

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 1,
1995, at 1:00 pm

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Larry Tveit

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

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

Committee Business Summary:

Hearing: SB 231, SB 247
Executive Action: SB 186

*{Tape: 1; Side: A; Comments: could not hear testimony or tapes clearly because
of microphone feedback noise and echo in Room 325.}*

HEARING ON SB 247

Opening Statement by Sponsor:

SEN. MACK COLE, SENATE DISTRICT 4, said SB 247 will assist in the
clarification of surface water standards. The bill also
eliminates the repetition between some of the administration rule

sections, e.g. 16.20.631 and other standards. The bill also eliminates the requirements of secondary treatment of a discharge when it is determined to be nonsignificant. SB 247 would allow a smoother operation in obtaining permits without endangering surface water quality standards.

Proponents' Testimony:

Doug Parker, Crown Butte Mines, said they were in favor of the legislation because duplication of standards puts industry in a difficult position. He said they were concerned with the way the bill was drafted, because it allows the Water Quality Division and their interpretation of rules to require secondary treatment. For example; in Libby they went through the nondegradation petition process and the Water Quality Bureau indicated that the proposed treatment was appropriate to meet the standards. But later a secondary treatment was required and they had to prove that there was an 80% removal of nitrates which forces the company into more expense (because of the secondary treatment requirements).

Bruce Gilbert, Environmental Affairs Manager, Stillwater Mining Co., said they support the changes as outlined in SB 247. He said he was involved in the nondegradation provisions of the law in 1990. They are now in court trying to defend their position on degradation. He said the current regulation under 16.20.631 requires secondary treatment regardless of the impacts or the requirements of the permit. That means an extended treatment system can be required by the agency. Another example involved a platinum mine located 35 miles south of Big Timber that is an underground mine and consequently has ground water. The water mingles with ore and waste in the mine such as inorganic fertilizer, much like that used on gardens. During the nondegradation process the quality of water coming from the mine was monitored. In observing the mine discharge it became apparent that without treatment the discharge was within the standards 99% of the time. But the department informed the company, that regardless of the mixing and the quality of the receiving water, secondary treatment was a condition of the permit. **Mr. Gilbert** stated that in order for SB 247 to be effective the word "treatment" needs to be redefined.

Max Botts, representing Montana Wood Products Association and other Montana industries, said SB 247 would eliminate the Department of Health and Environmental Science's ability to impose the secondary treatment of surface waters in Montana, since such treatments are now covered by state and federal rules.

Currently, the department requires secondary treatment for all wastes even though they meet the high standards of nonsignificance. He said SB 247 simplifies the rules that are already in place.

Gary Langley, Executive Director, Montana Mining Association, said they support SB 247 for the same reasons as discussed in previous testimony.

Raymond Lazuk, Hydrolologist, Golden Sunlight Mines, said he worked as an environmental consultant specializing in water resources. Over the years, many of the regulations were overly complex and redundant, and SB 247 was introduced because of the secondary treatment mandate. As an example, water from gravel pits would be considered waste water under the current statute.

Larry Brown, representing Agricultural Preservation Association, said they support SB 247 for the reasons stated in previous testimony.

{Tape: 1; Side: B}

Opponents' Testimony:

Steve Pilcher, Administrator, Water Quality Division, Department of Health and Environmental Sciences, said they were in opposition to SB 247, because it directs the Board of Health and Environmental Sciences to amend a specific rule. He said that seems to be a significant departure from the traditional approach of providing agency direction by statute and allowing the administrative rulemaking process to resolve details. **EXHIBIT 1.**

Jeff Barber, representing Northern Plains Resource Council, said they were in opposition to SB 247 because the bill amends the rules adopted after last session under SB 401. He said it took a year and a half of dialogue between industry, environmental and citizens groups, and the state, to establish those rules. NPRC participated extensively in that process. The rules have only been in effect for a few months, and should be given a chance to work instead of being amended by this legislation. **EXHIBIT 2.**

Debby Smith, representing the Sierra Club, said if SB 247 passes there will be a serious constitutional concern regarding agency rule making and regulations. The legislature has delegated to DHES the authority to implement the Water Quality Act. She stated that she didn't think it was proper to interfere with executive branch action.

Jim Jenson, Executive Director, Montana Environmental Information Center, said most of the concerns against SB 247 were made in previous testimony. He stated that SB 247 proposes to change from prevention of pollution to dilution of pollution. The legislature should not move backward towards dilution of pollution, but support the Board of Health's accomplishments to prevent the pollution of water. There are a lot of questions raised with SB 247 along with other legislation that will be heard before the committee such as the bills drafted by **SEN. SWYSGOOD** and **SEN. BECK.** The committee members should wait and

consider all of the bills pertaining to water quality at one time.

Questions From Committee Members and Responses:

SEN. BROOKE asked Mr. Parker if his example on water quality was after the rules were promulgated or before. Mr. Harper answered that it was before the rules were promulgated.

SEN. CHRISTIAENS said Mr. Parker testified that nondegradation requirements were less stringent, including the treatment of nitrates. He asked Mr. Pilcher if that had been addressed in the committee process. Mr. Pilcher answered that Mr. Parker was talking about a small amount of nitrate that could be discharged into a small body of water and have a nonsignificant impact. A small amount of waste dissipated into a large amount of water would be disposed of without any treatment.

SEN. CHRISTIAENS said the fiscal note says, "The industrial wastewater permit review process utilized by the DHES would remain the same. Only the standards used in the review would change as a result of SB 247." Mr. Pilcher said the process that would be used would not change, but the standards used to evaluate the proposal would be modified by SB 247.

SEN. CHRISTIAENS asked Mr. Pilcher whether if the bill passed it would affect some primacy issues. Mr. Pilcher answered he did not know if primacy would be an issue because the language that is added in section 3 says, "the treatment required to attain the permit limitations established pursuant to ARM 16.20.1320." That section of the rules refers to the minimal federal requirements to protect primacy.

SEN. BROOKE asked Mr. Pilcher how long it took to put the rules together. Mr. Pilcher answered following the passage of SB 401 in the last session, the department embarked on a rulemaking process that took nearly 18 months to interpret, develop, and implement.

SEN. BROOKE asked SEN. COLE if he proposed an amendment to redefine "treatment" in SB 247. SEN. COLE replied at this time he did not have an amendment, but would propose an amendment in order to serve the purpose of SB 247.

CHAIRMAN GROSFIELD asked Mr. Pilcher if he would respond to redefining the term "treatment." Mr. Pilcher stated he thought there was an opportunity consistent with section 75-5-303 that charges the board with establishing standards of performance to define the level of treatment that is necessary. He said reference was made to other bills being introduced, and he thought that one of those bills would require treatment standards be adopted by considering reasonable cost effective measures.

Closing by Sponsor:

SEN. COLE said there had been a good discussion on SB 247 and had nothing further to add.

HEARING ON SB 231Opening Statement by Sponsor:

SEN. KEN MESAROS, SD 25, Great Falls, said the intent of SB 231 would serve as a directive to state agencies to implement government actions that reduce regulatory restrictions on private property. He said whenever Montana Environmental Policy Act analysis is required, legislative actions should be analyzed to ensure that undue government regulation of private property be evaluated, and alternatives to eliminate regulatory restrictions of private property be implemented when practicable.

SEN. MESAROS said that SB 231 established that when MEPA analysis is conducted that may impact the human environment, the state agencies will also evaluate any regulatory restrictions upon private property. Should regulatory impacts occur on private property, alternatives should be considered that would reduce, minimize or eliminate actions that could result in any "takings" of private property under the U. S. Constitution or the Montana Constitution. SB 231 establishes that when MEPA analysis is to be conducted an analysis regarding regulating the use of private property is also to be conducted. He said the fiscal impact on SB 231 would be minimal.

Proponents' Testimony:

John Bloomquist representing the Montana Stockgrowers Association, said SB 231 uses the existing MEPA process for the property rights analysis that would not now occur on all state government actions even though MEPA analysis might be triggered. An analysis would be essential when regulatory restrictions are placed upon private property rights .

{Tape: 2; Side A}

Lorna Franks, representing the Montana Farm Bureau, said they believe that property rights are among the human rights essential for the preservation of individual freedom. She said federal agencies need to review their actions toward private property, and should be required to have alternative plans to minimize the "takings." She asked the committee members to give SB 231 a do pass recommendation.

Maureen Schwinden representing Women Involved in Farm Economics, said their policy states two things: 1. protect private property rights and 2. protect the land, air, and water in Montana. She

hoped the committee would find a way to solve the problem for those who make their living off the land. She said their organization would like to see a holistic approach in consideration of the impact on landowners.

Bob Stephens, representing the Montana Grain Growers Association, said they support SB 231.

Candace Torgerson, representing the Montana Cattlewomen's Association said they supported SB 231.

Larry Brown, representing the Agricultural Preservation Association, said under MEPA there is a continuous effort to reinvent and eliminate redundancy by identifying the root of actions. He said SB 231 gives an opportunity to solve problems.

Mike Murphy, Executive Director, Montana Water Resources Association, said SB 231 represents common sense. He said the bill is consistent with state and federal regulations and they support SB 231.

Bud Clinch, Commissioner, Montana Department of State Lands, said he appeared before the committee on behalf of the Governor's office. The administration fully recognizes the necessity to protect the value of private property rights and prevent "takings" determinations. They support SB 231 hinged upon the sponsor's intent that the bill will have minimal fiscal impact on the affected state departments.

Riley Johnson, representing the National Federation of Independent Business, Montana chapter, said nearly 2,000 members in Montana are agricultural based families and small businesses. He said that small businesses are being considered under SB 231.

David Owen, representing the Montana Chamber of Commerce, said they support SB 231, but the word "pollution" needs to be changed to a more comprehensive definition.

Peggy Trenk, representing Western Environmental Trade Association, said they support SB 231.

Tammy Johnson, representing Citizens United for a Realistic Environment, said they support SB 231, because private property rights are very dear to their members. Those people are spending between 38% and 52% on mortgage payments to realize the American dream of owning property.

Opponents' Testimony:

Ted Lange, representing the Northern Plains Resource Council, said they were opposed to SB 231 because of the costs that may be imposed on state government and because they don't believe it fits the intent of MEPA. **EXHIBIT 3.**

Mr. Lange submitted amendments addressing the statements of intent as contained in **EXHIBIT 3a**.

Debby Smith, representing the Sierra Club, said they oppose SB 231. She said they believe SB 231 is based upon two flawed notions: 1. the regulation of private property is bad, and 2. regulation of private property frequently involves "taking." She said the state agency should step in and make sure that it is not affecting a "taking." There were bills heard in the House that dealt with "takings," and both of the bills would require state agencies to consider whether or not anything they do will affect a "taking." "Taking" happens in only the most extreme circumstances when someone's property value is impacted. It may be beneficial to the committee to find out how much money has been paid out in "takings" litigation. The 1100 members of the Montana Sierra Club, most of which are private property owners, want property values to be protected. She said they believe that the agricultural community benefits by regulations that prohibit the sitings of waste dumps and regulations that provide clean water. These benefit everyone. SB 231 shouldn't involve MEPA, because the purpose of MEPA is to make sure that agencies consider the effects on the public environment that people don't necessarily own such as air, water, and public land. When private property is impacted by state regulations, people can already have a very strong voice in saying their property is being affected. Her organization doesn't believe MEPA should be involved with private property analysis and therefore, encourages that SB 231 be tabled.

Janet Ellis, representing the Montana Audubon Society, said they oppose SB 231, especially because of the statement of intent that says, "It is the intent of the legislature that this legislation serve as a directive to state agencies to implement government actions in a manner that reduces regulatory restrictions placed on private property." Regulations are not all bad; there are regulations that protect the air, water, etc. Property owners are protected by zoning laws. She said they would like to work with the sponsor to see if he would be willing to change some sections of the bill.

Jim Jensen, Executive Director, Montana Environmental Information Center, said environmental laws protect people's private property. You cannot sell property that has polluted air and ground water. He said he could not see how SB 231 would work, because MEPA is not meant to do what the amendments address. As an example, the mine proposal on the Black Foot River, where an environmental impact statement will be done, is more than the company wishes to pay so the department will use the analysis that has been paid for by the company. He said the fiscal note is substantially flawed on SB 231, because it does not acknowledge the mining industry. The Montana Constitution says that all land disturbed by mining shall be reclaimed. The application of SB 231 will make it very expensive for agencies and the public to understand just what is reasonably required of

a developer. Also, state lawyers will be conducting an alternative in the EIS process in identifying potential private property impacts.

{Tape: 2; Side: B}

Mr. Jensen pointed out that the rules which all state agencies have adopted to implement MEPA, already have requirements. He said Section 2, Subsection D, of the rules says: "the agency is required to consider the alternatives that are realistic, technology available and that represent a course of action that..."

Questions From Committee Members and Responses:

SEN. WELDON said one of the state actions that cause a MEPA review is permitting. He asked **SEN. MESAROS** if in the process of MEPA, would the appropriate agency have to examine the possible effect of the permit on all water rights and drainages. **SEN. MESAROS** said SB 231 is not the kind of legislation that would go into in-depth analysis of impacts on adjoining properties.

SEN. WELDON said adjoining property would have to be taken into consideration. **SEN. MESAROS** said according to testimony that has been heard, a lot more is anticipated by some of the witnesses than what the bill actually does.

SEN. WELDON said there are other agencies who's actions trigger a MEPA review such as Fish, Wildlife and Parks, Department of State Lands, Livestock, Agriculture, and the Board of Investments. He asked **SEN. MESAROS** how the bill would affect some of those agencies. **SEN. MESAROS** said those agencies were contacted as to the fiscal impact, and they did not respond. He said he received the fiscal note from DNRC, EQC, and DHES. DHES came out with a significant fiscal impact, which he questions. He agreed that the fiscal note is substantial and cannot see how SB 231 would carry such a fiscal note by taking an existing program and adding one additional step to it.

SEN. WELDON suggested that the committee ask DHES to provide some information because of the significant impact of the fiscal note. A key challenge for MEPA effectiveness is evident in the fiscal note. He said in the proposed reorganization of the Legislative Branch it is suggested that EQC be reduced to 2 FTE. **SEN. WELDON** asked If that were to occur, what would the success of the intent of SB 231 be. **SEN. MESAROS** said he was not aware of the proposed legislation, but could not see where SB 231 places any significant burden on any agency.

SEN. FOSTER asked **Katherine Orr, Chief Legal Counsel, Department of Health and Environmental Sciences**, why DNRC and EQC had no significant impact in the fiscal note on SB 231, but DHES has that additional cost. **Ms. Orr** replied that the language of the bill does not clearly specify that the only action required by an

agency is with respect to an EIS. She said to assess "takings" would affect more than Environment Impact Statements.

SEN. FOSTER asked **Ms. Orr** to address contracted services. **Ms. Orr** said contracted services would be an alternative because they wouldn't have the staff to do extensive takings analyses.

SEN. BROOKE asked **Mr. Clinch** if he could respond as to the fiscal impact in Department of State Lands.

Mr. Clinch responded that the Department of State Lands did not receive a request for a fiscal note. He said some preliminary evaluation was done anyway to determine what impact SB 231 would have on DSL. In visiting with **SEN. MESAROS** it was decided the impact on DSL would be minimal.

SEN. BROOKE asked **Mr. Clinch** if MEPA would be triggered in regard to a sale in a particular area. **Mr. Clinch** said their legal staff interpreted the bill as not having any impact on State Lands, but only on regulatory actions that are taken with respect to adjacent private lands.

SEN. BROOKE asked **Mr. Clinch** if he thought the bill was open to broader interpretation. She said there should be some consideration for the downstream water owners. **Mr. Clinch** said, he could only relate to the fact that upon receiving SB 231, it was turned over to **John North, Chief Legal Counsel** to evaluate the impact.

SEN. CRISMORE said to **Ms. Smith** that she talked about "taking" of private property. As an example, he said he had 240 acres of timber with a stream running through it, however, it doesn't run all year. He said he bought the land for the timber, and by leaving 50 feet on each side of the stream, leaves only 50% of the timber to be harvested. He asked **Ms. Smith** if the 50% left on each side of the stream was considered a "taking" by law. **Ms. Smith** said that was a question that is in litigation and is coming up before the Supreme Court. She said in her opinion under current law, that situation would not be considered a "taking." The reason is that the Supreme Court requires a valuation of all the land, and even though in **SEN. CRISMORE'S** case he would only have 50% of the land, that would not be considered a "taking." She said however that she thought that the law could be stretched, so that it could be considered a "taking."

SEN. CRISMORE asked **Ms. Smith** if she could foresee that once that timber no longer existed, would it then be considered a "taking." **Ms. Smith** said she couldn't say whether or not it would be. It will be the subject that will be discussed in the Supreme Court. Under SB 231 if no action on that land was taken by state agencies, she did not believe the court could come up with a conclusion that a "taking" would occur.

SEN. CHRISTIANS said in Long Range Building they talked about feed lots built on creek beds and debris going down stream. He asked if the state was liable because of the quality of the water.

Debbie Schmidt, Executive Director, Environmental Quality Council, said it may be beneficial to confer with the MEPA legal staff and contact some of the members of DNRC.

SEN. WELDON said it appears the Department of Health is operating on the assumption that if an applicant receives a permit and it creates a problem for a neighboring land owner, the state could be liable for damages.

SEN. MESAROS said they are looking beyond SB 231 for those additional property values. That is their interpretation and it does not exist in SB 231.

SEN. BROOKE asked **SEN. MESAROS** if he could explain how **REP. GRINDE'S** bill and SB 231 coordinate.

{Tape: 3; Side: A}

SEN. MESAROS said he could not speak to **REP. GRINDE'S** bill.

CHAIRMAN GROSFIELD questioned **Ms. Smith**, about "takings," the Supreme Court and the Fifth Amendment that talks about due process, etc. He said that he understood that when the Montana Constitution was redone, the people involved with the constitutional convention had a different approach. The Montana Constitution says, "not to be taken or damaged." He asked her to respond to that. **Ms. Smith** said, she agreed that the word "damaged" could be interpreted differently. She said to her knowledge, that issue had not been litigated. She agreed that the Montana Constitution may be more stringent in determining devaluation than just defining "taking."

CHAIRMAN GROSFIELD said Page 1, Line 13 or 14 of SB 231 says, "...actions be analyzed to ensure that undue government regulation of private property be evaluated and that alternatives that eliminate regulation of private property be implemented when practicable."

Mr. Bloomquist said SB 231 is focusing on the regulatory aspects of state government action. There are regulatory results that do benefit property owners, and there are regulatory actions that restrict and limit the use of private property, and the latter is what SB 231 is focused on.

Closing by Sponsor:

SEN. MESAROS said it was a good hearing and he thanked everyone who testified on SB 231. He said he presented SB 231 to have a balanced approach in the existing program. He said he was

sensitive to the cost of the implementation of state programs. He said he believed that with further consideration, the fiscal impact of SB 231 would be minimal. He said almost 100 bills dealing with this subject are currently being proposed in 36 states. A quote from Theodore Roosevelt says, "In every civilized society property rights must be carefully safeguarded; ordinarily and in the great majority of cases, human rights and property rights are fundamentally and in the long run, identical." **EXHIBIT 4.**

EXECUTIVE ACTION ON SB 186

Mr. Clinch said they had no opposition to SB 186. **Mr. Crowley** and **Mr. Langley** also supported SB 186.

Motion: SEN. CRISMORE MOVED SB 186 DO PASS.

Discussion: SEN. WELDON asked **Mr. Clinch** if SB 186 included some federally funded sites. **Mr. Clinch** answered that by law, the funds are not allowed to be spent on super fund sites.

Vote: MOTION TO DO PASS SB 186, CARRIED UNANIMOUSLY.

ADJOURNMENT

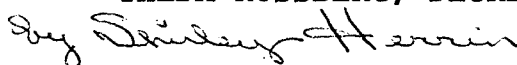
Adjournment: 3:00 PM



LORENTS GROSFIELD, CHAIRMAN



THEDA ROSSBERG, SECRETARY



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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 1, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 186 (first reading copy -- white), respectfully report that SB 186 do pass.

Signed: 
Senator Lorents Grosfield, Chair

 Amd. Coord.
Sec. of Senate

271543SC.SPV

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-1-95

✓ BILL NO. SB 247

SENATE BILL 247

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Steven L. Pilcher, Administrator
Water Quality Division

As a representative of the Department of Health and Environmental Sciences (DHES) I appear before you today in opposition to Senate Bill 247. We are somewhat confused by the approach taken in this bill to direct, by statute, the Board of Health and Environmental Sciences to amend a specific rule. This seems to be a significant departure from the traditional approach of providing agency direction in statute and allowing the administrative rulemaking process to resolve details. Procedurally, the question arises as to whether future changes to this section would be made statutorily or administratively. Would a resolution be a more appropriate way in which to provide direction to the board in carrying out their administrative responsibilities?

Should the bill pass in the current form, it would be in conflict with other sections of the Montana Water Quality Act. Specifically, it would conflict with 75-5-304 which requires the board to, in part, establish standards of performance for new point source discharges. "Standard of Performance" means a standard adopted by the board for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

This requirement is based, in part, on the section 75-5-101 of the Water Quality Act which establishes a policy of protecting, maintaining, and improving the quality of our waters for all beneficial uses. During the last legislative session, SB 401 was widely debated but the final message seemed quite clear. Montana's high quality waters deserve reasonable and responsible protection. It is a well established fact that it is cheaper to prevent pollution than to remove pollutants from the environment. Providing some level of treatment to wastewaters, thereby reducing the amount of pollutant being discharged into a river system seems to make a lot of sense.

Representatives of the Department would be happy to respond to any questions that you might have.

Thank you!

Northern Plains Resource Council

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2-1-95

BILL NO. SB 247

Testimony of the Northern Plains Resource Council on SB 247

Before the Senate Natural Resources Committee

Wednesday, February 1, 1995

Mr. Chairman, members of the committee, my name is Jeff Barber. I am testifying today on behalf of the Northern Plains Resource Council in opposition to Senate Bill 247.

SB247 is amending the rules adopted to implement last session's Senate Bill 401. It took a year and a half of dialogue between industry, environmental and citizens groups and the state to come up with those rules. NPRC participated extensively in that process. The rules have only been in effect for a few months. They should be given a chance to work instead of being amended by this legislature.

The one portion of this bill that actually changes the rules is section 3. This change is not for the better. This change would not allow the state to implement its own best practicable control technology on industrial waste discharges. Instead, it would defer to the EPA and the federal regulations as to what treatment is necessary on industrial waste discharges. Even in instances where the EPA does not have best practicable control technology standards for discharges, this bill would not allow the state to come up with its own. So, what this bill is essentially saying is that the federal government and not the state will be the final authority in how we regulate industrial waste discharges in Montana.

This bill is particularly worrisome in another light. Although the bill has not yet been introduced, there is a bill draft request from Senator Beck (LC837) that would constitute a major overhaul of the Montana Water Quality Act. One provision of that bill would be to drastically change the current definition of industrial waste. SB247 deals with how industrial wastes shall be treated and at a minimum, I believe this committee must delay taking any action on this bill until it sees Senator Beck's proposed changes to the definition of industrial waste.

In summary, there are some problems with this bill. It is giving regulatory authority for discharges to the federal government and not allowing the state to set its own standards and it is shooting at a moving target as we have not yet seen all of the proposals to change the Water Quality Act.

I thank the committee for the opportunity to testify and I urge you to oppose Senate Bill 247.



Northern Plains Resource Council

SENATE NATURAL RESOURCES
COMMITTEE NO. 3
DATE 2-1-95
BILL NO. SB 231

Testimony on SB231 Senate Natural Resources Committee February 1, 1995

Mr. Chairman and members of the committee, my name is Ted Lange, and I'm speaking on behalf of the Northern Plains Resource Council. NPRC is opposed to SB231 because of the costs it may impose on state government and because, as this bill is currently drafted, we do not believe that it fits into the spirit and intent of MEPA.

MEPA was enacted in the spirit of fairness and balance. It's intent was that all the impacts of government actions should be carefully weighed before an action was taken. It was meant to ensure that the public good was balanced against private gain, and that environmental impacts that had been previously neglected would now be considered.

If this legislature decides it is appropriate to include specific private property considerations alongside MEPA's environmental provisions, we believe the language must be carefully worded so that no private property impacts are neglected.

There are government actions that **protect** private property. There are actions that **restrict** the use of private property. And there are also actions that actually **enhance** property values. Government can adversely impact private property not only by regulating it, but by failing to regulate one party's use of their property if their actions are likely to impact the property of others.

We believe private property rights come with responsibilities, and an essential role of government regulation is to guard against instances when property owners use their property in irresponsible and destructive ways.

We do not believe that the current language in SB231 adequately provides for balanced consideration of all the positive and negative property impacts of government actions. We believe that the statement of intent is flawed, as are the provisions concerning regulatory impacts, property rights and alternatives, on page 3, line 18 and lines 26 through 28. These provisions appear to address **only** the impacts on those being regulated, neglecting those property owners who may be benefitted or protected by those same regulations. It is also strange that the alternatives provision is worded in the past tense when the intent of MEPA is to address future proposed actions.

We believe this bill will only be balanced if it requires consideration of **all** private property impacts of government actions; not just **regulatory** impacts; not just

Northern Plains Resource Council

Suggested Amendments to SB231 Senate Natural Resources Committee February 1, 1995

Statement of Intent, Page 1

1. Line 11
Following: "reduces"
Strike: "regulatory restrictions placed"
Insert: "impacts"
2. Line 13
Following: "government"
Strike: "regulation of"
Insert: "impacts on"
3. Line 14
Following: "that"
Strike: "eliminate regulation of"
Insert: "minimize impacts on"
4. Line 14
Following: "property"
Insert: "while protecting the public's right to a clean and healthful environment"

SENATE NATURAL RESOURCES
COM. NO. 317
DATE 2-1-95
BILL NO. SB 231

The Statement of Intent would now read:

It is the intent of the legislature that this legislation serve as a directive to state agencies to implement government actions in a manner that reduces impacts on private property. Whenever Montana Environmental Policy Act analysis is required, it is the intent of the legislature that any actions be analyzed to ensure that undue government impacts on private property be evaluated ~~and that actions be analyzed to ensure that undue government impacts on private property be evaluated~~ and that alternatives that minimize impacts on private property, while protecting the public's right to a clean and healthful environment be implemented when practicable.



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| To | From <u>George Darrow</u> |
| Co. <u>SEN GROSFIELD</u> | Co. |
| Dept. | Phone # <u>837-4400</u> |
| Fax # <u>406-444-3971</u> | Fax # <u>406-837-1166</u> |

George Darrow

SENATE NATURAL RESOURCES

EXHIBIT NO. 4 Paladin Farms
 DATE 2-1-95 Box 400
 Bigfork, MT 59911
 406-837-4400
 BILL NO. SB-231

January 31, 1995

RE: S.B. 231

Senator Lorents Grosfield, Chairman
 and Members of the Senate Natural Resources Committee
 Montana Legislature
 Capitol Station
 Helena, MT 59620

Dear Senator Grosfield:

I am submitting herewith my testimony on S.B. 231. As a legislative courtesy to a former Montana State Senator (Republican from Yellowstone County) and the chief sponsor of the Montana Environmental Policy Act, enacted in 1971, I would appreciate it if you would read this testimony to the committee at the hearing on S.B. 231 and have it entered into the record. Thank you.

Section 3 of the Montana Constitution sets forth the Inalienable Rights of all Montanans. Among the rights that are enumerated therein is the right to a "clean and healthful environment" and the rights of "acquiring, possessing and protecting property." The Section closes by stating that, "In enjoying these rights all persons recognize corresponding responsibilities."

For nearly a quarter of a century the Montana Environmental Policy Act has been the primary means of implementing the Constitutional rights set forth above. It has functioned in an exemplary manner to protect the "use and enjoyment" of private property "without undue government regulation."

MEPA embodies no regulatory authority and does not provide for any penalties. Montana is the only state in the U.S. with an environmental policy act administered as an arm of the Legislature. In other states and for the federal government, environmental policy is administered by large and costly bureaucracies in the executive branch that do operate with abundant regulations.

In essence, MEPA simply requires state agencies to "look before they leap" and "think before they act." It outlines a process for the thoughtful consideration of all impacts and consequences of "significant" state agency projects and proposals. It requires that agencies publicly identify these impacts "along with economic and technical considerations" so as to avoid the otherwise unintended, unforeseen and unwanted consequences of their proposed action.

It is no accident that Montanans enjoy a "clean and healthful environment" of great beauty to a much greater degree than residents of similarly situated nearby states. It is no accident that Montana ranchers and farmers and other private property owners have benefited from the accrual of hundreds of millions of dollars in increased property values, all Montana citizens have shared in improved state prosperity and enhanced state revenues relative to other regions subject to accelerated degradation.

SENATE NATURAL RESOURCES

EXHIBIT NO. 24DATE 2-1-95BILL NO. S.B.-231

This has been accomplished by the quiet, efficient, almost unnoticed *legislative oversight* of MEPA. With this oversight delegated to the tiny, but dedicated and capable staff of the EQC, Environmental Impact Statements have minimized the irreparable damage to Montana resources and property, both public and private, that might otherwise have resulted from sometimes ill-conceived, misguided, cockamamie proposals. For nearly 25 years, and to Montana's great benefit, MEPA has successfully and at nominal expense, provided an effective process that has "minimized the regulation of private property rights."

I believe that the well-intentioned amendments proposed in S.B. 231 will have an effect opposite to that apparently intended. The modifications proposed will make the administration of a revised MEPA more awkward, more cumbersome, more costly and less effective in protecting private property rights.

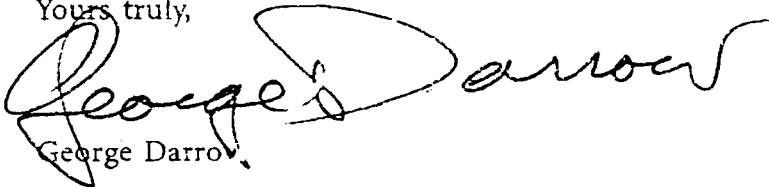
They will disrupt a legislative process that has a proven track record of protecting and enhancing those rights and increasing property values and economic investment in Montana. Since 1971, MEPA has been an important safeguard in assisting generations of Montanans in the care that they have devoted to the land they own and love. Public and private prosperity does not derive from irresponsibly degraded, trashed out, polluted and blighted properties.

I understand the present mood of the Legislature that embraces any legislation purporting to minimize regulation and strengthen private property rights. At the same time, it is my belief that the record abundantly demonstrates that over the last quarter of a century, these goals have been and are now being effectively implemented by MEPA in its present form. I believe that S.B. 231 will impede and disrupt rather than strengthen that effort.

Please make this testimony available to others in the Legislature and to interested parties.

Thank you for your consideration.

Yours truly,



George Darro

cc: Governor Marc Racicot
(ex-officio and non-voting member of the EQC)
Director EQC
Senate Leadership

2-1 DATE 2-1-95BILL NO. SB-231

"In every civilized society property rights must be carefully safeguarded; ordinarily and in the great majority of cases, human rights and property rights are fundamentally and in the long run, identical."

Theodore Roosevelt, 1910

**EXECUTIVE SUMMARY ON STATE PRIVATE PROPERTY RIGHTS
LEGISLATION DURING THE 1993-94 LEGISLATIVE SESSIONS
(April 21, 1994)**

- Almost 100 bills are currently under proposal in 36 states.
- Eight bills have been signed into law.

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 2-1-95

BILL NO. SB 231

STATES WITH ENACTED PRIVATE PROPERTY RIGHTS LAW

Arizona² (1992)
Delaware (1992)
Indiana³ (1993)
Mississippi⁴ (1994)
Utah⁵ (1993, 1994)
Virginia⁶ (1993)
Washington⁷ (1991)

STATES IN WHICH LEGISLATION HAS BEEN INTRODUCED⁸

| | | |
|-------------|----------------|----------------|
| Alabama | Kentucky | Pennsylvania |
| Arizona | Louisiana | Rhode Island |
| California | Massachusetts | South Carolina |
| Colorado | Minnesota | South Dakota |
| Connecticut | Missouri | Tennessee |
| Delaware | Montana | Texas |
| Florida | Nebraska | Vermont |
| Georgia | New Hampshire | Virginia |
| Hawaii | New York | Washington |
| Idaho | North Carolina | West Virginia |
| Iowa | Oklahoma | Wisconsin |
| Kansas | Oregon | Wyoming |

STATES WHERE CURRENT LEGISLATION HAS PASSED ONE HOUSE

| | | | |
|------------|-----------|----------|--------------|
| California | Kansas | Montana | Rhode Island |
| Delaware | Louisiana | Oklahoma | Texas |
| Idaho | Missouri | Oregon | |

¹These laws, except for the Mississippi law, are all planning laws. Italic type indicates that new legislation is currently under consideration to supplement existing private property rights law.

²Opposition circulated and successfully gathered signatures for a referendum to repeal the law. A vote will occur in the 1994 General Election in November. The law does not go into effect unless it is approved in the referendum.

³Property rights legislation was part of the 1993 Administrative Rules Oversight Act.

⁴Compensation act that applies only to private forest land.

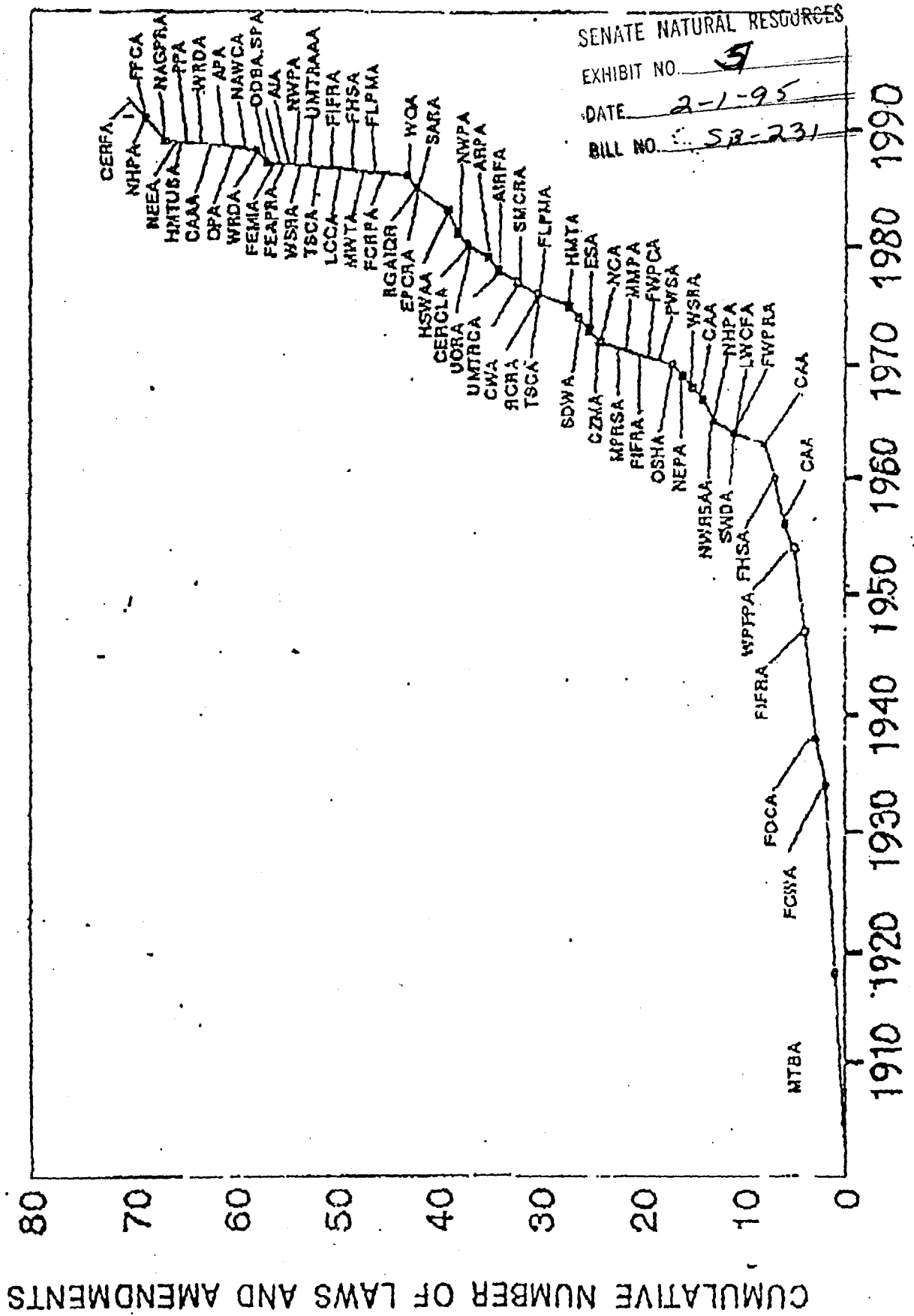
⁵The 1993 act applies to state agencies. The 1994 act applies to local governments.

⁶Study bill--A joint subcommittee was established to study state governmental actions which may result in a taking of private property and to see if changes in current laws are needed.

⁷Property rights legislation was added as an amendment to the 1991 Growth Amendment Act.

⁸Regular type signifies where planning bills have been introduced. Bold type indicates where compensation legislation has been introduced. Both planning and compensation legislation have been introduced in California, Massachusetts, New Hampshire, Oregon, Rhode Island, and Washington.

FEDERAL ENVIRONMENTAL LEGISLATION



DATE 2-1 - 95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 231 ^{SP} 247

| Name | Representing | Bill No. | Check One | |
|-------------------------------|-------------------------------|------------|-------------------------------------|---|
| | | | Support | Oppose |
| <u>Don Allen</u> | <u>Mont. Water Res. Assn.</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Peggy Olson Trenw</u> | <u>WETA</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>MIKE MURPHY</u> | <u>MT. WATER RES ASSN</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>John Blumquist</u> | <u>MT. Stockgrowers</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Carson Torgerson</u> | <u>MT Cattlemen Assn</u> | <u>231</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Larry Brown</u> | <u>Ag. Pres. Assoc.</u> | <u>231</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Dorothy Smith</u> | <u>Serra Club</u> | <u>231</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>John Langley</u> | <u>MONTANA MINING ASSN.</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Bob Miller</u> | <u>mt mine</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Janet Ellis</u> | <u>MT Audubon</u> | <u>231</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> Amend |
| <u>Ther. Hedge's</u> | <u>MEIC</u> | <u>231</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>J.V. Bennett</u> | <u>Mont PIRG</u> | <u>231</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <u>Maureen Clay-Schwinden</u> | <u>WIFE</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Lorna Frank</u> | <u>MT. Farm Bureau</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Jimmy Johnson</u> | <u>CURE</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Bob Stephens</u> | <u>mt horse growers</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>John Fitzpatrick</u> | <u>Pegasus Gold</u> | <u>231</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Ken Hoovestol MSA (Snowmobile) MAT 3 / MTF
Melissa Case

VISITOR REGISTER

BUD CLINCH

Govt. Off 231

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Riley Johnson
ELA

NFIB 231 ☒
ASSOC OF MT Aerial Application 231 ☒

DATE 2-1-95

SENATE COMMITTEE ON

Natural Resources

BILLS BEING HEARD TODAY:

S.B. 231 & B. 247

< ■ >

PLEASE PRINT

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Check One

| Name | Representing | Bill No. | Support | Oppose |
|------------------|----------------------------------|----------|---------|--------|
| Jim Mockler | MT. Coal Council | 247 | ✓ | |
| Doug Parker | Crown Butte | 247 | | |
| John Fitzpatrick | Pegasus Gold | 247 | ✓ | |
| MIKE MURPHY | MT. Water RES. ASSN | 247 | ✓ | |
| Jeff Barber | Northern Plains Resource Council | 247 | | X |
| Larry Brown | Az. Pres. Assoc. | 247 | ✓ | |
| Terry Grotbo | Huntingdon Engineering & Engr. | 247 | ✓ | |
| Deborah Smith | Silvira Club | 247 | ✓ | ✓ |
| Jim Jensen | M E C | | | X |
| Raymond Lazak | Golden Sunlight Mines | 247 | ✓ | |
| M. K. Bode | Hydro Metals | 247 | ✓ | |
| Mary Cansky | MT. Mining Ass | 247 | ✓ | |
| Bob Williams | MT. Mining | 247 | ✓ | |
| Steve Pitcher | D H F S | 247 | | X |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-1-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 231 JB-247

< ■ > PLEASE PRINT < ■ >

Check One

| Name | Representing | Bill No. | Support | Oppose |
|--------------------------|-------------------|----------|---------|--------|
| <i>Jamara J. Johnson</i> | CURE | 247 | ✓ | |
| <i>Ward Kaulaia</i> | NRCO | 247 | ✓ | |
| GAIL ADEACROMBIE | MT Petroleum Assn | 247 | ✓ | |
| Bill Allen | MT Audubon | 247 | | X |
| David | | | | |
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY