



SENATE STANDING COMMITTEE REPORT

March 12, 2005

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** recommend that **House Joint Resolution 10** (third reading copy -- blue) be concurred in.

Signed:

A handwritten signature in cursive script, reading "Glenn A. Roush".

Senator Glenn Roush, Chair

To be carried by Senator Jim Elliott

- END -

Committee Vote:
Yes 8, No 0.

550908SC.ssc

Handwritten initials, possibly "JP", in the bottom right corner.



SENATE STANDING COMMITTEE REPORT

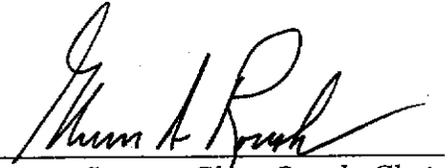
March 14, 2005

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** recommend that **House Bill 147** (third reading copy -- blue) be concurred in.

Signed:


Senator Glenn Roush, Chair

To be carried by Senator Bill Tash

- END -

Committee Vote:
Yes 8, No 0.

561317SC.ssc





SENATE STANDING COMMITTEE REPORT

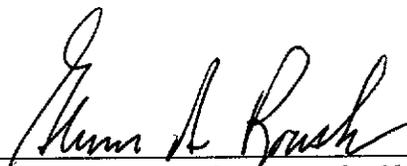
March 12, 2005

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** recommend that **House Joint Resolution 18** (third reading copy -- blue) be concurred in.

Signed:


Senator Glenn Roush, Chair

To be carried by Senator Glenn Roush

- END -

Committee Vote:
Yes 8, No 0.

550910SC.ssc





SENATE STANDING COMMITTEE REPORT

March 14, 2005

Page 1 of 3

Mr. President:

We, your committee on **Natural Resources** recommend that **House Bill 428** (third reading copy -- blue) be concurred in as amended.

Signed: *Glenn A. Roush*
Senator Glenn Roush, Chair

To be carried by Senator Greg Lind

And, that such amendments read:

1. Page 8, line 15.

Following: line 14

Insert: "COORDINATION SECTION. Section 4. Coordination instruction. If both House Bill No. 429 and [this act] are passed and approved, then the amendments to 82-4-441 in both House Bill No. 429 and [this act] are void and 82-4-441 must read as follows:

"82-4-441. Penalty Administrative and judicial penalties -- enforcement. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

~~(1)~~(2) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:

(a) ~~a civil~~ an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

Committee Vote:

Yes 8, No 0.

560936SC.sjo

(b) an additional ~~civil~~ administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues ~~following the service of notice of the violation.~~

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part or provisions of a permit, and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in [section 3 of House Bill No. 429].

~~(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:~~

~~— (a) the nature, circumstances, extent, and gravity of the violation;~~

~~— (b) the violator's prior history of violations within the past 3 years;~~

~~— (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;~~

~~— (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and~~

~~— (e) other matters that justice may require to decrease the amount of penalty.~~

~~(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty, including the penalty calculation that identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after issuing the notice of violation. After a hearing provided for in 82-4-427, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and, if the board finds that the violation occurred, the amount of penalty warranted, and order the payment of a penalty in that amount. If the time for requesting a hearing expires without a hearing request, the department shall make the findings of fact and issue the written decision and order. The person or operator shall remit the amount of any penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an~~

~~action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the opencut mine is located.~~

(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5) (a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

~~(4) (6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the opencut mine is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.~~

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."

Renumber: subsequent sections

- END -



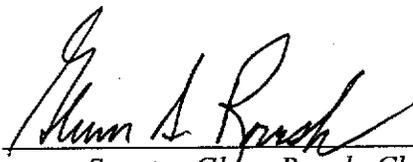
SENATE STANDING COMMITTEE REPORT

March 12, 2005

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** recommend that **House Bill 370** (third reading copy -- blue) be concurred in.

Signed: 
Senator Glenn Roush, Chair

To be carried by Senator Kelly Gebhardt

- END -

Committee Vote:
Yes 8, No 0.

550911SC.ssc

Handwritten initials, possibly "KJ", in the bottom right corner.

**MONTANA STATE SENATE
2005 LEGISLATURE**

**VISITOR REGISTER
NATURAL RESOURCES**

HB 147
HB 428
HB 399
HJ 10

DATE 3/11/05 BILLS BEING HEARD TODAY _____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike McComby	603-3750	Bowerhace Co	HB 399		X
Wally Congdon	683-3730	Bull Co	HB 399		X
Clint Bralce	276-3682	Luzy J Ranch	HB 399		X
Bob Hammarston	542-4301	DWR	HJ 10	X	
Art Nail	751-2401	PLUM CREEK	HB 147	X	
May Ann Steinbeisser	798-3643		HB 399		X
Jim Steinbeisser	798-3643		HB 399		X
Barry Rice	645-348	Rice Ranch	HB 399	X	
Paul Mehl	542-4304	DWR	HJ 10	X	
W. McCullough	444-6791	DEQ	HB 147	✓	
Chris Christensen	868-6406	MFL	HB 399	X	
Jason Tadhunter	253-3806	MT Logging Assoc.	HJ 10	X	
Cody Ferguson	670-2487	Northrup Plains	HB 399		X
Steve Snerd	439-4028	MT Grain Growers	HB 399	X	
Bud Clinch	442-6223	MT CPAL Council	HB 428	X	
John Semple	443-7487	Assoc MT Aerial Application	HB 399	X	
Mary Slyton	444-1948	DWR	HJ 10	X	
M. S. KAKUK	443-7788	MT CONTRACTOR ASSN	HB 428	✓	
John Gargani	837-3458				
John Arledge	444-5327	MT DEQ	HB 428	✓	
Donelle	443-554	WFOA	HB 428	✓	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Krista Lee Evans
Resource Policy Analyst
Legislative Environmental Policy Office
Legislative Services Division
406-444-1640
kevans@mt.gov
PLEASE NOTE: MY EMAIL ADDRESS HAS CHANGED TO KEVANS@MT.GOV

-----Original Message-----
From: Marilyn_Krause@blm.gov [mailto:Marilyn_Krause@blm.gov]
Sent: Thursday, March 10, 2005 10:51 AM
To: ochenski@mt.net; Evans, Krista Lee
Cc: Rich_Maggio@blm.gov; Tim_Bozorth@blm.gov
Subject: Additional Info for HJ 13

George and Krista, here is some additional information concerning the recreation site across the road from Red Mountain CG that George mentioned in his comments at yesterday's hearing. Krista, please give Sen. Roush a copy of this email.

According to the BLM in Dillon, fees are charged at those sites from May - October when porta potties are in place. The area is considered dispersed, designated camping and the goal is to keep the area as primitive as possible and still manage the sites. The area is sensitive because it is home to a large number of cultural sites including tepee rings. To protect the cultural sites and manage the weed problem, BLM blocked off some two-track roads in the area, and developed some pull-off designated camping spots and installed fire grates to keep people from taking the tepee ring rocks for their own fire rings. BLM started charging fees under the "fee demo program" a few years ago in an effort to provide site maintenance (litter removal, site clean-up and weed treatment).

If you have other questions, please do not hesitate to contact me.

Marilyn Krause
Public Affairs Specialist
(406) 533-7617 (office)
(406) 490-0367 (cell)
email: mlkrause@mt.blm.gov

March 11, 2005

To: Montana Senate - Natural Resources Committee
Re: HB 428 Revise laws related to enforcement of strip and underground mine reclamation

Dear Senators,

My homeowners group has been involved extensively in the last year and a half in issues related to sand and gravel mining. We urge you to support House Bill 428 to revise mining enforcement laws.

Our development of about 60 homes is adjacent to an operating gravel pit in the Kalispell area. There are almost 400 other property owners in the Flathead area that are currently involved with issues related to the gravel industry. There are over 120 gravel pits in Flathead County and close to 2,000 statewide. We have spent hundreds of hours reviewing gravel pit permits, Flathead County conditional use permits, state opencut mining law, the way this law is enforced by the Department of Environmental Quality (DEQ) and many other facets of these operations. We are familiar with the workings of this industry.

The DEQ needs the ability to increase the penalties on operators that violate state law. The current penalty system is barely a slap on the hand for industry. **A review of DEQ enforcement files determined that a Flathead area company violated state opencut mining law (sand and gravel industry law) and the DEQ calculated a benefit to the company of over \$190,000. Because of limitations in the current law, the DEQ could only penalize the company \$2,750.** This system is biased towards industry and does not protect Montana taxpayers. The attached table provides other Flathead area cases. Further analysis would likely identify a similar problem across the state. We can provide the DEQ documentation if needed.

The DEQ has stated in their own documents related to opencut mining law that "the department is concerned that the relatively low penalties do not provide an adequate deterrent to violators and does not level the economic playing field. Operators who mine gravel without a permit and later sell the gravel realize a substantial economic benefit. The failure to obtain a permit and provide adequate bond creates a significant reclamation liability for the department in the event the operator or landowner cannot afford proper reclamation." See page 41 of The Report to the Environmental Quality Council FY 2001-2003 (www.deq.state.mt.us/enf/EQC2003/final.pdf).

This penalty system does not protect Montana taxpayers and needs to be improved. HB 428 is a good first step in this process. We urge you to support this bill. Thank you for the opportunity to provide this input.

Sincerely yours,

Todd Spangler
23 Sunrise Drive
Kalispell, MT 59901
756-9403

Flathead area enforcement actions
Benefit versus penalty table

Operator	Violation	Case Number	Year	Total Benefit to the Company	Final Penalty Assessed by DEQ
Bruce Tutvedt	- Mined outside of opencut mining permit area several times - Reclamation bond issues	632	2003	\$65,500	\$1,000
Mission Valley Concrete	- Mined outside of opencut mining permit area - Inadequate reclamation bond - Didn't salvage topsoil	578	2002	\$192,166	\$2,750
Robert Spoklie	- Mined outside of opencut mining permit area - Didn't salvage topsoil - Oil/petroleum dumped on ground	557	2002	\$24,746	\$2,653

Statement of Commissioner Donna J Sevalstad

**REGARDING: SB-399
The Cloud Seeding Bill**

While I agree that Beaverhead County may have a lawsuit regarding Cloud Seeding, I am not prepared based on the information I have been presented to go on record against something that could possibly help my constituents or others in the State. The bill is supported by both of this areas representatives, it has passed legislative legal review and was also passed out of the House of Representatives last week on an 83-11 vote. For the above reasons, I am in favor of HB-399.