

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIR RANEY, on April 23, 1991, at 2:00 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)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Members Absent: Bob Ream (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.

EXECUTIVE ACTION ON SB 472

Motion: REP. BOB GILBERT MOVED SB 472 BE CONCURRED IN.

Discussion: REP. GILBERT stated that SEN. MAZUREK impressed on the committee the importance of SB 472. The concerns of the opponents were addressed by Mr. Tweeten. Water is not being taken from anyone. The water allocated came from a community source. During most sessions, major bills often come in late. It takes time to negotiate and work issues through. It is not a valid excuse to vote against the Compact on the grounds that it was introduced this late. This is a compromise bill. Everyone can not get everything they want.

REP. JIM SOUTHWORTH asked **SEN. TOM TOWE** how the Crows felt about the Compact. **SEN. TOWE** responded that the Crows opposed the bill as written for the basic premise that the Northern Cheyenne shouldn't solve their water shortages by taking from another tribe. The Crows were never involved at the beginning of the negotiations. It is still unclear if there will be enough water.

Motion: **REP. BRUCE MEASURE** moved to adopt the following language: Page 17, line 8; "Any use of disposition of water from the Big Horn Reservoir off the Reservation by the Tribe is subject to the specific provision relating to such use or disposition in any act of Congress ratifying this Compact."

Discussion: **REP. MEASURE** stated that it appears that all parties find this amendment proposed by the Crow to be acceptable. It is unclear how the Cheyenne feel about it as they have not been reached yet. Their attorney suggests that they will accept it. **CHAIR RANEY** inquired how the Compact Commission feels about the amendment. **Susan Cottingham, Reserved Water Rights Compact Commission (RWRCC)**, responded that their only concern is that the Northern Cheyenne Tribal Government has not seen the amendment yet. **SEN. JOE MAZUREK** agreed and suggested the amendment be made on the House floor. He stated they currently are trying to contact the Tribal Council to obtain their opinion.

CHAIR RANEY asked what affect the amendment has on the Compact. **SEN. MAZUREK** replied that it does not change the Compact. **Chris Tweeten, RWRCC**, explained that the amendment only clarifies what already can be done. **SEN. TOWE** added that the language basically suggests that Congress should pull all the parties together to discuss the issue. Without the language it is assumed or it is probable that it is assumed that the agreement has been approved by all. With this amendment, the Crow will withdraw their opposition to the Compact.

REP. MEASURE stated that he preferred to put the amendment on and then take it off on the floor should the Cheyenne disagree with it. **REP. MARK O'KEEFE** disagreed and stated he would prefer to wait until there is full agreement. **REP. HOWARD TOOLE** agreed stating that face to face negotiations have been occurring for years. It would not be good to change that process during the last hours.

SEN. MAZUREK announced he just received a message that the Northern Cheyenne Tribal Council will accept the amendment. Their attorney, Jean Whiting, called and had talked with Edwin Dahl and Max Small.

Vote: Motion to adopt the proposed language carried unanimously with Rep. Ream absent from voting.

Motion/Vote: **REP. MEASURE MADE A SUBSTITUTE MOTION THAT SB 472 BE CONCURRED IN AS AMENDED.** Motion carried unanimously with Rep. Ream absent for voting.

EXECUTIVE ACTION ON SJR 28

Motion: REP. SOUTHWORTH MOVED SJR 28 BE NOT CONCURRED IN.

Discussion: REP. GILBERT stated that the Environmental Quality Council (EQC) received a letter from Alan Evans that accused EQC, REP. RANEY, and REP. GILBERT of collaborating to sabotage this resolution. The letter was unjust and made numerous false accusations. REP. GILBERT stated that even though resolutions aren't worth the paper they are printed on, he would like to see the resolution pass out of committee for a full House vote. This will allow Mr. Evans the satisfaction of having a full House vote and perhaps help avoid anymore disparaging comments from Mr. Evans. REP. O'KEEFE sympathized with the intent of REP. GILBERT'S actions but stated that the resolution is simply a bad piece of legislation. That was clear in the hearings. An energy study was already passed out of committee. There is no need for another one.

Motion/Vote: REP. O'KEEFE MOVED TO TABLE SJR 28. Motion carried 10 to 7. EXHIBIT 1

Discussion on Coal Development in Huntley

CHAIR RANEY, stated that after listening to the testimony of the residents of Huntley, and talking with members of the committee, the foremost concern is the health of the citizens of Huntley. Two issues stand out: how coal dust will be controlled and what will be done to ensure traffic safety on highways and through the community. He asked the departments to address these concerns.

Gary Amestoy, Department of State Lands (DSL), stated he would like Bonnie Lovelace, Strip Mining Bureau Chief - DSL, to respond. Ms. Lovelace stated that the Department is in the very early stages of the Environmental Impact Statement (EIS) process. Currently, Meridian has supplied DSL with information on over thirteen off loading sites. These sites and others will be evaluated. DSL is not just accepting the Huntley site. Others will be evaluated. The EIS will consider many aspects when evaluating site location. Railroad access, cost effectiveness, and environmental impacts are the types of items considered. The goal is to have the least amount of environmental disturbance. Air quality studies and transportation studies from the Highway Department will be used in the analysis. Under the coal statute the Department can not regulate air quality or traffic. They are outside the jurisdiction of DSL. DSL can regulated traffic on the actual site. Under the Montana Environmental Policy Act (MEPA), DSL can evaluate different sites and can choose an alternative site.

CHAIR RANEY suggested that it is probable that the most environmentally sound location is outside the town of Huntley. Ms. Lovelace replied that it is possible. REP. RANEY asked if

there is any way the citizens of Huntley can be involved in determining which of the loadout sites will be chosen. **Ms. Lovelace** responded that there is no legal restriction to putting a loadout facility in a community; that is local zoning question. The citizens are involved in the scoping process. The Department is aware of the problems and the concerns. These will be considered in the Draft Environmental Impact Statement (DEIS). **CHAIR RANEY** asked if the Department will insure that the citizens will be involved in the process and be actively involved. **Ms. Lovelace** replied that they will certainly involve all interested parties. When the DEIS is published it will be available for people to read and to comment on. During the original scoping period, DSL did not hold any meetings in Huntley. The residents were mailed scoping information. Since the Department is aware of their interest, public meetings on the DEIS will be held in Huntley.

REP. RANEY asked when the DEIS will be out. **Ms. Lovelace** replied, barring no technical problems, the DEIS will be out sometime in August. **CHAIR RANEY** requested that the Department send Committee members copies of the DEIS. **Ms. Lovelace** agreed to do so.

REP. DICK KNOX asked if they are considering sites outside of Huntley. **Ms. Lovelace** replied yes. She added that when other sites are being considered that require new disturbances, such as laying track, many aspects need to be considered. Cultural resources, rare plants and animals, and other such items need to be evaluated. It is too earlier to determine how these other sites fair in that arena. DSL can provide the Committee information regarding alternative loadout sites. **CHAIR RANEY** stated he would appreciate that information. He stated that he assumed that there are sites along existing railways that could be used. **Ms. Lovelace** replied that there are only two sites, within a reasonable distance from Round Up, with the capacity to take a 115 car train.

REP. DAVE WANZENRIED asked what is going to be the affect of the public participation. He questioned how the Department can reflect the publics concerns in the decisions made. It seems that the statutes could limit the Departments discretion to apply conditions. It is nice to be involved but if the input can't be used then it seems senseless. The situation is analogous to the gravel pit problem discussed earlier. **Ms. Lovelace** responded that **John North** would be the most appropriate person to respond to questions regarding mitigation or conditions defined in an EIS and how they apply to a mining permit.

Mr. North, DSL, stated that **REP. WANZENRIED** touched upon what is getting to be a major issue in the administration of the MEPA. The question is whether MEPA is substantive or procedural. Under the Coal Act, the Agency's authority is limited to certain parameters. One of these parameters is that if environmental laws would not be violated, siting can not be denied based on the

reason that the site is located in or near a town. If evaluations show that air and water quality laws would not be violated and the EIS demonstrates that some kind of impact on people would result, the question becomes whether the MEPA gives an agency the authority to deny permits for that particular site based on these other reasons. The question has not been resolved by the courts.

REP. WANZENRIED stated it is only fair that this issue be publicly discussed. People need to understand that their involvement does not guarantee that their concerns will be taken care of. The Department may make a substantive decision which is totally contrary to their concerns.

Mr. North stated that under the Montana Hard Rock Act, MEPA is interpreted to be substantive, pursuant to a court settlement made several years ago. The issue has not been determined under the Strip Mining Act. **CHAIR RANEY** asked whether the visual, air quality impacts on the town of Huntley would be substantive. **Mr. North** replied that it is unclear whether, if there were demonstrative impacts, that the Department would have authority to go beyond the Coal Act to either deny or condition a permit. **CHAIR RANEY** asked if there is a need for clarification of the law or if it needs to be settled in court. **Mr. North** responded that if there is not a clarification by the Legislature then it will be settled in court. He stated that during three sessions in the early and middle 1980's, two bills were introduced: one to clarify that MEPA was substantive and the other to clarify that MEPA was procedural. In all the sessions the bills died.

REP. SOUTHWORTH asked **Jeff Chaffee**, Department of Health and Environmental Sciences (DHES) - Air Quality Bureau (AQB), how he felt about the air quality problem. **Mr. Chaffee** responded that the AQB has not done any studies concerning the air quality at Huntley. A permit was not required for the temporary facility and therefore did not require monitoring. Studies and monitoring will occur for the proposed project. The questions of coal dust impact on Huntley will be answered through the EIS process.

REP. ORVAL ELLISON stated that under the Hard Rock Act, MEPA was declared substantive. It seems that DSL would need to take a stand whether they feel it is substantive or procedural under the Coal Act before they proceed with the EIS and with the decision to locate the facility at Huntley. **REP. ELLISON** asked how they will proceed. **Mr. North** responded that the proper procedure is to evaluate the impact first to determine if the proposal will produce significant impacts. If it appears that there will be significant impacts beyond the scope of the Strip Mining Act, Water Quality Act, and other such acts, a decision will be made regarding whether it is substantive or procedural.

REP. TOOLE stated that if it was determined if MEPA is viewed as substantive or procedural prior to the EIS process, more options would exist as to how to proceed with the process. He asked why

that decision can't be made. **Mr. North** responded that it may not be necessary to make that decision. Under the EIS process determinations of significant impacts are fact driven. It depends on situations and on types of mitigations. Until the actual situation is clear, it is hard to make a statement that DSL would require mitigation of a particular impact, especially if one looks at the question of procedural or substantive process. If the Coal Act is followed, a person knows before they apply exactly what he must do: prevent water and air quality degradation. Under substantive MEPA, there is a great deal of discretion with the decision maker. It is questionable whether it is due process to deny a permit if the applicant does not know what the ground rules are. It is a complicated issue.

REP. TOOLE asked if what he was saying was that to deny a permit, to require alternate siting, or to impose significant substantive conditions upon an applicant depends upon an evaluation that has to be completed before it can be determined what the ground rules are for decision making. A determination whether the Department has the discretion to do anything with the application is made after review of the EIS is completed. This procedure seems to turn the entire environmental review process on its head. **Mr. North** responded that under the direction of substantive MEPA, the authority to compel an alternative siting depends on whether there is substantive impacts. This will not be known until an EIS is completed. The EIS serves as the basis to require alternative siting.

CHAIR RANEY stated it is clear that the impacts are substantive in Huntley. He asked why Meridian is allowed to submit such a proposal. **Mr. North** responded that proposals need to be reviewed objectively. By not allowing submission of proposals the purpose of MEPA, which is to have an objective interpretation of the impacts, is defeated. Facts are needed. The EIS serves as the basis for the decision. As an executive agency, DSL has to apply the laws as they are directed.

REP. BEVERLY BARNHART stated that one of the residents commented she was having trouble getting information about the alternative sites. **Ms. Lovelace** replied that DSL just received the detailed alternative site plans from Meridian. DSL just met with interested people and provided them the information. **REP. BARNHART** asked, in general, how people find out plans and information. **Ms. Lovelace** responded that people generally obtain information at public meetings. Direct contact is made with pertinent landowners.

CHAIR RANEY stated that he is curious about what has already happened in Huntley. It is hard to imagine that it was allowed to happen and that it could happen again with another temporary facility. It is unbelievable. **CHAIR RANEY** asked if there is anything that can be done about controlling these types of temporary situations. **Mr. Chaffee** responded that in this situation, the projected emissions were acceptable and would not

require permitting. The company was to monitor itself. The need for an air quality permit hinges on the emissions potential of the facility or project. The calculated emissions potential for the Huntley temporary project was below the trigger level for issuance of an air quality permit. There are general rules regulating air emissions that would apply.

CHAIR RANEY stated that it is obvious that the operation did not meet any emissions standards, yet the project was allowed to continue for a considerable amount of time. He asked if there is a problem that needs to be addressed in the law to prevent it from happening again. **Mr. Chaffee** responded that this appears to be a unique situation. It seems that a more aggressive approach regarding follow-up visits and enforcement may be needed by federal and state agencies. **CHAIR RANEY** inquired if the Department was understaffed so that enforcement was not effective. The people complained, the county was informed, and the resulting mitigating action was minimal. The problem still existed and the people could not stop it. It is obvious that a problem exists in the system. **Mr. Chaffee** replied that DHES and DSL did follow up on the complaints and did observe a problem. The departments asked Meridian to implement control measures. It is understood that Meridian did that and that the situation improved. The departments' observations of the problem were not as significant as were expressed by the citizens during the hearing. The departments do not take the situation lightly.

REP. ELLISON asked if the Department had to buy and install the air quality monitoring equipment for the temporary site. **Mr. Chaffee** answered that the company is normally required to buy and install it. The Department oversees the monitoring.

CHAIR RANEY thanked everyone for their participation and urged continued communication.

ADJOURNMENT

Adjournment: 3:00 pm.



BOB RANEY, Chair



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 4/23/91

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	/		

HOUSE STANDING COMMITTEE REPORT

4:35
4-23-91
JDB
April 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 472 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Bob Raney, Chairman

Carried by: Rep.

And, that such amendments read:

1. Page 17, line 8.

Following: "WATER."

Insert: "Any use or disposition of water from Big Horn Reservoir off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact."

EXHIBIT 1
DATE 4-23-91
~~SJR 28~~ SJR 28

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 4/23/91 BILL NO. SJR 28 NUMBER 1

MOTION:

TO TABLE ~~HR~~ SJR 28

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	10	7

Motion carried 10-7