

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRPERSON BOB RANEY, on February 13, 1991,
at 3:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HB 537

Presentation and Opening Statement by Sponsor:

REP. HAL HARPER, HD 44 - Helena, stated that Montana is in a semi-arid region. The state, as a whole, does not deal with drought in a timely manner nor does it mitigate damages. During the 1989 legislative session, a bill, similar in principle, was introduced. Since 1989, The Department of Natural Resources and Conservation (DNRC) held meetings and collected public input. The result is HB 537.

HB 537 will establish a drought advisory council and define it's responsibilities. The creation of the council is long overdue.

Proponents' Testimony:

Stan Bradshaw, Trout Unlimited, supported HB 537. He stated he chaired the Drought Advisory Steering Committee appointed by the Governor. The committee was comprised of a diverse group of people, often with radically different viewpoints. The committee worked together to develop HB 537 and stands together in supporting it. The process of compromise and cooperation illustrated by this committee is admirable. Mr. Bradshaw summarized the bill and urged passage.

Jo Brunner, Montana Water Resources, supported HB 537. She complemented Mr. Bradshaw stating he was the most fair chair she has ever worked with. She reiterated that the diverse committee worked together in a cooperative and productive manner. The outcome of HB 537 will be very beneficial to the state. She urged passage.

REP. CHUCK SWYSGOOD, HD 73 - Dillon, co-sponsor of HB 537, stated that Beaverhead County was selected as the experimental county to test the plan. The results have been positive. Many people have learned from the test.

George Ochenski, Helena, supported HB 537. He stated he has been involved in efforts to establish drought management since 1985. In 1987 he chaired a drought task force committee. An outcome of these efforts was HB 537. He stated it is very important to deal with drought issues and urged passage of HB 537.

Susan Lenard, Montana Audubon Legislative Fund, stated it is important to become more aware of environmental change. Environmentally sensitive areas usually respond more predominately than other areas. She supported HB 537 and urged passage.

Jim Jensen, Montana Environmental Information Center, supported HB 537 for reasons previously stated. He stated drinking water is a key issue that needs to be addressed in the plan.

Peggy Olsen Trenk, Western Environmental Trade Association, stated she served on the committee and supported HB 537 for reasons previously stated.

Karen Barclay, Department of Natural Resources and Conservation (DNRC), supported HB 537. EXHIBIT 1

Opponents' Testimony: none

Questions From Committee Members:

REP. VIVIAN BROOKE stated the fiscal note does not reflect any travel expenses. She asked REP. HARPER if this will allow for fair representation, particularly of lower income groups. REP. HARPER responded that due to the importance of the issue, members will find a way to fund their travel. If it becomes apparent that such a problem exists then they will make sure money is available. REP. BROOKE asked what the rationale is for having the military represented. REP. HARPER replied that the Division of Disaster and Emergency Services within the Department of Military Affairs responds to disasters such as droughts.

REP. DAVE WANZENRIED stated that it appears the Drought Committee doesn't allow for public input. REP. HARPER referred to page 1, line 24. He said that private individuals can be appointed to the committee and that the interests of the public would be represented.

Closing by Sponsor:

REP. HARPER asked the committee to support HB 537.

HEARING ON HB 539

Presentation and Opening Statement by Sponsor:

REP. FRITZ DAILY, HD 69 - Butte, stated that HB 539 deals with the quality of soil reclamation work occurring throughout the state. REP. DAILY distributed pictures of reclamation work in Butte-Silver Bow. He said the main purpose of the bill is to assure that local and state input in the Superfund decision making process is considered and to make the Environmental Protection Agency (EPA) more responsible for its actions. The bill attempts to ensure that the cleanup is done properly by establishing local and state cleanup requirements in addition to the federal requirements. The bill is intended to apply to both state and federal Superfund sites. The amendments clarify that it is applicable to federal sites. EXHIBIT 2

REP. DAILY stated the most important part of the bill is found on page 4, line 11. It requires approval of a consent degree by the local governing agency in the area where the site is located. This is important because the local citizens are the one's affected by the decisions and have to live with the results. REP. DAILY highlighted the other sections of the bill. He stated that the Superfund process is backwards. EPA and the potentially responsible party (PRP) make decisions and then have a public hearing. This bill will help to ensure input at the beginning of the decision making process.

Proponents' Testimony:

Jim Johnston, Director of Public Works in Butte-Silver Bow, supported HB 539. He stated that Butte-Silver Bow is one of the

largest Superfund sites in the United States. Local governments are responsible for maintenance and ramifications of the rehabilitation work done by EPA and the PRP, though they are not allowed any input into the planning of the rehab. The rehab work completed in Butte-Silver Bow has caused significant problems, especially to the street systems. A lack of bonding for rehab work could financially destroy communities if the community has extensive costs to fix the work. The people of Butte-Silver Bow are frustrated and dissatisfied. They have tried to have their input heard through numerous ways. Local government needs to be able to have a say in the rehab work that affects their community.

James Daily, Citizens of South Central Butte, stated that people live very close, within feet, of the clean-up area. He said he was here today because he felt that the clean-up was not properly done. The toxic wastes are removed from the top but not further down. Grass won't grow, erosion is excessive, culverts are clogging, and toxic substances and soils flow across the street. To ensure that rehab work is done properly, bonds should be imposed and citizens input be fairly considered.

Tom Eggert, Department of Health and Environmental Sciences (DHES), supported HB 539 with DHES amendments. He stated that HB 539 amends a bill that passed the previous session which DHES proposed. The previous bill enabled DHES to qualify for federal funding to perform some of the work at the site. This bill would amend it in such a manner that DHES may not qualify for the funds. It is unclear if the state can have control over sites that the federal government has the lead on. It is probable that this bill only affects those sites where the federal government is not involved. Of the 200 hazardous wastes sites in Montana, only eight are federal sites. To amend state law to incorporate those eight sites is foolish and would undermine all the positive aspects of the state law. If the provision of the bill that would require local approval of any remedial actions at sites is adopted, DHES would no longer receive any EPA funding. **Mr. Eggert** recommended amendments and urged their acceptance.

EXHIBIT 3

Peter Nielsen, Clark Fork Coalition, supported HB 539. He strongly supported the concept of increased public involvement and authority in Superfund remediation decisions. Current remedial actions are less than desirable and less than permanent. Responsible parties should pay for this. The section amending 75-10-719 on page 8 is a very important concept. The language needs to be broadened to include other options besides bonding, such as trusts funds. If the responsible party realizes that they are responsible for all associated cleanup costs, the job may be better completed. Bonds, or other such assurances, should be mandatory, not optional. Input during the draft and final work plan stages should be included on page 4, section 75-10-713. Hearings should be liberally granted if so requested. There is a concern that the bill may not be applicable to federal work

sites. A solution to this may be to provide for public input on matters that require state concurrence. Applicability to federal sites may lead to disagreements with EPA and may result in a backlash effect. The repercussions need to be considered.

Mr. Nielsen stated that several areas in the bill need work. There is a need to clarify what "governing body in the affected area" entails and specifically, whether concurrence from all the governing bodies of affected areas is necessary. The process of how local governing bodies will be informed needs to be clarified. The veto power of the local governing agencies should be scrutinized. Local agencies may abuse it, may not be well informed and may want less cleanup. There should be an amendment to ensure that local governing bodies can't weaken clean-up processes.

Chris Kaufmann, Montana Environmental Information Center (MEIC), supported the concept of increased public input. Decisions need to be made by well informed people. She supported bonding concepts. Ms. Kaufmann shared previously stated concerns about local veto power. She stated that many communities may not be as knowledgeable as Butte-Silver Bow concerning issues affecting their community.

Opponents' Testimony:

Ward Shanahan, Atlantic Richfield Company, opposed HB 539.
EXHIBIT 4

Leo Berry, Burlington Northern, opposed HB 539. He stated that he agreed with the testimonies of Mr. Shanahan and Mr. Eggert. He said it is nearly impossible to get local consensus about an issue. It is not appropriate for local governments to have power in this situation. Additionally, it is not appropriate for the penalty to include the costs incurred by the Department (referring to page 5, line 9). Posting of bonds and the proof of financial capability is acceptable. The bill is designed to solve one problem: Butte-Silver Bow. It will affect the whole state. Many of the provisions should not be applicable to other sites. Mr. Berry stated that he may be able to support the bill with Mr. Eggert's amendments.

Questions From Committee Members:

CHAIR RANEY asked Mr. Eggert to explain what would be left in the bill if his amendment was adopted. Mr. Eggert replied that the main change in the original bill is the addition of the performance bond requirement. CHAIR RANEY stated that the amendments eliminate public participation. The public desires more public participation and responses to their input. Mr. Eggert responded that as written the amendments do not address more public participation. DHES would support an amendment increasing public involvement and to require a response summary to the public comments.

CHAIR RANEY asked if DHES would provide the appropriate wording for that amendment. Mr. Eggert replied yes. REP. REAM asked if DHES would support the opportunity for public involvement during the work plan stage. Mr. Eggert said yes. REP. REAM inquired why EPA did not want the involvement of the local governing bodies. Mr. Eggert responded that EPA does. Federal regulations provide for public comment, which are used extensively in decision making. The conflict that occurred in Butte-Silver Bow involved pre-decision making planning. Public participation is not required during the pre-decision period.

Closing by Sponsor:

REP. DAILY stated this is a problem that affects more communities than Butte. He said it was stated that EPA may not be pleased if citizens start "forcing" them to be responsible and to involve the public. It is time to "force" them. It is our community and our health. Little is known about Butte-Silver Bow, the largest Superfund site in the world. EPA has not been responsible in dealing with the people of Butte. Local governments are elected by the citizens and should have input and veto power if they want it. If additional public involvement is not included in the bill, the bill is not worth passing.

CHAIR RANEY asked REP. DAILY if he would be willing to work on some of the problems with the bill and return with proposed amendments. REP. DAILY replied he would do so and would like to meet with those wishing to provide input.

HEARING ON HJR 17

Presentation and Opening Statement by Sponsor:

REP. DON LARSON, HD 65 - Seeley Lake, stated that HJR 17 is a request for the Environmental Quality Council (EQC), to conduct a lake shore development study. EXHIBIT 5

Proponents' Testimony:

Abe Horpstadt, Department of Health and Environmental Sciences (DHES), supported HJR 17. EXHIBIT 6

Chris Kaufmann, Montana Environmental Information Center (MEIC), supported HJR 17 for reasons previously stated.

Opponents' Testimony: none

Questions From Committee Members:

REP. ORVAL ELLISON asked REP. LARSON the reason that lakes are not included in the Stream Bed Act. REP. LARSON replied that he thought the reason was that there are too many jurisdictions involved. REP. MARK O'KEEFE asked REP. BOB GILBERT if EQC is overloaded with proposed studies.

REP. GILBERT responded he thought there was only one proposed study to date. He suggested that REP. LARSON amend the bill so that it requests a study be considered rather than direct a study to be done. This will allow EQC the option of not doing the study if they become overloaded. REP. FOSTER asked REP. LARSON to clarify what is meant by dying lakes. REP. LARSON deferred the question to Mr. Horpstadt. Mr. Horpstadt responded that all lakes are ephemeral. Eventually, they will all fill in and "die". It is the rate that they are doing this that is of concern.

Closing by Sponsor:

REP. LARSON stated that lake shore development and use is increasing. The costs of the study are minimal. It is important to study the effects of growth and the potential impacts. He urged passage of HJR 17.

HEARING ON HB 660

Presentation and Opening Statement by Sponsor:

REP. BEN COHEN, HD 3 - Whitefish, stated that there needs to be more control over waste disposal. Those unlawfully dumping waste need to be controlled. Areas being used as landfills that are not licensed need to be licensed and properly managed. REP. COHEN reviewed the bill and the fiscal note.

Proponents' Testimony:

Chris Kaufmann, Montana Environmental Information Center, supported HB 660. She stated there is a serious loophole in the Solid Waste Mananagement Act. The loop hole involves the importation of waste. HB 660 addresses waste management of instate and out-of-state industries.

Linda Lee, Montana Audubon Legislative Fund, supported HB 660.
EXHIBIT 7

Opponents' Testimony:

Ken Williams, Montana Power Company (MPC) and Entech, stated they were not strongly opposed to HB 660. He said the reason for opposing the bill is that regulations would be duplicated. Their facilities are currently regulated. Under HB 660, they would need to acquire additional permits to be regulated in the same fashion. He stated he would support amendments to correct this situation.

John Alke, MDU Resource Group Inc., opposed HB 660 for the reason stated by Mr. Williams.

Jerome Anderson, Shell Western E & P, Inc. and Montana Petroleum Association, opposed HB 660 for the reason stated by Mr. Williams. Mr. Anderson stated that he has no objection other than the duplicity issue.

Doug Abelin, Northern Montana Oil and Gas Association, reiterated testimony presented by Mr. Williams and Mr. Anderson.

John Fitzpatrick, Pegasus, opposed HB 660 for reasons previously stated. He said that the mining wastes that Pegasus produces are not addressed by HB 660 but the other wastes associated with the operation of mining sites are.

Questions From Committee Members:

REP. DOLEZAL asked Tony Grover if he had any comments. Mr. Grover, DHES, stated that the number of facilities mentioned in the fiscal note is probably underestimated. REP. ELLISON asked for an example of the kinds of wastes and types of producers under discussion. Mr. Grover responded that an example is the waste building material that the Exxon Refinery dumps on their land. REP. KNOX, referring to the fiscal note, asked what are the "Personal Services". Mr. Grover answered that they are the costs of two FTE's. REP. HOFFMAN asked Mr. Williams if he would be willing to work with the committee to make it workable and if so, what he would like to see done. Mr. Williams replied he would be willing to work to improve the bill. He said he would like to see a grandfather exemption for power plants already regulated.

REP. HOFFMAN asked how small unincorporated towns would be affected. Mr. Grover replied that they should be regulated by the existing program. CHAIR RANEY asked Mr. Grover if he understood the intent of the bill. Mr. Grover stated that it is unclear to him. CHAIR RANEY said the intent is to control those individuals who are disposing of their garbage in an unlawful and unsafe manner. Mr. Grover responded that the bill is vague and needs to be amended so that regulated people are not subjected to additional regulation and to specify those that are unregulated. CHAIR RANEY inquired if all those that are currently regulated were eliminated from the bill would the fiscal note be affected. Mr. Grover replied that the fiscal impact would significantly decrease.

REP. BRUCE MEASURE asked REP. COHEN who the bill is trying to address. REP. COHEN answered unregulated individuals, such as those that dump in coulees, or the small business that disposes of garbage through unconventional methods. The intent is to help the state get control so that garbage is disposed of in a licensed landfill. Mr. Grover added that in some situations, such as Hutterite communities, large amounts of garbage are disposed of in an unregulated fashion. REP. GILBERT asked if an incorporated group of farmers would be regulated under HB 660. Mr. Grover replied yes, according to the way the bill is written.

REP. HOFFMAN asked REP. COHEN if he would be willing to work with the concerned people to arrive at a compromise bill. REP. COHEN responded that he would and he never intended to affect the agriculturalists, or the mining and power companies. REP. KNOX stated he was comfortable with the bill provided the amendments addressing agriculture and mining are adopted.

Closing by Sponsor:

REP. COHEN stated he is happy to work with the concerned parties. He said the intent of the bill was to address the problems of individuals improperly disposing of wastes. It was never intended to be directed at the agricultural, mining, or power industries.

HEARING ON HB 524

Presentation and Opening Statement by Sponsor:

REP. BOB RANEY, HD 82 - Livingston, stated that at some point society will abandon fossil fuels and find methods of energy production that won't destroy the environment. Wind power is a source of power yet to be harnessed. The Rocky Mountain Front is an ideal place to address the possibility of creating wind power. HB 524 asks for \$70,000 from oil overcharge money for use in a wind energy study in Montana. The oil overcharge money is a fund of approximately \$1,000,000 to \$1,500,000. For money to be appropriated for the study, every state dollar must be matched by two dollars from the federal government or private enterprises.

Proponents' Testimony:

Van Jamison, Department of Natural Resources and Conservation (DNRC), supported HB 524. He stated there is plenty of wind energy on the Rocky Mountain Front, over 4800 megawatts. There is a need to study if wind can be economically harnessed, transformed to electricity, and transported. The highest cost in wind energy is the transmission line and the transmission connection. The study will help prioritize feasible areas to develop. The Northwest Power Planning Council's most recent plan incorporates wind as an important component in meeting future energy needs. The study will form partnerships with interested parties to study the availability and feasibility of wind energy.

EXHIBIT 8

Jim Barngrover, Alternative Energy Resource Organization (AERO), stated that wind power is not a new concept. He said that conservation and self-reliance is extremely important. While it is not desirable to build more transmission lines, wind power is much better than burning fossil fuels or relying on nuclear power plants. He supported HB 524.

Jim Jensen, Montana Environmental Information Center (MEIC), supported HB 524. He stated that wind energy has its negatives

(e.g. the farms and transmission lines are unsightly). Aesthetics may need to be compromised for the health of the global environment. It is important to get the facts. HB 524 will enable a study to do so.

Judith Carlson, Helena, was not present at the hearing but submitted written testimony. EXHIBIT 9

Opponents' Testimony: none

Questions From Committee Members:

REP. FOSTER asked REP. RANEY if the \$70,000 is currently allocated elsewhere. REP. RANEY redirected the question to Mr. Jamison. Mr. Jamison replied that the money will come from the lowest priority project under HB 10, which is the Institutional Conservation Program (ICP). ICP was recommended to receive \$700,000. Funding for HB 524 may cut into that \$700,000. Because oil overcharge revenues were estimated conservatively when putting together the Appropriation Bill, excess money may exist. This would allow for funding of HB 524 without cutting into funding for ICP. REP. FOSTER asked how much of the 4800 megawatts are in Montana. Mr. Jamison replied that most of it is in Montana.

REP. COHEN inquired if a certain percentage of the oil overcharge money always goes to designated projects, such as low income weatherization. Mr. Jamison responded that the low income weatherization program is the top-rated program under HB 10. Some of the oil and gas money is directed to the weatherization program by a court order. The low income weatherization program will not lose funding. The only possible program that may lose some funding would be the ICP. REP. COHEN asked how programs are prioritized under HB 10. Mr. Jamison replied that the priorities are established in the Office of Budget and Program Planning.

REP. KNOX inquired how much space does a wind farm occupies. Mr. Jamison answered less than a square mile.

CHAIR O'KEEFE stated he felt comfortable with DNRC prioritizing the studies. He asked how the Department determines who they are going to work with on a project. Mr. Jamison replied they work with as many people as are willing to work cooperatively together. REP. KNOX asked if there are interested parties for the wind project. Mr. Jamison said that to date the Blackfeet Tribe, Montana Power Company, Bonneville Power Company and the Northwest Power Planning Council are initiating talks. DNRC would like to form a partnership with them.

Closing by Sponsor:

REP. RANEY stated that he believed that funding HB 524 would not take funding away from other programs. There is reversion money that could be used. This is a public-private partnership. The

state contributes \$70,000 and private groups match with \$140,000. The money can only be used for this program. If the study does not occur then the money would be reverted.

Wind energy causes relatively minor environmental damage. It is much cleaner than nuclear and fossil fuel energy. Other uses can occur on the land simultaneously, such as cattle grazing and agriculture. Owners of the land can get a percentage of the electricity sold. The three main issues to be addressed in the study are:

- 1) determining the wind energy supply on the Front;
- 2) determining the availability of transmission lines and the feasibility of constructing transmission lines;
- 3) determining the economic feasibility of transporting electrons to the transmission center.

REP. RANEY urged support of HB 524 and stated that \$70,000 is not a large amount of money to invest in a new era of energy products.

EXECUTIVE ACTION ON HB 360

Motion: REP. O'KEEFE MOVED HB 360 DO PASS.

Motion: REP. O'KEEFE moved to adopt amendments requested by REP. HARPER. EXHIBIT 10

Discussion:

REP. TOOLE stated that the subcommittee on HB 360 met with concerned individuals to work out an acceptable bill. He asked Gail Kuntz, staffer, to explain the amendments. Ms. Kuntz explained that the amendments essentially accomplish two things: to set a boundary or term, in years, to serve on the Commission, and to remove the sunset provision on the function of the Reserved Water Rights Compact Commission.

REP. FOSTER asked if the phrase "suspensions effective until negotiations are terminated" means that the Commission would be terminated after they completed negotiations with all the tribes. Ms. Kuntz replied that it refers to negotiation of an individual compact. REP. FOSTER stated that if the sunset is removed, negotiations could go on in perpetuity. REP. O'KEEFE responded that negotiations will continue until they are successful or until they are forced to go to court. "In perpetuity" is not the proper term. It is clear that an ending point cannot be reached by 1993. REP. FOSTER stated that it is a large increase to go from an ending date of 1993 to an undetermined ending date. CHAIR RANEY stated that any Legislature can terminate it. The thought pattern is that negotiations are on going projects and it is not practical to have an unreasonable ending date. REP. RUSSELL FAGG asked REP. HAL HARPER if he supported the amendments. REP. HARPER replied that he did.

Vote: Motion to adopt amendments carried 15 to 1, with Rep. Foster voting no and Reps. Ream and Gilbert absent for voting.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 360 DO PASS AS AMENDED. Motion carried 15 to 1, with Rep. Foster voting no and Reps. Ream and Gilbert absent for voting.

EXECUTIVE ACTION ON HB 361

Motion: REP. O'KEEFE MOVED HB 361 DO PASS.

Motion: REP. O'KEEFE moved to adopt amendments prepared by Michael Kakuk. EXHIBIT 11

Discussion: REP. HARPER, sponsor of HB 361, stated that the subcommittee on HB 361 met and agreed upon the amendments. The essence of the amendments are to ensure that reserved water rights established post-1973 are subjugated to the same process and adjudication as those established prior to 1973. CHAIR RANEY asked what changes are being made with the amendments. REP. HARPER responded that the amendments clarify what rights are affected and to ensure that it is clear to the federal government. CHAIR RANEY stated that there would be no affect on the existing process or on agriculture. REP. HARPER responded that is correct. REP. O'KEEFE clarified that the bill states that water rights established after 7/1/73 will be dealt with in the same manner as rights established before 7/1/73. The process has never been clear. This bill is intended to clarify the process.

Vote: Motion to adopt amendments carried unanimously with Rep. Ream absent from voting.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 361 DO PASS AS AMENDED. Motion carried unanimously with Rep. Ream absent from voting.

EXECUTIVE ACTION ON HB 485

Discussion: CHAIR RANEY stated that Jean Riley, Department of Health and Environmental Sciences - Petroleum Tank Release Compensation Board, polled the Board's members to determine their concerns and opinions with a \$10,000 co-payment verses a \$35,000 co-payment. He distributed copies of their responses. EXHIBIT 12 REP. COHEN stated that the opinions of the Board members were varied. CHAIR RANEY recalled that Ms. Mills's amendments were to reduce co-payments and to include inactive old tanks. CHAIR RANEY stated that the \$35,000 co-payment was put in last session by the executive branch to help ensure that the fund didn't deplete too quickly and to put some responsibility on people with leaky tanks. If the co-payment is dropped to zero, people with leaky tanks have no responsibility for environmental clean-up. The fund covers environmental degradation and injury to third parties. The people will still be responsible for tank removal.

If more money is taken out of the fund, the cap will not be reached as quickly and the fuel tax will stay on longer. The affect will be increased costs to people who purchase gas.

Motion: REP. O'KEEFE MOVED HB 485 DO PASS.

Motion: REP. O'KEEFE moved to adopt an amendment to reduce the co-payment from \$35,000 to \$12,500.

Discussion: REP. O'KEEFE stated that, according to Ms. Mills, the co-payment of \$35,000 is too high for small operators. The small operators would like to comply but are unable to do so because the co-payment is too high. The Board differs amongst itself on this issue. It will be impossible to please them all. A \$5000 co-payment is too low and the fund would never grow. The \$12,500 is a compromise between the \$5000 and \$35,000 payments. CHAIR RANEY stated he would like to see the fund grow. He asked if the individual would end up paying \$6,250. REP. O'KEEFE replied yes.

REP. TOM NELSON suggested that John Dove's idea of establishing a sliding payment scale based on the age of the tanks might be appropriate. CHAIR RANEY stated that it is not feasible to establish the scale. REP. FOSTER stated that REP. GILBERT would not be agreeable to any co-payments less than \$17,500, and therefore, would oppose REP. O'KEEFE'S amendment. CHAIR RANEY reminded the committee that this type of amendment is actually outside the scope of the bill and was requested only by an individual business and by REP. BARNETT.

REP. HOFFMAN stated he did not understand the logic used to arrive at the \$12,500 co-payment and would vote against the amendment. He stated if the amendment failed then he would make an amendment of reduce it to \$10,000. CHAIR RANEY added if REP. O'KEEFE'S amendment passes, it will constitute a significant tax increase for gasoline consumers and the bill may need to be referred to Appropriations. REP. COHEN asked if the original bill had a co-payment in it. CHAIR RANEY responded that there was a holiday for the first two years. If the work didn't get accomplished in the first two years, a \$25,000 co-payment would be invoked. The co-payment was increased to \$35,000 by the governor. REP. COHEN stated that people have already started cleaning up and it would be unfair to them if the amendment was adopted. REP. FOSTER inquired how the amendment would result in a tax increase. CHAIR RANEY responded that if the amendments are adopted the existing gasoline tax scheduled to come off when the fund reaches a certain amount, would not come off for a very long time.

Vote: Motion to adopt Rep. O'Keefe's amendment to have a \$12,000 co-payment failed 2 to 16, with Reps. O'Keefe and Southworth voting yes.

Motion/Vote: REP. HOFFMAN moved to decrease co-payment to \$10,000. Motion failed 3 to 15.

Motion: CHAIR RANEY moved to adopt amendment "A" requested by Jean Riley, Petroleum Tank Release Compensation Board. EXHIBIT 13

Discussion: CHAIR RANEY asked Ms. Riley to explain the amendment. Ms. Riley explained that the amendment will keep regulated tanks out of the fund. It is a petroleum fund not a hazardous waste clean-up fund.

Vote: Motion to adopt amendment "A" carried unanimously.

Discussion: CHAIR RANEY asked Ms. Riley to explain amendment "B". Ms. Riley explained that the Board needs clarification whether they are suppose to cover abandoned tanks. Amendment "B" clarifies that abandoned tanks are excluded. If the Committee would like abandoned tanks to be included, the language should be changed to read "contains or contained".

REP. COHEN clarified that amendment "B" excludes defunct tanks from the program. He asked if there was another way to take care of the defunct tanks. Ms. Riley replied that if amendment "B" is adopted, defunct tanks would not be covered under the program. There is funding in the Lust Trust to cover abandoned tanks. REP. COHEN asked for more information on how the Lust Trust Fund operates.

Doug Rogness, DHES, explained that the federal Lust Trust Fund provides money to DHES. The money can only be used if the underground tank meets the federal definition of underground tanks and if a viable responsible party can't be found. Responsible parties are sometimes found but are not financially able or viable to perform or fund the clean-up. Because the fund is limited, priority is given to the tanks with the worst problems and threats to the environment. It is used in cases of old underground tanks with no responsible party identified. The responsible party must do the clean-up if they are financially capable. If they are not, then the Lust Trust Fund can be used. The fund is limited, therefore priority is given to the leaky tanks. REP. COHEN asked how much money is in the fund. Mr. Rogness replied that the amount in the fund varies. Currently it is approximately \$500,000/yr.

Motion: REP. COHEN moved to adopt amendment "B".

Discussion: CHAIR RANEY clarified that amendment "B" will result in defunct tanks being excluded.

REP. DAVE WANZENRIED stated that he had an amendment that would retain the status quo, and include coverage of defunct tanks. REP. RANEY stated that the bill, as introduced, was to provide an insurance mechanism for the business, because many are unable to

get insurance due to EPA's restrictions. This bill is the insurance policy for the business. Adding in abandoned tanks is a major change in the bill, even though DHES has been doing it for years. Including coverage for abandoned tanks may become a significant liability and gasoline taxes may increase.

Motion: REP. MEASURE MADE A SUBSTITUTE MOTION TO ADOPT REP. WANZENRIED'S AMENDMENT.

Discussion: REP. WANZENRIED stated that policy decisions are being made by excluding the abandoned tanks. It is a major problem that needs to be addressed immediately. Incentives are needed to promote the reporting and clean-up of tanks. REP. FOSTER agreed that abandoned tanks need to be cleaned up, however he stated that the fund may deplete quickly. REP. HOFFMAN said that only a small part of the fund is used for abandoned tanks. The abandoned tanks should be included. CHAIR RANEY asked Ms. Riley if she thought there may be a huge increase of abandoned tanks needing clean-up in the near future. Ms. Riley responded that it is hard to predict but that she anticipates a significant increase. REP. KNOX spoke in opposition to the amendment stating that the immediate problem needs to be addressed first. REP. WANZENRIED asked what will happen to those people that applied for and were granted money for abandoned tanks. REP. RANEY answered they will be unaffected. The bill takes affect July 1, 1991.

REP. MEASURE stated that if Rep. WANZENRIED'S amendments are adopted there would not be a problem with funding as there is over \$500,000 in the Lust Trust Fund and the other clean-up fund. He asked if the Lust Trust Fund will dry up soon. Mr. Rogness responded that Lust Trust funds are used for other problems besides abandoned tanks, such as oil spills. It is uncertain how long the funding will last. REP. COHEN suggested that a cleaner way to accomplish REP. WANZENRIED'S intent would be to incorporate Ms. Riley's language of "contains and contained". Ms. Riley proposed the following language:

Page 3, line 25, following "contains", insert "contains or contained"; Page 4, line 1, strike line 1 in it's entirety; and Page 4, lines 2 through 4, following "products" on page 2, strike remainders of line 2 through "discovered" on line 4.

Motion/Vote: REP. COHEN made a substitute motion to adopt the wording provided by Ms. Riley. Motion carried 12 to 6. EXHIBIT 14

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 485 DO PASS AS AMENDED. Motion carried 17 to 1 with Rep. Gilbert voting no.

EXECUTIVE ACTION ON HB 380

Motion: REP. SOUTHWORTH MOVED HB 380 DO PASS.

Motion: REP. HOFFMAN moved to adopt amendments requested by Rep. Daily. EXHIBIT 15

Discussion: CHAIR RANEY asked Gail Kuntz, staffer, to explain the amendments. Ms. Kuntz reviewed the amendments and the draft committee resolution. She stated that REP. DAILY met with a contingency of people to work out an agreeable solution. They agreed to the amendments and the concept of the proposed committee resolution. EXHIBIT 16 CHAIR RANEY stated he would like to see a marked up bill so that the amendments will be easier to follow. He requested Ms. Kuntz to complete one and distribute copies to interested parties. He said that the bill deals with a complex situation and needs to be closely examined.

REP. VIVIAN BROOKE asked if the Clark Fork Coalition's concerns about the equality of fines was included in the amendments. CHAIR RANEY suggested that the question be addressed after the marked up version is completed. REP. TOOLE suggested that DHES be present when the bills are discussed.

Vote: Motion to adopt amendments requested by Rep. Fritz carried.

Motion: REP. COHEN MADE A SUBSTITUTE MOTION TO PASS CONSIDERATION ON HB 380. Motion carried unanimously with Reps. Ream, Gilbert, and Knox absent for the vote.

EXECUTIVE ACTION ON SB 18

Motion: REP. FOSTER MOVED SB 18 DO PASS.

Discussion: REP. RANEY stated he was not certain what the bill changes in current law. It appears to be a "trust me" type of situation. REP. MEASURE questioned why the language on page 5, lines 19 to 23, was stricken. He stated he did not feel comfortable with that. REP. O'KEEFE agreed and suggested that the language be reinstated.

Motion: REP. COHEN moved to reinstate the stricken language on page 5, lines 18 to 23.

Discussion: REP. O'KEEFE suggested that action on the bill wait until after transmittal. This will allow the committee more time to review the bill.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT SB 18 BE PASSED FOR CONSIDERATION UNTIL AFTER TRANSMITTAL. Motion carried unanimously.

EXECUTIVE ACTION ON HJR 14

Motion: REP. WANZENRIED MOVED HJR 14 DO PASS.

Motion: REP. O'KEEFE moved to adopt an amendment that would clarify that the hearings would occur in Montana.

Discussion: REP. O'KEEFE stated the intent of the bill was to have hearings in Montana. These amendments will correct an oversight.

Vote: Motion to adopt Rep. O'Keefe's conceptual amendment carried unanimously.

Discussion: REP. FOSTER stated that there is a need to include oil, gas, and mineral resources in the resolution.

Motion: REP. FOSTER moved to insert "mineral resources" following "water" on page 1, line 12 and to insert "mineral resources" following "beauty" on line 15.

Discussion: REP. MEASURE stated that oil and gas is outside the scope of the bill. They should be added on the side of the equation with forest practices. CHAIR RANEY stated that the resolution concerns the cutting of trees and not multiple use. It is about how the cutting of trees affects the environment. REP. KNOX stated that it is impossible to have a timber sale without affecting the visual resource. It is a contradiction to state that timber practices need to be evaluated to determine the effect upon scenic values. REP. WANZENRIED stated that those who signed the bill did so with the understanding that the resolution would deal with forest practices, primarily clear cutting. REP. KNOX stated that using the criteria discussed here, all timber sales would be eliminated. CHAIR RANEY clarified that the resolution calls for hearings to evaluate the impact. It does not stop timber cutting.

Vote: Motion to adopt Rep. Foster's amendments failed 2 to 16 with Rep. Foster and Knox voting aye.

Motion: REP. COHEN moved, that on page 1, line 9, and on page 2, line 8, following "being", strike "harvested on a sustained-yield" and insert "managed on a sustainable".

Discussion: REP. COHEN explained that with the amendment, the bill will incorporate more contemporary language pertinent to forest practices. REP. FOSTER asked what the difference is. REP. COHEN explained that "manage" includes reforestation planning, and other items not generally included under "harvesting."

Vote: Motion to adopt Rep. Cohen's amendment carried 17 to 1 with Rep. Knox voting no.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HJR 14 DO PASS AS AMENDED. Motion carried 14 to 4 with Reps. Foster, Ellison, Gilbert, and Knox voting no.

EXECUTIVE ACTION ON HB 537

Motion/Vote: REP. O'KEEFE MOVED HB 537 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HJR 17

Motion: REP. O'KEEFE MOVED HJR 17 DO PASS.

Discussion: CHAIR RANEY stated that it will be easy to overload EQC with studies. He suggested that the study be requested as opposed to being directed. REP. COHEN said that the study would not require much work, as parts of it are already included in other studies.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 524

Motion: REP. FOSTER MOVED HB 524 DO PASS.

Motion: REP. FOSTER moved to adopt the following amendment as requested by Chair Raney: on page 3, line 6, following "appropriations.", insert "The appropriation made in [section 4] is a biennial appropriation.".

Discussion: REP. FOSTER explained the amendment is clean-up language to clarify that the money can be used up in the second year.

Vote: Motion to amend HB 524 carried unanimously.

Motion/Vote: REP. FOSTER MADE A SUBSTITUTE MOTION THAT HB 524 DO PASS AS AMENDED. Motion carried unanimously.


Announcements/Discussion:

CHAIR RANEY asked for an update on the Rails-to-Trails bill. Paul Sihler, staffer, stated that the committee bill should be available to be introduced by next week. REP. FAGG stated he did not feel it is appropriate to hold HB 233 until the committee gets the Rails-to-Trails bill. CHAIR RANEY, responded that, REP. BARDANOUVE entrusted him, as the co-signer of the bill, to do what he felt was correct. REP. RANEY supported holding HB 233 until the Rails-to-Trails bill is introduced. REP. FAGG stated HB 233 has the mechanism to maintain the 17' right-of-way. REP. MEASURE clarified that it only applies for cooperative lands. It will not protect the integrity of the corridor. REP. RANEY stated he wanted to preserve the railroads for future transportation needs.


REP. MEASURE stated that it appears any method to maintain the integrity of the railroad corridor is not acceptable to the agriculturist or the Republicans. REP. FAGG and REP. FOSTER both stated that HB 233 is a good bill and needs to be passed out of committee. CHAIR RANEY stated that one of the main reasons he supported the original HB 233 was that it would protect the integrity of the railroad corridor. It is not acceptable to only send one-half of the bill's concerns out of committee with a risk the other one-half won't pass. REP. FAGG emphasized that the subcommittee did not split the bill with the intention of killing the Rails-to-Trails issue. REP. WANZENRIED suggested that the two issues be combined into one bill. CHAIR RANEY replied that the committee decided it was better to have two bills. HB 233 can be moved out when there is adequate assurance that the Rails-to-Trails bill meets all the deadlines. REP. COHEN suggested they confirm the deadlines with Speaker of the House, Hal Harper.

ADJOURNMENT

Adjournment: 7:10 pm.



BOB RANEY, Chair



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-13-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	/		
REP. BOB GILBERT	/		
REP. BEN COHEN	/		
REP. ORVAL ELLISON	/		
REP. BOB REAM	/		
REP. TOM NELSON	/		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	/		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	/		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	/		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	/		

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HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 4

Mr. Speaker: We, the committee on Natural Resources report that House Bill 360 (first reading copy -- white) do pass as amended.

Signed: 
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 5.
Following: "COMMISSION;"
Insert: "DELETING PROVISIONS THAT ESTABLISH A TERMINATION DATE FOR THE SUSPENSION OF ADJUDICATION REQUIREMENTS;"
2. Title, line 6.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"
Following: "2-15-212,"
Insert: "85-2-217, 85-2-231, AND 85-2-702,"
3. Page 1, line 14.
Following: "11,"
Strike: "1979"
Insert: "1990"
4. Page 2, line 10.
Following: "for"
Insert: "staggered"
5. Page 2.
Following: line 13
Insert: "Section 2. Section 85-2-217, MCA, is amended to read:
"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, 1993, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state

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~~legislature and tribes or federal agencies has not been accomplished by July 1, 1993, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2 the negotiations are terminated pursuant to 85-2-704. Those tribes and federal agencies that choose not to negotiate their reserved water rights shall be are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."~~

Section 3. Section 85-2-231, MCA, is amended to read:

"85-2-231. Temporary preliminary and preliminary decree.

(1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree shall be issued within 90 days after the close of the special filing period set out in ~~85-2-702(3)~~ 85-2-704 or as soon thereafter as is reasonably feasible.

(c) ~~This~~ section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (1) of this section, or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(3) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(4) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.

(5) If the water judge is satisfied that the report of the

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water master meets the requirements for the preliminary decree set forth in subsections (1) and (3) and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

(6) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, shall upon issuance supersede and replace the temporary preliminary decree."

Section 4. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. ~~However, if approval of the state legislature and tribe has not been accomplished by July 1, 1993, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary~~

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~~decree and shall be given treatment similar to that given to all
other filings."~~

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HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 361 (first reading copy -- white) do pass as amended.

Signed: _____

Bob Raney, Chairman

And, that such amendments read:

1. Title, lines 6 and 7.

Following: "LATER;" on line 6

Strike: "AMENDING SECTIONS 85-2-221 AND 85-2-703, MCA;"

2. Page 1, line 11 through page 3, line 7.

Strike: sections 1, 2, and 3 in their entirety

Insert:

"NEW SECTION. Section 1. Purpose. The purpose of [section 2] is to ensure that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973.

NEW SECTION. Section 2. Federal reserved water rights with priority date of July 1, 1973, or later -- process and adjudication. (1) Under authority granted to the states by 43 U.S.C. 666, a federal reserved water right that has a priority date of July 1, 1973, or later and that is asserted by a federal agency is subject to the claim filing requirements and all other applicable requirements of the state water adjudication system provided for in Title 85, chapter 2, parts 2 and 7.

(2) At the request of a federal agency, the reserved water rights compact commission may negotiate to conclude a compact under Title 85, chapter 2, part 7, for a federal reserved water right with a priority date of July 1, 1973, or later.

(3) Whenever necessary, a water judge may reopen any decree issued pursuant to Title 85, chapter 2, to process the asserted or negotiated reserved water right."

Renumber: subsequent sections

3. Page 3, line 9.

Following: "["

Strike: "Section 3"

Insert: "Sections 1 and 2"

Following: "]"

Strike: "is"

Insert: "are"

4. Page 3, line 11.

Following: "["

Strike: "section 3"


Insert: "sections 1 and 2"

HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 485 (first reading copy -- white) do pass as amended .

Signed: 
Bob Raney, Chairman

And, that such amendments read:

1. Page 3, line 22.
Following: "absolute)"
Insert: "or motor fuel blend such as gasohol"
2. Page 3, line 23.
Following: "a"
Strike: "minimal"
Insert: "de minimis"
3. Page 3, line 25.
Following: "~~contains~~"
Insert: "contains or contained"
4. Page 4, line 1.
Strike: line 1 in its entirety
5. Page 4, lines 2 through 4.
Following: "products" on line 2
Strike: remainder of line 2 through "discovered" on line 4

Lisa

CLERICAL

House Bill No. 485

Date: 2/14

☐ Natural Resources
S 1 (H) Standing Committee

(Chairman) Raney

Time: _____

☐ S / H Committee of the Whole

(Legislative Council Staff)

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

1. Insert: "blend, such as gasohol,"

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

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HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Joint Resolution 14 (first reading copy -- white) do pass as amended .

Signed: Bob Raney
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 6.
Following: "HEARINGS"
Insert: "IN MONTANA"

2. Title, line 9.
Following: "BEING"
Strike: "HARVESTED ON A SUSTAINED-YIELD"
Insert: "MANAGED ON A SUSTAINABLE"

3. Page 2, line 2.
Following: "hearings"
Insert: "in Montana"

4. Page 2, line 8.
Following: "being"
Strike: "harvested on a sustained-yield"
Insert: "managed on a sustainable"

HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that House Bill 537 (first reading copy -- white) do pass .

Signed: _____
Bob Raney, Chairman

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HOUSE STANDING COMMITTEE REPORT

February 14, 1991

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Mr. Speaker: We, the committee on Natural Resources report
that House Joint Resolution 17 (first reading copy -- white)
do pass .

Signed: _____

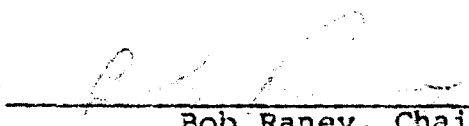
Bob Raney, Chairman

HOUSE STANDING COMMITTEE REPORT

February 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 524 (first reading copy -- white) do pass as amended.

Signed: 
Bob Raney, Chairman

And, that such amendments read:

1. Page 3, line 6.

Following: "appropriations."

Insert: "The appropriation made in [section 4] is a biennial appropriation."

DATE 2-13-91

HB 537

Karen Barclay
DNRC

LC 0550

H_B 537

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

January 21, 1991

By request of the Governor: -----
A Bill for an Act entitled:

"An Act creating a drought advisory committee and defining its
responsibilities."

Purpose

The purpose of this bill is to improve drought monitoring, mitigation, and response by establishing in the statute an entity responsible for these functions and a process to insure they are accomplished efficiently. The drought advisory committee will institutionalize drought management into the operations of state government, using a process that emphasizes local cooperation and allows the state to match its drought management strategy to predicted and actual moisture conditions.

Background

Many Montanans were dissatisfied with the performance of state government in mitigating the impacts of the droughts of the past several years. Thus, drought management was addressed in the state water plan during 1989-90. The creation of a drought advisory committee was one of the recommendations adopted in the Drought Management section of the state water plan. This recommendation was strongly supported by the steering committee responsible for drafting this plan section.

To a limited extent, this drought management strategy was employed by the Governor in 1990, through the Disaster Advisory Council and the creation of a local drought task force in Beaverhead County. This experience was generally successful, and this legislation represents a long-term commitment of state government to this drought management approach.

Implementation

The drought advisory committee will be composed of representatives of the governor's office, DNRC, DHES, DFWP, Dept. of State Lands, Dept. of Agriculture, Dept. of Livestock, Dept. of Commerce, and the Dept. of Military Affairs. Additional, non-voting members representing federal and local government agencies and public and private drought-affected interest may also be appointed by the governor. The committee will be staffed by the DNRC.

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Fiscal Impacts

The costs of participation on the drought advisory committee will be absorbed by the agencies represented. All other costs related to the committee's staffing and operations will be absorbed by the DNRC or other member agencies assigned responsibility for any recommended activities.

Amendments to House Bill No. 539
First Reading Copy

Requested by Rep. Daily
For the Committee on Natural Resources

Prepared by Gail Kuntz
February 9, 1991

1. Title, line 6.

Following: "ACT;"

Insert: "CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MAY TAKE REMEDIAL ACTION AT A SITE THAT IS SUBJECT TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980;"

2. Title, line 12.

Following: "POSSIBLE;"

Strike: "AND"

3. Title, line 13.

Following: "75-10-704,"

Insert: "75-10-711,"

4. Title, line 14.

Following: "75-10-723, MCA"

Insert: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"

5. Page 3, line 13.

Following: line 12

Insert: "Section 2. Section 75-10-711, MCA, is amended to read:
"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1).

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

(3) Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has

made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or persons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs him that if he is subsequently found liable pursuant to 75-10-715(1), he may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to 75-10-715(3).

(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.

(5) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record,

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that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

Renumber: subsequent sections

6. Page 10, line 25.

Following: line 24

Insert: "NEW SECTION. Section 8. {standard} Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1985."

DHES Testimony House Bill 539

Section 2

Public Participation Section: Section 713

- (1) (b) Preferably, this section should not be amended. The cost and formality of a hearing is often not warranted at many of the state sites. If it has to be amended, DHES recommends changing public hearing to public meeting.
- (1) (c) Preferably, this section should not be amended. If it has to be amended, then change to: consider and respond to relevant written or verbal comments properly submitted during the comment period or at the public meeting.
- (1) (d) Delete this amendment. This amendment likely will take the state out of any direct involvement in the Federal Superfund process because EPA will not give the Department funding if there is a very low likelihood that the state could get these local governing body approvals and therefore follow through with the consent agreements or administrative orders. Due to a variety of factors, it is often impossible to obtain the approval of the governing body. Two examples are the BN clean up in Livingston and Mill Creek near Anaconda. The Livingston City Council wrote to the Department requesting that the enforcement action be dropped. Obviously, no consent decree could have been entered into. The second example is the removal of the unincorporated town of Mill Creek directly east and downwind of the Anaconda smelter at Anaconda. After it was determined there was no way to clean up the area, it was decided that moving the residents was the only viable solution. It is doubtful the local government would have formally approved that order.
- (2) Change this amendment to: The administrative record supporting the order or decree must contain the department's responsiveness summary prepared pursuant to 75-10-713 (1) (c).

Section 3

Administrative Penalties: Section 714

- Section 714 (2) This amendment is unnecessary because these department costs are already covered in Section 722.

Section 4

Settlement Section 719

- 719 (5): Change "The department **shall** require" to "the department **may** require" and insert "operation and" between "long-term" and "maintenance." In addition, delete "performance bond"

and insert "a method of financial assurance satisfactory to the department including, but not limited to, any one, or any combination of the following: insurance, guarantee, performance or other surety bond, letter of credit, or qualification as a self insurer."

Section 5

Performance Bond Section: Section 721

- 721 - change of title - delete "performance bond" replace with "financial assurance".

- 721 (4) The proposed amendments require a performance bond from remedial action contractors or liable persons. Remedial action contractors should not be required to submit performance bonds relating to cleanup. They have no liability and this requirement would make it very difficult to find contractors.

In addition, the reference to performance bond should be expanded to include other types of financial assurance. Federal law provides guidance in CERCLA Section 108. CERCLA Section 108 requires financial assurance, albeit in a different context (this section talks about financial assurance of vessels on navigable waters). However, relevant language can be borrowed and inserted in state law.

Finally, financial assurance should only apply to the operation and maintenance of the remedial action. Many sites will be cleaned up by small businesses without adequate funds to both post a bond and cleanup the site. DHES believes that financial assurance, if required at all, should only be used to ensure the successful operation and maintenance of the remedial action.

DHES recommended amendments: delete "or a remedial action contractor" and delete "attainment of the degree...subsections (1) and (2)" and replace the latter with "the long-term operation and maintenance of the remedial action."

Also, delete "performance bond" and insert "a method of financial assurance satisfactory to the department including, but not limited to, any one, or any combination of the following: insurance, guarantee, performance or other surety bond, letter of credit, or qualification as a self insurer."

Section 6

Agreements to perform Remedial Action Section 723

- 723 (1): DHES recommends deleting these changes as the changes in 721 (4) and 719 (5) clearly describe those instances when financial assurance may be required.

COMMENTS OF ATLANTIC RICHFIELD COMPANY
IN OPPOSITION TO HOUSE BILL NO. 539

February 13, 1991

Mr. Chairman and Members of the Committee:

For the record, my name is Ward Shanahan, I represent Atlantic Richfield Company, and I appear here today in opposition to House Bill 539 for several specific reasons. In particular:

1. The language on page 4, line 11, subsection (d) effectively provides a veto over the action of the Department of Health or any court which would approve a consent decree recommended by the Department. Atlantic Richfield has no objection to the participation of local government in a final approval process, but believes subsection (d) on page 4 needs amendment to remove the word "approval" and insert the word "comments" on line 11. In addition, what does the word "governing body" mean? Would this include all governing bodies? Would a county, a city, a school district, a weed control district, a drainage district, a volunteer fire department, or a special improvement district all exercise this veto power? It appears to us that this could happen, and that "governing bodies" should be replaced with "county commissioners" or some single entity. In addition, what does "affected area" mean? We believe this should be amended to delete "affected area" and insert "area in which the site is located."

2. While we have no general objection to Section 2(2) beginning at line 13 on page 4, we do believe that on lines 19 and 20 the words "reasons for overruling the considerations urged" should be stricken and replaced with the words "responses to the comments received" which better expresses the subject matter of that section as expressed in its title on page 3.

3. Section 4(5) beginning at 5 on page 8 and Section 5(4) beginning at line 18 on page 9 creates serious legal problems in application and interpretation. Following are some specific objections:

(a) These sections conflict with each other and duplicate and conflict with the Department's administrative order or judicial consent decree provided for in Section 2 of the Act.

(b) The order or consent decree provisions of the Act may specifically provide for financial contributions to be made by a responsible party during remediation as well as the way in which this will be paid for. To require a bond duplicates this and may may require an "offset" against monies paid under the order or decree to prevent a double penalty.

(c) If a bond is decided upon, there is no flexibility as to how the bond may be posted. For example, current bonding provisions in the mining acts allow the creation of trusts, the deposit of letters of credit, and the use of other financing devices which assist the responsible party in complying with the requirements of the Department. Is there any necessity here to deny the responsible party this flexibility in carrying out remediation?

4. Section 4, paragraph 5, and Section 5, paragraph 4 disagree with one another. One says "shall" and the other says "may." Both should say "may" in order to allow the Department some discretion.

5. In addition, who is the bond to be posted with? How is the bond to be released? How is the bond to be reconciled with the remediation order? For example, if the bond conflicts with the remediation order, is the responsible party to be charged twice, or will an offset be allowed?

6. What happens in the situation where the Department's order merely requires an investigation? Why should a bond be required in this circumstance? HB 539 fails to deal with this.

In summary, Mr. Chairman and Members of the Committee, Atlantic Richfield has no problem with the participation of local government in this process. However, HB 539 does not prescribe an orderly process for accomplishing this objective, and tends to confuse the procedure already established under the Montana Little Superfund Act, which may only multiply the legal problems and delay the accomplishment of the objectives which the sponsors are attempting to achieve.

(b) The order or consent decree provisions of the Act may specifically provide for financial contributions to be made by a responsible party during remediation as well as the way in which this will be paid for. To require a bond duplicates this and may may require an "offset" against monies paid under the order or decree to prevent a double penalty.

(c) If a bond is decided upon, there is no flexibility as to how the bond may be posted. For example, current bonding provisions in the mining acts allow the creation of trusts, the deposit of letters of credit, and the use of other financing devices which assist the responsible party in complying with the requirements of the Department. Is there any necessity here to deny the responsible party this flexibility in carrying out remediation?

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6. What happens in the situation where the Department's order merely requires an investigation? Why should a bond be required in this circumstance? HB 539 fails to deal with this.

In summary, Mr. Chairman and Members of the Committee, Atlantic Richfield has no problem with the participation of local government in this process. However, HB 539 does not prescribe an orderly process for accomplishing this objective, and tends to confuse the procedure already established under the Montana Little Superfund Act, which may only multiply the legal problems and delay the accomplishment of the objectives which the sponsors are attempting to achieve.

EXHIBIT 4
DATE 2-13-91
HB 539

We respectfully submit that if these problems cannot be solved, HB 539 should be given a "DO NOT PASS" recommendation. However, we stand ready to work with the sponsors in drafting the appropriate amendments to remove these problems.



