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INTRODUCED BY *House* BILL NO. *349*
~~Day~~ ~~Schmidt~~ ~~Furum~~
Hammerfeldt

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA STRIP MINING AND RECLAMATION ACT TO PROVIDE FOR THE PROTECTION OF CERTAIN AGRICULTURAL LANDS ON VALLEY FLOORS, AND CERTAIN STREAM CHANNELS; AMENDING SECTION 50-1042, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-1042, R.C.M. 1947, is amended to read as follows:

"50-1042. Refusal of permit--grounds. (1) An application for a prospecting or strip mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for prospecting or strip mining permit where the area of

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land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture; or

(e) hydrologic importance, in the sense that the operation would (i) adversely affect or be located within

1 valley floors underlain by unconsolidated stream laid
2 deposits where farming can be practiced in the form of
3 irrigated or naturally subirrigated lands; or

4 (ii) alter the channel of a significant watercourse,
5 which is a stream fed by a spring, other groundwater
6 discharge or surface flow that flows an average of two
7 hundred fifty (250) gallons per minute or more during two
8 hundred seventy (270) days or more of most years.

9 (3) If the department finds that the overburden on any
10 part of the area of land described in the application for a
11 prospecting or strip mining permit is such that experience
12 in the state with a similar type of operation upon land with
13 similar overburden shows that substantial deposition of
14 sediment in streambeds, landslides, or water pollution
15 cannot feasibly be prevented, the department shall delete
16 that part of the land described in the application upon
17 which the overburden exists.

18 (4) If the department finds that the operation will
19 constitute a hazard to a dwelling house, public building,
20 school, church, cemetery, commercial or institutional
21 building, public road, stream, lake, or other public
22 property, the department shall delete those areas from the
23 prospecting or strip mining permit application before it can
24 be approved."

25 Section 2. This act does not apply to permits issued

1 under section 50-1039 prior to the date of passage and
2 approval of this act.

-Lnd-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 349

INTRODUCED BY DAY, JOHNSTON, HUENNEKENS, KUMMERFELDT

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA STRIP MINING AND RECLAMATION ACT TO PROVIDE FOR THE PROTECTION OF CERTAIN AGRICULTURAL LANDS ON VALLEY FLOORS, AND CERTAIN STREAM CHANNELS; AMENDING SECTION 50-1042, R.C.M. 1947."

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(2) The department shall not approve the application for prospecting or strip mining permit where the area of

land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

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1 valley floors underlain by unconsolidated stream laid
 2 deposits where farming can be practiced in the form of
 3 irrigated or naturally subirrigated HAY MEADOWS OR OTHER
 4 CROP lands; or

5 (ii) alter the channel of a significant watercourse,
 6 which is a stream fed by a spring, other groundwater
 7 discharge or surface flow that flows an average of two
 8 hundred fifty (250) gallons per minute or more during ~~two~~
 9 ~~hundred--seventy-(270)~~ ONE HUNDRED TWENTY (120) days or more
 10 of most years, OR WHOSE DRAINAGE AREA ABOVE THE LOWEST POINT
 11 OF IMPACT ON THE WATERCOURSE BY THE PROPOSED SURFACE MINING
 12 OPERATION ENCOMPASSES TEN THOUSAND OR MORE ACRES OR SUCH
 13 LESSER AMOUNT IF IN THE DETERMINATION OF THE DEPARTMENT THE
 14 PROPOSED SURFACE MINING OPERATION WOULD HAVE A SIGNIFICANT
 15 ADVERSE IMPACT UPON THE WATERCOURSE AND ITS DRAINAGE AREA.

16 (3) If the department finds that the overburden on any
 17 part of the area of land described in the application for a
 18 prospecting or strip mining permit is such that experience
 19 in the state with a similar type of operation upon land with
 20 similar overburden shows that substantial deposition of
 21 sediment in streambeds, landslides, or water pollution
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 23 that part of the land described in the application upon
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1 constitute a hazard to a dwelling house, public building,
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 3 building, public road, stream, lake, or other public
 4 property, the department shall delete those areas from the
 5 prospecting or strip mining permit application before it can
 6 be approved."

7 Section 2. This act does not apply to permits issued
 8 under section 50-1039 prior to the date of passage and
 9 approval of this act OR TO PERMITS THAT MAY BE ISSUED TO THE
 10 SAME OPERATOR ON CONTIGUOUS LAND.

-End-

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INTRODUCED BY DAY, JOHNSTON, HUENNEKENS, KUMMERFELDT

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land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

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 4 CROP lands; or

5 (ii) alter the channel of a significant watercourse,
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 7 discharge or surface flow that flows an average of two
 8 hundred fifty (250) gallons per minute or more during ~~two~~
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 11 OF IMPACT ON THE WATERCOURSE BY THE PROPOSED SURFACE MINING
 12 OPERATION ENCOMPASSES TEN THOUSAND OR MORE ACRES OR SUCH
 13 LESSER AMOUNT IF IN THE DETERMINATION OF THE DEPARTMENT THE
 14 PROPOSED SURFACE MINING OPERATION WOULD HAVE A SIGNIFICANT
 15 ADVERSE IMPACT UPON THE WATERCOURSE AND ITS DRAINAGE AREA.

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 17 part of the area of land described in the application for a
 18 prospecting or strip mining permit is such that experience
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 21 sediment in streambeds, landslides, or water pollution
 22 cannot feasibly be prevented, the department shall delete
 23 that part of the land described in the application upon
 24 which the overburden exists.

25 (4) If the department finds that the operation will

1 constitute a hazard to a dwelling house, public building,
 2 school, church, cemetery, commercial or institutional
 3 building, public road, stream, lake, or other public
 4 property, the department shall delete those areas from the
 5 prospecting or strip mining permit application before it can
 6 be approved."

7 Section 2. This act does not apply to permits issued
 8 under section 50-1039 prior to the date of passage and
 9 approval of this act OR TO PERMITS THAT MAY BE ISSUED TO THE
 10 SAME OPERATOR ON CONTIGUOUS LAND.

-End-

March 22, 1975

SENATE COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

AMENDMENTS TO HOUSE BILL NO. 349

That House Bill NO. 349, third reading, be amended as follows:

1. Amend page 2, section 1, lines 24 through line 15 on page 3.
Strike: Subsection (e) in its entirety
2. Amend page 4, section 1, line 6.
Following: line 6
Insert: "(5) The department shall not approve an application for a strip mining permit unless the applicant has affirmatively demonstrated, and the department makes a written finding, that the proposed strip mining would not have a substantial adverse effect on crop lands or hay lands overlying alluvial valley floors where such crop lands or hay lands are significant to the practice of farming or ranch operation. For the purpose of this act, "alluvial valley floors" means the unconsolidated stream laid deposits, holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities."
3. Amend page 4, section 2, line 7 through 10.
Following: "Section 2."
Strike: Section 2 in its entirety
Insert: "Saving clause. This act does not apply to permits issued under section 50-1039 prior to the date of passage and approval of this act or to successive permits that may be issued to the same operator on contiguous land, or to those operations covered by section 50-1617."

Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

1 HOUSE BILL NO. 349

2 INTRODUCED BY DAY, JOHNSTON, HUENNEKENS, KUMMERFELDT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
5 STRIP MINING AND RECLAMATION ACT TO PROVIDE FOR THE
6 PROTECTION OF CERTAIN AGRICULTURAL LANDS ON VALLEY FLOORS,
7 AND CERTAIN STREAM CHANNELS; AMENDING SECTION 50-1042,
8 R.C.M. 1947."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11 Section 1. Section 50-1042, R.C.M. 1947, is amended to
12 read as follows:

13 "50-1042. Refusal of permit -- grounds. (1) An
14 application for a prospecting or strip mining permit shall
15 not be approved by the department if there is found on the
16 basis of the information set forth in the application, an
17 on-site inspection, and an evaluation of the operation by
18 the department that the requirements of the act or rules
19 will not be observed or that the proposed method of
20 operation, backfilling, grading, highwall reduction,
21 topsoiling, revegetation, or reclamation of the affected
22 area cannot be carried out consistent with the purpose of
23 this act.

24 (2) The department shall not approve the application
25 for prospecting or strip mining permit where the area of

1 land described in the application includes land having
2 special, exceptional, critical, or unique characteristics,
3 or that mining or prospecting on that area would adversely
4 affect the use, enjoyment, or fundamental character of
5 neighboring land having special, exceptional, critical, or
6 unique characteristics. For the purposes of this act, land
7 is defined as having such characteristics if it possesses
8 special, exceptional, critical or unique:

9 (a) biological productivity, the loss of which would
10 jeopardize certain species of wildlife or domestic stock; or

11 (b) ecological fragility, in the sense that the land,
12 once adversely affected, could not return to its former
13 ecological role in the reasonable foreseeable future; or

14 (c) ecological importance, in the sense that the
15 particular land has such a strong influence on the total
16 ecosystem of which it is a part that even temporary effects
17 felt by it could precipitate a system-wide reaction of
18 unpredictable scope or dimensions; or

19 (d) scenic, historic, archeologic, topographic,
20 geologic, ethnologic, scientific, cultural, or recreational
21 significance. In applying this subsection, particular
22 attention should be paid to the inadequate preservation
23 previously accorded Plains Indian history and culture. ~~or~~

24 ~~(e) hydrologic importance, in the sense that the~~
25 ~~operation would adversely affect or be located within~~

1 valley--floors--underlain--by--unconsolidated--stream--laid
 2 deposits--where--farming--can--be--practiced--in--the--form--of
 3 irrigated--or--naturally--subirrigated--HAY--MEADOWS--OR--OTHER
 4 CROP--lands;--or

5 (ii)--alter--the--channel--of--a--significant--watercourse
 6 which--is--a--stream--fed--by--a--spring;--other--groundwater
 7 discharge--or--surface--flow--that--flows--an--average--of--two
 8 hundred--fifty--(250)--gallons--per--minute--or--more--during--two
 9 hundred--seventy--(270)--ONE--HUNDRED--TWENTY--(120)--days--or--more
 10 of--most--years;--OR--WHOSE--DRAINAGE--AREA--ABOVE--THE--LOWEST--POINT
 11 OF--IMPACT--ON--THE--WATERCOURSE--BY--THE--PROPOSED--SURFACE--MINING
 12 OPERATION--ENCOMPASSES--TEN--THOUSAND--OR--MORE--ACRES--OR--SUCH
 13 LESSER--AMOUNT--IF--IN--THE--DETERMINATION--OF--THE--DEPARTMENT--THE
 14 PROPOSED--SURFACE--MINING--OPERATION--WOULD--HAVE--A--SIGNIFICANT
 15 ADVERSE--IMPACT--UPON--THE--WATERCOURSE--AND--ITS--DRAINAGE--AREA;

16 (3) If the department finds that the overburden on any
 17 part of the area of land described in the application for a
 18 prospecting or strip mining permit is such that experience
 19 in the state with a similar type of operation upon land with
 20 similar overburden shows that substantial deposition of
 21 sediment in streambeds, landslides, or water pollution
 22 cannot feasibly be prevented, the department shall delete
 23 that part of the land described in the application upon
 24 which the overburden exists.

25 (4) If the department finds that the operation will

1 constitute a hazard to a dwelling house, public building,
 2 school, church, cemetery, commercial or institutional
 3 building, public road, stream, lake, or other public
 4 property, the department shall delete those areas from the
 5 prospecting or strip mining permit application before it can
 6 be approved.

7 (5) THE DEPARTMENT SHALL NOT APPROVE AN APPLICATION
 8 FOR A STRIP MINING PERMIT UNLESS THE APPLICANT HAS
 9 AFFIRMATIVELY DEMONSTRATED, AND THE DEPARTMENT MAKES A
 10 WRITTEN FINDING, THAT THE PROPOSED STRIP MINING WOULD NOT
 11 HAVE A SUBSTANTIAL ADVERSE EFFECT ON CROP LANDS OR HAY LANDS
 12 OVERLYING ALLUVIAL VALLEY FLOORS WHERE SUCH CROP LANDS OR
 13 HAY LANDS ARE SIGNIFICANT TO THE PRACTICE OF FARMING OR
 14 RANCH OPERATION. FOR THE PURPOSE OF THIS ACT, "ALLUVIAL
 15 VALLEY FLOORS" MEANS THE UNCONSOLIDATED STREAM LAND
 16 DEPOSITS, HOLDING STREAMS WHERE WATER AVAILABILITY IS
 17 SUFFICIENT FOR SUBIRRIGATION OR FLOOD IRRIGATION
 18 AGRICULTURAL ACTIVITIES."

19 Section 2. This act does not apply to permits issued
 20 under section 50-1039 prior to the date of passage and
 21 approval of this act OR TO PERMITS THAT MAY BE ISSUED TO THE
 22 SAME OPERATOR ON CONTIGUOUS LAND; SAVING CLAUSE. THIS ACT
 23 DOES NOT APPLY TO PERMITS ISSUED UNDER SECTION 50-1039 PRIOR
 24 TO THE DATE OF PASSAGE AND APPROVAL OF THIS ACT OR TO
 25 SUCCESSIVE PERMITS THAT MAY BE ISSUED TO THE SAME OPERATOR

1 ON CONTIGUOUS LAND, OR TO THOSE OPERATIONS COVERED BY
2 SECTION 50-1617.

3 SECTION 3. SEVERABILITY. IF A PART OF THIS ACT IS
4 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
5 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
6 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
7 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
8 INVALID APPLICATIONS.

-End-