

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By DICK KNOX, CHAIRMAN, on March 10, 1993, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

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

Committee Business Summary:

Hearing: SR 24, SB 284, SB 282, SB 231
Executive Action: SB 284, SB 214, SB 319, SB 296, SB 282

HEARING ON SJR 24

Opening Statement by Sponsor:

SEN. DON BIANCHI, SD 39, Belgrade, opened by stating that SJR 24, urges the Department of State Lands (DSL) to develop voluntary wildlife habitat management guidelines.

Proponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, spoke in support of the Resolution, emphasizing the guidelines contained in the Resolution are voluntary, that this legislation is a small but important step in helping wildlife, and stressed the importance of the services provided in the legislation. EXHIBIT 1

Stan Bradshaw, Montana Trout Unlimited, testified on the evolution of this legislation and the cooperation between state and private entities working on habitat and wildlife management.

Al Elser, Department of Fish, Wildlife & Parks, submitted testimony strongly supporting the Resolution, and added this was a positive step toward ensuring progressive land management stewardship in the state. EXHIBIT 2

J. V. Bennett, Montana Wildlife Federation, presented testimony in support of SJR 24 as a vehicle to protect the well being of wildlife species which rely on riparian zones for survival. EXHIBIT 3

Opponents' Testimony:

Don Allen, Montana Wood Products Association, supported the cooperative spirit which developed in working on wildlife habitat. However, he expressed the association's concern that the voluntary guidelines will develop into permanent guidelines.

John Bloomquist, Montana Stockgrowers, reiterated his support for Mr. Allen's testimony and stated the Montana Stockgrowers would go on record in support of voluntary - not permanent - guidelines.

Questions From Committee Members and Responses:

The committee questioned Mr. Allen on his association's position on the voluntary guidelines, state management practices and the impact of those practices on the private sector. The committee also questioned DSL's intent for implementation of this Resolution.

Closing by Sponsor:

SEN. BIANCHI closed testimony on SJR 24 by stating that voluntary practices have worked well and this Resolution, directing the DSL to develop voluntary wildlife management practices, would be another positive step toward wildlife and land management in the state.

HEARING ON SB 284

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 27, Arlee, presented this legislation on behalf of the Department of Health and Environmental Sciences (DHES), which will amend sections of the Underground Tank Installer Permit Act. He noted current law allows only an owner or operator to obtain a permit to install, repair, close or modify an underground storage tank. This bill would require any individual installing an underground tank to obtain a permit.

The legislation also clarifies the applicability of the underground storage tank law to include all parts of an underground storage tank by inserting the word "systems" in the regulations.

Proponents' Testimony:

John Geach, Underground Storage Tank Supervisor, DHES, testified this legislation insures proper installation of tanks and is a consumer protection bill.

Opponents' Testimony: None

Closing by Sponsor:

SEN. WELDON closed the hearing by urging the committee to move the adoption of SB 284.

EXECUTIVE ACTION ON SB 284

Motion: REP. BOB GILBERT MOVED SB 284 BE CONCURRED IN.

Discussion: REP. SCOTT ORR expressed his opposition to the bill due to the increase in money and time necessary to regulate and inspect tanks, quoting assumptions on the fiscal note. The committee discussed the current increase in tank inspections and fiscal impacts of the legislation.

Vote: SB 284 BE CONCURRED IN. The motion carried, with REPS. ORR AND FELAND voting against the bill.

EXECUTIVE ACTION ON SB 214

Motion: REP. GILBERT MOVED SENATE BILL 214 BE CONCURRED IN.

Motion/Vote: REP. GILBERT moved the amendments to SB 214. EXHIBITS 4 AND 5 The motion carried on a voice vote.

Motion/Vote: MOTION WAS MADE THAT SB 214 BE CONCURRED IN AS AMENDED. Motion carried.

EXECUTIVE ACTION ON SB 319

Motion: REP. EMILY SWANSON MOVED SB 319 BE CONCURRED IN.

Discussion: An updated fiscal note was distributed and discussed as well as a list of container sites which had been cited for illegal disposal activity. EXHIBIT 6

EXHIBIT 7, from John Geach, Department of Health and Environmental Sciences, Underground Storage Tanks Section, was also distributed for the committee's information.

Vote: SB 319 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON SB 296

Motion: REP. RUSSELL FAGG MOVED SB 296 BE CONCURRED IN.

Discussion: EXHIBIT 8 was distributed for discussion in response to concerns raised by well-drillers. The committee further discussed the intent of the legislation.

Motion/Vote: REP GILBERT moved to modify the statement of intent by striking out the portion discussing the rotating basis when giving notice. REP HARPER added that language on Page 3, Line 8, should be reinstated. Motion carried.

Motion/Vote: MOTION WAS MADE THAT SB 296 BE CONCURRED IN AS AMENDED. The motion carried on a roll call vote, with REPS. FELAND, TOOLE, WAGNER, AND CHAIRMAN KNOX voting against the bill.

HEARING ON SB 282

Opening Statement by Sponsor:

SEN. CHARLES "CHUCK" SWYSGOOD , SD 37, Dillon, stated SB 282 closes the Jefferson River Basin and the Madison River Basin to further consumptive use and appropriations except those delineated in the legislation. He noted these two sub-basins have been over-appropriated for a long time and that this bill addresses the problem.

Proponents' Testimony:

Lorna Frank, Farm Bureau, stated the Bureau fully supported SB 282.

Holly Franz, Montana Power Company, spoke in support of the legislation.

Jo Brunner, Executive Director, Montana Water Resources Association, expressed the association's support for SB 282.

Bob Lane, Fish, Wildlife & Parks, supported the bill and noted the department's earlier concerns with other basin closure legislation. EXHIBIT 9

John Bloomquist, representing various water users in the Jefferson and Madison River Basins, stated his support for the bill. EXHIBIT 10

Gary Fritz, Department of Natural Resources, spoke in support of the legislation and noted the Jefferson and Madison River Basins have had serious water availability problems.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. SWYSGOOD closed testimony on SB 282 and urged committee support.

HEARING ON SB 231

Opening Statement by Sponsor:

SEN. WILLIAM "BILL" YELLOWTAIL, SD 50, Wyola, opened testimony on SB 231, which would clarify the burdens of proof and standards of proof under which applications for beneficial water use permits, change authorizations, and reservations are processed pursuant to Montana water laws, and would clarify the process for extension of time for a water use permittee to complete conditions, and clarify the verification process for issuance.

Proponents' Testimony:

Don MacIntyre, Attorney, Montana Department of Natural Resources, presented technical data in support of the legislation. EXHIBIT 11

Opponents' Testimony: None.

Questions From Committee Members and Responses:

In response to a question from REP. FELAND, Mr Fritz noted this legislation would not affect water discharge permits, and would also not impact driller notification of water use applications.

Closing by Sponsor:

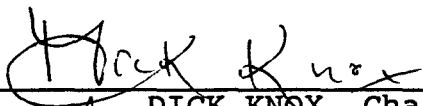
SEN. YELLOWTAIL closed by noting the legislation was a straightforward attempt to streamline the current process and make it more efficient.

EXECUTIVE ACTION ON SB 282

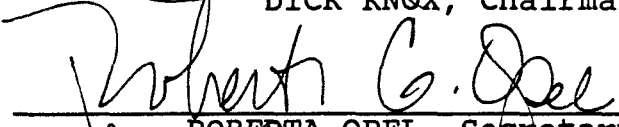
Motion/Vote: REP GILBERT MOVED SB 282 BE CONCURRED IN. Motion carried unanimously.

ADJOURNMENT

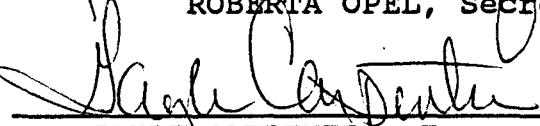
Adjournment: The meeting was adjourned at 8:15 pm.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary



GAYLE CARPENTER, Transcriber

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

3-10-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	<input checked="" type="checkbox"/>		
REP. ROLPH TUNBY, VICE CHAIRMAN	<input checked="" type="checkbox"/>		
REP. JODY BIRD	<input checked="" type="checkbox"/>		
REP. VIVIAN BROOKE	<input checked="" type="checkbox"/>		
REP. RUSS FAGG	<input checked="" type="checkbox"/>		
REP. GARY FELAND	<input checked="" type="checkbox"/>		
REP. MIKE FOSTER	<input checked="" type="checkbox"/>		
REP. BOB GILBERT	<input checked="" type="checkbox"/>		
REP. HAL HARPER	<input checked="" type="checkbox"/>		
REP. SCOTT ORR	<input checked="" type="checkbox"/>		
REP. BOB RANEY	<input checked="" type="checkbox"/>		
REP. DORE SCHWINDEN	<input checked="" type="checkbox"/>		
REP. JAY STOVALL	<input checked="" type="checkbox"/>		
REP. EMILY SWANSON	<input checked="" type="checkbox"/>		
REP. HOWARD TOOLE	<input checked="" type="checkbox"/>		
REP. DOUG WAGNER	<input checked="" type="checkbox"/>		

HR:1993

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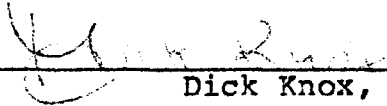
CS-09

HOUSE STANDING COMMITTEE REPORT

March 11, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 214 (third reading copy -- blue) be concurred in as amended .

