MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE,** on April 3, 2001 at 2:30 P.M., in Room 317 Capitol.

ROLL CALL

Members Present:
Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandenbosch, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 69, 3/30/2001
HB 420, 4/2/2001
Executive Action: None

HEARING ON HB 69

Sponsor: REP. MATT MCCANN (D), HD 92, Harlem

Proponents: SENATE PRESIDENT TOM BECK (R), SD 28, Deer Lodge

Bonnie Gestring, Montana Environmental Information Center
Richard Parks, Northern Plains Resource Council
SEN. ED BUTCHER (R), SD 47, Winifred
REP. EILEEN CARNEY (D), HD 82, Libby
Jon Metropoulos, Helena Attorney representing Golden Sunlight Mine
Jim Kuipers, Center for Science and Public Participation representing the Montana Environmental Information Center
John Smart, Photo Journalist, representing himself
Jan Sensibaugh, Director, Montana Department of Environmental Quality
John Wilson, Montana Chapter of Trout Unlimited
Leo Berry, Helena Attorney representing National Fire Insurance Company of Hartford
W.G. Wibberding, representing the Wibberding Family
Jeff Barber, representing the Montana Wildlife Federation, the Clark Fork Coalition, and the Montana Chapter of American Fisheries Societies
David Mannix, North Powell Conservation District Board

Opponents: **Angela Janacaro, Montana Mining Association**
Frank Crowley, Helena Attorney representing Asarco
Ted Antonioli, President, Missoula Chapter of the Montana Mining Association
Gene Nelson, a small miner representing himself
Mike Collins, a placer miner representing himself
Don Allen, Western Environmental Trade Association
Dirk Nelson, Montana Tunnels Mine
Alan Gilda, Canyon Creek, a small miner representing himself
Virgil Roper, Lincoln, representing himself
Russ Ritter, Montana Rail Link Incorporated
Don Farley, Bitterroot Gem and Mineral Club
Harvey Frederick, representing himself
John Hinther, Montana Mining Association-Grayment

Opening Statement by Sponsor:

REP. MATT MCCANN, HD 92, Harlem, stated **HB 69** revised the definitions, applicable fees, and mine performance bonding and appeal procedures of the metal mine reclamation laws. It

allocated interest from the Hard-Rock Mining and Reclamation Account and the Opencut Mining and Reclamation Account back into those accounts. It amended sections 82-4-303, 82-4-311, 82-4-331, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-341, 82-4-360, and 82-4-424 of the Montana codes and provided an immediate effective date. This bill originated from the Legislative Finance Committee during examination of the state's exposure regarding the lack of adequate bonding to adequately fund the needed reclamation. The first hearing on **HB 69** was quite contentious because of misunderstandings and discomfort with this bill amongst small miners, hobbyists, and the mining industry. A subcommittee evolved to work out those differences through discussion along with the Montana Department of Environmental Quality (DEQ). The small miners wanted their issue removed from the bill and addressed at a different time, separate from industry. After stating there were several amendments being offered, **REP. MCCANN** said that, to date, this bill had been based on consensus. He asked that the committee recognize the responsibility of the DEQ as well as the industry to recognize their responsibilities to reclamation. **REP. MCCANN** was excused for participation at another hearing.

Proponents' Testimony:

SENATE PRES. TOM BECK, SD 28, Deer Lodge, supported the bill and said its intent was not to hurt the small miners or others but to level the playing field so even small mining operations required a bond to insure clean-up.

Bonnie Gestring, Montana Environmental Information Center (MEIC), stated **HB 69's** original intent was to strengthen Montana's reclamation bonding laws and enjoyed broad support in the House. The Legislative Finance Committee commissioned a report, entitled Metal Mine Performance Bonds and State Liability, which was completed in February 2000 by the Legislative Fiscal Division. That report concluded the state faced approximately $25 million in un-bonded reclamation costs. Since that report was released, the state had determined an additional $8 million was needed for clean-up at the Kendall Mine near Lewistown. The water treatment plan failed at the Beall Mountain Mine, so an additional $4 million was needed there. Far more than the $7.5 million would be needed at the Zortman/Landusky Mine. When the mine's reclamation plan was amended and completed, costs for clean-up would be estimated and a new bond would be calculated. **Ms. Gestring** said these costs would only continue to grow. She referred to **SB 484** which was intended to generate some funds to use for mine reclamation based on selling general obligation bonds which would be paid off over time by the Metalliferous Mines License Tax. She added that the revenue stream from that

tax, however, would only generate $8 million with an anticipated ten to thirty years to pay it off. This amount was not going to address any one of the mines with outstanding liabilities. **Ms. Gestring** referenced a red book titled 1995 Summary Report from the Abandoned Mine Reclamation Bureau of the DEQ. She shared several examples of the 269 abandoned mines in the state with severe water and other environmental impacts yet to be addressed. She added that small hard-rock mines, 300 currently permitted in Montana, were currently not required to reclaim unless they had a leaching facility and were also exempt from the bond posting requirement. The small placer mines, those that disturbed the stream bank and sediment, were required to post a bond capped at $10,000 and to reclaim the site. If the costs exceeded the $10,000 cap, the state had no ability to collect or increase the bond. **Ms. Gestring** offered **EXHIBIT(nas75a01)**, photographs of placer mines around the state. She pointed out some significance of the disturbance when working five acres straight down a streambed. **Ms. Gestring** discussed some of the existing impacts and distributed several exhibits listing water bodies in the state that did not currently meet their beneficial uses due to probable sources of impacts from mining; **EXHIBIT(nas75a02)**, 132 water bodies impacted from abandoned mining; **EXHIBIT(nas75a03)**, 58 water bodies impacted from acid mine drainage; **EXHIBIT(nas75a04)**, 11 water bodies impacted from dredge mining; **EXHIBIT(nas75a05)**, 20 water bodies impacted from mill tailings; **EXHIBIT(nas75a06)** 28 water bodies impacted from mine tailings; **EXHIBIT(nas75a07)**, 16 water bodies impacted from placer mining. With the outstanding liabilities the state already faced, **Ms. Gestring** thought it was critical, reasonable, and fair to first amend **HB 69** to get at the underlying problem of fixing the reclamation bonding provision so bonds adequately covered costs of reclamations at both large and small mines; those disturbing an area sized less than five acres. The House amended out reclamation and bonding requirements for small miners. The MEIC suggested those requirements be reinstated as the Finance Committee report (page eight) found that the maximum limit for small miners "may not be adequate to cover all of the costs of reclamation". The Finance Committee recommended requiring reclamation for all mining activities except those under 100 square feet. The MEIC was not asking the current operators to post the bond but rather any new small mines. **Ms. Gestring** stated water quality was often the concern related to hard rock mine reclamation. In a section entitled "Focus on the Entire Environment" (page eleven), the Finance Committee report discussed the possibility of ensuring that bonds focused not just on earth moving, but also on reclaiming environmental damage that had occurred on-site. She added that existing law did not explicitly describe how water treatment was bonded or provide a description of how or when that could occur. The MEIC proposed a

second amendment be introduced that required, when permitting mines whose operating plan or reclamation plan included surface or groundwater treatment, a bond be posted up front to address long-term water treatment. During the course of the mine life, if degradation of water quality developed and was identified from field investigations or results monitoring, at that point the DEQ would require the company post a bond covering water treatment costs. The House added language to the bill stating that DEQ could only reclaim to the original reclamation plan unless certain findings were made. The Finance Committee report (page seven) found that often times there were unforeseen events and changes in circumstances on the site and that reclamation plans were not often changed frequently enough to keep pace with changes in law. The MEIC thought this was unnecessarily restrictive and recommended changing this language back to the way it was originally in statute which would allow the agency greater flexibility and not require them to use an outdated reclamation plan. She said the MEIC supported **HB 69** with their proposed amendments and claimed it would prevent additional mines from being added to the long list for reclamation the state already had.

Richard Parks, Northern Plains Resource Council, said his organization echoed MEIC's testimony and provided **EXHIBIT(nas75a08),** Metal Mine Performance Bonds and State Liability, a report prepared for the Legislative Finance Committee by Roger Lloyd, revised February 29, 2000; **EXHIBIT(nas75a09),** a packet of six editorials from Montana newspapers referencing bonding and reclamation; **EXHIBIT(nas75a10),** a map of a proposed placer exploration project on a gravel bar on the Yellowstone River about four miles from where he lived. He asked the committee to specifically focus on the proposed exploration project of which the DEQ received and reviewed the application and concluded $8,000 was needed to assure reclamation of the exploration project alone. He added that an $8,000 tab for an exploration project was unrealistic if it turned into a mine as it was not conceivable to successfully bond that project within the $10,000 cap. He said this example provided an explicit reason why **HB 69** be amended to cover the small miner.

SEN. ED BUTCHER, SD 47, Winifred, supported **HB 69** and offered **EXHIBIT(nas75a11),** a letter from Stephanie and Alan Shammel, ranchers below the Kendall Mine near Lewistown, and a letter published in the Tribune authored by Stephanie Shammel. He stated some of the reclamation in the Kendall Mine area could have been looked at very quickly and instead was pushed back repeatedly. Some of his district's people had a real concern that the bonding was inadequate and their needs were not going to be

met. He asked the committee to read the letters and seriously consider passage of **HB 69**.

REP. EILEEN CARNEY, HD 82, Libby, thought it was interesting that in hearing this bill today, simultaneously, the headlines across the state were screaming about W.R. Grace declaring bankruptcy. Another headline today stated that the United Stated Environmental Protection Agency was suing W.R. Grace for $10 million for damages for the clean-up at the vermiculite mine at Libby. Originally, W.R. Grace paid $32,000 in 1972 to bond the mine site at Libby. In 1988, that bond was increased to $440,000. In 1994, the state released $400,500 back to W.R. Grace saying the company had done the clean-up around the mine. In 1999, the state recommended that the DEQ return the remaining $67,000 to W.R. Grace. To date, the DEQ is still holding the remainder. When the people in Libby saw that headline in the paper, they protested and requested a public hearing. Then an investigation was made about the mine site and subsequently the EPA went in to clean up the mine site. She noted that the total bonding was under $500,000 and yet the EPA spent $10 million to clean-up the mine site. **REP. CARNEY** stated that Montana needed to do something about the bonding that these companies pay. She referred to page nine of the bill where it also included load-out facilities in the bonding process. She explained that W.R. Grace only paid the bonding on the mine site but that there were areas all over Libby that had to be cleaned up after they left including the ball parks and the high school track that were built with mine tailings. She urged support of **HB 69**.

Jon Metropoulos, representing Golden Sunlight Mine, distributed their proposed amendments, **EXHIBIT(nas75a12)** and said A and E related to each other and served as a deterrent to mine operators pursuing litigation with the DEQ. Amendment A addressed sections three and five, "non-issuance of exploration license or operating permit-merely punitive". Amendment B addressed contingencies in section six, "third-party contractor may assist in bond component calculation; procedure for selecting contractor; contingencies exactions prohibited". Amendment C addressed section six, "submission of disputed bond amount prior to hearing unconstitutional and unfair". ***{End of Tape: 1; Side: A}*** Currently, **Mr. Metropoulos** reported the permittee must submit the bond amount in full. Amendment D addressed a technicality in section eight, "procedure for written findings exists in 82-4-337(3)". Amendment E addressed section nine, "treatment of negotiated settlement same as a forfeiture merely punitive and promotes needless litigation". **Mr. Metropoulos** concluded by emphasizing the need for this issue to be addressed and the Golden Sunlight Mine's proposed amendments would make **HB 69** fair to all.

Jim Kuipers, a professional mining engineer based in Boulder, MT, working for the **Center for Science and Public Participation** stated his organization was here today **representing the Montana Environmental Information Center.** He offered **EXHIBIT(nas75a13),** Amendment to **HB 69** proposing a provision for water quality treatment bonds. He said he spent the last three years researching reclamation bonding practices in the western United States as conducted by other states as well as federal government agencies and advised various public interest groups, state agencies, private entities, and mining companies in the proper calculation and implementation of bonding for hard-rock mining reclamation. **Mr. Kuipers** stated that, clearly, water treatment was the most overlooked and often the most expensive part of reclamation, especially occurring with hard-rock mines. He stated that Montana was a "poster-child" in the country for how reclamation bonds, particularly relating to water treatment, could fall far short of what was necessary. He said he also represented the Fort Belknap Tribal Government and was working with the state coming in line with the EPA in determining the cost of water treatment for the Zortman/Landusky Mine where, presently, the cost of surface reclamation appeared to be equal to the cost of water treatment. He reported that even some of the more mundane mines in Montana had significant impacts; the DEQ determined the tailings pond at Asarco's Troy Mine would require water treatment and calculated an official $1 million bond after estimating clean-up costs. Presently in the Montana Metal Mines Reclamation Act, there was no explicit requirement for water treatment bonding though it was commonly done by the agency. **Mr. Kuipers** stated many of the mining water treatment scenarios would continue for hundreds of years and described them as "water treatment in perpetuity" or until the next "ice age" event. He stated the water treatment bonds were the only way to ensure future generations did not end up being responsible to assume clean-up costs by themselves. He encouraged support of his proposed amendments to bring **HB 69** to its fair and full measure to provide the level of protection for surface reclamation and water treatment.

John Smart, representing himself, a photo journalist, stated he spent two summers photographing the Zortman/Landusky Mine. He said he was not an expert regarding science but after spending time there, realized there were problems that could not be solved and that fifth generations would live with the economic consequences. He said surface reclamation was one thing but pollution of underground aquifers in a large operation like Zortman/Landusky had not even been looked at. He said he photographed a stock tank one and a half miles south of the mine erupting with acid mine drainage and heavy metals. The same thing had already happened at the Kendall Mine with insufficient

funding. There were friends, neighbors, ranchers, and fourth generation Montanans that had no water and this was all "real" and the state needed to look at the big picture, our "real" economy and our grandchildren. He pondered what kind of economy would revolve around the Clark Fork River if it was not in the 90-mile superfund site; construction jobs, guides and outfitters working, a clean industry for centuries. **Mr. Smart** stated we had a problem with the Clark Fork River that could not be solved. He stated the small mines at the headwaters of the Ten Mile Creek created a multi-million dollar clean-up project in trying to keep Helena's water clean. He claimed proper bonding could stop these problems before they started and reached proportions that could not even be calculated, billions of dollars of future economic liability for the people of Montana. He said he was familiar with the popular myth that "mining was wonderful, the foundation of our economy" but advised checking out the statistics claiming it was a minor contribution to our economy. He asked the committee, as lawmakers, to pass a law that would protect the public from these types of activities which he tended to categorize as criminal activity harming our society.

Jan Sensibaugh, Director, Montana Department of Environmental Quality (DEQ), provided written testimony, **EXHIBIT(nas75a14)**. She also provided **EXHIBIT(nas75a15)**, AMENDMENTS TO HOUSE BILL NO. 69 (Third Reading Copy) and advised it contained a technical error as it should have referenced 82-4-338(8) rather than 82-4-338(7).

John Wilson, Montana Chapter of Trout Unlimited, entertained if anyone had noticed that trout and mineral deposits were often found in the same places such as high mountain streams and the rivers they fed. He said that currently Montana was the most popular destination for recreational trout fishing in the country because Montana had a wild trout population, a natural appropriation; trout were not "stocked" in our waters. The headwater streams, often the same site of mineral deposits, were the nurseries for the wild trout that spawned a very healthy, viable recreational sportfishing industry. It used to be that small mining was a job and trout fishing was a hobby. That has changed and was not necessarily a truth anymore. In 1999 in Montana, expenditures by stream and river fishermen were $157.3 million and including the expenditures of $65.5 million by lake fishermen produced a grand total of $222 million spent in the sport fishing industry. That was big business and employed lots of folks. Controversially, there were relatively few small miners that were active. From information obtained from the DEQ, it was estimated that out of 100 small miners, maybe only 30 were active. While the small miners were good folks, their contribution to Montana's overall economy was minimal compared to

that of the recreational fishing industry. Montana had spent millions of dollars cleaning up old mines and still had 132 stream segments that could not meet their beneficial uses including the ability to support fish, specifically due to abandoned mines. **Mr. Wilson** stated that was income lost to the state, not just from one year but over many years. He said if politics were set aside and a decision was made based on what was best for Montana's economy as a whole, it would be clear and extremely reasonable that protecting and enhancing the sport fishing industry and the jobs and contributions it made to Montana's economy would be the decision. **Mr. Wilson** said it made good sense to protect the taxpayers from the potential liability associated with un-reclaimed or partially reclaimed mine sites. He said small miners needed to be amended into the bill as, given the abandoned mine history in the state, it was time for miners to take responsibility for their actions by posting adequate reclamation bonds, not only to protect jobs but also the taxpayers. Trout Unlimited urged the committee to amend **HB 69** and DO PASS.

Leo Berry, representing National Fire Insurance Company of Hartford, offered **EXHIBIT(nas75a16),** their Amendments to **House Bill No. 69** as passed by the House. He said his client issued the bonds on several of the major mining operations in the state and it was important bonding companies felt comfortable with the process to continue to issue bonds so Montana had a healthy mining program. He explained amendment one and four applied when a bond was under review, revoked or expired. The bonding company wanted to make sure mining or any additional activity did not continue until the bond had been replaced as they continued to be liable for any activity even though there was no permit or it had been suspended. The second part of the amendments applied when the DEQ forfeited all or part of the bond to do emergency work. If interest had been earned on the un-needed bond proceeds, the amended bill would return the bond proceeds and the interest to the surety company. **Mr. Berry** encouraged adoption of the amendments to **HB 69.**

W.G. Wibberding, representing the Wibberding family, supported **HB 69.** No testimony was given.

Jeff Barber, representing the Montana Wildlife Federation, the Clark Fork Coalition, and the Montana Chapter of the American Fisheries Societies, supported **HB 69.** No testimony was given.

David Mannix, North Powell Conservation District Board, supported **HB 69** with **EXHIBIT(nas75a17),** a letter to the committee.

W.S. McGinnis, owner, and Chris Koonce, manager, Cal-Creek Ranch, Madison County, supported **HB 69** with **EXHIBIT(nas75a18)**, a letter to the committee.

EXHIBIT(nas75a19), Amendments to House Bill No. 69, 3rd Reading Copy, **HB006911.alm**, requested by **SEN. KEN TOOLE.**

EXHIBIT(nas75a20), Amendments to House Bill No. 69, 3rd Reading Copy, **HB006910.alm**, requested by **SEN. BEA MCCARTHY.**

Opponents' Testimony:

Angela Janacaro, Montana Mining Association, referred to some proponents' testimony regarding Zortman/Landusky, the Kendall mine sites, and a large book shared by the MEIC on abandoned mine sites. She stated **HB 69**, in the un-amended form, never addressed any of those problems. **Ms. Janacaro** stated that abandoned mine sites had their own division within the DEQ that was a greatly followed and admired program and the DEQ did a great job cleaning up abandoned mines. She added that the bonding provisions never applied to those mines because they were "historic". She offered amendments, **EXHIBIT(nas75a21)**. On page 14, line 23 of the bill regarding fees being increased to $500, she said corporate miners had no problem with that, but small miners did. They recommended replacing the "$500" with "If the person is disturbing between 5 and 15 acres, the person shall pay a basic permit fee of $25". On page 18, line 10, regarding usage of a third party for bond amount determination, they would agree with the addition that the contractors would be selected and "directed and compensated" jointly by the DEQ and the mine operator because many miners feared it would be an open checkbook for the DEQ to run as many studies as they wanted to bond a mine. On page 18, line 28, **Ms. Janacaro** thought public input for determination of a bond amount was not necessary. On page 18, line 29, they recommended "in 30 days" be inserted following "determination". Regarding lines 7 through 10 on page 19, she said a precedent was set that allowed the DEQ to require the permittee to put up bond in full even if the permittee disagreed with the amount and before it could be appealed. If they did not, their operating permit would be pulled and they would be out of business. She did not think that was justice. The other amendments to page 24, lines 10 through 15, dealt with the provision that disallowed the DEQ to issue an operating permit if a person was involved in a company in some way that forfeited their bond. Her group proposed that the entire subsection (2) be stricken and resubmitted with new language that existed before; allowing a person to redeem themselves. If the DEQ had to go in and clean up the reclamation, before that person could be allowed to receive an operating permit, the expenses and interest had to be re-paid to

the DEQ. With those amendments, the Montana Mining Association supported **HB 69.**

Frank Crowley, representing Asarco, supported **HB 69** with a few selected amendments. He pointed out the concerns expressed by some of the proponents were valid. He stated the mining industry today would not come in and conduct any operations without a sufficient guarantee to the public and taxpayers. **Mr. Crowley** added that most of the experiences shared today resulted from bonds written many years ago. He said the DEQ had come along way and was more sophisticated and certainly more conservative today in the writing of the bonds. He also pointed out the irony when issues were discussed concerning the Resource Indemnity Trust, currently at about $100 million, that funded many state programs in which its original purpose was to address many concerns discussed today. He referred to the bill language on page 19 regarding the "condition precedent" wherein it stated that before a permittee could request an appeals hearing, the full bond amount be submitted to the DEQ. He understood the decision was a result of another bill before the Board of Environmental Review. ***{End of Tape: 1; Side: B}*** He was concerned of the effect on any applicants' rights and thought it unfair and actually took away their right to request a hearing to contest a bond. He urged consideration of amendments for deletion of that portion of **HB 69.**

Ted Antonioli, President of the Missoula Chapter of the Montana Mining Association, stated he represented mostly the exploration and small mine operators in western Montana. He said some proponents distorted the picture of mining impacts. **Mr. Antonioli** suggested the economic impact on counties was very substantial because four of the top six wage counties in the state were mining counties; Rosebud, Stillwater, Jefferson, and Butte-Silverbow. He urged the committee look at figures available from the Montana Department of Commerce. He emphasized mining was extremely important in a state where wages had declined and a severe problem existed with the disappearance of basic industry. He pondered some of the causes why mining and small miners had declined. Every year the "think tank" Frazier Institute of Canada surveyed the investment climate for mining around North America. In their 2000-2001 report, 69% of the mining companies and mineral investors surveyed said that the uncertainty regarding the administration, interpretation, and enforcement of existing regulations was a very significant deterrent to investing in mining in Montana. However, **Mr. Antonioli** said the biggest deterrent was Montana's environmental laws. He said if you mined an ore body from the surface, cyanide could not be used. If you mined the exact same ore body from underground in the exact same plant, you could use cyanide.

Therefore, he reasoned the cyanide ban was irrational and just one example in Montana law that caused the state to be blackballed by 80% of the mining companies and mineral investors in North America. He said if the state wanted mining in Montana to be a significant and continuing trigger to the economy, a process was needed by the state improving the certainty of administration, interpretation, and enforcement of the laws. **Mr. Antonioli** stated the DEQ already had the ability to address water quality issues and continued treatment and required very significant increases in bonding. Since the legislative audit in 1998, the DEQ increased his company's bonds by 152.36% and the Barrett's Mine's bond was reviewed and increased from $1.054 million to $4.543 million. He charged this so-called problem was already being addressed by the DEQ and that **HB 69** did nothing to take care of the Zortman-Landusky Mine which he proclaimed paid $18 million in state taxes. He said **HB 69** was very significantly amended in the House but suggested NEEDED AMENDMENTS TO HB 69, **EXHIBIT(nas75a22).** He thought the 30 day public comment period on the proposed bond determination was unnecessary and contended the right to a hearing for appealing the final bond determination should not require the full bond amount be posted as a condition to that right. In section 3, subsection (3)(a), his group recommended that after "a principal or controlling member", "at the time of the default" should be inserted. His group requested striking all fee increases throughout the bill. He stated that what the lower threshold was, maybe a gold panner, concerning the need for an exploration license was just not clear and new language was needed to clarify that requirement since the fee increased $5 to $100. They also proposed in section nine allowing for redemption of miners that met their reclamation responsibilities. He urged passage of **HB 69** with their amendments.

Gene Nelson, a graduate engineer representing himself as a small miner, stated he was sensitive to the bond shortfall problem and had no objection to adequate bonding to spare taxpayers and the public from the responsibility. **Mr. Nelson** stated **HB 69** appeared to address much more than just the bond shortfall and added more to the process while at the same time this legislature was streamlining processes for efficiency regarding MEPA. He opposed the bill in its present form and believed it was absolutely imperative the amendments offered by the Montana Mining Association be adopted.

Mike Collins, Helena, representing himself as a placer miner since 1971, stated he was one of the small miners being directly attacked in this issue and he was not the guilty party who caused the perceived problems with historic mining in Montana. As a result of this, he thought Holly Swanson had a very appropriate

title in her book, Set Up and Sold Out. **Mr. Collins** stated mining was a very important facet of Montana's history and industry and with abundant mineral wealth continued to be so. He asked if individual freedom and economic liberty were the price Montanans were being asked to pay and if common sense was to be replaced by theory and concept models and stated he was not willing to succumb to that. **Mr. Collins** submitted the sky was not falling in 1971 nor today. He urged serious consideration of this legislation.

Don Allen, Western Environmental Trade Association, opposed **HB 69** in its present form. WETA supported the bill with the Montana Mining Association's amendments offered by **Ms. Janacaro.**

Dirk Nelson, Montana Tunnels Mine, also opposed **HB 69** in its present form but supported it with the Montana Mining Association's amendments attached. He also extended an invitation to the committee to come out and visit the large, open-pit Montana Tunnels Mine as an excellent opportunity to see how mining was done responsibly with protection to the environment and reclamation concurrent with production.

Alan Gilda, Canyon Creek, representing himself as a small miner, also supported the bill with the Montana Mining Association's amendments attached. He disagreed with the exploration and operator permit fees and the 30 day public comment period regarding determination of a bond amount and offered **EXHIBIT(nas75a23)** that addressed those concerns.

Virgil Roper, Lincoln, President of Blackfoot River Gold Prospectors' Association of America, stated he would like to see implementation that all hand-fed mining equipment would be exempted from all of the provisions in **HB 69.**

Questions from Committee Members and Responses:

SEN. KEN TOOLE asked how the bonding worked especially regarding foregone potential interest earnings. **Leo Berry** explained that typically the smaller mining operations did not use a bonding system in the traditional sense, they usually put a CD or a cash deposit up for a small operation. Larger operations buy a bond from a company, such as his client. The bonding company reviewed the client's permit application and reclamation plan and once the bond amount was determined by the DEQ, the bonding company evaluated the risk including the financial well-being and stability of the permittee and the reclamation and project itself and then established a rate. **Mr. Berry** said the charge would vary depending on those factors. Regarding interest, he referred to page 20, subsection 8, wherein it provided a process whereby

the DEQ could, in the case of an emergency or imminent hazard, forfeit a portion of the bond up to $150,000. On page 20, line 21, a provision stated the DEQ shall return to the surety any money received pursuant to the subsection and not used by the DEQ. **Mr. Berry** stated his point was that if there was interest earned on that amount and it was not utilized as part of the remediation activity, that interest ought to go back to the surety company along with the balance of bond proceeds. **SEN. GROSFIELD** asked about **SB 484** sponsored by **SENATE PRES. BECK** and **Ms. Sensibaugh** responded it was to create an account for the DEQ to sell bonds merely to raise money to do reclamation on under-funded situations the department currently had or would have in the future, but did not address the process in the Metal Mine Reclamation Act. **SEN. GROSFIELD** asked the DEQ to comment on the amendments, the DEQ's current capabilities of water treatment bonding, and a better proposal addressing long-term water quality treatment. **Ms. Sensibaugh** said she was reluctant to comment without adequate review of the amendments, so her response was conceptual. She explained the DEQ had a handle on costs and bonding of the historical dirt work portion of reclamation but water quality issues had mushroomed and with science and technology changing so rapidly regarding water quality treatment, that added some difficulty. She reported unanticipated or unexpected water quality problems were seen at some mines. Many of the problems required water quality treatment with a plan operating in perpetuity, or 100 years as DEQ defined that term, or until science changed providing alternatives, which was difficult to cost estimate for bonding purposes. ***{End of Tape: 2; Side: A}*** **CHAIRMAN CRISMORE** asked about the separation of the bond from Libby's W.R. Grace Mine's reclamation work done at the mine site and the off-site asbestos contamination. **Ms. Sensibaugh** stated the DEQ held an adequate bond for reclamation from the plan at the time it was put together. As the company remained on site and did the reclamation, the DEQ visited and certified the completed reclamation and released the bond portion held for the portion of reclamation completed. She said the bond was not forfeited because the company was on-site doing the reclamation. However, because of the Metal Mine Reclamation Act, the DEQ only permitted and bonded the site where the mining actually occurred with no bonding for off-mine site places where asbestos had now been found. Because there was a liable company, up until today she guessed, W.R. Grace was doing the work and the bond was just being held by the surety in case they weren't there to do the work. **CHAIRMAN CRISMORE** said he realized the loading sites probably needed to be included. Referring to W.R. Grace's actual mine site itself, he said the state was aware for many years there was asbestos within that mine. Now that the state knew that asbestos caused a health problem and if the mine was still in operation and their bond had not been released, would W.R.

Grace then be liable for the billions of dollars it would take to cap that entire mountain, with asbestos viewable in any road-cuts. He asked if, at this point, the DEQ had a bond to cover those situations. **Ms. Sensibaugh** stated the procedure used by the DEQ when new circumstances arose, such as operating changes or a discovered health risk associated with a mine site, was that the DEQ re-did the reclamation plan necessary to re-claim that mine and re-calculated the bond according to the new reclamation plan and then had the company post that bond. **SEN. TOOLE** asked how often the DEQ faced problems with water treatment shortfalls related to the bonding process. **Ms. Sensibaugh** stated it was almost every time. **SEN. TOOLE** asked what the process was when the DEQ began to see water quality problems with an operating mine. **Ms. Sensibaugh** responded the DEQ went to the mine, advised the mine of the problem identified, began discussion, often did additional monitoring, revised the reclamation plan, recalculated the bond, and had the mine post the bond. She stated there were various negotiation appeal processes that could slow it down though the mine continued to operate under its current permit and reclamation plan. **SEN. TOOLE** reasoned that water quality continued to deteriorate and degradate during that process and asked how water quality would be protected if the project was not providing the full cost. **Ms. Sensibaugh** said the state would have to somehow step in to protect the water quality. **SEN. TOOLE** asked if it was fair to say that the state would end up assuming those costs. **Ms. Sensibaugh** stated the DEQ did enforcement and changed reclamation plans and re-bonded. The state wanted the company to be responsible and attempted to make sure the company stayed on-site and took responsibility for clean-up. It was only when the mine could not or would not, that the state would have to step in. **SEN. COCCHIARELLA** asked **Angela Janacaro** if there were amendments here that were also considered or rejected in the House. **Ms. Janacaro** stated that when the House went into sub-committee, the Montana Mining Association gave **Larry Mitchell**, legislative staff, a draft of the amendments they had proposed. She added that the DEQ and the Golden Sunlight Mine had individual amendments. All of the amendments were worked through to come to the bill before us today, but not every request was granted. **SEN. GROSFIELD** asked about the House vote with passage of **HB 69**. **Ms. Janacaro** reported it passed with a vote of 95-4 on the second reading.

Closing by Sponsor:

CHAIR CRISMORE closed the hearing as **REP. MCCANN** had been excused.

HEARING ON HB 420

Sponsor: **REP. JIM SHOCKLEY (R), HD 61, Victor**

Proponents: **REP. KIM GILLAN (D), HD 11, Billings**
Richard Parks, Northern Plains Resource Council
Steve Gilbert, Helena, representing farmers and ranchers on the Tongue River
REP. MONICA LINDEEN (D), HD 7, Huntley
Jeff Barber, Montana Wildlife Federation, the Clark Fork Coalition, and the Montana Chapter of the American Fisheries Societies

Opponents: **Gail Abercrombie, Executive Director, Montana Petroleum Association**
Tom Ebzery, QWEST
Don Allen, Western Environmental Trade Association
Steve Wade, Conoco

Informational Witness: **Nick Rotering, Montana Department of Transportation**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, Victor, said **HB 420** was a property rights issue and attempted to ensure a land owner, who might have his land taken, would know what his rights were. **REP. SHOCKLEY** said he was on the Eminent Domain Subcommittee during the last interim that received several complaints that landowners did not know their rights or were being abused by the Tongue River Railroad or the Yellowstone Pipeline. He said **HB 420** required a condemnor in an eminent domain action provide the condemnee with a statement of the condemnee's rights in an eminent domain action. That statement must be in writing, be signed by the condemnee or the person who provided the condemnee with the eminent domain statement of rights, include the condemnee's right to not accept the offer submitted by the condemnor, provide the location of eminent domain laws in the Montana codes and the rights granted to a condemnee under Article II, section 29, of the Montana constitution. He added that additional documents regarding the eminent domain action may not be recorded and a sale may not be made until 30 days after the eminent domain statement of rights had been provided to the condemnee. It also amended section two regarding facts necessary to be found before condemnation and sections three and four would be stricken in their entirety. A new section three would be added regarding codification instruction and a new section four would be added

addressing applicability. **HB 420** amended section 70-30-111 and provided an applicability date. **REP. SHOCKLEY** said he did not know how anyone could object to this legislation and asked for full support of **HB 420.**

Proponents' Testimony:

REP. KIM GILLAN, HD 11, Billings, said she also served on the Eminent Domain Subcommittee and reported confusion shared by landowners over the eminent domain process. She stated **REP. SHOCKLEY** embraced a good idea with **HB 420** to address those complaints and problems. She added this simple bill, in light of future power plants coming over the next decade, would discourage future lawsuits.

Richard Parks, Gardiner, representing Northern Plains Resource Council, rose in support of **HB 420** because it addressed the core concern of many of their members regarding a landowners' rights being unclear under the eminent domain process. **Mr. Parks** said landowners sometimes felt pressured, in the absence of clear knowledge about what their rights were, to settle disadvantageously to themselves.

Steve Gilbert, Helena, representing friends, farmers, and ranchers on the Tongue River who had been confronted with condemnation procedures over the last few years regarding the Tongue River Railroad. He said once a person reached the point of becoming a condemnee, that person should well know what his or her rights were. **Mr. Gilbert** maintained most of those people were busy performing their jobs as farmers and ranchers and welcomed the opportunity to have the information in writing as a small gesture the state could offer. He urged support of **HB 420.**

Opponents' Testimony:

Gail Abercrombie, Executive Director, Montana Petroleum Association, stated that when the briefing of legislators was done last September and October, "eminent domain" was part of the tour. She stated there was discussion about the booklet the EQC produced that addressed the issue regarding people not understanding the eminent domain process. This booklet had all the rules and regulations and information regarding the eminent domain process. She stated that as her organization traveled around the state, they met with county commissioners and told them that if there was a project coming through their counties, they should have these booklets available in their courthouses. **Ms. Abercrombie** referred to line 28 of **HB 420** where it referred to what was needed in the statement of rights, how it needed to be signed by either party, and expressed her concern regarding

the language "not limited to". She said if the statement of rights merely advised the location of the eminent domain statutes, that would be straightforward. Her concern about the language "not limited to" was that what if the condemnee declared that the statement provided was not adequate. She thought the language raised the question of what was adequate and would lead to more court cases to explore what other items could be listed in the statement of rights and what important elements might be missing. **Ms. Abercrombie** contended that many of the landowners at the different hearings of the EQC were large landowners and had been involved with the eminent domain process in the past and gave one the idea that many were acquainted with the process in some way. She maintained that members of organizations, such as the Farm Bureau or Stockgrowers or Northern Plains Resource Council, saw this as a service to their members. She thought one of the roles of these organizations was to inform their members of what was happening and where the laws were and what their members' rights were and was not the policy of the state to provide this information. She was concerned with the appropriate time to provide the statement of rights and contended it could establish a negative relationship right from the start. If the state required a signed statement of rights, she contended that document should be prepared by the state so it was adequate and deemed the language "not limited to" would not be an issue then. She said the EQC did a good job with the booklet and she suggested it be available in the counties, the associations, and the membership groups. She opposed **HB 420** because of the uncertainty on that "not limited to" langauge.

Tom Ebzery, Billings attorney representing QWEST, opposed even a stripped down version of **HB 420.** He said the bill sponsor believed that condemnation occurred on a regular basis and that was not historically accurate, exercising the power of eminent domain was a last resort type situation. He said **HB 420** put on a "Miranda" bill of rights. He thought a company would be specific about choosing who would present the statement of rights and assumed an attorney would be required to handle that task just to make sure the statement contained all of the elements required. He was concerned about the requirement to present the statement of rights in regards to establishing a relationship with the landowner and thought it placed the condemnor in an adversarial position. ***{End of Tape: 2; Side: B}.*** He was concerned with other provisions, the requirement for a signature by the condemnee or the condemnor or his agent when the statement of rights was provided and what would be done with that, was there a need to provide an affidavit, would the courts need it later, etc. He said the landowner, when presented with a statement like that, would probably tell you to get out of there and don't come back due to the nature of the situation which did not help

landowner negotiations. He thought **HB 420** was unnecessary and fostered a distrust between the parties involved and asked the committee to table the bill.

Don Allen, Western Environmental Trade Association, opposed **HB 420** as it went beyond what the EQC interim study subcommittee had agreed to and he echoed points made by **Ms. Abercrombie** and **Mr. Ebrezy. Mr. Allen** expressed concern the process was not clear-cut regarding rule-making for clarification, who was going to adopt the rules to implement the law, the time limit for the property sale after providing the statement, and others. He was concerned with the possible need to expedite a situation to accommodate a power or fiber optic line in order to aid the crisis relating to energy and communication issues that this legislature was working so hard trying to address. **Mr. Allen** said WETA supported the other four bills that came out of the EQC interim study committee. They also supported using the EQC's handbook and moving forward with that. WETA recommended tabling **HB 420.**

Steve Wade, representing Conoco, raised one issue by stating if the committee felt compelled to pass this bill, some clarification was needed because his organization was not quite sure when in the process this needed to be done. He said that normally formal condemnation started after negotiations ended. During negotiations, **Mr. Wade** wondered whether the parties were considered to be a condemnor or condemnee or just two bargaining parties.

Informational Testimony:

Nick Rotering, Staff Attorney, Montana Department of Transportation (MDT), stated the MDT had followed all of the eminent domain bills very carefully. He said the MDT had been living with somewhat of a similar requirement in their acquisitions for highway purposes. They were required, where there was federal participation, to give a statement and he offered **EXHIBIT(nas75a24),** a pamphlet entitled Questions & Answers On Buying Property for Montana Highways published by the MDT. He stated while this would not necessarily meet the requirements of this bill, it was similar to **REP. SHOCKLEY'S** idea in **HB 420.**

Questions from Committee Members and Responses:

SEN. KEN TOOLE asked **Mr. Wade** about the negotiation process and whether or not condemnation as a significant factor for a fair negotiation process was disclosed. **Mr. Wade** responded the process depended on the company but noted the EQC study

recognized that most of the cases were resolved through negotiations or settlement and very rarely did they actually go to the formal process of filing a complaint through eminent domain. **Mr. Wade** said he thought the people, most of the time, did know or should know that the power of eminent domain could be triggered and that drove the fear when a company came knocking on a landowner's door. He did not feel it was the condemnor's obligation to provide the statement of rights as compared to civil lawsuits. He stated the party would be told of the power of condemnation if the right facts could be proven and reasoned the fair market value would bring in that if the landowner were asking for a price that was significant. Condemnation triggering the statues rarely happened as negotiation and settlement were preferred. **SEN. TOOLE** stated that condemnation was essentially a power that was generally reserved to the state and asked if **Mr. Wade** agreed with that. **Mr. Wade** responded that eminent domain was a state police power which the state had then authorized a certain public use of land for the benefit of the public. **SEN. ROUSH** asked the sponsor whether the new language in section one of the bill, which was strongly opposed by businesses, attempted to generally stop any kind of a public project or a project that would benefit the public whether it was a highway, a pipeline, utilities, fiber optic lines, on private property. **REP. SHOCKLEY** stated **HB 420** would not slow down anything or adversely affect an honest condemning party. **SEN. GROSFIELD** noted confusion regarding who was required to sign proving the statement of rights was presented and also noted the bill did not require that proof be dated. He asked the sponsor when the negotiator became the condemnor and referred to line 20 interpreting that the negotiator did not become the condemnor until there was an eminent domain action filed. Once that happened, subsection 3 on page two said "additional documents can be recorded" but it did not say whether by the condemnor or another party nor was it clear when the statement of rights must be presented. **REP. SHOCKLEY** stated that the only documents that would be recorded relative to a land transfer, would be the deed, fee simple title, a grant for an easement, or the realty transfer certificate which always needed to be filed anytime land was conveyed. He envisioned the statement of rights would be presented the first time the company representative contacted the landowner. With the condemnor required not to close the action until 30 days after the statement of rights was provided, **SEN. GROSFIELD** supposed that would put pressure on the condemnor to get that done. **REP. SHOCKLEY** agreed. **SEN. GROSFIELD** inquired about the intention of **HB 420** in reference to language on page two, line three, "the rights granted to a condemnee under Article II, section 29, of the Montana constitution". **REP. SHOCKLEY** understood that portion required the condemning part inform the landowner of the location of those rights in the Montana

constitution. **SEN. GROSFIELD** thought the language needed to be changed to clarify that intention and provided better language to accomplish that. **SEN. TASH** asked **Mr. Rotering** if MDT's initial visit to the landowner for the acquisition of right-of-way required any signatures from either party when the MDT presented their booklet explaining the eminent domain process and the landowners' rights. **Mr. Rotering** responded no signatures were required. He added that if the landowner was also going to be re-located off the land, there was an additional book that the MDT provided regarding re-location benefits. ***{End of Tape: 3; Side: A}***

Closing by Sponsor:

REP. SHOCKLEY stated **REP. MONICA LINDEEN** wanted to go on record as supporting this legislation. He said it was somewhat distressing and he did not understand the opposition to **HB 420** by industry as he thought this would only be considered a tool to help those industries. He thought the state had an obligation to see that Montana's landowners, subject to the power of eminent domain, be made aware of their rights, in all fairness, and encouraged support of **HB 420**. ***{Tape: 3; Side: B; 0 - 5.1}***

ADJOURNMENT

Adjournment: 5:00 P.M.

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SEN. WILLIAM CRISMORE, Chairman

_____
NANCY BLECK, Secretary

WC/NB

EXHIBIT(nas75aad)