

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Thomas F. Keating, on February 8, 1989,
at 1:00 p.m., in Room 405 of the State Capitol

ROLL CALL

Members Present: Thomas Keating, Larry Tveit,
Loren Jenkins, Darryl Meyer, Lawrence Stimatz,
Pete Story, Bill Yellowtail, Elmer Severson,
Cecil Weeding, Dorothy Eck and Jerry Noble

Members Excused: Fred Van Valkenburg

Members Absent: None

Staff Present: Bob Thompson and Helen McDonald

HEARING ON SB 321

Presentation and Opening Statement by Sponsor: Senator Tom Beck, District #24, introduced this bill to amend the Montana Hazardous Waste Act to correct some language in the law making it clear the department has the authority to get underground tank leaks cleaned up and to fund the tank program through fees placed on underground storage tanks. Senator Beck stated that the 1985 legislature established the tank program and amended the Hazardous Waste Act but the tank program doesn't regulate hazardous waste. The bill concerns what the law refers to as regulated substances that are defined as liquid fuels and chemicals. When the legislature put the tank program in the Hazardous Waste Act they didn't amend the clean up, monetary, and testing sections of the law. These sections only refer to hazardous waste. SB 321 authorizes the Department of Health and Environmental Sciences to set up a system of tank fees to generate money to pay for the program. The federal rules for leak prevention are out now and require tank upgrading and leak detection by tank owners. To make sure that leak prevention works, additional state and local training, education and inspection efforts are needed. Other states have turned to tank fees to recover the costs of the prevention program, thereby putting the cost on the owners of the tanks.

List of Testifying Proponents and What Group they Represent:

Larry Mitchell, Department of Health & Environmental

Sciences

Tim Bergstrom, Mont. State Firemens' Assn.
Chris Kaufman, Mont. Environmental Information Center
Jim Mockler, Montana Coal Council
Janelle Fallon, Montana Petroleum Assn.
Steve Visocan, Mont. Petroleum Marketing
Ben Havdahl, MMCA
Doug Abelin, Black Diamond Products
Fritz Zettle, City of Helena Fire Department
Doug Granal, Montana Highway Department

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Larry Mitchell, DHES, submitted written testimony.
(Exhibit #1)

Tim Bergstrom, Montana State Firemens' Association, strongly supports this bill.

Chris Kaufman, Montana Environmental Information Center, stated that leaking underground storage tanks is one of the most important environmental problems that Montana will face in the next couple of years. About 20 years ago, the state buried tanks without inspection and the problem now is to decide what to do with them. Ms. Kaufman stated that leaking underground storage tanks can contaminate ground and surface water. Ninety-five percent of the buried tanks have petroleum products in them. A leak of one gallon per day can contaminate the drinking water for fifty thousand people. Gasoline may contain up to twelve hundred different kinds of chemical compounds, many of which are carcinogenic. This bill will increase the authority of the Department of Health and Environmental Sciences to deal with serious leaking problems. There are about 18,000 underground tanks that are registered in Montana and maybe 12,000 that are not registered. There are probably somewhere between 3,000 and 10,000 leaking tanks in Montana.

Ms. Kaufman closed by stating that the state needs to have adequate authority to deal with this problem. There will be more and more extreme cases that will place more burden on local services, like the fire department, and the state's resources. The underground tank program is a critical environmental and public health issue for Montana. (Exhibit #2)

James Mockler, Montana Coal Council, generally supported the bill because the federal government will do it anyway. Mr. Mockler wanted to bring the committee's attention to Page 10, Line 22, in the bill referring to fees. He thought the fees should be spelled out so that everyone knows what they are. As to "delegation of authority and funds to local agents for inspections and implementation", (pages 10 and 11). Mr. Mockler would like to make sure that this act supersedes any other local authority so the fire marshal will not say one thing and the DHES something else. On Page 11, Line 13 and 14, "regulated substances are or have been stored in underground storage tanks", he suggested adding language "limiting its applicability to those tanks that have not gone through closing procedures," so that once they have gone through the procedures prescribed, they will not be a liability. Finally on Page 14, line 22 and 23, "where the underground storage tank is located or in the first judicial district, Lewis and Clark County, whichever the department considers appropriate," Mr. Mockler thinks the venue is a matter of whoever is being charged and should not be a department decision. He suggested that the following alternative language be added instead: "if mutually agreeable by the respected parties."

Janelle Fallon, Montana Petroleum Association, indicated there are a number of underground storage tank bills, and noted that the industry thinks this bill is a reasonable approach and urges committee support.

Fritz Zettel, Helena Fire Department, stated that the Helena Fire Department was very involved in a recent rail car explosion. The City of Helena feels that this is an important bill and urges committee support.

Steve Visocan, Montana Petroleum Marketing Association, supported this bill. The association believes the Department of Health and Environmental sciences should have the support necessary to perform the requirements concerning underground tanks. However, he questioned the open-ended fee structures, because they are rather open ended.

Ben Havdahl, Montana Motor Carriers Association, said he wasn't sure he was an opponent or proponent. Because of the program generally, he has many of the same reservations about this bill as expressed by Jim Mockler of the Montana Coal Council. The association sees this bill as carte blanche to the state agency to establish fees at whatever level it wishes. He would urge the fee system be given some legislative

guidelines, ceilings, or some approach that will give more control on that aspect.

Doug Abelin, Montana Oil and Gas Association, supported the bill.

Doug Granal, Montana Highway Department, was concerned about the EPA regulations stating that a certain number of tanks should be installed this year. The department did a survey that indicated 40 tanks should be replaced by December 1989. With the rule making authority the Board of Health has, the highway department wants to make certain that, of the tanks installed in 1989, the board doesn't come back to haunt them on these installed tanks.

In response to a question from Keating, Mr. Granal answered that the highway department has approximately 350 tanks located throughout the state.

Senator Keating mentioned that the highway department will be installing tanks in 1989 and the rules have not been promulgated yet.

Questions From Committee Members:

Senator Keating asked if the department had a fee schedule.

Larry Mitchell said "no". However, he stated that the department had a study conducted on methods to fund this particular program a year ago. Some of the committee members may have been contacted about insurance fees, tank fees, and the general fund that the fiscal note was based on.

Senator Keating stated that a fiscal note was not received.

Larry Mitchell answered that the fiscal note was based on a \$50 annual fee per tank for those tanks regulated by the federal program. Small farm tank and residential motor fuel tanks were exempt. The department took the federal population of about 11,000 tanks at \$50 a tank and put together a budget based on a 20% noncompliance fee for the first year. About half of that would go to the state who would return it to local governments. Mr. Mitchell handed out a summary. (Exhibit 3)

Mr. Mitchell stated that health department rules now need to go to the governor's office for approval. The legislature may refuse to fund the program by this method of tank fees. He also stated that the Hazardous Waste Act, give the Department of Health the authority

to adopt "a schedule of fees for hazardous waste management, facility permits, and hazardous waste generators." SB 321 provides a similar parallel for the tank program. If the legislature would like to take a shot at what it thinks is a fair and equitable fee, the department has no objection.

Senator Jenkins asked which tanks were covered under this bill.

Larry Mitchell said the underground storage tanks were addressed. Virtually all underground tanks are included in this program which extend beyond the federal program. The Montana legislature included farm and residential motor fuel tanks which are less than 1100 gallons in size and added aboveground tanks with underground piping. The theory was that there was no difference in how a tank erodes or leaks. The most serious major tank leaks in Montana are the ones with aboveground tanks and underground piping. The department determined that about 50% of the leaks occur from underground piping.

Senator Weeding wondered if legal action begins with the county attorney.

Larry Mitchell answered that in Sections 4, 17, and 19, of SB 321, the Department, or the county attorney at the department's request, could begin legal action. The amendment in Section 9 would allow venue to be either in Helena or under local jurisdiction. Most litigation is not taken to trial. The department is talking about over 18,000 tanks that it knows of. Because of the large size and cost of the program, a lot of these cases offer the department the opportunity to educate one judge in a couple of districts and standardize the court procedures.

Senator Severson asked if the department knows of some device that can monitor the tank in a short period of time.

Larry Mitchell wished there was a device for that purpose, but there is not. Tanks start to leak very slowly as they are rusting out.

Senator Severson asked if the new tanks are treated with anything and what kind of lifetime do they have?

Larry Mitchell answered that new tank design standards are coming. The new tanks will be corrosion-resistant tanks and Mr. Mitchell thinks the makers are giving 30-

year guarantees on them provided they are installed properly. The new fiberglass plastic tanks are guaranteed for 30 years and there is a fiberglass clad steel tank out now that may actually go beyond the current guarantees. The manufacturer not only guarantees the tank from corrosion but will pay for environmental cleanup of any messes caused.

Senator Severson asked how the department would determine leaks unless they are completely obvious and how the law would be enforced.

Larry Mitchell said it is in the best interests of the tank owner not to have a leak because he is losing product. Moreover, it will be costly to replace his tanks and settle lawsuits with the neighbors. The rules that EPA has come up will require the department to adopt regulations that put requirements on the tank owner. These requirements include installing observance wells, monitoring wells, and groundwater vapor wells around the tank casing to test the tank on a routine periodic basis. The department will rely heavily on local fire and health authorities and building inspectors for enforcement and inspection. Local fire and health authorities will check to ensure that a tank inspection was done in the scheduled year, and to ensure that protection systems are installed and that the owner is keeping records on the test results.

