

MINUTES

**MONTANA
54th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES**

Call to Order: By Rep. Dick Knox, Chairman, on March 20, 1995,
at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: SJR 15, SB 346, SB 347, SB 371
Executive Action: SB 386 Be Concurred In As Amended
SB 406 Be Concurred In As Amended

Tape 1, Side A

HEARING ON SJR 15**Opening Statement by Sponsor:**

SEN. JOHN HARP, Senate District 42, Kalispell, said SJR 15 urges the flexibility and timeliness by the U. S. Environmental Protection Agency (EPA), particularly the Region 8 office, in consideration of regulations and pending or future applications for primacy for certain environmental programs affecting air quality, underground storage tanks, waste oil and the management of hazardous and other wastes produced in Montana. **SEN. HARP** said he was particularly interested in the bill because part of his Senate District includes the Columbia Falls Aluminum Plant and it's running out of the ability to take care of its hazardous waste materials. Unless there are changes made in EPA'S Region 8, the hazardous waste materials may have to be transferred to Arkansas which would cost the plant millions of dollars.

Proponents' Testimony:

Allen Barkley, External Affairs Manager, Columbia Falls Aluminum Plant, said SJR 15 doesn't weaken any environmental policies, it just urges EPA to execute their responsibilities as quickly as possible.

Tom Daubert, Ash Grove Cement Company, said it has been about 17 months since EPA in Denver has had Montana's application for primacy. All EPA needs to do is compare Montana's regulations with their regulations to make sure they are the same, or if not the same, Montana's would be stricter. To date, EPA has not done that. SJR 15 just urges EPA to consider applications for primacy in a more timely manner. If Montana can get primacy it would make the permitting process simpler because there would be only one application process and EPA in Denver wouldn't have to be dealt with.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. HAL HARPER asked **SEN. HARP** if it was true that the quantity of waste generated in Montana has increased and if so, why hasn't Montana looked at programs like other states have to limit the growth of hazardous waste. **SEN. HARP** said he thought a lot of Montana's hazardous waste classifications have continued to grow because of federal legislation.

Closing by Sponsor:

SEN. HARP closed.

HEARING ON SB 346**Opening Statement by Sponsor:**

SEN. GARY FORRESTER, Senate District 8, Billings, said SB 346 was requested by the Department of Health and Environmental Sciences (DHES). There has been 20 years of conflict in Montana because of the inability to clean up mine wastes or clean up the waters that are polluted. SB 346 addresses those problems.

Proponents' Testimony:

Steve Pilcher, DHES, said the department has requested consideration of SB 346 in an attempt to deal with the problem it currently faces in administering the Montana Water Quality Act. The Water Quality Act requires the Board of Health and Environmental Sciences (BHES) to classify all waters in Montana according to present and future beneficial uses and then to establish quality levels that must be maintained. When Montana's streams were classified in the mid-1960s the available water quality information was limited so assumptions and generalizations had to be made. Localized water quality problems such as those created by past mining activities were not recognized and identified. The department is now finding a number of stream segments that do not meet the assigned classification, probably never did and hopefully will sometime in the future. The best local example would be the Upper Blackfoot River near Lincoln where historic mining activities in the area of Mike Horse, Anaconda and Paymaster mines have seriously affected the quality of the Blackfoot River. When the BHES conducted its classification hearings, the upper segment of the river was given the same classification as the lower river which has good water quality. SB 346 represents a realistic way to address these water quality problems. Currently, the board can reclassify streams that are shown to have been misclassified, but that just means they are put in another category but no action will be taken. SB 346 would allow the board to recognize that the streams may have been misclassified, but more importantly, it would put the board on a schedule for overall improvements. The bill requires the restoration of a stream segment so it will support the beneficial uses in a time period not to exceed 20 years. The department, through its permitting responsibilities and authorities, would ensure that conditions and limitations are imposed on activities and on any discharges into the stream segment to ensure that it achieves the desired improvements in water quality conditions. The bill does not allow people to further degrade state waters, it merely recognizes that those waters were impaired in the past and puts the department on a plan to restore them to beneficial uses.

Gary Langley, Executive Director, Montana Mining Association, urged the committee to support SB 346.

Larry Brown, Agricultural Preservation Association, supported the SB 346 for the same reasons **Mr. Pilcher** stated.

John Davis, Atlantic Richfield Company, supported SB 346.

Gail Abercrombie, Montana Petroleum Association, supported SB 346.

Opponents' Testimony:

Jim Barrett, Beartooth Alliance, Cooke City, said SB 346 is an attempt by DHES to accommodate mining interests who are faced with acquiring permits to discharge pollutants into streams that are presently impaired in one or more of the parameters which determine their classification. Written testimony. **EXHIBIT 1**

Jim Jensen, Executive Director, Montana Environmental Information Center, opposed SB 346.

Florence Ore, Northern Plains Resource Council. Written testimony. **EXHIBIT 2**

Brian Kuehl, Greater Yellowstone Coalition, said the coalition supported the intent of the bill however, they felt that a mechanism exists under existing law and is not adequately being used. The mechanism is the permitting system established for discharge permits. The coalition and a number of other conservation groups have filed suit against Crown Butte Mining Company requesting it to get a permit to clean up historic conditions at the mine. Rather than requiring that permit, the Water Quality Division has been procrastinating and no permit has been issued. The last thing that is needed is more rulemaking that will take another year. Permits should be issued and treatment should be required.

Tape 1, Side 2

Debbie Smith, Sierra Club, supported the intent of SB 346 but it is inconsistent with the Clean Water Act. Under the Clean Water Act, before the state can change any water quality standard, it has to go through a use attainability analysis which requires examination of certain factors that are stated in the Environmental Protection Agency's (EPA) regulations and it also requires public input. After that has been accomplished, the state can reclassify the water quality standards. The bill allows a party to get a petition and require temporary standards to be put in place. Currently, the federal law has a mandatory proactive requirement placed on the state to identify all areas of surface waters where water quality standards aren't being met and to determine the total maximum daily load. All future permits have to take into account restricted or reduced pollutant discharges that stay within the total maximum daily load. Presumably, that could be done through the temporary modification standards except that the bill does not require the board to do

it. The bill merely allows the board to do so, if it so chooses, upon a petition by an interested party.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. JON ELLINGSON asked Mr. Pilcher to explain how SB 346 would improve Montana's water quality. Mr. Pilcher said as an example, the department is interested in the improvement of the water quality in the Upper Blackfoot River. The department has been working with the landowners in that area. A permit has been issued and is for a five year period. The permit is the first phase of necessary improvements and allows the company to begin to make improvements to the poor water quality. Additional permits will be needed, each having more stringent effluent limits, until the desired goal of restoring beneficial uses to the stream segment has been met. This approach, as outlined in SB 346, would allow the department to accomplish that goal. The company would give the department information that showed the stream was not supporting beneficial uses. The company would submit a plan to achieve compliance and the plan would be reviewed by DHES and adopted by BHES. Each permit would have to conform to the compliance plan. REP. ELLINGSON asked Mr. Pilcher why that couldn't be accomplished without SB 346. Mr. Pilcher said generally, water discharge permits are to include effluent limits that are protective of water quality in-stream standards. The permit that has been issued for the Mike Horse Mine realize global values and wouldn't be in total compliance with surface water quality standards. It recognizes that further permits will have to be issued in order to achieve complete compliance. Mr. Pilcher said he was concerned that the procedure might not be legitimate. SB 346 would legitimize and clarify this procedure.

REP. ELLINGSON asked Ms. Smith if she thought the department had the authority to issue the appropriate permit now. Ms. Smith said there are three options that DHES can pursue. When water quality standards are not being met permits can be denied. DHES can change the water quality standards by going through the use attainability analysis to lower the water quality standards so that within the five year timeframe those standards could be met. It is possible that even if the standards were lowered the permit requirements couldn't be met. In that case, the permit could be denied. Once the analysis was completed, the department would know what discharge limits could be allowed. Pollutant parameters would have to be really ratcheted down at that time. REP. ELLINGSON asked Ms. Smith what the impact of a permit denial would be for a mining company. Ms. Smith said ordinarily, if the permit application is denied and the applicant continues to discharge he would be in violation of the state and federal Acts. In Montana the state could sue the applicant in state court for discharging without a permit. Citizens could sue the applicant in federal court and the fine would be 25,000 a day, until the applicant is in compliance.

REP. BOB RANEY asked **Mr. Pilcher** if the bill allowed lower parameters for some things while other things were being improved. **Mr. Pilcher** said the intent of the bill is to allow cleanup to take place and to implement measures that will result in long term improved water quality conditions. For example, if a company puts in some ponds that might be necessary to allow treatment of metals, the construction of the ponds may result in some increase in sediment. That may be a short term impact that is a part of a longer term permanent solution.

REP. HAL HARPER said he noticed in the statement of intent that no discharge would allow water quality to become worse than the water was prior to the discharge and asked **SEN. FORRESTER** if he would be willing to insert that statement in the bill. **SEN. FORRESTER** said section 2 of the bill covers that statement. **REP. HARPER** noted that section 3, subsection (5) also states that a temporary modification of water quality standard may not result in adverse impacts to existing beneficial uses, which is close but is not quite the same thing. The statement of intent talks about water quality becoming worse than the water was prior to discharge. **SEN. FORRESTER** said **REP. HARPER's** intent was to clarify he had no objection but if he had some ulterior motive he would object. **REP. HARPER** assured **SEN. FORRESTER** that he had no ulterior motive.

Tape 2, Side A

REP. RANEY asked **Mr. Jensen** to explain his objection to SB 346 a little more clearly. **Mr. Jensen** said the problem is that the Water Quality Bureau has for more than two decades, refused to enforce the Water Quality Act on discharges like the Mike Horse Mine until enough political and legal pressure was put on it to enforce the law. The bill would allow a company like American Smelting and Mining Company (ASARCO) to pollute the Blackfoot River for another twenty years without having to meet the standards in law. That would be a total of 42 years because it has already been polluting the river for 22 years before it got the permit. If it were impossible for ASARCO to meet the standards, as **Mr. Pilcher** has said, it would make the permit fraudulent.

