

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - 2nd SPECIAL SESSION

#### COMMITTEE ON NATURAL RESOURCES

Call to Order: By Representative Raney, on Wednesday, May 23, 1990, at 1:23 p.m.

An informal meeting of the Natural Resources Committee was called to order by Chairman Bob Raney for the purpose of receiving information on the Forest Management Practices Program and on the Pony Mill. Chairman Raney announced this was not a formal meeting, there would be no roll call and no executive action would be taken. He said he felt more information was needed, and those who attended would be able to discuss it with others around the state.

Tape 1, Best Management Practices in Forestry. (009)

DON ALLEN, representing the Montana Wood Products Association, said he was not going to speak to this, but would like to introduce Mr. Clinch. He said after the last Legislature, the challenge to the industry to prove that voluntary best management practices could be a good and best way to go put a big challenge and big burden on them to prove it. They also knew it could not be done without the involvement of all the other agencies and involved parties. He said Mr. Clinch has done a super job of involving other agencies and leading the efforts on behalf of all who are interested.

Mr. BUD CLINCH, staff forester with the Montana Logging Association, said "I seem to have merged as an industry coordinator in instituting a state wide Best Management Practices (BMP) education program. In the last several sessions forest management and BMPs have been a hot topic, and in fact, at the last session, not only did the industry promote and lobby for voluntary BMP but made a considerable commitment to a voluntary education program. Since that last session, we have been successful in bringing a number of things together that I think is of interest to you in terms of the cooperative spirit of BMP education. When I say cooperative, I think that's exactly what we formed, and when we sat down initially as an industry group and started talking about 'how we are going to start educating ourselves', it appeared to me that there was a broad cross-section of people out there that needed to be educated. There were loggers, there were mill personnel, there were agency people, as well as private land owners all around Montana. To maximize our efficiency and to really have an impact on BMP across the state we came up with a concept to try to bring all of the entities together and develop a single comprehensive

program. When I say all the entities, beside the strong support of private industry, we contacted people within the Department of State Lands (DSL), Montana Department of Fish, Wildlife and Parks, the Water Quality Bureau, Montana Association of Conservation Districts, Montana Tree Farmers Association, and the Montana State Extension Forester. All these people have a very valuable interest in BMP, and all of them were interested in doing something on their own. We brought together this cooperative and tried to meld all of our interests together so that we could pool our finances as well as our interests and provide a broad spectrum to all those cross section of people on BMPs.

"Basically, through the help of the Extension Forester we developed what I would refer to as a 5 stage program to implement the BMP education program. The first stage of that is a brochure, the second is comprehensive workshops, the third would be a detailed booklet on the BMPs, the fourth would be an on-going industry coordinated audit program on timber sales, and the fifth would be a professionally done video to be available to the public free of charge, on best management practices. That was a rather ambitious agenda, and when we started totaling up, we found our budget for such a program as that was in excess of \$100,000, but none-the-less, we did not let that impede our progress. Through cooperation with the Water Quality Bureau we found there would be some pass through money from the EPA, industry made a substantial commitment, and we found all the other agencies were either willing to contribute money or in-kind services. We started with exactly that 5 stage program on BMP education some time ago. Most you should be familiar with the first thing we did, we developed a brochure. We sent out a questionnaire to a cross-section of land owners and resource people around the state to find out what was the level of understanding on BMP's as they exist, and we found that level was at all different extremes, from some people that were quite familiar and had been involved on BMP technical committees to some individuals that hadn't any idea what we were talking about. You have to remember, when I say that, we were talking to all facets from the small private land owner to industrial foresters, and everyone in between. We decided as a committee, and through the expertise of Bob Logan at Extension Forestry, to develop an introductory brochure, and all of you should have received it in the mail, either from me, or from the Montana Environmental Center. It is a very brief format of what best management practices are. We put it in a four color, in a very introductory fashion, to introduce people to best management practices. Those of you that have been involved in BMPs, should know that the actual BMP's as they are written, are this (he showed papers) 26 page, typewritten document, that we

find difficult for us professionals to read and interpret, let alone the lay person. We thought to develop an effective program we needed to start at the bottom up and bring everyone's understanding up to a common level, so we produced this brochure and we have done significant distribution of it. Through industry alone we have distributed over 10,000 of these state wide, and DSL is currently distributing them as part of their information process as required by House Bill 678. The funding of this is a joint funding effort from some of the pass through money from the Environmental Protection Agency (EPA) as well as industry contributions, DSL, and Montana Tree Farmers Association.

"The second step in our educational program was a development of workshops. While we had workshops a little over a year ago around the state, we thought a little more expanded version of that could provide a great benefit. We set up an ambitious schedule of 11 workshops in 11 different Montana localities which we just finished in the last 2 weeks. For your information those locations were Missoula, Libby, Kalispell, Eureka, Thompson Falls, Seeley Lake, Deer Lodge, Townsend, Bozeman, Columbia Falls and Lewistown. That basically corresponds with the timber industries reaches as well as the private non-industrial forest lands around Montana. We wanted to have these workshops in a location that was convenient for anyone to attend. I am proud to report that we had excellent turn out, nearly 900 total at those 11 workshops and I think that is a credit to the industry that strongly encouraged their loggers and purchase loggers to attend as well as some strong support from other agency groups as well.

"I want to spend a little time and talk about those workshops because I think they were tremendously valuable in the process. One of the most important things, we were able to bring together a diverse group of people to put on the workshops. They were 4 hours and they covered 4 different subjects: Water Quality laws as they relate to forest practices, timber harvesting, impact of sedimentation on fisheries, as well as roads. We selected some people from different disciplines: Department of Fish, Wildlife and Parks put on the section on Fisheries, DSL talked on Water Quality laws, and industry provided 2 professionals at each workshop to talk about harvesting and road construction process. Just to give you an idea of the type of things we talked of, in the law session alone, the individual made the audience familiar with the Federal Clean Water Act, the Montana Stream Bed and Land Preservation Act, which we commonly refer to as the 310 permit; the Montana Stream Preservation Act,

that is the 124 permit that government entities comply with; the Montana Water Quality Act, as well as House Bill 678. As you can see, there is quite a bit of material there currently on the books on laws that we tried to make our participants familiar with. In harvesting, we got right down to the nuts and bolts, and talked about specific locations where the impact of forest activities are greatest on water quality, but we spent the majority of the hour on harvesting talking about what needs improvement in harvesting, and we keyed on the results of the last audit that was done as well as the most recent Flathead Basin Commission audit where it identified areas that forest practices were in compliance with BMP's, and where there some departures. We thought it made good sense to take the areas we have shown the need for improvement in, and really address that to our audience. The Fisheries part of the workshop was extremely interesting, one, because it is an aspect that we have never spent much time trying to educate the lay person on, and I was a bit apprehensive at first as to how the Department of Fish, Wildlife and Parks was going to handle an audience with hundreds of loggers when we talked about sedimentation, because we are all well aware because we are all well aware of the impact that has on our forest practices, but the session went real well and was probably the most popular session we had where the biologists with hands on experience showed slides and overheads of sedimentation impacting some of the fishery runs, and I think it really went a long way toward imparting the thought into our operators as to how sedimentation really can impact things like fisheries that we all think are pretty important, so the fisheries aspect, I am very well pleased of. Roads, as you are well aware, is a major contributor to the sedimentation problems, and is obviously one with a lot of BMP's relative to it. We had a private road building contractor present the material, and again we keyed on the same thing--the departures that were made apparent in the last audit as well as the Flathead Basin Commission audit. As I said earlier, in those 11 workshops we had nearly 900 participants, and not to say that we sent all those people away with the key to successful forest management, but I think we brought their understanding a long way along, and it is a process, we certainly didn't get into the dilemma we have right now, and I don't know that we are going to change it over night, but I would like to leave you with the fact that we have a very good cooperative spirit developed right now with industry, a whole host of agencies as well as other private people, and I think there are some results that surely point to the fact that we are very concerned about the problem of forest management and BMP's, and not only have made a commitment to educate that, but we are carrying it out. With that, I would

like to open it up to questions and see if there is anything specific I could answer. If not, that is about as brief as I can give you our current on-going program on education."

(168) QUESTIONS:

Representative Raney asked what the industry would do with those people who won't comply with BMP? Where will your control come over them? Mr. Clinch answered that it was a good question, but did feel comfortable with the cooperators they have that they have a strong commitment, and would like to guarantee 100% compliance, but can't. He said compliance, and maybe some sort of response to non-compliers is an aspect that needs to be addressed. He felt the success of the program lies in the education effort. He said there is considerable talk about developing a formal forest practices in regulation, and in the event they went that way they would probably find themselves back at the drawing board in trying to develop an education program. The success is going to involve around having people understand why it works, and only then will they implement it. He drew a correlation with Workers Compensation and Logging, and said when he was hired by MLA they had one of the worst experience and loss ratios for logging accidents. We had very strong regulation relative to WC both on the state level and with Occupational Safety and Health Administration at the federal level. (OSHA) He said it was not until the industry took progressive charge of that program to control their own destiny that they had a real impact on reducing accidents. He said now they are voluntarily imparting stricter regulations on themselves in the field of safety than any of the regulations in any of the other western states have. He said if their rate within logging now could stand on its own without the unfunded liability, they would be for a substantial reduction. He said he offered this as an example of how commitment and cooperative spirit can bring about some tremendous results.

Representative Cobb asked if they are planning to do as the independent audits, with random sampling? He said you are going to have to convince the Legislature that where there are problems you are taking care of it as you did with your safety in Work Comp. so they don't go out there and check you all the time. Mr. Clinch answered that he did not want to confuse the issue on audits since the Legislature directed a group to do audits. That is an on-going process, but we think to stay abreast of how effective our educational program is we can't wait until that team gets done and gets their report in for the next Legislative session, so we are starting on our own audits now, randomly selecting

to get a feel as to whether our educational efforts are getting to the people, and if they are doing any good. He said this would be an on-going process and are tentatively looking at around 60 jobs in the next 3 months.

Representative Brooke said at the '89 session there was a bill to give stream management, and asked Mr. Clinch to comment on what the BMP workshops, and asked if he felt the particular piece of Legislation that was defeated is now being implemented on a voluntary basis. She was asked if that was the bill that talked about specific distances from a stream as an exclusion? She answered yes, and said the stream was defined very narrowly, and even if it was dried out, it would still apply. Mr. Clinch said in the workshops they spent a substantial amount of time talking about the stream management zones (SMZ), both in the harvesting segment and in the roads, and the very basis of the Fisheries presentation talked about the importance of SMZs in protecting sedimentation from moving into the valuable fisheries. The SMZs we're talking about did protect streams that dried out, the intermittent streams, and I think we are receiving some pretty strong support, at least from the lay person, in understanding the importance of SMZs. One of the areas of contention with EPA has to do with the opening of clear cuts along the SMZs.

Representative Moore asked if the forest project audits were to be announced or not and was told they are announced and yet wanted the committee to know they are doing them on themselves for the purpose of learning. He said the state has an unbiased audit team that will provide the unbiased information to them. He said for their prospective, they are interested in being unbiased. They want to find out what's going on to find out if the members of their cooperative and all the various people who are involved are implementing them, and if not, how can they step up their efforts to do so.

Mr. Clinch said Paul Klugg is in the audience from DSL has been an excellent cooperator, and said he would re-cap what DSL is doing, and Rep. Raney asked him to do so briefly.

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Mr. Klugg, Chief of the Service Forestry Bureau, DSL, said "I will quickly try to recap DSL's role concerning Forest Best Management Practices. Our role comes out of recommendations on the House Joint Resolution 49 study on Forest Practices and water shed effects. In a nut shell, there are three jobs that DSL has, the first job is to provide information in response to notifications from private persons that they intend to do forestry operations on private land; it

pertains only to private land. That program is operated in conjunction with our slash program which also has a pre-notification requirement. In response to that notification, we give forestry best management practices information out to the individuals and we use the information that has been developed by this education cooperative as well as information that we have developed ourselves, and that process is working quite well. The second job is basically to coordinate this audit process, which Bud (Mr. Klugg) mentioned, and that is a job that was prescribed for DSL, not as a part of House Bill 678, which gave us the first job, but merely as a recommendation in the final report in HJR 49. We are coordinating those audit teams; they are multi-disciplinary, they are forming their teams to start work in July and August. Those audits will be multi-ownership; they don't just cover private land, and they are basically repeat of the field audits that were done in 1988. The purpose of that is to come back to EQC and the Legislature and say 'this is the result that we find in 1990' and to allow EQC and the Legislature to judge whether there is any difference in: 1. The use of the BMPs and 2. How well the BMPs are being used.

"The third job is simply to define a process for updating the BMP's, and that job is in the development stages and we are preparing for departmental review and then eventually on to the EQC process which is based on consideration of what other states do for updating their BMPs. There are different reasons that have been identified that might warrant changing BMPs. New information becomes available, for instance; there may be an indicated need for a clarification; it could be that the audits find that the BMP is not being implemented correctly; and the last reason we have thought of so far is that some kind of water quality sampling that is being done on one ownership, for whatever reason indicates the BMP is not as effective as was intended. Those three jobs are in process, and other than having a case load for the service program that is responding to these notifications to do logging on private land--other than the case load of that exceeding our expectations by a very significant percentage, the programs are being implemented successfully."

#### QUESTIONS:

(336)

Representative Moore asked about the slash disposal and the small round wood we are burning up, and how could we use more of it rather than burn it? She said on the Swan Lake State Forest, Lynn Grey talked about doing everything he could to have people at least come and get fire wood before the piles are lit, and asked if they are doing anything about it. Mr. Klugg said in relation to the slash program, technically they do not require that size material to be disposed of.

To implement the slash law they have to make some technical interpretations and set some program standards and guidelines pursuant to those interpretations. He said their interpretation from a technical standpoint, slash is everything that is 3" or less, because that is the material that contributes to fire hazard that the slash law is designed to abate. We encourage land owners that are subject to the slash law to abate the fire hazard but we don't tell them to dispose of the kind of material you are talking about and the service foresters who work with these individuals on the ground do attempt to identify solutions to their fuels management problem that are innovative and responsive to their objectives, because there are many ways to satisfy the slash law. If someone is tending to utilize round wood or even slash itself for whatever purpose, we can devise a prescription that can accommodate that as well as satisfy the slash law, he said.

Tape ends at (378). Tape 2 is on the Pony mine. (000)

#### PONY MILL

Chairman Raney said some members of the committee had been concerned about the Pony Mill, and he had written a letter to Mr. Dennis Casey in regard to those concerns. He handed out a packet of letters which included the original and the responses, included as EXHIBITS 1, 2, 3 and 4.

Chairman Raney said evidently their concern had gotten around to the concerned citizens of Pony who knew they were having a special session of the legislature and contacted the Speaker and said they would like to be able to express our sentiments in regard to what is taking place in our community with regard to the Chicago Mining Company. The Speaker said they would do it with the Natural Resources Committee, and we will start with a presentation from the concerned citizens of Pony.

DAVID ZIMMERMAN, Chairman of the Concerned Citizens of Pony, said "I'm speaking today for the nearly 60 members of the CCP, our members include a wide cross-section of people. We have agricultural people, business professionals, retirees and mining employed people. The CCP is a non-profit citizens organization dedicated to the protection of the quality of the air, water, wild life and other values of the Pony area. We wish to preserve the historical scenic and cultural heritage so unique to our region. Our group does research and analysis of issues affecting this legacy in order to provide information to the public. This research helps members of our community to participate more effectively in decisions affecting our quality of life.

"The CCP was formed in response to new levels of mineral development in our vicinity. We realize the economic



potential of mining industry. We also believe the mineral development can and should be responsibly accomplished. Industry should also be responsive to local concerns and input. We are not against mineral development, but given the size of modern mining operations and the amount of toxic materials used we want to see the best possible controls to protect the environment and our quality of water. I am here today to tell you about the situation in Pony regarding the Chicago Mining Company's gold mill currently under construction there. We've had some real problems dealing with this development and I would like to relate a few of these to you. The first problem was that by calling this a custom mill Chicago Mill was able to enter a regulatory loop hole where they were exempt from normal requirements including bonding and an operating permit from DSL. I am pleased to report that this exemption will end on June 1st when the new custom mill rules go into effect. Assuming that the mill is not operational, they will be required to apply for an operating permit and we will have than another opportunity to express our concerns. We are looking forward to working with DSL on this issue.

"Now, a little history. Approximately one year ago we saw bulldozers cutting roads above Pony. There had been rumors that CMC had been looking for a mill site, but nothing had been publicly announced; in fact they continued to construct for over 3 months before notifying Pony residents of their plans or for applying for a ground water pollution control permit from the Department of Health and Environmental Sciences (DHES). This construction would have clearly been illegal except for that exemption. When we saw the plan, we were frankly, horrified at the location of the mill. This facility is 3/8 of a mile west of Pony, 300 feet above, and sits between the two creeks that flow through the town. The town is basically down hill, down stream and down wind from this facility. This presents potential threat to the towns water supply and also threatens the Dissent Rainbow Fishery in Harrison Lake. We are very concerned about both of these things--actually we have many concerns. We expressed our concerns at CC's public information meeting with no results. Our next opportunity for comment was at the public hearing on the E (Environmental Assessment) and Water Quality Permit in November. At this point they had been under construction for 8 months. This testimony resulted in a considerable tightening of the permit which was issued in January. We were glad to see these improvements, but feel some of our major concerns were not addressed. The first and largest is that, due to the fact that construction is well under way, at the time of the public hearing the company was not willing to consider alternative sites. This allows to total denial of the public right to comment on alternative sites, and given the sensitive locations that are so close to Pony, we feel this is a major problem. I do have a photograph with me and will pass it around (this he did). It sort of emphasizes the project and the closeness to town. You will

notice there are a few buildings out here, those are on the outskirts of Pony, in fact the reason you can't see the town is because it is obscured by this hill. It is so close that it is totally covered by this picture. The two creeks run very close either side, and meet in town. Our second concern is that due to the fact that DHES has no bonding authority, we were informed that the company would not be required to post a reclamation bond. Our third concern was that, in spite of the fact that CMC controls over 100 mining claims in the Pony area, there was no assessment of the accumulative effects. It was decided that the DHES authority ended at the Mill site boundary and thus there was no consideration of the impact, the roads necessary to transport ore to the mill from all these sites, no consideration of possible acid drainage from these many mines. Fourth, we feel that there was inadequate base line data on surface and ground water. Had this operation been permitted under DSL we would have had at least an additional year to generate information, and specifically on site specific data.

"We feel that the DSL with its wider scope and authority would be better able to deal with these concerns. We will ask for a full IS on this project to ensure that the whole project including these hundred mines get adequate review, and we ask your support in this request. I am sure you are aware of the controversy regarding this project. The social impact has been large in the town of Pony. The town is very deeply divided on this issue. The intractable nature of the company management has aggravated this situation, but we are not here for a name calling session, and regardless of the personalities involved, we do have valid concerns. We feel that our arguments are valid and we will present our case on those merits. I would like to invite any or all of you to come and visit Pony and see for yourself. I, of course, cannot guarantee that the company will allow you on the property, but I suggest that you contact them in this regard. Nevertheless, there is still plenty to see, and I would be happy to show you around. We would also like to ask your support for the strongest possible interpretation of the Montana Environmental Policy Act (MEPA). The state of Montana needs the best available controls to ensure protection of our environment and quality of water. We already have 975 miles of severely polluted water ways and we have thousands of miles that are moderately polluted. Resource Extraction Industries are a major contributor to this pollution. Prevention as opposed to 'after the fact' clean up will benefit all Montanans, including industry. It makes economic sense in the long term." He thanked the committee for the opportunity to testify and said he would answer questions.

(120)

KIM WILSON, attorney representing the Concerned Citizens of Pony,

said "Dave did a good job of summarizing the situation, I'll be very brief. I would like to start by saying I was a little reluctant to testify today, and the reason is, as Dave has explained to you, the State Land rules covering these mills were passed by the land board Monday and will go into effect June 1, presumably including this mill site and in State Lands rules jurisdiction, and I think that is a good thing, and we may be back to square 1 as far as the permit review process, and many of our concerns hopefully will be addressed as it is reviewed by State Lands.

"There are a couple of general points I would like to touch on which I think sort of apply here, whether it is the Department of Health or State Lands, or whatever agency that is doing it, they are just sort of general concerns--permitting and the MEPA process as it occurs in the state of Montana. One of the major problems of the situation is that construction had not only begun, but was well advanced before the state's review had even commenced. It was absolutely inexcusable, regardless of who had the jurisdiction, for there to be loopholes in the law that would allow a major industrial operation like this to actually be constructed and built prior to a permit being granted. The situation here is somewhat of an anomaly just because I believe that had the State Lands rules been in effect at the time the construction started, State Lands would have been able to keep them from constructing until they got the permit. The company, in this case, didn't even have the state building permit, and that was brought to the State Building Code Division, or whoever's attention, in November, they quickly--after the fact--applied for first a building permit and were granted one, as I said, they were not required to not commence their construction prior to getting the permit, and so what you have is where the DHES was reviewing a permit on an operation where much of the construction and many of the conditions of the permit, had already occurred. Things that had already been done, so far as the digging and impoundment of the construction that would be difficult if not impossible for the agency to go back in and see whether they had been done correctly, and I think that is something that we should not allow to happen again. It is not going to occur, it is not going to occur at least with mining operations now that the new rules have gone into effect, but I think there is a potential for other large operations under the water quality act to fall through this loop hole, and I think it is something the committee should be aware of.

I think this process also raised, in my mind, some serious concerns about the viability of the MEPA review process. First of all, I think the state agencies doing MEPA review need to have the authority to look at a much broader picture than they have the authority currently, or at least they may perceive they have the authority currently. The situation here, as Dave indicated, was that there were and are,

several mines being proposed by this developer in close proximity to Pony and in close proximity to this mill. Nevertheless, in the MEPA process there was no cumulative effects analysis to examine what the combined effect of the mining and the milling would be on the town of Pony. Not only that, but there was not even any indication of where the ore for this mill was going to be coming from. Not to point fingers at the Department of Health, because I'm not sure how much different that would have been with state lands, I think, looking at the general picture, perhaps there is a shortcoming in MEPA that needs to be addressed. Perhaps we need to look at giving much more specific authority to the agencies to look at connective developments and look at the big picture at once, so that we avoid the kind of piecemealing of analysis that may well still occur here. It is certainly possible there will be an EA on this mill, and then an EA on one or two or three or four of the mines that feed this mill, but no big picture. I think it behooves the state, right from the beginning, when you know there is some large development in the works, to take a look at that big picture. The third MEPA short coming, and again I think partially it is disagreement over how the law is interpreted, but clearly, as I think you will all recognize from the news accounts, there have been, and will continue to be some major social effects and social impacts from the construction of this mill in close proximity to the town. I think the agency felt constrained in their ability to examine that in any more detail, and I think that is another short coming. While I think there is language in MEPA to give that authority, maybe it means to be more specific, but I think that when you are talking about environmental impact, especially in a case like this, where it is so close to a population center, you need to be looking at social and human impacts as well. Having said all that, I think I will return to what I initially said, which is that hopefully the Pony situation was an anomaly. We now have this mill, which will be under the regulation of the Department of State Lands, many of my clients concerns had to do with the fact that there wasn't any strict reclamation requirements, there wasn't any bonding requirement, wasn't any requirement for replacement of the water supply under the Water Quality Act, whereas under the State Lands rules, those types of things will be addressed, and we are hopeful that they will be addressed in such a way that the people at Pony feel comfortable that they will not suddenly wake up with a developer walking away with them having this large wields development in their back yard. I would also like to say, and commend the Governor's office for some recent efforts in this instance to try to get some mediation going between the Concerned Citizens of Pony and the developer. The initial attempts didn't appear to be successful. We may try some further attempts because I think in the long run, if this development is going to proceed, and it most likely will, I think there needs to be every effort by the parties involved, and by the state, to the extent possible to make

sure those people and the company control exist. As I said, I am reassured we are back on a level playing field, that the people of Pony now will be treated the same as the people in close proximity to any other mining operation, and we are hopeful that during the permitting process, the concerns that they felt were left unaddressed earlier, will be addressed in more detail.

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TOM ELPELL, resident of Pony and a member of the Concerned Citizens said he and his wife are building a house in Pony and have started a school--a holotype outdoor primitive school here, for teaching aboriginal living skills. He said he felt Dave and Kim had pretty well covered things and wanted to voice his concern and also invite the members to come down and look at it.

(248)

Mr. Rock Ringling, Helena, spoke as a home owner in Pony said the thing that stands out in the process is that the first meeting the people had before forming the Concerned Citizens of Pony, was sort of a universal agreement among those attending the meeting and the residents there that they were not against the mill. He said with a lot of the name calling, and things that came out in the press, is that people really didn't want the mill there, and he did not believe that is true. People wanted the jobs and understood that custom mills were probably a good idea, and wanted employment in their community. He felt that through the permitting process and the way of events that the new rules may solve, people didn't have a chance to address an alternative site. He said they wanted the mill, just didn't want it where it is at. He felt you couldn't have thrown a dart and hit a worse spot to build a mill. He felt there was a lot of information lacking, and with the information given, they did not have enough to address their problems, so you ended up with a situation where the community may be irrevocably divided. He said it would take a lot of healing to get the community back to where it was before. He said it was unfortunate that the construction was allowed to begin before any of the problems had been addressed. He said he could see where it might not be fair where the process had already started to make them go back through the process one more time, but neither is it fair for the residents at the start not to have their concerns addressed and possibly have the mill moved to a different location, and felt it should be through MEPA or the interpretation of the rules that these problems should be addressed.

There appeared to be no one present from the Chicago Mining Company present at the meeting to comment. The DHES man said he would be happy to address any questions. Sandy said she could give an overview or answer

questions, and Rep. Raney suggested answering questions as the better way.

Mr. Jim Jenson, Executive Director, Montana Environmental Information Center handed out copies of a letter he had received EXHIBIT 5. He said the letter is one from the mine promoter, Bob Lee, and asked that members read the letter so they would have a better understanding of why it has been so extremely difficult for the citizens of this community to resolve problems, to work constructively with this developer. Every single opportunity he has taken to inflame and divide the community he has used to what he apparently feels is to his advantage. He said he felt Mr. Lee is tarnishing the process and the image of the mining industry in the state and it is not helping anyone.

#### QUESTIONS:

Representative Raney addressed a question to Steve Pilcher. He said it is a little mind boggling after going through wild development in his own valley that was unregulated, and it being such a strange occurrence there. This is common for mining development to take place in Montana, so how is it that our laws could have been so poorly written that it allowed for mill construction to proceed for 8 months before there was ever a public hearing?

(348)

Mr. Steve Pilcher said it was a little mind boggling for him, too, to explain why the DHES seemingly get stuck picking up the slack--trying to plug the hole in the dam by using water quality laws and the authority, maybe not for uses for which they are not intended, but trying to do too much with too little in the way of authority. He said it is sort of like bear hunting with a switch. In this case as well as the one you referenced in Paradise Valley, it was only because of a small requirement under water quality laws that any control or review was initiated of a massive project in both cases. It seems as if at times, we are sort of hanging onto the end of the tail and get beat around quite a bit in the process. To be more specific in answering your questions, I have to point out that under Montana Law, and specifically the Water Quality Act which requires a permit for discharges for either surface or groundwater, and more specifically the Montana Groundwater Pollution System rules, it does not preclude construction of a source -- a mill in this case--but it does require an applicant to seek a permit for that portion of his operation that might have an adverse impact on ground water quality. In the case of the CC, Pony Mill, we are talking specifically of the tailings impoundment. That's the part of the operation that poses the biggest threat to ground water quality and it is that is regulated under the Groundwater Pollution Control Permit that has been issued, but again it is important to point out that

there is no prohibition in the law for building the mill, just as in the case of the Church Universal and Triumphant. There is nothing in state law that says they cannot construct certain buildings. The limit is on the water and waste water systems as is the case of the CUT, or the tailings impoundment as is the case with the Pony Mill with the Chicago Mining Corporation. The permit that was issued, the law and rules require application for such permit 180 days prior to the time the company wishes to use that tailings impoundment and application for that permit was made in accordance with that requirement but did nothing to stop the construction on the remaining portion of the bill. He said he had to add their own frustration in trying to monitor environmental impacts, or assess environmental impacts through, in this case an E, as construction is taking place. I would have to agree that the intent, if nothing else of MEPA, is to call a halt to things until we have a chance to identify, assess, and maybe even mitigate some of the potential impacts associated with that construction and not just keep score with the impacts as it goes along.

(414)

Representative Addy asked what good is a mill without a tailings impoundment? Mr. Pilcher said he supposed it is somewhat physically possible, but not without extreme difficulty to operate the mill without the tailings impoundment. The tailing impoundment is an essential part of most mills if they are intending to dispose of tailings in that manner. If they are going to discharge tailings which do contain certain levels of cyanide they cannot just be disposed of anywhere, they must be disposed in a proper location, they do pose a significant threat to the environment and the potential of creating a ground water contamination problem that generates the need for the permit. The permit and its conditions are intended to reduce that risk to an acceptable level.

(433)

Representative Addy asked if you can't operate a mill without a tailings impoundment, and a tailings impoundment requires a permit, aren't you putting the "cart before the horse" in allowing them to build the mill. It implies a permit will be given. Once the mill is there, it almost forces the decision for approval since they've dumped that sort of money into it. Mr. Pilcher answered that there is something to be said for that position, but he needed to clarify that they transfer the risk to proceed with construction of a facility of that magnitude without having a waste discharge permit or a ground water permit for the tailings impoundment, given the fact that the tailings impoundment is an essential part of the total mill operation. That risk has been transferred to the applicant, he said, and they are

not swayed by the fact that the mill was under construction. He said they reviewed the tailings impoundment and the ground water and pollution permit without regard to the construction of the facility. Had the permit not been issued, it would be the companies loss rather than any one elses.

Representative Addy said it seemed to him it would be an exercise of some questionable business judgment with that kind of an investment at risk without any kind of assurance at all that you will be able to operate that mill. He said it did not seem to him that hard headed business people, dedicated to the bottom line, are going to put that kind of money at risk unless they have some kind of assurance that they will have some kind of approval. Mr. Pilcher said from a personal point of view he would agree, but needed to point out that in a sense is none of their business--it is a question that is valid, but should be posed to the stockholders of the Chicago Mining Corporation. If they have been convinced to invest sizable amounts of money into a mill prior to having a ground water pollution permit.

Representative Addy asked if everything goes wrong for them in the Pony area, how do we assess the magnitude of the damage and what assurance do you have that CC people will be held accountable for it? Mr. Pilcher answered that they had discussed this, and people here had expressed their concern over the lack of bonding authority by the DHES and that was one of the reasons they were anxious to have this reviewed under the new rules by the DSL because they could, in fact, invoke a bond requirement. As things stand now, if nothing changes, it would be difficult to answer your question without knowing at what stage things go "wrong". If it should happen today and the company should just walk, and we have had in the past, some problems with some miners doing just that if they thought if complying with the law was more than it was worth, they just left--but we are at somewhat of a disadvantage, we have to take them and their commitments at face value and assume they will make a good faith effort and the conditions that have been imposed. If they are under operation and suddenly decide to leave, he thought the tailings impoundment, if constructed in accordance with the plans and specifications submitted, and if they adhere to the conditions of the ground water pollution control permit, we do not have an immediate threat to public health or to the environment. The ground water pollution permit that has been issued is without a doubt the most stringent waste water or ground water permit that we have ever issued in the state, he said. The tailings and impoundment contains two liners as extra safety precaution, it provides a leak detection system, such that if a leak should occur in the top liner that leak would be detected prior to any contaminant reaching the second liner and it will give someone an opportunity to respond to that in a timely fashion, he said. Mr. Pilcher added that the someone that



responds to that will depend a little bit on whether the company has left; there is always the possibility that the state will have to come in and pick up the responsibility and implement a remediation plan through a mini superfund program or a variety of other sources, but that is a risk that exists without a bonding requirement for this operation or any similar facility.

Representative Addy said he would like to remind the committee that during the regular session, all the oil wells in the Cutbank area hadn't been drilled properly, hadn't been plugged properly, and there were no bonding requirements on that.

Mr. Pilcher mentioned that it is not as though they were totally without control. Under the water quality laws they have very specific legal authority to hold the company responsible, but sometimes that can be a long and drawn out process during which time environmental damage, if it is occurring unless the state invoked provisions of mini superfund or dipped into other pots of money to correct the problem.

Representative Ellison asked, during your work on the Pony project and also the work in Park county, you evidently have identified the short comings in several places in our laws--are you working with the EQC to point out those deficiencies and making some recommendations as to how they can be remedied? Mr. Pilcher answered yes, they have discussed both of these with staff, with the EQC and as they progress in the study in response to your request we will be asked to participate because of our experience in these two cases. Rep. Ellison said he felt the experience would be valuable.

Representative Brooke asked, since these new off-site mill rules have been adopted by DSL and will go into effect June 1, do you think, or does DSL think there is a chance for exemption in that time frame between now and June 1 that would exempt the CC from the rules. Mr. Pilcher answered that since the custom rules will be administered by DSL he would refer this question to Sandy.

Sandi Olsen said the statute that was passed in 1985 and subsequently, the rules adopted under that, state that any mills that are not constructed and operated prior to the effective date of the rules would be covered. If they are constructed and are operating prior to the effective date of the rules they are grandfathered.

Representative Brook asked Ms. Olsen asked if she would answer the question as to whether or not they would be exempt, and was told it would depend on whether they are operating or not by June 1, and that is a business decision I would not have an answer for.

Representative Brooke asked for the definition of operating and Ms. Olson asked John North to answer the question and he said the question would be if they contend they are operating as of June 1, will they fit that definition, and he said they would have to wait and see what happens. He said at this point they have no indication that CC will try to commence operation by June 1, so they had not gone through a lengthy thought process as to what constitutes operating and what doesn't. If the question arises they will have to do so, he said.

Ms. Olsen said they do plan to inspect the site on June 1 and they would be looking for production of tailings, they would be looking for employees on site, they would be looking for indications of activity, but exactly what would or would not break the case they would have to wait and see.

Mr. North said he would also like to indicate in response to the question that the Hard Rock Act says, is that you shall not either operate a mill or disturb land in anticipation of operation of a mill, so they would not be able to disturb any additional land after June 1st without obtaining an operating permit. For land that's already disturbed as of June 1, that is the mill site and the tailings pond which has already been scraped out, they could continue construction on those sites where there has already been disturbance until obtaining a permit, but could not commence operation without a permit.

Representative Raney asked if a pickup load of ore and some sledge hammers busting it up and sprinkling some cyanide water on it be termed as mill operation? Could they perform some Micky Mouse work and say they are operating. Mr. North said, again they would have to look at what they've done as of June 1. Certainly the Department is going to require there to be a bona fide operation occurring. What they do as of that date, if it is bona fide, that is something we will have to look at.

Representative Moore asked Mr. Pilcher if, with the big picture review under MEPA, is it possible as that law is written now, you don't have the big picture review capacity, or is it because they don't realize they have the authority? Mr. Pilcher said they need to look at the agency interpretation of those rules. He said the reason he said that is to point out the difficulty that we have as program managers and technical people have in determining just how big that picture is. He said he would refer specifically to cumulative effects. He said the committee had heard Mr. Zimmerman make reference to the number of mining claims owned by the CC in that mining district--about 100 claims. The difficulty we face is a determination or identification of which of those 100 mines, or which combination, since they are obviously located over a fairly significant geographical area, will in fact be used for a source of ore

for this facility. He said, we don't have enough resources to waste our time evaluating the environmental impacts of a scenario that may never occur. He said he was not saying this as an excuse, was just trying to point out there is some difficulty in identifying the scope of environmental review under the Montana Environmental Policy Act, and he was not sure that the solution rests with the law or the rules or the interpretation, or any one spot is the culprit; maybe it is a combination, but definitely needs to review and evaluate how they can improve upon the situation.

Representative Moore said she was wondering who picked the site for this mill, and asked if he knew. Mr. Pilcher said that is under their current method of doing business, still the prerogative of the company. He said they are required to evaluate alternative locations and in the E that was prepared, there is discussion of some alternate sites that were evaluated and were eliminated for consideration for a variety of reasons. Obviously if the company is selecting the location, there are certainly factors that are considered that are more important to them than if you or I or the concerned citizens of Pony were making that same selection; but basically, it is the responsibility of the applicant to select the site that is evaluated.

Representative Moore said, then he is fully responsible for the consequences of his choice of site; in other words, if it pollutes those two streams coming down off the mountain he would be liable. Mr. Pilcher answered by saying, that is correct. He said they have attempted through the environmental review and through the ground water permit that has been issued to minimize the risk to the human environment, but if something should go astray and there would be a problem, under Montana law, he would be responsible, as long as he was still there and could be held accountable through our legal system.

Representative Moore said, then he is responsible for restoration when this thing is all done? Mr. Pilcher said, if an operating permit is issued through DSL and their custom mill rules--yes, a reclamation plan will be required. Under our ground water pollution control permit no reclamation of the mill site can be required because it would be overstepping our statutory authority. He said they cannot use a ground water pollution control permit to require things outside our statutory authority for that permit.

Representative Raney asked, the alternative sites that were discussed in the E were sights picked by the developer, and Mr. Pilcher answered yes. Rep. Raney said logically then, he could have picked a couple of sites he knew he didn't want to operate on and said "these are my alternative sites, and here is why I am not going to use them"? Mr. Pilcher said there may be something to that, but he could not answer it. He said only the developer would say the basis for the

alternative sites. He said he thought the alternative sites that were discussed do in fact, represent viable sites, if you consider the factor the rest of us would consider in site selection.

Representative Cobb asked if what was happening here was that they were trying to expand the water quality laws to do things that should be land use planning or expand MEPA instead of trying to use the water quality laws to stop the development because people don't like the site, and we should be going in and trying to fixing MEPA or land use planning and not expand the water quality to stop things you don't even have the authority to stop. Mr. Pilcher said, that is what I was trying to say in my opening comments. He said, it seems like too often we are caught in that position. He said the same thing holds true with their involvement with CUT. The only statutory authority and the only approval they needed down there was for their waste water systems, and we were trying to control this massive development and we only had a hold on the waste water and waste water system. He said the same thing holds true with the Pony mill. They have authority for the tailings impoundment through their ground water permit and they are trying to use that to control all the other things, and the only way to bridge that gap is the MEPA. As all of you are all aware, there is still some ongoing debate as to just how far "substantive versus procedural" MEPA really goes. He said he would like somebody decide once and for all what MEPA allows state agencies to do? Is MEPA intended to expand their specific statutory authority that you as Legislators have delegated to the respective agencies. He said it would make their life a lot easier if they knew.

Representative Cobb if he meant what major state action is, and Mr. Pilcher answered, not only what a major state action is, but how far that agency which has the responsibility for that action, should go in assessing some of these spin-off impacts. There are a lot of things I heard reference to--the social impact, the division of the town, there are a lot of issues that can be addressed--cumulative ones. He said he was speaking for himself, and speaking for experience--it would help everyone to have more explicit direction in those areas.

Mr. Jim Jensen commented on the question of procedural versus substantive effect of MEPA really isn't the question before the Department in this case. Even if MEPA is not held to be substantive, meaning that you cannot use information gathered to deny or grant a permit on the basis of that information--that is the definition of substantive with MEPA. The procedural side is clearly intended to make sure that all the impacts of the decision are fully disclosed; it is a full disclosure document, so that the decision makers, when they make that decision, understand the implications and ramifications of the decision. He said, what Mr.

Pilcher is saying is a smoke screen about using this debate of procedural versus substantive, when the department clearly, in its own rules, along with the statute, is directed to assess cumulative impact so that we know if you push this domino you know the following dominoes are going to fall. He said, the decision the director of DHES in this case, would understand the implications of that decision. Based on that knowledge, and Environmental community has always felt, decision makers will try to make better decisions. You have knowledge, you use that knowledge, and I think it is important to understand. He said that is what the EIS or the EA is intended to do, and saying that don't know what the impacts are, we don't have resources enough to find out what those cumulative impacts are, shows that the department doesn't understand why an EA is important. The salient difference between an EIS and an EA in today's administration of MEPA, is that the EIS is paid for by the developer--which it should be, and an EA is paid for by the taxpayer. If the department would say there are likely significant impacts here, therefore you are going to do an IS, we will require it, you will have to pay for it and here are the things we want you to answer, then the question of resources at the state agency is no longer valid. He said that needs to be understood by everybody in this process.

Representative Addy said he would like to suggest the committee send another letter from the Chairman to the DSL, since they are evidently going to have the next review, and it seemed to him there had been an extraordinary risk had been taken by CC with their capital, and he hoped a similar risk would not be taken with the environment surrounding the holding. He said the inadequacy of the enforcement mechanisms that are available at this point to the state review are clearly inadequate and we really have to look at the need for bonding to assure accountability by any firm whose principle offices are beyond the jurisdiction of state government offices. He said we need some assurance of their good faith. He said he knew nothing formal would be done but would consider a letter from the chairman.

Representative Brooke said in the letter received from Mr. Casey, the application for the permit for the mine was denied and a resubmission was made? Ms. Olsen said the Department received the application, determined it was incomplete, which is different than a denial. She said the application was then resubmitted, and the applicant has subsequently withdrawn that application from the Department so we are no longer reviewing it. She said at this particular time they are not even proposing to mine that particular project area.

Representative Brooke said, so that is withdrawn and asked if there is any indication that it will be resubmitted? Ms. Olsen said assuming logic they will have to get ore from somewhere and I would assume it will have to be resubmitted by the company at some time, and we do not know if it would

even be for the same project area.

Representative Brooke said, in our letter to the DSL, we noted that the developer has violated a ground water permit in the past. She said in the gambling information meeting, and that is one of the things in that process, that a violator is no longer able to get a permit, and I wondered if that ever enters into these permitting processes--do you look at a person's past history? Ms. Olson said, under the metal mine reclamation act the DSL looks at past history relative to bond forfeiture. Steve would have to speak to what the water quality act requires. Mr. Pilcher said there is no specific requirement that we go back and look at corporate history, and in this particular case we are talking about two separate and distinct corporations, even though they are common stock holders and officers, they are legally created separate corporations.

Representative Moore asked Mr. Elpell about his aboriginal skills you are going to be teaching. What is it all about and how will the mine impact your plans to do that teaching? Mr. Elpell said he will be teaching aboriginal living skills which will include primitive shelters, primitive fire making with flint steel and a bone drill, edible wild plants and things of that nature. He said the mill site will not impact their business except possible aesthetics when they are up in the hills. He said his concerns about the mill are about his own home and also for other concerned members.

(208) Representative Raney asked Mr. Pilcher--what he did not understand--with your office and the powers of MEPA and whatever else--how alternative site is not considered. Even an alternative site for the tailings pond isn't considered. Mr. Pilcher said it is difficult to answer, but they are not a land use planning agency, we don't have any dictatorial powers so that we can go out and tell people how to conduct private business. Maybe our rule should be reversed, but you will find on review of the water quality laws that they are best described as somewhat permissive as long as the environment is protected. He said, an applicant will put together a plan, submit the plan, and it is that plan along with some reasonable alternatives that we proceed to evaluate and thorough our action impose whatever conditions are necessary to make that plan comparable with the environment. He said maybe it is a fine line as to how much involvement they should have of alternate sites in selection for consideration or for final selection. He said they did not interpret their authority to allow them to dictate to an applicant where he should locate his mill, his tailings impoundment or anything else so long as he can show them the potential risk for impact associated with that choice can be mitigated to an acceptable level.

Representative Raney said from observing Pony that the absolute worst site for this mill and pond is where it is at, in the

whole valley, so how could any alternative site not have been better? Mr. Pilcher said he would have to ask what factors were used in reaching the conclusion that it was the absolute worst site. Rep. Raney answered, risk to the people who live in the community, first off. Blowing chemicals, chemicals in the water, children getting into the site, animals getting into the site--all of those things. Literally this development is in town. Mr. Pilcher said they had talked earlier that for you and I to select a site might consider factors that would differ from the factors used by the corporation in selecting a location. They may be looking at some factors that have economic ties that we would not consider, and he would respond by saying that even though they have selected what you feel is the worst site, in my mind what this does is to place additional responsibility on them, and to a certain extent on the regulatory agency to impose conditions that will mitigate away the additional risk associated with the selection of that site, and if that can be done, then we probably have an obligation under our current laws to allow that to continue. He said the fact that they have chosen the location they have, played an important role in the requirements for lining of the tailings impoundment. If they had selected a site or a location that was far removed from ground water, far removed from any beneficial use of water, surface water or whatever, it may well have been that a lesser degree of liner or lesser precautions would have been required through the ground water pollution control permit. He thought the responsibility of the agency that the controls they imposed through the regulatory tools available to them are consistent to the location and the situation in hand and effectively mitigate to an acceptable level, that risk. He said, yes, it is close to Pony Creek, that is not the same as to say that is going to pollute Pony Creek, and the concern over the threat to the fisheries in Harrison Lake. Again that is a risk, but we feel that through the conditions that have been imposed through the ground water pollution control permit, we have effectively taken away that risk. He said there is always an outside possibility there will be some devastation that results in the material getting to the stream; you cannot totally eliminate that possibility, but he felt the ground water pollution control permit has effectively minimized it to a reasonable and acceptable level.

GARY LANGLEY, Executive Director, Montana Mining Association said he would like to clarify two points that have been brought out during the meeting. 1. Because of the promulgation of the rules that go into effect June 1 he felt this committee and the public in Montana can be assured this kind of anxiety etc. will not be raised again. 2. The 1989 Legislature passed House Bill 582 with the support of the Montana Mining Association and others and it states specifically that anyone who violated the conditions of one permit cannot obtain another one.

Representative Ellison asked, in their tailings pond, and their tailings, are the restrictions on those, are they as strict as the ones at Mineral Hill? Mr. Pilcher said he would say without a doubt, yes. He said probably more stringent through the physical requirement and the monitor requirements than the Mineral Hill Mine, at Jardine.

Representative Ellison said he understood that at Mineral Hill Mine they treated their tailings to remove part of the cyanide and asked if this would happen. Mr. Pilcher said he would not want to mislead the committee by trying to guess, he would find out and let them know. Rep. Ellison said he thought at Mineral Hill Mine they treated the tailings to neutralize the cyanide before putting them in the tailings pond. Mr. Pilcher said neutralization of the tailings impoundment will be required at some point in time of any mining operation. They can't just allow it to continue out there.

Side 2, (318)

Representative Raney said he could not speak for the committee but he would ask that Steve Pilcher, MEIC and Kim Wilson and anyone else concerned with our current laws that allowed this to happen, who can perceive of other things happening such as what has happened with CUT development in Park county; if you have observations on what specifically what is wrong with the law we would like to have you write to the members of this committee and to EIC and say "here's what we see is wrong with the law" and if you also have some suggestions on correcting the inequity in the law we would also appreciate that information. He said the people just mentioned and the concerned citizens of Pony have spent a lot of time working with this issue at a much closer level than any of us on this committee work. EQC works pretty close with that, and if you could just feed us that information, and the things that are right with the law, we need to know that so we don't go tinkering with something that isn't broke.

Representative Cobb suggested that Rep. Raney, as Chairman of this committee, write a letter to EQC or Debbie and have them write a letter to all these interested groups. Perhaps they should have a hearing and bring in all these things in about the interpretation problem. He said we see a bill or two come through each session, and it would be nice to see what the problem is on both sides. One side might be using a different interpretation and he would like to know who and why. He said during Legislature there are all the political fights and then it is too late, so it would be nice to know



what is objectively and legitimately right before session.

Representative Raney asked Debbie if there was someone who could do that work, not do anything with it, but pass it on to the committee. Ms. Schmidt answered that their principle responsibility in terms of the legislation that created the EQC is to oversee and monitor the implementation of MEPA, and it is really their first priority. She said while they are loaded with work at present, they felt it is important enough to do this kind of effort, and while they were doing it in an ad hoc type of operation, she felt it might be necessary to do a more formal evaluation as to how the new rules are being implemented and what some of the problem areas are. Representative Raney said it would be nice to hear comments from people in Paradise Valley who spent a year close to the subject, and the concerned citizens of Pony, etc. What have we done wrong with Montana law that would allow these things to happen and how can we correct them. He said there are a lot of people out there with ideas that might allow them to be prepared before January to address the issues instead of after everyone is divided up along party lines.

Ms. Schmidt thanked the people who had testified and said the meeting had been very informative. Rep. Raney echoed this comment.

Tape ends (387)

ADJOURNMENT

Adjournment At: 3:05 p.m.

  
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REP. Bob Raney, Chairman

BR/sk

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EXH 1  
MAY 23/90  
PAC

May 2, 1990

Mr. Dennis Casey  
Commissioner of State Lands  
1625 11th Avenue  
Helena, MT 59601

Dear Sir,

I write on behalf of the majority of the members of the Natural Resources Committee, Montana House of Representatives. We are increasingly concerned with the apparently inadequate level of health and environmental review given development projects in Montana. The environmental tragedy that has been unfolding in the Paradise Valley illustrates the compelling need for more effective and aggressive health and environmental evaluation and protection. The situation at Corwin Springs (Mol Heron and Glastonbury), where the health and environmental review will be proceeding at the same time the environmental degradation is occurring, is, in our view, unacceptable.

The Church Universal and Triumphant situation is, we believe, similar to another situation where the state runs the risk of events outpacing the environmental review - the Pony mines and mills. In early January, DHES released an EA and granted a groundwater discharge permit to the Chicago Mining Company giving them the go ahead to open a "custom mill" to process ore within one half mile of the town of Pony. Local residents sued the state contending, among other things, an inadequate environmental review. This case is awaiting review in court.

Meanwhile, Chicago Mining Corporation's sister company, the 2900 Company, submitted a plan of operations and application for a metal mine reclamation act permit for the Amy mine, five miles west of Pony. This mine will provide ore to the Pony mill. Given the mill's capacity and the number of exploration permits and mining leases held by Chicago Mining Company - 2900 Company, it can be presumed there will be significant mining development in the Pony area in order to feed ore to the mill. None of this associated development was evaluated in the mill EA.

Additionally, the mine manager of the Pony mill was recently quoted in the press as stating that the mill will be processing 700 - 800 tons of ore per day - significantly more than the maximum of 500 tons of ore per day evaluated in the EA.

Although we recognize that the Department of State Lands may end up with authority over the mill once new rules go into effect, we would like to urge both agencies, or DSL, to commence a full health and environmental impact statement on the mill, Amy mine, and the associated development.

The Church Universal and Triumphant situation shows the danger of piecemeal and incomplete health and environmental review. While Church Universal and Triumphant is clearly a different situation than the Pony development, there are similarities. In both situations, there is a high level of distrust among the local population for the developer and state officials. In both cases, earlier statements made by the developer/permittee have proven to be not entirely true. In the case of Pony, the developer has violated a groundwater permit in the past, raising serious questions about the company's ability or willingness to follow the requirements imposed by state agencies.

In short, we are very concerned that the state fully examine the Pony mining and milling development through an EIS, (a joint one if necessary). We can no longer afford to hope that minimal scrutiny will be adequate. That approach simply does not work as the two cases mentioned in this letter prove. We urge you to carefully consider our request.

Sincerely yours,

Rep. Bob Raney  
Chairman, House Natural Resources Committee

for the following members of that committee:

- Hal Harper - Helena
- Vivian Brooke - Missoula
- Mike Kadas - Missoula
- Kelly Addy - Billings
- Mary McDonough - Billings
- Janet Moore - Condon
- Ben Cohen - Whitefish
- Mark O'Keefe - Helena

cc: Mr. Donald Pizzini

DEPARTMENT OF STATE LANDS



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE  
HELENA, MONTANA 59620

May 10, 1990

Representative Bob Raney  
Chairman  
House Natural Resources Committee  
212 South 6th Street  
Livingston, MT 59047

Dear Chairman Raney:

Your letter of May 2, 1990, expressing views of the Democratic members of the Natural Resource Committee was, obviously, written after careful thought and attention to the issues addressed.

I, too, am dismayed by reports emanating from Paradise Valley. Although I am not directly involved in the CUT situation, newspaper articles indicate that not only has Governor Stephens and DHES acted appropriately, but that those actions have met with approval by environmental spokesmen who have often been highly critical of this Administration.

As to the mill and/or mining operations at and near Pony, your request to have an EIS prepared for those operations will be given full consideration.

I do have reservations, however, as to weighting the decision making process because of distrust of the operator by local residents who are on record as being opposed to the mill facility no matter the level of environmental assessment.

At the present time, DSL has no authority over the mill which is being constructed at Pony. Although the Legislature, in 1985, did pass legislation which provided that authority, rules which would have made the legislation effective have not been adopted. That situation was brought to my attention last year. A determination was then made to proceed with that rulemaking process.

The Board of Land Commissioners in January gave approval to beginning the mill rule adoption process. A public hearing was conducted by the Department on February 28 in Butte.

Final approval of rules for off-site mill and reprocessing operations will be recommended to the Board of Land Commissioners at their May 21, 1990, meeting. If approval is granted, the rules will become effective on June 1, 1990.

If the Pony mill comes under the jurisdiction of DSL, the following would occur:

The company would be required to submit an application to the DSL which fulfills the requirements of the new mill rules. Much of the information would be similar to what has already been submitted to the Water Quality Bureau. Then, under an interagency MOU, the Department and Water Quality Bureau would conduct a joint review of the application. Once the application is determined complete an environmental analysis would be prepared. The environmental analysis would include opportunity for public comment. Whether an EIS would then be needed would depend upon the significance of residual impacts, consistent with rules adopted pursuant to the Montana Environmental Policy Act (MEPA).

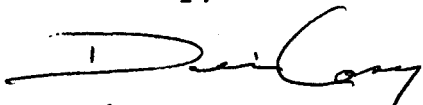
When the application and analysis are complete, a decision to approve outright, approve with conditions, or deny will be made. If the decision is to approve, the bond level would be determined. Upon submission of bond, a permit would be issued.

With regard to associated mining, a similar process is followed. The environmental analysis would likely cover projects together or one project presenting cumulative impacts of the other. Specific details would depend on the timing of the respective applications. The level of detail specific to exploration will vary with a determination of what is reasonable and foreseeable, consistent with MEPA and the confidentiality provisions for exploration under the Metal Mine Reclamation Act.

Your letter specifically refers to the Amy Mine and 2900 Company's application submitted to DSL. The first application was deficient and a copy of the Department's deficiency letter is enclosed. The application was recently (5-8-90) resubmitted but has not yet been reviewed. Therefore, any decision at this time, related to a need for an EIS, would be premature and without foundation.

I would welcome the opportunity to discuss these issues with you. Perhaps, if your schedule allows, we could do so during the upcoming Legislative session.

Sincerely,



Dennis D. Casey, Commissioner  
Department of State Lands

Enclosure

cc: Hal Harper  
Vivian Brooke  
Mike Kadas  
Kelly Addy  
Mary McDonough  
Janet Moore  
Ben Cohen  
Mark O'Keefe  
Donald Pizzini, DHES

EXH 3  
Hse Nat Res

5/23/90

House Natural Resources  
Exhibit 3 5/23/90

DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

May 8, 1990

Representative Bob Raney  
212 South 6th Street  
Livingston, Montana 59047

Dear Representative Raney:

We have received your letter of May 2, 1990 regarding the level of environmental review conducted by this agency on a couple of specific projects that have generated considerable public interest recently. I would like to respond to some of the comments made and issues raised in your letter. First, we appreciate your concern for environmental protection and the interest you have shown in environmental problems in the Livingston area. You have long voiced your concern, in particular, with the massive development by the Church Universal and Triumphant and we share that concern. Had it not been for action by this agency there would have been no environmental review of any part of the Church's activities.

As a lawmaker you are well aware of the fact that State Agencies are not free to limit the activities of individuals or groups just because we don't like what they are doing. No one voiced louder concerns or displeasure with the Church's change in plans for the Mol Heron drainage than did staff of this agency's Water Quality Bureau. Once a legal basis for conducting further environmental review of that specific project was established the Church was notified of our decision and we requested that they halt further construction. We agree with your statement that to conduct an environmental review while environmental degradation is continuing is not the way MEPA is intended to work. When it became apparent, from recent incidents, that the environmental risk was significant, this agency responded with a request for a temporary restraining order to halt further construction activity pending completion of the environmental review. If it is shown that similar environmental threats exist in Glastonbury, this agency will attempt to extend the conditions of the temporary restraining order to cover that area as well.

Your letter compares the Church Universal and Triumphant situation to that of the Chicago Mining Company Pony Mill. The only common factor would seem to be that both are controversial projects and local residents do not want either project and therefore do not agree with the results of our environmental review. In both cases, the agency effort withstood a legal

challenge by our critics. Recently, for your information, the court denied the Pony Citizen's request for mandamus action.

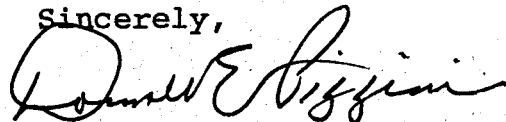
Ore for the mill will come from a variety of sources, including several mines that are currently in operation. With a custom mill, it is impossible to determine the exact source of the ore and therefore to evaluate the impacts of the mining end of the operation. All ore may come from one or two mines or from a dozen or more. The information in your letter relative to the operating capacity of the mill seems to be incorrect. The mill is designed to process a maximum of 500 tons per day and it is that design capacity that was evaluated in the environmental assessment.

It is true that the 2900 Corporation did violate the conditions of their Montana Groundwater Pollution Control Permit by constructing a storage pond without prior approval. This agency has issued a Notice of Violation and Order to Take Corrective Action in response to that situation.

Your inference that projects reviewed by this agency receive only minimal scrutiny is somewhat disturbing and in my opinion, incorrect. Controversial matters such as these will always result in different opinions as to the adequacy of the environmental review. Staff of the Department of Health and Environmental Sciences strive to carry out their responsibilities in an unbiased and professional manner with the resources available to us. Out of the hundreds of projects that we deal with each year you are bound to find some where the end result is not satisfactory to all concerned. At this point in time we do not intend to conduct further environmental review of the Chicago Mining Company Pony Mill.

I hope this response provides additional information as to this agency's actions on the two projects mentioned in your letter. Please do not hesitate to contact me if further information is required.

Sincerely,



Donald E. Pizzini, Director

cc: Dennis Casey, Director, Department of State Lands  
Members House Natural Resources Committee

State of Montana  
Office of the Governor  
Helena, Montana 59620  
406-444-3111

EXH 4  
See [unclear]  
Not Rec.  
5/23/90

STAN STEPHENS  
GOVERNOR

May 9, 1990

Gary Freebury  
Route 62, Box 3119F  
Livingston, MT 59047

Dear Gary:

Thank you for your letter regarding your opinions about gravel pits. I think it is very good to express your point of view. I agree with you that the noise could be disturbing. However, a gravel operation is clean and chemical free. Dirt and dust would be more apparent, especially in such a windy area.

There are benefits to gravel pits. Many people need sand for mixing concrete, gravel for surfacing roads, rock for decorative purposes or in building. Rocks can be very valuable. Collectable rocks, such as moss agate, can be worth \$5.00 per rock. Topsoil is used for lawns and gardens and the people that run the business provide jobs for people that work for them, plus people that buy from them. What if they struck gold? Then your property would be worth more.

There is more than one point of view. All of us are entitled to our opinion. It is important to consider all sides of an issue.

Sincerely,

*Sta Stephens*

STAN STEPHENS  
Governor



5  
Use next page  
5/23/90

United States Forest Region 1 Federal Building  
Department of Service P.O. Box 7669  
Agriculture Missoula, MT 59807



United States  
Department of  
Agriculture

Forest  
Service

Region 1

Federal Building  
P.O. Box 7669  
Missoula, MT 59807

Reply to: 1800

Date: May 11, 1990

Mr. Charles R. Lee  
The Pony Times  
P.O. Box 557  
Pony, MT 59767

Dear Mr. Lee:

Chief Robertson asked that I respond to the concerns you expressed to him in a recent letter relating to the publication called "Inner Voice", published by the Association of Forest Service Employees For Environmental Ethics.

I appreciate your bringing to our attention that some Forest Service offices in Montana were displaying the "Inner Voice" along side our own publications. I was unaware that this was occurring and have already directed each National Forest in this Region to discontinue that practice. It is inappropriate for us to display publications in any way that appear to be an endorsement of another group's mission.

Your second concern addressed the membership of Forest Service employees in the organization, the Association of Forest Service Employees For Environmental Ethics. Our employees, like any other citizens of the United States, are free to belong to organizations of their own choosing. They do so on their own behalf, in their own interest, on their own time, and at their own expense. I would consider it an infringement on their rights for me or any other Forest Service official to ask our employees about their membership affiliations.

Sincerely,

  
JOHN W. MUMMA  
Regional Forester



# ENVIRONMENTALISTS FOR JOBS

— House Natural Resources  
Exhibit 5 5/23/90

P.O. Box 490  
Veradale, Washington 99037  
FAX: 509-928-2594

May 21, 1990

Mr. John W. Mumma  
Regional Forester  
US Forest Region 1 Federal Building  
Department of Service  
P. O. Box 7669  
Missoula, Montana 59807

Dear Mr. Mumma:

Thank you for your letter. I was pleased to read that you had stopped Forest Service offices in Montana from displaying the *Inner Voice* alongside Forest Service publications. In regards to your action, I hope that other Regional Foresters throughout the United States will follow your example.

I partially disagree with your position concerning Forest Service employees belonging to the Association of Forest Service Employees for Environmental Ethics. While I will readily agree that Forest Service employees, like other citizens of the United States, are free to belong to organizations of their choosing, I will submit to you that Forest Service employees who presently belong to radical obstructionist groups hold high potential for criminally violating the constitutional rights of those American people involved in the natural resource industry.

Please allow me to give you two examples of how such criminal violations can occur. I will use my own corporation as one example.

As you probably already know, I am executive vice president of Chicago Mining Corporation, an Illinois corporation, authorized to conduct a lawful business in the State of Montana, and that my corporation is in the process of constructing a mill to process gold ore near Pony, Montana. Too, you are possibly aware of the fact that Chicago Mining Corporation is now under siege by a multitude of closely affiliated radical obstructionist groups who have utilized every means short of guns, bombs and rocket launchers to prevent the mill from being constructed. Led by the Montana Environmental Information Center and the Northern Plains Resource Council, those groups, in my opinion, have conspired to deny Chicago Mining Corporation the right to conduct a legal business in that state.

I am presently in possession of a considerable amount of fully documented evidence to the effect that true environmental consideration of the Pony mill is not a matter of actual concern to the radical groups opposing the project. In reviewing this evidence, I am reasonably certain that the majority of it can, and will, be eventually utilized to build a solid case of criminal

conspiracy against the radical groups in a court of law. I have concluded that many of the acts committed by those groups can easily be classified as organized crime. My CMC partners, who are all attorneys, fully share that opinion.

It is my further belief that all radical obstructionist groups throughout the United States, the Association of Forest Service Employees for Environmental Ethics included, comprise a closely knit religious cult of people, founded in America by a Scotchman named John Muir, and that it is the mission of the religious cult to attack and destroy "Judeo-Christianity" and to return the planet, Earth, to a primitive state of nature. In essence, regardless of American laws and regulations pertaining to the natural resource industry, I believe that a dangerous religious cult is attempting to dictate from a minority position to other religious faiths and to a majority of American people.

In light of those beliefs, you can perhaps imagine my surprise and consternation when I was recently told by a Forest Service employee in your district that Chicago Mining Corporation's Amy Project plan, a proposed mining venture located on forest service land in the Deer Lodge National Forest, would have to be "cleared and coordinated" through the Northern Plains Resource Council. That same supervisory employee informed me that it was "customary" to clear all mining plans on public lands in that specific region through that radical organization, and that Chicago Mining Corporation had little choice in the procedure.

I made a strong, blunt verbal protest at that time which, I suspect, has not yet reached your ears.

On the day that I talked by telephone to the Forest Service employee, approximately Fifty Thousand Dollars had already been expended by Chicago Mining Corporation in preparing the proposed plan of operation. I realized that the money was lost to Chicago Mining Corporation. Knowing that ten percent of all members of the Association of Forest Service Employees for Environmental Ethics are located in the State of Montana, and that Chicago Mining Corporation is a specific target for destruction by every radical obstructionist group in Montana, I knew that the plan of operation for the Amy project had little chance of being approved. It occurred to me that the Amy plan would be discriminated against by people who fanatically believe that all mining, logging, or cattle grazing endeavor on multiple use, public land by private enterprise is unacceptable and constitutes valid reason for Forest Service disapproval.

Therefore, to save Chicago Mining Corporation further expense on a project that was foredoomed to Forest Service rejection, I withdrew the Amy Project from Forest Service consideration on May 14, 1990. Unless reinstated by higher corporate authority, that withdrawal will remain in effect until the U. S. Forest Service can get its house in order and deal with those employees who are jeopardizing the integrity of U. S. Forest Service Regulations.

Another example is the spotted owl controversy. In regards to that matter, I will ask you the same question that I asked the readers of my *Pony Times*:

*How is it humanly possible for the U. S. Forest Service to continue to maintain objectivity, to continue to administer public lands with fairness and impartiality, when many of*

*its own employees currently pledge allegiance to a radical obstructionist group that is dedicated to destroying the American natural resource industry?*

And still more questions, Mr. Mumma. I do not expect you as a Regional Forester in Montana to answer them, but I believe they are questions that many thousands of people now facing unemployment in the states of Washington and Oregon fully deserve to have answered.

How many Forest Service employees belonging to the Association of Forest Service Employees for Environmental Ethics took part in preparing the assessment of the spotted owl as an endangered species? Is there any person in the U. S. Forest Service who actually knows the answer to that question? If the answer is, no, what logical explanation can the U. S. Forest offer for placing credibility in any portion of the assessment? By the same token, if the answer is, yes, and even one member of that religious cult of tree and animal worshippers was involved in preparing the report, what mysterious logic convinced the U. S. Forest Service as a whole that prejudiced, tainted evidence had not been included in the assessment?

As a man deeply involved in the natural resource industry, as publisher of the Pony Times and as president of Environmentalists For Jobs, I am requesting that the U. S. Forest Service take immediate steps to review the credibility of the Forest Service personnel connected with listing the spotted owl as an endangered species and recommending that large tracts of old growth timber be preserved. Since I realize that you, personally, lack the authority to grant my request, I am faxing a copy of this letter to Chief Robertson in Washington, D. C.

In conclusion, I wish to thank you again for your prompt handling of the Inner Voice matter.

Very truly yours,

*Charles R. Lee*  
Charles R. Lee, President  
Environmentalists For Jobs

# VISITORS' REGISTER

Nat. Res

COMMITTEE

BILL NO. Sup. Mtg

DATE 5-23-70

SPONSOR \_\_\_\_\_

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.