district court that the action was a major action. He said the party's claim would derive from 75-1-201, in which the intent of the Legislature was that this constituted a major action. At that point, the weight and burden of evidence would rest upon the department. He suggested that placing the burden of proof upon the defendant was contrary to our system of justice.

✓ SEN. KEATING said SB 327 would reverse that role. Under the bill, all actions would be considered minor unless the department deemed it a major action. He distributed a handout (EXHIBIT 1) which indicated that the proposed change in SB 327 would have no effect on all of the rules and regulations at the disposal of state government for making its determinations regarding what is major and minor. He said the effect of the bill would be on how the intent of the Legislature was perceived by the courts whenever there was a challenge on a minor action. SEN. KEATING said those who wished to invest here would perceive that Montana was being fair in the application of its environmental laws.

Testifying Proponents and Who They Represent:

Cal Cummings, Economic Development Director, Billings  
James D. Mockler, Executive Director, Montana Coal Council  
Jack Salmond, Western Environmental Trade Association  
(WETA)  
Janelle Fallan, Executive Director, Montana Petroleum  
Association  
Lorna Frank, Montana Farm Bureau, Women Involved in Farm  
Economics (WIFE), and the Water Resource Association  
Kim Enkerud, Montana Stockgrowers Association  
Julie Hacker, Missoula County Freeholders Association  
Sue Weingartner, Montana Solid Waste Contractors  
Mark Simonich, F.H. Stoltz Land and Lumber Company  
Kay Foster, Billings Chamber of Commerce  
Don Allen, Executive Director, Montana Wood Products  
Association  
Colleen Ellison, Mayor, City of Columbia Falls  
Carol Daily, Executive Director, Flathead Economic  
Development Corp.

Additional Proponent Testimony:

Doug Abelin, Montana Oil and Gas Association, EXHIBIT 3

Proponent Testimony:

CAL CUMMINGS said Montana today was facing serious problems that had been years in the making. He said some of those problems were exemplified by the problems with school equalization. He said that it came down to an ongoing

search for property and income tax revenue. The population in Montana was dwindling, and business was stagnant. He stated that Montana needed to bring back the 12 thousand or more in population that it had lost, because we were in the process of losing a United States Representative.

MR. CUMMINGS said that in his capacity as an economic development director, he was confronted constantly by prospective businesses looking at this area. He said their impression was that there was a bad business attitude in Montana. He said this bad attitude was made up of many things such as taxation, Workers Compensation, and the uncertainty in the environmental laws. It was thus difficult for a big business to come into Montana and try to budget for what was needed to build a new plant or new business here. In the case of MEPA, a decision by the department could be challenged, and he asked how a big or small industry coming would budget for that. MR. CUMMINGS said, as Senator Keating pointed out, that he was not after a major change in the environmental laws, but wanted the process to be allowed to proceed once a state agency had made a decision.

JAMES MOCKLER said he had no argument with the EIS requirement in major cases, such as a coal mine. However, he objected to the requirement for an EIS every time an operator wanted to move a drag line, or go into a relatively small new area. He noted that Western Energy, in its years of operation, had done 20 EIS's, 7,700 pages that he said no one had ever read. He said it meant cost to the company, cost to customers, and delay. He said he did not want to change the environmental laws, but asked for some flexibility. He suggested that a Preliminary Environmental Review (PER) or some other means could be used instead of a full EIS. He also said that the proposed changes would give some certainty, once the Department of State Lands had made the decision that an EIS was not needed.

JACK SALMOND said WETA represented a broad spectrum of interests including agriculture, labor, recreation, business and industry and state resource industries. The organization's primary goal was to promote jobs and economic development opportunities for the state of Montana while fully recognizing and encouraging a reasonable protection of the environment. He said the association had long been an opponent of unnecessary red tape and regulations that discouraged industries from doing business in Montana.

MR. SALMOND said WETA believed that when a project was only in its exploration stages or when development involved a small operation with a minimum impact on the environment, the preparation of an EIS was unnecessary and could drive away jobs and economic opportunities. MR. SALMOND suggested that, in the instance of a small timber harvest or a small mining operation, an environmental review that took into account the appropriate reclamation considerations would

adequately protect the environment. He said WETA encouraged efforts to improve existing laws to create a better business climate for Montana, and urged the committee to give SB 327 favorable consideration.

JANELLE FALLAN reiterated that it was very important that the burden of proof be on the challenger, rather than on the agency that would be issuing the permit.

LORNA FRANK stated that this proposed change would help the economic climate of the state, but would not drastically change the environmental intent. She said the change would make the law more responsive to the majority of the people of this state.

KIM ENKERUD stood in support of SB 327.

JULIE HACKER testified that the bill would provide an opportunity for development of resources in the state without costly litigation (EXHIBIT 2).

SUE WEINGARTNER said the bill was reasonable because only those proposals which would have a significant impact on the environment would be required to go through the time-consuming and costly procedures of an EIS. She said the safeguards to the environment would still be intact and were not at all compromised by this bill.

MARK SIMONICH said F.H. Stoltz supported the state of Montana taking the appropriate steps to protect and enhance natural resources, and believed the Montana Environmental Policy Act was intended to do this. However, he expressed concern that the trend had been to allow that act to be a vehicle to stop economic development. He said it had become a "paper tiger" that was basically eating up an agency. He said the department was unable to get out and do the work necessary because of numerous appeals and endless litigation. He gave the example of two law suits filed against the Department of State Lands concerning operations on school trust lands. He said he was worried that this trend would grow in the state. He suggested that SB 327 provided an option to let the state spend its money managing resources instead of just shuffling paper.

KAY FOSTER gave examples of two situations in Yellowstone County: a proposed chrome refinery and a barley malt plant proposed by Anheiser Busch. Both represented the potential for significant economic benefit to the county. Under current law, she said someone could claim that there could be a major environmental impact, which could delay this development. She said the proponents were not asking for easing of current environmental requirements, but rather that unnecessary delays be removed.

DON ALLEN commented that no one who enjoyed this state would wish that any of the mistakes of the past be repeated. He said the real problem with all the issues addressed at the hearing were the intentions of the few people who wanted to use the rules to prevent certain things from happening. He said he thought the changes that the bill asked for would certainly not do anything to remove the protection in the current laws. Rather, he said it would shift the burden to those who had nothing at risk. He suggested that the timber industry was a living example of what paralysis can occur by those who used the 25 cent stamp and yet had nothing at all at risk.

COLLEEN ELLISON said part of her responsibility was to protect and support jobs for her people and to produce a balanced environment. She said the bill made sense to her because it allowed people to do business expediently, profitably and sensibly, and gave a balance both to jobs and the environment. She said that as a mayor for the last seven years, she had witnessed the increased responsibilities to the environment. She said that the state and communities needed jobs, markets, and the ability to produce.

CAROL DAILY stood to urge the committee's support of the bill.

Testifying Opponents and Who They Represent:

Jim Jensen, Executive Director, Montana Environmental  
Information Center  
Janet Ellis, Montana Audubon Legislative Fund  
Gene Fenderson, Montana Construction and Trades Council  
Kim Wilson, Sierra Club  
Richard Parks, Legislative Chairperson, Bear Creek Council,  
an affiliate of Northern Plains Resource Council  
Don Judge, Montana AFL-CIO  
Stan Bradshaw, Montana Council of Trout Unlimited  
Tony Schoonen, Montana Wildlife Federation, Skyline  
Sportsmens Club  
Kate McMillen, self  
Sherm Janke, self  
Joan Montagne, Greater Yellowstone Coalition

Additional Opponent Testimony:

Jack Tuholske, attorney, Missoula (EXHIBIT 5)  
Margery H. Brown, Attorney At Law, Missoula (EXHIBIT 10)

Opponent Testimony:

JIM JENSEN quoted the section of the Montana Constitution which guaranteed each of us a right to a clean and healthful environment. He said the Montana Environmental Policy Act was the Legislature's implementation of that constitutional mandate to provide remedies for the protection of the environmental support system. He said SB 327 would

effectively repeal MEPA by exempting the state agencies who were the focus of the act. He said that MEPA as currently administered was mostly a planning process that implemented society's demand that development of our natural resources be conducted in a way that acknowledged that there were values to a clean and healthful environment.

MR. JENSEN said another constitutional provision required that the public be able to participate in Montana's government. He said the Montana Public Participation statute enabled us as citizens to inform ourselves of the issues that have potential environmental effects. He said that was what MEPA was all about, with the public having the opportunity to speak and to help improve projects so that everyone's rights were balanced. He gave the example of Pegasus Mining Company's Beall Mine, the largest in Montana. He said that within five months, which included the preparation of an EIS, this was a producing, 100 million ton mine. He suggested that this was not obstructionism. He urged the committee to kill the bill.

JANET ELLIS testified as set forth in EXHIBIT 4.

GENE FENDERSON reminded the committee about the court case involving Montana Power Company's Haynes Pipeline. He said that situation brought his union and MEIC together to force the state of Montana and the corporations of Haynes and Montana Power to adhere to MEPA. He said he disagreed that all it took was a postage stamp to stop a project. He said the case brought out not only the environmental impacts, but the safety of the pipeline. That case proved that we had some of the most unsafe pipeline ever built in the state. He said that most of that pipeline has been taken out, at great expense to the state and the corporations. He said the law worked and was not necessarily easy to implement. He encouraged the committee to keep MEPA on the books.

KIM WILSON submitted testimony on behalf of Jack Tuholske, EXHIBIT 5. He said the Sierra Club opposed this bill because it represented a significant change in the way we were currently doing business in Montana. Currently, MEPA imposed an orderly and systematic process by which all state agencies could determine the environmental impact of a proposed project. He said this bill removed that orderliness as well as the state's ability to oversee all projects.

MR. WILSON said that contrary to the opponents testimony, not all actions were presumed to be major actions. He said only a few cases had actually been brought to court, and commented on the recent judgement made in favor of the plaintiff in the case of the North Fork Preservation Association versus the Department of State Lands. He said the comments of the judge exemplified the purpose of MEPA, quoting the judge as follows: "Ideally an EIS is designed to serve as a decision

making tool for the lead agency, and a means by which the concerned public can become involved in the decision making process. Public notice and involvement, inter-agency involvement and distribution for comment are key elements in the process of making an environmental assessment." Another comment was that "an EIS, should one be needed, should serve to assist agencies in making decisions before any significant steps are taken which may damage the environment. That purpose requires that the process be integrated with agency planning at the earliest possible time." He said the Sierra Club believed this bill would change all of that. As an attorney, he resented the implication that MEPA challenges were brought for the purposes of delay. He urged the committee to give the bill a do not pass.

RICHARD PARKS testified as set forth in EXHIBIT 6.

DON JUDGE testified as set forth in EXHIBIT 7.

STAN BRADSHAW said he would like to provide some clarification in regard to the statement made by proponents that any disinterested party could file a lawsuit under MEPA. He said advocacy groups could file lawsuits but they still had to meet a stringent test for legal standing. They had to have members who were directly affected.

MR. BRADSHAW said the proponents had a serious flaw in their understanding of how the law works, specifically in the area of burden of proof. He said the committee had heard that the burden is on the defendant once the suit is filed, which was not true. In his experience while working in state government and defending lawsuits under MEPA, the department made sure that the plaintiffs met the standing requirement. He said the plaintiffs had to show extensive and scientific proofs, that are expensive and difficult to acquire.

MR. BRADSHAW continued with a discussion of the mechanism by which any kind of threshold decision on the need to prepare an EIS could be made at all, a mechanism the bill would wipe out. Referring to the bill, he said it did not say that the agencies of the state were exempt from requiring environmental impact statements. It said that they were exempt from the provisions, which meant they did not even make a threshold decision, unless the agencies went through this declaratory ruling procedure. He said the irony of that particular procedure was that it was done under the Administrative Procedures Act. Under those rules, it was contemplated that someone would petition the agency for declaratory ruling. He said he had yet to see an agency petition itself.

MR. BRADSHAW said MEPA was about accountability. He said SB 327 would strip the government of any accountability for the environmental consequences of its actions. He said this was

a bad precedent, and urged the committee to vote against the bill.

TONY SCHOONEN urged the committee vote against SB 327. He said that in 1971, the citizens of Montana made it clear with the passage of MEPA that they desired and were entitled to participation in the process of evaluating state's actions that impacted the human environment. He said that feeling was still strong and was indeed an essential part of this citizens' participation process. He said his organization did not feel comfortable leaving the decisions about whether or not to do an EIS solely up to the state agencies, who were often subject to political pressures. He said sportsmen took a keen interest in how we deal with our environment, and strongly supported the provisions encompassed in MEPA. He suggested that with the lack of appeals to the current process, SB 327 seemed to be directed at solving a problem that did not exist.

MR. SCHOONEN disputed the opponents' claim that mining and timber were in a decline. He mentioned several examples of mines that had worked cooperatively with the people and the state and were now in operation. He offered a challenge to the proponents to prove that the smelter was closed in Anaconda because of environmental laws. He also asked them also to prove that the taxpayers in this state and nation were not already paying for the effects of these sites. He said appeals were filed because resources were important to the health and happiness of the citizens of this state.

KATE MCMILLEN said that when she voted, she chose people to represent her. She said she wanted state agencies to be representing her also. She said that 18 years ago the people decreed that state agencies should be responsible for at least investigating impacts on the environment. She said that responsibility had not changed, and that the environment still needed that protection. She urged the committee to vote against HB 327.

SHERM JANKE testified as set forth in EXHIBIT 8.

JOAN MONTAGNE testified as set forth in EXHIBIT 9.

Questions From Committee Members:

REP. BROOKE asked Kay Foster to describe the two industries that she referred to in her testimony. MS FOSTER said the first company was Boulder Gold that now had a chrome mining project in Stillwater and was proposing to build a chrome kiln near the mine. The other, the Anheiser Busch barley malting plant, was being considered for possible location in the Billings area.

REP. BROOKE, referring to the smelter, asked how many persons would be employed in the state through this project. MS



FOSTER said there would be 300 to 400 jobs in the construction phase. REP. BROOKE asked if she considered this smelter to be a minor project. MS FOSTER said she did not know.

REP. BROOKE said that in SB 327, at the outset everything would be considered minor. MS FOSTER replied that her understanding was that the agency could declare this a major project. REP. BROOKE asked if under this statute, it would be considered a minor project from the beginning. MS FOSTER said that was correct.

REP. RANEY asked Kay Foster if it was her understanding that with this bill, if those industries came to her community and the department found the project minor, the public in her town would have no say. MS FOSTER said if the department made that declaration without any background information or work, then she supposed that would be true. She said she did not believe that they worked in a vacuum. She said the public could still challenge the projects, but it would be up to them to prove their case, rather than the department.

REP. HARPER asked Jack Salmond if Montana had to substantially weaken its environmental laws to encourage economic development. MR. SALMOND responded that he felt this kind of legislation would encourage some small businesses.

REP. HARPER asked Carol Daily if she could you give him some examples of the businesses that did not locate in the Flathead area because of MEPA. MS DAILY said she did not know of any businesses at this time that had not located in the area, but was aware of businesses that were concerned about their ability to continue doing business in the Flathead.

REP. HARPER said he thought the concerns expressed by Ms Foster and Ms Daily would come to pass with this legislation. It was his interpretation that an EIS process would be automatically triggered. He said that when this bill passed, a company would know that if there was a chance that its action was going to have significant impact on the environment, any review at all would be a full EIS. He asked the sponsor what impact he thought that would have on businesses considering to come into the state. SEN. KEATING said that was not correct, and referred to his handout (EXHIBIT 1). He directed Rep. Harper to the yellow highlighted area, and said the amending language implied that the obligation for protecting the environment was still there. The determination of necessity for an EIS was written in the procedural rules. In the case of the chrome refinery, the department would still do the PER to determine the necessity of an EIS. He said anybody seeking a permit would still be subject to the potential of an EIS.

- REP. HARPER asked the sponsor to explain how an environmental assessment (EA) was to be done. SEN. KEATING said he had just read it, and re-read the text of his exhibit. REP. HARPER asked what section of the law he was reading from. SEN. KEATING said he was reading from the procedural rules. REP. HARPER asked if they were the procedural rules under MEPA. SEN. KEATING replied yes, and said he had already pointed out that the section his bill amended had no effect on the rules and regulations that followed in the chapter. He said that SB 327 specified that all actions were considered minor unless determined to be major actions by the experts in the departments.
- REP. HARPER said his point was that the way the language was written, you must go all the way or no where at all. He said the sponsor had thrown a major challenge and a major roadblock. SEN. KEATING objected, and said the requirement for a preliminary environmental review was still there. REP. HARPER said that it was his perception that the bill would exempt any state agency from all of the provisions of MEPA including reporting requirements to the Environmental Quality Council unless the balance of significant impact was tipped. He said if that balance did tip, in order to cover itself, under this law, a state agency would have to require an EIS. Thus he suggested that the bill was contrary to the sponsor's intent.
- SEN. KEATING disagreed with Rep. Harper's interpretation. REP. HARPER countered, saying that the text of the law Sen. Keating was quoting, 75-1-104, was one of the parts of the law from which the department would be exempted by the bill. Therefore, he said, it would not exist unless the EIS process was triggered by the finding that the project constituted a major action. He suggested that Sen. Keating had caught himself in a Catch-22. SEN. KEATING replied that the drafters of SB 327 did not hold this view.
- REP. COHEN said that in his opening, Sen. Keating had asserted that the gold mine on the Blackfoot was not going into operation because of MEPA. He said that he had read in the paper that it was due to the declining price of gold. He asked the sponsor to respond. SEN. KEATING said he had not referenced that mine in his testimony.
- REP. COHEN said the sponsor had claimed the timber industry was adversely affected by MEPA, yet in the state the timber industry was cutting more logs than ever before. He asked Sen. Keating how he reconciled his statements with these facts. SEN. KEATING replied that the people from the wood products and forest industry, who had experience with the procedures of the application of MEPA through the departments and in the courts, had said there was an adverse impact from frivolous challenges. He said he had to believe them.

REP. COHEN said the sponsor also had stated that since 1971, there had been a constant down-hill flow for business in Montana. Yet, he said, the state had seen the growth of Colstrip and the power generating plants in that area, most of which occurred since 1971. He asked for Sen. Keating to comment. SEN. KEATING said Colstrip 1, 2, 3 and 4 were built under the Facility Siting Act, and were exempt from the MEPA procedure because they fell under the thresholds of that act. He added that there had been challenges made numerous times to Colstrip 3 and 4 in the district courts under the Siting Act. Northern Plains Resource Council challenged Montana Power and the department on those permits. Yet, he said, they never made a change at all in the plan and setting, and Colstrip 3 and 4 were built just like they were going to be built on the drafting board. He said all Northern Plains did was slow down the process, delay the building of the plant for one or two years and quadruple the cost of the plant. He said the consumers in Montana were now paying these costs.

REP. COHEN said Sen. Keating had implied that since the passing of MEPA, the oil industry had suffered, and yet the state had seen a boom in the industry when OPEC raised the price of oil, and when OPEC lowered the price, the state saw the oil industry fall apart. He said that during the past two years, while the oil industry had been exempt from MEPA awaiting the programmatic EIS, the oil industry's fortune seemed to be connected entirely to the price of crude. SEN. KEATING said the impact had been felt before the exemption under MEPA, which was a temporary exemption. He said there had been cases in which investors had millions of dollars of capital investment up front, and had been stopped in that process because of the permitting process under MEPA, the unnecessary costs of an EIS, or the challenge that an EIS was necessary. He said that impact was registered on others who wanted to do business in Montana, but were reluctant to do so because they did not want to subject themselves to that same kind of treatment that they have seen others get. He said drilling was still going on in North Dakota, Wyoming and Colorado in sensitive mountain areas just as in Montana. He said it wasn't entirely MEPA that was stopping the oil industry, but was also taxes.

REP. COHEN said there was one industry in the state that was actively involved in extracting natural resources, and that had come to the committee asking for regulations on itself. He said he was speaking of the mining industry. He asked how Sen. Keating accounted for its absence from this hearing. SEN. KEATING said representatives of that industry were absent because they were subject to the Hard Rock Mining Act primarily.

REP. ROTH asked Don Allen to relate how MEPA had affected the timber industry. MR. ALLEN said that as far as levels of harvest were concerned, the industry was at an all time

high. He said that he had no specific problem with the laws or rules under MEPA, but added that anything that would help shift the emphasis of the burden on those who were doing challenges was desirable. He said the timber industry had more problems with the National Environmental Policy Act (NEPA).

REP. RANEY asked Richard Parks if he recalled the controversy involved in the Colstrip 1, 2, 3, and 4, and asked him to respond to Sen. Keating's allegation that Northern Plains Resource Council (NPRC) had quadrupled the cost of those facilities. RICHARD PARKS said he was familiar with the controversy and that he doubted seriously that Northern Plains was responsible for quadrupling the costs. He questioned whether the costs were accurately calculated in the first place. Sen. Keating's charge was that NPRC had no effect on the ultimate design of the plans and that the organization was just doing it for the purpose of running up the costs. He rebutted this statement, stating that there were literally dozens of changes made and actually constructed because of environmental considerations that the original plans inadequately considered. He said those changes were the result of NPRC's activity, and made the plant more economically viable and sounder in operation. He said NPRC was proud to have been a part of that process.

REP. OWENS referred to a letter received by committee members from an independent petroleum landman, Louis Pinwell, and asked Janelle Fallan if she would comment on the oil rig status in the state and in the surrounding states. He said the letter reported that the rig count in Montana had dropped from 80 rigs in 1981, to 25 in 1985, to 3 rigs in 1989. MS FALLAN said that was accurate data, but hesitated to give any specific numbers on rig counts in the state of Wyoming and North Dakota. She said that generally, Wyoming's rig count was quite a bit more than Montana's, and North Dakota's was usually one or two more. She added that neither one of those states applied their equivalent MEPA legislation to the oil and gas industry, and also had lower tax rates than Montana.

REP. ADDY asked Ms Fallan if she could tell whether the drop in the rig count could be attributed more directly to: a) the world price of oil; or b) MEPA. MS FALLAN said as long as Rep. Addy said "more directly", the answer would be the world price of oil. She said it could be attributed largely to the world price of oil.

REP. ADDY asked Sen. Keating about the Anheiser Busch plant and the chrome processing plant. He said they both knew that Billings was in a depression. He said the jobs situation drove him to want to give these other two facilities chances to operate. He asked how the bill would change the threshold that they must meet in order to construct those facilities. SEN. KEATING said both facilities, with this

bill, could still be subject to an EIS, depending on the determination by the departments that would issue the various permits. He said that if the departments, in their determination in gathering the data to comply with the rules, decided after doing an environmental assessment (EA) and a preliminary environmental review (PER) that an EIS was not necessary, then the plants could go forward unless they were challenged in the district court by a third party. The difference that this amendment to MEPA would make would be that the burden of proof that the construction project constituted a major action would be upon the appellant, not the department. He stated that if an investor felt he/she would be tied up in judicial action regarding the intent of the law, he/she would be less likely to make an investment in Montana. He assured Rep. Addy that the chrome group had looked at Sheridan, Wyoming, for the location of the plant.

REP. ADDY asked Mr. Bradshaw to comment on Sen. Keating's answer. MR. BRADSHAW said that the provision in MEPA that triggered a PER or an EA was 75-1-201. That section requires a systematic, interdisciplinary approach and agencies would be exempted from this requirement by this amendment. He added that in the MEPA rules that describe the procedures for EA's, the statute cited was the same 75-1-201. Again, he said this would be eliminated by this amendment.

REP. ADDY said Sen. Keating seemed to be saying that all he wanted to do was reverse the burden of proof. He said that what he heard Mr. Bradshaw saying was that this bill threw the baby out with the bath water by taking all the procedural requirements out of the law. He asked if there was some way the bill could be re-written to do what Sen. Keating wanted to do without doing what Mr. Bradshaw did not want done. MR. BRADSHAW said he believed the bill addressed a problem that did not exist because any court challenge that was undertaken against an agency decision would have to be filed under the Montana Rules of Civil Procedure. He said the burdens of proof under those rules were as they were under any civil litigation--that the party bringing the case or the plaintiff had the burden of proof. He said that in looking at the language in the bill, it did not refer to judicial procedure at all. He said his point was that he did not think the problem existed, and therefore did not know how the law could be changed.

REP. ADDY asked DON ALLEN to explain how the "25-cent appeal process" worked. MR. ALLEN said this was a term used by the industry for the filing of appeals on timber sales by organizations and individuals. He said one of his concerns was the lack of commitment of resources of the individuals who filed the suits. He said the term referred to the cost of the stamp and did not refer to MEPA per se.

REP. ADDY continued, asking if Mr. Allen had stated that his problems were more with NEPA (National Environmental

Protection Act) rather than MEPA. MR. ALLEN said that with regards to the timber industry appeals, that was true. He said he was addressing more the attitude and the delays rather than the rules and laws themselves.

REP. ADDY asked, if the law were to provide that anyone who filed an action and did not base it on best knowledge, information and belief formed after reasonable inquiry, the state could sock them for everything it cost the industry, including attorneys' fees. He asked if that would be a sufficient deterrent to those kinds of actions. MR. ALLEN said the timber industry called for some sort of bonding system where those who had nothing at risk would have to file some sort of bond. Again, he said he was referring to the national level. REP. ADDY asked if the frivolous people Mr. Allen referred to could be deterred if the industry was able to get its costs, plus attorneys' fees, plus economic damages. DON ALLEN said he thought that was already in the existing law. He said the problem was to stop the delays for delay's sake.

REP. RANEY asked Stan Bradshaw to respond to this. MR. BRADSHAW said that in every MEPA lawsuit in which he had been involved, basically what the plaintiffs were attempting to do was to stop action from going forward. He said they were filing an action for injunctive relief, usually in the form of a temporary restraining order, or a preliminary injunction. He said that what inevitably happened was that, by law, the court could assess a bond on the party bringing the law suit so that, if they had stopped someone from going forward with the permitting process, and they failed to prove their case, they were liable for the damages and the costs. He gave a case in point. In 1977, a group of residents filed a law suit against the Anaconda Company, the Montana Department of Health and Environmental Sciences, the Department of State Lands and the Department of Highways trying to stop the further construction of a waste dump. In that case, he said they initially sought a temporary restraining order and a preliminary injunction. The court said they were required to put up a bond. They did not have the money for the bond, so the company was able to go forward with its work. He stated that the power to impose a bond was a strong deterrent against filing a lawsuit.

REP. GIACOMETTO asked Mr. Bradshaw if he could support SB 327 if the bill were to be written so that it changed the burden of proof in a direction that Sen. Keating was talking about by having to go to the district court. MR. BRADSHAW said the representative was asking him an impossible question. He said he believed that the burden of proof already rested on those people. He said he did not know what changes could be proposed to make that different. He said he supposed that a clause could be added that when a party wanted to file an action to enforce MEPA, it would have the burden of proof to make a prima facie case. But, he said, that would be

redundant, since it was already in the law. He said it happened in other statutes that redundant language was placed on the statute in order to alleviate a concern. He said if the sponsor wanted to strip this away and add an amendment that reiterated the current law, he would not object.

Closing by Sponsor:

SEN. KEATING, closed, citing Mr. Jensen's reference to the Montana Constitution. He stated that he agreed that the people were entitled to a healthful environment. However, he said he would like to go to the Declaration of Independence, which says that "we are endowed by our Creator with the pursuit of happiness". He said this meant to him the right of franchise, opportunity to work in whatever pursuits he chose to sustain his life and liberty. He said his job, the opportunity to provide for himself and his family, seemed to be superior to the ideal of a pristine environment.

He reiterated that despite Montana's history of resource exploitation, the state still had a beautiful environment. He noted that the Montana Environmental Information Center began in 1971, about the same time that MEPA was passed. In retrospect, he suggested that the demise of the state's economy coincided with the birth of MEIC.

SEN. KEATING said he had been looking for what he could do to bring the state back to a balance of a healthful environment, and wondered why the state should not be given the opportunity to develop its natural resources to provide jobs, while still retaining the environment.

He said that the staff of the state agencies charged with enforcing MEPA had the expertise and knowledge to determine the necessity of an EIS. He said they were better equipped to make those decisions than a district judge. He suggested that as the law stood at present, the state was allowing its experts to be second guessed by a district judge.

SEN. KEATING reiterated that what we now had was legislative intent that all permits were major actions. Therefore, a judge in making a decision would look at legislative intent and see 75-1-201 requiring an EIS, even though the department had already made its determination under a preliminary environmental review that it was not a major action. Again, he said the bill simply reversed that legislative intent. He suggested that the vast majority of actions were minor and were not challenged was a rationale for making them all minor actions. He said he knew that there had been decisions made to go elsewhere with plants, factories, and investment money that would have created jobs, because people had the impression that Montana's

environmental laws would require them to do something unnecessarily.

SEN. KEATING said he was a representative of the people. He said that although he was the sponsor of SB 327, the bill really belonged to this multitude of proponents at the hearing from all of the various industries in the state who were looking to the committee for relief under the law and for opportunity to do their jobs and to provide their livelihoods. He assured the committee that each one of them was just as environmentally conscious as all of those who were opposed to the measure. He suggested that there was a majority of people in Montana that found this amendment to the Montana Environmental Policy Act very necessary.

#### DISPOSITION OF SB 327

Motion: REP. O'KEEFE moved the bill BE NOT CONCURRED IN.

Discussion: REP. HARPER commented that the bill would require any industry that believed it would have any impact at all to go through the EIS process. He said there was no half-way process in this, and that the bill did not do what the sponsor thought it did. REP. GILBERT said the bill was not a good proposal. He said he was asked to sign and refused, because it went too far.

Amendments, Discussion, and Votes: None

Substitute Motion: REP. BROOKE moved to TABLE the bill.

Recommendations and Vote: The substitute motion CARRIED 10 - 6 on a recorded vote.

REP. ADDY, at a later time in the hearing, asked permission to speak on SB 327. He said he had problems with the bill, and had sensed in the testimony of the opponents some room for compromise. If an individual could work long enough with Sen. Keating, language could be arrived at that would accomplish what Sen. Keating said he wanted to do. He said it was his belief that that would be a restatement of the law; however, the result of this compromise would be a correct perception of the law on the part of Sen. Keating. But he disagreed with the statement that the state's economic woes began with the passage of MEPA in 1971. He stated that Montana had not seen a boom like it saw right after 1971. More correctly, he said, the state's woes started about the time that the price of oil dropped. With that clarification, he said he would like to change his vote on the motion to TABLE SB 327 to a yes.

There was no objection from the committee, and the vote did not change the outcome of the motion.



DISPOSITION OF HB 676

Hearing 2/17/89

Discussion: REP. RANEY said that there were many amendments to HB 676 because they had gone to the hospitals, dentists, doctors, veterinarians, and morticians for comments on a viable Infectious Waste Act. He said that Infectious Waste Management referred to the point at which infectious waste was generated until it was finally disposed. REP. RANEY asked that researcher Hugh Zackheim review the gray bill (EXHIBIT 11), saying that the amendments were the result of testimony at the hearing and subsequent follow-up. He asked the committee to review the amended bill for executive action at the committee meeting on March 17, 1989.

MR. ZACKHEIM went through the exhibit, the gray bill, section by section. He said the definition of infectious waste was amended to delete a number of items, and a phrase added to allow health care providers more discretion in the determination and treatment of patient generated waste.

He explained the definition of commercial transporter, and noted the transport fee reductions for transport of infectious waste within Montana.

REP. RANEY said mortuaries and crematoria had been exempted due to the lack of time for the development of language regarding rural mortuaries.

REP. O'KEEFE asked what the rationale was for exempting hospitals who accepted infectious waste from the definition of commercial facility. REP. RANEY said bigger hospitals at present were accepting wastes from smaller hospitals and clinics. He said the exemption would allow that to continue.

REP. GIACOMETTO said, in response to the language regarding non-institutional facilities, that there were some facilities that generated infectious waste that were smaller than a dentist's office. He referred to the hospital in his district which did not have a doctor. He suggested the use of the word "person" to cover these.

REP. RANEY, with the committee's permission asked for comments from people in the audience. JIM AHRENS said there were very small facilities that would benefit by the use of the word "person". He said the lead time of July 1, 1990, be helpful for these facilities to come into compliance. He said it was a major piece of legislation that would have a impact on the hospital and nursing home industry in the state. He said they were not opposed to this in principle, and predicted that the act would be worked on in the future.

DISPOSITION OF HB 754

Hearing 3/10/89

Motion: REP. HARPER moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. HARPER moved the amendments. He mentioned the amendments that protected not only the landowner, but the person leasing the land. He said there were some additional clarifying amendments he would like to move, one which substituted the language "physical projects to improve" for "rehabilitation". The motion CARRIED on all of the amendments.

REP. GIACOMETTO said he had received a lot of calls about taking leasing of water rights out of the bill, and asked if the subcommittee had discussed this. REP. HARPER said they had, and that many people were nervous about leasing. He said that if the leasing bill did not pass, this was not any good; moreover, there was not enough money in this bill to do much leasing anyway.

REP. GIACOMETTO said the people in his area were afraid of another funding mechanism for leasing of water rights, which they definitely opposed. REP. GILBERT added that the people in eastern Montana resented government so strongly that even an innocuous section like this would invite their opposition, and result in the loss of votes for the measure in the committee and on the floor.

REP. O'KEEFE said he was sensitive to the fact that the leasing bill as it went through was voluntary, but HB 754 requires an amount of money from all sportsmen and women for leasing. He said he supported that comment, but predicted some backlash.

REP. HARPER suggested striking the words "water rights" and substituting the words "water from storage facilities". He moved the amendment.

REP. GIACOMETTO asked if by changing this language, an individual would still be allowed to lease water for in-stream flow.

REP. RANEY asked Laurents Grosfield to comment on the question. MR. GROSFIELD said that as he understood current Montana water law, the department could now lease or purchase water from storage facilities. He said if the committee substituted "from storage facilities" for "water rights", that question would be taken care of. REP. GIACOMETTO said then it would not affect the part of his water right that flowed downstream. MR. GROSFIELD said that was correct.

The motion on the amendment on the water leasing language CARRIED unanimously.

REP. CLARK asked if the sponsor would accept a voluntary donation check-off instead of the automatic \$.50. REP. HARPER declined, saying that the fund would help reverse loss of fishing habitat.

Recommendation and Vote: REP. HARPER moved the HB 754 DO PASS AS AMENDED. The motion CARRIED, with Rep. Giacometto, Rep. Clark, Rep. Gilbert, and Rep. Smith voting no.

DISPOSITION OF SB 223

Hearing 3/03/89

Motion: REP. ADDY moved to TABLE the bill.

Discussion: REP. ADDY addressed the committee, stating that if anyone wanted to debate the motion, he would withdraw it. REP. GIACOMETTO stated that it was non-debatable.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED on a roll call vote, 9 - 7.

DISPOSITION OF SB 261

Hearing 3/13/89

Motion: REP. GIACOMETTO moved the bill BE CONCURRED IN.

Discussion: None

Amendments, Discussion, and Votes: REP. COHEN moved an amendment which added the language "Any restrictions or requirements placed on a platted lot will continue to apply". He said the language came from the Association of Planners and addressed their major concern regarding the bill.

REP. O'KEEFE said he would agree with the amendment but reminded the committee that Sen. Bishop was adamant in stating that he did not want this bill amended. REP. O'KEEFE asked for a clarification of the amendment. REP. COHEN said the concern was expressed in the testimony of Kathy Macefield, the Planner for the City of Helena. He quoted that testimony, which said, among other things, that the boundary relocation should be shown as an amended plat, and not as a certificate of survey.

REP. RANEY asked Mr. Zackheim to read the amendment. MR. ZACKHEIM said it would read "Any restrictions or requirements on the platted lot continue to apply". REP. O'KEEFE said he was told by the planners here and in Deer

Lodge County that the only way it could be assured that the restrictions and requirements would continue to apply was if an amended plat was filed and reviewed by the governing body. He said this change was suggested by Kathy Macefield, but was rejected by the sponsor.

REP. HARPER said that the property would still be platted because an amended plat had not been submitted. With the submission of a certificate of survey, restrictions would have to still apply.

The motion on the amendment CARRIED, with Rep. Giacometto, Rep. Raney and Rep. Smith voting no.

Recommendation and Vote: REP. COHEN moved the SB 261 BE CONCURRED IN AS AMENDED and the motion CARRIED, with Rep. Clark and O'Keefe voting no.

#### DISPOSITION OF SB 390

Hearing 3/10/89

REP. RANEY asked Don Belcher, a retired rancher from Roundup, to speak to the committee. REP. RANEY stated that it was customary that the committee not hear any further testimony, but asked permission of the committee to hear Mr. Belcher, who had driven up from Roundup to address this issue. There was no objection from the committee.

DON BELCHER apologized to the Committee on behalf of those proponents who were not at the hearing, stating that most of them were ranchers busy with calving and feeding. He said the bill referred to a test pumping for 7 days that would be closely monitored by the Department of Natural Resources (DNRC) and the Bureau of Mines and Geology (MBMG) to ensure that the water level was not lowered in any creeks or wells. Should any adverse impact happen from the pumping, the action would cease immediately. He said the mines were in existence and actively mined for 40 years, during which time the wells and creeks still ran. MR. BELCHER said the proponents thought there was 13,000 acre feet of available water that could be used for supplemental irrigation and for supplemental water supply for the towns of Melstone and Musselshell.

Regarding the problem of possible PCB contamination in the mine water, MR. BELCHER said the city of Roundup derived some of its water from the mine, and had it tested by Energy Laboratories of Billings. No PCB's were found. He added that there was no possibility for off site storage due to the lack of available water from the Musselshell River. He said there was a need for additional water for irrigation

and for the municipal water supply for the towns of Melstone, Musselshell, and even Roundup.

MR. BELCHER acknowledged the numbers of opponents who had appeared before the committee, and said if a vote were taken right now along the Musselshell River drainage, there would be an overwhelming yes in favor of the bill.

REP. RANEY asked, in fairness to the opponents, if there was anyone who would like to speak as an opponent to the bill. There was no response.

Motion: REP. CLARK moved the bill BE CONCURRED IN.

Discussion: REP. CLARK reminded the committee that this was just a test. He spoke of the grant application process, and said all of the concerns of the opponents were addressed in each phase of this project. The concerns of the opponents, as well as others brought up, had prompted the development of additional safeguards. Otherwise, the project would have been on schedule. He said that was the reason for the extension requested in SB 390. He said the project was in place, the money was there, and the bill simply extended the time frame of SB 151, which was passed last session.

REP. COHEN said that, contrary to what he had stated earlier, he would be voting for this bill because he believed the safeguards were there. He said he was swayed at the hearing by a very effective campaign, but in re-looking at the bill and considering his yes vote on the bill last session, he would vote yes on SB 390.

REP. O'KEEFE asked Gary Fritz (DNRC) if the committee killed the bill, would it still be possible to conduct tests up to 2,000 acre feet. MR. FRITZ said the statute required that if the appropriation was going to exceed 3,000 acre feet from groundwater, legislative approval was required. Presumably if less than that amount was going to be appropriated or pumped, then legislative approval would not be necessary. He said his concern regarding the killing of the bill would be that the action would represent legislative intent. At that point the project itself would be in jeopardy, and the department would be hesitant to approve an interim permit for less than the 3,000 acre feet if the Legislature would not approve the project for more than 3,000 acre feet. He said the committee's decision on this bill could affect the project as a whole.

REP. O'KEEFE spoke on the bill, saying he was initially dismayed that there were no proponents at the hearing, especially after being lobbied intensely by phone calls and letters. After checking with the department, he said he discovered that the project did have some potential. He said that knowing how the protections function in the law, he had asked for time to get additional input from the proponents.

He said he was impressed with the information the committee received from the Soil Conservation Service, and also the information received in calls from members of the Deadman's Basin Water Users Association (EXHIBITS 12 and 13). He urged the Committee to support this bill, saying it would provide information that might be applied elsewhere in the state. He said if anything detrimental occurred, the project would be shut down.

REP. ADDY asked Gary Fritz how many acre feet were in the mines. GARY FRITZ said there had been some estimates that there could be as much as 15,000 acre feet. He said that was the purpose of the two test pumps: to find out how much water was there, and if there was water, would pumping affect somebody else. WAYNE VAN VOST, MBMG said the latest estimate was about 17,000 acre feet of water in storage. He added that the title of the project was possibly a misnomer, and that if the project were to go to an irrigation development phase, the project would be more aptly considered an off stream storage project, with the underground mines serving as a reservoir. Part of the study was to determine whether the Musselshell River water would replace that water used in irrigation.

REP. ADDY asked how many acre feet of water would have to be pumped in order to run a valid test. He said he had a problem because the language of the bill granted an excess of 3,000 acre feet per year. He said the bill seemed to be asking for more water than was needed to simply test. He suggested amending the bill to read "up to 3,000 or 4,000 acre feet per year". MR. VAN VOST replied that when the project was originally designed, there were considerations of the water quality, and what effects it would have on downstream irrigated land. He said part of this study was soil and fertility studies using this water, which was why it was designed over two irrigation seasons. He added there is always a physical limit to the amount of water that could be pumped. He said that during the test they wanted to irrigate with this water substantial acreage in order to examine the viability of the soil chemistry and the water.

REP. ADDY repeated his question of how many acre feet per year would be needed. WAYNE VAN VOST said he could not accurately answer that, but he knew it would certainly be more than 3,000 acre feet per year.

REP. RANEY asked Mr. Van Vost to address the situation in which wells and springs started to go dry after 13,000 acre feet of water was pumped out of the mines over a number of years. MR. VAN VOST responded, saying that there were some misconceptions. He said there were about 17,000 acre feet of water in storage. He said the intent of pumping was somewhere around 5,000 to 6,000 acre feet.

REP. GILBERT commented that he was born and raised in the same country in question. He said during his childhood, there were at least five underground coal mines, all deep underground mines. He said they pumped water out of these mines 24 hours a day for 7 days a week for the entire lifespan of those coal mines, and everyone had water. He said the fear of running short of water was not justified. He said the mines were over 400 feet deep, while the normal water wells in the Bull Mountain area were approximately 140 feet deep, representing completely different zones. He said SB 390 was a good bill, and said Rep. Addy's ideas were good regarding restricting the maximum amounts to be pumped.

Amendments, Discussion, and Votes: REP. ADDY moved an amendment on page 2, line 19 to read "to appropriate up to 6,000 acre feet of groundwater in any twelve month period from abandoned coal mines".

REP. HARPER asked Mr. Fritz if, depending upon when one year ended and another began, the water could be pumped continuously up to 12,000 acre feet under this amendment. MR. FRITZ replied that the intent was to pump in two consecutive irrigation seasons. REP. HARPER clarified his concern, saying that a valid test was needed, especially in light of potential litigation. He said that for a valid test, in his mind the mine reservoir would have to be dewatered. He wanted the department to have the authority to have a valid test.

GARY FRITZ commented that, just as Rep. Clark indicated, this was the most closely monitored interim permit ever issued in the state of Montana. He said there would be a minimum of 15 observation wells surrounding that pumping test of 31 acre feet, the interim permit in question at this point. In addition, he said the department had established criteria in that permit that if water levels dropped below a certain point, the test would stop, which would prevent any adverse impacts. In terms of establishing a true test, he said the Bureau of Mines would develop that. He said pumping 6,000 acre feet per year did not prevent the department from conducting a valid test.

The motion on the Addy amendment CARRIED, with Rep. Giacometto voting no.

REP. CLARK had an additional comment regarding the slow rate of recharge of the reservoir. He said that some of the mine shafts underlaid the Musselshell River. He said that one of the proposals, if the project went to completion, was to refill the mine reservoir from the river in the off season.

Recommendation and Vote: REP. CLARK moved that SB 390 BE CONCURRED IN AS AMENDED, and the motion CARRIED on a recorded vote, 10 - 2.

DISPOSITION OF SJR 13

Hearing 3/13/89

Motion: REP. HARPER moved SJR 13 BE CONCURRED IN.

Discussion: None

Amendments, Discussion, and Votes: REP. HARPER moved the amendments set forth in EXHIBIT 14. REP. HARPER said the amendments removed all references to any groups. REP. COHEN asked that plastics be included in the list of recycled materials.

REP. RANEY suggested that a section be added indicating the resolution would be sent to local governing bodies in the communities.

REP. COHEN said he would vote against the resolution, or at least objected to the whereas which referenced sorting at the site, because curbside was the place to separate garbage. He said separation could occur at landfills and solid waste disposal sites only at great expense. He suggested amending the amendment to encourage sorting of materials at curbside.

REP. RANEY announced that all of the amendments would be considered as one. REP. HARPER moved the amended amendments, and the motion CARRIED.

Recommendation and Vote: REP. HARPER moved that SJR 13 BE CONCURRED IN AS AMENDED. The motion CARRIED, with Rep. Giacometto and Rep. Smith voting no.

ADJOURNMENT

Adjournment at: 8:40 p.m.

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

BR/cm

D:\6012.min



## DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 3-15-89

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

March 16, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 754 (first reading copy -- white) do pass as amended .

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

And, that such amendments read:

1. Page 1.

Following: line 12

Insert: " STATEMENT OF INTENT

It is the intent of the legislature that the department of fish, wildlife, and parks conduct the river restoration program in coordination, communication, and cooperation with local landowners, lessees, and conservation district officials so that projects conducted under the program will benefit the river resource and all parties involved."

2. Page 1, line 25.

Following: "to"

Insert: "help"

3. Page 2, line 23.

Strike: "rehabilitation of"

Insert: "projects to improve"

4. Page 2, line 25.

Strike: "of water rights"

Insert: "from storage facilities"

5. Page 3, line 3.

Following: "with"

Insert: "individuals, conservation districts, and"

6. Page 3.

Following: line 7

Insert: " (4) The department shall consult with the local conservation district regarding the appropriateness of the project and any applicable permit requirements.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands."

STANDING COMMITTEE REPORT

March 16, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 261 (third reading copy -- blue) be concurred in as amended .

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

[REP. RAMIREZ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 2, line 15.

Following: "subdivision."

Insert: "Any restrictions or requirements on the platted lot  
continue to apply."

STANDING COMMITTEE REPORT

March 16, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 390 (third reading copy -- blue) be concurred in as amended .

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

[REP. CLARK WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 7.

Strike: "IN EXCESS OF 3,000"

Insert: "UP TO 6,000"

2. Page 2, line 19.

strike: "in excess of 3,000"

insert: "up to 6,000"

STANDING COMMITTEE REPORT

March 16, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Joint Resolution 13 (third reading copy -- blue) be concurred in as amended.

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

[REP. HARPER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 1.

Following: line 24

Insert: " WHEREAS, the United States is facing an increasingly drastic solid waste disposal crisis; and

WHEREAS, Montanans are currently fortunate enough to have low waste disposal costs compared to other states, but those costs are expected to increase dramatically as communities fill up existing landfills and must open new costly one; and

WHEREAS, recyclable material, such as glass, aluminum, plastic, steel, newsprint, and other paper goods make up a substantial portion of the solid waste in landfills; and"

2. Page 2, lines 8 through 18.

Strike: strike lines 8 through 18 in their entirety

Insert: " WHEREAS, citizen cleanup efforts are a significant tribute to our state in its centennial year; and

WHEREAS, communities have an interest in promoting and improving recycling at all opportunities; and

WHEREAS, communities are in the position of directly assisting and increasing recycling through education and assistance to all members of the community; and

WHEREAS, community landfills, as the destination of a community's solid waste, are the best location for implementing comprehensive community-wide recycling; and"

3. Page 2, line 21.  
Following: "program"  
Insert: "; and

WHEREAS, local communities can and should increase the  
level of local recycling to reduce solid waste disposal  
volume and costs"

4. Page 3, lines 4 through 7.  
Strike: lines 4 through 7 in their entirety

5. Page 3.

Following: line 10

Insert: " BE IT FURTHER RESOLVED, that all Montana communities be  
urged to promote and encourage recycling.

BE IT FURTHER RESOLVED, that all Montana communities be  
encouraged to study means of sorting recyclable materials.

BE IT FURTHER RESOLVED, that a copy of this resolution  
be sent to all county commissioners, mayors, city managers,  
and city council members in Montana."

EXHIBIT 1  
DATE 3-15-89  
HB SB 327

579

ENVIRONMENTAL POLICY  
AND PROTECTION GENERALLY

75-1-105

state of Montana, in cooperation with the federal government and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources to the end that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(e) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(f) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503.

**Cross-References**

Right to clean and healthful environment,  
Art. II, sec. 3, Mont. Const.  
Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Comments of historic preservation officer,  
22-3-433.

Renewable resource development, Title 90, ch.  
2.

**75-1-104. Specific statutory obligations unimpaired.** Nothing in 75-1-103 or 75-1-201 shall in any way affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any other state or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506.

**75-1-105. Policies and goals supplementary.** The policies and goals set forth in parts 1 through 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.



**Parts 4 through 10 reserved****Part 11 — Environmental Contingency Grant Program**

- 75-1-1101. Environmental contingency account objectives.  
 75-1-1102. Grant program special revenue account created — revenues — allocation — limitations on appropriations.  
 75-1-1103 through 75-1-1110 reserved.  
 75-1-1111. Coordination of fund sources for grant program projects.  
 75-1-1112. Conditions of grants.

**Chapter Cross-References**

Beauty of the state, Preamble, Mont. Const.  
 Right to clean and healthful environment,  
 Art. II, sec. 3, Mont. Const.  
 Duty to maintain a clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Youth Conservation Corps, Title 76, ch. 21.  
 State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

**Part 1****General Provisions****Part Cross-References**

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

**75-1-101. Short title.** Parts 1 through 3 may be cited as the "Montana Environmental Policy Act".

**History:** En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

**Cross-References**

State policy of consistency and continuity in the adoption and application of environmental rules, 90-1-101.

**75-1-102. Purpose.** The purpose of parts 1 through 3 is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

**History:** En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502.

**Cross-References**

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.  
 Department of Public Service Regulation, 2-15-2601.

**75-1-103. Policy.** (1) The legislature, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the

EXHIBIT 2  
DATE 3-15-89  
HB SB327

WITNESS STATEMENT

NAME Julia Carroll

BILL NO. B237

ADDRESS 54 Brown Mt

WHOM DO YOU REPRESENT? Miss C. Lunder

SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

COMMENTS: \_\_\_\_\_

Exemption of Mt. is directly affected  
by legislative action.  
It is a state-owned property. I would like  
to see it as a state-owned property.

We are concerned about the  
state-owned property and we  
are concerned about the  
state-owned property.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# Montana Oil & Gas Association

P.O. Drawer D  
Shelby, Montana 59474  
Phone 434-5518

EXHIBIT 3  
DATE 3-15-89  
# SB 327

House Natural Resources;  
Senate Bill-327, Keating;  
March 15, 1989.

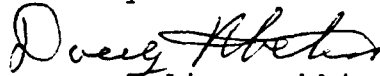
Mr. Chairman & Committee;

Senate Bill 327 addresses a problem that has surfaced only twice on State leases in Montana, but is being used quite often on Federal lands within Montana. This is the fact that lands that have been leased for Mineral extraction are being blocked from that use by a simple request of appeal sent to the Department. The party appealing doesn't have to prove there is a problem, only to raise the question. Then the hopeful leasee has to prove there will not be a problem as was supposed in the appeal and this can and has been very expensive and time consuming to everyone involved.

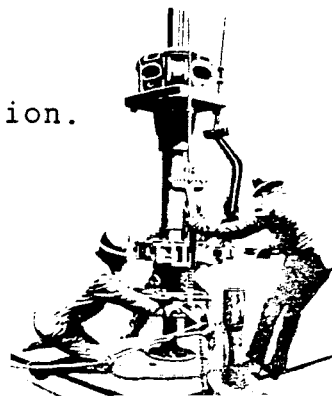
I wish there was a quick and easy way to cure this type of problem, but that is not the case. It seems that this situation should and must be addressed and hopefully be sorted out to the best possible solution. If Montana is to return to it's prior level of Oil & Gas activities, this and many other basically minor issues must be sorted out as best they can be. I agree we need regulation, and I helped design the Pro-gimatic EIS that is just now being sorted out to what I hope will be a big help to developing our Natural Resources in a timely and proper manner. It has caused a lot of concern in everyone's mind during the time of development, but if given sufficient time now for the NEW OIL & GAS BOARD to address all the data, and use it where it is needed and to refer to the rest as a text of information, it should be of a benefit for all of us involved with the future development of Montana's Oil based resources.

But this will also have some problems that will need correcting and change till it does the best possible job for us; and I feel what Senate Bill-327 is attempting to do is the same thing. There is a flaw and it needs to be addressed and I hope corrected. If this bill is more than necessary, then correct it till it does as we feel it should, but at least address the issue and see if there can be some changes agreed upon by all parties, that will make our task better, and help rebuild our industry back to where we as a state can live the life style we deserve.

Thank you for this support;



Doug Abelin, Lobbyist for  
Montana Oil & Gas Association.



Montana  
Audubon Legislative Fund

EXHIBIT 4  
DATE 3-15-89  
HB SB327  
*Sen. Kesting*

Testimony on SB 327  
House Natural Resource Committee  
March 15, 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.

The Audubon Fund opposes SB 327.

The Montana Environmental Policy Act (MEPA) is Montana's most important environmental law. It requires us to examine a "major action of state government" and its affect on our environment. A "major action of state government" is defined as an action "significantly affecting the quality of the human environment." Such actions require the preparation of an Environmental Impact Statement (EIS) - a process that allows alternatives to be examined and the public to have a voice when something "significant" is about to happen to their environment.

This policy makes sense. It allows Montanans to stop and think and plan for the future. It is a good state policy to examine things closely when something "significant" is about to happen to our environment.

SB 327 assumes that private industry is exempt from MEPA unless "an agency...in its discretion, on a case-by-case basis" decides otherwise. Giving agencies discretion when to enforce MEPA is not a good idea. It means that MEPA will be utilized more or less, depending on the Governor's office. A Governor sensitive to environmental concerns will demand MEPA is followed. An environmentally insensitive Governor will make sure agencies don't follow MEPA.

This discretionary application is poor state policy. It sends a message to industry planning to develop in Montana that we will change the rules on them at our whim. What kind of a message is that? There is nothing more irritating - or discouraging - than participating in something where the rules are continually changing. It doesn't make sense to send developers that very message - Montana's business climate will suffer at a time we are needing to encourage economic growth.

By making compliance with MEPA discretionary, SB 327 also discourages state agencies from doing any kind of environmental review of private projects. Currently state agencies must do an Environmental Assessment (EA) to determine if a proposed action requires the more extensive EIS. If SB 327 passes, EAs also become discretionary...What state agency, in times when they are straining to save pennies, will require an EA to be completed? We think this is a bad state policy. Planning is essential as Montana continues to grow. Our environment needs to be protected.

Since MEPA was established in 1971, it has worked to protect our environment. A total of 377 EISs and 2632 EAs (called PERs (Preliminary Environmental Reviews) until last year) have been completed. Of the 2632 EAs completed, only three times in 17 years have EAs been challenged in a court of law to require the more extensive EIS - three times in 17 years; three times in 2632. To us that indicates that the process is working. It shows consistency of application. We know that our environment is worth protecting - and this track record shows us that our best environmental law is being applied in a way that everyone has the same rules and everyone is following them.

You have heard that passage of SB 327 will improve Montana's business climate. You have heard that passage of SB 327 will reduce the number of "frivolous lawsuits" being filed. I want to suggest to you that passage of

SB 327 will do just the opposite of what proponents say it is going to do.

The only reason that lawsuits are filed is that people feel that they will win that lawsuit. If MEPA was not consistently followed, I would suggest to you that there would have been a lot more lawsuits than three in 17 years. If SB 327 passes, you will leave application of MEPA up to the discretion of a state agency. Such discretion will discourage - not encourage - consistent application of the law. When you get inconsistent application, you degrade Montana's business climate. When you get inconsistent application of the law, you will encourage - not discourage - more lawsuits.

MEPA is Montana's environmental safety net. Planning is essential as Montana continues to grow. MEPA lets us examine our decisions when something "significant" is about to happen to our environment. SB 327 effectively destroys MEPA. Why shouldn't we look at all decisions that could potentially "significantly" affect our environment? There is no harm in looking at the decisions, unless we fear what they might mean for us.

The Audubon Fund urges you to vote "Do Not Pass" on SB 327 and continue to protect Montana's environment.

Thank you.

JACK TUHOLSKE  
ATTORNEY AT LAW

240 N. HIGGINS, SUITE 2  
P.O. BOX 7458  
MISSOULA, MT 59807  
(406) 721-6986

EXHIBIT 5  
DATE 3-15-89  
HB SB 327

March 15, 1989

Representative Raney  
Chairman, House Natural Resources Committee  
State Capitol  
Helena, MT 59601

Re: Senate Bill 327

Dear Chairman Raney and members of the Committee:

I am an attorney in Missoula who specializes in natural resource law. I am also adjunct Professor of environmental law at the University of Montana School of Law. I am writing to urge that your committee reject Senate Bill 327. This bill would essentially destroy the Montana Environmental Policy Act. Based on my experience as an attorney in this field, I feel that MEPA is a sound legislative directive that helps ensure that governmental decisions consider environmental factors in the decision-making process.

MEPA is often mistakenly characterized as a statute preventing economic and resource development within the state of Montana. This mistaken characterization is not supported by the statute, judicial interpretations, or MEPA's practical application. MEPA does not dictate that activities cannot occur if there are adverse environmental consequences. What MEPA requires is that these consequences are disclosed and analyzed, both to the public and the agency. The result is better decision-making.

I was the attorney for the Clark Fork Coalition, a Montana-based environmental group, in a dispute concerning the issuance of a permit by the Montana Water Quality Bureau for the benefit of Stone Container Corporation's Frenchtown mill. During that process, a Preliminary Environmental Review was prepared pursuant to MEPA. This document served as the basis for negotiations and discussions that led to a resolution of the issues. In this instance, the conservation groups, Water Quality Bureau and Stone Container successfully negotiated a resolution to the issues of water quality, which at the same time permitted Stone Container to receive its discharge permit. The fact that MEPA was involved in the process demonstrated that a PER or Environmental Impact Statement can indeed provide necessary information and serve as a focus for discussion about the project. The fact that a PER or EIS is involved did not prevent or, in this case, even delay the permit from being approved.

EXHIBIT

5

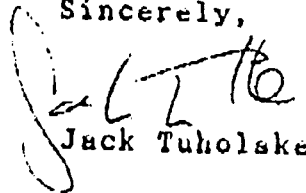
DATE

3-15-89

SB 327

In sum, MEPA is an integral part of Montana's environmental laws. As citizens, we should be proud of our environmental heritage and of the laws that we have passed to help protect that heritage. The amendments to MEPA contained in SB 327 would totally destroy the effectiveness of the Montana Environmental Policy Act.

Sincerely,



Jack Tuholske

JT:ca

# NORTHERN PLAINS RESOURCE COUNCIL

Field Office  
Box 858  
Helena, MT 59624  
(406) 443-4965

Main Office  
419 Stapleton Building  
Billings, MT 59101  
(406) 248-1154

Field Office  
Box 886  
Glendive, MT 59330  
(406) 365-2525

## TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL OPPOSING SB 327.

March 15, 1989

Mr. Chairman, members of the Committee; my name is Richard Parks. I own the Parks' Fly Shop in Gardiner, MT. and am a member of the Bear Creek Council, an affiliate of the Northern Plains Resource Council. I am the Secretary and Legislative Chairman of NPRC. Senator Keating's bill rips the guts out of MEPA and for what? To better protect the environment? Jobs? On the contrary this is an anti-jobs bill.

SB-327 is an anti-jobs bill because it presumes some things about Montana and our potential for economic development that are not accurate. It ignores the facts that our economic base is agriculture, that our best growth segment is the travel business and that a high quality environment is a major factor for new businesses that consider locating in Montana. This bill indulges in the strange mathematics of throwing out jobs we already have and jobs we can readily develop through the destruction of their environmental base. This is not all, the bill sacrifices the constructive interplay between involved citizens and potential developers. I will cite two instances from the project with which I am most familiar, the Jardine Joint-Venture's Mineral Hill Mine now under construction in Jardine. The original location of the wash-house drainfield would have cost the company money as well as put Bear Creek at risk. No provision had been made for on-site water storage to accommodate the probability of Bear Creek, the mine's water source, from freezing, system failure or fire. This has been corrected and has the obvious potential to save the company's investment in the latter case.

Since MEPA's enactment, hundreds of environmental assessments have been done, 2632 at last count, and of those only 377 have lead to full blown EIS's. An EIS, when required, typically runs less than 2% of the project cost, not an overwhelming burden. Only ~~2~~ of the preliminary environmental reviews have been challenged in court and in both cases the court determined that in fact an EIS was required. This record does not support the sponsor's argument that state reviewers are perfect or that MEPA results in either environmental or judicial radicalism.



EXHIBIT 6  
DATE 3-15-89  
HB SB 327

MEPA ranks in the lower half of the state environmental protection laws in its "tooth count." Even so it has worked reasonably well. The reason it has worked is because it is THERE and compels anyone with a project to consider the environmental impacts and the means to mitigate them. Because it is mandatory citizens have a means of entering the process and this in turn is an incentive for developers, in their own interest, to do it right the first time. This relationship is what this bill deliberately sacrifices by uncoupling MEPA compliance and permitting procedures.

We ask for a DO NOT PASS vote on SB-327. Thank you.



EXHIBIT #7  
DATE 3-15-89  
HB SB 327

Box 1176, Helena, Montana

JAMES W. MURRY  
EXECUTIVE SECRETARY

ZIP CODE 59624  
406/442-1708

*Don Judge*

Testimony of ~~James W. Murry~~ before the House Natural Resources Committee on Senate Bill 327, March 15, 1989

*Don Judge*

Mr. Chairman and members of the Committee, for the record, I am ~~James W. Murry~~ *Don Judge*, representing ~~Executive Secretary of~~ the Montana State AFL-CIO. We are here today in opposition to Senate Bill 327 which would make discretionary state agency actions under the Montana Environmental Policy Act.

The position of the Montana State AFL-CIO on issues of environmental protection is long-standing and in the best interests of Montana's working men and women. We believe that strong, sound environmental protection laws lead to proper development of our state's natural resources and to more and better jobs. Allow me to quote from a resolution which was passed at our 1974 Annual Convention:

"Montana's environmental laws, although stringent, are not unreasonable. They are based upon a century-long bitter experience. A century of exploitation that has left portions of our state a heritage of unsightly mine dumps and placer tailings, of air polluted by the emissions of smelters and oil refineries, of once sparkling trout-laden streams poisoned by mining, lumber and pulp wastes. We are determined that that experience will not be repeated in the century ahead.

"This is not to say we are against the wise use of our resources. Quite to the contrary, Montana needs jobs that increased resource utilization will create. However, we know that the technology is available to keep the adverse environmental impact of the exploitive industries to levels which will do a minimum of damage to our environment."

MEPA is one of the laws which helps us to protect our environment and way of life. It serves to look at the environmental consequences of our actions. Certainly, the agencies of state government should know, understand and work with environmental concerns which will affect not only us but generations to come. Jobs and environmental protection can and should go hand-in-hand. This legislation is simply unnecessary and could prove harmful to our state in the long run.

I urge you to defeat this attempt to weaken our state's approach to maintaining a quality environment.

TESTIMONY OF  
SHERMAN H. JANKE

Concerning Senate Bill 327, 1989 Montana State Legislature  
before the House Committee on Natural Resources

Chairman Raney and members of the committee:

My name is Sherman H. Janke; I reside in Bozeman at 415 North 17th Avenue; this testimony is presented on behalf of the Montana Chapter of the Sierra Club, which I serve as chairman. Professionally, among other things, I am an investor and manage rather substantial holdings in various securities and in real estate.

By way of demonstrating commitment to investing in Montana, at least one-fourth of the holdings mentioned above are within Montana, with one tenth of the total consisting of hospital, university system, water and sewer system, and housing bonds. It follows that the business climate in our state is of concern to me.

Respecting SB 327, my perception is that the real issue is the Montana business climate, with the bill being at least the sponsor's attempt to enhance the same by lessening environmental regulatory requirements in a particular sphere of activity, with the hope that such activity would therefore increase.

In this regard it is instructive to examine the reasons for which at least one business, not of an extractive nature, came to locate within the last year in Bozeman, namely the telemarketing division of Patagonia, the outdoor clothing and related gear merchandiser headquartered in California.

An interview with the Bozeman supervisor of operations produced the following:

First, because telemarketing involves information transfer, the company could have, in principle, located anywhere it chose in the U. S. A. Bozeman was chosen not only so that telephone salespersons could be users of the products in a prime natural setting, but because of high quality amenities including clean air, pure water, and an extremely attractive natural setting. In addition, the company wished to avoid the transportation gridlock for its employees to and from the workplace.

Secondly, the location of this operation in Bozeman produced 40 year-around jobs for persons who were already Montanans, with only 9 transfers in, at wages even for starting personnel well above minimum.

Thirdly, the company would consider shifting other business operations to Bozeman if in its judgment the community and county were conscientiously engaged in long term planning for handling increased traffic, for community appearance/esthetics, and for population growth. Stated simply the company does not want to become part of the problem--the problems associated with the growth brought on by its presence if the community is not carefully planning on how to deal with those problems. Patagonia emphasizes that Bozeman should energetically plan for the future while it still has the opportunity to control trends.

Fourthly, the company wishes to provide long-term, sustainable employment, avoiding the "boom and bust" cycles typical of the extractive industries.

In our view, if there is majority opinion that additional business activity should be attracted to Montana, the example given is precisely the kind we should be inviting and encouraging. Its operation is relatively benign to the environment and energy efficient (although it could be made more so if the operators worked at monitors in their residences), the vast majority of its employees were recruited from residents, and they are decently to very well paid.

It is extremely instructive that such a company, having first hand experience in a poorly or under-regulated and unrestricted growth area, is stating that as a condition for further transfer to our area, it would have to see increased rather than decreased environmental planning, i.e., regulation.

Finally, turning to the oil and gas industry in Montana, it cannot be said with concrete evidence that the industry would have been more active without MEPA. We didn't run the experiment, so to speak. In any case our contention is that oil and gas activity has and does hinge much more directly on the price of crude oil rather than on the state's environmental regulation.

We urge a negative committee vote on SB 327.

Thank you for the opportunity to present testimony.

*Sherman H. Janke*

## WITNESS STATEMENT

EXHIBIT 9  
DATE 3-15-89  
HB SB 327  
DATE: 3/15NAME: Joan MontagneADDRESS: 1105 S. Tracy, Bozeman, MTPHONE: 587-2406REPRESENTING WHOM? Greater Yellowstone CoalitionAPPEARING ON WHICH PROPOSAL: SB 327DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? XXXX

COMMENTS: The Greater Yellowstone Coalition is concerned with the management of the Greater Yellowstone ecosystem, the largest intact ecosystem in the temperate zones of the earth. Little by little - each nibble by itself almost unnoticeable, the working components of the ecosystem are being destroyed. In Montana, the Greater Yellowstone Coalition has relied on the investigations of MT State agencies when potentially major actions are proposed. The same game rules apply to everyone whether you are the Jardine gold mine on Yellowstone Nat'l Park's boundary, oil and gas development or what was originally claimed to be a minor subdivision on the banks of the Yellowstone River. The Church Universal Triumphant certainly deserved to be reviewed under NEPA if all expected 3000 people move in. The MT citizen has the right to know how their future environmental health will be affected even in counties with no development regulations. Let's give future generations of Montana the opportunity to have something

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.  
left to make a decision about.

This state may be undergoing temporary economic ~~times~~ hard times but we can hold our heads high that with NEPA we are thinking of the future health and well being of Montana  
GYC urges you to defeat this short sighted bill.

MARGERY HUNTER BROWN  
ATTORNEY AT LAW  
WILDCAT ROAD, EAST RATTLESNAKE  
ROUTE #6, MISSOULA, MONTANA 59801  
March 15, 1989

EXHIBIT 10  
DATE 3-15-89  
HB SB 327

To: Members of the Committee on Natural Resources  
Montana House of Representatives

Re: Senate Bill 327

I fully anticipate that your regard for Montana's future will result in adverse committee action on Senate Bill 327. The strongest argument against this measure is found in two sections of Montana's Constitution. You know them well:

- Article II, Section 3, Declaration of Rights, in which "a clean and healthful environment" is included in Montanans' inalienable rights.
- Article IX, Section 1, Environment and Natural Resources, which provides: Protection and Improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
  - (2) The legislature shall provide for the administration and enforcement of this duty.
  - (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Members of the Committee on Natural Resources, these provisions are constitutional, not aspirational. Their implementation should never be determined by changes in political climate in any of the three branches of government. The integrity and force of the Montana Environmental Policy Act must be maintained if the legislature is to discharge its constitutional mandate. I have great faith that you will respond to Senate Bill 327 in a manner that will reaffirm the importance of a clean and healthful environment to which Montanans have given constitutional status, an importance that remains undiminished for the majority of Montanans today.

*Margery H. Brown*  
Margery H. Brown

11  
DATE 3-15-89  
HB 674

Gray HB 676 -- Unofficial  
March 15, 1989

1  
2 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING MANAGEMENT  
3 STANDARDS FOR INFECTIOUS WASTE; REQUIRING PERMITS FOR  
4 COMMERCIAL INFECTIOUS WASTE MANAGEMENT FACILITIES AND  
5 TRANSPORTERS; ESTABLISHING FEES AND PERMITS FOR INFECTIOUS  
6 WASTE ~~DISPOSAL~~ MANAGEMENT AND TRANSPORT; CREATING AN  
7 INFECTIOUS WASTE MANAGEMENT SPECIAL REVENUE ACCOUNT;  
8 REQUIRING FACILITIES TO APPOINT AN INFECTIOUS WASTE MANAGER AND  
9 TO SUBMIT REPORTS; ESTABLISHING INFECTIOUS WASTE ~~DISPOSAL~~  
10 MANAGEMENT REGIONS; AUTHORIZING THE DEPARTMENT OF HEALTH AND  
11 ENVIRONMENTAL SCIENCES TO CONDUCT INSPECTIONS, COLLECT  
12 SAMPLES, AND EXAMINE RECORDS; ESTABLISHING A MORATORIUM ON  
13 ~~THE ADDITIONAL COMMERCIAL TREATMENT, STORAGE, OR DISPOSAL~~  
14 MANAGEMENT OF INFECTIOUS WASTE UNTIL REGULATIONS ARE ADOPTED;  
15 PROVIDING ADDITIONAL AIR QUALITY PERMIT REQUIREMENTS FOR CERTAIN  
16 COMMERCIAL FACILITIES THAT INCINERATE INFECTIOUS WASTE; AND  
17 PROVIDING APPLICABILITY DATES, A RETROACTIVE APPLICABILITY DATE  
18 FOR THE INFECTIOUS WASTE MANAGEMENT FEE, AND AN IMMEDIATE  
19 EFFECTIVE DATE."

20  
21 STATEMENT OF INTENT

22 It is the intent of the legislature than the department of health and  
23 environmental sciences adopt enforceable regulations to implement the infectious  
24 waste management standards provided in [section 5]. These regulations must be  
25 designed to protect the public health, safety, and welfare and the environment  
26 and must be developed in consideration of the best current technical information,  
27 guidance from other states and the federal government, and the needs of  
28 Montana's medical service community.

29 As part of the regulations implementing the management standards provided  
30 in [section 5], the department shall consider the following specific requirements:

31 (1) Infectious waste, except for sharps, must be contained in {double}  
32 disposable plastic bags that are impervious to moisture and have a strength  
33 sufficient to preclude ripping, tearing, or bursting under normal conditions of use.  
34 The bags must be securely tied to prevent leakage during storage, handling, or

Gray HB 676 -- Unofficial  
March 15, 1989

1 transport.

2 (2) Sharps subject to storage, transport, treatment, or disposal must be  
3 packaged in leakproof, rigid, puncture-resistant containers that are taped closed  
4 or tightly lidded to preclude loss of the contents.

5 (3) Locations where infectious waste is contained must be secured to deny  
6 access by unauthorized persons and must be marked with "biological hazard" or  
7 "biohazard" signs.

8 (4) Bags used for containment of infectious waste must be red or orange  
9 {and / or} clearly identified.

10 (5) Rigid containers of discarded sharps must be labeled as "biomedical  
11 waste" or placed in the bags used for other infectious waste."

12 It is further the intent of the legislature that the department adopt necessary  
13 rules related to infectious waste management permits, infectious waste transport  
14 permits, collection of fees, financial assurance requirements, and public hearing  
15 requirements.

16 The legislature intends that the rules ensure that permits for large-scale  
17 incineration of infectious wastes not be issued until the department and the  
18 public have the necessary information to understand environmental and public  
19 health consequences and until these consequences constitute a negligible risk to  
20 the public health, safety, and welfare and to the environment.

21 The department shall adopt rules providing for a waiver of the per-pound  
22 interregional management fee for interregional management that results in an  
23 equivalent or reduced risk to the public health, safety, and welfare and to the  
24 environment when compared to the alternative of intraregional management. The  
25 fee waiver authorized by this rule is intended to ensure that any current and  
26 safe interregional management practices are not subject to undue expense. If a  
27 commercial facility does not manage any infectious waste for which the per-  
28 pound fee is assessed, the annual operating fee for that commercial facility must  
29 be determined pursuant to [section 8(1)(b)(i)].

30 The department shall also adopt rules ~~providing~~ implementing the provisions  
31 of [section 7] that provide a reduction in the fee for any interregional transport  
32 of {less than 2,000 pounds of} infectious waste {a year} that ~~reduces the~~  
33 results in an equivalent or reduced risk to the Montana's public health, safety,  
34 and welfare, and to the environment when compared to the alternative of



Gray HB 676 -- Unofficial  
March 15, 1989

intraregional transport. The fee reduction is intended to ensure that any current and safe transport practices are not subject to undue expense.

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

NEW SECTION.    **Section 1. Short title.** This act may be cited as the "Infectious Waste Management Act".

NEW SECTION.    **Section 2. Policy and purpose.** (1) It is the policy of the state of Montana to manage the treatment, storage, transportation, and disposal of infectious waste in an efficient and effective manner, recognizing the needs of the medical service community, recipients of medical care, and persons whose health, safety, and property may be affected by exposure to infectious waste and its disposal residues. It is further the policy of the state of Montana to provide the governmental services necessary to ensure that Montana's land, air, and water resources are protected from contamination by infectious waste treatment, storage, transportation, and disposal.

(2) The purposes of [sections 1 through 19] are:

(a) to provide for the effective regulation of infectious waste management in Montana;

(b) to establish a waste management structure that encourages cooperative management of infectious waste within a geographic region;

(c) to provide fees to support state regulation and oversight of infectious waste ~~disposal~~ management;

(d) to apply fees most heavily on management systems that create environmental or public health hazards through long-range transportation of infectious waste and through the concentration of infectious waste at treatment, storage, or disposal sites;

(e) to ensure that Montanans are protected from potentially adverse air quality effects of infectious waste incineration; and

(f) to impose a moratorium on additional commercial treatment, storage, and disposal of infectious waste until the state of Montana has adopted infectious waste management regulations.

NEW SECTION.    **Section 3. Definitions.** Unless the context requires otherwise, in [sections 1 through 19] the following definitions apply:

(1) "Account" means the infectious waste management account provided for

Gray HB 676 -- Unofficial  
March 15, 1989

1 in [section 9].

2 (2) "Board" means the board of health and environmental sciences provided  
3 for in 2-15-2104.

4 (3) "Commercial facility" means a nonprofit or for-profit facility that in return  
5 for consideration accepts infectious waste, other than that generated on its own  
6 premises, for treatment, storage, or disposal. The term does not mean a hospital  
7 or other ~~medical~~ health care facility that accepts infectious waste for treatment,  
8 storage, or disposal ~~infectious waste that is generated within its region.~~

9 (4) "Commercial transporter" means a person who, in return for  
10 consideration, transports infectious waste to a management location.

11 (5) "Decontamination" or "to decontaminate" means a process of rendering  
12 noninfectious through steam sterilization, chemical treatment, or other sterilization  
13 procedures a container, implement, or other article contaminated by infectious  
14 waste.

15 **RENUMBER FOLLOWING SUBSECTIONS**

16 (4) "Department" means the department of health and environmental  
17 sciences provided for in Title 2, chapter 15, part 21.

18 (5) "Disposal" or "to dispose" means the ~~discharge, injection, deposit,~~  
19 ~~dumping, spilling, leaking, or placement of any infectious waste into or onto the~~  
20 ~~land or water so that the hazardous waste or any constituent of it may enter the~~  
21 ~~environment or be emitted into the air or discharged into any water, including~~  
22 ~~ground water~~ final placement of infectious waste.

23 (6) "Effectively treated" means processed in a manner to render the  
24 infectious waste ~~sterile~~ noninfectious.

25 (7) "Facility" or "infectious waste management facility" means all contiguous  
26 land and structures, other appurtenances, and improvements on the land used  
27 for treatment, storage, or disposal of infectious waste. A facility may consist of  
28 several treatment, storage, or disposal operational units.

29 (8) "Generate" means to produce infectious waste.

30 (9) "Infectious waste" means ~~isolation wastes;~~ cultures and stocks of  
31 infectious agents and associated biologicals; human blood and blood products;  
32 contaminated human body parts and contaminated bedding; pathological wastes;  
33 ~~contaminated~~ sharp instruments and objects; contaminated animal carcasses,  
34 animal body parts, and veterinary dressings that are ~~a potential~~ suspected as a

Gray HB 676 -- Unofficial  
March 15, 1989

1 source of human pathogens; ~~wastes from surgeries or autopsies; miscellaneous~~  
2 ~~laboratory wastes, including specimen containers, slides and cover slips,~~  
3 ~~disposable gloves, aprons, and lab coats; dialysis unit wastes, such as tubing,~~  
4 ~~filters, disposable sheets, towels, gloves, aprons, and lab coats; and~~  
5 ~~contaminated equipment, such as equipment used in patient care, medical~~  
6 ~~laboratories, and research and in the production and testing of certain~~  
7 pharmaceuticals; wastes from humans or animals that are isolated to protect  
8 humans from communicable diseases; and wastes generated in connection with  
9 patient care that are known to be contaminated with a contagious diseases.

10 Infectious waste includes any otherwise noninfectious waste that has been stored,  
11 bagged, or otherwise placed in direct contact with infectious waste. The term  
12 does not mean any of the wastes referred to in this subsection that have been  
13 treated in a manner that has rendered the waste sterile noninfectious.

14 (12) "Management" or "to manage" means treatment, storage, or disposal,  
15 except that the term does not mean the disposal of infectious waste that has  
16 been rendered noninfectious.

17 (13) "Noninstitutional facility" means the office or clinic of a health care  
18 professional licensed under Title 37 that is not within a health care facility as  
19 defined in 50-5-101.

20 **RENUMBER FOLLOWING SUBSECTIONS**

21 (10) "Permit" means an infectious waste management permit provided for in  
22 [section 6].

23 (11) "Person" means an individual, firm, partnership, company, commercial  
24 entity, corporation, or association.

25 (12) "Region" means an infectious waste ~~disposal~~ management region, as  
26 provided for in [section 13].

27 ~~(13) "Sterilization" means a process to make an infectious waste free of~~  
28 ~~living organisms, particularly microorganisms.~~

29 (17) "Steam sterilization" means a treatment method for infectious waste  
30 utilizing saturated steam within a pressure vessel (known as a steam sterilizer,  
31 autoclave, or retort) at time lengths and temperatures sufficient to kill infectious  
32 agents within the waste.

33 **RENUMBER FOLLOWING SUBSECTIONS**

34 (14) "Storage" or "to store" means the actual or intended containment of

Gray HB 676 -- Unofficial  
March 15, 1989

1 wastes, either on a temporary or a long-term basis.

2 (15) "Transportation" or "to transport" means the movement of infectious  
3 waste from the point of generation to any intermediate points and finally to the  
4 point of ultimate treatment or disposal.

5 (16) "Treatment" or "to treat" means the application of a method, technique,  
6 or process, including incineration, designed to change the character of an  
7 infectious waste so as to render it ~~sterile~~ noninfectious, safer for transportation  
8 or storage, or reduced in volume.

9 NEW SECTION. Section 4. Prohibition. A person may not treat, store,  
10 transport, or dispose of infectious waste in a manner inconsistent with the  
11 provisions of [sections 1 through 19] or rules adopted under the provisions of  
12 [sections 1 through 19].

13 NEW SECTION. Section 5. Management standards. (1) ~~Infectious~~ Except  
14 as provided in subsection (3), infectious waste must be managed in compliance  
15 with the following standards:

16 (a) Storage and containment must be characterized by:

17 (i) segregation by separate containment and identification of infectious waste  
18 containers from point of generation through disposal;

19 (ii) use of containers that are secure, appropriately labeled and located,  
20 made of materials suitable to prevent releases or punctures, and properly  
21 ~~disinfected~~ decontaminated if reusable;

22 (iii) handling that excludes compaction or other physical or mechanical  
23 manipulation that provides an opportunity for release of infectious waste; and

24 (iv) compliance with time and temperature standards for storage conditions.

25 (b) (i) Treatment and disposal may be by the following methods only:

26 (A) incineration that provides complete combustion of the waste to  
27 carbonized or mineralized ash;

28 (B) steam sterilization that will render the waste noninfectious; or

29 (C) for the noncommercial disposal of small quantities of liquid or semiliquid  
30 waste generated incidentally to a health care procedure, discharge to a sewer,  
31 provided that secondary treatment is available, that federal, state, or local  
32 regulations do not prohibit the discharge, and that aerosol formation does not  
33 occur during the discharge.

34 {(D) any other technique approved by department rule that results in

Gray HB 676 -- Unofficial  
March 15, 1989

1 effectively treated infectious waste.}

2 (ii) Infectious waste or infectious waste incinerator ash that has been  
3 effectively treated may be disposed of in a state-licensed landfill if the disposal  
4 is in compliance with applicable federal, state, and local regulations.

5 (c) Transportation of infectious waste must include:

6 (i) use of containers that are secure, appropriately labeled and located,  
7 made of materials suitable to prevent releases or punctures, and properly  
8 disinfected decontaminated if reusable;

9 (ii) availability of decontamination and response procedures in the event of a  
10 release;

11 (iii) compliance with time and temperature standards for residence on  
12 vehicles or in loading or unloading areas;

13 (iv) identification of vehicles as carriers of infectious waste; and

14 (v) carrying of papers to accompany the infectious waste shipment that  
15 describe the waste and identify the generator and the receiving facility.

16 (d) Workers involved in the generation, storage, treatment, transportation, or  
17 disposal of infectious wastes must be provided with appropriate protective  
18 clothing, equipment, information, and training to provide for their personal health  
19 and safety and to ensure the protection of the public health, safety, and welfare  
20 and the environment.

21 (2) Human fetuses and recognizable human body parts (other than teeth)  
22 must be disposed of by incineration or interment.

23 {(3) A noninstitutional facility that generates less than 50 pounds of infectious  
24 waste a month and that packages, labels, and otherwise handles infectious  
25 waste in accordance with the guidelines of the federal occupational safety and  
26 health administration may store and transport infectious waste in the same  
27 manner as noninfectious solid waste, but must comply with treatment and  
28 disposal requirements {and may not subject infectious to compaction}.}

29 ~~{(3)}~~ (4) The department shall adopt specific requirements, under its  
30 rulemaking authority in [section 14(1)], that apply to persons or facilities that  
31 generate, treat, store, transport, dispose of, or work with infectious wastes to  
32 achieve the management standards provided in this section.

33 NEW SECTION. Section 6. Permits for commercial facilities -- hearing. (1)  
34 A commercial facility that ~~treats, stores, or disposes of~~ manages infectious waste

Gray HB 676 -- Unofficial  
March 15, 1989

1 must possess ~~a~~ an infectious waste management permit issued by the  
2 department.

3 (2) An application for a permit must be submitted on forms supplied by the  
4 department and must include a complete description of the proposed operation  
5 and physical facilities.

6 (3) In determining whether to issue a permit, the department shall consider:

7 (a) the capability of a facility to ensure that infectious waste management  
8 will comply with the standards provided for in [section 5] and with the rules  
9 adopted to implement the standards and will otherwise protect the public health,  
10 safety, and welfare and the environment;

11 (b) whether the facility has the financial capability to conduct corrective  
12 action for a release of infectious waste and to compensate third parties for  
13 bodily injury and property damage resulting from a release; and

14 (c) for incinerators, the requirements of subsection (4).

15 (4) The department may not issue a permit to a facility to incinerate  
16 infectious waste until the owner or operator and the department have satisfied  
17 the conditions of [section 20], if applicable.

18 (5) The department shall conduct a public hearing on an initial permit  
19 application ~~for a commercial treatment, storage, or disposal facility.~~

20 (6) (a) A permit is valid for {3 / 5} years and may be renewed as provided  
21 by department rule.

22 (b) A proposed significant change in the quantity or method of treatment,  
23 storage, or disposal of infectious waste at a permitted facility must be described  
24 in an amended permit application submitted to the department for review. The  
25 change may not be made without approval by the department.

26 (7) The department may modify, suspend, revoke, or terminate a permit for  
27 failure to comply with the provisions of [sections 1 through 19], a rule adopted  
28 under [sections 1 through 19], a permit condition, or an order of the department  
29 or board.

30 NEW SECTION. Section 7. Infectious waste transport permit -- fee. (1) ~~No~~  
31 ~~later than June 30, 1990, the following persons shall possess an infectious waste~~  
32 ~~transport permit issued by the department:~~

33 ~~(a) a person who, in return for consideration, engages in the transport of~~  
34 ~~infectious waste for treatment, storage, or disposal in Montana;~~

Gray HB 676 -- Unofficial  
March 15, 1989

1     ~~(b) a person who transports in any month more than 1,000 pounds of~~  
2     ~~infectious waste generated in Montana; or~~

3     ~~(c) a person who transports in any month more than 5,000 pounds of~~  
4     ~~infectious waste from one state to another state through Montana. A commercial~~  
5     ~~transporter shall possess an infectious waste transport permit issued by the~~  
6     ~~department.~~

7     (2) In determining whether to issue an infectious waste transport permit, the  
8     department shall consider:

9     (a) a transporter's knowledge of and ability to comply with standards and  
10    requirements for infectious waste transportation;

11    (b) the suitability of vehicles and equipment to be used to transport  
12    infectious wastes;

13    (c) the suitability of any terminals to be used for loading, unloading, or  
14    temporary storage of infectious wastes; and

15    (d) the financial capability of the transporter to conduct corrective action for  
16    a release of infectious waste and to compensate third parties for bodily injury  
17    and property damage resulting from a release.

18    (3) An infectious waste transport permit is valid for 1 year and may be  
19    renewed annually.

20    (4) (a) The department shall assess a fee of \$100 for an infectious waste  
21    transport permit or permit renewal authorizing intraregional transport.

22    (b) (i) Except as provided in subsection (4)(b)(ii), the department shall  
23    assess a fee of \$1,000 for an infectious waste transport permit or permit  
24    renewal authorizing interregional transport ~~or transport of infectious waste from~~  
25    ~~one state to another state through Montana.~~

26    (ii) The department ~~may~~ shall reduce the fee provided for in subsection  
27    (4)(b)(i) to \$100 for interregional transport {of less than 2,000 pounds of  
28    infectious waste a year} that ~~reduces the results in an equivalent or reduced~~  
29    risk to the Montana's public health, safety, and welfare, and ~~to the~~ environment  
30    when compared to the alternative of intraregional transport.

31    (5) All fees collected by the department must be deposited in the account  
32    provided for in [section 9].

33    NEW SECTION.   Section 8. Infectious waste ~~disposal~~ management fee. (1)  
34    A person who operates any facility that ~~disposes of~~ manages infectious waste

Gray HB 676 -- Unofficial  
March 15, 1989

1 must annually pay to the department an infectious waste ~~disposal~~ management  
2 fee that is calculated based on the classification of the facility, the weight of the  
3 infectious waste, and, for a commercial facility, the origin of the infectious waste,  
4 as follows:

5 (a) For a noncommercial facility:

6 (i) that ~~disposes of~~ manages 5,000 pounds or more of infectious waste, the  
7 annual fee is \$2,000;

8 (ii) that ~~disposes of~~ manages 600 pounds or more but less than 5,000  
9 pounds of infectious waste, the annual fee is \$250;

10 (iii) that ~~disposes of~~ manages less than 600 pounds a year, there is  
11 no fee.

12 (b) ~~For~~ Except as provided for in subsection (c), for a commercial facility:

13 (i) that ~~disposes only of~~ manages only infectious wastes generated within its  
14 region and:

15 (A) that ~~disposes of~~ manages 50,000 pounds or more of infectious waste,  
16 the annual fee is \$5,000;

17 (B) that ~~disposes of~~ manages less than 50,000 pounds of infectious waste,  
18 the annual fee is \$2,000;

19 (ii) that ~~disposes of~~ manages infectious waste generated out of its region, the  
20 annual fee is \$10,000 plus ~~10~~ 25 cents for each pound of infectious waste  
21 ~~disposed of generated in a different region and managed at the facility, except~~  
22 as provided in subsection (1)(b)(iii).

23 (iii) (A) The department shall waive the per-pound fee for infectious waste  
24 transported across regional boundaries to a commercial management facility if  
25 the transport and management of that waste results in an equivalent or reduced  
26 risk to Montana's public health, safety, welfare, and environment when compared  
27 to the alternative of intraregional management. The fee waiver may apply only  
28 to those specific waste streams meeting this criterion.

29 (B) If a commercial facility manages only infectious waste for which a per-  
30 pound fee is not assessed, the annual fee for that commercial facility is \$2,000  
31 if the facility manages less than 50,000 pounds of infectious waste and \$5,000 if  
32 the facility manages 50,000 pounds or more of infectious waste.

33 (c) For a commercial facility that manages a quantity of infectious waste no  
34 greater than the quantity managed at that facility during 1988, the annual fee is



Gray HB 676 -- Unofficial  
March 15, 1989

1   \$2,000.

2   (2) The infectious waste management fee must be paid no later than March  
3 31 of the year following the calendar year for which the fee is assessed.

4   ~~(2)~~ (3) All fees collected by the department must be deposited in the  
5 account provided for in [section 9].

6   NEW SECTION.   **Section 9. Infectious waste management account.** (1)  
7 There is an infectious waste management account in the state special revenue  
8 fund provided for in 17-2-102.

9   (2) There must be deposited in the account:  
10   (a) all revenue from the infectious waste ~~disposal~~ management fee;  
11   (b) all revenue from the infectious waste transport permit fee;  
12   (c) money appropriated to the account by the legislature;  
13   (d) money that is received by the department in the form of gifts,  
14 reimbursements, or appropriations from any source and that is intended to be  
15 used for the purposes of the account.

16   (3) The account may be used by the department only for the administration  
17 of [sections 1 through 19] and [section 20].

18   NEW SECTION.   **Section 10. Infectious waste manager.** (1) The owner or  
19 operator of each commercial or noncommercial facility where infectious wastes  
20 are ~~generated, treated, stored, or disposed of~~ managed shall appoint an  
21 infectious waste manager who is the individual for the department to contact on  
22 all matters related to the management of infectious waste at the facility.

23   (2) The owner or operator shall submit to the department the name,  
24 address, and telephone number of the infectious waste manager, along with any  
25 other pertinent information requested by the department. The owner or operator  
26 shall submit any change in this information to the department within 2 weeks of  
27 the date of the change.

28   (3) The infectious waste manager shall provide the department with a  
29 suitable emergency procedure to ensure that an individual responsible for  
30 infectious waste management at the facility may be contacted at all times.

31   NEW SECTION.   **Section 11. Reporting.** (1) Except as provided in  
32 subsection (4), an infectious waste manager shall annually submit to the  
33 department on or before March 1 a report on the infectious waste management  
34 activities of the facility. The report must be submitted on a form supplied by the

Gray HB 676 -- Unofficial  
March 15, 1989

1 department.

2 (2) The report must include:

3 (a) the quantity of infectious waste generated during the preceding calendar  
4 year;

5 (b) the quantity of infectious waste ~~disposed of~~ managed at the facility  
6 during the preceding year and the method of ~~disposal~~ management;

7 (c) the quantity of infectious waste that was generated at the facility and  
8 ~~disposed of at~~ transported for management to a location other than the facility  
9 and the location, method of ~~disposal~~ management, and method of transport for  
10 ~~that disposal~~;

11 (d) the method and location of any storage of infectious waste;

12 (e) the current year's projected quantities of infectious waste generation,  
13 treatment, storage, and disposal; and

14 (f) any other information requested by the department and necessary for the  
15 administration of [sections 1 through 19].

16 (3) An infectious waste manager shall report to the department any  
17 proposed ~~handling~~ management of quantities of infectious waste significantly in  
18 excess of quantities indicated in the most current report. The proposal is subject  
19 to department approval, as provided in [section 6].

20 (4) (a) The infectious waste manager of a facility that annually generates,  
21 treats, stores, or disposes of less than 50 pounds of infectious waste a month  
22 shall submit an initial notification to the department on a form supplied by the  
23 department, but he is not required to submit annual reports.

24 (b) If, after providing an initial notification under subsection (4)(a), a facility  
25 ~~handles~~ manages 50 pounds or more of infectious waste in any month, the  
26 manager shall submit an annual report for that year and for any subsequent  
27 year in which the quantity exceeds 50 pounds of infectious waste in any month.

28 (c) The appointment of the same individual as infectious waste manager by  
29 two or more noninstitutional facilities in the same building or complex does not  
30 cause that building or complex to become a single facility.

31 NEW SECTION. Section 12. Authority to inspect, collect samples, and  
32 examine records. The department may:

33 (1) inspect facilities, vehicles, and equipment utilized in the management of  
34 infectious wastes;

Gray HB 676 -- Unofficial  
March 15, 1989

(2) collect samples of infectious waste or suspected infectious waste from any facility, vehicle, equipment, or other location utilized in the ~~handling~~ management of infectious waste; and

(3) examine any records relating to infectious waste management.

**NEW SECTION.**    **Section 13. Infectious waste ~~disposal~~ management regions.** (1) There are six infectious waste ~~disposal~~ management regions, as follows:

(a) eastern Montana, consisting of Phillips, Garfield, Rosebud, and Powder River Counties and all Montana counties east of these counties;

(b) northern Montana, consisting of Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties;

(c) south central Montana, consisting of Bighorn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone Counties;

(d) southwestern Montana, consisting of Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Meagher, Park, Powell, and Silver Bow Counties;

(e) northwest Montana, consisting of Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties; and

(f) all areas outside of Montana.

(2) The department shall assist and encourage public health officials, persons involved in infectious waste management, and the medical service community to coordinate their activities within each region in Montana to provide for the safe, efficient, and effective management of infectious waste.

**NEW SECTION.**    **Section 14. Rulemaking.** The department shall, no later than June 30, 1990, adopt rules:

(1) establishing regulations to implement the infectious waste management standards provided in [section 5];

(2) providing procedures for application and renewal of infectious waste management permits and infectious waste transport permits;

(3) providing recordkeeping requirements for persons and facilities generating, treating, storing, transporting, or disposing of infectious wastes;

(4) establishing financial assurance requirements for commercial facilities and permitted transporters;

Gray HB 676 -- Unofficial  
March 15, 1989

1       (5) requiring a public hearing on ~~an~~ a permit application for a commercial  
2 ~~treatment, storage, or disposal~~ facility; and

3       (6) providing ~~a fee reduction~~ reductions for interregional transportation ~~or~~  
4 management of infectious waste ~~if such transportation results in a reduced risk~~  
5 ~~to the public health, safety, and welfare and to the environment when compared~~  
6 ~~to the alternative of intraregional transport. as provided for in [sections 7 and 8];~~  
7 and

8       (7) establishing, for the purpose of determining the infectious waste  
9 management fee to which a facility is subject under [section 8], methods for  
10 determining or estimating the amount of infectious waste managed at a facility.

11       NEW SECTION. Section 15. **Moratorium on additional commercial**  
12 ~~treatment, storage, and disposal~~ management of infectious waste. (1) Except as  
13 provided in subsection (2), a person may not engage in the commercial  
14 ~~treatment, storage, or disposal~~ management of infectious waste until the  
15 department has adopted rules implementing the infectious waste management  
16 standards provided in [section 5] and until the person has obtained a permit ~~for~~  
17 ~~the commercial activity pursuant to [section 6].~~

18       (2) A commercial facility that is engaging or has engaged in the ~~treatment,~~  
19 ~~storage, or disposal~~ management of infectious waste on or before [the effective  
20 date of this act] may continue its commercial activities if:

21       (a) the quantity of infectious waste ~~handled~~ managed during any month does  
22 not exceed the maximum quantity of infectious waste handled at the facility  
23 during any month in 1988;

24       (b) the owner or operator submits a completed permit application no later  
25 than 60 days after the application form is made available by the department;  
26 and

27       (c) the permit application is not denied by the department.

28       NEW SECTION. Section 16. **Administrative enforcement.** (1) When the  
29 department believes that a violation of [sections 1 through 19], a violation of a  
30 rule adopted under [sections 1 through 19], or a violation of a permit provision  
31 has occurred, it may serve written notice of the violation by certified mail on the  
32 alleged violator or his agent. The notice must specify the provision of [sections  
33 1 through 19], the rule, or the permit provision alleged to be violated and the  
34 facts alleged to constitute a violation and may include an order to take

Gray HB 676 -- Unofficial  
March 15, 1989

1 necessary corrective action within a reasonable period of time stated in the  
2 order. The order becomes final unless, within 30 days after the notice is served,  
3 the person named requests in writing a hearing before the board. On receipt of  
4 the request, the board shall schedule a hearing. Service by mail is complete on  
5 the date of mailing.

6 (2) If, after a hearing held under subsection (1), the board finds that a  
7 violation has occurred, it shall either affirm or modify the department's order  
8 previously issued. An order issued by the department or by the board may  
9 prescribe the date by which the violation must cease and may prescribe time  
10 limits for particular action. If, after hearing, the board finds no violation has  
11 occurred, it shall rescind the department's order.

12 (3) Instead of issuing an order pursuant to subsection (1), the department  
13 may either:

14 (a) require the alleged violator to appear before the board for a hearing at  
15 a time and place specified in the notice and answer the charges; or

16 (b) initiate action under [section 17, 18, or 19].

17 (4) This section does not prevent the board or department from making  
18 efforts to obtain voluntary compliance through a warning, a conference, or any  
19 other appropriate means.

20 NEW SECTION. Section 17. **Injunctions.** The department may institute an  
21 action for injunctive relief as provided in Title 27, chapter 19, to:

22 (1) immediately restrain a person from engaging in any unauthorized activity  
23 that endangers or causes damage to the public health, safety, and welfare or to  
24 the environment;

25 (2) enjoin a violation of [sections 1 through 19], a rule adopted under  
26 [sections 1 through 19], an order of the department or board, or a permit  
27 provision without the necessity of prior revocation of the permit; or

28 (3) require compliance with [sections 1 through 19], a rule adopted under  
29 [sections 1 through 19], an order of the department or board, or a permit  
30 provision.

31 NEW SECTION. Section 18. **Civil penalties.** A person who violates any  
32 provision of [sections 1 through 19], a rule adopted under [sections 1 through  
33 19], an order of the department, or a permit condition is subject to a civil  
34 penalty not to exceed \$10,000. Each day of violation constitutes a separate

Gray HB 676 -- Unofficial  
March 15, 1989

1 violation.

2 NEW SECTION. Section 19. Criminal penalties. (1) (a) A person is subject  
3 to a fine not to exceed \$10,000 for each violation or imprisonment not to  
4 exceed 6 months, or both, if he:

5 (i) knowingly transports infectious waste to an unpermitted facility;

6 (ii) ~~treats, stores, or disposes of hazardous~~ manages infectious waste without  
7 a permit; or

8 (iii) makes any false statement or representation in any application, label,  
9 manifest, record, report, permit, or other document filed or maintained as  
10 required by the provisions of [sections 1 through 19] or rules adopted under  
11 [sections 1 through 19].

12 (b) A person convicted of a subsequent violation of this section is subject  
13 to a fine not to exceed \$20,000 for each violation or imprisonment not to  
14 exceed 1 year, or both.

15 (c) Each day of violation constitutes a separate violation.

16 (2) Action under this section does not bar enforcement of [sections 1  
17 through 19], rules adopted under [sections 1 through 19], orders of the  
18 department or the board, permits by injunction, or other appropriate remedies.

19 (3) Fines collected under this section, except money collected in a justice's  
20 court, must be deposited in the state general fund.

21 NEW SECTION. Section 20. Infectious waste incineration -- additional  
22 permit requirements. (1) The owner or operator of a commercial facility, as  
23 defined in [section 3], who proposes to incinerate in any month a quantity of  
24 infectious waste exceeding the maximum quantity of infectious waste incinerated  
25 at the facility in any month during 1988 shall apply to the department, pursuant  
26 to 75-2-211, for a permit authorizing the incineration and consequent emissions.

27 (2) The department may not issue a permit to a facility described in  
28 subsection (1) until:

29 (a) the owner or operator has provided to the department's satisfaction:

30 (i) a characterization of emissions and ambient concentrations of air  
31 pollutants, including hazardous air pollutants, from any existing incineration at the  
32 facility; and

33 (ii) an estimate of emissions and ambient air concentrations, including  
34 hazardous air pollutants, from the incineration of infectious waste as proposed in

Gray HB 676 -- Unofficial  
March 15, 1989

1 the permit application; and

2 (b) the department has reached a determination that the projected emissions  
3 and ambient concentrations will constitute a negligible risk to the public health,  
4 safety, and welfare and to the environment.

5 (3) The department shall require the application of air pollution control  
6 equipment, engineering, or procedures as necessary to satisfy the determination  
7 required under subsection (2)(b). The equipment, engineering, or procedures  
8 must provide particulate and gaseous emission reductions equivalent to or more  
9 stringent than those achieved through the best available control technology, in  
10 addition to any other controls necessary to satisfy the determination required  
11 under subsection (2)(b).

12 NEW SECTION. Section 21. Codification instruction. [Section 20] is  
13 intended to be codified as an integral part of Title 75, chapter 2, part 2, and the  
14 provisions of Title 75, chapter 2, part 2, apply to [section 20].

15 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid,  
16 all valid parts that are severable from the invalid part remain in effect. If a part  
17 of [this act] is invalid in one or more of its applications, the part remains in  
18 effect in all valid applications that are severable from the invalid applications.

19 NEW SECTION. Section 23. Extension of authority. Any existing authority  
20 to make rules on the subject of the provisions of [this act] is extended to the  
21 provisions of [this act].

22 NEW SECTION. Section 24. Applicability dates -- retroactive applicability for  
23 infectious waste management fee. (1) The department may enforce the  
24 management standards provided for in [section 5] and adopted by rule under  
25 [section 14] only for violations occurring after June 30, 1990.

26 (2) Requirements for an infectious waste management permit and an  
27 infectious waste transport permit apply after June 30, 1990.

28 (3) The infectious waste management fee provided for in [section 8] applies  
29 retroactively, within the meaning of 1-2-109, to waste disposed during 1988.

30 (4) The annual infectious waste transport fee provided for in [section 7]  
31 applies to transporters operating after June 30, 1989. The initial permit is valid  
32 from July 1, 1990, through December 1, 1990.

33 (5) The requirement for an infectious waste manager provided for in [section  
34 10] applies after September 30, 1989, and the initial infectious waste

Gray HB 676 -- Unofficial  
March 15, 1989

1 management report must be submitted on or before March<sup>31</sup>, 1990.

2 (6) [This act] does not apply to the normal operations of any mortuary as  
3 defined in 37-19-101 or any crematory as defined in 35-21-101 until July 1, 1991.

4 NEW SECTION. Section 25. Effective date. [This act] is effective on  
5 passage and approval.

6 -END-  
7



EXHIBIT

12

DATE

3-15-89

HB

SB 390

109 RAILROAD AVE. EAST  
ROUNDUP, MT 59072  
(406) 323-2103



United States  
Department of  
Agriculture

Soil  
Conservation  
Service

Bob Raney  
Montana House of Representatives  
Chairman, Natural Resources Committee  
Helena, Mt. 59620

March 13, 1989

Dear Mr. Raney:

The water management study of the Musselshell River funded through the RIT grant during the 1987 session was a good idea then and is a major concern now.

The project was finally initiated after the scope of work plan was written and rewritten several times to address items of concern by members of the community (POWER). Please realize this is a STUDY to determine availability of water for potentially supplementing the existing system.

The study has two major efforts identified. The first is to monitor and determine water use along the Musselshell River from Deadman's Basin to all the water users in the association ending below the city of Melstone. There are over 160 contracts for nearly 26,000 shares. Each share represents one acre foot of water in Deadman's Basin. The basin has useable storage capacity of 72,200 acre feet. The recent dry years have not allowed the basin to be fully charged in the spring.

In 1985, the reservoir was depleted in late August. All irrigators were requested to leave remaining water to supply the city of Melstone with water. In 1988, the water supply was depleted in mid July. Again, irrigators were requested to leave water instream for livestock and domestic needs.

THE SHORTAGES ARE REAL! The Deadman Wateruser's Association has been addressing the issue for four years. Senate Bill 390 is a request to extend legislative approval for the interim permit. The process has been delayed pending scope of work plan development, funding approval, etc.

The mine pumping portion of the project is designed to be tested in phases. Should the first or any subsequent phases prove to be impractical, the need for further testing and the interim permit would be deemed unnecessary. Senate Bill 390 is designed to allow the project to continue as it was originally proposed.

I ask you for your support to approve SB390 so the project testing can proceed without further delay.

Sincerely,

*John P. Rouane Jr.*

John P. Rouane Jr.  
District Conservationist



The Soil Conservation Service  
is an agency of the  
United States Department of Agriculture



# Tri-County Sportsmen's Association

Golden Valley Petroleum Musselshell  
P.O. Box 1036  
Roundup, Montana 59072

EXHIBIT 13  
DATE 3-15-89  
HB SB 390

Dear Mr. Bob Raney

We are writing this letter in support of S.B. 390.

We the sportsman are very concerned over the lower Musselshell River drainage. The drought years have devastated our fisheries & harmed our wildlife populations as well.

It would be a shame, not to test pump the mines & see if it is feasible to supplement the river flow, especially in these dry years. There is no positive way of knowing if it will work or not, unless the test is done.

The wildlife, sportsman, fisheries, landowners, & business people could all benefit from this project. Nothing ventured - Nothing Gained.

Sincerely

Don J. Hoagland  
President

Tri-County Sportsman A

Amendments to Senate Joint Resolution No. 13  
Third Reading Copy

Requested by Rep. Harper  
For the House Committee on Natural Resources

Prepared by H. Zackheim  
March 15, 1989

1. Page 1.

Following: line 24

Insert: " WHEREAS, the United States is facing an increasingly drastic solid waste disposal crisis; and

WHEREAS, Montanans are currently fortunate enough to have low waste disposal costs compared to other states, but those costs are expected to increase dramatically as communities fill up existing landfills and must open new costly one; and

WHEREAS, recyclable material, such as glass, aluminum, steel, newsprint, and other paper goods make up a substantial portion of the solid waste in landfills; and"

2. Page 2, lines 8 through 18.

Strike: strike lines 8 through 18 in their entirety

Insert: " WHEREAS, citizen cleanup efforts are a significant tribute to our state in its centennial year; and

WHEREAS, communities have an interest in promoting and improving recycling at all opportunities; and

WHEREAS, communities are in the position of directly assisting and increasing recycling through education and assistance to all members of the community; and

WHEREAS, community landfills, as the destination of a community's solid waste, are the best location for implementing comprehensive community-wide recycling; and"

3. Page 2, line 21.

Following: "program"

Insert: "; and

WHEREAS, local communities can and should increase the level of local recycling to reduce solid waste disposal volume and costs"

4. Page 3, lines 4 through 7.

Strike: lines 4 through 7 in their entirety

5. Page 3.

Following: line 10

Insert: " BE IT FURTHER RESOLVED, that all Montana communities be urged to promote and encourage recycling.

BE IT FURTHER RESOLVED, that all Montana communities be encouraged to study means of implementing ~~onsite~~ sorting of recyclable material ~~at all landfill and solid waste disposal sites.~~"

# ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 3-15-89

BILL NO. SB 327

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

10 6

Claudia Montez  
Secretary

Bob Raney  
Chairman

MOTION: to table SB 327

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 3-15 BILL NO. SB 223 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

9

7

Claudia Montague  
Secretary

Bob Raney  
Chairman

MOTION: Motion to TABLE SB 223

# ROLL CALL VOTE

HOUSE NATURAL RESOURCES

COMMITTEE

DATE 3-15-89 BILL NO. SB 390 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

10

2

Claida Montagna  
Secretary

Bob Raney  
Chairman

MOTION: DPA SB390

that SB390 be concurred in as amended