

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chair Bianchi, on February 15, 1993, at 5:15 p.m.

**ROLL CALL**

**Members Present:**

Sen. Don Bianchi, Chair (D)  
Sen. Bob Hockett, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Lorents Grosfield (R)  
Sen. Tom Keating (R)  
Sen. Ed Kennedy (D)  
Sen. Bernie Swift (R)  
Sen. Chuck Swysgood (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)  
Sen. Cecil Weeding (D)  
Sen. Jeff Weldon (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Paul Sihler, Environmental Quality Council  
Leanne Kurtz, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 343, SB 294  
Executive Action: SB 346, SB 320

**HEARING ON SENATE BILL 343**

**Opening Statement by Sponsor:**

Senator Bernie Swift, House District 32, Hamilton, said Senate Bill 343 would revise and clarify present language in the subdivision law. He added it is not a land use planning bill and is not a zoning or permitting bill. Senator Swift stated 80% to 90% of the land splits in the past two years have not been reviewed. He said three things need to be clarified: 1) a land use plan; 2) zoning and permitting, and; 3) subdividing tracts of

land.

**Proponents' Testimony:**

Tom Sands, President of the Montana Association of Registered Land Surveyors (MARLS) said the 139 active members support subdivision reform that would benefit all Montanans, including land owners. MARLS supports streamlined review for minor subdivisions, revision of the park land requirements, and adequate access to all parcels.

Dan McGee, MARLS legislative chairman, distributed a handout to the Committee members explaining the bill (Exhibit #1). He said subdivision reform should be a clear part of a larger plan, adding that development should meet certain requirements. Mr. McGee stated the procedures should assure compliance and be equitable to developers, buyers, the environment, and land owners.

Tom Hopgood, Montana Association of Realtors (MAR), said SB 343 was meticulously drafted by the Surveyor's Association. He stated there is no unanimity among MAR regarding specifics of subdivision reform, but added all the members believe something should be done with the Subdivision and Platting Act. They believe the law should just deal with the subdivision and platting of land, not for zoning and planning.

Steve Mandeville, legislative chair for Montana Association of Realtors said SB 343 addresses the pertinent issues: 1) rights of property owners; 2) land use planning; 3) streamlined subdivision process, and; 4) accountable review of authorities.

Daniel Brien, Hersman Land Survey, Somers, said the majority of his clientele have been small land owners. He gave an example of the process and listed some of the requirements which must be met. He said SB 343 addresses many of these issues and urged the Committee to support this bill.

Clayton Fiscus, Fiscus Realty, handed out pictures of subdivisions in which he had been involved (Exhibit #2). He said people are currently subdividing because they are afraid they will lose their property rights. Mr. Fiscus added he does not believe property rights should be a partisan issue.

Dennis Applebury, professional surveyor from Victor, said all the counties in Montana are experiencing the same difficulties. He commented that occasional sales are reviewed, and allegations otherwise are incorrect. Mr. Applebury read a letter from the Ravalli County Commissioners regarding reviews. He stated there are two major problems with the present subdivision law - excessive and arbitrary input from adjoining and surrounding land owners, and the park requirement. He told of a recent rejection of a subdivision which did not address any of the criteria, but

was based on input of surrounding land owners.

Rick Gustine, MARLS, said the surveyors cannot afford to close their businesses while the Legislature is in session working on changes. Mr. Gustine stated anything requiring major revisions, such as SB 343, will require new rules which will take time to draft and implement.

Jo Brunner, executive director, Montana Water Resources Association (MWRA), said MWRA is concerned about how subdivisions will affect water and irrigation districts. She referred to sections of the bill which address water, stating SB 343 protects water rights.

Tom Russett, registered professional land surveyor from Conrad, said he supports the position of MARLS in Senate Bill 343.

Stephen Ries, a Helena land surveyor, said he has worked with many occasional sales in the last 15 or 20 years. He urged the Committee to support SB 343.

Sid Smith, representing himself, has been a land owner and a subdivider for 20 years. He said county governments have taken it upon themselves to interpret the law as they see fit.

Jake Korell, Billings realtor, said SB 343 closes loopholes and deals with abuses that have occurred in the past. He urged the Committee to pass the bill.

#### Opponents' Testimony:

Jim Richard, Montana Wildlife Federation, Montana Association of Planners, and speaking on behalf of the Montana Audubon Legislative Fund, submitted written testimony (Exhibit #4).

Stan Bradshaw, Montana Trout Unlimited (MTU), said MTU agrees with Mr. Richard's testimony and referred to SB 261, Senator Doherty's subdivision bill. Mr. Bradshaw reminded the Committee of county officials' testimony on SB 261 regarding the 20 acre limit, occasional sale and family exemptions.

Brian McNitt, Montana Environmental Information Center (MEIC), said the Committee is approaching good reform of the subdivision law and SB 343 flies in the face of that effort. He urged the Committee to recommend SB 343 do not pass.

Kathy Macefield, planning director, City of Helena, said she was concerned about how the land surrounding the city was divided and developed. She also expressed concern about Helena's ability to grow in an orderly manner that is beneficial to taxpayers in both the short term and the long term. She pointed out SB 261 and other bills tried to address the occasional sale by removing that as an exemption and to revise the acreage threshold on the

definition of subdivision. She said SB 343 keeps all the existing problems in the existing law and then creates new problems.

Doug Olsen, Paradise Valley Coalition, expressed his position on SB 343 as neutral. He said his clients are concerned that the present subdivision law is not working. They believe changes need to be made and would support a minimum review standard of 160 acres as a starting point. Mr. Olsen stated his clients encourage the Senate to examine the definition of a subdivision, as they believe it would be much clearer to the public if it were drafted in an outline form as opposed to a narrative.

Senator Bianchi asked Mr. Olsen about his testimony on SB 261. Mr. Olson said he also testified as a neutral on that bill.

A memo from the League of Women Voters of Montana in opposition to SB 343 was given to the Committee (Exhibit #5).

**Questions From Committee Members and Responses:**

None.

**Closing by Sponsor:**

Senator Swift stated he has requested an amendment regarding the occasional sale which would make that procedure subject to review by the government entity similar to the procedures of the minor subdivision process. Senator Swift stated there will continue to be problems with planning and development, but he believes SB 343 is a step in the right direction. He said the major thrust of this bill is private property rights for landowners, reasonable review that is not expensive, and protection of the environment. He passed out a sheet discussing what a minor subdivision will require (Exhibit #3).

**HEARING ON SENATE BILL 294**

**Opening Statement by Sponsor:**

Senator Tom Keating, Senate District 44, Billings, said SB 294 deals with the statutory definitions of coal, gas and oil. He stated there has not been a clear definition of coal, nor has coal bed methane been defined. Senator Keating stated methane and other gasses in the coal seams escape during strip or underground mining, resulting in explosions if the gas ignites. He said oil and gas drillers are now able to extract methane gas from coal beds and market it like natural gas because it has a good BTU content. The development of this technology has resulted in mineral interest problems, and coal and gas leasing.

Senator Keating stated the purpose of SB 294 is to define coal bed methane as a natural gas produced from a well "and that is not considered oil as a product." He discussed definitions of coal, gas, and oil in the bill. He stated the Department of State Lands (DSL) has offered a definition of coal as a "combustible carbonation of rock formed from impaction and induration of variously altered plants." The definition does not include methane or other natural gasses found in the coal formation, and does not include oil shale or gilsonite. Senator Keating stated the Department of Revenue wants to include gas in Chapter 15 so they don't miss any tax. He added he coal industry wants a provision that would exempt the siting act from this definition. Senator Keating said he will ask for amendments to pacify everybody.

#### Proponents' Testimony:

Janelle Fallan, executive director, Montana Petroleum Association, said SB 294 would help in the development of coal bed methane in Montana. She said a report on natural gas indicates that there are about 16,000 BCF (billion cubic feet) of potential coal bed methane in Montana, which constitutes 300,000 years worth of natural gas for the state. Ms. Fallan said SB 294 would help make that development possible.

Monte Mason, DSL minerals management bureau chief, said DSL is responsible for managing approximately 6.2 million acres of state-owned mineral rights, nearly all of it in trust land. He said the Department, through the Board of Land Commissioners, issues leases to both coal and oil and gas operators to allow development of the state trust resources. Mr. Mason stated by providing a definition for coal, SB 294 clarifies that gas found in coal formations is part of the oil and gas estate unless titled occupants indicate otherwise. He said SB 294 is consistent with the DSL's position on coal bed gas ownership. Mr. Mason added where the state owns both coal and gas rights, the issue of coal bed gas benefits is moot, but coal bed gas ownership can become an issue where the state owns either coal or oil and gas rights. He said the Bureau of Land Management's (BLM) position on coal bed gas ownership is consistent with DSL's position and with SB 294. He said Section 2 of SB 294 expands coverage of definitions beyond Title 82. Mr. Mason stated oil and gas are valued when the product is run into any pipeline or tank to the credit of the lessee, which may or may not be at the wellhead. Mr. Mason said Senator Keating told him it is not the intent of SB 294 to restrict or alter the application of the terms for evaluation purposes. He said DSL has mainly been concerned that the definition of coal did not include some other solid hydrocarbons that would complicate leasing and DSL regulation.

**Neutral Testimony:**

Jim Mockler, executive director, Montana Coal Council, said his concern is over the venting of gas during coal mining. He suggested the Committee add a New Section E on page 6, following line 10, which would state "Nothing in this title applies to lands under permit in accordance with Title 82, Section 4, Part 2, which is the Montana Strip and Underground Reclamation Act." Mr. Mockler said he wants the language to specifically exclude operations on those permitted lands.

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Kennedy said he has a hard time believing there is no statutory definition for coal, gas and oil. Senator Keating said the Strip Mining Act addresses marketable coal and enhanced coal, but does not define coal. He added oil and gas is defined under 82-11-101. Senator Keating stated he intends to distinguish between coal and methane gas or any other natural gas that can leak into the coal bed. He said he wants to make sure that the venting of gas is not considered waste during coal mining.

Senator Kennedy asked if there are precious stones other than diamonds formed by compressing hydrocarbons. Senator Keating said the only one he knows of is a ruby.

Senator Weeding said he understands that the intent of SB 294 is to define minerals so coal and oil and gas ownership can be identified. He said the government can reserve coal, but the oil and gas belong to the owner of the mineral rights.

Senator Weeding asked how tar shales fit into SB 294. Senator Keating said he thought that was gilsonite, adding the definition of coal does not include oil shale. He said SB 294 exempts gilsonite and oil shale from the definition of coal because they are the other known products that are "exempt and treatable for leasing purposes as a separate mineral."

Senator McClernan asked if Senator Keating intended to leave out oil shale. Senator Keating said coal does not include oil shale or gilsonite.

Senator Doherty asked if there has been a problem defining terms,

and if there is a court case. Senator Keating said there is a court case in Carbon County involving lease rights. He said he does not know the details of the case, but that operators in Billings and Carbon County are on the same side. Senator Doherty asked if SB 294 is meant to affect taxation. Senator Keating said the Department of Revenue has asked that the definition in Chapter 15 be included, and he was sure they would use that for taxation purposes. He assured Senator Doherty that SB 294 has nothing to do with altering the tax rate. Senator Doherty asked if the bill would affect state school lands or state-owned minerals. Senator Keating said if the state-owned land was a "coal only" reservation, then SB 294 would establish that the methane belongs to the oil and gas title and in that case would not belong to the state.

Referring to the savings clause in Section 5, Senator Doherty stated that by passage of SB 294, the Legislature does not intend to favor one side or the other in the current law suit. Senator Keating said that is correct.

**Closing by Sponsor:**

Senator Keating closed.

**EXECUTIVE ACTION ON SB 346**

**Motion:**

Senator Kennedy moved Senate Bill 346 DO PASS.

**Discussion:**

Senator Hockett said the Montana Stockgrowers and Montana Woolgrowers had a concern about point of diversion and asked if an effort had been made to address this concern. Stan Bradshaw, Montana Trout Unlimited, said the working group with ranchers in southwestern Montana drafted the language on page 12, line 6. He stated the original language only protected the amount of water that was historically consumed. He said members of the working group expressed concern about the reach they were trying to protect from the original point of diversion to the state line. Mr. Bradshaw said the language on page 12 was written in response to that concern and he said he believes the concern has been met.

Senator Bianchi said if an irrigator changes the point of diversion downstream, the irrigator cannot affect any existing water rights.

John Bloomquist, Montana Stockgrowers, said the bill does not specify what quantity would be transferable downstream from the

original point of diversion. He commented that too much is assumed and listed several problems that could arise.

Chair Bianchi asked how DNRC would handle a situation in which an irrigator wanted to change a point of diversion downstream.

Gary Fritz, administrator of the Water Resources Division, Department of Natural Resources and Conservation (DNRC) said the test is always whether there is an adverse impact on an existing water user. He said there are not many changes in points of diversion where the change is a significant distance downstream. Mr. Fritz stated the local district court enforces those water rights.

Chair Bianchi asked if water loss is taken into account. Mr. Fritz said that is one of the possibilities. He noted if the flow is 10 CFS (cubic feet per second) at the point of diversion, and it is a losing stream, flow 10 miles downstream may be only 5 CFS.

Senator Bartlett asked if there is anything in existing law specifying when someone applies for a change in point of diversion that they have to identify the point of measurement and the amount they want to appropriate. Mr. Fritz said the test in statute is the question of adverse impact. He stated DNRC requires applicants to provide information so that other people on a stream know the point of measurement and the amount of water being requested to be transferred.

Senator Weeding said the simplest thing would be to say the point of original diversion is the point of measurement and the state does not have to calculate evaporation. He said he believes the transferee should bear that responsibility. Mr. Fritz said an irrigation water right holder can now ask DNRC to have his point of diversion moved downstream. He added this language is an attempt to respond to the problem DNRC had identifying the flow in the reach.

Senator Swift asked Mr. Fritz what DNRC is currently doing with instream leasing. Mr. Fritz said the reach has to be identified in the leasing program and the amount of water that can be leased or protected below the old point of diversion is the amount originally consumed. He added that is specific in the statute. When SB 346 was being drafted, the feeling was that it should be kept simple and precisely parallel with the current law on changing consumptive use.

Mr. Bradshaw said Senator Swift's question presupposed that DNRC has had problems with the Fish, Wildlife & Parks leasing program. He said he does not think it is correct to assume from experience so far that it is an insurmountable problem.

Senator Swift said junior rights has been the real problem with instream flow. Chair Bianchi said junior right holders will be



protected under SB 346.

Senator Grosfield said he had a lot of problems in general with this bill. He stated he sensed from the proponents during the hearing that there were some major misconceptions. Senator Grosfield said the first misconception is that water leasing is too difficult and something else should be implemented. The second misconception is that SB 346 is a panacea. He acknowledged that water leasing is and has been a difficult process because significant changes are being made in water law, and water leasing is defined in more detail in the statute than it is in this bill. He said he believes it is premature to open instream flow when a water leasing study is being conducted. Senator Grosfield said the whole water rights system is based on beneficial use. He wondered how one would determine with instream flow how much water is being used beneficially. Senator Grosfield said he believes it is premature to sell water without answers to the questions that the water leasing study is trying to address.

**Substitute Motion:**

Senator Grosfield moved House Bill 346 DO NOT PASS.

**Discussion:**

Senator Weeding said he believes the point of diversion question is the only valid point in Senator Grosfield's argument. With that exception, DNRC is already doing what is contemplated in this act, with the exception of FW&P. He said he realizes there needs to be a point in time when there is no water right left.

Senator Bianchi said every case will be different and it will have to be determined how far water can be moved without adversely affecting some other water user.

Senator Weldon asked Mr. Bradshaw to comment on the diversion question. Mr. Bradshaw stated the point of measurement referred to in Section 3a, wherever it is, ceases to exist as an instream right and is available for anybody. Mr. Bradshaw said the self regulating mechanism in the bill is that the purchaser of the water will be looking at this in the terms of dimension return.

**Vote:**

The substitute motion that Senate Bill 346 do not pass FAILED, 6 voting yes, 7 voting no, roll call vote.

**Discussion:**

Senator Swysgood said if he was buying water to leave instream he would be very cautious about it until the adjudication process was complete so he would know that what he was buying existed.

**Substitute Motion:**

Senator Swysgood moved to AMEND SB 346 (Exhibit #1E).

**Discussion:**

Senator Swysgood said he does not believe there can be enforcement of instream flow rights without a plan for the measuring device, and that is the purpose of this amendment.

Senator Doherty asked how many streams have stream flow measuring plans and Senator Swysgood said he does not think that many do.

Senator McClernan asked Mr. Fritz what the implication of this amendment would be. Mr. Fritz said he feels at a disadvantage because he was not involved in the discussions where this language was derived. He said he does not know what a streamflow measuring plan is, as it is not defined in the statutes, nor is it a term DNRC has ever defined. Mr. Fritz stated DNRC is responsible for the water measuring program that requires measuring devices on chronically dewatered streams.

Senator Bianchi asked Michael Kakuk, Environmental Quality Council (EQC) to respond to the question.

Michael Kakuk discussed Section 85-2-436 Sub 2(c). He said the application for a lease authorization must include specific information on the length and location of the stream rate in which the stream flow must be maintained or enhanced. Mr. Kakuk said the application must also provide a detailed streamflow measuring plan that describes the points where and the matter in which the stream flow must be measured.

Senator Swysgood said he does not believe instream flow can be enforced without this amendment.

Senator Weeding said the language does not give the Department enough latitude, and asked Mr. Fritz to comment. He asked if the amendment requires DNRC, without any exception, to put in measuring devices.

Mr. Fritz said he believes it is clear the Legislature wants to ensure that the instream right can be properly measured and enforced, which would require that measuring devices be installed. He said he expects the Department to be in the business of acquiring measurement devices with the inflow

transfer for change. Mr. Fritz added there would be at least one measuring device at the measuring point, and possibly others would be required to develop a measuring plan.

Chair Bianchi asked if the person buying the instream flow would have to pay for the measuring device, adding he assumed they would because it would be point specific. Mr. Fritz said DNRC currently requires that the applicant install measuring devices.

Senator Weeding said it would not seem there would be any reason to measure a stream if a purchase was made on a single tributary. He asked if this would give DNRC the latitude to determine the necessity of a plan if an entire right was purchased from several right holders.

Mr. Fritz said that question has not been answered in SB 346. He said he believes DNRC would have the discretion to determine whether or not a measuring device would be required in the instance to which Senator Weeding referred. Mr. Fritz noted it would seem logical that a measuring device be installed at the measuring point. He added he does not think SB 346 requires that, but it might be required at the discretion of the agency.

Senator Tveit asked how a buyer would know how much water he or she was buying without a measuring device, and wondered who would monitor the measurement. Mr. Fritz said DNRC often requires applicants to install measuring devices and maintain records on the measurements. He stated the district court is responsible for enforcing those water measurements.

Senator Grosfield said he supports Senator Swysgood's motion. He said he could not conceive of cases where anybody would buy water they did not need. He said the only creeks at issue are those that dewater, and dewatering is often the result of irrigation diversion. Senator Grosfield stated that without a measuring device, the rest of the people on a creek will not know if someone is exceeding their quota. He said he believed a stream flow plan was the minimum needed.

**Vote:**

The motion to amend SB 346 CARRIED, 7 voting yes, 6 voting no, roll call vote.

**Substitute Motion:**

Senator Swysgood moved to amend SB 346 (Exhibit 2E).

**Discussion:**

Senator Swysgood said this amendment puts into the bill the measuring plan as described in 85-2-436. He said the cost of this streamflow measuring plan and any required measuring device must be borne by the applicant for an instream use.

Senator Doherty asked who pays for the cost of the streamflow measuring plan in the leasing program. Senator Grosfield said FW&P must pay all costs associated with installing devices and providing personnel to measure streamflows, according to the measuring plan submitted under this section. He added the Department is the only entity that can lease so they are the applicants.

Chair Bianchi asked Mr. Kakuk if he had seen the amendments and asked him to comment. Mr. Kakuk said the language clearly indicates that the Department may not issue a change to an instream flow use without a streamflow measuring plan as described in 85-2-436.

Chair Bianchi asked if the person buying an instream flow would have to pay for every measuring device on every existing ditch up and down a particular stream. Mr. Kakuk said Mr. Fritz was correct when he said a streamflow measuring plan is not defined in state law. He stated that is why the language does not say "defined as described in". Mr. Kakuk said the measuring plan must describe the reach to be measured, how it is going to be measured, and where it is measured.

Chair Bianchi said this language would only apply to the stretch being considered for instream flow, not for the entire stretch. He stated a measuring plan would not be needed for the entire river. Mr. Kakuk said that would be a reasonable interpretation of this statute, but there are other possible interpretations.

Senator McClernan asked Mr. Kakuk what a streamflow measurement is. Mr. Kakuk declined to answer that question because there were others better qualified to answer the question.

Mr. Fritz said every case is different, and every streamflow measuring plan will be different, depending on how many streamflow gages will be required and what they may look like. In order to make sure that applicants do not take more water than they actually need, DNRC may require multiple measuring devices. Mr. Fritz stated that a streamflow measuring plan is a measuring device or series of measuring devices to ensure that applicants do not take more water than they are entitled to. Mr. Fritz said streamflow measuring plans are terms in the water leasing statute, and not a term typically used for changes. He added Senator Swysgood's amendment describes what a stream point measuring plan is. Mr. Fritz stated DNRC would use the guidance in the statement of intent to draft rules that would explain what measure devices are necessary to allow enforcement of the instream flow water right.

Senator Doherty asked if the Department, under the previous amendment and with the adoption of this amendment, would have the discretion to determine the necessity for streamflow measuring devices. Mr. Fritz said his interpretation is that, depending on the situation, no streamflow device might be required, while another situation may call for multiple streamflow devices.

**Vote:**

The motion to amend SB 346 (Exhibit #2E) CARRIED unanimously.

**Substitute Motion:**

Senator Swysgood moved to AMEND SB 346 (Exhibit #3E).

**Discussion:**

Senator Swysgood said this amendment is an attempt to rectify some concerns expressed by a number of people.

Senator Doherty asked Mr. Bradshaw to comment on the amendment. Mr. Bradshaw said most of the leases that have been looked at involve leasing water below the point of diversion. He stated the point in getting a lease is to water the stretch that a diversion is dewatering. Water may be leased with this amendment, but if an applicant for a junior appropriation wanted to dewater a stretch for which the water right was purchased, there would be no way to protect it.

Senator Bianchi said the working group tried to treat instream water use the same as those uses that are diverting water for consumptive purposes. He added this amendment treats instream flows differently from irrigators and other consumptive users of water. Senator Bianchi stated the City of Bozeman has moved a significant amount of water downstream for the city water supply. He said he does not understand why people who buy instream flow water rights should not have the same rights as other users, whether industrial, municipal or agricultural. Senator Bianchi stated he opposes the amendment for that reason.

Senator Grosfield said if the point of measurement is not going to be the historical point of diversion, then the question is still wide open as to where the point of measurement is. He said without some answer to that question, it is very difficult to deal with this bill. Senator Grosfield stated this amendment would keep that water instream down to the point that it is historically diverted, and downstream to the next point of diversion.

Senator Bianchi stated with this amendment, someone may be able to buy water and carry it a mile down the stream. But if a

junior water right user decides to put in a diversion halfway between, he can take all the water. He said this amendment would allow someone to steal water without just compensation.

Senator Weeding asked if the language in this bill gives a junior right holder standing when it comes to objecting or going to court. Ted Doney told him that any senior or junior appropriator on the stream will have standing to object to the change.

Senator Swysgood said in that instance, the junior appropriator would have to apply and the instream flow water right holder would have the right to object at that time to the diversion.

Senator Bianchi asked Mr. Fritz if there would be any reason for DNRC to accept that objection because the instream flow holder does not own water below the point of diversion. Mr. Fritz said he believes the interpretation was correct. As he understands it, the instream applicant - the water right holder in this instance - cannot protect the instream right below the point of measurement.

Senator Hockett asked from where the measurement would take place. Senator Bianchi said each case will be different. He stated it will depend on how far one can go before adversely affecting another water right user.

Mr. Fritz said the applicant will choose the point of measurement, which might be the point of diversion, a mile downstream to a point of diversion, or further. It may be determined the applicant has chosen a point of measurement too far downstream, and it may have to be moved back upstream in order to satisfy the objectors.

**Vote:**

The motion to amend (amendment #3E) FAILED, 6 members voting yes, 7 voting no, roll call vote.

**Substitute Motion:**

Senator Swysgood moved and discussed his next amendment (Exhibit #4E).

**Discussion:**

Senator Bianchi stated that the individuals drafting SB 346 tried to keep it as simple as possible and treat everyone fairly. He said this amendment treats someone buying a water right for instream flow differently than any other water user.

Senator McClernan asked about a fee for an objection. Senator Bianchi said DNRC charges \$50 per objection to administer the program.

Senator Swysgood asked John Bloomquist to comment. Mr. Bloomquist stated that change applicants moving the point of diversion need to provide information showing that there is no adverse effect to other users. He added obtaining the information will be expensive.

Senator Bianchi asked if an irrigator sells his water right to an industry, who would be responsible to provide the information if someone objects. Mr. Bloomquist stated "everybody pays for his own situation," and out of the 64 changes of purpose, all but about 6 had objections. He added more and more juniors will have to show no adverse effect.

Senator Grosfield said without identifying the point of measurement, there is a lot of room for mischief and for unnecessary extra costs.

Mr. Fritz stated DNRC tries to resolve objections before going to court, but if objections cannot be solved, each would be argued on its own merits.

Senator Swysgood said if the amendment passes, he would like to add "or 85-2-402" after "85-2-309".

**Vote:**

The motion failed 8 votes to 5, roll call vote.

**Substitute Motion:**

Senator Swysgood moved to AMEND SB 346 (Exhibit #5E).

**Discussion:**

Senator Bianchi asked Mr. Kakuk to explain the amendments. Mr. Kakuk stated Senator Swysgood's intent was that DNRC's enforcement of instream flow rights be no different than any other water right. He said the amendment does not affect the water right holder's enforcement capabilities. Mr. Kakuk added a water right holder always has recourse to district court.

**Vote:**

The motion CARRIED UNANIMOUSLY.

**Substitute Motion:**

Senator Kennedy moved SB 346 DO PASS AS AMENDED.

**Discussion:**

Senator Grosfield stated instream water use by its nature is a public resource use, and private entities should not be allowed ownership. He cautioned the Committee to consider the issue carefully before allowing anyone to obtain control over Montana water.

Senator Swysgood said his amendments were not intended to make light of the bill, but were meant to address concerns. He added he does not intend to vote for the bill because it pushes the issue too far too fast.

Senator Bianchi stated there will be many bureaucratic hoops to jump through before anyone can transfer water out of the state for commercial purposes.

**Vote:**

The motion PASSED 7 votes to 6, roll call vote.

**EXECUTIVE ACTION ON SB 320****Motion:**

Senator McClernan moved SB 320 DO PASS.

**Substitute Motion:**

Senator Doherty moved to TABLE SB 320.

**Discussion:**

Senator Doherty stated there is a bill in the House that addresses amendments and revisions of operating permits. He stated current Montana civil procedure #11 states: "a pleading should not be interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Senator Doherty said frivolous lawsuits are already discouraged and can be thrown out of court. He said if the court believes a lawsuit can cause irreparable harm, it can order injunction. Senator Doherty added SB 320 would take away the discretion of the court. He said a mining company has obtained 8 separate revisions to its original permit, doubled its



capacity, and doubled the size of its permitted area, all under current statute.

Senator Bianchi stated he would not accept Senator Doherty's motion to table because the motion is non-debatable, and he wants to discuss the bill.

Senator Doherty withdrew his motion to table SB 320.

**Motion:**

Senator McClernan moved to AMEND SB 320 (Exhibit #6E).

**Discussion:**

Senator McClernan stated his intent is to strike Section 2, dealing with bonding, as it was one of the environmental community's main objections.

**Vote:**

The motion CARRIED UNANIMOUSLY.

**Motion:**

Senator McClernan moved to AMEND SB 320 (SB032001.PCS).

**Discussion:**

Senator McClernan said SB 320 provides for a 30 day limitation for filing of actions. He said the first two amendments change the limit to 45 days, making it easier to object, and meeting the same timetable as the Forest Service and the Bureau of Land Management. He continued the second two amendments are housekeeping in nature.

Senator Doherty said the time extension is helpful, but does not mirror the language in the Coal Act. He said he opposes amendments #2, #3, and #4 as surplus and unnecessary.

Senator McClernan said he would be willing to segregate the amendments.

Senator Grosfield said amendment #2 is significant, as it strikes "clear and convincing" and inserts "preponderance of evidence".

Senator Swysgood asked John Fitzpatrick, Pegasus Gold, to comment on the 45 day limit. Mr. Fitzpatrick stated he requested the 45 day limit because Pegasus must sometimes have dual permits with

the Forest Service or the Bureau of Land Management. He said Pegasus wants the appeal procedure to be consistent with that of federal agencies.

**Vote:**

The motion to amend SB 320 (amendments #1 and #2) CARRIED UNANIMOUSLY.

**Vote:**

The motion to amend SB 320 (amendments #3 and #4) CARRIED with Senator Hockett and Senator Doherty voting NO.

**Discussion:**

Senator Bianchi said he was uncomfortable with the attorneys fees. Senator McClernan said he wants to keep the attorneys fees in the bill "in deference to the working folks from Whitehall."

**Motion:**

Senator McClernan moved SB 320 DO PASS AS AMENDED.

**Substitute Motion:**

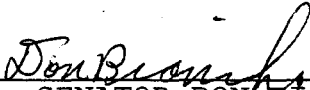
Senator Doherty moved to TABLE SB 320 AS AMENDED.

**Vote:**

Motion CARRIED 7 votes to 6, roll call vote.

ADJOURNMENT

Adjournment: 9:35 p.m.

  
\_\_\_\_\_  
SENATOR DON BIANCHI, Chair

  
\_\_\_\_\_  
LEANNE KURTZ, Secretary

DB/lk

# ROLL CALL

SENATE COMMITTEE Natural Resources DATE 2/15/93

NAME	PRESENT	ABSENT	EXCUSED
Bianchi	✓		
Hockett	✓		
Bartlett	✓		
Doherty	✓		
Grosfield	✓		
Keating	✓		
Kennedy	✓		
Swift	✓		
Susgood	✓		
McCernan	✓		
Tveit	✓		
Weeding	✓		
Weldon	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 16, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 346 (first reading copy -- white), respectfully report that Senate Bill No. 346 be amended as follows and as so amended do pass.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

That such amendments read:

1. Page 3, line 5.

Following: "rights"

Insert: "by the department, subject to the provisions of 85-2-114"

2. Page 3, lines 5 through 7.

Strike: "This" on line 5 through "." on line 7

3. Page 12, line 11.

Following: "use"

Insert: " :  
(i) "

4. Page 12, line 13.

Following: "(6)"

Insert: "; and

(ii) without a streamflow measuring plan as described in 85-2-436. The cost of the streamflow measuring plan and any required measuring device must be borne by the applicant for an instream use"

5. Page 19, line 4.

Following: "use"

Insert: " :  
(i) "

6. Page 19, line 6.

Following: "(6)"

Insert: "; and

(ii) without a streamflow measuring plan as described in 85-2-436. The cost of the streamflow measuring plan and any required measuring device must be borne by the applicant for an instream use"

7. Page 12.

Following: line 13

Insert: "(c) Enforcement by the department of instream uses is  
subject to the provisions of 85-2-114."

8. Page 19.

Following: line 6

Insert: "(c) Enforcement by the department of instream uses is  
subject to the provisions of 85-2-114."

-END-

TABLED BILL  
SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 17, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 320 (first reading copy -- white), respectfully report that Senate Bill No. 320 be amended as follows and as so amended be tabled.

Signed: Don Bianchi  
Senator Don Bianchi, Chair

That such amendments read:

1. Title, lines 6 and 7.

Strike: "REQUIRING" on line 6 through "DECISIONS;" on line 7

2. Page 1.

Following: line 11

Insert:

"STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] requires the department of state lands to adopt administrative rules. In adopting rules, the department shall establish criteria to distinguish between major and minor amendments and criteria for revisions to operating permits."

3. Page 1, lines 17 through 19.

Strike: "the" on line 17 through "Act" on line 19

Insert: "45 days after the decision is made"

4. Page 1, line 20 through page 2, line 1.

Strike: section 2 in its entirety

Renumber: subsequent sections

5. Page 12, lines 4 and 5.

Strike: "if" on line 4 through "that" on line 5

6. Page 12, line 13.

Strike: "and"

Insert: ", "

7. Page 12, line 14.

Following: "denial"

Insert: ", and be based on a preponderance of the evidence"

8. Page 12, lines 16 and 19.

Strike: "4"

Insert: "3"

-END-

# ROLL CALL VOTE

SENATE COMMITTEE Natural Resources BILL NO. SB 346

DATE 2/15/93 TIME 7:40 A.M. P.M.

NAME	YES	NO
Senator Bianchi		X
Senator Hockett	X	
Sen. Bartlett		X
Doherty		X
Grosfield	X	
Keating	X	
Kennedy		X
McClerman		X
Swift	X	
Suysgood	X	
Treit	X	
Weeding		X
Weldon		X
	6	7

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: SB 346 DNP



ROLL CALL VOTE

Amendment # 1

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 346

DATE 2/15/93 TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
Chairman Bianchi		X
Vice Chairman Hockett	X	
Sen. Bartlett		X
Sen. Doherty		X
Sen. Grosfield	X	
Sen. Keating	X	
Sen. Kennedy		X
Sen. McClerman		X
Sen. Swift	X	
Sen. Suysgood	X	
Sen. Treit	X	
Sen. Weeding	X	
Sen. Weldox		X
	7	6

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: TO Amend SB 346 (SB 034601.PCS)  
Carried

ROLL CALL VOTE

(02)

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 346

DATE \_\_\_\_\_ TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
Chairman Bianchi		X
Vice Chairman Hockett	X	
Sen. Bartlett		X
Sen. Doherty		X
Sen. Grosfield	X	
Sen. Keating	X	
Sen. Kennedy		X
Sen. McClellan		X
Sen. Swift	X	
Sen. Swysgood	X	
Sen. Treit	X	
Sen. Weeding		X
Sen. Weldox		X
	6	7

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: To Amend SB 346 (SB 034602.PCS)  
fails



# ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 346

DATE 2/15 TIME \_\_\_\_\_ A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	
Vice Chairman Hockett		X
Sen. Bartlett	X	
Sen. Doherty	X	
Sen. Grosfield		X
Sen. Keating		X
Sen. Kennedy	X	
Sen. McClellan	X	
Sen. Swift		X
Sen. Swysgood		X
Sen. Treit		X
Sen. Weeding	X	
Sen. Weldon	X	
	7	6

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: Kennedy Moved 346 Do Pass AA.

# ROLL CALL VOTE

TABLE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 320 AS Am

DATE 2/15 TIME 9:00 A.M. P.M.

NAME	YES	NO
Chairman Bianchi	X	
Vice Chairman Hockett	X	
Sen. Bartlett	X	
Sen. Doherty	X	
Sen. Grosfield		X
Sen. Keating		X
Sen. Kennedy	X	
Sen. McClellan		X
Sen. Swift		X
Sen. Swysgood		X
Sen. Treit		X
Sen. Weeding	X	
Sen. Weldon	X	
	7	6

Leanne Kurtz  
SECRETARY

Sen. Bianchi  
CHAIR

MOTION: TO Table SB 320 - Doherty motion

PRESIDENT  
Thomas E. Sands  
1995 3rd Ave. E.  
Kalispell, MT 59901  
(406) 755-6481

VICE-PRESIDENT  
Glenn R. Howard  
3201 Russell Street  
Missoula, MT 59801  
(406) 721-4320



P.O. Box 4112  
Missoula, Montana 59806  
- SYNOPSIS OF SENATE BILL 343 -

PRESIDENT-ELECT  
Daniel P. Brien  
P.O. Box 225  
Somers, MT 59932  
(406) 857-3563

SECRETARY-TREASURER  
Linda S. Smith  
1935 3rd Ave. E.  
Kalispell, MT 59901  
(406) 755-5401

SENATE NATURAL RESOURCES  
EXHIBIT NO. 1  
DATE 2/15/93  
BILL NO. 493 343

PREPARED FOR: THE MONTANA SENATE NATURAL RESOURCES COMMITTEE HEARINGS, JANUARY 15, 1993

## I. BASIC PHILOSOPHIES:

- A. Basic Property Rights are fundamental to any land use law.
  1. "Land Ownership" has certain unalienable rights.
  2. People may wish to use land as an investment.
  3. The right to divide land carries with it certain responsibilities.
  
- B. A "Subdivision Law" does not a "Planning Law" make.
  1. Government is granted the authority to govern by those they serve, and is responsible to their constituents - this includes landowners.
  1. Planning is the process of looking at options, land capabilities, etc., and identifying potentials as well as limits of land in advance of any proposed specific usage.
  2. Planning is not regulatory, but is rather conceptual.
  3. Laws currently exist which are planning tools:
    - a. Title 76, Chapter 1: Planning Boards and Jurisdictions, Comprehensive & Master Planning;
    - b. Title 76, Chapter 2: Zoning
  4. It is governments responsibility to plan appropriately.
  5. Subdivision requirements are more technical than philosophical.
  6. Planning by Subdivision is a bandaid approach to planning which reacts to a proposal.
  
- C. The problems inherent with the current Montana Subdivision and Platting Act are addressable with common sense.

## II. PROPOSED AMENDMENTS TO THE CURRENT LAW INCLUDE:

- A. Section 76-3-102, Statement of Purpose is amended to include the concept of protection of rights of property owners.
  
- B. Section 76-3-103, Definitions, is amended to define or re-define the following:
  1. Division of Land is redefined to include all segregations, whether by survey or by deed (as in 1/32nd aliquot parcels).  
**ALL DIVISIONS OF LAND ARE REQUIRED** to meet the requirements of legal and physical access and utility easements.
  2. Legal access is defined as private or public easements or right-of-way.
  3. Physical access is defined as public or private roads.
  4. Minor subdivisions are redefined to allow for single divisions minor subdivisions.
  5. Record of Survey is defined for purposes of retracing existing lots.
  6. Rights of Property owners are defined as enjoying, improving, selling and conveying, in whole & in part, real property.
  7. Subdivisions are continued defined as parcels less than 20 acres.
  8. Tract of Record is defined.
  9. Utilities are defined.
  
- C. Section 76-3-105 is amended to include provisions for bringing action against the governing body for just cause.

- D. Sections 76-3-201 and 76-3-207 are amended to delete the phrase "unless the method of disposition is adopted for the purpose of evading this chapter" is deleted. Violations will be strictly related to non-performance and non-conformity to the provisions of the Act.
- E. Section 76-3-207(1) is amended as follows:
- (a) Relocations of boundaries are re-defined to incorporate all types of relocations on subdivided and non-subdivided land
  - (b) Gift or sale to family members is amended to specify members eligible for such conveyance (parents, children, spouse).
  - (c) "Agricultural Use" is changed to allow for any use that does not require sewer or water.
  - (d) The Occasional Sale is deleted.
- F. Section 76-3-207(4) is added to provide that contiguous exempted divisions can be shown on the same Certificate of Survey.
- G. Section 76-3-301 is amended to require that the clerk and recorder file a plat or certificate of survey which shows all required approvals and acknowledgments.
- H. Section 76-3-302 is amended to require that instruments of transfer specifically address legal and physical access. This condition applies to existing divided tracts of land as well as any in the future.
- I. Section 76-3-402 is amended to require the landowner to state the purpose of the survey and to reserve, describe, grant or dedicate public or private easements or rights-of-way for legal and physical access and utility easements.
- J. Section 76-3-403 is amended to require the preservation of monuments and for restoration of the same after destruction.
- K. Section 76-3-404 is amended to include certificates of survey, subdivision plats and instruments of transfer which must bear a disclaimer statement releasing the governing body from liability or responsibility for maintenance and which addresses year-round access and use by public services. This section is also amended to provide for a record of survey as a means for filing data regarding surveys of non-divisions of land.
- L. Sections 76-3-501 and 76-3-504 are amended to:
1. remove remove subjective language from the section.
  2. include the concept of protection of rights of property owners.
  3. include expedited review for minor and special subdivisions;
  4. provide for public notice of public hearings;
  5. provide for the establishment of four types of public roads; and
  6. establish the distinction between public and private roads pursuant to the chapter.
  7. provide for the establishment of financial or positive incentives for developments that accommodate public values.
- M. Section 76-3-507 is amended to provide for various types of compliance security.
- N. Section 76-3-603 is amended to delete subjective discussions of subdivision needs.
- O. Section 76-3-604 is amended to define the review process and time constraints for preliminary plats.
- P. Section 22 is a new section which completely re-defines the park requirements and specifies that no park dedication is required for minor subdivisions.
- Q. Section 76-3-608 is amended to:
1. delete the subjective "public interest criteria".
  2. establish the primary criteria for subdivision review.
  3. establish a mitigation process for dealing with hazard situations.
- R. Section 76-3-609 is amended to re-define the review process for minor subdivisions and to establish a Single Division Minor Subdivision during a 2-year period.

# Fiscus Realty

1111 MAIN STREET  
P.O. BOX 50328  
BILLINGS, MONTANA 59105  
(406) 252-6400

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2/15/93

BILL NO. SB 343

## Subdivisions Developed Under Current Law.

1/2 ACRE Subdivisions

1 ACRE Subdivisions

3-5 ACRE Subdivisions

10 ACRE Subdivisions

20 ACRE Subdivisions

Planned Unit Development.

PROOF CURRENT LAW IS WORKING

Clayton Fiscus, Broker/owner, FISCUS REALTY  
19 years, Home builder, REALTY. Subdivided land  
under, occasional sale, GIFT TO FAMILY MEMBER  
+ Sold & Developed 10 & 20 ACRE TRACTS  
with...



Senate Natural  
Resources Committee  
February 15, 1993  
Senate Bill No. 343  
Exhibit # 2

A portion of Exhibit #2 included 9 photographs presented in support of testimony given by Mr. Clayton Fiscus, Fiscus Realty, Billings MT. The photographs are stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

People Are Concern About loosing Property

Rights.

(A) Divisions of Land are created

When you are in session out of Feat.

(B) OF TOTAL GOVERNMENT CONTROL OF OUR LIVES.

Just like last session when Hunters  
could no longer hunt Buffalo. Now only  
Government Employees can hunt.

There may be a few abuses but these

Pictures show the present law is working.  
You don't hobble a whole herd of horses because  
one kicks you.

① Property Rights should not be a partisan  
issue.

EXHIBIT #2

DATE 2-15-93

SB-343

Senator Bengtson has said Montana people are  
rural by nature and we should  
not legislate that away from them

SUPPORT SB 343. IT address abuses  
streamlines review & protects private  
property rights.

A minor subdivision will usually require the following process under the current law:

From a pre-application meeting with the planning authorities;

To the preliminary plat submittal and subsequent review by the planning authorities;

To the scheduling and preliminary reviewing and conditional approval by the county governing body;

To the review and approval by the local county health department;

To the review and approval by the State Department of Health,

To the preliminary review of the final plat by the clerk and recorder's office;

To the review and approval of the county surveyor's office;

To the stage of meeting the conditions of approval from the governing body;

To the submittal of the final plat to the planning authorities;

To the review and approval of the final plat by those planning authorities;

To the review and approval of the final plat by the county treasurer's office;

To the review and approval of the final plat by the county attorney's office;

To the ultimate final review and approval of final plat by the county governing body;

To the review and approval and recording of the "FINAL" plat with the clerk and recorder's office.

This is our existing "expeditious review" process.

The landowners of Montana need a more refined process to dispose of a single parcel of land without going through this lengthy process as though they are creating several tracts of land which might have a major impact on the neighborhood. The local governments also need a process which will allow them to approve a plat with minimal, pre-set requirements for a single division of land.

NATURAL RESOURCES  
EXHIBIT NO. 3  
DATE 2/15/93  
02 212

TESTIMONY OF JIM RICHARD ON SB 343  
representing the  
MONTANA WILDLIFE FEDERATION AND MONTANA ASSOCIATION OF PLANNERS

I AM JIM RICHARD. TODAY I AM REPRESENTING THE MONTANA WILDLIFE FEDERATION AND THE MONTANA ASSOCIATION OF PLANNERS.

BOTH ORGANIZATIONS HAVE BEEN INTERESTED IN SUBDIVISION REFORM FOR MANY YEARS.

THE MONTANA WILDLIFE FEDERATION, THE LARGEST CONSERVATION ORGANIZATION IN MONTANA, IS CONCERNED ABOUT THE EFFECTS OF UNPLANNED, UNREGULATED LAND DEVELOPMENT ON WATER QUALITY, FISH AND WILDLIFE HABITAT, AND ON HUNTING AND FISHING ACCESS. THE FEDERATION WANTS AN EFFECTIVE REVIEW AND APPROVAL PROCESS THAT CONSIDERS WILDLIFE AND WILDLIFE HABITAT AND CONSIDERS MEASURES TO MINIMIZE OR MITIGATE IMPACTS ON FISH AND WILDLIFE. IN ADDITION, FEDERATION MEMBERS ARE TAXPAYERS AND WANT LOCAL GOVERNMENT EMPOWERED TO ENSURE THAT LAND DEVELOPMENT RESULTS IN FUNCTIONAL, LIVABLE NEIGHBORHOODS AT A MINIMAL COST TO TAXPAYERS.

THE MONTANA ASSOCIATION OF PLANNERS COMPRISES THE PEOPLE WHO PROVIDE THE PROFESSIONAL AND TECHNICAL ADVICE AND COUNSEL TO LOCAL OFFICIALS REGARDING LAND USE AND COMMUNITY DEVELOPMENT. MANY MEMBERS WORK FOR LOCAL GOVERNMENT AND ARE GIVEN THE RESPONSIBILITY FOR HANDLING THE ADMINISTRATIVE FUNCTIONS UNDER THE MSPA. THE MONTANA ASSOCIATION OF PLANNERS WANTS A SUBDIVISION REVIEW PROCESS THAT FUNCTIONS EFFECTIVELY, ALLOWS ELECTED OFFICIALS TO ENSURE FUNCTIONAL, CONVENIENT COST-EFFECTIVE COMMUNITIES, AND MINIMIZES THE COSTS TO LOCAL TAXPAYERS.

I MIGHT ADD THAT MY OWN EXPERIENCE WITH MONTANA SUBDIVISIONS AND SUBDIVISION LAW GOES BACK 22 YEARS, EVEN TO WORKING WITH THE STATE PLATTING ACT THAT PRECEDED THE MSPA. THROUGH THOSE YEARS, I HAVE DEALT WITH SUBDIVISION REVIEW FROM MANY PERSPECTIVES, INCLUDING WORKING WITH LOCAL GOVERNMENTS TO ADMINISTER REGULATIONS, AND HELPING LAND OWNERS THROUGH THE REVIEW PROCESS.

WE RISE TODAY IN OPPOSITION TO SB 343. A BROAD SPECTRUM OF MONTANANS WANT REFORM OF SUBDIVISION LAW BECAUSE OF PROBLEMS CREATED BY UNPLANNED, UNREVIEWED LAND DEVELOPMENT. EVERYONE SEEKING REFORM SEES THE 20-ACRE DEFINITION AND THE OCCASIONAL SALE EXEMPTION AS THE TWO BIGGEST PROBLEMS WITH THE PRESENT LAW. YET, SB 343 DOES NOT EVEN ATTEMPT TO ADDRESS THESE PROBLEMS.

NATURAL RESOURCES  
EXHIBIT NO. 4  
DATE 2/15/93  
17212

ONE FEATURE OF SB 343 ALONE MAKES THE BILL WORSE THAN THE CURRENT LAW BECAUSE THE BILL WOULD MAKE LOCAL GOVERNMENT LESS EFFECTIVE IN ACHIEVING SOUND, COST-EFFECTIVE LAND DEVELOPMENT.

On page 8, lines 24 and 25, and on page 9, lines 22-24, SB 343 deletes the current umbrella language "Unless the method of disposition is adopted for the purpose of evading the chapter...". This language has been essential to allow local government the authority to determine whether an exemption was properly used. Without this or similar language, the exemptions could be used to evade the purpose of the law, and local government would have no authority to prevent abuse.

Page 8, lines 10-21 specifically allows lawsuits against the governing body to recover monetary damages if the subdivider believes a local regulation exceeds the authority of the statute. Placing this authority in the subdivision statute is an open invitation for developers to file a proliferation of lawsuits each time a local governing body attempts to protect its taxpayers or to ensure orderly development.

Page 35, lines 5-12, the bill deletes the public interest criteria, which have been a vehicle by which local governments have been able to protect wildlife, habitat and water quality. Removal of these criteria would be a great loss for fish and wildlife, because it is at the land division stage that the land use patterns are established that affect the wildlife resource.

SB 343 eliminates local government's authority to review private roads within a subdivision. Although internal roads often are not dedicated to the public, it is vital that the governing body be able to require proper location and construction of roads that will be used by the public to ensure safety, proper drainage, and location that minimizes adverse impacts on land, water and wildlife habitat.

The bill eliminates the requirement that local government prepare a community impact report that describes the proposed subdivision's impact on taxes, and services. These community impact reports have been very important to providing both local officials and the public about the effects a development would have financially on the community and local government.

EXHIBIT # 4  
DATE 2-15-93  
# SB-343

The bill requires local government to establish standards to mitigate adverse impacts. Currently, minimizing impacts and offering mitigation measures is a responsibility of the developer. Requiring local governments to help take the lead in mitigating impacts will be a tremendous burden on small cities and counties that already have limited funding and resources.

SB 343 greatly reduces the parkland requirement, and it bases all park land contribution on fair market value, rather than on some measurement of acreage. This approach would require an appraisal in every case to determine how much park land would be dedicated.

League of Women Voters  
of Montana



2410 + 5  
Copies for  
minutes

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE ~~3/2~~ 2/15/93

BILL NO. SB 343

M E M O R A N D U M

TO: SENATE NATURAL RESOURCES COMMITTEE  
FR: CHRISTINE MANGIANTINI, League Lobbyist  
*mm* RE: Senate Bill 343, by Swift  
DATE: February 15, 1993

Today you heard testimony on Senate Bill 343, by Bernie Swift, amending the Montana Subdivision and Platting Act.

On behalf of the 200 members of the League of Women Voters we urge a DO NOT PASS on this measure. Subdivision reform legislation has been introduced nearly every session for 20 years. Three issues are at the forefront of change---these are agreed upon by nearly every organization that testifies on subdivision reform measures:

1. Amend the definition of subdivision by increasing the acreage threshold to at least 160 acres.

Senate Bill 343 retains the existing problematic language which includes a parcel of land less than 20 acres.

2. Eliminate the Occasional Sale provision.

Senate Bill 343 amends the Occasional Sale provision by allowing it within a 24 month period.

3. Strengthen Family Conveyance language to ensure it is utilized exclusively by the agricultural community.

Senate Bill 343 will cause more problems than it will solve. Let's concentrate on the three major issues and pass a bill that eliminates the main obstacles to fair and consistent subdivision review.

Your committee passed out Senate Bill 261 by Steve Doherty. We support this legislation and urge you to table Senate Bill 343.

Thank you.

Amendments to Senate Bill No. 346  
First Reading Copy

Requested by Senator Swysgood  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 15, 1993

1. Page 3, lines 5 through 7.  
Strike: "This" on line 5 through "." on line 7

COMMITTEE ON NATURAL RESOURCES  
EXHIBIT NO. 1 E  
DATE 2/15/93  
BILL NO. SB 346



Amendments to Senate Bill No. 346  
First Reading Copy

Requested by Senator Swysgood  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 15, 1993

1. Page 12, line 11.

Following: "use"

Insert: ":

(i) "

2. Page 12, line 13.

Following: "(6)"

Insert: "; and

(ii) without a streamflow measuring plan as described in 85-2-436. The cost of the streamflow measuring plan and any required measuring device must be borne by the applicant for an instream use"

3. Page 19, line 4.

Following: "use"

Insert: ":

(i) "

4. Page 19, line 6.

Following: "(6)"

Insert: "; and

(ii) without a streamflow measuring plan as described in 85-2-436. The cost of the streamflow measuring plan and any required measuring device must be borne by the applicant for an instream use"

SENATE NATURAL RESOURCES

EXHIBIT NO. 2E

DATE 2/15/93

BILL NO. SB 346

Amendments to Senate Bill No. 346  
First Reading Copy

Requested by Senator Swysgood  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 15, 1993

1. Page 12, line 9.

Following: ".\_"

Insert: "The point of measurement must be the historical point of  
diversion."

2. Page 19, line 2.

Following: ".\_"

Insert: "The point of measurement must be the historical point of  
diversion."

SENATE NATURAL RESOURCES  
EXHIBIT NO. 3 E  
DATE 2/15/93  
BILL NO. SB 346

Amendments to Senate Bill No. 346  
First Reading Copy

Requested by Senator Swysgood  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 15, 1993

1. Page 12.

Following: line 13

Insert: "(c) The cost of an objection to an appropriation for  
instream use, if upheld under 85-2-309, must be borne by the  
instream use applicant. "

2. Page 19.

Following: 6

Insert: "(c) The cost of an objection to an appropriation for  
instream use, if upheld under 85-2-309, must be borne by the  
instream use applicant. "

SENATE NATURAL RESOURCES  
EXHIBIT NO. 4E  
DATE 2/15/93  
BILL NO. SB 346

Amendments to Senate Bill No. 346  
First Reading Copy

Requested by Senator Swysgood  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 15, 1993

1. Page 3, line 5.

Following: "rights"

Insert: "by the department, subject to the provisions of 85-2-114"

2. Page 12.

Following: line 13

Insert: "(c) Enforcement by the department of instream uses is subject to the provisions of 85-2-114."

3. Page 19.

Following: line 6

Insert: "(c) Enforcement by the department of instream uses is subject to the provisions of 85-2-114."

SENATE NATURAL RESOURCES  
EXHIBIT NO. SE  
DATE 2/15/93  
BILL NO. SB 346

Amendments to Senate Bill No. 320  
First Reading Copy

Requested by Senator McClarnan  
For the Committee on Natural Resources

Prepared by Paul Sihler  
February 13, 1993

1. Title, lines 6 and 7.

Strike: "REQUIRING" on line 6 through "DECISIONS;" on line 7

2. Page 1.

Following: line 11

Insert:

"STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] requires the department of state lands to adopt administrative rules. In adopting rules, the department shall establish criteria to distinguish between major and minor amendments and criteria for revisions to operating permits."

3. Page 1, line 20 through page 2, line 1.

Strike: section 2 in its entirety

Renumber: subsequent sections

4. Page 12, lines 16 and 19.

Strike: "4"

Insert: "3"

SENATE NATURAL RESOURCES

EXHIBIT NO. 6E

DATE 2/15/93

BILL NO. SB 320

DATE ~~2/15~~ 2/15

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 294, SB 343

Name	Representing	Bill No.	Check One		Att.
			Support	Oppose	
Janelle Fallow	Mt Petroleum	294	X		
Clinton FISCUS	FISCUS Realty	343	X		
DANIEL P. BRIEN	HERSMAN LAND SURVEY	343	X		
Stephen J. Ries	Myself	343	X		
THOMAS L. RUSSETT	TRIANGLE ENGINEERING	343	X		
Monte Mason	DEPT OF STATE LANDS	294	X		
RICK GUSTINE	MARLS	343	X		
DAN McEIFFE	MARLS	343	V		
TOM SANDS	MARLS	343	X		
Dennis Applebury	Myself	343	X		
James LaFolie	myself	343	X		
John Howell	Self	343	X		
Jerry Kimmey	SELF	343	X		
Doug Olson	Paradise Valley Coalition	343			X
Steve Maaderville	Mt Assoc Realtors	343	X		
Kathy Macfieled	City of Helena	343		X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 8/15

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 294, SB 343

Name	Representing	Bill No.	Check One	
			Support	Oppose
Stan Bradshaw	MT. T.U.	343		✓
Tom Hoggard	Mt. Assoc. Nat. Hrs	343	✓	
Jim Replew	MWF	343		✓
Jul Smith	SEIF	343		
J. Brunner	MWPA - water conveyance	343	✓	
Brian McNitt	MEIC	343		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY