

MINUTES

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

Call to Order: By Chairman Larry Stimatz, on March 22, 1991, at 3:16 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:

Staff Present: Paul Sihler and Deborah Schmidt

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

Announcements/Discussion: The roll call was taken by the secretary. The Natural Resource committee will meet tomorrow, Saturday, March 23, 1991 at 8:30 a.m. to handle Executive Action.

HEARING ON HB-926

Presentation and Opening Statement by Sponsor: Representative David Hoffman, District 74, said this bill was at the request of the DHES for a unique problem that arose in Madison County. Bob Lee, the owner of Chicago Mining Company and owner of some mining property near Pony put up a voluntary bond, and the DHES had no rules or direction on how to handle the bond. This bill would

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give them the rules to hold these types of voluntary bonds.

Proponents' Testimony: John Arrigo, Department of Health and Environmental Sciences (DHES), said that currently under the Montana Water Quality Act, the DHES does not have the authority to require reclamation bonds for sites that it issues discharge permits to. HB-926 was developed to address a unique situation. Because of public concern about potential pollution problems, the operator of the Chicago Mining Company gold mill in Pony, Montana, voluntarily offered to put up a bond to cover the cost of any cleanup or reclamation that would be necessary should the operator abandon the site. However, DHES does not have the authority or the ability to hold any bonds, so HB-926 modifies the Water Quality Act to allow the DHES to adopt new rules governing the reclamation of sites disturbed by construction, modification, or operation of disposal systems for which a bond is voluntarily offered by the permit holder. This modification will allow the DHES to hold the bond that may be posted by Robert Lee and Chicago Mining Company, or any other permit holder in the future that would like to post a bond. We urge the committee to Concur in HB-926.

Kim Wilson, Helena Attorney, supported this bill (Exhibit #1).

Opponents' Testimony: none

Questions From Committee Members:

Senator Hockett asked the DHES what kind of bonds are these, and for how much money? John Arrigo, DHES, said these details would be covered in the rules to be adopted. The bonds would not be as comprehensive as those covered under the Hard Rock Mining Act. They would be designed principally to address reclamation of the surface of an operation to restore to a condition where water pollution would not occur, and possibly to address cleanup of a site where a release has occurred. That is the grey area because trying to anticipate a problem and calculate its cleanup cost is extremely difficult. We would look to the Department of State Lands on how they calculate bonds. This is the intent to cover cleanup of abandoned sites or property closed sites.

Senator Keating asked how large a bond did they volunteer? Mr. Arrigo said he was not sure of the amount. It was mainly a response to the citizen concerns that the mining company to go belly up, and the DHES and community would be left with this installation that could be a source of pollution. Senator

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Keating said this bill will not require that bonds be put up in the future, will it? Mr. Arrigo said that was correct. This bill is to allow the DHES to hold any bond that is voluntarily posted. Senator Keating stated that the bill is not going to require bonding for these kinds of projects, only on a voluntary basis. Mr. Arrigo said that was correct.

Senator Bianchi said his question was why is it voluntary? Why doesn't the DHES try to make it mandatory on these projects, so there are some guarantees? Mr. Arrigo said he asked himself that question, and his answer is that it wasn't the DHES desire to attempt to get the bonding authority for all of the permits they issue. This was a mechanism that would accommodate Mr. Lee and Chicago Mining Company where they have offered this bond. Senator Bianchi said that right now, with an ongoing project or proposed one that has the potential for water pollution, there are no bonds to cover the reclamation if the company does go broke? We are not covered anywhere in the state? Mr. Arrigo said that is correct for permits that the DHES issues for water discharge permits. Other permits such as the Hard Rock Mining permits do require reclamation bonds. The DHES issues permits for water discharge, not water reclamation type act. Senator Bianchi said there are fines if they violate, but what if they go broke, the state has no protection? Mr. Arrigo said that was correct.

Senator Bengtson said this was just for information. The Department of State Lands and the DHES are working in cooperation here? This is a mill, but it is in conjunction with a mine, so the Department of Lands had issued a Hard Rock permit for them? Mr. Arrigo said this mill has been exempted from the Hard Rock Mining Act because of rule writing, effective date of the act, and a court decision. So there is no Department of State Land permit or bond for this site. Senator Bengtson said all they have is a water discharge permit? Mr. Arrigo said they have a ground water permit issued by the DHES to cover the mill that the tailings impound. We are not talking about any mines or associated activities. Senator Bengtson said there are no reclamation bonds at all? Mr. Arrigo said at the present time there aren't any.

Senator Hockett said it is difficult to understand why a company would want to put a bond if other companies don't. Why would they want to do that? Mr. Arrigo said most of the DHES permits are for a discharge. A company wants to discharge their waste water to the stream or an impounded end. We deal with the impact of those discharges, not specifically the closure and reclamation. In this particular case, to address the concerns

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from the citizens, the operator, Mr. Lee, volunteered this bond. He thought this would help calm the public concerns, and it would demonstrate his sincerity to protect the environment. Senator Hockett said this bill is for one company? Mr. Arrigo said that was correct.

Senator Bengtson asked John North, Department of State Lands, what the relationship between the DHES and his department in dealing with this mine and public health in Pony? Mr. North said with regard to this mill, the Department of State Land does not have any authority because of the grandfather clause in the Hard Rock Mining Act. We have no authority over hard rock mills that were being operated independently of a mine, which is what this mill was at its inception. Until the Legislature cast a law giving us that authority, but the law said the effective date was based on when we adopted rules. Then on the effective date of the rules, there was a grandfather for any operation that was constructed and operating prior to this effective date of the rules. The court ruled that this mill was constructed and operating prior to the effective date of the rules. Therefore, the Department of State Lands has no authority. All the regulatory authority would be in the DHES. For any mill that started up after that effective date, we have the regulatory and bonding authority over those. This one mill is grandfathered, and all the authority is in the DHES. Senator Bengtson said this is an exception to the rule, or are there others this could apply to? Mr. North said there are a couple mills that are operating in the state that started operations years ago, and they are also grandfathered.

Senator Anderson asked Mr. North if there has been permits issued that require a voluntary bond? Mr. North said the DHES has issued the permits, but the DHES did not request the bond, the operator has said they would voluntarily put one up. Then the DHES realized they had no way to accept and retain it at this time.

Closing by Sponsor: Representative Hoffman answered Senator Keating's question about the amount of the bond by saying he thought it was \$350,000. That was a random figure arrived at by the Chicago Mining Company, and the DHES just was not able to accept it because they have no procedure or way to implement the acceptance and its application. What this bill will do is to allow that bond to be put up, and essentially the same types of bonding requirements would follow after the bond is voluntarily put up. This bill does not require any additional bonding in any other situation. This bill was originally going to be written

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just to cover the Chicago Mining Company in Pony, but we thought if another situation this unique pops up, and the company wanted to put up a voluntary bond, then this bill should be broad enough to cover that. This was a public relations jester, and a good faith effort on behalf of Chicago Mining Company. If you are not familiar with this, there was a lawsuit in Madison County over the issue of who had authority, DHES or the Department of State Lands. The Chicago Mining Company won, and after that they decided to go ahead and put up the bond voluntarily.

HEARING ON HB-641

Presentation and Opening Statement by Sponsor: Representative Dick Knox, District 29, said this bill does several things. It will #1. clarify those owners who will be effected within the area of the mine. #2. It expands the area of voter registration by 1/2 mile around the perimeter of the permit area. The reason for this is obvious. There will be some impact on any land owner within 1/2 mile of an active mine. #3. Is to reveal the source of the applicants legal right to mine the mineral on the land effected by the permit. Representative Knox said there is no hidden agenda in this bill. It is designed to increase, somewhat, the number of landowners that would be involved in the permit process. It is designed to increase the amount of pertinent information available to all those that would be affected by the permit. This will accomplish some things that are very important to the landowners near the mine. #1. It provides important information to the landowner at the very inception of the process. This is a very important part of the bill, and it does address many of the landowners' concerns. This information will benefit all parties concerned by getting those people affected by the proposed mine involved early in the process. This is good for the landowner and for the miner. One of the worst things that can happen from either perspective is to have the permit process well under way, and then have the landowners become aware of something they perceive to be a problem. At that point in time, the atmosphere becomes poisoned, a feeling a distrust is established, and it may never be overcome. This can not possibly be in the long term best interest of the mine operator. The provisions of this bill will be helpful in heading off some of the problems before they occur. This is in the best interest of the mine operator, the landowners, and the community in which the proposed mine is located.

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Proponents' Testimony: Dennis Olson, Northern Plains Resource Council, said they support this bill as they did the same principle in the Surface Mining Act, the Coal Act, that there should be surface owner consent and surface owner notification whenever mining occurs. The company should at least have to show that they own the minerals before they start mining them.

Susan Brooke, Montana Stockgrowers and Montana Woolgrowers Associations, said they want to go on record as supporting this bill, and would like the committee's favorable consideration.

Gary Langley, Executive Director, Montana Mining Association, said they support HB-641.

Dan Whyte, for Ward Shanahan, representing Chevron, said they are proponents of this bill, but we would like to see one amendment to the bill in two places. On Page 2, line 19 and 21, we would like the bill to read "contracts for deed be recorded contracts for deed". This would simply make it easier for anyone interested to know who the interests in the land are, and that they would not have to try to find unrecorded deeds.

Jim Jenson, Montana Environmental Information Center, said they worked in the House to get this bill past, and they wanted to emphasize that the notification required when the mining company applies for the permit that they must provide records that they own those minerals and have the right to mine them. This was not just pulled out of the air. In Representative Knox's district, there is the Kendall Mine, and the company that applied for the permit to mine there was in fact involved at the same time in a massive quiet title action over the minerals that were within the requested permit boundary. Unless this has been settled in the last 2 or 3 weeks, it is still a concern. The Department of State Land is in a difficult situation. They are being pressured by the landowners and citizens concerned about the impact of this mine, and by the mine operators. The citizens felt that should the Department of State Lands should adjudicate landownership. The department should not be put in this position, and this bill helps the Department of State Lands stay out of those impossible positions. It provides the same protection as those under the Federal poll law, only with the right to mine language. We think this makes a lot of sense.

Lorna Franks, Montana Farm Bureau, supported this bill by letter (Exhibit #6).

Opponents' Testimony: none

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Questions From Committee Members:

Senator Keating asked about the language on Page 1, line 25 where it says that the approval will be provided by a board, what board? Representative Knox said it is the State Land Board operated through the Department of State Lands.

Senator Bianchi asked Representative Knox if he would be in favor of the amendment proposed by Dan White who represented Chevron? Representative Knox said he would have no problem with "deeds of record" being added, and is an amendment that should be made.

Closing by Sponsor: Representative Knox said this does have wide spread support, and it does address several areas of need. It does it in a manner that everyone can live with. He hoped the committee would concur in the bill.

HEARING ON HB-749

Presentation and Opening Statement by Sponsor: Representative Ellison, District 81, said HB-749 covers the Hard Rock Impact Act where the bill before was the Hard Rock Act. This is a bill that does a little fine tuning on the Hard Rock Impact Act. On Page 1, line 15-16, this bill will amend the law to include administrative staff. It is unclear in the original whether the Hard Rock Board had this, and it was determined to be the intent that they should, so this clarifies it in law. Then on Page 2, line 9-12 provide the change in the dates to provide for the lag time when taxes come in. Carol Fergus will explain this further.

Proponents' Testimony: Carol Ferguson, Hard Rock Impact Board, said on the board supports this bill, and she summarized the information from the board (Exhibit #2).

Dennis Olson, Northern Plains Resource Council, said the council was involved in Mr Lessens, the former Commerce Director, to cut back the staff of the Hard Rock Impact Board. We thought it went over his authority, and we think this bill helps clarify this issue. It is the prerogative of the Hard Rock Impact Board to have the primary decision making, and retain their staff. We urge your support of this bill.

Opponents' Testimony: none

Questions From Committee Members: none

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Closing by Sponsor: Representative Ellison had no further closing remarks.

EXECUTIVE ACTION ON HB-749

Motion: Senator Doherty moved to Concur in HB-749. The motion passed unanimously. Senator Grosfield will carry HB-749.

EXECUTIVE ACTION ON HB-926

Motion: Senator Bianchi moved to Concur in HB-926. The motion passed unanimously. Senator Anderson will carry HB-926.

EXECUTIVE ACTION ON HB-641

Motion: Senator Bengtson moved the amendment suggested by Dan Whyte to added "recorded" to Page 2, line 19 and 21.

Discussion: Senator Hockett asked if the proposed amendment needed to also be on Page 3, line 1? Senator Tveit thought it would make the law consistent.

Senator Keating said that contracts for deed are not always recorded. Sometimes they are in a notice of purchasers interest, and the contract for deed is on file at the bank, and only a reference to the contract is recorded. Sometimes the notice of purchasers will indicate whether the minerals are being passed or reserved, or what disposition there is to the minerals. In order to determine the title, you actually have to read the contract for deed. By adding this amendment we will be limiting the scope of the bill. If we require that the person who is going to operate these lands and reveal his source of legal right to mine, then they will have to file the documents with the State Land Board. The State Land Board gives them the ownership and the right to mine, or a lease or mining contract of some sort, which may or may not be or record. The intent of this bill is to make

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certain that the Department of State Lands knows which people are involved whether it is a surface owner, mineral owner, surface lessee, mineral lessee, and what have you. All of those contracts should be used as evidence, and normally they are recorded, but not always. In the case of a notice being recorded, the information may not necessarily be available. He recommended that the scope not be limited, but require that the applicant furnish all the documents, ownership, leasehold, etc. that gives them the right to operate this property. That way you have a full disclosure with the land owner. It takes the onerous off the State Land Department. It does say that the Department of State Lands is not required to verify this information, and that is fine. If you want the intent of the bill to be carried through, then you better leave it fairly broad.

Chairman Stimatz said Senator Keating was certainly correct that not all contracts are recorded. Some are not recorded for a long time after they are written.

Senator Bengtson withdrew her motion to concur in the amendment. She then moved to Concur in HB-641. The motion passed unanimously. Senator Bengtson will carry HB-641.

HEARING ON HB-448

Presentation and Opening Statement by Sponsor: Representative Bob Ream, District 54, was unable to make the hearing because he was attending a funeral. Senator Grosfield was a co-sponsor of HB-448, so he presented the bill to the committee. Senator Grosfield this bill is by request of Governor Stan Stephens, and is a result of a year long advisory council that resulted in uniform consensus. This bill is a passage of that consensus. There were 31 recommendations made by the advisory council, and 21 of them could be implemented administratively, and 9 of the other 10 are in this bill. The 10th one is the reorganization of the department, and is a Natural Resource bill.

Proponents' Testimony: Art Wittich, Governor's Office, said this legislation is the product of the Governor's Mine Permitting Improvement Advisory Council. There are six components of the bill. It is hard to follow the bill because many of the changes necessary are simple amendments, and there are cross references to statute numbers. He passed out a fact sheet to explain the six changes (Exhibit #3). #1 allows for additional staff at the Department of State Lands to be paid for through fees including

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environmental assessment fees. Currently, these are the only fees allowed under the Hard Rock Act for environmental impact statements. #2. it increases the public participation opportunities for public interest groups to get information. Currently in state law, it is very difficult to get information concerning mine exploration and operations. It is easier to get it through the U.S. Forest Service. This would loosen up the state's disclosure requirements to more accurately parallel the federal Forest Service requirements. #3 is a periodic bonding requirement that would require that a bond be reviewed at least every 5 years. #4 there are provisions to improve the enforcement abilities of the Department of State Lands. It institutes a mine violator tracking system. One major concern from the council members was that bad miners were allowed to keep coming back and operating bad mines. This bill allows for a tracking system to be used. #5 it also prevents any additional mining or remining in areas that have been reclaimed by the Department of State Lands, unless a new permit is issued and a new bond issued. #6 it extends the reclamation standards on replacement water to associated mine facilities as well as regular mine facilities. This is what is in the bill. This process took about 9 meetings. There were 16 members on the Advisory Council. They included mining company representatives, environmental groups, state and federal officials, and we added two additional people later to represent small miners. It was a very broad based group, and at times it was confrontational, but it was beneficial for all parties involved. He passed out the final report of the group (Exhibit #4). This is the 31 recommendations which includes the Executive Orders with the make up of the Advisory Council. Besides the 9 meetings, they had 2 public hearings, subgroup meetings which all contributed to this considerable effort. Mr. Wittich said he would be happy when this committee can pass this bill out, and get it through the Senate, signed by the Governor, and then he can throw the enormous notebooks away.

Gary Langley, Executive Director, Montana Mining Association, said Mr. Wittich stated that this committee met for more than one year. Questions that have lingered with public interest groups and the mining industry of how we resolve some issues and how to expedite the process without detracting from the environmental protection were studied. This bill comments on that process because we were able to sit down for over a year, and work things out. The result is HB-448, as well as the other recommendations that were made in the issued report. He asked the committee to concur in HB-448.

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Kim Wilson, Clark Fork Coalition, and a member of the Mine Permit Advisory Council on behalf of the Montana Environmental Information Center, supported HB-448 (Exhibit #5).

Dennis Olson, Northern Plains Resource Council (NPRC), supported this bill. He added that the NPRC asked to serve on the council, but they were rejected. Their members did participate through the public hearings. The NPRC is concerned that they have two other bills in the House, water protection bills. At the hearing in House Natural Resources, we found out that the mining industry might come out and oppose this compromise bill because of our two bills. It was interesting today to hear the example of the voluntary water bonding bill because these are some of the issues that our bills address. They do go further than the compromise position in the mine permitting council. He did not want to get into that bill, but he hoped to be able to present it to this committee. NPRC supports this bill even though they are presenting other legislation. We think this is a good process, and if we can come to a compromise with the industry, the Governor, and other people, NPRC is willing to support that. We hope the committee will let this bill stand on its own merits, and not be influenced by the other bills.

Scott Stelson, Montana Wildlife Federation, said they would like to go on record supporting HB-448.

Opponents' Testimony: none

Questions From Committee Members:

Senator Keating asked Mr. Wittich how this impacts small miners? Mr. Wittich said the council was originally set up to only address large mining, but once they started, they realized small mining was a concern. So they added representation from small mines to the council. They had a small mining hearing that showed people felt overwhelming that the laws passed last session should include rules that would require permits for use of cyanide. There should be some time allowed to see those rules will adequately regulate small mining. So this bill did not address small mining, but the public participation that allows for the Department of State Lands to disclose, not geologic information, but location, type of activity, and type of disturbance information could impact small mining. He added that the council made a decision to agree to this that small mines were represented by a member on the council. That member did not feel that this was a bad idea. Senator Keating asked if the bonding requirements hurt small mining to any degree, or are they

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able to obtain bonds? Mr. Wittich said there is no additional bonding required in this bill. It simply requires a periodic review of the bonds to see if the bond is adequate.

Senator Anderson clarified that the small mining representative did go along with? Mr. Wittich said that was correct. John Magnus, from Senator Anderson's country, was in support of the package. Senator Anderson said he had a letter from Bill Hand that indicated he agreed with this legislation.

Closing by Sponsor: Chairman Stimatz told the committee, that due to the fact that Representative Ream was unable to present the bill, he would hold up Executive Action until he could talk to him. He understood there were negotiations going on, but he was not sure what they were about. Senator Grosfield had no closing remarks.

EXECUTIVE ACTION ON HB-671

Discussion: Chairman Stimatz said there is a grey bill that has the Gilbert Cobb amendments inserted in to it. (Exhibit #7, amendments Exhibit #8).

Senator Keating asked what is a grey bill, and if these amendments are those offered the evening of the hearing? Deborah Schmidt, Legislative Council and EQC, said a grey bill is the bill with proposed amendments, by Representative Cobb and another set offered by Representative Gilbert, and technical amendments that have been developed, that all offered the evening of the hearing inserted where they would appear to make the bill proposed clearer to understand and discuss. Some amendments have substantive impact, but they are all lumped together in this set, and proposed by Representative Gilbert. Senator Keating asked if these new amendments restore the bill to its original draft before the House amended it? Representative Gilbert said these new amendments bring the bill back to about 70% of the original, but not to the original bill. The original bill was too far to one side. These amendments bring the bill to the center. Senator Keating said these amendments have been reviewed by many people in his district, and in two other areas, and even with changes the people are not happy with the bill. The land surveyors accepted the original bill, but not after the amendments that the House put on the bill. He is still getting a lot of negative response to this bill.

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Motion: Senator Keating moved to Do Not Concur in HB-671.

Discussion, and Votes: Senator Weeding he would resist this motion. We just got these new amendments, and have not had time to review them or get any response from people. He suggested that this grey bill be sent to a subcommittee for further study. This is a good bill and there is a lot at stake. It would be a big mistake to kill this bill because it has been around every session that he has been here and more, and it won't go away until the problems are ironed out. Senator Weeding would like to see both parties in a subcommittee at least try to iron these problems out. Maybe someday we can get this subdivision thing behind us.

Substitute Motion: Senator Weeding made a substitute motion that HB-671 be referred to a subcommittee to work these amendments out.

Discussion: Senator Keating said this bill has been reviewed by many people across the state. It has a serious impact on many people in many walks of life. Realtors, surveyors, subdividers, landowners, farmers, ranchers, and many others. It's had a hearing in the House, and it got amended so severely that the supporters of the bill withdrew their support and actively opposed it because it became a threat to them. Now this committee wants to partially amend it, having another subcommittee, having people come and work in the subcommittee, and try to work out a compromise. But then if it passes the Senate with amendments it has to go to the House in the very last hours of the session. If the House committee decides to amend it again, and the Senate rejects the new House amendments, then it goes to a Conference Committee. We're dealing with some very serious situations as far as impact on people's livelihood, ownership, etc. It frightens him to death to think of putting something this serious into a Conference Committee in the last week of the session. Nothing would be safe, no one would be safe, and he does not think this committee should try to crunch this into this time period. The subdivision laws are fine, and they are working well out there. If they need to be changed or altered, then in the interim when people have plenty of time to understand what is going on, there can be public input, proposed changes can be debated, and then legislation drafted that encompass these healthy agreed upon changes. Then we can pass this legislation through both houses in the light of day, so that we can achieve the quality that we want in our laws. To suggest doing this in a subcommittee or Conference Committee at this late

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date, is extremely dangerous, and he opposed it.

Senator Hockett said he is the new kid on the block, but he respectively disagreed with Senator Keating. Subdivision law is not working well. In Great Falls there are disastrous affects. The time does create strains to consider. He is concerned about the total effect on bonafide agricultural transfers were there are not subdivisions involved. He has not had time to look at these new amendments, but he hoped someone would address some his concerns. With his lack of knowledge of the total history of this bill, he would support Senator Weeding's motion to refer it to a subcommittee.

Senator Tveit said he would resist the substitute motion. We have lots of literature and phone calls, but he is concerned about the process. The House stripped out amendments, and put some powerful pieces of amendments in that are just unlivable. If we were guaranteed that we could put these amendments on this bill, and Representative Gilbert would get it through the House without any other changes that would call for a conference committee, he might agree to a subcommittee. The problem is that when we go to all the trouble of subcommittee work, then go back to the House, then they could strip them all off. Then we are back where we were, and then we have to rely on a conference committee. Three people from the House and three from the Senate take over the control of 150 Legislatures. This is just basically what happens in conference committees. This is a real concern, and it would mean this bill has totally gotten out of our hands. In one letter he received said that there are parts of this bill that are good. If we could hold the bill, but we can't because the House has already stripped the bill and it will again. So what will we finally wind up with? We have a problem with property rights. Farmers and ranchers have problems with this bill. There are problems through the nature of the bill with large fines, donations of respective kinds, and dollars that go to parks with division of land. There are real problems with this bill. The review officer that is not accountable to the public is also a major concern. He added that a lot of work has been done, and he respects Representative Gilbert for what he has tried to do, but this is one that could turn into a monster. All the subcommittee work could be wasted. He did say the amendments here today are better than the ones that came into the House to begin with. They only restore 70% of the bill, and he thinks we will still have a problem with this bill.

Senator Bianchi said he agreed with Senator Hockett that the subdivision laws are not working well. Gallatin is an examples of 20 acres cut up everywhere, and Paradise Valley is an example of

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20 acre exclusions that have been exploited by the Church Universal Triumphant on the Royal Teton Ranch. He was interested in taking action today, but with the new amendments it needs to be considered. It is a livable bill. Many people oppose this bill based on the House amendments. He is a new kid on the block, and maybe the process will take the bill back to the House, but as Legislators, we have to depend on the process. This bill should have the opportunity to go through the process. If it is totally amended in the House, and goes through a conference committee, we can still kill it. There has been a lot of work put into this, and we should allow it to go through the process. If we as members, are not willing to work with the amendments today and get it to a point that we can live with, then he would support the subcommittee motion.

Senator Bengtson said this bill has caused her many sleepless nights. She is saturated with the idea of trying to create a utopia. We have argued in this committee and Local Government about state primacy. In this case, we are doing it for ourselves. We are not struggling for state primacy. We did that in Waste Water, Solid Waste, Clean Drinking Water, and Underground Storage Tanks. We could put all of these wonderful words on paper, and expect our constituents to live by them. In real life this does not happen. Her district is probably one of the most subdivided in the state. They have had good ones and bad ones, but people in a subdivision will work to correct problems given time. They want to live in a healthy environment. If there water, sewer, or roads are terrible they will work to improve them. She has seen it all, and every type of subdivision under the sun. Some are still not up to par. They are trying. People don't want to live in a dump. We're talking like we don't know each other in this state. We know the developers, we know the farmers, we know the construction people, and we know the people in the courthouse. What we need to do it to enforce what laws we already have on the books. You can put book in front of people, but real people can only deal with what they have at their disposal, their resources. A young couple with a dream looks at those 20 acre parcels, and they dream of building a house there. These kinds of road blocks to these dreams will make all our lives just that more stressful. An older couple wants to sell 20 acres, but this will take away people dreams by regulating all this. This is a philosophical thing. Who in their right might would be against something that would create a utopia? We've tried to do this will all these struggles for state primacy. It doesn't work! Now we can fight with the EPA, and try to deal with that because those really are burdens to us, and we have to comply. But this bill is not a struggle for state primacy. We are doing this to ourselves. We are a large state,

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and we are trying to complicate everything. Let's work together, and give problems time to be worked out. She doesn't want to support this substitute motion, the amendments or the bill.

Senator Kennedy said he wanted to support Senator Weeding's motion. A lot of work has been done on this bill. It has very good things, and it has things that need to be changed. With these new amendments it is hard to look at it quickly and make a decision. The bill deserves the consideration of a subcommittee, and let's see if we can't satisfy both sides on this, and come back with something we can live with. He supported Senator Weeding's substitute motion.

Senator Doherty said that the problems this bill addresses are to make sure that our dreams don't turn into nightmares. Unfortunately, the loopholes that exist in the current subdivision law, those dreams have become nightmares for those people who purchased property that hasn't been properly reviewed. Everyone knows that the 20 acre exclusion is a farce, and so is the occasional sale. It is time to do something about it. The arguments made by the opponents to the bill are nothing more than hysterical attempts to fractionalize, divide, inflame, and destroy, what he believes, is a legitimate attempt to protect property rights. This tries to make sure that when land is subdivided in Montana is appropriate, worthwhile, and a legitimate economic development tool. If we don't begin to deal with this, and the retired people coming to Montana buy that swamp land, then write one article in the AARP bulletin about "How I got schnookered when I tried to buy my dreamland in Montana", we won't have the retired folks moving to Montana anymore. He said the argument is that this bill has come in too late. This has been going on for a long time. If people have legitimate concerns we should address them. Some of the concerns have been raised about the technical laws in the bill. Senator Grosfield has found some, and he thought we could deal with these in a subcommittee, and deal with it well.

Senator Grosfield said that if he had to vote on the blue copy of the bill he would vote no. There are mistakes, and the House went too far in stripping the bill. He is concerned like Senator Keating about the timing, and he doesn't want this decided in the last 3 days by a conference committee. There could be a wreck if that happens. There are problems with the bill, and they need to be addressed. There are good things in this bill that help the landowner and the developers as opposed to current law. He did not say that there are too many good things in the bill, or the subcommittee can fix the bill. He did think that it is worth a shot, and he emphasized that the subcommittee should only get a

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SENATE NATURAL RESOURCES COMMITTEE

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couple days. If it can't be squared away, then the committee can kill the bill. He was willing to work in a subcommittee to give the bill a shot. This needs to be in shape by next Wednesday to vote on it.

Chairman Stimatz said we have all gotten a lot of mail and phone calls about this. His are roughly divided evenly, with maybe a view more against. He agreed that this bill has good things in it, and it is an improvement over existing law. But there are some rather vague or scary points in it. The bill has produced, in the minds of the public, emotions akin to terror. There are people really afraid of this, and these fears are not just whipped up by the realtors, surveyors, or subdividers. He has genuine letters from people across Montana, in their own hand and style, telling him why they are afraid of this bill. He is terrified at turning this into the hands of a Conference Committee. He has been around long enough to see that he knew what was in them, go to conference committees and the final product is entirely different. They have a way of being changed, and it is according to the rules. The subcommittee gets together, their meetings are not announced because of the time constraints in these last days, they may have several meetings, get tired, and do something rash. Bingo they do something that is different. He did not want to give 90 days of Legislative effort to a hurried up action by a Conference Committee. On the other hand, we should give the bill a chance to see if we can't do something with it in a subcommittee. Chairman Stimatz said he would put a deadline on the subcommittee report of Wednesday, March 27, 1991, so this committee can discuss it.

Senator Keating said he is not an expert in subdivisions or real estate, but merely a representative of the people in his district. There are numerous experts that do this for a living. It is not going to do any good to have a subcommittee meeting, and present the bill to him because he is not an expert. There must be some time for public input. Any kind of change we make creates fear in people. People fear this is an omnibus bill. He rebutted that he said the subdivision laws were working, albeit not as well as everyone would. If there are specific areas, the 20 acre exemption, if they could be addressed individually, and you can reduce this omnibus bill to deal with one or two of those serious subdivision problems so it is understandable and quickly remedied to the agreement of all, then he suggested the subcommittee address amendments to the current subdivision law on a smaller scale. Do that, rather than trying to rewrite the whole book on this. Address this few serious problem areas that are addressable under the title of this bill. Then we can begin to address the problems of the subdivision law, as alleged here,

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and then the expertise out there will see this bit of tinkering being done, and they can relate whether it is good or bad in time to for us to make decisions on this. He did not know how many subdivision experts there are on this committee. Senator Tveit jokingly stated there were eleven.

Chairman Stimatz said he served on a city planning board for four years and he knows there are very difficult problems. That board had a great of deal of difficulty getting something that works. He is sympathetic to the knew bill, and would like to pass it, but he does not think we can do it with a subcommittee, possible Conference Committee, and the need for everyone to digest all this stuff. The people in the Senate will have to depend on the words of experts because a lot of them have not read the blue bill. They won't read whatever else comes out, but they will take someone's word for it.

Senator Bianchi asked Representative Gilbert addressed what he thought might happen in the House if we put the Cobb Gilbert amendments on? Representative Gilbert said he has not talked with the players concerned with the proposed amendments. However, he said if this committee would put it into a subcommittee until next Wednesday, adopt these amendments and other suggestion, he would take it to the House. He would work to have the House to accept the bill as is. If they mess the bill up then he will kill the bill.

Senator Hockett said there was an article in the March 18th, Great Falls Tribune that had highly inflammable statements about what the bill would do in a negative way. He could understand why people are excited and writing to us. He has lots of letters of opposition, and they comment on the article. He had another article that responded to the Great Falls Tribune article. He asked Representative Gilbert if he saw these two articles? Representative Gilbert said he saw them, and he arranged for the article "Read the Bill" to be printed. That is the direct response to the editorial. The editorial made 10 or 12 points, and 8 were lies. He faxed the reply to the paper with the request that before you criticize a bill by talking to one individual perhaps you should talk to the sponsor of the bill. They have not given me the courtesy of a reply. Senator Hockett asked him why there are so many bad feelings, or is there a real potential for profit? Representative Gilbert said that the potential for profit is the bottom line to the adamant opposition of this bill. No one gives a hoot about the consumer that buys the lot. All this bill does is protect the guy that buys the lot. This is what he is trying to do regardless of what the realtors tell you. This is better for them than the current law.

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Senator Hockett commented that he had numerous calls from realtors that did support the bill. They were looking at the long term. He said he was understandably confused.

Senator Bengtson stated that Representative Gilbert said the bottom line is the potential for profit. Everyone wants to make money whether you are the buyer, the seller, or the developer. Something else is involved, too. It is the striving to be free of oppressive government and regulations. She said some of the testimony heard was that in other parts of the world they are struggling to have what we have. Then we are accepting some of these repressive laws, and going in just the opposite direction. She thought that we just go too far. We sit up here, and want to perfect everything, make it perfect. The real world isn't perfect.

Chairman Stimatz said he had calls and letters from farmers and ranchers saying that this will absolutely restrict them from distributing parcels to their children without going through a lot of red tape. Representative Gilbert said that under this bill, without any review, one gift to each child. Then under the Cobb Gilbert amendments, it clarifies the real estate planning. It will be in statute, not just implied. Estate planning is merely moving boundaries within the land. You're not creating a subdivision, and this bill clarifies that this what you are doing. You can give plots to your kids, and you can do estate planning. One complaint is what if we want to give 2 lots to each kid? If it is adjoining piece of property you can do that. If they want to give 3 or 4 little pieces, then let's face it, you're trying to be a subdivider. Take off your cowboy hat, and put on your subdivider hat. Anything an agriculturist wants to do, as long as the land remains in agriculture, he can do without review.

Senator Weeding said that this is too important an issue just to summarily dispense with. We owe it to the people of the state to make an honest effort. We have 10 days, the 1st of April would be the deadline. Then there are 20 days before we get to the free conference point. There is ample time, yet, for us to put some work into this. We can have the people interested look at our handy work, and tell us if its good or bad. There are people right in the Capitol that know about this stuff. Two EQC studies, and Senator Tveit, Representative Gilbert, and himself have been through the subdivision review already. There are people representing the industry and other elements that we can tap for information. We are not working in a void. There is plenty of expertise around here to help us look at this, draft amendments, get it into order, and present it. We can always say

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no. The floor can reject it, too. There are many opportunities to say no if we don't like it later on. Right now, we need to give our best shot.

Vote on Substitute Motion: Chairman Stimatz asked the committee to vote on the motion to send this to a subcommittee. The secretary took a roll call vote. The motion passed 7 to 4. Senators Anderson, Bengtson, Keating, and Tveit were opposed to the motion.

Chairman Stimatz appointed Senator Weeding as Chairman of the subcommittee. He also appointed Senator Tveit and Senator Grosfield. Senator Kennedy asked that Senator Doherty also serve on the subcommittee because he is a lawyer. The committee agreed. The subcommittee will need to present their report on Wednesday, March 27, 1991. The committee will then have the time to review the subcommittee proposal over the Easter holiday with their constituents. Senator Bengtson asked if other members of the Natural Resources committee could attend these meeting with their concerns? Senator Weeding said anyone interested could attend, and together they would try to come up with a good solution. Chairman Stimatz said the Natural Resource Committee would schedule Executive Action on HB-671 for April 1, 1991.

EXECUTIVE ACTION ON HJR-17

Discussion: Senator Bengtson said she objected to this resolution at a previous attempt on Executive Action. Chairman Stimatz had wanted to give Senator Kennedy a chance to discuss this resolution because it pertains to his district.

Senator Bengtson restated her objections to the resolution. Here again, we are trying to have a state wide policy on lake shore protection, public health, safety, and welfare. She said we are biting off more than we can chew. We affect other areas in the state that probably don't need this kind of standards. Her objection was that this resolution is just too comprehensive. She said she was willing to listen to proponents.

Senator Hockett said he did not think this was an adversarial. He wanted to comment that this was a study, not any kind of law, action or mandate. If any action is proposed, then he assumed that someone is going to try to draft a bill from the informational finds of the study, and bring it to some group in the Legislature to sponsor it. He is not an expert on lakes

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living where he does, but he has been in a lot of lakes. He has talked to people living there, and they do feel that there needs to be some consistency with the way deal with water, sewage, garbage and so on. He did not see Senator Bengtson's point that someone was trying to put some kind of regulations on.

Senator Keating said that Senator Hockett was right, that this resolution is just a study. But a study takes people, time, and money to conduct a study. We generally appropriate \$15-20,000 to cover all the requests for studies. We try to combine them, vote on them, and then decide which ones to take on. This resolution is not clear in its direction. It reads "lakeshore", but what about the reservoirs in this state that are lakeshores. There are a lot of reservoirs that are like lakes, and this resolution is not specific enough. If it is just for Flathead or Swan Lake, or mountain lakes, or everything west of the Continental Divide, or something like that to have more parameters. We have 400-500 miles of Fort Peck Lake that is actually a reservoir, but is considered a lake. There is boating, public health and safety, and other things to consider there. Senator Keating agreed that Senator Bengtson was correct that this is a pretty large order, and it is too big a study. It will take up too much staff time, and he doubted that it would arrive at any useful conclusions.

Senator Kennedy said the study itself could come back, and identify some of the things that Senator Keating mentioned. He saw no problem in a study of these problems. He thought a study needed to be done, and it might say that Fort Peck doesn't need this type of thing. It certainly is just a study that will identify things that are very important to a lot of areas, and it would include all lakes. He saw no problem conducting this study.

Chairman Stimatz pointed out that this study asks the EQC to conduct this study, and it is not one of the Legislative interim studies that would be voted on. This study will take place if the resolution is passed. The EQC will be directed to look into this resolution. This will be put on the EQC agenda as a direction from the Legislature. It will not be up for grabs like the other 15 or so study resolutions. These 15 will be sorted by the Legislative Council, and they will pick about 4 or 5 of these. They limit themselves by the amount of money that it takes. The study in HJR-17, if passed, will take place by the EQC.

Senator Kennedy added that it is important enough that it should take place.

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March 22, 1991

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Senator Weeding asked Deborah Schmidt, Legislative Council and member from the EQC, what other studies have been directed to the EQC. Ms. Schmidt said so far there are a number of different studies in the process, and none have been passed by both houses, yet. She believed there are studies on energy policy, sustained yield forest management, and there was one on geothermal resources, but she thought the water policy committee is going to do that. There might be a fourth one, but she was unsure of what it was. When she did the fiscal note for HJR-17, she did list as an assumption that the EQC would evaluate this resolution and any others, and then they would be prioritized within the EQC existing funding.

Chairman Stimatz said that was his next question, how much money does EQC have to do studies? Ms. Schmidt said they have current level budget. Chairman Stimatz said how much is that? Ms. Schmidt said funds are not allocated separately for studies. Senator Keating said the fiscal note shows the whole budget. Chairman Stimatz said none is allocated to studies.

Senator Weeding said that there is some discretionary authority at the EQC. Ms. Schmidt said the EQC interprets these that if they do not have enough money to do all the studies, then they prioritize the studies within the council the directed studies.

Senator Hockett asked if these resolutions passed through the House and Senate do they then go onto the Governor? Chairman Stimatz said they go to the council. Senator Hockett they have the prerogative to prioritize if they get too many.

Ms. Schmidt said the 13 members of the Environmental Quality Council, the public members and the Governor's representative, and the Legislators make this decision. Senator Hockett said this is not mandated that the EQC must do this study? Ms. Schmidt said no. Senator Hockett had no problem with this resolution if it was not a mandate.

Chairman Stimatz said this resolution has a better chance of being conducted than those that go before the Legislature.

Senator Kennedy said the resolution says the EQC will have the authority to limit the scope of the study. Ms. Schmidt said that the EQC would definitely have to limit this study.

Senator Grosfield said the resolution talks about natural lakes, but not reservoirs, and he thought that is how it would be interpreted. Maybe this is an issue that should be studied. He said this only talks about lakes with high likelihood of

SENATE NATURAL RESOURCES COMMITTEE

March 22, 1991

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development, but that would certainly include a lot of reservoirs in this state.

Motion: Senator Kennedy moved to Concur in HJR-17.

Discussion, and Votes: Senator Tveit said the EQC will decide what lakeshores will be studied, and he felt that the bill should list what lakes. One lake, like Flathead, will get all the work and all the money. He has been on the EQC, and he knows what happens. They can study anywhere they want to. He agreed that Flathead probably needs to be studied, but "lakeshores" is a blanket to give. Literally bureaucracy trying to protect us from ourselves. The resolution is too broad, and it should state specifics instead of a blank check.

Senator Kennedy said he did not make the motion so Flathead Lake would get all the money. If a lake needs to be studied and a problem identified, then this is a way to do it. With the latitude in the bill for the EQC to decide he could see no reason not to give this resolution to them, and let them decide what to study.

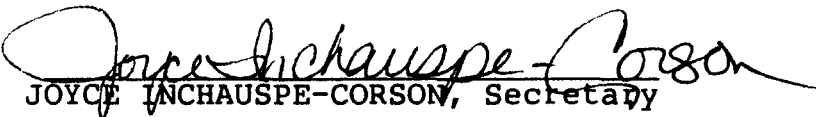
Senator Bengtson said the signatures on the bill it does look like it is all from Flathead. Senator Tveit agreed.

Recommendation and Vote: The question on the motion was called. The motion to Concur in HJR-17 passed 7 to 4, and was recorded as a roll call vote. Senators Anderson, Bengtson, Keating, and Tveit voted against the motion. Senator Kennedy will carry HJR-17.

ADJOURNMENT

Adjournment At: 5:16 p.m.


LARRY STIMATZ, Chairman


JOYCE INCHAUSPE-CORSON, Secretary

LS/jic

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 1901

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 644 (third reading copy on marked blue), respectfully report that House Bill No. 644 be and be so in.

Respectfully,
Lawrence G. Stewart, Chairman

Jan 22 11
And. Coord.

Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1951

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 926 (third reading copy) do hereby respectfully report that House Bill No. 926 be approved in

Witness my hand and seal this 22nd day of March, 1951.
Lawrence C. Schlichter, Chairman

And, Coord.

Rec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 749 (third reading copy blue) respectfully report that House Bill No. 749 be concurred in

Signed:

Lawrence C. Stimac
Lawrence C. Stimac, Chairman

6-28-11
And Concur

6-28-11
Sen. of Senate

DATE

3-22-91

COMMITTEE ON

Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Albert L. Dunn	Self	448		X
Carol L. Ferguson	Hazel Rock Mining Impact Bd	749	X	
Glenn Liedle	Self	671		
Leo Dutton	Self	671		
John Amigo	DHES	HB 926	X	
David Fradette	Self	671		
Dan L. Hays for W. Hays, SAN ANTONIO	CHEVRON	HB 448	X	
Wayne Turner	# RUC	HB 641	X	
Wayne Joyner	Rocky Mtn. Timberlands	HB 671		X
Susan Brooke	Stockpiles/Wood products	HB 641	X	
Kim Wilson	Clark Fork Coalition	HB 448	✓	
11	Self	HB 926		
Gary Amosley	Dept of State Lands	HB 448	✓	
Dennis Casey	" "	" "	"	
John North	" "	" "	✓	
Art Wittich	Governor's Office	448	✓	
Martha Canale	MT. MINING ASSN	641 448	✓	
Jim Jensen	MERC	448	X	
John Kitzpatrick	Pegasus 641	448 641	X	
Dennis Olson	NPRC	448 641	X	X
Morvin Barber	# P H	641	X	
Scott SNELSON	MT Wildlife Federation	448	X	
Steve Brown	Noranda	448	X	
Ted S Dargy	ASARCO	448	X	

ROLL CALL
Natural Resources
COMMITTEE

DATE 3-22-91

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LEGISLATIVE SESSION

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

Each day attach to minutes.

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE
March 22, 1991Testimony of Kim Wilson in Support of HB 926

I appear today as an individual who practices law in Helena and as the lawyer who represents the Concerned Citizens of Pony over their long standing concerns with Chicago Mining Company's Pony Mill. I urge your support for Rep. Hoffman's HB 926.

By way of background, the gold processing mill constructed in Pony last year "fell through the cracks" of state review. Because the Department of State Lands (DSL) did not implement milling rules for more than five years, this mill was "grandfathered" - Chicago Mining Company did not need to obtain a permit from DSL. It did have to obtain a groundwater permit from the Department of Health and Environmental Sciences (DHES). Because the mill did not have to comply with the Hard Rock Act, no bonding was required, even though the mill was using cyanide to process ore in a large tailings impoundment. And even though the operator claimed it wanted to put up a bond voluntarily, DHES claimed it did not have the regulatory framework to process and accept a bond.

That's where HB 926 comes in. It will allow an entity with a water quality permit to voluntarily negotiate and put up a bond with DHES. In this case, it will mean that Chicago Mining Company will - if it keeps it's promise - put up a bond which will ensure that reclamation is properly done and which will protect the people of Pony who live downhill and downstream from the mill. If DHES had this authority a year ago, a lot - although not all - of the acrimony and disagreement over the Pony Mill would have been avoided.

This bill does not only address Pony, however. With this bill, anyone operating under a water quality permit may enter into a bonding agreement to protect water resources. HB 926 will hopefully promote the protection of resources early in the process. In certain situations, it may also allow an industrial permit holder to demonstrate that it is a good neighbor. I urge your support for this bill.

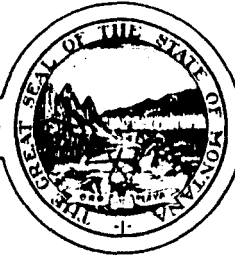
DEPARTMENT OF COMMERCE
LOCAL GOVERNMENT ASSISTANCE DIVISIONEXHIBIT NO. 2DATE 3-22-91BILL NO. HB-749COGSWELL BUILDING - ROOM C 211
CAPITOL STATION

STAN STEPHENS, GOVERNOR

STATE OF MONTANA

(406) 444-3757

HELENA, MONTANA 59620-0522



March 22, 1991

Senate Natural Resources Committee
Montana State Legislature
Helena, Montana 59620

Re: HB 749

Dear Chairman Stimatz and Members of the Committee:

HB 749 addresses two matters, neither of which affects the substantive provisions of the Hard-Rock Mining Impact Act.

The purpose of Section 1 is to reaffirm and clarify beyond doubt the historic interpretation of the statutory authority given the Hard-Rock Mining Impact Board to hire its own professional staff, following, of course, the procedures of the State's hiring system. From when the Act came into existence in 1981 a common understanding of the existing statute was shared by the Environmental Quality Council, the Board, and the Department of Commerce, with the exception of the Department's immediate past Director. Following a disagreement with the past Director of the Department on the issue of the Board's hiring authority, the Stillwater County Commissioners asked the Environmental Quality Council to determine whether clarifying language might be appropriate to forestall any repetition of the problem and to ensure the continued hiring and policymaking independence of the Board. The amendment proposed in Section 1 resulted from that request.

Section 2 is basically a housekeeping amendment which would adjust the date on which the Board transfers any unexpended administrative and operating money to the counties in which metal mines license taxpaying mines are located. The existing language was part of SB 410 in 1989 and was intended to correspond to State fiscal years. However, the statutory transfer dates do not take into account either the real-world time-lag in receiving bills and making fiscal year-end payments nor the separate statutory requirement that the Board must meet its administrative and operating expenses before allocating money to the counties. The proposed amendment would allow for the realities of fiscal year-end payment procedures and would make the transfer procedure consistent with other requirements in the Act.

Please note that Section 2 does not affect the amount of money transferred to the counties, only the timing. From the counties' perspective, the two or three month shift in timing should not pose any problem. The money the Board transfers to the counties is not immediately available for expenditure. All of it is credited to the county's hard-rock mining impact trust reserve

HB 749
3-22-91
page 2 of 2

account, where it will remain until the taxpaying mine closes or reduces its workforce by 50 percent or more.

The Hard-Rock Mining Impact Board supports the proposed amendments, which facilitate consistent interpretation and implementation of the Hard-Rock Mining Impact Act.

If you have questions about HB 749, I encourage you to raise them with our Administrative Officer, Carol Ferguson, whom I have asked to attend your hearing on my behalf.

Sincerely,

Rick Young ^{by g}

Rick Young, Acting Chairman
Hard-Rock Mining Impact Board
Montana Department of Commerce
Helena, MT 59620
(406) 444-4478

cc. Hard-Rock Mining Impact Board

WITNESS STATEMENT

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

Dated this 22nd day of March, 1991.

Name: Carol L. Ferguson

Address: Hard-Rock Mining Impact Board,
MT. Dept. of Commerce, Helena, MT. 59600

Telephone Number: 444-4478

Representing whom?

Hard-Rock Mining Impact Board

Appearing on which proposal?

HB 749

Do you: Support? X Amend? _____ Oppose? _____

Comments:

Written testimony on behalf of Board
chairman, attached.

STEPHENS ADMINISTRATION
FACT SHEET

HOUSE BILL 448

COMMITTEE ON NATURAL RESOURCES

EXAMINER NO. 3

DATE 3-22-91

BILL NO. HB-448

- The year-long deliberations of the Advisory Council resulted in a uniform consensus, with the recommendations being considered a "package" with give and take by all interested parties.
- Of the thirty-one recommendations made by the Advisory Council, twenty-one can be implemented administratively (which is currently occurring) while ten require statutory change.
- This bill includes nine of the ten recommendations (the tenth recommendation is the natural resource/environmental reorganization bill).
- The basic provisions of the bill address:

Staffing Needs

1. The Reclamation Division would be entitled to collect permit application fees to fund additional staff, on an as-needed basis.

Public Participation Opportunities

2. The confidentiality provisions currently in statute would be relaxed to allow non-geologic information on public land to be disclosed to the public (i.e., site impacts and locations).

Bonding

3. The Reclamation Division would be required to periodically review bond levels every five years, with such adjusted bond amounts being subject to public review and comment.

Enforcement

4. A mining violator tracking system would be established to prevent past violators from obtaining new mining permits until the violations are resolved. This tracking system would be updated annually through operator reports.
5. No additional mining or re-mining would be allowed on areas reclaimed by the state until a new operating permit is issued.

Reclamation Standards

6. The requirement to replace water due to mine impacts should extend to associated facilities if a loss of water quality or quantity occurs to existing water users.

The provisions in LC 1199 are comprehensive and thoroughly analyzed recommendations that would improve the mine permitting process in Montana. The passage of these recommendations into law would be of benefit to all citizens of Montana.

SENATE NATURAL RESOURCES

EXHIBIT NO.

4

DATE

3-22-91

BILL NO.

HB-448

FINAL REPORT

MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL

presented to

GOVERNOR STAN STEPHENS

NOVEMBER 1, 1990

I. INTRODUCTION

A. Need for the Advisory Council

Mining activity in Montana has increased during the past few years, creating beneficial economic development. Based on U.S. Bureau of Mines' statistics, the value of non-fuel mineral production in Montana during 1989 rose to \$637 million, which was a 16% increase from 1988 levels.

During the last two years, the Mineral Hill Mine near Jardine and the Beal Mountain Mine near Anaconda have opened. In addition, expansions have occurred at the Zortman-Landusky operation near Malta, the Basin Creek Mine near Helena and the Kendall Mine near Lewistown. New mineral processing facilities are also being constructed at the Pfizer Talc facility near Dillon, the Continental Lime Plant near Townsend, and the Stillwater Mining Company smelter in Columbus.

However, even with this new activity, many believe that the current mine permitting system is in need of revision. While Montanans differ on many issues, most Montanans feel that the permitting process is inadequate, either it doesn't encourage mineral development or it doesn't protect our environment.

B. Structure/Goals of the Advisory Council

Based on this perceived need to review and change the permitting process, Governor Stan Stephens, on August 31, 1989, signed an Executive Order establishing the Mine Permitting Improvement Advisory Council (MPIAC). (See Appendix I, attached). MPIAC was originally composed of sixteen members, representing environmental groups, mining companies, and state and federal government agencies. Two additional members were subsequently added to represent small mining interests and an additional environmental group. The combined mine permitting experience among the MPIAC members totaled over 166 years.

The Governor instructed MPIAC to review the current mine permit process in Montana, compare it with other states, and recommend improvements that would 1) expedite the permitting process, 2) increase public participation in the process, and 3) protect the environment from mining impacts.

C. Process of Advisory Council

MPIAC held its first meeting on September 26, 1989. This report is the culmination of over 51 hours of MPIAC deliberations during 9 meetings.

Over the course of the deliberations, MPIAC held a public hearing on large mining on November 14, 1989, and a hearing on small mining on June 19, 1990. Extensive testimony and correspondence were received. The MPIAC members were also given information on other state permitting systems, in order to compare Montana's system and identify possible improvements.

After obtaining a general understanding of the current process, the council members identified problems with the present permitting system. From this problem list, solutions were offered and discussed by the council members.

The council was then divided into subgroups of industry, environmental groups, state government and federal government. These subgroups were all instructed to deliberate and submit a subgroup report with recommendations to improve the current permitting process. After submission of the subgroup reports, representatives of the Governor's Office and the Environmental Quality Council attempted to synthesize the recommendations into a consensus draft report. This consensus draft report was then discussed again by the council, the result of these discussions being this final report.

While the work of the advisory council required much time and effort by the MPIAC members, the discussion and consensus building provided an excellent education concerning the permitting process and thoughtful deliberation concerning balanced improvements.

II. SUMMARY OF PROBLEMS

Based on the public hearings and discussions by the advisory council, a list of problems with the current permitting system was generated. Common perceptions of the permitting process included:

- "It takes too long,"
- "The public does not have adequate access to information and the decision-making process,"
- "Don't overregulate everybody due to a few bad apples,"

- "Environmental Impact Statements, and now Environmental Assessments, require too much time and money,"
- "Violations are occurring at existing operations with insufficient enforcement."

After deliberating about the perceived problems with the current system, MPIAC developed evaluation criteria to consider the problems and formulate solutions. These criteria included:

1. Protect public involvement.
2. Ensure environmentally sound mineral development.
3. Encourage positive economic benefits of mining.
4. Avoid unnecessary delays.
5. Build consensus -- bring together interested parties.
6. Ensure efficiency by state government and the process.
7. Require fiscal responsibility by eliminating duplication of efforts.
8. Analyze "Implementability" of solution (of both public and private sectors).

Enumerated below are the conclusions of the MPIAC members concerning the permitting problems.

III. ANALYSIS OF LARGE MINE PERMITTING

While the advisory council disagreed on many issues, the MPIAC members were able to reach a consensus on thirty-one recommendations to improve the present mine permitting system. Of these 31 recommendations, 10 require legislative change, while 21 can be accomplished administratively. These distinctions are noted in parentheses following each recommendation.

The analysis below is organized in a chronological fashion, with the early stages of mine permitting analyzed first, and with mining and post-mining issues analyzed later.

A. Pre-mining issues

1. Completeness determination

Some MPIAC members expressed a concern over delays by the Reclamation Division in deeming a permit application "complete." Currently, an application can receive numerous "deficiency letters" by the Reclamation Division prior to its completeness. A finding of completeness is important because this is when the one year "permitting clock" starts. Completeness recommendations include:

1. Specific guidelines for completeness should include a checklist for content and should define the required level of detail and regulatory review. Disagreement on major technical points should provide the only basis for extending the 365-day permit review deadline. Guidelines should be updated on a regular basis, as statutes and technology change, and should be designed to find a balance to maximize problem resolution between the completeness and analysis phases. A legislative or administrative extension to timeframes should be developed to address extra timeframe needs in the event additional data collection is necessary. (Administrative)

2. Timely review

The MPIAC identified a number of recommendations that would allow for a more expeditious review of a permit application. These recommendations can best be explained by making a distinction between government agency staffing needs and non-staffing opportunities.

a. Staffing needs

2. The Reclamation Division staff must be increased to provide the necessary scientific expertise in the areas of hydrology and mine engineering which presently create "log jams". While it may be difficult to attract and keep these specialties due to current salary levels and market conditions, the state must maintain qualified personnel in these areas through employee hiring. (Administrative)

3. Agency staff should be adequately compensated to ensure that salaries paid are competitive with other state's regulatory agencies. This will stem the present "brain drain", whereby after receiving extensive training with Montana state government, personnel leave to perform similar duties in other states for much greater pay. (Administrative)

4. To ensure that the State's Hardrock Mine Permitting program is stable and has the resources necessary to meet its legal mandate in an efficient and effective manner, the State must maintain a strong financial commitment to

the program through the general fund or existing mining related taxes. In addition, permit application fees could be used to provide greater flexibility to meet short term staffing needs and/or requirements for special technical studies. Some members of the MPIAC suggested exploring, at a future date, the concept of state tax credits for permit fees. (Legislative)

5. One stop permitting should be implemented to efficiently utilize agency personnel and provide them with greater non-salary career opportunities. This should be accomplished through a comprehensive reorganization of not only the Reclamation Division, but also the three predominant state permitting departments (i.e., Department of State Lands, Department of Health and Environmental Sciences and Department of Natural Resources and Conservation. (Legislative)

6. The Reclamation Division should pursue the availability of federal inter-agency personnel assignments (IPAs), as well as state inter and intra-departmental assignments or temporary transfers, to ease workloads and to provide cross-training in critical regulatory functions (i.e., hearing examiner, public relations specialist, hydrologist, engineer, etc.) (Administrative)

7. The state should provide for increased training opportunities of agency personnel. Such training should include an introductory regulatory training program concerning both legal and technical reclamation matters. (Administrative)

b. Non-staffing opportunities

While insufficient staff has contributed to permitting delays, there are non-staff opportunities (i.e., third-party contracting) that could assist in expediting the review of permit applications. These include:

8. The current contractor selection process is much too time consuming. Instead, the Reclamation Division should maintain a list of "pre-qualified consultants" which would be updated annually. Upon the submission of an

application, and the determination by the Reclamation Division that a third party contractor is needed, the Reclamation Division shall solicit comments from the applicant on those pre-qualified consultants. The Reclamation Division would then request a proposal from each of those consultants, and after analyzing each proposal, select the contractor to complete the work. (Administrative)

9. Much of the environmental data necessary for an environmental review is collected by the applicant company prior to the submission of an application. In order to avoid the time and expense of generating this information a second time, the Reclamation Division should allow the mining applicants the option of submitting an Environmental Impact Report (EIR) that can be used as the basis of the environmental review. The Reclamation Division would then use those sections of the EIR that are accurate and pertinent, and incorporate the data into the Montana Environmental Policy Act (MEPA) document - whether it be in an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). (Administrative)

10. The use of third party contractors should be for preparing MEPA documents only. Therefore, the Reclamation Division would maintain oversight authority and decision making authority over the permit application and decisions. (Administrative)

11. A technically qualified permit facilitator should be hired by state government to coordinate the lead agency duties with the other agencies, as well as to facilitate expeditious permit decision making. (Administrative)

3. Degree of environmental review

The MPIAC dedicated considerable discussion to the differences between EISs and EAs. Since one of the most prevalent reasons for appealing a permit based on an EA is the sufficiency of review and necessity for an EIS, this issue is crucial in improving the permitting process. After lengthy discussion, it was concluded that many misconceptions exist concerning this area. Namely,

there is a false presumption that EAs are "quick" and "not detailed". Conversely, many incorrectly assume that EISs "take too long" and "provide the greatest protection" for the environment. Given the necessity to mitigate impacts below the level of significance for EAs, and the amount of review necessary for planning such mitigation, the above perceptions are often wrong.

As such, the MPIAC makes the following three recommendations concerning this issue:

12. The Environmental Quality Council (EQC) should review the adequacy of past MEPA rule-makings to determine if mitigated EAs are ultimately beneficial to the public. After such a review, the EQC should make recommendations for improvements. (Legislative/Administrative)

13. The applicable agency should develop guidelines describing the distinction between an EA and an EIS, and the necessity for both. Such guidelines should also be condensed into a public information pamphlet and disseminated at public meetings. (Administrative)

14. A schedule of permit application fees should be developed that takes into account the size and degree of proposed environmental disturbance, the complexity of reclamation, and degree of environmental analysis necessary to process the application. The fee schedule should take into account the costs of reviewing an application under relevant environmental permit requirements, as well as MEPA, but should coordinate with existing fee requirements. (Legislative)

4. Public participation opportunities

Representatives from environmental groups were particularly concerned about the ability to access information on mining projects, and to provide comment on the environmental documents for such projects, especially EAs. After lengthy deliberations, a consensus was reached to recommend:

15. The confidentiality provisions currently in statute (which restrict virtually all information obtained by the Reclamation

Division) should be changed to more closely parallel the existing U.S. Forest Service disclosure rules on information availability. Specifically, public disclosure should only 1) apply to public land - not patented claims, 2) include the location (i.e., Section, Township and Range) and description of surface disturbances associated with mining projects but, 3) should not extend to proprietary geological information on a project. In addition, the existing provisions on personal and criminal liability for disclosure should be retained and applied to the new confidentiality provisions outlined above. (Legislative)

16. The current MEPA rules allow for a large amount of discretion by the agency directors concerning the public comment on EAs. While a public hearing is required, the MEPA rules do not require any minimum public comment or timely response by the agency. The MPIAC concluded that increased opportunities should exist for public participation concerning mitigated EAs and permit amendments. Specifically concerning mitigated EAs, a minimum 15 day, and maximum 30 day, public comment period should apply. A public hearing must be conducted by the tenth day after the mitigated EA is issued. After the close of the public comment period the agency has a maximum of 15 days to respond to the comments, and either make a decision to issue the permit, or require the preparation of a full EIS. In this way, a maximum 45 day time period will occur between the issuance of the mitigated EA and the decision by the agency. (Administrative)

17. There was a concern by some on the MPIAC that while public hearings and comment are important, some believe that these forms of public participation may not necessarily be meaningful. Therefore, the agency should utilize a professional hearing officer to conduct public meetings and coordinate public involvement in order to ensure meaningful public participation. (Administrative)

5. Bonding

All of the MPIAC members agreed that the imposition of bonds to insure adequate reclamation

after mining is a crucial and necessary part of mineral development in Montana. As such, the MPIAC recommended that:

18. Incremental bonding and incremental bond release should continue to be encouraged for mining companies, so that bond levels fluctuate with the true reclamation liability of the mining operations. (Administrative)

19. Sufficient bond levels that accurately reflect the reclamation liability are essential to protect the state's future financial interest. Therefore, the Reclamation Division should be required to periodically review bond levels, at least every 3-5 years. Based on these periodic bond reviews, increases or decreases to the bond amount may occur after negotiation with the applicable company. If the bond level is in dispute, an administrative contested case hearing should be required to resolve the matter. In addition, if members of the public feel the bond level is incorrect, they should be able to intervene if they can qualify as an interested party under the Montana Administrative Procedures Act. (Legislative)

20. The public should be notified 30 days prior to release of a bond by the Reclamation Division, so as to have the opportunity to be heard concerning the advisability of such a release. (Administrative)

B. Mining and post-mining issues

1. Enforcement

There was a general consensus among the MPIAC members that violators of the permitting and reclamation laws should be dealt with firmly. Strong enforcement not only protects the public by deterring future violators, but it also protects the "good miners" in the industry by dis-associating them with the violators. Recommendations from MPIAC concerned not only enforcement of existing violations, but also possible solutions in preventing environmental damage from shoddy mining operators in the future. These recommendations include:

21. The applicable agencies should conduct adequate and periodic inspections of existing facilities. (Administrative)

22. The applicable state and federal government agencies should enter into a Memorandum of Understanding (MOU) to share information on the inspection of operations and compliance. In addition, the MOU may extend to coordinate possible joint inspections in the future. (Administrative)

23. The use of the corporate shell game has allowed for some chronic violators to continue operating in an environmentally irresponsible manner. While it certainly is not a common or prevalent problem, it was agreed by the MPIAC members that such abuse should be stopped. Accordingly, persons with unresolved legal issues, which are not being addressed in good faith, and which stem from past violations of state and federal mining law should be prevented from obtaining subsequent mining permits until these issues are resolved to the satisfaction of the agencies. In addition, an annual reporting requirement should be established for all individual officers and directors of mining companies, partnerships, and other business entities. This information would be used in a tracking system in order to track and assess individual liability for subsequent permits. (Legislative)

24. No additional mining or re-mining should be allowed on areas reclaimed by the state until a new operating permit is issued. (Legislative)

25. There have recently been a number of incidents whereby miners leave their operations in an unreclaimed state. In addition to the bond forfeiture proceedings requiring a lengthy process, the reclamation on some operations exceeds the bond amount. Rather than change the current bond forfeiture procedures, the MPIAC concluded that the Reclamation Division should be given statutory legal and financial authority to remediate such unreclaimed areas that constitute an environmental emergency. Such reclamation would be at the discretion of the Director of the Department with funding by statutory appropriation (Legislative)

2. Permit Amendments

Once a permit is issued to a mining operation, any proposed change in operations from the permit requires an amendment. The mining operator must apply to the Reclamation Division for such an amendment in a manner similar to the original permit application. In recent years there has been some disagreement as to the level of review the agency is entitled to undertake concerning the amendment application, as well as the level of public participation concerning the amendment application. As such, the MPIAC members recommend the following:

26. The Reclamation Division should clarify the distinction between reviewable and non-reviewable issues in the amendment process. Based on the outcome of this policy, it may be necessary to more clearly define "amendment" through rulemaking. (Administrative)

27. The level of public participation during the amendment process should be consistent with the level of environmental impact anticipated in the amendment. (Administrative)

28. While the complete prior operating plan should not be subject to review during the amendment process, the bond levels should be subject to such a review by the Reclamation Division. (Administrative)

29. Relevant and valid MEPA information and documents that were generated during the original application should be incorporated by reference into the amendment application. (Administrative)

3. Reclamation Standards

After a thorough explanation of the present reclamation standards, the MPIAC generally agreed that such standards are adequate to protect the environment. There was no consensus concerning the necessity to add a requirement to reclaim open pits due to the economic cost of such a new requirement. Reclamation requirements, however, currently apply to virtually all other aspects of the mining operation.

There was consensus on two recommendations concerning reclamation, which include:

30. The requirement to replace water should extend to all mine and mill related facilities if a loss of water quality or quantity occurs to the existing water users. (Legislative)

31. The Governor should convene a periodic forum on reclamation, which could include a technical panel to make recommendations in order to resolve scientific disputes between mining companies and state agencies. (Administrative)

IV. ANALYSIS OF SMALL MINE PERMITTING

The original charge of MPIAC was to investigate large mine permitting. However, it soon became apparent that much of the public concern over mining involved small mining issues. Once it was decided by the MPIAC members to review small mining, a representative from the small mining industry was added to the advisory council.

A public hearing was held to specifically address small mining concerns. After a thorough discussion by the MPIAC members, it was concluded that while certain small mining activities are exempt from regulation (i.e., lode mining on less than five acres) much small mining activity is now regulated to a certain degree based on legislation that was passed during the 1989 session (which regulates small placer and cyanide operations).

One area that concerned both small miners and the public was adequate bonding. Bonding is currently required on some small mine operations, but it is difficult for small miners to capitalize such amounts. A bonding pool concept patterned after a Wyoming program was offered to the Advisory Council, but was not strongly endorsed by any of the members.

Based on a lack of consensus among the MPIAC members, it was decided that no recommendations should be made from the MPIAC concerning small mining.

V. CONCLUSION

After one year of study and deliberation, the Mine Permitting Improvement Advisory Council identified many improvements to the current mine permitting process. This report contains the final recommendations of the advisory council, which now require administrative and legislative action to implement.

However, it should be kept in perspective that even though the need for improvement was identified, the Montana

Metal Mine Reclamation Act and associated environmental laws were generally endorsed as workable and necessary for mine permitting. While most Montanans want streamlined mineral development and the economic benefits it brings, they also expect and demand adequate environmental safeguards and planning.

The MPIAC also succeeded in educating a broad spectrum of Montanans about mine permitting from perspectives they might not have considered before. Consensus on improvements was reached only after extensive communication among the advisory council. This consensus was achieved by a variety of people with different interests, who had the benefit of open communication before the "heat of battle" in a specific permitting dispute.

Even though some of the recommendations are currently being adopted and processed by the Department of State Lands (see Appendix II, attached) many are still in need of administrative adoption. The Mine Permitting Improvement Advisory Council requests the Governor to pursue such administrative changes, as well as the ten legislative recommendations enumerated above during the 1991 Legislative Session. Such change, if instituted, will benefit Montana's economy and environment for years to come.

STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NO. 10-89

EXECUTIVE ORDER ESTABLISHING THE
MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL

WHEREAS, mining is an important part of Montana's her
and

WHEREAS, the continuation of existing mining operatio
crucial to the economic health of Montana; and

WHEREAS, the development of new mines must be encoura
increase Montana's economic vitality; and

WHEREAS, environmental impacts from mining must be mi
through the mine permitting process; and

WHEREAS, the permitting process should be periodicall
reviewed and improved, so as to protect the environment an
public health of Montanans, while also allowing for orderl
efficient mineral development.

NOW, THEREFORE, I, STAN STEPHENS, Governor of the Stat
Montana, do hereby establish the Mine Permitting Improvemen
Advisory Council.

I. PURPOSE

The Mine Permitting Improvement Advisory Council shall

1. Review the current mine permitting system in Mont
2. Compare Montana's system with those from other st
3. Recommend to the Governor improvements that could
achieved administratively to:
 - A. expedite the permitting process.
 - B. increase public participation in the process.
 - C. protect the environment from mining impacts;
4. Propose to the Governor necessary legislation to
achieve the above recommendations.

II. COMPOSITION

The following persons shall serve on the Mine Permit Improvement Advisory Council at the pleasure of the Governor:

Art Wittich, Chair
Governor's Office
Helena, MT 59620

Debbie Schmidt
Environmental Quality Co
Helena, MT 59620

Gary Amestoy, Ex-officio
Department of State Lands
Helena, MT 59620

Kim Wilson
Montana Environmental
Information Center
405 N. Last Chance Gulch
Helena, MT 59601

Steve Pilsner, Ex-officio
Department of Health and
Environmental Sciences
Helena, MT 59620

Tony Schoonen
Montana Wildlife Federation
P.O. Box 2
Ramsay, MT 59748

Van Jamison, Ex-officio
Department of Natural
Resources and Conservation
Helena, MT 59620

Dave Suhr
ASARCO
P.O. Box 440
Wallace, ID 83873

John Munding, Ex-officio
Department of Fish, Wildlife
and Parks
Helena, MT 59620

John Fitzpatrick
Pegasus Gold, Inc.
P.O. Box 176
Jefferson City, MT 59638

Chuck Wassinger
U.S. Forest Service
P.O. Box 7669
Missoula, MT 59807

Bruce Gilbert
Stillwater Mining Company
P.O. Box 365
Nye, MT 59061

Tom Lonnie
U.S. Bureau of Land
Management
P.O. Box 36800
Billings, MT 59107

Brent Bailey
Noranda Inc.
P.O. Box 15638
Denver, CO 80215

Max Botz
Hydrometrics, Inc.
2727 Airport Road
Helena, MT 59601

Bill Harbrecht
Western Energy Company
P.O. Box 1899
Billings, MT 59103

III. COMPENSATION

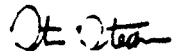
The Council members shall not be eligible for compensation or reimbursed for travel expenses. It is anticipated that all meetings will be held in Helena, and called by the Chair no more frequently than bi-monthly.

IV. DURATION


This Council shall exist through December 31, 1990.

This Order is effective August 11, 1989.

GIVEN under my hand and the
SEAL of the State of Montana
31st day of August, in the y
our LORD, One Thousand Nine
Hundred and Eight-Nine.


STAN STEPHENS, Governor

ATTEST:


MIKE COONEY, Secretary of State

STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NO. 6-90

EXECUTIVE ORDER SUPPLEMENTING MEMBERS TO THE
MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL

WHEREAS, the Mine Permitting Improvement Advisory Council established by Executive Order 20-89 has determined that small mining issues should be discussed by the Council; and

WHEREAS, there is not adequate representation on the Council for such discussions to occur; and

WHEREAS, recommendations on small mining regulations should be included in the Council's recommendations to the Governor on the mine permitting process, including proposed legislation on small mining issues.

NOW, THEREFORE, I, STAN STEPHENS, Governor of the State of Montana, do hereby add the following people to the composition of the Mine Permitting Improvement Advisory Council:

Mr. John Magnus
Independent Montana Miner
Box 258
Sheridan, MT 59749
(406) 842-5911

Mr. Bruce Farling
Clark Fork Coalition
P.O. Box 7593
Missoula, MT 59807
(406) 542-0539

Executive Order 20-89 shall be unaffected by this executive order, other than the addition of the above two named members.

GIVEN under my hand and the GREAT SEAL of the State of Montana, this 14th day of March, in the year of our LORD, One Thousand, Nine Hundred and Ninety.

Stan Stephens

STAN STEPHENS, Governor

ATTEST:

Mike Cooney
MIKE COONEY, Secretary of State

Agency Implementation

This appendix identifies ongoing Department of State Lands activities related to the recommendations in the MPIAC report.

A. Premining Issues

1. Completeness

1. Completeness Determination: The Department agrees its Plan of Study guidelines need to be updated and will develop guidelines for dealing with disagreement on technical points and need for additional baseline.

2. Timely Review

a. Staffing Needs

2. Levels: Although Legislative approval may be required for FTEs and funding, DSL has added three positions, through a Legislatively-approved Plan of Operations Change, to the staff to facilitate EIS management. These positions are responsible for tracking and for facilitating interagency communication. All vacant positions except two, discussed below, have been filled. Additionally the Department has proposed, as a part of the Executive Planning Process (1) creation of six aggregate positions to deal with fluctuating workloads and (2) addition of a file clerk, attorney and two reclamation specialists to deal with ongoing workload.

3. Compensation: Although the Department has no direct control of salaries and compensation, the Department submitted a request for pay plan exception to the Department of Administration for the hydrologist/geohydrologist/hydrogeologist position. The pay plan exception, if approved, would allow for a salary increase for the hydrologist position, which would resolve the difficult recruitment problems that have been encountered in filling this vacant position.

4. Fees: Legislative action may be required here.

5. Reorganization: Although Departmental reorganization is the purview of the Legislature, the Department has undertaken some internal reorganization activities. The Hard Rock Bureau, in conjunction with the Reclamation Division Administrator and the Department Director, has proposed a Bureau re-organization strategy. The proposal provides for three section supervisors (Mine Permitting, Exploration and Small Miners) at Grade 16 and a Reclamation Specialist III, Grade 15 for Senior level staff. If this proposal is approved, the Bureau Chief will have the authority to delegate to Section Supervisors for more timely decision

making. This structure will also provide for a career ladder of Grades 13, 14, 15, and 16 positions under the Bureau Chief. The proposal and corresponding position descriptions are currently being evaluated by the Department of Administration, Classification Bureau. In addition, the Department is developing working agreements with the various agencies to facilitate coordinated permitting.

6. Interagency Personnel Assignments: No specific action has yet been taken.

7. Increased Training: The Department has contracted for some additional training with regard to MEPA/NEPA compliance. Technical training which is available in state is being pursued. Additional legal training at the staff level has yet to be identified.

b. Non-staffing Opportunities

8. Contractor Selection:

a. The department is developing an "Request for Qualifications/Request for Proposals" package to solicit contractors for preparation of third-party EISs. The process will require that the potential third-party contractors provide the DSL with a combined Statement of Qualifications and Proposal for a specific EIS-level project that will be started in early 1991. This process should save time in the contractor-selection process.

b. The DSL is presently seeking to develop a "generic" request for Qualifications for other EISs that would need to be prepared in 1991. The DSL believes it may need contractors to prepare EISs for the following areas:

1. Open pit, cyanide, heap-leach operations
2. Underground, flotation, tailings impoundment operations.
3. Cyanide vat leach, tailings pond operations.

9. Environmental Impact Reports:

a. The Department is currently working with an applicant to develop an environmental impact report process in order to reduce the amount of time and expense necessary in preparing an EIS. The applicant would prepare the Description of Existing Environment, a summary of proposed plans, an analysis of impacts and a description and analysis of alternatives which the Department would review. Those sections which are accurate and pertinent would then be used as a basis for expediting EIS and EA production.

b. The Coordinator positions identified under item no. 1 above have been hired and are working well.

10. Role of Third-party Contractors: The Department has clarified, in its new Request for Qualifications and Proposals, that

the role of the third-party contractor is to identify potential EIS data needs and to prepare draft EIS materials for agency review. The contractor has no decision-making authority over the permit application and decision.

11. Permit Facilitator: The DSL has acquired additional positions, described under item no. 1 above, which have been assigned facilitation roles on those EISs currently underway. These FTEs have responsibilities both for coordinating interagency activities at both the state and federal level and for assuring state timeframes are met. Position descriptions are available on request.

3. Environmental Review

12. EQC Rulemaking Study: Legislative action may be required here.

13. EA-EIS Guidelines: Although no progress has been made on the development of EA/EIS determination guidelines, guidelines have been prepared to identify the interagency processes for preparation of EAs. EIS guidelines are being similarly developed. Other policies, procedures, and guidelines are being developed which apply to permit processing and technical issues, as well as to environmental compliance. A list is available from the Department.

14. EIS Fees: Legislative action may be required here.

4. Public Participation

15. Confidentiality: Legislative action may be required here.

16. EA Comment and Response: The Department has adopted the guidelines proposed.

17. Evaluate Public Participation Methods: The Department is modifying its public participation methods, to the extent allowed by law, in order to meet specific project needs. MEPA coordinators and section supervisors are required to take specific public participation training. As time allows, the Bureau would develop written guidance to supplement this training.

5. Bonding

18. Incremental Bonding: The Department has accepted incremental bonding on a one-year cycle, whereby additional bond is required for all activities and disturbances proposed for the forthcoming year, at the level the Department would need to complete reclamation of the entire disturbance area in the event of abandonment. This would not include automatic rollover of bond-

ing monies for some activities. Public notice of relase resulting from a "rollover" of bond monies would continue to be required 82-4-338(3), MCA.

19. Periodic Bond Reviews: The department currently reviews the bond with every proposed amendment, or in the case of incrementally bonded operations, with the submission of the incremental bond. The Department intends to adopt a more rigorous review schedule as staffing and workload levels allow.

20. Bond Release: Legislative action may be required here to modify 82-4-338(3), MCA, to require the specific 30-day notice.

B. Mining and postmining Issues

1. Enforcement

21. Inspections: The department has developed a planning and tracking program to assure that it has policy of inspecting all operations at least once per year, cyanide operations at least four times per year, and operations under construction more frequently, on an as-needed basis. Collection of Fees requires action by the Legislature.

22. MOU: The Department has entered into Memorandums of Understanding with the USFS, and the BLM. Under these MOUs, the agencies are authorized to share information on inspection and compliance. Joint inspections are periodically planned.

23. Corporate Accountability: Legislative action may be required here.

24. Remining of areas reclaimed by the State: Legislative Action would be required to clarify that only operating permits could be issued for areas reclaimed by the State.

25. Supplemental Remediation of Abandoned Sites: Legislative action may be required here.

2. Permit Amendments

26. Scope of Amendment Review: The Department has identified what the scope of review is for amendments and has clarified that non-reviewable activities will be evaluated under 82-4-337(3), MCA, rather than as part of the amendment.

27. Public Participation: The Department has implemented a policy of publishing notice for all amendments consistent with that required under 82-4-353, MCA, for operating permits.

28. Bond Review: The Department has adopted a procedure to review bond for every amendment submitted.

29. Tiering: The Department has adopted a procedure to incorporate applicable materials by reference into amendment applications and the related MEPA documents.

H. Reclamation Standards

30. Water replacement: Legislative action may be required here.

31. Reclamation Forum: At the Governor's request the Department designated three staff to participate in a forum and provided a list of independent technical specialists who could be considered for such a forum. Three technical issues have been identified for study: (1) cyanide attenuation, (2) slope reduction, and (3) acid mine drainage.

Testimony of Kim Wilson, Clark Fork Coalition, in Support of HB 448 Implementing the
Mine Permit Improvement Advisory Council Recommendations

The Clark Fork Coalition is a coalition of individuals and businesses concerned about maintaining and improving the water quality of the Clark Fork drainage. Necessarily, we are very concerned about mining in the Clark Fork drainage and its impact upon water quality. The Clark Fork Coalition strongly urges this Committee to pass HB 448. The Final Report of the Mine Permit Advisory Council is the product of more than a year of intensive negotiations between the mining industry, conservation groups and state and federal agencies. The Clark Fork Coalition had a member on the Advisory Council and helped formulate the recommendations. The end result is an unprecedented meeting of the minds between groups normally at odds with each other. The Clark Fork Coalition hopes the Advisory Council will serve as a model for resolution of future resource conflicts.

HB 448 constitutes the legislative portion of the Advisory Council recommendations. As such, it should be viewed as only a part of a larger package of reforms. In the view of the Clark Fork Coalition among the highlights of HB 448 are:

- The provision providing disclosure of previously confidential information about small mines and exploration. This brings the Hard Rock Act closer to complying with Montana's "Right to Know" constitutional provision;
- The provision allowing DSL to levy fees to defray expenses in processing permits and environmental documents;
- The provision which precludes operators with prior violations to receive a permit will help weed out the "bad apples".

Among the Advisory Council recommendations which will hopefully be accomplished administratively are:

- Increased and improved staffing of the Reclamation Division;
- Improved public access to the whole permitting process;
- Improved cooperation between agencies on inspection and enforcement.

In short, HB 448 is part of a larger package which will improve the permitting - and environmental review - for mining. We urge your favorable consideration.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

BILL # HB-641; TESTIMONY BY: Lorna Frank

DATE March 22, 1991; SUPPORT Support; OPPOSE

COMTEE NATURAL RESOURCES

EXHIBIT NO. 6

DATE 3-22-91

BILL NO. HB-641

Mr. Chairman members of the committee:

For the record, I am Lorna Frank, representing the Montana Farm Bureau.

We are in support of HB-641 for the additional information required for an operating permit will preclude confusion regarding rights to mine and who will be affected by the operation. Proof of ownership or a legitimate lease is a must.

We hope this committee will concur with HB-641. Thank you.

SIGNED: Lorna Frank

— FARMERS AND RANCHERS UNITED —

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 3-22-91 Bill No. HB-671 Time 4:54

NAME	YES	NO
Senator Anderson		X
Senator Bengston		X
Senator Bianchi	X	
Senator Doherty	X	
Senator Grosfield	X	
Senator Hockett	X	
Senator Keating		X
Senator Kennedy	X	
Senator Tveit		X
Senator Weeding, Vice Chairman	X	
Senator Stimatz, Chairman	X	

James Inchausti-Cason
Secretary Chairman

Motion: motion to move HB-671
to a subcommittee

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 3-22-91 Bill No. HR-17 Time _____

NAME	YES	NO
Senator Anderson		X
Senator Bengston		X
Senator Bianchi	X	
Senator Doherty	X	
Senator Grosfield	X	
Senator Hockett	X	
Senator Keating		X
Senator Kennedy	X	
Senator Tveit		X
Senator Weeding, Vice Chairman	X	
Senator Stimatz, Chairman	X	

Joyce Inchausti-Corson
Secretary

Chairman

Motion: move to Concur in HR-17

Amendments to House Bill No. 671
Third Reading Copy

EXHIBIT NO. 8

DATE 3-22-91

Requested by Rep. Gilbert
For the Committee on Natural Resources

BILL NO. HB-671

Prepared by Deborah Schmidt
March 21, 1991

1. Title, line 18.
Following: "76-3-614"
Insert: "76-4-102"

2. Page 2, line 14.
Following: "LAND;"
Strike: "TO PREVENT OVERCROWDING OF LAND;"

3. Page 2, line 16.
Following: "ADEQUATE"
Strike: "LIGHT, AIR,"

4. Page 2, lines 18 and 19.
Following: "REQUIREMENTS;" on line 18
Strike: "TO REQUIRE DEVELOPMENT IN HARMONY WITH THE NATURAL ENVIRONMENT;"

5. Page 3, line 1.
Following: "AND TO"
Strike: "promote"
Insert: "require"

6. Page 7, line 15.
Following: "it"
Insert: "it"
Following: "more"
Insert: "one or more"

7. Page 7, line 25 through page 8, line 7.
Following: "year" on page 7, line 25
Strike: the remainder of line 25 through line 7 on page 8
Insert: "in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed. The term includes any resubdivision and any residential condominium building, and further includes any area, regardless of its size, that provides or will provide permanent multiple spaces for recreational camping vehicles, three or more dwelling units, or work camp structures constructed to exist for longer than one year. For purposes of this subsection, "work camp structure" means housing provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of that person and the families, if any, of the employees. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties

on a ranch or farm, if the employer's primary business is agriculture."

8. Page 9, line 9.

Following: "both the"

Insert: "index of"

Following: "survey"

Strike: "and"

Insert: "or"

9. Page 9, line 10.

Following: "76-3-613"

Insert: ", as applicable"

10. Page 9.

Following: line 15

Insert: ":"

(A)"

11. Page 9, line 16.

Following: "subdivision"

Insert: ";"

Following: "and"

Insert: "(B)"

12. Page 9.

Following: line 16

Insert: ", for parcels smaller than 160 acres,"

13. Page 9, line 22.

Following: "chapter."

Insert: "(C) Divisions made exclusively for agricultural purposes when the parcels are 160 acres or larger must be noted on the certificate of survey."

14. Page 10, line 1.

Following: "for"

Strike: "requirements other than"

15. Page 10, line 4.

Following: "for"

Strike: "requirements other than"

16. Page 10, line 10.

Following: "member."

Insert: "Additional sales or gifts to each family member of an agricultural producer may be made for adjoining properties under the provisions of subsection (20)(b)(viii) of this section, as long as no additional parcels are created."

17. Page 10.

Following: line 17

Insert: "(xiv) a division created to provide security for construction mortgages, liens, or trust indentures, until such time as the division is no longer providing that security."

18. Page 19, line 24.

Following: "SPACES FOR"

Strike: "TRAVEL, LIGHT, AIR, AND"

19. Page 20, line 2.

Following: "CONGESTION"

Insert: "of streets and highways"

20. Page 21, line 10.

Following: "values"

Insert: "incentives for developments that accommodate public
values;
(g)"

21. Page 27, lines 13 through 18.

Following: "~~petitioner,~~" on line 13

Strike: the remainder of lines 13 through 18

22. Page 28, lines 8 and 9.

Following: "notice of the" on line 8

Insert: "informational"

Following: "hearing" on line 8

Strike: the remainder of line 8 through
"hearing" on line 9

23. Page 30, lines 4 through 8.

Following: "(4)" on line 4

Strike: the remainder of lines 4 through 8

Insert: "An informational hearing may be held on a minor or
special subdivision only if:

(a) the subdivision would be located in an area having
unique cultural or historical resources, or environmental or
ecological resources that are susceptible to substantial
adverse effects from subdivision development; or if the
subdivision would cause substantial adverse fiscal costs to
local government; and

(b) the subdivider or a citizen who demonstrates that he
would be adversely affected by the proposed subdivision
requests a hearing from the governing body within 15 days
following submission of the complete application."

24. Page 30, lines 10 and 11.

Following: "(4)," on line 10

Strike: "or the review authority,"

25. Page 30, line 20.

Following: "after the"

Strike: "public"

26. Page 30, line 23.

Following: "one"

Strike: "public"

27. Page 30, line 24.

Following: "The"

Strike: "public"

28. Page 31, line 14.

Following: "a"

Strike: "public"

29. Page 31, lines 17 through 20.

Following: "~~probable~~" on line 17

Strike: the remainder of lines 17 through 20

Insert: "the factors listed in subsection (4) are probable,"

30. Page 31, line 25.

Following: "in"

Strike: "THIS"

31. Page 32, line 1.

Following: "~~(4)~~"

Insert: "(4)"

32. Page 32, lines 7 through 9.

Following: "impacts."

Strike: the remainder of lines 7 through 9

33. Page 32, line 20.

Following: "~~(b)~~"

Insert: "In reviewing a subdivision under subsection (4), a governing body must be guided by the following standards:
(a) Mitigation measures imposed should not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.
(b)"

34. Page 39.

Following: line 8

Insert: "[section 18],"

35. Page 40, lines 21 and 22.

Following: "hazards" on line 21

Strike: ", INCLUDING BUT NOT LIMITED TO"

Insert: "such as"

36. Page 41, line 8.

Following: "(3)"

Strike: "(f)"

Insert: "(e)"

37. Page 42, line 10.

Following: "(B)"

Insert: "unique"

38. Page 42, lines 11 and 12.

Following: "RESOURCES"

Strike: ", INCLUDING WILDLIFE AND WILDLIFE HABITAT"

39. Page 43, lines 15 through 17.

Following: "impacts."

Strike: the remainder of lines 15 through 17

40. Page 44, line 3.

Following: "~~(ii)~~"

Insert: "In reviewing a subdivision under subsection (1), a governing body must be guided by the following standards:
(i) Mitigation measures imposed must not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval the plat.
(ii)"

41. Page 47, line 1.

Following: "body"

Strike: "review authority"

Insert: "governing body"

42. Page 48.

Following: line 19

Insert:

"Section 30. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Extension of public sewage disposal system" means a sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring

facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of such a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided which that creates one or more parcels ~~containing less than 20 acres, exclusive of public roadways,~~ in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium building or area, regardless of size, which that provides permanent multiple spaces for recreational camping vehicles, ~~or mobile homes~~ three or more dwelling units, or work camp structures constructed to exist for longer than one year. For purposes of this subsection, "work camp structure" means housing provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of that person and the families, if any, of the employees. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm, if the employer's primary business is agriculture.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of such a system."

Renumber: subsequent sections

43. Page 50, line 5.

Following: "by"

Insert: "operation of law or"

44. Page 51, line 10.

Following: "INDENTURES"

Insert: "until such time as the division is no longer providing that security"