

Senate Bill 470

In The Senate

February 13, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 20, 1981	Committee recommend bill do pass as amended.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading do pass as amended.
February 25, 1981	On motion rules suspended. Bill placed on Calendar for third reading this day. Third reading passed.

In The House

March 3, 1981	Introduced and referred to Committee on Water.
April 23, 1981	Died in Committee.

1 *Sparks* BILL NO. 470
 2 INTRODUCED BY *Stromberg*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
 5 CONSTRUCTION OF DAMS AND RESERVOIRS; TO PROVIDE FOR
 6 INSPECTIONS AND PENALTIES; AMENDING SECTIONS 85-15-101,
 7 85-15-102, AND 85-15-104, MCA; AND REPEALING SECTIONS
 8 85-15-103, 85-15-201 THROUGH 85-15-206, AND 85-15-301
 9 THROUGH 85-15-304, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 NEW SECTION. Section 1. Short title. This chapter may
 13 be cited as the "Montana Dam Safety Act".

14 NEW SECTION. Section 2. Definitions. Unless the
 15 context requires otherwise, in this chapter the following
 16 definitions apply:

17 (1) "Alterations" or "repairs" means alterations or
 18 repairs that may directly affect the safety of a dam or
 19 reservoir.

20 (2) "Appurtenant works" means all works appurtenant to
 21 a dam or reservoir, including but not limited to spillways,
 22 either in the dam or separate therefrom; the reservoir and
 23 its rim; low-level outlets; and water conduits such as
 24 tunnels, pipelines, or penstocks, either through the dam or
 25 its abutments.

1 (3) "Construction" includes construction, alteration,
 2 repair, enlargement, or removal of a dam or reservoir.

3 (4) "Dam" means any artificial barrier, including
 4 appurtenant works, used to impound or divert water and that
 5 is 25 feet or more in height from the natural bed of the
 6 stream or watercourse, measured at the downstream toe of the
 7 dam, or, if it is not across a stream channel or
 8 watercourse, that has maximum storage elevation of 25 feet
 9 or greater or an impounding capacity of 50 acre-feet or
 10 greater.

11 (5) "Department" means the department of natural
 12 resources and conservation provided for in Title 2, chapter
 13 15, part 33.

14 (6) "Emergency" means any threat to life or property
 15 caused by the condition of a dam or reservoir or by present
 16 or imminent floods that threaten the structural integrity of
 17 any dam or reservoir.

18 (7) "Engineer" means a registered professional
 19 engineer licensed to practice in the state of Montana under
 20 Title 37, chapter 67, part 3.

21 (8) "Enlargement" means any change in or addition to
 22 an existing dam or reservoir that raises or may raise the
 23 water storage elevation or increases the impoundment
 24 capacity of the reservoir.

25 (9) "High-hazard dam" means any dam or reservoir the

1 failure of which would cause loss of life or serious damage
2 to homes; agricultural, industrial, or commercial
3 facilities; public utilities; main highways or railroad
4 lines; or campgrounds.

5 (10) "Inspection" means visual or mechanical checks,
6 measures, borings, or any other methods necessary for
7 determination of the adequacy of construction techniques,
8 conformity of work with approved plans and specifications,
9 or the safety and operating performance of a dam or
10 reservoir.

11 (11) "Owner" means any person who owns, controls,
12 operates, maintains, manages, or proposes to construct a dam
13 or reservoir.

14 (12) "Person" means an individual, association,
15 partnership, corporation, business trust, state agency,
16 political subdivision, utility, municipal or quasi-municipal
17 corporation, or any other entity or any authorized agent,
18 lessee, or trustee of any of the foregoing, except the
19 United States or any agency thereof.

20 (13) "Removal" means removing, taking down, or
21 changing the location of any dam or reservoir.

22 (14) "Reservoir" means any valley, basin, coulee,
23 ravine, or other land area that contains 50 acre-feet or
24 more of impounded water.

25 Section 3. Section 85-15-101, MCA, is amended to read:

1 "85-15-101. Dams and reservoirs -- how constructed. No
2 person must ~~may~~ fill or procure to be filled with water any
3 ~~dam or~~ reservoir which ~~that~~ is not so thoroughly and
4 substantially constructed as to safely hold any water that
5 may be turned therein."

6 Section 4. Section 85-15-102, MCA, is amended to read:
7 "85-15-102. Construction in a secure manner. ~~{1}~~ A
8 person, ~~association, or corporation~~ may not construct or
9 cause to be constructed a ~~dam, dike,~~ or reservoir for the
10 purpose of accumulating, storing, appropriating, or
11 diverting any of the waters of this state, except in a
12 thorough, secure, and substantial manner.

13 ~~{2}--The--department--of--nature--resources--and~~
14 ~~conservation--may--at--any--time--on--its--own--motion--and--it~~
15 ~~shall--upon--complaint--on--oath--being--made--to--the--department~~
16 ~~by--three--or--more--persons--residing--or--having--property--in--such~~
17 ~~location--that--their--homes--or--property--would--be--in--danger--of~~
18 ~~destruction--or--damage--in--event--of--flood--occurring--on--account~~
19 ~~of--the--breaking--of--any--dam--dike--or--reservoir--within--the~~
20 ~~state--and--that--they--have--reason--to--believe--said--dam--dike~~
21 ~~or--reservoir--is--in--an--unsafe--condition--or--that--it--is~~
22 ~~diverting--or--is--being--filled--with--water--to--such--an--extent--as~~
23 ~~to--render--it--unsafe--immediately--examine--or--cause--to--be~~
24 ~~examined--the--dam--dike--or--reservoir--if--upon--the~~
25 ~~examination--the--department--finds--that--the--dam--dike--or~~

~~reservoir is unsafe or is diverting or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the dam, dike, or reservoir is located, setting forth its findings and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.~~

~~{3} If either party is dissatisfied with the findings of the department, it may appeal to the district court of the district wherein the dam, dike, or reservoir is located and the court shall hear and determine the matter at the earliest practicable time, subject to the right of either party to appeal as in other civil cases; however, the judgment of the department shall control until the final determination of the case."~~

Section 5. Section 85-15-104, MCA, is amended to read:

"85-15-104. Exemption of federal structures. The provisions of 85-15-102 and 85-15-103 shall this chapter do not apply to federal dams, dikes, and reservoirs which that are subject to federal power commission inspections under federal laws."

NEW SECTION. Section 6. High-hazard dam -- determination -- plans. (1) Any person proposing to construct any dam or reservoir shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include

the information required by the department. The department shall make the determination required by this subsection within 60 calendar days after a complete application has been received by the department.

(2) The department or its designated representative shall determine if an act is construction as defined by this chapter.

NEW SECTION. Section 7. Preparation and approval of plans. (1) A person may not construct a high-hazard dam as determined under [section 6] without obtaining a construction permit from the department.

(2) An application for a construction permit must be submitted to the department and must contain:

(a) plans and specifications for the proposed construction, prepared by or under the direction of an engineer experienced in dam design and construction; and

(b) other data and information required by the department.

(3) At the request of the department, the engineer responsible for the plans and specifications shall carry out any revisions of the plans and specifications or provide any additional information necessary to justify or clarify the design.

(4) As soon as practicable after receipt of the application and any additional information requested by the

1 department, the department shall:

2 (a) issue a construction permit or deny the
3 application, as filed; or

4 (b) issue a construction permit upon the terms,
5 conditions, or modifications the department considers
6 appropriate.

7 NEW SECTION. Section 8. Engineer inspection and
8 reports. (1) An engineer must be in charge of and
9 responsible for the construction of any high-hazard dam.

10 (2) The engineer in charge shall provide for
11 inspections at intervals necessary to insure conformity with
12 the permit. The engineer in charge or a qualified designee
13 shall perform the inspections. The engineer is responsible
14 for the designee's work.

15 (3) The engineer in charge shall certify and report to
16 the department all information obtained from, during, or as
17 the result of an inspection. The department shall set the
18 time for reporting.

19 (4) The department shall keep a copy of all reports.

20 NEW SECTION. Section 9. Department inspection -- cost
21 -- operating permit. (1) If the department determines that
22 inspections carried out under [section 8] are inadequate or
23 that additional inspections are necessary, the department
24 may inspect the construction of any high-hazard dam. If
25 after any inspection the department finds that amendments,

1 modifications, or changes are necessary to insure the
2 security and integrity of the work and structure or the
3 protection of property or public safety, the department may
4 order the owner of the high-hazard dam to revise the plans
5 and specifications. No person may proceed with or continue
6 such work until any revisions have been approved by the
7 department.

8 (2) The owner of the high-hazard dam shall pay the
9 costs of any inspections required by this section, including
10 but not limited to such work or tests as are necessary to
11 fully provide any information or data required by the
12 department or its appointed representative.

13 (3) When construction is complete and if the dam
14 conforms to the construction permit as determined under
15 [section 8] and this section, the department shall issue a
16 permit to operate the high-hazard dam.

17 NEW SECTION. Section 10. Periodic inspections. (1)
18 Any high-hazard dam shall be inspected at least once every 5
19 years or as often as considered necessary in order to insure
20 the continued safe operation of the works or structure.

21 (2) The department or its appointed representative
22 shall perform inspections required by subsection (1). The
23 department shall retain a copy of all information obtained
24 as a result of such inspections.

25 (3) The owner shall pay the costs of inspections

1 required under this section.

2 NEW SECTION. Section 11. Requested inspections --
3 costs -- limitations against unsafe structures. (1) At its
4 discretion or upon receipt of a written complaint alleging
5 that the person or property of the complainant is endangered
6 by the construction, maintenance, or operation of any dam or
7 reservoir, the department may order an inspection of the dam
8 or reservoir unless the data, records, and inspection
9 reports on file are adequate to determine that the complaint
10 is not meritorious.

11 (2) If the complainant insists upon an inspection
12 regardless of the findings by the department on the merits
13 of the complaint, the department may make the inspection
14 upon requiring the complainant to deposit with the
15 department money sufficient to cover the costs of the
16 inspection.

17 (3) If the dam or reservoir is found to be defective,
18 the department may require the person owning the dam or
19 reservoir to pay the whole or any part of the expenses of
20 inspection. If the department requires such payment, it
21 shall present a bill of costs to the owner. The costs shall
22 constitute a lien upon the dam, reservoir, or other
23 properties of the owner and may be collected by appropriate
24 action in a court of competent jurisdiction.

25 (4) If the dam or reservoir is not found to be

1 defective after an inspection made on account of a complaint
2 and the complaint is found by the department to have been
3 without merit, any money deposited therefor shall be payable
4 to the general fund.

5 (5) If the inspection discloses defects in the works
6 that, in the judgment of the department, constitute an
7 immediate hazard to life or property, the department shall
8 order the draining of any dam or reservoir involved or the
9 limitation or cessation of its use or the use of any
10 defective appurtenant works until such time as the dam or
11 reservoir or appurtenant works have been made safe and
12 approved by the department.

13 NEW SECTION. Section 12. Outlets -- drainage. (1) All
14 dams or reservoirs constructed after [the effective date of
15 this act] shall contain a low-level outlet controlled by a
16 headgate or other control works. The headgate or control
17 works shall be maintained in an operable condition at all
18 times and in such manner that water impounded by or within
19 the dam or reservoir may be evacuated or maintained at any
20 water level as may be required by the department.

21 (2) All dams or reservoirs constructed prior to [the
22 effective date of this act] that have no low-level outlet or
23 means for lowering the reservoir water level in an
24 expeditious manner shall be drained by breaching at the
25 owner's expense when the department determines that the

1 breaching is necessary to safeguard life or property.

2 NEW SECTION. Section 13. Emergency repairs or
3 breaching. (1) In case of an emergency, the department may
4 declare that repairs or breaching of a dam or reservoir are
5 immediately necessary to safeguard life or property.
6 Necessary repairs or breaching shall be commenced
7 immediately by the owner or by the department at the owner's
8 expense if the owner fails to do so. The department shall be
9 notified immediately of any proposed emergency repairs or
10 breaching to be instituted by the owner.

11 (2) After the emergency situation has passed and if
12 the owner plans to repair the dam or reservoir, the owner
13 shall make all repairs necessary to place the dam or
14 reservoir in safe and usable condition.

15 (3) All costs incurred by the department during an
16 emergency shall be paid by the owner on receipt of the bill
17 of costs from the department. The costs shall constitute a
18 lien upon the dam, reservoir, or other properties of the
19 owner and may be collected by appropriate action in a court
20 of competent jurisdiction.

21 NEW SECTION. Section 14. City or county prohibited
22 from regulation. No city or county may regulate, supervise,
23 or provide for the regulation or supervision of any dams or
24 reservoirs in this state or the construction, maintenance,
25 or operation thereof or limit the size of any dam or

1 reservoir or the amount of water that may be stored therein.

2 This chapter does not prevent a city or county from adopting
3 ordinances regulating, supervising, or providing for the
4 regulation or supervision of dams and reservoirs that:

5 (1) are not within the state's jurisdiction; or
6 (2) are not subject to regulation by another public
7 agency or body.

8 NEW SECTION. Section 15. No limitation of liability.
9 Nothing in this chapter relieves an owner of any dam or
10 reservoir of any legal duties, obligations, or liabilities
11 incident to ownership or operation, including any damages
12 resulting from leakage or overflow of water or floods caused
13 by the failure or rupture of the dam or reservoir.

14 NEW SECTION. Section 16. Permit cancellation. Failure
15 to comply with the provisions of [sections 6 through 9, 11,
16 or 12] shall subject the permit to cancellation at any time
17 during the progress of work. The department is authorized to
18 cancel any permit if the provisions of the above sections
19 have not been or are not being complied with, and the
20 cancellation shall operate as a forfeiture of all rights
21 acquired under and by virtue of any permit approved by the
22 department.

23 NEW SECTION. Section 17. Penalties. A person who
24 violates or refuses or neglects to comply with the
25 provisions of this chapter or any rule or order of the

1 department pursuant to this chapter is guilty of a
2 misdemeanor. Each day of a continuing violation constitutes
3 a separate offense.

4 NEW SECTION. Section 18. Deposit of penalty fees and
5 costs. All penalty fees and costs collected under this
6 chapter shall be deposited in the state general fund.

7 NEW SECTION. Section 19. Entry on land. Any employee
8 or agent of the department authorized by the director may
9 enter upon any land to carry out the purpose of this
10 chapter. The department or its agent shall give reasonable
11 notice to the landowner of its intention to enter upon the
12 land.

13 NEW SECTION. Section 20. Legal assistance. When
14 requested by the department, the attorney general or the
15 county attorneys within their respective counties shall
16 perform legal services and conduct legal proceedings
17 necessary to carry out the purposes of this chapter. The
18 department may also employ legal counsel to enforce this
19 chapter and to conduct proceedings under it.

20 NEW SECTION. Section 21. Rules. The department may
21 adopt rules to implement the provisions of this chapter.

22 Section 22. Codification instruction. Sections 1, 2,
23 and 6 through 21 are intended to be codified as an integral
24 part of Title 85, chapter 15, and the provisions of Title
25 85, chapter 15, apply to sections 1, 2, and 6 through 21.

1 Section 23. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 24. Repealer. Sections 85-15-103, 85-15-201
8 through 85-15-206, and 85-15-301 through 85-15-304, MCA, are
9 repealed.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 470

3 Senate Agriculture, Livestock And Irrigation Committee

4
5 A Statement of Intent is required for this bill because
6 it delegates rulemaking authority to the Department of
7 Natural Resources in section 21.

8 It is the intent that the Department adopt rules
9 relating to standards for a predesign conference, insuring
10 compliance with existing environmental laws, reviewing soil
11 testing relating to the design of the structures, and the
12 time frame in which plans must be approved by the
13 Department.

14 First adopted by the Senate Agriculture, Livestock and
15 Irrigation Committee on the 20th day of February 1981.

Approved by Committee
on Agriculture Livestock
& Irrigation

1 SENATE BILL NO. 470
2 INTRODUCED BY STIMATZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE
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6 INSPECTIONS AND PENALTIES; AMENDING SECTIONS 85-15-101,
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16 definitions apply:

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18 repairs that may directly affect the safety of a dam or
19 reservoir.

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6 stream or watercourse, measured at the downstream toe of the
7 dam, or, if it is not across a stream channel or
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9 or greater or an impounding capacity of 50 acre-feet or
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22 an existing dam or reservoir that raises or may raise the
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3 dam or reservoir which that is not so thoroughly and
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6 Section 4. Section 85-15-102, MCA, is amended to read:

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9 cause to be constructed a dam ~~dike~~ or reservoir for the
10 purpose of accumulating, storing, appropriating, or
11 diverting any of the waters of this state, except in a
12 thorough, secure, and substantial manner.

13 ~~{2} The department of natural resources and~~
14 ~~conservation may at any time on its own motion and it~~
15 ~~shall upon complaint on oath being made to the department~~
16 ~~by three or more persons residing or having property in such~~
17 ~~location that their homes or property would be in danger of~~
18 ~~destruction or damage in event of flood occurring on account~~
19 ~~of the breaking of any dam, dike or reservoir within the~~
20 ~~state and that they have reason to believe said dam, dike~~
21 ~~or reservoir is in an unsafe condition or that it is~~
22 ~~diverting or is being filled with water to such an extent as~~
23 ~~to render it unsafe, immediately examine or cause to be~~
24 ~~examined the dam, dike or reservoir if upon the~~
25 ~~examination the department finds that the dam, dike or~~

1 reservoir is unsafe or is diverting or is being filled with
 2 water to such an extent as to render it unsafe, it shall
 3 notify the county attorney of the county in which the dam,
 4 dike, or reservoir is located, setting forth its findings,
 5 and the county attorney shall immediately take the necessary
 6 steps to abate the danger and make the structure safer.

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 8 of the department, it may appeal to the district court of
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 16 "85-15-104. Exemption of federal structures. The
 17 provisions of 85-15-102 and 85-15-103 shall this chapter do
 18 not apply to federal dams, dikes, and reservoirs which that
 19 are subject to federal power commission inspections under
 20 federal laws OR TO DAMS AND RESERVOIRS LICENSED AND SUBJECT
 21 TO INSPECTION BY THE FEDERAL ENERGY REGULATORY COMMISSION."

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 23 determination -- plans. (1) Any person proposing to
 24 construct any dam or reservoir shall make application to the
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 3 shall make the determination required by this subsection
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 7 shall determine if an act is construction A DAM IS
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17 the department all information obtained from, during, or as
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22 -- operating permit. (1) If the department determines that
23 inspections carried out under [section 8] are inadequate or
24 that additional inspections are necessary, the department
25 may inspect the construction of any high-hazard dam. If

1 after any inspection the department finds that amendments,
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3 security and integrity of the work and structure or the
4 protection of property or public safety, the department may
5 order the owner of the high-hazard dam to revise the plans
6 and specifications. No person may proceed with or continue
7 such work until any revisions have been approved by the
8 department.

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10 costs of any inspections required by this section, including
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2 defective after an inspection made on account of a complaint
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7 that, in the judgment of the department, constitute an
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9 order the draining of any dam or reservoir involved or the
10 limitation or cessation of its use or the use of any
11 defective appurtenant works until such time as the dam or
12 reservoir or appurtenant works have been made safe and
13 approved by the department.

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15 dams or reservoirs constructed after [the effective date of
16 this act] shall contain a low-level outlet controlled by a
17 headgate or other control works. The headgate or control
18 works shall be maintained in an operable condition at all
19 times and in such manner that water impounded by or within
20 the dam or reservoir may be evacuated or maintained at any
21 water level as may be required by the department.

22 (2) All dams or reservoirs constructed prior to [the
23 effective date of this act] that have no low-level outlet or
24 means for lowering the reservoir water level in an
25 expeditious manner shall be drained by breaching at the

1 owner's expense when the department determines that the
2 breaching is necessary to safeguard life or property.

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4 breaching. (1) In case of an emergency, the department may
5 declare that repairs or breaching of a dam or reservoir are
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7 Necessary repairs or breaching shall be commenced
8 immediately by the owner or by the department at the owner's
9 expense if the owner fails to do so. The department shall be
10 notified immediately of any proposed emergency repairs or
11 breaching to be instituted by the owner.

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13 the owner plans to repair the dam or reservoir, the owner
14 shall make all repairs necessary to place the dam or
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18 of costs from the department. The costs shall constitute a
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20 owner and may be collected by appropriate action in a court
21 of competent jurisdiction.

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1 or operation thereof or limit the size of any dam or
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3 This chapter does not prevent a city or county from adopting
4 ordinances regulating, supervising, or providing for the
5 regulation or supervision of dams and reservoirs that:

- 6 (1) are not within the state's jurisdiction; or
7 (2) are not subject to regulation by another public
8 agency or body.

9 NEW SECTION. Section 15. No limitation of liability.
10 Nothing in this chapter relieves an owner of any dam or
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12 incident to ownership or operation, including any damages
13 resulting from leakage or overflow of water or floods caused
14 by the failure or rupture of the dam or reservoir.

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16 to comply with the provisions of [sections 6 through 9, 11,
17 or 12] shall subject the permit to cancellation at any time
18 during the progress of work. The department is authorized to
19 cancel any permit if the provisions of the above sections
20 have not been or are not being complied with, and the
21 cancellation shall operate as a forfeiture of all rights
22 acquired under and by virtue of any permit approved by the
23 department.

24 NEW SECTION. Section 17. Penalties. A person who
25 violates or refuses or neglects to comply with the

1 provisions of this chapter or any rule or order of the
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 3 misdemeanor. Each day of a continuing violation constitutes
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 20 chapter and to conduct proceedings under it.

21 NEW SECTION. Section 21. Rules. The department may
 22 adopt rules to implement the provisions of this chapter.

23 Section 22. Codification instruction. Sections 1, 2,
 24 and 6 through 21 are intended to be codified as an integral
 25 part of Title 85, chapter 15, and the provisions of Title

1 85, chapter 15, apply to sections 1, 2, and 6 through 21.

2 Section 23. Severability. If a part of this act is
 3 invalid, all valid parts that are severable from the invalid
 4 part remain in effect. If a part of this act is invalid in
 5 one or more of its applications, the part remains in effect
 6 in all valid applications that are severable from the
 7 invalid applications.

8 Section 24. Repealer. Sections 85-15-103, 85-15-201
 9 through 85-15-206, and 85-15-301 through 85-15-304, MCA, are
 10 repealed.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 470

3 Senate Agriculture, Livestock And Irrigation Committee

4
5 A Statement of Intent is required for this bill because
6 it delegates rulemaking authority to the Department of
7 Natural Resources in section 21.

8 It is the intent that the Department adopt rules
9 relating to standards for a predesign conference, insuring
10 compliance with existing environmental laws, reviewing soil
11 testing relating to the design of the structure, and the
12 time frame in which plans must be approved by the
13 Department.

14 First adopted by the Senate Agriculture, Livestock and
15 Irrigation Committee on the 20th day of February 1981.

SENATE BILL NO. 470
INTRODUCED BY STIMATZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE CONSTRUCTION OF DAMS AND RESERVOIRS; TO PROVIDE FOR INSPECTIONS AND PENALTIES; AMENDING SECTIONS 85-15-101, 85-15-102, AND 85-15-104, MCA; AND REPEALING SECTIONS 85-15-103, 85-15-201 THROUGH 85-15-206, AND 85-15-301 THROUGH 85-15-304, MCA."

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

NEW SECTION. Section 1. Short title. This chapter may be cited as the "Montana Dam Safety Act".

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works appurtenant to a dam or reservoir, including but not limited to spillways, either in the dam or separate therefrom; the reservoir and its rim; low-level outlets; and water conduits such as tunnels, pipelines, or penstocks, either through the dam or its abutments.

(3) "Construction" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means any artificial barrier, including appurtenant works, used to impound or divert water and that is 25 feet or more in height from the natural bed of the stream or watercourse, measured at the downstream toe of the dam, or, if it is not across a stream channel or watercourse that has maximum storage elevation of 25 feet or greater or, WITH an impounding capacity of 50 acre-feet or greater.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means any threat to life or property caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67, part 3.

(8) "Enlargement" means any change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means any dam or reservoir the

1 failure of which would cause loss of life or serious damage
2 to homes; agricultural, industrial, or commercial
3 facilities; public utilities; main highways or railroad
4 lines; or campgrounds.

5 (10) "Inspection" means visual or mechanical checks,
6 measures, borings, or any other methods necessary for
7 determination of the adequacy of construction techniques,
8 conformity of work with approved plans and specifications,
9 or the safety and operating performance of a dam or
10 reservoir.

11 (11) "Owner" means any person who owns, controls,
12 operates, maintains, manages, or proposes to construct a dam
13 or reservoir.

14 (12) "Person" means an individual, association,
15 partnership, corporation, business trust, state agency,
16 political subdivision, utility, municipal or quasi-municipal
17 corporation, or any other entity or any authorized agent,
18 lessee, or trustee of any of the foregoing, except the
19 United States or any agency thereof.

20 (13) "Removal" means removing, taking down, or
21 changing the location of any dam or reservoir.

22 (14) "Reservoir" means any valley, basin, coulee,
23 ravine, or other land area that contains 50 acre-feet or
24 more of impounded water.

25 Section 3. Section 85-15-101, MCA, is amended to read:

1 "85-15-101. Dams and reservoirs -- how constructed. No
2 person must may fill or procure to be filled with water any
3 dam or reservoir which that is not so thoroughly and
4 substantially constructed as to safely hold any water that
5 may be turned therein."

6 Section 4. Section 85-15-102, MCA, is amended to read:
7 "85-15-102. Construction in a secure manner. ~~{}~~ A
8 person~~y-association-or-corporation~~ may not construct or
9 cause to be constructed a dam~~y-dike~~ or reservoir for the
10 purpose of accumulating, storing, appropriating, or
11 diverting any of the waters of this state, except in a
12 thorough, secure, and substantial manner.

13 ~~{2}-The-department-of-natural-resources-and~~
14 ~~conservation-may-at-any-time-on-its-own-motion-and-it~~
15 ~~shall-upon-complaint-on-oath-being-made-to-the-department~~
16 ~~by-three-or-more-persons-residing-or-having-property-in-such~~
17 ~~location-that-their-homes-or-property-would-be-in-danger-of~~
18 ~~destruction-or-damage-in-event-of-flood-occurring-on-account~~
19 ~~of-the-breaking-of-any-dam-dike-or-reservoir-within-the~~
20 ~~state-and-that-they-have-reason-to-believe-said-dam-dike~~
21 ~~or-reservoir-is-in-an-unsafe-condition-or-that-it-is~~
22 ~~diverting-or-is-being-filled-with-water-to-such-an-extent-as~~
23 ~~to-render-it-unsafe-immediately-examine-or-cause-to-be~~
24 ~~examined-the-dam-dike-or-reservoirs-if-upon-the~~
25 ~~examination-the-department-finds-that-the-dam-dike-or~~

1 ~~reservoir is unsafe or is diverting or is being filled with~~
 2 ~~water to such an extent as to render it unsafe; it shall~~
 3 ~~notify the county attorney of the county in which the dam,~~
 4 ~~dike, or reservoir is located, setting forth its findings,~~
 5 ~~and the county attorney shall immediately take the necessary~~
 6 ~~steps to abate the danger and make the structure safer.~~
 7 ~~(3) If either party is dissatisfied with the findings~~
 8 ~~of the department, it may appeal to the district court of~~
 9 ~~the district wherein the dam, dike, or reservoir is located,~~
 10 ~~and the court shall hear and determine the matter at the~~
 11 ~~earliest practical time, subject to the right of either~~
 12 ~~party to appeal as in other civil cases; however, the~~
 13 ~~judgment of the department shall control until the final~~
 14 ~~determination of the case."~~

15 Section 5. Section 85-15-104, MCA, is amended to read:
 16 "85-15-104. Exemption of federal structures. The
 17 provisions of 85-15-102 and 85-15-103 shall this chapter do
 18 not apply to federal dams, dikes, and reservoirs which that
 19 are subject to federal power commission inspections under
 20 federal laws OR TO DAMS AND RESERVOIRS LICENSED AND SUBJECT
 21 TO INSPECTION BY THE FEDERAL ENERGY REGULATORY COMMISSION."

22 NEW SECTION. Section 6. High-hazard dam --
 23 determination -- plans. (1) Any person proposing to
 24 construct any dam or reservoir shall make application to the
 25 department for a determination of whether the dam or

1 reservoir is a high-hazard dam. The application must include
 2 the information required by the department. The department
 3 shall make the determination required by this subsection
 4 within 60 calendar days after a complete application has
 5 been received by the department.

6 (2) The department or its designated representative
 7 shall determine if ~~an act is~~ construction A DAM IS
 8 HIGH-HAZARD as defined by this chapter.

9 NEW SECTION. Section 7. Preparation and approval of
 10 plans. (1) A person may not construct a high-hazard dam as
 11 determined under [section 6] without obtaining a
 12 construction permit from the department.

13 (2) An application for a construction permit must be
 14 submitted to the department and must contain:

15 (a) plans and specifications for the proposed
 16 construction, prepared by or under the direction of an
 17 engineer experienced in dam design and construction; and

18 (b) other data and information required by the
 19 department.

20 (3) At the request of the department, the engineer
 21 responsible for the plans and specifications shall carry out
 22 any revisions of the plans and specifications or provide any
 23 additional information necessary to justify or clarify the
 24 design.

25 (4) As soon as practicable after receipt of the

1 application and any additional information requested by the
2 department, the department shall:

3 (a) issue a construction permit or deny the
4 application, as filed; or

5 (b) issue a construction permit upon the terms,
6 conditions, or modifications the department considers
7 appropriate.

8 NEW SECTION. Section 8. Engineer inspection and
9 reports. (1) An engineer must be in charge of and
10 responsible for the construction of any high-hazard dam.

11 (2) The engineer in charge shall provide for
12 inspections at intervals necessary to insure conformity with
13 the permit. The engineer in charge or a qualified designee
14 shall perform the inspections. The engineer is responsible
15 for the designee's work.

16 (3) The engineer in charge shall certify and report to
17 the department all information obtained from, during, or as
18 the result of an inspection. The department shall set the
19 time for reporting.

20 (4) The department shall keep a copy of all reports.

21 NEW SECTION. Section 9. Department inspection -- cost
22 -- operating permit. (1) If the department determines that
23 inspections carried out under [section 8] are inadequate or
24 that additional inspections are necessary, the department
25 may inspect the construction of any high-hazard dam. If

1 after any inspection the department finds that amendments,
2 modifications, or changes are necessary to insure the
3 security and integrity of the work and structure or the
4 protection of property or public safety, the department may
5 order the owner of the high-hazard dam to revise the plans
6 and specifications. No person may proceed with or continue
7 such work until any revisions have been approved by the
8 department.

9 (2) The owner of the high-hazard dam shall pay the
10 costs of any inspections required by this section, including
11 but not limited to such work or tests as are necessary to
12 fully provide any information or data required by the
13 department or its appointed representative.

14 (3) When construction is complete and if the dam
15 conforms to the construction permit as determined under
16 [section 8] and this section, the department shall issue a
17 permit to operate the high-hazard dam.

18 NEW SECTION. Section 10. Periodic inspections. (1)
19 Any high-hazard dam shall be inspected at least once every 5
20 years or as often as considered necessary in order to insure
21 the continued safe operation of the works or structure.

22 (2) The department or its appointed representative
23 shall perform inspections required by subsection (1). The
24 department shall retain a copy of all information obtained
25 as a result of such inspections.

1 (3) The owner shall pay the costs of inspections
2 required under this section.

3 NEW SECTION. Section 11. Requested inspections --
4 costs -- limitations against unsafe structures. (1) At its
5 discretion or upon receipt of a written complaint alleging
6 that the person or property of the complainant is endangered
7 by the construction, maintenance, or operation of any dam or
8 reservoir, the department may order an inspection of the dam
9 or reservoir unless the data, records, and inspection
10 reports on file are adequate to determine that the complaint
11 is not meritorious.

12 (2) If the complainant insists upon an inspection
13 regardless of the findings by the department on the merits
14 of the complaint, the department may make the inspection
15 upon requiring the complainant to deposit with the
16 department money sufficient to cover the costs of the
17 inspection.

18 (3) If the dam or reservoir is found to be defective,
19 the department may require the person owning the dam or
20 reservoir to pay the whole or any part of the expenses of
21 inspection. If the department requires such payment, it
22 shall present a bill of costs to the owner. The costs shall
23 constitute a lien upon the dam, reservoir, or other
24 properties of the owner and may be collected by appropriate
25 action in a court of competent jurisdiction.

1 (4) If the dam or reservoir is not found to be
2 defective after an inspection made on account of a complaint
3 and the complaint is found by the department to have been
4 without merit, any money deposited therefor shall be payable
5 to the general fund.

6 (5) If the inspection discloses defects in the works
7 that, in the judgment of the department, constitute an
8 immediate hazard to life or property, the department shall
9 order the draining of any dam or reservoir involved or the
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