

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Senate BILL NO. 92
Albery

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 50-1055, R.C.M. 1947, TO DEFINE PRIMA FACIE EVIDENCE OF INJURY TO AN OWNER'S WATER SUPPLY IN A DESIGNATED GROUND WATER AREA AND TO SHIFT BURDEN TO STRIP MINE OPERATOR IN A NONDESIGNATED AREA."

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

Section 1. Section 50-1055, R.C.M. 1947, is amended to read as follows:

"50-1055. Mandamus to compel enforcement of law -- action for damage to water supply -- damage from surface water -- other remedies. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(a) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal from a designated "ground water area" as prescribed in Title 89, chapter 29. If the area is not a designated "ground water area", a showing that the coal is an aquifer in that

SB92

1 geographical location and that the coal has been removed
 2 shifts the burden to defendant (operator) to show that
 3 plaintiff's (owner's) water supply was not injured thereby.

4 (b) An owner of water rights adversely affected may
 5 file a complaint, detailing the loss in quality and quantity
 6 of his water, with the department. Upon receipt of this
 7 complaint the department shall:

8 (i) investigate the complaint using all available
 9 information including monitoring data gathered at the mine
 10 site;

11 (ii) issue, within thirty days, a written finding
 12 specifying the cause of the water loss, if there is a loss,
 13 in terms of quantity or quality;

14 (iii) order the mining operator to replace the water,
 15 in like quality, quantity, and duration, within thirty days
 16 if the loss is caused by the surface coal mining operation;
 17 and

18 (iv) order the suspension of the operator's permit,
 19 for failure to replace the water, until such time as the
 20 operator provides substitute water.

21 (4) A servient tract of land is not bound to receive
 22 surface water contaminated by strip mining on a dominant
 23 tract of land, and the owner of the servient tract may sue
 24 an operator to recover the damages proximately resulting
 25 from the natural drainage from the dominant tract of surface

1 waters contaminated by strip mining on the dominant tract.

2 (5) This section does not create, modify, or affect any
 3 right, liability, or remedy other than as expressly provided
 4 in this section."

-End-

Approved by Committee
on Agriculture Livestock
& Irrigation

1 SENATE BILL NO. 92
2 INTRODUCED BY COLBERG

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 50-1055, R.C.M. 1947, TO DEFINE PRIMA FACIE EVIDENCE OF
6 INJURY TO AN OWNER'S WATER SUPPLY IN A DESIGNATED GROUND
7 WATER AREA AND TO SHIFT BURDEN TO STRIP MINE OPERATOR IN A
8 NONDESIGNATED AREA."

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

11 Section 1. Section 50-1055, R.C.M. 1947, is amended to
12 read as follows:

13 "50-1055. Mandamus to compel enforcement of law --
14 action for damage to water supply -- damage from surface
15 water -- other remedies. (1) A resident of this state, with
16 knowledge that a requirement of this act or a rule adopted
17 under this act, is not being enforced by a public officer or
18 employee whose duty it is to enforce the requirement or rule
19 may bring the failure to enforce to the attention of the
20 public officer or employee by a written statement under oath
21 that shall state the specific facts of the failure to
22 enforce the requirement or rule. Knowingly making false
23 statements or charges in the affidavit subjects the affiant
24 to penalties prescribed under the law of perjury.

25 (2) If the public officer or employee neglects or

1 refuses for an unreasonable time after receipt of the
2 statement to enforce the requirement or rule, the resident
3 may bring an action of mandamus in the district court of the
4 first judicial district of this state, in and for the county
5 of Lewis and Clark, or in the district court of the county
6 in which the land is located. The court, if it finds that a
7 requirement of this act or a rule adopted under this act, is
8 not being enforced shall order the public officer or
9 employee, whose duty it is to enforce the requirement or
10 rule, to perform his duties. If he fails to do so, the
11 public officer or employee shall be held in contempt of
12 court and is subject to the penalties provided by law.

13 (3) An owner of an interest in real property who
14 obtains all or part of his supply of water for domestic,
15 agricultural, industrial, or other legitimate use from an
16 underground source other than a subterranean stream having a
17 permanent, distinct, and known channel, may sue an operator
18 to recover damages for contamination, diminution, or
19 interruption of the water supply, proximately resulting from
20 strip mining.

21 (a) Prima facie evidence of injury in a suit under
22 this subsection is established by the removal of coal from a
23 designated "ground water area" as prescribed in Title 89,
24 chapter 29. If the area is not a designated "ground water
25 area", a showing that the coal is an aquifer in that

1 geographical location and that the coal has been removed
 2 shifts the burden to defendant (operator) to show that
 3 plaintiff's (owner's) water supply was not injured thereby.

4 (b) An owner of water rights adversely affected may
 5 file a complaint, detailing the loss in quality and quantity
 6 of his water, with the department. Upon receipt of this
 7 complaint the department shall:

8 (i) investigate the complaint using all available
 9 information including monitoring data gathered at the mine
 10 site;

11 (ii) issue, within thirty days, a written finding
 12 specifying the cause of the water loss, if there is a loss,
 13 in terms of quantity or quality;

14 (iii) order the mining operator to replace the water
 15 IMMEDIATELY ON A TEMPORARY BASIS TO PROVIDE THE NEEDED WATER
 16 AND WITHIN A REASONABLE TIME REPLACE THE WATER in like
 17 quality, quantity, and duration, ~~within-thirty-days~~ if the
 18 loss is caused by the surface coal mining operation; and

19 (iv) order the suspension of the operator's permit,
 20 for failure to replace the water, until such time as the
 21 operator provides substitute water.

22 (4) A servient tract of land is not bound to receive
 23 surface water contaminated by strip mining on a dominant
 24 tract of land, and the owner of the servient tract may sue
 25 an operator to recover the damages proximately resulting

1 from the natural drainage from the dominant tract of surface
 2 waters contaminated by strip mining on the dominant tract.

3 (5) This section does not create, modify, or affect any
 4 right, liability, or remedy other than as expressly provided
 5 in this section."

-End-

1 SENATE BILL NO. 92

2 INTRODUCED BY COLBERG

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 50-1055, R.C.M. 1947, TO DEFINE PRIMA FACIE EVIDENCE OF
6 INJURY TO AN OWNER'S WATER SUPPLY IN A DESIGNATED GROUND
7 WATER AREA AND TO SHIFT BURDEN TO STRIP MINE OPERATOR IN A
8 NONDESIGNATED AREA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11 Section 1. Section 50-1055, R.C.M. 1947, is amended to
12 read as follows:

13 *50-1055. Mandamus to compel enforcement of law --
14 action for damage to water supply -- damage from surface
15 water -- other remedies. (1) A resident of this state, with
16 knowledge that a requirement of this act or a rule adopted
17 under this act, is not being enforced by a public officer or
18 employee whose duty it is to enforce the requirement or rule
19 may bring the failure to enforce to the attention of the
20 public officer or employee by a written statement under oath
21 that shall state the specific facts of the failure to
22 enforce the requirement or rule. Knowingly making false
23 statements or charges in the affidavit subjects the affiant
24 to penalties prescribed under the law of perjury.

25 (2) If the public officer or employee neglects or

1 refuses for an unreasonable time after receipt of the
2 statement to enforce the requirement or rule, the resident
3 may bring an action of mandamus in the district court of the
4 first judicial district of this state, in and for the county
5 of Lewis and Clark, or in the district court of the county
6 in which the land is located. The court, if it finds that a
7 requirement of this act or a rule adopted under this act, is
8 not being enforced shall order the public officer or
9 employee, whose duty it is to enforce the requirement or
10 rule, to perform his duties. If he fails to do so, the
11 public officer or employee shall be held in contempt of
12 court and is subject to the penalties provided by law.

13 (3) An owner of an interest in real property who
14 obtains all or part of his supply of water for domestic,
15 agricultural, industrial, or other legitimate use from an
16 underground source other than a subterranean stream having a
17 permanent, distinct, and known channel, may sue an operator
18 to recover damages for contamination, diminution, or
19 interruption of the water supply, proximately resulting from
20 strip mining.

21 (a) Prima facie evidence of injury in a suit under
22 this subsection is established by the removal of coal from a
23 designated "ground water area" as prescribed in Title 89,
24 chapter 29. If the area is not a designated "ground water
25 area", a showing that the coal is an aquifer in that

1 geographical location and that the coal has been removed
 2 shifts the burden to defendant (operator) to show that
 3 plaintiff's (owner's) water supply was not injured thereby.

4 (b) An owner of water rights adversely affected may
 5 file a complaint, detailing the loss in quality and quantity
 6 of his water, with the department. Upon receipt of this
 7 complaint the department shall:

8 (i) investigate the complaint using all available
 9 information including monitoring data gathered at the mine
 10 site;

11 (ii) issue, within thirty days, a written finding
 12 specifying the cause of the water loss, if there is a loss,
 13 in terms of quantity or quality;

14 (iii) order the mining operator to replace the water,
 15 IMMEDIATELY ON A TEMPORARY BASIS TO PROVIDE THE NEEDED WATER
 16 AND WITHIN A REASONABLE TIME REPLACE THE WATER in like
 17 quality, quantity, and duration, ~~within-thirty-days~~ if the
 18 loss is caused by the surface coal mining operation; and

19 (iv) order the suspension of the operator's permit,
 20 for failure to replace the water, until such time as the
 21 operator provides substitute water.

22 (4) A servient tract of land is not bound to receive
 23 surface water contaminated by strip mining on a dominant
 24 tract of land, and the owner of the servient tract may sue
 25 an operator to recover the damages proximately resulting

1 from the natural drainage from the dominant tract of surface
 2 waters contaminated by strip mining on the dominant tract.

3 (5) This section does not create, modify, or affect any
 4 right, liability, or remedy other than as expressly provided
 5 in this section."

-End-

HOUSE OF REPRESENTATIVES

MARCH 15, 1975

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 92

Be amended in the third reading bill as follows:

1. Amend page 2, section 1, subsection (3) (a), line 22.

Following: "coal"

Insert: "or disruption of overlying aquifer"

2. Amend page 2, section 1, subsection (3) (a), line 23.

Following: "water"

Strike: "area"

Insert: "areas"

3. Amend page 2, section 1, subsection (3) (a), line 25.

Following: "coal"

Insert: "or overlying strata"

4. Amend page 3, section 1, subsection (3) (a), line 1.

Following: "coal"

Insert: "or the overlying strata"

5. Amend page 3, section 1, subsection (3) (a), line 1.

Following: "removed"

Insert: "or disrupted"

6. Amend page 3, section 1, subsection (3) (b), following line 10.

Insert: A new subsection (ii) and renumber subsequent sub-sections.

"(ii) require the defendant (operator) to install such monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;"

March 18, 1975

HOUSE OF REPRESENTATIVES

COMMITTEE OF THE WHOLE AMENDMENTS TO SENATE BILL NO. 92,

third reading copy, as follows:

1. Amend page 3, line 11,

Following: "within"

Strike: "thirty"

Insert: "ninety"

2. Amend page 3, line 14,

Following: "operator"

Insert: "in compliance with the water use act".

SENATE BILL NO. 92

INTRODUCED BY COLBERG

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 50-1055, R.C.M. 1947, TO DEFINE PRIMA FACIE EVIDENCE OF INJURY TO AN OWNER'S WATER SUPPLY IN A DESIGNATED GROUND WATER AREA AND TO SHIFT BURDEN TO STRIP MINE OPERATOR IN A NONDESIGNATED AREA."

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

Section 1. Section 50-1055, R.C.M. 1947, is amended to read as follows:

"50-1055. Mandamus to compel enforcement of law -- action for damage to water supply -- damage from surface water -- other remedies. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or

refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(a) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal OR DISRUPTION OF OVERLYING AQUIFER from a designated "ground water area AREAS" as prescribed in Title 89, chapter 29. If the area is not a designated "ground water area", a showing

1 that the coal OR OVERLYING STRATA is an aquifer in that
 2 geographical location and that the coal OR THE OVERLYING
 3 STRATA has been removed OR DISRUPTED shifts the burden to
 4 defendant (operator) to show that plaintiff's (owner's)
 5 water supply was not injured thereby.

6 (b) An owner of water rights adversely affected may
 7 file a complaint, detailing the loss in quality and quantity
 8 of his water, with the department. Upon receipt of this
 9 complaint the department shall:

10 (i) investigate the complaint using all available
 11 information including monitoring data gathered at the mine
 12 site;

13 (II) REQUIRE THE DEFENDANT (OPERATOR) TO INSTALL SUCH
 14 MONITORING WELLS OR OTHER PRACTICES THAT MAY BE NEEDED TO
 15 DETERMINE THE CAUSE OF WATER LOSS, IF THERE IS A LOSS, IN
 16 TERMS OF QUANTITY OR QUALITY;

17 ~~(ii)~~ (III) issue, within ~~thirty-NINETY~~ (90) days, a
 18 written finding specifying the cause of the water loss, if
 19 there is a loss, in terms of quantity or quality;

20 ~~(iii)~~ (IV) order the mining operator IN COMPLIANCE
 21 WITH THE WATER USE ACT to replace the water, IMMEDIATELY ON
 22 A TEMPORARY BASIS TO PROVIDE THE NEEDED WATER AND WITHIN A
 23 REASONABLE TIME REPLACE THE WATER in like quality, quantity,
 24 and duration, ~~within--thirty-days~~ if the loss is caused by
 25 the surface coal mining operation; and

1 ~~(iv)~~ (V) order the suspension of the operator's
 2 permit, for failure to replace the water, until such time as
 3 the operator provides substitute water.

4 (4) A servient tract of land is not bound to receive
 5 surface water contaminated by strip mining on a dominant
 6 tract of land, and the owner of the servient tract may sue
 7 an operator to recover the damages proximately resulting
 8 from the natural drainage from the dominant tract of surface
 9 waters contaminated by strip mining on the dominant tract.

10 (5) This section does not create, modify, or affect any
 11 right, liability, or remedy other than as expressly provided
 12 in this section."

-End-