

MINUTES
NATURAL RESOURCES SUBCOMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 13, 1987

The meeting of the Natural Resources Subcommittee was called to order by Chairman Swift on February 13, 1987, at 8:10 a.m. in room 317 of the State Capitol.

ROLL CALL: All subcommittee members were present. Also present were Carl Schweitzer, Senior Fiscal Analyst, from the Office of the Legislative Fiscal Analyst (LFA) and Karen Vollstedt, Budget Analyst, from the Office of Budget and Program Planning (OBPP).

Tape 76A

Department of State Lands EXHIBIT 1

Carl reviewed the exhibit. Carl said that after the subcommittee completed State Lands' budget, the subcommittee directed him and the department to go back and look at the funding to be sure everyone agreed. Due to some of the decisions made by the subcommittee, some numbers will change in Department of State Lands budget.

Carl explained State Lands' request in the reclamation program for an additional three hard rock people to work on the administration and licensing of hard rock applications for mining. The department had asked for approximately \$85,000 each fiscal year of the biennium for three hard rock specialists. This was a budget modification that was approved by the executive. The subcommittee had delayed action on this request because Sen. Smith had wanted staff to talk to people in the hard rock industry.

Chairman Swift said that the subcommittee had toured the Pegasus mine/Montana Tunnels Mining Inc. in Jefferson City. The subcommittee found a good operation. Sen. Smith said that the Pegasus mine is a good operation with cooperation between all concerned. Dennis Hemmer, Director, Department of State Lands, said that the Pegasus operation is an example of what can be done when government works with the industry. Mr. Hemmer said there are many beginning mining operations. Right now the department is not keeping up with that demand. Mr. Hemmer said that is the basis of his request for the three addition FTEs.

Chairman Swift asked how many persons are in the hard rock area in the Department of State Lands at this time. Mr. Hemmer answered that there are six persons, including a bureau chief. Rep. Manuel asked how the positions are funded. Mr. Hemmer said they are funded by the general fund.

Rep. Manuel MOVED to allow three FTEs, \$85,000 for each year of the biennium (general fund money). Rep. Devlin made a SUBSTITUTE MOTION to allow two FTEs. Motion failed on a tie vote.

Sen. Smith MOVED to add three FTEs, and that language be included in the appropriation bill which would require the department to eliminate one of the three new positions if the number of mining applications going into fiscal 1989 is less than the number of applications going into fiscal 1988. Motion passed unanimously.

Sen. Smith said that he had been contacted regarding crop insurance on state lands. Mr. Hemmer said that under present ruling, under the sod buster provision, if any one of the state lessees is out of compliance with the sod buster provision, then the state will not get any of the federal payment. One of the lessees is going to go out of compliance. Mr. Hemmer said that unless the state can turn that around, they cannot get the FCIC payment. Mr. Hemmer recommended that if the subcommittee wants to proceed with the insurance concept, that it be done with the understanding to only do crop insurance if the state can get that FCIC problem resolved.

Mr. Hemmer said that last year the Department of State Lands studied insurance programs. If they insured all the state lands, the state would make some money. Mr. Hemmer recommended going with a test project.

Tape 76B

Sen. Smith MOVED that the Department of State Lands take two counties as a pilot project for crop insurance on state lands, and those two counties be in different parts of the state, and not spend anymore than \$10,000 for each year of the biennium. Motion failed.

Rep. Devlin asked if this program could be put in place whereby the claims would come back into a revolving account. Rep. Devlin did not want to take general fund money with no way to redeem it back into the general fund.

The subcommittee agreed that the Department of State Lands proceed with the understanding that if they have the funds, they will do a pilot project.

Department of Natural Resources and Conservation (DNRC)

- EXHIBIT 2 Centralized Services Budget
- EXHIBIT 3 Water Development Program
- EXHIBIT 4 Resource Indemnity Trust Interest

Water Development

Mr. Fasbender, Director, DNRC, said that by the time you take \$233,000 from the water development program for the biennium, there would be approximately \$300,000 that would be available for projects. The program would be able to fund approximately three projects.

Carl said his understanding was that if the subcommittee takes the LFA figures, the water development program could fund through the ninth project (Exhibit 3). If the subcommittee didn't take the LFA figures, additional money would be available to fund more projects.

Chairman Swift said that the subcommittee needs some firm numbers in order to take action. Carl said it appears there is still a discrepancy in the numbers.

Mr. Fasbender said that the \$590,000 that is being suggested be taken out of RIT, would amount to a direct reduction of the grants portion of the RIT program.

Sen. Smith asked if the subcommittee is considering doing something out of order as far as RIT and water development budget. Sen. Smith said this money was collected and set aside for a specific purpose.

John Armstrong, Administrator, Centralized Services Division, said that the LFA figures penalize the oil and gas too much money for the amount of support services that they receive. Chairman Swift stated that the subcommittee would not take any final action on this budget until DNRC, LFA, and the budget office are in agreement over the figures.

Rep. Manuel requested a list of RIT projects and water development projects and how they will be affected by budget cuts.

Tape 77A

EXHIBIT 5 Water Rights Adjudication Program

Mr. Fasbender reviewed this handout of how budget cuts ordered by the subcommittee would affect the determination of who owns the rights to water from Montana's rivers and streams. Mr. Fasbender said that if accuracy is not the single prime motivating factor for adjudication, then the process should be terminated before any more money is wasted on a meaningless process. He said that with an adequate budget, the department would be able to retain its field office employees to visit water rights claimants and work out many problems. Mr. Fasbender said he would have no problem if the legislature would choose to eliminate the program, but it is difficult to be given the responsibility to run a program and not have adequate funding. His report concluded that the subcommittee's cuts would either extend the life of the entire adjudication program by at least 15 years or would undermine the accuracy of the decrees such that their utility and validity is doubtful.

Public Service Commission Travel and Attorney position

EXHIBIT 6 Public Service Commission Travel

EXHIBIT 7 Subcommittee action worksheet
Travel

- a. out-of-state
- b. In-state
- c. Pipeline safety
- d. Rail safety

Carl said that he, Karen, and persons from the PSC met and came up with a better travel budget. Rep. Devlin MOVED to reconsider action on the travel budget, a, b, c, and d. Motion passed unanimously.

Tape 77B

Rep. Spaeth and Sen. Smith said they wanted to insure that PSC could continue to have hearings out of Helena.

Rep. Devlin MOVED to accept the PSC request for out-of-state travel, \$33,450. Motion passed unanimously.

Rep. Devlin MOVED to accept the executive recommendation for in-state travel, and included \$6,430 per year for travel should HB 302 pass. Motion passed unanimously.

EXHIBIT 8 PSC Legal Division Workload Information

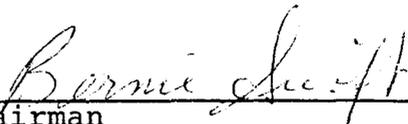
Dan Elliott, Administrator, Utility Division, reviewed the handout. Rep. Spaeth asked Howard Ellis if it would delay PSC work if they didn't have this attorney position. Mr. Ellis said that it is not only a timely problem, but a quality problem also. Mr. Ellis said that, this quarter, Montana Power Company is expected to file two major rate design applications. This will be a heavy workload and tough issues.

Rep. Spaeth MOVED to accept the LFA budget on this item and approve the attorney position. Motion passed 4-3.

EXHIBIT 9 House Resolution

Rep. Devlin agreed to carry the resolution clarifying the sod busting program.

The meeting adjourned at 11:30 a.m.



Chairman
Natural Resources Subcommittee

DEPARTMENT OF STATE LANDS ISSUES

ISSUE 1. Maximizing Federal Funds: The subcommittee directed the LFA, OBPP and the department to meet and agree of the available federal and state special revenues. After meeting with the OBPP and the department an agreement on what federal and state special revenues were available was reached. The amounts of general fund and federal funds which were reported in the LFA newsletter will have to be adjusted by increasing general fund \$8,503 in fiscal 1988 and \$33,903 in fiscal 1989. Federal funds would have to be reduced a like amount.

ISSUE 2. In calculating the forestry budget the LFA has assessed the total vacancy saving to the general fund. The department and the executive have assessed vacancy savings equally to all funds. The difference in the approaches results in the LFA budget having \$27,000 less of general funds than the executive and \$27,000 more of state special revenue funds.

FOREST FIRE PRESUPPRESSION BUDGET

	DEPARTMENT'S ORIGINAL REQUEST	FISCAL 1988 SUBCOMMITTEE BUDGET	WHAT BUDGET NEEDS BE TO USE ALL LANDOWNER FUNDS	DIFFERENCE
Total request	\$3,602,989	\$3,396,553	3,440,190	43,637
1/3 of total req revenue from	1,200,996	1,132,184	1,146,730	
landowner assessment	1,146,730	1,146,730	1,146,730	
under (over)	54,266	(14,546)	0	

	DEPARTMENT'S ORIGINAL REQUEST	FISCAL 1988 SUBCOMMITTEE BUDGET	WHAT BUDGET NEEDS BE TO USE ALL LANDOWNER FUNDS	DIFFERENCE
Total request	\$3,515,023	\$3,294,896	3,443,679	148,783
1/3 of total req revenue from	1,171,674	1,098,299	1,147,893	
landowner assessment	1,147,893	1,147,893	1,147,893	
under (over)	23,781	(49,594)	0	

Natural Resources Subcommittee
Exhibit 2

CENTRALIZED SERVICE	FY 1988		FY 1989		DIFFERENCE
	LFA	EXEC	A	EXEC	
TOTAL PROGRAM	1,552,453	1,552,453	1,570,435		
RANGELAND 2052	12,500	12,500	12,500	12,500	0
MAJOR FAC SITTING 2428	20,000	20,000	20,000	20,000	0
WATER RIGHTS 2430	3,750	3,750	3,750	3,750	0
GRAZING FEES 2433	500	500	500	500	0
CONSER DIST 2434	11,000	11,000	11,000	11,000	0
ALT ENERGY 2437	26,161	38,282	26,085	37,104	11,019
RRD 2436	6,530	6,530	6,530	6,530	0
FEDERAL INDIR 3036	142,000	130,000	142,000	130,000	(12,000)
NET	1,330,012	1,329,891	1,348,070		
OIL AND GAS 2422	114,460	41,736	111,594	42,508	(69,086)
WATER DEVELOP 2435	232,624	102,375	230,808	102,493	(128,315)
ADJUSTED NET	982,928		1,005,668		
RY INTEREST 2027	291,045		297,778		(297,778)
GENERAL FUND 1100	691,883	1,185,780	707,890	1,229,050	521,160
TOTAL	0		0		

METHODOLOGY

FOR DETERMINING THE OIL AND GAS SHARE I USED THE FOLLOWING

TOTAL CENT SER	1,552,453
MINUS RENT	(250,000)
MINUS LEGAL	(200,000)
FORMULA BASE	1,102,453

TO FINANCE \$1,552,453 REQUIRED AND INDIRECT RATE OF 20.18 PERCENT
THE REVISED INDIRECT RATE ON \$1,102,453 IS 14.33 PERCENT
THEREFORE APPLYING THE REVISED INDIRECT TIMES THE DIVISIONS ADJUSTED BASE
OF \$798,747 ESTABLISHES A INDIRECT COST OF \$114,460

114,460

Water Development Program Prioritized Project and Activities
G: Grant L: Loan

Applicant/Project

MONTANA STATE LIBRARY Montana Water Resources Data Management	G	\$ 97,712
PRIVATE COMPANY Lima Dam Rehabilitation	G	64,000
MONTANA BUREAU OF MINES Mobility of Agricultural Chemicals	G	98,500
HILL COUNTY Lower Beaver Creek Dam Rehabilitation Study	G	35,000
TREASURE COUNTY CONSERVATION DISTRICT Conservation Practice Loan Program	G	100,000
PRIVATE COMPANY Edgar Canal Erosion Control	G	10,000
MONTANA STATE UNIVERSITY Plastic Irrigation Canal Lining	G	37,500
FLATHEAD CONSERVATION DISTRICT Rehabilitation of East Spring Creek	G	75,000
MINERAL COUNTY St. Regis Park Irrigation	G	35,000
CARBON COUNTY Roberts Water System Improvements	G	47,500
GREENFIELDS IRRIGATION DISTRICT Willow Creek Measuring Device	G	2,074
PRIVATE CORPORATION Nilan Canal Lining	G	25,000
EASTERN SANDERS CONSERVATION DISTRICT Little Bitterroot Recharge Enhancement	G	86,300

Office of the Legislative Fiscal Analyst
February 5, 1987

Table 1
Resource Indemnity Trust Interest
1987 and 1989 Bienniums

	<u>1987 Biennium</u>	<u>1989 Biennium</u>
Beginning Balance	\$ 2,001,373	\$ 133,109
Revenue	<u>13,478,388</u>	<u>13,684,665</u>
Total Funds Available	\$15,479,761	\$13,817,774
<u>Expenditures</u>		
30% Water Development	\$ 4,043,516	\$ 4,105,400
6% Hazardous Waste	808,703	821,080
Agency Operations*	5,832,752	4,273,995
House Bill 952	232,892	-0-
RIT Grant Program	<u>4,428,789</u>	<u>-0-</u>
Total Appropriations	<u>\$15,346,652</u>	<u>\$ 9,200,475</u>
Ending Fund Balance	<u>\$ 133,109</u>	<u>\$ 4,617,299</u>

*Natural Resources subcommittee has approved \$3,679,247 for agency operations in the 1989 biennium and has another \$594,748 under consideration as of 2-3-87.

WATER RIGHTS ADJUDICATION PROGRAM

Projected Impacts From a \$500,000 Funding Reduction For The Department

of Natural Resources and Conservation Adjudication Functions

Prepared by

Department of Natural Resources and Conservation

At the Request of

Natural Resources Appropriations Subcommittee

10 February 1987

WATER RIGHTS ADJUDICATION PROGRAM

The Natural Resources Appropriation Subcommittee has requested that the Department of Natural Resources and Conservation (Department) describe how a \$500,000 annual reduction would affect the water rights adjudication process. In order that the Department's response be clearly understood, several fundamental issues must first be addressed. These issues concern the Department's role in verification (claims examination) and as a general objector, and the interaction of these roles in an accurate and defensible McCarran Amendment adjudication.

ISSUES

Accuracy and the Need for a Strong Verification

Both the Department and the Water Court recognize the need for accuracy in the decree process. This recognition is based on the legislative history behind S.B. 76. In November 1978, the Subcommittee on Water Rights reported to the 46th Legislature the need for an accurate adjudication, supporting implementation of S.B. 76. Briefly, the subcommittee recognized the following as goals of an adjudication:

- (1) the elimination of confusion and uncertainty in each appropriator's existing rights;
- (2) the establishment of an accurate basis upon which to make decisions for the allocation of new water rights;
- (3) the establishment of the amount of water put to beneficial use to assist the courts when conflicts arise between Montana residents and the federal government as to reserved water rights;
- (4) the guaranteeing of a state forum for the adjudication of all rights;
- (5) the reduction of the chance of expensive piecemeal litigation in low water years;
- (6) the establishment of accurate records of water use for proper water planning.
- (7) the establishment of a central water right record as mandated by the state constitution in a timely manner;
- (8) the facilitation of the buying, selling, and transferring of water rights;
- (9) the settlement of local water right issues with finality by utilizing a state assisted adjudication; and,

- (10) the establishment of a more accurate adjudication by utilizing witnesses and physical evidence that may not be available if the adjudication was delayed.

None of these goals can be achieved if accuracy is not the primary concern of the adjudication. It is a fallacy to suggest that the legislature was not interested in accuracy when S.B. 76 was enacted. Furthermore, in light of the United States Supreme Court holding in Arizona v. San Carlos Apache Tribe, it is irresponsible to argue that a McCarran Amendment adjudication can take place in Montana state courts if accuracy is of little or no importance.

Accuracy has always been of fundamental importance to Montana's adjudication. The 1979 legislative mandate to "expedite and facilitate" the adjudication was not a mandate to reduce accuracy. Rather, it was a directive to move a projected 100-200 year process to a more accelerated and easier process. But there is not a hint of evidence in the legislative history of S.B. 76 to suggest that accuracy should take a backseat to speed in the adjudication process.

If accuracy is not the single prime motivating factor for the adjudication, then the process must be terminated before any more money is wasted on a meaningless process. A water right decree that is not reasonably accurate serves no purpose. It cannot be used to settle disputes on a stream, it cannot be used to administer water rights in times of water shortage, it cannot be used to defend our water rights from downstream states, and it cannot be used to quantify federal water rights in state court.

The Powder River water rights adjudication is often mentioned as an adjudication that took too much time and was too expensive, while the current system is viewed by many as a means to "expedite and facilitate" the process. The current system under the Water Court is neither faster, simpler, nor less expensive than the adjudication effort in the Powder River.

The cost to the state for the Powder River adjudication was about \$90 per claim. The 10,302 claims in the Powder River basin were verified in five years with the final decrees issued less than three years later. Even though the Department field-investigated only about 10 percent of the water right claims, there were very few objections (309 or 3%) to claims in the preliminary decree. The final decree was appealed to the Supreme Court because of changes made by the Water Court. The Supreme Court reversed the Water Court's decision.

To date, the cost to the state for the current system is about \$110 per claim. This cost cannot be compared directly with the cost of the Powder River adjudication costs because only about two percent of the 204,000 claims are in final decree at this time. The Powder River process resulted in a final decree for

all claims in that basin. Obviously, more expense will be incurred in the current program as the remaining claims proceed to a final decree.

More claims are processed annually under the current program because the budget for the Department and the Water Court is 10 times what the budget was for the Powder River adjudication. In addition, almost 39 percent of the claims in decrees produced by the current process have been objected to, indicating that these preliminary decrees are less accurate than the Powder River preliminary decree.

Department Verification

In an effort to facilitate the adjudication, the legislature adopted a claims filing program and established a prima facie standard of proof for the claims. Verification, or claims examination, provides a collection of information that may be used as evidence to supplement the claims or provide evidence to overcome the prima facie status of the claims. The purpose of the claims examination process was noted by the eminent water law scholar, Frank J. Trelease, in his work on the publication "A Water Protection Strategy for Montana" as "a good faith attempt at verification of the water rights claimed for the pre-1973 rights, so as to guard against duplicate claims, claims to abandoned rights, or exaggerated claims....The current program should identify the level of existing water rights within a range of accuracy of plus or minus 10 percent (the 10 percent variance was the criterion allowed by the [United States Supreme] Court.)"

The Water Court has recognized the importance of the examination process to the adjudication. Although the Department and the Water Court have disagreements as to the extent and the degree of control the water judges may exercise over the department in carrying out the verification, the fact remains that the Water Court has required the department to verify each claim. In an April 1984 interview with the Montana Lawyer, Judge Lessley stated that 100 percent of all claims are being examined through "an intensive investigation of each claim." In that interview, Judge Lessley stated that the claims "have to stand up under verification and under objections of their neighbors." Furthermore, the Water Court in its recent proposed orders to implement the revised verification procedures continues to require the examination of all claims.

Verification is an essential tool which must be used to ensure an accurate adjudication. If verification is terminated or drastically reduced as the result of proposed budget cuts, then it will be unlikely that the necessary range of accuracy can be achieved to meet the objectives established by the legislature for the adjudication. Failure to achieve such accuracy will ultimately result in more expensive litigation, both to the state and the individual water users.

The disagreement between the Department and the Water Court concerns the extent that the Water Court can or should control the executive branch in the verification program. The Montana Supreme Court has before it a case that will address the state law questions as to whether the verification rules are executive rules or judicial rules. Unfortunately, the serious federal constitutional due process issues raised by the Water Courts' controlling the production of evidence (i.e., through claims examination) and determining the water rights based on such evidence cannot be finally decided by the Montana Supreme Court.

Department Objections

The Department has objected to preliminarily decreed water rights that appear to be exaggerated, erroneous or non-existent. The Department feels strongly that these objections are essential in order to ensure an accurate adjudication. Of the 70,000 water rights so far preliminarily decreed, the Department has submitted about 3,000 objections, with many of those being settled without a formal hearing.

The Department's role as an objector is important for several reasons. First, the Department's objections help ensure the accuracy of each individual water right. Second, the Department's objections may question the accuracy and validity of large water rights that can significantly affect every other water right on a source. For example, the Department has objected to large claimed rights of both the Montana Power Company and the U.S. Bureau of Reclamation, rights that affect entire river systems.

Senator Story has accused the Department of intimidating claimants in the way Department objections were handled. This allegation has no foundation. In filing objections to water right claims, the Department makes every effort to work with the claimant to settle objections, rather than force the issue into a hearing. For example, the Department felt claimants should know as soon as possible that their water rights have been objected to. Therefore, the Department sent each water right claimant whose claim had been objected to a copy of the Department's objection even though the Water Court does not send to water rights claimants copies of objections to their claims unless specifically requested by a claimant. Additionally, the Department sent a cover letter explaining that the Department was objecting to ensure an accurate adjudication and that it would work with the claimant to clear up any misunderstandings as to the extent of the water right. Interrogatories (five questions) were also sent to the claimant. The five questions asked claimants what proof they had of their claimed water right and asked if they disagreed with the Department's objection. A stipulation was also enclosed so that a claimant, if he agreed with the Department objection, could sign it and thereby resolve the dispute.

Many claimants agreed with the Department objections and signed the stipulations sent to them. Others who disagreed with the Department's objection often contacted the Department to discuss the matter. Many times these claimants visited the Department field office for a further explanation of the basis of the Department's objection and the dispute was ultimately settled. Many Department objections were thus resolved in advance of any type of Water Court hearings or prehearing conferences as a result of the Department's letters that were sent out soon after its objections were filed with the Water Court.

Chief Water Judge, W. W. Lessley, has ruled that the Water Court has the authority to control the timing of when interrogatories may be served on claimants, and has held that the Department has not violated any claimants' constitutional rights by serving interrogatories with its objections. In fact, the Water Court ruled the Department had served its interrogatories in good faith stating:

The DNRC served its interrogatories after the commencement of the adjudication of all existing water rights in good faith to evaluate the merits of each contested case and prepare for trial. The DNRC was substantially justified in opposing the Motion for Protective Order as their interrogatories were timely filed in compliance with the governing Rule 33, M.R.Civ.Pro. (1985).

Case No. 40A-A (August 22, 1986) (emphasis added).

IMPACTS OF A \$500,000 ANNUAL REDUCTION

Department Budget

The Department adjudication responsibilities are described by the following functions.

1. As mandated by §85-2-243, MCA, the Department provides assistance and information to the Water Court. Every existing water use claim is examined and errors, inconsistencies, or exaggerations are reported to the Water Court.
2. A centralized record system of all existing water rights claims is maintained. This record system documents all claimed water uses and provides public access, security, and updates of changes to the records.
3. The Department reviews decrees and prepares objections to claimed rights that are erroneous, exaggerated, or nonexistent.

4. The Department provides assistance to claimants and water users in filing claims, amending claims, accessing existing water right data and information.
5. The Department reviews final decrees in preparation for issuing certificates of water rights and to maintain quarterly and annual reports to county clerk and recorders as mandated by statute.

Table 1 provides a breakdown of the FY88/89 expenditures as proposed by the Governor's Budget Office. The projected expenses allotted to each of the functions within the adjudication program have been estimated. The table also projects cost impacts that would result from a \$500,000 reduction within the adjudication program for FY88 and FY89.

OBPP Recommended Funding Level Natural Resources Appropriations Subcommittee Reduced Funding Level

<u>Function</u>	<u>FY88-89</u>	<u>FY89</u>	<u>FY89</u>
1. Assistance to Water Court	Personal Services-	423,542	154,625
	Operating Expenses & Equipment-	137,435	79,713
	Subtotal-	560,977	234,338
	(20.0 FTE)	(7.0 FTE)	(7.0 FTE)
2. Records System	Personal Services-	157,272	99,369
	Operating Expenses & Equipment-	110,275	89,980
	Subtotal-	267,547	189,349
	(8.22 FTE)	(5.5 FTE)	(5.5 FTE)
3. Objections	Personal Services-	120,314	50,790
	Operating Expenses & Equipment-	9,029	6,752
	Subtotal-	129,343	57,542
	(5.5 FTE)	(2.0 FTE)	(2.0 FTE)
4. Assistance to Claimants	Personal Services-	76,781	53,419
	Operating Expenses & Equipment-	5,000	5,000
	Subtotal-	81,781	58,419
	(3.5 FTE)	(2.5 FTE)	(2.5 FTE)
5. Certificates	Personal Services-	23,362	23,362
	Operating Expenses & Equipment-	5,000	5,000
	Subtotal-	28,362	28,362
	(1.0 FTE)	(1.0 FTE)	(1.0 FTE)

<u>Total</u>	<u>381,565</u>	<u>381,565</u>	<u>381,565</u>
Personal Services-	381,565	381,565	381,565
Operating Expenses & Equipment-	186,445	186,445	186,445
Total-	568,010	568,010	568,010
	(38.22 FTE)	(18.00 FTE)	(18.00 FTE)

Impact Description

The effect of cutting the Department's adjudication budget in half cannot be properly described unless assumptions are made about future actions of the Water Court. If the Water Court maintains its projected schedule of issuing preliminary decrees without recognition of the Department's diminished capacity to assist the Water Court to properly verify claims, or to object to claims, then the probability of achieving an accurate adjudication will be diminished and the entire program will be undermined. If, on the other hand, the Water Court slows the process in accordance with the Department's reduced resources, then the completion date of the adjudication program would be greatly extended. Both of these scenarios are described below.

The Program is slowed because of reduced budget. If the Water Court slows its pace of issuing temporary preliminary decrees, the Department would continue to verify claims, assist claimants, and object to claims, but at a reduced level.

This scenario would increase the total time required for the Department to verify the remaining 134,000 claims. Based on the proposed reduction, the Department would verify about 6,000 claims per year, a reduction of about 67 percent from the current rate of 18,000 claims per year. The time required to examine the remaining claims would be about 23 years, while at the current level, about eight years would be required to finish verification. It must be noted that the adjudication program will extend far beyond the verification work; additional time being required for issuance of preliminary decrees, objections to claims, hearings, and issuance of final decrees.

The Department would reduce its objection role by about 60 percent. If the rate at which decrees are issued is slowed, the Department should be able to maintain its current level of decree review for possible objections.

Sufficient resources would be available in the records section to issue decrees at the reduced rate. Although requests for water rights data would be delayed or unanswered.

Assistance to claimants in the field offices throughout the state would be substantially reduced. That is, field office personnel would not be as available to answer questions, provide technical information, or otherwise assist water right claimants.

The current field office staff would be reduced by 65 percent. Most of these people have been with the program since the claim filing deadline of April 30, 1982. Tremendous water right experience would be lost.

Six of the nine field offices would no longer have adjudication program staff available to assist the Water Court in pre-hearing conferences, hearings, or field investigations.

The Program continues at current pace in spite of reduced budget. If the Water Court maintains its projected schedule for issuing decrees without considering the departments reduced capability, the decrees that are issued would be less accurate and individual claimants would face greatly increased costs to protect their water rights.

The Department would be unable to properly verify all water right claims. Consequently, errors in water rights placed in decrees would not be identified. Currently, objections are submitted on about 39 percent of claims in preliminary decrees. As more errors are included in the claims, more objections will be filed, increasing the cost to the state and to the claimants. It is likely that many inaccuracies would not be identified by other claimants, since claimants traditionally rely on the Department's verification information as a basis for objections to erroneous or exaggerated claims--information that would no longer be available. Other western states recognize the benefits of technical information on water right claims and require administrative agencies to provide such data.

The Department would reduce its objection role by about 60 percent. This reduction would allow erroneous, exaggerated, or nonexistent water rights to be included in water right decrees. Accuracy of Montana's water right adjudication program would suffer, undermining the utility of the program.

Sufficient resources may not be available in the records section to issue decrees. Requests for water rights data would be delayed or unanswered.

As with the previous scenario, assistance to claimants in the field offices throughout the state would be limited, with individuals not as available to answer questions, provide technical information, or otherwise assist water right claimants.

The current field office staff would be reduced by 65 percent as in the first scenario. Most of these people have been with the program since the claim filing deadline of April 30, 1982. Tremendous water right experience would be lost.

As with the first scenario, six of the nine field offices would no longer have adjudication program staff available to assist the Water Court in pre-hearing conferences, hearings, or field investigations.

Conclusion

Cutting the Department's water rights adjudication budget in half would either extend the life of the entire adjudication program by at least 15 years or would undermine the accuracy of the decrees such that their utility and validity is doubtful.

PUBLIC SERVICE COMMISSION TRAVEL

PSC REQUEST EXEC.REC LFA CURR.

Out-of-State

Pipeline Safety	\$ 3,050	\$3,050	3,050
Revolving Account	15,000	-0-	15,000
MDU Case	7,400	-0-	10,345
NARUC & Other Travel	<u>8,000</u>	<u>-0-</u>	<u>11,184</u>
TOTAL OUT-OF-STATE	\$ <u>26,450</u>	\$ 3,050	\$ 39,579

In-State

Rail Safety 60/40	\$ 6,900	6,900	6,900
Pipeline Safety 50/50	6,000	6,000	6,000
In-State Commission Hearings	11,525	11,525	11,525
Motor Carrier Travel	12,000	12,000	12,000
In-state Motor Carrier Audits	3,850	3,850	3,850
Reductions	<u>-0-</u>	<u>(4,500)</u>	<u>(9,904)</u>
TOTAL IN-STATE	\$ 40,275	\$ 35,775	\$ 30,371

TOTAL TRAVEL	\$ <u>76,725</u>	\$38,825	\$69,950
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House Bill 302	\$6,430		
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Subcommittee Action
Agency: Public Service Commission

	----- Fiscal 1988 -----			----- Fiscal 1989 -----		
	<u>Executive</u>	<u>Current Level</u>	<u>Difference</u>	<u>Executive</u>	<u>Current Level</u>	<u>Difference</u>
FTE	45.00	46.00	(1.00)	45.00	46.00	(1.00)
Personal Serv.	\$1,328,002	\$1,351,875	\$(23,873)	\$1,326,579	\$1,350,437	\$ (23,858)
Operating Exp.	320,197	332,913	(12,716)	319,023	321,897	(2,874)
Equipment	30,525	23,260	7,265	23,605	10,778	12,827
Non-Operating	<u>20,000</u>	<u>-0-</u>	<u>20,000</u>	<u>7,000</u>	<u>-0-</u>	<u>7,000</u>
Total Exp.	<u>\$1,698,724</u>	<u>\$1,708,048</u>	<u>\$ (9,234)</u>	<u>\$1,676,207</u>	<u>\$1,683,112</u>	<u>\$ (6,905)</u>
Funding						
General Fund	\$ -0-	\$1,661,118	\$(1,661,118)	\$ -0-	\$1,632,790	\$(1,632,790)
State Spec. Rev.	1,644,164	-0-	1,644,164	1,618,705	-0-	1,618,705
Federal	39,560	31,930	7,630	42,502	35,322	7,180
Proprietary	<u>15,000</u>	<u>15,000</u>	<u>-0-</u>	<u>15,000</u>	<u>15,000</u>	<u>-0-</u>
Total Funding	<u>\$1,698,724</u>	<u>\$1,708,048</u>	<u>\$ (9,234)</u>	<u>\$1,676,207</u>	<u>\$1,683,112</u>	<u>\$ (6,905)</u>

<u>Differences</u>	Add to (Subtract From) LFA Current Level		Subcommittee Action	
	<u>Fiscal 1988</u>	<u>Fiscal 1989</u>	<u>Fiscal 1988</u>	<u>Fiscal 1989</u>
1. Executive Reduction	\$(31,035)	\$(31,000)	_____	_____
2. Commission Vacancy Savings	8,707	8,707	_____	_____
3. Rail Safety				
FY88 - \$8,659 State Funds				
\$2,013 Federal Funds				
FY89 - \$9,085 State Funds				
- \$1,517 Federal Funds	10,672	10,602	_____	_____
4. Audit	-0-	(12,480)	_____	_____
5. Pipeline Safety (50% Federal)	11,234	11,234	_____	_____
6. Court Recorder Fees	10,108	10,108	_____	_____
7. Pipeline Consultant	3,000	3,000	_____	_____
8. Computer Subscription	3,500	3,500	_____	_____
9. Payroll Charges	2,700	2,700	_____	_____
10. Insurance & Bonds	(1,600)	(1,600)	_____	_____
11. Gasoline	2,700	2,500	_____	_____

<u>Differences</u>	Add to (Subtract From) LFA Current Level		Subcommittee Action	
	<u>Fiscal 1988</u>	<u>Fiscal 1989</u>	<u>Fiscal 1988</u>	<u>Fiscal 1989</u>
12. Clothing	700	700	_____	_____
13. Travel				
a. Out-of-State	(30,400)	(30,400)	_____	_____
b. In-State	(11,157)	(11,157)	_____	_____
c. Pipeline Safety	5,701	5,701	_____	_____
d. Rail Safety	4,756	4,756	_____	_____
14. Repairs and Maintenance				
Vehicles - 350				
Radios - 200				
Grease & Lube - 400				
Tires & Tube - 450	1,400	1,400	_____	_____
15. Magazine Subscription	(1,200)	(1,200)	_____	_____
16. Equipment				
a. Car Costs	3,625	11,927	_____	_____
b. Computer Supplies	3,642	900	_____	_____
17. Sound Deadening Boards	20,000	7,000	_____	_____
18. Rent Inflation Factor	(3,400)	(4,721)	_____	_____
19. Data Consultant MOD	57,000	-0-	_____	_____
20. Equipment Inspector MOD	43,691	34,217	_____	_____
21. Consultants MOD	50,000	50,000	_____	_____
22. Toll-Free Number MOD	10,184	10,122	_____	_____

PSC LEGAL DIVISION - WORKLOAD INFORMATION

	<u>83</u>	<u>84</u>	<u>85</u>	<u>86</u>
Hearing days				100
Administrative hearings ..	85	103	75	87
Court cases pending		29	27	28

These statistics do not reflect time spent on drafting orders; drafting rules and the rulemaking process; decision-making advice to the Commission; travel time; preparation for administrative and court cases; responding to public inquiries; correspondence; consultation with regulated companies, industrial customers and other consumer groups; involvement in federal agency issues and legislation; consumer complaint advice; declaratory rulings; and involvement in cases that settle with no need for hearing.

General Areas Of Workload Decrease:

1. MPC natural gas pipeline construction. :
Due to resolution of the major controversy surrounding construction of the southern pipeline, the legal division has concluded a lengthy contested case. The division will continue to be involved in the monitoring program, however, and is currently reviewing compliance with DOT rule requirements.
2. MPC Colstrip No. 3.
Again, although monitoring continues, the legal division is no longer involved in a contested case proceeding in this matter.

General Areas of Workload Increase:

1. Telecommunications restructuring.
Last Session, the PSC noted that workload on telecommunications issues had increased to the point where one attorney spent approximately 80% of his time on those matters. That is equally true today due to the continued restructuring.
2. MDU/Williston reorganization.
MDU's reorganization requires current involvement in FERC proceedings which will have a significant

and lasting effect on retail gas rates. This re-organization has coincided with a general upheaval in the natural gas industry which requires closer supervision of gas purchases. The Commission has recently initiated an investigation in this regard.

3. Federal Tax Reform of 86.

The Commission has very recently received updated rate filings from every major utility in the State. This is possibly the largest single project ever undertaken by the Commission, and will involve all of its legal staff.

4. COS/rate design filings.

MPC is expected to file this quarter two major rate design applications affecting both its gas and electric operations. Included in these cases will be consideration of industrial incentive and market retention rates which have been pending for quite some time.

5. Railroad matters.

The legal division has experienced a significant workload increase due to the safety and service issues raised by BN's short line sales activities.

Potential workload increase:

If HB302 is enacted, station closure petitions would require approximately 100 days of legal division time in each of the next two fiscal years.

50th Legislature

HOUSE RESOLUTION NO. _____

INTRODUCED BY _____

A RESOLUTION OF THE NATURAL RESOURCES SUBCOMMITTEE OF THE APPROPRIATIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ENCOURAGE THE SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE TO AMEND RULES CONCERNING ELIGIBILITY OF PRODUCERS PRODUCING AGRICULTURAL COMMODITIES FROM HIGHLY ERODIBLE LAND OR CONVERTED WETLAND.

WHEREAS, the United States Congress has enacted the Food Security Act of 1985, which includes, among other things, a policy discouraging the breaking of highly erodible land and the conversion of wetlands; and

WHEREAS, the United States Department of Agriculture has adopted Federal regulations concerning the eligibility of producers producing agricultural commodities from highly erodible land or converted wetland, 51 Federal Register 23502 et seq. (June 27, 1986) (to be codified at 7 CFR §12.1 et seq.); and

WHEREAS, Federal crop benefits received by the State of Montana comprise a significant amount of financial support for Montana public schools; and

WHEREAS, the Food Security Act of 1985 does not deny to the State of Montana such crop benefits; and

WHEREAS, the United States Department of Agriculture has misinterpreted the applicable statutes and has interpreted the regulations so as to totally deny the State of Montana all its Federal crop benefits, resulting in a possible loss of one million to two-and-one-half million dollars to Montana public schools; and

WHEREAS, the State of Montana has requested the Secretary of the United States Department of Agriculture pursuant to 5 U.S.C. § 553(3) to amend these rules, so as to clarify the eligibility of the State of Montana to continue to receive its Federal crop benefits.

NOW THEREFORE, BE IT RESOLVED BY THE NATURAL RESOURCES SUBCOMMITTEE OF THE APPROPRIATIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Secretary of the United States Department of Agriculture be encouraged to amend the Federal rules which implement the Highly Erodible Land and Wetland Conservation provisions of Subtitles B and C of Title XII of the Food Security Act of 1985 (P.L. 99-198), so as to clarify the right of the State of Montana to receive Federal crop benefits.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the members of Montana's Congressional delegation and to the Secretary of the United States Department of Agriculture.

