MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMANMAN LORENTS GROSFIELD**, on March 13, 1995, at 3:00 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: HB 338, HB 412, HB 478
Executive Action: SB 366, HB 201

HEARING ON HB 478

Opening Statement by Sponsor:

REP. ROBERT STORY, HD 24, Stillwater County and the Southern half of Sweetgrass County, said HB 478 revises the Natural Streambed and Land Preservation Act, also called the "310 law". That law has been in effect for about 20 years and has gone through periodic revisions. This past summer the Montana Association of Conservation Districts and their members worked on several areas, including the 310 law. The 310 law is being used more and more every year. There are approximately 1,500 permits issued each year and it is becoming burdensome.

He said the law is vague in some places and that makes it difficult to deal with those who violate the law. He said the bill had gone through the House without any major modifications. One of the things the bill dealt with was the definition of "Project." He reviewed amendments proposed by the Montana Association of Conservation Districts. **EXHIBIT 1.**

Proponents' Testimony:

Mike Volesky, Executive Director, Montana Association of Conservation Districts, said the purpose of the bill was not to change the law, but to streamline the permitting process and make it less cumbersome. Since 1975, in the more populated areas that were being subdivided, there was a large increase of 310 permits. In 1982 there were 621 permits issued, in 1992 nearly 1,400 permits were issued. Because of those increases many conservation districts meet often and sometimes past midnight. The proposed legislation was a product of several people getting together with conservation district officials and the Attorney General's Office. Also the Departments of Natural Resources and Conservation and Fish, Wildlife, and Parks helped with the bill. They support the proposed amendments that clear up the definition of what a "Project" is.

Bob Martinka, representing the Montana Fish, Wildlife & Parks, said the department has a long standing cooperative relationship with the county conservation districts in administration of the Natural Streambed and Land Preservation Act. **EXHIBIT 2.**

He said they were concerned about the definition of "Project" that says: "a physical alteration or modification of a stream in the State of Montana that results in an adverse change in the state of the stream due to erosion or sedimentation." He said there were some projects that may have an adverse effect on a stream without causing soil erosion or sedimentation. The primary purpose of the law was to prevent adverse changes to rivers and streams. With those exceptions, it is a good bill, and he supports the efforts of all the parties involved.

George Schunk, Department of Justice and representing Attorney General Joe Mazurek, said their office was in support of SB 478, and appreciate **REP. STORY** and all the people of the conservation districts who contributed their efforts to the bill. A year and a half ago they began to work on the 20 year old 310 law. Their office had experienced problems relating to 2nd home developers' activities along the streams of Montana. The County Attorneys in several areas felt the only recourse they had was to file either a civil or criminal violation. They support the bill.

Candace Torgerson, representing the Montana Stockgrower's Association and the Montana Cattlewomen's Association, said they support the bill because it clarifies the law and will help to maintain the law as it was originally intended. It gives

direction to the Conservation Districts. The definition of "Project" is crucial to the bill. She was concerned that the term "significant" was left out in that definition. If there were amendments to the bill they would be willing to work with the sponsor and the committee on those amendments.

Vicki McGuire, representing the Lincoln Conservation District, said they support HB 478 with the proposed amendments. The committee that met about a year ago to revise the law wanted to rid the law of vague or grey areas, and make it easier for the public, and conservation district supervisors to administer the law. The wording in the proposed amendments works towards accomplishing that goal.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. B. F. "CHRIS" CHRISTIAENS said **Ms. Torgerson** in her testimony was concerned about "significant" taken out of the bill on Page 2, Line 5. He asked **Mr. Schunk** if he would respond to that. He replied that it was his intent to go back to the original language in the act. He said the original definition was: "Project means a physical alteration or modification of a stream in the State of Montana which results in a change in the state of the stream in contravention of 75-7-102." The word "significant" does not appear.

SEN. CHRISTIAENS asked **Mr. Schunk** if he was saying that they should not adopt the amendment. He replied they support the amendment that goes back to the original language, because it would make it a better bill. **SEN. CHRISTIAENS** asked what contravention meant. **CHAIRMAN GROSFIELD** said "in contravention of 75-7-102" is a policy section.

CHAIRMAN GROSFIELD said the way "stream" was defined on Page 2, Line 13, it included anything that was perennial. There could be a stream coming out of a spring that was only one miner's inch, but it would be there all year long. There isn't a conservation district in the state that applies that law to that scenario. **Mr. MacIntyre, DNRC** said the rule-making authority that the conservation districts have has allowed them to designate what streams are covered. The conservation districts were attempting to apply the law in a manner that was reasonable and practically effective. He said that would be difficult to try to legislate.

CHAIRMAN GROSFIELD said there should be authority in the statutes for districts to do what they have been doing for the past 20 years. **Mr. MacIntyre** said there hadn't been a problem over the years because the law had been administered by local land-users. Members of the conservation districts are generally farmers and ranchers. The conservation districts would not need to change.

CHAIRMAN GROSFIELD said there was a possibility that there could be a problem, and would like to see a language change in the bill.

Closing by Sponsor:

REP. STORY said he appreciates the hearing on the bill, and would appreciate any work that can be done on the definition of "project." **CHAIRMAN GROSFIELD'S** definition of a stream would be another area that probably should be reviewed. He encouraged adoption of the amendments to the bill and asked for the committee's concurrence to the bill with the amendments.

HEARING ON HB 412

Opening Statement by Sponsor:

REP. SCOTT ORR, HD 82, Libby, said the bill gives limited protection to a facility for voluntarily disclosing a violation of an environmental law. It also provide for a voluntary self-evaluation report. It was a new concept for Montana and has generated a lot of discussion. There was a working group that met regularly before the bill was presented to the House. He had two amendments to the bill: 1) from industry groups and the Department of Health and Environmental Sciences, **EXHIBIT 3,** and 2) from the Department of State Lands, **EXHIBIT 4.** The Montana Association of Realtors also have an amendment to be considered. **EXHIBIT 5.**

REP. ORR said HB 412 was a good bill and gives industry an opportunity to define the problems that they may have, and to report them without being afraid of being fined.

Proponents' Testimony:

Riley Johnson representing NFIB (turned in written testimony). He said they support regulation compliance by incentive and not by force. HB 412 provides the opportunity for small businesses to cooperate with state amd comply with the environmental statutes.

Susan Callahan, representing the Montana Power Company, said they strongly urge support of HB 412. It addresses a significant concern of the regulated community regarding compliance with environmental laws. There is no provision in current law that allows the regulated entity to conduct the environmental audits, which was good for a company to do, without fear that it would result in enforcement penalties. This bill allows for compliance with the laws while putting better management systems in place; it also will promote pollution prevention and general awareness of employees as to what some of the issues are. If a problem was identified and they fixed it, the bill will protect them from liability. HB 412 will not get any company out of compliance with environmental laws. There were provisions in the bill that

would prevent companies from abusing the privilege. She strongly urged the committee to support HB 412. Some amendments to the bill were proposed by the Montana Power Company. **EXHIBIT 6.**

John Shontz, Attorney for the Montana Association of Realtors, propose an amendment to the bill. See **EXHIBIT 5.** He said on Page 3, Line 27 of the bill it says: "...disclosure made under the terms of a confidentiality agreement between the owner and operator,..." The amendment clarifies that a buyer's realtor was included in the discussion. Under the realtors' licensing statute, they have a duty to disclose any adverse factors of a property, and because there was a conflict in the bill, the amendment would clarify that section. He urged the committee to pass the bill with the amendment.

Jim Tutweiler, representing the Montana Chamber of Commerce, said they were in favor of HB 412. The bill puts money into the environmental and correction process and would divert money away from the fine process. The bill offers a solution for fixing and defining problems before they become large problems. The bill does not provide a shield in any way to encourage a violation or a cover-up.

Jim Mockler, Executive Director, Montana Coal Council, said they support SB 412. He gave an example of how the EPA works in regard to one of their mines. One of the operators lost a paper trail of a can of carburetor cleaner. They did a self-audit, and EPA picked up that the paper trail was lost and levied a $28,000 fine. The bill will discourage that kind of action and encourage good management for people to keep track of their solvents or whatever.

Cary Hegreberg, Executive Vice President, Montana Wood Products Association, said they were in support of HB 412. If a company or an individual embarks on a voluntary self-audit of potential compliance problems, that company or individual should be responsible to fix the problem, and not be penalized for it. Their industry has developed voluntary best management practices and they initiated a series of voluntary audits on nonindustrial private lands that had been harvested by member companies. They wanted to find out if the operators were complying with the Voluntary Best Management Practices, and the Stream Side Management Act. That was an effort to identify potential problems on site, rectify the problem, and use that experience to educate themselves, landowners, and loggers. The results were good, but they did find some minor violations, which were taken care of, and there were no fines levied.

Peggy Trenk, representing the Western Environmental Trade Association, said they support HB 412. The bill would encourage companies to conduct high quality audits and establish environmental compliance programs that emphasize prevention and good management. Small businesses are increasingly struggling with complex regulatory requirements, and the bill would allow

them to identify potential problems, and take appropriate and timely corrective actions.

Gail Abercrombie, Executive Director, Montana Petroleum Association, said their sister association in Colorado worked on a self-audit bill and were instrumental in getting it passed. They support HB 412.

Rex Manuel, representing Cenex, said they believe that HB 412 is a good common sense bill, and urge passage of the bill.

Dexter Busby, Montana Refinery Company of Great Falls, said they support HB 412.

Opponents' Testimony:

Ann Hedges, Montana Environmental Information Center, said they agree that self-audits should be done and that it was a good way to find pollution prevention methods. However, they strongly disagree with the bill, because it does a lot more than that. On Page 2 the definition of an environmental self-audit says: "...anything that is labeled an environmental self-evaluation report." She understood that there were proposed amendments to the bill that would make that more clear. The definition of that needs to be narrowed down, so people could know exactly what that would entail.

Ms. Hedges said she had a problem with "privileged information." That means that anyone who sees the report cannot be compelled to testify regarding any contents contained in the report. Also, that information cannot be considered in an administrative, civil or criminal court. The public, who doesn't have a right to see the document, won't know if there was a violation occurring, and the agency cannot be compelled to testify. She urges that state agencies be asked what information was not required to be reported. Information that was required to be reported was not privileged information.

{Tape: 1; Side: B}

Paul Johnson, representing Montanans for a Healthy Future, which is a public health advocacy citizen's organization, said they recommend a do not pass of HB 412. They have strong concerns about the "privilege" that would be granted to offending corporations, and strong objections to granting immunity that would be given to corporations that violate environmental laws. Other concerns they had were the lack of standards or definitions for the phrase: "...reasonable period of time..." in Section 7 (b). Also the lack of the definition "significant harm to public health or the environment" in Section 7 (c). Those terms should be defined and if they were not they would lead to necessary litigation that would hamstring the ability of an enforcement agency. **Mr. Johnson** had other concerns with several sections of

the bill. If the committee decides not, to kill the bill he would like to offer some amendments to the bill. On Page 3, Line 12, strike "... or any matter", because the privilege shouldn't apply to silence a witness who has obtained independent knowledge of a violation. Page 6, Line 21 after the word "initiated" add, "and completed promptly" and strike, "within a reasonable period of time." Page 6, Line 22 after the word "resulted" add "a significant threat to or..." Page 6, Line 29 strike the word "serious." Page 7, Line 2 strike "...3-year period" and change that to "5-year period."

Karl Englund, Attorney practicing environmental law, said the bill tries to accomplish 3 things, one of which is within the Legislature's authority to do, one of which is not in the Legislature's authority, and a third which is of a dubious value from a public policy standpoint. Before the bill passes there should be some data that demonstrates that the state was actually not doing that already. The bill seems to say that once a disclosure was made to the state, that information was confidential. Article 2, Section 9 of the Constitution provides that all efforts of state government are open to the government unless the demand of individual privacy clearly exceeds the merits of public disclosure. When they come to you with a plan to remedy a violation, that is one thing, but to create all the immunities and secret privileges is another.

Debby Smith, Helena Attorney, Sierra Club, said they oppose HB 412. The bill makes information privileged from disclosure to the public and in some cases to the state. It also grants broad immunity from civil and criminal violations. The problem with granting this kind of immunity is that it would be granting a privilege to polluters. The bill makes no valid public sense. She said it would be a mistake to pass HB 412.

Richards Parks, sporting goods store operator in Gardner, said he also appears on behalf of the Northern Plains Resource Council, and they oppose the bill, for the reasons previously stated.

Russell Hill, representing the Montana Trial Lawyers Association, said they oppose HB 412 for four reasons: 1) enforcement, 2) accountability, 3) broad and vague provisions, and 4) a potential for litigation. On Page 3, Line 10 the language "...self-evaluation report..." is blanket secrecy. There was a difference between disclosure of information and admissibility of that information.

SEN. STEVE DOHERTY, SD 24, Great Falls, said there was a rule of law that says, "each dog gets one bite" before its declared a dangerous dog. About 90% of environmental violations were self-reported now. If you let someone come forward and admit a violation, fix it, and don't fine him, that would be a legitimate public policy as far as enforcement is concerned. But the privileges and immunity from prosecution created by this bill would result in very serious problems.

Melissa Case, representing Montanans Against Toxic Burning, said for all of the reasons previously stated, they request that the committee table the bill as soon as possible.

Kim Wilson, Helena Attorney, said he urged the committee to vote against the bill. In talking about "privileges", under the rules of evidence the statutory rules on evidence state: "there are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate." The bill was creating a polluter, public official privilege in addition to existing privileges such as spousal, attorney-client, clergy discussions, doctor-patient and others. There is only one privilege that in statute comes close to the proposed one, and that is in 26-1-810 where it says: "a public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure." Any intention to hide public disclosure is unconstitutional and he urges a do not pass on the bill.

J. V Bennett, Montana Public Interest Research Group, said they oppose the bill because of the definition of "privilege." They believe that public scrutiny over governmental actions is a good thing. **EXHIBIT 7.**

Janet Ellis, representing the Montana Audubon Council, opposes HB 412.

Peter Nielsen, Environmental Health Supervisor, Missoula County Health Dept., submitted written testimony because he was unable to attend the hearing. **EXHIBIT 8.**

Dan Pittman, Natural Resource Consultant, opposed the legislation and **Mr. Bennett** presented his written testimony because he was unable to attend the hearing. **EXHIBIT 9.**

Milt Carlson, Kalispell submitted written testimony opposing HB 412. **EXHIBIT 10.**

Questions From Committee Members and Responses:

SEN. MACK COLE said they heard a lot of comments on "privilege" and how that would affect the bill. He asked **Ms. Callahan** what her opinion was of that. She replied that in listening to a lot of the opponents concerns, she wondered if they were reading the same bill. She didn't see near the issues that were raised by the opponents. Generally there seemed to be a misconception that information about voluntarily disclosed violations wouldn't be available to the public. The self-evaluation report would have the privilege, and the voluntary disclosure had to arise from an environmental self-evaluation, and the violation itself would be disclosed. The concern that the public would not be able to know what the agency's files contain regarding the violations is erroneous. Public violations were public knowledge. There were a lot of misconceptions of what the bill does. There were other

states that have the same type of bill, and they seem to be working.

SEN. MIKE FOSTER said he was thinking of a scenario such as, if something happens at the Ash Grove Cement Plant, and they were burning hazardous waste, and bad stuff was going up the stack, and it was a very serious public health matter, and suppose the amendments proposed by **REP. ORR** were accepted, would the public know that what happened was clearly a violation of the standards. **Katherine Orr, Chief Counsel, Department of Health**, responded that voluntary disclosure was not necessarily something that was written, except there has to be a written report of the action taken to correct the violation. Anything that the department receives in written form has to be disclosed to the public upon request. If the company generated a report and corrected the violation, the department probably would never see that and neither would the public.

SEN. FOSTER said then there could actually be a problem that could have potential harm to public health and those affected by that may never know what happened. **Ms. Orr** said there were disclosure requirements under some of the permits that they issue. If they were covered under the department's requirements, then the bill wouldn't cover that situation because the bill exempts out any situation where reporting was otherwise required by law.

SEN. FOSTER said then the agency must make sure that the public was informed of the violation. **Ms. Orr** said Ash Grove Cement Company was not required by law to report to the public.

{Tape: 2; Side: A}

SEN. JEFF WELDON asked **Ms. Orr** if the same burden of proof applies to the state as well. She responded that the party asserting the privilege has to demonstrate the applicability of the privilege and if the burden shifts to the department, and they believe that the privilege shouldn't apply, they would go through the elements listed on Page 4, subsection (3). **SEN. WELDON** asked what kinds of information the DHES does not require that would fall under privileged? **Ms. Orr** responded that as an example, a decision to permit or not, wouldn't fall under any reporting requirement.

SEN. FOSTER requested **REP. ORR,** in his closing, address the amendments that were proposed by **Mr. Johnson** and the letter from **Mr. Pittman.**

SEN. COLE asked **Mr. Shontz** how the bill would affect attorney-client privileges. He responded that one of the things that had been missing in the discussion had to do with the attorney-client privilege and how it was applied. The bill takes a lot of

lawyers out of the process and if you believe lawyers should be involved, then kill the bill. There was too much money spent on consultants and attorneys on environmental concerns. The bill removes the need to use the attorney-client privilege.

SEN. VIVIAN BROOKE asked **Ms. Orr** if her agency had in place the structure for receiving confidential information. **Ms. Orr** said nearly all of the information received by the department was not confidential. **SEN. BROOKE** said there were a lot of confidential laws regarding family services. She asked **Ms. Orr** if there was a structure in the DHES to receive confidential information. She replied that one part of the bill addresses privilege as it attaches to the self-evaluation report. The other has to do with voluntary disclosure which allows an entity to be free from a penalty. Under the amendments there was a report where the entity had to give a written description of actions taken to correct a violation, and that report would not be confidential. There was nothing specifically set up in the department for receiving confidential information.

SEN. BROOKE asked if they would be able to receive confidential information if the bill passed. **Ms. Orr** said there would be no way that the information they received would be confidential.

SEN. WELDON said that **Mr. Shontz** said the privilege would operate similar to the attorney-client privilege. **SEN. WELDON** stated tjat of am attorney had a consultant prepare a report for a client of his that had spilled gasoline from his pipeline, that's privileged and he would not have to report it to the state. However, the person who's property the gasoline spilled on, could say there was a gasoline spill on his property and no one will tell him who did it, so he will bring a suit against the pipeline company. When he then asks the lawyer about the pipeline spill, he has to disclose and the consultant has to give his testimony under oath as to the spill he had discovered.

Mr. Shontz said Section 3, Lines 8-12 says: "unless disclosure constituted a waiver of the privilege under (section 4(4), a person or entity that conducted an environmental self-evaluation or prepared an environmental self-evaluation report or any person or entity to whom the results were disclosed cannot be compelled to testify regarding the environmental self-evaluation report or any matter that is addressed in the environmental self-evaluation report."

CHAIRMAN GROSFIELD asked **Ms. Orr** to describe briefly what was involved in an "in camera review". She said it assumes that there was an ongoing action that had been filed. As an example, if the department was trying to collect penalties or trying to establish liability and wanted to get the report, the parties would give the court notice that they wanted to review the report, and the court could then give the parties a chance to argue on their relative side as to why it should or should not be kept confidential.

CHAIRMAN GROSFIELD said an issue was brought up that if the bill were to pass as is, agencies would probably require a lot more information, in order to avoid the privilege. He asked **Ms. Callahan** if the agency would require more information to avoid the privilege. **Ms. Callahan** replied no, most permits that regulated agencies already require a lot of reporting and data gathering. The permit does allow the department to review records unrelated to the permit.

CHAIRMAN GROSFIELD asked **Ms. Callahan** if without the privilege that is attached to that kind of information, would there be self-audits leading to constructive cleanups. She replied that there would not be as great an effort to do environmental audits, and the audits themselves would be less useful. One of the abilities to be privileged is for there to be very candid assessments made of management structures, and suggestions of how a company can do business better. If an audit is privileged, it is a good educational tool for the company to be able to advance its environmental compliance and to promote pollution prevention.

SEN. BROOKE asked **Ms. Callahan** if there was a way that a company could do an environmental audit and go public with what they will do to clean up the situation. She replied that there were a lot of violations that can be corrected right away, and she wasn't sure if citizens would be interested in that. If the bill with the amendments passes, it will improve public information because prudent entities will identify and report violations because it will result in them getting a presumption against fines and penalties that they wouldn't get if they didn't report them.

SEN. CHRISTIAENS asked **Ms. Orr** if the bill would cause more work for the agency or less. She replied they didn't anticipate any problem.

<u>Closing by Sponsor</u>:

REP. ORR said there have been a lot of questions raised concerning the bill. They were not plowing new ground, the same concept was in affect in 6 other states, and was not the horror story that has been heard. The constitutionality of the bill had been addressed by the DHES. As an example: if a small business buys a building and they discover a wooden grate, and underneath that is dirt and muck, and if they turned that in, and there was a possibility that they would be fined, they probably would cover that up with some pre-mixed concrete. We don't want that to happen, we want them to come forward and say we have a problem and this was how we intend to fix it. They could go ahead and correct the problem without the fear of being fined by the departments that would be involved.

The bill does not preclude anything that is currently regulated. In regard to the Ash Grove Plant situation, if they had an emission from the stack, under the audit provision of the bill,

they cannot, the next day, say they decided to do an audit because they had the emission from the stack. That would be a sham audit and would not be covered under the bill.

REP. ORR said the Chamber of Commerce referred to HB 412 as the "find it and fix it" bill vs. the "find it and forget it" bill, and that was what the bill was about. There was a lot of attorneys present at the hearing and the bill probably would make a lot of them "homeless."

HEARING ON HB 338

Opening Statement by Sponsor:

REP. DUANE GRIMES, HD 39, Jefferson County, said in 1992 the EPA sued the Department of State Lands and the Golden Sunlight Mine alleging that the agency granted the privilege of expanding the mine without doing an Environmental Impact Statement. They did an Environmental Assessment instead of an EIS. That mine employs between 270 to 300 people, and they have the largest reclamation bond posted in the United States, of $32 million. As a result of that suit, the judge ruled there was a conflict between the Constitution that states that lands disturbed by the taking of natural resources shall be reclaimed, and an amendment to the Montana Metal Mine Reclamation Act, which excludes open-pits and rock faces that may not be feasible to reclaim from reclamation. The company was in the process of doing an EIS, but most hard rock mines in the state could be jeopardized if the reclamation issues were not resolved.

REP. GRIMES presented some amendments to HB 338 and said they were for the purpose of taking care of some of the concerns that have been raised. **REP. GRIMES** reviewed the proposed amendments with the committee members. **EXHIBIT 11.**

He said there has been some criticism that the bill would weaken reclamation laws. The bill does not do that, in fact it strengthens the current reclamation law. A lot of the charges that have been heard was due to a lot of misinformation. The bill would still hold the mining companies to a very high level of accountability.

{Tape: 2; Side: B}

Proponents' Testimony:

Alan Joscelyn, Helena Attorney representing the Golden Sunlight Mine and other mining operations, said he was involved in the Golden Sunlight Mine law suit that generated HB 338. Judge Honzel ruled that the Reclamation Act did not specifically address open pit and rock face mines, and the bill would correct that deficiency. If the bill passes, with regard to open-pit and rock faces, it would consist of 3 options: 1) reclamation for a

condition of stability sufficient to prevent any threat to any human safety and environment, 2) steps sufficient to prevent pollution, and 3) steps sufficient to prevent degradation of the land. In addition to those steps, feasible additional steps will be required for open pits and rock faces to restore to a condition that affords utility to humans and the surrounding natural system and blend with the appearance of the surrounding area.

He said the amendments that **REP. GRIMES** reviewed, include some guidance to the DSL to determine what would be feasible under the circumstances. He urges the support of HB 338.

Fess Foster, Ph.D., Director of Geology and Environmental Affairs, Golden Sunlight Mine, presented written testimony. **EXHIBIT 12.**

He reviewed how the reclamation of coal mines was done and how reclamation of gold mines was done. See chart on Page 3, of **EXHIBIT 12.** He urges support of the bill.

Tammy Johnson, representing Citizens United for a Realistic Environment, said they support HB 338 as well as the amendments offered by **REP. GRIMES. EXHIBIT 13.**

Ms. Johnson stated that in 1972, at the Montana Constitutional Convention, there was a proposal for Article IX, Section 2. This proposed Article read as follows: "All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use." One member of the delegation, in support of this motion, made the following statement: "Mr. President, we have all made a serious mistake when we added the words,'to a beneficial and productive use'; we have gone beyond a Constitutional statement of principle. We have entered into a legislative field. With these words the hardrock miner or the prospector is faced with an impossibility." The motion for the deletion of words, "to a beneficial and productive use" was successful.

Janice Miller, student at Montana State University, said she was speaking in support of HB 338. The environmental aspects of the bill were very important. The economical aspects of not passing the bill were equally important. She said a large percentage of the college students will have to leave the state in order to find employment. By not clarifying mining reclamation, it leaves the possibility of law suits and industry shut-downs. When industry cannot afford the cost of implementing rules they will leave the state, taking the high-paying jobs with them.

Jim Miller said confusing laws concerning mine reclamation need to be more clearly defined and HB 338 would be a big step towards that. The bill would close a loop-hole in the law that was detrimental to future mining in Montana. Groups that were opposed to mining use loop-holes such as this to prevent all

mining. No mine can afford to restore a pit or a rock face, as is in the present law. He urges the committee to support HB 338.

Glenna Obie, Jefferson County Commissioner, said that the Golden Sunlight Mine was a valued member of their community and an important contributor the economy. They have always been cooperative and responsible to county government. The legislation was a good compromise to bring to a satisfactory conclusion a sticky issue. They urge support of HB 338.

Bruce Parker, Environmental Manager, Beal Mountain Mining, Anaconda, said he supports HB 338. Approximately 90% of all metals were obtained from open pit type mining. The bill would provide the necessary tools to insure that the changes were dealt with in a proper and reasonable manner. The goal was to return the land to productive use, such as wildlife habitat, grazing, agriculture, timber harvest, and recreation. The reclamation was not intended to return the land to the same condition that it originally was before mining occurred, because it would be impossible to accomplish.

Bob Williams, Montana Mining Association, reviewed a map showing where environmentally conscious mining companies operate. **EXHIBIT 14.**

He said everything we have comes from the earth originally. Of the 227 billion acres of land in the United States, less than 6 million acres are use for mining. There were 508,000 acres used for metal mining, 2,353,000 nonmetals, 2,818,000 for coal for a total of 5,700,000. He said that 47.4% of those have been reclaimed and the rest were still being mined. There were 31,553,900 acres of roads, railroads and airports. He asked how many acres of those had been reclaimed. He urges the passage of HB 338.

Peggy Trenk, representing the Western Environmental Trade Association, encouraged the committee to give HB 338 a do pass consideration.

<u>Opponents' Testimony</u>:

Kim Wilson, Helena Attorney, said he was the attorney for the plaintiff in the Golden Sunlight Mine law suit. That law suit didn't involve a loop-hole in the law. It involved a constitutional right that Montana citizens have, for all the mines to be reclaimed. The deficiency that Judge Honzel found in the Golden Sunlight Mine reclamation had to do with a section of statute that the state relied upon, essentially not requiring reclamation of the pit. The statute exempted from reclamation those open pits which may not be feasible to be reclaimed. The court found that exemption was unconstitutional. Judge Honzel said in his opinion was: "there was however no indication at the Constitutional Convention that open pit mines, particularly mines that may be permitted in the future, should be exempt from

reclamation. Because Section 82-4-336, subsection (7) does not require reclamation of open pit mines which may not be feasible to reclaim, is in conflict with Article 9, Section 2 of the Constitution. **Mr. Wilson** stated that under the proposed legislation, even with the proposed amendments, we are still talking about reclamation to the extent feasible, and even with the proposed amendments the legislation continues to be unconstitutional. The bill was creating two different standards for reclamation. All mines have to be reclaimed and open pit mines only to the extent feasible.

Jim Jensen, Executive Director, Montana Environmental Information Center, said the way the bill was written it would exclude back-filling of all mines in all places. The Golden Sunlight Mine's reclamation permit allows them to fill their pit with highly acidic water. Would you want that to be what would be called reclamation? What has happened in Butte will happen again in the future. The Montana Tunnels mines were allowed to be able to mine with full knowledge disclosed in the EIS that the pit would fill in the next 400 years with water of unknown quantity and unknown quality. The bill allows that circumstance to continue, and that should not be allowed to happen. He urged the committee to kill the bill.

Richard Parks, owner of a sporting goods store, and representing the Northern Plains Resource Council, said they concur with the amendments that have been proposed to strike the economically and technologically feasible language, that they had strongly objected to in the House hearing. The assertion that people in businesses other than mining don't produce any economic value to the State of Montana was not true. His industry produces approximately $250 million for the State of Montana on an annual basis. That was created out of the natural resources of the State of Montana every bit as much as the miner or the agriculturalist does. HB 338 should be killed.

Paul Roos, representing the Black Foot Chapter of Trout Unlimited, reviewed the amendments introduced by **REP. GRIMES. EXHIBIT 11.**

Mr. Roos reviewed the language in the amendments that say: "(1) To encourage mining as an activity beneficial to the economy of our state; and (2) To encourage the production of minerals to meet the needs of society..." That language seems fair if that was in the law regarding other activities such as agriculture, bird watching, sight seeing, fishing, etc.

Mr. Roos stated that regarding the language that says: "The Legislature finds that, when reclamation has been accomplished in accordance with an approved reclamation plan, the economic and social benefits of mining outweigh the scenic and other impacts associated with open pit mining", the people he represents would oppose that language. Not striking "economically and technologically" out of the bill, would even be worse.

Debby Smith, Helena Attorney representing the Sierra Club, said they oppose HB 338. They oppose the bill because the language that was proposed even with the amendments would still allow open pits to not be reclaimed and would set up two different standards of reclamation.

Ms. Smith had some of the same concerns with the bill that were previously stated.

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. GRIMES said the bill would make sure that the reclaimed area would be stable, and not create another litigation problem. He said there was no water in the pit at the Golden Sunlight Mine, and the bill would prevent another Berkeley Pit. The bill also addresses the issues that were in the law suit.

{Tape: 3; Side: A}

EXECUTIVE ACTION ON SB 366

SEN. COLE said they considered a lot of amendments to the Major Facility Siting Act, and after a lot of discussion came up with the way it was originally, with some exceptions. He reviewed the amendments as proposed by the Executive Branch, contained in **EXHIBIT 16.**

Motion: **SEN. COLE MOVED TO ADOPT AMENDMENTS PREPARED BY GREG PETESCH, NO. sb036605.agp, AS CONTAINED IN EXHIBIT 16.**

Discussion: **CHAIRMAN GROSFIELD** said in the hearing there was talk about an on-going study of the Major Facility Siting Act, and that we should wait a couple of years.

SEN. COLE said the only major thing that the bill changed was increasing megawatts to 150 megawatts.

Mr. MacIntyre said he worked with **Mr. Petesch** in developing the amendments and they were designed to make the bill one which would allow activities, that were discussed at the hearing, to retain the Major Facility Siting Act. The department and the administration approve the amendments.

SEN. BROOKE asked **Mr. MacIntyre** if the intent of the bill would exempt the Co-generation Plant in Billings from the Major Facility Siting Act. He replied that was correct.

SEN. BROOKE said the grey bill on Page 21 references a pre-hearing conference that recommended 30 days and is now 45 days, is that correct? **Mr. MacIntyre** replied that was correct. She asked if that was realistic. He answered that as they go through the hearing process they only have to go consider contested cases and that doesn't require a lot of time.

SEN. BROOKE wondered how the study group for improving the Montana Major Facility Siting Act would work, what the cost would be, who's budget it would affect, and how the report would be produced.

Van Jamison, Administrator Energy Division Department of Natural Resources and Conservation, said that group was already in place and he would have to defer that question to the administrator as to the costs.

Mr. Jamison said that currently there was a committee in place that was an extension of the committee that originally did the integrated resource planning bill from the 1991 session. As a followup they wanted to move right into the Major Facility Siting Act so there would be a connection between planning and rate-making.

Mr. Jamison said he spent considerable time trying to get the federal government to approve some funding and they agreed that they should fund it. It took nearly 2 years, but that money was in the agency's proposal to expend federal monies during the next biennium.

SEN. CHRISTIAENS asked **Mr. Jamison** if the bill would be necessary, because of the report that would be done in two years by the department. He replied that the proponents testified for the need for that kind of a bill.

SEN. CHRISTIAENS said the bill that was originally proposed and the bill that was before us now has only 2 parts: 1) time-frame and 2) the size of the facility. **Mr. Jamison** said there were some other important changes to the bill and that was to eliminate facilities that convert 500,000 tons of coal per year, which would be a permit change, and to eliminate the requirement to demonstrate the need for coal gasification and coal liquification.

Vote: **MOTION TO ADOPT AMENDMENTS NO. sb036605. agp, CARRIED UNANIMOUSLY.**

Motion: **SEN. COLE MOVED TO ADOPT AMENDMENT NO. sb036603.ate AS CONTAINED IN EXHIBIT 17, WITH A CHANGE IN ITEM (2) THAT TAKES OUT THE SECOND "less than".** He also said if the amendments do pass, **Mr. Everts** could change the numbers to tie into the amended bill.

SEN. BROOKE asked **SEN. COLE** what the amendments did. He answered that they were looking at what was a legal application of a "2

year window." What it means is that if someone was 90% done at the end of 2 years they would have an additional 3 months to finish the final correct application.

SEN. KEATING said they were talking about an application for a permit that was predicated on the history of the Major Facility Siting Act. When the 2 year sunset on the proposal was negotiated, and if a person made a sincere application for a permit within the 2 years, they would not get trapped if they got into construction beyond the end of the sunset if their project was not complete, and would not have to do the Facility Siting Act if the sunset was not extended. He asked **Mark Simonich, Director Natural Resources and Conservation,** when someone makes a request for an application or files for an application for a permit, they would have already done a lot of work and spent a lot of money in preparing that application, is that correct? He replied that was correct and that was why the language in the amendment addresses a "complete and correct application." If they simply send in an application, the DHES would send that applicant a list of all the areas that were deficient in the application, and until all the information was complete and correct, there was no application.

SEN. KEATING asked if there was something in the statutes that could be high-lighted for the record to show legislative intent when an application was submitted with great expense to the applicant, and was a bonafide application for a permit that leads to the exemption of the project from the Facility Siting Act through that window of opportunity. **Mr. Simonich** said what would be in the act, and the proposed amendments that were currently being considered. If there wasn't an amendment to the bill, the Facility Siting Act as it currently stands is what would happen when the 2 year exemption expires. They have to have air and water quality before they can operate. If those permits were in place by July 1997, and they were under construction, they would be allowed to go forward.

SEN. KEATING said for the record, the legislative intent, was an applicant submitting a correct and complete application and satisfying deficiencies if there were any, as being a start-up at that point. They don't have to have the permits within 2 years, they don't have to start construction within 2 years, it was just that they were a bonafide applicant and it was the legislative intent that they would be exempt if they do that within that window of opportunity. **Mr. Simonich** said that was correct, the intent of the administration is that the environmental laws of the state would still apply. What is being exempted is the requirement for the applicant having to go through the Major Facility Siting Act. They still have to go through the permitting process for air and water quality.

Vote: MOTION TO ADOPT AMENDMENTS No. sb036603.ate, CARRIED 10-1 WITH SEN. WELDON VOTING NO.

Motion: SEN. COLE MOVED TO DO PASS SB 366 AS AMENDED.

SEN. TVEIT asked **SEN. COLE** what the key changes were in the bill now, and why they should vote for it. He answered that the major change was that the threshold would now be 150 megawatts and the other amendment to the bill was the review committee, and some minor date changes.

Vote: MOTION TO DO PASS SB 366 AS AMENDED, CARRIED 9-2 WITH SEN. WELDON AND SEN. WILSON VOTING NO.

EXECUTIVE ACTION ON HB 201

Motion: SEN. CRISMORE MOVED TO ADOPT AMENDMENTS NO. hb020102.ate AS CONTAINED IN EXHIBIT 18.

REP. ELLIS explained the amendments to the committee members.

{Tape: 3; Side: B}

SEN. TVEIT asked **REP. ELLIS** if the 45-55 million board feet was the sustainable yield for timber harvest. He replied that they thought that when the study was done the yield would be in excess of that. **SEN. TVEIT** asked if that yield would be mandatory. **REP ELLIS** replied that the study that was in was measured in 1987. The Forest Service recently measured it, and there must be a measurement taken before any money goes into the fund. The timber companies have 2 years to cut.

SEN. TVIET asked what the DSL flexibility would be. Are we establishing something here that would be the way it is going to be, or the way it should be. **REP. ELLIS** said he believed the study would show larger figures for yield than the target range. There won't be any cutting until the study is completed. **SEN. TVEIT** asked if they were mandating that DSL would cut that range of 45 to 55 million board feet, or is there some flexibility if the market drops off. **REP. ELLIS** said that price was a bogus issue, because wheat and cattle growers held their crop because the price fell and ended up selling it lower. No one can predict what price was a better price.

SEN. CHRISTIAENS said he had a concern that they were mandating a certain amount of harvest per year without taking in the effect of the flexibility of market prices. That doesn't make good business sense.

SEN. KEATING said they were presented testimony about what happens in old growth situations. If you let the trees get too old, they lose value. It would be the same for ranching, if the calves were fed sufficiently to a certain point, and after that money would be wasted to continue to feed them so they were sold

for whatever the market price was. It was the same with sustained yield, in cutting the trees before they lose their value, and there was a sufficient old growth that should be cut and marketed regardless of the price.

SEN. CRISMORE said if the price does drop everything else would drop accordingly. As long as we are importing 30% of the lumber that is used, and everyone is running short on timber, the price will not drop. There is a situation in Montana where we aren't even starting to supply the demands.

SEN. BROOKE asked **Madalyn Quinlan, Office of Public Instruction** what the difference was between the proposed amendment no. 6 and the current language. She replied the difference would be that the amendment would only allow them to fund technology acquisitions with money they receive from the timber harvest, and there would be no cost to the state. With the proposed amendment to allow it to be transferred out of the general fund budget, there would be an estimate of about a $500,000 general fund cost. Districts can still take some money out of the fund, but it would be less. They could move approximately $1 million out of general fund and move it to the acquisition fund.

SEN. BROOKE was concerned that the school fund would be significantly reduced. She asked **Ms. Quinlan** if that was a valid concern. She replied it would be hard to say if that would compete with the general fund. The districts would still be able to use both funds.

SEN. COLE asked **REP. ELLIS** about the 30 million board feet he referred to. He said the study said that 30 million board feet was blowing down and dying. He said in the Forest Service analysis they indicated that 127 million board feet of growth on state timber lands and probably other school lands was available.

SEN. BROOKE asked that the amendments on Exhibit 18 be segregated.

CHAIRMAN GROSFIELD asked **Mr. Clinch** whether when timber was sold off of state lands, was that contracted to be harvested immediately, or would it be a one or five year contract. He replied it would probably be a two or more year contract and probably would not start right away, because of all the other issues involved, from water quality to grizzly bears.

SEN. GROSFIELD asked if they were sold for so much per thousand board feet, or would they be sold according to a market indicator. **Mr. Clinch** said they were tied to some escalating factors in market conditions, and if the value increases the state receives an increase. There were margins for change allowed. They do both escalators and de-escalators. It also takes the department between 12 to 18 months to prepare a timber sale, even if they knew the market was currently up.

SEN. WELDON said there could be consequences of setting the level of timber harvest from 45 to 55 million board feet.

CHAIRMAN GROSFIELD said if we say we aren't going to sell anything until it gets up to, say, $400, what happens then, will they sell everything. How could we justify not selling all of the timber.

SEN. WELDON said if the market was low, only sell say a quarter of the sustainable yield. **SEN. CRISMORE** said suppose they decide not to sell any timber. The biggest threat we have now would be some timber company coming in and saying you are not generating any revenue off of those lands and the trustees are suppose to do that. We are willing to buy that and will give you so many dollars per board feet. How can we defend that if we aren't generating any money from the timber. There are timber companies that would buy all the timber and give a better price than what we are getting today.

SEN. CHRISTIANS said he had a problem with the amount of sustained yield per year. He had a problem with the 45 to 55 million board feet. If the prices were low, you only sell some of it and when the prices go up, sell more. Do we want to tie the department to selling a certain amount each and every year.

SEN. BROOKE asked why they were doing this when there was a study going on by the DSL. The study will be out in a couple of months that would be modeling all kinds of different options of what would be a sustainable yield. It was untimely to try to resolve the issue when the study would be ready in a few months.

SEN. CRISMORE asked **SEN. BROOKE** if they were willing to wait for that study and it recommends 90 million board feet, would you be willing to mandate that.

CHAIRMAN GROSFIELD asked **Mr. Clinch** if the bill was passed, what would be the timing of the study that was referred to in Section 2. He answered the study that was referenced in the bill was an analysis of the inventory data that was done in the early 1980's and 1990's. It was his understanding that a 3rd party would look at that and come up with a sustained yield within approximately 12 months. The talk about the other study that was going on, the Programmatic EIS, in terms of developing a management strategy for the management of forested lands, it was not a sustained yield study.

Substitute Motion/Vote: **SEN. CRISMORE STATED HE WOULD SEGREGATE THE AMENDMENS AND MOVED TO ADOPT AMENDMENT NO. 1. MOTION CARRIED 6-3 WITH SEN. CHRISTIAENS, SEN. WELDON, AND SEN. WILSON VOTING NO.**

Motion/Vote: **SEN. CRISMORE MOVED TO ADOPT AMENDMENT NO. 2. MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. CRISMORE MOVED TO ADOPT AMENDMENT NO. 3. MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. CRISMORE MOVED TO ADOPT AMENDMENT NO. 4. MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. CRISMORE MOVED TO ADOPT AMENDMENT NO.5. MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. CRISMORE MOVED TO ADOPT AMENDMENT NO. 6.**

Discussion:

SEN. BROOKE said she had a problem with No. 6, because it would reduce the amount of funds schools could use for salaries.

Vote: **MOTION CARRIED 6-3 WITH SEN. BROOKE, SEN. CHRISTIAENS, AND SEN. WELDON VOTING NO.**

Motion/Vote: **SEN. CRISMORE MOVED TO ADOPT AMENDMENTS 7 AND 8. MOTION CARRIED UNANIMOUSLY.**

{Comments: SEN. TVEIT, SEN. FOSTER, AND SEN. MILLER, who had to attend a different committee meeting, left notes that they voted aye on all the amendments.}

Motion: **SEN. BROOKE MOVED TO ADOPT AMENDMENTS NO. hb020102.avb AS CONTAINED IN EXHIBIT 19.**

Discussion: **SEN. BROOKE** explained the amendments to the committee members. She said the bill addresses more than how to determine annual sustainable yield. They should make sure the funds were used for technical training for school district personnel. HB 201 not only wanted computers in the classroom, but also the knowledge to operate them and teach how to use them.

SEN. KEATING asked **Ms. Quinlan** if a lot of the schools currently have computers. She answered yes, but didn't know what the percentages were. A lot of schools have computer labs where the student can take that particular class to learn how to use the computer. It was important that the class room teacher had that training to be able to use that technology, and that was what was lacking in a lot of the school districts.

SEN. KEATING asked if the bill required the school district to buy computers. **Ms. Quinlan** said no. **SEN. KEATING** said it just allows them to use a portion of the general fund that would be furnished from timber harvest to buy computers if they choose to do so, is that right? **Ms. Quinlan** answered the money would be taken out of the general fund and put into a new fund call the "technology acquisition fund." The money can be expended for

hardware or software, access to networks and other kinds of educational technology.

SEN. CRISMORE asked **REP. ELLIS** if he thought the amendment would take more money away from the bill than what was intended. He answered that in Red Lodge, the teacher has to put 3 students at a time to a computer, and they don't all have the same capability, so her instruction has to be varied.

{Tape: 4; Side: A}

REP. ELLIS said the schools will still have to fund some of the expense out of the general fund, as they have currently been doing. The bill does relieve them of some of the responsibility so they can purchase equipment. It would be the committee's decision now.

SEN. CHRISTIAENS said it seems ludicrous to buy equipment and not have anyone trained in the school districts to work on them.

CHAIRMAN GROSFIELD asked who would make the decision whether or not to spend some of the funds on training, and how much, and who would do the training. **Ms. Quinlan** said that determination would be made by the trustees, and the school administrators would make the final decision on how much money would be spent on training. The decision would be made locally and **SEN. BROOKE'S** amendment would be another option.

CHAIRMAN GROSFIELD said he would support the amendment because it only addresses how some of the money would be spent. He said school districts could approach a company like IBM and say they would buy so many computers and they furnish the training. It is an issue of local flexibility.

Motion: **MOTION TO ADOPT AMENDMENTS NO. hb020102.avb, CARRIED WITH SEN. TVEIT AND SEN. KEATING VOTING NO.**

Motion: **SEN. BROOKE MOVED TO ADOPT AMENDMENTS NO. hb020104.avb AS CONTAINED IN AMENDMENT 20.**

Discussion: **SEN. BROOKE** explained the amendments to the committee members. There were other uses that make up sustainable yield. The trouble with the bill is that it focuses only on timber yield of state lands. For the long term all of those entities for the multiple use should be considered.

SEN. CRISMORE said there was not much timber land that was suitable for grazing. Water quality was already addressed in other bills. Timber sales would probably enhance wildlife. There were no restriction for recreation on the land. He said the amendments just muddy up the bill and he opposes them.

SEN. KEATING said the amendments go beyond the title and the scope of the bill. The bill was to study sustainable yield and deal with tree growth not grazing, water, etc.

SEN. WELDON said he takes a different approach to the title because it says: "an act requiring that annual sustainable yield be used as a factor." The bill would actually require a factor.

SEN. COLE said they were forgetting that they were talking about forested lands and was against the amendment.

SEN. BROOKE said she offered the amendment so that all renewable resources would be considered when the state was setting their long range management goals.

Vote: MOTION TO ADOPT AMENDMENTS NO. hb020104.avb FAILED ON A ROLL CALL VOTE OF 5-4.

Motion/Vote: SEN. CRISMORE MOVED TO CONCUR IN HB 201 AS AMENDED. MOTION CARRIED ON A ROLL CALL VOTE OF 7-4.

{Comments: the meeting was recorded on 4, 2 hour tapes.}

ADJOURNMENT

Adjournment: 8:30 PM

Lorents Grosfield

LORENTS GROSFIELD, Chairman

Theda Rossberg

THEDA ROSSBERG, Secretary

by Shirley Norris

LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-13-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
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
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CS-09

SENATE STANDING COMMITTEE REPORT

March 14, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 366 (first reading copy -- white), respectfully report that SB 366 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 5.
Strike: "75-20-102,"
Strike: "75-20-201,"

2. Title, line 6.
Strike: "75-20-205, 75-20-211,"
Strike: "75-20-213, 75-20-215, 75-20-216,"
Strike: "75-20-219,"

3. Title, line 7.
Strike: "75-20-222," through "75-20-227,"
Following: "75-20-301,"
Insert: "AND"

4. Title, line 8.
Strike: line 8 through "85-15-107,"

5. Title, line 9.
Strike: "SECTIONS 75-20-103, 75-20-302, 75-20-404, 75-20-409, 75-20-501,"
Insert: "SECTION"
Following: "75-20-502,"
Strike: "AND"

6. Title, line 10.
Strike: "75-20-503,"
Following: "DATE"
Insert: "AND AN APPLICABILITY PROVISION"

7. Page 1, lines 14 through 26.
Strike: section 1 in its entirety
Renumber: subsequent sections

8. Page 2, line 13.
Following: "~~need~~"
Insert: "and public need"

Amd. Coord.
Sec. of Senate

9. Page 3, line 10.
Strike: "250"
Insert: "25"

10. Page 3, line 11.
Following: "~~million~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant"

11. Page 3, line 12.
Strike: "100,000"
Insert: "25,000"

12. Page 3, line 13.
Following: "~~million~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant"

13. Page 3, line 15.
Following: "~~or~~"
Insert: "or any addition thereto"

14. Page 4, line 2.
Following: "~~coal~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant;
(e) any underground in situ gasification of coal"

15. Page 4, lines 11 through 25.
Strike: section 3 in its entirety
Renumber: subsequent sections

16. Page 5, lines 8 through 18.
Strike: subsection (3) in its entirety
Renumber: subsequent subsection

17. Page 5, line 30 through page 7, line 30.
Strike: sections 6 and 7 in their entirety
Renumber: subsequent sections

18. Page 8, line 7 through page 11, line 28.
Strike: sections 9 through 11 in their entirety
Renumber: subsequent sections

19. Page 12, line 9 through page 13, line 9.

Strike: section 13 in its entirety
Renumber: subsequent sections

20. Page 13, line 19.
Page 14, line 15.
Strike: "30"
Insert: "45"

21. Page 14, line 16.
Strike: "45"
Insert: "60"

22. Page 14, line 20.
Strike: "3"
Insert: "8"

23. Page 15, line 2.
Strike: "and"

24. Page 15, line 7.
Following; ";"
Insert: "(c) any person entitled to receive service of a copy of the application under 75-20-211(5);
(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;"
Renumber:subsequent subsection

25. Page 15, line 12.
Following: "~~(1)~~"
Insert: "(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsection (1)(b) through (1)(e)."
Renumber: subsequent subsections

26. Page 15, line 22 through page 18, line 1.
Strike: sections 16 through 19 in their entirety
Renumber: subsequent sections

27. Page 18, line 11.
Following: "~~facility;~~"
Insert: "the basis of the need for the facility;"

28. Page 18, line 12.

Following "~~(b)~~"
Insert: "(b)"
Renumber: subsequent subsections

29. Page 18, line 15.
Following: "~~75-20-503;~~"
Insert: "(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
(d) each of the criteria listed in 75-20-503;"
Renumber: subsequent subsections

30. Page 18 line 21.
Following: "~~local~~"
Insert: "and local"

31. Page 18, line 25.
Following: "~~subdivisions~~"
Insert: ", except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions"
Strike: "and"

32. Page 18, line 26.
Following: "~~;~~"
Insert: "(g) that the facility will serve the public interest, convenience, and necessity;"
Renumber: subsequent subsection

33. Page 19, line 10.
Following "~~facilities~~"
Insert: "; and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting

from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities described in 75-20-104(10)(a)(i), (10)(b), (10)(c), and (10)(d)"

34. Page 20, line 19 through page 24, line 29.
Strike: sections 22 through 28 in their entirety
Insert: "NEW SECTION. **Section 10. Reports.** The department of natural resources and conservation shall prepare and present a report to the 55th legislature with recommendations for improving and modernizing the Montana Major Facility Siting Act. The department shall convene a state dialogue to develop the report and recommendations. The participants in the dialogue shall represent a broad spectrum of interests affected by the siting, construction, and operation of major facilities, including utilities, energy development groups, interested industries, ratepayers, regulators, landowners, and citizen groups. The dialogue is to be designed to seek the involvement of a broad range of affected interest groups in the discussions of reforming the Montana Major Facility Siting Act, with the express intent of eliciting a consensus. The consensus developing process must use a facilitator who is not an employee of the department.

NEW SECTION. **Section 11. Termination.** The amendment to 75-20-104(10)(a)(i) contained in [section 1] that increases the megawatts of electricity produced from "50" to "150" terminates on June 30, 1997.

NEW SECTION. **Section 12. Applicability.** (1) A person who between [the effective date of this act] and June 30, 1997, has submitted a correct and complete application for all applicable air and water quality permits from the department of health and environmental sciences or has commenced to construct or commenced or applied to upgrade a power plant that has been designed for or will be capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20.

(2) A person who between [the effective date of this act] and June 30, 1997, has filed an application for all applicable air and water quality permits from the department of health and

environmental sciences for a power plant capable of generating less than 150 megawatts, is not subject to the provisions of Title 75, chapter 20, if the application is correct and complete as of October 1, 1997."
Renumber: subsequent sections

35. Page 25, lines 1 and 2.
Following: "Repealer." on line 1
Strike: remainder of line 1 through "75-20-501," on line 2
Insert: "Section"
Strike: "and 75-20-503,"
Strike: "are"
Insert: "is"

-END-

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration HB 201 (third reading copy -- blue), respectfully report that HB 201 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1, line 24.
Strike: "50"
Insert: "a range of 45 million board feet to 55"

2. Page 1, line 28.
Following: "department."
Insert: "This annual requirement may be reduced proportionately by the amount of sustained income to the beneficiaries generated by site-specific alternate land uses approved by the board."

3. Page 2, line 19.
Strike: ", throughout the biennium"

4. Page 2, line 27.
Following: "equal to"
Strike: "90% of"

5. Page 2, line 28.
Strike: "1994 timber harvest from state lands and the sustainable yield provided in [section 2(2)] may"
Insert: "average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to"

6. Page 3, line 13.
Following: "FOR"
Insert: ": (a)"

7. Page 3, line 14.
Following: "ACCESS"
Insert: "; and
(b) associated technical training for school district

Amd. Coord. _____
Sec. of Senate

Senator Carrying Bill

personnel"

8. Page 3, line 16.
Following: "GENERAL FUND"
Insert: ", within the adopted budget,"

9. Page 3, lines 18 and 19.
Following: "DISTRICT"
Strike: "DETERMINE THAT AN AMOUNT OF REVENUE IS REQUIRED FOR A TECHNOLOGY ACQUISITION FUND BUDGET"
Insert: "establish the technology acquisition fund"

10. Page 3, line 20.
Following: "(A)"
Strike: "WHEN THE TRUSTEES ESTABLISH THE FUND,"

-END-

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3-13-95
BILL NO. HB-478

Amendment

House Bill 478 (third reading copy)

Senate Natural Resources Committee

Prepared by Montana Association of Conservation Districts

1. Page 2, line 5.
Strike: "AN ADVERSE"
Insert: "a"
Strike: "DUE TO SOIL EROSION"

2. Page 2, line 6.
Strike: "OR SEDIMENTATION"
Insert: "in contravention of 75-7-102"

3. Page 2, line 7 through line 12. Following: "include" on line 7
Strike: remainder of line 7 through line 12 in their entirety.
Insert: ": (i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102."

4. Page 3, line 5. Following "notice of the"
Insert: "proposed"

5. Page 3. Following: line 10
Insert: "(4) The district may authorize a representative to accept notices of proposed projects."

6. Page 3, line 12. Following: "notice of a"
Insert: "proposed"

7. Page 3, line 13. Following: "the district"
Insert: "or the district's authorized representative"
Strike: "proposed"

Following: "project."
Insert: "If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of project, the applicant may proceed upon written notice of the supervisors."

House Bill 478
March 13 1995
Testimony Presented by Robert Martinka
Montana Fish, Wildlife & Parks
before the Senate Natural Resources Committee

As most of you know, this Department has a long standing cooperative relationship with the County Conservation Districts in administration of the Natural Streambed and Land Preservation Act.

We have worked with the Department of Natural Resources and Conservation and the Montana Association of Conservation Districts during the drafting of this bill. We particularly appreciate the efforts of Representative Story to try and get input from all parties who are interested in this legislation. We believe that the majority of proposed changes strenghten the law and make it an even more effective tool for protecting streams from being degraded. We particularly appreciate the more detailed guidance given in this bill to emergency projects and conditions for project approval.

We are, however, concerned about the change in definition of a project from the previous draft. The most recent draft of the bill that we reviewed defines a project as "a physical alteration or modification of a stream in the state of Montana that results in an adverse change in the state of the stream due to soil erosion or sedimentation." First, there are some projects that may potentially have an adverse effect on a stream without causing soil erosion or sedimentation. Secondly and most importantly, the primary purpose of this law is to prevent adverse changes to rivers and streams. We believe that the best way to deal with this is to use the definition of project that was in the original bill, "a physical alteration or modification of a stream in the state of Montana that results in a significant change in the state of the stream." This leaves it up to the Conservation Districts to determine if a project will cause adverse effects and to recommend alternatives that will prevent them.

With the exception of the above, we believe this is a good bill and we support the efforts of our co-workers in MACD and DNRC.

Amendments to House Bill No. 412
Third Reading Copy

Requested by Rep. Orr
For the Committee on Natural Resources

Prepared by Todd Everts
March 22, 1995

1. Page 1, line 24.
Strike: "and"
Insert: "or"

2. Page 2, lines 3 through 22.
Strike: the second "report" on line 3 through "LAWS." on line 22
Insert: "set of documents that are prepared as a result of an environmental self-evaluation. All documents that are part of an environmental self-evaluation report must contain the date or dates on which the environmental self-evaluation was conducted. An environmental self-evaluation report must:

(a) contain materials that were collected or developed for the primary purpose of and in the course of conducting an environmental self-evaluation and that may include but are not limited to field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memorandums, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys;

(b) state the scope of the environmental self-evaluation, the information obtained, and conclusions and recommendations with a reference to supporting data or supporting information that is to be generated or that has already been generated for purpose of the report;

(c) identify proposed actions to resolve identified violations in accordance with applicable environmental laws; and

(d) indicate identified violations that have been resolved or indicate that a plan has been implemented to resolve the violations in accordance with applicable environmental laws."

3. Page 2, line 28 and 29.
Strike: "CORRECTS" on line 28 through "AGENCY" on line 29
Insert: "submits to the appropriate regulatory agency, in writing, the following information:

(i) the date of the self-evaluation that identified the violations;

(ii) a description of the violation, including all data pertinent to the determination that a violation existed;

(iii) the action being undertaken to correct the violation;

(iv) an estimated timetable for correcting the violation; and

(v) a commitment to diligent resolution of the violation"

4. Page 3, line 1.
Strike: "issues"
Insert: "violations"
Following: "disclosure"
Insert: "pursuant to applicable environmental laws"

5. Page 3, line 8.
Strike: "(4)"

6. Page 3, line 10.
Following: "ENTITY"
Insert: "identified in [section 4(2)]"

7. Page 3, line 12.
Strike: "REPORT OR ANY MATTER that is addressed in"
Insert: "or"

8. Page 3, line 16.
Following: "conducted"
Insert: "or to the extent that the owner or operator consents to disclosure"

9. Page 4, line 1.
Strike: "tribunal"
Insert: "body"

10. Page 4, line 4.
Strike: "tribunal"
Insert: "body"

11. Page 4, line 15.
Strike: "TO COMPLETION"
Insert: "to resolve the violation in compliance with applicable environmental laws"

12. Page 4, line 21.
Strike: "necessary proof"
Insert: "prima facie evidence"

13. Page 4, line 22.
Following: "COMPLETION"
Insert: "and including a commitment that completion will be accomplished in accordance with applicable environmental laws"

14. Page 5, line 4.
Following: "prepared"
Insert: "or the state's attorneys"
Strike: "tribunal"
Insert: "body"

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-13-95
BILL NO. HB-412

15. Page 5, line 5.
Strike: "Failure"
Insert: "Unless the state files a petition, failure"

16. Page 5, line 6.
Strike: "tribunal"
Insert: "body"
Following: "shall"
Insert: "immediately"

17. Page 5, line 24.
Strike: "tribunal"
Insert: "body"

18. Page 6, line 5.
Strike: "OR"
Insert: ", except to the extent derived"

19. Page 6, line 7.
Following: the second "SELF-EVALUATION"
Insert: "report"
Strike: "OR"

20. Page 6, line 10.
Strike: "."
Insert: ";"

21. Page 6.
Following: line 10
Insert: "(6) information contained in the environmental self-evaluation report that is relevant in a civil action for alleged damage to real property or to tangible personal property in areas outside of the facility property provided that the causes of action asserted are not for alleged violations of environmental laws and that only that portion of the report may be disclosed that is relevant to the action; or
(7) information contained in the environmental self-evaluation report that is relevant in a civil action for alleged personal injury provided that the causes of action asserted are not for alleged violations of environmental laws and that only that portion of the report may be disclosed that is relevant to that action."

22. Page 6, line 17.
Following: "be"
Insert: "sought or"
Strike: "tribunal"
Insert: "body"

23. Page 6, line 18.
Following: "law"
Insert: ", except for a violation of Title 82, chapter 4, part 1 or 2, first made known only by the entity conducting the environmental self-evaluation,"

24. Page 6, line 21.
Strike: "was not initiated within a reasonable period of time"
Insert: "does not meet the requirements of [section 2(4)(d)]"

25. Page 6, lines 22 and 23.
Strike: "significant" on line 22 through "ENVIRONMENT" on line 23
Insert: "a clear, substantial, and immediate threat of actual harm to the public health or to the environment"

26. Page 6, line 26.
Following: "AUTHORITY"
Insert: "or within a reasonable time after disclosure is made. All information submitted to a regulatory agency regarding a voluntarily disclosed violation is public information"

27. Page 6, line 29.
Strike: "TRIBUNAL"
Insert: "body"

28. Page 7, lines 5 though 11.
Strike: "[THIS" on line 5 through "ACT]." on line 11.
Insert: "(1) The evidentiary privilege created by [this act] applies to environmental self-evaluation reports that are prepared as a result of environmental self-evaluations after [the effective date of this act] and before [the termination date of this act].

(2) The limited protection for voluntary disclosures created by [this act] applies to voluntary disclosures that are made during the period beginning on [the effective date of this act] and ending on [the termination date of this act].

(3) [This act] applies to all legal actions and administrative actions commenced on or after [the effective date of this act].

(4) Environmental self-evaluation reports that are privileged under [this act] and voluntary disclosures that are protected under [this act] must remain privileged and protected after [the termination date of this act]."

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-13-95
BILL NO. HB-412

AMENDMENTS TO HB 412

1. Page 5, line 14.
Following: "law"
Insert: ", except for a violation of Title 82, chapter 4, parts 1 or 2,"

AMENDMENT TO HOUSE BILL 412

REQUESTED BY
THE MONTANA ASSOCIATION OF REALTORS

MARCH 10, 1995

PAGE 3, LINE 27: AMEND TO READ

(b) disclosure made under the terms of a confidentiality agreement between the owner or operator, AND HIS AGENT, and a potential purchaser, AND HIS AGENT, of the facility or operation; or... .

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-13-95
BILL NO. HB-412

Amendments to House Bill No. 412
Second Reading

For the Committee on Natural Resources

Prepared by Montana Power Company
March 13, 1995

1. Page 1, line 24.
Strike: "and"
Following: "environment"
Insert: "or"

2. Page 2, line 3.
Strike: line 3 through line 10 and line 17 through line 22
Insert: "(3) Environmental self-evaluation report" means a set of documents that are prepared as a result of an environmental self-evaluation. All documents that are part of an environmental self-evaluation report must contain the date or dates on which the environmental self-evaluation was conducted. An environmental self-evaluation report must:

(a) contain materials collected or developed for the primary purpose of and in the course of conducting an environmental self-evaluation, which may include but are not limited to field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memorandums, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, and surveys;

(b) must state the scope of the environmental self evaluation, the information obtained, and conclusions and recommendations, with a reference to supporting data or supporting information to be generated or which has already been generated for purpose of the report;

(c) identify proposed actions to resolve identified violations in accordance with applicable environmental laws; and

(d) indicate identified violations have been resolved or that a plan has been implemented to resolve the violation in accordance with applicable environmental laws."

3. Page 2, line 28.
Following:"manner"
Strike: "corrects the violation according to the compliance plan approved by the regulatory agency;"
Insert: "submits to the appropriate regulatory agency a written description of action taken to correct the violation in compliance with applicable laws."

4. Page 3, line 1.
Strike: "issues"
Insert: "violations"
Following:"disclosure"
Insert: "pursuant to applicable environmental laws."

5. Page 4, line 1
Following:"administrative"
Strike: "tribunal"
Insert: "body"

6. Page 4, line 15.
Following:"pursued"
Strike: "to completion"
Insert: "to resolve the violation in compliance with applicable environmental laws "

7. Page 4, line 21.
Following:"including"
Strike: "necessary proof"
Insert: "prima facie case "

8. Page 4, line 22.
Following:"completion"
Insert: ", including a commitment that completion will be accomplished in accordance with applicable environmental laws."

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-13-95
BILL NO. HB-412

9. Page 5, line 4.
Following:"prepared"
Insert: "or the state's attorney"

Following:"administrative"
Strike: "tribunal"
Insert: "body"

10. Page 5, line 5.
Following:"report."
Insert: "Unless the state files a petition, "

11. Page 5, line 6.
Following:"shall"
Insert: "immediately "

Following:"administrative"
Strike: "tribunal"
Insert: "body"

12. Page 5, line 7.
Following:"review"
Strike: "within"
Insert: "to be held"

13. Page 6, line 5.
Following:"self-evaluation"
Strike: "or"
Insert: "except to the extent derived"

14. Page 6, line 7.
Following:"self-evaluation"
Insert: "report"

15. Page 6, line 17.
Following:"administrative:
Strike: "tribunal"
Insert: "body"

16. Page 6, line 23.
Following:the second "the"
Insert: "physical"

17. Page 6, line 26.
Following:"authority"
Insert: "or within a reasonable time after disclosure is made."

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE 3-13-95
BILL NO. HB-412

18. Page 6, line 29.
Following: "administrative"
Strike: "tribunal"
Insert: "body"

19. Page 7, line 6.
Strike: lines 6-11

Insert: "(1) The evidentiary priviledge created by [This Act] applies to environmental self-evaluation reports that are prepared as a result of environmental self-evaluations after the effective date of this act and before June 30, 2001.

(2) The limited protection for voluntary disclosures created by [This Act] applies to voluntary disclosures that are made during the period beginning on the effective date of This Act and ending on June 30, 2001; and

(3) All legal actions and administrative actions commenced on or after [the effective date of this Act].

(4) Environmental self-evaluation reports that are priviledged under This Act and voluntary disclosures that are protected under This Act prior to June 30, 2001, shall remain priviledged and protected after This Act terminates on June 30, 2001.

MontPIRG

Montana Public Interest Research Group
360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony Against House Bill 412, March 13, 1995
Chairman Grosfield and members of the Senate Natural Resource Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members, and is funded with membership donations.

As an advocacy organization advocating good government and sound environmental protection, MontPIRG rises in opposition to House Bill 412

While the purported purpose of this bill is to encourage industries to report and remedy environmental violations, House Bill 412 will actually have the effect of shielding a polluting industry from public scrutiny.

The problem with the system set up in House Bill 412 is that any information disclosed on an "environmental self-evaluation report" is privileged and therefore inadmissible in court and unavailable to the public.

As an organization involved in developing legislation to site hazardous waste facilities, MontPIRG is dismayed by this legislation. When this committee tabled SB 199, we were told that current state laws were sufficient to protect Montana citizens. If this bill passes we would have no way of knowing if this was the case if the facility in question filed environmental self-evaluation report.

Public scrutiny of violations and their remedy are important because it contributes to the public's faith in governmental decisions. Without public scrutiny the public can not be guaranteed that there is no wrong-doing on the part of the company or the regulatory agency.

House Bill 412 represents an unacceptable risk to not only the environment and human health, but also to the public's confidence in their government. For these reasons we urge you to table House Bill 412.

MISSOULA COUNTY
MISSOULA

MISSOULA CITY-COUNTY HEALTH DEPAR
301 W ALDE
MISSOULA MT 5980?
(406) 5[illegible]-

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-13-95
BILL NO. HB-412

Missoula Valley Water Quality District

March 13, 1995

Senator Lorents Grosfield, Chair
Senate Natural Resources Committee
Montana Senate
Helena MT 59620

RE: House Bill 412

Dear Senator Grosfield,

We are unable to attend today's hearing on Senate Bill 412, but wish to offer the following comments.

Our Department would welcome legislation that would encourage voluntary disclosure and remediation of environmental problems. We agree with the intent of House Bill 412. However, we think it is a bad idea to allow a person to conduct an environmental self-evaluation, not disclose its results, address the problem without any regulatory oversight, and be protected against the use of the information in a legal proceeding. We feel that this presents an undesirable risk to both the public and to the person who voluntarily addresses the problem.

This bill would allow a person to conduct an environmental self-evaluation, prepare a written report of the evaluation and receive protections against its findings being used against them in a legal proceeding. The self-evaluation must contain a proposed corrective action. Disclosure of the self-evaluation is optional. The person must implement their proposed corrective remedy with reasonable diligence. But the person may do this without disclosing the problem or its plans to an oversight agency. As such, ***they are taking a chance that the proposed remedy may fall short of legal requirements, may violate other laws or regulations, or may actually make matters worse.*** This, in our view, poses an unacceptable risk for both the public and the person responsible for the problem.

As an incentive, the bill would encourage voluntary disclosure of the self-evaluation by providing protection against legal penalties. A " Voluntarily disclosed violation" is defined in the bill as one in which the person making the disclosure ***corrects the problem according to the compliance plan approved by the regulatory agency.***

We suggest that the bill be amended to require cleanup in accordance with an agency-approved plan in order to obtain any sort of legal protection. This could be accomplished through the following amendments:

Page 2, line 24. Immediately following "environmental self-evaluation" insert "and resulting environmental self-evaluation report."

Page 3, line 14. Insert new subsection (1), "In order to obtain the limited privileges contained in (Section 3) the person conducting the self-evaluation and self-evaluation report must voluntarily disclose the violation to the agency that has regulatory authority with regard to the violation disclosed, and initiate action to resolve the violation in a diligent manner and correct the violation according to a compliance plan approved by the regulatory agency."

We believe these amendments would protect both the public interest and the regulated parties by eliminating the potential for ill-advised, inappropriate, or potentially damaging corrective actions by people who intend to do the right thing.

Sincerely,

Peter Nielsen

Peter Nielsen
Environmental Health Supervisor

cc: Senator Jeff Weldon
Senator Vivian Brooke

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 3-13-95
BILL NO. HB-412

March 13, 1995

To: Senate Natural Resources Committee

From: Dan Pittman
#2 Twilight Drive
Clancy, MT 59634

Re: HB 412

Dear Mr. Chairman and Committee Members:

I am a self employed natural resource consultant living and working in the Montana City area. In general, I support the intent of this bill to help bring some common sense into the environmental laws but I have some questions and concerns which I would like to have considered by a subcommittee before approval is recommended.

Section 3, paragraph 2, sentence 12. Amend to eliminate the words "REPORT OR ANY MATTER."

Section 4, paragraph 3, sentence 18. Please define SUBSTANTIAL IMPENDING DANGER.

Section 5 , paragraph 1, sentence 1. " documents, communications, data, reports, or other information **required** to be collected, developed, maintained, or reported **to a regulatory agency** pursuant to environmental law;" My concern is, what is not required to be reported by an owner or operator of a facility that generates, incinerates or stores hazardous waste or a facility operating under an old air quality permit.

I oppose this legislation without amendments that would ensure public health and safety from those facilities which generate, incinerate and store hazardous waste. Please direct this bill to a subcommittee for further consideration.

Sincerely,

Dan Pittman

MILT CARLSON
375 Grandview Drive
Kalispell, MT 59901-2614

March 12, 1995

Senator Bill Wilson
Capitol Station
Helena MT 59620-1706

RE: HB 412 (Orr,Libby)

Dear Senator:

Please, please consider the long range effects of this Bill proposing privilege for a so-called "environmental self-evaluation report" and send this Bill to the never-never land that it wants to create in this State. Vote **"NO" on HB 412.**

Having been involved in the beet sugar business for over 36 years, I am cognizant of all types of requirements of corporate and public entities especially as they regard the environment. Any company that does not self-audit is stupid, and any company that does not deal openly with the public is merely asking for trouble.

If any threat to the public health and welfare exists anywhere in the State of Montana, we are all stakeholders and require more than voluntary cooperation from an entity. Our State agencies are underfunded and overburdened enough at this point, and this Bill, if enacted, would send the public interest farther down the list of priorities (or eliminate it).

Kindly put down this unworkable and unreasonable bill by voting "NO" and let us get on with positive efforts to maintain, not destroy, Montana's quality of life and reason.

Sincerely,

Milt Carlson

Milt Carlson

Copy to Governor Racicot

Proposed Amendments to House Bill 338
Second Reading Copy (unchanged on third reading)
Introduced by Rep. Grimes

1. Page 1
FOLLOWING: Title
INSERT: "Statement of Intent. In this Act, the Legislature is implementing, with regard to open pits and rock faces which are the result of hard rock mining, the duty imposed upon it by the Montana Constitution, Article IX, Section (2), Clause (1), which provides: "All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed."

The drafters of this provision of the Constitution expressly decided not to impose a constitutional requirement for a specified level of reclamation for all disturbed lands in all locations under all circumstances. Rather, they delegated to the Legislature the duty to more specifically define reclamation in the public interest.

The Legislature expects, and this act requires, that mining companies will prepare and submit to the state reclamation plans for open pits and rock faces. This act requires that these plans will, at a minimum, provide for return of these lands to structural stability; that the plans must be protective of air and water quality and prevent degradation of adjacent lands is provided elsewhere in the Metal Mine Reclamation Act. These requirements and standards will prevent risks to public health, safety, and the environment and thereby will adequately protect the environmental life support system from degradation.

In order to prevent unreasonable depletion and degradation of natural resources, as required by Montana Constitution Article IX, Section 1, Clause (3), the legislature finds that further reclamation of open pits and rock faces, to provide functional uses and to blend with surrounding areas, should be accomplished whenever feasible. In determining feasibility of further reclamation, the Legislature directs the Department to consider and give effect to each of the following policy objectives:

(1) To encourage mining as an activity beneficial to the economy of our state;

(2) To encourage the production of minerals to meet the needs of society and the economic demands of the marketplace;

(3) To encourage reclamation to a condition which is aesthetically unobtrusive;

(4) To encourage reclamation to a functional use;

(5) To discourage requirements which may foreclose future access to mineral resources not fully developed by current mining operations;

(6) To discourage requirements which will generate undesirable off-site environmental impacts.

The Legislature finds that functional post-reclamation uses include, but are not limited to, livestock grazing, agriculture, timber, recreation, wildlife habitat or other wildlife use, or other industrial use, including re-mining.

The Legislature finds that, when reclamation has been accomplished in accordance with an approved reclamation plan, the economic and social benefits of mining outweigh the scenic and other impacts associated with open pit mining."

2. Page 2, lines 23, 24
Following: "extent", line 23
Strike: "economically and technologically"

3. Page 2, lines 25, 26
Following: "extent", line 25
Strike: "economically and technologically"

-End-

HOUSE NATURAL RESOURCE COMMITTEE TESTIMONY ON HB338 (OPEN PIT MINE RECLAMATION BILL)

By

Fess Foster, Ph.D.
Director of Geology and Environmental Affairs
Golden Sunlight Mines, Inc., Whitehall, MT

March 13, 1995

Justification

An amendment to the Montana Metal Mines Reclamation Act (MMRA) is necessary due to a September 1994 ruling by the Helena District Court. The Montana State Constitution states that "all lands disturbed by the taking of natural resources shall be reclaimed to as good a condition or use as prior to the disturbance". MMRA, as amended in 1985, states that open pits and rock faces which are not feasible to reclaim are not required to be reclaimed "to comparable utility and stability as that of adjacent areas".

The court ruled that this clause in the MMRA violates the constitution because it could be interpreted to mean that open pits do not need to be reclaimed. However, the court did not define what constitutes "reclamation".

Background

Montana's mining industry recognizes the need to reclaim open pits. However, we want you to know that different reclamation techniques are required for different types of mine disturbances. For example, waste dumps (piles of broken rock surrounding a mine) are commonly covered with soil and revegetated. Obviously, earth moving equipment cannot be feasibly or safely operated on steep open pit faces to apply soil. Further, the soil would rapidly erode from the steep faces. As a consequence, most pits cannot be covered with soil.

In addition, the hole created by pits cannot always be filled. In many cases filling the pit is not economical (in other words, the mine would not operate at a profit if the pit were filled). Some might argue that all pits should be filled, regardless of the economic consequences. But remember that this requirement would put many mines out of business, and force the mining industry to other countries where regulations are less restrictive. Aside from the economic benefits of mining, the U.S. is the largest consumer of natural resources in the world. Don't we have an obligation to extract those resources that we do have in an environmentally sound manner, rather than spoiling other countries' land to obtain raw materials to make our "stuff" from? To do otherwise would be environmental hypocracy.

EXHIBIT NO. 12
DATE 3-13-95
BILL NO. HB-338

No two pits will be reclaimed identically. In some cases, leaving a pit open after mining may actually lessen environmental impacts. As an example, some pits contain water. If they are left open, those waters can be reached with pumps and be treated so that they will not affect any local groundwater. Obviously, mine regulators need flexible statutes in order to develop reclamation plans that are specific to each pit.

Solution

The MMRA should be amended so that there are no questions regarding its compliance with the state constitution, and still allow environmentally sound development of the resources that we all require in order to live a healthy and enjoyable lifestyle. The amendment should also be worded to allow mine regulators flexibility in developing open pit reclamation plans. Each mine is unique geologically and geographically. Regulatory technical staff need to be able to take the site-specific aspects of each mine into consideration in order to develop the most environmentally sound reclamation plan.

Such an amendment has been proposed as House Bill No. 338. It revokes the current exemption from reclamation for open pits and rock faces that are not feasible to reclaim. Instead, it requires that all open pits and rock faces be reclaimed to a condition:

"a) of stability structurally competent to withstand normal geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

b) that affords such utility to humans and the surrounding natural system to the extent feasible under the circumstances; and

c) that blends with the appearance of the surrounding area to the extent feasible."

Note that the provision in the Montana Constitution applies to "all lands disturbed by the taking of natural resources". It therefore should also apply to reservoirs, roadcuts along highways, and many other disturbances that, like mining, result from using our natural resources for the betterment of society. Certainly there are more disturbed acres from roadcuts than open pits in Montana. We feel that the amendments proposed in House Bill No. 338 require that the mining industry go well beyond other industries to comply with the constitution.

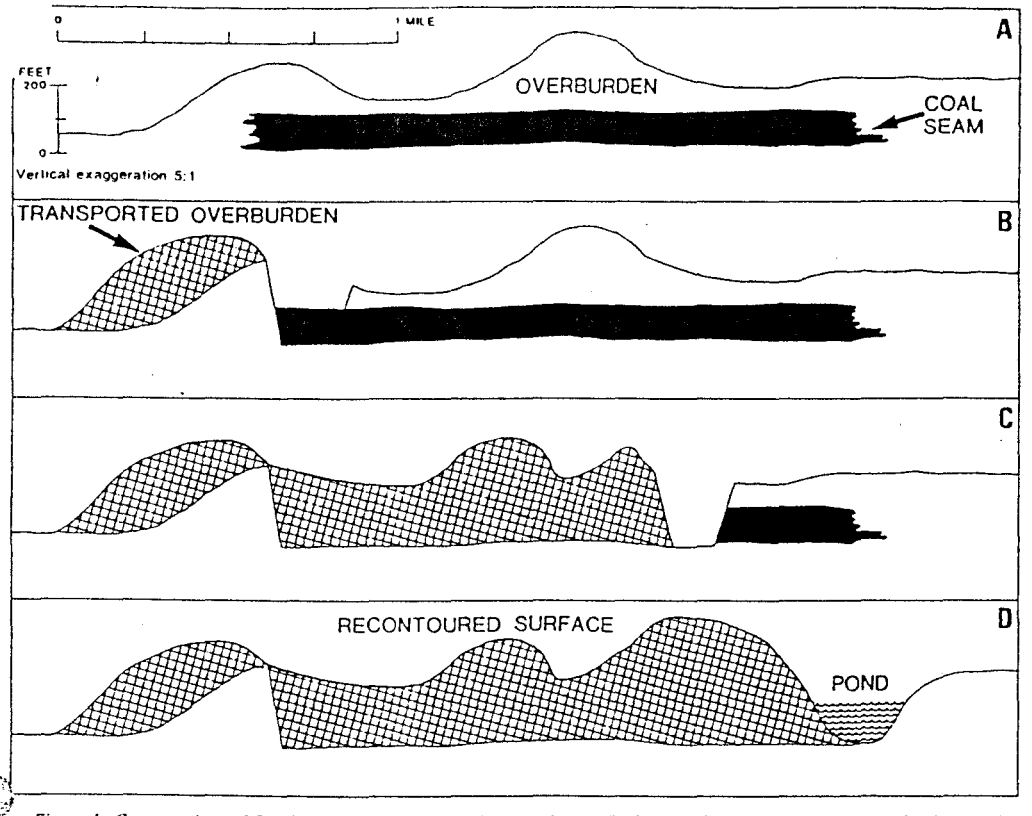

Figure 1. Cross sections of Breakeven's Itsa Mine, a coal mine where a flat-lying coal seam is covered by overburden ranging from 50 to 300 ft in thickness. Note vertical exaggeration. A. Pre-mine cross section, showing the original contour of land before mining begins. B. When the first cut is made, the overburden is built up into a hill until coal is finally exposed for mining. As soon as no new material is to be added to the overburden hill, the hill is contoured, covered with topsoil that was removed from the mine site, and revegetated to make it stable and not prone to landsliding. C. After coal is removed from a portion of the excavation, overburden removed from a different part of the mine is piled into the mined-out area, contoured, topsoiled, and revegetated. This cycle is repeated until the end of the mine is reached. D. The mine after mining has ceased, the land has been restored to the "approximate original contour," and a pond has been created for wildlife or recreational use.

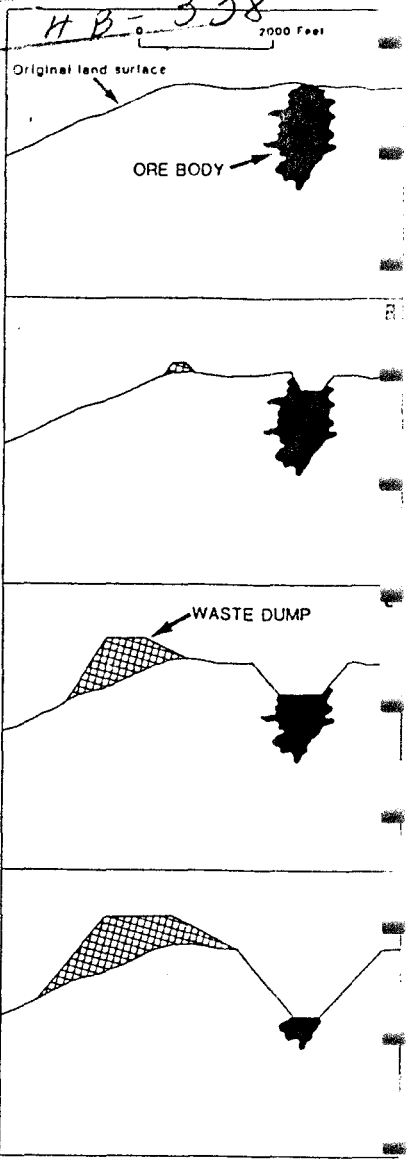

Figure 3. Cross sections of Justa Mine, a western U.S. mine developing an egg-shaped ore body. A. Pre-mine topo showing the location and shape of the ore body. B. First the ore body. Note how far away from the ore body th material must be transported, so that later excavations w undercut the waste dump. C. Mine when about half of t body has been removed. Note how it is impossible to begin the pit at this stage without covering up some of the re ore. D. Mine site after the currently economic ore body h removed. Waste has been piled some distance from the p the waste pile can be contoured and seeded.

EXHIBIT NO. 13
DATE 3-13-95
BILL NO. HB-338

P.O. Box 856
Whitehall, MT 59759

CURE
Citizens United For A Realistic Environment

(406) 287-3012
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TESTIMONY OF TAMARA J. JOHNSON
HB NO. 338

Mr. Chairman, Members of the Committee, Representative Grimes, for the record, my name is Tammy Johnson. I am here today on behalf of CURE (Citizens United for a Realistic Environment). Our membership wholeheartedly supports HB 338. We also support the amendments that have been presented by Representative Grimes.

What I would like to do today, is give you a feel for the rational behind the Constitutional Reclamation section and to point out the Legislative Findings that are part of the Metal Mines Reclamation Act, the statute that HB 338 would amend. With your permission Mr. Chairman, I would like to share with you and the members of the committee some posters that I have brought along with me today.

In 1972, at the Montana Constitutional Convention, there was a proposal for Article IX, Section 2. This proposed Article read as follows: All lands disturbed by the taking of natural resources must be reclaimed 'to a beneficial and productive use'. A motion was subsequently made to delete the words 'to a beneficial and productive use'. One member of the delegation, in support of this motion, made the following statement: "Mr. President. We have all made a serious mistake when we added the words--I quote--'to a beneficial and productive use' to the reclamation section. All of us favor reclamation. We want to recognize this in our constitution, and we should. By the addition of the words 'to a beneficial and productive use' we have gone beyond a Constitutional statement of principle. We have entered into a legislative field. With these words (the hardrock miner or the prospector) is faced with an impossibility." The motion for the deletion of the words 'to a beneficial and productive use' was successful.

Article IX, Section 2 of the Montana Constitution, as adopted, reads: All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Under the section entitled Legislative Findings of the Metal Mines Reclamation Act, that would be amended with HB 338, it says the following: The extraction of minerals by mining is a basic and essential activity making an important contribution to the economy of the state and nation. At the same time, proper reclamation of mined land...is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals takes place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of the many

types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed. It goes on in Section 2 to say...the need for and the practicality of reclamation will control the type and degree of reclamation.

HB 338 provides a sound approach to the reclamation of open pits while understanding that the very nature of mining does not lend itself to a one-size-fits-all approach. Every mining operation needs to be considered on an individual basis with a reclamation plan designed exclusively for that particular operation, within the context of the statutes. HB 338 complies with the Montana Constitution and follows the intent of the Legislative Findings of the Metal Mine Reclamation Act.

CURE's membership consist of families and the folks who run our Main Street businesses who are dependent upon maintaining a sound, viable mining industry. We believe that you recognize us as an important part of the Montana economy and tax base. We believe that you understand the importance of the minerals we mine to our state and nation. We urge you to support HB 338 as a realistic common-sense approach to reclamation. The future of our jobs and our families livelihoods are at stake. Please give HB 338 and the proposed amendments a do pass recommendation.

Thank you for the opportunity to present this testimony on behalf of CURE, and to the extent that I am able, I will be happy to answer any questions you or the committee may have.

MINERAL INFORMATION INSTITUTE, INC.
475 Seventeenth Street, Suite 510, Denver, Colorado 80202 (303) 297-3226

Sources of information
for
FROM THE EARTH . . . A BETTER LIFE

There are few subjects that can be more controversial than *land use*. For this reason, below is an explanation of the categories and sources used to develop Mineral Information Institute's statistics.

CANADA Land Statistics

Canadian land statistics (provided in km^2) from: Peter B. Hale 613/992-8589
Senior Technical Advisor
Resource Management Division
Energy, Mines and Resources Canada
Mineral Policy Sector
Ottawa, Ontario K1A 0E4

Canada	Acres
Total land area	2,492,500,000
Forests	610,000,000
Recreation and Conservation	177,000,000
Agriculture	169,600,000
Urban Areas	17,500,000
Roads, railroads, airports	9,381,250
Mining	747,750
Public Lands (Federal/Provincial)	2,080,248,300 *

* Includes portions of some land use designations noted above.

Population statistics from *Statistics Canada*, 613/951-8116.

UNITED STATES Land Statistics

Total Acreage 2,271,343,360 acres

Source: Public Land Statistics, 1991, Bureau of Land Management (BLM), U.S. Department of the Interior. The Soil Conservation Service (SCS), *Summary Report 1987 National Resources Inventory,* claims 1,937,726 acres (excluding Alaska-365.5 million acres) which gives the United States 2.31 billion acres, of which 49.5 million acres is water covered areas.

Federal ownership 662,158,197 acres

Source: Public Land Statistics., 1991, BLM. SCS tends to indicate a higher federal ownership, potentially as high as 701 million acres.

Agriculture 1,183,000,000 acres

Sources: Including 983 private acres, from *National Agricultural Statistics*, quarterly reports, 1991 (Steve Sakary, Colorado Agricultural Statistics, 303/236-2300) and 150 million acres of BLM grazing *(Public Lands Statistics, 1991)*, and 50 million U.S. Forest Service (USFS) grazing acres (suitable acres vs. 99 million total acres actually under grazing permits), Lynn Young, USFS, Denver, 303/236-9659.

Some agricultural land use counts include forested lands for timber harvesting. This statistic does not. SCS tends to verify this acreage *AND* adds 59.9 million acres of forested land to this classification (excluding Alaska but including the Caribbean).

Forest Lands 731,000,000 acres

Source: Total forested acres (both public and private), *Forest Statistics of the U.S., 1987*, USFS, 59% (483.3 million acres) is suitable for timber management and 72% (346,966,000 acres) is privately owned.

Cities & Towns 77,553,900 acres

Source: Soil Conservation Service, assuming that all "developed non-federal land" was equivalent to urban lands (cities & towns) and this was the statistic used. Again SCS figure excludes Alaska but includes the Caribbean.

Roads, Railroads, & Airports 31,701,760 acres

Sources: This number includes highways only (in the U.S.) not railroads and airports. The U.S. highway acreage is from *Federal Highway Administration,* Ron Lorenz, 303/969-6737. The USBM has reported 1978 statistics that indicate 4 million acres were used for airports and 3 million acres were used for railroads. Railroad and airport acreage was not added because statistics could not be found for verification, although there are 17,000 airports in the U.S. (FAA, Ben Castellano, 202/267-3883) and 200,074 miles of railroad track (Railroad Association Communications Dept., 202/639-2100). Both the Federal Aviation Administration and the Federal Railroad Administration claimed they could not provide acreage statistics.

Wilderness, Wildlife & National Parks 263,000,000 acres

Sources: This is a composite number and includes some double counting. This was determined preferable to either listing more categories to try to include all those lands set aside for natural, historic, and wildlife reasons or selecting only one or two categories which might appear to minimize the actual amount of land used for these purposes. Wilderness Study areas (25 million acres of BLM lands) and those lands identified as endangered species habitat (92 million acres) are not included but approximately 50 million acres is double counted, meaning it is both wilderness land and managed by the National Park Service (NPS) or U.S. Fish & Wildlife Service (USFWS). The Conservation Fund, *Land Letter, Nov. 1, 1992, Vol. 11, No. 29,* (703/522-8008) reports 95,433,680 acres in the National Wilderness Preservation System. The *National Park Service, Land Resources Division* (202/343-3862) reports 80 million acres are managed by the NPS. The *U.S. Fish & Wildlife Service* reports 88 million acres in its Wildlife Refuge System lands.

Mining 6,000,000 acres

Sources: This is also a composite statistic developed from a *1982 USBM report (Information Circular 8862)* and a 1992 report from the *Office of Surface Mining* (OSM) *Surface Coal Mining Reclamation: 15 Years of Progress, 1977-1992.* According to the 1982 report:

Land Utilization and Reclamation in the Mining Industry, 1930-80

Commodity	Acres Used	Acres Reclaimed	% Reclaimed	Assumed still actively being mined
Metals	508,000	41,000	8.1%	467,000 acres
Nonmetals	2,353,000	635,600	27%	1,717,400 acres
Coal, peat	2,818,000	2,053,000	72.9%	765,000 acres**
Total	5,700,000	2,700,000	47.4%	2,949,000 acres

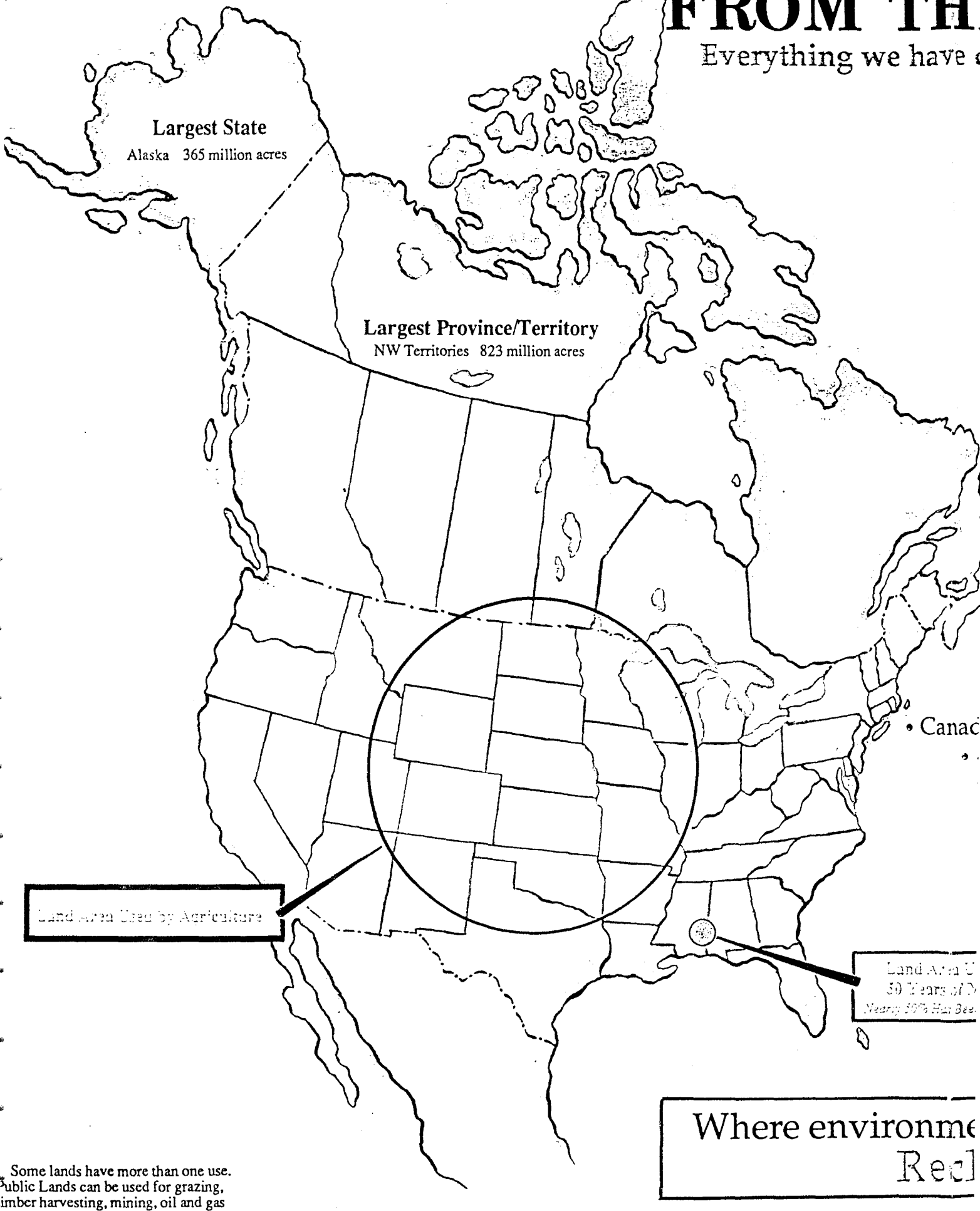
** However, the 1992 OSM report indicates that the amount of land permitted for coal mining between 1978 and 1991 totaled 4,228,334 acres, with 1,292,227 acres being released from bond (reclaimed), for a net acreage currently "used" for mining coal of 2,936,107 acres. Obviously not all of this land is being mined—some has been reclaimed but not released, some hasn't been mined yet, some is buffer and never will be mined, etc.

We found no other source (except for the 1982 USBM report) to update those lands being used for metal and nonmetal mining.

EXB - 14

FROM TH

Everything we have



Where environme

Red

Some lands have more than one use. Public Lands can be used for grazing, timber harvesting, mining, oil and gas drilling and recreation.

HE EARTH . . A BETTER LIFE

ve comes from our natural resources—most of it from within the Earth.

Land Use In The

United States		Canada
2.27 billion acres	Total Land Area	2.49 billion acres
1,183 million acres	Agricultural Lands	169.6 million acres
662 million acres	Federal Public Lands *	1,004 million acres
731 million acres	Forested Lands	610 million acres
263 million acres	Wilderness, Wildlife & Nat'l Park Service Managed Lands	
	Canadian Recreation & Conservation Lands	177 million acres
77.5 million acres	Cities & Towns	17.5 million acres
32 million acres	Roads, Railroads, & Airports	9.4 million acres
Less than 6 million acres	Mining	Less than 1 million acres
243 million	Population	27 million

Less than 0.2% of the land area of the United States and Canada is used by mining to produce all of the mineral materials we use every day.

Did You Know?

- ...la and the United States are nearly equal in size— but the U.S. has nearly 10 times as many people.
- 40,000 pounds of new minerals and metals must be mined every year, for every person in the United States and Canada to maintain our life style—over 3 million pounds for a lifetime.
- The Northwest Territories contain one-third of Canada's land area— but only 0.2% of the population.
- Nearly 50 pounds of gold is used every day by dentists—requiring the mining of 18,500 tons of ore each day.
- Nearly one-third of all agricultural land is used to raise crops—the rest is range land and pastureland.
- Alaska is nearly twice as large as the original 13 Colonies— but has half the population of Rhode Island.
- 80% of the timber that is harvested in the U.S. comes from private land.
- 47% of the land mined between 1930 and 1980 has been reclaimed— most of the rest is still producing minerals and metals.

...ntally conscious mining companies operate, ...eclamation Is A Way Of Life.

DESCRIPTION OF AMENDMENTS TO SENATE BILL 366

AS PROPOSED BY THE EXECUTIVE BRANCH

The Administration amendments to Senate Bill No. 366 do the following:

1. Sections 1, 2, 6, 7, 9, 10, 11, 13, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, and 28 are deleted from the bill in their entirety. This means that the following noted provisions of the law remain as they exist under present law: the policy and legislative findings; public need (but only as it applies to utility generation facilities, transmission facilities, pipelines, and geothermal resources used for production of energy); the so-called list of 503 criteria application to siting decisions; application requirements; amendments; filing fees; study, evaluation and report requirements; amendments to certificates; hearing procedure; certificate renewal; renewal study; renewal hearing; waiver; monitoring; revocation or suspension of a certificate; judicial review; jurisdiction of courts; penalties; and, exemption provisions of the dam safety act.

2. The new Section 1 of the amended bill reads as follows:

Section 1. Section 75-20-104, MCA, is amended to read:

"**75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and

conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility ~~and public need~~ and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by ~~(b) or (c) of subsection~~ (10)(b) or (10)(c), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating ~~50~~ 150 megawatts of electricity or more or any addition thereto, ~~(~~except pollution control facilities approved by the department of health ~~and environmental sciences~~ and added to an existing plant~~) having an estimated cost in excess of $10 million~~;

(ii) producing ~~25~~ ~~250~~ 25 million cubic feet or more of gas derived from coal per day ~~or any addition thereto having an estimated cost in excess of $10 million~~ or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant;

(iii) producing ~~25,000~~ ~~100,000~~ 25,000 barrels of liquid hydrocarbon products per day or more ~~or any addition thereto having an estimated cost in excess of $10 million~~ or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant; or

(iv) enriching uranium minerals ~~or any addition thereto having an estimated cost in excess of $10 million; or~~ or any addition thereto having an estimated cost in excess of $10 million ;

~~(v) utilizing or converting 500,000 tons of coal per year~~

~~or more or any addition thereto having an estimated cost in excess of $10 million;~~

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more ~~or any addition thereto having an estimated cost in excess of $750,000;~~ or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant;

~~(e) any underground in situ gasification of coal~~ (e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

EFFECT OF NEW SECTION 1:

A. the threshold limit for energy generation facilities would remain at 150 megawatts as provided in the original bill.

B. estimated costs related to additions to plants would be removed as triggers for covering facilities under the Act, and pollution control facilities approved by DHES would be removed from Siting Act jurisdiction.

C. removes coal conversion facilities that do not generate

electricity or produce gas from Siting Act jurisdiction.

EXHIBIT NO. 15
DATE 3-13-95
SB 366

3. The new Section 2 of the amended bill reads as follows:

Section 2. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) ~~utilizes~~ uses coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

~~(3) The board shall waive compliance with the requirements of this chapter if the applicant makes a clear and convincing showing to the board at a public hearing that:~~

~~(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;~~

~~(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support a waiver by resolution;~~

~~(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; or~~

~~(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.~~

~~(3)~~ ~~(4)~~ (3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

~~(4) This chapter does not apply to a facility defined in 75-20-104(10)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985.~~"

EFFECT OF NEW SECTION 2:

A. removes the proposed waiver provision and leaves the existing waiver provision.

B. retains all other amendments proposed by SB 366.

4. New Section 3 of the amended bill reads as follows:

Section 3. Section 75-20-203, MCA, is amended to read:

"**75-20-203. Certificate transferable.** A certificate may be transferred~~, subject to the approval of the board,~~ to a person who agrees to comply with the terms, conditions, and modifications contained ~~therein~~ in the certificate."

EFFECT OF NEW SECTION 3:

A. retains the amendments proposed by SB 366.

5. New Section 4 of the amended bill reads as follows:

Section 4. Section 75-20-212, MCA, is amended to read:

"**75-20-212. Cure for failure of service.** Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in ~~75-20-211(3) and (5)~~ 75-20-211 may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding."

EFFECT OF NEW SECTION 4:

A. retains the amendments proposed by SB 366.

6. New Section 5 of the amended bill reads as follows:

Section 5. Section 75-20-217, MCA, is amended to read:

"**75-20-217. Voiding an application.** An application may be voided by the department following notice and an opportunity for hearing for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted ~~thereunder~~ under this chapter; or

(3) failure to deposit the filing fee as provided in 75-20-215."

EFFECT OF NEW SECTION 5:

A. retains amendments proposed by SB 366.

7. New Section 6 of the amended bill reads as follows:

Section 7. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner -- restrictions -- duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, an employee of the department, or a member or employee of the department of health or board of health. A hearing examiner, if any, ~~shall~~ must be appointed by the board within 20 days after the department's report has been filed with the board. If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.

(2) A prehearing conference ~~shall~~ must be held following notice within ~~60~~ ~~30~~ 45 days after the department's report has been filed with the board.

(3) The prehearing conference ~~shall~~ must be organized and supervised by the hearing examiner.

(4) The prehearing conference ~~shall~~ must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony which they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on ~~shall~~ must be submitted and served in like manner, at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery, which ~~shall~~ must be completed before the commencement of the hearing, upon good cause shown and under ~~such~~ other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in which the hearing ~~shall~~ must proceed, setting forth those section 75-20-301 criteria as to which no issue of fact or law has been raised ~~which~~ that are to be conclusively presumed and are not subject to further proof except for good cause shown, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within ~~60~~ ~~30~~ 45 days of that date, prepare and submit to the board and in the case of

a conjunctive hearing, within ~~90~~ ~~45~~ 60 days to the board and the board of health or department of health proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall insure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed ~~9~~ ~~3~~ 8 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

EFFECT OF NEW SECTION 6:

A. reduces the siting process time frames in which a hearing examiner must act, but does not reduce them to the extent proposed in SB 366.

8. New Section 7 of the amended bill reads as follows:

Section 7. Section 75-20-221, MCA, is amended to read:

"**75-20-221. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1) The parties to a certification proceeding or to a proceeding involving the issuance of a decision, opinion, order, certification, or permit by the board of health under this chapter may include as active parties:

(a) the applicant;

(b) each ~~political entity,~~ unit of local government, and government agency, including the department of health, entitled to receive service of a copy of the application under 75-20-211~~(3)~~; ~~and~~

~~(c) any person entitled to receive service of a copy of the application under 75-20-211(5);~~

~~(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;~~ (c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be

located;

~~(c)~~ ~~(c)~~ (e) any other interested person who establishes an interest in the proceeding.

(2) The department ~~shall be~~ is an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

~~(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).~~ (3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in (b), (c), (d), or (e) of subsection (1).

~~(4)~~ ~~(3)~~ (4) Any party waives the right to be a party if the party does not participate in the hearing before the board or the board of health.

~~(5)~~ ~~(4)~~ (5) Each unit of local government entitled to receive service of a copy of the application ~~under 75-20-211(3)~~ shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. ~~If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent shall be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government.~~"

EFFECT OF NEW SECTION 7:

A. Parties to a certification proceeding will be the same as in the existing law, however, the requirement for a unit of local government to state its reasons for not participating is stricken as proposed by SB 366.

9. New Section 8 of the amended bill reads as follows:

Section 8. Section 75-20-301, MCA, is amended to read:

"**75-20-301. Decision of board -- findings necessary for certification.** (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon ~~such~~ terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate ~~either as proposed by the applicant or as modified by the board~~ unless it ~~shall find and determine~~ finds and determines:

(a) ~~the basis of the need for the facility;~~ the basis of the need for the facility;

~~(b)~~(b) the nature of the probable environmental impact;

~~(c) that the facility minimizes adverse environmental~~

~~impact, considering the state of available technology and the nature and economics of the various alternatives;~~

~~(d) each of the criteria listed in 75-20-503;~~ (c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

~~(c)~~ ~~(b)~~ (e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct ~~shall be~~ is located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

~~(f)~~ ~~(c)~~ (f) that the location of the facility as proposed conforms to applicable state ~~and local~~ and local laws and regulations ~~issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions~~ issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions; ~~and~~

~~(g) that the facility will serve the public interest, convenience, and necessity;~~ (g) that the facility will serve the public interest, convenience, and necessity;

~~(h)~~ ~~(d)~~ (h) that the department of health or board of health ~~have~~ has issued a decision, opinion, order, certification, or permit as required by 75-20-216(3)~~; and~~

~~(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.~~

~~(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:~~

~~(a) the items listed in subsections (2)(a) and (2)(b) of this section;~~

~~(b) the benefits to the applicant and the state resulting from the proposed facility;~~

~~(c) the effects of the economic activity resulting from the proposed facility;~~

~~(d) the effects of the proposed facility on the public health, welfare, and safety;~~

~~(e) any other factors that it considers relevant.~~

~~(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities~~ ; and

(i) that the use of public lands for location of the

facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities as defined in 75-20-104(10)(a)(i), (10)(b), (10)(c), and (10)(d)."

EFFECT OF NEW SECTION 8:

A. Decision requirements of the Siting Act will be the same as in the existing law, however, the need finding is eliminated for synthetic coal conversion plants and applies only to utility generation facilities, transmission facilities, pipelines, and geothermal resources used for production of energy.

10. New Section 9 of the amended bill reads as follows:

Section 9. Section 75-20-303, MCA, is amended to read:

"**75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation ~~which~~ that would be otherwise applicable is unreasonably restrictive ~~pursuant to 75-20-301(2)(f)~~, it shall state in its opinion the reasons ~~therefor~~ that it is unreasonably restrictive.

(3) Any certificate issued by the board ~~shall~~ must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement ~~shall~~ must include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

~~(iii) problems and objections raised by other federal and~~

~~state agencies and interested groups; and~~

~~(iv) alternatives to the proposed facility;~~

EXHIBIT NO. 15
DATE 3-13-95
BILL NO. SB-366

(b) a plan for monitoring environmental effects of ~~the~~ proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in ~~(b) or (c) of~~ 75-20-104(10)(b) or (c) that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in ~~(b) of~~ 75-20-104(10)(b) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in ~~(a) of~~ 75-20-104(10)(a), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed ~~in accordance with subsection (4)(c) or 75-20-225 through 75-20-227~~, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any ~~such~~ permit or certificate.

~~(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.~~"

EFFECT OF NEW SECTION 9:

A. accepts all amendments provided in SB 366.

11. New Section 10 of the amended bill reads as follows:

NEW SECTION. **Section 10. Report.** The department of natural resources and conservation shall prepare and present a report to the 55th Legislature with recommendations for improving and modernizing the Montana Major Facility Siting Act. The department shall convene a state dialogue to develop the report and recommendation. The participants in the dialogue shall represent a broad spectrum of interests affected by the siting, construction, and operation of major facilities, including utilities, energy development groups, interested industries, ratepayers, regulators, landowners, and citizen groups. The dialogue is to be designed to seek the involvement of a broad

range of affected interest groups in discussions of reforming the Major Facility Siting Act with the express intent of eliciting a consensus. The consensus developing process is to use a facilitator who is not an employee of the department.

EFFECT OF NEW SECTION 10:

A. Requires an interim review of the Major Facility Siting Act by affected interests to develop proposed legislation that modernizes the Act.

12. New Section 11 of the amended bill reads as follows:

' NEW SECTION. **Section 11. Termination.** The amendment to 75-20-1049(a)(i) contained in [section 1] that increases the megawatts of electricity produced from "50" to "150" terminates on June 30, 1997.

EFFECT OF NEW SECTION 11:

A. The 150 megawatt limitation would revert back to 50 megawatts in two years.

13. New Section 12 of the amended bill reads as follows:

NEW SECTION. **Section 12. Repealer.** ~~Sections 75-20-103, 75-20-302, 75-20-404, 75-20-409, 75-20-501,~~ Section 75-20-502, ~~and 75-20-503,~~ MCA, ~~are~~ is repealed.

EFFECT OF NEW SECTION 12:

A. Repeals one section of the Act that relates to a 5 year study under the 10-year plan. No other provision of the Act is repealed.

14. New Section 13 of the amended bill reads as follows:

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

EFFECT OF NEW SECTION 13:

A. Same effective date as proposed by SB 366.

Insert: "25,000"

12. Page 3, line 13.
Following: "~~million~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant"

13. Page 3, line 15.
Following: "~~or~~"
Insert: "or any addition thereto"

14. Page 4, line 2.
Following: "~~coal~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant;
(e) any underground in situ gasification of coal"

15. Page 4, lines 11 through 25.
Strike: section 3 in its entirety
Renumber: subsequent sections

16. Page 5, lines 8 through 18.
Strike: subsection (3) in its entirety
Renumber: subsequent subsection

17. Page 5, line 30 through page 7, line 30.
Strike: sections 6 and 7 in their entirety
Renumber: subsequent sections

18. Page 8, line 7 through page 11, line 28.
Strike: sections 9 through 11 in their entirety
Renumber: subsequent sections

19. Page 12, line 9 through page 13, line 9.
Strike: section 13 in its entirety
Renumber: subsequent sections

20. Page 13, line 19.
Page 14, line 15.
Strike: "30"
Insert: "45"

21. Page 14, line 16.
Strike: "45"
Insert: "60"

22. Page 14, line 20.
Strike: "3"
Insert: "8"

23. Page 15, line 2.
Strike: "and"

Amendments to Senate Bill No. 366
First Reading Copy

For the Committee on Natural Resources

Prepared by Greg Petesch
March 8, 1995

1. Title, line 5.
Strike: "75-20-102,"
Strike: "75-20-201,"

2. Title, line 6.
Strike: "75-20-205, 75-20-211,"
Strike: "75-20-213, 75-20-215, 75-20-216,"
Strike: "75-20-219,"

3. Title, line 7.
Strike: "75-20-222," through "75-20-227,"
Following: "75-20-301,"
Insert: "AND"

4. Title, line 8.
Strike: line 8 through "85-15-107,"

5. Title, line 9.
Strike: "SECTIONS 75-20-103, 75-20-302, 75-20-404, 75-20-409, 75-20-501,"
Insert: "SECTION"
Following: "75-20-502,"
Strike: "AND"

6. Title, line 10.
Strike: "75-20-503,"

7. Page 1, lines 14 through 26.
Strike: section 1 in its entirety
Renumber: subsequent sections

8. Page 2, line 13.
Following: "~~need~~"
Insert: "and public need"

9. Page 3, line 10.
Strike: "250"
Insert: "25"

10. Page 3, line 11.
Following: "~~million~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant"

11. Page 3, line 12.
Strike: "100,000"

EXHIBIT NO. 16
DATE 3-13-95
BILL NO. SB-366

Insert: "25,000"

12. Page 3, line 13.
Following: "~~million~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant"

13. Page 3, line 15.
Following: "~~or~~"
Insert: "or any addition thereto"

14. Page 4, line 2.
Following: "~~coal~~"
Insert: "or any addition thereto, except pollution control facilities approved by the department of health and added to an existing plant;
(e) any underground in situ gasification of coal"

15. Page 4, lines 11 through 25.
Strike: section 3 in its entirety
Renumber: subsequent sections

16. Page 5, lines 8 through 18.
Strike: subsection (3) in its entirety
Renumber: subsequent subsection

17. Page 5, line 30 through page 7, line 30.
Strike: sections 6 and 7 in their entirety
Renumber: subsequent sections

18. Page 8, line 7 through page 11, line 28.
Strike: sections 9 through 11 in their entirety
Renumber: subsequent sections

19. Page 12, line 9 through page 13, line 9.
Strike: section 13 in its entirety
Renumber: subsequent sections

20. Page 13, line 19.
Page 14, line 15.
Strike: "30"
Insert: "45"

21. Page 14, line 16.
Strike: "45"
Insert: "60"

22. Page 14, line 20.
Strike: "3"
Insert: "8"

23. Page 15, line 2.
Strike: "and"

24. Page 15, line 7.
Following; "~~;~~"
Insert: "(c) any person entitled to receive service of a copy of the application under 75-20-211(5);
(d) any nonprofit organization formed in whole or in part to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent commercial and industrial groups; or to promote the orderly development of the areas in which the facility is to be located;"
Renumber:subsequent subsection

25. Page 15, line 12.
Following: "~~(1)~~"
Insert: "(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in subsection (1)(b) through (1)(e)."
Renumber: subsequent subsections

26. Page 15, line 22 through page 18, line 1.
Strike: sections 16 through 19 in their entirety
Renumber: subsequent sections

27. Page 18, line 11.
Following: "~~facility;~~"
Insert: "the basis of the need for the facility;"

28. Page 18, line 12.
Following "~~(b)~~"
Insert: "(b)"
Renumber: subsequent subsections

29. Page 18, line 15.
Following: "~~75-20-503;~~"
Insert: "(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
(d) each of the criteria listed in 75-20-503;"
Renumber: subsequent subsections

30. Page 18 line 21.
Following: "~~local~~"
Insert: "and local"

31. Page 18, line 25.
Following: "~~subdivisions~~"
Insert: ", except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions"

Strike: "and"

32. Page 18, line 26.
Following: "~~.~~"
Insert: "(g) that the facility will serve the public interest, convenience, and necessity;"
Renumber: subsequent subsection

33. Page 19, line 10.
Following "~~facilities~~"
Insert: "; and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) of this section, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) of this section;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities described in 75-20-104(10)(a)(i), (10)(b), (10)(c), and (10)(d)"

34. Page 20, line 19 through page 24, line 29.
Strike: sections 22 through 28 in their entirety
Insert: "NEW SECTION. **Section 10. Reports.** The department of natural resources and conservation shall prepare and present a report to the 55th legislature with recommendations for improving and modernizing the Montana Major Facility Siting Act. The department shall convene a state dialogue to develop the report and recommendations. The participants in the dialogue shall represent a broad spectrum of interests affected by the siting, construction, and operation of major facilities, including utilities, energy development groups, interested industries, ratepayers, regulators, landowners, and citizen groups. The dialogue is to be designed to seek the involvement of a broad range of affected interest groups in the discussions of reforming the Montana Major Facility Siting Act, with the express intent of eliciting a consensus. The consensus developing process must use a facilitator who is not an employee of the department.

NEW SECTION. **Section 11. Termination.** The amendment to

75-20-104(10)(a)(i) contained in [section 1] that increases the megawatts of electricity produced from "50" to "150" terminates on June 30, 1997."

Renumber: subsequent sections

35. Page 24, line 30.

36. Page 25, lines 1 and 2.
Following: "Repealer." on line 1
Strike: remainder of line 1 through "75-20-501," on line 2
Insert: "Section"
Strike: "and 75-20-503,"
Strike: "are"
Insert: "is"

Amendments to Senate Bill No. 366
First Reading Copy

Requested by Senator Cole
For the Committee on Natural Resources

Prepared by Todd Everts
March 10, 1995

1. Title, line 10
Following: "DATE"
Insert: "AND AN APPLICABILITY PROVISION"

1. Page 25
Following: line 2
Insert: "NEW SECTION. **Section 30. Applicability.** (1) A person who between [the effective date of this act] and June 30, 1997, has submitted a correct and complete application for all applicable air and water quality permits from the department of health and environmental sciences or has commenced to construct or commenced or applied to upgrade a power plant that has been designed for or will be capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20.

(2) A person who has filed an application for all applicable air and water quality permits from the department of health and environmental sciences for a power plant capable of generating less than ~~less than~~ 150 megawatts, between [the effective date of this act] and June 30, 1997, is not subject to the provisions of Title 75, chapter 20, if the application is correct and complete as of October 1, 1997."
Renumber: subsequent section

SENATE NATURAL RESOURCES
EXHIBIT NO. 18
DATE 3-13-95
BILL NO. HB-201

Amendments to House Bill No. 201
Third Reading Copy

Requested by Rep Ellis
For the Committee on Natural Resources

Prepared by Todd Everts
March 3, 1995

1. Page 1, line 24.
Strike: "50"
Insert: "a range of 45 million board feet to 55"

2. Page 1, line 28.
Following: "department."
Insert: "This annual requirement may be reduced proportionately by the amount of sustained income to the beneficiaries generated by site-specific alternate land uses approved by the board."

3. Page 2, line 19.
Strike: ", throughout the biennium"

4. Page 2, line 27.
Following: "equal to"
Strike: "90% of"

5. Page 2, line 28.
Strike: "1994 timber harvest from state lands and the sustainable yield provided in [section 2(2)] may"
Insert: "average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to"

6. Page 3, line 16.
Following: "GENERAL FUND"
Insert: ", within the adopted budget,"

7 Page 3, lines 18 and 19.
Following: "DISTRICT"
Strike: "DETERMINE THAT AN AMOUNT OF REVENUE IS REQUIRED FOR A TECHNOLOGY ACQUISITION FUND BUDGET"
Insert: "establish the technology acquisition fund"

8. Page 3, line 20.
Following: "(A)"

Strike: "WHEN THE TRUSTEES ESTABLISH THE FUND,"

Amendments to House Bill No. 201
Corrected Third Reading Copy

Requested by Sen. Brooke
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 3, 1995

1. Page 3, line 13.
Following: "FOR"
Insert: ": (a)"

2. Page 3, line 14.
Following: "ACCESS"
Insert: "; and
(b) associated technical training for school district personnel"

Amendments to House Bill No. 201
Third Reading Copy

Requested by Sen. Brooke
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 9, 1995

1. Page 1, line 16.
Following: "quantity"
Insert: "and quality"
Following: "timber"
Insert: ", grazing, water, wildlife, fisheries, and recreation"
Following: "harvested"
Insert: "or otherwise used"

2. Page 1, line 18.
Following: "generate"
Strike: "replacement tree growth"
Insert: "renewable resources"

3. Page 1, line 27.
Following: "yield"
Strike: "constitutes"
Insert: "must be used as a factor in determining"

hb
sb020104.avb

DATE 3-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-338, HB-412

HB-478

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Sara J. Johnson	Self	412		✓
Paul Roos	Big Blackfoot Ch. of Th	338		✓
Tom Ebzery	Exxon	412	✓	
Rep Manuel	Cenex	412	✓	
Jim Tutwiler	MT CHAMBER	HB 412	✓	
Chris J Hallen	MERDC/MTC		✓	
Don Peoples	MT Technology Companies		✓	
Anne Hedges	MEIC	412		✓
Haley Beaudry	Self	338	✓	
Bob Williams	MT Mining	338	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-13-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB- 338 HB-412

HB-424

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Deborah Smith	Sierra Club	412 338		X X
Janet Ellis	MT Audubon	412 338		X X
Jim Mockler	MT. Coal Council	412	✓	
Gail Abercrombie	MT Petroleum Assn	412	✓	
Candace Torgerson	MT. Cattlemen & MT. Stockgrowers	HB478	✓	
Gary Beck	DNRC	HB478	✓	
SCOTT ORR	HD82	HB412	X	
J. Shontz	MT Assc. REALTORS	412	X	
Jim Richard	MT Wildlife Fed	412		✓
MELISSA CASE	Montanans Against Toxic Burning	412		✓
Peggy Trenk	WETA	412	X	
Peggy Trenk	WETA	338	X	
J.V. Bennett	MontPIRG	HB412 HB338		X
Grant Parker	Self	412		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME Riley Johnson

ADDRESS 491 South Park Ave, Helena, MT 59601

HOME PHONE 443-5022 WORK PHONE 443-3797

REPRESENTING NFIB

APPEARING ON WHICH PROPOSAL? HB 412

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

NFIB, the largest small business advocacy group in Montana, supports HB 412. We support regulation compliance by incentive and cooperation, not compliance by force or fear of fines and penalty. HB 412 provides the opportunity for small business to join the environment age by cooperating and working with the State of Montana.

Please give a "Do Pass" on HB 412

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-13-95 BILL NO. HB-201 NUMBER 1

MOTION: To Adopt Amendments
hb020104.aab
Failed 5-4

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		
TOM KEATING		X
KEN MILLER		
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 3-13 95 BILL NO. 201 NUMBER 2

MOTION: To CONCUR IN SB 201 AS Amended 7-4 Carried

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

DATE 2-13-95 Nat. Resources

SENATE COMMITTEE ON HB-332 - HB-412

BILLS BEING HEARD TODAY: HB-428

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
D.W. ENGEL	Self	478	—	—
JEANNIE MILLER	MT. ASSN. of Cons. Dist.	478		
Dexter Busby	MT. Refining CO.	412	✓	
BOB MARTINKA	MT. FWP	478	✓	
Jim Jensen	MEIC	338		X
Maureen Hanses	Yellowstone County	478	✓	
Richard Parks	NPRC	338/412		X
Ken Wiby		11		X
Tamara J. Johnson	CURE	338	X	
Cary Hegreberg	MT Wood Prod.	412	X	
Kate ENGLUND		412		X
Riley Johnson	NFIB	412	X	
Glenna Obie	Jefferson County	338 1412	X	X
Susan Callaghan	Mont. Power	412	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-13-95

SENATE COMMITTEE ON/NATURAL RESOURCES

BILLS BEING HEARD TODAY: HB-338, HB-412
HB-478

< ■ > **PLEASE PRINT** < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Russell B Hill	MT Trial Lawyers	HB412		✓
Alan Joscelyn	Golden Sunlight Mines	HB338	✓	
Jim Elliott	L+C Conservation Dist	HB 478	✓	
Vicki McGuire	Lincoln CD	HB478	✓ w/amend	
Terry Grotbo	Huntington Engineering	HB 338	✓	
Steve Voigt	Bitterroot CD	H-478	✓	
Jamie Miller	SELF	HB338	✓	
Jim Miller	self	HB338	✓	
Judy Juntunen	R Management	HB338	✓	
Tess Foster	Golden Sunlight Mine	HB 338	✓	
Bruce Parker	BEAL MTN. MINING	HB 338	✓	
~~Tom Curtis~~	MT Chapter Sierra Club			
Paul Johnson	Montanans for A Healthy Future L.F.	HB 412		✓
John Fitzpatrick	Pegasus Gold	HB412 HB338	X	
~~Gail Trenfield~~				

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY