

SENATE BILL 478

IN THE SENATE

February 12, 1979

Introduced and referred to  
Committee on Natural Resources.

February 20, 1979

Committee recommend bill, do  
not pass, as amended.

February 21, 1979

On motion, Senate reconsider  
its action taken on Adverse  
Committee report and order  
printed and placed on second  
reading. Motion failed.

1 *Senate* BILL NO. *478*  
 2 INTRODUCED BY *Jerguson Day J. Brown VINCENT*  
 3 *Conover Johnson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
 5 70-30-102, MCA, TO RESTRICT THE EXERCISE OF THE RIGHT OF  
 6 EMINENT DOMAIN FOR WATER RESERVOIR SITES."

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

9 Section 1. Section 70-30-102, MCA, is amended to read:

10 "70-30-102. Public uses enumerated. Subject to the  
 11 provisions of this chapter, the right of eminent domain may  
 12 be exercised in behalf of the following public uses:

- 13 (1) all public uses authorized by the government of
- 14 the United States;
- 15 (2) public buildings and grounds for the use of the
- 16 state and all other public uses authorized by the
- 17 legislature of the state;
- 18 (3) public buildings and grounds for the use of any
- 19 county, city or town, or school district; canals, aqueducts,
- 20 flumes, ditches, or pipes conducting water, heat, or gas for
- 21 the use of the inhabitants of any county, city, or town;
- 22 raising the banks of streams, removing obstructions
- 23 therefrom, and widening, deepening, or straightening their
- 24 channels; roads, streets, and alleys and all other public
- 25 uses for the benefit of any county, city, or town or the

1 inhabitants thereof, which may be authorized by the  
 2 legislature; but the mode of apportioning and collecting the  
 3 costs of such improvements shall be such as may be provided  
 4 in the statutes or ordinances by which the same may be  
 5 authorized;

6 (4) wharves, docks, piers, chutes, booms, ferries,  
 7 bridges, of all kinds, private roads, plank and turnpike  
 8 roads, railroads, canals, ditches, flumes, aqueducts, and  
 9 pipes for public transportation, supplying mines, mills, and  
 10 smelters for the reduction of ores and farming neighborhoods  
 11 with water and drainage and reclaiming lands and for  
 12 floating logs and lumber on streams not navigable and sites  
 13 for reservoirs necessary for collecting and storing water.  
 14 However, such reservoir sites must possess a public use  
 15 demonstrable to the district court as the highest and best  
 16 use of the land, and are limited to the following uses:

- 17 (a) public water supplies financed and owned by the
- 18 state, a local government unit, or political subdivision
- 19 thereof, including but not limited to a county or
- 20 municipality, or a special district, including but not
- 21 limited to irrigation districts and water conservancy
- 22 districts;
- 23 (b) irrigation, livestock, domestic, and hydroelectric
- 24 uses solely for agricultural purposes; and
- 25 (c) joint water development projects between the state

1 and private concerns that have received legislative  
2 approval.

3 (5) roads, tunnels, ditches, flumes, pipes, and  
4 dumping places for working mines, mills, or smelters for the  
5 reduction of ores; also outlets, natural or otherwise, for  
6 the flow, deposit, or conduct of tailings or refuse matter  
7 from mines, mills, and smelters for the reduction of ores;  
8 also an occupancy in common by the owners or the possessors  
9 of different mines of any place for the flow, deposit, or  
10 conduct of tailings or refuse matter from their several  
11 mines, mills, or smelters for reduction of ores and sites  
12 for reservoirs necessary for collecting and storing water.  
13 However, such reservoir sites must possess a public use  
14 demonstrable to the district court as the highest and best  
15 use of the lands and are limited to the following uses:

16 (a) public water supplies financed and owned by the  
17 state, a local government unit or political subdivision  
18 thereof, including but not limited to a county or  
19 municipality, or a special district, including but not  
20 limited to irrigation districts and water conservancy  
21 districts;

22 (b) irrigation, livestock, domestic, and hydroelectric  
23 uses solely for agricultural purposes; and

24 (c) joint water development projects between the state  
25 and private concerns that have received legislative

1 approval.

2 (6) private roads leading from highways to residences  
3 or farms;

4 (7) telephone or electric light lines;

5 (8) telegraph lines;

6 (9) sewerage of any city, county, or town or any  
7 subdivision thereof, whether incorporated or unincorporated,  
8 or of any settlement consisting of not less than 10 families  
9 or of any public buildings belonging to the state or to any  
10 college or university;

11 (10) tramway lines;

12 (11) electric power lines;

13 (12) logging railways;

14 (13) temporary logging roads and banking grounds for  
15 the transportation of logs and timber products to public  
16 streams, lakes, mills, railroads, or highways for such time  
17 as the court or judge may determine; provided, the grounds  
18 of state institutions be excepted;

19 (14) underground reservoirs suitable for storage of  
20 natural gas;

21 (15) to mine and extract ores, metals, or minerals  
22 owned by the plaintiff located beneath or upon the surface  
23 of property where the title to said surface vests in others.  
24 However, the use of the surface for strip mining or open pit  
25 mining of coal (i.e., any mining method or process in which

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1 the strata or overburden is removed or displaced in order to  
2 extract the coal) is not a public use, and eminent domain  
3 may not be exercised for this purpose."

4 Section 2. Saving clause. This act does not affect  
5 rights that matured or proceedings that were begun before  
6 the effective date of this act.

-End-

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