Signed: 
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Gilbert

1. Title, line 14.
Following: second ";"
Insert: "AND"

2. Title, line 15.
Following: "MCA"
Strike: ";" through "DATE"

3. Page 2, lines 12 and 15.
Following: "through"
Insert: "7 and"

4. Page 2, line 21.
Following: "any"
Insert: "natural"
Following: "structure"
Insert: "that is"

5. Page 2, line 23.
Following: "shelter"
Insert: "and that communicates with a subterranean passage or drainage system"

6. Page 4, line 1.
Following: "unlawful."
Strike: "A"
Insert: "(1) Except as provided in subsection (2), a"
Renumber subsequent subsections

7. Page 4, lines 2 and 3.
Following: "knowingly" on line 2
Strike: ", without" through "owner" on line 3

Committee Vote:
Yes ____, No ____.

550956SC.Hss

8. Page 4, line 4.

Strike: "(1)"

Insert: "(a)"

9. Page 4, line 9.

Strike: "(2)"

Insert: "(b)"

10. Page 4, line 12.

Strike: "(3)"

Insert: "(c)"

11. Page 4, line 13.

Following: "through"

Insert: "7 and"

12. Page 4, line 15.

Strike: "(4)"

Insert: "(d)"

13. Page 4.

Following: line 16

Insert: "(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave."

14. Page 6, line 24.

Strike: "8"

Insert: "7"

15. Page 7.

Following: line 2

Insert:

"NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7 and 9] are intended to be codified as an integral part of Title 23, chapter 2, and the provisions of Title 23, chapter 2, apply to [sections 1 through 7 and 9]."

16. Page 7, lines 3 and 4.

Strike: Section 10 in its entirety

HOUSE STANDING COMMITTEE REPORT

March 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that ~~House~~ Bill 284 (third reading copy -- blue) be concurred
in . *Senate*

Signed: *[Signature]*
Dick Knox, Chair

Carried by: Rep. Gilbert

Committee Vote:
Yes , No .

551018SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Bill 282 (third reading copy -- blue) be concurred
in.

Signed: _____



Dick Knox, Chair

Carried by: Rep. Tash

Committee Vote:
Yes ☐, No ☐.

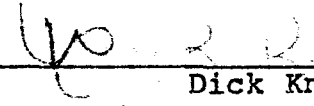
551020SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 296 (third reading copy -- blue) be concurred in as amended .

Signed: 
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Fagg

1. Page 1, lines 17 through 20.

Strike: "and" on line 17 through "inspections" on line 20

2. Page 3, line 9.

Following: "~~times~~"

Insert: ", and the department has access to these wells at reasonable times"

3. Page 3, line 10.

Strike: "(i)"

4. Page 3, lines 14 through 20.

Strike: "(ii)" on line 14 through "standards." on line 20

Committee Vote:

Yes , No .

550948SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Bill 319 (third reading copy -- blue) be concurred
in. *Y. K.*

Signed: *Y. K. Knox*
Dick Knox, Chair

Carried by: Rep. Bachini

Committee Vote:
Yes __, No __.

551008SC.Hss

Montana Audubon Legislative Fund
P.O. Box 595, Helena, MT 59624, 443-3949

Testimony on SJR 24
House Natural Resource Committee
March 10, 1993

Mr. Chairman and Memebers of the Committee,

My name is Janet Ellis and I'm here representing the 2,500 members of the Montana Audubon Legislative Fund.

We support this legislation for the following reasons:

1. Montana should provide the service that other states provide. Other states that we know provide this service include:

California
Oregon
Washington
Idaho
Colorado

2. Last session, through HB 731 (the Streamside Management Zone bill), DSL was directed to develop voluntary wildlife guidelines. This effort failed because we couldn't come up with guidelines that would help wildlife within the 50' SMZ. It made no sense to develop guidelines for the narrow, 50' segment around a lake or stream.

3. What we were developing under HB 731, and what we would anticipate the DSL developing under SJR 24, include guidelines for the following species/habitats:

Bald Eagle and other raptors
Snag retention
Great Blue Heron and Cormorant Rookeries
Other Birds (neotropical migratory birds)
Small mammals and furbearers
Big game species
calving areas
wallows

4. We want to emphasize that these guidelines are:
voluntary

a small but important step to helping wildlife; and
important service for the Department of State Lands to provide

EXHIBIT
DATE 3-10-93
HB SJR 24

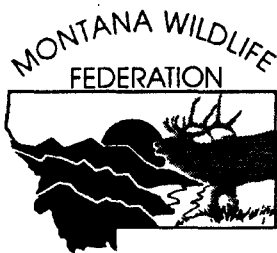
SJR 24
March 10, 1993

Testimony presented by Al Elser, Dept. of Fish, Wildlife & Parks
before the House 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 all forestry practices in Montana.

The department has jointly funded a wildlife biologist position in the Forestry Division of State Lands in an attempt to develop guidelines specifically for forest practices as they impact wildlife. The department has also cooperated with the Department of State Lands 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. This is a positive step toward ensuring progressive land management stewardship in the state.



MONTANA WILDLIFE FEDERATION

P.O. Box 1175, Helena, MT 59624 406-449-7604

1990 Outstanding State Affiliate of the National Wildlife Federation

EXHIBIT 3
DATE 3-10-93
HB SR 24

SJ 24
March 10, 1993

Testimony presented by J.V. Bennett, representing the Montana Wildlife Federation before the House Natural Resources Committee

The Montana Wildlife Federation supports SJ 24 as a vehicle to protect the well being of wildlife species which rely on riparian zones for survival.

In 1991, the Montana Legislature enacted law which created streamside management zones in order to maintain the integrity of forest streams. Voluntary guidelines for the management of wildlife habitat within the streamside management zones were provided as part of that law.

Subsequent development of the guidelines identified the need to apply wildlife management practices beyond the streamside management zones. Many wildlife species are not only dependent on the stream and the area directly adjacent to the stream, but also an area just outside the presently established streamside management zones. Raptor species which rely on fish from streams for their nourishment frequently build their nests near the stream, but usually not within the 50 foot streamside management zone. This area just outside the streamside management zone provides an important nesting site near the birds' source of food, which is vital for their survival. The same is true for many wildlife species which form rookeries within this area. Elk wallows and other important areas for wildlife are found outside of the streamside management zones.

For these reasons the Montana Wildlife Federation believes that the development of voluntary wildlife habitat guidelines would be beneficial to the wildlife of Montana. These guidelines would also be beneficial to foresters in Montana wishing to be good stewards of Montana's forest resources.

Passage of SJ 24 would provide a valuable service for foresters who are concerned about the well being of Montana's wildlife. Foresters wishing to preserve wildlife habitat within the forests they are managing would be able to obtain a set of voluntary guidelines from the Department of State Lands. This would assist them in developing sound management practices.

The Montana Wildlife Federation urges passage of this resolution.

EXP 7
DATE 3-10-93
HB SB 214

Amendments to Senate Bill No. 214
Third Reading Copy

Requested by Rep. Gilbert
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 9, 1993

1. Page 4, line 1.
Following: "unlawful."
Strike: "A"
Insert: "(1) Except as provided in subsection (2), a"
2. Page 4, lines 2 and 3.
Following: "knowingly" on line 2
Strike: ", without" through "owner" on line 3
3. Page 4, line 4.
Strike: "(1)"
Insert: "(a)"
4. Page 4, line 9.
Strike: "(2)"
Insert: "(b)"
5. Page 4, line 12.
Strike: "(3)"
Insert: "(c)"
6. Page 4, line 15.
Strike: "(4)"
Insert: "(d)"
7. Page 4.
Following: line 16
Insert: "(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave."

Section 3, SB 214 with Representative Gilbert's amendments:

NEW SECTION. Section 3. **Vandalism of cave unlawful.** (1) Except as provided in subsection (2), a person may not purposely or knowingly:

(a) carve, write, mark upon, break, crack, burn, or remove or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or material found in a cave, whether attached or broken, including speleothems, speleogens, and sedimentary deposits;

(b) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to a cave;

(c) remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of [sections 1 through 7 and 9]; or

(d) disturb or alter in any way the natural condition of a cave.

(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave.

FISCAL ANALYSIS

In compliance with a request, there is hereby submitted a Fiscal Analysis for SB 319, third reading

The following is a fiscal analysis of SB 319, third reading, as requested. This fiscal analysis is not to be considered as a revised fiscal note from the administration.

DESCRIPTION OF PROPOSED LEGISLATION: "An Act exempting container sites from the definition of a solid waste management system; amending sections 75-10-103, 75-10-112, and 75-10-203, MCA and providing an effective date."

ASSUMPTIONS:

1. The Department will not be responsible for licensing, regulating, or inspecting solid waste container sites. Local governments will assume these duties.
2. Currently there are 268 container sites in Montana which pay annual licensing fees totaling \$16,625. Annually the Department receives license applications for approximately 3 new container sites which pay license application fees totaling \$2,500. These fee revenues of \$19,125 per year will be eliminated effective July 1, 1993. This equates to the loss of approximately 0.5 FTE
3. Current licensing and annual fee levels for solid waste management systems will not be increased.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	15.25	14.75	0.5	15.25	15.25	0.5
Personal Services	464,755	446,553	18,202	465,165	446,963	18,202
Operating Expenses	240,849	239,926	923	237,646	236,723	923
Equipment	12,907	12,907	0	19,043	19,043	0
Total	718,511	699,386	(19,125)	721,854	702,729	(19,125)
<u>Expenditures:</u>	718,511	699,386	(19,125)	721,854	702,729	(19,125)
<u>Revenues:</u> General Fund	146,447	146,447	0	147,111	147,111	0
Solid Waste Fees	572,064	552,939	(19,125)	574,743	555,618	(19,125)
<u>Net Impact:</u>	0	0	(19,125)	0	0	(19,125)

EXHIBIT 3-10-93
DATE SB 319

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: The licensing and fee exemption for container sites may result in a saving to those cities and counties currently operating or siting such facilities. However, the savings may be offset by the need for local governments to assume siting and regulatory responsibility for these sites when the container site are currently owned and operated by the local government. This possible offsetting will not occur in locations where the container sites are privately owned or operated. In these cases the county will not receive a reduction in fees (the private operator will) but will possibly incur increase costs in regulating these sites.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: None

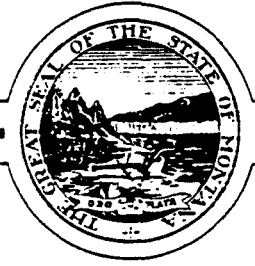
TECHNICAL NOTES: None

Fiscal Analysis for SB 319, third reading, prepared by:

Jon A. Dilliard - Solid Waste Management Program, Solid & Hazardous Waste Bureau, Dept. of Health & Environmental Sciences.

Date: March 10, 1993

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES



MARC RACICOT, GOVERNOR

FAX # (406) 444-1499

STATE OF MONTANA

OFFICE 836 Front Street
LOCATION Helena, Montana

MAILING Cogswell Building
ADDRESS: Helena, MT 59620

EXHIBIT 7
DATE 3-10-93
HB SB 319

MEMORANDUM

TO: Rep. Bob Gilbert, House Natural Resource Committee

DATE: March 10, 1993

FROM: Jon A. Dilliard, DHES, Solid Waste Management Program

SUBJECT: Container sites cited for illegal disposal activity.

The following list represents container sites that have been cited for illegal disposal activity during program inspections. The list is broken down by county and license number, location of the site, and date of the inspection(s). For container sites that have been in place for a number of years, only the past four (4) inspections were included in the search. It should be noted that not all violations were a direct result of the owner/operator's operation of the site. Some resulted from the inappropriate use of the site by the general public.

Beaverhead County - License #284

Wise River - 8/31/88, 4/8/91, 6/4/92
unlicensed container site
Wisdom - 6/4/92

Broadwater County - License #207

Toston - 4/27/82

Jefferson County - License #201

Montana City - 6/11/92

Granite County (Lower Flint Creek Valley Refuse District) - License #231

Drummond 1/14/92, 11/20/92
Hall - 7/24/90

Lake County - License #38

Elmo - 12/7/91

Rep. Bob Gilbert
March 10, 1993
Page 2

Madison County - License #263

Alder - 4/9/91, 6/3/92
Cardwell - 4/9/91
Ennis - 4/9/91
Harrison - 4/9/91, 6/3/92
Norris - 4/9/91
Sheridan - 6/3/92
Silver Star - 4/9/91
Virginia City - 4/9/91

Phillips County - License #311

Dodson - 10/9/91
Landusky - 9/25/92
Loring - 10/9/91
Wagner - 10/9/91, 9/21/92
Whitewater - 10/9/91, 9/22/92
Zortman - 10/9/91, 9/25/92

Powell County - License #243

Elliston - 2/13/92
Helmville - 12/13/91

Rosebud County - License #9

Birney site - 4/10/92
Ingomar site - 4/12/92
Rosebud - 8/8/86, 5/5/87

Stillwater County - License #123

Park City - 11/19/91, 7/23/92
License #304
Columbus - 11/9/91

RESPONSE TO COMMENTS RAISED IN
THE HOUSE NATURAL RESOURCES COMMITTEE REGARDING SENATE BILL 296

Comment 1:

EXHIBIT 8
DATE 3-15-93
HB SB 296

There is no problem requiring the proposed legislation.

Response:

Currently, the Board of Water Well Contractors relies on complaints from citizens who are supposed to ascertain whether their well is constructed according to standards. This accounts for the small number (1%) of complaints and violations identified by the Board. Under most circumstances, citizens cannot identify the problem when there is one.

Studies by researchers at Montana State University and the U. S. Geological Survey show that there is a problem. Alarming high nitrate concentrations are being found in Montana's groundwater.¹ EPA drinking water standards limit nitrate concentrations to less than 10 mg/liter. Work at MSU concluded that "A 2-year program to provide public education and voluntary testing of water quality of private, domestic wells in Montana repeatedly revealed consistently recurring NO₃-N [nitrate] concentrations greater than 10 mg/liter in groundwater sources". The fact that nitrates are adversely affecting human health, particularly that of infants and children, shows that a wide range of contaminants are in fact reaching groundwater. Nitrates reach groundwater from three primary sources: 1) agricultural practices (farming, feedlots, etc.); 2) improperly constructed wells; and 3) failing septic systems. According to the Montana Bureau of Mines and Geology, improperly constructed wells contribute to aquifer degradation by allowing surface contaminants, such as feedlot runoff and concentrated irrigation return flows (both containing nitrates as well as other contaminants) to flow down the well casing directly to groundwater systems.

Comment 2:

The provisions of Senate Bill 296 would be prohibitively costly to implement.

Response:

Additional well inspector positions would more effectively facilitate attaining the purposes of this legislation. However, in the face of the current budget situation this has not been considered a viable option. In 1991, 1,329 hours of regional field office staff time were dedicated to well investigations. The prior notification system contemplated by the bill and the ability to view wells during their construction would provide for more efficient and effective utilization of these staff resources.

This measure has no net fiscal impact to the general fund. The Board of Water Well Contractors recognizes that inspecting well construction sites will result in additional violations being detected. The majority of cases resulting in legal action against drillers are funded with the driller's \$4,000 performance bond. Additional Board expenses are funded from their special revenue account. The Board has already voted to maintain license fees at their current level instead of reducing them when the Groundwater Assessment fee sunsets in July, 1993. However, this bill could act as a deterrent, reducing violations and associated costs.

Comment 3:

The need to provide prior notification would result in delays in well drilling operations.

Response:

The bill does not require drillers to wait to receive any sort of authorization or wait for an inspector to arrive on site. It simply requires leaving a phone message with staff of the nearest Water Resources Regional Office informing them where well drilling operation will be taking place. During weekends or after hours, such messages could be left on a phone answering machine. The drillers responsibility ends with the phone message.

Comment 4:

This bill increases the authority of the Department of Natural Resources and Conservation and allows the Department to become a "policeman"

Response:

This bill does not increase the authority of the Department in any way. The Board of Water Well Contractors would retain exclusive authority to take disciplinary action against water well drillers. Since the Board does not have staff, the role of the Department would be to serve as the eyes and ears of the Board.

Comment 5:

Regional Office staff are not qualified to inspect well drilling operations.

Response:

This proposal would allow experienced Department staff, who the Board now relies upon to investigate complaints, to perform inspections to protect public health and safety on behalf of citizens. Further, department has three qualified individuals that would provide additional technical and on-going training support to other DNRC personnel.

Comment 6:

Citizens may cause a driller to be put on permanent notification by writing a letter of complaint.

Response:

The language in the legislation noting "Drillers known to have violated well construction standards" refers to drillers whom the Board of Water Well Contractors has taken action against for verified well construction violations.

Endnote

1. Bauder, J.W., K.N. Sinclair, and R.E. Lund. 1993. Physiographic and Land Use Characteristics Associated with Nitrate-Nitrogen in Montana Groundwater. Journal of Environmental Quality, Vol. 22.

Thamke, J. 1993. Nitrates in the Flaxville aquifer, Northeastern Montana. U. S. Geological Survey.

Bauder, J.W. 1990. Extension water-well test program. Mont. Ag Res. 7:3-11.

EXHIBIT 9
DATE 3-10-93
HB SB 282

SB 282
March 10, 1993

Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the House Natural Resources Committee

The department supports the concept of basin closures on the
Jefferson River and Madison River basins.

Our concern is with the impact of closures in the upper Missouri
River Basin on the instream water reservations granted by the Board
of Natural Resources and Conservation on June 30, 1992.

These reservations were granted for fisheries, recreation and water
quality with a priority date of July 1, 1985. Because of a
condition put on the reservations by the Board, the reservations
for instream purposes and for irrigation are partially nullified.

In testimony on three House bills already heard by this committee
and in testimony on this bill before a Senate committee, I have
explained the department's concern with the impacts of the Board's
condition and argued that it was now clear the Board's condition
was not good public policy. However, both the House and Senate
have decided so far to defer to the Board on this issue. The
department can accept this decision. It preserves the status quo
of the reservations as granted by the Board.

The department would strongly resist any attempts to amend this
closure bill to completely eliminate the water reservations granted

by the Board on the Jefferson and Madison River basins. I raise this point because this bill initially had a section that did completely undo the work of the Board by eliminating the water reservations. The Senate amended that section out.

The House and this committee have passed HB 395 which would close the Missouri River Basin above Morony Dam near Great Falls. HB 395 is identical to SB 282 except that it includes all of the Missouri River Basin above Great Falls. If HB 395 is approved, then SB 282 is not needed.

3/7/93
Hagenbarth Livestock
Jim Hagenbarth
P.O. Box 1128
Dillon, MT 59725

Representative Dick Knox
Chairman, Natural Resource Com.
Room 437
Capitol Station
Helena, MT 59620

EXHIBIT 10
DATE 3-10-93
HE SB 282

Re: Senate Bill 282

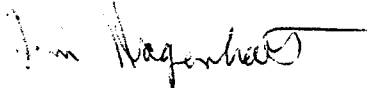
Dear Representaive Knox:

Our family has been puting to beneficial use water from the the Big Hole River, a tributary of the Jefferson River, since 1903 and water from Birch Creek, a tributary to the Big Hole since 1871. This water is used to irrigate crops and pasture, water livestock, charge underground storage and support wetlands, both natural and developed.

New appropriations on the Big Hole River have been minimal to say the least. There is no water to appropriate, and as a point in fact, there is no water to fulfill Fish and Game and DHES reservations. On Birch Creek, where the Fish and Game was granted a 10 cfs reservation, the appropriations of record are 129,780 acre feet and the average stream flow is 14,000 acre feet annually. To boot, the last 8 miles of the designated reach have been dry at least ten months of the year for the last 100 years. There is no water, reservations cannot make water, and the closures that would be granted by Senate Bill 282 are certainly in order and desired. I ask for your support and that of the committee for Senate Bill 282.

Please make available a copy of this letter to all committee members.

Thanks,



Jim Hagenbarth

cc. Senator Swysgood
Representative Tash
Montana Stockgrowers

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON SENATE BILL 231, FIRST READING

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

MARCH 10, 1993

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE BURDENS OF PROOF AND STANDARDS OF PROOF UNDER WHICH APPLICATIONS FOR BENEFICIAL WATER USE PERMITS, CHANGE AUTHORIZATIONS, AND RESERVATIONS ARE PROCESSED PURSUANT TO MONTANA WATER LAWS; CLARIFYING THE PROCESS FOR EXTENSION OF TIME FOR A WATER USE PERMITTEE TO COMPLETE PERMIT CONDITIONS; CLARIFYING THE VERIFICATION PROCESS FOR ISSUANCE OF A PERMIT."

The Montana Department of Natural Resources and Conservation supports this legislation revising the Montana Water Use Act to clarify three basic administrative issues -
- burdens of proof, extensions of time, and permit verification.

The first issue addressed by the legislation is that of clarifying the burdens of proof used in making decisions on applications for water use permits, changes in appropriation rights, and water reservations. This is accomplished by first defining what is meant by a "*correct and complete*" application. That is, an application in which all the blanks are filled in and the information supplied is considered a sufficient body of facts to cause the department to believe that the requested action should occur. The legislation goes on to require the submission of correct and complete applications for the various water filings involved -- permits, changes, and reservations as well as leases and objections.

Currently, and although the law requires the application of a "*substantial credible evidence*" standard, the department uses the "*preponderance of evidence*" standard when acting under the Water Use Act. This may be attributed to the fact that the substantial credible evidence standard is generally looked upon as a review standard -- one used by an appellate court when reviewing decisions of a lower court or administrative body. In contrast, the more appropriate preponderance of evidence standard is an evidentiary standard used by administrative decision-makers when weighing competing and contradictory evidence. Senate Bill 231 removes this confusing language regarding decision-making under the law by inserting the term "*preponderance of evidence*" in lieu of the current "*substantial credible evidence*."

The final matter pertaining to the burden of proof issue concerns the evidence needed by an applicant to meet its burden to persuade the department that the criteria for issuance have been met. Although the law states the types of information needed,

it is confusing in its use of the term "*independent*" evidence. As presently interpreted, it means an applicant has to generate new and independent evidence even though existing information available from the department or other sources is perfectly acceptable. Senate Bill 231 addresses this matter by deleting the term "*independent*" and restructuring the subsection involved.

The second administrative matter addressed by this legislation concerns requests for extensions of time to comply with the conditions on permit and change authorizations. Senate Bill 231 provides for more efficient handling of requests for extensions of time through a process defined by rule rather than the present statutory mechanism. Consistent with the need to assure that the due process rights of existing water users are adequately safeguarded, it would allow the department to develop a process that provides more flexibility and efficiency in dealing with time extension requests. As an example, rather than provide notice by means of newspaper publication as now required by law, the department could individually notice only those parties having a potential concern with a time extension request. The proposed amendment would also reduce the need for extenuated hearings by establishing standards for what constitutes "*due diligence*" in putting permitted water to use. This might involve setting forth specific conditions on new permit or change authorizations that specify how any subsequent time extension requests would be handled. In doing so, it would advise all water right holders on a stream of the criteria the department will use in acting on requests for time extensions. In turn, this would eliminate the need to re-notice the action at the time any such request is actually made and reduce the need for extenuated hearings.