Senator Tveit stated all tanks of 1,100 gallons or below would be exempt under federal EPA and the state usually follows their rules. Under this proposal, DHES can write any rule they want to on 1,100 gallon tanks or below. He wonders why many states have exempted farm tanks, 1,100 gallons or below, when they have the same EPA rules.

Senator Beck understood that the state would follow the federal regulations and 1,100 gallon tanks would still be exempt.

Senator Tveit stated that under federal rules farm tanks that contain less than 1,100 gallons are exempt. Are the feds under a different set of rules?

Larry Mitchell said the bill on Page 7 should clarify the implementation of regulations. Page 7, Line 14, defines an underground storage tank as "any one or combination of tanks (including connected underground pipes) used to contain a regulated substance, the volume of which (including the volume of the connected underground pipes) is 10% or more beneath the surface

of the ground." That definition was in the bill in 1985. The 1985 legislature amended the bill to add underground pipes and asked why it is excluding small-farm residential tanks. Don't they leak the same as a 2,000 gallon diesel tank." The conclusion of the legislature was to include all tanks. Therefore, those few exemptions do not appear.

Montana will have to write rules at least as stringent as the federal rules. Montana does not have to write a rule requiring a million dollar responsibility for a heating oil tank because EPA will not care. Congress will care if the rules are less stringent for tanks covered under the federal laws. The department will assess fees against tank owners by a fee schedule. Some tank owners will be charged a minimum of \$5 and other tank owners may be assessed the full price of \$20 to \$50.

Senator Tveit said the state rules could be more stringent on tanks 1,100 gallons or less, the state could write any rules it wants.

Larry Mitchell said the legislature granted authority to the underground storage tank program to write regulations equal to or greater than the federal regulations. The department has not done that yet having waited four years for these federal regulations. Because the bill states the department may not adopt rules under the Hazardous Waste Act that are more restrictive than those promulgated by the federal government, the department wrote a rule saying farm tank owners had to notify the department that the tanks exist. By doing that, the state is more stringent than EPA. Nonetheless, the department does not anticipate regulating farm tanks very heavily, and frankly, it does not need the business and does not have the time to regulate them.

Senator Eck wondered if it was possible to get insurance without meeting these rigid standards.

Larry Mitchell answered that it was his understanding that pollution liability insurance for underground storage tanks is difficult to buy and expensive, with high deductibles. He thinks insurance will be easier to get when the rules are implemented and tanks are tested for leaks and cleaned up.

Senator Keating asked why the effective date on the bill is on passage and approval?

Larry Mitchell answered that he does not anticipate there will be permits required on fees generated until January 1, 1990. It will take the department that long to put together a system of billing, collecting, tagging and identifying tanks.

Senator Keating stated that if the effective date was October, which is normal, then the highway department could put their tanks in before October and not be bound by this law.

Larry Mitchell said it would not make any difference to the highway department.

Closing by Sponsor: Senator Beck closed by saying he thought some of the amendments suggested were not unreasonable. He thinks the legislators would feel more comfortable if the DHES would work on the fee system and some of the questions regarding the small farm tanks. Senator Beck wanted to remind the committee that there is a real problem with leaking underground storage tanks. Once the groundwaters are polluted, it is a real problem getting things cleaned up.

DISPOSITION OF SB 321

Discussion: Hearing on SB 321 is closed.

HEARING ON SB 238

Presentation and Opening Statement by Sponsor: Senator Tom Keating, District 44, Billings, introduced this bill, which is an act to suspend the authorization of the coal board. This bill amends the activities of the coal board and reduces the staff. During a 1986 hearing on the performance of the coal board, it was determined there was no more local impact from coal. The coal industry was actually in a demise rather than in a growth mode. There have been no impacts and a member of the board suggested that instead of being a local impact board they could be an exit impact board because people were leaving the state.

The coal board was enacted to deal with the impact of the mines. The coal tax money went to some good activities and some not so good but it took care of the local impact. As time went on, the use of the coal board money began to go to programs that were not related to the impact and in the last two bienniums

most of the money allocated to the coal board has been appropriated by the legislature for other purposes.

The coal board has tried several times to set aside money for highway development in the area, a very legitimate cause, but there are two problems: 1) the highways are not necessarily in the area governed by the local impact so they get overlooked or the money is taken away, and 2) the highway department cannot appropriate funds for secondary roads and the roads that are impacted are secondary roads. Moreover, the coal board has made grants in the past but the money has been spent for some other purpose.

In this biennium, in the executive budget, the coal board staff has decreased from 2 1/2 FTEs to one FTE at \$30,000 a year, plus operating expenses. The recommended grants were \$292,000 for both years of the biennium for the drug enforcement program through the Department of Justice. The local impact fund that is earmarked from the coal tax money was destined to receive six million dollars. The executive budget will cut the money to \$600,000, or 10% of what they were going to receive. Now if this is what is going to happen to the coal board all the time, there is no sense in having the coal board active. If the board is suspended at this time, the state could save a couple hundred thousand dollars a year in administrative expenses because the grants will not be there.

As to use of coal board money for drug enforcement, Senator Keating agreed that there is a drug problem in this state and that should be the first priority even if it is general fund money.

Inasmuch as the reason for the Coal Board is gone Senator Keating thinks serious consideration should be given to suspending the coal board, saving some administration money and using the coal tax money for legitimate purposes.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

Herschel M. Robbins, Oil, Gas, & Coal Counties
Rep. Marian Hanson, District 100.
Rep. Tom Asay, represented himself
Rep. Robert Clark, District 31, Ryegate

Rep. Roger Knapp, District 27, Hysham
Dave Lloyd, Supt. of Schools, Forsyth
Ed Flechter, Powder River County Commissioner
Dennis Hemmer, Meridian Minerals
Greg Carrell, Dept. of Justice
D. H. Ketting, Dawson Community College
Peggy Haaglund, Rosebud County & Montana
Bob Dozier, Northern Plains Resource Council
Phil Campbell, Montana Education Association
Rusty Rikito, Big Horn County
Gene H. Kurtz, Member Mt. Coal Board, Forsyth
Monty Long, Chairman, Montana Coal Board
Harriet Meloy, League of Women Voters
Jim Mockler, Montana Coal Council

Testimony:

Hershel Robbins, Association of Oil, Gas and Coal Counties, submitted written testimony. (Exhibit 4)

Marian Hansen, District 100, Powder River, Bighorn and Rosebud Counties, opposes suspending the coal board.

Tom Asay, Rosebud County, Chairman of the Coal Tax Oversight Committee, agrees with Senator Keating on the issue of earmarking funds. Mr. Asay thinks the legislature needs to look at any funding the coal board gets and why it is not used for projects. The coal board agreed there were several ongoing projects and the money was left intact to take care of those projects, while a hold was put on any new projects. For political reasons the money was intercepted.

Representative Asay concluded by saying that the coal board was formed because the history of prolonged and rapid resource development has not been all that bright.

Representative Robert Clark, District #31, stated that the people in his district do not feel that the coal impact is over and thinks there is still a good future for coal in this areas. He supports keeping the coal board.

Representative Roger Knapp, District #27, stated the coal board was established to help impacted areas and become a part of the legislative process in dealing with appropriate dispensation of coal revenue funds. He does not believe that coal development in the state is over.

David Lloyd, Superintendent of schools in Forsyth, submitted written testimony. (Exhibit 6)

Ed Fletcher, Powder River County Commissioner, submitted

written testimony. (Exhibit 7)

Dennis Hemmer, Meridian Minerals, stated his company is in the process of developing a large underground coal mine in the Bull Mountains near Roundup. They still have to go through the permitting process but hope to be mining in the next two years. Meridian expects to be a positive economic impact in this area once production has begun and to provide stable benefits from the taxes paid.

Gary Carrell, Department of Justice, wanted to remind the committee that the department has a drug project going on in Billings since 1982. The department has an excellent relationship with the coal board and without it there would be no funding for this project. Mr. Carrell appreciated Senator Keating's support for drug enforcement and doesn't have any objection to being funded by the general fund.

Don Ketting, Dawson Community College, thinks the coal board had worked diligently, meticulously, conscientiously and conservatively in its decisions and in dispersing the money. The new Burlington Northern officials at Glendive predict great growth in the coal industry in eastern Montana. Eastern Montana is sometimes forgotten and the coal board has bridged this gap in a professional manner. Eastern Montana has paid dearly to the fiscal coffers in this state and it has difficulty getting it back. The coal board can produce things for Eastern Montana that normally wouldn't happen. The revenue has been coming back through this organization, particularly in the education area.

Peggy Haaglund, Rosebud Conservation District, submitted written testimony. (Exhibit 5)

Bob Dozier, Northern Plains Resource Council, submitted written testimony. (Exhibit 8)

Phil Campbell, Montana Education Association, opposed the bill because of the negative impact it would have on local communities.

Rusty Rokita, Big Horn County, said that nine hundred seventy million dollars has been paid by the coal industry in severance taxes and only about 6.5% has come back through the coal board to the coal impact areas. Mr. Rokita said that nearly fifty-two million dollars has been raised through taxes and bond issues locally.

Gene Kurtz, Montana Coal Board, has had some experience with the impact of coal development. Mr. Kurtz remembers in 1972, overcrowded classrooms, classes held in church basements, and not enough bond passed to build adequate schools. He remembers the city council wrestling with problems like not enough water storage, not enough water supply capacity, needed expansion of water and sewer, fire and police protection, more medical doctors, and a need for a new landfill. The board worked with the legislature, passed the coal severance tax, and set up the Montana coal board to assist in the local impact. Now six years later the students moved into that school. That was the beginning of a working partnership between the state and local government that has lasted 13 years. This partnership is still needed.

Monty Long, Chairman of the Montana Coal Board, stated coal impact funds have been requested for crime prevention, drug enforcement, and water marketing projects. The Montana Coal Board continues to review grant requests from the impact area and receives clean bills of health from the Office of the Legislative Auditor. The board has never diverted any funds to projects they were not intended to go.

Harriet Meloy, Montana League of Women Voters, opposes this bill.

Jim Mockler, Montana Coal Council, felt that in the process of appropriations and financing claims, the money will be taken away from the coal board without a hearing. He said this strategy is in the Governor's budget. Mr. Mockler said if the legislature takes the money away from the coal board, this bill might as well be attached to it at least for another two years.

Chris Kaufman, Montana Environmental Information Center, opposes the bill.

Questions From Committee Members:

Senator Yellowtail wondered why Senator Keating chose "suspension," rather than "abolishing" the coal board.

Senator Keating replied that there is a potential for coal development in Musselshell County, Ashland, and Powder River County. When that happens, then there may be a need for a coal board again. The board will be a good vehicle for up-front money for those areas while the mines are being set up and that is why it is only a suspension.

In response to a question concerning the importance of the coal board and the attention it gives to local impact mitigation in upholding the legality of Montana's coal severance tax, Mr. Mockler stated that the U.S. Supreme Court might have considered these programs in upholding Montana's severance tax on coal. However, he noted the issue is unlikely to come up again.

Senator Keating stated that it is the Governor's Executive budget that proposed to strip the coal board of its appropriation, but the final decision is the legislature's. Senator Keating added that his desire with this bill is that the legislature pay attention to what is going on with the coal tax money and where it is being spent.

Senator Weeding asked what the status of the roads and highway projects are?

Mr. Long answered that the coal board has a meeting next month and the applicants have been notified their applications will be considered at that time. At this time there is still no money.

Closing by Sponsor: Senator Keating closed by saying the coal board in the past spent over 60 million dollars of coal tax money. The local impact money is not the only money that the counties receive as a benefit from the growth of the coal industry. Big Horn County has gotten over eighty million dollars during the last ten years from net and gross proceeds tax. Rosebud County has gotten fifty million dollars in the past years from net and gross proceeds, which does not cover personal property tax that is paid on equipment and machinery. Senator Keating thinks Big Horn County's total budget is sponsored by the coal industry. About 90% of their revenue comes from the coal industry and ten percent comes from agriculture and other sources. The growth of the industry is beneficial to the county. When a mine opens up and people move in and facilities are needed, that's when the local impact money and board are needed. If the coal board doesn't have any money to spend for projects, then money should not be spent on administration either. Senator Keating thinks there are a lot of people aware of the situation, not only of the coal board but of the appropriations away from the coal board oversight. If the legislature is going to use the coal board then give them something to do.

Hearing is closed on SB 238.

EXECUTIVE ACTION

SB223 is the Facility Siting Act and there is an amendment from the Department of Natural Resources. (Exhibit 11) Senator Jenkins moved the amendment.

Senator Eck had a question about which companies would be subsidized.

Senator Keating asked Bob Thompson about that amendment.

Bob Thompson said it is a problem trying to identify which facilities will be subsidized and which will not.

Senator Keating said it wouldn't do any good to amend the bill to address the subsidy issue.

Senator Tveit moved SB 223 as amended.

Senator Yellowtail asked if Vann Jamison, DNRC, would outline the policy choices here.

Vann Jamison said the measure before the committee now is a resolution of a debate taking place within the DNRC. There are very strong arguments on both sides of this discussion. There are two groups of utilities--the conventional utility whose mandate is to serve an area and those who function in the competitive market. The department separated these utilities and made two distinct definitions of utilities. One is called a service area utility and the other a competitive utility. As an example, a chrome plant will provide jobs, require investment in schools, and may require power from the power company and some resources from the state. No assessment of need is made for the plant because it doesn't fall under the siting act. The company secures funding and builds their project, provided they meet the environmental standards. If a gas plant is substituted for the chrome plant, that plant probably comes under the siting act. All of a sudden the department might say that wasn't an acceptable risk for the state to take without looking at need because it is a gas plant. The question is, should both plants have to conform to a need standard or should neither have to meet a need standard. This bill illuminates the need standard to treat the processing of chrome or coal differently from a regulatory perspective and depending on what kinds of values you bring to that discussion, you will come to different conclusions.

Senator Keating said his purpose for leaving the utilities

under the need provision is to protect the consumer. The consumer is also protected under the Public Service Commission so the utility has to prove need twice: once before the department and again before the public service commission. This bill is to relieve the private sector of additional annoyance of doing something that is unnecessary.

Senator Eck was concerned that if there wasn't a need whether the plant would leave the community holding the bag.

Senator Keating answered that if the gasification plant is not profitable, nobody would build one.

Senator Weeding wondered if the language allowed the board to consider alternate products.

Senator Keating answered that the industry doesn't have to prove there is some other product that would do the same thing. To convert coal to fertilizer under the present law the company has to prove to the department that there isn't some other product that will do the same job cheaper and better. That is not a government decision, that's a business decision. The bill says that a non-utility does not have to prove the unavailability an alternate product.

Senator Keating stopped executive action and adjourned because it was time for floor action in the Senate.

ADJOURNMENT

Adjournment At: 3:00 p.m.


THOMAS F. KEATING, Chairman

TFK/hmc

senmin.208

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 2-8-89

NAME	PRESENT	ABSENT	EXCUSED
Chairman Tom Keating	✓		
Vice-Chairman Larry Tveit	✓		
Senator Fred VanValkenburg			✓
Senator Loren Jenkins	✓		
Senator Darryl Meyer	✓		
Senator Lawrence Stimatz	✓		
Senator Pete Story	✓		
Senator Bill Yellowtail	✓		
Senator Elmer Severson	✓		
Senator Cecil Weeding	✓		
Senator Dorothy Eck	✓		
Senator Jerry Noble	✓		

Each day attach to minutes.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

SENATE NATURAL RESOURCES



STAN STEPHENS, GOVERNOR

EXHIBIT

DATE

2-8-89

COGSWELL BUILDING

STATE OF MONTANA

BILL NO.

321

FAX # (406) 444-2606

HELENA, MONTANA 59620

Underground Storage Tank Program
(406) 444-5970

PS 1062

Date: February 8, 1989

Title: SB 321 Statement, Larry Mitchell

In 1984, Congress established a federal program to address leaks from underground storage tanks. The 1985 Legislature established the UST program in Montana by amending the Hazardous Waste Act. EPA finalized federal minimum regulations for states to implement on December 22, 1988. DHES expects to adopt regulations for Montana's program and obtain state program approval from EPA during 1989.

SB 321 is an important bill which corrects and clarifies the original 1985 state legislation that established the tank program in Montana. That authority was granted by amending the state hazardous waste act. However, the hazardous waste act controls improper management and disposal of hazardous wastes. The tank program regulates a different class of materials defined as regulated substances. These are essentially petroleum fuels and chemical products. When they leak out of tanks, they can cause serious damage to groundwater and vapors can force evacuation of homes and businesses due to health or fire dangers and they must be cleaned up. However, these substances are not generally categorized as hazardous wastes; diesel soaked dirt for example.

However, the existing cleanup authority in the hazardous waste act forces DHES to treat them, contaminated soils and water as hazardous wastes in order to require clean up.

The 1985 Legislature overlooked the need to amend the term "regulated substances" into the cleanup authorities of the hazardous waste act. This bill seeks to correct that problem by adding the words "regulated substances" to several sections of the hazardous waste law that will help in requiring cleanup when groundwater and property are threatened. This will put DHES authority in line with federal EPA authority to address regulated substances under the tank program along with the existing authority to address hazardous wastes in the Hazardous Waste Act.

SB 321 also authorizes DHES to establish a schedule of tank fees to help support the implementation of the tank leak prevention program. Federal EPA rules on leak detection and tank upgrading requirements are now final.

Ex. #1

2-8-89

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February 8, 1989
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UST program needs include training of local officials, tank owners and operators, inspections of new tank installations, tank closures, and routine tank facility inspections by state and local officials to assure compliance with state and federal leak detection and inventory management requirements.

Since state groundwater resources are most directly impacted by leaking tanks, Congress and EPA anticipate that states will need to provide additional funding in order to implement this program. As of August 1988 nineteen states have established annual tank fees as their state program funding mechanism. Nine states have utilized petroleum product use or transfer fees.

EPA grants now support 75% of the 4.5 FTE Montana state program. There are over 18,000 tanks at more than 9,000 facilities subject to the leak prevention, leak detection requirements. Additional resources will be required at the state and local level to assure that voluntary compliance with the rules and increased owner/operator education will prevent disastrous, bankrupting tank leaks from continuing to occur.

In summary, SB 321 will correct the 1985 legislative omission and solidify the foundation of the underground storage tank program. It will clarify the Legislature's intent that the enforcement authorities in the hazardous waste law also apply to the regulated substances included in the tank program without having to treat them as hazardous waste.

SB 321 will also provide a funding mechanism that will help assure that impacts from leaking tanks are minimized through state and local implementation of rules designed to prevent leaks and detect them early before serious and costly damage can occur.

statesb.321

Case Studies of Leaking Underground Storage Tanks in Ohio 2-6-88BILL NO. SB 321

The following brief descriptions of incidents of leaking underground storage tanks in Ohio over several years demonstrate some of the personal, financial, and environmental problems faced by persons affected by the leaks. The case studies were extracted largely from telephone interviews with persons who had reported either a leak or complaint about water quality to Ohio EPA in recent years. The names of the persons interviewed were taken from Ohio EPA files. Although these cases are typical of leak incidents, they are not meant to represent the entire scope of leaking underground storage tank problems encountered.

- Martinsburg, Knox County. Until the mid 1970's, residents depended on private wells in a shallow sandstone aquifer. Complaints of gasoline odors in well water led to an investigation by Ohio EPA, which determined the cause to be improperly abandoned gasoline tanks that were leaking at closed service stations. Contamination was so widespread that the aquifer had to be abandoned, and the village was forced to develop a community water system with wells in another aquifer. A large portion of a \$2.1 million Housing and Urban Development community development grant was used for the water system.
- Gahanna, Franklin County (1981 to present). Gasoline fumes in a shopping center after heavy rains led to an investigation by the local fire department, which immediately closed the facility temporarily due to the explosion hazard. Subsequent geologic investigations to locate the source of the gasoline found two pockets of gasoline pooled on top of groundwater beneath the shopping center. The gasoline was traced to a nearby gas station, to a leak in a delivery line between the underground tank and a gas pump. It was determined that possibly as much as 2,000 gallons of gasoline escaped over several years. Because of the extreme contamination and the difficulty in removing the gasoline, the shopping center and two adjacent buildings were condemned and torn down. In 1988, a new shopping center is under construction on the site; it is reported that free gasoline has been found in trenches excavated for sewer lines.
- Dublin, Franklin County (January, 1984). An oil sheen was noticed on a creek for more than six months. The reporting homeowner eventually discovered an old, improperly abandoned heating oil tank during excavation for an addition to his house, which was determined to have been the source of the oil polluting the stream. The tank was removed.
- Gahanna, Franklin County (1984). Telephone company crews discovered gasoline in a series of manholes. The gasoline was so pervasive that it could not be removed to a concentration safe for the telephone cable and a half-mile length of cable had to be put aboveground to bypass the contaminated soil. The phone company recovered approximately one million dollars of the re-routing cost from the petroleum company which owned the

leaking tanks.

- Chester Township, Geauga County (mid-1980s ongoing to present). Suspected multiple leaks from service stations have contaminated 22 water wells serving both families and public facilities such as restaurants, directly affecting approximately 65 residents as well as business establishments. One well had a benzene concentration of 1,470 parts per billion (ppb; compared to the public water supply standard of 5 ppb). Other volatile organic compounds, including some components of drycleaning solvents, have been also detected in the wells. Assessments of the aquifer are currently ongoing. Affected residents are purchasing bottled water at their own expense for an indefinite period, until legal responsibility is determined and aquifer clean-up takes place. Because of the current situation and based on local geology, the local fire department now requires that all new or replacement tanks be of fiberglass, buried with artificial liners for secondary containment of possible leaks. The problem has not yet been resolved, and negotiations are currently ongoing with several potentially responsible parties to determine liability.

- Tippecanoe, Harrison County (June, 1985). A family found their well contaminated with kerosene in the springtime. Ohio EPA investigated and determined that kerosene was in the water, yet a source was not located. The well was pumped throughout the summer in an attempt to remove all of the contaminated water, during which time the family had to rely on a neighbor's well which was unaffected. At times the liquid being pumped was almost 80 percent kerosene. Finally, by autumn the contamination in the aquifer had been removed or had moved down-gradient with respect to the well, and the family started using their water supply again.

- Mingo Junction, Jefferson County (July, 1986). Gasoline fumes pervaded a neighborhood and several manhole covers were blown off the sewers. An emergency investigation by Ohio EPA found gasoline in the sewer system, and traced the gasoline back to leaking underground tanks at a service station. The leaking tanks were ordered replaced.

- Fairview Park, Cuyahoga County (October, 1986). A physician constructed an office building near a gas station. During excavation for the basement, discolored (black) soil was noticed, but was ignored. Since the building was completed, the basement smells of gasoline when the sump pump operates, spreading a gasoline odor through the medical offices. The owner/physician feels his practice has suffered because patients refuse to expose themselves to the odors. The gas station denies any responsibility.

Fact Sheet

UST PROGRAMS IN OTHER STATES

A number of states have seen the need to respond to the environmental problems posed by leaking underground storage tanks. They have adopted more environmentally protective regulations without waiting for the federal government. The 4.4 million Ohioans who use groundwater as their source of drinking water would benefit if similar regulations were adopted in Ohio. Listed below are some of the innovative measures other states have implemented that not only predate but also provide greater protection for drinking water supplies than can be achieved through the new federal requirements.

Secondary Containment: Nebraska, California, Delaware, Florida, Iowa, New York, New Hampshire, New Jersey, South Carolina, Texas and Vermont require secondary containment for some of their underground petroleum and chemical storage tanks. In most cases secondary containment is required in areas where groundwater is the source of drinking water. For example: new tank installations over the Edwards Aquifer in Texas must have double walled tanks and piping.¹ The aquifer supplies 2.4 million people with water and is the sole source of drinking water for the city of San Antonio. Tertiary containment (a double walled system and a liner) has even been required by authorities due to a tank's location over a highly vulnerable section of the aquifer. Some states require secondary containment within a certain distance of public or private wells, over aquifers which serve as the sole source of a community's water supply, or within an aquifer's recharge zone. In Maine, new tanks can not be installed within 2,000 feet of public water supplies and 300 feet of private wells. Illinois requires a buffer zone around basements and sewer lines.

Installer Certification: A common cause of a leak from an underground storage tank is poor installation resulting from installer error. Maine was the first state to institute a training and examination program for tank installers. Massachusetts also requires certification. Installer certification would also help protect owners and operators of UST systems, who are the ones directly liable for any damages caused by a release.

Clean Up Funds: Many states are creating funds to help pay for clean-up of releases from USTs. Funding mechanisms vary from state to state. They may be financed through general fund appropriations, bond issues, tank registration fees, or taxes on fuels. These funds also vary in the range of activities they will support. For instance, some only cover releases from abandoned tanks, while others cover any leak, some also cover compensation to victims of contamination or those who are otherwise injured. Some clean up funds are financed by a variable fee structure that provides incentives for owners to install better tanks and practice good management and maintenance.

Small Business Assistance: Some states are exploring programs that offer low interest loans to small business to help defray the costs of upgrading and replacing environmentally risky UST systems. Vermont has an UST incentive program in place that provides grants up to \$5,000 per site to help small towns and small businesses with the cost of tank replacement.²

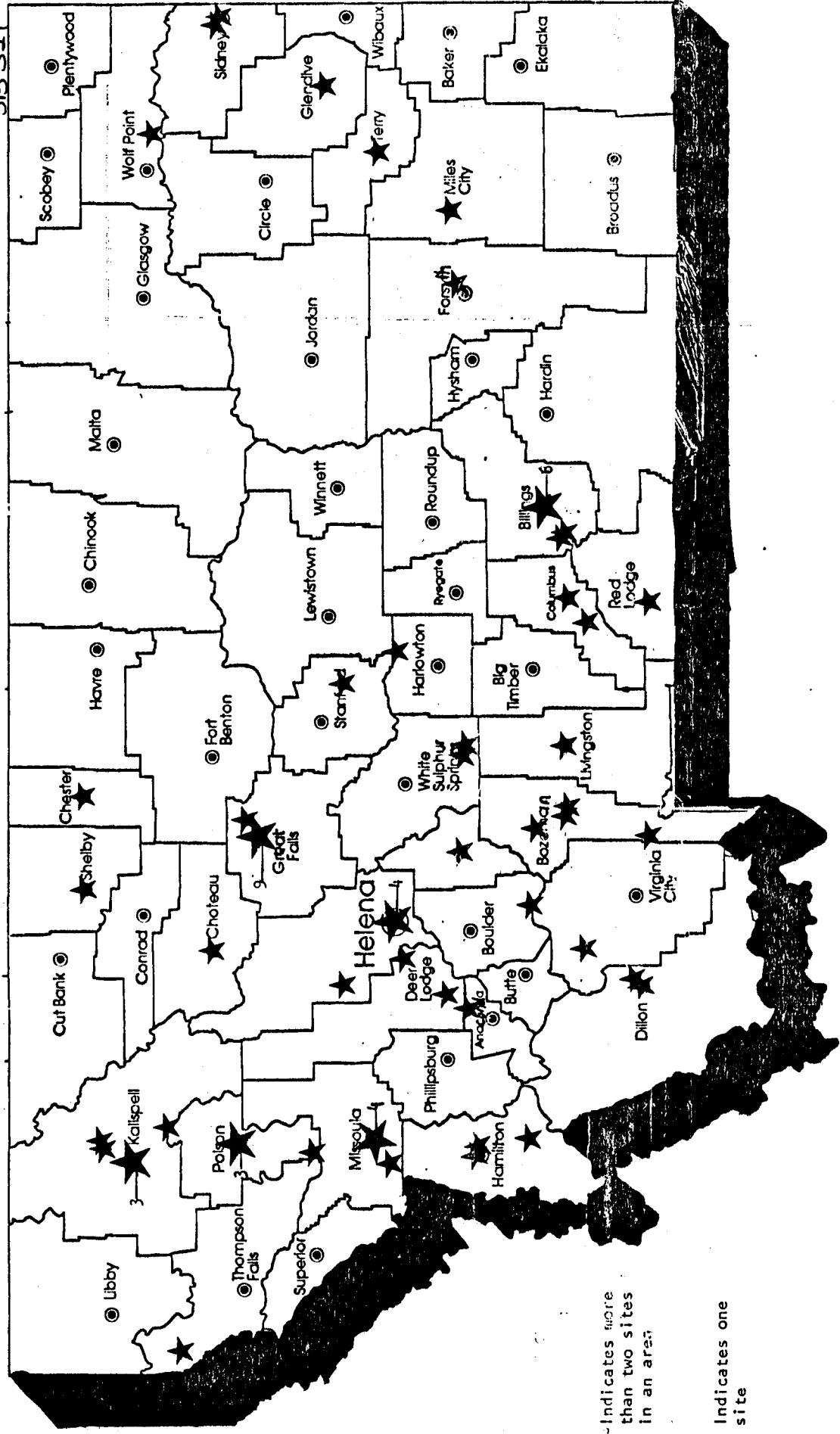
Sources:

- (1) Personal communication with staff of the Texas UST program, Texas State Water Commission, December 19, 1988.
- (2) "L.U.S.T.LINE," Bulletin 9, September 1988. A publication of the New England Interstate Water Pollution Control Commission.

* The purpose of secondary containment is to allow the release to be detected before it reaches the environment. Secondary containment refers to two barriers between the product being stored (petroleum, used oil or chemicals) and the environment. Double-walled tanks are common examples of secondary containment. A double-walled tank is simply a tank within a tank, that offers a space between the two barriers where a monitor can be placed to detect leaks. A synthetic liner in the excavation pit is another example.

Ex. #2
2-8-89
30321

UNDERGROUND STORAGE TANKS THAT HAVE LEAKED OR ARE LEAKING — AS OF OCTOBER 1988



★ Indicates more than two sites in an area
★ Indicates one site

STATE OF ILLINOIS
 EXHIBIT NO. 2-8-89
 DATE SB 331
 BILL NO.

REGISTRATION AND PERMIT FEES BY STATE
 (continued)

	California	Delaware	Florida	Illinois
What is the funding mechanism used?	Tank fee	Tank fee	Tank fee	Tank fee
When was the fee established?	1984	11/1/88	1987	1988
Who pays?	Tank owners	Tank owners and operators	Owners of above and below ground tanks	Tank owners
What is the fee structure and how often is it collected?	1. Annual permit fee that varies among local agencies. 2. Per tank state surcharge set annually by legislature and collected once in five years (current surcharge fee is \$56)	\$50 tank annual, \$30 tank for use permit of annual fee	1. \$50 tank initial registration fee 2. \$25 tank annual renewal fee	1. \$50 tank one-time registration fee 2. \$15 tank annual permit fee
Is there a minimum assessment?	NO	NO	NO	NO
Are there any restrictions on that which is assessed?	1. Annual permit fee may be waived for state, local, and farm tank owners (1100-1500 gal capacity)	State and county municipal tanks are exempt, restricted to petroleum tanks only	Petroleum tanks < 550 gal are exempt	Tanks < 1100 gal are exempt
Is there a cap on total revenues? (If so, what?)	NO	NO	NO	NO
Is there a sunset provision? (If so, when?)	Yes, local agencies with own ordinance cur. annually collecting state surcharge stop collecting on 1/1/90	NO	NO	NO
Are any changes planned or anticipated?	NO	Amendment to HB311 anticipated to create UST Response Fund	May be amended to include chemical tanks	Prevention and Cleanup programs
Used for prevention and cleanup program?	Prevention program	Prevention and Cleanup programs	Prevention program	Prevention program

REGISTRATION AND PERMIT FEES BY STATE

	Illinois	Illinois	Illinois	Illinois
What is the funding mechanism used?	Site activity fee	Tester registration fee	Tank fee	Tank fee
When was the fee established?	1988	1988	1986, revised in 1987	1984
Who pays?	Installers, removers and removers of USTs	Tank tightness testers	Tank owners	Tank owners
What is the fee structure and how often is it collected?	\$100/site activity, M.F. \$200/site activity Sat. Sun or holiday	\$100/tester annually	1. \$10 tank one-time registration fee 2. \$15 tank annual permit fee	\$3 tank annually
Is there a minimum assessment?	NO	NO	NO	NO
Are there any restrictions on that which is assessed?	Tanks < 1100 gal are exempt	Farm tanks, only collected on petroleum product tanks
Is there a cap on total revenues? (If so, what?)	NO	NO	NO	NO
Is there a sunset provision? (If so, when?)	YES, 1991	YES, 1991	NO	NO
Are any changes planned or anticipated?	NO	NO	NO	YES
Used for prevention and cleanup program?	Prevention program	Prevention program	Prevention and Cleanup programs	Prevention program

Ex. # 3
2-8-89
2064

REGISTRATION AND PERMIT FEES BY STATE
(continued)

	Louisiana	Maine	Nebraska	New Jersey
What is the funding mechanism used?	Tank fee	Tank fee	Tank fee	Facility fee
When was the fee established?	1985	1985	1986	1986
Who pays?	Tank owners	Distillers and marketers	Tank owners	Facility owners
What is the fee structure and how often is it collected?	1. \$25/tank one-time registration fee for chemical tanks \$15/tank one-time registration fee for petroleum tanks 2. \$15/tank annually for > 10000 gal. \$10/tank annually for 2000-9999 gal \$5/tank annually for 1000-1999 gal	1. \$50/tank one-time registration fee 2. \$25/tank annually for < 6000 gal \$50/tank annually for > 6000 gal	1. \$2/tank one-time registration fee 2. \$750/tank annually for < 2500 gal \$10/tank annually for > 2500 gal and < 5000 gal \$12.50/tank annually for > 5000 and < 7500 gal \$15/tank annually for > 7500 gal	\$100/facility annually for facilities with 1-5 tanks; \$15/tank additional for each tank over 5 at a facility
Is there a maximum assessment?	1. \$100/center on registration fees for petroleum 2. No ceiling on annual fees	--	NO	NO
Are there any exemptions or restrictions on that which is assessed?	Same as in EPA proposed regulations	--	NO	NO
Is there a sunset provision? (if so, when?)	NO	--	NO	NO
Are any changes planned or anticipated?	Leaking and changing to list on gasoline	--	Program will be reviewed A. "Sunclad" bid for corrective action will be reinitiated in 1988	NO
Used for prevention and/or cleanup program?	Prevention and Cleanup programs	Prevention program	Prevention and Cleanup programs	Prevention program

REGISTRATION AND PERMIT FEES BY STATE
(continued)

	New Mexico	New York	New York	Ohio
What is the funding mechanism used?	Tank fee	Tank fee (Hazardous Substances)	Facility fee (Petroleum)	Tank fee
When was the fee established?	5/1/88	1986	1983	1744
Who pays?	Tank owners	Tank owners	Facility owners	Tank owners
What is the fee structure and how often is it collected?	\$2/tank annually in 1988. Subsequent fees to be established by NM Environmental Improvement Board	\$50/tank every 2 yrs for < 500 gal \$100/tank every 2 yrs for > 500 and < 1100 gal \$125/tank every 2 yrs for > 1100 gal	\$20/facility every 5 yrs for < 100 and < 5000 gal \$150/facility every 5 yrs for > 500 and < 10000 gal \$225/facility every 5 yrs for > 10000 gal	\$20/tank every 3 yrs plus taxes penalties
Is there a maximum assessment?	NO	\$50,000/year*	NO	NO
Are there any exemptions or restrictions on that which is assessed?	Same as in EPA proposed regulations except heating oil tanks	Prior to 1986 and movable tanks are exempt	Facilities < 1100 gal are exempt	State and local government tanks are exempt
Is there a sunset provision? (if so, when?)	NO	NO	NO	NO
Are any changes planned or anticipated?	NO	NO	NO	NO
Used for prevention and/or cleanup program?	Prevention program	Prevention program	Prevention program	Prevention and Cleanup program

* Maximum assessment for facility with multiple tanks

2-8-89
3 of 4

REGISTRATION AND PERMIT FEES BY STATE
(continued)

	Oregon	Texas	Utah	Vermont
What is the funding mechanism used?	Tank fee	Tank fee	Tank fee	Tank fee
When was the fee established?	2/88	1987	1987	1997
Who pays?	Tank owners or operators	Tank owners	Tank owners	Tank owners or operators
What is the fee structure and how often is it collected?	1 \$25 tank one time permit application fee 2 \$25 tank annual compliance fee (1987 tank annually after 7/1/89)	\$25 tank annual maximum	\$25 tank annually*	\$25 tank annually
Is there a maximum assessment?	NO	NO	YES \$100 tank**	..
Are there any exemptions or restrictions on that which is assessed?	Tanks exempt by Subtitle I of RCRA are exempt	Permanently out of service tanks are exempt	NO	..
Is there a cap on total revenues? (If so, what?)	NO	NO	NO	..
Is there a sunset provision? (If so, when?)	NO	NO	Annual by state approval required	..
Are any changes planned or anticipated?	NO	NO	YES	..
Used for prevention and/or cleanup program?	Prevention program	Prevention and Cleanup programs	Prevention program	Prevention program

* Authority is \$100 tank, with public hearing required to raise the rate
 ** The 1988 Legislature provided for a regulatory tank fee to examine the entire state UST system. Accommodations on the fee will be made this year. A \$60 tank assessment has been proposed

Ex. #3
2-8-87
484

PETROLEUM PRODUCT ASSESSMENTS BY STATE

PETROLEUM PRODUCT ASSESSMENTS BY STATE
(continued)

	Florida	Maine	Maryland	Minnesota
What is the funding mechanism used?	Transfer tax on petroleum imposed into state	Oil transfer fee	Leaving fee on processed fuel	Petroleum tank release cleanup fee
When was the fee established?	1987	1985, revised 1987	1973	1987
Who pays?	--	Oil terminal facility licensees	Bulk oil handlers	Petroleum product distributors
What is the fee structure and how often is it collected?	\$ 100/barrel monthly*	\$ 0.3/barrel monthly for gasoline \$ 0.2/barrel monthly for refined petroleum products and by-products	3/4 cent/barrel monthly for oil**	\$ 10/1000 gal. petroleum
Is there a maximum assessment?	--	--	3/4 cent/barrel fuel fee	NO
Are there any exemptions or restrictions on that which is assessed?	--	Gasoline and liquid asphalt are not included in by-product fee	Only bulk oil products	
Is there a cap on total revenues? (If so, what?)	\$50 million	NO	\$750,000	NO**
Is there a sunset provision? (If so, when?)	1992	--	NO	NO
Are any changes planned or anticipated?	--	--	YES	NO
Used for prevention and/or cleanup program?	Cleanup program	Cleanup program	Prevention and Cleanup programs	Prevention and Cleanup programs

	New Hampshire	New Jersey	New Mexico	New York	Wisconsin
What is the funding mechanism used?	Oil transfer fee	New Jersey Soil Fund-transfer fee	Tax on gasoline and special fuels	Throughput fee	Petroleum storage cleanup fund fee on petroleum products
When was the fee established?	1978	1971	1968	1977	1987
Who pays?	Distributors, refiners	Tank owners	Distributors/refiners	Terminal operators with > 400,000 gal. capacity	Wholesalers, dealers (usually wholesalers)
What is the fee structure and how often is it collected?	\$ 0.25/barrel monthly	\$ 0.1/barrel annually	2/10 cent/gallon collected at point of sale	\$ 0.25/barrel monthly (\$ 0.1 for cleanup funds, \$ 0.25 for sold waste facilities)	--
Is there a maximum assessment?	NO	NO	2/10 cent/gallon	NO	--
Are there any exemptions or restrictions on that which is assessed?	NO	NO	NO	NO	--
Is there a cap on total revenues? (If so, what?)	\$ 2.75 million	\$ 50 million	\$ 10 million	\$ 25 million	To be determined
Is there a sunset provision? (If so, when?)	NO	NO	NO	NO	NO
Are any changes planned or anticipated?	May expand to include tank replacement costs in 1988	NO	NO	NO	YES, legislation under development
Used for prevention and/or cleanup program?	Cleanup program	Cleanup program	Cleanup program	Prevention and Cleanup programs	Cleanup program

* If the fund falls below \$5 million, the rate is increased to \$ 20/barrel. When the fund increases to \$15 million, the rate drops back to \$ 10 barrel. When the fund exceeds \$50 million, no excise tax will be collected until the fund falls below \$35 million.
 ** Collection would stop if the fund reaches \$750,000. It would be reinstated if the fund falls below \$500,000.
 # The fee will be collected initially during October and November 1987, until \$5 million is collected. Collections of the fee will be reinstated when the fund balance approaches \$1 million.
 ## The original collection will be \$5.6 million, which probably represents the fund's maximum amount.

Testimony in Opposition to Senate Bill 238

Senate Natural Resources Committee Hearing

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

Wednesday, February 8, 1989

For the Record My Name is Hershel Robbins and I Represent the Association of Oil, Gas and Coal Counties.

I speak today in opposition to Senate Bill 238, which suspends the powers and duties of the Coal Board and eliminates the coal severance tax allocation to the local impact account.

I strongly oppose this measure based on much the same reasons I testified to on Monday regarding Senate Bill 224. This bill removes the impact monies resulting in the taxpaying residents of the counties I represent having to make up this revenue loss. This bill also breaks a trust established by the original legislation that created the coal severance tax and turns our backs on the coal impact counties who must address the increased service needs that come with large scale coal development.

But even more so, this ill advised act fails to follow any logic or consistency when we consider the need to respond to the impacts of the very real increased coal development now occurring in Montana. This coal production, which reached a record 39 million tons last year, was the result of two logical moves. First, in 1985, the "window of opportunity" was proposed to temporarily reduce the coal severance tax on new coal production. This was followed in 1987 by the bill to permanently reduce the severance tax which resulted in the record coal production. The coal industry

Ex. #4
2-8-89
Pg 2 of 2

has shown us that in this case it was logical and consistent public policy to believe that the state's tax rate influence on price was critical to production and sales levels.

Now comes the paradox- Senate Bill 238- a bill that implies that there will be no more coal mining growth in the Montana coal counties in spite of the record production figures mentioned. An act that says the local impact account has no future reason to exist completely ignoring the long range human service needs associated with both the increase and decline of production. An act that completely ignores any logic or consistency let alone demonstrating a good common sense commitment. Logically then, this measure's only purpose is to seek out and destroy a proven program of rightful assistance to coal impacted local governments.

I urge this Committee to reject Senate Bill 238. Thank you.

ROSEBUD CONSERVATION DISTRICT

FORSYTH, MONTANA 59327

February 2, 1989

SENATE NATURAL RESOURCES

EXHIBIT 5

DATE 2-8-89

BILL NO. 513-238

Senate Natural Resource Committee
Capitol Building
Helena, Montana 59601

Dear Committee Members:

The Rosebud Conservation District would like to take this opportunity to urge that you do not support the abolishment of the Montana Coal Board.

It is our contention that grants, distributed by the Coal Board, to fund projects, etc., directly related to the impact of coal mining is fair and equitable and serves the State of Montana as well as the impacted areas.

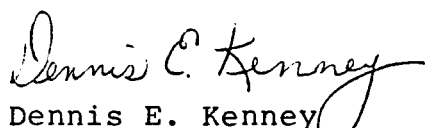
For instance, the Rosebud Conservation District found it necessary to use the Coal Board grants to continue the "Water Quality and Quantity Monitoring" in the coal mining areas of Rosebud and Big Horn Counties. Funding was sought elsewhere, but denied!

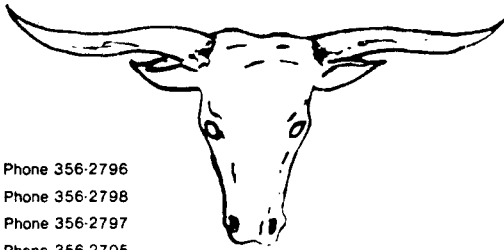
The purpose of this monitoring project, which has been going on for 18 years, is to substantiate changes in hydrologic conditions that are occurring in conjunction with mining. Results of this monitoring are continually being used by Federal, State, and industrial planners, and future developments of mineral extraction in Montana will be better planned and implemented with the use of this historical knowledge.

Without the Coal Board, and the grant program, we feel that projects such as this will not be funded and valuable continuity of information will be lost.

Therefore, we again wish to stress the importance of keeping the Coal Board intact. It is answering the needs of Montanans and we feel it should be allowed to continue to accomplish its' mission.

Thank you for your favorable consideration in this matter.


Dennis E. Kenney
Chairman



DAVID C. LLOYD, Superintendent Phone 356-2796
MARILYNN TRUSCOTT, District Clerk / Business Manager Phone 356-2798
CONNIE COPE, Payroll Clerk Phone 356-2797
MICHAEL V. LYGSTAD, High School Principal Phone 356-2705
CATHY BYRON, Middle School Principal Phone 356-2791
SCOTT SCHUMACHER, Elementary School Principal Phone 356-2986
DENNIS KOPITZKE, Activities Director Phone 356-2705

SENATE NATURAL RESOURCES
EXHIBIT NO. 26
D. 2-8-89
~~FORSYTH PUBLIC SCHOOL~~ ^{S.B. 238}
The Dogies
SCHOOL DISTRICT NO. 4
AND
FORSYTH HIGH SCHOOL DISTRICT
P.O. BOX 319
FORSYTH, MONTANA 59327

February 7, 1989

Thomas S. Keating, Chairman
and Members of
Senate Natural Resources Committee
State Legislature
State Capitol
Helena, Montana 59620

Dear Mr. Keating and Committee Member:

I am writing in opposition to S.B. 224 and S.B. 238. Our school system here at Forsyth has been greatly impacted in a most positive manner through the work of the Coal Board and the funds which they disbursed. Our community has been able to build an exemplary school system, a modern park complex, a swimming pool, jail, storm sewer system, etc. In all, grants totalling nearly 11 million dollars were given Rosebud County and its communities to offset the impact of coal development in our area. These facilities are the showcase of our community. They will benefit children for decades to come. Who can measure the impact that will have on our whole state of Montana?

My direct involvement with the working of the Coal Board came about in 1985 when we began work on a joint project here to renovate the park. The Coal Board was instrumental in first getting school and town to work together, then enhanced the partnership by providing matching funds to carry the project forward. I was very impressed with the sincere caring attitudes and professionalism displayed by those on the Board and employed by it. All were very helpful in getting the project moving. I understood, through community input, that this was the norm in dealing with the Coal Board. Certainly, it has the respect of our eastern Montana people.

My Board of Trustees and I feel the Coal Board should not be disbanded. Rather it should be funded fully. This can be easily done as more coal than ever is being mined. One hundred more coal trains went through Forsyth than last year. Ten million tons more. More coal means more impact and thus further underscores the need for the Coal Board. It is in place, it does its job well and should be allowed to continue.

Sincerely,

David C. Lloyd
Superintendent

RECEIVED

1-3-89

DEPARTMENT OF HIGHWAYS

1-9/1-1-3-89

2305-1-3-89

2-7-1-3-89



TED SCHWINDEN, GOVERNOR

2701 PROSPECT

STATE OF MONTANA

HELENA, MONTANA 59620

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 2-8-89

BILL NO. SB-238

December 29, 1988

County Commissioners
Powder River County
P. O. Box J
Broadus, MT 59317

AGREEMENT BETWEEN THE MONTANA
DEPARTMENT OF HIGHWAYS (MDOH) AND
THE TONGUE RIVER RAILROAD COMPANY (TRRC)

As a follow-up to the letter forwarded to you dated November 17, 1988,
attached is a consummated agreement for your records.

If you have any questions regarding this proposed action, please contact me at
444-6103.

Don W. Cromer

DON W. CROMER, SUPERVISOR
RURAL PLANNING SECTION

DWC:cg:2u

Attachment

cc: Larry Williams
Bruce Russell

Ex. # 7
2-8-89
SB238

AGREEMENT

This agreement is between the Tongue River Railroad Company (TRRC) and the Montana Department of Highways (MDOH). Both parties agree to the matters which are contained in this document.

The TRRC is planning to construct a rail line from Miles City southward and has received approval to construct the line from the Interstate Commerce Commission. The proposed alignment will involve four encroachments on Interstate and Primary facilities maintained by the Montana Department of Highways, and three encroachments on Secondary facilities maintained by either Powder River or Rosebud County. The TRRC has filed preliminary applications with the MDOH for these encroachments.

The Montana Department of State Lands has been designated the lead agency for the preparation of a Preliminary Environmental Review (PER) Document, which will assess the possible impacts from issuance of permits from various state agencies including, but not limited to MDOH, for the proposed Tongue River Railroad. The PER, when finalized, will supplement the Draft and Final Environmental Impact Statements prepared by the Interstate Commerce Commission for this proposed project.

Relative to MDOH concerns regarding permits to cross state Interstate and Primary highways and county Secondary roadway facilities and related environmental issues addressed in the PER the following is agreed upon.

1. Confirming the discussions held at a meeting on August 26, 1988, with MDOH and TRRC personnel, it is agreed that the preliminary encroachment applications which have been submitted to date have been submitted for informational purposes only. It is also agreed that the preliminary encroachment applications, together with this signed agreement, are sufficient to meet MDOH concerns relative to the completion of the PER.
2. At the August 26, 1988 meeting, TRRC personnel stated that the highway milepost locations for railroad crossings in final encroachment applications would not vary by more than 10 feet from milepost locations identified in preliminary encroachment applications. As mileposting in preliminary applications is given in hundredths of a mile (52.8'), which is already greater than the amount of milepost variance identified by TRRC personnel, it is understood that the milepost locations in final encroachment applications will not vary from those given in preliminary encroachment applications. It is understood by TRRC that if milepost locations in final encroachment applications vary from those given in preliminary applications, the areas of MDOH concern in the PER may have to be readdressed. In other words, altering milepost locations in final encroachment applications could necessitate a new PER.
3. It is agreed that MDOH approval of encroachment applications for those roadways under MDOH jurisdiction will be based on final engineering drawings to be submitted for review to the MDOH by TRRC. Final approval of encroachment applications by MDOH is a prerequisite to beginning construction on any of the highway crossings.

4. It is agreed that approval of encroachment permits for those Secondary roadways being maintained by the counties will not occur until final engineering drawings and corresponding encroachment permits from TRRC are submitted to and approved by the respective counties. Permits to cross Secondary roadways shall be finalized and approved by the respective counties before TRRC initiates construction on any of the Secondary roadway crossings.

Although the MDOH does not exercise authority to approve or reject encroachment applications on any portion of these Secondary routes, Federal Aid and state money has been invested into the development of these routes, and the MDOH is charged with protecting this investment. Consequently, the TRRC will submit to the MDOH all final engineering drawings for crossings of Secondary roadways being maintained by the individual counties, and after review the MDOH will submit the drawings and comments to the relevant county.

5. The TRRC must submit for MDOH approval a traffic detour and signing plan that is sufficient to protect the traveling public and maintain traffic flow through the proposed construction sites before any encroachment application will be approved.
6. It is agreed that the TRRC will comply with the following design criteria on final TRRC designs submitted for separation structures and associated highway approaches where the rail line crosses all MDOH and county Secondary facilities. These criteria are set out below:

- I. ROADWAY DESIGN: The TRRC will conform to design criteria specified in the "Montana Department of Highways Road Design Manual," and will follow design and construction criteria specified in "Montana Standard Specifications for Road and Bridge Construction," 1987 and all supplemental specifications to it, and the AASHTO manual A Policy on Geometric Design of Highways and Streets, 1984.

- a. DESIGN SPEED: For the crossing of I-94, a design speed of at least 70 m.p.h. will be used. For all crossings of Primary System routes, a design speed of at least 60 m.p.h. will be used. For all crossings of Secondary System routes, a design speed of at least 50 m.p.h. will be used.
- b. HORIZONTAL AND VERTICAL ALIGNMENT: The TRRC will follow "desirable" standards for horizontal and vertical design criteria as they relate to the appropriate design speed as specified in the "Montana Department of Highways Road Design Manual."
- c. CUT AND FILL SLOPE RATIOS: Cut and fill slope ratios will be designed to be in conformance with the "Montana Department of Highways Road Design Manual."
- d. The TRRC will submit all design calculations, design plans and contract special provisions for structures crossing over the rail-road to the MDOH for approval and retention.

- II. STRUCTURE DESIGN: Where roadways cross over the railroad, separation structures will be designed by TRRC to MDOH standards and specifications. The TRRC will follow design and construction criteria specified in "Montana Standard Specifications for Road and Bridge Construction," 1987 and all supplemental specifications to it, and the AASHTO Standard Specifications for Highway Bridges, 1983 and all amendments.
 - a. STANDARD BRIDGE CLEARANCES: Where the railroad crosses over the highway, the separation structures will be designed to TRRC standards and will provide minimum horizontal and vertical highway clearances as specified on standard sheet #1202, (page 12-3) of the "Montana Department of Highways Road Design Manual."
 - b. The TRRC will submit all fabrication drawings, design calculations, design plans and special provisions for structures crossing over the railroad to the MDOH for approval and retention.
- 7. It is agreed that the construction of this project is for the sole benefit of the TRRC and that no benefit will be derived by the MDOH. Because of this, the parties agree that the MDOH and the involved counties will bear none of the costs incurred in the development, construction or operation of this project.
- 8. For separation structures carrying MDOH roadways over TRRC rail lines the MDOH will let the contracts for the construction of these structures and associated approach work and administer these contracts in accordance with normal MDOH procedures. All costs incurred in accomplishing this end will be solely the responsibility of the TRRC. MDOH agrees to use its best efforts to administer such contracts in a professional, cost efficient and timely manner.
- 9. The contracts for TRRC separation structures that carry Secondary roadways over TRRC rail lines will be let and administered by the MDOH in accordance with normal MDOH procedures. All costs incurred in accomplishing this end will be solely the responsibility of the TRRC. MDOH agrees to use its best efforts to administer such contracts in a professional, cost efficient and timely manner.
- 10. The TRRC will provide to the MDOH for review an estimate of construction costs for each separation structure to be let, 90 days prior to the projected contract letting date.
- 11. TRRC agrees to pay to MDOH the costs of the above-referenced contracts within 30 days of receipt of each claim submitted by MDOH. In addition, prior to the signing of each of the contracts, TRRC shall furnish a corporate surety bond for the benefit of the project in the name of MDOH and in the amount of the contract plus estimated charges for contract administration, construction engineering and contingencies. If the Department approves any change order which is necessary for the construction of the project and which results in an increase in the contract amount or if other necessary costs are incurred relevant to the project, the TRRC shall also pay such claims within 30 days of receiving notice.

2-8-85

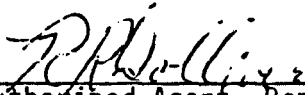
If any of the above payments are not paid within 30 days, except in the case of a legitimate dispute, the bond will be forfeited and the proceeds made payable to MDOH.

12. Because the construction contracts will be public works contracts, they shall be subject to the requirements of Chapters 1 and 2, Title 18, MCA, specifically, bidder preference, bid security, performance bonds, and the Little Davis Bacon Act. In case of a contractor claim, TRRC shall be responsible for all costs of defense and for any final award or settlement unless the reason for the claim was the result of negligence by the MDOH.
13. For TRRC structures over MDOH facilities, the TRRC will notify the MDOH at least 60 days prior to any construction within highway right-of-way of the anticipated construction dates. The MDOH may have inspector(s) present during the construction of any facilities within highway right-of-way.
14. The separation structures carrying Interstate and Primary highways over TRRC rail lines shall upon completion become the property of the MDOH and the TRRC will submit original drawings of these structures to the MDOH for permanent retention.
15. The separation structures carrying Interstate and Primary highways over TRRC rail lines will be maintained by the MDOH. The cost to repair damage to MDOH facilities which is the direct result of TRRC operations shall be paid by the TRRC. The necessary repairs and means to accomplish such repairs will be determined by the MDOH. Repair of damages to highway facilities which are the result of highway operations will be the responsibility of the MDOH.
16. In the event that it is determined through normal bridge inspection and sufficiency considerations that structures carrying MDOH facilities over TRRC rail lines require rehabilitation or replacement, the cost of this construction shall be paid by TRRC and replaced or rehabilitated facilities shall conform to highway design standards and specifications in effect at the time of construction. Work to rehabilitate or replace facilities will be administered by the MDOH.
17. The ownership of separation structures that carry TRRC facilities over MDOH roadways will be retained by TRRC with the total responsibility for these structures borne solely by the TRRC.
18. Permission must be acquired by TRRC before entering MDOH right-of-way to perform maintenance on separation structures owned by the TRRC. It is recommended that TRRC ask for permission 30 days prior to the intended work to assure adequate time for MDOH to consider and respond to the request. Emergency maintenance requests will be responded to promptly by the MDOH.
19. In the event of abandonment of railroad facilities or cessation of railroad operations, the MDOH will decide whether crossing facilities involving MDOH right-of-way will remain in place or if they will be removed. If the MDOH determines that these facilities must be removed,

then highway facilities shall be reconstructed to the grade and alignment that existed prior to construction of the TRRC crossing. Reconstructed facilities shall conform to highway design standards and specifications in effect at the time of reconstruction. The cost of removal of crossing facilities and reconstruction of MDOH facilities shall be paid by TRRC. Such structures will then become the property of the TRRC. Work to restore MDOH facilities will be administered by MDOH.

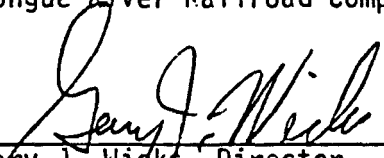
- 20. This agreement will take effect immediately upon execution by an authorized representative agent or general partner of the Tongue River Railroad Company and the Director of the Montana Department of Highways.
- 21. This agreement may not be changed or amended except in writing in a document signed by both parties.
- 22. This agreement will be null and void if the TRRC has not initiated construction on any of the crossings within five (5) years of the date of signing by an authorized representative, agent or general partner of the TRRC.

Dated: December 22, 1988



 Authorized Agent, Representative, or
 General Partner of
 Tongue River Railroad Company

Dated: Dec. 23, 1988



 Gary J. Wicks, Director
 Montana Department of Highways

NORTHERN PLAINS RESOURCE COUNCIL 2-8-89

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

Bob Dozier NPRC

SB238 Oppose

This bill will eliminate a board that has been operating to the advantage of all Montana. The eastern counties of the state are sparsely populated. When the coal industry first began its expansion these counties were not in a position to deal with the increased problems. Most of this area is farm and ranch country. I remember in 1968 I spent two days in Colstrip. At that time the only place in town you could eat was the local bar, and they only served from 5pm till 8pm. They brought drinking water in a milk can, and the mens room was out back. Because I had to stay over night I either drove back to Forsyth or slept in my truck. Today we see a regular city there in the shadow of the massive generating facilities. It wasn't too long ago that the locals knew every one for miles around and all their kids and what kind of car they drove. Today there are a lot of strange faces and a lot more traffic on that road. The coal board has been a major force in providing for a smooth transition.

We have become a generation of planners. No longer will we accept the environmental and social problems of the past. Today we provide for the present and plan for the future. The coal board has played an important role in this. As a mediator between the industry and the local communities they have worked hard. This is an ongoing process, not something that can be stopped and started at will. Many of the projects take years from planning to completion. This legislature cannot afford to eliminate this important board. Without these people on the front lines dealing with the real world the state will spend more money to overcome their loss. To eliminate them would be penny wise and pound foolish. In the words of Ann Landers, "if it ain't broke don't fix it".

EXHIBITS WERE MISNUMBERED. THERE IS NO EXHIBIT # 9 FOR THIS DAY.

Board of County Commissioners

POWDER RIVER COUNTY

P.O. Box J

Broadus, Montana 59317

Phone (406) 436-2657

SENATE NATURAL RESOURCES

SENATE BILL NO. 10

DATE 2-8-89

BILL NO. SB 338

F. F. Huckins, Broadus

Ted Fletcher, Ashland

Gerald Himelspach, Powderville

Statement

Informal Conference
Office of Surface Mining
Montco Mine
July 16, 1985

We would like to thank the Office of Surface Mining for granting us this hearing. We are here to address our fiscal concerns on the Montco Mine. We are not going to ask you to deny the permit as we feel industry and development is needed in eastern Montana. Due to the raid of the coal board funds by the last legislature the future grants from the coal board appear in jeporady. If this lack of funding comes to pass, we feel we would need a commitment from Montco to provide needed services for impacts created by the Montco mine development. The mine development will be in Rosebud county. The Montco E.I.S. predicts a 2.2 Million fiscal deficit for Powder River County. With the declining oil production, our valuation has dropped 27 Million the last 2 years and there is no way the financially strapped agriculture producers can pick up this fiscal short-fall.

In closing, we are saying Powder River County can't and won't be able to handle the fiscal impact from the Montco mine without help from the coal board or Montco.

Proposed Amendments to SB 223
First Reading Copy

Exhibit 11

2-8-89

bill no. SB 223

1. Page 6, line 25.

Following: "use"

Strike: remainder of page 6, line 25 through page 7, line 3 in
their entirety

Insert: "engaged in any aspect of the production, storage, sale,
delivery, or furnishing of heat, electricity, or natural gas for
ultimate public use that:

(a) has a legally protected service area or a body of
customers for whom the person has a conventional utility mandate
to serve loads; or

(b) is a wholesale energy supplier or transporter with
requirements contracts, participation agreements, or other
contractual agreements to serve persons specified in subsection
(13)(a) for the energy form to be produced or transported by a
proposed facility."

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Irvin, M. Robbins	Big Horn & Park Counties	238		✓
Kurtz, Bob	Big Horn County	238		✓
Gene H. Kurtz	Fourth - member mt. Coal Board	238		✓
Robert Dohler	N.P.R.C.	238		✓
Roger Knapp	House District #27	238		✓
Tom Olson	Self	238		✓
Fritz Zettel	CITY OF HELENA FIRE DEPT.			
Monty E. Long	Helena, Chairman Mt Coal Bd.	238		✓
Tom Fletcher	Powder River County Commission	238		✓
Jennis Hemmer	Meridian Minerals	238		✓
Steve Visican	Montana Petroleum Mfg.	321	✓	
Larry Mitchell	DHES	321	✓	
Duane Roberts	DHES	321	✓	
Doug Abehin	Black Diamond Products	321	✓	
Jim Michter	Mt. Coal Board	238 321	✓	
Chris Kaufmann	MEIC	321 238	✓	✓
Tim BERGSTROM	MT. STATE FIREMENS' ASSOC	321	✓	
Lanette Fallon	MPA	321		
Gary J. Carroll	mt Dept. of Justice	238		✓
Bill Davidson	M M C A	321		
ROBERT CLARK	H. D. 31	238		✓
Peggy Hooglund	Baselund CD	238		✓
Don Ingers	Mt Chamber of Commerce	331	Monitor	
Phil Campbell	Mont. Ed. Assoc.	238		✓
Tom Ezzey	NERCO	238		✓
Jim [unclear]	[unclear]	238		✓

