

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 8, 1997, at 1:00 in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Committee Business Summary:

Hearing & Date Posted: SB 1; Posted January 2, 1997
Executive Action: None

Introductory Meeting and Procedures Discussion:

CHAIRMAN LORENTS GROSFIELD began the hearing with an introduction of committee members, the legislative staff, **Larry Mitchell**, and committee secretary, **Gayle Hayley**. Procedures, rules, coffee detail, were discussed. It was stated that all meetings will be open, Executive Action will generally not be on the same day as the hearing, controversial bills Executive Action will be posted in advance if possible, voting order will vary, the committee will accommodate questions from the public, especially those from out of town, motions do not need seconds, and amendment ideas will be given to **Larry Mitchell**. **Mr. Mitchell** handed out a two page writeup explaining his duties and biography. **SEN. MACK COLE** was appointed to take care of the coffee detail. Tentative absentee voting procedures were discussed. **SEN. TOM KEATING** recommended that unless present, a member may not vote on an amendment and regarding the bill, suggested allowing the vote to be open for 24 hours. It was agreed to allow a signed vote on

either a properly drafted amendment or on the bill itself and if a person is not here, leave the avote on the bill open for 24 hours, at the discretion of the Chairman.

CHAIRMAN GROSFIELD turned the meeting over to **VICE CHAIRMAN WILLIAM CRISMORE** in order to present SB 1.

HEARING ON SB 1

Sponsor: **SEN. LORENTS GROSFIELD, SD 13, Big Timber.**

Proponents: **John Shontz, Montana Association of Realtors**
John Fitzpatrick, Pegasus Gold
Dennis Iverson, Western Environmental Trade Assn.
Michael Murphy, Montana Water Resources Association
John North, Department of Environmental Quality
Larry Brown, Agriculture Preservation Association

Opponents: **Ted Lange, Northern Plains Resource Council**
Patrick Judge, Montana Environmental Information Center
Tara Mele, Mont PIRG
Jim Richard, Montana Wildlife Federation
Janet Ellis, Montana Audubon
Joan Miles, Lewis and Clark County Health Dept.

Opening Statement by Sponsor

SEN. LORENTS GROSFIELD, SD 13, Big Timber, said SB 1 is an act clarifying nitrate water quality measurements. In SB 331, from last legislative session, the word "nitrate" was used as a common language meaning versus the technical meaning, which is quite different. SB 1 is a simple bill basically to codify the code commissioner's clarification comments.

{Tape: 1; Side: A; Approx. Time Count: 1:20; Comments: .}

Proponents' Testimony:

John Shontz, Montana Association of Realtors, stated his support of SB 1 and the position of the Code Commissioner.

John Fitzpatrick, Pegasus Gold Corp., (EXHIBIT 1) presented a handout entitled Nitrate and Nitrite in Drinking Water by the National Research Council. He stated that Montana water quality significance levels are lower than the federal drinking water standard of the EPA, which is 10 mg/L. **Mr. Fitzpatrick** summarized his testimony by saying there is very low potential for health risks regarding nitrates and is of support of SB 1. He believes this bill is a great benefit to people having septic tanks and to sewage treatment plants.

Dennis Iverson, Western Environmental Trade Association (WETA), encouraged the Committee's support of SB 1.

Mike Murphy, Montana Water Resources Association, stated SB 1 is a bill just of clarification and is supportive of the bill.

John North, Chief Legal Counsel, Dept. of Environmental Quality, also is in support of SB 1. He stated that the bill clarifies what the legislature intended to do the last time in SB 331 and recommends a do pass to the Committee.

Larry Brown, Agriculture Preservation Association, Northern Montana Oil and Gas Association, is in full support of SB 1.

{Tape: 1; Side: A; Approx. Time Count: 1:30; Comments: .}

Opponents' Testimony:

Ted Lange, Northern Plains Resource Council (NPRC), expressed strong opposition to SB 1. The bill poses serious health threats to the public in general. (EXHIBIT 2). He noted a letter from the Missoula Health Dept. concerning the federal standard of 10mg/L and the detrimental effects. (EXHIBIT 3). He concluded that these standards are not reasonable and there is a severe weakening of public health protection. He also handed out a letter from Don Spivey (EXHIBIT 4). **Mr. Lange** urged the committee to vote no on SB 1 and that the legislature should not be setting standards as such.

Patrick Judge, Montana Environmental Information Center, opposed SB 1 because of the weakening of the Montana standard by a factor of 4.4, which would bring the new standard to a level of 22mg/L and 33mg/L, thus exceeding the federal standard. He continued to say that nitrates do accumulate in the environment and we should measure as "whole nitrate" meaning measure nitrate as nitrate, not just one component, i.e., nitrogen. **Mr. Judge** stated that there are increasing levels of nitrates occurring in Montana and one reason is subdivisions. In five to ten years the drinking water may not be safe to drink, due to the nitrate level.

Tara Mele, Montana Public Interest Research Group (Mont PIRG) opposed SB 1 for reasons already stated.

Janet Ellis, Montana Audubon, wished to add one additional point that no subdivision has been declared significant under the non-degradation law.

Jim Richard, Montana Wildlife Federation, wanted to emphasize that rural subdivisions and nitrates are of major concern for the health of our wildlife populations.

Joan Miles, Lewis and Clark Health Department, opposes this bill because of the result of increased nitrate levels allowable.

Health risks should be considered and she urged Committee to realize implications of this bill.

{Tape: 1; Side: B; Approx. Time Count: 1:45; Comments: .}

Questions From Committee Members and Responses:

SEN. KEN MILLER, addresses Ms. Joan Miles, Lewis and Clark Health Dept. about how would voting no on SB 1 change anything concerning levels. Ms. Miles replied that the committee should look at appropriate levels now and consider what would be an appropriate standard. SEN. MILLER responded that the intent of the bill SB 1 is not to change anything, levels or anything else. Ms. Miles felt by voting yes to the bill, just to prevent a lawsuit, was not justifiable.

SEN. VIVIAN BROOKE, asked Abe Horpested, Dept. of Environmental Quality, what the intent of SB 331 was and to give some further information about nitrates as nitrogen. Mr. Horpestead replied that SB 331 last session was drafted to relax the standard, to make the threshold less restrictive. The EPA standard is 10mg/L and in the fine print the standards are measured as nitrogen.

SEN. FRED VAN VALKENBURG, asked Mr. Greg Petesch to clarify his intent regarding why he as the Code Commissioner decided, after the legislature adjourned, to put in parentheses the words "as nitrogen" after nitrate. Is the clarification of the legislative intent the correct assumption? Also, what is the authority level of the Code Commissioner? Mr. Petesch replied that it was necessary step in order to codify what the legislature had done. The issue was prompted by the Dept. of Environmental Sciences' request to review existing rules. The Code Commissioner does have the authority to insert editorial comment as appropriate, and has done so several times in the past.

SEN. VAN VALKENBURG asked SEN GROSFIELD about the retroactive applicability.

SEN. GROSFIELD justifies retroactive applicability and why it is important. He also states again that SB 1 does not change the law, it clarifies it. It is a matter of just clarifying the glitch in the language from the last session so the bill will stand up.

SEN. VAN VALKENBURG asked Mr. Langee about the letter from the Missoula Health Dept.

SEN. BROOKE asked Margaret Morgan, MT Association of Realtors, about the association's strategy concerning the preferred level of nitrate recommended for SB 331. Did the association want lower levels of nitrate standards than that of outcome of SB331? Does SB1 then, by defining nitrate as nitrogen, get to the level you were hoping to get? Ms. Morgan answered, the term nitrate as

nitrogen does accomplish much of what we originally wanted in our original proposals.

SEN. MILLER asks **Mr. Lange**, what his understanding was last session when we were talking nitrate levels in SB 331, nitrate as nitrogen or as nitrate whole? **Mr. Lange** responded that it was his understanding the measurement was the same scale as EPA was using.

SEN. VAN VALKENBURG, asked **Patrick Judge** about the pamphlet **Mr Fitzpatrick** handed out from the National Research Council. Does your organization endorse this organization, or is this a one side of the issue document? **Mr. Judge** said he was not familiar with the organization and he did make a mistake regarding the federal standard of nitrate measurements.

SEN. DALE MAHLUM, asked **Mr. Judge** if I spread nitrogen on my pastures at home, is there a problem? **Mr. Judge** said I'm not a chemist, I cannot answer that.

{Tape: 1; Side: B; Approx. Time Count: 2:10; Comments: .}

Closing by Sponsor:

SEN. GROSFIELD wanted to make several points clear. Firstly, this bill does not make any changes, it reaffirms what was done in the last legislative session, and it clarifies what was done. Secondly, this bill does not go beyond the federal standard of 10mg/L as stated by several opponents. The confusion arises from the 4.4 factor. One must divide, rather than multiply, the 5.0 and the 7.5 by 4.4 which is 1.14 and 1.70 respectively, versus 22 and 33. If you are talking about Nitrate period, that is 4.4 times less than nitrate as nitrogen. If we kill this bill and the court held that what we really meant was nitrate period, then the standard would be divided, not multiplied, and the result is 1.14, which is substantially less than 2.5, the previous standard before the last session.

The Blue Baby Syndrome is definitely a serious health threat that is directly related to nitrate. The federal standard has been set at 10.0 and that includes a safety factor which is built in. The EPA based this standard on the Blue Baby Syndrome.

The section of law that allows the Code Commissioner to make such editorial comments is in Section 1-11-204 (2) of the MCA, Duties of Code Commissioner. It states the Commissioner shall cause to be prepared for publication with the MCA the following material:

(c) Editorial notes, cross-references, and other matter the Commissioner considers desirable or advantageous. **SEN. GROSFIELD** read a few sentences from the Code Commissioner's submittal to the court to the effect that last legislative session, everyone, proponents and opponents alike, understood that the meaning of the word "nitrate" was as this bill clarifies it.

SEN. GROSFIELD conveyed in closing, this is a housekeeping bill clarifying what has already been done, clarifying the policy that has already been set, the policy that the department has been operating under.

Committee Business:

At this point in the hearing **CHAIRMAN GROSFIELD** resumes the chair.

Cell phone comments were discussed. **SEN. MIKE TAYLOR** commented that cell phones are not appropriate, and are distracting, and we should not have them in the hearings. **SEN. BROOKE** thought in times of urgency the phones are necessary. It was decided to allow phones only in cases of urgency, and under the discretion of the chairman.

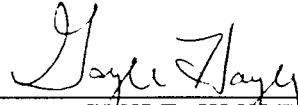
CHAIRMAN GROSFIELD stated Executive Action will be taken on SB 1 on Monday, January 13, 1997.

ADJOURNMENT

Adjournment: 2:17 p.m.



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH