

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on February 22, 1997,
at 7:44 a.m., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJR 13, 2/21/97
Executive Action: SJR 13 ADOPT

HEARING ON SJR 13

Sponsor: SEN. KEN MILLER, SD 11, LAUREL

Proponents: Linda Reed, Senior Economic Development Advisor,
Governor's Office
SEN. MACK COLE, SD 4, HYSHAM
SEN. STEVE DOHERTY, SD 24, GREAT FALLS
Al Kington, Independent Forest Products
Association
Ted Lange, Northern Plains Resource Council
SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER

Opponents: Debbie Smith, Montana Chapter, Sierra Club
Brett Brownscombe, Montana Wildlife Federation

Opening Statement by Sponsor:

SEN. KEN MILLER, SD 11, LAUREL, stated that SJR 13 could be very important to the citizens of Montana as it attempts to keep the negotiations open regarding the Crown Butte Land Trade, adding that he thinks we need to participate, and he would like to see the results of that land trade benefit the State of Montana, both environmentally and economically.

Proponents' Testimony:

Linda Reed, Senior Economic Development Advisor, Governor's Office, reported that, in December, the Governor met with representatives from Montana's Congressional Delegation, federal land management agencies, the U. S. Department of Justice, the U.S. Department of the Interior, and private sector firms and environmental groups to ask if it was possible to find a solution to the Crown Butte Land Exchange with Montana assets, and indicated that there was general consensus that they could. She said that it was the Governor's desire to see the economical opportunity lost to Montana as a result of the agreement, stay in the state, noting that mining jobs in Montana contribute \$135,000 a year to the State Domestic Product, compared to trade and services which contribute \$20,000 and \$15,000 a year, respectively. She stated that the agreement requires the federal government to identify \$65 million of federal assets to be exchanged to Crown Butte for their agreement to stop mining activities in the district, to transfer property under private ownership to the public, and to clean up activities from historic mining activities. She noted that Montana has federal coal and timber assets which could become part of the exchange property, that these are resources which have long been a part of the economy, and which we know how to manage.

Ms. Reed reported that, when she reviewed the unemployment statistics for Montana for December, five of the top ten counties with the highest unemployment were counties with abundant timber resources, two of which share the nation's largest reserves of super-compliant coal, now in demand due to utility deregulation and changes to the Clean Air Act, which will go into effect in the year 2000. She said, not only do these counties suffer from high unemployment, but also low per-capita income, that a Montana solution to this federal problem could help the people who live in these counties, and the state generally, and could also bring sensitive lands into public ownership, achieving a balance between the environment and the economy, adding that roadless areas, critical grizzly habitat, a portion of the Lewis & Clark Trail, desirable recreation lands, and access to the Custer National Forest were under discussion. She indicated that activities over the recent past have given them reason to believe that White House and federal support have waned since their December meeting, and the Governor discontinued efforts to find a Montana solution until they receive confirmation that Montana's participation is desired.

She stated that they believe Montana has a role to play, and that they should play a role because actions by the federal government last August impact Montana's economy directly. She indicated that she also believes this joint resolution will send a signal to the parties of the agreement that the legislature wants Montana to be a player, and hope that the parties to the agreement will come to understand the practicality of the Montana initiative and invite the Governor to continue his work. She thanked the Committee for favorably considering SJR 13.

SEN. MACK COLE, SD 4, HYSHAM, stated that he supports this resolution, that he thinks it is important and sends a message to the President and the other parties that they need to follow through with the agreement. He indicated that he feels the Governor, **Ms. Reed**, and others have been doing a good job of trying to keep Montana's resources here for Montana, pointing out that a major resource has been lost, in the loss of jobs and the effect on the economy, when they agreed that Crown Butte could no longer be mined. He added that, hopefully, this resolution will help get it back on track, and help in the development of alternate resources, regardless of where they are in the State. He reiterated that he supports the bill, and the Governor, for what he is doing in this matter.

SEN. STEVE DOHERTY, SD 24, GREAT FALLS, said that one thing to remember about this proposal is that there was a willing buyer and a willing seller, and he thinks the notion that we have foregone economic development is amiss in that the permits could not have been granted. He stated that he supports the Governor's Montana initiative, that he thinks it is a good idea, but there are other things to consider, and he would like to propose some amendments, (**EXHIBIT 1**) noting that he showed a portion of them to **SEN. MILLER**, and that they are not offered with the intent of gutting this resolution or going after anybody. He stated that he thinks we all receive something from the independent forest products people, that they have an interesting, inventive and creative idea which deserves consideration, and this might be a Montana solution.

SEN. DOHERTY reviewed his proposed amendments, explaining that negotiations of this agreement did not include the State of Montana as a party, but that it did include Crown Butte Resources and Crown Butte Mines, which are landowners in the state. He indicated that he would amend the resolution to state that Montana should develop a process that involves all stakeholders as equal participants, and also that Montana has a responsibility to protect land with environmental, historic and recreational value. He added that he would further amend the resolution to state that the legislature supports the broad-based work of the Governor which involves all stakeholders as equal participants, that he thinks they have to bring everybody to the table. He reiterated that he believes broad-based public participation is very important, and the only way this is going to go. He indicated that he applauds the Governor's efforts to find a

Montana solution, that he would like to find a Montana solution, but thinks they need to get all Montanans at the table, and to recognize equal responsibilities to protect incredibly valuable lands and promote economic prosperity.

Al Kington, Independent Forest Products Association, read written testimony attached (EXHIBIT 2).

Ted Lange, Northern Plains Resource Council, stated that they are willing to work with the Governor, and believe there should be a way to work this out with Montana resources. He noted that the Northern Plains Resource Council is not listed on the bill as a participant, that they were involved in the negotiations but chose not to sign on to the agreement. He reported that they were not willing to sign on to something that they did not know what the end result would be, and reserved their option to sign on until they knew more about it. He indicated that the only involvement they had in the negotiations was that their opinion was solicited regarding trading coal and that, from the very beginning, their position on coal is very clear. He stated that they have been concerned with the Montana initiative, as the Governor has presented it to date.

Mr. Lange explained that they fundamentally disagree with the premise that Montana is losing something in the Crown Butte Mine, they believe it was a bad idea in that place, Montana is gaining by not having the Crown Butte Mine developed, and that there will be economic development, noting that over \$20 million will be spent on reclamation at the mine site. He stated that their position has always been "no new coal", that they think it would be appropriate to trade coal within the boundaries of existing operating permits, but not in areas that would require a change in the surface mining law to allow the mining of coal which is now off-limits and illegal. He explained that opening up new coal reserves outside of existing mining permits creates implications for surface owners' rights, they do not know how surface owners would be impacted, and it would be a major, traumatic disruption of surface owners' operations. He added that the state would be blundering into unknown environmental impacts, that these new mines could potentially have huge environmental impacts, and they do not think that is appropriate and are opposed to trading one environmental problem for another. He reiterated that they are opposed to the proposals on the Tongue River and the Custer National Forest to trade coal, that they view it as speculative and a threat to the ranchers in the existing economy on the Tongue River, especially in the sense that it would provide another excuse for the development of the Tongue River Railroad, which they believe will severely disrupt existing ranches and economies, and will not lead to more coal development in Montana because Wyoming mines are more easily able to expand their operations and take the markets which currently exist for Montana coal, resulting in the loss of over one hundred railroad jobs, as well as loss of jobs at Sarpy Creek, Rosebud and Big Sky Mines, in addition to the disruption of property

rights and ranching operations on the Tongue River. He indicated that they do think there are existing coal leases which could be traded, and are willing to discuss those with the Governor, but they have not supported a lot of what the Governor has proposed to this point, and continue firmly in that position.

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, reported that he represents Park County, where Crown Butte is located, as well as part of Sweetgrass County. He indicated that he applauds **SEN. MILLER** for bringing this proposal forward, and he also applauds the Governor for bringing this idea forward, that this is a situation where there is a major economic impact on Montana which was thwarted in the process, and the Governor is attempting to get some benefit out of it for Montana. He noted that he has looked at the proposed amendments, that some of them are fine, but others he takes issue with. He explained that, in economic terms, the losses to Park County are terrific, and he does not believe they can say everybody is equal participants. He pointed out that the amendments strike the language "individual Montana private property owners as parties;", and indicated that some people were not included in the process. He reported that, at a meeting with federal negotiators, the Governor's Office, and others, he told them he was sure no one intends to subvert the Constitutional rights of individuals, but that one property owner who owns a substantial amount of the mineral rights was never contacted, or asked if she would be willing to sell those rights, and he does not think it is fair to say all stakeholders will be treated as equal participants because they are not all equal participants. He added that Montana is much more a player in this than, for example, someone in North Carolina, noting that not everything about this proposal is great, that it is close to Yellowstone Park, in a sensitive area, but they were in the middle of an environmental impact statement process which was subverted by the environmental groups who exerted legal pressure, that interest groups exerted political pressure on politicians, the President and others, and stopped the process. He said that he does not think that was appropriate, and it is also not fair to say there will be environmental impacts because they do not know that since they did not get that far in the process.

He indicated that the amendment inserting the language "broad-based public involvement" is fine, but he thinks this resolution is an important one to put through, and get it out on the floor for discussion. He added that he hopes the Committee will pass the resolution.

Opponents' Testimony:

Debbie Smith, Montana Chapter, Sierra Club, noted that she recognizes the Senate, and this Committee in particular, try to hold hearings in a fair manner with adequate public notice, but this is certainly not one of those examples. She added that, had this bill been introduced earlier, as it could have been, there would be more people to speak in opposition, that a lot of people

from the Cooke City, Park County area would have come to say their businesses would have been hurt by the permitting of this mine. She reported that Sierra Club was a plaintiff in the lawsuit against the Crown Butte Mines and Crown Butte Project, which was brought because of ongoing, unpermitted discharge into state and federal waters, the surface waters of Montana and Wyoming, which the Montana Department of Environmental Quality was not acting to stop. She pointed out that it took a citizen's suit in federal court to bring the mining companies to the negotiating table and that, because the mining companies felt the suit was strong, they agreed to settle. She indicated that it would have been of national significance to have a federal court decision saying unpermitted discharges from abandoned mine sites are unlawful under the federal Clean Water Act, but that the state did nothing. She noted that she would not say this is owner/citizen involvement in the political process.

Ms. Smith stated that the problems with the bill are many-fold, that, one, it assumes the mine was going to be permitted. She said that the groups which brought the lawsuit and, she would submit, Crown Butte and Miranda, also, believe the mine was not going to be permitted. She reported that the federal government agreed to provide \$65 million to Crown Butte, or equal value of land, and indicated that, of that \$65 million, Crown Butte is to spend \$22.5 million on reclamation of the abandoned mine site, pointing out that this money will create economic activity in Montana, it will put people to work cleaning up old mine waste, but that this will go on, regardless of the Montana initiative. She indicated that jobs, which would have been created if the mine had been permitted, would have gone to Wyoming because these people would have lived in Wyoming, which is why the Wyoming state government was so concerned about this project, that the jobs, the boom-bust, the economic cycle, the impacts were going to be in that state. She added that, if the mine had been permitted, it would have been permitted at the cost of existing recreation-based businesses, and the tourist industry in the Yellowstone National Park area, which would have been a loss, that this would not have necessarily been a net job gain for Montana.

She stated that, had the mine been permitted, the proposed tailings pond was in a very high earthquake zone and, had there been an earthquake, it would have created a very real impact to the State of Montana, and taxpayers would have been left holding the bag. She indicated that Sierra Club is not opposed to having a Montana solution to this problem, finding lands in Montana to be given to Crown Butte in exchange for their valid property interests in the New World Mine site, but this is not what is at issue. She stated that, by the areas designated by the Governor as part of the Montana initiative, it would not be the "Montana Initiative", it would be the "Plum Creek Timber and WestCo Coal Initiative." She added that it would be a big-industry initiative, that the lands were high-use, recreational lands, popular with hunters and hikers, and important wildlife habitat.

She urged the Committee to oppose the bill, noting that she would support the amendments presented by **SEN. DOHERTY**.

Brett Brownscombe, Montana Wildlife Federation, stated that the Wildlife Federation is interested in working with the Governor in resolving this issue, that they support the idea of looking into potential land swaps to resolve this, and definitely support attempting to internalize, for Montana, the benefits that could come from resolving this issue. He indicated that they do not support the outright sale of public lands, which the Governor has supported in the recent past, and would like to go on record as opposing any idea of selling public lands. He pointed out that economic benefits already exist from public lands which provide wildlife habitat, creating hunting opportunities, and the state benefits from the sale of hunting licenses. He added that there is also benefit to the state from the tourism industry, which is related to public lands. He noted that he does not mean to see any demons in this resolution, that he supports the amendments offered by **SEN. DOHERTY**, and they want to be involved in working with the Governor to resolve this issue but, if it means liquidating public lands, they can not support it. He indicated that he is not sure the language referring to protection of land with environmental, historic or recreational value adequately addresses their concerns, and that is where their concerns lie.

Additional written testimony from **Janet Ellis, Montana Audubon**, is attached (**EXHIBIT 3**).

{Tape: 1; Side: A; Approx. Time: 8:13 a.m.; Comments: The Committee recessed until 1:09 p.m.}

Questions From Committee Members and Responses:

SEN. BILL WILSON asked **SEN. DOHERTY** his sentiments, whether it was the original proposal, or the way it first came in.

SEN. DOHERTY noted that **SEN. GROSFIELD** was not happy with the initial proposal, and stated that he thought the initial proposal was awful and established a terrible precedent for these kinds of natural resource issues. He indicated that he understands there was a willing buyer and a willing seller, but pointed out that **SEN. GROSFIELD** testified he felt the Environmental Impact Statement (EIS) process was undermined, and there was political pressure to come up with a willing buyer and a willing seller. **SEN. DOHERTY** said that, had the EIS process gone through, he does not think there is any guarantee the mine would have been permitted and, as a matter of fact, there were preliminary indications of findings of significant impact that could not be mitigated. He added that he thinks the involvement, at that stage, in paying \$65 million is a horrible precedent, that he and **SEN. GROSFIELD** agree it was a rotten deal to begin with, but that is the deal we're stuck with at this point.

SEN. VIVIAN BROOKE reported that, in her interpretation of the ethics law, she has a conflict of interest in that her husband has been working with **Mr. Kington** on this project. She then indicated that the resolution appears to bring out some divisiveness around the issue, but the people who are moving ahead are creating options, and the main issue they are concerned with is moving forward. She asked **SEN. MILLER** what he seeks to gain from this resolution, which appears to be focusing on why we are here and how we have gotten to this point, rather than going forward with the proposals and creative ideas put forth to resolve the issue.

SEN. MILLER stated it is certainly not his intention to cause any type of divisiveness, that they are looking forward, and are concerned about the future because of the past. He said it is his intention that Montana citizens be included in what develops out of the negotiations in this land trade deal, that he is concerned we may lose public lands, and may lose environmentally and economically and, if the people of Montana are participants and at least aware of the negotiations and what is going on, we are better protected so that does not happen. He added that this has been his only concern, and the purpose of this resolution.

SEN. BROOKE asked **SEN. MILLER** if he thinks the parties who are interested in bringing creative solutions to this dilemma are already aware of what is going on. She explained that it looks to her like many, many people are aware, and there are many players in this arena, already. She noted that she does not want to deny him a resolution or statement, but that she has concerns and was surprised at the divisiveness this language created, and that she is more interested in going forward and trying to create good resolutions to this problem.

SEN. MILLER indicated that they agree on the results, although they disagree on what this does, noting that he does not know that there is that much divisiveness in the resolution, although there are some concerns. He pointed out this resolution does not specify that we want to trade for coal, or for anything, that the intent is it be economically, environmentally and, public property-wise, for Montanans, and the only way to achieve that is to have an open-door policy. He added that there are some players involved, but he does not think those players have necessarily been the public and, in fact, he thinks the Governor has had the feeling of being locked-out and not knowing what is going on, from the very beginning. He indicated that, when dealing with public lands in the State of Montana, he thinks we all need to be involved, as citizens, and that is what he is trying to achieve.

{Tape: 1; Side: A; Approx. Time: 1:17 p.m.; Comments: End of Tape 1, Side A.}

CHAIRMAN DON HARGROVE noted that this is probably stimulated by the fact that Montana has been ignored at the federal level. He

asked **Ms. Reed** to comment on her perceptions of what should be the motivations.

Ms. Reed noted that he is correct, that Montana was not made a party to the agreement when it was originally negotiated, prior to August when it was signed, but they feel there are significant impacts for Montanans as a result of it. She reported that the Governor has tried to figure out a way to recapture some value out of the agreement, fully acknowledging that there is no official mandate to do so because Montana was not a party to the agreement. She noted that if they can be a part of the solution, they would love to be, and that has been the effort to date.

She reported that they had an agreement with federal officials, Crown Butte, and the environmental interests, early on in the discussions but, over the last several weeks, it has become clear that the enthusiasm is waning, and the Governor has indicated to the President that, unless we are given some stronger signals to go forward, we will discontinue these activities. She noted they would regret that, because they think they have a role to play, and their solution may be the only practical solution to the agreement. She said they are trying very hard to be mindful of their position and not overstep those particular bounds, and asked for the Committee's support. She indicated that they think this resolution adds the commitment of the people of Montana to be a part of the solution.

Closing by Sponsor:

SEN. MILLER said that he thinks this is a really important issue that they need to discuss. He reported that, after reading about this again, a couple of days ago, he went to the Governor and asked what they could do, as a legislature, and if a resolution would help. He indicated the Governor expressed that it would, and was very excited about it, that they talked with **Ms. Reed**, who was also excited, and felt this might help keep Montana involved. He said that he would resist the amendments, noting that the only one he would not have a problem with would be insertion of the language "broad-based", but he thinks it already says that, however, if the Committee so desires, he would have no problem with it. He referred to the amendment on lines 13-14, and indicated that would limit it, that Montana private property owners are involved in it as well, and the negotiations need to be carried forward as set out in the original bill. He referred to the amendment to change the language on line 18 from "willing" to "should", and pointed out that this resolution is only asking to participate. He indicated that, with regard to using the word "equal" on line 18, they would then have to measure that, and he thinks it would just cause problems down the road. He noted that the proposed language on line 23 is already taken care of, and the proposed change on line 25 again raises the question of how to measure equal. He pointed out it states that economic is important, and that environmental concerns are important, but that people will have a different definition of what is equal,

and he thinks it complicates it more. He closed by saying that he hopes the Committee will resist the amendments, leave the resolution as it is, and give it a favorable vote so they can have more discussion as it goes through the process.

EXECUTIVE ACTION ON SJR 13

Amendments:

Motion: SEN. KEN MESAROS moved that SJR 13 BE ADOPTED.

Discussion:

SEN. BROOKE referred to page 2 of the bill, line 5, and asked why it is limited to only those entities listed. She indicated that, according to SEN. MILLER's testimony in response to her questions, it is her understanding this was intended to get all the parties involved, but it seems there are a host of other people who could receive this resolution.

CHAIRMAN HARGROVE indicated that he believes this decision was made at the Presidential level, that even the Montana Congressional Delegation was included for information, and it was directed specifically only to the President of the United States.

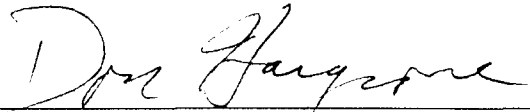
SEN. BROOKE asked why Crown Butte Resources was included. CHAIRMAN HARGROVE stated that it would seem obvious, but he does not know.

SEN. FRED THOMAS asked SEN. BROOKE if she wants to include other people. SEN. BROOKE pointed out that there is a whole list at the beginning of the resolution who are included in the agreement which was entered into.

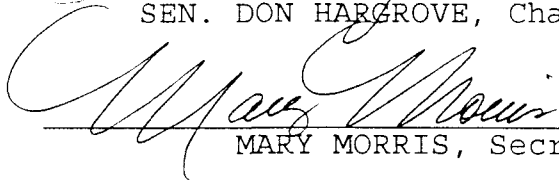
Vote: The motion that SJR 13 BE ADOPTED PASSED with SEN. MESAROS, SEN. THOMAS AND CHAIRMAN HARGROVE IN FAVOR, SEN. WILSON OPPOSED and SEN. BROOKE ABSTAINING.

ADJOURNMENT

Adjournment: 1:26 p.m.



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary

DH/MM