

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By VICE CHAIRMAN LARRY TVEIT on January 16, 1995,
at 1:00 PM

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

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

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

Committee Business Summary:

Hearing: SB 78
Executive Action: None

{Tape: 1; Side: B; Comments: Chairman Grosfield relinquished the chair to Vice-Chairman Larry Tveit in order to present SB 78.}

HEARING ON SB 78

Opening Statement by Sponsor: SEN. GROSFIELD said SB 78 is response to an audit of the Water Quality Bureau by the Legislative Auditor. Recommendations from the audit for the Water Quality Bureau should be available from the Legislative Auditor's office. Of the ten recommendations, the first six were questions of management, enforcement policy, etc. The **Department of Health and Environmental Sciences** are putting together a management and enforcement policy, and are in the process of

restructuring the enforcement compliance strategy. The tenth recommendation in the audit will be in another bill within a few days. SB 78 addresses audit recommendations 7-9. Recommendation 7 has to do with clarification of some exclusions in some rules adopted under the Water Quality Act. Recommendation 8 addresses civil penalties and cleanup orders for violations. The audit recommended that the agency change from "shall issue an order..." to "may issue an order..." , because "shall issue an order" could be applied to situations such as an applicant filing a late report, where a cleanup order would not be appropriate.

SEN. GROSFIELD said Sections 1,3,5 of SB 78 addresses performance bonds. There was a performance bond provision in the Water Quality Act, but the audit revealed that bonding authority didn't accomplish anything and could be eliminated. The circumstances for which a bond can be acquired are not expanded from the old law. He said there are some things in SB 78 that are not in response to that particular audit, but in response to other audits done in the department. Section 2 is one of those with a minor change that says, "Water pollution control advisory council shall hold at least two meetings each calendar year if necessary." On Page 7, Line 14, the words "less than \$250" are struck. A \$250 fee for a very small project would be in excess. Striking that would give the department the discretion of setting a lower fee. The new language on the bottom of Page 7 is kind of a good actor incentive. If the permittee is doing better than required by the permit, he would be entitled to a 25% reduction of his permit fee.

Proponents' Testimony:

Glenn Marx, Policy Director, Governor Mark Racicot, said the administration supports SB 78 and the recommendations produced by the performance audit. **EXHIBIT 1.**

Steve Pilcher, Administrator, Water Quality Division, said the division was in support of SB 78. He stated during the past year the department has been the subject of both a Financial Compliance Audit and a Performance Audit for enforcement of the Water Quality and Public Water Supply Acts. He said SB 78 implements several of the department's responses to the recommendations contained in those reports. **EXHIBIT 2.**

Florence Orr, representing the Northern Plains Resource Council, and the Concerned Citizens of Pony, said because of the Water Quality Division's failure to enforce the Water Quality Act, the NPRC called for a legislative audit in the 1993 legislature. She stated that a mill near Pony that has only operated for a year and a half has contaminated the ground water for the last five years with cyanide. The Department of State Lands said the mill is considered grandfathered and the rules of bonding don't apply. **EXHIBIT 3.**

Richard Parks, owner and operator of a sporting goods store and fly fishing outfitting business in Gardner, Montana and a member of the Northern Plains Resource Council, stated he supported SB 78, but recommended several amendments as contained in **EXHIBIT 4**.

Julia Page, Chairman of the Northern Plains Resource Council's Legislative Task Force, said she supported SB 78 with some reservations, **EXHIBIT 5**. Ms. Page requested an amendment to SB 78 as contained in **EXHIBIT 5a**.

{Tape: 1; Side: B;}

Jerry Iverson, Chairman of the Cottonwood Resource Council, an affiliate of the Northern Plains Resource Council, said he supports passage of SB 78, **EXHIBIT 6**. Mr. Iverson requested an amendment as contained in **EXHIBIT 6a**.

David Zimmerman, Chairman of the Concerned Citizens of Pony, said he would like to encourage the support of SB 78. He said the ground pollution in Pony clearly needs bonding authority by the DHES, **EXHIBIT 7**.

Jim Jenson, Executive Director of the Montana Environmental Information Center, said there have been some legitimate concerns raised on the potential effect on small miners. He said the State Lands bond requirements for small miners are working well and would not want SB 78 to override that legislation. However, the bonding authority by DHES is important to the citizens to prevent ground water contamination such as has happened at Pony.

Opponents' Testimony:

John Fitzpatrick, Director of Community Affairs for Pegasus Gold, Corp., said he was opposed to SB 78. He said water bonding is not a new concept to the legislature. It has been a key part of the Northern Plains Resource Council's legislative agenda for many years. There were two bills before the session in 1991 and 1993 dealing with the hard rock and coal industries that were defeated. He said that SB 78 goes beyond the mining industry. The legislative audit identified a number of problems with DHES's water quality division. The Montana Water Quality Act has a very broad grant of authority that is expressed in the administrative rules. Mr. Fitzpatrick said the DHES has crafted the most comprehensive water quality management program in the United States. SB 78 is just another way in which DHES expands their authority. When administrative rules are drafted they often go beyond the statutes.

Mr. Fitzpatrick said Page 2, Line 2 describes the definition of disturbed land. He said the only place that is considered disturbed land is in the hard rock statutes, and that went beyond the hard rock definition. It means the area of land altered by activities associated with the permit issued pursuant to the

bill. The DHES issues all kinds of permits such as the discharge permit of which there are over three hundred in Montana. **Mr. Fitzpatrick** said if SB 78 passes there will be more rule making from the DHES than can be imagined. On Page 6, the bill refers to posting of bonds, and for a large company, surety bonds are usually not a big problem. However, for small companies, they will have difficulty trying to procure a surety bond, and will have to put up a cash bond or make some other arrangements. SB 78 could be an invitation to change the bond amounts that could have a significant effect on small businesses. He stated that on the bottom of Page 7 of the bill, it refers to effluent credits, but doubted that any of the facilities would ever receive a credit because there is very little flexibility to reduce the amounts.

Gary Langley, Executive Director, Montana Mining Association, presented a report to the committee members entitled "Mining And The Environment - A Balanced Relationship." **EXHIBIT 8.**

He said a number of years ago the Montana Mining Association took the lead in introducing legislation that required placer miners to be bonded up to \$5,000 per operation for not more than 5 acres. Legislation was also passed requiring an operator using cyanide to obtain a full operating permit. He said he sympathized with people in Pony, but that mill was in operation before the rules took effect. He said he understood there were plans in progress to correct the problems, and if that isn't done, they will never be able to acquire another operating permit again. There are funds available that have been paid for by mining companies to take care of those kind of problems. **Mr. Langley** stated that the mines in operation today are posting millions of dollars in bonds to ensure there is no permanent damage to the land or the water. Under legislation, the department had an option of either dropping the voluntary bond or requesting a mandatory bond. Naturally, when there was a choice, they opted for the mandatory bond. Because of legislation, a bond can be required from a mining company whenever the department wishes. He said SB 78 was an over-reaction of the legislative audit. The Department of State lands already requires bonding provisions. and SB 78 is adding another requirement, expense, and uncertainty to the mining process, and giving more discretion to bureaucratic agencies. It is a time when the mining industry is trying to seek stability in the laws of government.

Carl Schweitzer representing the Montana Contractors Association, said the association opposed SB 78 because of the definition of disturbed lands. The contractors are inundated by regulations and rules that the DHES is applying to them. The contractors have a concern about the environment and our waters, but the DHES goes to extremes and the cost and expense is overwhelming. SB 78 seems to include everything concerning disturbed lands.

Don Allen representing the Montana Wood Products Association, said they were in opposition to SB 78. When the meeting was held in the EQC regarding the proposed legislation, several questions were asked concerning the bill. He stated some definitions need to be clarified, because there are inconsistencies in the bill. For example, Page 2, Line 2, the bill refers to "disturbed land" and in another section it refers to "state waters," which do not have the same meaning.

{Tape: 2; Side: A}

Frank Crowley, representing Butte Mining, Rose Bud Energy, etc., said he attended several meetings on water quality enforcement, and realized that **SEN GROSFIELD** and staff reviewed the problem very carefully. He said the department has had very little time to react to the legislative audit and the EQC findings. He said the department issues hundreds of different kinds of bonding permits every year. There are storm water permits and general permits issued by rule. A general permit could require a creek operation or a sluice operation to post a bond. That was not the intention of the general permit requirement, and should be clarified by the DHES before action is taken on SB 78. He said all kinds of projects are proposed to the agency and a general definition for disturbed lands will be a big issue for the agency. The agency has not had time to respond to the audit or to EQC. He stated that requiring a permittee to respond to bond for everything, is imposing an unnecessary administrative burden on the agency.

Mr. Crowley said the new enforcement policy should be given time to work, before adding more requirements. The agency is prepared to enforce the water quality statutes and requirements of the state in an efficient and dependable manner.

John Blomquist, representing the Montana Stockgrowers, said the definition of "disturbed land" could mean a variety of activities that water quality permits are associated with. Some of the concerns of SB 78, are the effect on animal feeding operations, feed yards, etc. The **Dairymens Association** expressed their concern as well. There are concerns with the bonding requirements, because they are not defined in SB 78. He said some informational requirements should be established before an investigation. For example, in southwest Montana, there are a lot of grazing controversies, because of concerned citizens and federal employees making water quality allegations, and not supporting them. In following up on those allegations, no violations to substantiate those allegations were found.

Mike Murphy, Executive Director, Montana Water Resources Association, said the association opposes SB 78, primarily of the definition of "disturbed land." Also the bonding is very expensive and cannot be met by the smaller operators.

Ben Havdahl, representing the Montana Motor Carriers Association, said that the association was opposed to SB 78 for all of the reasons the other opponents stated. The MMCA represents a number of small businesses in the state and there is confusion with cost and compliance of water quality requirements. If compliance costs are added to the high cost of permit fees, small businesses will not be able to afford those increases.

Mr. Havdahl conducted a number of environmental workshops for the members to counsel them on compliance of water quality and permit requirements for water discharge and storm water runoff. There was a lot of misinformation discovered at those meetings such as, some members were confused as to whether or not a permit was needed. Those that tried to comply, were told by telephone to describe their operation, and based on the telephone conversation, it was decided whether or not a permit was needed. He stated it's not a question of wanting to comply, but of understanding the compliance.

Larry Brown, representing the Agricultural Preservation Association, said for a number of reasons already discussed, the association opposes SB 78. There are concerns with the description of "disturbed lands," and the bonding authority in the bill. He said there is federal legislation in the United States Congress, considering reauthorization of the storm water program. They are requesting \$100 million to be distributed to the states, of which, Montana would be eligible for a portion of that. In most cases SB 78 is a duplication that is already on the books in State Lands and other agencies, and the association doesn't support another bill of the same content.

Holly Franz, representing the Montana Power Company, said the company was concerned with the ambiguity of the bonding provisions, those provisions do not belong with water quality.

Peggy Trenk, representing the Western Environmental Trade Association, said they were in opposition to SB 78 because of the reasons already stated by previous opponents. During the EQC meetings, which were excellent, opinions were expressed as to whom the bill may or may not apply to; ranging from mining companies to septic tank installations. She stated there must be one version so everyone knows the intent of the bill, before the association can support that legislation.

Patrick Montalban, representing Montana State Resources from Cut Bank, and the Northern Montana Oil and Gas Association, said they were in opposition to SB 78 because of the description of "disturbed lands" and the concern for the small independent operators in northern Montana. Whenever a drill site is constructed it would fall under the description of "disturbed lands," and that is not acceptable. The bonding requirement is another issue, because taxes were not supposed to be increased. The House has already increased the costs of drilling permits and a change of bond requirements from one operator to another. He

said most of the small independent businesses have to put up cash bonds. There is a \$250 bonding requirement on small pits, of which there are thousands in northern Montana that have been there for over forty or fifty years. Under the Board of Oil & Gas, there is a .002% license and privilege tax, and a bill will be introduced later in the session to increase that tax. Because of the decline of oil, the department needs more funds to operate, and permit fees are not included in the budget. The concern is, that the fees will go into administrative costs instead of regulations of water quality.

Questions From Committee Members and Responses:

SEN. MIKE FOSTER asked **Mr. Pilcher** if he would give an example of how a designated person would participate under the Water pollution Control Advisory Council, and if that person would have the right to vote.

Mr. Pilcher stated an example of the intended use of the advisory council, would be in the development of rule-making. The Water Quality Act gives considerable rule-making authority which deals with a variety of issues. For example, they were contemplating some rules dealing with oil and gas. The current membership of the Water Pollution Advisory Council is set by statute. One member on the council is appointed by statute that represents the inorganic waste disposal industry, and other members represent a variety of different activities in the state, but not oil and gas. If rule-making pertained specifically to oil and gas, it would make sense to have a representative of that industry or someone with specific knowledge in that area. The voting arrangement had not been discussed, but he would assume it would be at the discretion of the Advisory Council.

SEN. KEN MILLER asked **Mr. Langley** if the mining industry was contributing funds to help resolve the Pony situation. **Mr. Langley** said that a letter from the mining company indicated they were going to do some reclamation, but there was no mention of funds. Previous operators had promises of some funds, but they were never received.

SEN. BROOKE asked **Michael Kakuk**, **Environmental Quality Council**, if he was instrumental in drafting that legislation. **Mr. Kakuk** replied it came through his computer, but that was all. **SEN. BROOKE** asked **Mr. Kakuk** if on Page 6, Line 11 that states, "protect the quality of state waters from impacts resulting from disturbed land associated with the permitted activity," was inconsistent. **Mr. Kakuk** replied he did not see any inconsistency.

SEN. BROOKE asked **Mr. Kakuk** if he thought the definition was too broad. He replied that was up to the committee members to decide.

SEN. BROOKE asked **Mr. Pilcher** if "disturbed land" was a good definition in SB 78.

{Tape: 2; Side: B}

Mr. Pilcher replied as an example, the Pony situation is considered "disturbed land" and the tailings impoundment poses a threat to water quality. He said any ground disturbance that would cause a potential contamination to state waters would be considered "disturbed land."

SEN. TOM KEATING asked **Mr. Pilcher** if the Pony situation could have been handled by the Department of State Lands. **Mr. Pilcher** replied that the Pony mill was an exception, as it was constructed at a time when the Department of State Lands did not have rules to regulate that type of an activity. At the time the mill was constructed, the only requirement was for the mill to acquire a waste discharge permit from DHES. Had that facility been permitted by the Department of State Lands, it would have been required to post a reclamation bond. Page 5, Section 4, Paragraph (2) of SB 78 states, "The department may not require a bond for a permitted activity if the permit holder or applicant has posted a bond for the permitted activity with another state agency to reclaim disturbed land that may impact water quality." That section was included so there would not be a duplication of bond requirements. If the bond was issued by the Department of State Lands, DHES would not have the authority to duplicate that bond.

SEN. KEATING asked **Mr. Pilcher** if there were other suggestions in the audit that the department is required to address statutorily. **Mr. Pilcher** answered that as the sponsor pointed out, the audit did include other recommendations that required a legislative response.

SEN. KEATING said the description of "disturbed land" is exceedingly broad and has scared the daylights out of every industry in the state. The audit recommended that either the rules were enforced or the statute changed, and the department chose to enforce rules.

Mr. Pilcher said he didn't believe they had attempted to make a tie between those two. The current Montana Water Quality Act, says, "that if the department determines that the bonding level does not represent the present cost of reclaiming the disturbed land according to reclamation requirements...", but the department attorneys advised that there was not a definition of "disturbed land," and that was going to be an issue if someone requested a voluntary proposal. Obviously from the comments that have been heard, that problem has not been completely addressed.

Mr. Pilcher stated the current rules recognize that certain activities are currently regulated by other agencies. When the

ground water pollution control program was developed in 1982 it made sense at that time to recognize that review and avoid a duplication of effort. However, it did not relieve them of complying with water quality laws, it only says that one permit is all that is required. The term "disturbed lands" has been challenged by numerous environmental groups. The department considered modifying the rules administratively, and to require facilities that were previously excluded, to retain a permit.

SEN. KEATING said Page 5 of SB 78 states " the department may not require a bond...", that seems very subjective. It further states, "a bond required under 75-5-405 must be used, if needed, only to reclaim disturbed land that may impact water quality." That is also vague. There are a lot of clauses in the bill that seem to be very subjective, because the language is not sufficiently specific in water quality permitting laws, and that is the reason for constant public hearings, court costs, etc.

Mr. Pilcher stated that the implementation of the water pollution program is not as simple as it used to be. The department is trying to recognize requirements that are currently imposed on the regulated community. He said if the Department of State Lands requires a bond to deal with reclamation, that should also provide protection to state waters. The department is trying to avoid a duplication of bonding.

SEN. KEATING said he didn't find fault with the water quality bureau, but the department cannot administer water quality efficiently to please everyone.

SEN. MACK COLE asked **Mr. Langley** if the mining industry would be assisting the Pony situation. **Mr. Langley** responded that there were three things that could happen: 1. the DHES and the mining company may get together and come up with a plan to clean up the area, 2. in case the company walks away, there are resources from trust money for clean up, and 3. the mining industry had preliminary discussions with DHES and the Governor's office investigating whether or not the Water Quality Division could assist with the water cleanup.

SEN. B. F. "CHRIS" CHRISTIAENS asked **Mr. Pilcher** if it was necessary for new language because the good actor incentives would not be used. **Mr. Pilcher** responded it was necessary to keep the language, because facilities could realize a 25% reduction in permitting fees if the quality of their effluent was improved. He said it's a possibility that industries can discharge at rates less than required in their permit and take advantage of the savings.

Closing by Sponsor: **SEN. GROSFIELD** said he wanted to address the legislative audit. He said the purpose of a legislative audit is to make sure the agency is doing a good job in complying with the law. The first page of the audit says. "the purpose of the audit is to assess the operations of state government." One of the

recommendations of that audit was, that the hard rock mining bureau and the water quality bureau don't coordinate very well, and suggested both agencies remedy that situation. **SEN. GROSFIELD** said the EQC and the legislative audit committee held a joint meeting and SB 78 was recommended. The EQC did not recommend expanded bonding beyond the recommendation in the bill, because expanded bonding failed in the two previous legislative sessions. He said Page 5, Lines 19-21 states, "The department may not require a bond for a permitted activity if the permit holder or applicant has posted a bond for the permitted activity with another agency to reclaim disturbed land that may impact water quality." The situation in Pony is an exception because at the time Pony was started, bonding was not required. Under SB 78 bonding would be required, and without the bill, would not be required.

{Tape: 3,, Side: B}

SEN. GROSFIELD said the concept of SB 78 is, that it requires the department to respond to every case. The bill increases the department's flexibility. On page 49 of the audit, the recommendation was to seek legislation granting the department a wider range of disciplinary action. The reason is, that current law says that any violation of the statute requires a civil penalty and a cleanup order. The auditor inquired if the legislature intended that every single violation be corrected through a cleanup order and a civil penalty. For example, if a municipality did not send in their monthly monitoring data should a civil penalty be enforced. That particular provision of SB 78 actually gives the department more flexibility.

SEN. GROSFIELD said questions were asked if disturbed lands means feed lots, etc. Perhaps the committee needs to take another look at that issue. SB 78 lowers the minimum permit fee by striking the \$250 minimum permit fee.

SEN. GROSFIELD noted that **SEN. KEATING** mentioned the Water Quality Act was not specific enough, and that puts the agency in a tough spot from time to time. He suggested that the committee members review whether or not those bonding requirements should apply to some of the general discharge permit holders. He said another bill that will be heard by the committee members, is an enforcement study by EQC, that may address the lack of specifics in SB 78.

SEN. GROSFIELD said in summary, most of the concerns expressed about the bill by both proponents and opponents had to do with bonding. He reminded the committee members that the Pony situation had not been remedied, and asked the committee members to consider passage of SB 78, because the bill addresses other important issues as well as the bonding provisions.

SENATE NATURAL RESOURCES COMMITTEE

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VICE CHAIRMAN TVEIT said executive action would not be taken because several areas of SB 78 needed to be addressed.

ADJOURNMENT

Adjournment: 2:30 PM



LARRY TVEIT, Vice Chairman



THEDA ROSSBERG, Secretary

LG/tr

DATE _____

1-16-95

SEN

6

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 1-16-95

BILL NO. SB 78

TESTIMONY OF GLENN MARX
POLICY DIRECTOR
GOVERNOR MARC RACICOT

January 16, 1995
Senate Natural Resources Committee
SB 78

Mr. Chairman, my name is Glenn Marx, and serve on the personal staff of Governor Marc Racicot as policy director.

The administration supports SB 78 for two main reasons.

First, the bill is a result of one of the recommendations produced by the performance audit conducted during the 93-94 interim by the Legislative Auditor. The department welcomed that audit, and the recommendations contained in that audit are taken seriously. As a result, legislation designed to implement these agreed-to recommendations are also taken seriously.

Second, while the bonding provision of this bill will probably generate the most interest, we believe additional new language contained in the bill is important as well. This language is important because it will assist the Water Quality Division to implement improvements in water quality management and enforcement.

The reduction in fees, as outlined in Section 6 of the bill, offers clear incentives for permit compliance and improved water quality. Also, the enforcement response language in Sections 8 and 13 offer statutory common-sense guidance and procedures for enforcement actions.

This bill has been discussed at length by the department and the EQC, and has undergone a thorough public review.

Governor Racicot has it made it clear he wants to assist the department improve water quality management and enforcement. This bill is plays an important role in those goals.

Thank you.

TESTIMONY
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCESSteven L. Pilcher, Administrator
Water Quality Division

The Department of Health and Environmental Sciences (DHES) has requested your consideration of Senate Bill 78. During the past year, the department has been the subject of both a Financial-Compliance Audit and a Performance Audit for Enforcement of the Water Quality and Public Water Supply Acts. This bill implements several of the Department's responses to the recommendations contained in those reports. This bill has been discussed at length the Environmental Quality Council and has received their support.

The bill addresses a number of identified deficiencies including the following:

The Water Pollution Control Advisory has not met on the schedule specified in the current law. Public and regulated community participation in our water quality program is important. This bill would allow meetings to be held as necessary and allow the director to add members to assist in addressing particular issues.

The current law allows the department to hold a performance bond only when a permittee volunteers to provide the same. This bill would allow the department to require a performance bond in those cases when reclamation of a facility is necessary to protect the quality of state waters. The bill does not extend the area covered by the bond beyond that currently allowed under the voluntary provision.

House Bill 388 of the 1993 session contained conflicting direction relative to the minimum fee charged to permittees. The statement of intent established a minimum fee of \$200 while the bill itself established a minimum fee of \$250. Administrative rules adopted by the department chose the lower amount included in the statement of intent. This bill would eliminate the minimum fee amount and allow the department to set a minimum fee commensurate with the cost of issuing the permit.

Another conflict exists relative to a provision that provides an incentive, through an annual fee reduction, for facilities to improve the quality of their effluent. Facilities that produce an effluent at levels between 50% and 100% of their effluent limitations would qualify for a reduction in their annual permit fee of up to 25%. This is intended to provide permit holders with the incentive not to utilize all of the pollution capability of their permit.

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 1-16-95

BILL NO. SB-78

The audit points out that under current law, the department must issue orders for any situation that may pollute state waters. The audit report suggested clarification in this area. This bill would provide the department discretion in use of orders and allow cleanup to be accomplished by other means. The bill identifies a variety of enforcement responses that the department may use in carrying out the provisions of the act.

We would be happy to answer any questions that the committee might have regarding this proposed legislation.

TESTIMONY OF FLORENCE ORE ON BEHALF OF THE NORTHERN PLAINS RESOURCE
COUNCIL ON SB78 BEFORE THE NATURAL RESOURCES COMMITTEE

HEARING, January 16, 1995

Mr. Chairman, members of the committee, my name is Florence Ore, and I reside in Pony, Montana. I'm a member of the Concerned Citizens of Pony and the Northern Plains Resource Council where I chair their Hard Rock Task Force. I'm here today to testify on behalf of Northern Plains, a grassroots citizens' organization of over 2,000 farmers, ranchers, businessmen and other conservationists from across Montana. We work together to promote sustainable economic development and to see that our natural resources are maintained and improved for present and future generations as our Constitution demands.

In the 1993 legislature, NPRC supported the resolution calling for a legislative audit of the Water Quality Division of the Department of Health and Environmental Sciences because our members have had to live with the consequences of the Divisions's continual failure to enforce the Water Quality Act. The Legislative Audit Committee report agreed with us and made recommendations for strengthening the administrative oversight, record keeping, monitoring and enforcement actions of the Division.

While monitoring this audit our members have testified before the Audit Committee and the Environmental Quality Council. We've commented on drafts of SB78 to the agency and the EQC, and appear today in support of it because it represents a sincere effort by the

However, as we have previously pointed out to the Environmental Quality Council, the Division and to Senator Grosfield we feel SB.78 is too weak and fails to follow the recommendation of the Legislative Audit Committee which stated in recommendation #9 that the division should seek statutory authority to "require a performance bond, if necessary, "to ensure compliance with the Water Quality Act." This Act's purpose is to "Conserve water by protecting, maintaining and improving the quality and potability of water....," not reclaiming land. This is the primary mission of the agency and it's their staff that has this expertise. Other agencies are in the business of reclaiming land. Northern Plains believes the discretion to require a bond should be broadened in three ways:

A) to allow the agency to require supplemental bonds "to ensure compliance with the Water Quality Act", and not limit the agency's discretion to bond "only to reclaim disturbed land" as is the case in SB78;

B) to allow the agency to require supplemental bonds if it doesn't believe that a bond required by another agency will be adequate to ensure compliance with the Water Quality Act; and

C) to allow the agency to require bonds to be used to remediate, i.e., clean-up, damages to state waters.

Thank you for hearing these comments and I ask you to seriously consider these strengthening changes which will help ensure the quality of our state waters will be maintained and improved.

**STATEMENT OF RICHARD PARKS IN SUPPORT OF SB 78
JANUARY 16, 1995**

Mr. Chairman, members of the committee, for the record my name is Richard Parks. I own and operate a sporting goods store and fly fishing outfitting business in Gardiner, MT. Obviously maintaining Montana's high quality waters is critically important to my business. I appear today on my own behalf and as a member of the Northern Plains Resource Council.

I support SB-78 but I believe it can and should be stronger. First, some context - the Water Quality Division is charged with maintaining our water quality - not any unit of the Department of State Lands, nor any other unit of the Department of Health and Environmental Sciences. The purpose of permits issued by or concurred in by this division is to protect water quality, not license pollution. As far as I can tell the bonding provision as drafted only applies to 3 sorts of activity, custom cyanide mills predating June 1990, otherwise exempt small miners that require a discharge permit and private landfill or hazardous waste disposal sites. The state requires me to carry liability insurance as a condition of being licensed to drive on the public roads. The purpose of this insurance is to protect innocent members of the public from my mistakes. In like manner the bonding provisions of this bill should be intended to protect the public from the mistakes, incompetence or bad luck of those seeking permits to discharge to state waters.

Viewed in that context SB-78 should be strengthened by amending line 9 of the title, striking "issued to applicants whose activities will require reclamation of disturbed lands that may affect water quality;" and replacing that clause with, "to ensure compliance with the Water Quality Act." By analogy you can compare the effect of the bill as drafted with a provision in state law limiting my requirement to purchase liability insurance to coverage only when driving a perfectly operating vehicle, stone cold sober and within the speed limit.

This amendment requires sequential amendments to bring the body of the bill in conformity with its title as follows:

1. On page 5, line 15: strike "disturbs land in a magnitude or manner that"

EXHIBIT NO. 4DATE 1-16-95BILL NO. SB-78

the little old lady, and you, and me and every other citizen and taxpayer who is going to be stuck with the bill, whether we had anything to do with the creation of the problem or not.

Please strengthen SB-78 and give it a "do pass" recommendation. Thank you for the opportunity to appear today. I stand ready to answer any questions you may have.

Northern Plains Resource Council

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 1-16-95

BILL NO. SB 78

Testimony of Julia Page on SB 78 before the Senate Natural Resources Committee Monday, January 16, 1995

Mr. Chairman, members of the committee, my name is Julia Page. I am chairman of the Northern Plains Resource Council's Legislative Task Force. I am speaking today on behalf of NPRC.

I am also speaking in favor of **SB 78**. I do have some reservations with this bill, however. Particularly, I would like to address Section 13 of SB 78 titled "Investigation of complaints by other parties." This section, in detailing how the Water Quality Division responds to alleged violations of the Water Quality Act, does not provide a mechanism by which the Division informs the party alleging a violation of the results of the complaint.

The Legislative Auditors review of the Water Quality Division identified the failure of the Division to follow through with alleged violations as a problem that needed to be corrected.

To solve this problem, I would submit the attached amendments to SB 78. These amendments detail a method by which the Division is required to respond when people allege violations of the Water Quality Act. The amendment leaves intact the language of SB 78 that requires the Division to investigate all complaints. However, it also allows people to file complaints with the Division by signed affidavit and if they do so, requires the Division to respond to that individual, in writing, within 30 days.

In light of the adverse publicity the Water Quality Division received during the past year and in consideration of the recommendations of the Legislative Auditor's review of the Water Quality Division, I ask you to consider these amendments and urge you to give SB 78 a "do pass" recommendation.



Northern Plains Resource Council

SENATE NATURAL RESOURCES

EXHIBIT NO. 5a

DATE 1-26-95

BILL NO. SB 78

NPRC Amendment to SB 78

Section 13. Investigation of complaints by other parties

Page 11, Section 13. Investigation of complaints by other parties.

1. Line 26

Following: "parties"

Insert: "(1)"

2. Line 30

Following: "complaint"

Insert: "(2) If the department is notified by a person, association, corporation, or agency of the federal government of an alleged violation by method of a signed affidavit, the department must within 30 days of receipt of the affidavit submit a written report to the party alleging the violation informing them whether:

(a) the department agrees a violation has occurred; or

(b) the department does not agree that a violation has occurred; or

(c) the department has not gathered enough information to make a determination that a violation has occurred, and is conducting further investigation.

(3) If the department determines further investigation is warranted, the department shall inform the party alleging the violation of the results of the further investigation within 60 days of the department's initial response to the affidavit.

(4)

Northern Plains Resource Council

SENATE NATURAL RESOURCES

EXHIBIT NO. 6

DATE 1-16-95

BILL NO. SB 78

Testimony of Jerry Iverson on SB 78 before the Senate Natural Resources Committee Monday, January 16, 1995

Mr. Chairman, members of the committee, my name is Jerry Iverson. I am chairman of the Cottonwood Resource Council, an affiliate of the Northern Plains Resource Council, based in Big Timber. I am speaking today on behalf of the Cottonwood Resource Council. I echo the comments made by Florence Ore, and I too support passage of SB 78.

However, I would call your attention to Section 10 on page 10, which deals with how the Water Quality Division responds in the case of emergencies. To quote from the bill starting at the end of line 11, "if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur."

It is the "may" in line 15 that concerns me. In my opinion, when harmful pollution is occurring or about to occur, the Water Quality Division should not be given latitude on whether it will act to stop the violation.

In our conversations with the Water Quality Division, they have indicated that the inclusion of "may" on line 15 will give them the latitude to pursue other actions beyond a cessation or cleanup order. Specifically, the Division has indicated that with this language, they would be able to pursue judicial actions which may provide the Division with more authority and the ability to impose greater fines.

I would submit that the Water Quality Division should have the opportunity to initiate judicial actions if the Division deems it necessary. However, I still believe the "may" on line 15 provides the Division with too much wiggle room.

With all of that in mind, I would ask the committee to consider the attached amendment. This amendment returns the "may" on line 15 to "shall" and then provides a list of actions, one of which the Division must initiate. The list includes issuing cessation orders, bringing judicial actions and seeking administrative or judicial penalties. This list of actions comes

Northern Plains Resource Council

NPRC Amendment to SB 78

Section 10 Emergencies

SENATE NATURAL RESOURCES

EXHIBIT NO. 6a

DATE 1-16-95

BILL NO. SB 78

Page 10, Section 10. Emergencies

1. Line 15

Following: "department"

Strike: remainder of line 15 and lines 16 and 17

2. Line 15

Following: "department"

Insert: "shall initiate an enforcement response which shall include any or all of the following actions:

(a) issuance of an order requiring the person to correct the violation pursuant to 75-5-601, 75-5-611, 75-5-613, and 75-5-621;

(b) bringing a judicial action as authorized by 75-5-614 and 75-5-622;

(c) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and 75-5-631 through 75-5-633.

(2) If the department issues an order pursuant to this part:"

3. Line 18

Strike: "(2)"

Insert: "(a)

4. Line 20

Strike: "(3)"

Insert: "(b)"

405

Mr Chairman, committee members,

Good afternoon to you all. My name is David Zimmerman, I live in Pony, I'm the chairman of the Concerned Citizens of Pony, and I'm here on their behalf to encourage you to approve SB 78 for passage by the full senate.

Our experience in Pony clearly illustrates the need for bonding authority at the DHES. Bonding was a major issue in the permitting process for the Pony Gold Mill, but impossible to resolve due to the lack of that authority. After a short run at mining, the mill ceased operation. Liens totalling nearly 1/2 million dollars have been filed against the company. Unpaid county taxes and penalties come to approx. \$180,000. The company failed in it's obligation to monitor water quality for a two year period resulting in revocation of the permit. Cyanide has recently been found in the groundwater at two locations, including one domestic well in Pony. Full reclamation could prevent further degradation of the water in Pony, but a company in this kind of financial distress is not likely to fulfill it's commitment to do so. The mill is now reputedly under " new ownership " but we have no way of telling if that will be any improvement. If or when the new operator applies for a permit, the DSL has indicated that it will again leave permitting to the DHES Without DHES bonding authority the taxpayers of Montana may end up footing the bill for reclamation.

SB 78 replaces voluntary bonding with the authority to REQUIRE bonding. The voluntary bonding legislation (sec 75-5-405) came out of our situation at Pony. The CEO of Chicago Mining said that he would be happy to post a bond if only the DHES could accept it. When the law was changed to allow it, nothing happened. In fact the DHES has not received a single voluntary bond. This definitely shows the need for amendment.

Responsible mining companies should have no objection to this bill, after all when they sign the permit they have agreed to do the reclamation. If they can't afford to set aside funds for that purpose, they are under capitalized. This is poor business practice in an industry subject to instability and fickle market conditions. When a mining operation fails, company assets, and investors assets are endangered. OK, they knew the risk. However the citizens of Montana also have assets at risk, and first among these is Water Quality. Reclamation can be an effective tool to protect our groundwater after mining closures, and the citizens of Montana should be assured that the funds are there to reclaim, even if the company is not. Again, I ask you to do all you can to ensure that this bill is passed, and to ensure that the groundwater of Montana gets the protection it deserves. I'd like to thank the chairman and the committee for this opportunity to comment.

David Zimmerman

Box 253.

Pony, MT. 59747

DATE 1-16-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 78

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Check One

Name	Representing	Bill No.	Support	Oppose
MIKE MURPHY	MT. WATER RES. ASSN	78		✓
Patrick M. Montalban	MSA + NMOBA	78		X
Hilly Franz	MELC	78		✓
DON ALLEN	MT Wood Products Assn	78		✓
FRANK CROWLEY	NEW BUTTE MINING ROSEBUD ENERGY, etc	78		X
Glenn Mays	Governor's office	78	X	
Bob Williamson	mt mine,	78		
Jim Jensen	MELC	78	✓	
LARRY BROWN	As PRES. ASSO.	78		✓
CHRIS IMHOFF	MON + ANA LEAGUE OF WOMEN VOTERS	78	✓	
Ted Lange	NPRC	78	✓	
Ben Harold	MT Motor Carriers Assn	78		✓
John Bloomquist	MT. Stockgrowers	78		✓

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SENATE COMMITTEE ON NAT RES.

BILLS BEING HEARD TODAY: SB 78

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Check One

Name	Representing	Bill No.	Support	Oppose
Richard C. Poles	sdh/nprc	78	✓	
FLORENCE ORE	NPRC	78	✓	
Julia Page	NPRC	78	✓	
Jerry Iverson	Cottonwood Resource Council	78	✓	
Kris Wilkinson	OLA	78		
Beth Wheatley	MWF	78		
STEVE PITCHER	DHES	78	✓	
ALAN ROLLO	MWF	78	✓	
DAVE HILL		78		
David Zimmerman	C.C.P.	78	✓	
John Fitzpatrick	Pyrus Gold	78		✓
Pecky Tien	WETA	78		✓
GARY LANGLEY	MONTANA MINING ASSN.	78		✓
Bluthman	DHES	78		

VISITOR REGISTER

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