

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By THOMAS F. KEATING, on March 6, 1989,
at 1:00 p.m. in Room 405 of the State Capitol.

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Helen McDonald and Bob Thompson

HEARING ON HB 679

Presentation and Opening Statement by Sponsor:

Representative Ed Grady, District #47, sponsored this bill requiring a small miner who has a placer or dredging operation to reclaim land disturbed by the operations. The bill originally addressed only those operations larger than two acres but the miners wanted to include all small mining operations. The amendments address the reclamation standards set by the Department of State Lands (DSL). (Exhibit 1) A maximum bond limit is set to not put a hindrance on the small miner and put him out of business. The bill is designed mainly to address the reclamation problem. In the past, the state has come in and reclaim this land. The amendments set cap of \$5,000 per operation. The bond will never be over \$5,000 and in most cases much less because this bill only addresses whatever portion was disturbed with the present operation. The DSL will look at the filing application and assess the approximate cost to reclaim the land.

List of Testifying Proponents and What Group they Represent:

Gary Langley, Montana Mining Association
Lee Reynolds, Small Miner

Jim Jensen, Montana Environmental Information Center
John North, Department of State Lands
Stan Bradshaw, Trout Unlimited

List of Testifying Opponents and What Group They Represent:

Mark Stratton, Placer Mining Company
John Ryde, Townsend
Lewis Shull, Missoula

Testimony:

Gary Langley said the most important amendment to this bill is the bonding, the upfront cost to small miners, which amounts to \$5,000. The second one is that small miners will only be bonded by one agency. In other words, if the miner has a forest service bond he can't be bonded by DSL. Mr. Langley passed out copies of the magazine The Pick & Shovel. (Exhibit 2) Page 5 explains why the association thinks this bill is necessary.

Lee Reynolds said the small miner's group spent many hours with Representative Grady, the environmental information center, and DSL to draft this bill so everyone concerned would benefit, the taxpayers as well as the small miners.

Jim Jensen said he worked with Lee Reynolds and others to address the key concerns of the small miners, including changing the bill from two to five acres. The reason the EIC supports this bill is because the Montana Constitution, section 3, states "all lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed." There is no provision in the constitution for a small miner exclusion. The EIC does not want to have this issue resolved in court because that would be unfair to the miner and the department.

John North stated the DSL was not initially involved in drafting this bill, but shortly before it was heard in the house, at the request of the miners, the mining association and Rep. Grady, the DSL did become involved offering services for drafting, etc. The mining association and the miners should be commended for getting together and working on this bill. Before the bill passed out of the house, an agreement was made that it would be amended in the senate to provide a cap on the amount of bond. This bill requires reclamation upon submission of a bond with a limit of \$5000 per operation. The reason for doing this is to prevent

capital requirements up front. If the small miner doesn't reclaim the land, then the state is entitled to receive its reclamation costs.

Stan Bradshaw thinks all the good reasons for the bill were heard today. The only other one that needs to be expressed is that two groups who traditionally are seen as being on opposite sides of the fence worked out their differences to come up with a bill that everybody feels comfortable with. That is an important step.

Mark Stratton is opposed to HB 679. He feels that if this bill is passed it will put people out of work and actually shut down placer mining. He said the Bureau of Land Management (BLM) is starting a process similar to the forest service to regulate public lands. BLM land needs to be regulated because there is no other method of permitting the small miner's exclusion. In the future this bill will apply only to private lands and placer mines under five acres. Small miners will have to fill out paperwork, have it approved by some skeptical DSL personnel, and place a \$5000 bond on it.

Mr. Stratton stated that once this bill is in place, it will be amended in later sessions and place the small miner under the same mining criteria as large mines. This will be the final step in removing the small miner from working on private land.

Mr. Stratton added the Montana Mining Assn. does not represent the placer miner. In fact, the mining association is made up of large companies that have no interest in the small miner and would just as soon put them out of business.

John Ryde's main objection to the legislation is that most of the small miners aren't here and aren't aware of what is happening. The miners and their future are being legislated without representation. The DSL has total communication with all small miners no communication has been made with small miners informing them of their future mining activities. The future use of their private lands has literally been taken out of their control and put into state lands through bonding. A farm operation of 100,000 acres farming next door to a placer mining operation can cut down the trees, kill the grass, burn and destroy the ground with insecticides and yet the small miner has to go under a bond. The small miner is having his property taken away from him and the constitution of the United States says the people have the right to own property. If this bill is passed as written the small owner and

miner will come under the clout of the state under a bonding situation.

Lewis R. Shull does not like this law that says "although the bond may not exceed \$5,000 per operation" and wondered who would set the fee. Mr. Shull stated he is a small operator on forest service ground. He noted the forest service requires a plan of operation showing how, where, and what you are going to mine. The forest service will ask the miner how many square feet of land will be mined and the bond would be \$250. Under this law the bond would be \$5,000. It can put a miner out of business.

Questions From Committee Members:

Senator Jenkins asked what was required for a \$5,000 bond.

John North said the bond guarantees that the land will be reclaimed. Five thousand dollars is the maximum amount. It could be less depending on how many acres are disturbed. There is no fee involved, just a bond. The miner doesn't have to submit a plan of operation to DSL to be either approved or disapproved.

Senator Jenkins asked the cost of a \$5,000 bond.

John North didn't know what the premium would be. If a small miner can't receive a bond, he has to put up the cash.

John North said the miner can put up a Certificate of Deposit (CD) so the money can draw interest during that time.

Senator Story wanted to know if there was a reclamation specialist in the room.

John North said Gary Amestoy from the Department of State Lands was here.

Senator Story asked if the miner could have a placer mine in a stream.

Gary Amestoy said the water can't be put back in the stream because of water quality standards.

Senator Story wondered when the miner disturbs the land, does he have to fill the top soil back in again?

Gary Amestoy said that would be determined on a case-by-case basis.

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Reclamation requirements are based on the specific site and the conditions that were there prior to the mining operation.

Senator Story wondered how the miners would get their \$5,000 bond back if they dug a ditch from the creek and most of the gravel ended up below.

Gary Amestoy said when the miner comes in and signs up for the small miner's exclusion, he explains what he plans to do and then the department's reclamation specialist in the hardrock bureau would determine the amount of material that would have to be moved and what would be involved in reclaiming that area. Based on that information, the department would establish a reclamation bond so the miner would know when he went into the project what it would take for reclamation.

Senator Story said in a typical operation the miner will never see that \$5,000 again. The top soil will be nothing but gravel so wherever that mine operator is, he will have to find some top soil somewhere else and haul it up. That is impractical.

Gary Amestoy said the miner shouldn't have lost the top soil to begin.

Senator Story asked Mr. Amestoy if the miner would ever see his \$5,000 again.

Gary Amestoy assured Senator Story the miner would get it back because as soon as he reclaims the area, the department would release the bond.

Senator Story asked if the charge would be more if the department reclaims the land.

Gary Amestoy said "yes" if it costs more than \$5,000. If there was no top soil there, the department wouldn't require any to be brought in.

Senator Noble wondered how many small placer miners were notified of the bill in advance. It seemed strange to him that there is such dissension here.

Lee Reynolds said he had talked with Representative Grady for over a year on this bill. With the two-acre limit it was impossible to function as a small miner on two acres of ground so a compromise was made leaving the small miners exclusion in and not requiring an operating plan. The biggest concern was the five acre small miner's exclusion allows a person to go out and

mine, and if he wants to, to walk away from it. The miner does not have to clean the area up. Mr. Reynolds added that Gary Langley contacted a lot of people from Missoula and Lewis & Clark Chapter of the mining association.

Senator Eck wondered if anyone other than DSL requires reclamation.

Lee Reynolds said BLM public lands do not have their own permitting so they go under the small miners exclusion. The federal government is working on legislation to cover all public lands with its own reclamation acts.

Gary Amestoy said all this bill does is give the state authority to require bonding where bonding is not required. There is no double bonding between the forest service and DSL.

Senator Yellowtail asked Mr. Wright if he objected to being required to reclaim a placer mine operation?

Mr. Wright said "no", but he did object to the restriction on treating private property the same as public property. Under the constitution the people have a right to own property.

Senator Jenkins asked Mr. Wright whether state or federal regulations would be more stringent for him?

Mr. Wright said in 1870 mining law, the federal government declared what must be done and unless the law is changed, the miner has more protection from the federal government. The state has been working for 10 years to get a workable small miners exclusion. The miners don't need anymore laws.

Senator Jenkins asked whether an operating plan is required under this bill?

Gary Amestoy said under this bill an operating plan is not necessary. In addition to filing a small miners exclusion, a bond is necessary and that bond is calculated based on what the operator tells the department about his plans and his type of operation.

Senator Story said a lot of water is needed to placer mine and the miner has to find some place downhill from the placer. If there was a meadow along side of the creek, the miner could put the gravel in the meadow whether they have the operating plan or not. Is that how they do it?

Gary Amestoy guessed that hopefully the miner could blade the material back up to where he moved it from but obviously if it was hundreds or thousands of feet away it would be very difficult to do so.

Senator Story said if the miner doesn't reclaim the area and if reclamation costs are higher than \$5,000, then the state can come in and nail the guy for the money if he has any possessions.

Gary Amestoy said the way the bill is written, if reclamation costs exceed \$5,000, the state just goes ahead and reclaims it.

Senator Story said the department was not hazarding this man's \$5,000, it's probably gone.

John North said the department would not require a formal operating plan but would ask the miner what he intends to do.

Senator Story said that even though the cap is \$5,000, if that amount didn't reclaim the land, the state can come in, reclaim it at its cost and go after the guy's assets.

Senator Keating said that was correct, if the amendment is accepted.

Senator Van Valkenburg said Montana has a constitutional provision that says "all land must be reclaimed," so we are not talking about the what the EPA is doing. Isn't that the basis of why this bill was introduced?

John North said this bill wasn't the department's bill but it complements the constitution.

Senator Van Valkenburg asked if there was anything else currently that requires reclamation by small miners.

John North said there is no law. In fact, the miners are exempt from the reclamation law.

Senator Van Valkenburg said the \$5,000 bond is really kind of a benefit to the small miner because there is a limit on the amount of bond. The department through regulations might say "all lands will be reclaimed" and further the miner must post a bond in the full amount of the expected costs, which might be a million dollars, but by law the bond has been limited to the total amount of \$5,000. Now that doesn't mean if they

don't reclaim the place that the department might not come after them for the cost in excess of \$5,000, but at least up front the small miners are not being required to put up more than \$5,000.

Senator Eck said it seemed to her that even though the constitution does require reclamation, Mr. Reynolds indicated that he has been reclaiming as he goes along. Is that a general practice among miners?

Mr. Reynolds said he works on private ground and reclaims the land because it is too valuable to leave disturbed.

Senator Eck asked about the cost of reclaiming?

Mr. Reynolds said he strips ahead of where he is mining and all of the overburden goes in behind. As a new pit is stripped ahead for the washing plant, the overburden is put in behind the area already mined and all of the tailings from the wash plant go right back in the pit where the pay came out. He works in a circle and reclaims as he goes along.

Senator Eck commented that the reclaiming cost is not separated from other costs.

Mr. Reynolds said it is just part of the operating cost. In regard to bonding on a per acre basis moving 10 feet of overburden off the pay would cost less per acre to reclaim than stripping 30 or 40 feet per pay.

Senator Eck asked the definition of a small mine?

John North answered that it is a mine of less than five acres in size and less than 36,500 tons year. There is also a provision that allows you to operate two 5-acre operations on a seasonal basis.

Senator Jenkins wondered how this bill fits with another bill that forfeits a miner's exclusion if he doesn't reclaim.

John North said the other bill provided that if a bond was forfeited under the Hardrock Mining Act, the miner would not get another small miner permit unless he reclaimed. The other bill just provides another enforcement mechanism to make the miner clean up what he left.

Senator Weeding asked if there was a reclamation requirement in the small miner exclusion?

John North said no. If a miner files a small miner's exclusion statement with the department, he has no reclamation obligation as long as he stays under five acres.

Mr. Wright asked who would draw the interest on the bond?

Senator Keating replied if the bond was a Certificate of Deposit, the interest would be drawn to the miner who bought the CD. A cash bond wouldn't draw interest unless it was in a savings account.

Senator Keating asked what are start-up costs for a small miner such as capital and equipment?

Mark Stratton said it varies with the size of the operation but most miners do a lot of bargain hunting. A miner can start with a low dollar amount and if the mine is profitable, he can continue to work the ground, reclaim, and move into new acres.

Senator Keating asked the cost per acre?

Mark Stratton answered it's a fairly high dollar amount and that is why he reclaims behind himself. If the material is left in a pile someplace, then the cost becomes higher. When it's part of your operation, it's hard to come up with a dollar amount.

Senator Keating asked if a \$5,000 bond would dig into his capital very much?

Mark Stratton said his company has applied for an operating plan because they are expanding and no longer have small miner status. They are renegotiating the bond but think it will cost about \$25,000.

Senator Keating said that some small miners felt their property rights were being usurped. Are the miners talking about personal ownership of property.

Mr. Wright said "yes".

Senator Keating asked if there was much of that?

Mr. Wright said there are considerable old placer mining properties such as his on Indian Creek that have been mined before with previous technology.

Senator Keating said this measure applies to "all lands" and the constitution states "to all lands" so in essence the constitution and this measure are talking private

land only.

Jon North said the land must be reclaimed if it is on private property.

Senator Keating said a farmer plowing ground disturbs the air quality standards and yet he doesn't need a permit to plow his ground.

Senator Eck said in the other bill about miners and cyanide, the department urged operating plans. She wondered why some miners can get buy just telling DSL what they are going to do and the other bill requires all kinds of plans.

John North answered that cyanide is more dangerous and, therefore, stricter regulations are required. The bonding agreement is greater because the cost of clean-up will be greater.

Senator Eck said suppose these laws are written that reclamation is required and DSL has authority to go out and clean it up. It sounds like the responsible ones are doing it now.

John North said if a bond is posted, that person has more investment in doing reclamation. In certain instances the department would be able to reclaim for \$5,000. If the department doesn't have to file suits against small miners in even 1/3 of the cases, it would be worth it to have the bonds because reclaiming land is a very expensive process.

Senator Keating asked Mr. Stratton if he extracted gold or precious metals when he was starting out as a small miner?

Mark Stratton indicated his company was making a profit on placer gold.

Senator Keating asked if taxes were paid on the gold?

Mark Stratton said "yes", including a resource indemnity trust tax.

Senator Van Valkenburg said if this bill fails and a miner decides "his land" is "his land" and he will reclaim it when he wants to, who will the Montana Environmental Information Center sue?

Jim Jensen said the lawsuit would be filed against the State of Montana and the small miner.

Senator Jenkins was wondering, since the constitution was passed in 1972, why wasn't this done 20 years ago.

John North said "we erred."

Senator Story said if the legislature passed a bill that said that every small miner will reclaim the land and failure to do so is a misdemeanor, then who gets sued?

John North said the state would be sued.

Closing by Sponsor: Representative Grady closed by saying that neither MEIC nor the department prompted him to sponsor this bill. The Environmental Protection Agency will probably have new rules on BLM land within the next year. Representative Grady felt "we are the solution and not the problem." Representative Grady said he has had bad cases of placer mining in his district, such as weed patches, land and erosion problems, soil problems from the old mines, and dredging operations that were not reclaimed. The miners came in, took the gold and went away.

Representative Grady asked who is going to stand the cost of reclaiming that land and who is suffering the consequences? The taxpayers of Montana. The rancher owns the land along the creeks and streams but can't go in there and do anything with the streams anymore. Underground tank legislation is coming down on the ranchers and farming operations are being controlled.

Representative Grady concluded by saying that the miners, DSL and myself spent many hours on this bill and came up with these amendments, which were promised when the bill came out of the House. If the amendments are taken off, there isn't a bill.

EXECUTIVE ACTION ON HB 172

Senator Story proposed an amendment to this bill. (Exhibit 3) Senator Story moved the amendment. Senator Van Valkenburg wanted to add after "includes", "but is not limited to". Senator Van Valkenburg moved the amendment to the amendment. Both amendments passed.

Senator Jenkins moved HB 172 to be concurred as amended. Motion carried.

HEARING ON SB 327

Presentation and Opening Statement by Sponsor:

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Representative Leo Giacometto, District #24, introduced this act to allow the Board of Land Commissioners to extend the primary term of state oil and gas leases where, due to litigation, state compliance with the Montana Environmental Policy Act, or adverse conditions caused by natural occurrences, exploration or production during the primary lease term has been threatened. There were problems in the House Committee because some people thought the Department of State Lands (DSL) was trying to get away from leases. If a person is leasing a tract of land and intends to do some drilling and someone appeals, the appeal process can go on for years beyond the term of the lease. Even if the drilling company wins, they've lost their lease. This bill will allow the drilling company to extend their lease and gives the Board of Land Commissioners more authority to extend the leases.

List of Testifying Proponents and What Group they Represent:

John North, Department of State Lands
Harold Ude, CENEX
Janelle Fallon, Montana Petroleum
Doug Abelin, Montana Oil and Gas

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John North submitted written testimony. (Exhibit 4)
Harold Ude supports this bill.
Janelle Fallon supports this legislation.
Doug Abelin thought this was a good bill.

Questions From Committee Members: Senator Yellowtail asked about page 2, line 12 and 13. Was it necessary to refer to the immediate area held by the same lessee.

John North stated the reason that this came up is because in the House Natural Resources Committee, the fear was expressed that if a company is involved in litigation in Texas has substantial losses, then it could use this clause to go before the land commissioners and say "We can't develop this due to litigation, so we want you to extend the lease term". The House Natural Resources Committee put in the words to address this concern. Then the department asked for additional language to allow for extensions of several leases in the same area.

SENATE COMMITTEE ON NATURAL RESOURCES

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Senator Weeding asked what good would an extension do if the oil company is prevented from operations by litigation?

John North said it might take four years to resolve litigation and the lease may only be 9 years. Mr. North's understanding is that it takes a few years to get capital, equipment etc. ready to drill so even if the driller had a year left, it wouldn't do him any good. Companies don't want to drill when they are in litigation.

Senator Keating said fee leases have "force majeure". If any federal or state law precludes the development of the lease for a period time the lease is held in suspense until it has been judicially determined.

Senator Eck asked what a "force majeure" clause is?

John North said it is the entire underlined language on page 2 of the bill. Force majeure means "major force beyond the control".

Closing by Sponsor: Representative Giacometto closed by thanking the committee.

DISPOSITION OF HB 327

Discussion: Hearing on HB 327 is closed.

Amendments and Votes: Senator Weeding moved HB 327, as amended DO PASS. HB 327 passed as amended.

HEARING ON HJR 25

Presentation and Opening Statement by Sponsor: Senator Dave Brown, District #72, introduced this resolution on behalf of the MHD program which affects Butte and Billings. The resolution urges recognition of the threat to Montana's coal industry posed by federal acid rain legislation and requests support for the magnetohydrodynamics program and the development of clean coal technologies.

List of Testifying Proponents and What Group they Represent:

Ken Williams, Entech

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ken Williams feels this resolution is important in its flexibility, if the acid rain situation is going to be solved, so that damage isn't done to the coal producers.

Questions From Committee Members: Senator Keating asked if there are any appropriations in the process with regard to MHD or clean coal technologies?

A representative from MHD in Billings said some aspects of clean coal have gotten support in the past.

DISPOSITION OF HJR 25

Recommendation and Vote:

Senator Jenkins moved HJR 25 DO PASS. HJR 25 passed unanimously.

ADJOURNMENT

Adjournment At: 2:50 p.m.


THOMAS F. KEATING, Chairman

TFK/hmc

senmin.306

ROLL CALL

NATURAL RESOURCES COMMITTEE

50~~th~~ LEGISLATIVE SESSION -- 1989

Date 3-6-89

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

March 6, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 172 (third reading copy -- blue), respectfully report that HB 172 be amended and as so amended be concurred in:

Sponsor: Swift (Story)

1. Title, line 6.

Following: line 5

Strike: "MISCHIEF"

Insert: "ENDANGERMENT"

Following: "TO"

Strike: "PURPOSELY OR"

2. Title, lines 6 through 9.

Following: "KNOWINGLY"

Strike: remainder of line 6 through "OTHER" on line 9

Insert: "PLACE IN A TREE, LOG, OR ANY OTHER WOOD A SUBSTANCE FOR THE PURPOSE OF DAMAGING A SAW OR OTHER WOOD HARVESTING, PROCESSING, OR MANUFACTURING"

3. Title, line 10.

Strike: "45-6-101"

Insert: "45-5-207"

4. Page 1, line 13, through page 3, line 2.

Strike: section 1 in its entirety

Insert: "Section 1. Section 45-5-207, MCA, is amended to read:
"45-5-207. Criminal endangerment -- penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes, but is not limited to, knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed \$50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

AND AS AMENDED BE CONCURRED IN

Signed:


Thomas F. Keating, Chairman

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HB 327 (third reading copy -- blue), respectfully report that HB 327 be concurred in.

Sponsor: Giacometto (Weeding)

BE CONCURRED IN

Signed: *Thomas F. Keating*
Thomas F. Keating, Chairman

*4/3/89
1:24 p.m.*

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration HJR 25 (third reading copy -- blue), respectfully report that HJR 25 be concurred in.

Sponsor: Brown, D. (Yellowtail)

BE CONCURRED IN

Signed: Thomas F. Keating
Thomas F. Keating, Chairman

3-7-89
2:55

Ex. #1
3-6-89
HIB 672
242

mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail to the address determined under subsection (5) of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it deems reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department."

Amendments to House Bill No. 679
Third Reading CopyRequested by Representative Grady
For the Senate Committee on Natural ResourcesPrepared by Bob Thompson
March 4, 1989

1. Title, line 9.

Following: "TO THE"

Insert: "STATE'S ACTUAL"

2. Title, line 10.

Following: line 9

Strike: "TO THE STATE"Following: "LANDS"Insert: ", ALTHOUGH THE BOND MAY NOT EXCEED \$5,000 PER
OPERATION; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO
COLLECT ALL ITS REASONABLE COSTS OF RECLAMATION IF A SMALL
MINER FAILS TO RECLAIM THE PLACER OR DREDGE MINING
OPERATION"

3. Page 7, line 3.

Following: "IN"Strike: "SUBSECTION"

Insert: "subsections"

Following: "(3)"

Insert: "through (6)"

4. Page 8, line 22.

Following: "TO THE"

Insert: "state's actual"

5. Page 8, line 23.

Following: "COST"Strike: "TO THE STATE"Following: "LAND"Insert: ", although the bond may not exceed \$5,000 per
operation"

Following: "."

Insert: "However, if the small miner has posted a bond for
reclamation with another government agency, he is exempt
from the requirement of this subsection.(4) If a small miner who conducts a placer or dredge
mining operation fails to reclaim the operation, he is
liable to the department for all its reasonable costs of
reclamation, including a reasonable charge for services
performed by state personnel and state materials and
equipment used. If the small miner posts a surety bond, the
surety is liable to the state to the extent of the bond
amount and the small miner is liable for the remainder of
the reasonable costs to the state of reclaiming the
operation.

(5) If a small miner who conducts a placer or dredge

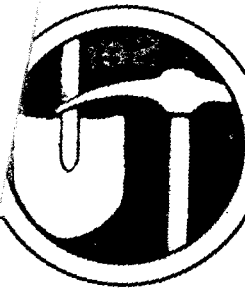


EXHIBIT NO. 2

Date 3-6-88

BILL NO. 679

pick & shovel

The Montana Mining Association
2301 Colonial Drive
Helena, MT 59601



The Last Frontier for Mining

2301 Colonial Drive
Helena, Montana 59601

Gary A. Langley, Editor
Jane Dritshulas, Administrative Assistant

Board of Directors

Don Jenkins President
Golden Sunlight Mine

Robert Job Vice President
Prospector Supply

Tad Dale Secretary
Beal Mountain Mining Inc.

Frank Gardner Treasurer
Montana Resources, Inc.

Don Lawson Chapter Liaison

Karen Barclay Director
MSE, Inc.

Fred Earll Director
Piper & Associates

Bill Robinson Director
Western Energy

Mike McLean Director
Mineral Hill Mine

Larry Young Director

Tim Watrud Director
Montana Talc Co.

John F. Bell Director

Joe Dewey Director
Stillwater Mining Co.

Terry Erskine Director
ASARCO

Michael Lorang Director
Cyprus Industrial Minerals, Inc.

Alan Stringer Director
W.R. Grace & Company

Roger Rice Director

Tom Weitz Director
Montana Tunnels

Industry Must Provide Solutions, Not Problems 3-6-89 HB 679

(continued from page 1)

Montana Mining Association will take the initiative in two areas.

First, the Association has requested legislation that will require anyone who uses cyanide in ore processing to obtain an operating permit. The bill is being introduced because persons using cyanide under the small miner's exclusion in the past have caused environmental problems. Any further problems caused through the use of cyanide by the uninformed will cause regulatory problems for the industry as a whole. The legislation will apply only to cyanide and will be based on site-specific and mine-specific regulations. It will not include regulation of any other so-called "hazardous reagents" or heavy metal solutions because any hazards to the public health from these agents are perceived and have not been proven. Indeed, the Montana Mining Association will vigorously oppose any attempts to amend the bill.

This legislation is necessary because of the actions of irresponsible placer operators who have polluted streams and left eyesores behind them in full view of a critical nonmining public.

Second, a bill has been requested to place any placer mining operations larger than two acres in size under reclamation and bonding requirements. This legislation is necessary because of the actions of irresponsible placer operators who have polluted streams and left eyesores behind them in full view of a critical nonmining public. This action should not be viewed as an attempt at the over-regulation of responsible operators, but an endeavor to solve a serious environmental and public image problem. Unless this moderate proposal is passed, anti-mining preservationist groups will continue to assault the industry with emotion instead of fact and attempts at prohibition instead of responsible regulation.

To paraphrase Robert E. Daniel, president of Chevron Inc., who spoke to the Montana Mining Association Convention last May: It is preferable, in terms of our honest concern for the environment, our credibility and our standing in the community to correct operational problems before they become public concerns and, in turn, compliance problems.

At the same time, the Montana Mining Association will continue to oppose attempts by anti-mining forces or overzealous regulators to turn mining regulations into unreasonable and unrealistic restrictions.

Possible Amendments to House Bill ~~NO. 172~~ HB 1727
Third Reading CopyRequested by Senator Pete Story
For the Senate Committee on Natural Resources

March 4, 1989

1. Title, line 6.
Following: line 5
Strike: "MISCHIEF"
Insert: "ENDANGERMENT"
Following: "TO"
Strike: "PURPOSELY OR"
2. Title, lines 6 through 9.
Following: "KNOWINGLY"
Strike: remainder of 6 through "OTHER" on line 9
Insert: "PLACE IN A TREE, LOG, OR ANY OTHER WOOD A SUBSTANCE FOR
THE PURPOSE OF DAMAGING A SAW OR OTHER WOOD HARVESTING,
PROCESSING, OR MANUFACTURING"
3. Title, line 10.
Strike: "45-6-101"
Insert: "45-5-207"
4. Page 1, line 13, through page 3, line 2.
Strike: section 1 in its entirety
Insert: "Section 1. Section 45-5-207, MCA, is amended to read:
"45-5-207. Criminal endangerment -- penalty. (1) A person
who knowingly engages in conduct that creates a substantial
risk of death or serious bodily injury to another commits
the offense of criminal endangerment. This conduct includes
knowingly placing in a tree, log, or any other wood any
steel, iron, ceramic, or other substance for the purpose of
damaging a saw or other wood harvesting, processing, or
manufacturing equipment.
(2) A person convicted of the offense of criminal
endangerment shall be fined an amount not to exceed \$50,000
or imprisoned in the state prison for a term not to exceed
10 years, or both."

SENATE NATURAL RESOURCES

EXHIBIT NO. 4

DATE 2-6-89

Testimony of John F. North on HB 327
Senate Natural Resources Committee HB 327

March 6, 1989

House Bill 327 authorizes the Board of Land Commissioners to place in its oil and gas lease a version of what is commonly referred to as a "force majeure" clause. Force majeure clauses are common in mineral leases and are included in the state metalliferous minerals and uranium leases. The need for them arises from the fact that mineral leases terminate if the lease is not producing minerals in commercial quantities by the end of the primary term of the lease. If the lessee is precluded, through no fault of his own, from bringing the lease into production and the lease contains no force majeure clause, the lease terminates. This is unfair to the lessee.

In addition, the Department is of the opinion that the lack of a force majeure clause could have a detrimental effect on the number of state tracts leased and the amount of bonus paid for state leases. Put simply, a state lease without a force majeure clause may be less attractive to the industry than another lease containing one.

HB 327 would eliminate the unfairness and make state leases more attractive by allowing the Board of Land Commissioners to insert a force majeure clause in its oil and gas leases. The Board could then extend the lease term if the lessee is delayed, through no fault of his own, by natural causes, such as fires, floods, and earthquakes, or by artificial causes such as, litigation and agency compliance with the Montana Environmental Policy Act.

Although this force majeure clause could apply to a number of situations, the situation that caused the Department to propose this bill involves the litigation that is presently pending in the Supreme Court regarding Cenex's 17 leases on the North Fork of the Flathead River. The Department has authorized Cenex to drill an exploratory well on one of those leases. The Department did not prepare an environmental impact statement on this authorization. The decision not to prepare an EIS has been challenged in court. Cenex has now held this lease for five of the ten year primary term, paid \$700,000 in bonuses and rentals, and, through no fault of its own, has not been able to develop the leases. Should the court hold that an EIS is necessary, additional delays will occur. Fundamental fairness requires that the Board of Land Commissioners have the authority to remedy this situation and others that may result from litigation, MEPA compliance, or natural causes.

The Department urges the Committee to give the bill a do pass recommendation.

NAME: LEWIS R. SHULL DATE: _____

ADDRESS: 836 MARSHALL ST MISSOULA MT

PHONE: (406) 543 5557

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: HB 679 SMALL MINER

DO YOU: SUPPORT? _____ AMEND? OPPOSE? _____

COMMENTS: WOULD LIKE AMENDMENTS AND LANGUAGE
TO THIS BILL TO WT:

~~covered~~
~~SECTION 2 UNDER BONDING: " THIS BOND SHALL~~
~~NOT APPLY IF APPLICANT IS BONDED UNDER ANOTHER~~
~~GOVERNMENT AGENCY".~~ *In Bill all ready*

SECTION 2 UNDER BONDING : " 0 TO 1 ACRE 500⁰⁰
1 ACRE TO 3 ACRES = 1000⁰⁰ 4 ACRES = 2,500⁰⁰
5 ACRES = 5000⁰⁰ = SUCH BOND CAN BE ONE
OR A COMBINATION OF THE FOLLOWING (1) CASH
(2) IRREVOKABLE LETTER OF CREDIT (3) CD'S WITH INTEREST
HELD BY THE MINOR.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.