

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

#### JOINT SUBCOMMITTEE ON NATURAL RESOURCES

**Call to Order:** By CHAIRMAN ROGER DEBRUYCKER, on January 13, 1995, at 8:00 a.m. in Room 402 of the State Capitol.

#### ROLL CALL

**Members Present:**

Rep. Roger Debruycker, Chairman (R)  
Sen. Thomas F. Keating, Vice Chairman (R)  
Sen. Judy H. Jacobson (D)  
Sen. Loren Jenkins (R)  
Rep. John Johnson (D)  
Rep. William R. Wiseman (R)

**Members Excused:** none

**Members Absent:** none

**Staff Present:** Roger Lloyd, Legislative Fiscal Analyst  
Florine Smith, Office of Budget & Program  
Planning  
Debbie Rostocki, Committee Secretary

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

**Committee Business Summary:**

Hearing: Department of State Lands  
-Reclamation Division  
Executive Action: none

**Mr. Roger Lloyd**, Legislative Fiscal Analyst (LFA), provided the committee with information regarding the public school trust fund. The trust is comprised of the corpus, interest and income. If the Department of State Lands (DSL) sells part of the corpus of the trust (i.e., state land or resources on state land) the principle goes back into the corpus of the trust. Until recently timber was considered to be part of the corpus of the trust. However, it is now considered *income* (i.e., a renewable portion of the trust) and timber sale revenues are now deposited into the "I&I" (interest and income) account instead of the corpus.

Before revenues go into the I&I account, DSL's Resource Development Account receives up to 2.5% of the income. This income helps fund Central Management and the Land Administration Division. **HB 50** proposes to set up a timber sale account within DSL, and the account's funding level would be appropriated by the

Legislature. **HB 50** would replace **HB 652** (which has a sunset provision soon to go into effect) and would give DSL \$312,000 from timber sales to hire six forestry FTE to prepare more timber sales.

The constitution provides for 95% of the remainder of the funds in the I&I account to go for the public schools and 5% to go back into the corpus of the trust.

**REP. WILLIAM WISEMAN** submitted that the value of the corpus of the trust was slowly being eroded because the 5% going back in could not keep up with inflation. **SEN. LOREN JENKINS** said he felt that **HB 50** might be circumventing the intent of the constitution by diverting funds which were supposed to be deposited into the I&I account.

**HEARING ON Department of State Lands**  
**Reclamation Division**

**Mr. Lloyd** gave an overview of the Reclamation Division. He said if the committee did not approve the increase in contracted services for the State Library it needed to convey this to the Institutions subcommittee, which would be setting the State Library budget. He pointed out the areas in which the same money was being appropriated twice, which included federal indirect costs (Present Law (PL) Adjustment No. 5, p. C-59), contracted services with the State Library and fund transfers (PL No. 7).

**SEN. JENKINS** wanted to know why the \$9,738 spent in 1994 (PL No. 7) was not included in the base. **Ms. Florine Smith**, Office of Budget and Program Planning (OBPP), said that negotiations between the LFA and OBPP had resulted in the decision not to include transfers in the base.

**Mr. Lloyd** said that although this item was a present law increase in the DSL budget, it was a new proposal in the State Library budget and this committee's actions on PL Adjustments No. 4 and 7 needed to be conveyed to the Institutions Subcommittee.

**Tape No. 1:B:000**

**Ms. Smith** said on P. C-57 the funding for new proposals needed to be corrected. The position that was eliminated (grade 14 civil engineer) was not part of the Environmental Analysis program staff. Therefore, the figure for State/other special funding under New Proposals Fiscal 1996 should be (\$43,138) instead of (\$78,746). The figure for Federal Special funding would be (\$31,108) instead of \$4,500. In FY 97 the state figure would be (\$46,086) and the federal figure would be (\$35,725). The reduction in state special funding reflects vacancy savings and the federal funding is related to the removal of the FTE. In addition, the executive has an additional New Proposal for 4.7 FTE and about \$360,000 of general fund over the biennium in response to the audit on the Hard Rock Mining program.

**Mr. Lloyd** pointed out that in spite of the OBPP's adjustments there was still a large vacancy savings rate applied in the Environmental Analysis program.

**Mr. Gary Amestoy**, Administrator of the Reclamation Division, then spoke. This division is the state regulatory authority for mine permitting and reclamation of all materials on all lands in the state regardless of ownership. Their authority comes from the constitution. As a result of this constitutional mandate, the Coal and Uranium law, the Montana Metal Mine Reclamation Act and the Opencut Mining Act were passed. The division also administers the Montana Environmental Policy Act (MEPA) with respect to the mine land reclamation statutes. The Montana Abandoned Mine Reclamation program is under this division and is funded from Federal coal tax dollars. The bureau is almost done with their abandoned coal mine reclamation and plans to move on to other kinds of abandoned mines.

**Mr. Amestoy** pointed out that the laws the division enforces all have "mandamus" provisions; i.e., even if DSL were to prioritize and eliminate some of these enforcement duties, they would not have the authority to stop enforcing these laws. Another authority they have is federal law in the coal and abandoned mine programs (Surface Mining Control & Reclamation Act).

**Mr. Amestoy** emphasized that the division's work in mine permitting and reclamation is geared towards fairly administering the law and they are not involved in the business of promoting or inhibiting mining. He said in the past ten years public participation and the involvement of the federal government in the permitting process has increased significantly. The division has played the role of facilitator in the decision-making process, trying to involve all interested parties, from the very beginning, in the process. The division's staff of reclamation scientists evaluates mining permit applications and makes sure that compliance is met with regards to Environmental Impact Statements (EIS's) or Environmental Analyses (EA's). Another area of attention is inspection and enforcement and another large part of the division's workload relates to permit maintenance: the workload doesn't end once a permit is issued.

Another component they are involved in is bond release. Once the work is successfully completed the reclamation bond can be released. They have calculated that they hold surety bonds, CD's, cash, etc. totaling about \$.5 billion. Some of the most high-profile projects they are currently working on are the Crown Butte project at Cooke City, the 7-Up Pete project at Lincoln and the Zortman-Landusky project north of Lewistown.

The division's Sand and Gravel program is a "sleeping giant." The main sand and gravel issues they are encountering have to do with groundwater and traffic impacts near urban areas.

The most controversial part of the division is the Hard Rock Bureau. In 1993 SJR 28 was passed which called for a financial and performance audit of this bureau. The audit found that there are some areas for improvement in the program.

Regarding the Abandoned Mine program **Mr. Amestoy** stressed that this was not a regulatory program. They identify and prioritize abandoned mines throughout the state, develop reclamation plans, with construction and reclamation being the final phase. When they started switching from reclaiming coal mines to reclaiming hard rock mines they found that the potential environmental and cleanup problems were very different.

**Mr. Amestoy** then showed the committee an organizational chart of the division. **EXHIBIT 1** One of the 52.4 FTE which has been eliminated is from the Abandoned Mine program.

**Mr. Amestoy** said the Coal and Uranium program was recognized as being one of the finest programs of its kind in the country. However, there are areas they need to improve, but they need additional resources.

In response to a question from **SEN. JENKINS**, he said the Abandoned Mine program only covers sites which were in operation before 1977 and which have no responsible party.

He then gave further information regarding PL No. 4.

**Tape No. 2:A:000**

He pointed out that the appropriation of \$25,000 for DSL's half of the FTE in the Coal and Uranium program was about half of what it had been in the past. The Air Quality program in the Department of Health and Environmental Sciences (DHES) has been able to utilize user fees to reduce the cost of the position.

Regarding contracted services for the Abandoned Mine Reclamation program, he said 50% (about \$5-6 million per year) of the state's federal coal tax revenues are eligible to be used for abandoned mine reclamation if the state can demonstrate to the federal Office of Surface Mining that there are projects to spend it on. Due to the switch from coal reclamation to hard rock mine reclamation in this program, some funds were unspent and the unallocated balance grew. They need authority from the Legislature in order to tap into these unspent funds.

In the Hard Rock program, he stressed that the \$200,000 biennial appropriation was from state special revenues. These monies are used for emergency projects and they feel it is important to have these funds available although often in the past they have not been used. He added that bond forfeitures were not a good way to get emergency funding because of the long amount of time the forfeiture process takes. **SEN. KEATING** wanted to know if this was actual money or just spending authority. **Mr. Amestoy** said

it was actual money. **Mr. Bob Kuchenbrod**, Central Management division administrator, explained there was a special account which held some of the monies in anticipation of being spent. The account is limited to that activity. **SEN. JENKINS** wanted to know what happened to the money if it wasn't appropriated. **Mr. Amestoy** explained that over the years the amounts they have requested have increased based on the amount of fines, fees and penalties that went into the account. If the money is not spent it stays in the account and the same money is re-appropriated each biennium. The money is part of the state's short-term investment portfolio and therefore does not just sit in the account.

Regarding bonding forfeitures, the \$500,000 request is for spending authority only; they do not have the money unless a bond is forfeited. He added that he hoped they never got into a situation where they would have to depend on bond forfeiture money.

**Mr. Amestoy** explained that of the \$3 million requested for environmental analysis, how much is spent in any given year is partially dependent upon EIS schedules. Spending levels can fluctuate fairly radically from one year to the next.

**SEN. JENKINS** wanted to know if the water quality problems in the Crown Butte project weren't due to the old mines in that area. **Mr. Amestoy** said this was the case. However, if a mine goes in and it isn't done right, there would be tremendous potential for problems. In further response to **SEN. JENKINS**, he said some of the 7-up Pete EIS costs would come from the PL request but the bulk of the Crown Butte EIS costs would come from the current biennium. Regarding the Tongue River Railroad, there are two issues. DSL has authority over the (Montco) coal mine permit, which was not extended, but does not have anything to do with the railroad. DSL anticipates that late in the 1990's there may be interest in the low-sulphur coal that may be available in the Tongue River Basin. DSL is doing data collection and analysis in anticipation of this.

**SEN. THOMAS KEATING** wanted to know if enough baseline data for the State Library Natural Resource Information System (NRIS) in the Tongue River area hadn't already been collected. **Mr. Amestoy** said that a lot of information had been gathered but it probably only pertained to the Montco and Colstrip areas.

In the Abandoned Mine Reclamation program **Mr. Amestoy** pointed out that the private sector was utilized to do the actual engineering and reclamation work.

**Mr. Kuchenbrod** then spoke about the biennial appropriation request for spending authority. He pointed out that if the request was not approved DSL would have to try to get a budget amendment if they needed the authority, and it is required to be an emergency situation. He expressed a strong preference for

getting spending authority during the legislative session vs. during the interim.

Regarding indirect costs, he said that DSL establishes the rate with the Department of Interior. It has fluctuated between 6% and 14% depending primarily on personal services costs. These federal indirect cost dollars help reduce the amount of general fund needed to fund the Central Management division. In response to **SEN. KEATING, Mr. Kuchenbrod** explained that DSL was usually fairly close in its estimate of the amount of indirect costs which would be allocated by the federal government.

**Tape No. 3:A:000 (Tape No. 2:B blank)**

According to the LFA narrative on p. C-61, the executive estimates that \$162,000 will be available from the Reclamation division in indirect costs. DSL has requested \$120,000. If the rate stays at 12%, general fund could be reduced by \$32,000 each year in the Central Management division. However if the rate comes in lower and general fund is reduced there would be problems.

**Mr. Lloyd** then illustrated what the executive budget contained for indirect costs in the Reclamation division. After paying \$10,000 to the Statewide Cost Allocation Plan (SWCAP), \$152,000 will be available for indirect costs in the Central Management division. The executive budget, however, only has \$120,000 set aside for this purpose. He suggested that the two divisions' budgets needed to be considered in tandem so the figures can correspond with each other.

In response to **SEN. JENKINS, Mr. Kuchenbrod** explained that the dollars expended in the previous year are used as the base to predict indirect costs rates. The rate is the percentage at which the predictions for the coming year are based on.

Regarding the \$120,000 figure Central Management uses for indirect costs, **Mr. Kuchenbrod** explained that they did this to protect themselves in case indirect costs come in at a lower rate.

**Mr. Lloyd** told the committee that the balance in the contingency account for the Hard Rock bureau was \$184,000 at the end of Fiscal Year (FY) 1994.

**Tape recorder problems. Rest of tape 3 blank.  
Tape No. 4:A:000**

**Mr. Amestoy** then reviewed the new proposals (p. C-62). \$6,000 has been requested for the Coal program to purchase a seismograph unit to monitor blasting in the mines. Citizens have complained about seismic activity which they feel is a result of blasts. He added that about 75% of the cost of the unit would come from federal dollars and the unit would be available for use by other

agencies as well. \$5,000 is being requested for software only (and not a new computer) in the Hard Rock bureau.

He then discussed the additional new proposal which **Ms. Smith** had mentioned. This third new proposal is in direct response to the audit on the Hard Rock program. A copy of the audit report was distributed. **EXHIBIT 2** They are proposing to add 4.07 FTE. **EXHIBIT 3** Because the audit report was not completed until December 1994 this proposal did not make it into the budget.

It was recommended that decisions made in the permitting program have better documentation and that the bureau needs to develop more policies, procedures and checklists to provide for better documentation and management control. It was also recommended that inspections and enforcement follow-up be more timely and that more inspections be made. In response they have proposed the additional FTE.

He explained that 1.07 FTE (.5 attorney, .5 reclamation specialist and .07 records manager) had been removed from the Hard Rock program in 1993 as a result of a required dollar reduction in the budget and part of New Proposal No. 3 would reinstate these positions. One FTE reclamation specialist, one FTE hydrologic technician and one FTE inspection supervisor make up the rest of the request. He pointed out that there was a statutory timeframe which they were mandated to meet regarding mine permitting and if it was not met, a permit could be issued by default. The inspection supervisor would help rectify this problem. Funding for water sampling and for additional associated equipment including a vehicle is also being requested in this new proposal.

**SEN. KEATING** wanted to know if there were any unnecessary statutes which could be repealed to help reduce the program's workload. **Mr. Amestoy** said that the constitution mandates that all lands disturbed by mining be reclaimed. In the past there has been discussion about exempting small miners from the Metal Mine Reclamation Act, but a lot of citizens complain more about the small miners than the larger outfits. Mine permitting has been their top priority because of its potential for the greatest impact. **SEN. KEATING** submitted that possibly the Resource Indemnity Trust (RIT) interest and income funds should be re-prioritized and used to help fund this program.

In response to **REP. WISEMAN**, **Mr. Amestoy** said that a number of years ago they conducted an inventory of abandoned hard rock sites and identified about 6,000 that would qualify for funding through this program. They discovered that hard rock sites were more complicated to reclaim than coal and uranium sites and there were additional laws governing reclamation of hard rock sites. They put an in-house ranking and scoring sheet together to identify the state's worst sites and came up with about 300 sites. They have been working with the other state and federal agencies to further prioritize these sites.

**Total tape machine failure. No recording of rest of meeting.**

He stressed that the work was going to take a lot of money to complete. He suggested that the definition of reclamation may have to be modified from "rolling hills and a lot of grass and trees" to simply stabilizing the surface. **REP. WISEMAN** wanted to know how long it would take for the 300 sites on the priority list to be reclaimed. **Mr. Amestoy** replied that it would take many years. He agreed to find out how many of the sites were on state land.

**REP. WISEMAN** wanted to know how much uranium mine reclamation was going on. **Mr. Amestoy** said that none was going on as the result of the enactment of a law regarding disposal of tailings.

**REP. WISEMAN** wanted to know why reclamation activities had not been moved from DSL to the Department of Natural Resources and Conservation (DNRC). **Mr. Amestoy** said it was his understanding that the plan of the Governor's Task Force was to combine regulatory activities into one department and to put land management into another, with the latter being located in DNRC. All regulatory activities in DSL, DHES and DNRC would be consolidated into a new agency.

**REP. WISEMAN** submitted that \$650,000 was appropriated for contingencies yet only \$30,000 was actually spent in the last year. He wanted to know why the Governor's emergency funds couldn't be used in the Hard Rock program, following the same approach as was done for funding wildfires. **Mr. Amestoy** replied that they had used the fund for small abandoned mine projects but there was not a lot of money in that fund and they are hesitant to spend a lot of that money on a specific project like this. Also he was not sure of the approval process on this. Regarding using bond forfeiture monies, **Mr. Amestoy** said that in some cases they would know far enough in advance to be able to use these monies but this was not always the case.



ADJOURNMENT

Adjournment: 11:25 a.m.

  
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ROGER DEBRUYCKER, Chairman

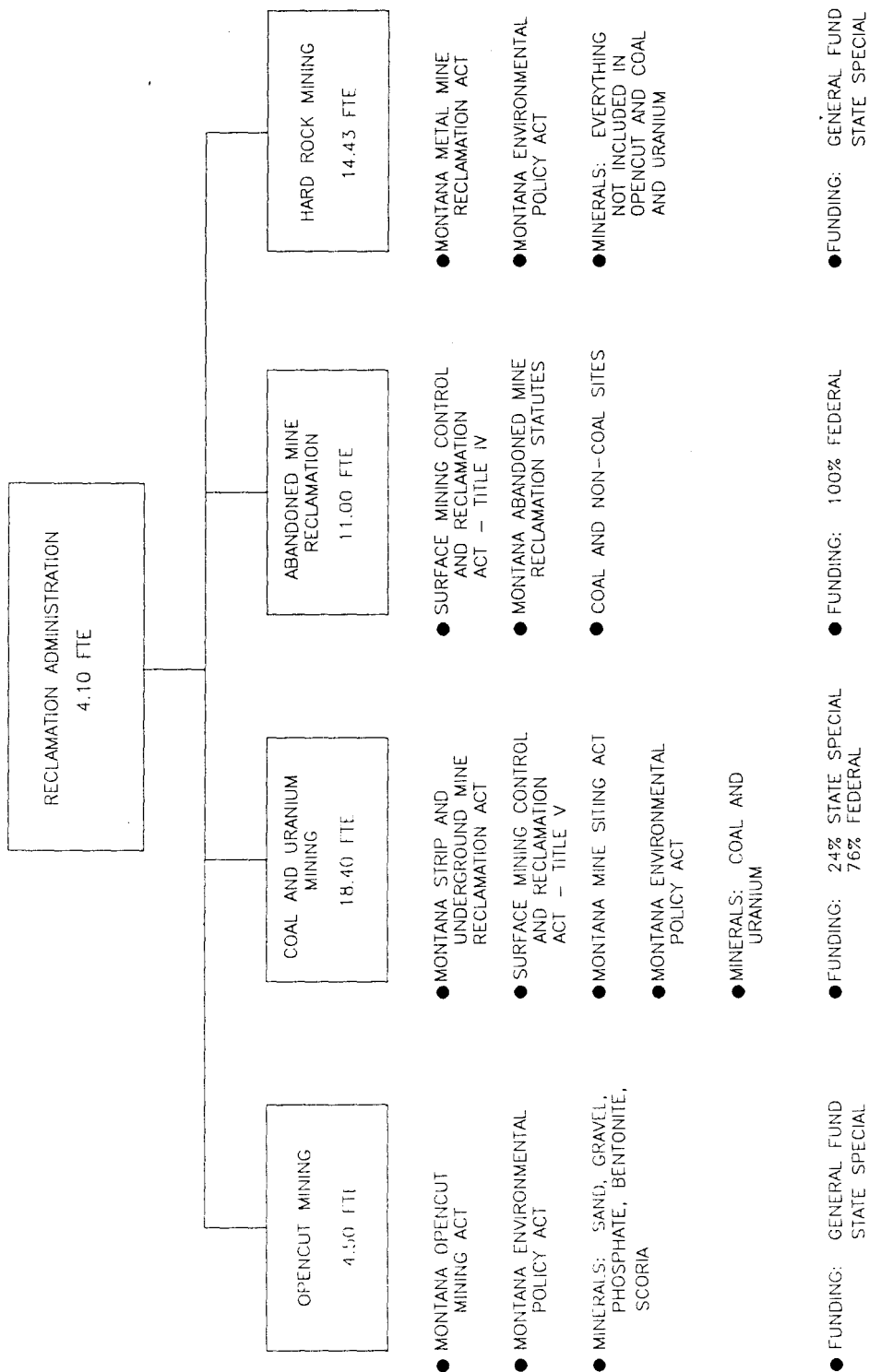
  
\_\_\_\_\_  
DEBBIE ROSTOCKI, Secretary

RD/dr

This meeting was recorded on four 90-minute audiocassette tapes.

# RECLAMATION (PROGRAM 03)

52.43 FTE



# Office of the Legislative Auditor

State of Montana



Report to the Legislature

December 1994

## Performance Audit Report

### Hard Rock Mining Regulation

Reclamation Division

Department of State Lands

This report contains recommendations for improvement in procedures used by the Department of State Lands for permitting, monitoring, and enforcement of hard rock mining activity in Montana. The recommendations address:

- ▶ Strengthening bureau administration.
- ▶ Supporting and documenting permitting decision-making.
- ▶ Expanding mine inspections and follow-up actions.
- ▶ Establishing a comprehensive enforcement system.

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Direct comments/inquiries to:  
Office of the Legislative Auditor  
Room 135 State Capitol  
PO Box 201705  
Helena MT 59620-1705

93P-41

## NEW PROPOSAL

**NEW PROPOSAL 92020**  
**HARD ROCK AUDIT RESPONSE**

	<u>FY96</u>	<u>FY97</u>
<b>FTE</b>	<b>4.07</b>	
<b>PERSONAL SERVICES</b>	<b>\$136,094</b>	<b>\$136,871</b>
<b>OPERATING EXPENSES</b>	<b>26,575</b>	<b>26,575</b>
<b>EQUIPMENT</b>	<b><u>40,765</u></b>	<b><u>0</u></b>
<b>TOTAL</b>	<b>\$203,434</b>	<b>\$163,446</b>
<b>GENERAL FUND</b>	<b>\$203,434</b>	<b>\$163,446</b>

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Nat. Resources Sub COMMITTEE

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Gary Amestoy	DSL			

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