

MINUTES

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

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on April 5, 1993, at 3:35 p.m.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

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

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

Committee Business Summary:

Hearing: HB 388, SJR 28
Executive Action: None.

HEARING ON HB 388

Opening Statement by Sponsor:

Representative Bob Gilbert, HD 22, said HB 388 authorizes the Department of Health and Environmental Sciences (DHES) to collect fees to offset water quality programs, conservation permits, and monitoring activity. He stated the bill requires notice of a fee assessment, allows for an appeal process for resolution of disputes, and provides for disposition of fees. He stated Representative Raney was HB 388's original sponsor, but he did not agree with amendments the House Taxation Committee placed on

the bill, so asked that his name be removed.

Proponents' Testimony:

Dan Fraser, chief, DHES Water Quality Bureau, distributed and discussed a handout explaining fees, funding, and administration of the Water Quality Bureau (Exhibit #1).

Bob Robinson, director, DHES, said one of Senator McClernan's amendments to SB 401 struck the \$25,000 fee and referenced back to HB 388. He added there was discussion in the House over the level of fees which DHES worked out with business and local government entities. He asked the Committee to resist changes in the fee levels.

Jim Jensen, executive director, Montana Environmental Information Center (MEIC) said MEIC supports the notion of Montana having a water quality program. He said public interest organizations were excluded from the discussions between DHES and industry, noting the Western Environmental Trade Association (WETA) wrote the amendments the House placed on the bill. Mr. Jensen said the Committee should feel free to consider increasing the fees if the members feel it necessary to ensure that the water quality program is adequately funded. He said if HB 388 fails, and the program is not adequately funded, EPA will administer Montana's water quality program, as it does in many states.

Stan Bradshaw, Montana Trout Unlimited, urged the Committee to pass "some kind of fee bill."

John Fitzpatrick, Pegasus Gold Corporation, said he opposed HB 388 as introduced in the House, but added he can offer qualified support for the bill as amended. Mr. Fitzpatrick stated the bill is lacking in that it addresses only permitted sources as sources of revenue. He said there are a number of sources of potential groundwater contamination other than industrial and municipal discharges. Mr. Fitzpatrick stated there should be a fee mechanism that taps all potential contamination sources.

Alec Hansen, League of Cities and Towns, submitted written testimony (Exhibit #2) and said the fees focus too heavily on Montanans who have invested millions of dollars in recent years on municipal sewage systems and treatment plants. He stated the bill pays no attention to the thousands of people not on municipal sewage systems who are contributing to the pollution of aquifers and groundwater.

Dennis Olson, Northern Plains Resource Council (NPRC), stated that NPRC and MEIC were the only supporters of HB 388 when it was introduced in the House. He objected to the fact that MEIC and NPRC were left out of the negotiations with DHES regarding fee levels, stating DHES and industry has "stripped [HB 388] down to the bare bones minimum that they can get it down to and still

withstand a challenge by EPA over the primacy issue." Mr. Olson said DHES has publicly admitted to having spent \$25,000 on the Noranda nondegradation exemption, which they said would assure adequate monitoring of the exemption. He stated the fee amendments on SB 401 placed a \$5,000 limit on the fee that can be assessed by the Department for a nondegradation waiver, so DHES is acknowledging it does not have the funding to adequately monitor the exemptions.

Opponents' Testimony:

Richard Nisbet, director of public works for the City of Helena, submitted written testimony (Exhibit #3) and stated the city opposes funding state government by imposing additional users fees.

Questions From Committee Members and Responses:

Senator Grosfield asked about the language in the statement of intent regarding general permits for nondegradation review. Mr. Fraser stated nondegradation review is addressed on page 5. Senator Grosfield asked if there would be annual fees associated with nondegradation review. Mr. Fraser stated there are two separate sets of fees - a discharge fee and an application fee. Senator Grosfield asked if the sewage treatment discussed on page 5 is municipal or private and Mr. Fraser replied the language refers to public sewer systems. Senator Grosfield asked if there is a difference between publicly owned treatment works and domestic sewage treatment. Mr. Fraser stated municipalities are publicly owned treatment works, but there are some privately owned domestic sewage treatment facilities as well. He stated the second fee for nondegradation could potentially be a fee to an industrial facility that was going to have its own sewage system and waste water treatment facility. Senator Grosfield stated nondegradation applies to several sources, and asked about the reason for the subdivision fee of \$120 to \$200 per lot. Mr. Fraser stated the subdivision fee is for all applications for permits or authorization to degrade. Senator Grosfield and Mr. Fraser discussed the fee cap for subdivisions. Senator Grosfield asked for clarification on the language on the bottom of page 5. Mr. Fraser stated a 25% fee reduction will be given to a facility producing an effluent that is less than or equal to one-half the permit limit. He added if a facility produced 75% of the limit, then the fee reduction would be 12 1/2%.

Senator Swysgood asked about the industrial storm water and ground water system permits. Mr. Fraser stated those permits apply to an industry where toxic materials may be associated with the discharge. He added they are not the same permits as the general storm water permits. Senator Swysgood asked if his truck garage, which is classified as industrial, would be affected by HB 388. Mr. Fraser stated the garage would probably fall under

the general storm water permit category.

Senator Swift stated a bill has been passed which assesses fees on subdivision lots at the local level. He asked if HB 388 would be duplicating efforts of local governments. Mr. Fraser said there will be many cases where two sets of fees will be charged on subdivisions. He noted DHES has not been conducting nondegradation reviews on subdivisions.

Mr. Fraser discussed the fee structure and DHES's efforts to establish an equitable system.

Senator Bianchi asked if DHES was currently reviewing subdivisions at all. Mr. Fraser stated the extent of DHES's nondegradation review of subdivisions is to ensure groundwater standards are not violated off the property boundary. Senator Bianchi asked if DHES would be able to more actively monitor subdivisions if the Department receives more FTEs. Mr. Fraser stated three and a half of the FTEs would be assigned specifically to nondegradation review. He added nobody pressured DHES to reduce the fees and stated Fred Shewman and Abe Horpestad put together a fee schedule they felt was appropriate. Senator Bianchi asked Mr. Fraser to explain the groundwater exemptions and whether HB 388 will supply DHES with the money it needs. Mr. Fraser stated the Board of Health adopted groundwater rules in 1982 as a result of a lawsuit involving Stillwater Mine. He stated the Board attempted to minimize the resources needed to implement the programs. He said specific activities permitted by other agencies, including hard rock mines, coal mines, and oil and gas activities, were excluded from the process in the attempts to minimize resources. Senator Bianchi asked if DHES was planning to do away with groundwater exemptions for those activities. Mr. Fraser answered DHES will continue to grant nondegradation authorizations for most of the activities, but would not issue the permit itself. Senator Bianchi asked how many more FTEs Representative Raney's bill would have allowed the Department. Mr. Fraser replied Representative Raney's amendments authorized DHES to raise fees at a later date without having to go through the legislature. He stated the current fee schedule is adequate for the Department's needs. Senator Bianchi asked how EPA administration of the water quality program would work. Mr. Fraser stated EPA is also underfunded and would deal only with the major permittees in the state.

Senator Bianchi asked why the environmental groups were not included in the fee schedule negotiations. Bob Robinson stated the mining industry and local governments had opposed HB 388 in its original form, while environmental groups supported it. He said industry and local governments were concerned about original fee schedule which authorized DHES to raise fees. Mr. Robinson stated DHES worked with the opposition to set parameters, but stressed that the program was not compromised in the process.

Senator Doherty said DHES represents the public interest, and

suggested that public interest groups be included in future negotiations and compromises. Mr. Robinson stated he does not think DHES compromised, but simply set the matrix.

Senator Tveit asked about fees for domestic sewage treatment permits. Mr. Fraser gave examples of domestic sewage treatment systems and said the fee would be established to cover costs of review in determining whether or not to grant authorization to degrade. He stated the subdivision fee would be in addition to the typical sanitation and subdivision review fees for those that require nondegradation review. Senator Tveit asked about annual fees and Mr. Fraser stated the annual fee is based on the amount and strength of discharge.

Senator Swysgood asked about the fiscal note. Mr. Fraser stated the fiscal note is accurate except that it does not show the 3 1/2 FTEs under current law. Senator Swysgood said the fiscal note indicates that if HB 388 passes, DHES will require \$928,000 in 1994 and \$930,000 in 1995, but the income under the proposed law is about \$100,000 less. Mr. Fraser said he does not know why the figures do not add up and Senator Bianchi asked him to bring the answer to the Committee when it meets for executive action.

Closing by Sponsor:

Representative Gilbert stated the fees and appropriations from HB 388 are not included in HB 2, so HB 2 will have to be amended if the bill passes. He said he was not aware that the public interest groups had been left out of the fee negotiations. Representative Gilbert said he sponsored the bill so DHES could be sufficiently funded to control the state's water quality. He urged the Committee to be careful about increasing the fees.

HEARING ON SJR 28

Opening Statement by Sponsor:

Senator Steve Doherty, SD 20, stated there has been concern on both sides of the hard rock mining issue about what is going on in the Hard Rock Bureau Reclamation Division. He handed out copies of an editorial by Gary Langley, Montana Mining Association, and an article from the Billings Gazette (Exhibits #4 and #5). Senator Doherty stated if both the industry and the public interest groups are having problems with the reclamation division, it should be examined by the legislative auditor.

Proponents' Testimony:

Jim Jensen, Montana Environmental Information Center (MEIC) stated the articles Senator Doherty passed out fairly represent the situation. He said it would be in everyone's best interest

to have a third party independent review of the Hard Rock Bureau's permitting and enforcement functions.

Kim Wilson, representing the Clark Fork Coalition, stated the Coalition has felt the Hard Rock Bureau has placed too much emphasis on granting permits and not enough on enforcement and monitoring of the permits.

John Fitzpatrick, Pegasus Gold, said he offers "qualified support" for the resolution, as he disagrees with some particulars of the legislation. Mr. Fitzpatrick handed out an article from the Billings Gazette (Exhibit #6) discussing allegations by Jim Jensen and William Patric that the state of Montana and the mining industry was engaged in a conspiracy. He stated the mining industry has been waiting for 5 months for Jensen and Patric to follow up on their call for a legislative audit. Mr. Fitzpatrick said he thinks the resolution as introduced is misleading. He said language on page 1, lines 18-20 gives the impression that the mining industry and environmental groups got together to draft the resolution, which he added is incorrect. Mr. Fitzpatrick asked the Committee to strike those lines. He said he does not consider MEIC a "public interest group" and suggested the Committee strike "public interest" and insert "environmental". On page 1, line 24, he asked the Committee to insert language which specifically refers to the authority of the legislative auditor. He also asked the Committee to insert language on page 2, line 12 "verifying the accuracy of allegations made by the Montana Environmental Information Center and Mineral Policy Center...that state laws have been violated."

Stan Bradshaw, Montana Trout Unlimited, stated Mr. Fitzpatrick's proposed amendments are intended to "allow him to vent his spleen via a legislative vehicle at a group that he's at odds with." He said the resolution simply calls for an objective evaluation of how the Hard Rock Bureau has performed.

Gary Amestoy, administrator, Department of State Lands (DSL) Reclamation Division, stated a performance audit "will assist the Reclamation Division in sorting through many of the misconceptions of both the industry and the environmental community about what a hard rock mining regulatory program should or should not be under existing state law." Mr. Amestoy stated the Division sees its role as adhering to the provisions of the Montana Constitution, the Metal Mine Reclamation Act and the Montana Environmental Policy Act (MEPA). He said environmental groups and the industry have both criticized the Division for inadequacies in the permitting process, inspection and enforcement, and compliance with MEPA. Mr. Amestoy stated everyone agrees the permitting process needs to be improved, but the definition of "improvement" varies widely. He stated whenever there is a general fund reduction, the bulk of the money comes out of the Hard Rock program, minimizing its flexibility. Mr. Amestoy suggested the Committee widen the scope of the audit

by including the following issues for inspection: the hard rock exploration license program; the small miners program; reclamation bond calculations; MEPA compliance; public participation; permit suspension and revocation; bond forfeitures; inspection and enforcement; and interaction with other state and federal agencies. Mr. Amestoy pledged his agency's cooperation with the performance audit.

Dennis Olson, Northern Plains Resource Council (NPRC), stated NPRC conducted a study in 1990 of the Hard Rock Bureau and the Water Quality Bureau's violations files. He said the agencies have levied over \$600,000 worth of fines against the hard rock industry in the last 10 years, but have collected only \$60,000. Mr. Olson said NPRC believes many more violations have not been dealt with.

J.V. Bennet, Montana Wildlife Federation, expressed MWF's support for SJR 28.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

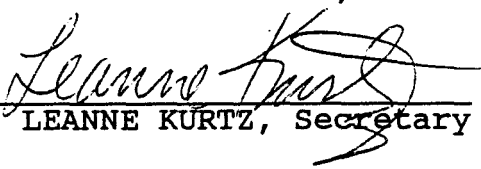
Senator Grosfield stated he would like to ask Scott Secat, legislative auditor, whether Mr. Amestoy's suggested amendments would cause a problem for the audit committee.

ADJOURNMENT

Adjournment: 5:00 p.m.



SENATOR DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES

DATE 4/5/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	✓		
Sen. Hockett	✓		
Sen. Bartlett	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Keating	✓		
Sen. Kennedy	✓		
Sen. Swift	✓		
Sen. Sunsgood	✓		
Sen. McCernan	✓		
Sen. Treitz	✓		
Sen. Weeding	✓		
Sen. Weldon	✓		

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'

TESTIMONY ON HB 388

ISSUES OF CONCERN:

- ☐ **PRIMACY FOR MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) PERMIT PROGRAM**
- ☐ **IMPLEMENTATION OF THE MONTANA WATER QUALITY ACT'S NONDEGRADATION POLICY**
- ☐ **ENVIRONMENTALLY RESPONSIBLE GROWTH AND DEVELOPMENT**
- ☐ **PROTECTION OF MONTANA'S SURFACE AND GROUND WATER**
- ☐ **ALTERNATIVES**

I. PRIMACY FOR THE MPDES PERMIT PROGRAM

- A. MONTANA'S WATER QUALITY ACT REQUIRES ALL WHO DISCHARGE WASTES TO STATE WATERS (GROUND WATER OR SURFACE WATER) TO HAVE A PERMIT FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.**

1. THE MONTANA GROUND WATER POLLUTION CONTROL SYSTEM (MGWPCS)

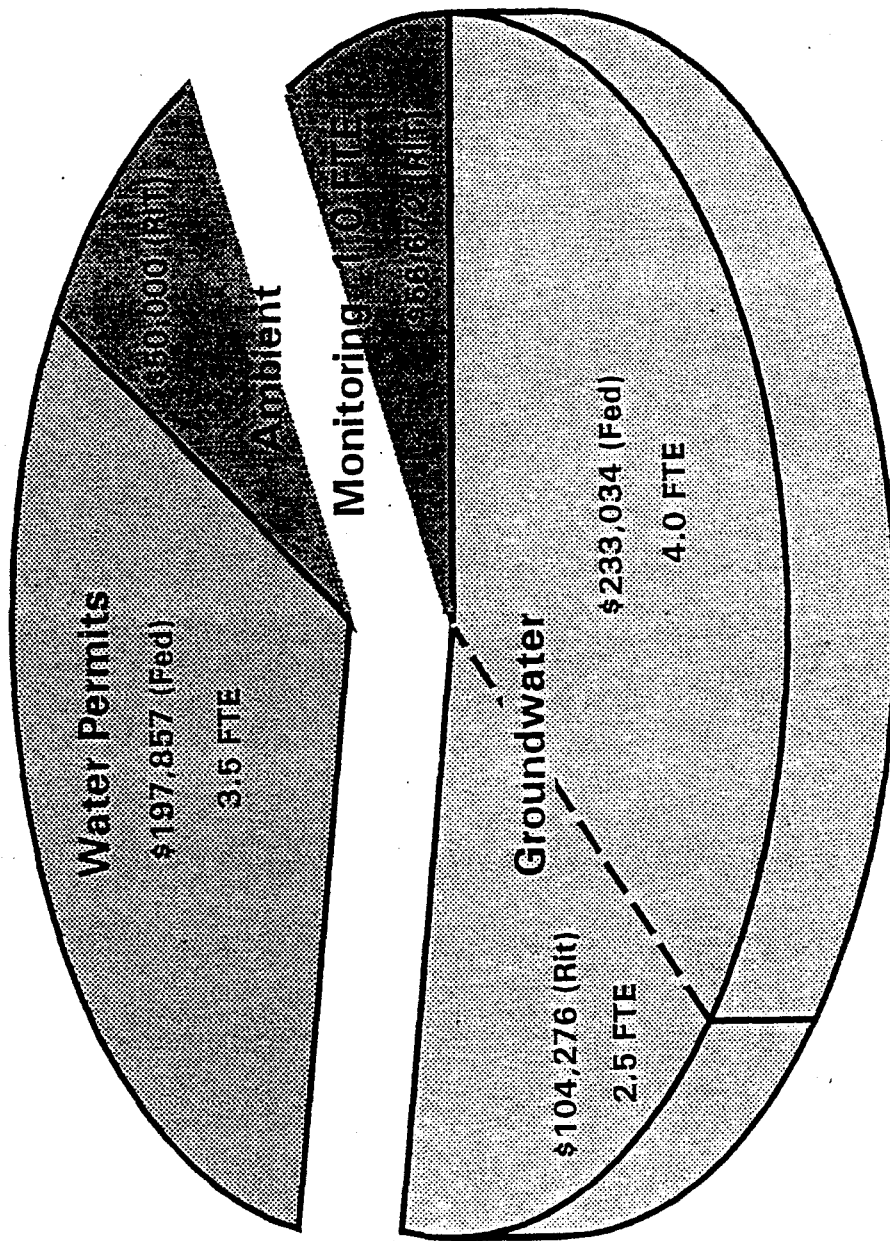
THIS IS A PROGRAM DESIGNED TO CONTROL DISCHARGES OF WASTES TO MONTANA'S AQUIFERS THEREBY PROTECTING THE QUALITY OF GROUND WATER FOR EXISTING AND POTENTIAL USES.

2. THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES)

THIS PROGRAM IS DESIGNED TO CONTROL DISCHARGES OF WASTES TO STATE SURFACE WATERS. IT IS PATTERNED AFTER THE FEDERAL (NPDES) CLEAN WATER ACT PROGRAM.

(SEE FY92 FUNDING)

FY92 FUNDING



GRAND TOTAL \$641,839

II. IMPLEMENTATION OF THE MONTANA WATER QUALITY ACT'S NONDEGRADATION POLICY

A. REQUIRED BY THE MONTANA CONSTITUTION'S ARTICLE IX, SECTION 1 (3); "The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation——"

This policy is essentially intended to ensure existing high quality waters are maintained for future generations of Montanans. It allows limited degradation to occur when justified and subject to strict conditions designed to protect water quality.

B. THE WATER QUALITY ACT HAS A NONDEGRADATION POLICY WHICH WILL PROBABLY BE MODIFIED DURING THE LEGISLATIVE SESSION. THE DHES WILL BE REQUIRED TO IMPLEMENT THIS NONDEGRADATION POLICY.

III. ENVIRONMENTALLY RESPONSIBLE GROWTH AND DEVELOPMENT

- A. SUBDIVISIONS OF LAND**
- B. METAL MINES**
- C. COAL MINES**
- D. GROWTH OF CITIES AND TOWNS**

IV. PROTECTION OF MONTANA'S SURFACE AND GROUND WATERS

THE WATER QUALITY ACT REQUIRES THE DEPARTMENT TO PROVIDE A COMPREHENSIVE WATER POLLUTION CONTROL PROGRAM. THE DEPARTMENT AND THE ADMINISTRATION HAVE DETERMINED THAT THE ONLY FEASIBLE WAY TO ENSURE THE EXISTENCE OF THIS PROGRAM IS THROUGH THE ASSESSMENT OF FEES ON THOSE WHO WOULD DISCHARGE WASTES TO STATE WATERS.

V. ALTERNATIVES

- A. NO AUTHORIZATION FOR THE DEPARTMENT TO ASSESS FEES FOR NONDEGRADATION AUTHORIZATIONS OR PERMITS TO DISCHARGE WASTES.**
 - **LOSS OF PRIMACY FOR THE MPDES PROGRAM.**
 - **LOSS OF THE STATE'S ONLY LONG-TERM AMBIENT WATER QUALITY MONITORING PROGRAM.**
 - **POTENTIAL LIABILITY EXPOSURE BECAUSE OF THE INABILITY TO PROCESS PERMITS AND/OR NONDEGRADATION AUTHORIZATIONS AS REQUIRED BY LAW.**

- **CAN DEVELOPMENT OCCUR????**
- **DEGRADATION OF STATE WATERS.**

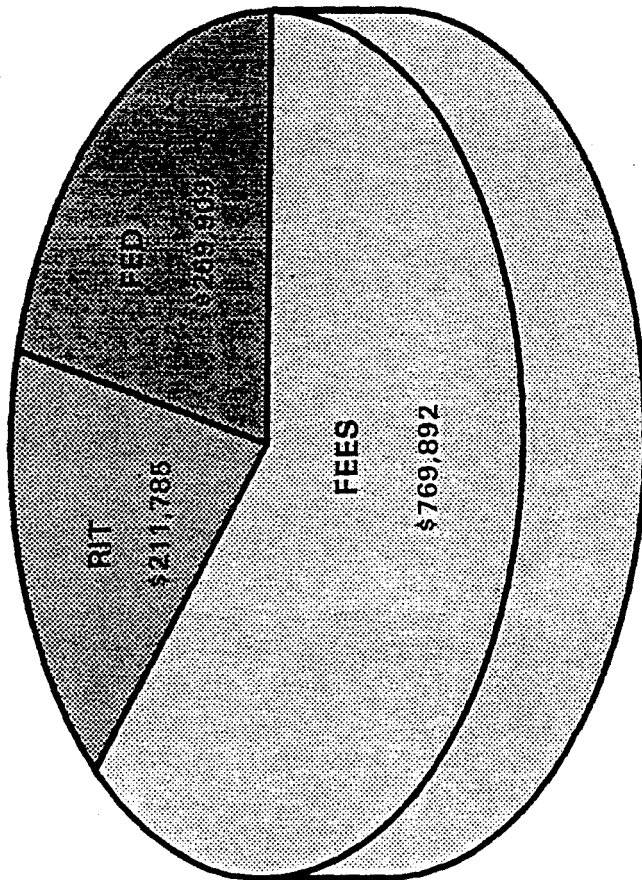
(SEE FY92 FUNDING)

B. AUTHORIZATION FOR FEES PROVIDED.

- **RETENTION OF PRIMACY.**
- **MAINTENANCE OF MINIMAL AMBIENT WATER QUALITY MONITORING PROGRAM.**
- **RESPONSIBLE DEVELOPMENT CAN OCCUR.**
- **WATER QUALITY WILL BE PROTECTED, MAINTAINED & IMPROVED AS REQUIRED BY THE WQA.**

(SEE FY94 FUNDING)

FY94 FUNDING



FTE:

Water Permits* 3.5
 Surface Water Permits 2.0
 Groundwater Per/Com 3.5
 Groundwater UIC 1.0
 Support Services Bureau 1.5

total 11.5 FTE

(3.5 current level;
 8.0 new, 1.5 of which
 are not in WQB)

FEES	
Ambient Monitoring*	50,000
Groundwater*	41,000
Water Permits*	260,422
Surface Water Permits	135,000
Groundwater Permits/Compliance	218,470
Groundwater UIC	65,000
TOTAL FEES	\$769,892
\$351,422* (CURRENT LEVEL)	
FED	
Groundwater	269,909
TOTAL FED	\$269,909
RIT	
Ambient Monitoring	56,473
Groundwater	155,312
TOTAL RIT	\$211,785
GRAND TOTAL	\$1,251,586

DATE 4-5-93
HR-388

Don L. Frick
 4/5/93

Montana League of Cities and Towns



April 5, 1993

Senator Don Bianchi, Chairman
Senate Natural Resources Committee
State Capitol
Helena, MT 59620

Dear Senator Bianchi:

Cities and towns understand the difficult financial position of the state, and accept a portion of the responsibility for funding necessary programs of the Department of Health and Environmental Sciences through permit or users fees. Cities accepted this responsibility in 1991, and they are currently paying fees that are assessed to support the Water Quality and Solid Waste Bureaus. These fees of \$2.25 for every water connection and \$.31 per ton of solid waste are passed on directly to consumers.

Municipal governments can accept the additional water quality assessments proposed in House Bill 388, but they do ask the committee to consider a more equitable and broader based distribution of the costs.

Cities and towns have made an enormous investment in sewage systems and treatment facilities in recent years to assure compliance with state and federal water quality standards. With the loss of federal grant programs, an increasing share of this investment comes from the local rate payers, who will also be responsible for the fees authorized by HB-388.

As indicated, cities are willing to pay a fair share, but they also believe those who dispose of sewage in septic systems should also be obligated for a portion of the costs of the state water quality program. It may be difficult to develop a procedure to apply water quality fees to septic systems, but we ask this committee and the department to consider this additional assessment to assure that the costs of this legislation are distributed equitably among all of those who will benefit from the program.

Thank you for considering this recommendation.

Best wishes,

A handwritten signature in dark ink, appearing to read "Alec Hansen".

Alec Hansen
Executive Director

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 4/5/93
BILL NO. HB 388

HOUSE BILL #388

TESTIMONY

MR CHAIRMAN AND MEMBERS OF THE SENATE NATURAL RESOURCES COMMITTEE.
MY NAME IS RICHARD A. NISBET, DIRECTOR OF PUBLIC WORKS WITH THE
CITY OF HELENA. I AM REPRESENTING THE HELENA CITY COMMISSION.

THE CITY OF HELENA WANTS TO GO ON RECORD AS OPPOSING HOUSE BILL
#388.

THIS BILL FUNDS STATE GOVERNMENT BY IMPOSING ADDITIONAL USER FEES
ON LOCAL GOVERNMENT. THE IMPACT ON THE CITY OF HELENA IS \$10,000
PER YEAR. THIS AGENCY IS A REGULATORY AGENCY AND DOES NOT PROVIDE
TECHNICAL SUPPORT TO THE CITY. THIS FUNCTION SHOULD BE PAID BY
STATE FUNDS, NOT LOCAL FEES.

THANK YOU.

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 4/5/93

BILL NO. HB 388

4B

Loretta Lynde..... **PUBLISHER**
Charles Wood..... **EDITOR**
Mike Voeller..... **EDITORIAL PAGE EDITOR**

OPINIONS

Mining could grow if...

The hardrock mining industry could provide as many as 1,640 new jobs during the next several years if it is allowed to grow in an orderly manner that is sensitive to environmental concerns.

Those jobs would provide \$56.5 million in direct labor and almost \$10 million a year in tax revenue to state and local governments and school districts.

But first, Montana's time-consuming and cumbersome permitting process and water nondegradation policy must be changed.

The mining industry already operates in respect to 37 federal and 11 state statutes — all designed to protect the environment. These laws are necessary to provide our citizens — and people who work for the mines — with the clean environment they not only deserve, but are guaranteed under Montana's constitution.

But some laws, particularly the Montana Metal Mine Reclamation Act and the Montana Water Quality Act, are open to a great deal of discretionary interpretation. This has led to delays of months and even years in the issuance of mining permits. Legislation is needed to clarify both of these statutes without detracting from environmental quality.

Montana's Water Quality Act in particular has been interpreted to mean that no changes — not even insignificant changes — are allowed in water quality. This has led to a virtual moratorium on mining permits in Montana.

And the mining industry isn't alone. The non-degradation policy is being selectively enforced on mining because it is the only activity applying for new permits. But eventually the policy will affect



**GARY
LANLEY**

oil and gas development, agriculture, timber harvesting and even motorized recreation.

At a recent symposium on water quality, Kevin Keenan, manager of the enforcement section of the Water Quality Bureau said: "The focus now in water quality is upon agriculture. There will be a limited window (during which) agriculture... will have a chance to eliminate the sources of pollution. Those who don't will get to know me better."

The last permit for a full-scale mine in Montana was issued July 14, 1986. That was for the Mineral Hill Mine at Jardine, an operation that now employs 84 persons, has a payroll of \$4.6 million and makes annual tax contributions to state and local governments of more than \$600,000. The last permit for an expansion of a mine was issued in July 1990. That was for an expansion of the Golden Sunlight Mine near Whitehall to extend its life-span for 10 years. The permit took two years and four months to obtain and still is being appealed by special interest groups. The operation employs 278 workers who earn \$10.6 million annually and the mine pays almost \$1.3 million in state and

local severance and property taxes.

Altogether, Montana's operating mines employ about 3,500 persons who earn a combined \$150 million. They pay \$5 million a year in state taxes on their incomes while the mines that employ them pay \$15 million in severance taxes and \$9 million in property taxes.

Here is a breakdown of the proposed operations awaiting permits and their contributions to Montana once they achieve full production:

Crown Butte Mine, Cooke City — 175 employees; \$7 million payroll; \$350,000 in state payroll taxes; \$1.6 million in state and local severance and property taxes.

Montanore, Libby — 450 employees; \$15 million payroll; \$600,000 payroll taxes; \$2 million in state and local severance and property taxes.

Stillwater Expansion, Nye — 65 additional employees; \$5 million payroll; \$150,000 payroll taxes; \$335,000 in local severance and property taxes.

East Boulder Project, Big Timber — 600 employees; \$20 million payroll; \$600,000 payroll taxes; \$3 million in state and local severance and property taxes.

ASARCO Rock Creek Project, Libby — 350 employees; \$9.5 million payroll; \$450,000 in payroll taxes; \$2.5 million in state and local severance and property taxes.

The mining industry will keep Montana's water clean and will contribute to the state's economy — but, only if these unwelcome policies are changed.

GARY LANLEY is executive director of the Montana Mining Association.

Mine jobs creation stalls

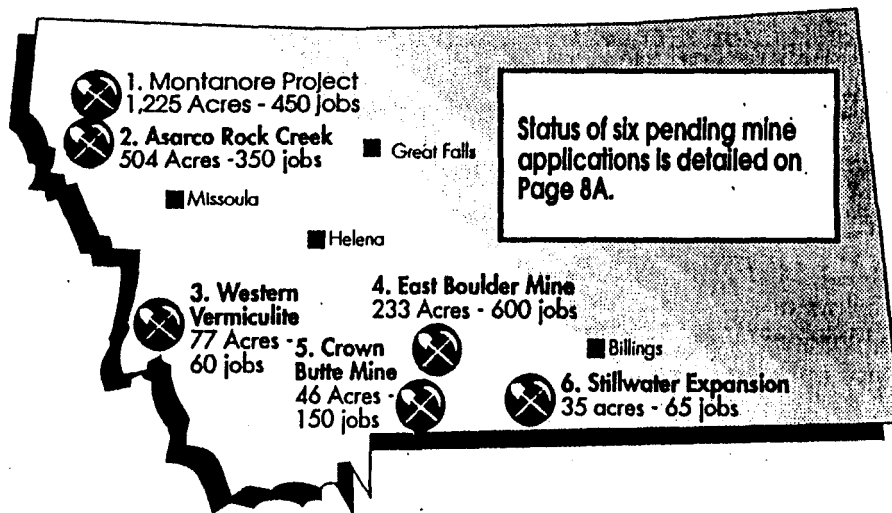
Industry blames a cumbersome permit process

By GRANT SASEK
IR Staff Writer

Mining officials blame Montana's permitting process for delaying the creation of more than 1,500 jobs in a relatively high-paying industry.

It has been nearly seven years since a new major mine was permitted in Montana, they point out.

"We need a clear set of rules and regulations that say 'If you can do this, then you get the permit,'" said Dave Rouig, president of Crown Butte Mines Inc. "Give us a clear target."



Conservationists argue the process works and delays have been the fault of the mining companies.

State agencies have mandatory time frames to make decisions. Mining companies have unlimited time to make theirs, they reply.

"It's the mining companies that have control over the process," said Jim Jensen, executive director of the Montana Environmental Information

(More on JOBS, page 8A)

Jobs

(Continued from Page 1A)

Center. "They're the ones dragging their feet."

Sandra Olsen, chief of the state bureau that permits most of Montana's mines, said it's a little of both.

"There have been complications, but the process is working," Olsen said.

The last major mine permitted in Montana was the Mineral Hill Mine at Jardine in 1986, but permits were issued in 1990 for major expansions at two Montana gold mines and the issuance of a permit for the new Montanore Project near Libby is "imminent," Olsen said.

There are six applications for major mine permits being considered by the Hard Rock Bureau of the Department of State Lands.

Gary Langley, executive director of the Montana Mining Association, said those proposed mines would create nearly 1,700 jobs, pay \$56.5 million in annual wages and raise nearly \$10 million a year in taxes.

Most of those mines originally filed applications for permits in the late 1980s.

THE PROCESS BEGINS when mining companies file applications for permits and the Hard

Rock Bureau begins the application's "completeness review."

Langley called the review a "never-ending process."

When the bureau reviews an application, it often asks for more information.

Depending on how thorough the original application is, requests for additional information may be few or many.

Langley said Crown Butte has been in the completeness process for 18 months and is in its fifth question-and-answer round. Asarco is approaching a dozen exchanges of information in its attempt to permit the Rock Creek Mine, he added.

That isn't necessarily the fault of the process or the bureau, Olsen said.

"Part of the problem is that the plans sometimes are not well thought out before they are submitted," she said.

ANOTHER PROBLEM is that at least four of the mines seeking permits would need exemptions from Montana's water quality laws.

The "non-degradation clause" of the Montana Water Quality Act prohibits calculable changes in Montana's water quality due to human activities.

For miners, that means mine water released into creeks must

be at least as clean as the creek water.

Langley said it is unrealistic to expect some large mines to operate without allowing "insignificant changes" to water quality.

Because many mining companies feel changes in water quality are inevitable, they apply for exemptions from the rule.

Those requests have been granted for at least two of the proposed mines.

Jim Curtis, chairman of the Mining Task Force for the Montana chapter of the Sierra Club, said the liberal use of exemptions or amendments to the act could jeopardize Montana's compliance with federal water law.

There are pending lawsuits related to the law and at least two bills are being considered by Montana's 53rd Legislature to amend it.

Dan Fraser, chief of the Water Quality Bureau, said changes are needed in the bill.

"The unfortunate part is that as the population grows and activities increase, just about anything we do will impact the water quality," Fraser said.

Jensen said mines could operate within the act.

"The technology is available," Jensen said. "The mining companies are just looking for the cheapest way out."

Status of proposals

■ **1. Montanore Project**, 18 miles south of Libby near the Cabinet Mountain Wilderness.

The proposed underground copper and silver mine would disturb 1,225 acres and create 450 jobs.

Among the environmental concerns are water quality, wetlands and grizzly habitat issues.

Status: Record of Decision issued, permit imminent.

■ **2. Asarco Rock Creek Project**, about 10 miles northeast of Noxon.

The proposed underground copper mine would disturb 504 acres and create 350 jobs.

Among the environmental concerns are water quality and geology issues.

Status: Application complete. Working on draft EIS.

■ **3. Western Vermiculite Project**, 11 miles east of Hamilton.

The proposed open pit vermiculite mine would disturb 77 acres and create 60 jobs.

Among the concerns are air quality and health issues.

Status: Final EIS almost complete.

■ **4. East Boulder Mine**, 30 miles south of Big Timber.

The proposed underground platinum/palladium mine would disturb 233 acres and create 600 jobs.

Among the environmental concerns are water quality issues.

Status: Record of Decision written. Because of "non-degradation issues" no permit has been issued.

■ **5. Crown Butte Mine**, four miles northeast of Cooke City.

The proposed underground gold mine would disturb 46 acres and create 150 jobs.

Among the environmental concerns are water quality and proximity to wilderness issues.

Status: Working on application process.

■ **6. Stillwater Expansion**, five miles southeast of Nye.

The proposed expansion of the underground platinum/palladium mine would disturb an additional 35 acres and create another 65 jobs.

Among the environmental concerns are water quality issues and impacts to nearby subdivision.

Status: Permit issued. Department of Health considering exemption from "non-degradation" clause.

ONCE APPLICATIONS are deemed complete by the Hard Rock Bureau, the information is used to write a comprehensive environmental impact statement (EIS).

The bottom line of an EIS, which takes at least a year to write, is a record of decision if a mine will be permitted and under what conditions.

That still isn't always the last word.

Although the Golden Sunlight expansion near Whitehall was approved in 1990, conservation organizations quickly filed a law suit because a less comprehensive environment analysis was used instead of an EIS during the process.

"These are big, complex operations requiring careful examinations," Jensen said. "We're not talking about a burro, pick and shovel."

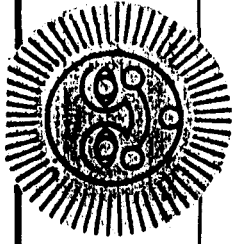
Olsen said if a complete application is filed with the bureau, it usually takes about five years to complete the process.

Rouig said Crown Butte has spent close to \$30 million since 1987 in its permitting efforts.

He said if everything goes well, the mine could begin construction in 1994 with production beginning in 1996.

Rouig said the lengthy process is having "dramatic impacts" on mining in Montana and the United States.

According to Langley, in 1991, \$35 million was spent in Montana on exploration. That figure dropped to \$5 million in 1992, he said.



Acid, metals found in mine discharge

By JILL SUNDBY
Of the Gazette Staff

Higher-than-normal acid and metal levels have been found in drainages below the Zortman and Landusky gold mines in the Little Rocky Mountains of north-central Montana, state and federal agencies have announced.

Because of these findings, the Department of State Lands and Bureau of Land Management have asked Zortman Mining

Inc. to change its mining procedures. The agencies want ZMI to map and identify potential acid-producing waste rock, selectively handle different types of rock, expand reclamation measures and increase its number of water quality monitoring stations.

Some of the metals exceed drinking water standards at points inside the mine permit boundary, according to Scott Haight, district BLM geologist based in Lewistown.

"Beyond the permit boundary we haven't detected any that have exceeded (standards) yet," he said. "We're still investigating."

Although the elevated levels were found on the Zortman and Landusky sides of the

mountains, no effects to the domestic water supplies in those towns have been detected, nor have metals been found in drainages into the Fort Belknap Reservation, Haight said.

The acid and metal levels were documented by the mining company, which takes its own water tests, as do other Montana mines. The government agencies based their conclusions on these water tests, historic water tests, on-site inspection and additional sampling.

Haight said the agencies first noticed the elevated levels on the July 1992 monitoring report, then looked back at older records. "We found that you could see some of that

starting to creep in in 1991," he said.

Acidic water — which dissolves the metals that occur naturally in rock — is created from sulfide-bearing rock. ZMI has been mining mostly oxide ore, which has less sulfide material than unoxidized ore, so acid mine drainage "hasn't been a problem in the past," Haight said.

"Now as they're mining deeper, I think we're starting to see an increase in the percentage of sulfide material mixed with oxide. We're saying 'Let's be a little bit more selective in where we mine' — identify those potentially hot zones and separate them."

The acidity issue is of concern because ZMI has applied to expand the mine more into unoxidized ore, Haight said. However, the current situation is not considered to be extremely serious or extremely hazardous.

The most acidic reading was at a surface water site in Rock Creek with a pH level of 2.5 — much lower than the neutral pH level of 7.

"Most were running in the 4 to 5 range," Haight said. "That's about the point where you start to say 'This is a little more than nat-'"
(More on Acid, Page 10A)

Acid

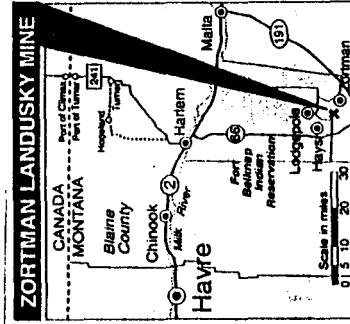
From Page One

ural — there's something else going on here."

In general, the monitoring stations have shown increases in iron, lead, cadmium and zinc "and we've seen some increase in arsenic, but it's hard to tell because the area is naturally high in arsenic anyway," Haight said.

Most of the acidic sites were surface water stations, although some were ground water stations in Rock Creek and Ruby Gulch.

The affected drainages are Ruby Gulch, which runs through Zortman and has been the site of



town of Landusky and continues on under the name Rock Creek.

"Rock Creek did have some elevated metal content before," Haight said. "To say it is totally the fault of the operator may not be correct."

The agencies are continuing to identify the exact source of the acidity, but believe it is coming from the waste rock sites and possibly pits, plus an old retaining dike that has since been removed.

ZMI has already begun capturing discharge water, treating water with limestone to raise the pH and excavating potentially acid-forming rock from one drainage.

The agencies expect to see improvement within six months.

ZMI, a subsidiary of Pegasus Gold Corp., operates both the Zortman and Landusky mines.

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 4/5/93
BILL NO. ST P 28

Groups say mine violations ignored

By BOB ANEZ
Associated Press Writer

The state has failed to enforce laws violated by a gold mine near Zortman and the problem smacks of a conspiracy between the mining company and state officials, environmentalists said Friday.

Representatives of the Mineral Policy Center and Montana Environmental Information Center criticized the Department of State Lands for its handling of the Pegasus Gold operation. They called for a legislative audit of the agency.

THEY CITED 31 LEAKS, spills and other environmental problems at the Zortman-Landusky mine over 13 years that allegedly went unpunished by department officials.

"These are not minor problems," said Jim Jensen, executive director of the environmental information center. "These situations have the potential to cause catastrophic harm both to the environment and to any workers or residents in the area."

"There's such an extraordinary pattern here of failure to enforce that it seems to me that at some point down the road there should be some discussion of whether or not there has actually been a conspiracy between this company and some individuals or agencies," Jensen said.

"Zortman-Landusky is a poorly run, really sloppy operation and perhaps it's dangerous as well," said

State, Pegasus deny any wrongdoing

William Patric of the Mineral Policy Center. "It appears that the Department of State Lands is more concerned about protecting Pegasus' interests than the interests of the people and resources of the Fort Belknap (reservation) area."

PATRIC SAID MANY TRIBAL members feel betrayed because of damage being done to the Little Rocky Mountains that Indians consider sacred ground. The mine opened in 1979 and covers 1,215 acres.

These situations have the potential to cause catastrophic harm both to the environment and to any workers or residents in the area.

Despite the mine's history of cyanide leaks and spills, ground water contamination, bird and wildlife deaths, and poor relations with local tribes, the

Department of State Lands has taken no action against Pegasus, Patric said.

The agency "staunchly defends the mine to the

Our files are open to the public.

public and in inspection reports criticism is framed with praise," Patric said.

Gary Amestoy, whose Reclamation Division includes the bureau overseeing hardrock mining operations, defended his agency's work.

"Our inspection and enforcement activities are based on standards established by state law and specific conditions in the permit," he said.

AMESTOY DISMISSED JENSEN'S SUGGESTION of a conspiracy, saying, "We have a very dedicated and qualified staff. I don't know what he's referring to there. I really doubt that there's any conspiracy going on anywhere."

John Fitzpatrick, spokesman for Pegasus Gold, called criticism of the Zortman-Landusky operation inaccurate and misleading. He said Patric and Jensen "failed to present an honest and balanced picture of the actual events."

For example, he said, there was no illegal overflow of cyanide solution due to a heavy rainstorm in 1986. Rather, the company worked with state and federal officials to prevent an overflow by treating the water before it was released, Fitzpatrick said.

He also denied an allegation the mine filled its leach pad beyond its safe capacity and said the report of 30 gulls dying after landing on a barren mine pond last year was incomplete. Pegasus spent \$30,000 to put a net over the pond to prevent a similar occurrence, Fitzpatrick said.

HE ACKNOWLEDGED THE MINE has had problems, but said the company has tried to correct them and protect the public health and safety.

"The Mineral Policy Center operates on the childlike notion that an industrial facility like a mine must be perfect in all of its design and operational features," Fitzpatrick said.

Both Amestoy and Fitzpatrick said they welcome an legislative investigation.

"Our files are open to the public," Amestoy said. "Everyone isn't going to agree with us 100 percent on everything we do. That's the nature of our enforcement program."

B. King Carzette 11/14/92

Groups say mine goes unpunished

HELENA (AP) — The state has failed to enforce laws violated by a gold mine near Zortman and the problem smacks of a conspiracy between the mining company and state officials, environmentalists said Friday.

Representatives of the Mineral Policy Center and Montana Environmental Information Center criticized the Department of State Lands for its handling of the Pegasus Gold operation. They called for a legislative audit of the agency.

They cited 31 leaks, spills and other environmental problems at the Zortman-Landusky mine over 13 years that allegedly went unpunished by department officials.

"These are not minor problems," said Jim Jensen, executive director of the Environmental Information Center. "These situations have the potential to cause catastrophic harm both to the environment and to any workers or residents in the area."

"There's such an extraordinary pattern here of failure to enforce that it seems to me that at some point down the road there should be some discussion of whether or not there has actually been a conspiracy between this company and some individuals or agencies," Jensen said.

"Zortman-Landusky is a poorly run, really sloppy operation and perhaps it's dangerous as well," said William Patric of the Mineral Policy Center. "It appears that the Department of State Lands is more concerned about protecting Pegasus' interests than the interests of the people and resources of the Fort Belknap (reservation) area."

"Zortman-Landusky is a poorly run, really sloppy operation and perhaps it's dangerous as well."

—William Patric
Mineral Policy Center

Patric said many tribal members feel betrayed because of damage being done to the Little Rocky Mountains that Indian consider sacred ground. The mine opened in 1979 and covers 1,215 acres.

Despite the mine's history of cyanide leaks and spills, ground water contamination, bird and wildlife deaths, and poor relations with local tribes, the Department of State Lands has taken no action against Pegasus, Patric said.

The agency "staunchly defends the mine to the public and in inspection reports criticism is framed with praise," Patric said.

Gary Amestoy, whose Reclamation Division includes the bureau overseeing hardrock mining operations, defended his agency's work.

"Our inspection and enforcement activities are based on standards established by state law and specific conditions in the permit," he said.

He said he did not have time to immediately review all 31 instances cited by Jensen and Patric, but that the criticism is not new.

Amestoy dismissed Jensen's suggestion of a

conspiracy, saying, "We have a very dedicated and qualified staff. I don't know what he's referring to there. I really doubt that there's any conspiracy going on anywhere."

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He also denied an allegation that the mine filled its leach pad beyond its safe capacity and said the report of 30 gulls dying after landing on a barren mine pond last year was incomplete. Pegasus spent \$80,000 to put a net over the pond to prevent a similar occurrence, Fitzpatrick said.

He acknowledged that the mine has had problems but said the company has tried to correct them and protect the public health and safety.

"The Mineral Policy Center operates on the childlike notion that an industrial facility like a mine must be perfect in all of its design and operational features," Fitzpatrick said.

Both Amestoy and Fitzpatrick said they welcome an legislative investigation.

"Our files are open to the public," Amestoy said. "Everyone isn't going to agree with us 100 percent on everything we do. That's the nature of our enforcement program."

DATE 4/5/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 388 and SJ 28
Gilbert Doherty

Name	Representing	Bill No.	Check One Support Oppose	
Richard Nisbet	City of Helena	388		X
David Sharp	DHS	388	X	
David Olsen	DSL	SJ 28	X	
J.V. Bennett	MT. Wildlife Federation	SJ 28	X	
Gary Amestoy	DSL	SJ 28	X	
David M. Smith	MRMS	388		
John Fitzpatrick	Pegasus Gold	SJ 28 HB 388	Amend	
Wynn Olsen	NRAC	HB 388	X	
Stan Bradshaw	MTU	HB 388 SJ 28	✓	
Johnny Johnson	CURE	SJ 28	Amend	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY