

HOUSE BILL NO. 466

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT DECLARING THAT THE OPEN-PIT EXTRACTION OF METALLIC ORES IS NOT AN UNRESTRICTED PUBLIC PURPOSE FOR WHICH PROPERTY MAY BE TAKEN BY EMINENT DOMAIN AND SETTING THE PUBLIC POLICY THEREFOR; AMENDING SECTION 93-9902, R.C.M. 1947."

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

Section 1. Section 93-9902, R.C.M. 1947, is amended to read as follows:

"93-9902. What are public uses. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.

3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions

therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, docks, piers, wharves, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water. Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors

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1 of different mines of any place for the flow, deposit, or
 2 conduct of tailings or refuse matter from their several
 3 mines, mills, or smelters for reduction of ores, and sites
 4 for reservoirs necessary for collecting and storing water.
 5 Provided, however, that such reservoir sites must possess a
 6 public use demonstrable to the district court as the highest
 7 and best use of the land.

8 6. Private roads leading from highways to residences
 9 or farms.

10 7. Telephone or electric light lines.

11 8. Telegraph lines.

12 9. Sewerage of any city, county, or town, or any
 13 subdivision thereof, whether incorporated or unincorporated,
 14 or of any settlement consisting of not less than ten (10)
 15 families, or of any public buildings belonging to the state,
 16 or to any college or university.

17 10. Tramway lines.

18 11. Electric power lines.

19 12. Logging railways.

20 13. Temporary logging roads and banking grounds for
 21 the transportation of logs and timber products to public
 22 streams, lakes, mills, railroads, or highways, for such time
 23 as the court or judge may determine; provided, the grounds
 24 of state institutions be excepted.

25 14. Underground reservoirs suitable for storage of

1 natural gas.

2 ~~15. To mine and extract ores, metals or minerals owned~~
 3 ~~by the plaintiff located beneath or upon the surface of~~
 4 ~~property where the title to said surface vests in others;~~
 5 ~~provided, however, the the use of the surface for strip~~
 6 ~~mining or open pit mining of coal (i.e., any mining method~~
 7 ~~or process in which the strata or overburden is removed or~~
 8 ~~displaced in order to extract the coal) is not a public use~~
 9 ~~and eminent domain may not be exercised for this purpose."~~

10 Section 2. There is a new R.C.M. section that reads as
 11 follows:

12 Policy on open pit mining of metallic ores. (1) The
 13 state's power to exercise the right of eminent domain for
 14 the purpose of open pit mining of metallic ores shall be
 15 severely restricted and shall be utilized only in extremely
 16 limited cases. However, due to the economic impact of mining
 17 and the nature of some mining technologies, the use of
 18 eminent domain for open pit mining must occasionally be
 19 permitted, but only after close scrutiny by an ad hoc board
 20 of necessity. This board shall be formed upon request of the
 21 plaintiff to the governor of Montana. The request shall be
 22 made after 2 week's notice in newspapers distributed in the
 23 area to be mined. The board shall be composed of five
 24 members appointed as follows:

25 (a) One member shall be appointed by the governor of

1 Montana.

2 (b) One member shall be appointed by the county
3 commissioners governing the area where the property is
4 located.

5 (c) One member shall be appointed by the plaintiff.

6 (d) One member shall be appointed by the surface
7 rights owner.

8 (e) One member shall be appointed by the state
9 district court of the area where the property is located.

10 (2) The board of necessity shall approve or disapprove
11 the sites-specific use of condemnation. This action may be
12 taken only after reviewing the following criteria:

13 (a) The underlying reasons for the mining company's
14 decision to develop the metallic ore properties beneath the
15 area in question with open pit techniques; and

16 (b) The feelings of the populace in the area
17 surrounding the development as to the proposed expansion of
18 the open pit mine; and

19 (c) The highest and best use of land surface in
20 question.

21 (3) All expenses incurred by the ad hoc board of
22 necessity shall be borne by the plaintiff. The approval or
23 disapproval of the ad hoc committee shall be final, and in
24 the event a favorable decision is rendered, normal
25 condemnation proceedings shall be instituted.

Judiciary

Objection Raised to
Adverse Committee Report

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17 United States.
18 2. Public buildings and grounds for the use of the
19 state, and all other public uses authorized by the
20 legislative assembly of the state.
21 3. Public buildings and grounds for the use of any
22 county, city, or town, or school districts; canals,
23 aqueducts, flumes, ditches, or pipes conducting water, heat,
24 or gas for the use of the inhabitants of any county, city,
25 or town; raising the banks of streams, removing obstructions

1 therefrom, and widening, deepening, or straightening their
2 channels; roads, streets, and alleys, and all other public
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4 inhabitants thereof, which may be authorized by the
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6 collecting the costs of such improvements shall be such as
7 may be provided in the statutes or ordinances by which the
8 same may be authorized.
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25 also an occupancy in common by the owners or the possessors

1 of different mines of any place for the flow, deposit, or
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-End-

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