

## **MINUTES**

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

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By CHAIRMAN DICK KNOX, on March 26, 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: SB 172  
Executive Action: SB 172, SB 72, SB 339, SB 338, SB 196  
SB 294, SB 311, SB 248, SB 280, SB 261  
SB 346

#### **HEARING ON SB 172**

##### **Opening Statement by Sponsor:**

SEN. GERRY DEVLIN, SD 13, Terry, stated SB 172 will delineate the number of gallons per minute pumped from a source before a permit is required.

**Proponents' Testimony:**

Jacqueline Lenmark, Montana Water Well Driller's Association, spoke in support of the bill, but stated legislation does not address rate of flow and volume problems. She submitted amendments and explained their intent. EXHIBIT 1

Terry Lindsay, Montana Water Driller's Association, presented a history of Montana's water, including residential and seasonal water use.

Pat Byrns, Pat Byrns Drilling, testified in support of the legislation on behalf of drillers and their customers.

Bill Bakke, Camp Well Drilling and Pump Supply, Missoula, stated he supported the bill.

Bob Chamberlain, Butte, expressed support for the bill.

Curt Shelly, American Drilling and Supply, asked for the committee's support of the legislation.

Mark DeBuff, Lewistown DeBuff Drilling Inc., testified in support of the bill.

Rick Byrns, Pat Byrns Drilling, also expressed support for SB 172.

Curtis Carlson, Carlson Drilling, Corvallis, urged committee support of the bill.

Holly Franz, Montana Power Company, expressed the company's support for the amended bill, noting that volume limitation was important to Montana Power.

**Opponents' Testimony:**

Dean Hall, Billings, expressed opposition to the gallon per minute limit, siting household and irrigation use from the same source.

Gary Fritz, Department of Natural Resources and Conservation (DNRC), stated the Department supported the bill in the Senate as amended, but now opposed the bill with current House amendments. The department's opposition revolves around the 35 versus 100 gallons per minute limitation.

Keith Kerbel, DNRC, testified in opposition to the legislation.

John Arrigo, Department of Health and Environmental Sciences, (DHES), stated the Department was opposed to any increase in exemptions to current law.

Vivian Drake, Supervisor, Lewis and Clark County Water Quality

Protection District, stated support for the bill as presented to the committee, but opposed the amendments.

J. V. Bennett, Montana Association of Planners, noted the association shared concerns of previous proponents.

**Questions From Committee Members and Responses:**

The committee discussed the interests of water well drillers versus the DNRC regarding the 35 and 100 gallon per minute limitations. Input was solicited from individuals who had provided testimony to the committee. The possibility of a compromise on these limitations was also considered.

**Closing by Sponsor:**

SEN. DEVLIN closed on SB 172, citing the need to streamline the permitting process. He said he was amenable to compromise.

**EXECUTIVE ACTION ON SB 72**

**Motion:** REP. BOB GILBERT MOVED SB 72 BE CONCURRED IN and moved the amendment to the bill. EXHIBIT 2

**Discussion:** REP. GILBERT explained the intent of the amendments. Michael Kakuk noted a technical change for the proposed second amendment, the new section number 3. The amendment would read "The department board may not issue a permit under 85-3-206 until ~~it~~ the department has prepared a programmatic environmental ....". REPS. TVEIT AND GILBERT agreed with the proposed amendment changes.

**Vote:** Motion to adopt the amendment carried on a voice vote.

**Vote:** REP. GILBERT MOVED SB 72 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON SB 339**

**Motion:** REP. RANEY MOVED SB 339 BE CONCURRED IN.

**Motion:** REP. SCHWINDEN moved to amend SB 339 by including NEWTEC amendments.

**Discussion:** REP. SCHWINDEN stated the amendment exempts NEWTEC from the bill's provisions. Michael Kakuk, legal counsel, advised the committee the amendment will impact two bills, SB 338 and SB 339.

**Motion:** REP. GILBERT moved to segregate the amendment for SB 338 and SB 339.

**Motion:** REP. GILBERT further moved to delete the language in brackets in amendment number one and delete all of amendment number two.

**Discussion:** The committee discussed ramifications of amending two bills with one amendment. Technical language was then discussed further.

**Vote:** TO DELETE LANGUAGE IN BRACKETS IN AMENDMENT NUMBER ONE AND ALL OF NUMBER TWO. Motion carried on a voice vote.

**Motion/Vote:** REP. TOOLE moved to delete Subsection C. Motion carried on a voice vote.

**Vote:** REP. RANEY MOVED SB 339 BE CONCURRED IN AS AMENDED.

**Vote:** REP. GILBERT moved to amend SB 339. EXHIBIT 3

**Discussion:** Michael Kakuk explained amendments proposed by SEN. WEEDING. EXHIBIT 4

**Motion/Vote:** REP. GILBERT moved to change language in his amendment to the bill. Page 1, following line 11, insert "STATEMENT OF INTENT" It is the intent of the legislature that the department of health and environmental sciences ~~not~~ give any ~~additional~~ equal weight or value to a referendum held pursuant to this bill ~~beyond~~ to that given to the other identified factors considered during the permitting process." The motion carried on a voice vote.

**Motion/Vote:** REP. GILBERT moved to adopt the amendment as amended. Motion carried on a voice vote.

**Motion/Vote:** REP. GILBERT moved to adopt the second amendment to SB 339. EXHIBIT 5 Motion carried.

**Motion:** REP. HARPER moved amendments proposed by SEN. WEEDING.

**Discussion:** The committee discussed and clarified amendments from SEN. WEEDING, and DHES. Northern Plains Resource Council (NPRC) presented amendments to the bill. EXHIBIT 6

**Motion:** REP. HARPER withdrew the amendments and replaced them with an amendment to change language on page 9, line 1, subsection (1) "when issuing a permit pursuant to ..... the department shall .....consider the results of the referendum and pursuant to section 2, in making the decision to grant or deny a permit, apply the results equally to other identified factors considered during the permit process."

**Discussion:** There was extensive discussion on the proposed amendment. REP. GILBERT clarified the legislative intent of his amendment "to give equal weight and consideration." This is one-sixth of the total, he noted.

**Vote:** TO ADOPT REP. HARPER'S AMENDMENT TO SB 339. Motion carried unanimously.

**Vote:** REP. BROOKE MOVED SB 339 BE CONCURRED IN AS AMENDED. Motion carried on a 9 to 7 vote with REPS. FAGG, FELAND, GILBERT, ORR, STOVALL, WAGNER and KNOX opposing the motion.

**EXECUTIVE ACTION ON SB 338**

**Motion/Vote:** REP. HARPER MOVED SB 338 BE CONCURRED IN AS AMENDED to include the NEWTEC amendment, page 3, after line 16, new number 8, which will define testing. Motion on NEWTEC amendment carried unanimously.

**Discussion:** REP. FOSTER said SB 338 is a highly volatile bill. Constituents from HD 32, Townsend, his district, have made it clear this bill should be supported on public health grounds, he told the committee.

REP. STOVALL, fourth generation Montana rancher, said he is concerned about Montana air quality. However, emissions from cement kilns are no more toxic than auto exhaust. REP. STOVALL said he will not support SB 338.

REP. HARPER said the committee has been besieged with facts regarding hazardous waste burning, some of which are not refutable. Ten percent of cement kiln emission is known; 90% is unknown. Montana is being rushed into burning hazardous and toxic waste without knowing associated risks. SB 338 raises a new look at health risks and asks that hazardous burning be re-examined.

REP. WAGNER stated the media has run wild with this issue. The EPA and air quality do examine toxic burning issues. The process should continue to move ahead, he said.

REP. RANEY told the committee that people exposed to cement kiln dust are sick, children are sick. Property values will suffer, as well. The legislature passed a bill to allow shooting a dog that is destroying cattle, but deliberates about passing a hazardous waste siting bill. Montana citizenry are opposed to nuclear waste. He urged the committee to pass SB 338.

REP. SWANSON said SB 338 is the most important decision the Natural Resources Committee and the legislature will make this session. Bozeman area residents are worried, she said. Montana is on the threshold of a major new industry in this country: hazardous waste disposal. This legislature needs to consider hazardous waste sites and the application process. REP. SWANSON cited the Valdez incident where technology was available but human error resulted in disaster. The headwaters of the Missouri should not be the site of a potential error, she concluded.

REP. WAGNER commented on SEN. YELLOWTAIL'S statement that SB 338 is not a jobs issue by saying that if hazardous waste is produced in Montana, it should be disposed of in Montana. If these wastes are placed into a landfill, cyanide could seep into the aquifer. SB 338 is a jobs issue, he reiterated.

REP. BROOKE stated that Montana needs to be aware of protecting land of neighboring states, such as Washington, where hazardous waste siting is current law. SB 338 will allow preventative work. Dr. Kelly did not provide scientific evidence at the hearing on this bill and her testimony included a number of discrepancies, she added.

REP. TOOLE said the ill-effects of hazardous waste burning are as yet unknown, although BTU content can now be determined. There is a need for a healthy fear of this unknown.

REP. GILBERT read a letter from the Texas Air Quality Control Board to reinforce Dr. Kelly's testimony. EXHIBIT 7 SB 338 will restrict the future, he said. It is difficult to find intermittent streams or reservoirs in Montana as safe siting areas.

REP. WAGNER said if hazardous waste isn't safe to burn, it isn't safe anywhere.

REP. HARPER presented a letter from the Texas Air Control Board, JoAnn Wiersema, written to Dr. Allen S. LeFohn, addressing Ms. Kelly's testimony. EXHIBIT 8 He stated that without knowledge of the full effects of hazardous waste burning, lives are in jeopardy. Research and development should proceed to find ways to burn this waste for proper siting. SB 338 is the single most important vote legislators will make. REP. HARPER asked the committee to support the bill.

**Vote:** SB 338 BE CONCURRED IN AS AMENDED. The motion failed on a tie roll call vote with REPS. BIRD, FAGG, FELAND, GILBERT, ORR, STOVALL, WAGNER and KNOX opposing the motion.

**Motion:** REP. RANEY MOVED SB 338 BE SENT TO THE FLOOR WITH NO RECOMMENDATION.

**Motion/Vote:** REP. HARPER MOVED THE COMMITTEE RECONSIDER ITS ACTION ON SB 338 stating that Montana citizens need to have a second reading. Motion failed on a tie roll call vote with REPS. BIRD, FAGG, FELAND, GILBERT, ORR, STOVALL, WAGNER and KNOX opposing the motion.

#### EXECUTIVE ACTION ON SB 172

**Discussion:** SEN. DEVLIN reported a compromise has been reached on SB 172. The 35 gallon limit has been removed and the 10 acre feet limitation remains. There will not be a definition of groundwater included in the bill. Dean Hall, Billings, expressed

opposition to the compromise.

Motion/Vote: REP. DOUG WAGNER moved to adopt the compromise amendments to SB 172. The motion carried.

Motion/Vote: REP. GARY FELAND MOVED SB 172 BE CONCURRED IN AS AMENDED. The motion carried on an 11 to 5 vote.

EXECUTIVE ACTION ON SB 196

Motion/Vote: REP. JAY STOVALL MOVED SB 196 BE CONCURRED IN. The motion failed on a 9 to 7 vote.

EXECUTIVE ACTION ON SB 294

Motion/Vote: REP. FAGG MOVED SB 294 BE CONCURRED IN. The motion carried.

EXECUTIVE ACTION ON SB 311

Discussion: SEN. GREG JERGESON submitted amendments for committee consideration. EXHIBITS 9 and 10 He suggested striking "each interest owner" on page 2, line 1, and insert "lessor".

Motion/Vote: REP. HARPER moved to adopt the amendments to SB 311. The motion carried.

Motion/Vote: REP. SCHWINDEN MOVED SB 311 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SB 248

Motion: REP. FAGG MOVED SB 248 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON SB 280

Motion/Vote: REP. FAGG moved to adopt the ARCO amendments to SB 280. Motion carried.

Discussion: A letter from Water Policy Committee Chairman, Hal Harper, addressed the benefits of SB 280. EXHIBIT 11a

Motion/Vote: REP. FAGG moved to adopt the amendments requested by SEN. LORENTS GROSFIELD. EXHIBIT 11 Motion carried.

Motion/Vote: MOTION WAS MADE THAT SB 280 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 261

Motion/Vote: REP. GILBERT MOVED SB 261 BE TABLED. The motion carried on a 9 to 7 roll call vote.

EXHIBIT 12 was submitted for the record.

EXECUTIVE ACTION ON SB 346

Motion: REP. BROOKE MOVED SB 346 BE CONCURRED IN.

Discussion: The committee discussed the history of the legislation and the need for wise and judicious use of water.

REP. BIRD reminded the committee that Ted Doney testified that only FWP should be allowed to purchase instream flows.

REP. BROOKE told the committee SB 346 is a good bill. A fair approach to beneficial use regarding instream flow is incorporated into the bill, she added.

REP. SWANSON said SB 346 is a simpler bill than previous instream flow legislation (SB 212). She expressed optimism that instream flow legislation continues to change. She encouraged the committee to examine what the bill accomplishes and give its support.

REP. STOVALL stated the purpose of the bill is to have instream flows for fish, but noted that current water leasing law takes care of this purpose. He expressed concern over selling water rights and changing points of diversion. He said water wars are likely if SB 346 is passed.

REP. FAGG said SB 346 allows for a willing buyer and a willing seller to do what they choose. Water rights can be severed from the land now. SB 346 carries this one step further by allowing severance for instream purposes. The bill does not take away water rights or property rights. The purpose of the bill is laudable and reasonable, he concluded.

REP. FOSTER said water leasing is a short-term situation and is, therefore, more desirable. Once a water right is sold, it is gone forever. Land will be devalued by selling water rights, even if they are sold to a willing buyer by a willing seller. He urged the committee to kill the bill.

REP. ORR said environmental groups, such as Trout Unlimited and Audubon, are interested in buying water rights for instream flow to benefit fish and wildlife. He stated these are the groups that have decimated the timber industry and now target agriculture.



REP. GILBERT said Montanan's fear loss of their water rights. He declined to present a proposed amendment. SB 346 will cause more problems than it will cure and the best the committee can do, therefore, is lay the bill to rest and avoid starting water wars. REP. GILBERT said educating agricultural groups will perhaps bolster passage of instream legislation at a future date.

REP. HARPER said four years ago many citizens were opposed to water leasing with the same fervor with which they now oppose instream flows. Water leasing will not solve the problem of instream flows, he emphasized. This war will move to the ballot box.


Further discussion of SB 346 included the intent of the bill, the buying and selling of water rights, the need for this legislation, the impact of selling water on the tax base of land and segregating water and land.

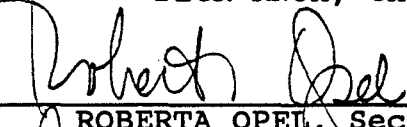
EXHIBIT 13 was submitted for the record.


MOTION/Vote: REP. STOVALL MOVED SB 346 BE TABLED. Motion carried on an 11 to 5 roll call vote.

#### ADJOURNMENT

Adjournment: The meeting adjourned at 7:30 pm.

  
\_\_\_\_\_  
DICK KNOX, Chairman

  
\_\_\_\_\_  
ROBERTA OPEL, Secretary

  
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GAYLE CARPENTER, Transcriber

DK/ro

HOUSE OF REPRESENTATIVES  
53RD LEGISLATURE - 1993  
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

3/26/93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	8		
REP. ROLPH TUNBY, VICE CHAIRMAN	8		
REP. JODY BIRD	6		
REP. VIVIAN BROOKE	0		
REP. RUSS FAGG	8		
REP. GARY FELAND	0		
REP. MIKE FOSTER	6		
REP. BOB GILBERT	6		
REP. HAL HARPER	0		
REP. SCOTT ORR	8		
REP. BOB RANEY	6		
REP. DORE SCHWINDEN	8		
REP. JAY STOVALL	0		
REP. EMILY SWANSON	0		
REP. HOWARD TOOLE	8		
REP. DOUG WAGNER	0		

HR:1993

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CS-09

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 339 (third reading copy -- blue) be concurred in as amended .

Signed: [Signature] Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Harper

1. Page 1.

Following: line 11

Insert: "STATEMENT OF INTENT

It is the intent of the legislature that the department of health and environmental sciences give equal weight or value to a referendum held pursuant to this bill to that given to the other identified factors considered during the permitting process. It is also the intent of the legislature that there may not be more than one referendum per application."

2. Page 2.

Following: line 23

Insert: "(5) "Testing" includes but is not limited to the following activities if performed by a research and development facility whose primary purpose is to test and evaluate waste treatment remediation technologies and that receives federal or state research funds to support its operations:  
(a) research and development testing; or  
(b) evaluation and demonstration of waste treatment remediation technologies."

3. Page 4, lines 18 through 21.

Strike: subsection (5) in its entirety

4. Page 8, lines 21 through 25.

Strike: "IF" on line 21 through "ELECTION." on line 25

5. Page 9, line 2.

Following: "GRANT"

Strike: ", "

Committee Vote:

Yes     , No     .

701123SC.Hss

Insert: "or"

6. Page 9, line 3.

Strike: ", OR MODIFY"

Following: "PERMIT"

Insert: "and apply the results equally to the other identified factors in the permitting process"

7. Page 19, lines 6 through 10.

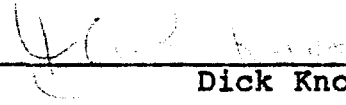
Strike: "If" on line 6 through "election." on line 10

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 196 (third reading copy -- blue) be not concurred in.

Signed:   
Dick Knox, Chair

Committee Vote:  
Yes 1, No 9.

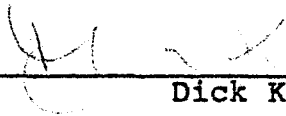
701138SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 172 (third reading copy -- blue) be concurred in as amended .

Signed:   
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Foster

1. Page 1, lines 12 and 13.

Strike: "PARTICULARLY," on line 12 through "MINUTE," on line 13

2. Page 5, line 22.

Strike: "35 gallons per minute"

3. Page 6, line 1.

Strike: "OR LESS, NOT TO EXCEED"

4. Page 7, line 21.

Strike: "of"

5. Page 7, line 22.

Strike: "35 gallons per minute"

6. Page 7, line 23.

Strike: "OR LESS,"

Committee Vote:

Yes 11, No 6.


701112SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 311 (third reading copy -- blue) be concurred in as amended .

Signed:   
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Bergsagel

1. Title, lines 7 and 8.

Following: the first "THAT"

Strike: "TERMS" on line 7 through "INVALID" on line 8

Insert: "THE DIVISION ORDER MAY NOT ALTER OR AMEND THE TERMS OF  
THE UNDERLYING OIL OR GAS LEASE"

2. Page 1, line 12.

Following: "section,"

Insert: "the term"

3. Page 1, line 13.

Strike: "means"

Insert: "is limited to mean"

Following: "instrument"

Strike: "used for directing"

Insert: "executed by the lessor of an oil or gas lease to  
authorize the sale of and direct"

4. Page 1, lines 16 through 19.

Strike: "is" on line 16 through "proceeds" on line 19

Insert: "may not alter or amend the terms of the underlying oil  
or gas lease"

5. Page 1, line 23.

Following: "and"

Strike: "must"

6. Page 1, line 24.

Following: "(a)"

Insert: "must"

Committee Vote:

Yes 11, No 10.

701135SC.Hss

7. Page 1, line 25  
Following: "(b)"  
Insert: "must"

8. Page 2, line 2.  
Following: "(c)"  
Insert: "must"

9. Page 2, line 3.  
Following: "ownership"  
Insert: "; and

(d) may contain any other terms that are necessary to  
facilitate the transaction"

10. Page 2, line 4.  
Strike: subsection (4) in its entirety




HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report  
that Senate Bill 248 (third reading copy -- blue) be concurred  
in.

Signed:   
Dick Knox, Chair

Carried by: Rep. Swanson

Committee Vote:  
Yes 16, No    .

701133SC.Hss

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20-9-93  
309  
11/5

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report  
that Senate Bill 294 (third reading copy -- blue) be concurred  
in.

Signed: \_\_\_\_\_

Dick Knox, Chair

Carried by: Rep. Feland

Committee Vote:

Yes 12, No \_\_\_\_.

701132SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 280 (third reading copy -- blue) be concurred in as amended .

Signed: [Signature]  
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Gilbert

1. Page 2, line 1.

Following: "effects"

Insert: "on the uses of water as classified"

2. Page 3, line 6.

Following: "of"

Strike: "an"

Insert: "a prior"

3. Page 3, lines 16 through 20.

Strike: the second "is" on line 16 through "met" on line 20

Insert: "must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(g), (1)(h), or (1)(i), as applicable, may not be met. For the criteria set forth in subsection (1)(h), only the department of health and environmental sciences or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection"

4. Page 10, lines 21 through 23.

Strike: subsection (g) in its entirety

Renumber: subsequent subsection

5. Page 11, line 3.

Strike: "through (2)(h)"

Insert: "and (2)(g)"

6. Page 11, lines 4 through 8.

Strike: the second "is" on line 4 through "(2)(h)" on line 8

Insert: "must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g)"

Committee Vote:

Yes 16, No     .

701119SC.Hss

7. Page 17, lines 20 through 22.

Strike: subsection (g) in its entirety

Renumber: subsequent subsection

8. Page 18, line 2.

Strike: "through (2) (h)"

Insert: "and (2) (g)"

9. Page 18, lines 3 through 6.

Strike: the second "is" on line 3 through "(2) (h)" on line 6

Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2) (f) or (2) (g)"

10. Page 24, line 18.

Strike: "or"

11. Page 24, line 21.

Strike: "."

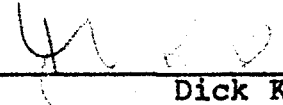
Insert: "; or (g) that water quality within the ground water  
area is not suited for a specific beneficial use defined by  
85-2-102(2) (a)."

HOUSE STANDING COMMITTEE REPORT

March 29, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 72 (third reading copy -- blue) be concurred in as amended .

Signed:   
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Gilbert

1. Title, lines 11 through 14.

Following: ";" on line 11

Strike: "PROVIDING" on line 11 through "MONTANA" on line 14

Insert: "REQUIRING A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT  
FOR THE WEATHER MODIFICATION PROGRAM"

2. Page 5, lines 19 through 25.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Programmatic environmental impact statement. The board may not issue a permit under 85-3-206 until the department has prepared a programmatic environmental impact statement on activities under Title 85, chapter 3, as provided for under 75-1-201 and rules adopted pursuant to 75-1-201. The programmatic environmental impact statement must be completed by November 1, 1994."

Committee Vote:

Yes 2, No    .

701127SC.Hss

# COMPROMISE AMENDMENTS TO SB 172

EXHIBIT 1  
DATE 3-26-9  
HB SB 172

① PAGE 1, lines 12 and 13.

STRIKE: "PARTICULARY" ON LINE 12 THROUGH  
"MINUTE," ON LINE 13.

② PAGE 5, line 22.

STRIKE: "35 gallons per minute"

③ PAGE 6, line 1

STRIKE: "OR LESS, NOT TO EXCEED"

④ PAGE 7, line 21

STRIKE: "of"

⑤ PAGE 7, line 22

STRIKE: "35 gallons per minute"

⑥ PAGE 7, line 23

STRIKE: "OR LESS,"

EXHIBIT #2  
date 3-26-93  
S.B 72

Amendments to Senate Bill No. 72  
Third Reading Copy

Requested by Rep. Gilbert  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 26, 1993

1. Title, lines 11 through 14.

Following: ";" on line 11

Strike: "PROVIDING" on line 11 through "MONTANA" on line 14

Insert: "REQUIRING A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT  
FOR THE WEATHER MODIFICATION PROGRAM"

2. Page 5, lines 19 through 25.

Strike: section 3 in its entirety

Insert: "NEW SECTION. Section 3. Programmatic environmental impact statement. The department may not issue a permit under 85-3-206 until it has prepared a programmatic environmental impact statement on activities under Title 85, chapter 3, as provided for under 75-1-201 and rules adopted pursuant to 75-1-201. The programmatic environmental impact statement must be completed by November 1, 1994."

EXHIBIT 3  
DATE 3-26-93  
HB SB 339

Amendments to House Bill No. 339  
Third Reading Copy

Requested by Rep. Gilbert  
For the Committee on Natural Resources

Prepared by Todd Everts  
March 26, 1993

1. Page 1.

Following: line 11

Insert: "STATEMENT OF INTENT

It is the intent of the legislature that there may not be  
more than one referendum per application."

2. Page 4, lines 18 through 21.

Strike: subsection (5) in its entirety

3. Page 8, lines 21 through 25.

Strike: "IF" on line 21 through "ELECTION." on line 25

4. Page 19, lines 6 through 10.

Strike: "If" on line 6 through "election." on line 10



Amendments to Senate Bill No. 339  
Third Reading Copy

Requested by Sen. Weeding  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 24, 1993

1. Page 8, line 4.

Following: "SHALL"

Insert: "comply with the requirements of subsections (3) and (4)  
and shall"

2. Page 8, line 8.

Following: "AND"

Insert: "and"

3. Page 9, lines 1 through 3.

Strike: subsection (C) in its entirety

Insert: "(3) The department may not issue a permit for a  
commercial dangerous waste incineration facility unless it  
finds and determines:

(a) the nature of the probable environmental impact;

(b) that the facility minimizes adverse environmental  
impact, considering the state of available technology and the  
nature and economics of the various alternatives;

(c) that the location of the facility as proposed conforms  
to applicable state and local laws and regulations. However, the  
department may refuse to apply any local law or regulation if it  
finds that, as applied to the proposed facility, the law or  
regulation is unreasonably restrictive in view of the existing  
technology, of factors of cost or economics, or of the needs of  
consumers, whether located inside or outside the directly  
affected government subdivisions;

(d) that the facility will serve the public interest;  
and

(e) that the applicant has fully mitigated the loss of  
wildlife habitat through either onsite or offsite habitat  
improvements.

(4) In determining that the facility will serve the public  
interest, the board shall consider:

(a) the factors listed in subsections (2)(a) and (2)(b);

(b) the benefits to the applicant and the state resulting  
from the proposed facility;

(c) the effects of the economic activity resulting from the  
proposed facility;

(d) the effects of the proposed facility on the public  
health, welfare, and safety;

(e) the results of the referendum conducted pursuant to  
[section 2]; and

(f) any other factors that it considers relevant."

Amendments to Senate Bill No. 339  
Third Reading Copy

Requested by Rep. Gilbert  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 26, 1993

1. Page 1.

Following: line 11

Insert: "STATEMENT OF INTENT

It is the intent of the legislature that the department of health and environmental sciences not give any additional weight or value to a referendum held pursuant to this bill beyond that given to the other identified factors considered during the permitting process."

# Northern Plains Resource Council

EXHIBIT <sup>6</sup>

DATE 3-26-93

HB SB 339

## Public Interest Criteria for Incinerator Permitting

### Amendment to SB 339 House Natural Resources Committee

Under current law - when permitting a dangerous waste incinerator - *the Department may not consider whether the facility will serve the public interest.*

In contrast, Montana's Megalandfill Siting Act requires consideration of the public interest and provides clear guidelines and criteria for making that judgement. Section 75-10-929 (3) states that, "in determining that the facility will serve the public interest, the board shall consider":

- 1) environmental impacts;
- 2) benefits to the applicant and the state resulting from the proposed facility;
- 3) the effects of the economic activity resulting from the proposed facility;
- 4) the effects of the proposed facility on the public health, welfare, and safety;
- 5) any other factors that it considers relevant.

As currently drafted, SB 339 would add to this list - requiring the department to consider the results of a local referendum (page 6, line 14).

### **Amendment:**

*The proposed amendment would include the public interest criteria from the Megalandfill Siting Act in the permitting process for commercial dangerous waste incinerators.*

The Megalandfill Siting Act was one of the most significant accomplishments of the 1991 Legislature. It was the result of hard work by the Legislature as well as a two year EQC study. NPRC believes that dangerous waste incineration proposals are as significant and difficult an issue for the 1993 Legislature as Megalandfills were in 1991. Most importantly, we believe that the public concerns generated by both issues are very similar. We believe it would therefore be appropriate to include in the commercial dangerous waste incineration permitting process, the public interest criteria developed in 1991 for the Megalandfill Siting Act.

In addition, this amendment is important because in the House Natural Resources Committee hearing on SB 339, *the Department identified new legal concerns* with the bill as it is written. Simply stated, it may be difficult for the Department to legally defend any decision based in part on the outcome of a local referendum *unless* the law clearly allows the Department to weigh the public interest in its permitting decision, and to consider the local referendum when determining the public interest.

# TEXAS AIR CONTROL BOARD

AUSTIN TEXAS

## MEMORANDUM

TO: Distribution

FROM: Marcia Willhite, Effects Evaluation MTW JAW ← (Joann Wiersema's initials)

DATE: July 13, 1992

SUBJECT: Effects Evaluation of Air, Soil and Materials Samples From Midlothian, TX, January 1991 through April 1992

A monitoring study of the impact of air emissions from three cement plants and a steel plant, located about one-quarter mile from the nearest residence in the vicinity of Midlothian, TX, was conducted by the Texas Air Control Board (TACB). Staff members collected and analyzed ambient air and soil samples as well as conducted analyses of various materials submitted by citizens. Several different types of sampling were done: short-term, variable-site ambient air monitoring, long-term fixed-site ambient air monitoring, citizen-operated monitoring and soil sampling. These samples have been reviewed by staff of the Effects Evaluation Division to evaluate whether exposure to the amounts of organics, metals or sulfur compounds measured in the air or soil might cause adverse health effects in the general public. The attached Appendix is a summary of the conclusions of the Effects Evaluation staff. The results of our review are discussed below.

### SOIL

Three different monitoring reports containing the results of soil sampling were reviewed. Since there was a concern that dust from the electrostatic precipitator (abatement equipment to reduce particulate pollution) might be contaminating soil off-site, grab samples of the dust from two of the cement plants were taken as well as soil samples from nearby, off-site locations. The heavy metal content of the dust and the soil samples was analyzed and compared to the Environmental Media Evaluation Guidelines (EMEG) for metals in soil. These Guidelines are developed by the Agency for Toxic Substances and Disease Registry (ATSDR) and represent a concentration of a metal in soil that a child could consume on a daily basis without damage to his/her health. Lead levels were compared to the Centers for Disease Control (CDC) guideline for soil lead. The measured concentrations were also compared to the published range of metals levels typical of U.S. soils. All levels of metals in these samples were below the appropriate EMEG and were within the range of background levels for U.S. soils.

In order to determine whether surrounding soils were accumulating excessive metal concentrations, soil samples were collected at distances ranging from 0.25 to 5 miles from each of the three cement plants and analyzed for heavy metals. Samples were taken in all four directions from each plant. These concentrations were compared to the soil EMEG for each metal (lead concentrations were compared to the CDC guideline). None of the measured levels exceeded a guideline.

\* In summary, none of the measured levels exceeded the guideline concentrations or were outside the range of background amounts of metals in U.S. soils. We would not expect adverse health effects from exposure to these concentrations of metals.

## VOLATILE ORGANIC COMPOUNDS

At various times from January 1991 through the spring of 1992, ambient air samples were taken at different locations downwind of the three cement plants and the steel plant. Analysis was conducted mainly for organic compounds such as chlorinated hydrocarbons (for example, vinyl chloride) and aromatics (like benzene, toluene or xylene), but any organic that was detected above 0.5 ppbv was reported. This sampling effort included 30-minute or 1-hour grab samples, canister samples collected by citizens when they smelled odors or experienced health effects and over 100 3-hour samples taken sequentially during a one week period. In addition, polycyclic aromatic hydrocarbons (PAH) were sampled for during the week-long mobile lab trip.

\* These results were compared to the Effects Screening Level (ESL) for each detected compound. The ESL is a guideline used to evaluate air concentrations for their potential to cause adverse health effects. An ESL is 1% or less of a concentration which has been determined to be safe for healthy adults. All of the organic compounds were below the ESL. Adverse health effects from exposure to these concentrations of organics would not be expected.

## PM<sub>10</sub>

\* Ambient air sampling for particulate matter of 10 microns or less was conducted simultaneously at three different sites (including a residence) from January 1991 through February 1992. Two additional sites were sampled during January and February 1992. Samples at each site were collected for a 24-hour period every sixth day. Analysis was conducted for heavy metals. The results were compared to the ESL, except for lead and beryllium which were compared to their respective federal and state standards. All measured concentrations were below the appropriate ESL or standard. No adverse health effects would be expected from exposure to these concentrations of metals.

## SULFUR COMPOUNDS

A special monitoring trip was conducted in February 1991 to measure ambient concentrations of hydrogen sulfide ( $H_2S$ ) and sulfur dioxide ( $SO_2$ ). Samples for these compounds were also taken during the week-long trip in November 1991. On both occasions, concentrations of  $H_2S$  high enough to be odorous were detected. No  $SO_2$  levels above the federal or state standard were detected. However, a TACB staff member reported smelling sulfur odor and experiencing irritation and chest tightness just prior to setting up the sampling equipment.

One citizen-obtained canister sample collected in February 1992 had measurable concentrations of carbon disulfide, methyl mercaptan and dimethyl sulfide. Although the amount of carbon disulfide slightly exceeded the ESL, none of the measured concentrations would be expected to cause adverse health effects.

In summary, hydrogen sulfide was detected at potentially odorous levels. Other sulfur compounds were below or did not significantly exceed the appropriate standard or ESL.

## SLAG, ROAD MATERIAL, OTHER MATERIALS

A concern was raised that because slag from a nearby steel plant was being used for road and driveway material, citizens may be exposed to excessive concentrations of metals. Samples of slag from the plant revealed high concentrations of total chromium. Loose road material also revealed high levels of total chromium, although hay, foundation rock and two air conditioning filters from a home whose driveway was paved with slag material did not have elevated levels. Although the amounts of total chromium in the road material were well above the soil EMEG for the more toxic chromium VI, air sampling was needed in order to determine whether the road material was being broken down to a chromium-contaminated dust which could be inhaled or ingested. The one sample reviewed to date was below the detection limit.

Further analysis to differentiate chromium VI from total chromium revealed chromium VI levels well below the chromium VI soil EMEG. A review of the literature regarding chromium-induced skin sensitivity indicated that the levels of soluble chromium in the slag material was below levels which have elicited skin reactions.

## SUMMARY

In summary, hundreds of samples have been taken over the last 16 months to evaluate

\* adverse health effects would be likely. The measured levels have been compared to guideline concentrations which are far below levels which the scientific literature reports human health effects occur. Almost all of the measured amounts have been below the guideline levels. Hydrogen sulfide was found at concentrations high enough to be odorous.

\* This collection of environmental data is not a study of incidence of health effects in the Midlothian community. We can conclude, however, that exposure to the measured concentrations of contaminants are unlikely to cause adverse health effects in the general public.

If you have any questions or require additional information, please contact me at (512) 908-1784.

**Distribution:**

Mr. Kirk Watson, Chairman

Mr. Bill Campbell, Executive Director

Mr. Doyle Pendleton, Deputy Executive Director

Mr. Manuel Aguirre, Jr., P.E., Deputy Director, Regulatory Operations

Ms. Debra Barber, Deputy Director, Field Operations

Mr. Scott Mgebroff, Deputy Director, Technical Operations

Ms. Joyce Lane, Assistant to Deputy Executive Director

Mr. Walter Bradley, Director, Program Development

Mr. Melvin Lewis, Regional Director, Fort Worth

Mr. John W. Key, P.E., Director, Source and Mobile Monitoring Division

Mr. Dave Jones, P.E., Director, Ambient Monitoring Division

Mr. Robert Brewer, Director, Quality Assurance Division

Mr. Jim Price, Ph.D., Director, Research Division

Mr. James P. Gise, Director, Data Management and Analysis Division

Mr. George Dean, Sampling and Analysis Program

Mr. Robert Ross, Region 8, Fort Worth

Mr. David Thompson, Region 8, Fort Worth

Ms. Kerry Williams, Administrative Services

JAW, JSL, LCS, NUG, LCH, RJT, ZLP, MTW, board

# TEXAS AIR CONTROL BOARD

12124 PARK 35 CIRCLE, AUSTIN, TEXAS 78753, 512/908-1000

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WILLIAM H. QUORTRUP  
C. H. RIVERS  
WARREN H. ROBERTS  
MARY ANNE WYATT

March 24, 1993

EXHIBIT 8

DATE 3-26-93  
HB SB 338

Allen S. Lefohn  
A.S.L. & Associates  
111 North Last Chance Gulch, Suite 4A  
Helena, Montana 59601

Dear Dr. Lefohn:

I am writing in response to your request for an evaluation of my letter of August 14, 1992, to Dr. Kathryn Kelly in reference to a draft of her paper "Burning Hazardous Waste in Cement Kilns: A Study of Emissions, Offsite Concentrations, and Health Effects in Midlothian, Texas." The latest draft of this paper that we have reviewed is not appreciably different from the draft we reviewed prior to the August 14 letter. Therefore, the concerns expressed in the August 14 letter remain. Dr. Kelly continues to exaggerate the database by including irrelevant samples in her discussion and further attempts to bolster her arguments by extracting statements from a number of different TACB reports and piecing them together completely out of context. The TACB data in no way support the conclusions drawn by Dr. Kelly concerning the global safety of cement kilns burning hazardous waste.

If you need further information, please call me at (512) 908-1782.

Sincerely,

JoAnn Wiersema  
Director  
Effects Evaluation Division



Amendments to Senate Bill No. 311  
Third Reading Copy

Requested by Sen. Jergeson  
For the Committee on Natural Resources

Prepared by Todd Everts, Committee Staff  
March 23, 1993

1. Title, lines 7 and 8.  
Following: the first "THAT"  
Strike: "TERMS" on line 7 through "INVALID" on line 8  
Insert: "THE DIVISION ORDER MAY NOT ALTER OR AMEND THE TERMS OF  
THE UNDERLYING OIL AND GAS LEASE"
2. Page 1, line 12.  
Following: "section,"  
Insert: "the term"
3. Page 1, line 13.  
Strike: "means"  
Insert: "is limited to mean"  
Following: "instrument"  
Strike: "used for directing"  
Insert: "executed by the lessor of an oil and gas lease to  
authorize the sale of and direct"
4. Page 1, lines 16 through 19.  
Strike: "is" on line 16 through "proceeds" on line 19  
Insert: "may not alter or amend the terms of the underlying oil  
and gas lease"
5. Page 1, line 23.  
Following: "and"  
Strike: "must"
6. Page 1, line 24.  
Following: "(a)"  
Insert: "must"
7. Page 1, line 25  
Following: "(b)"  
Insert: "must"
8. Page 2, line 2.  
Following: "(c)"  
Insert: "must"
9. Page 2, line 3.  
Following: "ownership"  
Insert: "; and  
(d) may contain any other terms that are necessary to  
facilitate the transaction"

10. Page 2, line 4.

Strike: subsection (4) in its entirety

EXHIBIT 9  
DATE 3-26-93  
SG 311

1 Senate BILL NO. 311  
 2 INTRODUCED BY Senators Burgess & Natchez  
 3 Barium Robert Schy: 1st Dep Schuler  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A DIVISION  
 5 ORDER FOR THE DISTRIBUTION OF OIL OR GAS PROCEEDS;  
 6 ESTABLISHING CERTAIN TERMS REQUIRED TO BE IN A DIVISION  
 7 ORDER; AND PROVIDING THAT TERMS OF A DIVISION ORDER MAY NOT  
 8 THE TERMS OF THE UNDERLYING OIL AND GAS LEASE  
 9 CONFLICT WITH THE UNDERLYING LEASE ARE INVALID."

①

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Division order -- definition  
 12 -- effect. (1) As used in this section, a "division order" is limited to mean  
 13 means an instrument <sup>executed by the lessee of an oil or gas lease to authorize the sale of and direct</sup> ~~used for directing the distribution of~~ proceeds from the sale of oil, gas, casinghead gas, or other  
 14 related hydrocarbons.

15 (2) A division order <sup>may not alter or amend the terms of the underlying oil or gas lease</sup> ~~is executed to enable the first~~  
 16  ~~purchaser of the oil or gas production or the holder of~~  
 17  ~~proceeds of the production to make remittance of proceeds~~  
 18  ~~directly to the owners legally entitled to the proceeds. A~~  
 19  ~~division order does not relieve a lessee of any liabilities~~  
 20  ~~or obligations under the terms of the underlying oil or gas~~  
 21  ~~lease.~~

22 (3) A division order must be in writing and must:

23 (a) <sup>must</sup> ~~must~~ warrant the division of interest;

24 (b) <sup>must</sup> ~~must~~ contain the name, address, and tax identification

①

1 number of (each interest owner) and  
 2 must

3 (c) ~~must~~ contain a provision requiring notice of change of  
 4 ownership.

5 (d) ~~may~~ contain any other terms that are necessary  
 6 to the terms of a division order that conflict with terms  
 7 to fact; i.e. take the transaction  
 8 of any underlying oil or gas lease are invalid.

-End-

AFTER OF MENDO

SB 311

Amendments to Senate Bill No. 280  
Third Reading Copy

EXHIBIT 11  
DATE 3-26-93  
HB SB 280

Requested by Sen. Grosfield  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
March 24, 1993

1. Page 2, line 1.  
Following: "effects"  
Insert: "on the uses of water as classified"
2. Page 3, line 6.  
Following: "of"  
Strike: "an"  
Insert: "a prior"
3. Page 3, lines 16 through 20.  
Strike: the second "is" on line 16 through "met" on line 20  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (1)(g), (1)(h), or (1)(i), as  
applicable, may not be met. For the criteria set forth in  
subsection (1)(h), only the department of health and  
environmental sciences or a local water quality district  
established under Title 7, chapter 13, part 45, may file a  
valid objection"
4. Page 10, lines 21 through 23.  
Strike: subsection (g) in its entirety  
Renumber: subsequent subsection
5. Page 11, line 3.  
Strike: "through (2)(h)"  
Insert: "and (2)(g)"
6. Page 11, lines 4 through 8.  
Strike: the second "is" on line 4 through "(2)(h)" on line 8  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2)(f) or (2)(g)"
7. Page 17, lines 20 through 22.  
Strike: subsection (g) in its entirety  
Renumber: subsequent subsection
8. Page 18, line 2.  
Strike: "through (2)(h)"  
Insert: "and (2)(g)"
9. Page 18, lines 3 through 6.  
Strike: the second "is" on line 3 through "(2)(h)" on line 6  
Insert: "must contain substantial credible information  
establishing to the satisfaction of the department that the  
criteria in subsection (2)(f) or (2)(g)"



# WATER POLICY COMMITTEE

## Montana State Legislature

EXHIBIT 114  
DATE 3-26-93  
HB SB 280

### SENATE MEMBERS

Esther G. Bengtson, Vice Chairman  
Tom Beck  
Lorents Grosfield  
Lawrence G. Stimatz

### HOUSE MEMBERS

Hal Harper, Chairman  
Vivian M. Brooke  
Russell Fagg  
Thomas N. Lee

### COMMITTEE STAFF

Environmental Quality Council  
Capitol Station  
Helena, Montana 59620  
(406) 444-3742

March 26, 1992

Representative Dick Knox  
Chairman, House Natural  
Resources Committee  
State Capitol  
Helena, MT 59620

Dear Representative Knox:

I am writing on behalf of the Water Policy Committee in support of SB 280. Apart from our statutory involvement with and support of the water planning process, the Committee believes that passage and full implementation of SB 280 is crucial to a successful conclusion of the Committee's Geothermal Resource Study.

The 1991 Legislature, through Senate Joint Resolution 25, requested the Committee to conduct an interim study of the need for and feasibility of state regulation of Montana's geothermal resources. Specifically, the Committee was asked to determine:

i. the need for and feasibility of state regulations to control the development of energy that may be extracted from the natural heat of the water and the development of any geothermal byproduct;

ii. if regulation of geothermal resources exists in other states with substantial geothermal resources; and

iii. if water users and entities with an interest in geothermal resources in Montana need and want state regulation of geothermal resources.

Based on the information presented throughout the study, the Committee made the following findings:

\* Geothermal values are a parameter of water quality.

\* Under current statutes, rules, and DNRC policy, it is unclear whether or not the DNRC may deny or condition water use permits on the basis of impacts to water quality, including impacts to geothermal values. It is clear that the DNRC has never denied or conditioned a water use permit on this basis.

- \* Geothermal resources have a value in addition to those associated with other, non-geothermal, water resources.
- \* Current geothermal resource users strongly express a desire to ensure that their geothermal resources are fully protected under Montana water law.
- \* Protecting existing and future geothermal resource users necessitates increasing the protection of the geothermal resource itself.

Based on these findings the Committee made the following recommendation to the Legislature.

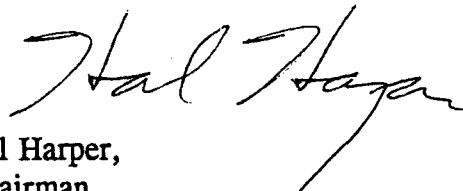
**Final Committee Recommendations**

*The Committee recommends that the DNRC be granted clear authority to deny or condition new water permits or applications for changes to water use permits on the basis of impacts to geothermal values. This determination should be based on beneficial use and adverse impact criteria currently used by the DNRC in processing new permit or change of use applications.*

*Additionally, the Committee recommends that state law be amended to allow for designation of a controlled ground water area on the basis of future or existing adverse impacts to a geothermal resource.*

The Committee closely followed the State Water Planning Process and believes that the changes recommended in that Plan, and now contained in SB 280, will adequately implement the Committee recommendations for the Geothermal Resources Study. The Committee believes that the term "water quality" includes the specific parameter of geothermal values. It is the intent of the Committee that geothermal values be added to the "bundle" of rights protected under the SB 280.

Sincerely,



Hal Harper,  
Chairman

**PRESIDENT**

Thomas E. Sands  
1995 3rd Ave. E.  
Kalispell, MT 59901  
(406) 755-6401

**VICE-PRESIDENT**

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



P.O. Box 4112  
Missoula, Montana 59806

**PRESIDENT-ELECT**

Daniel P. Brien  
P.O. Box 225  
Somers, MT 59032  
(406) 857-3583

**SECRETARY-TREASURER**

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

EXHIBIT 12  
DATE 3-26-93  
HB SB 261

TO: The Honorable Members of the House Natural Resources Committee  
FROM: The Montana Association of registered Land Surveyors (MARLS)  
SUBJECT: Senate Bill 261  
DATE: March 26, 1993

Throughout this 1993 legislative session, MARLS has presented to this committee, as well as the legislature as a whole, an honest assessment of our understanding of the subdivision process in Montana. We have outlined what we see as the problems with the current law, regulations, and review process. We have also tried to present our concept of the solutions to those problems.

Our opinions are based on our unique position of public trust - that of being licensed Professionals Land Surveyors - who, by law, must practice our professions with a complete knowledge and understanding of, and in direct conformance with, the Montana Subdivision and Platting Act (MSPA). No other profession in the State of Montana is required to demonstrate competency in the MSPA - not Professional Engineers, Architects, Lawyers, Real Estate Agents, not even planners. We alone are registered and licensed only after being tested on the Act, and demonstrating satisfactory competence therein to warrant the protection of the public trust and general welfare of Montana and Montanans. Our perspective, then, is from those who work with the law on a daily basis, and as the only Professionals in Montana legally charged with the responsibility of meeting the tenets and requirements of the law.

Our concern with SB 261 is that it deals with only half of the problem in Montana. Admittedly there are violations to the current law and we wish to help to eliminate those abuses. But government bureaucracy cripples and stifles growth in Montana as well, and SB 261 does nothing to address that aspect of the problem. It merely states, in essence, that landowners are the problem, government is the solution. Unfortunately, the administration of such a concept is normally then left to non-elected bureaucrats. Such persons generally have not met the tests and requirements of licensure and registration, which serves to establish the responsibility, credibility and credibility of professionals in Montana, and assures the protection of the public welfare and trust. We are concerned with the concept of giving all rights and responsibility for divisions of land to any government entity without specifying in the law the criteria and process for division and review.

We agree that subdivision reform is necessary, but we oppose SB 261 as the vehicle to accomplish that end without the significant amendments from SB 343 suggested to you at the hearings on March 12. We encourage you to consider SB 261 very carefully and to vote to kill SB 261.

We thank you for your efforts in this matter, and for your efforts on behalf of Montana.

Daniel W. McGee, Chairman, MARLS Legislation Committee

EXHIBIT 15  
DATE 3-26-93  
HS SB 346

EXPERIENCE MONTANA  
53 Elser Lane  
Sheridan, MT 59749-9604  
842-5134

House Natural Resources Committee

Mar. 20, 1993

Dear Chairman Knox, Vice Chairman Tunby, Representatives Bird, Brooke, Fagg, Feland, Foster, Gilbert, Harper, Orr, Raney, Schwinden, Stovall, Swanson, Toole and Wagner:

We need your help in passing Senate Bill 346 one of the most significant bills on water use to appear in the legislature in many years. It makes instream flow a beneficial use and provides for leasing and sale of water rights to individuals to provide instream flow.

It is very important that we do not damage our wonderful rivers and streams by dewatering them to the point that they are no longer living systems. Montana citizens benefit greatly from healthy waterways and tourists also highly appreciate our trout rivers and streams. In 1992 tourism brought 900 million dollars to Montana and when the turnover effect is considered the impact was over 2.1 billion dollars to local economies. Certainly tourists did not come here to see the Blue Ribbon Big Hole River dried up to a trickle or the mighty Jefferson River only a dribble surrounded by mud.

Under present law a person may not obtain a water right for non-consumptive use. Also if a person has excess water rights through efficient water use he cannot leave that water in the river because he will lose the right to it. Instream flows are vital for maintaining Montana's nationally famous waterways and fish and wildlife resources. Instream flows will benefit our expanding travel and recreation industry.

This bill involves only willing buyers and sellers and lessors and lessees. It does not take away any person's water right; remove private property rights; allow new permits for instream flow; reduces the chance of a law suit to impose the public trust doctrine; does not establish minimum instream flows; or allow out of state transfer of water.

This legislation complements the current leasing program which may be applied to 20 streams in the state but is only active on two.

I am a Montana native, experienced wildlife research and management biologist, livestock rancher, outfitter and educational tour leader and have 20 years irrigation work.

Sincerely,

*Allen Schallenberger*  
Allen Schallenberger

P.S. Please include this letter in the hearing record.



HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 172

DATE March 26, 1992 SPONSOR(S) R. Devlin

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gert Schelle	American Drilling	X	
Linda Lindsay	Lindsay Drilling	X	
Vivian Drake	Lewis + Clark Water Quality		X
Robert Hall Pitkin	BBWA	X as Amended	
Keith Kerbel	DNRC	X as Amended	
B. Chamberlain	Okafe-Chamberlain Pump	X	
J.V. Bennett	MT Association of Planners	X	X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 172

DATE March 26, 1993 SPONSOR(S) Devlin

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
2602 Mount Pleasant Debra Baker	Comer Well Drilling	X	
Ph Baker 2602 Mount	" " "	X	
Susan Schuck	LINDSAY DRILLING		
Joyce Burne	Pat Burne Drilling	X	
Patty Byrnes	" " "	X	
Rick Byrnes	PAT BURNES Drilling	X	
Curt Carlson	Carlson Drilling	X	
Bob Brown	Joe Schuck		
Pat Byrnes	Pat Byrnes Drilling	X	<del>X</del>
Terra Lindsay	Lindsay Drilling	X	
Robert Schuck	Schuck Drilling	X	
Bob Beer	Beer Ranch	X	
Marjuline Denmark	Mid Water Well Drilling	X	
U Mawin DeBuff	DeBuff Drilling Inc	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. SB 338

DATE 3/26/95

SPONSOR(S) SEN. YELLOWTAIL

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JOHN VAN SUGARINGEN	ASH GROVE CEMENT WORKERS		X
JEFF HOWARD	ASH GROVE CEMENT		X
MIKE COLLINS	ASH GROVE CEMENT		X
Tony Collins			X
DAVE ANDERSON	JEFFERSON CO. COMMISSION	X	
Sean G. Weeks	SELF	X	
Joe Scheeler	ASH GROVE		X
Becky Johnston	Ranchers - White Sulphur	X	
STEVEN JACOBS	Agriculture Family - White Sulphur	X	
Margaret Beer		X	
Jim Reichel	self	X	
Denise Kerns	self		X
Vivian Drake	self / Drake Engineering		X
Henny McPhee	Self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Natural Resources

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Scott St. Clare	Self		X
Timmy Smith	Bordermakers 435		X
Don Ryan	CFAC		X
Charles Houser	DHES-AQB		
Gretchen Bingman	Self	✓	
Maggie Pittman	Family	✓	
Sarah Barnard	Self	✓	
Jim Venter	Montana Paper's Assoc	✓	
Cindy Morey	Family	✓	
Brad Raggy	Family	X	
Barb Harris	Self	X	
Kim Wilson	"	+	
Marlyn & Charpie Atkins	Self - husband	X	
George M. Schell	Self & Ash Grove		X

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# HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources

COMMITTEE

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Melissa Case	Self	338		X
Paul Johnson	Self	338		X

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