



EXHIBIT 6
DATE 1-31-07
HB 405

Montana Audubon

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Testimony on HB 405
House Federal Relations, Energy and Telecommunications
January 31, 2007

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing Montana Audubon. Montana Audubon is composed of nine chapters and has approximately 3,200 members.

Montana Audubon opposes HB 405. Although there are several aspects of this bill we oppose, we want to take this time to address one issue: exempting "clean energy development" from the Montana Environmental Policy Act.

MEPA is one of Montana's most important environmental laws. It requires us to examine a "major action of state government and its affect on our environment." A "major action of state government" is defined as an action "significantly affecting the quality of the human environment." Such actions require the preparation on an environmental review—a process that allows alternatives to be examined and the public to have a voice when something "significant" is about to happen to their environment.

This policy makes sense. It allows Montanans to stop and think and plan for the future. It is a good state policy to examine things closely when something "significant" is about to happen to our environment.

HB 405 proposes to exempt "clean energy development" from MEPA. Although some of Montana's future energy development projects may not "significantly" affect our environment, a statutory exemption from MEPA is not a good policy—because if a situation arises that warrants MEPA review, the agency cannot do it.

Generally when an agency feels that a "class" of activities should not be subject to MEPA, it does not ask for a statutory exclusion. Instead, it asks for a categorical exclusion. Categorical exclusions are set up as a flexible tool in MEPA that allows agencies to exclude certain categories—or groups—of activities through rulemaking. What this process would involve is that DEQ go through rulemaking to categorically exclude certain "clean energy" projects from MEPA. They would be required to define the activities that should be exempt from MEPA in the proposed rule.

The advantage of doing MEPA compliance through a categorical exclusion is that DEQ would have to outline the conditions under which "clean energy" projects would be excluded from MEPA. And if circumstances arise that warrant MEPA review, the agency would be able to do an environmental review. In addition to allowing major coal-fired power plants to be exempt from MEPA, HB 405 would exempt any new hydroelectric dams in the state—including one on the Yellowstone River—the longest undammed river in the country.

MEPA is Montana's environmental safety net. Planning is essential as Montana continues to grow. HB 405 predetermines the answer to the key questions MEPA asks. This is bad policy, for we cannot know the answer unless we ask the questions. And there is no harm in asking the question unless we fear the answer.

Montana Audubon urges you to vote "DO NOT PASS" on HB 405 and continue to protect Montana's environment.

Chapters:

Bitterroot Bitterroot Valley	Five Valleys Missoula	Flathead Kalispell	Last Chance Helena	Mission Mountain Polson	Pintlar Butte • Dillon	Rosebud Miles City	Sacajawea Bozeman	Upper Missouri Breaks Great Falls	Yellowstone Valley Billings
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List of 12 specific statutory exemptions from MEPA*

ETIC = Energy and Telecommunications Interim Committee
*Information obtained from Montana Environmental Quality Council memo dated May 11, 2006

1. **Certain actions that involve an amendment to a hard-rock mine operating permit** (categorical exclusions, administrative actions, ministerial actions, repair and maintenance actions, investigation and enforcement actions, actions that are primarily economic or social in nature, insignificant boundary changes in the permit area, and changes in an operating plan that was previously permitted) (82-4-342, MCA).
2. **The transfer of permits for portable emission sources** (75-2-211(5), MCA).
3. **A qualified exemption for reciprocal access agreements on state land.** The Department of Natural Resources and Conservation (DNRC) is not required to analyze or consider potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access (77-1-617, MCA).
4. **A transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies.** This does not trigger review under MEPA if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law (75-1-201(1)(d), MCA).
5. **Issuance of a historic right of way deed** (77-1-130, MCA).
6. **Issuance of any lease or license by the DNRC and the Board of Land Commissioners that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82, MCA** (77-1-121(2), MCA).
7. **DNRC 's issuance of lease renewals** (77-1-121(3), MCA).
8. **Nonaction on the part of DNRC or the Board of Land Commissioners.** Even though they have the authority to act, this does not trigger MEPA review (77-1-121(3), MCA).
9. **DNRC or Board of Land Commissioner actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:**
 - (a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1, MCA;
 - (b) development or adoption of zoning regulations;
 - (c) review of a proposed subdivision pursuant to Title 76, chapter 3, MCA;
 - (d) actions related to annexation;
 - (e) development or adoption of plans or reports on extension of services; and
 - (f) other actions that are related to local planning (77-1-121(4), MCA).
10. **Certain emergency timber sale situations** (fire, fungus, insect, parasite, blowdown, etc.) or time-dependent access situations involving timber. DNRC is exempt from MEPA review to the extent that DNRC's compliance with MEPA is precluded by limited time (77-5-201, MCA).
11. **Small business licenses under the Montana Small Business Licensing Coordination Act** (30-16-103(3)(b), MCA).
12. The DEQ is prohibited from preparing an environmental review under 75-1-201, MCA, for a **transfer of mine operating permits** unless the department can show that the operation has caused or may cause significant impacts that have not been analyzed previously in an environmental review document prepared pursuant to 75-1-201 (82-4-250(4), MCA).