

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By Lawrence Stimatz, on February 13, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: None

Staff Present: Michael Kakuk (EQC).

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

Announcements/Discussion: There were no announcements.

HEARING ON SJR 10

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, District 23, presented SJR 10 to the committee. Mazurek stated that he was a member of the Reserved Water Rights Compact Commission and that the "major responsibility" of this committee was to protect the rights of non-Indian water users in the areas of reservations and drainages

encompassed by federally reserved water rights. In 1985, an agreement was reached that allowed the Assiniboine and Sioux Tribes of the Fort Peck Reservation to market water from their federally reserved water rights, Mazurek said. SJR 10 is a reminder to Congress that in 1985 a contract was made with these tribes and that Congress needs to pass legislation to grant authority to them over their water rights, Mazurek concluded.

Proponents' Testimony:

Lawrence D. Wetsit, Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, appeared in support of SJR 10. (EXHIBIT #1).

Opponents' Testimony:

There were no opponents to SJR 10.

Questions From Committee Members:

There were no questions from committee members.

Closing by Sponsor:

Senator Mazurek stated that he felt Lawrence Wetsit did a "very good job" of outlining the conditions and limitations of the Compact and asked the committee for a DO PASS of the resolution.

HEARING ON SB 253

Presentation and Opening Statement by Sponsor:

Senator Bengtson, District 49, told the committee she had been asked to carry this revision of the Opencut Mining Act because some of her constituents had concerns.

Proponents' Testimony:

Steve Welch, Department of State Lands, testified in support of SB 253. (EXHIBIT #1).

Opponents' Testimony:

There were no opponents to SB 253.

Questions From Committee Members:

Chairman Stimatz asked Steve Welch why the Department of State Lands (DSL) wanted this bill. Welch stated there was a significant need to supplement bonds that had been forfeited because they had been written a number of years ago and were now inadequate.

Closing by Sponsor:

Senator Bengtson closed the hearing on SB 253.

HEARING ON SB 283

Presentation and Opening Statement by Sponsor:

Senator Doherty, District 20, told the committee that SB 283 was presented on behalf of Department of State Lands and is a preventive medicine bill. The bill reduces the opportunity for "legal mischief," Doherty added.

Proponents' Testimony:

John North, Department of State Lands, told the committee that SB 283 addresses the consequences of violating metal mining permits. North said that it is assumed, under current laws, that permits are enforceable because a permit is required but there is nowhere in the statute that states there is a penalty for violating a permit, North stated. (EXHIBIT #1).

Dennis Olson, Northern Plains Resource Council, appeared in support of SB 283.

John Fitzpatrick, Director of Community and Governmental Affairs for Pegasus Gold Corporation, stated he supported SB 283.

Opponents' Testimony:

There were no opponents to SB 283.

Questions From Committee Members:

Senator Bengtson asked if SB 283 was precipitated by a particular event? John North said he had been "worried" about these mining permits since 1977. The potential cyanide leak in central Montana gave some urgency to the drafting of this bill, North said. Overall, as mining operations continue to grow, there is an increased need for an improved legal basis, North said.

Closing by Sponsor:

Senator Doherty told the committee he felt the bill received a fair hearing and that he would continue to work closely with members of the mining industry.

HEARING ON SB 136

Presentation and Opening Statement by Sponsor:

Senator Tom Beck, District 24, presented SB 136 which came from the Environmental Quality Council (EQC). The bill allows for an act to permit local governments to establish water quality districts within their area. A Grey Bill, at the request of the Environmental Quality Council and amendments were distributed to committee members. (EXHIBIT'S #1 and #2).

Gail Kuntz, Environmental Quality Council, explained to the committee amendments included in the bill dealt with some of the ramifications of where cities would stand in regard to their water quality district. If the voters approve and/or less than 20 percent of the people disapprove, a local government would be allowed to assess fees on water withdrawal from wells and city water use, Kuntz explained. The amendments limit what local ordinances could be passed within water districts, Kuntz added.

Proponents' Testimony

Jim Carlson, Director of the Environmental Health Division of the Missoula City-County Health Department, testified in support of SB 136 as amended on the Grey Bill from the EQC. (EXHIBIT #3).

Dennis Taylor, city of Missoula, appeared in support of SB 136, but requested a minor amendment. (EXHIBIT #4).

John Arrigo, Department of Health and Environmental Sciences, appeared in support of SB 136. (EXHIBIT #5).

Jane Lopp, Flathead City-County Health Department, supported SB 136. (EXHIBIT #6).

Barry Dutton, Chairman of the Missoula Water Quality Advisory Group, submitted testimony in favor of SB 136. (EXHIBIT #7).

The Missoula County Board of Commissioners submitted testimony in favor of SB 136. (EXHIBIT #8).

Opponents' Testimony:

Peggy Parmalee, Montana Association of Conservation Districts, appeared in opposition to SB 136. (EXHIBIT #9).

Closing by Sponsor:

Senator Beck closed the hearing on SB 136 by requesting a DO PASS.

EXECUTIVE ACTION ON SB 133

Motion:

Senator Kennedy made a motion that SB 133 DO PASS.

Senator Grosfield presented a substitute motion to amend the bill by modifying Senator Keating's four amendments by inserting on page 6 line 4..."until January 1, 1994." (EXHIBIT #1).

Senator Bianchi moved that SB 133 be tabled then withdrew the motion and moved that SB 133 DO NOT PASS.

Discussion:

Senator Anderson said he was concerned that if there were leaks in the underground storage tanks, was it possible to determine the extent of the leakage? John Geach, DHES, told the committee that field work was being done to determine how much leakage is occurring from the tanks. Currently there are 53 underground storage tank leaks that have been identified, Geach stated.

Senator Anderson told the committee that it was his understanding that the affect of a tag on the underground tanks was only to allow the tank to be filled and had nothing to do with monitoring of the tanks. Senator Stimatz concurred.

Senator Bianchi read testimony from Dennis Snow, District Sanitarian, Glendive, opposing SB 133. (EXHIBIT 2).

Recommendation and Vote:

The substitute motion by Senator Grosfield DID NOT PASS; vote of 5 to 4.

The motion by Senator Bianchi that SB 133 DO NOT PASS carried unanimously.

EXECUTIVE ACTION ON SB 245

Motion:

Motion by Senator Keating that SB 245 DO NOT PASS.

Discussion:

There was no discussion on SB 245.

Recommendation and Vote:

The motion made by Senator Keating that SB 245 DO NOT PASS carried unanimously.

EXECUTIVE ACTION ON SB 247

Motion:

Senator Keating presented an amendment to SB 247 requesting that the underground tank piping would be sleeved in a method approved by the DHES.

Discussion:

John Geach, DHES, explained to the committee that such an amendment would be superfluous as the current policy already requires sleeving approval.

Recommendation and Vote:

Senator Keating made a motion that SB 247 DO NOT PASS.

The motion that SB 247 DO NOT PASS carried unanimously.

EXECUTIVE ACTION ON SB 94

Motion:

Motion by Senator Weeding that SB 94 DO PASS.

Discussion:

Senator Grosfield moved his amendment. (EXHIBIT # 1).

Amendments, Discussion, and Votes:

Senator Grosfield stated he was concerned about the extent of power being given to a groundwater assessment steering committee. Grosfield said he felt that was the kind of power given to boards or department director's and said he would also like to see someone from the Board of Oil and Gas on the steering committee as a possible voting member.

Senator Bianchi stated that he felt SB 94 was "well worthwhile." This bill involves a 20 year study, Bianchi said, and this legislature can only fund it on a biennium basis.

Recommendation and Vote:

Amendment proposed by Senator Grosfield passed unanimously.

Motion by Senator Weeding that SB 94 DO PASS carried unanimously.

EXECUTIVE ACTION ON SJR 10

Motion:

Motion by Senator Keating that SJR 10 DO PASS.

Discussion:

There was no discussion on SJR 10.

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

Motion by Senator Keating that SJR DO PASS carried unanimously.

EXECUTIVE ACTION ON SB 283

Motion:

Motion by Senator Keating that SB 283 DO PASS.

Discussion:


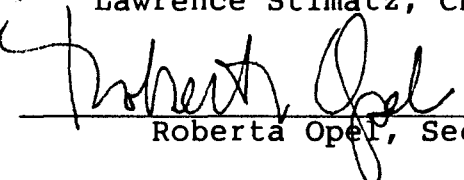
There was no discussion.

Recommendation and Vote:

Motion by Senator Keating that SB 283 DO PASS carried unanimously.

ADJOURNMENT

Adjournment At:


Lawrence Stimatz, Chairman

Roberta Opel, Secretary

Ls/ro

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kate Metcalf	L&C City-County Health	SB136	✓	
Dennis M. Taylor	City of Missoula	SB136	✓	Amend
Jim Cauden	Missoula City-County Health	SB136	✓	
John Arnes	Dept. Health & Env. Sci	SB136	✓	
Susan C. Ethingam	DNRC / RWRC	SJ10	✓	
Stan Boudreau	MTU	SB136	✓	
Peggy Karmeloff	MT. Assoc. Cons. Dist	SB136	amend	✓
Lawrence Wetsit	Fort Peck Tribes	SJ	✓	
Donna Jean	OTHS			
inda Stoll-Anderson	Lewis & Clark County	SB136	✓	
Hail Hunsz	Epic staff - requested by Sen. Beck	SB136		
John North	Dept. of State Lands	SB253283	✓	
Peter Nielsen	1. Missoula Under Quality Adv. Committee 2. Clark Fork Coalition	136	✓	
FRANK CROUCH	ASARC, MT. DAIRYMEN ASSN MOUNTAIN LEADER COUNCIL	136	✓	
STEVE WELCH	DEPT OF STATE LANDS	SB253	✓	
Gary Amosby	Dept of State Lands	SB253+283	✓	
John S. Fitzpatrick	Pygus Gold Corp	SB136	amend	
Wennis Oh N	NPRC	SB253	✓	
Steve Brown	Noranda	SB136	amend	

DATE 2-13-91

COMMITTEE ON Natural Resources

VISITORS' REGISTER

[illegible]

ROLL CALL

Natural Resources COMMITTEE

DATE 2-13-91

52nd

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	P		
Senator Bengtson	P	A	
Senator Bianchi	P		
Senator Doherty	P		
Senator Grosfield	P		
Senator Hockett	P	A	
Senator Keating	P		
Senator Kennedy	P	A	
Senator Tveit	P	A	
Vice Chairman, Weeding	P		
Chairman, Stimatz	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT


Page 1 of 1
February 14, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 133 (first reading copy -- white), respectfully report that Senate Bill No. 133 do not pass.

Signed:


Lawrence G. Stimatz, Chairman

 2/11/91
Amd. Coord.

SP 2-14
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 14, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 94 (first reading copy -- white), respectfully report that Senate Bill No. 94 be amended and as so amended do pass:

1. Page 8, line 9.

Following: line 8

Insert: "(b) the board of oil and gas conservation;"

Renumber: subsequent subsections

Signed:


Lawrence C. Stimatz, Chairman

for 2-14-91
App. Coord.

SB 2-14
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 14, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 245 (first reading copy -- white), respectfully report that Senate Bill No. 245 do not pass.

Signed:

Lawrence G. Stilmatz
Lawrence G. Stilmatz, Chairman

LB 2/14/91
Amd. Coord.

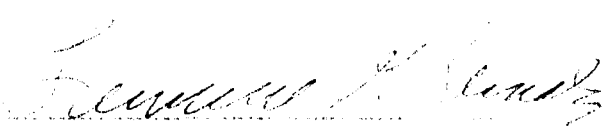
SR 2-14
Sec. of Senate

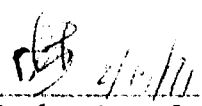
SENATE STANDING COMMITTEE REPORT


Page 1 of 1
February 14, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 247 (first reading copy -- white), respectfully report that Senate Bill No. 247 do not pass.

Signed: 
Lawrence G. Stimatz, Chairman


Amd. Coord.

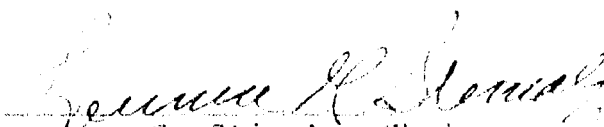

Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 14, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Joint Resolution No. 10 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 10 do pass.

Signed: 

Lawrence C. Stimalz, Chairman

MA 2-14-91
And. Coord.

SP 2-14
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 14, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 283 (first reading copy -- white), respectfully report that Senate Bill No. 283 do pass.

Signed: _____
Lawrence G. Stimatz, Chairman

Amend. 2-14-91
Amend. Coord.

SB 2-14
Sec. of Senate

FORT PECK TRIBES

Assiniboine & Sioux

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-13-91

BILL NO. SJR 10

TESTIMONY OF
LAWRENCE D. WETSIT

CHAIRMAN
ASSINIBOINE & SIOUX TRIBE OF THE
FORT PECK INDIAN RESERVATION, MONTANA

Before the
Montana State Senate
Committee on Natural Resources

February 13, 1991

Mr. Chairman and members of the Committee, my name is Larry Wetsit and I am the Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. Our Reservation contains over 2 million acres of land in northeastern Montana. Over 5,000 Indians reside upon it. I am pleased to appear before you today in support of a Resolution reaffirming Montana's commitment to the Fort-Peck-Montana Compact and the State's petition to Congress asking that it take necessary action to implement the Compact.

Water is the life blood of our Reservation. It is necessary to secure water if our Tribes are to make progress toward economic self-sufficiency. Because of the great importance of water to my Tribes, we entered into a Compact in 1985 with the State of Montana to settle pending water rights litigation. The Montana Legislature (in S.B. 467) and Tribal Executive Board both ratified this Compact in 1985. The Compact has been approved by the Secretary of the Interior and the United States Attorney General as well.

This Compact quantifies finally and forever the reserved rights of the Assiniboine and Sioux Tribes at 1,050,000 acre feet per year. The Compact also protects certain non-Indian water uses in the tributaries and to groundwater that were in existence in 1985. It establishes a joint tribal-state board to resolve disputes between the Tribes and the State, and between Indian and

non-Indian water users.

The Compact authorizes the Tribes to establish a schedule of instream flows. This past spring, we established minimum instream flows on all major tributary streams on our Reservation. These total a maximum of 58,503 acre feet per year. The Tribes took this step to ensure preservation of fisheries and wetland habitat for wildlife on our Reservation for ourselves and our posterity.

Finally, the Compact authorizes the Tribes to market water outside our Reservation subject to certain conditions. Because the Indian Non Intercourse Act (25 U.S.C. 177) may bar leases and other conveyances of the tribal water rights, the Montana Legislature formally petitioned Congress to enact legislation authorizing tribal water marketing when it ratified the Compact in 1985. The Tribes have joined in this request.

The legislation we have jointly requested Congress to enact would allow the Tribes to lease, market or otherwise exchange portions of the tribal water right confirmed in the Compact for periods of not to exceed fifty years (including all renewal periods). No sales would be allowed. Any tribal lease, contract or other marketing agreement must be approved by the Secretary of the Interior. This protects against any arrangement that could be for less than fair value.

The legislation also provides that any agreement must be subject to all terms and conditions of the Fort Peck-Montana Compact. Under the Compact, the Tribes can divert whatever water they wish on the Reservation for marketing on the Reservation. Otherwise, the Tribes may divert water for marketing off the Reservation only from Fort Peck Reservoir or the mainstem of the Missouri downstream from Fort Peck Dam to the North Dakota state border.

The Compact provides that the Tribes and the State must each give the other at least 180 days advance written notice of any intent to transfer water diverted from Fort Peck Reservoir or from the Missouri River downstream of Fort Peck Dam, and give the other an opportunity to participate in the water marketing venture as a substantially equal partner. This is an unique provision, authorizing the State and Tribes to cooperate on a government-to-government basis, sharing the benefits of water development.

There are fairly complicated quantity limitations on the amount of water that may be marketed by the Tribes. The Tribes will always be authorized to market at least 50,000 acre feet of water per year. If the State allows the marketing of more than 200,000 acre feet per year statewide, the amount which the Tribes can market increases. There is a ceiling, however. The Tribes may divert only 40,000 acre feet per month from the Missouri River, so

year round the Tribes could divert a maximum of 480,000 acre feet for marketing.

When marketing water, the Tribes must also comply with some state laws. Their marketing of water outside the Reservation must be for a beneficial purpose as that term is defined by valid state law. Also, the Tribes or any diverter or user of water marketed by the Tribes off the Reservation must comply with valid state laws regulating the siting, construction, operation or use of any industrial facility, pipeline or other transportation facility. In addition, the Tribes must comply with any valid state laws prohibiting or regulating export of water outside of the State.

While the Tribes do not have to comply with other state law regulatory or administrative requirements, they must give the State notice showing that: (1) any off-reservation use of water will be beneficial as defined by valid state law; (2) the means of diversion, construction and operation of any diversion works outside the reservation are adequate; (3) the diversion will not adversely affect any federal or state water right actually in use at the time notice is given (unless the owner has consented); and (4) the purpose use will not cause any unreasonable significant environmental impact. Finally, tribal diversions for marketing in excess of 4,000 acre feet per year must not: (1) substantially impair the quality of the water in the Missouri River; (2) create

or substantially contribute to saline seep; (3) substantially injure fish and wildlife populations in the Missouri River; or (4) be made where lower quality water can economically and legally be used by the Tribes.

Mr. Chairman and members of the Committee, that concludes my testimony. Again, our Tribes appreciate the vigorous and enthusiastic support the State of Montana has given to the Fort Peck-Montana Compact, and strongly support the Resolution. I should be pleased to answer any questions you may have.

DEPARTMENT OF STATE LANDS

TESTIMONY FOR SENATE BILL 253

(3:00 pm February 13, 1991 SENATE NATURAL RESOURCES)

This proposed legislation would provide the Department and the Opencut Operator with additional flexibility in implementing the Montana Open Cut Mining Act in the areas of:

1. Successful reclamation after reclamation bond forfeitures;
2. Remining areas previously reclaimed;
3. Reclamation bonding; and
4. Resolution of Violations of the Open Cut Mining Act

SECTION 1

All too frequently, bonds that are forfeited for failure to reclaim an opencut mining site, are insufficient to adequately restore that affected land to a productive use. Most of the bonds that have been forfeited were written a number of years ago, and the costs that were adequate then, are now much higher. In addition, mining plans may not have been followed such that reclamation techniques must be altered to achieve the desired post-mine land use, and/or the mined area may have been expanded without authorization and bond.

Funds made available by amending the statute would allow the Department ability to contribute sufficient money to a project for a complete reclamation job.

In addition, certain operations are located in harsh environments, or create very harsh conditions that make reclamation extremely difficult. The Department would like to conduct small research projects to determine optimum species selection, and reclamation methods, on some of these sites instead of requiring the operator to gamble on specific species or methods over the entire affected area just to have them fail, and return to try again.

SECTION 2

It is not uncommon for an operator to expend considerable funds and resources to reclaim mined sites, only to discover that another party has gone back in and redisturbed the area and destroyed the reclamation just completed. Many times, this re-entry into a site is done without benefit of topsoil salvage, and almost always without regrading, retopsoiling, or seeding.

The amendment proposed would ensure that mining in completed reclamation would be done in an acceptable manner such that it could again be reclaimed.

SECTION 4

Most surety companies are now unwilling to write reclamation bonds if the applicant does not currently hold a bond, or the area applied for is not being utilized in conjunction with a larger project that is also bonded. The other forms of bonding that are acceptable by statute are cash, property, and Certificates of Deposit. Too frequently, these forms are not available to an applicant either. If an applicant cannot furnish an acceptable bond, then the state is unable to enter into a Mined Land Reclamation Contract, and the site applied for cannot be mined. The Department is currently reviewing an application that is facing that very problem, and unless alternative bonding is approved, we will be required by statute to deny the application.

SECTION 5

Current sections that address penalties and enforcement for violations of the Opencut Mining Act require the Department to sue, through the Attorney General, for recovery of civil penalties, without benefit of an informal hearing, and therefore creating the potential for requiring the action to go before district court.

Changes proposed in those sections would allow an operator the opportunity for an informal hearing to discuss the violation, and if not satisfied with the results, request a formal hearing. If still not satisfied with the decision, they could request judicial review.

These changes would simplify court civil penalty procedures for both the operators and the department by limiting the court review to an administrative record.

The Department of State Lands respectfully requests your support of the proposed amendments.

EXHIBIT NO. 1

DATE

2-13-91

BILL NO.

SB 283

Testimony of John North, Department of State Lands
Senate Natural Resources Committee
February 13, 1991
SB 283

Under the Hard Rock Act, the Department of State Lands regulates exploration and mining for metalliferous minerals, such as gold, silver, copper, and talc. This regulation is accomplished through issuance of licenses for exploration and permits for mining. The Act generally requires the operations being conducted in a manner that does not violate air quality, water quality, and other laws and that, upon completion, the disturbed area must be reclaimed. The licenses and permits impose specific requirements that the Department finds necessary to meet the general requirements of reclamation and compliance with other laws.

Enforcement of the Act is accomplished through two procedures - civil penalties for less serious violations and permit suspension or revocation for the most serious violations. Unfortunately, the civil penalty statutes, which is on page 7 of the bill, authorizes civil penalties only for violations of the act, the rules, or an order. On its face, it does not specifically refer to violations of a permit. Similarly, the suspension statute, which is on page 8, of the bill, does not specifically refer to suspension for violations of the permit.

In practice, the Department has collected civil penalties and suspended permits for violation of the permit on the theory that, because the act requires a permit, violation of a permit is violation of the act. So far, no one has challenged this interpretation because it only makes sense that the Department can enforce its permits. Someday there could be needless litigation, however.

The second thrust of SB283 is also on page 8. It clarifies that the Commissioner can immediately suspend a permit if a violation creates an imminent danger to the health or safety of persons off the permit area. This language is essential because another statute (82-4-341) requires that the Department give the permittee 30 days to correct violations. Someone could argue that on the basis of this statute that, even in emergencies, the Department must allow 30 days to correct deficiencies. Again, no one has ever made this argument because a good regulatory program includes immediate permit suspension for emergency situations. Someday the argument could be made, however.

In short, this bill closes several loopholes in the law and thereby eliminates the possibility of needless litigation based on these technical deficiencies in the law. It does not change existing practices.

GREY BILL

2-13-91

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

SENATE BILL NO. 136

INTRODUCED BY

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ESTABLISHMENT OF LOCAL WATER QUALITY DISTRICTS; AUTHORIZING ESTABLISHMENT OF FEES; AUTHORIZING GOVERNING BODIES OF COUNTIES, CITIES, AND TOWNS THAT PARTICIPATE IN A LOCAL WATER QUALITY DISTRICT TO ADOPT LOCAL LAWS RELATED TO WATER QUALITY PROTECTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO APPROVE LOCAL WATER QUALITY PROGRAMS; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO MONITOR IMPLEMENTATION OF LOCAL WATER QUALITY PROGRAMS; AND AMENDING SECTION 75-5-106, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences concerning rulemaking and approval of local water quality programs. The board shall adopt rules concerning the format of local water quality programs, including the level of information necessary for a local water quality district to show that its proposed program will be consistent with Title 75, chapter 5, and that its program will be effective in protecting, preserving, and improving the quality of surface water and ground water. ~~The board of health and environmental sciences shall ensure that local water quality programs do not duplicate department of health and environmental sciences requirements and procedures relating to the regulation and permitting of waste discharge sources, enforcement of water quality standards, implementation of the nondegradation policy, or other water quality protection authorities.~~ The board may define by rule the types of best management practices that a local water quality district may impose upon each of the types of facilities and sources of pollution that may be regulated by local ordinances as authorized under [section 24 (4)].

It is the intent of the legislature that administrative responsibilities for water quality protection be clearly allocated and, when necessary, clearly divided between the department of health and environmental sciences and a local water quality district, insofar as possible, to ensure that permitholders, permit applicants, and citizens are not subject to conflicting or duplicative requirements. Through its approval of local water quality programs, the board of health and environmental sciences shall ensure that the department of health and environmental sciences' ability to continue to administer federally delegated water quality protection programs is not impaired.

The board may also adopt rules to specify the procedures the department of health and environmental sciences shall follow pursuant to 75-5-106 to authorize a local water quality district to enforce provisions of Title 75, chapter 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. **Findings and purpose.** (1) Pollution and degradation of surface water and ground water pose both immediate and long-term threats to the health, safety, and welfare of citizens of this state.

(2) Because of the expense and difficulty of ground water rehabilitation and cleanup and the need to protect drinking water supplies, policies and programs to prevent ground water contamination must be implemented.

(3) The purpose of [sections 1 through 23] is to provide for the creation of local water quality districts to protect, preserve, and improve the quality of surface water and ground water.

NEW SECTION. Section 2. **Definitions.** As used in [sections 1 through 23], unless the context indicates otherwise, the following definitions apply:

(1) "Board of health and environmental sciences" as used in [sections 1 through 23] means the board of health and environmental sciences as provided in 2-15-2104.

(2) "Board of directors" means the board of directors provided for in [section 12] or a joint board of directors provided for in [section 21].

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by [sections 1 through 23].

NEW SECTION. Section 3. **Authorization to initiate creation of a local water quality district.** (1) The commissioners may initiate the creation of a local water quality district for the purpose of protecting, preserving, and improving the quality of surface water and ground water, as provided by [sections 1 through 23], by holding a public meeting, passing a resolution of intention, providing an opportunity for owners of fee-assessed units to protest, and conducting a public hearing to hear and decide upon protests, as provided in [sections 5 through 8].

(2) A city or town may be included in the district if approved by the governing body of the city or town.

NEW SECTION. Section 4. **Public meeting -- resolution of intention to create local water quality district.** (1) The commissioners shall hold at least one public meeting concerning the creation of a local water quality district prior to the

passage of a resolution of intention to create the district.

(2) The resolution of intention must designate:

- (a) the proposed name of the district;
- (b) the necessity for the proposed district;
- (c) a general description of the territory or lands included in the district, including identification of the district boundaries;
- (d) a general description of the proposed water quality program;
- (e) the initial estimated cost of the water quality program; and
- (f) the initial proposed fees to be charged.

NEW SECTION. Section 5. Participation of cities and towns.

(1) Upon passage of a resolution of intention, the commissioners shall transmit a copy of the resolution to the governing body of any incorporated city or town within the proposed local water quality district for consideration by the governing body.

(2) If the governing body of the city or town by resolution concurs in the resolution of intention, a copy of the resolution of concurrence must be transmitted to the commissioners.

(3) If the governing body of the incorporated city or town does not concur in the resolution of intention, the commissioners may not include the city or town in the district but may continue to develop a district that excludes the city or town.

NEW SECTION. Section 6. Notice of resolutions of intention and concurrence. (1) The commissioners shall give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and publish a notice that:

- (a) describes the local water quality program that would be implemented in the local water quality district;
- (b) specifies the initial proposed fees to be charged;
- (c) designates the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and
- (d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the county assessor's office, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

NEW SECTION. Section 7. Right to protest -- procedure. (1) At any time within 30 days after the date of the first publication of the notice provided for in [section 6(i)], a person owning a fee-assessed unit located within the proposed local water quality district may make written protest, ~~on forms provided by the county clerk,~~ against the proposed district and the fees proposed to be charged.

(2) The protest must be in writing ~~on the forms provided by the county clerk~~ and must be delivered to the county clerk, who shall endorse on it the date the ~~completed form~~ protest is received.

(3) Owners may file one protest per fee-assessed unit.

NEW SECTION. Section 8. Hearing on protest. (1) At the next regular meeting of the commissioners after the expiration of the time period provided for in [section 7], the commissioners shall hear and decide upon all protests. ~~The commissioners' decision is final and conclusive.~~

(2) The commissioners may adjourn the hearing as necessary.

NEW SECTION. Section 9. Sufficient protest to bar proceedings require referendum. If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless the commissioners submit a referendum to create the district to the registered voters who reside within the proposed district and the registered voters approve the creation of the district and establish the fees by approving a the referendum on the issue.

NEW SECTION. Section 10. Referendum. (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters who reside within a proposed local water quality district to authorize the creation of the district and establish fees.

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed fees that would be imposed, consistent with the requirements of [section 18];

(b) the maximum dollar amount for a family residential unit; and

(c) the type of activities proposed to be financed, including a general description of the local water quality program; and

(d) a general description of the areas included in the proposed district.

NEW SECTION. Section 11. Insufficient protest to bar proceedings -- resolution creating district -- power to implement local water quality program. (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with [section 9] or if the registered voters who reside in the proposed district have approved a referendum as provided in [section 10].

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by

the board of health and environmental sciences pursuant to [section 24].

NEW SECTION. Section 12. **Board of directors.** (1) Except as provided in subsections (3)(b) and (5), the commissioners shall appoint a board of directors for the local water quality district.

(2) The board of directors consists of not less than five members, including one county commissioner or member of the governing body of a city-county consolidated government, one member from the governing body of each incorporated city or town that is included in the district, and one member of the county or city-county board of health.

(3) The remaining members of the board of directors are selected from interested persons, as follows:

(a) from persons whose residences or businesses are distributed equally throughout the district if a county is the only unit of local government participating in the district; or

(b) through mutual agreement by all governing bodies if a county and one or more incorporated cities and towns are participating in the district.

(4) Terms of members of the board of directors are staggered and, after the initial terms, are for 3 years.

(5) In counties that have a full-time city-county health department, the city-county board of health, created as authorized by 50-2-106, may be designated as the board of directors for the local water quality district.

NEW SECTION. Section 13. **Powers and duties of board of directors.** The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the board of health and environmental sciences, for the protection, preservation, and improvement of the quality of surface water and ground water in the district;

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local governments, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality

district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than \$5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

NEW SECTION. Section 14. **Powers and duties of commissioners.** In addition to the other powers and duties of the commissioners authorized by [sections 1 through 23], the commissioners may:

(1) adopt local ordinances in accordance with the requirements of [section 24];

(2) establish fees;

(3) review and approve the annual budget of the local water quality district; and

(4) approve the construction of facilities that cost more than \$5,000 but not more than \$100,000 a year and that are necessary to accomplish the purposes of [sections 1 through 23], including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment.

NEW SECTION. Section 15. **Implementation of program.** The board of directors may implement a local water quality program in parts of a local water quality district before the program is implemented in the district as a whole. If a program is initially implemented in only a portion of a district, the fees may be levied only against that part of the district where the program is being implemented. As the program is expanded throughout the district, each additional part of the district that is covered by the program shall pay the fee.

NEW SECTION. Section 16. **Changes in district boundaries.** The board of directors may by resolution make changes in the boundaries of a local water quality district that the board determines are reasonable and proper, following the same procedures of notice and hearing provided in [sections 6 through 8] except that the notice provisions of [section 6(3)] apply only to the owners of proposed fee-assessed units in new areas that are proposed to be included in the district. If 20% of the owners of fee-assessed units in the new areas protest the inclusion in the district and the fees proposed to be charged, the board of directors is barred from further proceedings on the matter unless the registered voters who reside in the areas proposed for inclusion agree to be included in the district and accept the proposed fees by approving a referendum in accordance with the provisions of [section 10].

NEW SECTION. Section 17. **Role of county attorney -- contracts for legal services.** The board of directors may, by

agreement with the commissioners, contract with the county attorney or an attorney licensed to practice law in the state of Montana to perform legal services for the local water quality district.

NEW SECTION. Section 18. **Fees -- determination of rates -- increases -- exemption for agricultural water use.** (1) The commissioners shall determine fee rates according to a classification system that is based upon the volume of water withdrawn and the volume and type of waste produced at each fee-assessed unit in the local water quality district.

(2) Fees for commercial and industrial units must be based on a comparison with a typical family residential unit as to volume of water withdrawn and volume and type of waste produced. Commercial and industrial units may be assessed fees that are not greater than 50 times the fees assessed on a family residential unit.

(3) The commissioners may increase fees up to 10% a year by passing a resolution to establish the new fee rate. The commissioners may not approve a proposed fee increase of more than 10% a year unless notice of the proposed increase is given as provided in [section 6(1) and (2)] and opportunity for protest is provided as set forth in [sections 7 and 8]. If more than 20% of the owners of fee assessed units in the district protest, the fee increase may not be approved except through the referendum procedure provided for in [section 10].

(4) Water withdrawals for irrigation and livestock use and related water discharges may not be assessed fees.

NEW SECTION. Section 19. **Procedure to collect fees.** The month the local water quality district is created pursuant to [section 11], the department of revenue or its agents shall ensure that the amount of the fees is placed on the county tax assessments for each fee-assessed unit. Unpaid fees are a lien on the fee-assessed unit and may be enforced as a lien for nonpayment of property taxes.

NEW SECTION. Section 20. **Disposition and administration of proceeds.** (1) All fees and other money received by a local water quality district must be placed in a separate fund maintained by the county treasurer and must be used solely for the purpose for which the local water quality district was created.

(2) The commissioners shall draw warrants upon the fund on claims approved by the board of directors.

NEW SECTION. Section 21. **Creation of joint local water quality districts.** (1) Joint local water quality districts are districts that encompass two or more counties or parts of counties.

(2) A joint local water quality district may be created if the commissioners of each affected county:

(a) create the district, following the procedures prescribed under [sections 3 through 11]; and

(b) appoint a joint board of directors that consists of at least five members and that is consistent with the requirement of [section 22(2)(b)], if applicable.

NEW SECTION. Section 22. **Composition of board of directors of joint district -- terms.** (1) The board of directors for a joint district consists of one commissioner from each county involved, one member from each incorporated city or town included in the district, and one member from each county or city-county board of health.

(2) The remaining members of the joint board of directors are selected from interested citizens, as follows:

(a) persons whose residences or businesses are distributed equally throughout the district if counties are the only units of government participating in the joint district; or

(b) through mutual agreement of all commissioners and governing bodies of cities and towns participating in the district.

(3) Terms of appointed members are staggered and, after the initial terms, are for 3 years.

NEW SECTION. Section 23. **Administration of funds in joint districts.** Fees and other money collected by a joint local water quality district may be administered by one county treasurer upon mutual agreement by the commissioners of the counties participating in a joint local water quality district.

NEW SECTION. Section 24. **Local water quality districts -- board approval -- local water quality programs.** (1) A county that establishes a local water quality district according to the procedures specified in [sections 1 through 23] shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the board after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the board shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to the board's approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances that:

~~(a) are compatible with, more stringent than, or more extensive than the requirements imposed by 75-5-303 through 75-5-306 and 75-5-401 through 75-5-404 and rules adopted under those sections, to protect water quality, implement the nondegradation policy, enforce water quality standards, regulate sources that discharge wastes into state waters, establish pollutant discharge permitting requirements, and ensure proper management of substances that have the potential to contaminate water quality, to regulate the following specific facilities and sources of pollution:~~

(a) onsite waste water disposal facilities;

(b) storm water runoff from paved surfaces;
(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(a) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(b) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

~~(c) provide for penalties not to exceed the penalties provided in 75-5-631 through 75-5-633; and~~

~~(d) ensure that the provisions imposed by 75-5-605 are not violated.~~

(c) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; or Title 75, chapter 10;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency;

(iii) the subject of an administrative order or consent decree issued pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or

(iv) subject to the provisions of Title 80, chapter 8 or

chapter 15.

~~(5)~~ (7) If the boundaries of a district are changed after the board has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the board and obtain the board's approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

~~(6)~~ (8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5. If the department finds that a local water quality program is not adequate to protect, preserve, and improve the quality of the surface water and ground water or is not being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5, the department shall report to the board.

~~(7)~~ (9) If the board determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the board shall give notice and conduct a hearing on the matter.

~~(8)~~ (10) If after the hearing the board determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the board shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

~~(9) If the local water quality district fails to take corrective measures within the time required, the department shall administer within the district all of the provisions of Title 75, chapter 5. The department's water quality program supersedes all local water quality ordinances, rules, and requirements in the affected local water quality district. The cost of administering the department's water quality program is a charge on the local water quality district.~~

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

~~(10)~~ (12) If the board finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the board may direct the department to assume and retain control over the source. ~~A charge may not be assessed against the local water quality district for that source.~~ Findings made under this subsection may

be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located.

~~(11) A local water quality district in which the local water quality program is administered by the department under the provisions of subsection (9) may, with the board's approval, establish or resume a local water quality program that meets the requirements of subsections (1) through (4).~~

Section 25. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of [sections 1 through 23] to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

NEW SECTION. Section 26. Codification instruction. (1) [Sections 1 through 23] are intended to be codified as an integral part of Title 7, and the provisions of Title 7 apply to [sections 1 through 23].

(2) [Section 24] is intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [section 24].

-End-

Amendments to Senate Bill No. 136
First Reading Copy

Requested by Senator Beck
For the Committee on Natural Resources

Prepared by Gail Kuntz
February 7, 1991

1. Title, line 12.
Following: ";"
Strike: "AND"
2. Title, line 14.
Following: "PROGRAMS"
Insert: "; AND AMENDING SECTION 75-5-106, MCA"
3. Statement of Intent, page 2, line 1 through line 8.
Following: "water." on line 1
Strike: the remainder of line 1 through "authorities." on line 8
Insert: "The board may define by rule the types of best management practices that a local water quality district may impose upon each of the types of facilities and sources of pollution that may be regulated by local ordinances as authorized under [section 24(4)]."
4. Statement of Intent, page 2, line 19.
Following: "impaired."
Insert: "The board may also adopt rules to specify the procedures the department of health and environmental sciences shall follow pursuant to 75-5-106 to authorize a local water quality district to enforce provisions of Title 75, chapter 5."
5. Page 3, line 2.
Following: "cleanup"
Insert: "and the need to protect drinking water supplies"
6. Page 3, line 25.
Following: "county"
Insert: ", and mobile homes as defined in 15-24-201"
7. Page 4, line 4.
Following: "district"
Insert: "as authorized by [sections 1 through 23]"
8. Page 4, line 9.
Following: "ground water"
Insert: ", as provided by [sections 1 through 23],"
9. Page 7, line 1.
Following: "protest"
Strike: ", on forms provided by the county clerk,"
10. Page 7, lines 3 and 4.

Following: "writing" on line 3
Strike: "on the forms provided by the county clerk"

11. Page 7, lines 5 and 6.
Following: "date the" on line 5
Strike: "completed form"
Insert: "protest"

12. Page 7, line 12.
Strike: line 12 in its entirety

13. Page 7, lines 15 and 16.
Strike: "bar proceedings"
Insert: "require referendum"

14. Page 7, line 20.
Following: "unless"
Insert: "the commissioners submit a referendum to create the district to"

15. Page 7, line 21.
Following: "district"
Insert: "and the registered voters"

16. Page 7, line 22.
Following: "approving"
Strike: "a"
Insert: "the"

17. Page 7, line 23.
Following: "referendum"
Strike: "on the issue"

18. Page 8, line 9.
Following: "unit;"
Strike: "and"

19. Page 8, line 10.
Following: "financed"
Insert: ", including a general description of the local water quality program; and
(d) a general description of the areas included in the proposed district"

20. Page 9, line 15.
Following: "residences"
Insert: "or businesses"

21. Page 15, line 24.
Following: "residences"
Insert: "or businesses"

22. Page 17, lines 10 through 19.
Following: "ordinances" on line 10

Strike: remainder of line 10 and subsection (a) in its entirety
Insert: "to regulate the following specific facilities and sources of pollution:

(a) on-site waste water disposal facilities;
(b) storm water runoff from paved surfaces;
(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(a) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;"

23. Page 17, line 24.
Following: "sections;"
Insert: "and"

24. Page 17, line 25 through page 18, line 3.

Strike: subsections (c) and (d) in their entirety

Insert: "(c) provide for civil penalties not to exceed \$1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed \$500 per day of violation or imprisonment for not more than 30 days, or both.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; or Title 75, chapter 10;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) the subject of an administrative order or consent decree issued pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended.

Renumber: subsequent subsections

25. Page 19, lines 13 through 21.

Following: line 12

Strike: subsection (9) in its entirety

Insert: "(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance."

26. Page 20, lines 8 through 12.

Strike: subsection 11 in its entirety

27. Page 20, line 13.

Following: line 12

Insert: "Section 25. Section 75-5-106, MCA, is amended to read:

"75-5-106. Interagency cooperation -- enforcement authorization. (1) The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, board, and department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of [sections 1 through 23] to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The board may adopt rules regarding the granting of enforcement authority to local water quality districts."

Renumber: subsequent section

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 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"



TESTIMONY REGARDING HOUSE BILL 136
February 13, 1991
Before Senate Natural Resources Committee

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE

2-13-91

BILL NO.

SB 136

Chairman Stimatz and Honorable Committee Members:

My name is Jim Carlson. I am the Director of the Environmental Health Division of the Missoula City-County Health Department. I am here in support of Senate Bill 136 as amended on the "Gray Bill" being circulated by the Environmental Quality Council.

The City and County of Missoula are experiencing severe problems with groundwater contamination. We have several square miles of urban Missoula which are affected by chlorinated solvent contamination. Currently Mountain Water has three major wells shut down because the water in those wells exceed the Federal Drinking Water Standard. We also have two other small public water supplies which have been discontinued due to perchlorethylene contamination. Last spring 30,000 people in Missoula had to boil their water for fifteen days because of fecal bacteria contamination. The probable source of this contamination was an overflow at a city sewer lift station. In the Linda Vista Subdivision area, we have at least 15 homes which have private wells which exceed the State and Federal Standard for nitrate contamination in groundwater. These people cannot get federally insured loans to sell their homes. In the North Reserve Street area, we have two known plumes of contamination. One from a 1973 spill from the Yellowstone pipeline which is gasoline. Another has its source from the rinsing and wash down of pesticides at the county weed control office. In downtown Missoula, we have several square blocks of diesel contamination underlying the Burlington Northern refueling station. West of town we have mostly individual wells. In this area several hundred private wells are contaminated with fecal bacteria. In the 1980's 28 individual water supply wells were replaced due to a leaking underground storage tank. We have two small public water supply wells which have been abandoned for drinking water purposes due to gasoline contamination, the source of which is unknown. Below the BFI landfill, we have measured violations of the Federal and State standards of heavy metals in monitoring wells. Although I am happy to say that recent monitoring indicates this problem may have been remedied by the installation of facilities at the landfill itself.

Missoulians are very concerned about the future viability of groundwater as a source of drinking water in the Missoula valley. Missoula valley currently gets 100 percent of it's drinking water from the Missoula Aquifer which is showing the affects of years of abuse.

Under current state law, local government does not have the authority to take action and remedy some of the problems we have with water quality and/or enforce the Clean Water Act of the State of Montana.

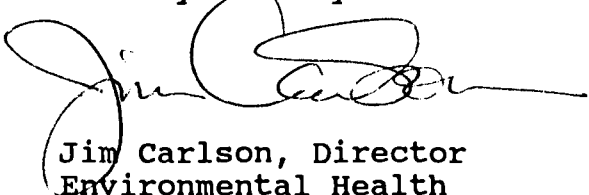
Local programs have been very successful where locals have the authority to conduct research, develop public education programs, and enforce the Clean Air Act of the State of Montana. I am happy to report that those efforts have been very successful and that Missoula is on the verge of attaining air quality standards.

We need similar authority to address local problems in water quality. In President Bush's state of the union address a few weeks ago, he said "we must return to our people, cities, counties and states the power to chart their own destiny." That is what this Bill would enable local cities and towns and counties to do as a local option. The Montana Clean Water Act and the administration of that Act have not been adequate to ensure protection of groundwater resources in the State of Montana.

Although this Bill as amended severely restricts broad-based authority for dealing with the variety of problems, it does allow local government to create and fund the necessary research, administration, public education and, if necessary, regulations for a restricted list of sources as required to maintain our vital water quality resources. The list of empowerment given to local government is shown in the "Gray Bill" in section 24 are adequate for us to address our local needs over the next several years.

This Bill is a compromise between a variety of concerned parties including: the mining industry, water companies, local government, state government, agricultural interests and general business interests. Montana communities cannot grow, diversify the economy, and attract businesses without being able to supply quality water at a reasonable price. It has been shown time and time again in other communities throughout the country, that an ounce of prevention in keeping clean water clean is much less expensive than trying to clean up groundwater resources after they are contaminated. This Bill as written is an appropriate method of achieving clean water standards. I urge you to pass it and give local government the opportunity to help solve our water quality problems.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Jim Carlson", is written over a horizontal line.

Jim Carlson, Director
Environmental Health

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 13 day of FEB, 1991.

Name: DENNIS M. TAYLOR

Address: CITY OF MISSOULA, 435 RYAN,
MISSOULA, MT 59802

Telephone Number: 523-4602

Representing whom?

CITY OF MISSOULA

Appearing on which proposal?

SB ~~236~~ 136

Do you: Support? X Amend? X Oppose?

Comments:

REQUEST UNDER AMENDMENT TO
REQUIRE JOINT AUTHORIZATION (CITY & COUNTY)
FOR DISTRICT WHEN DISTRICT ^{GOVERNING} BOARD'S
BOUNDARY INCLUDES THE
URBAN FRINGE AREA WITHIN
4 1/2 MILES OF THE BOUNDARIES
OF ~~THE~~ INCORPORATED
MUNICIPALITY.

SIMILAR LANGUAGE TO 50-60-101 (10)
(b) (iii)

SENATE NATURAL RESOURCES COMMITTEE
February 13, 1991

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 2-13-91

BILL NO. SB 136

TESTIMONY ON SB136 -- AN ACT TO ESTABLISH LOCAL WATER QUALITY DISTRICTS
PRESENTED BY -- JOHN ARRIGO, DHES WATER QUALITY BUREAU

The Department of Health and Environmental Sciences supports SB136 with the proposed amendments. Many of the typical water quality problems in Montana appear minor when viewed on a statewide basis. Seepage from a failing septic system that reaches a stream or the disposal of wastewater from a car wash near an individual domestic well may seem trivial when measured against the illegal dumping of hazardous materials at an industrial site. However, the smaller sources of pollution are not trivial to the people affected in the local area where they occur.

The amendments to SB 136 spell out the smaller sources of pollution for regulation by local water quality districts. These sources represent gaps the department is unable to effectively regulate on a statewide basis. Other priorities and staff shortages limit the department's ability to address many of the numerous and varied water quality problems that are brought to our attention.

The department's water pollution control programs are funded almost entirely by federal funds, and as such the state programs mirror federal programs. Pollution control efforts by the U.S. Environmental Protection Agency and the state focus on major sources of water pollution such as wastewater discharges to streams, hazardous waste management facilities, solid waste landfills and underground fuel storage tanks. Also, the federal government does not have a nationwide ground water pollution prevention or control program.

The department hopes that the establishment of local water quality districts will help achieve preventive approaches to pollution control. It is clear that pollution prevention is much cheaper than pollution cleanup. New directions and funding from EPA encourage states to develop ground water pollution prevention programs.

The 1986 Amendments to the Safe Drinking Water Act created the wellhead protection program. The department is developing a statewide wellhead protection program that will eventually require individual communities to inventory and manage the sources of pollution adjacent to public water supply wells in an effort to prevent pollution of those wells.

Implementation of new pollution prevention programs administered by the department will require the cooperation and assistance of local governments. The state will not be able to provide local governments with funds to develop or implement these programs. Water quality districts, as proposed under SB136, will be able to assess fees that can be used to support pollution prevention programs. The ability to fund local pollution prevention programs is a key to their success and a small investment in prevention will result in a long-term savings.



Flathead City-County Health Department

723 5th Ave. East • Kalispell, Montana 59901

Environmental Health Services 756-5632 • Community Health Services 756-5633

SENATE NATURAL RESOURCES

EXHIBIT NO. 6

DATE 2-13-91

BILL NO. SB 136

To: Senate Natural Resources Committees

From: Flathead City-County Board of Health

TESTIMONY: SB 136

In accordance with the position statement of the Flathead City-County Board of Health adopted January 17, 1991, the Board is in full support of the proposed legislation introduced as Senate Bill 136 which will establish local water quality districts.

At this time, local government has very limited authority to take steps necessary to protect against degradation of groundwater and surface water. This Bill would enable local governments to take essential steps to accomplish the very important task of protecting two of our most valuable resources: our water, and the citizens who reside in Montana.

The proposed legislation will solve specific problems within a given jurisdiction. It is also "consumer oriented" and subject to the identified needs of the people.

The Flathead City-County Board of Health fully supports Senate Bill 136.

Respectfully submitted,

Jane Lopp, Chairperson

Jane Lopp, Chairperson



Flathead City-County Health Department

723 5th Ave. East • Kalispell, Montana 59901

Environmental Health Services 756-5632 • Community Health Services 756-5633

SENATE NATURAL RESOURCES

EXHIBIT NO. 6

ADOPTED JANUARY 17, 1991

DATE 2-13-91

BILL NO. SB 136

The Flathead City/County Board of Health supports legislation that continues coordination of all Public Health Services. This includes continued single-site organization of Personal, Community and Environmental Health Services and the resources and support services necessary for these programs and services.

The Flathead City/County Board of Health supports legislation that will enhance environmental quality and protect the public safety including the areas of Waste Management, Air and Water Quality, Subdivisions, and Underground Storage Tanks.

The Flathead City/County Board of Health supports legislation which will enhance the provision of Personal Health Services through a coordinated delivery plan. Such services would include basic immunization and disease prevention programs, nutrition services for families, family planning services and other basic Public Health Programs for our citizens regardless of ability to pay.

The Flathead City/County Board of Health supports those programs that will positively benefit the Public Health, protect the Public Safety and enhance the environmental quality of the State and support adequate funding of those programs and services by the State or through authorization of such mechanisms to local units of government that they can be adequately funded at the local level.

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 2-13-91

BILL NO. SB 136

February 12, 1991

TO: Chairman and Members of the Senate Natural Resources Committee

From: The Missoula Water Quality Advisory Group

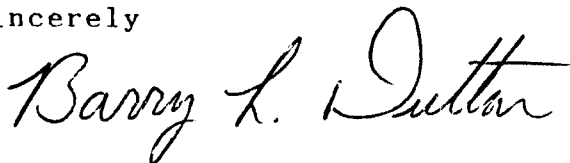
RE: SB 136 Local Water Quality Districts

Dear Chairman Stimatz and Members:

The Missoula Water Quality Advisory Group consists of hydrologists, soil scientists, water chemists, engineers, and others involved in water quality related professions. This group advises local units of government and government agencies on water quality issues.

We would like to strongly endorse SB 136 which would allow the creation of local water quality districts. This would allow important local aquifers to be protected with local citizen input and local government administration. Statewide there are many aquifers that may not need this provision but there are some where protection is essential to the long-term economy and general public health.

Sincerely



Barry L. Dutton
Chairman



BOARD OF COUNTY COMMISSIONERS
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802

BCC-91-114
February 13, 1991

(406) 721-5700

SENATE NATURAL RESOURCES

EXHIBIT NO. 8

DATE 2-13-91

BILL NO. SB 136

Senator Larry Stimatz
Chairman, Senate Natural Resources Committee
Montana State Senate
Capitol Station
Helena, MT 59620

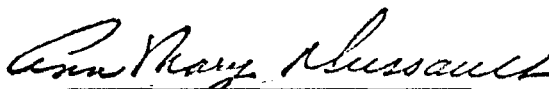
Dear Senator Stimatz,

We are writing in support of SB 136, which would provide for the establishment of local Water Quality Districts, authorize establishment of fees, authorize governing bodies that participate in a local Water Quality District to adopt local laws related to water quality protection, authorize the Board of Health and Environmental Sciences to approve the local Water Quality Programs, and authorize the Department of Health and Environmental Sciences to monitor implementation of local Water Quality Programs.

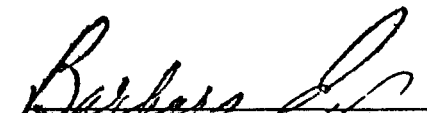
Protection of the Missoula Valley Aquifer as a viable source of clean water into the future is of utmost concern to the Missoula County Commissioners. We are speaking in favor of House Bill 136 because we see this legislation as a vehicle by which the City and County of Missoula can develop the adequate research, public education, staffing and programs to rehabilitate our aquifer and ensure its future viability. Diversification and growth of the Missoula area economy is also one of our top priorities. We cannot attract businesses that can have their pick of hundreds of communities throughout the west, without being able to ensure them that we will take care of our air quality and water quality problems. SB 136 will help us address these very important issues. We ask that you help us and the citizens of Montana in ensuring that clean water is available to them. We urge you to pass Senate Bill 136 as legislation that is needed to achieve clean water for commerce and the public.

Sincerely,

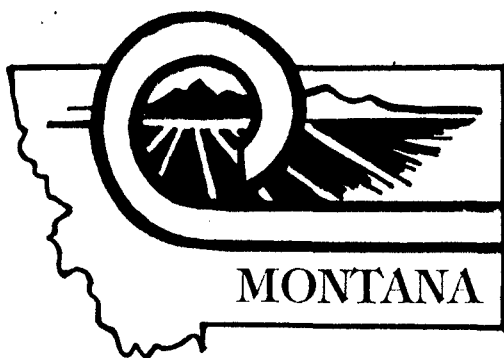
BOARD OF COUNTY COMMISSIONERS


Ann Mary Dussault, Chair


Janet Stevens, Commissioner


Barbara Evans, Commissioner

BCC/JC:ss



MONTANA

Association of Conservation Districts

501 North Sanders
Helena, MT 59601

(406) 443-5711

SB 136

February 13, 1991

My name is Peggy Parmelee and I am executive vice president of the Montana Association of Conservation Districts (MACD), representing the 59 conservation districts in Montana which are sub-divisions of state law and are local government.

