

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 19, 1993, at 1:03 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (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: Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)

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 413, SJR 24
Executive Action: SB 413, SJR 24

HEARING ON SB 413

Opening Statement by Sponsor:

Senator Steve Doherty said SB 413 would limit the period for which a metal mine permit is valid. He said the Department of State Lands (DSL) has approved seven or eight minor permit modifications for Stillwater Mining Company, which have substantially changed the size of the project. Sen. Doherty said DSL has recently decided to conduct an Environmental Impact Statement (EIS), because a lawsuit has been threatened.

Proponents' Testimony:

Dennis Olson, Northern Plains Resource Council (NPRC), said the Board of Health and Environmental Sciences granted the East Boulder mine and Noranda mine exemptions from the nondegradations of the Water Quality Act. He added the Department and the Board of Health granted exemptions for the life of the mine for both mines. As a result, the mines would not be subject to the Water Quality Act's 5 year renewal process. Mr. Olson said the conditions in the Water Quality Act and the Coal Act are intended to give the agencies, the public, and the companies a chance to look at new technologies, investigate contaminants and upgrade permits.

Opponents' Testimony:

Gary Langley, executive director, Montana Mining Association (MMA) said SB 413 would be creating "one more layer of regulation and one more layer of instability" for the mining industry. He said the permits are reviewed every five years. Mr. Langley added if a mining company is forced to renew its permit every five years, it will lower the life expectancy of the mine and discourage exploration projects. He stated because of the instability created as a result of politics governing the mining industry, money spent on exploration has decreased from 35 million dollars per year to about 5 million dollars per year. Mr. Langley concluded SB 413 is an attempt to discourage mining and discourage investment in Montana.

John Fitzpatrick, Pegasus Gold Corporation, said all the permits granted to the Stillwater Mining Company underwent some type of environmental review. He said mining companies will be able to amend their permits even if SB 413 passes. Referring to Mr. Olson's testimony, Mr. Fitzpatrick stated SB 413 would not affect the nondegradation permits that East Boulder and Noranda have received, as they were issued under the Water Quality Act. Mr. Fitzpatrick stated DSL already has the authority to review mining operations, which they do regularly when people propose permit modifications. He added DSL also has the authority to review a mine which it believes may not be complying with the law. Mr. Fitzpatrick said DSL is required to update the performance bond every 5 years. Mr. Fitzpatrick said references to the Coal Act are irrelevant because coal mining differs greatly from hard rock mining. He said the 5 year permit renewal condition in SB 413 would hinder a mining company's attempts to finance its projects, and discussed how coal markets differ from metal markets. He noted payback to investors from most coal mines occurs under 5 years, while payback from metal mines starts at 5 years and extends longer. Mr. Fitzpatrick stated the real effect of SB 413 will be to deny mining companies access to capital markets. He said due diligence has not been a problem with hard rock mining companies, as they are usually anxious to get a permit and begin production.

Ted Doney, ASARCO, said ASARCO owns a mine in Troy which has just announced closure because of metal prices on the world market. Mr. Doney said the closure will lay off 300 employees and result in the loss of 13 million dollars in salaries and benefits. He said ASARCO hopes the Rock Creek mine will be permitted in time to absorb some of the unemployment. Mr. Doney said SB 413 will make it difficult for ASARCO to finance the Rock Creek operation. He stressed the uncertainty of permits is a significant factor to banks, underwriters and lending institutions.

Jerome Anderson, representing Holnam Inc., said the Trident cement plant has a quarry which is permitted under the statute at issue in SB 413. He said the company is required to file an annual report with DSL. Mr. Anderson said the quarry is currently undergoing an extensive review because new statutes governing mining operations have been adopted in the last 10 to 15 years.

Tom Daubert, representing Ash Grove cement, said Ash Grove must follow a procedure similar to the one Mr. Anderson described. He said Ash Grove is concerned that SB 413 would increase the plant's costs, and it is already struggling on a number of fronts. Mr. Daubert said Ash Grove consumes 300 million cubic feet of natural gas per year and gas prices are expected to triple in the next year. He added Ash Grove is also concerned about President Clinton's BTU tax proposal.

Russ Ritter, Montana Resources, said his company is concerned about the cost of doing business in the Montana mining industry and said SB 413 would hamper expansion in the Butte area.

David Rovig, president, Crown Butte Mines, read from written testimony (Exhibit #1).

Informational Testimony:

John North, Department of State Lands, said DSL is neither a proponent nor an opponent of SB 413, but added there are two potential defects in the bill. He submitted copies of proposed amendments (Exhibit #2).

Questions From Committee Members and Responses:

Sen. Grosfield asked Sen. Doherty if there were any other types of permits, besides coal, that had to be renewed every five years. Sen. Doherty said the Coal Act and the Water Quality Act both contained five year renewal provisions.

Sen. Weeding asked Dennis Olson to comment. Mr. Olson said there is a surface discharge permit and a groundwater discharge permit under the Water Quality Act. Mr. Olson said a consequence of the Water Quality Bureau's lack of resources is that the bureau

exempts a long list of activities from having to get groundwater discharge permits. He said DSL has the authority to write conditions into the metal mine permit requiring the company to meet groundwater quality standards. Mr. Olson said SB 413 would affect nondegradation permits.

Sen. Grosfield asked Mr. Olson to respond to industry's claims that SB 413 would shut down mining in Montana. Mr. Olson said resubmitting and updating applications is not a complicated process. Referring to industry's claims that SB 413 will disrupt financing, Sen. Doherty said a potential lender would want to know if the company was responsible and capable of meeting permit requirements. Sen. Doherty said SB 413 does not overburden mining companies.

Mr. Fitzpatrick said obtaining permit renewals is a problem, but obtaining financing is the more substantive issue from his perspective. He said bankers do not care how responsible a company is, they are more concerned that the loan is repayed. Mr. Fitzpatrick said a five year renewal condition inhibits the ability of a company to guarantee payback on a loan.

Sen. Keating asked Sen. Doherty why SB 413 is necessary. Sen. Doherty said he would address that in his closing.

Referring to the amendments John North distributed (Exhibit #2), Sen. Weeding said the bill does not reference 82-4-342. Mr. North said the citation should be 82-4-341.

Sen. Swift and Sen. Doherty discussed the average life of mining operations. Sen. Swift asked Sen. Doherty if he was trying to discourage metal mining. Sen. Doherty said he is not attempting to obstruct the metal mining industry in Montana. He added responsible corporations should be invited into the state.

Sen. Kennedy asked if there was a better way to regulate the irresponsible companies without having to burden the responsible companies. Sen. Doherty said the permit renewal process is straightforward, and a responsible operator should have little trouble obtaining renewal.

Sen. Bianchi asked how long it would take for an operator to get a permit renewal. Mr. Langley said he believes a company would have to start from scratch in the process.

Sen. McClernan asked Mr. Rovig to comment on the permitting process. Mr. Rovig said Crown Butte Mines has applied for a permit to operate gold property in Park County and he is in the midst of financing. He discussed the complications of permitting and financing, noting that language in SB 413 would disrupt the process.

Sen. Bianchi asked Mr. North how long permit renewal would take. Mr. North said language in SB 413 is similar to the Coal Act,

under which uncontested permit renewal takes about 3 months, while contested cases can take up to 6 months.

Closing by Sponsor:

Senator Doherty said there is a flaw in the hardrock act regarding the permitting process. He said operations and permits should be reviewed on a regular basis. Sen. Doherty said operators should not be able to "peddle [their] permits to the highest buyer."

HEARING ON SJR 24

Opening Statement by Sponsor:

Senator Don Bianchi said the 1991 legislature created streamside management zones through a best management practice statute for state forest lands. He said the statute asks DSL to establish best management practices for wildlife management. Sen. Bianchi said SJR 24 urges DSL to develop wildlife management guidelines, and generate informational brochures to help loggers and landowners protect wildlife resources.

Proponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, said other states voluntarily provide information on wildlife, including raptors, elk wallows, and snag retention.

Stan Bradshaw, Montana Trout Unlimited, discussed last session's streamside management zone law and urged the Committee to support SJR 24.

Al Elser, deputy director, Montana Fish, Wildlife and Parks (FWP), read from written testimony (Exhibit #3).

Opponents' Testimony:

Don Allen, Montana Wood Products Association, said HB 731, passed last session, was intended to develop voluntary guidelines in the streamside zone management area. He said water quality and wildlife management are the two major impediments to timber harvesting on state lands. Mr. Allen stated he is concerned about adding another layer of regulation that could cause delays in the timber sale process.

Questions From Committee Members and Responses:

Sen. Swysgood asked Sen. Bianchi if last session's streamside management zone legislation included private land. Sen. Bianchi

said the bill did include private land and developed best management practices for streamside logging. Sen. Bianchi said SJR 24 would help private land owners who allow logging to receive wildlife management information.

Sen. Hockett asked Mr. Allen how implementation of SJR 24 could affect logging operations. Mr. Allen said he is concerned that groups who oppose logging could use SJR 24 to interrupt operations.

Sen. McClernan asked Bud Clinch, DSL Commissioner, to comment on the resolution. Mr. Clinch said DSL will follow through with developing voluntary wildlife guidelines, whether or not SJR 24 passes.

Closing by Sponsor:

Senator Bianchi stated DSL agrees with the provisions in SJR 24. He said the department has expressed interest in providing information which would allow landowners to maintain wildlife through a logging operation.

EXECUTIVE ACTION ON SJR 24

Motion/Vote:

Sen. McClernan MOVED SJR 24 DO PASS. The MOTION CARRIED with Sen. Swift, Sen. Grosfield, Sen. Tveit and Sen. Swysgood voting NO.

EXECUTIVE ACTION ON SB 413

Motion/Vote:

Sen. Weldon MOVED TO TABLE SB 413. The MOTION CARRIED with Sen. Doherty voting NO.

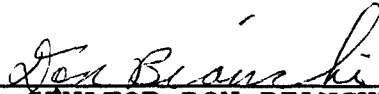
SENATE NATURAL RESOURCES COMMITTEE

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ADJOURNMENT

Adjournment: 2:45 p.m.



SENATOR DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2/19/93

| NAME | PRESENT | ABSENT | EXCUSED |
|----------------|---------|--------|---------|
| Sen. Bianchi | X | | |
| Sen. Hockett | | ✓ | |
| Sen. Bartlett | | ✓ | |
| Sen. Doherty | X | | |
| Sen. Grosfield | X | | |
| Sen. Keating | X | | |
| Sen. Kennedy | X | | |
| Sen. Swift | X | | |
| Sen. Sunsgood | X | | |
| Sen. McCernan | X | | |
| Sen. Treitz | X | | |
| Sen. Weeding | X | | |
| Sen. Weldon | X | | |
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 19, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Joint Resolution No. 24 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 24 do pass.

Signed: Don Bianchi
Senator Don Bianchi, Chair

AW Amd. Coord.
Sec. of Senate

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I am David Rovig, President of Crown Butte Mines and a current resident of Billings, MT. I am a 4th generation Montanan, a registered engineer and was educated in Kalispell and the Montana School of Mines.

I am here to urge your rejection of SB413 which is clearly designed to prevent development of Montana mineral resources. Permitting is currently the least predictable part of mine development and the provisions of this bill further confuse that process.

The language of SB413 is more of the classic moving target obstruction so frequently aimed at Montana industry.

Financing requirements for mine development are huge, usually tens or hundreds of millions of dollars, and such an investment generally demands at least a 10 year amortization period. SB413 would restrict the certainty of a permit to 5 years, thus making financing extremely difficult and probably impossible. The issue is further complicated by the provisions of Sect 1 b (iii) which would make permit renewal subject to entirely new laws and rules and thus amounts to a totally new permit process rather than a renewal.

This bill is unnecessary and brings nothing to the table except a message to potential investors in Montana's economy that their capital expenditures and jobs are not welcome.

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2/19/93

BILL NO. SB 431

AMENDMENTS TO SB 413
(Introduced Bill)

1. Page 1, lines 16 and 17.
Following "~~of~~" on line 16,
Strike: "reasonably anticipated to be affected by"
Insert: "in anticipation of"

2. Page 2, lines 10 and 11.
Following: "of" on line 11
Strike: "82-4-34~~1~~,"
Following "82-4-351"
Strike: ", "
Insert: "and"
Following: "82-4-352"
Strike ", and 85-4-362"

- End -

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2/19/93
BILL NO. SB 413

SJR 24
February 19, 1993

Testimony presented by Al Elser, Dept. of Fish, Wildlife & Parks
before the Senate Natural Resources Committee

The Montana Department of Fish, Wildlife and Parks strongly supports SJR 24 which urges the Department of State Lands to develop voluntary wildlife management guidelines for forest practices.

The department has jointly funded a wildlife biologist position in the Forestry Division of DSL in an attempt to develop guidelines specifically for forest practices as they impact wildlife. The department has also cooperated with the DSL and supports the Non-Industrial Private Forest Landowner Program. That program is focused on helping owners of forest lands develop stewardship plans which include wildlife habitat guidelines.

The concept of voluntary wildlife habitat management guidelines for all forestry practices in Montana is supported by Fish, Wildlife & Parks, and is a step toward ensuring a progressive land management program in the state.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2/19/93
BILL NO. SJR 24

DATE

2/19

SENATE COMMITTEE ON

Natural Resources

BILLS BEING HEARD TODAY:

SB 413, SJR 24

Name

Representing

Bill
No.Check One
Support Oppose

| | | | | |
|-------------------|---------------------|--------|--------------|---|
| Janet Ellis | MT Audubon | SJ 24 | ✓ | |
| AL ELSEZ | FWP | SJ 24 | ✓ | |
| Dennis Olson | NPRC | SB 413 | ✓ | |
| JEROME ANDERSON | HOLNAM INC. | SB 413 | ✓ | ✓ |
| Joseph Scheuering | self | SB 413 | | ✓ |
| John Fitzpatrick | Pegasus Gold | SB 413 | | ✓ |
| D.B. ROVILLO | Crown Butte Mines | SB 413 | | ✓ |
| GARY LANGLEY | MONTANA MINING ASSN | SB 413 | | ✓ |
| Russ Ritter | MT Resources | SB 413 | | ✓ |
| Ted J. Doney | ASARCO | SB 413 | | ✓ |
| John North | DSL | SB 413 | | |
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY