

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON SB 401

Call to Order: By Chair Doherty, on March 9, 1993, at 5:00 p.m.

ROLL CALL

Members Present:

Sen. Steve Doherty, Chair (D)
Sen. Bernie Swift (R)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)

Members Excused: None.

Members Absent: None.

Staff Present: Michael Kakuk, Environmental Quality Council
Leanne Kurtz, Committee Secretary

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

Committee Business Summary:

Hearing: None.
Executive Action: None.

SB 401 PROPONENTS

Bob Robinson, director, Department of Health and Environmental Sciences (DHES), said the Racicot Administration does not want to be part of anything that would weaken Montana's environment. He said SB 401 maintains the original intent of the nondegradation policy and attempts to clarify internal conflicts within 75-5-303 MCA. Referring to page 10, Mr. Robinson said specific qualifiers are placed in the bill which state that degradation is necessary because no economically or technologically feasible alternatives exist. Mr. Robinson stated permits are periodically reviewed in light of developing technology and developing standards. He said SB 401 is a way to clean up the current law. Mr. Robinson said DHES proposes amendments to clarify a couple points in the bill (Exhibit #1). He discussed the definition of high quality waters, adding that without parameters, all waters in Montana could be presumed high quality unless classified otherwise. Mr. Robinson discussed mitigation, and noted that if everyone could look more progressively at the projects and how permits are issued, water quality would be improved. He mentioned conditions under which DHES would revoke a permit and discussed the appeal

process.

Dan Fraser, chief, DHES Water Quality Bureau, said some activities may justify lowering the water quality, if certain conditions are met and the activities are in the best interests of Montana. Mr. Fraser said DHES believes the nondegradation policy (75-5-303 MCA) should apply to new and existing sources, adding that is the only way the laws would make sense. He said DHES should have the authority to grant mixing zones, adding a mixing zone is necessary if the discharge is not identical to the receiving water. Mr. Fraser said if mixing zones are not allowed, existing sources would be out of compliance. He said if mixing zones are not allowed for new or increased sources, there will be no new or increased sources. Mr. Fraser stated the Legislature should settle the nondegradation issue this session because activities are ongoing that are resulting in water degradation, including the subsurface disposal systems approved by DHES under the Sanitation and Subdivisions Act. He noted there has not been much comprehensive implementation of the nondegradation policy. Mr. Robinson stated eligibility of new and enlarged sources for nondegradation is currently being litigated, as is the Department's authority to grant mixing zones.

Leo Barry, representing NEWTECH, stated SB 401 is needed because current law contains internal inconsistencies and invites litigation. He added nothing in current law limits the requirements to hard rock mining, although that is where the focus has been. Mr. Barry said SB 401 is a good bill because it contains clear application and appeals processes. He said areas that should be amended are: the definition of high quality water; who can appeal; and the 5 year reauthorization provision referred to on page 11.

John Bloomquist, Montana Stockgrowers Association, said nondegradation laws affect agriculture, particularly in the non-point source area. He added that present law is unclear. Mr. Bloomquist said federal nondegradation provisions provide guidance as to the definition of high quality water.

Ted Doney, representing ASARCO and the Montana Dairymen's Association, said the hard rock mining industry sees a need for nondegradation legislation and SB 401 is a step in the right direction. He stated his clients are willing to work with all parties concerned to work out necessary amendments.

SB 401 OPPONENTS

Grant Parker, an attorney representing Northern Plains Resource Council (NPRC), said SB 401 may be unconstitutional, referring to Article 9, Section 1 of the Montana Constitution. He added SB 401 is a vehicle for more litigation by allowing degradation. Mr. Parker agreed that the issue must be resolved, but SB 401 is

not the appropriate solution. He noted an interim study would give all parties involved the chance to settle the contentious aspects.

Mona Jamison, representing Michaelson Land Company, said she does not agree with the definition of degradation on page 3, lines 20 and 21 because of the term "nonsignificant". She said the Board of Health determines what is nonsignificant, adding that entity is too subject to political pressures to be objective in its determination. Ms. Jamison said she would rather the Legislature make that determination. She discussed the definition of "interested person" in SB 401 and commented on public involvement in DHES's decision-making process. Ms. Jamison stated she objects to the section on mixing zones, stating more study is needed. She said Department of State Lands (DSL) rules stipulate that mixing zones may be as large as a permitted boundary, and added a permittee could expand the mixing zone boundary by purchasing more land or changing the boundary of the operation. Ms. Jamison said the definition of "nonsignificant changes" is a huge loophole which will allow substantial degradation. She said citizen boards should not be making decisions on such major areas of public policy. Ms. Jamison said the primary issue is whether degradation should be allowed "if an applicant has the technology available, and the water is high quality water." She said DHES should be the entity making the initial decision whether or not to allow degradation because it is less vulnerable to politics than the Board.

Stan Bradshaw, Montana Trout Unlimited, said he concurs with Ms. Jamison's testimony and said he supports the appeals provision and the reauthorization language. He said the mitigation language Mr. Robinson referred to is not explicit enough on its own, adding it sounds like "trading pollution credits".

Jim Jensen, Montana Environmental Information Center (MEIC), said the fundamental premise of the federal Clean Water Act and the Montana Water Quality Act is that water quality will improve over time. Mr. Jensen said SB 401 allows for pollution rather than helping reduce it. He said new technology will be developed only after society changes its perception of water as a medium for waste disposal. Mr. Jensen read Article 9, Section 1 of the Montana Constitution.

Dennis Olson, NPRC, discussed a court case in which NPRC is involved on behalf of members living near East Boulder Mine. He said there has been "wholesale, unreviewed pollution and violation of standards in ground water," adding that mining companies often negotiate with the Department on how far the contamination can go before it is diluted enough to meet water quality standards. Mr. Olson stated some of the major issues (non-point sources, new and increased sources and mixing zones) should be examined in an EQC interim study.

COMMITTEE DISCUSSION

Senator Doherty said the areas of agreement as he understands them are:

- procedural issues
- the need for a clear definition of "nondegradation policy"
- the need to clarify the term "nonsignificant change"

Senator Doherty said policy issues need to be identified regarding non-point pollution sources. He stressed that the Committee would have to make clear whether or not it intends to affect the ongoing litigation by its action on SB 401.

Senator Weeding said he believes an EQC interim study on the nondegradation issue may be appropriate.

Senator Grosfield commented that someone should look into whether or not the Committee should treat surface water differently from ground water.

The opposing parties agreed to meet with each other in a working group to discuss potential compromises and report their results to the Committee at a later date.

ADJOURNMENT

Adjournment: 6:25 p.m.



SENATOR STEVE DOHERTY, Chair



LEANNE KURTZ, Secretary

SD/lk

ROLL CALL

SENATE COMMITTEE SB 401 SUBCOMMITTEE DATE 3/9/93

NAME	PRESENT	ABSENT	EXCUSED
Doherty	✓		
Swift	✓		
Treit	✓		
Weeding	✓		