

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Senator Thomas F. Keating, Chairman on
February 10, 1989, at 1:00 p.m. in Room 405 of the
State Capitol

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Gail Kuntz and Helen McDonald

HEARING ON SB 327

Presentation and Opening Statement by Sponsor: Tom Keating,
Senate District #44, Billings SB 327 sponsored this
bill dealing with the Montana Environmental Policy Act.
This act controls the effect of MEPA on the permitting
processes of state government. The way the law has been
interpreted is that actions of state government are
major actions unless deemed minor actions by the
department or the agency. This bill reverses that
attitude by stating that all of the permitting actions
of government are minor actions. On a case-by-case
basis, the department can find that an action or a
combination of actions constitute a major action
significantly affecting the quality of the human
environment and require a full environmental impact
statement. This process would then be reviewed through
the Montana Administrative Procedures Act.

In the past, a department issuing a permit had a
tendency to avoid making a decision if it thought
their decision would be challenged. They didn't really
want to make a decision on a major action because then
they would have to go through the whole environmental
impact process, which discourages the industry from
undertaking the project they were working on. But at

the same time, the agency doesn't want to make the determination that something would be a minor action and then be challenged in the district court. Now the plaintiff that appeals this decision in the court can state this would be a major action, file a complaint with a few phrases saying why they think it would be a major action, and then the department as the defendant has to prove that the action would not be a major action and that it does not need a full environmental impact statement. The proof and the evidence would be the burden of the defendant rather than the plaintiff, which is just the opposite of our judicial system. When someone is charged with a crime and becomes a defendant the burden is on the plaintiff and the party is innocent until found guilty. In the present MEPA process, the complainer or the appellate to the minor action decision merely has to make a statement that the action is a major action. The state staff then has to gather all of its resources and spend time gathering data and evidence to prove in court that it is not a major action.

If this bill is adopted, there would still be the challenge available in the district court. The burden of proof would be on the plaintiff and the department would not have to expend funds in order to prove the validity of its original decision.

One case of the present problems was the permitting of the CENEX well up on the North Fork. The department spent 10 months preparing a preliminary environmental review and determined that it was not a major action. There was a three-page complaint filed in district court and it took the judge three years to determine that the department was in error and it should have been a major action. That kind of activity puts a real damper on all industry. The department feels it is going to have to pay a lot of expenses unnecessarily and then have a district judge who has no expertise and no training in the permitting activities make the decision of what an operator will have to go through to get the permit.

Senator Keating noted that when the Department of Agriculture was faced with the endrin problem, it said that use of endrin was a major action and prepared a full environmental impact statement. The department determined that endrin was a killer, was toxic and very dangerous and as a consequence endrin was banned in the state of Montana. The department with their own experts made a valid decision, which indicates that Montana has experts on its boards and staffs to make

proper decisions on whether something should be a major or minor action. Thus, Montana should avoid as much as possible turning these kinds of decisions over to the district courts.

Senator Keating summarized by state this bill would reverse the present situation somewhat while protecting the environment, protecting the public's health, and protecting the state. The departments and staff are well qualified and the boards and commissions are experts in their fields. They can make proper decisions based on the data they receive.

This bill would also lessen the potential for challenges in the court and lessen the cost. Finally, this bill would be an invitation to more activity and development.

List of Testifying Proponents and What Group they Represent:

Jack Salmond, Western Environmental Trade Association
Doug Abelin, Montana Oil and Gas Association
Janelle Fallon, Montana Petroleum Association
James Mockler, Montana Coal Council
Don Allen, Montana Wood Products

List of Testifying Opponents and What Group They Represent:

Thomas M. France, Montana Wildlife Federation
Bob Dozier, Northern Plains Resource Center
Kim Wilson, Montana Chapter Sierra Club
Jim Murry, Montana State AFL-CIO
Joe Gutkoski, Gallatin Wildlife Assn.
Richard Parks, Northern Plains Resource Council
Janet Ellis, Audubon Society
Gene Federson, Mont. State Construction & Building Trades
Jeff Renz, Montana Environmental Information Center

Testimony:

Jack Salmond, Western Environmental Trade Association, submitted written testimony. (Exhibit #2)
Doug Abelin, Montana of Oil and Gas Association, stated the intent of this bill is good and deserves serious consideration.
Janelle Fallon, Montana Petroleum Association, stated that she was not going to offer a whole bunch of horror stories of delays or unnecessary costs that are heaped on projects in the state. This bill helps separate major and minor to the extent that it should improve the state's ability to defend against the challenging

action and is highly worthy of the committee's consideration.

James E. Mockler, Executive Director of the Montana Coal Council, stated that this bill is a major policy decision as far as the legislature goes. With the policy now, a \$.25 stamp can virtually cost an industry a million dollars and a year's time because the burden of proof would be on them. The industries need to have an EIS every time they want to expand in a new area. This is not really meaningful to any member of the public and has done nothing except cause the industry a lot of money and time. Environmental impact statements are costly and time consuming, and the only purpose they serve is to discourage someone from getting into mining. A major action, such as a new mine, should have an EIS but on relatively minor decisions an EIS should not be necessary. The departments in state government are frankly afraid to do anything else. Then the department has to go through a lengthy process having to prove that it made the proper decision before industry can proceed. It is time to leave those decisions to the departments and those that wish to appeal a department's decision should and spend their own time and effort.

Don Allen, Montana Wood Products, stated the expenses should be paid by those who challenge actions. To make it easier for decisions to be made by the departments in cases which are not major actions, an EIS should automatically not be required. This bill would simply help make that possible and also shift some of the burden to those that want to delay actions just for the sake of delay.

Thomas France, attorney with The National Wildlife Federation, submitted written testimony. (Exhibit #3)

Jeff Renz, MEIC, stated that environmental policy acts just don't exist for the enjoyment of people like the Montana Environmental Information Center. About five years ago a survey was conducted of state environmental policies acts. Six states extend their environmental policies acts to acts of local government. Montana is not one of them. Most of the state apply their environmental policy acts to ministerial actions. Nearly all the states apply their environmental policy acts to any kind of state permit. Montana requires essentially a pure state permit. Of 24 environmental policy acts across the country in 1984, Montana was one of the least affected by its law.

Janet Ellis, Montana Audubon Society, stated that SB 327

assumed that private industry would be exempt from MEPA unless an agency at its discretion, on a case-by-case, basis decides otherwise. Giving agencies discretion in enforcing MEPA is not a good idea. MEPA will be used more or less depending upon the governor in office. By making compliance with MEPA discretionary, SB 327 also discourages state agencies from doing any kind of environmental review of private projects.

Richard Parks, Northern Plains Resource Council, stated the existence of MEPA as it stands guarantees that industries will be held responsible.

Gene Federson, Montana State Building and Construction and Building Trades Council, claimed that this law was a good law for industry, the environment and the workers.

Jim Murry, Montana State AFL-CIO, submitted written testimony. (Exhibit 6)

Kim Wilson, Sierra Club. (Exhibit #5)

Tony Schooner, Montana Wildlife Association, stated that last year he was appointed to the governor's noxious weed board and money was dispersed all over the state primarily to spray noxious weeds on grasslands and farmlands. The board voted yesterday to apply for an environmental statement. When spraying farmland and grasslands it didn't seem to be too much of a problem but now subdivisions and urban areas are being sprayed. To do away with our environmental laws would be a license for a multimillion dollar lawsuit.

Stan Bradshaw, Trout Unlimited, was employed at a state agency that was involved in at least two lawsuits. The burden of proof was clearly on the plaintiff and a major part of the agency's effort was to make sure the plaintiff carried out or failed to meet that burden. This action was no different than other civil suits. Mr. Bradshaw then stated that an EIS is not triggered when an action is a major action. An EIS is triggered when there would be a major action that significantly affects the quality of the human environment. If significant effect is not shown, there is no EIS. The process regarding the discretionary decision under this bill involves a declaratory ruling under the administrative procedures act.

Jim Jensen, MEIC, stated stated if this bill passes, the best thing to do would be to repeal MEPA.

Questions From Committee Members: Senator VanValkenburg

stated that at one time he was foolish enough to think that issuing a liquor license at the edge of a wilderness area constituted major state action. He ended up in front of Judge Bennett on that issue who pretty well laughed him out of court. The judge was very kind about it but he thought it wasn't a major state action and if he said it was it would probably bring an end to the MEPA. Senator Keating's comment that the burden of proof is on state agencies to demonstrate that something is not major action wasn't borne out in his experience.

Senator Keating stated that in the case on the North Fork it appeared that the burden of proof was on the Department of State Lands rather than on the complainant. He hears from people in the industry who are seeking the permits that pressure is there and that dampens the desire to function in the state.

Senator Van Valkenburg wondered if the governor has a position on this bill.

Senator Keating answered that he didn't know whether the governor knows about this bill. He has not discussed it with him. This bill was his idea and has been working on it for a year.

Senator Weeding noted that that 17,000 permits have been applied for and 15,000 granted. Could you relate some of horror stories that Janelle Fallon mentioned?

Doug Abelin, Montana Oil and Gas Association, answered that he did not know of horror stories, but felt that doing business was becoming more complex.

Senator Yellowtail said he was astonished with Mr. Mockler's statement that there was one purpose only for MEPA, and that purpose is to consume time and money and cause delay.

Senator Keating answered that there is a valid reason for MEPA, it is to protect the natural and human environment of this state. All that the proponents of this measure are perceiving would be the way it is now, the EIS works as a damper against investment and productivity in the state. The protection is still there throughout the law and with the department staff and boards. But the window of opportunity is there for people not to be challenged frivolously from time to time.

Senator Yellowtail said he thought that Ms. Ellis stated

that twice in seventeen years there have been challenges out of 2,632 environmental assessments.

Senator Keating replied that those numbers are nice and there are all kinds of permits out there that are very insignificant insofar as the impact on the environment. But in comparison if you'd been punched in the nose just once by somebody, you are a little bit hesitant to put yourself in the same position to get punched again. That is what is happening here. Every once in awhile out of the clear blue sky there is a frivolous lawsuit brought under MEPA that makes it worrisome for somebody who's getting ready to risk several million dollars or a few hundred thousand dollars in a development project. Doug Abelin talked about the hesitation of people in the industry saying who don't want to get into a project because of potential of that one challenge.

Senator Yellowtail wondered when Senator Keating used the words "frivolous challenge" was he referring to the two that were filed.

Senator Keating answered that one was a frivolous challenge.

Sen Yellowtail assumed that the challenge was not upheld.

Senator Keating replied it was upheld by the court and that was the frightening part. Ten months of expert data gathering by the DSL, the environmental experts, the technical experts in government, and all of that evidence was turned over to the judge. The judge ignored all the evidence and came out with a decision to deny what the DSL experts had done. The judge had no basis because he was not an environmental expert.

Senator Yellowtail asked if that case was appealed to the Supreme Court.

Senator Keating replied that it is in the Supreme Court at the present time.

Senator Jenkins wanted to know about that infamous pipe line and Mr. Federson's group got it stopped under this program.

Gene Federson answered that the pipeline was up and running. There were two cases and one was the environmental case that concerned the environment, social impact and economic impact on the workers. The judge tabled that under MEPA and that shut the line down. There was another case with the public service commission that

then came in and gave them time to send in their experts from the federal government and their own experts. After that case was over, the companies involved agreed to build an environmentally safe pipelines and the companies also agreed to tear up the biggest share of what already was in and proceed with safe measures for the rest of the line. He understands that the pipeline is now operating.

Senator Jenkins wanted to know how did it all of a sudden become environmentally safe.

Gene Federson answered that before the judge shut the project down, it had gone through a number of rivers and streams, polluted them and basically tore up the countryside. Not only did the companies have to back and fix that stuff but in the future along the pipelines up in Augusta, they had to take certain environmental construction steps to make sure they didn't hurt the environment. The PSC is the one that said you will build a line with certain standards for public safety.

Senator Jenkins asked if the pipeline was held up for two years.

Gene Federson stated that was correct. Building pipelines is a very sophisticated and scientific thing. There are certain ways to build them and put them in the ground so that they don't disturb the water and the soil quality. There's the problem of knapweed along the pipelines out of western Montana.

Senator Jenkins stated they were safer without the holes drilled in the inside of the pipe.

Gene Federson answered "yes".

Senator Jenkins asked if the pipeline was finished and then held up.

Gene Federson answered "yes".

Senator Eck stated that Senator Keating has suggested that MEPA as written might scare out some investors. She wondered if we might attract some good investors because we do have a good environment.

Lee Strancek, Trout Unlimited, responded that it would be his opinion that people and companies can see the handwriting on the wall and the way to do business in the future would be in an environmentally sound

fashion. The companies who bear some of up front costs are the ones that will succeed.

Senator Jenkins wanted to know how much this law has increased our business or population in the last five years.

Lee Strancek answered he wasn't sure if MEPA has increased the population and wondered what Montana is interested in is the well being of the current population. He asserted Montana is interested in the economic status of people who are currently holding wage earning jobs now in the state.

Senator Jenkins said Montana's population has been dropping and it might lose one congressman. Montana has lost a major portion of it's working population and if MEPA is so good for business, where is it showing up?

Lee Strancek answered that it is hard to see what would have happened if, for example, Montana hadn't had MEPA. The cost of environmental protection should be an accepted part of doing business because if it is not, then that cost of doing business on somebody else. For example, who will pay for the toxic situation in Livingston? The company that did it isn't going to bear the cost but someone else is so there is a question of cost transfer. The general population is better off if a company that comes in is committed to sound environmental policies.

Senator Eck stated that in Bozeman the last 4 or 5 years almost every single company that came in did so because of Montana's environment and living conditions.

Doug Abelin stated in four years a thousand people in the Cut Bank area have left. He has 2 of over 200 houses for sale. He is here lobbying for the oil and gas industry not only to keep his business alive but to help keep that portion of the industry alive. Seventy percent of the RIT money is oil-based money. This state doesn't want to lose the industry's benefits but does not want to condone the industry. He would not defend the industry in past years, but laws have improved on that, by support of the industry and the environment. He thinks the people that are trying to use these laws are creating adverse effects.

Senator Weeding wondered if SB 327 should pass, would it affect the way the DSL or FWP do their land evaluations and permitting?

Senator Keating answered the procedures would still be there for all of the environmental assessments and reviews, and for the environmental impact statements.

Senator Weeding wanted to know if the change would affect the federal agencies under MEPA.

Senator Keating answered that MEPA has no effect on the federal government.

Senator Weeding wanted to know if all this bill would really pertain to those actions on private lands rather than public lands.

Senator Keating stated this bill affects all lands in Montana.

Senator Weeding thought he heard in the other debate that extending the oil and gas exemption from MEPA really had no effect on how state lands does their leasing. They still have a check list they go through.

Senator Keating answered that all this does is lessen the potential for challenge in the district court.

Senator Van Valkenburg asked what would happen if an agency's determination that something was not a major state action under this bill was overturned by the district court. Does that mean the district judge decides that it's a major state action?

Senator Keating said it doesn't mean that at all.

Closing by Sponsor: Senator Keating stated that if one considers the proponents and opponents, the backgrounds, the endeavors and the industry of those two categories, he thinks one will see that there is an extreme difference of opinion in what's being done and what is being attempted. There are those who take risks with capital investment to conduct their business in the state of Montana for the benefit of the state's economy. People of Montana say that MEPA weighs heavily on their decisions to invest. On the other side, you hear those who are not engaged in some of these extractive industries that are impacted by MEPA. It is interesting that the union leadership appeared here in opposition to this bill when its obvious from the statistics in the late 70's, when 40% of the working people in the state belonged to the union, and now only 10% belong to union. Moreover, the working force has dropped by some 20 or 30 thousand jobs in this state.

Senator Keating thinks it should be obvious that the rules and regulation promulgated in the 70's have impacted industrial and exploratory investment and have driven investment away to the extent that we lack jobs, productivity, and a good sound economy. Have our regulations been too stringent? Are we driving away capitol investment and opportunity? If the legislature adopts this measure it will still protect the environment but you will encourage investment and a better economy.

Senator Tveit closed the hearing on SB 327.

EXECUTIVE ACTION

There are no bills on Monday, February 13, but action will occur.

Senator Keating noted that SB 211 is Senator's Pinsoneault's bill which was voted on and with Senator Eck's vote it was a tie. This matter will be discussed again on Monday.

SB 223 SB 223 is the Major Facilities Siting Act bill. In the last meeting it was amended to define a "utility". (Exhibit 7)

Larry Tveit made a motion that SB 223 do pass as amended.

Senator Van Valkenburg discussed one other amendment before action Senator Tveit's motion. On page 8, line 17, he understands the bill is trying to take away the requirement of proving need if the facility proposed is an entity other than utility. Senator Eck asked a question about how letting private enterprise act to avoid the proof of need when the entity is substantially funded from federal funds (for example, for a synthetic fuels or shale oil facility).

Senator Keating answered that he had language prepared as an amendment but the department of Natural Resources and Conservation stated it was not workable.

Van Jamison stated that the department has to know what is meant by the idea of subsidizing. The biggest concern the department has with subsidizing is not subsidies in the absolute sense but the reliability by which that subsidy is provided. The difficulty the department would see for industry is that somebody might build with the expectation of a subsidy and then find that the subsidy is withdrawn. The difficulty would be having to write rules to implement something to distinguish between those people who receive subsidizes

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and those who don't.

Senator Van Valkenburg suggested drawing a line and stating that any entity proposing funding for the facility must have more than 25 million dollars of government funds."

Van Jamison answered that he thought the department would be confronted with, for example, low-interest loans that the Montana Economic Development Board might provide somebody if those rates are below market rates. Does the department consider the difference between market rates and the rate they are actually borrowing their money at to be part of the 25 million going toward the subsidy. If the department could be given some fairly specific guidelines in terms of what was meant by "subsidization", it might then be able to go forward.

Senator Yellowtail said he understands the policy issue here is to remove the law for non-utility development. He opposes the motion because he feels that the public has a stake and he thinks the law at present gives those people a break.

SSB 223 DO PASS AS amended.

Roll call vote was taken and SB 223 was given DO PASS AS AMENDED. (Exhibit 13)

SB 224 Senator Keating proposed amendments to SB 224 that will restore the renewable resource development fund, with surplus going into the debt service fund and eventually to the general fund. (Amendment Exhibit 10).

Senator Noble made the motion that SB224 do pass as amended.

The roll call vote motion failed. The vote was reversed for the motion. (Exhibit 11 and 12)

SB 225 SB 225 eliminates statutory allocation for the RIT. a motion to adopt SB 225 as amended failed. Senator Weeding moved SB 225 as amended DO NOT PASS. The vote on the previous vote was reversed, with Senator Weeding's motion passing.
(Exhibits 14 and 15)

SB 226 SB 226 is the cabin sites bill on state lands to value the cabin sites at 1.5% of value. There is an amendment on line 21 to refer to the Board of Land Commissioners. (Exhibit 8) The motion was made to move the amendments and the bill passed as amended. (Exhibit 16) Senator Keating added that the bill changes the way lots are appraised and applying a

formula for charging rent. The old law said the fee must be 5% of the appraised value. The appraisal went up 500% so the rentals went up about 5 times so that somebody who was paying two or three hundred dollars a year rent on a site now paying up to \$1200 and they are objecting. Moreover, Senator Keating said that the people next door are still paying lower amounts of rent on fee property but the people have to pay more on the state property. Senator Van Valkenburg asked if this bill would bring in more or less money.

Senator Keating said it would be less money, but it depends upon what is considered. Under the new price it would bring in a lot more money and the state would lose what it could have gotten if we increase the price but reduce the percentage. Now it'll go back to about where it was before. The argument from the DSL is that its obligation is to obtain as much money as possible for the trust fund as they can. The rentals go into the education program and into the school trust to fulfill the department's obligation. If the law is not changed, the department has to charge 5% of the appraised value, which would increase the revenues considerably. If the percentage is reduced, the rental will fall back to the approximate value before the reappraisal. Their rent will be higher than their neighbors taxes.

Senator Van Valkenburg said now in effect renters would be getting the land tax free.

Jim Mockler stated that the rent on his cabin went from \$100 a year to \$720 and that is considerably higher than taxes.

Senator Van Valkenburg's inclination on this bill is to raise the percentage from 1.5% up to 2%.

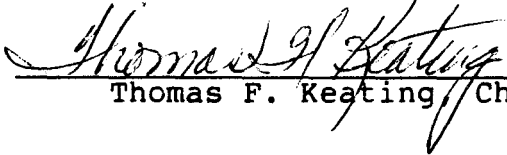
Senator Jenkins indicated that in the figures given to the committee taxes would be \$241 at the 1.5% and he has figured here it would be \$328.80 for rent, so that's \$80 higher than the taxes.

Senator Van Valkenburg moved that the bill be amended where it says 1.5% to increase that figure to 2%.

The amendment was adopted with Senator Severson voting no. SB 226 as amended was passed with Senators Severson and Noble voting no. (Exhibit 16)

ADJOURNMENT

Adjournment At: 2:55 p.m.


Thomas F. Keating, Chairman

TFK/hmc

senmin.210

NATURAL RESOURCES COMMITTEE

5054 LEGISLATIVE SESSION -- 1989

Date 2-10-89

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.

SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration SB 223 (first reading copy -- white), respectfully report that SB 223 be amended and as so amended do pass:

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."

AND AS AMENDED DO PASS

Signed: 
Thomas F. Keating, Chairman

SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration SB 226 (first reading copy -- white), respectfully report that SB 226 be amended and as so amended do pass:

1. Title, line 5.
Following: line 4
Strike: "STATE LANDS"
Insert: "LAND COMMISSIONERS"


2. Title, line 5.
Following: "AT"
Strike: "1.5"
Insert: "2"

3. Title, line 7.
Following: "BOARD OF"
Strike: "STATE LANDS"
Insert: "LAND COMMISSIONERS"

4. Page 1, line 21.
Following: "~~of~~"
Insert: "fee"

5. Page 1, line 25.
Following: "5"
Strike: "1.5%"
Insert: "2%"

AND AS AMENDED DO PASS

Signed 
Thomas F. Keating, Chairman

2/13/89
eg
12:10

NORTHERN PLAINS RESOURCE COUNCIL ²⁻¹⁰⁻⁸⁹ ₃₂₇

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Montana is proud of it's clean environment. When the rest of the country thinks of our great state, they think of vast open skies. They think clean running streams. They envision Montana as unspoiled scenic beauty. One of the last places in this country where you can find wild rivers. A place where the native wildlife hasn't been poisoned out. Truly a paradise unspoiled. As our ads once read "The last of the big time splendors.

All of this didn't happen by chance. When Montana started to get heavy into developing it's natural resources it put into place laws to protect it's environment. Montana Environmental Policy Act is one of those laws. Perhaps the most significant one. A model for others to follow. We have become a generation of planners. MEPA makes us look at not only the present value of our resources, but what impact they will have on future generations. I once read somewhere need is difficult to prove. Food, water and warmth are needs. Everything else are wants. We need to balance those wants against their environmental impacts. Poor planning can cause problems that will stay us for many generations to come. Quality of life should be the criteria for all planning. Greed must be balanced with need. MEPA was created for that very reason. Future generation will thank us for our farsightedness. Please preserve this act in it's present form. Defeat this bill for the future of Montana.

OPPOSE

SB 327

Bob Dozier - 2/10/89

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
D. 2-10-89
BILL NO. SB 327

TESTIMONY BEFORE THE
SENATE NATURAL RESOURCES COMMITTEE
FEBRUARY 10, 1989

SB 327

Mr. Chairman, Members of the Committee, my name is Jack Salmond and I am here today to represent the Western Environmental Trade Association or WETA in supporting SB 327.

As you are aware, WETA represents a broad spectrum of interests, including agriculture, labor, recreation, business and industry--including our state's resource industries. Our primary goal is to promote jobs and economic development opportunities for the state of Montana while fully recognizing, and encouraging, the reasonable protection of our physical environment.

Our association has long been an opponent of unnecessary red tape and regulation that discourages industries from doing business in Montana. We believe that when a project is only in its exploration stages, or when development involves a small operation with a minimal impact on the environment, preparation of a full-blown environmental impact statement is not only unnecessary, but as a result of the expense and lengthy delay, could be driving away the potential for jobs and economic opportunities in a state that is in desperate need of both.

As I mentioned earlier, WETA believes our environment should be protected in a reasonable manner. In the instance of a small timber harvest, or a small mining operation we feel an environmental review that takes into account the appropriate reclamation considerations would adequately provide that protection.

In sum, we encourage efforts to improve existing laws in order to create a better business climate for Montana. We trust this committee will consider the potential economic benefit of SB 327 and recommend that it be passed.

Thank you again, Mr. Chairman and members of the Committee for the opportunity to offer my comments today.



NATIONAL WILDLIFE FEDERATION

NORTHERN ROCKIES NATURAL RESOURCE CENTER
240 N. Higgins, Missoula, Montana 59802

(406) 721-6705

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 2-10-89

BILL NO. 327

TESTIMONY ON BEHALF OF THE MONTANA WILDLIFE FEDERATION,
AND THE NATIONAL WILDLIFE FEDERATION IN OPPOSITION TO
SENATE BILL NUMBER 327

Montana State Capitol
Helena, Montana
February 10, 1989

Thomas M. France, Esq.
National Wildlife Federation
240 N. Higgins
Missoula, MT 59802
(406) 721-6705

Members of the committee, my name is Thomas M. France, and I am here today on behalf of the Montana Wildlife Federation and the National Wildlife Federation to speak out in strong opposition to Senate Bill 327. I am an attorney in Missoula with the National Wildlife Federation. I also serve on the Montana Environmental Quality Council and am an adjunct professor of law at the University of Montana Law School, although I am in no way speaking for either the EQC or the Law School today.

The proposed legislation before you would grant to all of Montana's state agencies the discretion to exempt projects and activities proposed by private companies and individuals from the provisions of the Montana Environmental Policy Act, MCA 75-1-101 et seq. As most of you know, MEPA requires state agencies to analyze proposals by both the private and governmental sectors that may have a significant impact on Montana's environment. The law directs that this analytical process should take place through the preparation of an environmental impact statement which examines the environmental impacts of the proposal and identifies alternatives which might reduce or eliminate such impacts. The EIS is a public document and available for review by other agencies and companies and Montana's citizens. The fundamental purpose of the environmental review required by MEPA is to ensure that state decision makers have before them the best possible information prior to making decisions that may affect Montana's environment. SB 327 would effectively eliminate this process of review even for those projects with potentially the most damaging impacts to our air, our water and our landscape.

nate that the bill before you does not contain
ntana Environmental Policy Act but instead only
part two, which concerns the actual preparation
n part one that the purposes and policies of
and only by reviewing these provisions that
the reasons why the 1971 legislature enacted
that state agencies carefully consider the en-
approving any project. Part one of MEPA un-
s that it is the continuing responsibility of
na to use all practical means to fulfill the
f each generation as trustee of the environment
erations. MCA 75-1-103(2)(a). MEPA states
icy of state government to assure for all
healthful, productive and aesthetically and
g surroundings. MCA 75-1-103(2)(b). The law
ofound impact of man's activities on the inter-
omponents of the natural environment," and fur-
e "critical importance of restoring and
nmental quality to the overall welfare and de-
MCA 75-1-103(1). To enact the legislation
s to defeat these very purposes and to make a
icies that were embodied in the 1971 legisla-
been carried forward by each successive legis-
ct was first passed.
faced with many sad examples of what happens
nt is not considered as private activities are
a today has the largest Superfund site in the

resulted from min-
te in the early
ment will pay an
recognizing the
uch of this damage
and care gone into
n exists at
n identified and
n up problems that
sed as products of
the projects
since MEPA was
were and are con-
nning that went
gned plants with
he land. A
mines in Montana.
her laws such as
ip Mine Act and
t required agen-
and that made
people for good en-
nergy development
ples across the
no way halted

through the MEPA process. I have with me today the EIS prepared by the Department of State Lands and the U.S. Forest Service on the Stillwater development in the Beartooths. As a result of this EIS, the project went forward but only after the agencies requested certain elements of mine be redesigned and identified 15 separate mitigation measures. One can look to the many environmental impacts statements prepared on gold mining in Montana over the past decade or to the improved water quality in the Clark Fork River which resulted from a MEPA review of the Champion Mill's discharge permit for other examples where MEPA has worked, and worked well on behalf of both Montana's people and its environment.

I am certain that the proponents of this legislation will say that such reviews can still take place if this bill is enacted, since it allows state agencies initiate an EIS on private projects at their discretion. But rather than making environmental planning an integral part of agency decisionmaking, as it now is, this legislation suggests that environmental concerns can be discarded for capricious reasons and that the purposes so strongly set forward in the introduction to the Montana Environmental Policy Act can be ignored where convenience so dictates. This is the wrong approach for Montana in the 1990's.

I have with me copies today of all of the Supreme Court cases that have interpreted the Montana Environmental Policy Act. There are a total of four cases. The fact that there are only four cases in 18 years of history suggests that MEPA's implementation has not been controversial, as neither private corpora-

tions nor public citizens have had cause to resort to the state courts. At the same time, the examples I have mentioned where good environmental planning has led to better projects are just that: examples, which could be supplemented by many other instances where state agencies, complying with the Montana Environmental Policy Act, have permitted projects to go forward, but only after careful review by both the agencies and the public.

In conclusion, there is no basis for amending the Montana Environmental Policy Act to set up the discretion embodied in Senate Bill 327. The Act has been implemented and implemented well, and it has achieved a measure of its purpose in forcing better decisionmaking by Montana's state agencies. The enactment of Senate Bill 327 would create controversy and confusion where none exists today and call in to question the fundamental responsibility of our state agencies to protect Montana's environment when they authorize private activities and projects.

Thank you for your consideration of this testimony.

THE MONTANA ENVIRONMENTAL POLICY ACT COMPARED

- I. SIX STATES EXTEND THEIR SEPA TO LOCAL GOVT. MONTANA DOES NOT.
- II. MANY STATES APPLY THEIR SEPA TO MINISTERIAL ACTIONS. MONTANA DOES NOT.
- III. NEARLY ALL STATES APPLY THEIR SEPA TO STATE PERMITTING. MONTANA REQUIRES "PURE" STATE ACTION.
- IV. MOST STATES APPLY A LOW THRESHOLD TO "SIGNIFICANT IMPACT." MONTANA DOES NOT.
- V. SOME STATES EXPRESSLY REQUIRE DISCUSSION OF MITIGATION MEASURES. MONTANA DOES NOT.
- VI. ALL STATES REQUIRE AGENCIES TO DISCUSS REASONABLE ALTERNATIVES TO A PROPOSED ACTION. MONTANA DOES NOT.
- VII. MANY STATES REQUIRE MITIGATION OF ENVIRONMENTAL IMPACTS PURSUANT TO THEIR SEPA. MONTANA DOES NOT.
- VIII. OF THE 24 STATE ENVIRONMENTAL POLICY ACTS ON THE BOOKS IN 1984, MONTANA'S IS ONE OF THE LEAST EFFECTIVE.
- IX. CALIFORNIA'S, NEW YORK'S, MINNESOTA'S, MASSACHUSETTS', AND WASHINGTON'S ENVIRONMENTAL POLICY ACTS ARE THE TOUGHEST IN THE NATION. WHICH STATE IS "ANTI-BUSINESS?"



MONTANA CHAPTER SIERRA CLUB

415 NORTH 17TH AVENUE • BOZEMAN, MONTANA 59715 • (406) 587-9782

Hearing: February 8, 1989
SIERRA CLUB IN OPPOSITION TO SENATE BILL 327
KIM WILSON, LOBBYIST

The Sierra Club opposes SB 327 as yet another thinly veiled attempt to scrap one of Montana's premier environmental laws, the Montana Environmental Policy Act (MEPA).

MEPA was passed in 1971 soon after the passage of the National Environmental Policy Act (NEPA), and immediately prior to the 1972 Montana Constitutional Convention. MEPA, like NEPA and subsequent Montana Constitutional provisions, established a public policy of protecting the natural environment. Both the purpose and policy of the original act make clear the legislature's intention to commit the state to a policy of preserving and protecting its natural resources. To that end, the Act required for every major action of state government "significantly affecting the human environment" a detailed statement on that action's environmental impact and alternatives to the action.

SB 327, as it is drafted, turns the original intent and clear direction of the statute on its head. The new paragraph 4 creates an exception that swallows the rule. It removes that mandatory review of all major actions by exempting any action requiring any state review. The implication is that that existing review process will address environmental concerns. Clearly, however, that is not the case when the exemption applies, as it does here, to matters as diverse as leases

2-10-89

or easements. If there is any review of environment matters through these various actions it is certainly not uniform, as was intended in the original act.

While the bill gives an agency discretion to require MEPA compliance, the process required for it to do so -- a declaratory ruling -- is cumbersome and time consuming. This will, to put it mildly, put a chill on agency initiative in this area. For all practical purposes, MEPA will never be required.

In short, the proposed change eviscerates MEPA. We do not believe Montanans will tolerate that. Montanans have proven time and again their interest in maintaining a clean and healthful environment in the state. It is a Constitutional right, and MEPA is one of the laws that ensures that right. The beauty of our natural resources is one of our greatest attractions and certainly one of our greatest assets. The Legislature has an interest in ensuring that those amenities are protected. This bill does the opposite. If the proponents of this bill wish to overturn MEPA, they should be honest and forthright about it and tell the people of Montana that they propose to do just that. The Montana Chapter of The Sierra Club strongly urges that you vote "do not pass" on SB 327.



JAMES W. MURRY
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

SENATE NATURAL RESOURCES

EXHIBIT NO. 6

DATE 2-10-89

BILL NO. SB 327

Testimony of Jim Murry before the Senate Natural Resources Committee on
Senate Bill 327, February 10, 1989

Mr. Chairman and members of the committee, for the record, I am Jim Murry, 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 balancing environmental protection and economic development is long-standing. Delegates to our convention have consistently expressed their view that strong, sound environmental protection laws lead to proper development of our state's natural resources and to more and better jobs.

MEPA is one of the laws which helps us to balance our environmental concerns and economic growth. It serves to look at the environmental consequences of our actions. Certainly, a balanced approach by the agencies of state government will benefit not only us but generations to come.

Jobs and environmental protection can and should go hand-in-hand. We feel that this legislation is unnecessary and could prove harmful to our state in the long run.

We urge you to defeat Senate Bill 327. Thank you.

Proposed Amendments to SB 223
First Reading Copy2-16-89BILL 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."

*all ready
in Bill*

Amendments to Senate Bill No. 226
First Reading Copy

For the Senate Committee on Natural Resources

February 1, 1989

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2-10-89
Bill NO. SB 226

1. Title, line 5.
Following: line 4
Strike: "STATE LANDS"
Insert: "LAND COMMISSIONERS"

2. Title, line 7.
Following: "BOARD OF"
Strike: "STATE LANDS"
Insert: "LAND COMMISSIONERS"

3. Page 1, line 21.
Following: "of:"
Insert: "fee"

WITNESS STATEMENT

SENATE NATURAL RESOURCES

HOUSE NO. 9

DATE: 2-10-89
2-10-89

BILL NO. SB 327

NAME: Joe Gutkoski Pres.

ADDRESS: 304 N. 18th Av. Bozeman MT. 59715

PHONE: 587-3242

REPRESENTING WHOM? Gallatin Wildlife Assoc., Dir Mont Wildlife Federation

APPEARING ON WHICH PROPOSAL: SB-327

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: There should be no weakening of the MT. Environmental Protection Act. Environmental considerations should be co-equal to all other considerations in the permitting commercial resource extraction process. The existing law.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Proposed Amendments to SB 224
First Reading Copy

Pg 1 of 2

1. Title, line 9.

Following: "FUND"

Insert: "AND THE RENEWABLE RESOURCE DEVELOPMENT BOND FUND"

2. Title, line 12.

Following: "85-1-619,"

Insert: "90-2-123,"

3. Page 3, line 2.

Following: "fund,"

Insert: "(c) 1 1/4% to the credit of the renewable resource development bond fund;"

4. Page 3, line 20.

Following: "{i}"

Strike: "(c)"

Insert: "(d)"

5. Page 3, line 24.

Following: "{k}"

Strike: "(d)"

Insert: "(e)"

6. Page 4.

Following: line 1

Insert: "(4) Income from severance tax money collected prior to July 1, 1991, for deposit into a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects, must be appropriated as follows:

(a) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(b) 2/3 for the acquisition, development, operation and maintenance of any sites and areas described in 23-1-102."

7. Page 11.

Following: line 4

Insert: Section 9. Section 90-2-123, MCA, is amended to read: "90-2-123. Debt service fund. (1) The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and

Ex. 10
2-10-89
PS 272

appropriated to the debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund, and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the debt service fund shall be used to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource development bonds.

(3) Money at any time received in the debt service fund in excess of the amount required by subsection (2) shall be transferred by the treasurer to the ~~renewable resource-development-account~~ general fund."

Renumber: subsequent sections

8. Page 14, line 17.
Following: "July 1,"
Strike: "1989"
Insert: "1991"

ROLL CALL VOTE

SENATE 11

DATE 2-10-89

NATURAL RESOURCES

SENATE COMMITTEE _____

BILL NO. SB 224

Date 2-10-89 Bill No. 224 Time _____

do pass

NAME	YES	NO
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	✓	
Chairman Tom Keating	✓	

Secretary _____

Chairman _____

Motion: do pass - failed

ROLL CALL VOTE

*do not
do pass*

SENATE NATURAL RESOURCES

NATURAL RESOURCES

SENATE COMMITTEE _____

EMERGENCY NO. 12

DATE 2-16-89

BILL NO. SB 224

Date 2-16-89 Bill No. 224 Time _____

NAME	YES	NO
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		✓
Chairman Tom Keating		✓
	8	4

Secretary _____

Chairman _____

Motion: reverse motion - do not pass
passed

ROLL CALL VOTE

13

2-16-89

BILL NO. SB 223

SENATE COMMITTEE NATURAL RESOURCES

Date 2-16-89 Bill No. 223 Time _____

NAME	YES	NO
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	✓	
Chairman Tom Keating	✓	
	7	5

Secretary _____

Chairman _____

Motion: passed as amended

No Pass

1988

ROLL CALL VOTE

14

2-10-89

NATURAL RESOURCES

SENATE COMMITTEE _____

BILL NO. SB 225

Date 2-10-89 Bill No. 225 Time _____

NAME	YES	NO
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	✓	
Chairman Tom Keating	✓	
	5	7

Secretary _____

Chairman _____

Motion: failed

ROLL CALL VOTE

Do Not Pass
SENATE NATURAL RESOURCES
EXHIBIT NO. 15
DATE 2-10-89
BILL NO. SB 225

SENATE COMMITTEE NATURAL RESOURCES

Date 2-10-89 Bill No. 225 Time _____

NAME	YES	NO
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		✓
Chairman Tom Keating		✓
	7	5

Secretary _____

Chairman _____

Motion: reverse motion

ROLL CALL VOTE

*1/2 to 2/3
No Pass as
amended*

NATURAL RESOURCES

SENATE COMMITTEE _____

SENATE NATURAL RESOURCES

Date 2-10-89

Bill No. 226

Time 16
2-10-89

BILL NO. SB 226

NAME	YES	NO
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		✓
Chairman Tom Keating	✓	
	10	2

Secretary _____

Chairman _____

Motion: passed

VISITOR'S REGISTER

SUBCOMMITTEE _____

AGENCY (S) _____

DATE 2-10-89 143

DEPARTMENT _____

SB-327

NAME	REPRESENTING	SUP-PORT	OP-POSE
DOUG ABELIN	MONTANA OIL & GAS ASSOC	✓	
John Salmon	WETA	✓	
Tom France	MT. NAT WILDLIFE FEDERATION		✓
Kim Wilson	Sierra Club		✓
Sherm Janke	Sierra Club		✓
JEFFREY RENZ	MEIC		✓
Richard Clark	KPRC		✓
Bob Dozier	N.P.R.C		✓
James Hillery	MEIC, Self		✓
Van Herz	Self		✓
Don Alley	Niki Mustang Trust Unlimited		✓
Peggy Alley			✓
Annelle Fallon	MT Petroleum	-	✓
Jim Jensen	MEIC		
Stan Bradshaw	Trust Unlimited		✓
Cory Schooner	MT W. F.		✓
Cedron Jones	-		✓
Michelle Proday-Hutchins	Self		✓
Kevin Shure	Self		✓
Jim Wherry	Mont. State AFL-CIO		✓
Valerie Dalton	MT Farm Bureau		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
 IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.

COMMITTEE ON NATURAL RESOURCES

SB-327

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Eugene Fensholt Teresa ERICKSON	Mt St Bly trader NPRC	3 327		X
Bill Erickson	myself	327		X
Janet Ellis	Audubon	327		X
Augustine Adams	Audubon Council	327		X
Don R. Sturges	Audubon	327		X
Sail Speer	self	327		X
Joe Goutkoski	Pres. Gallatin Wildlife Assoc	327		X
Kerry Michnevich	TU	327		X
George Holton	Myself	327		X
Ann Pennuske	MAPP	327		X
Jim Mockler	Mt. Coal Council	327	✓	
Monte Mlekash	NPRC	327		X
Bill Krupman	NPRC - SPP			X
Lee Stronck	Trave Unlimited	327		X
Jan Cook	EXXON	327	X	
Mary A Canale	Mt. Mining Assn.	327	X	
John North	Dept. of State Lands	327		
Marc Passmann	Self	327		X
Bill Rogers	Rancher	327	X	
Louise Bruce	N.P.R.C.	327		✓
Grant Quirk	21 Jefferson Helena Mt.	327		✓
Boyd Halgimur	Helena Audubon	327		✓
Suzanne Hanlon	self Helena	327		✓
YENNIS KAVANAGH	FISHING & FLOWING DISTRICTS	327		✓
Margaret Schomier	Citizen	327		X

