

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 8, 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: None

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 252. SB 288
Executive Action: None

HEARING ON SB 252

Opening Statement by Sponsor:

SEN. LARRY TVEIT, District 50, Fairview, said he had a substitute SB 252 in the form of amendments drafted by Allen Joslyn **EXHIBIT 1**. The bill had been subject to considerable discussion between the Department of Health and Environmental Sciences and the representatives of industries. The bill provides for a definition of controlled property discharge. He said the second section of the bill provides groundwater mixing zones to extend from the point of discharge to the property boundary, pursuant to the rules by the Board of Health.

CHAIRMAN LORENTS GROSFIELD said that SB 252 will be a substitute bill if the proposed amendments are adopted by the committee.

Proponents' Testimony:

John Fitzpatrick, representing Pegasus Gold Corporation, said in 1991 there was a policy in the Montana Water Quality Act with the Department of Health and Environmental Sciences that regulated groundwater at the property boundary. During that time a number of mining companies developed and with enforcement by the permit process, they were subject to review by the Department of State Lands, DHES, and several other agencies. They went through that process with the understanding the point of the groundwater regulation was at the property boundary. They had to meet the requirements of the Water Quality Act for the permit process and expected that certain regulatory rules would be in place. That particular policy provided a mechanism that if there were pollutants in the groundwater discharge, they had to be naturally assimilated. For example, if there was a cyanide leak at a facility, you had an obligation to rectify the problem and clean the situation up. Further down the stream there would be natural mechanisms that would take care of that. The bill is attempting to go back to the concept that the compliance would be at the property boundary. The bill as introduced does not do that as clearly as with the amendments. The proposed language was developed in conjunction with the Department of Health to try to clear up the situation and set the point of compliance at a location that is reasonable to the regulated party.

Raymond Lazuk, Hydrologist with the Golden Sunlight Mines said in 1994 the Water Quality Division of the DHES was granted authority to allow mixing zones to reduce the costs in surface and groundwater discharges. Allowing mixing zones and other mechanisms was an important provision allowed to those who discharge water. That could be agriculture, industry, or a residential source. In many cases it would be the only practical means for discharges to comply with Montana's nondegradation rules. The present rules for groundwater discharges are extremely complex and difficult to understand for anyone other than an experienced hydrologist. SB 252 recognizes that determining the size of the mixing zones should not be a highly technical process. The bill will reduce the complexities of existing government regulations and allow greater utilization of natural processes to improve the water quality.

Larry Brown, Senior Environmental Scientist, Morrison, Maierly Environmental Corporation and representing the Agricultural Preservation Association, said the application associated with feed lots and agricultural entities that have irrigation systems, etc. could be subject to discharges to the groundwater. SB 252 would rectify some of the concerns associated with that.

Jim Mockler, Director Montana Coal Council, said some of their mines cover a large area. He said the bill makes a lot of sense, and he urged the committee to pass it.

Gary Langley, Executive Director Montana Mining Association, said the reasons they support the bill have already been stated.

John Bloomquist, Montana Stock Growers Association, said that agriculture has some interest in this type of legislation for the attenuation zone, and that the common sense aspect should be considered.

Mike Murphy, representing the Montana Water Resources Association, said they support SB 252.

Russ Ritter, representing Montana Resources, Butte, Montana, said for the reasons already stated and on behalf of his company, they support SB 252.

Tammy Johnson, representing Citizens United for a Realistic Environment, said they support the bill with the amendments.

Peggy Trenk, Western Environmental Trade Association, said they support the bill as amended. She said they participated for 2 years in the rule-making process under SB 401, and SB 252 is one of the corrections that may have been missed.

Opponents' Testimony:

Jeff Barber, Northern Plains Resource Council, said industry was asking that they increase the area where water quality standards can be exceeded. Just because someone owns property doesn't mean they can do what they want with it. He said it was reasonable that the state has a responsibility to monitor the water quality. The state spent 18 months making new rules and they should be given time to work. He strongly urges the committee to table the bill and the amendments.

CHAIR. GROSFIELD said he wanted to remind everyone that the hearing was on SB 252, and not on the amendments. The amendments are not in the bill until the committee members agree to add them to the bill.

Jim Jensen, Montana Environmental Information Center, opposes SB 252. If the amendments pass there will be a situation where an arbitrary boundary will be defined as a mixing zone boundary that has nothing to do with the hydrologic conditions. It would allow the same situation that occurred at the Golden Sunlight Mine to continue. In 1983, the Golden Sunlight Mine released 19 million gallons of cyanide laced water into the groundwater, that poisoned the neighbors' drinking water. Those residents brought suit against Golden Sunlight, who settled with the residents, one of whom was an employee of the mine. That settlement was

shielded from the public by the court, so the terms of the settlement are unknown. The company took over those peoples' lands and extended the mixing zone, which made a bigger area to pollute. That is not the intent of the Montana Water Quality Act. The rules that were passed should be given time to work. If the rules don't work the Legislature will have a chance to review those rules again.

Debby Smith, Helena Attorney representing the Sierra Club, said they oppose SB 252 in its original form and the proposed amendments. It seems unclear what the difference is for a natural mixing zone or attenuation zone. That was dealt with after the last session by the Board of Health in an extensive rule-making process. SB 252 was drafted by representatives of the mining industry and the Department of Health and Environmental Sciences. She said that Crown Butte Mine and Pegasus Gold Mine are being sued by various environmental coalition groups.

George Ochenski, representing Trout Unlimited, said there is some question as to who controls groundwater. Groundwater is a natural resource of the state. The bill in its present form would impact land-owners that are adjacent to an industry site.

Steve Pilcher, Director Water Quality Division, DHES, said that SB 252 is unreasonable and unworkable. The proposed amendments have addressed many issues, but there are still some unresolved issues that need to be addressed. When the original groundwater control was established in 1982, it allowed a mixing zone to go to property boundaries with the understanding that only the surface owner could be impacted by contamination of the groundwater. SB 401 made it clear that mixing zones were authorized and recognized under the Water Quality Act. That allows the permittee to have a mixing zone and utilize dilution of a waste in a stream as a solution to the problem. Including property boundaries places an additional burden on the department in determining legal and legitimate land ownership for the area to be included in that mixing zone. Where contamination occurs, the agency should have jurisdiction until the aquifer has been cleaned up. Elsewhere, jurisdiction should continue until there is no longer a need for a mixing zone.

Steve Kelly, representing Friends of the Wild Swan, said SB 252 is increasing the task of determining where the boundary is, what the level of pollutant is and how it will be cleaned up. He believes prevention is the most cost effective way to keeping the environment and drinking water healthy for all the citizens. Agencies are all too eager to cater to corporations that seem to have increasing control over the political process in Montana. The burden should be on the corporation and the agencies to prevent pollution.

Questions From Committee Members and Responses:

SEN. B. F. "CHRIS" CHRISTIAENS asked **Mr. Pilcher** to define natural attenuation zones and mixing zones, **Mr. Pilcher** replied that they have wrestled with that distinction, and that there is considerable over-lap. A mixing zone is when a waste stream is discharged into a larger body of water and eventually will clear out the waste. The attenuation zone does not apply to surface water and thus the proposed amended language.

Abe Horpestad, Water Quality Division, DHES, said in his interpretation of the bill he couldn't tell the difference between the attenuation zone and the mixing zone.

SEN. CHRISTIAENS said in the Long Range Building Committee there were a number of grants for clean-up for feed lots in the Cut Bank area. He asked **Mr. Brown** if in his testimony that said, "by the edge of the feed lots", stops his responsibility. **Mr. Brown** replied that he had spent 10 years with the Water Quality Bureau working with that issue. It would be his opinion that where there was a groundwater discharge from a feed lot and that site was permitted the same way that a mine was permitted, there would have to be some type of an attenuation continuation zone allowed around that facility. The permitting would have to depend on the geohydrology of the site.

SEN. CHRISTIANS asked **Mr. Brown** if a feed lot is built next to a creek and the waste flows into the creek, is that considered a mixing zone. **Mr. Brown** replied that it could be, but couldn't recall specifically working with that particular issue on a feed lot. There has been a lot of work done in the past years regarding permitting of feed lots. If there was a residential structure near that site that may have a drinking well, they may have to do something different to control that pollution.

SEN. JEFF WELDON asked **Mr. Fitzpatrick** if he said, "it would be easier for a mining company to come into compliance with the property boundary rather than some small mixing zone." Essentially, the larger the property, the larger the mixing zone. He asked **Mr. Fitzpatrick** what the logical extreme would be with pollution. **Mr. Fitzpatrick** said that extreme could be extended to any distance that you wish. In the case of the Golden Sunlight mine, the cyanide content was extremely low and did not constitute a threat to human health and safety. However, the company acquired the property because it was not feasible to treat large volumes of water with extremely low levels of contaminants. Even if there is a mixing zone, there is a discharge requirement that has to be met in order to get a permit to make sure they are in compliance with the Water Quality Act. He said natural attenuation zones will clean up low levels of contaminates.

SEN. WELDON asked **Mr. Fitzpatrick** if a river runs through the property is that considered a mixing zone. **Mr. Fitzpatrick** replied no, that it only applies to groundwater.

SEN. MIKE FOSTER asked **Mr. Fitzpatrick** if he would comment on the bill and the amendments. **Mr. Fitzpatrick** said in the original bill the concept of natural attenuation zones was more complicated than it needed to be. The amendments would amend the mixing zone language for groundwater that would say, "it extends to the property boundary or further, dependent upon the board rules." The amendments do the same thing as the original bill, only more simplified.

SEN. FOSTER asked **Mr. Fitzpatrick** if the bill gave someone the right to poison someone's drinking water. **Mr. Fitzpatrick** replied no, in order to discharge groundwater it has to be done pursuant to the permit. If the mixing zone is at his property boundary, he must have clean water going on to the adjacent property. **SEN. FOSTER** asked **Mr. Fitzpatrick** if he thought the bill would limit responsibility, such as what happened with the Golden Sunlight Mine. **Mr. Fitzpatrick** replied not at all, the bill makes it clear where the mixing zones are and where the water must be clean. In an accidental discharge like the mine had, they have to mitigate that in some way. The appropriate way may be to buy the property or haul in drinking water temporarily, or pump groundwater and treat it.

SEN. CHRISTIAENS asked **Mr. Pilcher** if the permits that were issued prior to SB 401 were grandfathered and if there was a problem, which would take precedent. **Mr. Pilcher** replied that in regard to the Golden Sunlight Mine, they do not have a groundwater permit so there would be no determination under the Water Quality Act for mixing zones. Therefore, their mixing zone would continue as it has been historically until such time as the current exemption had been eliminated.

SEN. VIVIAN BROOKE asked **Mr. Pilcher** how it interplays within a water quality district and an urban area. **Mr. Pilcher** said they have not had an opportunity to review that from the water quality perspective.

Closing by Sponsor:

SEN. TVEIT said the amendments simplify the bill. They are not contaminating creeks that would flow through a neighbor's property. It is a natural attenuation zone disappearing naturally. Agriculture, mining, and feed lots are affected and that could be very serious without the bill. The Department of Health still has control over the mixing zones. Over the last several months the Water Quality Division of the DHES has been subject to criticism by industry and environmental groups. That is why there is a need to make the program more manageable and responsive. There must be more consistency in the control of

water quality management. SB 252 will clearly define the groundwater mixing zones and how they would be monitored.

{Tape: 1; Side: B}

HEARING ON SB 288

Opening Statement by Sponsor:

SEN. TOM KEATING, District No. 5, Billings, said SB 288 deals with the Montana Environmental Policy Act. It does not affect the Act in parts 1-3 and does not change or amend the environmental regulations. The bill is merely a procedural amendment. The Montana Environmental Policy Act is an excellent law for Montana. The purpose of the MEPA cannot be criticized. Especially where the policy says, "the State of Montana in cooperation with the federal government, local governments, and other concerned public and private organizations to use all practicable means and measures including financial and technical assistance, in a manner calculated to foster and promote the general welfare. To create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social and other requirements of present and future generations of Montana."

SEN. KEATING said the bill has nothing to do with changing that policy. The MEPA has been abused in its procedures and SB 288 will remedy how the Act is applied. An applicant wishing a permit of any kind, must approach some agency or department of government to obtain that permit. The people with the authority in the departments determine whether that permit involves a major or minor action by state government. If it is a major action of government, then they will operate under parts 1-3 of the MEPA requiring an Environmental Impact Statement and the applicant must comply with all the language and all the rules that are required. If a permit involves a minor action of government, then the department may require only an environmental assessment and will determine what remediation must be done. That would work because the experts are in the various departments.

SEN. KEATING said what is happening is that those who disagree with the determination by the agency that it is a minor action will file a complaint in a district court and they will say that it is a major action under the Montana Codes 75-1-101. Then the agency will have to require an EIS. If the state wishes to fight that challenge, they will go to court and present the scientific evidence for the basis of their decision that says it is a minor action. The defendant must prove his actions or decisions in the court. There is no burden of proof on the plaintiff. The bill says that the agencies are exempt from parts 1-3 if they determine in their expert opinion that it is a minor action that is requested. If it is determined that it is a major action then

they must file a declaratory ruling with the Secretary of State stating why they determined that it was a major action requiring an EIS under MEPA. The bill will not interfere with the protection of the environment. The agencies have the expert staff to make decisions, and the amendment will protect them from harassment and second-guessing and threats, and if they don't comply they will end up in court. But the bill protects them from second guessing pressure.

Proponents' Testimony:

Jim Mockler, Executive Director of the Montana Coal Council, said the Western Energy Mine has done 2 to 3 Environmental Impact Statements, that cost the company a lot of money and time and there was lot of things to deal with. They felt if they didn't do it they would be sued and those that sued had nothing to lose except perhaps the \$15 filing fee. SB 288 will not do anything to harm the environment.

Gail Abercrombie, Executive Director of the Montana Petroleum Association, said they support the bill and believe it will contribute to efficiencies and will give the agencies the opportunity to apply their previous experience with similar situations and evaluate whether or not an EIS is needed.

John Fitzpatrick, Pegasus Gold Corporation, said they support the bill and agree with Mr. Mockler's statement.

David Owen, Chamber of Commerce, said there are numerous people around the state who are concerned with some of the threats that are out there. The business community wants to know that the money they have spent would protect the environment and not go into some procedure that doesn't accomplish the goal. The bill is a good start towards that.

Opponents' Testimony:

George Darrow, Big Fork, former Montana State Senator and Chief Sponsor of the MEPA, said he opposes SB 288 because MEPA provides a coherent, coordinated, consistent state policy to guide all agencies in major actions significantly affecting the quality of the human environment. It merely requires state agencies to look before they leap. **EXHIBIT 2.**

Steve Gilbert, owner of a Natural Resources Consultant Company, said SB 288 was an anti-business bill. His firm is one of many that employ hundreds of people in Montana, who's work is outlined in MEPA. Those are long-term positions held by professionals. The businesses in Montana pay lots of taxes and they are here because of the quality of life in Montana and the recreational opportunities. Eliminating portions of MEPA would result in the loss of many jobs and the revenue generated. He said SB 288 would be a "quick fix" approach and makes as much sense as over-

stocking a carefully managed ranch to take advantage in a sudden rise in cattle prices.

Janet Ellis representing the Montana Audubon Legislative Fund said they oppose the bill because they don't interpret the bill the same way that **SEN. KEATING** does. Page 4, Lines 1-7 say there "may" be an effect on the environment and it could go through the EIS process. She asked why anyone who was exempt from MEPA would go through the EIS to decide if it was a major action affecting the environment. She suggested asking different attorneys their interpretation of the way the bill is written.

Debby Smith, Helena Attorney representing the Sierra Club, said she opposes **SEN. KEATING'S** SB 288. What MEPA means is that the agency has to decide what the quality of life and repercussions are of a permitting decision before it makes that decision. It requires agencies to be reasonable. The city of Butte is still under orders by the EPA to boil its drinking water because of the mining that occurred there before there was a law such as MEPA. She said to make MEPA the exception rather than the rule will take away the accountability of the public for their actions.

Steve Kelly representing Friends of the Wild Swan, said he was in opposition to SB 288 because of 3 reasons: "exempt, discretion, and case by case." Those words will change the meaning and intent of those agencies who are already paranoid about implementing the laws as they exist with the conflict over increasingly scarce resources. There already is an exemption clause in MEPA called "categorical exclusion."

Jim Jensen, Executive Director, Montana Environmental Information Center, said a recent decision by the Department of State Lands, not to do an Environmental Impact Statement, allowed the second largest gold mine in Montana to more than double in size. He said his group did not consider that to be a minor action, so they sued and won the court case.

George Ochenski, representing Trout Unlimited, said SB 288 provides a good way to eliminate public decision-making in government.

John Vollertsen, landowner in Roosevelt County, said MEPA is probably the most used and misunderstood statute there was. It empowers people to participate in government proposals. A lot of property owners do not realize that their property could be threatened if MEPA did not exist. Industries and taxpayers can all get together under MEPA to identify any problems.

Willa Hall, representing the League of Women Voters of Montana, said they agree with **SEN. KEATING** that MEPA is a good bill, but they oppose weakening it and urge the committee to do not pass SB 288.

Melissa Case, representing Montanans for a Healthy Future, a citizens organization concerned with public health issues, said they oppose SB 288 because it will adversely affect public health. It would allow agencies unlimited discretion regarding alternative options that would benefit public health.

Sara Barnhart, representing Montanans Against Toxic Burning, said MEPA provides a framework where citizens can participate in decisions that affect their communities. SB 288 would rob Montana citizens and state government of the opportunity to be fully educated about environmental, social, and economic impacts.

David Hemion, Montana Association of Churches, said their opposition to SB 288 is based upon stewardship and justice. Justice is maintained when the law is followed as dictated by the democratic process.

Kay Fox, Montana Low Income Coalition, said the low income people in Montana cannot protect themselves without knowing what the government is doing. They urge the state to stand by them and oppose SB 288.

Ted Lange, representing the Northern Plains Resource Council, said they oppose SB 288 for all the reasons that have been discussed. The bill would eliminate citizens from the process and when that happens they get frustrated and tend to file a law suit.

Brad Martin, Director of the Montana Democratic Party, said they were in opposition to SB 288. The air, water, and the land are among the most highly visible areas the government works with. MEPA has done a commendable job in involving the public in the decisions that affect the natural resources of Montana. He said SB 288 is a direct attack on MEPA.

Jim Baumberger, representing Agricultural Marketing, said as a marketer, people were looking for products that come from a clean environment. He asked the committee members to think about that when involving world agriculture markets. The amendment is a direct threat to those resources. They oppose SB 288 and said MEPA should remain as it is.

Questions From Committee Members and Responses:

SEN. WELDON asked **SEN. KEATING** if the bill passes, where is the public participation. **SEN. KEATING** replied that the public has the right to challenge any decision in the permitting process. They can file a complaint in district court if they oppose a decision.

SEN. WELDON asked **SEN. KEATING** who would be making the decisions regarding something that could or could not be a major action. **SEN. KEATING** said any employee who has the authority to determine

the extent of the project, whether or not it would be a major or minor impact. **SEN. WELDON** asked what about an employee who appeals to the director, who then appeals to the board. Ultimately every decision is made by the Board of Health. That doesn't seem like it would stream-line the process. **SEN. KEATING** said the bill does not change that line of authority. Under MEPA people in departments are making decisions as to whether or not it would be a major or minor impact.

SEN. BROOKE asked **Ms. Schmidt** if her department has performed a lot of training for department staff to implement MEPA. **Ms. Schmidt** said they have trained over 550 employees in the implementation of MEPA.

SEN. BROOKE asked **Ms. Schmidt** what takes place in the training for public participation. **Ms. Schmidt** said that by involving the public early on, they can avoid problems with their projects. The thrust of the training is that public participation early on in the process makes for better decisions.

{Tape: 2; Side: A}

SEN. BROOKE said that **SEN. KEATING** said that MEPA had been abused in the process. **Ms. Schmidt** said perhaps in executive session the committee members could share the discussion that they had with the EQC on that point. The reason for the training was to help agencies stay out of trouble with MEPA and to avoid challenges.

CHAIR. GROSFIELD asked **John North, Chief Legal Counsel, Department of State Lands**, whether if the bill passes, it would be changing some of the agencies responses with respect to MEPA compliances. He asked how he would react with respect to MEPA compliance. **Mr. North** replied they have an obligation under MEPA to make a determination on the environment from an application for a permit. Unless it is obvious, an environmental assessment would make that determination, and if there was not a significant impact then they stop with environmental assessment. If they determine it to be a major impact, then an EIS would be requested. They may or may not have a public hearing.

CHAIR. GROSFIELD asked **Mr. North** if they received a permit application for a mine, and it was decided that there would be an EIS, would that end it. **Mr. North** said yes, that would be the end of it, because he didn't believe there would be a judicial review of that decision the way the bill was written. Under current law, that is subject to challenge.

Bob Robinson, Director of Department of Health and Environmental Sciences, said their work is similar to the DSL, but they probably do a lot more of them. They do approximately 300 environmental assessments annually, and less than one EIS per year. The department starts with a check-list when there is a

discharge or subdivision application, and they use the guidelines from the MEPA rules.

Donald Kern, Coalition for Canyon Protection submitted written testimony opposing SB 288. **EXHIBIT 3.**

Closing by Sponsor:

SEN. KEATING said he appreciated all of the comments from the opponents of the bill because they help make his case. They were afraid they would not be able to stop projects at will. A permittee has to pay for a permit and all of the costs of an environmental assessment or an EIS. They have to pay for everything and it takes a lot of time and money. The permit can be challenged in court by anyone, and that delays the process. The plaintiff may not win the suit, but the process has been slowed down, and that has stopped a lot of economic development from coming into the state.

SEN. KEATING said some of the challenges that were filed in court were, electrical engineering, local 254 vs the DSL, DNRC, DHES, FWP, DOH, and the Montana Power Company. In one case, the plaintiff filed a complaint in district court claiming that the agencies should have required an EIS when granting a pipeline right-of-way. The unions had a labor dispute with the MPC and they filed under MEPA challenging the permits requiring an EIS. The MPC and the union went to the bargaining table and settled the issue out of court, and no EIS was done. That challenge cost the DSL \$2600 in attorney fees, and MPC a lot of time and money. He said the statement about the bill abusing MEPA is absurd.

{Comments: The committee hearing was recorded on 2, 60 minute tapes}.}

ADJOURNMENT

Adjournment: 3:00 PM



LORENTS GROSFIELD, CHAIRMAN



THEDA ROSSBERG, SECRETARY

LG/TR

DATE _____

2-8-95

SEN

54th Legislature

SENATE BILL NO. 252

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE WATER QUALITY LAWS TO RECOGNIZE AND PROVIDE FOR GROUNDWATER MIXING ZONES AT LEAST TO THE EXTENT OF PROPERTY OWNED OR CONTROLLED BY THE DISCHARGER."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1)-(2) (no change)

(3) "Controlled property" means the land area controlled by a discharger through ownership, lease or otherwise, within which the discharger controls beneficial uses of groundwater.

(Renumber former subsection (3) and all subsequent subsections)"

Section 2. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 75-5-302 through 75-5-307 and 80-15-201, the board shall:

(1) - (3) (no change)

(4) adopt rules governing the granting of mixing zones requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size, except that groundwater mixing zones shall extend from the point of discharge downgradient to the discharger's controlled property boundary, and may, in accordance with rules adopted by the board, extend further;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5)-(7) (no change)"

-End-

Testimony of
George Darrow, Bigfork, MT,
former Montana State Senator and Chief Sponsor of the
Montana Environmental Policy Act
before the
Senate Natural Resources Committee,
Helena, MT, February 8, 1995

For nearly a quarter of a century, since its enactment in 1971, the Montana Environmental Policy Act has been the declared Legislative policy of the State of Montana for implementing the Constitutional Right to a "clean and healthful environment."

MEPA has functioned in an exemplary manner to protect the use and enjoyment of private property free from needless damage. It has done so, administered **as an arm of the Legislature**, maintaining policy oversight with an absolute minimum of regulation.

Montana, having adopted MEPA, became the only state in the U.S. with an environmental policy administered as an oversight function 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 generate a surplus of regulations. MEPA embodies no regulatory authority and does not provide for any penalties.

MEPA provides a coherent, coordinated, consistent state policy to guide all agencies in "major actions significantly affecting the quality of the human environment." In essence, it simply requires state agencies to "look before they leap" and "think before they act." MEPA outlines a process for the thoughtful consideration of all the impacts and consequences of "significant state agency projects and proposals." It requires that agencies publicly identify those impacts "along with economic and technical considerations" so as to avoid the otherwise *unintended, unforeseen, and unwanted consequences of their proposed action.*

MEPA has been enormously successful. Montana has gained national recognition for maintaining the high quality of her environmental resources and lifestyle amenities. Montanans enjoy a quality of life that other states envy and visitors seek. **It is no accident.** Montana ranchers, farmers and other private property owners have benefited from the accrual of hundreds of millions of dollars of increased property values. **It is no accident.** Greater prosperity has become more widely available. More Montanans have had the opportunity to

share in the economic growth and improved state prosperity resulting from new enterprises and new residents attracted by the quality of life that Montana offers. **It is no accident.**

MEPA is a creature of the Legislature. As a result of its foresight and the unique instrument it created in MEPA, the Montana Legislature provided the institutional wherewithal that has proven itself, over the span of a generation, as a mainstay of Montana's economic progress. **It is no accident** that tourism has become the second largest industry in Montana, and that 80% of the entrepreneurs relocating to Montana were either raised here or came here first as visitors.

All of this has been accomplished at nominal expense by a bi-partisan Environmental Quality Council composed of four Senators and four Representatives, appointed in the same manner as standing committees, and four public members with two each appointed by the Speaker and the Senate President with the consent of the Minority, plus the Governor or his representative as an ex-officio non-voting member. Legislative oversight is exercised by a small, but dedicated and capable staff. Quietly and efficiently, almost without notice, it has functioned to the great benefit of Montana. This oversight, utilizing the format of Environmental Impact Statements, has minimized the irreparable damage to Montana resources and property, both public and private, that might have otherwise resulted from sometimes ill-conceived, misguided, cockamamie proposals.

I believe that by adoption of the provisions of S.B. 288, the Legislature would abdicate its responsibility for implementing the Constitutional Right to "a clean and healthful environment" for all Montanans.

By an inappropriate delegation of its authority, the Legislature would relinquish its duty to enunciate a coherent, coordinated, consistent state environmental policy.

Each agency would be authorized to act on "a case by case basis" as it might from time to time see fit, with whatever consequences might ensue. No administration could keep track of the multitude of decisions arrived at by unguided, uncoordinated whim and impulse. The Legislature, having forfeited all proactive policy guidance, could only confront the subsequent wreckage caused by this "everyone go in all directions at every opportunity" kind of policy abdication. Members of the Committee, I urge you to reject S.B. 288. For Montana's sake—Please. Do not pass.

Thank you for your consideration.

SENATE NATURAL RESOURCES
COMMITTEE NO. 3
DATE 2-8-95
BILL NO. SB-288

NAME DONALD KERN

ADDRESS 1805 JOSLYN ST. # 89

HOME PHONE 442-4124 WORK PHONE _____

REPRESENTING COALITION FOR CANYON PROTECTION

APPEARING ON WHICH PROPOSAL? SB 288

DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

WE DO NOT NEED TO GUT THIS BILL. EITHER
STRENGTHEN ENVIRONMENTAL PROTECTION OR LEAVE IT
AS IT IS.

Donald A. Kern

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

1

SENATE COMMITTEE ON NATURAL RESOURCESBILLS BEING HEARD TODAY: ~~SB 252~~ SB 252SB 288

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
DONALD KERN	SELF	SB 288		X
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASSOCIATION OF MONTANA	SB 288 SB 252		X
John VollerTson	Self	SB 288		X
Stan Frasier		SB 288		X
Judy Jundunen	Santa Fe Pacific Coal			
John Fitzpatrick	Pegasus Coal	SB 288 SB 252	X	
Edna Darrow	Self	SB 288	X	X
George Darrow	Self	SB 288		X
Jeff Barber	Northern Plains Resource Council	SB 252 252		X
GEORGE OCTENSKI	TROUT UNLIMITED	288		X
Jim Mockler	MT Coal Council	SB 252 SB 288	X X	
Willa Hall	LWV	SB 288		X
Bob Williams	MT Mine Assoc	SB 252	X	
Angela Janacano	MT Mine Assoc	SB 252	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

2

SENATE COMMITTEE ON NAT. RESOURCESBILLS BEING HEARD TODAY: ~~SB 139~~ SB 252
SB 288

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Janet Ellis	MT Audubon	SB 288		✓
Melissa Case	MATB/MHF	SB 288		✓
Sarah Barnard	MATB	SB 288		X
MIKE MURPHY	MT. WATER RES. ASSN	SB 288 SB 252	X	
Larry Brown	Ag. Pres. Assoc.	SB 288 SB 252	X	
Immaculate Johnson	CURE	SB 252	X	
Ramona Luzak	Golden Spike Mining	SB 252	X	
Mary A. Pongler	MONTANA MINING ASSN.	SB 252	X	
David Hemion	MT Assoc. of Churches	SB 288		✓
DAVID H. DERHAM	public citizen	SB 252		X
HUME DAVENPORT	MYSELF	SB 252 SB 288		✓
Steve Pichea	DHES	SB 252		✓
Carol Shanahan	Stillwater Mining	SB 288 SB 252	X	
Peggy Trenk	WETA	SB 252	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

3

SENATE COMMITTEE ON NATURAL RESOURCESBILLS BEING HEARD TODAY: SB 252, SB-288

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
JOHN ARRIGO	DHES	SB252		X
Ted Lange	NPRC	SB288		X
Maureen Cleary-Schwinden	Women In Farm Econom.	SB252	✓	
BOB ROBINSON	DHES	SB252		X
Jim Jensen	MEIC	252 288		X
Don Allen	MT Wood Products Assoc.	252	✓	
Kay Fox	MEIC			X
Jim P. Schars	MWR	288		✓
Steve Kelly	Friends of the Wild Swan	SB 288 SB 252	→	X
Ralph A JACKSON	MEIC	288		X
Brad Martin	MT Democratic Party	288		✓
Jim Samponer	Myself			✓
Robt. T. Coulter	Self	288		✓
Edw. P. Bunker	Wash. State Ch	288		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2.8.95

4

SENATE COMMITTEE ON NAT. RESOURCES

BILLS BEING HEARD TODAY: SB 252 SB 288

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Ashley Oliverio	self - private landowner	SB 288		X
Katharine A. Brown	Self	288		X
Steve Gilbert	OCA Research	288		X
John Bloomquist	Mt. Stockman	252	X	
Pam Hillery - Pres, MEIC	Pres. Bd., MEIC	288		X
Madeleine von Laue	self	288		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY