

## 1 HOUSE BILL NO. 154

2 INTRODUCED BY TAYLOR

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA STRIP AND  
6 UNDERGROUND MINE RECLAMATION ACT; REQUIRING UNDERGROUND COAL MINE OPERATORS TO  
7 COMPENSATE FOR CERTAIN PROPERTY DAMAGE CAUSED BY SUBSIDENCE; REQUIRING REPLACEMENT  
8 OF A WATER SUPPLY THAT IS CONTAMINATED, DIMINISHED, OR INTERRUPTED BY UNDERGROUND  
9 COAL MINING OPERATIONS; PROVIDING THAT AN OPERATING PERMIT IS REQUIRED FOR ALL  
10 UNDERGROUND INJECTION MINING OF URANIUM; CLARIFYING PROSPECTING PERMIT REQUIREMENTS;  
11 AMENDING SECTIONS 82-4-203 AND 82-4-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
12 AND A RETROACTIVE APPLICABILITY DATE."  
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 **NEW SECTION. Section 1. Subsidence.** (1) The owner of an underground coal mining operation  
17 shall:18 (a) promptly repair or compensate for material damage to any occupied residential dwelling and  
19 related structures and to any noncommercial building resulting from subsidence caused by an underground  
20 coal mining operation. Repair of damage includes rehabilitation, restoration, or replacement. Compensation  
21 must be provided to the owner of the damaged property and must be in the full amount of the diminution  
22 in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to  
23 mining, of a noncancellable premium-prepaid insurance policy.24 (b) promptly replace any drinking, domestic, or residential water supply from a well or spring that  
25 has been affected by contamination, diminution, or interruption resulting from the underground coal mining  
26 operation in existence prior to the application for a permit pursuant to 82-4-202.27 (2) This section may not be construed to prohibit or interrupt an underground coal mining  
28 operation.  
2930 **Section 2.** Section 82-4-203, MCA, is amended to read:

1           **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions  
2 apply:

3           (1) "Abandoned" means an operation in which ~~no~~ a mineral is not being produced and ~~about which~~  
4 that the department determines ~~that the operation~~ will not continue or resume operation.

5           (2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where  
6 water availability is sufficient for subirrigation or flood irrigation agricultural activities.

7           (b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial  
8 deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash,  
9 together with talus, other mass movement accumulation, and windblown deposits.

10          (3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that  
11 contains or stores water and transmits it from one point to another in quantities that permit or have the  
12 potential to permit economic development as a water source.

13          (4) (a) "Area of land affected" means the area of land from which overburden is to be or has been  
14 removed and upon which the overburden is to be or has been deposited.

15          (b) The term includes:

16           (i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

17           (ii) lands affected by the construction of new railroad loops and roads or the improvement or use  
18 of existing railroad loops and roads to gain access and to haul the mineral;

19           (iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition  
20 areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or  
21 underground mining; and

22           (iv) all activities necessary and incident to the reclamation of the mining operations.

23          (5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

24          (6) "Board" means the board of environmental review provided for in 2-15-3502.

25          (7) "Coal conservation plan" means the planned course of conduct of a strip- or  
26 underground-mining operation and includes plans for the removal and use of minable and marketable coal  
27 located within the area planned to be mined.

28          (8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
29 concentrating, or other processing or preparation.

30          (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid

1 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing  
2 for other than commercial purposes.

3 (9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation.  
4 The term includes commercial facilities associated with coal preparation activities but is not limited to  
5 loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and  
6 coal processing and other waste disposal areas.

7 (10) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough  
8 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance  
9 is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with  
10 the excavated overburden commonly being cast down the slope below the mineral seam and the operating  
11 bench.

12 (11) "Degree" means a measurement from the horizontal. In each case, the measurement is subject  
13 to a tolerance of 5% error.

14 (12) "Department" means the department of environmental quality provided for in 2-15-3501.

15 (13) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable  
16 coal by an operation. However, the nonremoval or nonutilization of minable and marketable coal that occurs  
17 because of compliance with reclamation standards established by the department is not considered failure  
18 to conserve coal.

19 (14) "Fill bench" means that portion of a bench or table that is formed by depositing overburden  
20 beyond or downslope from the cut section as formed in the contour method of strip mining.

21 (15) "Imminent danger to the health and safety of the public" means the existence of any condition  
22 or practice or any violation of a permit or other requirement of this part in a strip- or  
23 underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial  
24 physical harm to persons outside the permit area before the condition, practice, or violation can be abated.  
25 A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected  
26 to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger  
27 during the time necessary for abatement.

28 (16) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale  
29 in the usual course of trade.

30 (17) "Method of operation" means the method or manner by which the cut, open pit, shaft, or

1 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed  
2 by the operator in the process of uncovering and removing the minerals that affect the reclamation of the  
3 area of land affected.

4 (18) "Minable coal" means that coal that can be removed through strip- or underground-mining  
5 methods adaptable to the location that coal is being mined or is planned to be mined.

6 (19) "Mineral" means coal and uranium.

7 (20) "Operation" means:

8 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of  
9 producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area,  
10 including coal preparation plants; and

11 (b) all activities, including excavation incident to operations, or prospecting for the purpose of  
12 determining the location, quality, or quantity of a natural mineral deposit.

13 (21) "Operator" means a person engaged in:

14 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic  
15 yards of mineral or overburden;

16 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by  
17 mining within 12 consecutive calendar months in any one location; ~~or~~

18 (c) operating a coal preparation plant; or

19 (d) uranium mining using in situ methods.

20 (22) "Overburden" means:

21 (a) all of the earth and other materials that lie above a natural mineral deposit; and

22 (b) the earth and other material after removal from their natural state in the process of mining.

23 (23) "Person" means a person, partnership, corporation, association, or other legal entity or any  
24 political subdivision or agency of the state or federal government.

25 (24) "Prime farmland" means land that:

26 (a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture  
27 in the Federal Register; and

28 (b) historically has been used for intensive agricultural purposes.

29 (25) "Prospecting" means:

30 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping,

1 trenching, or geophysical or other techniques necessary to determine:

2 (i) the quality and quantity of overburden in an area; or

3 (ii) the location, quantity, or quality of a ~~natural~~ mineral deposit; or

4 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-  
5 or underground-coal-mining and reclamation operations under this part.

6 (26) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall  
7 reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip  
8 mining or underground mining under a plan approved by the department.

9 (27) "Remining" means conducting surface coal mining and reclamation operations that affect  
10 previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

11 (28) (a) "Strip mining" means any part of the process followed in the production of mineral by the  
12 opencut method, including mining by the auger method or any similar method that penetrates a mineral  
13 deposit and removes mineral directly through a series of openings made by a machine that enters the  
14 deposit from a surface excavation or any other mining method or process in which the strata or overburden  
15 is removed or displaced in order to recover the mineral.

16 (b) For the purposes of this part only, strip mining also includes remining and coal preparation.

17 (c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining"  
18 for purposes of Title 15, chapter 35, part 1.

19 (29) "Subsidence" means a vertically downward movement of overburden materials resulting from  
20 the actual mining of an underlying mineral deposit or associated underground excavations.

21 (30) "Surface owner" means:

22 (a) a person who holds legal or equitable title to the land surface and whose principal place of  
23 residence is on the land;

24 (b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to  
25 be directly affected by strip-mining operations or who receives directly a significant portion of income, if  
26 any, from farming or ranching operations; or

27 (c) the state of Montana when the state owns the surface.

28 (31) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
29 the earth, that has been subjected to and influenced by genetic and environmental factors of parent  
30 material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time,

1 and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

2 (32) "Underground mining" means any part of the process that is followed in the production of a  
3 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with  
4 excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

5 (33) "Unwarranted failure to comply" means:

6 (a) the failure of a permittee to prevent the occurrence of any violation of a permit or any  
7 requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

8 (b) the failure to abate any violation of a permit or of this part because of indifference, lack of  
9 diligence, or lack of reasonable care.

10 (34) "Waiver" means a document that demonstrates the clear intention to release rights in the  
11 surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

12 (35) "Written consent" means a statement that is executed by the owner of the surface estate and  
13 that is written on a form approved by the department to demonstrate that the owner consents to entry of  
14 an operator for the purpose of conducting strip-mining operations and that the consent is given only to  
15 strip-mining and reclamation operations that fully comply with the terms and requirements of this part."  
16

17 **Section 3.** Section 82-4-226, MCA, is amended to read:

18 **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any  
19 person on land not included in a valid strip-mining or underground-mining permit is unlawful without  
20 possessing a valid prospecting permit issued by the department as provided in this section. A prospecting  
21 permit may not be issued until the person submits an application, the application is examined, amended if  
22 necessary, and approved by the department, and an adequate reclamation performance bond is posted, all  
23 of which prerequisites must be done in conformity with the requirements of this part.

24 (2) An application for a prospecting permit must be made in writing, notarized, and submitted to  
25 the department in duplicate upon forms prepared and furnished by it. The application must include among  
26 other things a prospecting map and a prospecting reclamation plan of substantially the same character as  
27 required for a surface-mining or underground-mining map and reclamation plan under this part. The  
28 department shall determine by rules the precise nature of the required prospecting map and reclamation  
29 plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number  
30 of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required

1 by the department. The applicant shall state what types of prospecting and excavating techniques will be  
2 employed on the affected land. The application must also include any other or further information that the  
3 department may require.

4 (3) The application must be accompanied by a fee of \$100. This fee must be used as a credit  
5 toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the  
6 prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained  
7 before or at the time the prospecting permit expires.

8 (4) Before the department gives final approval to the prospecting permit application, the applicant  
9 shall file with the department a reclamation and revegetation bond in a form and in an amount as  
10 determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds  
11 under this part.

12 (5) In the event that the holder of a prospecting permit desires to strip mine or underground mine  
13 the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or  
14 underground-mining permit, the department may permit the postponement of the reclamation of the acreage  
15 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application  
16 for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating  
17 under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan  
18 must be promptly reclaimed.

19 (6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation  
20 in the same manner as strip-mining or underground-mining permits under this part.

21 (7) The holder of the prospecting permit shall file with the department the same progress reports,  
22 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators  
23 under this part.

24 (8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
25 82-4-227 or 82-4-228, ~~and~~ that is not conducted for the purpose of determining the location, quality, or  
26 quantity of a ~~natural~~ mineral deposit, and that does not remove more than 250 tons of coal is not subject  
27 to subsections (1) through (7). In addition, prospecting that is conducted to determine the location, quality,  
28 or quantity of a ~~natural~~ mineral deposit outside an area designated unsuitable, that does not remove more  
29 than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to  
30 subsections (1) through (7). However, a person who conducts prospecting described in this subsection shall

1 file with the department a notice of intent to prospect that contains the information required by the  
2 department before commencing prospecting operations. If this prospecting substantially disturbs the natural  
3 land surface, it must be conducted in accordance with the performance standards of the board's rules  
4 regulating the conduct and reclamation of prospecting operations that remove coal. The department may  
5 inspect these prospecting and reclamation operations at any reasonable time."

6

7 **NEW SECTION.** **Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
8 integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to  
9 [section 1].

10

11 **NEW SECTION.** **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

15

16 **NEW SECTION.** **Section 6. Retroactive applicability.** [This act] applies retroactively, within the  
17 meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992.

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19 **NEW SECTION.** **Section 7. Effective date.** [This act] is effective on passage and approval.

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REQUIRING UNDERGROUND COAL MINE OPERATORS ~~OPERATORS~~ PERMITTEES TO COMPENSATE FOR CERTAIN PROPERTY DAMAGE CAUSED BY SUBSIDENCE; REQUIRING REPLACEMENT OF A WATER SUPPLY THAT IS CONTAMINATED, DIMINISHED, OR INTERRUPTED BY UNDERGROUND COAL MINING OPERATIONS; PROVIDING THAT AN OPERATING PERMIT IS REQUIRED FOR ALL UNDERGROUND INJECTION MINING OF URANIUM; CLARIFYING PROSPECTING PERMIT REQUIREMENTS; MODIFYING REVEGETATION REQUIREMENTS; AMENDING SECTIONS 82-4-203 ~~AND~~, 82-4-226, 82-4-233, AND 82-4-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE ~~DATE~~ DATES AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. Section 1. Subsidence. (1) The ~~owner~~ PERMITTEE of an underground coal mining operation shall:

(a) promptly repair or compensate for material damage to any occupied residential dwelling and related structures and to any noncommercial building resulting from subsidence caused by an underground coal mining operation. Repair of damage includes rehabilitation, restoration, or replacement. Compensation must be provided to the owner of the damaged property and must be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(b) promptly replace any drinking, domestic, or residential water supply from a well or spring that WAS IN EXISTENCE PRIOR TO THE APPLICATION FOR THE PERMIT PURSUANT TO 82-4-222 AND THAT has been affected by contamination, diminution, or interruption resulting from the underground coal mining operation ~~in existence prior to the application for a permit pursuant to 82-4-202.~~

(2) This section may not be construed to prohibit or interrupt an underground coal mining operation.

1           (3) THIS SECTION DOES NOT ABROGATE, IMPAIR, OR DIMINISH ANY RIGHT OR REMEDY  
2 GRANTED UNDER ANOTHER PROVISION OF THIS PART OR ANY OTHER LAW.

3  
4           **Section 2.** Section 82-4-203, MCA, is amended to read:

5           **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions  
6 apply:

7           (1) "Abandoned" means an operation in which ~~no~~ a mineral is not being produced and ~~about which~~  
8 that the department determines that the operation will not continue or resume operation.

9           (2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where  
10 water availability is sufficient for subirrigation or flood irrigation agricultural activities.

11           (b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial  
12 deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash,  
13 together with talus, other mass movement accumulation, and windblown deposits.

14           (3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that  
15 contains or stores water and transmits it from one point to another in quantities that permit or have the  
16 potential to permit economic development as a water source.

17           (4) (a) "Area of land affected" means the area of land from which overburden is to be or has been  
18 removed and upon which the overburden is to be or has been deposited.

19           (b) The term includes:

20           (i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

21           (ii) lands affected by the construction of new railroad loops and roads or the improvement or use  
22 of existing railroad loops and roads to gain access and to haul the mineral;

23           (iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition  
24 areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or  
25 underground mining; and

26           (iv) all activities necessary and incident to the reclamation of the mining operations.

27           (5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

28           (6) "Board" means the board of environmental review provided for in 2-15-3502.

29           (7) "Coal conservation plan" means the planned course of conduct of a strip- or  
30 underground-mining operation and includes plans for the removal and use of minable and marketable coal

1 located within the area planned to be mined.

2 (8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
3 concentrating, or other processing or preparation.

4 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid  
5 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing  
6 for other than commercial purposes.

7 (9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation.  
8 The term includes commercial facilities associated with coal preparation activities but is not limited to  
9 loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and  
10 coal processing and other waste disposal areas.

11 (10) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough  
12 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance  
13 is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with  
14 the excavated overburden commonly being cast down the slope below the mineral seam and the operating  
15 bench.

16 (11) "Degree" means a measurement from the horizontal. In each case, the measurement is subject  
17 to a tolerance of 5% error.

18 (12) "Department" means the department of environmental quality provided for in 2-15-3501.

19 (13) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable  
20 coal by an operation. However, the nonremoval or nonutilization of minable and marketable coal that occurs  
21 because of compliance with reclamation standards established by the department is not considered failure  
22 to conserve coal.

23 (14) "Fill bench" means that portion of a bench or table that is formed by depositing overburden  
24 beyond or downslope from the cut section as formed in the contour method of strip mining.

25 (15) "Imminent danger to the health and safety of the public" means the existence of any condition  
26 or practice or any violation of a permit or other requirement of this part in a strip- or  
27 underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial  
28 physical harm to persons outside the permit area before the condition, practice, or violation can be abated.  
29 A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected  
30 to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger

1 during the time necessary for abatement.

2 (16) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale  
3 in the usual course of trade.

4 (17) "Method of operation" means the method or manner by which the cut, open pit, shaft, or  
5 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed  
6 by the operator in the process of uncovering and removing the minerals that affect the reclamation of the  
7 area of land affected.

8 (18) "Minaable coal" means that coal that can be removed through strip- or underground-mining  
9 methods adaptable to the location that coal is being mined or is planned to be mined.

10 (19) "Mineral" means coal and uranium.

11 (20) "Operation" means:

12 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of  
13 producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area,  
14 including coal preparation plants; and

15 (b) all activities, including excavation incident to operations, or prospecting for the purpose of  
16 determining the location, quality, or quantity of a natural mineral deposit.

17 (21) "Operator" means a person engaged in:

18 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic  
19 yards of mineral or overburden;

20 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by  
21 mining within 12 consecutive calendar months in any one location; ~~or~~

22 (c) operating a coal preparation plant; or

23 (d) uranium mining using in situ methods.

24 (22) "Overburden" means:

25 (a) all of the earth and other materials that lie above a natural mineral deposit; and

26 (b) the earth and other material after removal from their natural state in the process of mining.

27 (23) "Person" means a person, partnership, corporation, association, or other legal entity or any  
28 political subdivision or agency of the state or federal government.

29 (24) "Prime farmland" means land that:

30 (a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture

1 in the Federal Register; and

2 (b) historically has been used for intensive agricultural purposes.

3 (25) "Prospecting" means:

4 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping,  
5 trenching, or geophysical or other techniques necessary to determine:

6 (i) the quality and quantity of overburden in an area; or

7 (ii) the location, quantity, or quality of a ~~natural~~ mineral deposit; or

8 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-  
9 or underground-coal-mining and reclamation operations under this part.

10 (26) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall  
11 reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip  
12 mining or underground mining under a plan approved by the department.

13 (27) "Remining" means conducting surface coal mining and reclamation operations that affect  
14 previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

15 (28) (a) "Strip mining" means any part of the process followed in the production of mineral by the  
16 opencut method, including mining by the auger method or any similar method that penetrates a mineral  
17 deposit and removes mineral directly through a series of openings made by a machine that enters the  
18 deposit from a surface excavation or any other mining method or process in which the strata or overburden  
19 is removed or displaced in order to recover the mineral.

20 (b) For the purposes of this part only, strip mining also includes remining and coal preparation.

21 (c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining"  
22 for purposes of Title 15, chapter 35, part 1.

23 (29) "Subsidence" means a vertically downward movement of overburden materials resulting from  
24 the actual mining of an underlying mineral deposit or associated underground excavations.

25 (30) "Surface owner" means:

26 (a) a person who holds legal or equitable title to the land surface and whose principal place of  
27 residence is on the land;

28 (b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to  
29 be directly affected by strip-mining operations or who receives directly a significant portion of income, if  
30 any, from farming or ranching operations; or

1 (c) the state of Montana when the state owns the surface.

2 (31) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
3 the earth, that has been subjected to and influenced by genetic and environmental factors of parent  
4 material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time,  
5 and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

6 (32) "Underground mining" means any part of the process that is followed in the production of a  
7 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with  
8 excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

9 (33) "Unwarranted failure to comply" means:

10 (a) the failure of a permittee to prevent the occurrence of any violation of a permit or any  
11 requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

12 (b) the failure to abate any violation of a permit or of this part because of indifference, lack of  
13 diligence, or lack of reasonable care.

14 (34) "Waiver" means a document that demonstrates the clear intention to release rights in the  
15 surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

16 (35) "Written consent" means a statement that is executed by the owner of the surface estate and  
17 that is written on a form approved by the department to demonstrate that the owner consents to entry of  
18 an operator for the purpose of conducting strip-mining operations and that the consent is given only to  
19 strip-mining and reclamation operations that fully comply with the terms and requirements of this part."  
20

21 **Section 3.** Section 82-4-226, MCA, is amended to read:

22 **"82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any  
23 person on land not included in a valid strip-mining or underground-mining permit is unlawful without  
24 possessing a valid prospecting permit issued by the department as provided in this section. A prospecting  
25 permit may not be issued until the person submits an application, the application is examined, amended if  
26 necessary, and approved by the department, and an adequate reclamation performance bond is posted, all  
27 of which prerequisites must be done in conformity with the requirements of this part.

28 (2) An application for a prospecting permit must be made in writing, notarized, and submitted to  
29 the department in duplicate upon forms prepared and furnished by it. The application must include among  
30 other things a prospecting map and a prospecting reclamation plan of substantially the same character as

1 required for a surface-mining or underground-mining map and reclamation plan under this part. The  
2 department shall determine by rules the precise nature of the required prospecting map and reclamation  
3 plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number  
4 of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required  
5 by the department. The applicant shall state what types of prospecting and excavating techniques will be  
6 employed on the affected land. The application must also include any other or further information that the  
7 department may require.

8 (3) The application must be accompanied by a fee of \$100. This fee must be used as a credit  
9 toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the  
10 prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained  
11 before or at the time the prospecting permit expires.

12 (4) Before the department gives final approval to the prospecting permit application, the applicant  
13 shall file with the department a reclamation and revegetation bond in a form and in an amount as  
14 determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds  
15 under this part.

16 (5) In the event that the holder of a prospecting permit desires to strip mine or underground mine  
17 the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or  
18 underground-mining permit, the department may permit the postponement of the reclamation of the acreage  
19 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application  
20 for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating  
21 under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan  
22 must be promptly reclaimed.

23 (6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation  
24 in the same manner as strip-mining or underground-mining permits under this part.

25 (7) The holder of the prospecting permit shall file with the department the same progress reports,  
26 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators  
27 under this part.

28 (8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
29 82-4-227 or 82-4-228, ~~and~~ that is not conducted for the purpose of determining the location, quality, or  
30 quantity of a ~~natural~~ mineral deposit, and that does not remove more than 250 tons of coal is not subject

1 to subsections (1) through (7). In addition, prospecting that is conducted to determine the location, quality,  
 2 or quantity of a natural mineral deposit outside an area designated unsuitable, that does not remove more  
 3 than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to  
 4 subsections (1) through (7). However, a person who conducts prospecting described in this subsection shall  
 5 file with the department a notice of intent to prospect that contains the information required by the  
 6 department before commencing prospecting operations. If this prospecting substantially disturbs the natural  
 7 land surface, it must be conducted in accordance with the performance standards of the board's rules  
 8 regulating the conduct and reclamation of prospecting operations that remove coal. The department may  
 9 inspect these prospecting and reclamation operations at any reasonable time."

10  
 11 **SECTION 4. SECTION 82-4-233, MCA, IS AMENDED TO READ:**

12 **"82-4-233. Planting of vegetation following grading of disturbed area. (1) After Except as provided**  
 13 **in subsection (4), after** the operation has been backfilled, graded, topsoiled, and approved by the  
 14 department, the operator shall prepare the soil and plant ~~such~~ the legumes, grasses, shrubs, and trees ~~as~~  
 15 that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and  
 16 permanent vegetative cover of the same seasonal variety native to the area of land to be affected and  
 17 capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation  
 18 of the area except that introduced species may be used in the revegetation process where desirable and  
 19 necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

20 (a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock  
 21 at least comparable to that which the land could have sustained prior to the operation;

22 (b) regenerating under the natural conditions prevailing at the site, including occasional drought,  
 23 heavy snowfalls, and strong winds; and

24 (c) preventing soil erosion to the extent achieved prior to the operation.

25 (2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer,  
 26 mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse  
 27 vegetative cover ~~shall~~ must be defined by rules of the board.

28 (3) All underground shafts, tunnels, or other excavations are excluded from the provisions of  
 29 subsection (1) ~~of this section.~~

30 (4) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded



1 prior to January 1, 1984, using a seed mix that was approved by the department pursuant to subsection  
 2 (2) and on which the reclaimed vegetation otherwise meets the requirements of subsection (1) and  
 3 applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable  
 4 and necessary to achieve the postmining land use and may compose a major or dominant component of  
 5 the reclaimed vegetation."

6  
 7 **SECTION 5. SECTION 82-4-235, MCA, IS AMENDED TO READ:**

8 **"82-4-235. (Temporary) Inspection of vegetation -- final bond release.** Inspection and evaluation  
 9 for permanent diverse vegetative cover shall must be made as soon as it is possible to determine if a  
 10 satisfactory stand has been established. If the department determines that a satisfactory permanent diverse  
 11 vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after  
 12 public notice and an opportunity for hearing as provided in 82-4-232(6). ~~In no event shall such~~ The  
 13 remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding,  
 14 fertilizing, irrigation, or other work required under this part for those operations or portions of operations  
 15 that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all  
 16 exploration activities and all other operations.

17 **82-4-235. (Effective on occurrence of contingency) Inspection of vegetation -- final bond release.**

18 (1) Inspection and evaluation for permanent diverse vegetative cover must be made as soon as possible  
 19 following an application for final bond release to determine if a satisfactory stand has been established. If  
 20 the department determines that a satisfactory permanent diverse vegetative cover has been established,  
 21 it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for  
 22 hearing as provided in 82-4-232(6). ~~For land that was seeded using a seed mix that included a substantial~~  
 23 ~~component of introduced species approved by the department pursuant to 82-4-233(2) and on which~~  
 24 ~~reclaimed vegetation otherwise meets the requirements of 82-4-233(1), approval of reclaimed vegetation~~  
 25 ~~for release of bond may not be withheld on the basis that introduced species compose a major or dominant~~  
 26 ~~component. Except as provided in subsection (2)(b), the~~ The remaining bond may not be released prior to  
 27 a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required  
 28 under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior  
 29 to a period of 5 years after initial planting for all exploration activities and all other operations.

30 (2) (a) Notwithstanding the provision in subsection (1), on land from which coal was removed prior

1 to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or  
 2 redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond  
 3 on an area of reclaimed vegetation that meets the following criteria:

4 (i) it was seeded using a seed mixture that was approved by the department under the criteria  
 5 established pursuant to 82-4-233 and that included introduced species; and

6 (ii) at least one of the following conditions exists:

7 (A) the standards of 82-4-233(1) are otherwise achieved;

8 (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing  
 9 of livestock;

10 (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat  
 11 component for wildlife present in the area; or

12 (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the  
 13 standards of 82-4-232(8) and the department approves and the operator completes that conversion.

14 (b) On lands that meet the criteria described in subsection (2)(a), interseeding or supplemental  
 15 planting may be performed without reinitiating the liability period provided in subsection (1)."

16  
 17 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an  
 18 integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to  
 19 [section 1].

20  
 21 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are  
 22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 23 applications, the part remains in effect in all valid applications that are severable from the invalid  
 24 applications.

25  
 26 **NEW SECTION. Section 8. Retroactive applicability.** [This act] applies retroactively, within the  
 27 meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992.

28  
 29 **NEW SECTION. Section 9. Effective date.** ~~[This act]~~ **DATES. (1) EXCEPT AS PROVIDED IN**  
 30 **SUBSECTION (2), [THIS ACT]** is effective on passage and approval.



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HOUSE BILL NO. 154  
INTRODUCED BY TAYLOR  
BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REQUIRING UNDERGROUND COAL MINE OPERATORS PERMITTEES TO COMPENSATE FOR CERTAIN PROPERTY DAMAGE CAUSED BY SUBSIDENCE; REQUIRING REPLACEMENT OF A WATER SUPPLY THAT IS CONTAMINATED, DIMINISHED, OR INTERRUPTED BY UNDERGROUND COAL MINING OPERATIONS; PROVIDING THAT AN OPERATING PERMIT IS REQUIRED FOR ALL UNDERGROUND INJECTION MINING OF URANIUM; CLARIFYING PROSPECTING PERMIT REQUIREMENTS; MODIFYING REVEGETATION REQUIREMENTS; AMENDING SECTIONS 82-4-203 ~~AND~~, 82-4-226, 82-4-233, AND 82-4-235, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE ~~DATE~~ DATES AND A RETROACTIVE APPLICABILITY DATE."

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.**

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 9 INTERRUPTED BY UNDERGROUND COAL MINING OPERATIONS; PROVIDING THAT AN OPERATING  
 10 PERMIT IS REQUIRED FOR ALL UNDERGROUND INJECTION MINING OF URANIUM; CLARIFYING  
 11 PROSPECTING PERMIT REQUIREMENTS; MODIFYING REVEGETATION REQUIREMENTS; AMENDING  
 12 SECTIONS 82-4-203 ~~AND~~, 82-4-226, 82-4-233, AND 82-4-235, MCA; AND PROVIDING AN IMMEDIATE  
 13 EFFECTIVE ~~DATE~~ DATES AND A RETROACTIVE APPLICABILITY DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
 17 NEW SECTION. Section 1. Subsidence. (1) The ~~owner~~ PERMITTEE of an underground coal mining  
 18 operation shall:

19 (a) promptly repair or compensate for material damage to any occupied residential dwelling and  
 20 related structures and to any noncommercial building resulting from subsidence caused by an underground  
 21 coal mining operation. Repair of damage includes rehabilitation, restoration, or replacement. Compensation  
 22 must be provided to the owner of the damaged property and must be in the full amount of the diminution  
 23 in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to  
 24 mining, of a noncancellable premium-prepaid insurance policy.

25 (b) promptly replace any drinking, domestic, or residential water supply from a well or spring that  
 26 WAS IN EXISTENCE PRIOR TO THE APPLICATION FOR THE PERMIT PURSUANT TO 82-4-222 AND THAT  
 27 has been affected by contamination, diminution, or interruption resulting from the underground coal mining  
 28 operation ~~in existence prior to the application for a permit pursuant to 82-4-202.~~

29 (2) This section may not be construed to prohibit or interrupt an underground coal mining  
 30 operation.

1           (3) THIS SECTION DOES NOT ABROGATE, IMPAIR, OR DIMINISH ANY RIGHT OR REMEDY  
 2           GRANTED UNDER ANOTHER PROVISION OF THIS PART OR ANY OTHER LAW.

3  
 4           **Section 2.** Section 82-4-203, MCA, is amended to read:

5           **"82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions  
 6 apply:

7           (1) "Abandoned" means an operation in which ~~no~~ a mineral is not being produced and ~~about which~~  
 8 that the department determines ~~that the operation~~ will not continue or resume operation.

9           (2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where  
 10 water availability is sufficient for subirrigation or flood irrigation agricultural activities.

11           (b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial  
 12 deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash,  
 13 together with talus, other mass movement accumulation, and windblown deposits.

14           (3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that  
 15 contains or stores water and transmits it from one point to another in quantities that permit or have the  
 16 potential to permit economic development as a water source.

17           (4) (a) "Area of land affected" means the area of land from which overburden is to be or has been  
 18 removed and upon which the overburden is to be or has been deposited.

19           (b) The term includes:

20           (i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

21           (ii) lands affected by the construction of new railroad loops and roads or the improvement or use  
 22 of existing railroad loops and roads to gain access and to haul the mineral;

23           (iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition  
 24 areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or  
 25 underground mining; and

26           (iv) all activities necessary and incident to the reclamation of the mining operations.

27           (5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

28           (6) "Board" means the board of environmental review provided for in 2-15-3502.

29           (7) "Coal conservation plan" means the planned course of conduct of a strip- or  
 30 underground-mining operation and includes plans for the removal and use of minable and marketable coal

1 located within the area planned to be mined.

2 (8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning,  
3 concentrating, or other processing or preparation.

4 (b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid  
5 hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing  
6 for other than commercial purposes.

7 (9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation.  
8 The term includes commercial facilities associated with coal preparation activities but is not limited to  
9 loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and  
10 coal processing and other waste disposal areas.

11 (10) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough  
12 and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance  
13 is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with  
14 the excavated overburden commonly being cast down the slope below the mineral seam and the operating  
15 bench.

16 (11) "Degree" means a measurement from the horizontal. In each case, the measurement is subject  
17 to a tolerance of 5% error.

18 (12) "Department" means the department of environmental quality provided for in 2-15-3501.

19 (13) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable  
20 coal by an operation. However, the nonremoval or nonutilization of minable and marketable coal that occurs  
21 because of compliance with reclamation standards established by the department is not considered failure  
22 to conserve coal.

23 (14) "Fill bench" means that portion of a bench or table that is formed by depositing overburden  
24 beyond or downslope from the cut section as formed in the contour method of strip mining.

25 (15) "Imminent danger to the health and safety of the public" means the existence of any condition  
26 or practice or any violation of a permit or other requirement of this part in a strip- or  
27 underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial  
28 physical harm to persons outside the permit area before the condition, practice, or violation can be abated.  
29 A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected  
30 to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger



1 during the time necessary for abatement.

2 (16) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale  
3 in the usual course of trade.

4 (17) "Method of operation" means the method or manner by which the cut, open pit, shaft, or  
5 excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed  
6 by the operator in the process of uncovering and removing the minerals that affect the reclamation of the  
7 area of land affected.

8 (18) "Minaable coal" means that coal that can be removed through strip- or underground-mining  
9 methods adaptable to the location that coal is being mined or is planned to be mined.

10 (19) "Mineral" means coal and uranium.

11 (20) "Operation" means:

12 (a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of  
13 producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area,  
14 including coal preparation plants; and

15 (b) all activities, including excavation incident to operations, or prospecting for the purpose of  
16 determining the location, quality, or quantity of a natural mineral deposit.

17 (21) "Operator" means a person engaged in:

18 (a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic  
19 yards of mineral or overburden;

20 (b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by  
21 mining within 12 consecutive calendar months in any one location; ~~or~~

22 (c) operating a coal preparation plant; or

23 (d) uranium mining using in situ methods.

24 (22) "Overburden" means:

25 (a) all of the earth and other materials that lie above a natural mineral deposit; and

26 (b) the earth and other material after removal from their natural state in the process of mining.

27 (23) "Person" means a person, partnership, corporation, association, or other legal entity or any  
28 political subdivision or agency of the state or federal government.

29 (24) "Prime farmland" means land that:

30 (a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture

1 in the Federal Register; and

2 (b) historically has been used for intensive agricultural purposes.

3 (25) "Prospecting" means:

4 (a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping,  
5 trenching, or geophysical or other techniques necessary to determine:

6 (i) the quality and quantity of overburden in an area; or

7 (ii) the location, quantity, or quality of a ~~natural~~ mineral deposit; or

8 (b) the gathering of environmental data to establish the conditions of an area before beginning strip-  
9 or underground-coal-mining and reclamation operations under this part.

10 (26) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall  
11 reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip  
12 mining or underground mining under a plan approved by the department.

13 (27) "Remining" means conducting surface coal mining and reclamation operations that affect  
14 previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

15 (28) (a) "Strip mining" means any part of the process followed in the production of mineral by the  
16 opencut method, including mining by the auger method or any similar method that penetrates a mineral  
17 deposit and removes mineral directly through a series of openings made by a machine that enters the  
18 deposit from a surface excavation or any other mining method or process in which the strata or overburden  
19 is removed or displaced in order to recover the mineral.

20 (b) For the purposes of this part only, strip mining also includes remining and coal preparation.

21 (c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining"  
22 for purposes of Title 15, chapter 35, part 1.

23 (29) "Subsidence" means a vertically downward movement of overburden materials resulting from  
24 the actual mining of an underlying mineral deposit or associated underground excavations.

25 (30) "Surface owner" means:

26 (a) a person who holds legal or equitable title to the land surface and whose principal place of  
27 residence is on the land;

28 (b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to  
29 be directly affected by strip-mining operations or who receives directly a significant portion of income, if  
30 any, from farming or ranching operations; or

1 (c) the state of Montana when the state owns the surface.

2 (31) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of  
3 the earth, that has been subjected to and influenced by genetic and environmental factors of parent  
4 material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time,  
5 and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

6 (32) "Underground mining" means any part of the process that is followed in the production of a  
7 mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with  
8 excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

9 (33) "Unwarranted failure to comply" means:

10 (a) the failure of a permittee to prevent the occurrence of any violation of a permit or any  
11 requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

12 (b) the failure to abate any violation of a permit or of this part because of indifference, lack of  
13 diligence, or lack of reasonable care.

14 (34) "Waiver" means a document that demonstrates the clear intention to release rights in the  
15 surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

16 (35) "Written consent" means a statement that is executed by the owner of the surface estate and  
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27 of which prerequisites must be done in conformity with the requirements of this part.

28 (2) An application for a prospecting permit must be made in writing, notarized, and submitted to  
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19 prospected if that acreage is incorporated into the complete reclamation plan submitted with the application  
20 for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating  
21 under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan  
22 must be promptly reclaimed.

23 (6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation  
24 in the same manner as strip-mining or underground-mining permits under this part.

25 (7) The holder of the prospecting permit shall file with the department the same progress reports,  
26 maps, and revegetation progress reports as are required of strip-mining or underground-mining operators  
27 under this part.

28 (8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to  
29 82-4-227 or 82-4-228, ~~and~~ that is not conducted for the purpose of determining the location, quality, or  
30 quantity of a ~~natural~~ mineral deposit, and that does not remove more than 250 tons of coal is not subject

1 to subsections (1) through (7). In addition, prospecting that is conducted to determine the location, quality,  
 2 or quantity of a ~~natural~~ mineral deposit outside an area designated unsuitable, that does not remove more  
 3 than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to  
 4 subsections (1) through (7). However, a person who conducts prospecting described in this subsection shall  
 5 file with the department a notice of intent to prospect that contains the information required by the  
 6 department before commencing prospecting operations. If this prospecting substantially disturbs the natural  
 7 land surface, it must be conducted in accordance with the performance standards of the board's rules  
 8 regulating the conduct and reclamation of prospecting operations that remove coal. The department may  
 9 inspect these prospecting and reclamation operations at any reasonable time."

10

11 **SECTION 4. SECTION 82-4-233, MCA, IS AMENDED TO READ:**

12 **"82-4-233. Planting of vegetation following grading of disturbed area. (1) ~~After~~ Except as provided**  
 13 **in subsection (4), after** the operation has been backfilled, graded, topsoiled, and approved by the  
 14 department, the operator shall prepare the soil and plant ~~such~~ the legumes, grasses, shrubs, and trees ~~as~~  
 15 that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and  
 16 permanent vegetative cover of the same seasonal variety native to the area of land to be affected and  
 17 capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation  
 18 of the area except that introduced species may be used in the revegetation process where desirable and  
 19 necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

20 (a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock  
 21 at least comparable to that which the land could have sustained prior to the operation;

22 (b) regenerating under the natural conditions prevailing at the site, including occasional drought,  
 23 heavy snowfalls, and strong winds; and

24 (c) preventing soil erosion to the extent achieved prior to the operation.

25 (2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer,  
 26 mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse  
 27 vegetative cover ~~shall~~ must be defined by rules of the board.

28 (3) All underground shafts, tunnels, or other excavations are excluded from the provisions of  
 29 subsection (1) ~~of this section~~.

30 (4) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded

1 prior to January 1, 1984, using a seed mix that was approved by the department pursuant to subsection  
 2 (2) and on which the reclaimed vegetation otherwise meets the requirements of subsection (1) and  
 3 applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable  
 4 and necessary to achieve the postmining land use and may compose a major or dominant component of  
 5 the reclaimed vegetation."

6  
 7 **SECTION 5. SECTION 82-4-235, MCA, IS AMENDED TO READ:**

8 **"82-4-235. (Temporary) Inspection of vegetation -- final bond release.** Inspection and evaluation  
 9 for permanent diverse vegetative cover shall must be made as soon as it is possible to determine if a  
 10 satisfactory stand has been established. If the department determines that a satisfactory permanent diverse  
 11 vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after  
 12 public notice and an opportunity for hearing as provided in 82-4-232(6). ~~In no event shall such~~ The  
 13 remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding,  
 14 fertilizing, irrigation, or other work required under this part for those operations or portions of operations  
 15 that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all  
 16 exploration activities and all other operations.

17 **82-4-235. (Effective on occurrence of contingency) Inspection of vegetation -- final bond release.**

18 (1) Inspection and evaluation for permanent diverse vegetative cover must be made as soon as possible  
 19 following an application for final bond release to determine if a satisfactory stand has been established. If  
 20 the department determines that a satisfactory permanent diverse vegetative cover has been established,  
 21 it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for  
 22 hearing as provided in 82-4-232(6). ~~For land that was seeded using a seed mix that included a substantial~~  
 23 ~~component of introduced species approved by the department pursuant to 82-4-233(2) and on which~~  
 24 ~~reclaimed vegetation otherwise meets the requirements of 82-4-233(1), approval of reclaimed vegetation~~  
 25 ~~for release of bond may not be withheld on the basis that introduced species compose a major or dominant~~  
 26 ~~component. Except as provided in subsection (2)(b), the~~ The remaining bond may not be released prior to  
 27 a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required  
 28 under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior  
 29 to a period of 5 years after initial planting for all exploration activities and all other operations.

30 (2) (a) Notwithstanding the provision in subsection (1), on land from which coal was removed prior

1 to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or  
 2 redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond  
 3 on an area of reclaimed vegetation that meets the following criteria:

4 (i) it was seeded using a seed mixture that was approved by the department under the criteria  
 5 established pursuant to 82-4-233 and that included introduced species; and

6 (ii) at least one of the following conditions exists:

7 (A) the standards of 82-4-233(1) are otherwise achieved;

8 (B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing  
 9 of livestock;

10 (C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat  
 11 component for wildlife present in the area; or

12 (D) the topography and soils are suitable for conversion to cropland or hayland consistent with the  
 13 standards of 82-4-232(8) and the department approves and the operator completes that conversion.

14 (b) On lands that meet the criteria described in subsection (2)(a), interseeding or supplemental  
 15 planting may be performed without reinitiating the liability period provided in subsection (1)."

16  
 17 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an  
 18 integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to  
 19 [section 1].

20  
 21 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are  
 22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 23 applications, the part remains in effect in all valid applications that are severable from the invalid  
 24 applications.

25  
 26 **NEW SECTION. Section 8. Retroactive applicability.** [This act] applies retroactively, within the  
 27 meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992.

28  
 29 **NEW SECTION. Section 9. Effective date.** ~~[This act]~~ **DATES.** (1) **EXCEPT AS PROVIDED IN**  
 30 **SUBSECTION (2), [THIS ACT]** is effective on passage and approval.