The third and final focus of this legislation is the process for verifying if the terms and conditions of a permit or change authorization have been met. Currently, the statute allows parties other than the department to certify if on-the-ground water use is in "*substantial compliance*" with a permit or change authorization. However, the ultimate determination of substantial compliance must be made by the department. Senate Bill 231 addresses the matter by continuing to allow outside parties to conduct the field verification effort. But, rather than assess the matter of substantial compliance, they would certify or document what has taken place on the ground. In turn, the department would use this information to determine if the use is in substantial compliance with the authorization. Along with this amendment, the legislation will also allow the department to use current rule making authority to specify the substance of the field report that needs to be prepared and thereby better assure that qualified persons prepare the needed documentation.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

EXHIBIT 11
DATE 3-10-93
SB 231



MARC RACICOT, GOVERNOR

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699
TELEFAX NUMBER (406) 444-6721

PO BOX 202301
HELENA, MONTANA 59620-2301

MEMORANDUM

FROM: Donald D. MacIntyre
Chief Legal Counsel

A handwritten signature, likely of Donald D. MacIntyre, in dark ink.

TO: Senator Lorents Grosfield

RE: Senate Bill No. 231
Burden of Proof and
Interpretation of term "substantial credible evidence"

DATE: March 3, 1993

BURDEN OF PROOF

The burden of proof embodies two concepts as an evidentiary standard: (1) the burden of production -- the burden of going forward with evidence to convince the decision maker that you should be believed; and,

(2) the burden of persuasion -- the burden of convincing the decision maker that you should ultimately win the case because your evidence meets the requisite standard of proof.

NOTE: The burden of production shifts from one party to the other depending on whose duty it is to present the evidence [for example, once a plaintiff has completed his case the burden shifts to the defendant to produce evidence to establish the defense]. The burden of persuasion never shifts [for example, the plaintiff is required to convince the judge by some set standard (see standards below) that he should prevail, if he doesn't meet the standard the plaintiff loses].

In modern judicial proceedings, three standards of proof are generally recognized:

(1) preponderance of the evidence -- this standard is used in most every civil case [evidence which, when fairly considered produces the stronger impression, and has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition, but does not necessarily mean the greater number of witnesses];

(2) clear and convincing evidence -- this standard is reserved to protect particularly important interests in a limited number of civil cases [a high standard requiring strong evidence that produces in the mind of the court a firm belief or conviction, but is less than conclusive]; and,

(3) beyond a reasonable doubt -- this standard is used exclusively in criminal cases [Highest standard of proof].

Confusion exists in the Montana water law because the standard "substantial credible evidence" is used. Terms such as substantial and substantial credible are generally terms used by a reviewing court. For example, the Montana Supreme Court reviews decisions of a district court and upholds the district court if there exists substantial evidence in the record of the district court to uphold the decision. Remember, however, that the district court in making its decision used the standard of a preponderance of the evidence (in most civil cases). The standards of substantial credible and preponderance of the evidence serve two different functions-- substantial credible to review a case on appeal, and preponderance to weigh the conflicting evidence by the initial decision maker. Unfortunately, the standard for the decision maker in the water laws has been set as "substantial credible" (the reviewing standard) therefore, the question naturally arises as to whether substantial credible is higher or lower than preponderance of the evidence. It appears that arguments may be made on both sides of the issue, but the department in dealing with the issue in water permitting matters is utilizing "preponderance of evidence" as being embodied in the "substantial credible" standard.

Senate Bill No. 231, introduced at the request of the Department of Natural Resources and Conservation, is intended to clarify the existing law to conform to the agency's interpretation. The bill does not change existing law by increasing the burden of proof on either an applicant or objector.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources

COMMITTEE

BILL NO. SJR 24

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AL ELSEK	FISH, WILDLIFE & PARKS	✓	
Don Allen	MT. Wild Producers Assn		X
Janet Ellis	MT Audubon Leg Fund	✓	
J.V. Bennett	MT Wildlife Federation	✓	
Stan Bradshaw	MT. T.U.	✓	

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HOUSE OF REPRESENTATIVES
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Natural Resources

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John GEACH	DHES	X	
Franklin Gessamen	DHES	X	
David Ross	Mt Audubon Leg. Fund	X	

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**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SB-282
DATE 3/10/93 SPONSOR(S) SEN. SMITH
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