

1 *House* BILL NO. 569
 2 INTRODUCED BY *Lien Doji*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE PRIOR TO
 5 ISSUANCE OF A STRIP MINING PERMIT, THE WRITTEN CONSENT OF
 6 THE OWNER OF A SURFACE ESTATE OVERLYING THE MINERAL ESTATE
 7 TO BE MINED WHEN SUCH OWNER DOES NOT OWN THE MINERAL ESTATE;
 8 AMENDING SECTION 50-1036, R.C.M. 1947."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 50-1036, R.C.M. 1947, is amended to
 12 read as follows:

13 "50-1036. Definitions. Unless the context requires
 14 otherwise in this act:

- 15 (1) "mineral" means coal and uranium;
- 16 (2) "overburden" means all of the earth and other
 17 materials which lie above a natural mineral deposit and also
 18 means such earth and other material after removal from their
 19 natural state in the process of strip mining;
- 20 (3) "strip mining" means any part of the process
 21 followed in the production of mineral by the open cut method
 22 including mining by the auger method or any similar method
 23 which penetrates a mineral deposit and removes mineral
 24 directly through a series of openings made by a machine
 25 which enters the deposit from a surface excavation, or any

1 other mining method or process in which the strata or
 2 overburden is removed or displaced in order to recover the
 3 mineral;

4 (4) "prospecting" means the removal of overburden,
 5 core drilling, construction of roads or any other
 6 disturbance of the surface for the purpose of determining
 7 the location, quantity, or quality of a natural mineral
 8 deposit;

9 (5) "area of land affected" means the area of land
 10 from which overburden is to be or has been removed and upon
 11 which the overburden is to be or has been deposited and
 12 includes all lands affected by the construction of new
 13 railroad loops and roads or the improvement or use of
 14 existing railroad loops and roads to gain access and to haul
 15 the mineral;

16 (6) "operation" means all of the premises, facilities,
 17 railroad loops, roads, and equipment used in the process of
 18 producing and removing mineral from a designated strip mine
 19 area, or prospecting for the purpose of determining the
 20 location, quality, or quantity of a natural mineral deposit;

21 (7) "operator" means a person engaged in strip mining
 22 who removes or intends to remove more than ten thousand
 23 (10,000) cubic yards of mineral or overburden;

24 (8) "person" means a person, partnership, corporation,
 25 association, or other legal entity, or any political

1 subdivision, or agency of the state;

2 (9) "method of operation" means the method or manner
3 by which the cut or open pit is made, the overburden is
4 placed or handled, water is controlled and other acts are
5 performed by the operator in the process of uncovering and
6 removing the minerals that affect the reclamation of the
7 area of land affected;

8 (10) "topsoil" means the unconsolidated mineral matter
9 naturally present on the surface of the earth that has been
10 subjected to and influenced by genetic and environmental
11 factors of parent material, climate, macro- and
12 micro-organisms, and topography, all acting over a period of
13 time, and that is necessary for the growth and regeneration
14 of vegetation on the surface of the earth;

15 (11) "department" means the department of state lands
16 provided for in Title 82A, chapter 11;

17 (12) "commissioner" means the commissioner of state
18 lands provided for in section 82A-1104;

19 (13) "board" means the board of land commissioners
20 provided for in article X, section 4 of the constitution of
21 this state;

22 (14) "reclamation" means backfilling, grading, highwall
23 reduction, topsoiling, planting, revegetation, and other
24 work to restore an area of land affected by strip mining
25 under a plan approved by the department;

1 (15) "degree" means from the horizontal, and in each
2 case is subject to a tolerance of five percent (5%) error;

3 (16) "contour strip mining" means that strip mining
4 method commonly carried out in areas of rough and hilly
5 topography in which the coal or mineral seam outcrops along
6 the side of the slope and entrance is made to the seam by
7 excavating a bench or table cut at and along the site of the
8 seam outcropping with the excavated overburden commonly
9 being cast down the slope below the mineral seam and the
10 operating bench;

11 (17) "bench" means the ledge, shelf, table, or terraces
12 formed in the contour method of strip mining;

13 (18) "fill bench" means that portion of a bench or
14 table which is formed by depositing overburden beyond or
15 down slope from the cut section as formed in the contour
16 method of strip mining;

17 (19) "abandoned" means an operation where no mineral is
18 being produced and where the department determines that the
19 operation will not continue or resume;

20 (20) "written consent" means such written statement as
21 is executed by the owner of the surface estate, upon a form
22 approved by the department, demonstrating that such owner
23 consents to entry of an operator for the purpose of
24 conducting strip mining operations and that such consent is
25 given only to such strip mining and reclamation operations

1 which fully comply with the terms and requirements of this
2 chapter;

3 (21) "waiver means any document which demonstrates the
4 clear intention to convey rights in the mineral estate for
5 the purpose of extracting such minerals by current strip
6 mining methods."

7 Section 2. There is a new R.C.M. section numbered
8 50-1039.1 that reads as follows:

9 50-1039.1. Protection of the surface owner. In those
10 instances in which the surface owner is not the owner of the
11 mineral estate proposed to be mined by strip mining
12 operations, the application for a permit shall include the
13 written consent, or a waiver by, the owner or owners of the
14 surface lands involved to enter and commence surface mining
15 operations on such land, except that nothing in this section
16 applies when the mineral estate is owned by the federal
17 government in fee or in trust for an Indian tribe.

-End-

HB 569

Approved by Committee
on Natural Resources

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19 area, or prospecting for the purpose of determining the
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21 (7) "operator" means a person engaged in strip mining
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23 (10,000) cubic yards of mineral or overburden;
24 (8) "person" means a person, partnership, corporation,
25 association, or other legal entity, or any political

1 subdivision, or agency of the state;

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3 by which the cut or open pit is made, the overburden is
4 placed or handled, water is controlled and other acts are
5 performed by the operator in the process of uncovering and
6 removing the minerals that affect the reclamation of the
7 area of land affected;

8 (10) "topsoil" means the unconsolidated mineral matter
9 naturally present on the surface of the earth that has been
10 subjected to and influenced by genetic and environmental
11 factors of parent material, climate, macro- and
12 micro-organisms, and topography, all acting over a period of
13 time, and that is necessary for the growth and regeneration
14 of vegetation on the surface of the earth;

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19 (13) "board" means the board of land commissioners
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21 this state;

22 (14) "reclamation" means backfilling, grading, highwall
23 reduction, topsoiling, planting, revegetation, and other
24 work to restore an area of land affected by strip mining
25 under a plan approved by the department;

1 (15) "degree" means from the horizontal, and in each
2 case is subject to a tolerance of five percent (5%) error;

3 (16) "contour strip mining" means that strip mining
4 method commonly carried out in areas of rough and hilly
5 topography in which the coal or mineral seam outcrops along
6 the side of the slope and entrance is made to the seam by
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20 (20) "written consent" means such written statement as
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22 approved by the department, demonstrating that such owner
23 consents to entry of an operator for the purpose of
24 conducting strip mining operations and that such consent is
25 given only to such strip mining and reclamation operations

1 which fully comply with the terms and requirements of this
 2 chapter;

3 (21) "SURFACE OWNER" MEANS A PERSON (A) WHO HOLDS
 4 LEGAL OR EQUITABLE TITLE TO THE LAND SURFACE; AND (B) WHOSE
 5 PRINCIPAL PLACE OF RESIDENCE IS ON THE LAND; OR WHO
 6 PERSONALLY CONDUCTS FARMING OR RANCHING OPERATIONS UPON A
 7 FARM OR RANCH UNIT TO BE DIRECTLY AFFECTED BY SURFACE MINING
 8 OPERATIONS; OR WHO RECEIVES DIRECTLY A SIGNIFICANT PORTION
 9 OF HIS INCOME, IF ANY, FROM SUCH FARMING OR RANCHING
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11 ~~(21)~~ (22) "waiver" means any document which
 12 demonstrates the clear intention to convey RELEASE rights in
 13 the mineral SURFACE estate for the purpose of extracting
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-End-

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Section 1. Section 50-1036, R.C.M. 1947, is amended to read as follows:

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other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

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1 federal government in fee or in trust for an Indian tribe.

-End-

March 20, 1975

SENATE COMMITTEE ON NATURAL RESOURCES AND FISH AND GAME

AMENDMENTS TO HOUSE BILL NO. 569

That House Bill No. 569, third reading, be amended as follows:

1. Amend page 5, section 1, line 10.

Following: "OPERATIONS"

Insert: "; (c) or the state of Montana where the state owns the surface"

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