

1 HOUSE BILL NO. 698
 2 INTRODUCED BY Dean Crane, Brad Aldy, Rene Eck
 3 Tolson BY REQUEST OF THE DEPARTMENT OF STATE LANDS Hollings
 4 Phil Miley, Moran, Keller, HARP, Cobb, Sprack, Driscoll, Marko, Fuchs, Hunter
 5 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER CLARIFYING THE
 6 INFORMATION REQUIRED IN APPLICATIONS FOR METAL MINE
 7 OPERATING PERMITS; PROVIDING ADDITIONAL STANDARDS IN THE
 8 RECLAMATION PLAN; SPECIFYING ACTIONS AVAILABLE TO PERSONS
 9 WHO ARE ADVERSELY AFFECTED BY VIOLATIONS OF METAL MINE
 10 RECLAMATION PROVISIONS OR WHO ARE ALLEGEDLY HARMED BY METAL
 11 MINES DAMAGING THEIR WATER SUPPLY; AND MAKING CERTAIN MINOR
 12 CHANGES; AMENDING SECTIONS 82-4-335, 82-4-336, AND 82-4-338,
 13 MCA."
 14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 Section 1. Section 82-4-335, MCA, is amended to read:
 17 "82-4-335. Operating permit. (1) No person shall
 18 engage in mining or disturb land in anticipation of mining
 19 in the state without first obtaining an operating permit
 20 from the board to do so. A separate operating permit shall
 21 be required for each mine complex. Prior to receiving an
 22 operating permit from the board, any person must pay the
 23 basic permit fee of \$25 and must submit an application on a
 24 form provided by the board, which shall contain the
 25 following information and any other pertinent data required

1 by the rules:
 2 (a) name and address of the operator and, if a
 3 corporation or other business entity, the name and address
 4 of its principal officers, partners, and the like and its
 5 resident agent for service of process, if required by law;
 6 (b) minerals expected to be mined;
 7 (c) a proposed reclamation plan;
 8 (d) expected starting date of mining;
 9 (e) a map showing the specific area to be mined and
 10 the boundaries of the land which will be disturbed,
 11 topographic detail, the location and names of all streams,
 12 roads, railroads, and utility lines on or immediately
 13 adjacent to the area, location of proposed access roads to
 14 be built, and the names and addresses of the surface and
 15 mineral owners of all lands within the mining area, to the
 16 extent known to applicant;
 17 (f) types of access roads to be built and manner of
 18 reclamation of road sites on abandonment; and
 19 (g) a plan of mining which will provide, within limits
 20 of normal operating procedures of the industry, for
 21 completion of mining and associated land disturbances;
 22 (h) ground water and surface water hydrologic data
 23 gathered from a sufficient number of sources and length of
 24 time to characterize the hydrologic regime;
 25 (i) a plan detailing the design, operation, and



1 monitoring of impounding structures, including but not
 2 limited to tailings impoundments and water reservoirs,
 3 sufficient to ensure that such structures are safe and
 4 stable;

5 (j) a plan identifying methods to be used to monitor
 6 for the accidental discharge of objectionable materials and
 7 remedial action plans to be used to control and mitigate
 8 discharges to surface or ground water; and

9 (k) an evaluation of the expected life of any tailings
 10 impoundment or waste area and the potential for expansion of
 11 the tailings impoundment or waste site.

12 (2) Except as provided in subsection (3), the permit
 13 provided for in subsection (1) for a large-scale mineral
 14 development as defined in 90-6-302 shall be conditioned to
 15 provide that activities under the permit may not commence
 16 until the hard-rock mining impact board approves the impact
 17 plan under 90-6-307 and until the permittee has provided a
 18 written guarantee to the department and to the hard-rock
 19 mining impact board of compliance within the time schedule
 20 with the commitment made in the impact plan approved by the
 21 hard-rock mining impact board, as provided in 90-6-307. If
 22 the permittee does not comply with that commitment within
 23 the time scheduled, the board, upon receipt of written
 24 notice from the hard-rock mining impact board, shall suspend
 25 the permit until it receives written notice from the

1 hard-rock mining impact board that the permittee is in
 2 compliance.

3 (3) Compliance with 90-6-307 is not required for
 4 exploration and bulk sampling for metallurgical testing when
 5 the aggregate samples are less than 10,000 tons."

6 Section 2. Section 82-4-336, MCA, is amended to read:

7 "82-4-336. Reclamation plan and specific reclamation
 8 requirements. (1) The reclamation plan shall provide that
 9 reclamation activities, particularly those relating to
 10 control of erosion, to the extent feasible, shall be
 11 conducted simultaneously with mining and in any case shall
 12 be initiated promptly after completion or abandonment of
 13 mining on those portions of the mine complex that will not
 14 be subject to further disturbance by the mining operation.
 15 In the absence of an order by the board providing a longer
 16 period, the plan shall provide that reclamation activities
 17 shall be completed not more than 2 years after completion or
 18 abandonment of mining on that portion of mine complex.

19 (2) In the absence of emergency or suddenly threatened
 20 or existing catastrophe, an operator may not depart from an
 21 approved plan without previously obtaining from the
 22 department written approval of his proposed change.

23 (3) Provision shall be made to avoid accumulation of
 24 stagnant water in the mined area which may serve as a host
 25 or breeding ground for mosquitoes or other disease-bearing

1 or noxious insect life.

2 (4) All final grading shall be made with nonnoxious,
3 nonflammable, noncombustible solids unless approval has been
4 granted by the board for a supervised sanitary fill.

5 (5) Where mining has left an open pit exceeding 2
6 acres of surface area and the composition of the floor or
7 walls of the pit are likely to cause formation of acid,
8 toxic, or otherwise pollutive solutions (hereinafter
9 "objectionable effluents") on exposure to moisture, the
10 reclamation plan shall include provisions which adequately
11 provide for:

12 (a) insulation of all faces from moisture or water
13 contact by covering to a depth of 2 feet or more with
14 material or fill not susceptible itself to generation of
15 objectionable effluents;

16 (b) processing of any objectionable effluents in the
17 pit before their being allowed to flow or be pumped out of
18 it to reduce toxic or other objectionable ratios to a level
19 considered safe to humans and the environment by the board;

20 (c) drainage of any objectionable effluents to
21 settling or treatment basins when the objectionable
22 effluents must be reduced to levels considered safe by the
23 board before release from the settling basin; or

24 (d) absorption or evaporation of objectionable
25 effluents in the open pit itself; and

1 (e) prevention of entrance into the open pit by
2 persons or livestock lawfully upon adjacent lands by
3 fencing, warning signs, and such other devices as may
4 reasonably be required by the board.

5 (6) Provisions for vegetative cover shall be required
6 in the reclamation plan if appropriate to the future use of
7 the land as specified in the reclamation plan. The
8 reestablished vegetative cover shall meet county standards
9 for noxious weed control.

10 (7) The reclamation plan shall provide for the
11 reclamation of all disturbed land. Proposed reclamation ~~need~~
12 ~~not-reclaim-the-areas-to-a-better-condition-or-different-use~~
13 ~~than-that-which-existed-prior-to-development-or-mining shall~~
14 provide for the reclamation of disturbed land to comparable
15 utility and stability as that of adjacent areas, except for
16 open pits and rock faces which may not be feasible to
17 reclaim. In such excepted cases, the board shall require
18 sufficient measures to insure public safety and to prevent
19 the pollution of air or water and the degradation of
20 adjacent lands.

21 (8) A reclamation plan shall be approved by the board
22 if it adequately provides for the accomplishment of the
23 activities specified in this section.

24 (9) The reclamation plan shall provide for permanent
25 landscaping and contouring to minimize the amount of

1 precipitation that infiltrates into disturbed areas,
 2 including but not limited to tailings impoundments and waste
 3 rock dumps. The plan shall also provide measures to prevent
 4 objectionable postmining ground water discharges."

5 Section 3. Section 82-4-338, MCA, is amended to read:
 6 "82-4-338. Performance bond. (1) The applicant shall
 7 file with the department a bond payable to the state of
 8 Montana with surety satisfactory to the department in the
 9 penal sum to be determined by the department of not less
 10 than \$200 or more than \$2,500 for each acre or fraction
 11 thereof of the disturbed area, conditioned upon the faithful
 12 performance of the requirements of this part and the rules
 13 of the board. In lieu of such bond, the applicant may file
 14 with the board a cash deposit, an assignment of a
 15 certificate of deposit, or other surety acceptable to the
 16 board. Regardless of the above limits, the bond shall not be
 17 less than the estimated cost to the state to complete the
 18 reclamation of the disturbed land. A public or governmental
 19 agency shall not be required to post a bond under the
 20 provisions of this part. A blanket performance bond covering
 21 two or more operations may be accepted by the board. Such
 22 blanket bond shall adequately secure the estimated total
 23 number of acres of disturbed land. When determined by the
 24 department that the set bonding level of a permit or license
 25 does not represent the present costs of reclamation, the

1 department may modify the bonding requirements of that
 2 permit or license.

3 (2) No bond filed in accordance with the provisions of
 4 this part shall be released by the department until the
 5 provisions of this part, the rules adopted pursuant thereto,
 6 and this reclamation plan have been fulfilled.

7 (3) No bond filed for an operating permit obtained
 8 under 82-4-335 may be released until the public has been
 9 provided an opportunity for a hearing."

10 NEW SECTION. Section 4. Mandamus to compel
 11 enforcement. (1) Any person having an interest that is or
 12 may be adversely affected, with knowledge that a requirement
 13 of this part or a rule adopted under this part is not being
 14 enforced by a public officer or employee whose duty it is to
 15 enforce the requirement or rule, may bring the failure to
 16 the attention of the public officer or employee by an
 17 affidavit stating the specific facts of the failure.
 18 Knowingly making false statements or charges in the
 19 affidavit subjects the affiant to penalties prescribed for
 20 false swearing, as provided in 45-7-202.

21 (2) If the public officer or employee neglects or
 22 refuses for an unreasonable time after receipt of the
 23 affidavit to enforce the requirement or rule, the affiant
 24 may bring an action of mandamus in the district court of the
 25 first judicial district or in the district court of the

1 county in which the land is located. If the court finds that
 2 a requirement of this part or a rule adopted under this part
 3 is not being enforced, it shall order the public officer or
 4 employee to perform his duties. If he fails to do so, the
 5 public officer or employee must be held in contempt of court
 6 and is subject to the penalties provided by law.

7 (3) Any person having an interest that is or may be
 8 adversely affected may commence a civil action on his own
 9 behalf to compel compliance with this part against any
 10 person for the violation of this part or any rule, order, or
 11 permit issued under it. However, no such action may
 12 commence:

13 (a) prior to 60 days after the plaintiff has given
 14 notice in writing to the department and to the alleged
 15 violator; or

16 (b) if the department has commenced and is diligently
 17 prosecuting a civil action to require compliance with the
 18 provisions of this part or any rule, order or permit issued
 19 under it. Any person may intervene as a matter of right in
 20 any such civil action.

21 (4) Nothing in this section restricts any right of any
 22 person under any statute or common law to seek enforcement
 23 of this part or the rules adopted under it or to seek any
 24 other relief.

25 NEW SECTION. Section 5. Action for damages to water

1 supply -- replacement. (1) An owner of an interest in real
 2 property who obtains all or part of his supply of water for
 3 beneficial uses, as defined in 85-2-102, from an underground
 4 source other than a subterranean stream having a permanent,
 5 distinct, and known channel may sue the operator engaged in
 6 a mining or exploration operation to recover damages for
 7 loss in quality or quantity of the water supply resulting
 8 from mining or exploration. The owner is required to exhaust
 9 the administrative remedy under subsection (2) prior to
 10 filing suit.

11 (2) (a) An owner described in subsection (1) may file
 12 a complaint with the department detailing the loss in
 13 quality or quantity of water. Upon receipt of a valid
 14 complaint, the department:

15 (i) shall investigate the statements and charges in
 16 the complaint, using all available information, including
 17 monitoring data gathered at the exploration or mine site;

18 (ii) may require the operator, if necessary, to install
 19 monitoring wells or other practices that may be needed to
 20 determine the cause of water loss, if there is a loss, in
 21 terms of quantity and quality;

22 (iii) shall issue a written finding specifying the
 23 cause of the water loss, if there is a loss, in terms of
 24 quantity and quality;

25 (iv) shall, if it determines that the preponderance of

1 evidence indicates that the loss is caused by an exploration
 2 or mining operation, order the operator, in compliance with
 3 Title 85, chapter 2, to provide the needed water immediately
 4 on a temporary basis and within a reasonable time replace
 5 the water in like quality, quantity, and duration. If the
 6 water is not replaced, the department shall order the
 7 suspension of the operator's exploration or operating permit
 8 until such time as the operator provides substitute water,
 9 except that nothing in this section preempts Title 85,
 10 chapter 2. The operator may not be required to replace a
 11 junior right if the operator's withdrawal or dewatering is
 12 not in excess of his senior right.

13 (b) If the department determines that there is a great
 14 potential that surface or subsurface water quality and
 15 quantity may be adversely affected by a mining or
 16 exploration operation, the operator shall install a water
 17 quality monitoring program, water quantity monitoring
 18 program, or both, which must be approved by the department
 19 prior to the commencement of exploration or mining.

20 NEW SECTION. Section 6. Codification instruction.
 21 Sections 4 and 5 are intended to be codified as an integral
 22 part of Title 82, chapter 4, part 3, and the provisions of
 23 Title 82, chapter 4, part 3, apply to sections 4 and 5.

24 NEW SECTION. Section 7. Severability. If a part of
 25 this act is invalid, all valid parts that are severable from

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

5 NEW SECTION. Section 8. Extension of rulemaking
 6 authority. Any existing authority of the board of land
 7 commissioners or department of state lands to make rules on
 8 the subject of the provisions of this act is extended to the
 9 provisions of this act.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 698
 2 INTRODUCED BY REAM, D. BROWN, ADDY, RANEY,
 3 ECK, ELLISON, IVERSON, KADAS, HALLIGAN, COHEN,
 4 PHILLIPS, MILES, MOHAR, KELLER, HARP, COBB,
 5 DRISCOLL, DARKO, SPAETH, FRITZ, KRUEGER
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 15 commence:

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 18 violator; or

19 (b) if the department has commenced and is diligently
 20 prosecuting a civil action to require compliance with the
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 24 determine the cause of water loss, if there is a loss, in
 25 terms of quantity and quality;

1 (iii) shall issue a written finding specifying the
2 cause of the water loss, if there is a loss, in terms of
3 quantity and quality;

4 (iv) shall, if it determines that the preponderance of
5 evidence indicates that the loss is caused by an exploration
6 or mining operation, order the operator, in compliance with
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8 on a temporary basis and within a reasonable time replace
9 the water in like quality, quantity, and duration. If the
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15 junior right if the operator's withdrawal or dewatering is
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17 (b) If the department determines that there is a great
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6 invalid in one or more of its applications, the part remains
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8 the invalid applications.

9 NEW SECTION. Section 8. Extension of rulemaking
10 authority. Any existing authority of the board of land
11 commissioners or department of state lands to make rules on
12 the subject of the provisions of this act is extended to the
13 provisions of this act.

-End-

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ECK, ELLISON, IVERSON, KADAS, HALLIGAN, COHEN,
PHILLIPS, MILES, MOHAR, KELLER, HARP, COBB,
DRISCOLL, DARKO, SPAETH, FRITZ, KRUEGER
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT FURTHER CLARIFYING THE
INFORMATION REQUIRED IN APPLICATIONS FOR METAL MINE
OPERATING PERMITS; PROVIDING ADDITIONAL STANDARDS IN THE
RECLAMATION PLAN; SPECIFYING ACTIONS AVAILABLE TO PERSONS
WHO ARE ADVERSELY AFFECTED BY VIOLATIONS OF METAL MINE
RECLAMATION PROVISIONS OR WHO ARE ALLEGEDLY HARMED BY METAL
MINES DAMAGING THEIR WATER SUPPLY; AND MAKING CERTAIN MINOR
CHANGES; AMENDING SECTIONS 82-4-335, 82-4-336, AND 82-4-338,
MCA."

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

Section 1. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. (1) No person shall
engage in mining or disturb land in anticipation of mining
in the state without first obtaining an operating permit
from the board to do so. A separate operating permit shall
be required for each mine complex. Prior to receiving an
operating permit from the board, any person must pay the

basic permit fee of \$25 and must submit an application on a
form provided by the board, which shall contain the
following information and any other pertinent data required
by the rules:

(a) name and address of the operator and, if a
corporation or other business entity, the name and address
of its principal officers, partners, and the like and its
resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of mining;

(e) a map showing the specific area to be mined and
the boundaries of the land which will be disturbed,
topographic detail, the location and names of all streams,
roads, railroads, and utility lines on or immediately
adjacent to the area, location of proposed access roads to
be built, and the names and addresses of the surface and
mineral owners of all lands within the mining area, to the
extent known to applicant;

(f) types of access roads to be built and manner of
reclamation of road sites on abandonment; and

(g) a plan of mining which will provide, within limits
of normal operating procedures of the industry, for
completion of mining and associated land disturbances;

(h) ground water and surface water hydrologic data



1 gathered from a sufficient number of sources and length of
 2 time to characterize the hydrologic regime;

3 (i) a plan detailing the design, operation, and
 4 monitoring of impounding structures, including but not
 5 limited to tailings impoundments and water reservoirs,
 6 sufficient to ensure that such structures are safe and
 7 stable;

8 (j) a plan identifying methods to be used to monitor
 9 for the accidental discharge of objectionable materials and
 10 remedial action plans to be used to control and mitigate
 11 discharges to surface or ground water; and

12 (k) an evaluation of the expected life of any tailings
 13 impoundment or waste area and the potential for expansion of
 14 the tailings impoundment or waste site.

15 (2) Except as provided in subsection (3), the permit
 16 provided for in subsection (1) for a large-scale mineral
 17 development as defined in 90-6-302 shall be conditioned to
 18 provide that activities under the permit may not commence
 19 until the hard-rock mining impact board approves the impact
 20 plan under 90-6-307 and until the permittee has provided a
 21 written guarantee to the department and to the hard-rock
 22 mining impact board of compliance within the time schedule
 23 with the commitment made in the impact plan approved by the
 24 hard-rock mining impact board, as provided in 90-6-307. If
 25 the permittee does not comply with that commitment within

1 the time scheduled, the board, upon receipt of written
 2 notice from the hard-rock mining impact board, shall suspend
 3 the permit until it receives written notice from the
 4 hard-rock mining impact board that the permittee is in
 5 compliance.

6 (3) Compliance with 90-6-307 is not required for
 7 exploration and bulk sampling for metallurgical testing when
 8 the aggregate samples are less than 10,000 tons."

9 Section 2. Section 82-4-336, MCA, is amended to read:

10 "82-4-336. Reclamation plan and specific reclamation
 11 requirements. (1) The reclamation plan shall provide that
 12 reclamation activities, particularly those relating to
 13 control of erosion, to the extent feasible, shall be
 14 conducted simultaneously with mining and in any case shall
 15 be initiated promptly after completion or abandonment of
 16 mining on those portions of the mine complex that will not
 17 be subject to further disturbance by the mining operation.
 18 In the absence of an order by the board providing a longer
 19 period, the plan shall provide that reclamation activities
 20 shall be completed not more than 2 years after completion or
 21 abandonment of mining on that portion of mine complex.

22 (2) In the absence of emergency or suddenly threatened
 23 or existing catastrophe, an operator may not depart from an
 24 approved plan without previously obtaining from the
 25 department written approval of his proposed change.

1 (3) Provision shall be made to avoid accumulation of
2 stagnant water in the mined area which may serve as a host
3 or breeding ground for mosquitoes or other disease-bearing
4 or noxious insect life.

5 (4) All final grading shall be made with nonnoxious,
6 nonflammable, noncombustible solids unless approval has been
7 granted by the board for a supervised sanitary fill.

8 (5) Where mining has left an open pit exceeding 2
9 acres of surface area and the composition of the floor or
10 walls of the pit are likely to cause formation of acid,
11 toxic, or otherwise pollutive solutions (hereinafter
12 "objectionable effluents") on exposure to moisture, the
13 reclamation plan shall include provisions which adequately
14 provide for:

15 (a) insulation of all faces from moisture or water
16 contact by covering to a depth of 2 feet or more with
17 material or fill not susceptible itself to generation of
18 objectionable effluents;

19 (b) processing of any objectionable effluents in the
20 pit before their being allowed to flow or be pumped out of
21 it to reduce toxic or other objectionable ratios to a level
22 considered safe to humans and the environment by the board;

23 (c) drainage of any objectionable effluents to
24 settling or treatment basins when the objectionable
25 effluents must be reduced to levels considered safe by the

1 board before release from the settling basin; or

2 (d) absorption or evaporation of objectionable
3 effluents in the open pit itself; and

4 (e) prevention of entrance into the open pit by
5 persons or livestock lawfully upon adjacent lands by
6 fencing, warning signs, and such other devices as may
7 reasonably be required by the board.

8 (6) Provisions for vegetative cover shall be required
9 in the reclamation plan if appropriate to the future use of
10 the land as specified in the reclamation plan. The
11 reestablished vegetative cover shall meet county standards
12 for noxious weed control.

13 (7) The reclamation plan shall provide for the
14 reclamation of all disturbed land. Proposed reclamation need
15 ~~not-reclaim-the-areas-to-a-better-condition-or-different-use~~
16 ~~than-that-which-existed-prior-to-development-or-mining shall~~
17 provide for the reclamation of disturbed land to comparable
18 utility and stability as that of adjacent areas, except for
19 open pits and rock faces which may not be feasible to
20 reclaim. In such excepted cases, the board shall require
21 sufficient measures to insure public safety and to prevent
22 the pollution of air or water and the degradation of
23 adjacent lands.

24 (8) A reclamation plan shall be approved by the board
25 if it adequately provides for the accomplishment of the

1 activities specified in this section.

2 (9) The reclamation plan shall provide for permanent
 3 landscaping and contouring to minimize the amount of
 4 precipitation that infiltrates into disturbed areas,
 5 including but not limited to tailings impoundments and waste
 6 rock dumps. The plan shall also provide measures to prevent
 7 objectionable postmining ground water discharges."

8 Section 3. Section 82-4-338, MCA, is amended to read:

9 "82-4-338. Performance bond. (1) The applicant shall
 10 file with the department a bond payable to the state of
 11 Montana with surety satisfactory to the department in the
 12 penal sum to be determined by the department of not less
 13 than \$200 or more than \$2,500 for each acre or fraction
 14 thereof of the disturbed area, conditioned upon the faithful
 15 performance of the requirements of this part and the rules
 16 of the board. In lieu of such bond, the applicant may file
 17 with the board a cash deposit, an assignment of a
 18 certificate of deposit, or other surety acceptable to the
 19 board. Regardless of the above limits, the bond shall not be
 20 less than the estimated cost to the state to complete the
 21 reclamation of the disturbed land. A public or governmental
 22 agency shall not be required to post a bond under the
 23 provisions of this part. A blanket performance bond covering
 24 two or more operations may be accepted by the board. Such
 25 blanket bond shall adequately secure the estimated total

1 number of acres of disturbed land. When determined by the
 2 department that the set bonding level of a permit or license
 3 does not represent the present costs of reclamation, the
 4 department may modify the bonding requirements of that
 5 permit or license.

6 (2) No bond filed in accordance with the provisions of
 7 this part shall be released by the department until the
 8 provisions of this part, the rules adopted pursuant thereto,
 9 and this reclamation plan have been fulfilled.

10 (3) No bond filed for an operating permit obtained
 11 under 82-4-335 may be released until the public has been
 12 provided an opportunity for a hearing."

13 NEW SECTION. Section 4. Mandamus to compel
 14 enforcement. (1) Any person having an interest that is or
 15 may be adversely affected, with knowledge that a requirement
 16 of this part or a rule adopted under this part is not being
 17 enforced by a public officer or employee whose duty it is to
 18 enforce the requirement or rule, may bring the failure to
 19 the attention of the public officer or employee by an
 20 affidavit stating the specific facts of the failure.
 21 Knowingly making false statements or charges in the
 22 affidavit subjects the affiant to penalties prescribed for
 23 false swearing, as provided in 45-7-202.

24 (2) If the public officer or employee neglects or
 25 refuses for an unreasonable time after receipt of the

1 affidavit to enforce the requirement or rule, the affiant
 2 may bring an action of mandamus in the district court of the
 3 first judicial district or in the district court of the
 4 county in which the land is located. If the court finds that
 5 a requirement of this part or a rule adopted under this part
 6 is not being enforced, it shall order the public officer or
 7 employee to perform his duties. If he fails to do so, the
 8 public officer or employee must be held in contempt of court
 9 and is subject to the penalties provided by law.

10 (3) Any person having an interest that is or may be
 11 adversely affected may commence a civil action on his own
 12 behalf to compel compliance with this part against any
 13 person for the violation of this part or any rule, order, or
 14 permit issued under it. However, no such action may
 15 commence:

16 (a) prior to 60 days after the plaintiff has given
 17 notice in writing to the department and to the alleged
 18 violator; or

19 (b) if the department has commenced and is diligently
 20 prosecuting a civil action to require compliance with the
 21 provisions of this part or any rule, order or permit issued
 22 under it. Any person HAVING AN INTEREST THAT IS OR MAY BE
 23 ADVERSELY AFFECTED may intervene as a matter of right in any
 24 such civil action.

25 (4) Nothing in this section restricts any right of any

1 person under any statute or common law to seek enforcement
 2 of this part or the rules adopted under it or to seek any
 3 other relief.

4 NEW SECTION. Section 5. Action for damages to water
 5 supply -- replacement. (1) An owner of an interest in real
 6 property who obtains all or part of his supply of water for
 7 beneficial uses, as defined in 85-2-102, from an underground
 8 source other than a subterranean stream having a permanent,
 9 distinct, and known channel may sue the operator engaged in
 10 a mining or exploration operation to recover damages for
 11 loss in quality or quantity of the water supply resulting
 12 from mining or exploration. The owner is required to exhaust
 13 the administrative remedy under subsection (2) prior to
 14 filing suit.

15 (2) (a) An owner described in subsection (1) may file
 16 a complaint with the department detailing the loss in
 17 quality or quantity of water. Upon receipt of a valid
 18 complaint, the department:

19 (i) shall investigate the statements and charges in
 20 the complaint, using all available information, including
 21 monitoring data gathered at the exploration or mine site;

22 (ii) may require the operator, if necessary, to install
 23 monitoring wells or other practices that may be needed to
 24 determine the cause of water loss, if there is a loss, in
 25 terms of quantity and quality;

1 (iii) shall issue a written finding specifying the
2 cause of the water loss, if there is a loss, in terms of
3 quantity and quality;

4 (iv) shall, if it determines that the preponderance of
5 evidence indicates that the loss is caused by an exploration
6 or mining operation, order the operator, in compliance with
7 Title 85, chapter 2, to provide the needed water immediately
8 on a temporary basis and within a reasonable time replace
9 the water in like quality, quantity, and duration. If the
10 water is not replaced, the department shall order the
11 suspension of the operator's exploration or operating permit
12 until such time as the operator provides substitute water,
13 except that nothing in this section preempts Title 85,
14 chapter 2. The operator may not be required to replace a
15 junior right if the operator's withdrawal or dewatering is
16 not in excess of his senior right.

17 (b) If the department determines that there is a great
18 potential that surface or subsurface water quality and
19 quantity may be adversely affected by a mining or
20 exploration operation, the operator shall install a water
21 quality monitoring program, water quantity monitoring
22 program, or both, which must be approved by the department
23 prior to the commencement of exploration or mining.

24 NEW SECTION. Section 6. Codification instruction.
25 Sections 4 and 5 are intended to be codified as an integral

1 part of Title 82, chapter 4, part 3, and the provisions of
2 Title 82, chapter 4, part 3, apply to sections 4 and 5.

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

9 NEW SECTION. Section 8. Extension of rulemaking
10 authority. Any existing authority of the board of land
11 commissioners or department of state lands to make rules on
12 the subject of the provisions of this act is extended to the
13 provisions of this act.

-End-

1 HOUSE BILL NO. 698

2 INTRODUCED BY REAM, D. BROWN, ADDY, RANEY,
 3 ECK, ELLISON, IVERSON, KADAS, HALLIGAN, COHEN,
 4 PHILLIPS, MILES, MOHAR, KELLER, HARP, COBB,
 5 DRISCOLL, DARKO, SPAETH, FRITZ, KRUEGER
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 7

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5 (a) name and address of the operator and, if a
 6 corporation or other business entity, the name and address
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1 (iii) shall issue a written finding specifying the
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4 (iv) shall, if it determines that the preponderance of
5 evidence indicates that the loss is caused by an exploration
6 or mining operation, order the operator, in compliance with
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11 commissioners or department of state lands to make rules on
12 the subject of the provisions of this act is extended to the
13 provisions of this act.

-End-