REP. HARPER asked **Abe Horpestad, DHES**, if the department can't get companies to clean up the water in five years under the permit, why would it be able to in 20 years. **Mr. Horpestad** said because some things take more than five years. There have been statements about total maximum daily loads and wasteload allocations. The implicit assumption in those statements is that they can be taken care of tomorrow and they can't because the department doesn't have the manpower. **REP. HARPER** asked **Mr. Horpestad** what permit Mike Horse Mine was using to discharge, prior to getting the five year permit. **Mr. Horpestad** said Mike Horse didn't have a permit prior to the five year permit. **REP. HARPER** asked **Mr. Horpestad** what would happen when the five year permit expires if the law doesn't change. **Mr. Horpestad** said the

company can demonstrate through the development of site specific criteria that it does not need to achieve Gold Book numbers to protect their uses. If the company can meet the site specific standards, the limits in the permit would be modified to reflect those numbers. If the company doesn't meet the permit limits, it is subject to the penalty provisions of the law. If the company could establish that the water body was originally misclassified and should be in the "I" class, the permit limits would have to be changed to reflect the "I" class standards for water.

Closing by Sponsor:

SEN. FORRESTER SB 346 will spark progress on cleaning up the streams and urged the committee to support it without allowing a lot of amendments that would make it unworkable.

HEARING ON SB 347

Opening Statement by Sponsor:

SEN. BILL CRISMORE, Senate District 41, Libby, said SB 347 allows the Department of State Lands (DSL) to negotiate reciprocal access to facilitate the management of isolated state forest lands. The department would not be required to conduct an environmental assessment of activities on adjoining private land which may be facilitated by granting an easement across state lands. The bill is a clarification of existing DSL policies. SB 347 is needed to protect DSL from lawsuits.

Proponents' Testimony:

Cary Hegreberg, Montana Wood Products Association, said much of the forest land in western Montana is checkerboard ownership among the federal government, State of Montana, corporate landowners and nonindustrial landowners. Not only do private landowners need to secure access across state and federal lands to access their land, but the reverse is true as well. SB 347 is a good neighbor bill. It allows the state and private landowners to negotiate reciprocal access agreements without going through a lot of legal red tape.

Ronald Buentemeier, Lands Manager, F. H. Stoltze Land and Lumber Co., Columbia Falls. Written testimony. EXHIBIT 3

Tape 2, Side B

Lech Szumera, Supervisor, Access for Plum Creek Timber Company, Missoula. Written testimony. EXHIBIT 4

Robert Spokley, Landowner, Western Montana, supported SB 347.

Nancy Kostman, Montana Forest Products, Kalispell, supported SB 347.

Bud Clinch, Commissioner, Department of State Lands (DSL), said the checkerboard ownership of state land across the State of Montana creates a whole array of complexities associated with the management of it. SB 347 defines and directs the department to negotiate reciprocal access agreements between private landowners and other agencies. The Forest Service and Bureau of Land Management will also be likely candidates to enter into reciprocal access agreements with the department. In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access. There is an amendment to SB 347 that gives the Board of State Lands the authority to waive all or a portion of the survey requirements for an easement. **EXHIBIT 5**

Opponents' Testimony:

Debbie Smith, Sierra Club, said SB 347 authorizes DSL to circumvent MEPA in areas where it should be applying MEPA now. MEPA does not allow the segmentation of a project and requires a cumulative impact analysis on a reciprocal access agreement.

Jim Jensen, Montana Environmental Information Center, opposed SB 347 for the same reasons **Ms. Smith** stated.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. AUBYN CURTISS asked **Mr. Clinch** if the department would still have the discretion to deny access if it perceives a problem exists even if SB 347 passes. **Mr. Clinch** said the bill states that the department may negotiate reciprocal access, which means the department will only do that when it is in the best interest of the state trust as well as the applicant. It is the department's opinion that SB 347 does not circumvent MEPA. In reviewing and making a decision on an application for easement, the department does implement the MEPA process.

REP. CLIFF TREXLER asked **Mr. Clinch** if the access problem was universal across the state. **Mr. Clinch** said the access problem is somewhat universal across the state. SB 347 is particularly for the management of isolated forest lands.

Tape 3, Side A

REP. DAVID EWER asked **Mr. Clinch** if it was true that the department doesn't consider the impacts when reviewing easement requests that may occur on properties that are not state land. **Mr. Clinch** said that was correct and that is because, in many instances, those are totally unknown activities. The magnitude of an analysis the state would have to conduct for an easement request from an oil and gas pipeline, a transmission line, or a highway project would be incredible. The decision not to

consider the impacts when reviewing easement requests is founded on the department's interpretation and reliance on the Winnebago Eighth Circuit Court Decision. **REP. EWER** asked **Mr. Clinch** if that was the way other state agencies view the consideration of impacts as far as MEPA is concerned. **Mr. Clinch** said other state agencies might have different opinions on how they are implementing and interpreting it, recognizing that each of those agencies has different roles. DSL is the lead agency in terms of being a land management agency. DSL does a MEPA analysis on the impacts that an application has on state land. **REP. EWER** said he thought it would be somewhat naive of the department not to do an impact analysis if it knows something is going to occur on a piece of property that may cause significant water degradation. **Mr. Clinch** said there might be some cases where an impact analysis may be necessary and those would be looked at on an individual basis. That is why the language in the bill states that the department may do an impact analysis.

Closing by Sponsor:

SEN. CRISMORE said he was sure that someone would want to amend section one and take out subsection (2) of the bill. If that happens, the bill may as well be thrown away because that is the bill. **SEN. CRISMORE** urged the committee to support SB 347.

HEARING ON SB 371

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, Senate District 13, Big Timber, said SB 371 is an Act to define outstanding resource waters and set up a process for further designation of those waters. It would also identify nonsignificant activities. SB 371 is the result of SB 401 that was passed last session. The Board of Health and Environmental Sciences (BHES) went through an extensive rulemaking process and decided to adopt a rule that gives it the authority to designate outstanding resource waters. The problem is that there is no statutory authorization for that within SB 401 or anywhere else. The Environmental Protection Agency (EPA) has rules for outstanding resource waters, but in the Clean Water Act that authorizes the rules of the EPA, there is no mention of statutory authority for outstanding resource waters. SB 371 gives clear authority to the board to define and designate outstanding resource waters. The bill is purposely restrictive because once a body of water is designated as an outstanding resource water, the kinds of activities that can take place are severely limited. No authorizations to degrade the waters can be issued. **SEN. GROSFIELD** reviewed the bill with the committee.

Proponents' Testimony:

John Bloomquist, Montana Stockgrowers Association, said the bill reflects very prudent aspects of water quality policy and urged the committee to support SB 371.

Don Allen, Montana Wood Products Association, said SB 371 establishes a process that is very important in the designation of outstanding resource waters and the association supported it.

Lance Clark, Montana Realtors Association, supported SB 371.

Tape 3, Side B

Mike Murphy, Montana Water Resources Association, said there are waters in Montana that deserve the recognition of outstanding resource waters, therefore he supported SB 371.

Gail Abercrombie, Executive Director, Montana Petroleum Association, said the procedures set in SB 371 for designation of outstanding resource waters are well delineated, make sense and have safeguards against petitions to stop a project which otherwise could not be stopped. **Ms. Abercrombie** urged the committee to support SB 371.

Jean Johnson, Executive Director, Montana Outfitters and Guides Association, offered an amendment to SB 371 which had been approved by **SEN. GROSFIELD**. The amendment would insert "hunting" into the list of nonsignificant activities. **Ms. Johnson** said although she couldn't speak for back country horsemen, she believed that they would also appreciate the amendment. In some areas, people don't like to see horses in the wilderness. In western Washington, the horses have to wear diapers, so it is important to have "hunting" added to the list. **EXHIBIT 6**

Larry Brown, Agricultural Preservation Association, supported SB 371.

David Owen, Montana Chamber of Commerce, supported SB 371.

Peggy Trenk, Western Environmental Trade Association, supported SB 371.

Chris Racicot, Montana Building Industry Association, supported SB 371.

Brian Kuehl, Greater Yellowstone Coalition. Written testimony. **EXHIBIT 7**

Opponents' Testimony:

Florence Ore, Northern Plains Resource Council. Written testimony. **EXHIBIT 8**

Informational Testimony: None

Tape 4, Side A

Questions From Committee Members and Responses:

REP. DAVID EWER said before the last session, when SB 401 was adopted, it was his understanding that there was something called "high quality water" and now it is going to be called "outstanding resource water." He asked Steve Pilcher, DHES, if he agreed that there isn't any difference between the two. Mr. Pilcher said in his opinion, there is a difference between the two terms. High quality water is of better quality than is required by surface quality water standards. Outstanding resource waters would obviously be those waters that met the test of high quality but they receive further protection. The BHES could previously allow a change in high quality water. The board would not be allowed to approve a change if those waters also met the test of outstanding natural resource waters.

REP. HAL HARPER asked SEN. GROSFIELD if the person that petitions the board for rulemaking to classify waters as outstanding resource waters, would have to pay for the environmental impact statement (EIS). SEN. GROSFIELD said an EIS would only be required when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values. Normally an EIS is not required under MEPA if only social or economic values are impacted. REP. HARPER said on page 6, line 8 of the bill, it states that the board could deny an accepted outstanding resource water classification petition if it finds that based on information available to the board from the EIS or otherwise, the approval would cause significant adverse environmental, social or economic impacts. He asked SEN. GROSFIELD if someone wanted to develop a facility because there was an ore body along the water course would the board find that sufficient cause to deny the petition. SEN. GROSFIELD said that would be something that the board and the Legislature would have to consider.

REP. EWER referred to Mr. Pilcher's definition of the difference between high quality water and outstanding resource water and asked SEN. GROSFIELD if he agreed with that definition. SEN. GROSFIELD said there can not be an authorization granted to degrade outstanding resource waters. REP. EWER said on page 5, subsection (a) states that the department may not grant an authorization to degrade under 75-5-303 in outstanding resource waters; or (b) grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters. He asked SEN. GROSFIELD why 75-5-301(5) wasn't used for both subsections. SEN. GROSFIELD said 75-5-301(5) is the authorization for the nonsignificant criteria. 75-5-303

addresses self-determination, which means that a person can determine that he is not degrading under that statute.

Tape 4, Side B

REP. BOB RANEY said he was concerned with the statement on page 9, lines 10, 11, and 12 that existing activities that are nonpoint sources of pollution as of April 29, 1993 are non-significant. There are a lot of nonpoint sources of pollution activities going on that are presently having significant impacts upon the waters. He asked REP. GROSFIELD if those sources would be grandfathered in. REP. GROSFIELD said the amendment offered by Ms. Ore would negate that. April 29, 1993 is the date of the Nondegradation Act. There has to be a date in order not to retroactively legislate. The conclusion shouldn't be drawn that grandfathering nonpoint sources of pollution activities means that it will remain that way forever. The bill is not in a vacuum.

REP. ROBERT STORY said he attended a hearing on the rules for nondegradation and there was talk about the rules applying to additional sources nonpoint sources of pollution. He asked Abe Horpestad, DHES, to comment. Mr. Horpestad said if a person was engaged in a nonpoint source of pollution activity and hasn't changed or increased that activity, and it was done before April 29, 1993, it would not be a new or increased source and would not be subject to the nondegradation rule. It would be subject to water quality standards.

Closing by Sponsor:

SEN. GROSFIELD said SB 371 is a restrictive bill. It won't be easy to designate outstanding resource waters. However, there are waters that deserve to be designated as outstanding resource waters and SB 371 will do that.

EXECUTIVE ACTION ON SB 386

Motion: REP. BILL TASH MOVED SB 386 BE CONCURRED IN.

Motion/Vote: REP. SCOTT ORR MOVED AMENDMENTS TO SB 386. EXHIBIT 9 Voice vote was taken. Motion carried unanimously.

Motion: REP. PAUL SLITER MOVED SB 386 BE CONCURRED IN AS AMENDED.

Discussion:

REP. BOB RANEY said he was going to vote against the bill because it is a giant step backwards in the underground storage tank program that has been moving along well for almost a decade, which was to ensure that there wouldn't be tanks underground that were leaking. It was done for the protection of groundwater.

The smaller storage tanks are more prone to rust through and leak than the larger tanks.

REP. BILL TASH said the purpose of the bill is to get the tanks out of the ground and to take advantage of the extended window of opportunity that will clean up the environment, not to put them back into the ground.

REP. DANIEL FUCHS said SB 386 gives people the incentive to get the tanks out of the ground.

REP. AUBYN CURTISS said this is one more instance where Montana's agencies have adopted rules more stringent than EPA standards are. It has cost the state a lot of money and it is going to cost a lot more, even if SB 386 is passed.

REP. JON ELLINGSON said he wouldn't vote for SB 386 because he didn't understand where it would give anyone the incentive to remove the underground tanks. The only incentive to be found in the bill is that after the period of time elapses there wouldn't be any reimbursement for tank removal.

REP. DAVID EWER said he understood that reimbursement was only for tanks that were leaking and didn't think that was an incentive to take the tanks out, it would be an incentive to keep them in.

REP. KARL OHS asked **REP. EWER** to explain why he thought it would be an incentive to leave the tanks in the ground if they were leaking. **REP. EWER** said under current law the underground tanks are supposed to be taken out. SB 386 lets people do what they want. **REP. OHS** said SB 386 is only effective for a certain period of time. The tanks are registered and the department knows where they are. **REP. EWER** said the current law requires the removal of underground storage tanks. SB 386 allows for a certain period of time, the removal of underground storage tanks, with the capacity of 1,100 gallons or less and if they are leaking reimbursement will be given. After that date, there will no longer be any reimbursement, but the bill does not require that the tanks be removed. **REP. OHS** said the tanks would not be filled if they aren't permitted. The tank won't have a tag on it after a certain date and unless there is a tag, fuel will not be put in it.

REP. FUCHS said people do have to remove their underground storage tanks. For a certain period of time, if they discover they are leaking, they can get reimbursed. That is the incentive.

REP. STORY said if a person has an underground storage tank it doesn't matter whether or not it is permitted, if it leaks that person is responsible for the costs because it is an illegal activity. The bill doesn't exempt a person from that provision of law. It merely states that if the tanks aren't out of the

ground by a certain date, the owners will be responsible for any clean up costs.

REP. TASH said the purpose of the bill is to get the tanks out before they leak and harm the environment and to relieve the owners' liability concerns. There is little likelihood that properties can be disposed of that have underground fuel storage tanks.

REP. RANEY said the bill states that tanks with the capacity of 1,100 gallons or less are not considered underground storage tanks. Therefore, these tanks don't fall under any of the laws.

REP. HARPER said the leaking underground storage tank program was established so a person who had a leaking tank could get some help in cleaning it up. SB 386 would let the state close the books on all these tanks because the state knows there have been leaks that haven't been reported and it wants to cover itself.

Tape 5, Side A

REP. JAY STOVALL said the bill merely gives people the incentive to remove their underground storage tanks. If they don't have that incentive, they will take the fill cap up and leave them in the ground and there will be pollution. SB 386 is a good bill for the environment.

REP. ELLINGSON said the bill's definition of underground storage tanks doesn't include tanks with the capacity of 1,100 gallons or less. In that case, if it is still in the ground after the window of opportunity time has elapsed, there would be no need to get a permit for its removal and the services of a licensed installer wouldn't have to be obtained for the closure. The state would lose any possibility of overseeing the final closure of the tank and if there is a bad leak it's possible no one will find out about it.

REP. TASH said inspections of tanks that are removed would still be done by local health officers. Pollution isn't coming from the smaller tanks. No one can afford to repeatedly fill an 1,100 gallon tank if it is known that it leaks. The high price of fuel now dictates that the owner isn't going to find it affordable to fill a leaking tank.

REP. SWANSON said she agreed that the incentive is to get the tanks out of the ground.

REP. RANEY said there wouldn't be an incentive to get the smaller tanks out of the ground because the bill excludes them in the definition of underground storage tanks.

REP. OHS said he used to have underground storage tanks but took them out. His neighbors didn't remove their tanks. The tanks have to be registered. The tanks can't be filled unless they

meet certain criteria. They have to be inspected to make sure they aren't leaking and certain reports have to be sent in to the state. The state will not let anyone put a tank in the ground and let it continue to leak.

REP. RANEY said if the tanks no longer fall under the underground storage tank law, they don't have to be registered and they could be filled. SB 386 excludes the smaller tanks from that law.

REP. FUCHS asked Michael Kakuk, EQC, to comment on REP. RANEY's statement that smaller tanks would no longer fall under the underground storage tank law if SB 386 is passed. Mr. Kakuk said it was his understanding that REP. RANEY is correct. The only reason that bulk fillers have to go through the process of making sure a tank is tagged and has been inspected is because they are currently defined as underground storage tanks. There is an incentive to take the tanks out because if they are leaking there may be some reimbursement. Everyone understands the dangers of storage tanks. However, SB 386 could be seen as an incentive to put more storage tanks in because they wouldn't be regulated.

CHAIRMAN KNOX said he had found from talking to many agricultural people, that they are scared of underground tanks and if they ever get them out of the ground they won't put anymore back in.

Motion/Vote: Voice vote was taken. Motion that SB 386 be concurred in as amended carried 10 to 8. REP. HARPER, REP. TUSS, REP. EWER, REP. STOVALL, REP. ELLINGSON, REP. TASH, REP. RANEY and REP. TREXLER voted no.

EXECUTIVE ACTION ON SB 406

Motion: REP. PAUL SLITER MOVED SB 406 BE CONCURRED IN.

Motion: REP. DAVID EWER MOVED AMENDMENTS TO SB 406.

Discussion:

REP. EWER said the amendment strikes subsection (3) of SB 406. Under subsection (3) the bill limits the responses to inquiries. Line 18 of subsection (3) states that responses must be limited to the date in the underground storage tank system was removed or closed in-place and to whether or not evidence of a release was reported. State government inquiries can't be limited. REP. EWER said he runs seven programs at the state Board of Investments. He is required to answer all inquiries except for material such as financial statements that need to be kept confidential in the interest of private parties.

REP. SCOTT ORR said he agreed with the wording in subsection (3). All anyone needs to know is when the storage tank was removed or closed in-place and whether it leaked.

REP. TASH asked REP. EWER if the sponsor was aware of the amendment. REP. EWER said he hadn't talked to SEN. NELSON about the amendment.

REP. HAL HARPER said another way subsection (3) could be amended would be to say that the department's response would be limited to information already on file. There would be a big government secrecy problem if the department is allowed to release only certain information to the public.

REP. TASH asked Michael Kakuk, to respond to REP. HARPER's statement. Mr. Kakuk said article 2, section 9 of the Montana Constitution states that no person shall be deprived of the right to examine documents of a public body or agency of the state government except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. For SB 406 to stand as it is, it would have to be argued that the information on file is not a public document, which would be difficult under existing case law, or that the merits of individual privacy for the tank owner outweighed the merits of public disclosure. If it deals with potential groundwater contamination, the latter would also be very difficult to argue.

Vote: Voice vote was taken. Motion to amend SB 406 carried unanimously.

Motion/Vote: REP. EWER MOVED SB 406 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried 15 to 3. REP. HARPER, REP. RANEY and REP. WAGNER voted no.

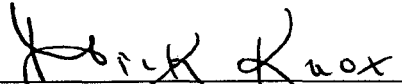
NATURAL RESOURCES COMMITTEE

March 20, 1995

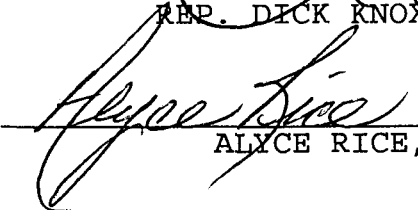
Page 17 of 17

ADJOURNMENT

Adjournment: 7:30 pm



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 3-20-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 386 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Dick Knox
Dick Knox, Chair

Carried by: Rep. Orr

And, that such amendments read:

1. Page 6, line 27.
Following: "RESIDENTIAL"
Insert: "underground storage"
2. Page 6, line 29.
Following: "RESIDENTIAL"
Insert: "underground storage"

-END-

gs.
Committee Votes
Yes 10, No 8.

650924SC.Hbk



HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 406 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Dick Knox

Dick Knox, Chair

Carried by: Rep. Orr

And, that such amendments read:

1. Page 1, lines 17 through 20.
Strike: subsection (3) in its entirety

-END-

Committee Vote:
Yes 5, No 3.

650921SC.Hbk

March 20, 1995

Mr. Chairman, members of the committee, for the record my name is Jim Barrett, I represent the Beartooth Alliance, a citizens group in Cooke City, Montana. I am here as a volunteer.

SB 346 is an attempt by the Dept. of Health and Environmental Sciences to accommodate mining interests who are faced with acquiring permits to discharge pollutants into streams which are presently impaired in one or more of the parameters which determine their classification. The impetus for this legislation is principally a result of a petition submitted by Noranda\Crown Butte to the Board of Health and Environmental Sciences to rewrite the rules which designate I class streams in Montana. A part of this petition is a request by Noranda\Crown Butte to reclassify streams near Cooke City to 'I', the lowest class, because of historic mine pollution that may have been exacerbated by exploration activity carried out by this Canadian gold mining company.

When this bill was presented to the Senate Natural Resource committee, I testified as a proponent with reservations as to the ability of this legislation to attain its stated goals of cleaning up water bodies affected by the actions of man. There have been statements made by members of the legislature that the pendulum of water protection regulation has swung too far to the left and SB 330 and SB 331 (and I include SB 346), are purported attempts to swing that pendulum back to the middle. I would submit that the pendulum is presently to the right of center. One has only to look at the level of degradation many of Montana's water bodies are enduring from historic and contemporary activities to see that we have a long way to go in order to strike a balance between our actions and the level of insult they inflict upon our natural world. SB 346 which must be considered collectively with SB 330 and SB 331, does not go far enough toward the middle to be considered for enactment.

SB 346 does not identify criteria that establish which water bodies would be subject to temporary modification. Federal Law delineates six specific instances under which designated uses can be removed. SB 346 should incorporate these exceptions

as part of the bill and clearly state that they will be referred to in considering any temporary modification.

SB 346 does not incorporate the existing requirement for the state to establish total maximum daily loads (TMDL's) which would identify all sources of pollution thereby providing a picture for the regulator of the real condition of a water body and help determine the subsequent level of cleanup that would be possible.

SB 346 should state explicitly that no temporary modification may be permitted until all other avenues for cleanup have been exhausted and then only for the parameter which is preventing the attainment of the beneficial uses. In addition, temporary modification should only apply to the individual permit applicants and not the entire water body. This must be clearly stipulated in the temporary modification to prevent other polluters on the water body from similarly applying for a temporary modification which effectively increases pollution. There should never be an opportunity for increasing discharges as a means to clean up a water body. This is both illogical and almost always results in furthering an impairment.

Finally, water quality standards should be strengthened (or ratcheted) as improvements in water quality are reached which reflect an accurate assessment of the stream's condition as a result of the implementation of permit requirements. Compliance with the cleanup schedule should be expedited rather than delayed and modifications of an implementation plan should be based on the availability of technology to meet the schedule rather than allowing the submission of a revised plan which serves only to delay and postpone with the end result of avoiding cleanup.

The Beartooth Alliance opposes SB 346 in its present form and asks the committee to consider the implications of SB 346 as it relates to SB 330 and SB 331 which cumulatively retreat from good sense, but more importantly disregard the Montana constitution which declares our inalienable right to a clean and healthful environment and that the legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Thank you for the opportunity to testify in opposition to SB346

A designated use can be removed only if :

1. naturally occurring pollutant concentrations prevent the attainment of the use (as is the case with thermal waters, which do not support aquatic life because of temperature, sulfates and salts).
2. natural, ephemeral, intermittent or low flow conditions of water levels prevent the attainment of the use.
3. human caused conditions or sources of pollutant prevent the attainment of the use and cannot be remedied, or would cause more environmental damage to correct than to leave in place.
4. dams, diversions, or other hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water to its original condition.
5. physical conditions related to natural features of the water body (such as depth, pools, and flow) preclude attainment of aquatic life protection.
6. controls more stringent than those required by sections 301 (b) and 306 of the Act would result in substantial and widespread economic and social impact (as might occur if a very small community were forced to build a multi-million dollar water treatment facility).

Northern Plains Resource Council

EXHIBIT

DATE 3-20-95

SB 346

**Testimony of Florence Ore
for the Northern Plains Resource Council
on Senate Bill 346
before the House Natural Resources Committee
March 20, 1995**

Mr. Chairman, members of the Committee, for the record, my name is Florence Ore. I am a retired postmistress and I live in Pony, Montana. I am speaking today on behalf of members of the Northern Plains Resource Council, as Secretary of NPRC's Board of Directors and Chair of NPRC's Hard Rock Mining Task Force.

I stand in support of the testimony given by Jim Barrett on behalf of the Beartooth Alliance. I also stand in support the intent of SB 346 to provide a workable mechanism to ensure that Montana waters, which have suffered damage from past pollution, are cleaned up so they will once again support the greatest possible range of beneficial uses. In order to ensure that SB 346 accomplishes its intent, I urge the committee to adopt amendments which would:

- provide stricter criteria which must be met in order for the board to consider granting a temporary modification of water quality standards; and
- require a more enforceable accountability process and stricter timetable for successful completion of the clean up plan by the permittee who is granted a temporary modification of water quality standards.

Without these additional controls, I fear that SB 346 could do more harm than good for Montana's waters.

Comments presented to House Natural Resources Committee concerning SB347.

March 20, 1995

Mr. Chairman, members of the committee, my name is Ronald Buentemeier, Lands Manager for F. H. Stoltze Land & Lumber Co. at Columbia Falls, Montana. Stoltze is the oldest family owned Lumber Company in Montana with the mill at Halfmoon being established in 1923. I have been lands manager for 34,000 acres of land in Northwest Montana for the last 31 years.

Today you are considering SB347, which is concerned with granting access across State Trust Lands. At the Senate committee hearing, Senator Crismore mentioned, we should all be good neighbors. Stoltze has been a good neighbor for the past 72 years in dealing with our neighboring landowners and access across our ownership. Under current Montana Law there appears to be some legal implications that the Department of State Lands feel prevents them from granting reciprocal access for Forest Management activities on forested land. We all recognize that we must be good stewards of our forest lands, one of our most precious resources. However, current procedures have done little for the land and much for the bureaucracy.

Much of the State Trust Lands, in the Northwest part of the State, are scattered in many locations similar to some of Stoltze ownerships. This scattered ownership makes management of any kind difficult at best. To have any management you must have access to your property. Because of the scattered nature, it is in everyone's best interest to be good neighbors and cooperate by granting single or reciprocal access. It is very shortsighted by either party to deny access because you will most likely pay at some point.

I have been dealing with the Department of State Lands on access for many years. We currently have 7 requests for access filed, dating back to 1989. After two months of frustration, I was able to meet with DSL at the Northwestern Land Office on December 22, to discuss the status of the various requests. Notes of this meeting, and letters I have sent to various people, including Bud Clinch and Governor Racicot, are included with my response. You will find that each request was discussed in detail. Some of the points covered were:

- 1) The Northwestern Land Office had made the decision about one year ago to concentrate on obtaining easements to State ownership and not spend time on other easement requests. They are to be praised for recognizing the importance of access to State Lands, but the decision may be short sighted.

2) Because of Grizzly Bear habitat near the valley edge , one request could not go any further unless Stoltze was willing to do and pay for the analysis required with no assurance that access would be granted.

3) Another request, near the upper end of Whitefish Lake, needed to be coordinated with a State Timber Sale. If access is granted, there will be timing and operating restrictions imposed.

4) A request near Beaver Lake is being delayed for several more years while DSL goes through the current bureaucratic process. DSL has begun the process, but, initial public meetings showed that management will be very controversial and difficult in the area.

5) On another, Stoltze and several other private landowners encouraged DSL to improve the road locations out of a riparian area. The landowners had agreed to provide gravel on the road in the new location in exchange for everyone getting easements across State land. This would be a win situation for the resource, the State Trust Lands, private landowners, and Stoltze!! Problem here is, that Stoltze must agree to do all of the leg work and pay the cost of the survey.

Everyone is concerned about the quality of Land Management that is being done on our Forest Lands. Industry and private landowners have been working very hard

through Best Management Practices and the Streamside Management Act to do a QUALITY land management job. The recent BMP audits show that we are doing a better job. Two audits, of Stoltze Land, show that we exceeded the requirements 6 times and met them 71 times, out of a total possible 77. Stoltze has also been recognized as doing a quality Forest Management job by other forest land owners and many private individuals. This all shows that DSL should only concern themselves with the access across State Trust Lands and not management on adjoining ownerships. This bill will help clarify the responsibility of the Department of State Lands and their obligation to be a good neighbor.

Because of the current course of events, Stoltze feels their only recourse is to deny a current access request by State Trust Lands across Stoltze ownership. This is NOT our preferred alternative. We want to be good neighbors , and have a common sense solution to a mutual access problem. This should be a simple reciprocal easement for timber management purposes!!

Thank you for your time. I will answer any questions at the appropriate time.

Ronald H. Buentemeier

Timber & Lands Manager

December 30, 1994

Bill O'Brien
Northwestern Land Office
Department of State Lands
2250 Hwy 93 N.
Kalispell, MT 59901

Re: Right-of-way requests to cross State Lands

Dear Bill,

On Thursday, December 22, 1994, I met with Bill Wright, Ted Giesey, and Stan Billheimer, at your office to discuss the status of our requests for access across State Land in Northwest Montana. Ted opened the meeting by explaining that your office had made the decision about one year ago that Stan would spend his time on gaining easements to Trust Lands as the priority and all other requests would have a lower priority to be worked on only as time permitted. To date nine easements have been recorded to State Land. I applauded the State for recognizing the importance of gaining access to State Land, but also pointed out the short sightedness of this decision. The State can not expect private landowners to be cooperative in granting easements to the State if requests by private landowners are being delayed or denied. Stan and Ted also mentioned that the regulations regarding granting of R/W's were changing almost daily adding to their problems.

A review of the R/W requests made by Stoltze was made.

I. Rhodes Draw

- a. Initially began in November, 1989.
- b. Road Use Permit dated July 26, 1990
- c. Letter of agreement signed October 24, 1990.
- d. Extension letter December 20, 1991.
- e. Route survey was done by Stan Billheimer and John Ulrich (Stoltze Forester) in the fall of 1990.
- f. Road built and graveled in the fall of 1990
- g. Discussions with all parties in February - March 1992 regarding exchange of easements.

- h. During 1993 contacts made with Stan regarding progress.
- i. October 1994 contacted Bill about concern with no progress on several R/W requests.
- j. November 1994 contacted Bill to set up meeting to discuss R/W's. This resulted in December 22, 1994 meeting.

Decisions on December 22, 1994 were as follows:

- 1. Stoltze will contract to have the entire route (approximately 5 miles) surveyed and plats prepared to State standards.
- 2. Stoltze will provide Bill with ownership map of watershed so he can determine proportionate shares based upon acres.
- 3. Stoltze will prepare a list of roads each party needs.
- 4. Stoltze will evaluate width of R/W needed on various roads.
- 5. Stoltze to determine, through contact with other parties, how deeds should be prepared.
- 6. Stan Billheimer will prepare another extension letter.
- 7. State will make this R/W request top priority on private list behind eight other easements to trust land.

II. Hollinberg - Birch Creek

- a. Verbal request made during August, 1993.
- b. Formal request made January 17, 1994.
- c. Ron Buentemeier and Beverly O'Brien had phone conversation May 17, 1994.
- d. Floyd McCubbins (Stoltze Forester) and Beverly met and discussed proposed route and alternate route. State is favoring the alternate route and only a temporary Road Use Permit. Permanent easement will require a MEPA document, supplied and paid for by Stoltze, and two to five years of time.
- e. There is no assurance to Stoltze that a permanent easement will ever be granted under these terms.
- f. Any easement will most likely have restrictions which will limit property ownership.

Decisions on December 22, 1994 were:

- 1. Ted will check to see if the Land Board will give preliminary approval when EA complete. Survey and documentation will then take place.
- 2. Stan will check to see if there are restrictions, can they be handled by a letter of agreement instead of in the deed.
- 3. Stoltze will be in a holding pattern until these questions are answered.

III. McLelland - Swan Lake

- a. Request sent August 9, 1994 to Glenn Gray, found out December 22, 1994 that this is on a boundary and in Bill Wright's working circle.
- b. No response until December 22, 1994.

Decisions on December 22, 1994 were:

1. Bill is writing adjacent landowners and plans to have package to Stan by February 1, 1995.
2. Stoltze will send in "new" formal request form along with survey plat and narrative.

IV. Ashley Lake Section 36:

- a. Request sent January 5, 1993.
- b. Letter from Stan January 14, 1993 informing Stoltze of needs.
- c. Stoltze sent \$50 permit fee on January 15, 1993.
- d. Road Use Permit issued September 20, 1993.
- e. Stoltze discussed with Stan the present survey that Plum Creek has on this road. It was decided that Stoltze would need to do a new survey because standards have changed and the old survey is no longer adequate.

Decisions on December 22, 1994 were:

1. Stan will again check old survey and let Stoltze know by early January how to proceed.

V. Blue Grass

- a. Stoltze sent a letter on October 1, 1993 supporting the timber sale and encouraging cooperation between all landowners to acquire permanent easements at the time the sale is made.
- b. Ron Buentemeier attended the November 15, 1993 open house to discuss the sale and again encouraged cooperation to gain permanent access.
- c. Stoltze granted the Road Use Permit requested by the state on March 18, 1994. The state was not happy that they were required to pay \$50 for the permit. Ron again stresses the need for cooperation to gain permanent access.
- d. On August 29, 1994 Beverly O'Brien responds by sending several easement applications to Ron and suggested he coordinate landowners, surveying, and documentation.
- e. Ron wrote Bill on October 23, 1994 about no mention of a permanent easement in the timber sale package.
- f. Beverly wrote Rem Kohrt (Stoltze General Manager) on November 21, 1994 updating sale progress and again encouraging Stoltze to do coordination.

Decisions on December 22, 1994 were:

1. Contact State Lands Board about R/W policy that allows the collection of R/W fees from eight owners to use the same road. This has to be "double dipping" at it's finest.
2. Ron will decide if he wants to be the "good guy" and coordinate this easement request.

VI. King Creek

- a. Prior to 1990 Ron had discussed with Tom Vars the possibilities of coming across State Land using old and new roads. Both old and new roads

had problems so we never came to a solution.

- b. March 2, 1990 Stoltze made a formal request to use roads across State Lands.
- c. March 6, 1990, March 20, 1990, April 17, 1990, March 4, 1992, August 4, 1992, and February 16, 1993 letters all refer to this project.
- d. October - November 1994 phone calls from Norm Kuennen, regarding project.

Decisions on December 22, 1994 were:

- 1. Ted will get some clarification from Tom Vars. The State is reluctant to give permanent easement because activities on private land could have an impact on state land.
- 2. Ron pointed out this is the same problem that the Hollinberg - Birch Creek project has and the same comments hold true.

VII. Beaver Lake

- a. Initial request was part of the Beaver Lake response, February 24, 1993.
- b. State and county are working to clear up the R/W problem through the Keister property, which will result in a county road to State Land.
- c. There is a big conflict with local residents regarding timber harvest on State Lands, approximately 6000 acres, and management of private lands in the area.
- d. Local residents are considering zoning to limit future development and activities.

Decisions on December 22, 1994 were:

- 1. Bill is looking at an alternate route through Skyles Lake area, but it does not look feasible because of road grades and needed private R/W.
- 2. Ron will make another formal request for R/W.
- 3. The State is not optimistic that this easement will be granted soon.

VIII. Haskill Basin

- a. The State has requested, on October 5, 1994, a Road Use Permit and permanent easement for Section 16, T31N, R21W. This permit would allow them to sell 500,000 to 1,000,000 board feet of sawtimber.

Decisions on December 22, 1994 were:

- 1. Stoltze will consider the Road Use Permit and permanent easement at a later date.

Under current regulations and priority directions there are at best three of the above eight R/W requests that can be moved to completion by December 31, 1995. We realize that the interests of the School Trust Lands must be taken care of first. However, current direction is neither insuring access to trust land nor to private land.

Our company has always been a cooperator in the past and want to be a cooperator in the future. However we must insure that the company's interests are protected. We do not feel it is in the best interest of the company to continue to grant road use or right-of-ways to others without our requests being handled in a prompt and fair manner. For the above reasons we will not grant a Road Use Permit or permanent easement for the State to use our roads to gain access to Section 16, T31N, R21W at this time. We realize that the people of Montana and Stoltze are losers by this decision. Resolution of the R/W issue must be a priority issue.

Your attention is appreciated.

Sincerely yours,

Ronald Buentemeier
Timber & Lands Manager

CC: The Honorable Marc Racicot, Governor
Rem Kohrt, Stoltze Land & Lumber Co.
Bud Clinch, Director, State Office, Department of State Lands
Don Artley, Department of State Lands, Division of Forestry
Bill Wright, Department of State Lands, Kalispell Unit
Ted Giesey, Department of State Lands, Kalispell Unit
Stan Billheimer, Department of State Lands, Kalispell Unit
Glenn Gray, Department of State Lands, Swan River Unit
Tom Vars, Department of State Lands, Stillwater Unit
Cary Hegreberg, Montana Wood Products Association

RB:tk

December 29, 1994

Bud Clinch, Director
Department of State Lands
P.O. 201601
Helena, MT 59620-1601

Dear Bud,

I have enclosed a copy of a letter I have sent to Bill O'Brien, Northwestern Land Office, concerning several Right-of-Way requests we have pending. The current approach that the State is taking concerning Right-of-Ways is very short sighted. The State should be taking a proactive role in solving Right-of-Way problems. You can not manage the School Trust Lands without access. A cooperative approach will bear much more fruit.

Any help you can give in solving our joint problem will be appreciated.

Sincerely yours,

Ronald Buentemeier
Timber & Lands Manager

CC: The Honorable Marc Racicot, Governor
Encl.
RB:tk

MEMORANDUM

TO: Bill Schultz, Supervisor State Land Management Section, Forestry Division,
Jeanne Fairbanks, Supervisor Special Uses Section, Forestry Division

FROM: *TLG* Ted L. Giesey, Manager Forestry and Lands Programs, Northwestern Land
Office, Department of State Lands

DATE: December 22, 1994

SUBJECT: STOLTZE RIGHT-OF-WAY REQUESTS ACROSS SCHOOL TRUST LAND

Ron Buentemeier, Stoltze Land & Lumber Company met with NWLO (Bill Wright - Kalispell Unit Manager, Stan Billheimer - NWLO Real Estate Specialist, & Ted Giesey) on 22 December, 1994.

In no uncertain terms, Buentemeier pointed out that DSL needs right-of-ways from Stoltze to manage our Trust Lands (just as Stoltze needs DSL's r/w's to access their lands). He pointed out a FY 1995 Kalispell Unit timber sale (Haskill Basin) that can't be sold without Stoltze approving a permanent r/w request!

I honestly related that NWLO had prioritized work on private sector r/w's: #1) Public highways & utilities serving a lot of people, #2) Industry r/w's, #3) private driveways serving one or a few individuals. Also, I pointed out a change in NWLO's r/w program of actively working on our own permanent r/w needs to access Trust Lands. (NWLO had little activity over the past 10 years in securing permanent easements for DSL Trust Lands. As a result of this change in the past one year, DSL now has 9 easements recorded in the Flathead & Lake County Courthouses).

A second big concern raised by Stoltze was the loss of "private property rights". That is, where DSL may impose mitigation or restrictions on Stoltze's management. For example, DSL proposed stipulating seasonal closures for grizzly bears in the right-of-way deed based upon -- in Buentemeier words "self imposed standards/guidelines". However, I do believe Stoltze is willing to cooperatively work with DSL and both of us be able to reach our resource management goals by signing a separate Memorandum of Understanding regarding how we deal with Grizzly bears, hydrology, etc.

The participants went through the following Stoltze r/w applications and discussed their status:

<u>EASEMENT:</u>	<u>DATE RECEIVED:</u>	<u>LOCATION:</u>	<u>TYPE REQUEST:</u>	<u>COMMENTS:</u>
Rhodes Draw	January, 1990	S 16, T29N, R23W	Permanent r/w	Road built with road use permit. Original intention was to exchange r/ws. Some survey problems. Temporary easement needs extension.

Narrative:

Decided Stoltze needs to hire a licensed surveyor to survey 4.2 Miles of road access they need across the State section. Surveyor probably should survey the main road in Section 15, T29N, R23W for DSL's permanent access needs--NWLO will budget dollars to pay for after July 1, 1995. Wright & Buentemeier to figure and agree on tributary acres for Stoltze and Montana Forest Products, and DSL lands. (Montana Forest Products lands are under a cooperative management agreement with Stoltze). Will likely need to prepare 2 sets of applications and plats (1 set for Stoltze and Montana forest Products, 2nd set for Chuck O'Neil & Jyos).

Billheimer will begin work on this easement in early January, 1995 and get the package to the Land Board upon receiving and processing the applications and survey plats from Stoltze this winter.

<u>EASEMENT:</u>	<u>DATE RECEIVED:</u>	<u>LOCATION:</u>	<u>TYPE REQUEST:</u>	<u>COMMENTS:</u>
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Birch Creek	January, 1994	S 2 & 11, T27N, R19W	Permanent r/w	Wet Lands. Grizzly Bear Mgt. Area already part of road closures. Stoltze to do the EA.
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Narrative:

Stoltze is willing to come in from the Jewel Basin Road (from the north), and drop their southern access route request because DSL has identified water quality problems with the route. Stoltze is not willing to have grizzly bear seasonal use restriction put in a r/w deed. (Property rights infringement). Stoltze is willing to specify no spring operations (probably to July 1) and is agreeable to road closures because this is critical spring grizzly bear habitat. Stoltze would be willing to sign a Memorandum of Understanding with DSL to stipulate this. Stoltze was told they have to contract or prepare the appropriate environmental documentation (EA or EIS) to DSL standards for our approval. Stoltze may be willing to do this, but decision has to be made yet. If Stoltze completes the EA and it is DSL's decision to approve, Stoltze wants preliminary approval from the Land Board before they commit the additional dollars to hire a surveyor to survey and prepare the plat. Will the Land Board give a preliminary approval?

<u>EASEMENT:</u>	<u>DATE RECEIVED:</u>	<u>LOCATION:</u>	<u>TYPE REQUEST:</u>	<u>COMMENTS:</u>
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Swan Lake East shore	September, 1994	S 24, T26N, R19W	Permanent r/w	Needs field review. Request out to specialist for comments.
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Narrative:

This r/w appears to be routine. Survey and plats have already been completed for Stoltze. Stoltze needs to get DSL the application and plats (by early January, 1995). Wright to complete his recommendations by February 1, 1995. Billheimer to process package in February, 1995. Anticipate sending r/w to the Land Board and receiving (if approved) r/w deeds for Stoltze by May, 1995.

<u>EASEMENT:</u>	<u>DATE RECEIVED:</u>	<u>LOCATION:</u>	<u>TYPE REQUEST:</u>	<u>COMMENTS:</u>
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Whites Basin	August 9, 1994	S 16, T27N, R21W	Road Use Permit	Kalispell Unit completed package and sent it to LO 10/14/94.
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Narrative:

Whites Basin Road Use Permit issued by NWLO to Stoltze on October 25, 1994.

EASEMENT: DATE RECEIVED: LOCATION: TYPE REQUEST: COMMENTS:

King Creek	March 2, 1990	S 29, T32N, R22W	Road Use Permit	Stoltze (McCubbins) anticipated r/w needed in 1997 (moved up to 1994).
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Narrative:

DSL must still bring the newly constructed King Creek Road up to finish standards (anticipate American Timbers completion during the summer of 1995). DSL would then be able to grant Stoltze Land & Lumber Company a temporary road use permit.

EASEMENT: DATE RECEIVED: LOCATION: TYPE REQUEST: COMMENTS:

Beaver Lake	February 29, 1994	S 20, T31N, R22W	?	R/W requested 2/24/94 by Stoltze. Stillwater Unit does not have any record of this application--please send copy.
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Narrative:

At present, DSL does not have a legal right-of-way into Beaver Lake. Therefore, DSL cannot grant any permanent or temporary easements to the private lands behind State ownership.

If and when DSL gains permanent easement, then we will suggest all interested parties (seven or more have expressed r/w interest) act together and share in the costs. Costs include preparing a environmental analyses or environmental impact statement, and also survey costs for the various road segments.

cc: Cal. File
 Stoltze Land & Lumber Company
 Bill O'Brien
 Stan Billheimer
 Kalispell Unit
 Stillwater Unit

DEPARTMENT OF STATE LANDS
FIELD OPERATIONS DIVISION



MARC RACICOT, GOVERNOR

STATE OF MONTANA

NORTHWESTERN LAND OFFICE
P.O. BOX 7098
KALISPELL, MT 59904-0098

Telephone: (406) 752-7994
FAX: (406) 752-7993

January 6, 1995

Ronald Buentemeier
Timber & Lands Manager
F. H. Stoltze Land & Lumber Co.
P.O. Box 1429
Columbia Falls, MT 59912

Dear Ron:

Thank you for your letter of December 30, 1994, regarding Stoltze's right-of-way requests to cross State trust lands.

I certainly appreciate your frustration at the apparent lack of progress in processing the rights-of-ways you have requested. We too are frustrated and disappointed that we have not been able to provide better service in this area of responsibility.

I understand the need for all major forest landowners to cooperate on providing access to each other. As you know, we have placed top priority on providing temporary access for timber harvest. You have pointed out, however, our progress on your requests for permanent access has been very slow. We have found it difficult to address access needs to trust land, along with the needs of other landowners. Our resources in this area have been essentially fixed, while the demand has escalated rapidly for both private sector and school trust right-of-way needs. Your patience up to now is appreciated.

With two exceptions, your letter is an accurate summation of the situation to date and actions both parties feel can be accomplished in the next couple of years.

The first exception is Rhodes Draw. You state it is behind eight other easements to school trust lands. In fact, Rhodes Draw is the fourth right-of-way on the overall list. I have had Ted provide the following priority listing of all Northwestern Land Office right-of-ways in progress:

- | | |
|---------------------------------|------------------|
| 1. Van Derhoff | (Private Sector) |
| 2. Van Derhoff | (Trust Lands) |
| 3. Stoltze-McLelland-Swan (III) | (Private Sector) |
| 4. Stoltze-Rhodes Draw (1) | (Private Sector) |
| 5. Stoltze-Rhodes Draw | (Trust Lands) |

KALISPELL UNIT
P. O. Box 7098
Kalispell, Montana 59904-0098
Telephone (406) 756-6575
Fax (406) 752-7993

STILLWATER STATE FOREST
P. O. Box 164
Olney, Montana 59927
Telephone (406) 881-2371
Fax (406) 881-2372

LIBBY UNIT
14096 U.S. Highway 37
Libby, Montana 59923
Telephone (406) 293-2711
Fax (406) 293-6748

PLAINS UNIT
P. O. Box 219
Plains, Montana 59859
Telephone (406) 826-3851
Fax (406) 826-5785

SWAN STATE FOREST
Swan Lake, Montana 59911
Telephone (406) 754-2301
Fax (406) 754-2884

Ronald Buentemeier Letter
January 6, 1995
Page 2

6.	Montana Power Co.	(Private Sector)
7.	Keister	(Trust Lands)
8.	Cadenhead	(Private Sector)
9.	NEWCO International	(Private Sector)
10.	Marquardt	(Trust Lands)
11.	Beller	(Trust Lands)
12.	Stoltze-Hollinverg Birch Creek (II)	(Private Sector)
13.	Owen-Hurst Leasing	(Private Sector)
14.	Confederated Salish Kootenai Tribes	(Private Sector)
15.	Confederated Salish Kootenai Tribes-Selow T.S.	(Trust Lands)
16.	Kiser	(Trust Lands)
17.	Hewitt/Tilton	(Trust Lands)
18.	Nelson	(Private Sector)
19.	Montana Dept. of Transportation-Lion Springs	(Private Sector)
20.	Eslick	(Private Lands)
21.	Johnson	(Trust Lands)
22.	Micklon (two easements)	(Private Sector)
23.	Kootenai N.F. (two easements)	(Private Sector)
24.	McFeely	(Private Sector)
25.	Mary B. Subdivision	(Private Sector)
26.	Montana Dept. of Transportation-Foy's Canyon	(Private Sector)

(Roman numerals refer to those in your letter.)

The second exception is that no formal applications for easement across Blue Grass Ridge (Section 36, T29N, R23W) and Beaver Lake (Section 20, T31N, R22W) have been received, but we are aware of your desire to obtain these rights-of-ways. At the Blue Grass Ridge open house, we told all the adjacent landowners present that it was in their best interest to coordinate and share in the right-of-way survey. DSL is available to provide information on easement requirements, but we do not feel it is our responsibility to coordinate this effort for private landowners.

Roman Numerals IV Stoltze-Ashley 36, V Stoltze-Blue Grass, VI Stoltze-King Creek, and VII Stoltze Beaver Lake will be added to the list and prioritized as pending questions are cleared up and applications and plats (as determined to be required) are submitted. As soon as you provide DSL with the Swan and Rhodes Draw survey plats and applications, processing of these easements will begin.

You should also be aware that the priority action list is subject to revision quarterly to semi-annually as the steady stream of right-of-ways applications come in. Applications from public utilities and highways generally have a higher priority than private or trust land needs.

I have asked Ted to give me a quarterly update on the progress of Stoltze's outstanding requests. I have also asked that he contact you in three months time to review progress with you and update the "action

Ronald Buentemeier Letter

January 6, 1995

Page 3

plan" as necessary. In this way, I feel we can establish and maintain reasonable progress and good communications.

I am committed to completing the priorities as outlined in your letter where DSL has the applications and plats and am hopeful that you will grant us the permanent easement needed for the Haskill sale.

Sincerely,



William E. O'Brien

Area Manager

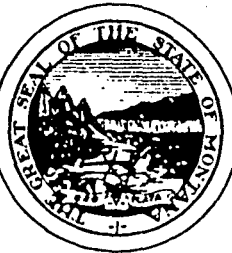
Northwestern Land Office

Department of State Lands

cc: Commissioner Clinch
Don Artley
Governor Mark Racicot

DEPARTMENT OF STATE LANDS

Lim
Please return -
FEB 12 1995 *AKS*
Ben



MARC RACICOT, GOVERNOR

P.O. BOX 201601

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620-1601

January 31, 1995

Ron Buentemeier
Stoltze Land & Lumber Co.
Box 1429
Columbia Falls, MT 59912

Dear Ron:

First, my apology for such a delay in response to your December 29th letter. Ever since January 1st with the legislature in town, life has been at a dog trot

As I understand it, the Department has been less than responsive to your requests for easements. Recognizing that I can certainly understand your decision to not grant DSL's request for access to section 16 T31N R21W. In fact such action may well be what it takes to bring this issue to a head. As you may well know, similar situation exists with Plum Creek Timber as well.

It is certainly my intention and direction to staff that we must be fair in both our requests and action on others requests. Requesting easements for our use but acting unfavorable on reciprocal requests is an unacceptable approach under this administration. As you may well know, our guiding parameters revolve around our "trust" responsibilities. While we are obligated to protect our current and future trust options, such an approach should not preclude reasonable cooperation among interested parties.

This issue of easements is becoming a higher profile topic across all our lands. Consequently the Department needs to adopt some comprehensive guidelines to address this increasing controversy. In addition to action on your requests, I assure you that the Department will keep you apprised of any development of easement guidelines. As you may know, at least one bill is pending before the 1995 legislature addressing the Department's responsibilities in considering right-of-way requests.

Ron Buentemeier
January 31, 1995
Page Two

Thank you for alerting me of your concerns. I'll do my best to untangle the web.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bud", written in dark ink.

Arthur R. Clinch, Commissioner
Department of State Lands

jc

c: Bill O'Brien
Cary Hegreberg, MWPA
Governor Marc Racicot

APPLICATIONS FOR RIGHTS-OF-WAY ON STATE LAND

All agencies or persons interested in putting a project on School Trust Lands should contact the area office that handles the county in which the request is made. Contact with the area or unit office should be made before an actual survey is done. After an on-site inspection, the Area Manager will consider whether the project is in the best interest of the trust. If there are no problems, a survey may be conducted and formal application may be made. All easement applications should be sent to the prospective area offices for review. Attached is a listing of area offices and the counties they manage.

Application

1. An original and one copy of the completed application.
2. An original and one copy (or two copies) of the plat or survey.
3. A statement signed by the State Surface Lessee which indicates they have made arrangements for compensation for leasehold damages, if any.
4. A completed Department questionnaire must accompany the application.
5. A non-refundable \$50.00 application fee must accompany the application when submitted, before any processing will begin.
6. The application must be signed in a manner which reflects the name of applicant as you wish it to appear on the easement right-of-way deed.

Survey Requirements

1. The survey must be prepared by a licensed surveyor or a certified engineer.
2. The legal subdivision or metes and bounds description must appear either on the survey or at the top of the reverse side of the easement application. The surveyor need sign only the survey plat. It is not necessary for that person to sign in the survey space on the application if the plat is signed.
3. Immediately above the signature are spaces to indicate the acreage requested from each 40-acre subdivision or government lot.

4. If the application is being made for a road or utility right-of-way, the survey is normally a metes and bounds centerline description.
5. If the requested right of way will cross more than one section of trust land, the survey may include all State tracts on one survey. However, this is not applicable to the application. A separate legal description and application must be made for each section of land on which the application is made. (Separate records are kept in our files on each section, and a separate deed is issued for each section.)

Charges

1. Charges for the easement or acreage known as the taking will be based on the market value of the parcel the easement crosses. If the State parcel is appraised at \$500 per acre, the acreage identified in the easement will be based on the \$500 per acre. Example: if the easement area is one acre, the fee charged for the easement will be one acre x \$500, or \$500.
2. If the easement request includes an existing road, a fee for a share of the value of the road will be assessed in addition to the land value.
3. Before the State sells an easement, the Surface Lessee is given the opportunity to be compensated for any damages to Department-approved leasehold interests, such as but not limited to roads, crops, summer fallow, forage, water developments, buildings and fences.

Easement Deed

1. The State will retain the right to sell minerals, other non-conflicting uses, and to sell additional right-of-way easements.
2. After the Land Board has approved the right-of-way request, a bill and a draft deed will be sent to you.
3. After the Department has received payment for the right-of-way, a deed will be issued to you.

Processing and Timeframes

A right-of-way application can take up to 12 months to process. Please contact the area or unit office in the area of your proposed project regarding timeframes for your easement request.

EASEMENT REQUEST QUESTIONNAIRE

Please complete this form and attach it to your application.

Legal Description of property intended for access.

Section _____ Township _____ Range _____ # of acres _____

When was the property purchased?

What was the purchase price?

State the need or necessity of the easement request.

List alternative means of access and reasons why the alternative route is not acceptable.

State the intended use of road (i.e., private, non-commercial, subdivision, number of lots accessed, timber management, agricultural etc.

State if utilities will be included in the easement. _____

If so, indicate the types; i.e., overhead, underground, telephone, power, cable T.V. and/or other, including locations and widths.

State if the easement request involves an existing road or if new construction is necessary.

Attach map of area indicating private ownership and state ownership.

APPLICATION FOR RIGHT OF WAY EASEMENT IN STATE LANDS

(Application Fee -- \$50.00)

The best method of describing the land needed for the right of way in all such cases is to describe the centerline and give the width on each side.

Please locate the starting point of the proposed right of way by giving its distance and bearing from the nearest public survey monument in the same section; then give the bearing and distance of each course of the line; and locate the terminus in the same manner as the starting point; whenever the line intersects a quarter section line, locate the point of intersection in the same manner also.

The description given in the application will be copied into the right of way deed. It must be so definite and complete that from it the right of way may readily be located upon the ground without the plat.

If the right of way runs through an intervening tract which is *not state land*, it may be shown on the tracing or plat, but *must not* be included in the description in the application as this might result in errors in writing the deed.

No application should include land in more than one section. Show the acreage required for the right of way in each forty-acre tract of *State land* in the place provided in this blank.

The application must be signed by or for the applicant, and certified correct by the endorsement of the engineer. *Write the name of the applicant exactly the way it is to appear in the deed.*

TRACING OR PLAT. Tracings or plats must accompany the application. These tracings or plats should be so plain that anyone can readily ascertain the section, township and range and see what forty-acre tracts the right of way runs through. A scale of 1 inch to 400 feet is commonly used.

There must be two copies of the tracing or plat duly verified by the affidavit of the land surveyor who has prepared the same endorsed thereon. They must show the "quantity of land taken by the proposed highway or street or other easement from each forty-acre tract or government lot of State land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot." (Part of Section 77-2-102(2) Montana Code Annotated)

For the sake of reference other than State lands may be shown on the plat, but they should be indicated by different colors. *If the proposed right of way follows a river or railroad right of way or other right of way, such river or right of way should be shown and also the area of the intervening strip, if any.*

The affidavit of the surveyor or engineer to be endorsed on the *tracing or plat* should be substantially in the following form:

STATE OF MONTANA,

SS.

County of _____

_____, being duly sworn says: That he is the _____ who made the survey of the right of way shown hereon; that the survey was correctly and accurately made; that the tracing or plat thereof is true and accurate and that it correctly shows the quantity of land required for the right of way in each forty-acre tract or government lot and also the amount of land remaining in each portion of such forty-acre tract or government lot.

Subscribed and sworn to before me this _____ day of _____, 19 _____

Notary Public for the State of Montana

Residing at _____
My Commission Expires _____

_____, Montana, _____, 19____

To the State Board of Land Commissioners
State of Montana
Helena, Montana:

Application is hereby made under the provisions of Section 77-2-101 through Section 77-2-107 of the Montana Codes Annotated, 1979, and Acts amendatory thereto by _____

February 15, 1995

Senate Bill 347

Mr. Chairman, members of the committee, I am Lech Szumera from Missoula, MT, and would like to testify on Senate Bill 347. I am the Supervisor of Access for Plum Creek Timber Company. In addition to harvest and reforestation planning for company lands, I am responsible for acquiring access for our lands as well as granting access to our neighbors.

Generally, dealing with access issues is not particularly time consuming. We typically grant access to private parties, ranchers, or even competing businesses, in a matter of weeks. Other private interests reciprocate with access to us in approximately the same time frames. However, this does not hold true when dealing with the Department of State Lands. Even the most straightforward access request often takes the better part of a year, and sometimes much longer.

Not obtaining access, by the State, or other parties, has several consequences. Foremost among these is that accessed land has a significantly higher market value than unaccessed land. By not having ready access to all lands, the State is forced to concentrate activities on a smaller land base rather than dispersing actions over a wider area. The lack of access also provides a temptation to reduce investment in timber stand improvement activities - such as precommercial thinning - making them less productive and exposing them to risk of loss from insects or disease. Uneven age timber management also becomes less attractive. After all, why take the risk of leaving significant numbers of large trees on site as part of a harvesting prescription when they may not be available in the future? Finally, approval of this bill would require less manpower to process access needs.

Streamlining access serves to increase the efficiency of all parties, and provides an incentive to good, long-term land management. Therefore, Plum Creek supports this legislation..

Examples:

Boles Cr. - Originally requested by PC in 9/93.

Denied due to "restrictions of DSL options"

Not really sure why. Cumulative effects?

Requested that PC do Biological Assessment for S. 36

Wanted to meet to approve PC approach on S.1

Crystal Cr. - Took 1 to 1.5 years.

Swan State Forest - Deny PC access due to conflicts with G-Bear BMA's.

Private we have granted:

Marjus, Fish Cr. - 3 weeks.

ITT - 3 to 4 weeks.

EXHIBIT 5
DATE 3-20-95
SB 347

AMENDMENTS TO
SB 347
(Third Reading Copy)

1. Page 1, line 12.
Following: "easements"
Insert: "For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions the board may impose."

-End-

EXHIBIT 6
DATE 3-20-95
SB 371

**Amendment to SB 371
(H) Natural Resources
March 20, 1995**

1. Page 10, line 14.
Following: "hiking,"
Insert: "hunting,"



Greater Yellowstone Coalition

EXHIBIT 7

DATE 3-20-95

SB 371

Comments on SB 371. Submitted to the Montana House of Representatives Natural Resources Committee -- March 20, 1995.

Good afternoon Mr. Chairman, members of the committee. My name is Brian Kuehl. I represent the Greater Yellowstone Coalition based in Bozeman, Montana. The Greater Yellowstone Coalition works to protect the environment, communities, and sustainable economies in Greater Yellowstone including portions of Carbon, Sweetgrass, Park, Gallatin, Beaverhead, and Madison counties in Montana.

The Greater Yellowstone Coalition supports this bill with a few minor amendments. One of the most problematic elements of this bill is a provision that was introduced as an amendment in the Senate Natural Resources Committee with little comment or consideration. This provision includes mineral exploration activities within the "non-significant" category that was established for the non-degradation rules.

Mineral exploration activities should not be included as "non-significant" for two reasons. First, the Water Quality Division listed industries in the "non-significance" category only if those industries were regulated by another agency such that they would be unlikely to degrade state waters. For example, drilling by the oil and gas industry is listed as "non-significant" because the use of drilling fluids and procedures is tightly regulated by another state agency. Unlike the existing "non-significant" categories, mineral exploration is not similarly regulated by the Department of State Lands. Because of this, mineral exploration may, and often does, result in significant degradation of our state's waters.

Second, this committee should reject the inclusion of mineral exploration as a "non-significant" activity because of the interplay between SB 371 and SB 331. Section 8, sub (1) of SB 331 prohibits the Department of Health from requiring treatment for industries that are neither listed under 40 C.F.R., Chapter I, Subchapter N, and that are included within the "non-significance" category. Because the federal regulations could be read as not establishing minimum treatment standards for mineral exploration, and because SB 371 now includes mineral exploration within the "non-significance" category, these two bills may have the unintended, or perhaps intended but unrevealed, result of prohibiting the Department from requiring treatment for mineral exploration activities.

Perhaps you remember that the Department of Health settled a lawsuit in 1993 with Noranda Minerals for discharging nitrates from the Montanore exploration project without a permit. As a result of that settlement, Noranda Minerals is working with the Department of Health to get a permit regulating the ongoing

discharge of pollutants from that project. If this bill passes unamended, the Department of Health may no longer have the authority to require treatment of discharges from exploration projects, even though those discharges may result in substantial pollution to our state's waters.

Why would we wish to give the mining industry special treatment at great cost to our rivers and streams? Why would we wish to tie the hands of the Department of Health? As currently written, SB 371 and SB 331 may prohibit the Department from requiring treatment, even if that treatment would require only a nominal cost and would keep substantial pollutants out of our state's waters. As a matter of common sense, I urge you to amend SB 371 to remove mineral exploration from the category of "non-significant" activities, and to amend SB 331 to permit the Department of Health to require treatment of pollutant discharges when it finds such treatment to be necessary.

Thank you for your time and consideration.

Northern Plains Resource Council

**Testimony of Florence Ore
for the Northern Plains Resource Council
on Senate Bill 371
before the House Natural Resources Committee
March 20, 1995**

Mr. Chairman, members of the Committee, for the record, my name is Florence Ore. I am a retired postmistress and I live in Pony, Montana. I am speaking today on behalf of members of the Northern Plains Resource Council, as Secretary of NPRC's Board of Directors and Chair of NPRC's Hard Rock Mining Task Force.

Although I appreciate the efforts of Senator Grosfield and the Environmental Quality Council staff in constructing SB 371, in its present form, I find it seriously flawed.

The stated intent of SB 371 is to establish a workable system for identifying and protecting Outstanding Resource Waters. The operative word here is "outstanding." If something is described as "outstanding," I think most reasonable people would agree that "outstanding" is something we value highly, want to maintain in its "outstanding" condition and are willing to protect. SB 371 does not ensure that all of Montana's outstanding water resources will get the protection they need and deserve. Once again, as with so many other bills we have seen this session, this bill contains provisions that unfairly slant it toward allowing more damage of Montana's pristine waters solely to accommodate the convenience and profitability of polluting activities.

The following provisions of this bill are unacceptable as part of a workable system for identifying and protecting Outstanding Resource Waters:

1. On page 2, line 28-30, under the definition of Outstanding Resource Waters, (15), (a), limits the definition to those surface waters located wholly within the boundaries of areas designated as national parks or wilderness areas. This provision excludes, from ORW protection, some of our most valuable rivers, including the north fork and the middle fork of the Flathead River which form part of the boundary of Glacier National Park, and a portion of the Yellowstone River where it forms the boundary of Yellowstone National Park. Furthermore, this provision excludes from ORW protection any and all groundwater located in

First, on page 9, lines 11 & 12, (2), (A), the bill exempts, as non-significant, "existing activities that are nonpoint sources of pollution as of April 29, 1993." and then in (2), (B) also exempts such activities initiated after April 29, 1993 "when reasonable land, soil and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected." This provision sets up a inequitable scenario where some nonpoint polluting activities are free to do whatever they want and others are held to reasonable standards that ensure protection of beneficial uses, simply by virtue of where they fall relative to an arbitrary political calendar. Again, what's the point here? Are we trying to protect our water or facilitate it's pollution?

On page 10, lines 24 & 25, new section 6, (2), (P) adds to SB 371's shopping list of nonsignificant activities "metallic and nonmetallic mineral exploration performed in accordance with Title 82, chapter 2, parts 3 and 4." This addition represents a potentially huge additional threat to our pristine waters since mining exploration is, almost exclusively, carried out in high elevation, extremely fragile, headwaters areas. Much of what I have witnessed during this Legislature would lead me to believe that Montana has been catapulted back in time, to the days of the copper kings. However, mining exploration today, is no pick and shovel, Gabby Hayes and burro operation—it is large scale, involves lots of heavy equipment and can be a substantial threat to water quality. Metallic and nonmetallic mineral exploration should not be considered nonsignificant under the Water Quality Act and this bill.

I urge the Committee to make the changes to SB 371 I have suggested. If you do, at least some small, but extremely valuable portion of Montana's outstanding water resources will have a chance of getting the protection they deserve.

EXHIBIT 9
DATE 3-20-95
SB 386

Amendments to Senate Bill No. 386
Third Reading Copy

Requested by Senator Devlin
For the Committee on Natural Resources

Prepared by Todd Everts
March 14, 1995

1. Page 6, line 27.
Following: "RESIDENTIAL"
Insert: "underground storage"
2. Page 6, line 29.
Following: "RESIDENTIAL"
Insert: "underground storage"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SJR 15
DATE 3-20-95 SPONSOR(S) Senator Harp
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Daubert	Ash Grove Cement Co	X	
Steve Browning	Columbia Falls Aluminum Co.	X	
Haley Beaudry	Emerald Engineers Inc	X	
John Fitzmaurice	Pegasus Gold	X	
David Owen	MT Chamber	X	
Peggy Trenk	WETA	X	
Allen Barkley	Columbia Falls Aluminum Co.	X	
GAIL ABERCROMBIE	MONTANA PETROLEUM ASSN.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. *SB 346*
 DATE *3-20-95* SPONSOR(S) *Senator Harrester*

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Larry Brown	Ag Pres. Assn	346		X
Jim Barrett	BA Cooke City	346	X	
Brian Kuehl	Greater Yellowstone Coalition	346	x	
John P. Davis	ARCO	346		X
James D. Jensen	MEIC		X	
Heidi Barrett	Cooke City MT	346	X	
Haley Beaudry	Emerald Engineers Inc	346		X
John Fitzgerald	Pegasus Coal	^{SB} 346		X
Deborah Smith	Sierra Club	346	X	
Therese Ore	NPRC	346		X
Hal McCreath	MT Petroleum Assn	346		X
GARY LANGLEY	MONTANA MINING ASSN	346		X
Steve Pichea	MDHEC	346		X
Andrea Strider	NPRC	346	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 347
 DATE 3-20-95 SPONSOR(S) Senator Cusack

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
LECH SZUMERA 140 N. Russell, Missoula, MT	Plum Creek Timber Co.	SB 347		X
Bad Clinch	DSL	347		X
Peggy Thew	WETA	347		X
Deborah Smith	Silva Club	347	X	
Ronald Buente-meier	F.H. Stettin Land & Lb.	347		X
Nancy E. Kosman	Montana Forest Products	347		X
Cary Hegreberg	MT Wood Prod. Assoc.	347		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. *SB 371*
 DATE *3-20-95* SPONSOR(S) *Senator Grassfield*

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Peggy Trenk	WETA	371		X
Larry Brown	Arg Pres Assoc.	371		X
Lorna Frank	MT. Farm Bureau	371		X
Lance Clark	MT. Realtors			X
MIKE MURPHY	MT. WATER RES. ASSN	371		X
Jim Baerett	BA Cooke City	371	X	
Brian Kuehl	Greater Yellowstone Coalition			
Jim Jensen	MEIC	371	X	
Deirdre Barnett	Cooke City	371	X	
Haley Beaudry	Emerald Engineers Inc	371		X
John Fitzpatrick	Pegasus Cold	371		X
David Owen	MT Chamber			✓
John Bloomquist	MT. Stockgrowers	371		✓
Andrew Stader	NPRC	371	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 371
 DATE 3-20-95 SPONSOR(S) Sen. Hasfield

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Allen Barkley	Columbia Falls Aluminum			X
Deborah Smith	Sierra Club			
Glenn W. Johnson	MT Outfitters & Guide	371		Y
Don Allen	Kit. Wood Products Co.	371		✓
Glennellie	NPRC	371	X	
Lail Abernethy	MT Petroleum Assn.	371		X
GARY LANGLEY	MONTANA MINING ASSN.	371		X
Russ Ritter	MT Resources	371		X
Lorna Frank	Farm Bureau			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.