Ward A. Shanahan
Atlantic Richfield Company
301 First Bank Building
P. O. Box 1715
Helena, MT 59624
(406) 442-8560

WAS/skh

8951W

Testimony of Don Larson (D-Seeley Lake
Before House Natural Resources

HJ 17 - Requesting the EQC to Conduct an Interim Study on the Need
for and Nature of Uniform State Standards for Lakeshore Protection
and Development
2/13/91

CHAIRMAN RANNEY, AND MEMBERS OF THE COMMITTEE.. FOR THE RECORD MY NAME
IS DON LARSON, HOUSE DISTRICT 65. I APPEAR BEFORE YOU TODAY TO PRESENT
TO YOU FOR YOUR CONSIDERATION HOUSE JOINT RESOLUTION 17.

IN A NUTSHELL, THIS RESOLUTION WOULD REQUEST THE ENVIRONMENTAL
QUALITY COUNCIL TO CONDUCT AN INTERIM STUDY OF MONTANA'S LAKESHORE
PROTECTION REGULATIONS AND ASSESS THE NEED FOR A COMPREHENSIVE, STANDARD
SET OF REGULATIONS.

I DON'T NEED TO TELL YOU MEMBERS THAT THIS FITS NICELY WITH THIS
COMMITTEE'S HEIGHTENED ENVIRONMENTAL AWARENESS, AND ITS WELL-ESTABLISHED
DIRECTION TOWARD ENVIRONMENTAL PROTECTION. WE HAVE TO KNOW WHERE WE
ARE BEFORE WE CAN DECIDE WHERE WE ARE GOING.

AS A RESIDENT OF A LAKESHORE COMMUNITY, I CONSIDER MYSELF WELL-VERSED
ON THE DEVELOPMENT PROBLEMS. THE POLLUTION POTENTIAL IS THERE, AND IT
IS INCREASING YEARLY, BOTH IN VOLUME AND IN RATE. ALL OUR LAKES ARE
DYING IN MONTANA. AS STEWARDS WE HAVE AN OBLIGATION TO OUR CHILDREN TO
SLOW AND MINIMIZE THOSE DEATHS, SO THAT THEY MIGHT ENJOY THE PRISTINE
LAKES OF MONTANA AS WE ENJOY THEM.

I HAVE A LIMNOLOGIST, ABE HORPSTADT, IN THE AUDIENCE TO ANSWER
TECHNICAL QUESTIONS. I WILL BE HAPPY TO ANSWER QUESTIONS AND I RESERVE
THE RIGHT TO CLOSE.

HOUSE NATURAL RESOURCES COMMITTEE

February 13, 1991

TESTIMONY ON HJR 17 -- LAKESHORE DEVELOPMENT EQC STUDY

PRESENTED BY -- ~~DAN FRASER~~, DHES WATER QUALITY BUREAU

Abe Horpstadt

The Department of Health and Environmental Sciences supports an interim study by the Environmental Quality Council to determine the need for and the nature of uniform state standards for the protection and appropriate development of lakeshores in Montana.

The Water Quality Bureau's 1990 statewide water quality status report shows that three-quarters of Montana's lake acres have one or more beneficial uses that are impaired by natural or man-caused sources of pollution. Lakeshore construction and on-site wastewater disposal (septic systems) contribute significantly to use impairment in Montana lakes.

The committee should understand, however, that protection of the lakeshore alone will not necessarily guarantee protection of the lake's water quality. Agricultural, forest practices, mining and other activities within the lake's watershed, as well as activities on the lake itself, may also need to be controlled in order to protect the lake's beneficial uses.

Thank you for the opportunity to provide testimony on this bill.

DATE 2-13-91

☒ HB 660

Montana Audubon Legislative Fund

Testimony on HB 660
House Natural Resources
February 12, 1991

Mr. Chairman and Members of the Committee,

My name is Linda Lee and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Society and represents 2,500 members throughout the state.

We support House Bill 660. It is important to close the loophole that exists for industry to dump on their own property with no regulation. The number of these unregulated landfills is unknown. There may be a hundred, and there could be a thousand of them across the state. Whatever the number, they cannot be allowed to continue because the potential contamination of our ground water supply is tremendous.

It is also important to allow local governments to address these violations. Please pass House Bill 660.

Confirmation and Demonstration of Wind Power Along the Rocky Mountain Front of Montana

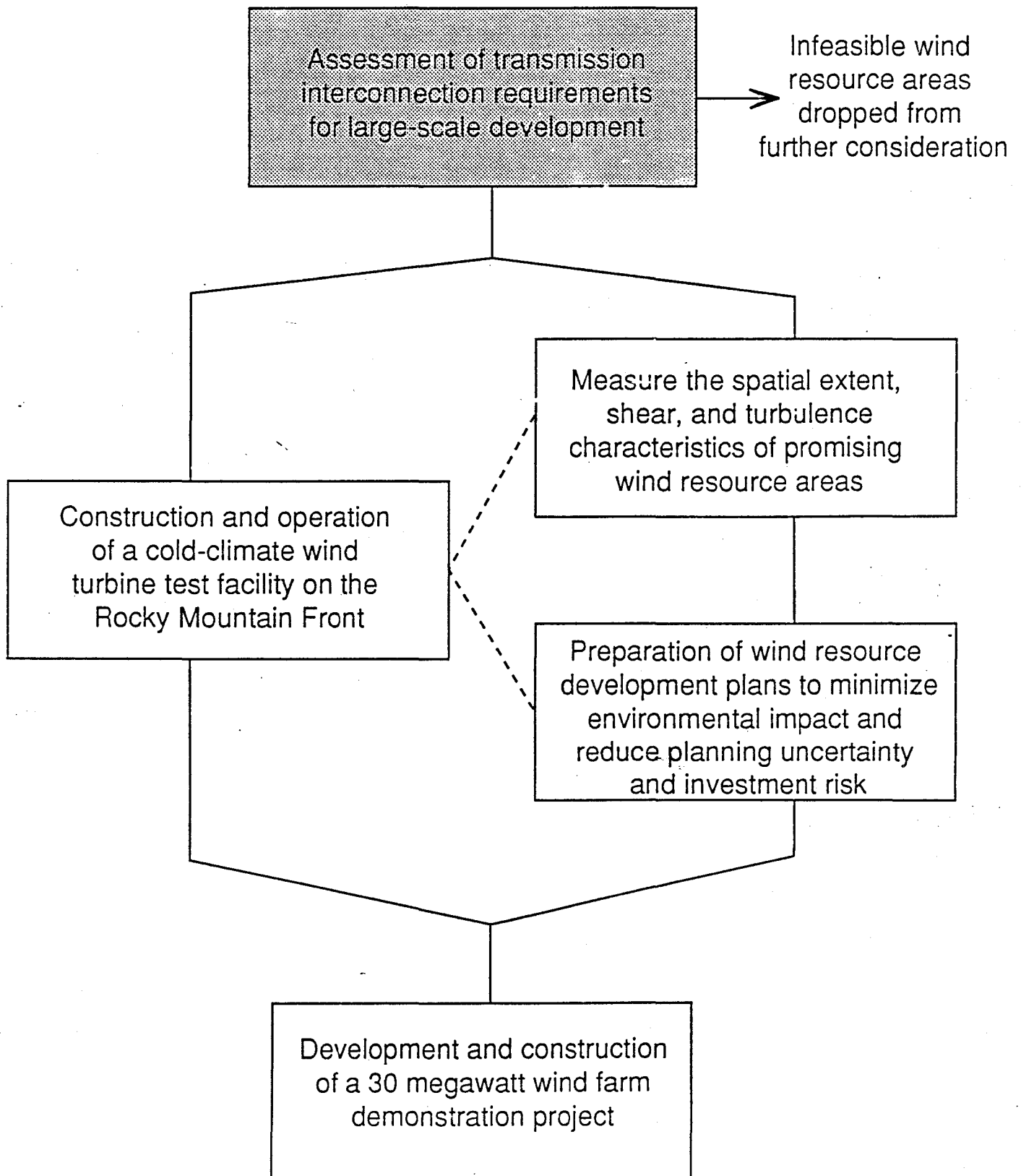


EXHIBIT 9
DATE 2-13-91
X HB 524

Testimony on HB 524
An Oil Overcharge Appropriation for a
Wind Farm Transmission Study

by
Judith H. Carlson
for the
Human Resource Development Councils

The HRDCs have no position on the appropriation of oil overcharge funds to the wind farm study. However, they are interested in protecting the present allocation of oil overcharge monies and will be appearing in favor of HB 10 before the Long Range Planning Committee.

That bill allocates the Exxon payments and stripper well payments to a number of programs, including those in which the HRDCs have a special interest - the weatherization of homes of low-income persons, the Energy Share program of help with power bills of low-income families, and replacement of leaky underground heating oil tanks of low-income families.

If the approval of HB 524 would jeopardize those funds, then we would oppose it. If it does not, then we have no problem with HB 524.

Thank you very much for your consideration of our views.

Judith H. Carlson
442-7462

2/13/91

Amendments to House Bill No. 360
First Reading Copy

Requested by Rep. Harper
For the Committee on Natural Resources

Prepared by Gail Kuntz
February 11, 1991

1. Title, line 5.
Following: "COMMISSION;"
Insert: "DELETING PROVISIONS THAT ESTABLISH A TERMINATION DATE
FOR THE SUSPENSION OF ADJUDICATION REQUIREMENTS;"
2. Title, line 6.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"
Following: "2-15-212,"
Insert: "85-2-217, 85-2-231, AND 85-2-702,"
3. Page 1, line 14.
Following: "11,"
Strike: "1979"
Insert: "1990"
4. Page 2, line 10.
Following: "for"
Insert: "staggered"
5. Page 2.
Following: line 13
Insert: "Section 2. Section 85-2-217, MCA, is amended to read:
"85-2-217. Suspension of adjudication. While negotiations
for the conclusion of a compact under part 7 are being pursued,
all proceedings to generally adjudicate reserved Indian water
rights and federal reserved water rights of those tribes and
federal agencies which are negotiating are suspended. The
obligation to file water rights claims for those reserved rights
is also suspended. This suspension shall be effective until July
1, 1993, ~~as long as negotiations are continuing or ratification
of a completed compact is being sought. If approval by the state
legislature and tribes or federal agencies has not been
accomplished by July 1, 1993, the suspension shall terminate on
that date. Upon termination of the suspension of this part, the
tribes and the federal agencies shall be subject to the special
filing requirements of 85-2-702(3) and all other requirements of
the state water adjudication system provided for in Title 85,
chapter 2 the negotiations are terminated pursuant to 85-2-704.~~
Those tribes and federal agencies that choose not to negotiate
their reserved water rights ~~shall be~~ are subject to the full
operation of the state adjudication system and may not benefit
from the suspension provisions of this section."

Section 3. Section 85-2-231, MCA, is amended to read:

"85-2-231. Temporary preliminary and preliminary decree.

(1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(i) the statements of claim before the water judge;
(ii) the data submitted by the department;
(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree shall be issued within 90 days after the close of the special filing period set out in ~~85-2-702(3)~~ 85-2-704 or as soon thereafter as is reasonably feasible.

(c) This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (1) of this section, or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(3) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(4) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (3) and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

(6) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, shall upon issuance supersede and replace the temporary preliminary decree."

Section 4. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. ~~However, if approval of the state legislature and tribe has not been accomplished by July 1, 1993, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."~~

Amendments to House Bill No. 361
First Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk
January 31, 1991

1. Title, lines 6 and 7.

Following: "LATER;" on line 6

Strike: "AMENDING SECTIONS 85-2-221 AND 85-2-703, MCA;"

2. Page 1, line 11 through page 3, line 7.

Strike: sections 1, 2, and 3 in their entirety

Insert:

"NEW SECTION. Section 1. Purpose. The purpose of [section 2] is to ensure that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973.

NEW SECTION. Section 2. Federal reserved water rights with a priority date of July 1, 1973, or later -- process and adjudication. (1) Under authority granted to the states by 43 U.S.C. 666, a federal reserved water right that has a priority date of July 1, 1973, or later and that is asserted by a federal agency is subject to the claim filing requirements and all other applicable requirements of the state water adjudication system provided for in Title 85, chapter 2, parts 2 and 7.

(2) At the request of a federal agency, the reserved water rights compact commission may negotiate to conclude a compact under Title 85, chapter 2, part 7, for a federal reserved water right with a priority date of July 1, 1973, or later.

(3) Whenever necessary, a water judge may reopen any decree issued pursuant to Title 85, chapter 2, to process the asserted or negotiated reserved water right."

Renumber: subsequent sections

3. Page 3, line 9.

Following: "["

Strike: "Section 3"

Insert: "Sections 1 and 2"

Following: "3]"

Strike: "is"

Insert: "are"

4. Page 3, line 11.

Following: "["

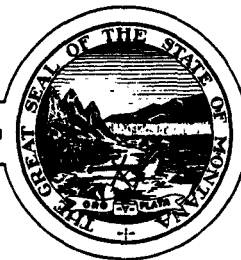
Strike: "section 3"

Insert: "sections 1 and 2"

PETROLEUM TANK RELEASE
COMPENSATION BOARD

DATE 2-13-91

HB 631



STAN STEPHENS, GOVERNOR

(406) 444-5941
FAX # (406) 444-1499

STATE OF MONTANA

OFFICE 836 Front Street
LOCATION: Helena, Montana

MAILING Cogswell Building
ADDRESS: Helena, MT 59620

To: House Natural Resources Committee Members

From: Jean Riley, Executive Director *from A. Riley*

Date: February 13, 1991

Subject: HB 485 -- Poll of Board Members concerning \$10,000 co-payment verses \$35,000 co-payment.

At the House Natural Resources Committee hearing on HB 485, Ms. Candy Mills requested a change to Title 75 Chapter 11 Part 3, MCA. The change Ms. Mills requested has to do with the amount of co-payment, 75-11-307(4). Presently the co-payment amount is set at \$35,000, Ms. Mills is requesting that the amount be reduced to \$10,000 and the total reimbursement which an owner or operator could receive would be \$995,000.

I called all the members of the Petroleum Tank Release Compensation Board (Board) on February 12, 1991, to discuss this and to find out their concerns. Listed below are their expressed concerns:

Al Audet The \$35,000 co-payment is a good deterrent. Would there be enough incentive if the co-payment is \$10,000.

Ray Blehm This is a good idea but this is a policy decision which needs to be made by the Legislature.

John Dove This is actually two issues. The smaller commitment on individuals may be good, but the issue here on not having proper funding could be due to the age of Ms. Mills's tanks. The 35+ year old tanks are a large liability and this could be an isolated case. She may not be looking at the alternatives--her tanks are old and when they pollute, the fund will have to pay for the cleanup. The problem may be that she cannot pay for the cleanup let alone replacement costs. This may be a case of old tanks with no intention of upgrade. These tanks are a leak waiting to happen and it may make more sense for the co-payment to be set proportional to the tank age. This is not an issue which should be clouded by the issue of putting people out of business.

(over)

"AN EQUAL OPPORTUNITY EMPLOYER"

- Ron Guttenberg The Fund should pay for first dollar coverage, that is no co-payment. The co-payment will not stop a release and the co-payment is not compelling owners or operators into checking work estimates or getting bids on work. It may be better to have field inspectors. Tank owners have other expenses which are not covered by the fund, such as replacement costs. The present co-payment is not causing early reporting. This is a move in the right direction and could result in an overall savings.
- Ray Hoffman A \$10,000 co-payment may not be enough of a deterrent to tank owners. This may not be a great enough liability to the tank owner.
- Gary Tschache This is a good idea, but the Fund should not become a catchall. There must be rules which require good management practices for tank owners.
- Howard Wheatley What about the \$17,500 which some tank owners have paid, this change may not be fair. Would owners have to show that inventory records were kept before being paid. Inventory records are very important in finding leaking tanks. He would rather see \$20,000 co-payment--this would still keep the tank owner responsible. He would follow the conscience of the other Board members.

I have also enclosed for your information a list of the claims received to date, what this change would have resulted in payment, and a list of the Board members. The Board members stated that if you need more information feel free to call them or me.

2-13-91
HB 631

ASSUMPTION OF PAYMENT REQUESTS USING \$5,000 LIMIT--CONT.

CLAIM REQUEST	WITH \$5,000 LIMIT
\$14,899.00	24,798.00
11,292.37	17,584.74
11,964.21	18,928.42
8,333.36	11,666.72
6,073.71	7,147.42
6,474.00	7,948.00
5,100.00	5,200.00
8,709.50	12,419.00
10,707.17	16,414.34
11,011.84	17,023.68
291.63	291.63
1,202.46	1,202.46
3,368.17	3,368.17
6,252.40	7,504.80
1,753.50	1,753.50
1,423.25	1,423.25
1,937.19	1,937.19
3,302.50	3,302.50
5,116.37	5,232.74
1,532.55	1,532.55
4,486.07	4,486.07
2,373.59	2,373.59
2,362.75	2,362.75
3,421.07	3,421.07
1,246.25	1,246.25
15,227.86	25,455.72
1,325.22	1,325.22
9,246.29	13,492.58
33,764.03	46,264.03
4,382.18	4,382.18
3,567.55	3,567.55
335.10	335.10
7,939.90	10,879.80
30,288.75	42,788.75
86.50	86.50
2,249.63	2,249.63
50,717.47	63,217.47
\$293,765.39	\$394,613.37
510,270.49	632,518.74
390,824.70	548,937.31
\$1,194,860.58	\$1,576,069.42

AS
OF
FEB. 11
1991

DIFFERENCE \$381,208.84
PERCENT INC. 31.90%

PETROLEUM TANK RELEASE COMPENSATION BOARD
ASSUMPTION OF PAYMENT REQUESTS USING \$5,000 LIMIT

CLAIM REQUEST	WITH \$5,000 LIMIT	CLAIM REQUEST	WITH \$5,000 LIMIT
\$1,482.98	\$1,482.98	\$19,746.54	\$32,246.54
20,144.73	32,644.73	2,294.78	2,294.78
5,623.78	6,247.56	1,730.67	1,730.67
4,322.37	4,322.37	9,568.61	14,137.22
2,113.91	2,113.91	8,448.75	11,897.50
2,193.33	2,193.33	11,011.26	17,022.52
4,224.09	4,224.09	10,332.56	15,665.12
7,882.73	10,765.46	27,619.92	40,119.92
884.22	884.22	277.50	277.50
19,254.68	31,754.68	6,890.24	8,780.48
1,377.00	1,377.00	6,546.68	8,093.36
117.50	117.50	38,618.87	51,118.87
649.33	649.33	48,833.47	61,333.47
15,201.94	25,403.88	13,160.65	21,321.30
5,340.02	5,680.04	899.47	899.47
5,738.53	6,477.06	4,010.39	4,010.39
218,378.08	230,878.08	3,729.25	3,729.25
1,886.63	1,886.63	3,197.76	3,197.76
1,141.89	1,141.89	3,707.50	3,707.50
3,530.81	3,530.81	729.87	729.87
14,845.90	24,691.80	5,321.00	5,642.00
1,866.37	1,866.37	1,314.08	1,314.08
1,592.85	1,592.85	1,512.43	1,512.43
836.92	836.92	20,381.55	32,881.55
8,304.00	11,608.00	10,995.40	16,990.80
1,603.05	1,603.05	19,628.07	32,128.07
451.42	451.42	4,006.72	4,006.72
1,326.00	1,326.00	1,783.58	1,783.58
5,034.56	5,069.12	2,024.55	2,024.55
16,294.61	27,589.22	15,438.89	25,877.78
50,543.05	63,043.05	10,593.91	16,187.82
31,412.31	43,912.31	6,390.00	7,780.00
3,128.05	3,128.05	4,240.89	4,240.89
2,076.23	2,076.23	4,242.87	4,242.87
5,244.39	5,488.78	1,755.06	1,755.06
1,027.05	1,027.05	1,719.43	1,719.43
5,016.63	5,033.26	26,719.37	39,219.37
9,147.14	13,294.28	14,553.80	24,107.60
2,907.75	2,907.75	6,381.50	7,763.00
8,574.02	12,148.04	9,979.36	14,958.72
17,549.64	30,049.64	487.50	487.50
\$510,270.49	\$632,518.74	\$390,824.70	\$548,937.31

PETROLEUM TANK RELEASE COMPENSATION BOARD

Mr. Al Audet 740 Skyline Drive, Great Falls, MT 59403
phone: 453-5451 (work) 452-3917 (home)
position held: representative of the petroleum services industry
term ends: June 20, 1992

Mr. Ray Blehm Dept. of Justice, Fire Marshal Bureau, Room 371, Scott Hart Bldg., Helena, MT 59620
phone: 444-2050 (work) 443-2383 (home) 252-7051 (Billings, MT)
position held: state fire marshal
term ends: June 30, 1993

Mr. John Dove 436 King Street, Missoula, MT 59801
phone: 721-1000 (work) 549-0174 (home)
position held: representative of the insurance industry
term ends: June 30, 1992

Mr. Ron Guttenberg P.O. Box 1068, Glasgow, MT 59230
phone: 228-4329 (work) 228-8332 (home)
position held: representative of the general public
term ends: June 30, 1991

Mr. Ray Hoffman DHES, Cogswell Bldg., Helena, MT 59620
phone: 444-4255 (work) 458-5838 (home)
position held: representative of DHES director
term ends: June 30, 1993

Mr. Gary Tschache 433 S. Black, Bozeman, MT 59715
phone: 586-1079 (work) 587-2926 (home)
position held: representative of service station dealers
term ends: June 30, 1991

Mr. Howard Wheatley
(Chariman of Board) P.O. Box 1607, Great Falls, MT 59403
phone: 453-0971 (work) 454-2087 (home)
position held: representative of independent petroleum marketers and chain retailers
term ends: June 30, 1992

TESTIMONY

Petroleum Tank Release Compensation Board
Jean Riley, Executive Director

The Petroleum Tank Release Compensation Board (Board) requested the proposed changes to Title 75 Chapter 11 Part 3. The Board is trying to clarify some issues which have come to light since this statute became effective in 1989. The following are the Board's reasoning behind the proposed changes and some proposed amendments which should help to further clarify the issues.

A. Definition of petroleum or petroleum products.

(15) "Petroleum" or "Petroleum products" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a minimal de minimis amount of another substance.

The reason for this change is to clarify that mixtures of waste oil and waste water or other mixtures with no commercial application are excluded, and that releases of mixtures of petroleum and hazardous substances which could result in hazardous waste also would be excluded.

B. Definition of petroleum storage tank.

(16) "Petroleum storage tank" means a tank that contains is being used to actively receive, dispense, or store petroleum or petroleum products when a release is discovered or that was actively used for any of these purposes no more than 1 year before the date that a release is discovered placed out of service on a temporary basis and is in compliance with department rule and that is:

The Board would like a clarification from the Legislature as to whether or not abandoned or defunct tanks not in use at the time the law went into effect, April 13, 1989, should be covered. The proposed language would exclude the defunct tanks. To date the Board has paid in excess of \$46,000.00 on 11 abandoned tank sites.

(over)

C. Definition of release.

The Board feels that the definition of release used by the Department of Health and Environmental Sciences (DHES) Underground Storage Tank Program better describes a release from a petroleum storage tank than the CECRA definition for release. The CECRA definition includes release from the abandonment or discarding of barrels, containers, and other closed receptacles which does not fit into the definition of a petroleum storage tank.

D. Limit assignment to designated representatives.

The Board has had problems in the past with owners not paying contractors for charges that the Board found to be ineligible. These charges include replacement costs and closure costs which are excluded by statute. The language clarifies that the owner or operator remains responsible for reimbursement of contractors or consultants.

E. Extend eligibility in some non-notification situations.

The Board has found that in some cases the DHES has waived the tank notification requirements. This proposed change would allow the Board the same flexibility.

F. Recognize tribal government authority.

The objective of this change is to allow the Board and DHES to recognize authority of tribal governments over tank leaks in Indian country, as EPA would require. This mainly makes sure that the tribal authority is notified similar to a local governmental agency.

E. Clarify Board and DHES roles in claim review process.

This would revise the statutory provision in the current statute to read like the actual practice. The claims are received by the Board staff and once determined to be complete, the Board staff transfers them to DHES for their review. This has been working well and the change would reflect this.

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 2/13/91 BILL NO. HB 485 NUMBER 1

MOTION: to adopt amendment suggested by Ms. Jean Riley; they are as follows:
Page 3, line 25, following "contains", insert "contains or contained"; page 4, line 1, strike
line 1 in its entirety; page 4, lines 2 thru 4, following "products" on page 2, strike remainder
of line 2. thru "discovered" on line 4.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT		✓
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER		✓
REP. DAVID HOFFMAN	✓	
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	12	6

Amendments to House Bill No. 380
First Reading Copy

Requested by Rep. Daily
For the Committee on Natural Resources

Prepared by Deborah Schmidt
February 11, 1991

1. Title, lines 4 through 6.
Following: "REQUIRE" on line 4.
Strike: the remainder of lines 4 and 5 through "SUBSTANCES" on line 6
Insert: "IMMEDIATE ACTION TO CONTAIN, REMOVE, AND ABATE A RELEASE OF A HAZARDOUS OR DELETERIOUS SUBSTANCE AT CERTAIN SITES"
2. Title, line 9.
Following: line 8
Strike: "75-10-701,"
3. Page 4, lines 21 and 22.
Following: "formation" on line 21.
Strike: the remainder of line 21 through "use" on line 22
4. Page 5, lines 5 through 8.
Following: "shall" on line 5.
Strike: the remainder of subsection (2) in its entirety
Insert: "establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment."
5. Page 5, lines 16 and 17.
Following: "present" on line 16.
Insert: "to cause pollution of an aquifer: (i)"
Following: "at a"
Insert: "national priority list"
Following: "site"
Strike: "regulated under"
Insert: "as defined by"
6. Page 5, line 19.
Following: "96-510"
Strike: ", to cause pollution of an aquifer"
Insert: "; and
(ii) where mining has left an abandoned open pit as described in 82-4-336(5)"
7. Page 6, line 24 through page 11, line 22.
Strike: section 5 in its entirety
Renumber: subsequent sections

(MORE ON NEXT PAGE)

8. Page 12, lines 9 through 14.

Following: "shall" on line 9.

Strike: the remainder of subsection (2) in its entirety

Insert: "require any person liable under 75-10-715(1) to take immediate action to contain, remove, and abate a release of a hazardous or deleterious substance at a site described in 75-5-605(1)(b)."

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EXHIBIT 16

DATE 2-13-91

1 ~~#10~~ proposed committee
resolution resulting from HB
LCopit

DRAFT

**** Bill No. ***

Introduced By *****

By Request of House Natural Resources Committee

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MONTANA STRONGLY URGING THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES CONGRESS TO
GIVE HIGHEST PRIORITY TO CLEANUP OF THE BERKELEY PIT AND
PROTECTION OF ALLUVIAL AQUIFERS UNDERLYING THE SILVER BOW CREEK
SUPERFUND SITE.

WHEREAS, the Berkeley Pit, located at the headwaters of the
Columbia River, is included in the nation's largest Superfund
site, the Silver Bow Creek Site, and is the site of the world's
largest mine flooding; and

WHEREAS, mining activity for the past 110 years has resulted
in soil and water contamination and changes in the way ground and
surface water flow in and near Butte; and

WHEREAS, mining companies installed an elaborate pumping and
bulkhead system during the active mining period to dewater the
underground mines and the Berkeley Pit; and

WHEREAS, when active mining ended, the pumps were turned off
on April 22, 1982, and the underground mines and subsequently the
pit began to flood, with water rising 2680 feet in the mines and
to a depth of 740 feet in the pit; and

WHEREAS, the Berkeley Pit currently contains over 16 billion

Draft Copy

Printed 1:11 pm on February 13, 1991

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gallons of water and fills at an average rate of 7.6 million gallons per day; and

WHEREAS, mine flooding in the Butte area is of significant concern because the water is highly acidic and contains high concentrations of iron, manganese, arsenic, lead, cadmium, copper, zinc, and sulfates that far exceed state and federal standards, conditions that prevented water in the pit from freezing even when temperatures fell to minus 40 degrees Fahrenheit in 1989; and

WHEREAS, water in the West Camp of the Butte mining area did discharge into the Silver Bow Creek alluvium and into basements in the central Butte area, which prompted the building of bulkheads in 1959; and

WHEREAS, many citizens of the Butte area believe that the United States Environmental Protection Agency (EPA) has ignored preliminary documentation indicating that the surrounding aquifers may be contaminated in the near future, but instead has negotiated a consent decree that sets water level targets well above previously established levels without scientific documentation supporting such a conclusion; and

WHEREAS, despite these alarming developments, residents of Butte and the Silver Bow Creek drainage have been frustrated by the lack of progress by the EPA in developing a plan that will adequately treat the contaminated water and protect the environment and citizens of the area from the potential threat to the alluvial aquifer surrounding Butte; and

WHEREAS, EPA's commitment of personnel located full-time in

Butte consists of only one employee, who is employed by a subcontractor of a contractor for EPA; and

WHEREAS, the Legislature of the state of Montana has provided state funds for the Upper Clark Fork Coordinator to assist local communities in dealing with the numerous agencies and potentially responsible parties (PRP's) involved in the Superfund process; and

WHEREAS, the only financial assistance provided to area local governments, in addition to the state funded Upper Clark Fork Coordinator, has been provided by the Atlantic Richfield Company.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the EPA and the United States Congress are strongly urged to give the Silver Bow Creek, Butte Area Superfund Site the highest priority for cleanup and action to prevent disastrous environmental damage and human health problems.

(2) That the EPA and potentially responsible parties should proceed with haste to develop and implement plans and design criteria for a facility to treat contaminated water before it reaches alluvial aquifers surrounding the Berkeley Pit.

(3) That the EPA should be more responsive to the concerns and desires of citizens of the Butte community by locating more personnel in Butte and assisting the Butte-Silver Bow and other Upper Clark Fork basin local governments with financial resources to deal with these enormous problems.

(4) That copies of this resolution be sent by the Secretary

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of State to the Administrator of the EPA, the Director of the Montana EPA Office, the Governor, and the Montana Congressional delegation.

-END-

{Deborah B. Schmidt

EQC

444-3742

}

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 537
 DATE 2-13-91 SPONSOR(S) Harper

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PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Karen Barclay	DNR-C			X
Peggy Olson Trenk	WETA	537		X
GEORGE OCHENSKI	SELF			X
Jo Dunning	MWA	537		X
Susan Ward	MALP	537		X
Stan Bradshaw	MTU			✓
Jim Jensen	MEIC			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

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Natural Resources

COMMITTEE

BILL NO. 539DATE 2-13-91SPONSOR(S) Daily

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
WARD SHANAHAN	ATLANTIC RICHFIELD	539	AMEND X	
Ray Tilman	Montana Resources	539	X	
RMM: Lady	Bottle-Silver Bow	539		✓
Mc Shea	Bottle-Silver Bow	539		✓
Jim Johnston	" "	539		✓
TOM EGGERT	DHES	539		AMEND ✓
James Daily	Citizens South Central Bldg	539		✓
Peter Nielson	Clark Fork Coalition	539		Amend ✓
Chris Kaufmann	MEIC	539		Amend ✓
Leo Berry	BNRR	539	amend ✓	

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HJR 17
DATE 2-13-91 SPONSOR(S) Lansa

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<i>Abe Horpestad</i>	<i>DHE</i>			<i>X</i>

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 660DATE 2-13-91SPONSOR(S) Cohen

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Linda Lee	Montana Audubon League Fund	660		X
Chris Kaufmann	Montana EIC	660		X
John Alke	MDY			amend
Steve Anderson	Shut Down E.P. Fuel			amend
Ken Williams	MPC/Entech			Amend
Doug Rhetts	N.M. Oil Co			amend
John Fitzpatrick	Pogoses Gold Corporation			amend
Janelle Tallan, Helena	Mt Petroleum			amend

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 524DATE 2-13-91SPONSOR(S) Raney

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<i>Jim Bangover</i>	<i>alternative Energy Resources Organization</i>	<i>HB 524</i>		<input checked="" type="checkbox"/>
<i>Van Janssen</i>	<i>DNRC</i>	<i>HB 524</i>		<input checked="" type="checkbox"/>
<i>Jim Jensen</i>	<i>MEETC</i>			<input checked="" type="checkbox"/>

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.