Today, on behalf of MACD and the conservation districts we represent, I rise in opposition to SB 136 as it is now written.

Conservation districts do support the concept that Montana's ground and surface water is a precious commodity and it should be kept in as high a quality as possible. As areas develop, new resource problems are developing. Conservation districts are evolving right along with everything else. What I want to emphasize here is, that we do not oppose this bill because of the issue. *Believe in the future*

is one
like
might to
have
location
cast upon many fed. & state technical resources for local assistance
The reason we oppose the bill is that we feel that this is almost a duplication of what conservation districts by law should be doing. We were established 50 years ago, by a vote of the people in each district, to be the local agency to work with natural resource issues. At this time, conservation districts are involved in working with many different ground and surface water issues. *We have the capability to*

us
the luck
We do not believe that it is in the tax payers best interest to establish another arm of government to work on a problem that conservation districts should and could do. *Also, we believe the "bang for the buck" will be more effective using an established gov. entity.*

Many folks have said that this bill is targeted to address specific problems in the Missoula and Helena areas. I agree that they do have potential severe groundwater problems in the residential areas of Missoula and I am sure that Helena is the same. But this bill does not just address residential problems in those specific areas. In talking with folks they have discussed the effect the Clark Fork River could have on the ground water in the Missoula Valley.

from a gas spill, chemical wash facilities

In reference to New Section 9, we think that this is a good idea, but also know that depending on how the proposed district lines are drawn this could put large area of agriculture, forest, mining, and so on into a district with small representation from the land managers.

don't paint pollution -

Well need protection/Mineral logging etc

Lead agency under a MOU between Fed & State agencies for "Coordinated Resource Mgmt" a program to get all mineral state in a resource...

Please note that in Section 24, (5), (a) it goes on to say ----and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters.

Once again, MACD is asking you to vote against this bill as written and suggest that a working group be established to develop a program that will address the problems on a state-wide basis. If you want to just address the residential problems, this bill had also better be rewritten to indicate that.

rework the proposed legislation -

Thank you.

Peggy Parmelee

areas of work CD's are presently involved in -

- . Salin seep reclamation*
- . ground water monitoring*
- . admin. of the Natural Shrubland & Land Preservation Act of 1975 (a state law)*
- . non point pollution / fed / local level*

Amendments to Senate Bill No. 133
First Reading Copy

2-13-91

SB 133

Requested by Senator Keating
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 8, 1991

1. Title, line 4.

Following: "EXEMPTING"

Insert: "NONCOMMERCIAL"

2. Title, line 7.

Following: "75-10-403"

Strike: ", 75-10-405,"

3. Page 6, line 4 through line 6.

Following: "any" on line 4

Strike: "tank" on line 4 through "capacity" on line 6

Insert: "farm or residential tank with a capacity of 1,100
gallons or less that is used for storing motor fuel for
noncommercial purposes"

4. Page 6, line 7 through page 9, line 7.

Strike: section 2 in its entirety

Renumber: subsequent section

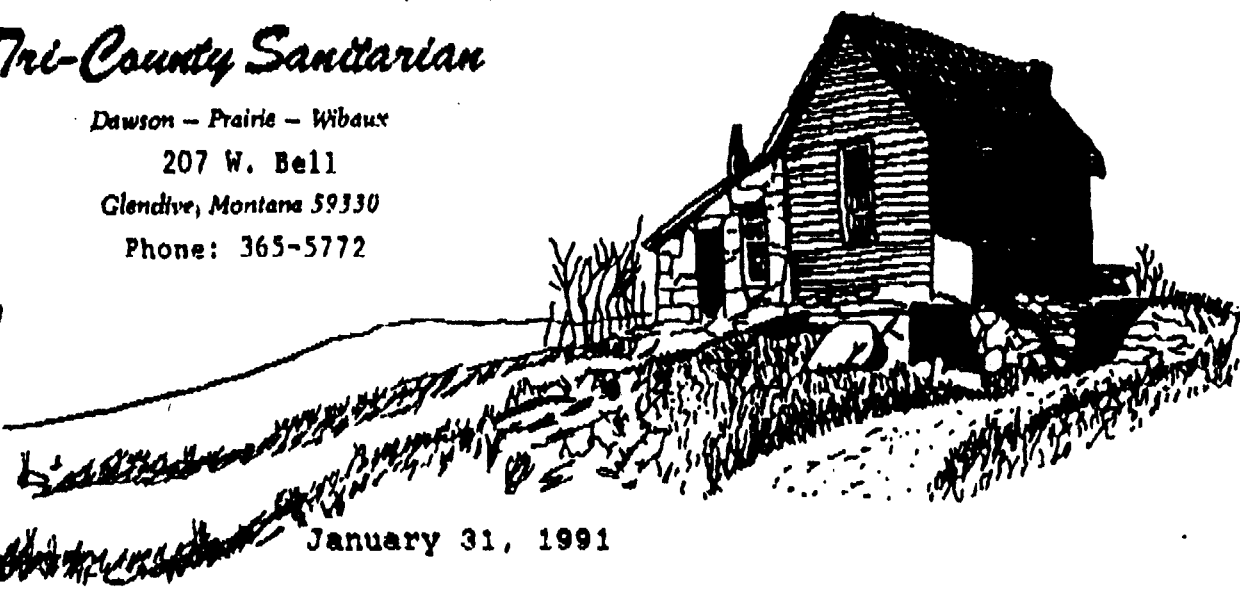
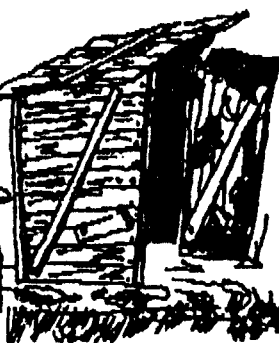
Tri-County Sanitarian

Dawson - Prairie - Wibaux

207 W. Bell

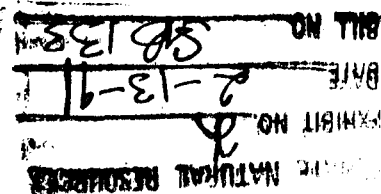
Glendive, Montana 59330

Phone: 365-5772



January 31, 1991

Senator Don Bianchi
Natural Resources Committee
Capitol Building
Helena, Mt.



Dear Senator Bianchi,

Your committee will be hearing testimony today regarding SB133. As you know, this bill would exempt all underground storage tanks (UST) under 1100 gallons, not withstanding their contents.

The state UST program is a federally mandated program. If the state does not take primacy, the feds will. Federal law (UST) only exempts heating oil and other noncommercial motor fuels. SB 133 would exempt even commercial UST'S under 1100 gallons. The state would then be in violation of federal UST laws and risk losing primacy.

Environmentally, this would defeat the entire purpose of the underground storage tank law. That is, to prevent contamination of Montana's groundwater. 300 gallons of gas from a 1000 gallon tank is just as environmentally damaging as 300 gallons from a 10,000 gallon tank.

My direct involvement with the removal of over 150 UST's in the past two years, in Eastern Montana, has certainly shown that the tanks in the ground ARE leaking. Over 50% of the tanks removed had been leaking gas into Montana's precious groundwater.

I strongly urge you to KILL SB133.

Thank you for your time and consideration of the bill.

Yours for a cleaner environment,

Dennis J. Snow R.S.

Dennis J. Snow R.S.
District Sanitarian

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-13-91
BILL NO. SB 94

Amendments to Senate Bill No. 94
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 14, 1991

1. Page 8, line 9.

Following: line 8

Insert: "(b) the board of oil and gas conservation;"

Renumber: subsequent subsections