

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 9,
1995, at 1:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)

Members Excused: SEN. WILSON

Members Absent:

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 46, SB 48
Executive Action: SJR 2

{Tape: 1; Side: A}

HEARING ON SB 48

Opening Statement by Sponsor:

SENATOR TOM KEATING, SENATE DISTRICT NO. 5 from Billings, said
the Legislative Auditor does financial and performance audits for

all government agencies and quite frequently discovers flaws in the laws that are different from the department practice, or the department action doesn't coincide with the statutes. He said SB 48 is a housekeeping bill. The legislative auditor pointed out that the time period for permitting was not conducive to the proper functioning of the Air Quality Division. In order to speed up the permitting process there are some amendments to the time period that allows the applicant to delay the permit if he would need more time. SB 48 also addresses the matter of inspections allowing the department access to various records pertaining to emission controls. **SEN. KEATING** stated he was not clear on the civil & criminal penalties in the bill, but thought it meant eliminating criminal penalties and allowing civil penalties.

Proponents' Testimony:

Jeffrey Chaffee, Air Quality Division, Department of Health and Environmental Sciences, said SB 48 is a housekeeping bill meant to bring the state statutes up to date in line with the Federal Clean Air Act. **EXHIBIT 1.**

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MACK COLE asked **Mr. Chaffee** if he would give an example of the meaning in Section 1. that states "whereby you need extensions."

Jan Sensibaugh, Air Quality Division. said a preliminary determination is issued that states all the conditions of the limitations in the permit and asks for public input. There have been instances where a company has not agreed with the emission limitations, and the company may want to submit additional information so as to revise the department's ruling. She said there are times that it takes more than the 15 days allowed to get the information to the department. When enforcing conditions, testing or actual monitoring of equipment may be required, a technical determination may require some technology and the company may ask for an explanation as to the determination. **Ms. Sensibaugh** said SB 48 allows the company more time to gather additional information for review.

SEN. MIKE FOSTER asked **Mr. Chaffee** about Section 2 (**EXHIBIT 1**) where he referred to "records." He asked what specific records would be reviewed.

Mr. Chaffee said data from the source covering emissions from the stack including the amount of fuel burned and various parameters that are tied to the permit conditions. Details of production records, etc. would not be included.

SEN. FOSTER asked if it was specifically written what can or cannot be examined. **Mr. Chaffee** replied it wasn't written anywhere what could or could not be examined, but as a matter of practice, in a compliance inspection the department deals with permit conditions relating to air quality. The department may request further data and the facility has a right to inquire why the additional information is requested.

SEN. FOSTER said on Page 4 of SB 48, Lines 6-14 there is a listing of several provisions. References were made to Title 5, the Federal Clean Air Act, and wondered if the wording in Lines 3-5 was from Title V.

David Rusoff, Attorney, Department of Health, Air Quality Division, said most of the language in the bill came out of the EPA Inspection statute. That statute says that "the administrator or authorized representative upon presentation of his credentials, shall have the right of entry to upon or through any premises of such a person or in which any records required to be maintained are located, and at reasonable times, access to copy any records, inspect any monitoring equipment, or method required under Paragraph 1 and sample any emissions that the owner or operator of such source is required to sample." Some of the language may have also come from the Federal Regulations.

SEN. FOSTER asked if there was anything in Lines 3-5 that the department has added in the bill that isn't in Title V. **Mr. Rusoff** said nothing was added into the bill that wasn't a federal requirement. Sec. 114 of the Federal Clean Air Act which refers to the administrator of EPA states "... may at reasonable times have access to copy records and to inspect and sample any monitoring equipment or method."

SEN. BROOKE asked **Mr. Rusoff**, with regard to **SEN. FOSTER'S** concern, would it be correct in assuming that Page 4, Line 10 guarantees that the department or authorized representative would be allowed to examine only the facility, equipment, practices, or operations regulated by the permit process. **Mr. Rusoff** said that is correct, the only authority the department has under the statute is to inspect the facility's records they are required to keep and maintain under the statute or a permit condition.

SEN. KEATING asked **Mr. Rusoff** if he knew that the language on Page 4, Lines 6-14 that says you can look at the records, are required under the permitting process, and if the department was

ever refused any information in the absence of this language in the department's inspection. **Mr. Chaffee** replied he didn't believe so.

CHAIRMAN GROSFIELD said each reference refers to Chapter 2, "anything kept by virtue of Chapter 2 or rule order permit issued under this Chapter..." He said it doesn't mention any financial records or permit records.

CHAIRMAN GROSFIELD asked **Mr. Chaffee** if it was his intention to issue as many 30 day extensions as were appropriate. **Mr. Chaffee** replied if the permit applicant asks for more time, SB 48 would allow the extension. **CHAIRMAN GROSFIELD** said Page 3, Line 4 states: "An additional 30-day extension may be granted by the department on request of the applicant." He said on Page 4, Section 3, it states. "both civil and criminal penalties." He said the department needs that authority because the EPA also has that authority. He asked if both the EPA and the department had ever filed civil and criminal penalties against a company. **Mr. Chaffee** replied it is a primacy issue under Title V, and in some instances it may be necessary to file both criminal and civil cases.

CHAIRMAN GROSFIELD asked if EPA had already approved the primacy. **Mr. Chaffee** replied it was submitted to EPA about a year ago and expect approval by April 6 of this year.

SEN. KEATING stated to be served with a criminal penalty you have to knowingly and willfully violate the law. To prove that person knowingly caused that exceedence is much more difficult to prove and criminal penalty can only be assessed on that basis. He said criminal penalty is only for the bad guys.

Closing by Sponsor:

SEN. KEATING said he would appreciate DO PASS on SB 48.

{Tape: 1; Side: B}

HEARING ON SB 46

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, Senate District 17, Madison, Gallatin, and Silver Bow Counties, stated SB 46 is before the committee members to correct an oversight in SB 94 of the 1991 Legislative Session that established the funding for the Ground Water Assessment Program for the Bureau of Mines. That bill addressed increased fees for the Ground Water Assessment Tax fund. He stated there were two sections of the statute that relate to that assessment.

The statute that was in the Department of Revenue (DOR) was not corrected and therefore part of the funds going into the Ground Water Assessment Program were not available. The DOR couldn't violate the law, so the funds were not available, and resulted in the termination of a number of employees. That situation was brought before the Revenue Oversight Committee, the Legislative Finance Committee, EQC, and the Water Policy Committee. In the interim, a funding mechanism was put in place to get them through that oversight.

Proponents' Testimony:

Jim Stimpson, Chairman Montana Ground Water Assessment Steering Committee, oversees the two programs of the Montana Bureau of Mines that is under discussion. He said the Montana Ground Water Assessment Act was passed in 1991 and the Metal Mines tax was part of that funding structure. The error was discovered late in April of 1993. At that time it was clear that there would be funding shortages and indeed, an error in the original bill.

Mr. Stimpson stated the Montana Ground Water Assessment Act establishes the Bureau of Mines and Geology to monitor ground water for the long term. He stated, there are approximately 730 wells to be monitored quarterly that will be a long term function. The state is divided into approximately twenty basins and classic groundwater studies are carried out in those basins to determine where the groundwater resources are and which aquifers are contributing, and if there are any other aquifers that could contribute. He informed the committee members that this was the first program of its kind. As an example, North Dakota started their program in 1955, completed it and started over again.

Mr. Stimpson said the problem with the Metal Mines tax has contributed to a very serious financial crisis for the programs and were basically shut down throughout the summer. He asked the committee members to consider passage of SB 46 as soon as possible to correct the funding shortage.

SEN. BECK, HOUSE DISTRICT 28, informed the committee members that he carried SB 95 in the 1993 Legislative Session. He said they were trying to divert some of the funds before they went into the Resource Indemnity Trust fund which would have extended the target of \$100 million in the trust fund that was coming from the metal mines tax. However, there was a code that said all the funds had to go into the RIT fund. The true intent of this bill is exactly the same as it was last time. **SEN. BECK** stated moratoriums were being put on surface water, and SB 46 would also monitor the ground water situation for pollutants. It is a hundred times more expensive to clean up ground water than surface water. He said he would appreciate passage of the bill as quickly as possible to correct the funding as originally intended.

Mike Murphy, Executive Director, Montana Water Resources Association, stated he would like to go on record in support of SB 46.

Mark Simonich, Director, National Resources and Conservation, stated he was here on behalf of Governor Racicot to support SB 46. He said the oversight that created this diversion was discovered last year and the Governor's office was trying to fix that problem in the immediate short term. In concurrence with the Water Policy Committee, the Revenue Oversight Committee, and the Legislative Finance Committee, Governor Racicot tapped into the Environmental Contingency Account to fund this program through the fiscal year, with the idea he was not going to continue to do that.

Mr. Simonich informed the committee members that there were some amendments to the proposed legislation to fix a second oversight. HB 608 that was passed during the 1993 Legislative Session that dealt with the Resource Indemnity Trust, was also a diversion of proceeds into the trust. They were trying to fund some agency budgets and move the Grant and Loan Program higher up on the list of priorities. **EXHIBIT 2** contains the flow chart of the RIT Trust. **Mr. Simonich** said before HB 608, agency budgets were funded with the interest from the RIT Trust, and any funds left over went into the Grant and Loan Programs which was then the Water Development Grant Program, Renewable Resource Grant and Loan Program, and the Reclamation Development Grant Program. As the agency became more and more dependent on RIT money, less money was going into the grant & loan program. The flow chart (**EXHIBIT 2**) showing 10% on the left and 30% on the right are the percentages that fund those agencies.

Mr. Simonich stated that HB 608 was drafted to follow identically what was done with the water characterization. The metal mines tax was not tapped for a diversion of funds the same was the Ground Water Characterization was done. He said it was suspected there would be a shortfall in RIT money this coming biennium because of the projections of revenue. The proceeds and interest from the trust what the agency budgets would be projected for the grant and loan programs. At that time it appeared that the RIT fund was going to have a deficit of \$5.7 million. The Governor the Governor's staff, the budget office and my staff budget to find ways to solve the problem. The Governor selected an approach that took 3 steps: 1. \$1 million in cuts from agency budgets, most of which came from the state water projects. Those were Battle Creek Reservoirs and Ruby Creek Reservoirs that are unsafe dams and had planned to do feasibility studies on. That makes up about \$950,000 in agency budgets. 2. General Fund replacement, one of the reasons agency budgets continue to be funded more on RIT money and less was available for grants because in previous bienniums whenever there was a budget crunch, can we use RIT in order to cut the general fund. The Governor was willing to come in with part of his budget that he proposed and back fill these agency budgets with \$3.6 million of General

Fund. Those funds would have been utilized out of the RIT interest proceeds. That takes us up to about \$4.6 million of the \$5.7 million deficit. Approximately \$950,000 - \$960,000 was to fix the oversight with this legislation. The Governor offers these amendments to this bill. **EXHIBIT 3.**

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. KEATING said **SEN. BECK** commented that the purpose of the Ground Water Assessment coming out of the tax was to prolong the contribution to the trust that was increasing taxes on the oil, gas and coal people because the tax was diverted before it got into the trust fund. The purpose of the tax is to fund the trust. He said the whole constitutional thrust is to have a \$1 million trust that would be funded from Statutory taxes on the value of extracted material. Now they begin to tap the tax for the ground water rather than allowing the trust to achieve its \$100 million goal. When the tax is tapped for the ground water it does not allow the trust to reach the \$100 million goal. **SEN. KEATING** asked why the department couldn't be satisfied with using a part of the approximate \$16 million of interest income for the Ground Water Assessment rather than taking taxes from oil, gas, coal companies, and the royalty owners.

Mr. Simonich answered that DNRC did not make the decision on how to fund the Ground Water Assessment, and didn't think anyone would be adverse to funding that program from the interest proceeds. He said there are so many programs the trust won't fund all of them. Once the funds are deposited in the RIT account they cannot be taken out. Therefore, those funds were diverted before being deposited into the trust. Because of that diversion, it will take longer for the trust to reach the \$100 million cap, but any amount above the \$100 million in the trust could be used.

SEN. KEATING said the Ground Water Assessment Program monitors water quality across the state for the benefit of all the citizens. He said water is very important to agriculture, irrigators, wild life and cities and towns. The Ground Water Assessment program has a legitimate government value to it. The Renewable Resource Grants that uses taxpayer's money for their private property on an individual basis, does not go to the general public. **SEN. KEATING** said the Ground Water Assessment program should have priority in the order of use of interest income proceeds and move the Renewable Grants farther down the list. **Mr. Simonich** stated that was a possibility, but was at the discretion of the Legislature. Those other programs came for funding previous to the Ground Water Assessment request. He said The Ground Water Assessment Program is a critical program

statewide, and that we understand the ground water resources we have in the state both in quantity and quality.

SEN. TVEIT said in the 4th amendment, striking 13.3% and inserting 7.2% (**EXHIBIT 3**) is about 6% decrease to the RIT fund. He asked if the development grants were increased by 4.6%. **Mr. Simonich** replied currently the funds are flowing into the trust and the interest income is flowing into those other programs.

Some of the metal mines funds will also be diverted from the trust.

SEN. TVEIT asked if the 4.6% was new language in amendment 5. **Mr. Simonich** replied that was correct.

{Tape: 2; Side: A;}

John Tubbs, Department of Natural Resources and Conservation responded that the RIT proceeds are as follows: 10% Renewal Resource Program, 30% Reclamation and Development Grants, and 14.1% the Ground Water Assessment program. 15.5% is currently deposited into the trust. He said 1.5% is deposited into the Renewal Resource account and 4.6% is deposited into the Reclamation and Development account. He said the grants are funded from interest earnings and are deposited into the State Special Revenue account.

SEN. FOSTER asked **Mr. Simonich** if he would make up a graph with the series of amendments as proposed by the Governor. **Mr. Simonich** responded he would provide that information to the committee members.

SEN. FOSTER asked **SEN. SWYSGOOD** if he would share his opinion of the amendments proposed by the Governor. **SEN. SWYSGOOD** replied that he had discussed the issue with the department, and was hesitant to incorporate their particular situation into the bill, because of the disbursement of RIT funds. He said during the interim when the problem surfaced, only the Bureau of Mines as related to the Ground Water Assessment Program and the funding for that program, came up before the interim committees. I don't recall that the department ever brought up the subject of that situation. **SEN. SWYSGOOD** said he was apprehensive with the amendments because his obligation was to the Ground Water Assessment program and seeing that the funding continued. He said he was not comfortable taking on something he had not addressed previously.

SEN. CHRISTIAENS inquired of **Mr. Simonich** if the current amount of the trust was \$91 million. **Mr. Simonich** stated that is the correct amount.

SEN. CHRISTIAENS asked if the funds continued to be diverted at this rate it would mean another year and a half before the RIT capped at \$100 million. **Mr. Simonich** answered that based upon revenue proceeds to the trust the projected time frame for reaching the \$100 million would be approximately 1999. With the proposed Governor's amendments it could possibly be extended to 2001.

SEN. BROOKE asked **Mr. Simonich** if he thought the proposed amendments were expanding SB 46 beyond the original intent. She said the bill was introduced to resolve a specific problem and the proposed amendments seem to expand the bill into other complex problems. She stated that under the guidelines of the rules a bill was not to be extended with an amendment beyond the original intent. **Mr. Simonich** replied the approach that was taken was the same as **SEN. SWYSGOOD's** in the Ground Water Assessment Program. He said the results would be the same as the original Senate Bill that was passed.

SEN. BROOKE asked **Mr. Simonich** if the Environment Contingency Fund that was used to resolve some of the Ground Water Assessment Program's problems was typical when a program needed funds. **Mr. Simonich** said the Environment Contingency Fund is used for example, a year ago the city of Gardner's sewage pipe line broke that crosses the Yellowstone River and affluent was being pumped into the river, so that fund was used for that kind of a problem.

SEN. COLE asked **Mr. Simonich** the effect of not having the metal mines funds available and when the water basins study would be completed.

Mr. Simonich said in a routine year the 15% tax on metal mine generates between \$120,000 to \$130,000 annually and the Ground Water Assessment Program operates on \$666,000 allocation annually. He said in 1989, SJR 22 instructed the Environmental Quality Council to see if a ground water program could be established for the state. A task force was formed that studied the problem for over a year and made recommendations that became part of the Ground Water Assessment Act. Because of that task force, the Bureau of Mines was designed to operate on a \$666,000 annual budget. Anticipating the \$666,000, it was estimated to take about twenty to twenty two years to complete the basin studies. However, because the Metal Mines Tax did not contribute the revenue was not generated. **Mr. Simonich** said because if an estimated 15% budget decrease in income to the programs, he could not estimate how much more time it would take to complete the basin studies.

CHAIRMAN GROSFIELD asked **Mr. Tubbs** if the problem was taking the 14.1 million out of one account and not the other account. **Mr. Tubbs** replied that was correct.

CHAIRMAN GROSFIELD asked **SEN. SWYSGOOD** if the effective date of October 1, 1995 would be soon enough, since the bill didn't state

a specific effective date. **SEN. SWYSGOOD** said October 1, 1995 was not soon enough and he would address the committee members on that.

CHAIRMAN GROSFIELD stated he asked **SEN. SWYSGOOD** if he preferred not to accept the amendment at this time. **SEN. SWYSGOOD** replied that was his intention. **SEN. GROSFIELD** asked **Mr. Simonich** if the committee members chose not to accept the amendment, if he would look for another sponsor. **Mr. Simonich** said that is correct.

CHAIRMAN GROSFIELD remarked that the Ground Water Assessment Program was very important. That program was hit very hard in the last session. It was discussed in EQC and the Policy Committee, and they sent a resolution to the Senate Finance Committee. He told **Mr. Simonich** that perhaps they should find another bill draft.

Closing by Sponsor:

SEN. SWYSGOOD told the committee members he appreciated the consideration on SB 46 and informed DNRC that he would not support their proposed amendments. SB 46 was very specific and was addressed by numerous interim committees and this bill was recommended. He asked the committee to provide an effective date to SB 46 upon approval and passage of the bill.

EXECUTIVE ACTION ON SJR 2

Motion: **SEN. BROOKE MOVED SJR 2 DO PASS.**

Discussion: **SEN. KEATING** said Page 3, Line 6 ...form of funding or in-kind services, that the Legislature remain open to those contingencies. He said he was reluctant to use state funds for the museum. The Museum of the Rockies cost the state a lot of money. He presented an amendment to SJR 2, **EXHIBIT 4**. He said he didn't want to give the illusion that this legislative body or any other legislative body would be thinking of funding this program.

Motion: **SEN. KEATING MOVED THE ADOPTION OF THE AMENDMENT AS CONTAINED IN EXHIBIT 4.**

{Tape: 2; Side: B;}

Discussion: **SEN. FOSTER** informed the committee members that he had a similar amendment to be considered. **EXHIBIT 5**. He said if the elimination of "funding or" would take care of it he would

not pursue his amendment. His amendment would eliminate Page 3, Lines 4-6. He asked the committee for their consideration when they decided on **SEN. KEATING'S** proposed amendment.

SEN. COLE asked **SEN. KEATING** if he wanted to leave in "tangible" because that could mean funding as well. **SEN. KEATING** answered that "tangible" didn't necessarily mean funding. He said in order to stimulate a public service like the museum by way of income tax payments from an estate if they would make a

contribution, he would not want to interfere with those kinds of support for the museum.

SEN. WELDON stated he would have to vote against the amendment. He didn't know the history of the Museum of the Rockies. He said if the museum concept happens it will be a state resource, not just a federal resource or just Missoula County. If there is some sort of state funding, he would like to leave the door open for that opportunity.

SEN. CHRISTIAENS stated that it was very clear that \$2 million would be expected from the state at some point in time. It is extremely difficult to raise that kind of money without legislation.

SEN. KEATING said taking funding out of this bill does not close the door on financial help from the state. The purpose in removing the funding is not to entice anyone to come and ask for or expect they will get it.

Vote: Motion to adopt amendment as per **EXHIBIT 5** passed 6 - 3 on a roll call vote.

SEN. BROOKE said the language should stay in because it states positively that there is an interest in the museum. It is a good project and would like to see some of our resources in the form of in-kind services going toward that effort in preserving state resources.

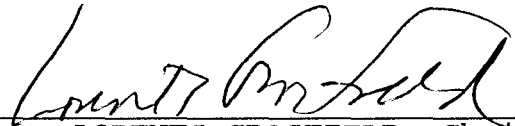
CHAIRMAN GROSFIELD asked the committee members to review Page 3, Line 3 that states that we are encouraging strong and continuing cooperation and etc., providing advice and other appropriate assistance. He said he agreed with **SEN. FOSTER** that Lines 4 - 6 were not inherent because of language in Line 3.

Motion/Vote: **SEN. FOSTER MOVED TO ADOPT THE AMENDMENT CONTAINED IN EXHIBIT 5** Motion carried 5 - 4 on a roll call vote.

Motion/Vote: **SEN. FOSTER MOVED SJR 2 DO PASS AS AMENDED.** Motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 2:30 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary

LR/tr

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 10, 1995

MR. PRESIDENT:



We, your committee on Natural Resources having had under consideration SJR 2 (first reading copy -- white), respectfully report that SJR 2 be amended as follows and as so amended do pass.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 3, lines 4 through 6.
Strike: lines 4 through 6 in their entirety

-END-

 Amd. Coord.
 Sec. of Senate

081036SC.SPV

TESTIMONY ON SENATE BILL NO. 48

Jeffrey T. Chaffee
Air Quality Division
Department of Health and Environmental Sciences

Mr. Chairman, members of the committee, my name is Jeff Chaffee and I represent the Department of Health and Environmental Sciences. SB 48 makes changes to the department's air quality permitting and enforcement authority to remedy some of the problems identified by the legislative auditor during a performance audit and EPA through review of Montana's operating permit program.

The changes include: extending the 60-day criteria for issuing a department determination; amending the inspection statute to provide for the right of entry to any premises in which required records are located, the right to copy records and the right to inspect monitoring equipment and methods and to sample emissions; and deleting the "in lieu of" language in the civil penalty statute.

Section 1. The proposed amendment to 75-2-211 addresses a recommendation of the Legislative Auditor's performance audit of the Air Quality Bureau. The legislative auditor identified that the department needed to address the following problem: Once the department issues a preliminary determination (PD) to the applicant which specifies intended air quality permit conditions and requirements, there is a 15-day response period for comments on the PD. If no comments are received, a department determination (DD) which finalizes the permit conditions and requirements is issued. The department has 60 days from the receipt of a complete application to issue the DD. If there are disagreements on the

conditions and requirements in the PD, the department attempts to negotiate and resolve the issues prior to the 60-day milestone since once the DD is issued the only recourse for the applicant is an appeal to the Board of Health and Environmental Sciences. However in some instances the department is unable to resolve the issues within the mandated time period but because legitimate negotiation activities are taking place and it is in the interest of all parties to continue the negotiation and not appeal to the Board, the 60-day time period is missed. The AQD is adding language to provide for a mutually agreed upon 30-day extension to the current 60-day criteria for issuing a department determination with additional 30-day extensions granted upon request of the applicant. The Air Quality Division met with the Clean Air Act Advisory Council (CAAC), a group comprised of regulated industry, environmental groups, small business and the general public, to discuss this legislative change on November 3, 1994. Everyone agreed this was necessary.

Section 2. In order to receive EPA's approval of the state's operating permit program, and maintain primacy for air quality activities in the state, section 75-2-403 needs to be amended. The changes to 75-2-403 are necessary to allow the department to determine that the source is in compliance with all applicable requirements and provide the department, or an authorized representative, access to information required under this chapter, or a rule, order or permit issued under this chapter. Currently the state statute provides only for inspections where an air contaminant source is located or being constructed or installed,

however pertinent records or monitoring equipment could be located away from the air contaminant source. The department also needs the authority to copy any record, or inspect any facility, equipment, practice or operation that is a requirement of or regulated under this chapter, a rule, or a permit issued under this chapter. In addition in order to ensure compliance with the provisions of this chapter or rule, order or permit issued under this chapter, the department must be allowed to sample or monitor substances or parameters.

Section 3. Under section 3 of the bill, the proposed amendment would delete language from section 75-2-413, MCA, that prevents the Department from recovering both a civil penalty and a criminal fine for the same violation. The statute now provides that a civil penalty is "in lieu of the criminal penalty provided for in 75-2-412."

The Department proposed this amendment as part of the Department's effort to obtain EPA approval of the Department's title V operating permit program since EPA identified the provision of section 75-2-413 as a potential barrier to approval of the state operating permit program. EPA requires that a state have the authority to recover both a civil penalty and a criminal fine for an intentional violation of the air quality laws.

Under section 75-2-412, MCA, of the Clean Air Act of Montana, the Department may institute a criminal action if a person "knowingly" violates the act or a rule, order or permit made or issued under the act or if a person knowingly makes a false material statement, representation or certification or knowingly

EXHIBIT NO. 1
DATE 1-9-95
BILL NO. SB-48

renders a required monitoring device or method inaccurate. An offense is a misdemeanor subject to a fine of up to \$10,000 per violation and/or imprisonment for up to 2 years. Any fines must be deposited in the state general fund.

Section 75-2-413, MCA, does not require a showing of intent and provides authority for the Department to bring a civil action in state district court to recover a civil penalty of up to \$10,000 per violation. Like criminal fines, any civil penalty must also be deposited in the state general fund.

The purpose of a criminal fine, under the Clean Air Act, is punishment and deterrence. The purpose of a civil penalty is compensation to the state for environmental harm. Courts have ruled that recovery of both is appropriate for the same violation as long as the civil penalty assessed is not so disproportionate to the harm caused as to constitute punishment or deterrence rather than compensation. (See, e.g., U.S. v. Barnette, 10 F.3d 1553, 1558-1559 (11th Cir. 1994).

Thank you for the opportunity to comment. I would be happy to answer any questions.

EXHIBIT NO. 2

DATE 1-9-95

BILL NO. SB 46

RIGWA TAX

RIT TRUST

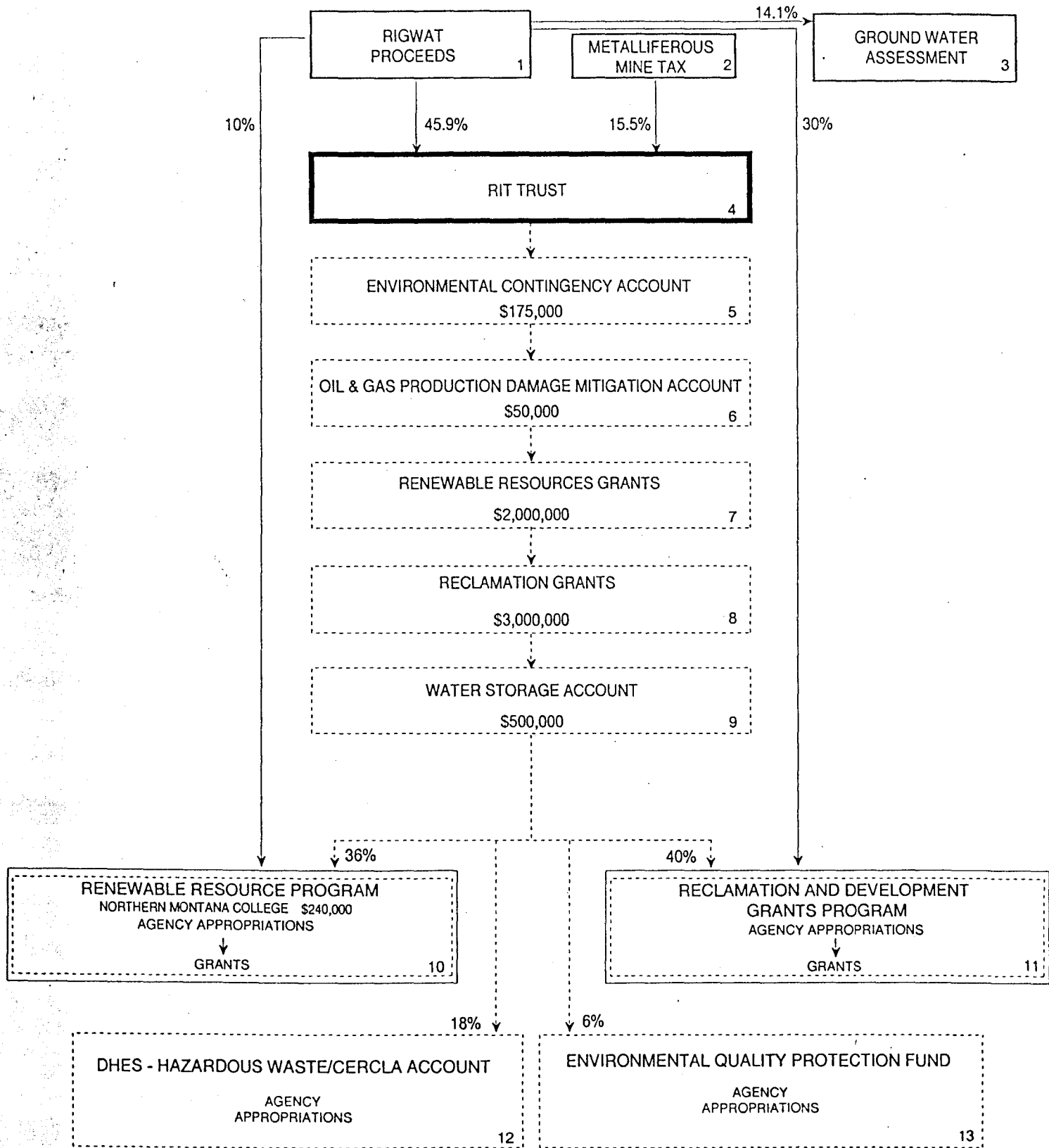
**Flow of Funds for the RIGWAT and RIT Trust Interest Earnings
FY 96-97**

Source: Department of Natural Resources and Conservation
Phone #444-6667

Ray Beck, Administrator
Anna Miller, Financial Advisor
John Tubbs, Bureau Chief

ALLOCATION OF RIT PROCEEDS AND INTEREST

1997 Biennium



- 1 The Resource Indemnity Ground Water Assessment Tax (RIGWAT) is a 0.5 percent tax of the gross value of the product of all mineral mining. The tax was originally created in 1973. Mineral production including oil, natural gas, coal, metals (gold, silver, copper, lead), talc, vermiculite, limestone and other "nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana (15-38-103) are taxed. The purpose of the tax is to "protect and restore the environment from damages resulting from mineral development; to support a variety of development programs that benefit the economy of the state and the lives of Montana Citizens; and to assess the state's ground water resources." (15-38-102, MCA)
- 2 The Metalliferous Mine Tax is a tax on "annual gross value of product" of all metal mine production or precious or semiprecious gem or stone production (15-37-101 et. seq.). The tax rate is 1.81 percent of the annual gross value over \$250,000 for concentrate shipped to a smelter, mill, or reduction work (15-37-103, MCA). For gold silver or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery, the tax rate is 1.6 percent of the annual gross value over \$250,000 (15-37-103, MCA). A 15.5 percent portion of the metalliferous mine tax is deposited into the RIT trust. The remaining 84.5 percent is distributed to several areas including the general fund, a hard-rock mining impact trust, and impacted counties.
- 3 The Ground Water Assessment Account was created in 1991 (85-2-901 et. seq., MCA). The purpose of the account is to fund a statewide ground water assessment program that will monitor quantity and quality of the state's ground water. The statute allocates 14.1 percent or a maximum of \$666,000 per year of the RIGWAT proceeds to this account. The program is staffed by the Bureau of Mines and Geology in Butte. An oversight committee reviews all expenditures, approves monitoring sites, prioritizes areas, coordinates information, and evaluates reports.
- 4 The Resource Indemnity Tax trust was created in 1973. RIGWAT (45.9%) and Metalliferous Mine Tax (15.5%) proceeds are deposited into the trust. Prior to 1991, 100 percent of the RIGWAT proceeds were deposited into the trust. No funds that are deposited into the trust can be spent until the total deposits exceed \$100 million. This protection is provided in Article IX, Section 2 of the Montana constitution. Trust fund proceeds are invested and the interest earnings are distributed to several natural resource programs.
- 5 The Environmental Contingency Account was created in 1985 (75-1-1101 et. seq., MCA). The Governor has the authority to approve expenditures from this account to meet unanticipated public needs. Specifically, the statute limits projects to the following objectives: (a) to support renewable resource

development projects in communities that face an emergency or imminent need for the services or to prevent the failure of a project; (b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including natural disasters or fire; to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and to fund the environmental quality protection fund. Each biennium \$175,000 of the RIT trust interest earnings are allocated to this account. The balance in this account cannot exceed \$750,000.

- 6 The Oil and Gas Production Damage Mitigation Account was created in 1989 (85-2-161, MCA). The Board of Oil and Gas Conservation may authorize the payment for the cost of properly plugging a well and either reclaiming and/or restoring a drill site or other drilling or producing areas damaged by oil and gas operations. The site must be abandoned and the responsible person either cannot be identified or refuses to correct the problem. Each biennium \$50,000 of the RIT trust interest earnings are allocated to this account. The balance in this account cannot exceed \$200,000.
- 7 Renewable Resource Grants receive \$2 million in RIT trust interest earnings. The Renewable Resource Grant and Loan program was created in 1993 by combining the Renewable Resource Development program and the Water Development program. The Renewable Resource Development program was originally established in 1975. The Water Development program was originally established in 1981. The purpose of the grant program is to fund projects that conserve, develop, manage, and preserve water and other renewable resources. The program provides preference to projects that support the state water plan. Projects include construction and rehabilitation of existing water supply systems and waste water systems, educational efforts, feasibility studies, development of water storage, enhancement of renewable resources including recreation, reduction and advancement of agricultural chemical use, and improvement of water use efficiency (85-1-602, MCA).
- 8 The Reclamation Development Grants Program was originally established in 1987. The purposes of the program are to: (a) repair, reclaim, and mitigate environmental damage to public resources from nonrenewable resource extraction; and (b) to develop and ensure the quality of public resources for the benefit of all Montanans (90-2-1101, MCA). Projects have ranged from plugging abandoned oil and gas wells, reclaiming mine sites, non-point source pollution control projects, researching new technologies for mine waste clean-up, conducting ground water studies to determine the extent of contamination, and cleaning up pesticide contamination. A minimum of \$3 million of RIT trust interest earnings are allocated for these grants.

- 9 The Water Storage Account was established in 1991 (85-1-701 et. seq., MCA). The purpose of the account is to provide funding for projects that rehabilitate existing water storage facilities or develop new ones. Priority is given to high hazard, unsafe dams. Each biennium \$500,000 of RIT trust interest earnings are deposited into this account. Currently, the only project to receive water storage account funding is the rehabilitation of the state owned dam on the Tongue River in eastern Montana.
- 10 The Renewable Resource grant and loan Program state special revenue account receives 36 percent of the remaining interest earnings from the RIT trust and 10 percent of the RIGWAT proceeds. This special revenue account also receives revenue from state water projects, excess deposits in the renewable resource debt service account, and other administrative fees. The revenues are used to fund natural resource agency projects and administration including DNRC, Governor's Office, Water Court and the State Library.
- 11 The Reclamation and Development Grant Program state special revenue account receives 40 percent of the remaining RIT trust interest earnings and 30 percent of the RIGWAT proceeds. The revenues are used to fund natural resource agency projects and administration including DNRC, DSL, State Library, and EQC.
- 12 The Hazardous Waste CERCLA Account is administered by the Department of Health and Environmental Sciences. (CERCLA stands for the federal Comprehensive Environmental Response, Compensation, and Liability Act). This account receives 18 percent of the remaining RIT trust interest earnings. The account was established in 1983 and is to be used to make payments on CERCLA bonds, implementation of the Montana Hazardous Waste Act, and to provide assistance in remedial action under CERCLA.
- 13 The Environmental Quality Protection Fund was established in 1985 and is administered by the Department of Health and Environmental Sciences. This account receives 6 percent of the remaining RIT trust interest earnings. The purpose of this account is to provide funding for remedial actions taken by the department in response to a release of hazardous or deleterious substances.

RIGWAT PROCEEDS, RIT TRUST INTEREST EARNINGS, AND EXPENDITURES
1997 Biennium

EXHIBIT NO. 2
DATE 1-9-95
BILL NO. SB-46

RIGWAT PROCEEDS PROJECTIONS	RIGWAT Proceeds	Metal Mine Tax Proceeds	Deposits To RIT Trust	Trust Balance
FY 95	\$2,979,674	\$797,469	\$2,463,107	\$91,776,719
FY 96	3,041,004	872,800	2,268,621	94,045,340
FY 97	3,030,203	823,029	2,213,892	96,259,232

RIT TRUST INTEREST EARNINGS PROJECTIONS	FY96	FY97	TOTAL
	7,703,657	7,763,086	15,466,743

TOTAL 1995 BIENNIUM ALLOCATION OF RIT INTEREST EARNINGS	\$15,466,743
Environmental Contingency Account	\$175,000
Oil & Gas Production Damage Mitigation Account	50,000
Renewable Resource Grant & Loan Program	2,000,000
Reclamation & Development Grants	3,000,000
Water Storage Account	500,000
TOTAL BIENNIAL APPROPRIATIONS	5,725,000
AMOUNT AVAILABLE FOR FURTHER DISTRIBUTION	9,741,743

Distribution of Remaining Interest Earnings

Account	Renewable Resource	Reclamation & Development	Hazardous Waste/ CERCLA	Environmental Quality Protection	TOTAL
Percent Distribution of RITT Interest	36%	40%	18%	6%	100%

Beginning Balance	\$572,226	\$212,524	\$968,414	\$841,669	\$2,594,833
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Revenues					
RIT Interest	\$3,507,027	\$3,896,697	\$1,753,514	\$584,505	\$9,741,743
RIGWAT Proceeds	607,121	1,821,362			\$2,428,483
Debt Service Sweep (04011 and 04008)	919,444				919,444
RRD Loan Repayments	238,900				238,900
Interest (STIP)			120,000	120,000	240,000
Cost Recoveries			514,000	1,237,000	1,751,000
Administrative Fees	10,000				10,000
State Owned Project Revenue	459,290				459,290
Total Funds Available	\$6,314,008	\$5,930,583	\$3,355,928	\$2,783,174	\$18,383,693

Appropriation					
Montana State University, Havre	240,000				240,000
DNRC Centralized Services Division	875,245	154,001			1,029,247
DNRC Conservation and Resource Development	649,931	1,185,566			1,835,497
DNRC Water Resources Division	1,737,971	2,051,709			3,789,680
Reserved Water Rights Compact Commission	131,638	534,516			666,154
DNRC State Water Projects	1,690,000				1,690,000
DSL Reclamation Division		2,082,177			2,082,177
DSL Central Management		78,085			78,085
DHES Environmental Division			3,415,016	2,802,350	6,217,366
DHES Radon		50,000			50,000
Governor's Office -- Flathead Basin Commission	80,082				80,082
Water Court	1,024,296				1,024,296
State Library	322,007	285,036			607,043
Environmental Quality Council		28,083			28,083
Pay Plan					0

Total Appropriations	\$6,751,170	\$6,449,174	\$3,415,016	\$2,802,350	\$19,417,710
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Projected Biennium Ending Balance	(\$437,162)	(\$518,590)	(\$59,088)	(\$19,176)	
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<i>Potential Allocation of Metal Mines Tax</i>	\$169,583	\$508,749			
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<i>Projected Balance with Allocation of Metal Mine Tax</i>	(\$267,579)	(\$9,842)	(\$59,088)	(\$19,176)	
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AMENDMENTS TO SB 46
BY REQUEST OF THE GOVERNOR'S OFFICE

3
200-8-10
SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 1-9-95
BILL NO. SB-46

1. Title, line 4

Following: "ALLOCATING" on line 4

Strike: "A PORTION"

Insert: "PORTIONS"

2. Title, line 5

Following: "ACCOUNT" on line 5

Insert: ", THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT, AND THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM STATE SPECIAL REVENUE ACCOUNT;"

3. Title, line 6.

Following: "15-37-117" on line 6

Insert: ", 85-1-604,"

Strike "AND"

Following: "85-2-905" on line 6

Insert: "AND 90-2-1104,"

Following: "MCA" on line 6

Insert: "; AND PROVIDING AN EFFECTIVE DATE."

4. Page 1, line 17.

Strike: "13.3%"

Insert: "7.2%"

5. Page 1

Following: line 19

Insert: "(e) to the renewable resource grant and loan program state special revenue account established in 85-1-104, 1.5% of the total collections each year;

(f) to the reclamation and development grants program state special revenue account established in 90-1-1102, 4.6% of the total collections each year;

Renumber: subsequent subsections.

6. Page 2, lines 7 and 10.

Strike: "(1)(e)"

Insert: "(1)(g)"

7. Page 2.

Following: line 12

Insert: Section 2. Section 85-1-604, MCA, is amended to read:

"85-1-604. Renewable resource grant and loan program state special revenue account created -- revenues allocated -- limitations on appropriations from account. (1) There is created a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant

and loan program state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) ~~38%~~ of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) the metal mine tax proceeds allocated by 15-37-117; and
~~(e) (f) 20% of the resource indemnity tax proceeds allocated~~
by 15-38-202.

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for the following purposes and subject to the following conditions:

(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b) must be used for renewable resource grants.

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (b) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection (c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).

(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for renewable resource projects; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants." Renumber: subsequent sections.

8. Page 3.

Following: line 5.

Insert: "Section 4. Section 90-2-1104, MCA, is amended to read:
"90-2-1104. Reclamation and development grants account. (1)

EXHIBIT NO. 3

DATE 1-9-95

BILL NO. SB-46

There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202; and

(b) the metal mine tax proceeds allocated by 15-37-117; and

~~(b)~~ (c) the resource indemnity trust tax under the provisions of 15-38-106.

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded prior to funding of projects."

NEW SECTION. Section 5 {standard} Effective date. [This act] is effective on July 1, 1995."

Amendments to Senate Joint Resolution No. 2
First Reading Copy

Requested by Senator Keating
For the Committee on Natural Resources

Prepared by Todd Everts
January 5, 1995

SENATE NATURAL RESOURCE
EXHIBIT NO. 4
DATE 1-9-95
BILL NO. SJR 2

1. Page 3, line 6.
Following: "of"
Strike: "funding or"

Amendments to Senate Joint Resolution No. 2
First Reading Copy

Requested by Senator Mike Foster
For the Committee on Natural Resources

Prepared by Todd Everts
January 5, 1995

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 1-9-95
BILL NO. SJR 2

1. Page 3, Strike: lines 4 through 6.

DATE JAN 9. 1995

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB 48, 46

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jeff Chaffee	Dept of Health / Env. Sciences	SB48	✓	
Tom Patten	MBMG - Butte	SB46	✓	
DENNIS McKENNA	MBMG	SB46	✓	
Charles R. Brooks	Yellowstone Ct.	SB48	✓	
Mike Murphy	MWRA	SB46	✓	
Willa Hall	LWV	SB48		
Jim Hanson	GW Assessment Steering Committee	SB46		
Pam Bond		SB46		
Merrin Miller	MBMG - Butte	SB46	✓	
Tara Tuhs	DWR	SB46		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 1-9-95 BILL NO. SJR-2 NUMBER 1

MOTION: TO ADOPT AMENDMENT

SJ000201.9 te

CARRIED 6-3

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN		

