

MINUTES

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

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 10, 1995, at 12:30 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 137 (following Executive Action on SB 199)
Executive Action: SB 231, SB 147, SB 199, SB 288, SB 137, SB 145, SB 225, SB 234.

EXECUTIVE ACTION ON SB 231

Motion: SEN. JEFF WELDON MOVED DO PASS ON SB 231.

Motion: SEN. WELDON THEN MOVED TO ADOPT AMENDMENTS NO. sb023102.ate AS CONTAINED IN EXHIBIT 1.

Discussion: SEN. WELDON explained the amendments to the committee members.

He said it was not his intention to change the intent of the bill, but thought the language was clearer. He was concerned that the sponsor may not have had a chance to review them yet.

SEN. TVEIT asked **SEN. KEN MESAROS** if he had a chance to look at the amendments and how they changed the bill.

SEN. MESAROS explained the first time he saw the amendments was just a few minutes ago, and in just going through them, it does expand the intent of the bill dramatically. He said he would oppose the amendments because they would be striking the "regulatory restrictions."

Substitute Motion: **SEN. TVEIT MOVED A SUBSTITUTE MOTION THAT THEY REJECT AMENDMENTS NO. sb023102.ate.**

CHAIRMAN GROSFIELD asked **Todd Everts, Environmental Quality Council**, if there was any fiscal impact with the amendments. **Mr. Everts**, responded that amendment no. 6, may have a fiscal impact.

SEN. BROOKE said she would like to hear a little bit of what and how you look at regulatory restrictions versus impacts.

SEN. WELDON explained that he thought that regulatory restrictions were narrower than impacts. He said there were other things the government could affect besides regulations.

SEN. KEATING asked **Sen. Weldon**, if he didn't think that it broadens it to the point that it is undefinable?

SEN. WELDON responded that he didn't think so. He indicated it is still definable to government action, but it would not broaden it to all human endeavors.

SEN. BROOKE asked **Mr. Everts** if he would give his interpretation of the how the amendments would affect the bill.

Todd Everts replied that the bill as introduced adds language to the Montana Environmental Policy Act, clarifying the Legislature's intent for agencies to review their economic and social impact analysis within MEPA.

SEN. BROOKE questioned the amendments because they also include the regulatory restrictions as well other social and economic impacts.

Mr. Everts said it just changes the clarification, but one could argue that regulatory impacts still would be analyzed under current existing law.

SEN. TVEIT said basically the amendments change it into a study bill.

SEN. BROOKE commented that if you are going to create an impact statement you have to study and analyze it, so it isn't just a study by itself. It has to have that language in the law to say what you do with it, or say that is how you get to the end result.

Vote: MOTION TO DO NOT PASS SEN. WELDON'S AMENDMENTS No. sb023102.ate, CARRIED 8-3 ON A ROLL CALL VOTE WITH SENATORS BROOKE, WELDON, AND WILSON VOTING NO.

CHAIRMAN GROSFIELD asked Sen. Mesaros if he had talked to anybody on the Committee about moving his amendments.

Motion: SEN. MACK COLE MOVED TO ADOPT SEN. KEN MESAROS'S AMENDMENTS NO. sb023101.ate AS CONTAINED IN EXHIBIT 2.

SEN. MESAROS explained the amendments to the committee members.

CHAIRMAN GROSFIELD said the current fiscal note says \$180,000 for the Department of Health and Environmental Sciences. He asked SEN. MESAROS what that was for.

SEN. MESAROS he hadn't seen any specific figures, but it was his understanding that the impact on the DHES would be minimal. They suggested some modifications which were included in the amendments.

Todd Everts explained that as Sen. Mesaros stated, a group was convened with all the agencies that have to conduct MEPA analysis along with the Governor's office. Sen. Mesaros went over his bill with them, and with these amendments, which were sent out to all the agencies including the DHES, the feed back has been "that there will be minimal impact." This specifically includes the DHES and their legal council.

Vote: MOTION TO ADOPT AMENDMENTS NO. sb023101.ate, CARRIED UNANIMOUSLY.

Motion/Vote: SEN. TVEIT MOVED TO DO PASS SB 231 AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 147

SEN. COLE explained they had approved amendment no. sb014703.ate, but amendment no. sb014704.ate would replace that amendment

CHAIRMAN GROSFIELD thought what they needed to do was to reconsider their action on amendment number SB014703.ate and asked for a motion to reconsider this action.

Motion: SEN. COLE MOVED TO RECONSIDER THEIR ACTION ON AMENDMENT SB014703.ate

Discussion: None

Vote: MOTION CARRIED UNANIMOUSLY.

Motion: SEN. COLE MOVED TO ADOPT AMENDMENT SB14704.ate, AS CONTAINED IN EXHIBIT 3.

Discussion:

SEN. COLE explained the amendment to the committee members.

SEN. KEN MILLER asked what the definition of "family" was. Mr. Everts said there was not a definition of "family" in this bill. Usually "families" would be immediate families.

Mr. Everts had suggested they could consider putting the word "immediate" in front of family.

CHAIRMAN GROSFIELD asked if the DHES had a chance to review the amendment. They replied yes, and they supported it.

{Tape: 1; Side: B;}

SEN. MILLER said he would like to see the word "immediate" inserted into the amendment.

Substitute Motion/Vote: SEN. COLE MOVED TO ADOPT AMENDMENT NO. sb014704.ate AND ADDING THE WORD "IMMEDIATE" IN FRONT OF "FAMILY." MOTION CARRIED UNANIMOUSLY.

SEN. COLE explained amendment no. sb014702.ate as contained in EXHIBIT 4.

Gary Fritz, Department of Natural Resources stated the reason they brought this bill before the Legislature was because they are not normally in the business of leasing land. They build dams and deliver water to irrigators, and those kinds of things. Mr. Fritz said, this was a responsibility they received when Fish, Wildlife and Parks, decided not to continue to administer those projects, or those leases, and the responsibility basically defaulted to them. They thought it was important to get some guidance from the Legislature on how they should operate and administer those leases. So if it is the wish of the Legislature that these fees be capped in some way, he guessed they didn't have any major concern with that. Mr. Fritz commented he would be surprised if someone wouldn't be concerned that this would limit the State in getting less than the full market value for the assets of the State. Mr. Fritz didn't think they had a major concern with this amendment.

SEN. CHRISTIAENS commented that he didn't support the amendment.

He said he keeps hearing from the members of the legislature that they are not receiving what the state lands are worth, and to put a percentage cap on the fees seems to go counter to that.

SEN. CHRISTIAENS stated this may be a protection for people who have current leases, and it may be an anti-out-of-state concern with competition coming in from potential out-of-state leases. He was not really sure that was a policy that we want to pursue in the state.

SEN. KEATING asked if they were 10 year leases.

SEN. COLE stated that the legislation allows them to lease those lands for up to ten years.

SEN. KEATING asked if the rental could be changed during that ten year period.

SEN. COLE commented the legislation would require us to do an appraisal at least one time during that lease period. So he assured the committee members, they didn't intend to be doing appraisals every year. They are going to be doing the appraisals once during the lease term. If they discover that the value of that land has gone up, then they can re-assess the fee at that time. **Sen. Cole** explained that the amendment would basically place a limitation on how much that increase could be, so they are talking about an increase once during the lease period.

SEN. MILLER mentioned that he had a bit of a concern with the amendment, but he didn't know how to solve it. **Sen. Miller** stated that land prices change quite often, and we have seen decreases and now we have seen increases. We have seen land prices increase by 7% or 8% per year, so 2% to him seems like it might result in falling farther behind than what they have already, up to this point. He was wondering if it would be more appropriate to have something that was tied to the average real estate market.

SEN. COLE said that when they were looking at the fees, it was very difficult to appraise cabin sites, due to the fact that people have large homes on them, and the value is really in the house and not in the land itself. For all practical purposes, you could end up having a case where somebody would pay "out-of-state" values (that is, inflated values) for it, if you do not have some kind of limits on it. Most of those people are elderly and have a lot invested in their shrubs and flowers, etc. If they had a choice to either move their cabin off or try to stay and pay the increased appraisals, it wouldn't be fair to a retired couple.

SEN. KEATING stated that they were only talking about \$18,000 a year. He didn't see any sense in making a federal case out of it. The ten year contract is binding for the fee that is established at the beginning, and the appraisal isn't going to

affect the contract. However, if the contract states they can adjust the fee during the term of the contract, then you have to have some limit to that adjustment. He thought the 20% restriction was sufficient protection for the lessee, and if the contracts are written right it won't be a burden on the Department either.

Motion/Vote: MOTION TO ADOPT AMENDMENT NO. sb014702.ate, FAILED 5-5 ON A ROLL CALL VOTE.

SEN. TVEIT asked how the department or agency determines whether or not it could be a 5 year or 2 year lease. The bill says "may not exceed 10 years", but it doesn't say 10 year leases.

CHAIRMAN GROSFIELD asked Mr. Fritz what the Department's current practice was as far as types of 10 year leases, and so on?

Mr. Fritz said, he couldn't tell them what FWP'S practice had been, but it seemed to him it made sense for them and also for the lessees to provide the longest term lease that they could. One of the reasons they put up to 10 years in the bill was because some of those leases, especially the agricultural leases, were for less than 10 years.

Mr. Fritz stated that they could stagger the lease terms and maybe make some of them 6 years, 7 years, 8 years, 9 years, and 10 years. So that all the lease renewals would not come due on the same year, and the department wouldn't get hit with a bunch of lease renewals all in the same year, and it would also stagger their workload.

Motion: SEN. CHRISTIAENS MOVED TO DO PASS SB 147 AS AMENDED.

Discussion:

SEN. WELDON said Mrs. Erickson from Roundup was concerned about the separation of land leases and water leases, and asked if the amendments would take care of that problem.

SEN. COLE said not exactly. The cabin site lessees on Deadman's Basin were very concerned that Fish, Wildlife and Parks was charging them the fees they were. Because the cabin site lessees were having to pay for other things that Fish, Wildlife and Parks Department was doing at Deadman's Basin, like the picnic access, and some other things they were administering. She wanted to make sure that we wouldn't do the same thing. He said they are not going to do that. In fact the basis on which we established the rate has nothing to do with what they were spending money on. It has to do with the appraised value of the land.

Vote: MOTION TO DO PASS SB 147 AS AMENDED, CARRIED UNANIMOUSLY.

DISCUSSION ON THE PONY MINE SITUATION

CHAIRMAN GROSFIELD stated they have talked some about the possible necessity for a Committee Bill regarding the Pony Mine situation.

CHAIRMAN GROSFIELD stated his understanding of **REP. KNOX'S** bill was that it would accomplish the requiring of a bond for future permits, and asked **Todd Everts** to comment.

Todd Everts affirmed that **CHAIR. GROSFIELD** was correct.

CHAIRMAN GROSFIELD indicated that he didn't know if the committee was going to go for this or not. He hadn't had a chance to discuss this with the mining community. However, a possible route they might take would be to draw up the committee bill for purposes of discussion. He said the mining industry indicated that they wanted to help with the problem at Pony. **CHAIR. GROSFIELD** thought there was a bill by **SEN. BECK** that addressed voluntary cleanup.

CHAIRMAN GROSFIELD stated that the deal with Pony was the voluntary bonding and the department couldn't accept the voluntary bond. In discussing with **Mr. Everts**, he said what about if the state were to come in and clean it up, then the state does not have that long term liability. The question is, could the state accept a voluntary contribution from perhaps the Mining Association or somebody else, for the purposes of going in and cleaning up the Pony situation?

CHAIRMAN GROSFIELD said he would guess the answer was, that the DHES probably does not have an account that would accomplish that, but that was a thought they might explore with the department.

Mr. Fritz said that it seemed to him that the mining community had a concern about liability, and perhaps they could include language in the bill to address that.

CHAIRMAN GROSFIELD affirmed that was exactly the reason he talked about a voluntary contribution to a state account and to let the state do the cleanup. The money costs the mining industry, but they are not liable. If that needed to be clarified in the bill that would be fine. That was the concept that he was dealing with. He asked **Rob Robinson, Director Department of Health and Environmental Sciences**, if that concept sounds like it might help the Pony situation?

Mr. Robinson stated, it might work under our Superfund scenario, but he didn't know if it would saddle the state with the liability, and the responsibility in the future for some unknown, unanticipated problems to do with that site.

SEN. CHRISTIAENS said by taking that kind of action, he thought they would be starting another earmarked account. That was something the legislature had just undone in SB 83. He thought they needed to be looking at a different mechanism.

CHAIRMAN GROSFIELD informed them that he was the Sponsor of SB 83. SB 83 left a whole lot of things earmarked. One of the things that was specifically left earmarked in SB 83 was donations. There are lots of things going on in the state where somebody will donate an amount of money to some state entity for a specific purpose. It seems logical that you would want to earmark that and keep it earmarked, otherwise nobody would ever donate anything. **CHAIR. GROSFIELD** said he didn't think it was improper to earmark those specific kinds of things.

SEN. WELDON said the volunteer bonding did not work because of its voluntary nature. Now we are talking about setting up a mechanism to accept voluntary contributions to assist in cleanup, and there again it is voluntary. The time that he heard that the mining industry say that they would be willing to contribute something was in opposition to a bill that they didn't want. **SEN. WELDON** stated that he was somewhat hesitant to believe that this will work.

CHAIRMAN GROSFIELD said the only other option was to do a direct appropriation from the General Fund or some other account to do the cleanup. They could not do that in this committee, as appropriation bills have to come from the House. **CHAIRMAN GROSFIELD** indicated that **REP. KNOX'S** bill presumably would still go forward. If it gets to this committee, he guessed it would get favorable consideration, and that would take care of future activities at the Pony Mine.

SEN. WELDON stated that it was his understanding that **REP. KNOX'S** bill does not cover the situation where arsenic is to be used, if he is not mistaken.

CHAIRMAN GROSFIELD said that was true, but it was his understanding that this is because it was already being taken care of in another section of law.

John North, Chief Legal Counsel, Department of State Lands, informed the members that **REP. KNOX'S** bill was passed. It contains an exception to the grandfather clause in the Hard Rock Act for off-site mills. The exception only applies to mills that use cyanide in the future. So if the Pony mill was re-opened using cyanide, then it would no longer be grandfathered. There is no mechanism for the department to take care of a situation in which arsenic was used.

SEN. CHRISTIAENS asked **John North** if there is a way that they could accept donations in a simple fashion, and make sure that it would go towards that project, or a similar project.

John North said yes, the department has authority right now under the Hard Rock Act to accept monies for reclamation purposes from private entities, federal entities, and state entities. So they have a mechanism in place for that kind of thing with an accounting structure for it. The thing they worry about when they do those kinds of projects is a Superfund liability, and they would certainly want to take a look at that question first.

CHAIRMAN GROSFIELD said the question that there was nothing this Legislature could do to relieve the department of that sort of Superfund liability, was referring to a federal liability.

John North said they do an analysis to see what kind of substances are out there. If it appears that there are substances out there which could subject them to Superfund liability, then they work with the Health Department under what they call a National Contingencies Plan to structure the project in such a way that they would not be liable. That also requires them to look for responsible parties.

CHAIRMAN GROSFIELD stated, just so the committee is clear, they do have an account now that they could take donations, but they are a little bit worried about the liability.

John North said that was correct.

Motion: **SEN. WELDON MOVED** that they draft a committee bill along the lines of what **CHAIR. GROSFIELD** suggested.

He stated that he had confidence in **CHAIR. GROSFIELD** working with **Mr. Everts** and the Department to figure out just how this would work best. He said that they would all like to do something for Pony, and if the committee could assist with that, let us do it.

CHAIRMAN GROSFIELD stated that based on **Mr. North's** statement that they can already receive donations, it was just the liability question, but that was a federal issue.

SEN. CHRISTIAENS commented that he was not real sure, but couldn't this committee just write a letter urging those individuals who wish to make a contribution to do so, and to just allow them, rather than have the state end up in the situation and in possible jeopardy?

CHAIR. GROSFIELD asked **Mr. Everts** if the title of **REP. KNOX'S** bill was broad enough so that they could amend it, and put in something like they had been talking about if they find that it might be appropriate.

Mr. Everts said **Mr. North** could probably explain that.

John North stated, he didn't have the bill with him. He thought his initial reaction is that it may not be, but he would have to read the title and the bill.

CHAIRMAN GROSFIELD clarified they had the motion before them to go ahead and draft a committee bill.

SENATOR BROOKE said during a special session there was a meeting of the Natural Resources Committee where many people came in as proponents of the development, even though there was not going to be any bonding. Now it is great that there is a possibility that these entities are in fact going to contribute for the cleanup, but once again here we are in the situation of cleanup, rather than prevention.

SENATOR BROOKE said she just wanted the committee to be aware of that, and her recollection of that meeting.

SENATOR BROOKE said that she thought that it was too bad that we are in this situation right now, when we could have done a lot better job back in 1991 to help Pony.

CHAIRMAN GROSFIELD stated that the motion for a committee bill is some what loose. It says, they will try and figure out a way to be sure that in addition to whatever **REP. KNOX'S** bill might do, that they consider the funding needs, and try to resolve the liability issue as best they can.

SENATOR KEATING asked if it was the intention of the proposed bill to have the department take action at the site to protect the ground water from the cyanide, or the contaminations that are there.

CHAIRMAN GROSFIELD stated that was not his understanding. The intent is -- if the money is available through the voluntary contribution, or whatever other funding sources they might have, then they could remedy the situation.

SENATOR CHRISTIAENS said it sounds like from what we have been hearing, that on an emergency basis they would be able to remediate the situation without our having something in statute.

Mr. Robinson stated there could be the possibility of doing that under the auspices of the Superfund, and that is when you direct the owner to proceed with the cleanup or try to find somebody who has some assets. In this case, he understood Chicago Mining had no assets. The new mining company may well be assuming some of the liability, and may be forced to make a cleanup with their own funds. If they don't have resources, then there is a state fund that could initiate some work on that. It might be pretty expensive before it is all done, whether or not there were adequate state funds.

SEN. CHRISTIAENS stated there obviously had been other situations similar to what we are talking about, and if we were not here in Session, what would your Department do?

Mr. Robinson replied in almost all those instances, you have a responsible party that you can give an order to execute the cleanup. If you don't have a responsible party, the only time the state gets involved in those issues, or in those cleanups, is when there is an immediate threat to public health. If it is a threat to public health, they may provide alternative water source, as opposed to cleanup, until they find who the responsible parties are.

Mr. Everts, said there was another mechanism that the Governor has at his disposal called the "Environmental Contingency Account" in which is deposited up to \$750,000. He was not sure if that amount was in that account right now.

He said the funds are statutorily appropriated. The objectives of that fund are to support renewable development projects in communities faced with an emergency, or an immediate need for services, or to prevent physical failure of a project. Other objectives are to preserve vegetation, water, soil, fish, wildlife and other renewable resources from an immanent physical threat, or during an emergency. And there are a few others listed in the statute.

SEN. KEATING said that the Mining Association has indicated that they would like to make a contribution. They would like to go in there and try to clean that thing up. But they are afraid of the liability. However, there is nothing that prohibits any private organization from contributing to a state fund. If the Mining Association wanted to donate some funds for cleanup, they could be put into the Governor's Contingency Fund, and then whatever Department is assigned that cleanup task, they could work it out of that contingency fund.

SENATOR MILLER asked if they use that account, the liability is still a problem.

CHAIR. GROSFIELD said there probably would be a liability to the state.

SENATOR MILLER said that the liability is probably to the federal government. Is there any way of alleviating that with a bill?

CHAIRMAN GROSFIELD stated probably only by passing an Act in Congress.

CHAIRMAN GROSFIELD clarified that they had a **MOTION** before them to come up with a committee bill. One of the things this would do would be to give them the ability to discuss this in a hearing setting.

CHAIR. GROSFIELD asked **Mr. Everts** if he could draft some kind of a committee bill from the information they had discussed.

Mr. Everts replied that he would give it a try.

SENATOR CHRISTIANS asked if they have a committee bill, would they then need to schedule, hear and act on this prior to transmittal.

CHAIRMAN GROSFIELD said that was right.

SEN. CHRISTIAENS said that this bill goes back to his original argument, that this bill is not needed. They would be going to an awful lot of work when it is not necessary. The discretion is already with the Department to take care of it.

Vote: MOTION TO DRAFT A COMMITTEE BILL CARRIED 8-2, WITH SENATORS CHRISTIAENS AND TVEIT VOTING NO.

CHAIRMAN GROSFIELD explained that by the Senate rules it takes a three quarters vote to pass this motion, and 8 out of 10 present would comply.

EXECUTIVE ACTION ON SB 199

Motion: SEN. MIKE FOSTER MOVED DO PASS ON SB 199.

DISCUSSION: SEN. FOSTER stated that when they had the hearing on SB 199, they learned a number of things. One of the things they learned is that over the time period since the 1993 Legislative Session when they dealt with the issue of burning hazardous waste, and until now, there has been a maturity of the public with respect to this issue. He thought it was an excellent hearing. He said the witnesses on both sides of the issue conducted themselves extremely well.

SEN. FOSTER said there were enough scientific facts presented, to show that there is a lot of uncertainty out there, even in the scientific community.

SEN. FOSTER said if you had a child or grandchild attending a school a half a mile away from a cement plant that is burning hazardous waste, and that wouldn't be any problem for you, then vote "no" on this abill. But if you would not want your child or grandchild attending that school in that situation, then vote "yes" with him on this bill.

SEN. FOSTER quoted an article that was in the Independent Record. It was an editorial talking about Ash Grove Cement Company, and the very last comment in the article said, "we wonder if the company wouldn't be wisest to accept the verdict of its neighbors, and declared by its elected representatives and begin planning a future without hazardous waste burning half a mile

from the Montana City School." **SEN. FOSTER** indicated that was well stated.

CHAIRMAN GROSFIELD stated that **SEN. CHRISTIAENS** had asked that during the hearing on this bill, for the department to come up with some kind of explanation on enforcement and so on. **SEN. CHRISTIAENS** (who had excused himself from the meeting for a few minutes to attend another hearing) wanted the committee members to know that he did support the bill.

Jeffrey Chaffee, Acting Administrator, Air Quality Division, Department of Health and Environmental Sciences, reviewed a memo prepared by the division outlining some of the activities they had been involved in between 1990 and 1995 at the Ash Grove Cement Company. **EXHIBIT 5.**

In 1990 while doing a kiln stack test, they observed a violation of the allowable particulate limit. They followed up with an enforcement action filed in 1991, and settled with the company for a \$5,000 cash penalty. A follow-up test in July of 1991 found them to be back in compliance.

They also spent money on a supplemental environmental project to pave one of their dusty haul roads at the plant. There had also been an increase of malfunctions at the plant which seemed to deal with the kiln stack and the precipitator. They were cited in 1994 for not reporting a couple of malfunctions, but since then they have cooperated with the department in doing a better job of reporting their upsets.

Mr. Chaffee stated that it had been 4 years since an emissions stack test had been performed and the department planned to follow-up on that this year.

{Tape: 2; Side: A}

Mr. Chaffee said they monitor for nitrous oxides, carbon monoxide, and oxygen on the kiln stack. They ran an ambient particulate monitor at the Montana City School for 8 years and didn't detect any high levels of oxides, so the monitor was shut down.

SEN. KEATING indicated that according to their report, even though they had several malfunctions, there were no documented emissions violations. He asked what is the difference between malfunctions and emissions violations?

Mr. Chaffee replied what was most likely causing the malfunction was that the precipitator in the kiln stack was shutting down, causing an excessive emission from the stack. There is no monitoring device to measure the capacity of emissions, and they did not have a certified inspector on site to document those

violations. He said they do periodic stack tests by taking a sample out of the stack to quantify the amount of particulate in it.

SEN. KEATING stated that initially when the plant was in violation they showed 170 pounds of emissions an hour, then they reduced that to 64 pounds per hour, but they were still in violation because 51.6 pounds per hour was the allowable rate. By 1991 they got it down to 25 pounds per hour, which was approximately half the allowable rate. He asked if there was a reduction in the operation of the plant at that time.

Mr. Chaffee replied he didn't believe that there was any significant reduction in the operation.

SEN. KEATING stated so then the assumption is that they cleaned up their emissions to the extent that there is now well under half as much emission as they had when they were cited.

Mr. Chaffee stated that was his understanding of the file history. He further stated that there were some problems with the air pollution device on that kiln when it was tested in 1990. He stated Ash Grove Cement Company fixed those problems with the precipitator and by the time they tested in 1991, it was operating in compliance.

SEN. KEATING asked whether they were well below the allowable. **Mr. Chaffee** replied in the affirmative.

SEN. BROOKE said she guessed what the department was saying was that they issued a warning letter, but also complimented the company on the fact that they had been reporting malfunctions in an approved manner.

Mr. Chaffee said that since the time of the violations the company has taken the matter seriously, and were now reporting malfunctions as they occur. Also they had made some of the improvements the department requested.

SEN. BROOKE asked **Mr. Chaffee** what a warning letter was. He replied that a warning letter is a level of enforcement action or follow-up requiring corrective actions to be taken by the company. If they are not taken, a penalty will be required.

SEN. WELDON asked what the malfunction was that was reported around the first of the month.

Mr. Joe Shieller, Environmental Safety Manager, Ash Grove Cement Company, stated the belt that feeds coal into the kiln went out of calibration, so a higher amount of fuel was fed to the process than normal. As a result, the combustion conditions changed, and precipitators tripped as they should, because that is a safety feature in the process. As a result of that, precipitators were

off for a short time and the conditions corrected, the belt was recalibrated, and then the precipitators were back on line automatically.

SEN. KEATING stated they heard testimony that people were nervous about the burning of hazardous material in the kiln based on the report of malfunctions and emission problems in the past at the plant, but it seems in the last 3 or 4 years, the efficiency of the cement plant has improved where it is almost at optimum.

SEN. KEATING said the precipitator operating time is better than 99%. The emissions are within the allowables, and the monitoring aside from paper work have been okay. So the fear that the hazardous waste that is burned is going to somehow impose a dangerous material on the students is a reason for the bill. But we have in our statutes air quality standards that have to be met before a permit is issued. There is a difference between incineration and a kiln, so this would prohibit that kiln from burning of hazardous waste within 3 miles of the school, a residence, or a public water supply, even before the operation has been tested to see if the emissions will fall within the state's standards, which are there to protect the public.

The bill doesn't even give the plant and the department the opportunity to see if it is operable within the statutory standards. If the Ash Grove Cement Plant wants to spend the time and money, and seek a permit to burn a fuel that is going to reduce their costs of doing business, and increase their efficiencies, and help the rest of the state get rid of some substances that they are now shipping out-of-state, and they can burn that in the kiln without a threat to the public health, at least we should allow them to seek the permit. If they don't comply with the standards then they have wasted their own time and money, and they won't get the permit unless they can burn that substance within those safety standards. So he sees the bill as a measure to prohibit the plant from even seeking the opportunity to obtain a permit to burn safely. If the plant can operate without a threat to the public health, it would be a benefit to the state, and to the community because of the jobs and tax base that is there, and disposing of hazardous waste that is now being shipped out-of-state at a considerable expense.

SEN. CRISMORE asked **SEN. FOSTER** how long the school had been there and how long had the cement plant been there. **SEN. FOSTER** replied that he didn't know.

Tom Daubert, Lobbyist, Ash Grove Cement Plant, stated that he thought that the school was built first. It was a very small school, and he thought that when the cement plant was built there was virtually nothing else in the community at that time. The school had been added onto since, and the community has built up around the cement plant. The plant has been there for 32 years.

SEN. BROOKE stated that there were lots of variables, and even through the permitting process they really couldn't tell at this time whether they could burn and meet the standards, and if those standards would be met all the time, and what kind of emissions were coming out now. She didn't think the emissions were near as dangerous as they would be if hazardous waste was being burned there, because these involve variables that would cause a lot of concern over what was coming out of the stack.

SEN. KEATING stated that he thought that **Mr. Chaffee** had told him that by knowing what material was going into the operations, they could determine what to expect coming out of the stack. If there was a determination of the material that is going to be consumed, or burned, depending on temperature and quantities, and the types of material and the elements involved, they could estimate pretty close what was going to come out of the stack. **Mr. Chaffee** said that was correct.

SEN. KEATING, inquired about cyanide. **Mr. Chaffee** said that he believed that cyanide was pretty well combusted in that high temperature, but he could defer that to one of his experts that was present.

SEN. GROSFIELD stated that this issue is obviously a very emotional issue and a very tough issue. The EQC spent two years looking at it, and came up with a long study involving a lot of people in the process. Last session they dealt with this issue, and in fact the bill was very similar, and it did not pass. He said he voted against the bill, and the reason was that he tries to look at those natural resource issues, not from an emotional perspective, but from a scientific perspective.

SEN. GROSFIELD said he was not convinced by the science at the last session, and frankly nothing has happened since the last session to make him change his mind. He finds the science on the other side convincing, so he was going to vote against the motion.

SEN. GROSFIELD said as he recalls the bill from last session, he thought it started out with a 5 mile radius, and then it was amended down to 3 miles. He had not heard any scientific rationale for why they picked the number 3. He asked why wasn't it 20 or 2 or 1, or whatever.

SEN. FOSTER stated that the thought process that goes into determining what is a reasonable buffer zone was something that had been addressed by several states, and they all vary from 5 miles to 1 mile. Therefore, he was trying to pick a number in the middle.

SEN. GROSFIELD said there was not a scientific basis for the number 3. It is a number picked out of a hat, and it could have just as well been 5 or whatever. He said there are 15 or 20 schools within 3 miles of the Exxon Plant in Billings.

SEN. CHRISTIAENS stated that he thinks that **CHAIR. GROSFIELD** and **SEN. KEATING** were both giving very good arguments against the bill. However, with the sulphur dioxide types of stacks or any other kind, it is obvious that the heavier the particulate the quicker it comes down, and probably the majority of it comes down within that 3 mile area. Dioxins are the greatest source of cancer that we have. He said to be real honest, if this was in his community he'd be saying no and he'd be screaming no. The arguments regarding those sulphur dioxide emissions in Billings that they heard last session in the Public Health Committee, were concerns about the health needs of children. He believes there is a definite need for this particular bill.

SEN. CRISMORE stated that they have an obligation to start thinking about how they are going to take care of some of our hazardous waste and what the primary fuel is going to be. It is not a bad fuel to be burning and its going to burn at a much hotter temperature than it would in a regular incinerator, and it is going to help the economy of the State of Montana. So therefore, he is not willing to vote for the bill either.

SEN. TVEIT said he had some concerns about the bill and he believes with the strong regulations they have with the Health Department that he thinks it can be regulated. He thought that the bill was going to make it to the Floor for debate no matter what happens to it in committee. It probably should go there so that they can have more debate and have some more concerns brought out, and for that reason he is going to make a substitute motion.

Substitute Motion: **SEN. TVEIT MOVED A SUBSTITUTE MOTION TO DO NOT PASS SB 199.**

SEN. FOSTER stated that this is one way to get it out on the Floor and get it debated, and he appreciates that, but he would just like to address a few of the comments that have been made. There is a great deal of reliance being placed on this precipitator, which is obviously a technical piece of machinery, and probably there are those on this committee that understand how it works much better than he does. He would assume that it was designed to handle the kinds of emissions that the plant was currently emitting, but he thinks there is a great deal of question about how a precipitator works when you are dealing with dioxins which is something that is created in the stack itself as a result of a chemical reaction.

He said they would also be dealing with heavy metals, and is that precipitator going to be able to handle heavy metals? That is a pretty serious question. Heavy metals can have a devastating effect on a person's health. We have already discussed the fact that dioxins are carcinogenic. He understands that we have no state standards for dioxins. He said referring to the report a quick mathematical process shows that it was nearly 4 hours down-

time. What was going to happen, when you are dealing with dioxins and heavy metals?

SEN. FOSTER said he understand the discussion about jobs, tax base, economy, but he thinks they are diversions more than anything else. These arguments are trying to move the focus away from public health, because the real question is at what cost do we sacrifice public health? Do we say, how many deaths of children are acceptable? Well, that is an extremely serious matter to him, when you are talking about a school within a half mile from a plant that is going to be burning hazardous waste. He said a better approach was to err on the side of safety. So he is going to vote against the do not pass motion because he wants the bill to pass.

Vote: MOTION TO DO NOT PASS SB 199, CARRIED 6-5 ON A ROLL CALL VOTE WITH SENATORS BROOKE, CHRISTIAENS, FOSTER, WELDON, AND WILSON VOTING NO.

SEN. FOSTER asked if it was possible at this point for him to move to reconsider what they have just done? The reason was for the purposes of an amendment. The amendment that he has asked **Mr. Everts** to prepare was a plan B, in case plan A didn't work.

Motion: SEN. FOSTER MOVED TO RECONSIDER THE MOTION FOR THE PURPOSES OF AMENDING THE BILL. AS CONTAINED IN EXHIBIT 6.

DISCUSSION:

SEN. FOSTER explained that what this amendment does is to address the issue about being responsible with hazardous waste that is produced in Montana. He stated that 50% of the hazardous waste that is produced in Montana is done so at the Aluminum Plant at Columbia Falls. It is his understanding that the only hazardous waste that is produced at that plant is cyanide. Now cyanide by itself is a very scary thing. But when it is subjected to high temperatures, as was discussed by **Mr. Chaffee**, it goes up the stack and does not turn into a dioxin or a heavy metal. It turns into nitrogen, which is a harmless part of our atmosphere, and so with this amendment it would allow the burning of the pot liners from Columbia Falls. He sees this as a compromise, as a way of saying, all right, lets take care of Montana's problem. This is 50% of hazardous waste produced in Montana. He would like to put this amendment on and then maybe everybody can look at it and say, well maybe we can live with this, maybe we are doing something that addresses all the concerns that have been raised by all the Committee Members present.

SEN. KEATING asked **SEN. Foster** if there were no dioxins created from the burning of potliners. **SEN. FOSTER** explained that it was his understanding from the investigations that he had been able to do, especially with **Mr. Everts**, that this was the case.

SEN. KEATING asked if there were other hazardous wastes that would not produce dioxins as well. **SEN. FOSTER** replied he didn't know.

SEN. FOSTER stated that the second amendment addresses situations when the weather is adverse to burning, and they would not be allowed to burn the hazardous waste then. This is very similar to what you have with wood stoves; if you have an inversion, then you can't burn.

SEN. KEATING asked if the inversion was very lengthy, could they switch to an alternate fuel during that time.

Mr. Daubert responded that he hasn't seen the amendments, but he would infer that they help display some of the mythology behind both this bill and the support for it. For example, Montana's BIF Rules, Boilers and Industrial Furnace Rules, are stricter than the federal rules in several ways. One of these is that burning during inversions is already in our rules.

Mr. Daubert said if Ash Groves only option were to burn potliners, they would not bother. It would not save the economic future of the plant. He also believes **SEN. FOSTER** is mistaken when he suggests that somehow the potliner doesn't create dioxins the way some other fuels do. The fact is dioxin production has nothing whatsoever to do with the fuel necessarily. There are other aspects of the cement kiln operation that determine how much dioxin is or isn't generated.

He said at Chanute, Kansas 62% of their fuel is from hazardous waste, compared to Montana City's 100% fossil fuels, and their dioxin level at Chanute is lower than it is here. **EXHIBIT 7**. In fact both these dioxin numbers are well below the proposed dioxin standards of the federal government, and well below the strictest dioxin standard in the world today, which is in Europe.

SEN. FOSTER emphasized that if we are going to ask **Mr. Daubert** further questions, he wants to ask that **Mr. Daubert** not so much provide more testimony as an opponent to this bill, but that he simply provide technical responses to the questions.

SEN. FOSTER said that a lot of what **Mr. Daubert** had to say had absolutely nothing to do with burning potliners at Montana City. He thought the amendment was a reasonable compromise, and he hoped the committee agreed.

CHAIR. GROSFIELD restated the motion.

MOTION\VOTE: TO RECONSIDER THEIR ACTION ON THE DO NOT PASS OF SB 199. MOTION FAILED ON A ROLL CALL VOTE OF 6-5 WITH SENATORS COLE, CRISMORE, KEATING, MILLER, TVEIT, AND GROSFIELD VOTING NO.

CHAIRMAN GROSFIELD, clarified that SB 199 WILL BE REPORTED OUT OF COMMITTEE WITH A DO NOT PASS RECOMMENDATION.

{Tape: 2; Side: B}

HEARING ON SB 137

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, Missoula, said that SB 137 was at the request of the DHES. There were other bills in the process that were addressing the same issues, so she recommended tabling SB 137.

EXECUTIVE ACTION ON SB 137

Motion/Vote: SEN. TVEIT MOVED TO TABLE SB 137. MOTION CARRIED UNANIMOUSLY.

{Comments: Meeting recessed at 3:30 PM and reconvened at 7:00 PM.}

ADDITIONAL EXECUTIVE ACTION ON SB 199

CHAIR. GROSFIELD said with the "Do Not Pass" recommendation of SB 199, it would not be debated on the Senate Floor until Monday, February 13th. However, it could be debated on the floor tomorrow if the bill was "Tabled."

Motion/Vote: SEN. FOSTER MOVED TO RECONSIDER THE "DO NOT PASS" ACTION ON SB 199 FOR THE PURPOSE OF TABLING IT INSTEAD. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. TVEIT MOVED TO TABLE SB 199. MOTION CARRIED WITH SENATORS FOSTER AND WILSON VOTING NO.

EXECUTIVE ACTION ON SB 288

Motion: SEN. KEATING MOVED TO ADOPT AMENDMENTS NO. sb028801.ate AS CONTAINED IN EXHIBIT 8.

Discussion:

SEN. KEATING reviewed the amendments with the committee members.

CHAIR. GROSFIELD asked Mr. North what affect the amendment would have on the bill.

John North, Chief Legal Counsel, Department of State Lands, stated that the amendment would not affect the department's

procedures. If they prepared an Environmental Assessment and determined that an Environmental Impact Statement was necessary, and if it was challenged in court, the courts tend to side with the department against the plaintiffs.

Vote: MOTION TO ADOPT AMENDMENTS NO. sb028801.ate, CARRIED UNANIMOUSLY.

Motion: SEN. COLE MOVED TO ADOPT AMENDMENTS NO. sb028802.ate AS CONTAINED IN EXHIBIT 9.

Discussion:

CHAIR. GROSFIELD explained the amendments to the committee members. The amendments would exclude the Legislature from MEPA compliance in drafting and passing legislation.

CHAIR. GROSFIELD said the problem is that for example last session they passed SB 401, and if someone was really upset with that bill, under current law they may be able to go to court and say that the Legislature did not comply with MEPA, and therefore the act was void.

SEN. CHRISTIAENS asked about the Montana State Prison with its own sewer lagoon, that is upstream from the water supply for the town of Deer Lodge. **CHAIR. GROSFIELD** responded that the prison belongs to the Executive Branch of the Department of Institutions and they would be subject to an EA.

Bob Robinson, Director, DHES, said that in the case of the prison sewage lagoon, they would have to give a discharge permit, and they would have to do an EA for that permit.

Mr. North said that MEPA says that all state agencies have to do impact statements on recommendations or reports on proposals for legislation. He didn't know if the Legislative Council or the Legislature would be considered an agency of the state.

Vote: MOTION TO ADOPT AMENDMENTS NO. sb028802.ate, CARRIED WITH SEN. WELDON VOTING NO.

Motion: SEN. KEATING MOVED TO DO PASS SB 288 AS AMENDED.

Discussion:

SEN. FOSTER asked **SEN. KEATING** if his bill would make it so a cement kiln burning hazardous waste would not need an EIS?

SEN. KEATING said no, the procedure would be that the cement plant would make an application for a permit to burn material and remain in compliance with the Air Quality Standards. The DHES and the Air Quality Bureau would do an Environmental Assessment. They would take a look at all the parameters to determine if that was a major action, and get public input and all the information

they could and then determine if that should be an EIS or an EA. If they decide that only an EA is necessary, that could be challenged in court. Those plaintiffs must have the scientific evidence presented to the court to show that it was a major action.

He said, what the bill does is shift the burden of proof from the defendant to the plaintiff, and doesn't interfere with the process at all.

SEN. BROOKE asked if the two parties would go before the court to present their testimony and if it was convincing to the court then the suit could go forward. If it was arbitrary and capricious and not in compliance with the law, it could not go forward. Is that how it would work?

Mr. North said the persons that were dissatisfied would file a suit in district court and in the complaint allege that the EA was inaccurate or incomplete. The department would respond and if the department disagreed it would then go to a trial. The plaintiffs would have to show evidence that the EA was inadequate, but the burden would be on the plaintiffs. Under the proposed bill they would have to show more evidence.

SEN. WELDON said any agency determination could be challenged in court whether or not it was a major or minor action, is that right? **Mr. North** said that was correct, it wouldn't necessarily be a major or minor action, it would be whether or not there was a significant impact on the environment.

Vote: MOTION TO DO PASS SB 288 AS AMENDED, CARRIED WITH SENATORS BROOKE AND WELDON VOTING NO.

EXECUTIVE ACTION ON SB 145

Motion: SEN. KEATING MOVED TO DO PASS SB 145.

DISCUSSION: **CHAIRMAN GROSFIELD** said the bill as he understands it does nothing to trigger or even urge the Federal Government to give them anything. He said he is probably going to vote against this bill, because he didn't see any need for it.

SEN. KEATING explained that under this bill if and when Congress or the Supreme Court rules that unappropriated public domain in Montana is transferred and title to the lands is conveyed to Montana, that the lands will come under the authority of the State Board. Also, the Attorney General would be vested with the authority to protect the interest of the state and to pursue against claims of the Federal Government in coalition with adjoining western states if such actions are ever brought. He said there was a possibility that the public domain could be appropriated to the western states if they seek redress in the Supreme Court or if Congress decides to reapportion lands to all

of the states equally. This bill would allow the Attorney General to pursue title to the lands.

SEN. CHRISTIAENS said he could not believe anyone would even consider that. There is difficulty enough of taking care of the lands we have. There are bills going through the House proposing to sell state lands and if we acquired federal land those would be sold too.

SEN. WELDON said what **SEN. KEATING** was asking with the bill was whether or not the federal government's possession of real property is limited to those listed in Section 8, Article 1 of the US Constitution that essentially provides that the government can only own the seat of government and military lands.

He said in Article IV, Section 3 of the Constitution it says: "The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." **EXHIBIT 9.**

SEN. WELDON quoted a paragraph in a letter written by the Attorney General of Nevada, "Your entreaty to me is essentially one to overturn this massive precedent. The task would be monumental. Even if there were enough merit in the legal theories which posit to justify filing a legal action, the balance of costs and benefits from such an action cannot justify it." **EXHIBIT 10.**

He said it would not be feasible to pass the bill because of the cost of just going through the legislative process.

SEN. CRISMORE said he didn't think **SEN. KEATING'S** bill was all that bad. They need to let the federal government know that they can manage lands, and probably do a better job than what is being done now.

CHAIR. GROSFIELD asked if the bill did not pass, and either Congress or the United States Supreme Court decided to give us some land, what would happen? **SEN. KEATING** answered that they would probably pass legislation to give direction to the Land Board on how to handle that land.

SEN. WELDON asked **Bud Clinch, Commissioner of Department of State Lands** if they occasionally trade lands. He replied that was correct, they have had exchanges with the Bureau of Land Management.

{Tape: 3; Side: B}

CHAIR. GROSFIELD said the bill does nothing to trigger or even urge the federal government to give us anything.

SEN. KEATING said a Senator from Idaho had submitted legislation to Congress for the conveyance of public lands to the states. Several of the western states were organizing to pursue it in Congress and the Supreme Court. His bill allows the Attorney General to participate in those activities if the opportunity arises and the Legislature wishes to appropriate the funds to allow the Attorney General to join in that action.

He said they would be preparing themselves to receive the lands and Montanans would like to take title to lands that were within their boundaries as a sovereign state and as a sovereign people.

Vote: MOTION TO DO PASS SB 145, CARRIED 6-5 ON A ROLL CALL VOTE.

SEN. KEATING shared a newspaper article with the committee members regarding the ownership of Yellowstone National Park. **EXHIBIT 11.**

EXECUTIVE ACTION ON SB 225

Motion: SEN. KEATING MOVED TO DO PASS SB 225.

Discussion: CHAIR. GROSFIELD reviewed the bill with the committee members to refresh their memories. He said perhaps one approach would be that any county that has over 8% of its land could sell anything over that, which would affect 6 counties. The approach would be to specifically address Daniels County which could auction off 5.9% of the land which would amount to approximately 165,000 acres. Those were some amendment possibilities.

SEN. KEATING stated that the State of Montana reimburses the counties with payments in lieu of taxes in the counties where the state has 6% or more of the lands within the county.

CHAIR. GROSFIELD said he thought there was bill being proposed in the Taxation Committee that would eliminate that 6%. He thought that meant that all of the counties that were under 6% would receive some in-lieu-of tax money.

Mr. Clinch said that was his interpretation of the bill also.

SEN. COLE stated that he thought there was a need to do a lot more when thinking of selling state lands. He didn't think the bill would be beneficial to the counties.

SEN. TVEIT said on Page 2, Lines 10-12 it says, "a sale of state lands may not be held unless applications have been made for the purchase of lands within a county by prospective purchasers representing at least 12 families." How could you sell one section of land and try and get 12 families to bid on it?

Mr. North responded that the section says, "as a general rule." He said they haven't sold state lands, except for small parcels for 30 years or so. The sale of the land under Section 1, would be exempt from the "12 families." When they sell the lands they retain 99% of the minerals and the owner receives 1%.

SEN. FOSTER said the bill pertains to an eastern Montana issue. If they decide to sell some of those state lands, it should specify that it would have to be isolated tracts.

Mr. Everts said he and **Michael Kakuk** tried to figure out a way of defining isolated tracts of land, and what access was. However, they didn't reach any conclusions.

CHAIR. GROSFIELD said that a bill by **SEN. AKLESTAD** offers a potential way to increase the payment to counties.

Substitute Motion/Vote: **SEN. WELDON** MADE A SUBSTITUTE MOTION TO TABLE SB 225. MOTION CARRIED 8-3, WITH SENATORS KEATING, TVEIT, AND CRISMORE VOTING NO.

EXECUTIVE ACTION ON SB 234

Motion: **SEN. COLE** MOVED TO DO PASS SB 234.

Motion: **SEN. KEATING** MOVED TO ADOPT AMENDMENTS NO. sb023406.amc AS CONTAINED IN EXHIBIT 12.

Discussion:

SEN. KEATING reviewed the amendments with the committee members.

CHAIR. GROSFIELD asked **SEN. KEATING** if his amendments were putting the Board of Oil and Gas back in the bill under the new department. **SEN. KEATING** replied that was correct.

Mark Simonich, Department of Natural Resources and Conservation, said that the Governor's preference was not to amend the bill as proposed by **SEN. KEATING**. The Governor made a conscientious decision to move the Board of Oil and Gas specifically to better regulate the industry in protecting the environment and water sources. The Board of Oil and Gas was a regulatory board and the Governor is trying to move all regulatory type entities and programs into a single department.

Currently the board is autonomous in that it has the authority to hire its own staff. The law provides that the department that a board is attached to would provide staff. Therefore, the department that the Board of Oil and Gas would be under would now provide the staff.

SEN. TVEIT said the bill says the rule-making authority would be transferred over to the Board of Environmental Quality. That

would result in some bureaucratic director telling the industry how to approve methods on secondary recovery, drilling oil wells, etc. He said he had a real concern about taking all the authority away from the Board of Oil and Gas. It would be turned over to an agency that knows nothing about the oil and gas business. It would disintegrate the quality of the oil industry. The Oil and Gas Board was paid for by the royalty owners and the industry owners.

CHAIR. GROSFIELD said **SEN. TVEIT** was right, that was what the bill now said, but that was a mistake in drafting. He said he had some technical amendments to offer that would take care of that and also some other areas. With the technical amendments to the bill the Board of Oil and Gas would have the same authority that they currently have with respect to rule-making, granting permits, etc.

Motion Withdrawn: **SEN. KEATING** WITHDREW HIS AMENDMENT AS CONTAINED IN EXHIBIT 12.

Motion: **CHAIR. GROSFIELD** MOVED TO ADOPT AMENDMENTS NO. sb023401.ate AS CONTAINED IN EXHIBIT 13.

Discussion:

Mr. Everts explained the technical amendments to the committee members.

Mr. MacIntyre said the amendment doing away with with the Soil Survey Advisory Council is being offered because currently the DNRC is required to have the Soil Survey Advisory Council with the Director as chairman. It is required to meet at least once per year to oversee the development of the soil surveys in Montana. However, the state does not do soil surveys in Montana, the federal government does them, and there is no need for an Advisory Council to meet and in fact it has not been meeting. This is simply a housekeeping amendment.

Mr. Everts continued to explain the rest of the amendments to the committee members.

{Tape: 3; Side: B}

CHAIR. GROSFIELD asked **Mr. MacIntyre** why they were repealing Section 406 on Page 261. **Mr. MacIntyre** said that deals with disputes over water contracts with the DNRC. If the Board of Natural Resources was eliminated there would be no place for them to appeal. This repealer essentially maintains the "status quo" without creating new remedies.

He said they were losing the remedy that was available through the board, because the board would be eliminated, but not any judicial remedies.

Mr. Everts continued with the explanation of the amendments.

SEN. CHRISTIAENS said there was so much to try to understand and that to expect anyone to comprehend it at the late hour, he would rather make a motion to table the bill until another day when they would have time to go through all of the amendments, when they weren't so tired.

SEN. WELDON suggested that a smaller group be appointed to review all the technical amendments and report back to the committee.

CHAIR. GROSFIELD said a subcommittee would have to wade through the whole bill with the technical amendments and then go through them again with the full committee. He agreed that that might be better way to do it since the bill was very long and complex.

Motion Withdrawn: **CHAIR. GROSFIELD WITHDREW HIS MOTION UNTIL A DAY CERTAIN.**

CHAIR. GROSFIELD said they would consider the subcommittee's report on the technical amendments in Executive Session on February 15, 1995.

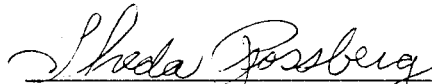
{Comments: this meeting was recorded on 3, 2 hour tapes.}

ADJOURNMENT

Adjournment: 9:00 PM



LORENTS GROSFIELD, CHAIRMAN



THEDA ROSSBERG, SECRETARY

LG/TR

2-10-95

SEN:1995
wp.rollcall.man
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1995

MR. PRESIDENT:

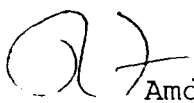

We, your committee on Natural Resources having had under consideration SB 231 (first reading copy -- white), respectfully report that SB 231 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1
Strike: line 10 through line 11.
2. Page 1, line 12.
Following: "that"
Strike: "any"
3. Page 1, lines 13 and 14..
Following: "actions" on line 13
Strike: "be" on line 13 through "practicable." on line 14
Insert: "that regulate the use of private property are evaluated to ensure that alternatives that reduce, minimize or eliminate regulatory restrictions are considered. It is not the intent of the legislature to affect in any manner other economic or social considerations or any other analysis conducted under the Montana Environmental Policy Act."
4. Page 3, line 18.
Following: "property"
Insert: ", as provided in (1) (b) (iv) (D) "
5. Page 3, lines 26 and 27.
Following: "including"
Strike: ":" on line 26 through "(I)" on line 27.
6. Page 3, line 28.
Strike: "implemented; and"
Insert: "analyzed. The analysis in this subsection (1) (b) (iv) (D) need not be prepared if the proposed action does not involve the regulation of private property."
7. Page 3, line 29 through line 1 on page 4.
Strike: subsection (II) in its entirety.

-END-


Amd. Coord.
 Sec. of Senate

351555SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 147 (first reading copy -- white), respectfully report that SB 147 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair


That such amendments read:

1. Page 2, line 14.

Following: "lands"

Insert: ", except for lease renewals and immediate family
transfers,"

-END-


Amd. Coord.
Sec. of Senate

351600SC.SPV


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 10, 1995



MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 199 (first reading copy -- white), respectfully report that SB 199 do not pass.

*Tabled Later
The same day*

Signed: 

Senator Lorents Grosfield, Chair


Amd. Coord.
 Sec. of Senate

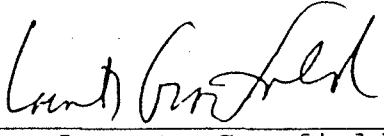
351607SC.SRF

SENATE STANDING COMMITTEE REPORT


Page 1 of 1
February 11, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 145 (first reading copy -- white), respectfully report that SB 145 do pass.

Signed: 

Senator Lorents Grosfield, Chair



Amd. Coord.
ST Sec. of Senate


360857SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 11, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 288 (first reading copy -- white), respectfully report that SB 288 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 4 through line 9.

Strike: "EXEMPTING" on line 4 through "ACT" on line 9.

Insert: "CLARIFYING THE BURDEN OF PROOF FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT; EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT"

2. Title, line 9 and 10.

Strike: "SECTIONS" on line 9 through "AND" on line 10

Insert: "SECTION"

3. Page 1, line 19.

Following: "except"

Insert: "the legislature and except"

4. Page 1, line 19.

Strike: "subsections"

Insert: "subsection"

Strike: "and (3)"

5. Page 1, line 26.

Strike: "legislation,"

6. Page 4, line 1 through line 8.


Strike: "An" on line 1 through "actions."

Insert: "In any action challenging or seeking review of an agency's determination that a statement pursuant to subsection (1)(b)(iii) is not required, the burden of proof is on the person challenging the decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law."

7. Page 4, lines 10 through 17.

Strike: Section 2 in its entirety

-END-

 Amd. Coord.
Sec. of Senate

360945SC.SRF

Amendments to Senate Bill No. 231
First Reading Copy

Requested by Senator Weldon
For the Committee on Natural Resources

Prepared by Todd Everts
February 6, 1995

1. Page 1, line 11.
Following: "reduces"
Strike: "regulatory restrictions"
Insert: "impacts"
2. Page 1, line 13.
Following: "government"
Strike: "regulation of"
Insert: "impacts on"
3. Page 1, line 14.
Following: "that"
Strike: "eliminate regulation of"
Insert: "minimize impacts on"
Following: "property"
Insert: ", while protecting the public's right to a clean and healthful environment,"
4. Page 3, line 18.
Following: "for"
Strike: "regulatory restrictions"
Insert: "impacts"
5. Page 3, line 26.
Strike: "rights"
6. Page 3, lines 27 and 28.
Strike: "whether" on line 27 through "implemented" on line 28
Insert: "an analysis of how each alternative may affect private property"

SENATE STANDING COMMITTEE REPORT

SENATE NATURAL RESOURCES

EXHIBIT NO. 2
DATE 2-10-95

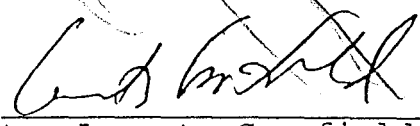
BILL NO. SB-231
Page 1 of 1

February 10, 1995

Mesuros's Amendments

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration SB 231 (first reading copy -- white), respectfully report that SB 231 be amended as follows and as so amended do pass.

Signed: 

Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1

Strike: line 10 through line 11.

2. Page 1, line 12.

Following: "that"

Strike: "any"

3. Page 1, lines 13 and 14..

Following: "actions" on line 13

Strike: "be" on line 13 through "practicable." on line 14

Insert: "that regulate the use of private property are evaluated to ensure that alternatives that reduce, minimize or eliminate regulatory restrictions are considered. It is not the intent of the legislature to affect in any manner other economic or social considerations or any other analysis conducted under the Montana Environmental Policy Act."

4. Page 3, line 18.

Following: "property"

Insert: ", as provided in (1)(b)(iv)(D)"

5. Page 3, lines 26 and 27.

Following: "including"

Strike: ":" on line 26 through "(I)" on line 27.

6. Page 3, line 28.


Strike: "implemented; and"

Insert: "analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property."

7. Page 3, line 29 through line 1 on page 4.

Strike: subsection (II) in its entirety.

-END-


Amd. Coord.
9th Sec. of Senate

56023101.ate
351555SC.SRF

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2-10-95
FILE NO. SB-147

Amendments to Senate Bill No. 147
First Reading Copy

Requested by Senator Cole
For the Committee on Natural Resources

3

Prepared by Todd Everts
February 2, 1995

1. Page 2, line 14.

Following: "lands"

Insert: ", except for lease renewals and ^{inherited} family transfers,"

Amendments to Senate Bill No. 147
First Reading Copy

SENATE NATURAL RESOURCES
AMENDIT NO. 4
DATE 2-10-95
BILL NO.

Requested by Senator Cole
For the Committee on Natural Resources

Prepared by Todd Everts
January 27, 1995

1. Page 2, line 27.

Following: "accordingly."

Insert: "The department may not increase a lease fee for a current lessee more than 20% during any consecutive 10 year period."

SB
199
JR
copy

NATURAL RESOURCES

EXHIBIT NO. 5
DATE 2-10-95
836 FRONT STREET
FILE NO. SB-199

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
AIR QUALITY DIVISION



(406) 444-3454
(406) 444-3671
FAX (406) 444-5275

PO BOX 200901
HELENA, MONTANA 59620-0901

STATE OF MONTANA

OFFICE MEMORANDUM

TO: The Senate Natural Resources Committee DATE: February 6, 1995

FROM: Jeff Chaffee, Division Administrator

SUBJECT: Questions on Enforcement and Monitoring at Ash Grove

At the hearing on the Commercial Hazardous Waste Siting Bill (SB 199), the Senate Natural Resources Committee indicated they had several questions regarding air quality enforcement and monitoring activities at Ash Grove Cement in Montana City. This memo provides information on enforcement activities of the department's Air Quality Division (AQD) at Ash Grove and it briefly discusses monitoring in the area. AQD staff will also be available when the committee takes executive action on SB 199 to address any additional questions.

An Air Quality Compliance Chronology for Ash Grove Cement for the period 1990 to 1995 is attached. AQD compliance and enforcement activities over this period are outlined in the chronology. An AQD enforcement action against the company in 1991 resulted in a penalty and efforts at the facility to upgrade the performance of pollution control equipment at their kiln. In the last two years, the number of reported malfunctions at Ash Grove has increased along with the frequency of citizen complaints. AQD is reviewing these trends with the company to determine if they reflect problems in facility operation. A particulate emissions test of the kiln stack will also be requested this year. AQD compliance staff continue to followup on citizen complaints in a timely manner and to conduct periodic inspections to determine if the facility is operating in compliance with existing regulatory and permit requirements.

Monitoring in and around the Ash Grove plant consists of two types of air monitors: stack continuous emission monitors (CEMs) and ambient air quality monitors. Stack CEMs monitor emissions from specific sources (stacks) at the facility, while ambient air monitors sample the outside air at locations surrounding the plant. Currently, Ash Grove operates CEMs on the kiln stack for nitrogen oxides (NOx), carbon monoxide (CO), and oxygen. Particulates from the kiln stack are measured through manual stack tests or through visual emission observations (opacity readings) by a certified inspector. Ambient monitors in the area are run by ASARCO and measure sulfur dioxide (SO2) on Microwave Hill and near the Montana City School. An ambient particulate monitor operated at the Montana City School from 1981 to 1989, but was shut down in 1989 because particulate readings were well within applicable state and federal standards.

Bob Booher (Compliance and Enforcement Supervisor), Jan Sensibaugh (Permitting Supervisor) and myself will be at your upcoming meeting to address questions from the committee. If you have questions during the interim, please call one of us at 444-3454.

Department of Health and Environmental Sciences
Air Quality Division
Air Quality Compliance Chronology
for Ash Grove Cement Company

1990

On February 24, 1990, Ash Grove conducted a particulate stack test on the main kiln stack at the request of the AQD. The results of that test indicated a particulate emission rate of 169.6 lbs/hr. The allowable for this source was calculated to be 51.6 lbs/hr.

On May 8, 1990, the AQD issued a citation for the failed stack test.

On August 24, 1990, the annual compliance inspection was conducted. The kiln was determined to be out of compliance based upon the stack test. All other sources were in compliance.

On October 29, 30, 31, and November 1, 1990, Ash Grove again conducted stack tests on the main kiln stack. The results indicted an emission rate of 64 lbs/hr.

During 1990, there were 12 reported malfunctions at the plant and 3 citizen complaints investigated.

1991

On March 25, 1991, a complaint was filed by AQD legal in regards to the failed emissions test of February 1990.

On June 12, 1991, a Consent Decree was signed by Ash Grove and the Department to settle violation claims in reference to the failed February 1990 stack tests. The Consent Decree ordered Ash Grove to pay a \$10,000 fine, \$5,000 of which was suspended. It ordered them to perform a Supplementary Environmental Project of paving a haul road to reduce fugitive emissions at a cost of \$33,193. And it required them to conduct stack tests on the main kiln stack to confirm compliance.

On July 25, 1991, Ash Grove conducted the required stack test. The results indicated that Ash Grove was in compliance with the allowable with a particulate emission rate of 24.9 lbs/hr.

On July 25, 1991, the AQD also conducted the annual compliance inspection in conjunction with the observation of the test. All sources were in compliance.

During 1991, there were 2 reported malfunctions at the plant and 1 citizen complaint investigated.

FILE NO. 62-10-95Amendments to Senate Bill No. 199
First Reading CopySB-199

P

Requested by Senator Foster
For the Committee on Natural ResourcesPrepared by Todd Everts
February 9, 1995

1. Page 4, line 15.

Following: "act]"

Insert: "or to a commercial hazardous waste incinerator whose only hazardous waste that is burned or processed is spent potliners generated from the primary aluminum reduction industry and that bears the waste code K088"

2. Page 4.

Following: line 15

Insert: "(4) The department shall require the owner or operator of a commercial hazardous waste incinerator whose only hazardous waste that is burned or processed is spent potliners generated from the primary aluminum reduction industry and that bears the waste code K088 to submit a plan that requires the cessation of the burning or processing of hazardous waste if site-specific monitoring determines that inversion conditions exist. The department shall consider the proximity of the commercial hazardous waste incinerator to populated areas and schools when determining the appropriate plan content. The plan must include a site-specific ambient air quality and meteorological monitor program in order to establish the conditions under which burning or processing must be halted and under those conditions that hazardous burning may then be resumed. Conditions of the plan must be incorporated as a condition of the facility's permit."

Chanute, Kansas, and Montana City Cement Plant Dioxin Emissions

EXHIBIT NO. 7

DATE

2-10-85

BILL NO.

58-199

	Chanute, Kansas 38% fossil fuel, 62% hazardous waste	Montana City TODAY 100 % fossil fuel	Montana City with 20 % waste-derived CHEMFUEL®
Nanogram toxic equivalent of 2,3,7,8 -tetrachloro - dibenzo - dioxin per dry standard cubic meter	0.0089	0.061	?

Source: Ash Grove Cement Co. (1994 testing, April and September)

Amendments to Senate Bill No. 288
First Reading Copy

DATE 2-10-95

BILL NO. SB-288

Requested by Senator Keating
For the Committee on Natural Resources

Prepared by Todd Everts
February 10, 1995

1. Title, line 4 through line 9.

Strike: "EXEMPTING" on line 4 through "ACT" on line 9.

Insert: "CLARIFYING THE BURDEN OF PROOF FOR ACTIONS IN WHICH AN
AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT
STATEMENT"

2. Title, line 9 and 10.

Strike: "SECTIONS" on line 9 through "AND" on line 10

Insert: "SECTION"

3. Page 1, line 19.

Strike: "subsections"

Insert: "subsection"

Strike: "and (3)"

4. Page 4, line 1 through line 8.

Strike: "An" on line 1 through "actions."

Insert: "In any action challenging or seeking review of an agency's determination
that a statement pursuant to subsection (1)(b)(iii) is not required, the burden
of proof is on the person challenging the decision. A court may not set
aside the agency's decision unless it finds that there is clear and convincing
evidence that the decision was arbitrary or capricious or not in compliance
with law."

5. Page 4, lines 10 through 17.

Strike: Section 2 in its entirety

Amendments to Senate Bill No. 288
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 10, 1995

2-1

1. Title, line 5.

Following: "ACT;"

Insert: "EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE
MONTANA ENVIRONMENTAL POLICY ACT;"

2. Page 1, line 19.

Following: "except"

Insert: "the legislature and except"

3. Page 1, line 26.

Strike: "legislation,"

the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any

*Changed by the Thirteenth Amendment.

Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made,

CLIMATE NATURAL RESOURCES

EXHIBIT NO. 10DATE 2-10-95BILL NO. SB-145

DIT

OFFICE OF THE ATTORNEY GENERAL

Capitol Complex

Carson City, Nevada 89710

Telephone (702) 887-4170

Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney GeneralBROOKE A. NIELSEN
Assistant Attorney General

September 17, 1993

VIA FACSIMILE AND U.S. MAIL

Mr. Edward L. Presley
Executive Director
County Alliance to Restore the
Economy and Environment
1350 East Flamingo Road, No. 519
Las Vegas, Nevada 89119

Dear Ed,

Your recent letter sets forth a collection of concerns about regulation of public lands and regulatory takings, and then concludes with a call for me, as Attorney General, to take certain immediate actions. Please accept this response as an official statement of my position.

1. Control of public lands.

A good portion of your letter is devoted to the challenge of federal control on public lands. However, your legal theory is unconventional, and it was rejected by the court in *State of Nev. ex rel. Nev. State Bd. of Agriculture v. United States*, 512 F. Supp. 166 (D. Nev. 1981), *affirmed on appeal*, 699 F.2d 486.

You may, as an advocate, pursue the matter. However, it is necessary for me, as the State's attorney, to provide considered counsel in the context of the full legal environment. Given these parameters and legal precedent, I cannot join in your approach.

As we have discussed in the past, and as you have discussed with my deputy for public lands, the law on federal authority over public lands is well-established. The basis for it is constitutional, not just statutory. The Property Clause, U.S. Const. art. IV, § 3, cl. 2, provides:

SENATE NATURAL RESOURCES

EXHIBIT NO. 10

DATE 2-10-95

BILL NO. SB-145

Mr. Edward Presley

September 17, 1993

Page 2

Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The Property Clause operates in tandem with the Supremacy Clause, U.S. Const. art. VI, cl. 2. The Supremacy Clause makes federal law paramount in those areas where the constitution gives the federal government authority to operate. This coincides with the Property Clause to give federal land management agencies, acting pursuant to statute, a firm control on the management of public lands.

Not only does the seminal U.S. Supreme Court decision set forth this authority of the federal government to regulate public lands, *Kleppe v. New Mexico*, 426 U.S. 529 (1976), but a long line of Nevada Supreme Court decisions is in harmony with its holding. See, e.g., *Courchaine v. Bullion Mining Co.*, 4 Nev. 369, 374 (1868); *State v. Central Pac. R.R.*, 21 Nev. 247, 254-55, 30 P. 686 (1892); *In re Calvo*, 50 Nev. 125, 138, 253 P. 671 (1927); *Itcaina v. Marble*, 56 Nev. 420, 432-33, 55 P.2d 625, 630 (1936); *Ansolabehere v. Laborde*, 73 Nev. 93, 107, 310 P.2d 842 (1957). The *Kleppe* opinion was expressly relied on by the Nevada Court in *State v. Morros*, 104 Nev. 709, 717, 766 P.2d 263 (1988).

Your entreaty to me is essentially one to overturn this massive precedent. The task would be monumental. Even if there were enough merit in the legal theories which you posit to justify filing a legal action, the balance of costs and benefits from such an action cannot justify it.

In all I have seen and heard from you, there has been little or no mention of the vast body of law which contradicts your position. I think you owe it to the people whom you address to explain its existence. The course you advocate could lead to rather large legal expenses with little guarantee of ultimate success. Public officials need to know this before they enlist in your cause.

2. Excessive regulation as taking.

I am sensitive to the burden of unnecessary, unwarranted government regulation. As you are aware, Senate Concurrent Resolution 50, passed during the last session of the Nevada Legislature, calls for this office to develop a takings checklist for agency use, and to train the agencies in its use. This project is already underway. Both the public and state agencies are well-served by educating regulators regarding the takings consequences of government action.

SENATE NATURAL RESOURCES

EXHIBIT NO. 10

DATE 2-10-95

BILL NO. SB-145

Mr. Edward Presley
September 17, 1993
Page 3

At the same time, I am not prepared to submit to pressures to adopt any group's agenda offered in the guise of concern for private property. Specifically, I know that takings law is recently the means used by private interests seeking to wrest public lands from government control. As a proponent on behalf of those who would oust the government of control, you make a very broad reading of takings law. But your position is based on what you hope will become the law, not what it already is. Again, in fact, your position is contrary to established precedent. See, e.g., *LaRue v. Udall*, 324 F.2d 428 (D.C. Cir. 1963).

Although you allege the existence of a concerted effort to systematically take the property of Nevada citizens, I fail to find any evidence of it attached to your letter. If you are able, you may provide support for your statements, and I will supplement this response. At the present time, however, I have no basis for pursuing the matter.

I must also say, Ed, that your supporting reference to a draft letter from the U.S. Attorney General's office is misleading at best. My staff learned, by speaking with Mark Evans in the Justice Department, that the draft was never sent, was never meant to be made public, and does not and never did state the position of the U.S. Attorney General. I think you do your cause more harm than good by relying on such authority.

3. State of Alaska Lawsuit.

Finally I will comment on the lawsuit filed by the State of Alaska against the United States. You are quite right that our situation in Nevada is not the same as in Alaska. The Alaska lawsuit seeks to *enforce* the terms of the Alaska admission act. I believe the gist of your theory is that the terms of the Nevada admission act are *unenforceable*, specifically section 4, which requires the State to:

[F]orever disclaim all right and title to the unappropriated lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States.

Again, this is the argument rejected by the court in *State of Nev. ex rel. Nev. State Bd. of Agriculture v. United States*, 512 F. Supp. 166.

Perhaps the court's decision in the Alaska suit will provide some useful precedent, but at this time I see no paradigm for action in this state.

* * * * *

In conclusion, I believe your agenda is principally a political, not a legal, one. Both as an attorney and as an elected, constitutional officer of the State of Nevada, I find it

SENATE NATURAL RESOURCES

EXHIBIT NO. 10

DATE 2-10-95

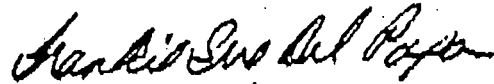
BILL NO. SB-145

Mr. Edward Presley
September 17, 1993
Page 4

impossible to press the legal arguments upon which you rely. I suggest that if you are to succeed, you must devote your energies to the legislative branch of the state and federal governments, and not the courts.

As always, I welcome your continued communication on these matters.

Cordially,



FRANKIE SUE DEL PAPA *(cc)*
Attorney General

FSDP/WH/rc

cc: All County Commissions
All District Attorneys



C Sunday, May 1, 1994

■ CROWN BUTTE

Treaty issue raised

By MICHAEL MILSTEIN
Gazette Wyoming Bureau

CODY, Wyo. — Debate over a proposed underground gold mine just outside the northeast corner of Yellowstone National Park could soon take on an international scope.

An international treaty that led to Yellowstone's special status as a "world heritage site" may raise new questions that could ultimately hold up construction of the mine, backed by Canadian mining giant Noranda Inc., officials say.

If the mine is permitted to proceed, some say, the United States could potentially be in violation of international law. It would depend on how the treaty is interpreted, however, according to National Park Service officials researching the question.

A federal law specifying how the United States will carry out the mandates of the treaty could also serve as a tool for environmental groups seeking to dismantle the mine proposal.

Yellowstone Park managers have voiced concerns about the mine, called the New World Project, which would be located among high peaks north of Cooke City, at the head of three drainages.

One of those drainages, Soda Butte Creek, flows into Yellowstone. Park Service officials fear construction of the mine could affect the park's resources and wildlife, particularly if an impoundment is built.

Treaty

From Page 1C

der the auspices of the United Nations Educational, Scientific and Cultural Organization, known as UNESCO.

The U.S. Senate ratified the treaty in 1973. A total of 136 nations have signed on to it since then.

In general, the treaty was designed to recognize natural and cultural sites of international significance, said Rick Cook of the National Park Service Office of International Affairs in Washington, D.C.

"There are some properties that transcend national boundaries, that it is in the international interest to protect," Cook said.

Among the provisions of the treaty is one that allows member nations to nominate certain sites to an international commission, which may then designate those areas "world heritage sites."

Yellowstone and Mesa Verde national parks were the first two sites nominated by the United States for international recognition. Yellowstone received its world heritage status in 1978.

The treaty reads: "Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate."

"Deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world."

By ratifying the treaty, Cook said, the United States essentially pledged to follow its mandates.

A World Heritage Committee of 21 nations, including the United States, approves the nominations of world heritage sites and monitors their protection. While the committee has no international policing powers, it can send expert teams to look into threats to world heritage sites.

If it finds that a site is threatened, it can address diplomatic missives to the responsible nation, add the site to a list of world heritage sites "in danger" and ultimately

"We know certain impacts that may be allowed under state and federal mining laws," said Mary Hektner, a resource management specialist in Yellowstone. "But are these impacts allowable under an international treaty the United States has pledged to abide by?"

The international treaty at issue is the 1972 World Heritage Convention, a multinational compact originally promoted by the United States and developed un-

(More on Treaty, Page 4C)

IMPORTANT WORDS

"Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage ... situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation ..."

"No property may be ... (nominated as a World Heritage Site) unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection)."

"Federal law governing world heritage sites in the United States, including Yellowstone Park

"We interpret this to mean that the Secretary (of Interior), based upon advice of counsel, must be satisfied that each nominated site has adequate legal protection to ensure its preservation."

— Federal legal opinion, 1991

tely de-list the site altogether.

Among the threats that could put a site in danger, according to rules of the World Heritage Committee, are declines in local endangered species, construction of reservoirs, mining, pollution, logging or "human encroachment on boundaries or in upstream areas."

The National Park Service already believes the proposed mine could threaten Yellowstone's "core resource values," Cook said. Relaying that concern to the World Heritage Committee could provoke international attention, he said.

"I would hope this would be a catch that might hold up the project," Cook said. "Very often what seems like a very local matter, if it takes on an international scope, it imposes a little more responsibility on nations — people begin to be a little more careful."

The international commission has already found Everglades National Park in Florida to be an endangered world heritage site. It has also urged other nations to take action to protect threatened

said the law mandates that the secretary of interior, when nominating sites, must be assured that the sites have proper protection.

Because the law requires protection of both "the property or its environment," Cook said could be viewed as extending protection to areas outside Yellowstone, including the proposed mine site. If the mine is approved, attorneys for environmental groups might argue that the secretary of interior is remiss in not safeguarding such areas.

Even the National Park Service could pursue legal action to block the mine, Cook said, though that would put the agency in the awkward position of taking the Interior Department to court.

While lawsuits in other nations have forced governments to protect world heritage sites according to the mandates of the treaty, neither the treaty nor U.S. law that implements it have ever been tested in U.S. courts.

"This would have to be explored in a legal arena to see what kind of real mandates there are," Cook said. "We are beginning to think that could happen on this site."

Since the 1980 law was passed until after Yellowstone was nominated as a world heritage site, however, it is unclear how it might apply to the New World mine project, he noted.

Although Canadian companies are backing the mine, the government of Canada could probably not be taken to task under international treaty unless it was somehow viewed as an accomplice in the mine project. However, Canadian government did stop proposed British Columbia copper mine that threatened Glacier National Park in Alaska.

"Certainly, the moral requirements of the treaty combined with the U.S. law give us a higher responsibility to protect Yellowstone," Cook said.

Dan McLaughlin, project manager for the New World Project, said he knows of questions surrounding Yellowstone's status as a world heritage site. He said Crown Butte Mines Inc., the Montana company actually engineering the mine, views it simply as "another obstacle."

"We've already got a bunch of those."

SENATE NATURAL RESOURCES
ENRICHIT NO. 12
DATE 2-10-95
BILL NO. SB-234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Sen. Keating
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 6, 1995

2-10-95

1. Title, line 14.
Strike: "2-15-3303,"
2. Title, line 15.
Strike: "2-18-103,"
3. Title, line 17.
Strike: "15-36-101,"
4. Title, page 2, line 18.
Strike: "82-11-117,"
5. Page 14, lines 19 through 30.
Strike: Section 20 in its entirety
Renumber: subsequent sections
6. Page 17, line 15 through page 18, line 7.
Strike: Section 26 in its entirety
Renumber: subsequent sections
7. Page 31, line 33 through page 36, line 32.
Strike: Section 52 in its entirety
Renumber: subsequent sections
8. Page 250, lines 21 and 22.
Following: "department of"
Strike: "environmental quality" on line 21 through "[section 24]"
on line 22
Insert: "natural resource management provided for in 2-15-3301"
9. Page 252, lines 5 through 20.
Strike: Section 396 in its entirety
Renumber: subsequent sections
10. Page 21, line 16.
Page 49, line 10.
Page 116, line 32.
Page 121, line 15.
Page 129, line 17.
Page 132, line 4.
Page 133, line 9.
Page 134, line 21.
Page 137, line 9.
Page 145, line 10.

EXHIBIT NO. 12

DATE 2-10-95

DILL NO. SB-234

Page 148, line 4.
 Page 149, line 23.
 Page 153, line 12.
 Page 215, line 20.
 Page 229, line 16.
 Page 231, line 20.
 Page 243, line 8.
 Page 246, line 19.
 Strike: "25"
 Insert: "24"

11. Page 49, lines 12 and 25.
 Page 50, line 16.
 Page 117, line 6.
 Page 119, line 6.
 Page 121, line 23.
 Page 129, line 23.
 Page 132, line 9.
 Page 133, line 11.
 Page 134, line 23.
 Page 137, line 14.
 Page 139, line 7.
 Page 142, line 23.
 Page 144, line 25.
 Page 145, line 20.
 Page 148, lines 6 and 18.
 Page 149, line 27.
 Page 151, line 1.
 Page 153, line 29.
 Page 229, line 18.
 Page 232, line 7.
 Page 243, line 12.
 Page 246, line 22.
 Strike: "24"
 Insert: "23"

12. Page 328, lines 17 and 18.
 Strike: "24 and 25"
 Insert: "23 and 24"

Amendments to Senate Bill No. 234

First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 3, 1995

1. Page 1.

Following: line 2

Insert: "BY REQUEST OF THE GOVERNOR"

2. Title, line 11.

Following: "TRANSFERRING"

Insert: "the responsibilities of the department of natural resources and conservation
for"

3. Title, line 14.

Strike: "2-15-3306,"

4. Title, line 17.

Strike: "15-36-101,"

5. Title, page 2, line 19.

Strike: "85-1-212,"

6. Title, page 2, line 23.

Strike: "85-2-212,"

7. Title, page 2, line 24.

Following: "85-2-512,"

Insert: "85-2-514,"

8. Title, page 2, line 30.

Following: "85-1-202,"

Insert: "85-1-212,"

9. Page 14, line 32 through page 15, line 7.

Strike: section 21 in its entirety

Re-number: subsequent sections

10. Page 15, line 16.

Strike: "public health"

Insert: "natural resource management"

11. Page 21, line 16.

Page 49, line 10.

Page 116, line 32.

Page 121, line 15.

Page 129, line 17.

Page 132, line 4.

Page 133, line 9.

Page 134, line 21.

Page 137, line 9.

Page 145, line 10.

Page 148, line 4.

Page 149, line 23.

Page 153, line 12.

Page 215, line 20.

Page 229, line 16.

Page 231, line 20.

Page 243, line 8.

Page 246, line 19.

Strike: "25"

Insert: "24"

12. Page 31, line 33 through page 36, line 32.

Strike: Section 52 in its entirety

Renumber: subsequent sections

13. Page 49, lines 12 and 25.

Page 50, line 16.

Page 117, line 6.

Page 119, line 6.

Page 121, line 23.

Page 129, line 23.

Page 132, line 9.

Page 133, line 11.

Page 134, line 23.

Page 137, line 14.

Page 139, line 7.

Page 142, line 23.

Page 144, line 25.

Page 145, line 20.

Page 148, lines 6 and 18.

Page 149, line 27.

Page 151, line 1.

Page 153, line 29.

Page 229, line 18.

Page 232, line 7.

Page 243, line 12.

Page 246, line 22.

Page 250, line 22.
Strike: "24"
Insert: "23"

14. Page 123, line 32.
Page 127, line 17.
Page 128, line 25.
Following: "~~conservation~~"
Insert: "and the department of commerce"

15. Page 124, line 5.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

16. Page 124, line 19.
Following: "department"
Insert: "and the department of commerce"

17. Page 124, line 20.
Following: "~~within~~"
Strike: "to implement"
Insert: ", within their respective authorities,"

18. Page 125, line 12.
Following: "~~department~~"
Insert: "of commerce as recommended by the department"

19. Page 125, line 17.
Page 127, lines 2, 29, and 31.
Page 128, lines 1, 7, 14, and 28.
Following: "department"
Insert: "of commerce"

20. Page 125, line 22.
Following: "shall"
Insert: ", after consultation with the department of commerce,"

21. Page 125, line 34.
Page 126, line 10
Following: "department"
Insert: "or the department of commerce"

22. Page 126, line 18.
Strike: "The"
Insert: "After consultation with the department of commerce, the"

23. Page 126, line 32.

Following: "application"
Insert: "by the department"
Following: "department"
Insert: "of commerce"

24. Page 127, line 16.
Following: "department"
Insert: "or the department of commerce"

25. Page 128, line 4.
Following: "department"
Insert: "of commerce, with the concurrence of the department"

26. Page 129, line 7.
Following: "~~department~~"
Insert: "department"
Following: "department"
Insert: "of commerce"

27. Page 132, line 31.
Strike: "natural resource management"
Insert: "environmental quality"

28. Page 134, lines 4 and 5 and 6.
Page 146, lines 2 and 3 and 4.
Page 211, lines 9 and 10.
Strike: "natural resource management"
Insert: "environmental quality"

29. Page 173, line 9.
Strike: "quality"
Insert: "review"

30. Page 187, line 27.
Following: "department"
Strike: "of natural"
Following: "~~conservation~~"
Strike: "resource management"

31. Page 261, lines 1 through 11.
Strike: Section 406 in its entirety
Renumber: subsequent sections

32. Page 267, lines 31 and 32.
Strike: "Any" on line 31 through "party." on line 32

33. Page 285, line 31 through page 286, line 21.
Strike: Section 447 in its entirety
Renumber: subsequent sections

34. Page 294, line 12.
Following: "alleging"
Insert: "of environmental quality"

35. Page 294, line 19.
Following: "sciences"
Insert: "of environmental quality"

36. Page 303.
Following: line 27
Insert: "Section 461. Section 85-2-514, MCA, is amended to read:
"85-2-514. Inspection of wells. The department, the state bureau of mines and geology, or the department of ~~health and environmental sciences~~ quality may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part.""
Renumber: subsequent sections

37. Page 320, line 5.
Following: "department of"
Strike: "natural"

38. Page 320, line 6.
Strike: "resource management"
Insert: "environmental quality"

39. Page 323, line 7.
Strike: "natural resource management"
Insert: "environmental quality"

40. Page 328, line 6.
Following: "85-1-202,"
Insert: "85-1-212,"

41. Page 328, lines 17 and 18.
Strike: "24 and 25"
Insert: "23 and 24"

DATE 2-10-95

SENATE COMMITTEE ON NAT RESOURCES

BILLS BEING HEARD TODAY: SB-137

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Don Vidine</i>	<i>MDHES</i>	<i>SB 199</i>		
<i>Jeff Kuhn</i>	MDHES <i>self</i>	<i>SB 137</i>		
<i>Anne Johnson</i>	<i>MATB</i>	<i>SB 199</i>		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-10-95 BILL NO. SB-231 NUMBER 1

MOTION: TO NOT APPROVE

SEN WELDON'S Amendments #sb0231.02.95

CARRIED 8-3

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-10-95 BILL NO. SB-147 NUMBER 2

MOTION: To adopt Amendment

Sb 014702.gte

FAILED 5-5

[illegible]

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-10-95 BILL NO. SB-199 NUMBER 3

MOTION: TO DO NOT PASS

SB199

CARRIED 6-5

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER		X
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995

wp:rlclvote.man

CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-10-95 BILL NO. SB-199 NUMBER 4

MOTION: TO RECONSIDER SB199

FAILS

6-5

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER	X	
TOM KEATING		X
KEN MILLER		X
JEFF WELDON	X	
BILL WILSON	X	
LARRY TVEIT, VICE CHAIRMAN		X
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-10-95 BILL NO. SB-145 NUMBER 5

MOTION: To DO PASS

SB-145

CARRIED 6-5

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995

wp:rlclvote.man

CS-11