

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Vice-Chairman, Cecil Weeding, on March 20, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: Lawrence Stimatz, Chairman (D)

Staff Present: Deborah Schmidt (EQC).

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

Announcements/Discussion: None.

HEARING ON HB 382

Presentation and Opening Statement by Sponsor:

Representative Swysgood, District 73, presented to the committee HB 382 at the request of the Department of Natural Resources. The primary purpose of the bill, Swysgood said, is to eliminate the overlapping jurisdiction between the state and local government for dam safety of non-federal high-hazard dams located on federal property.

Proponents' Testimony:

Gary Fritz, Department of Natural Resources, told the committee the idea for HB 382 came from the DNRC water planning process, although the bill was not formally endorsed by the Water Regulations Steering Committee. The bill will also change the definition of dam to reservoir, Fritz said. (EXHIBIT #1).

Jo Brunner, Montana Water Resources Association, testified in support of HB 382.

Opponents' Testimony:

There were no opponents' to the bill.

Questions From Committee Members:

Senator Anderson asked Gary Fritz if there were currently regulations on dams within the state.

Fritz stated there are approximately 16 dams on federal land that will be affected by the new statutes.

Closing by Sponsor:

Representative Swysgood asked Senator Grosfield to carry HB 382.

EXECUTIVE ACTION ON HB 382

Motion:

Senator Grosfield made a motion that HB 382 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Grosfield that HB 382 BE CONCURRED IN carried unanimously.

HEARING ON HB 745

Presentation and Opening Statement by Sponsor:

Representative Swysgood, District 73, stated that HB 745 establishes a partial basin closure between the Beaverhead and Red Rock River Basins. Water usage under 100 gallons per minute is excluded within the bill, Swysgood said.

Proponents' Testimony:

Dick Kennedy, manager of the East Bench unit in Dillon, stated the Bureau of Reclamation and the DNRC plan to conduct a study to determine if there is a hydrological connection between the irrigation wells adjoining the river and the Basins. (EXHIBIT #1). The results of the study will likely benefit areas outside

the Beaverhead as well as areas within the state, Kennedy said.

Jo Brunner, Montana Water Resources Association, testified in support of HB 745.

Holly Franz, representing Montana Power Co., told the committee the power company has been concerned about the possible effect of accelerated groundwater development and has committed \$50,000 toward a groundwater study. Franz urged the committee's support of the bill which would maintain the status quo and gather information for a groundwater study. (EXHIBIT #2).

Gary Fritz, Department of Natural Resources and Conservation (DNRC), stated the DNRC is responsible for determining whether or not groundwater permits are allowed. In the past, Fritz said, the agency has not had enough information to deny permits. The proposed study and moratorium seems a responsible way to determine the relationship between groundwater and surface water, Fritz added. (EXHIBIT #3).

Gary Spaeth, Montana Water Users Coalition, noted a substantial number of members of the Coalition live within Representative Swysgood's jurisdiction and are in support of HB 745.

Opponents' Testimony:

There were no opponents'.

Questions From Committee Members:

Senator Grosfield asked Holly Franz to explain the difference between a groundwater well and vertical infiltration galleries.

Holly Franz replied that infiltration galleries are considered an appropriation of groundwater although the current definition of groundwater is water that is not connected to surface water.

Don MacIntyre, DNRC, stated the difference between wells and infiltration galleries is basically related to streams: if the water is coming into a stream from a groundwater source, it is considered a well. In a stream infiltration gallery the well is taking water from the surface flow and would be considered an infiltration gallery because it is taking water from the stream, Macintyre said.

Closing by Sponsor:

Representative Swysgood stated the bill clarifies the definition of groundwater, and for that reason, is an important piece of legislation. Senator Anderson was asked to carry HB 745.

HEARING ON HB 360

Presentation and Opening Statement by Sponsor:

SENATE NATURAL RESOURCES COMMITTEE

March 20, 1991

Page 4 of 9

Representative Harper, District 44, stated HB 360 accomplishes two purposes: 1. It attempts to ensure that the Reserved Water Rights Compact Commission will be "firmly rooted to the legislature by having members of the House of Representatives and the Senate as members. 2. Proposed amendments will extend the termination date of the compact commission to 1999, Harper said. (EXHIBIT #1 and #1a and #1b).

Proponents' Testimony:

Jack Galt, Chairman Montana Reserved Water Rights Compact Commission, stated he felt it was "very important" to have representation on the RWRCC from the legislature and to retain membership continuity on the Commission. (EXHIBIT #2 and #2a).

George Oschenski, on behalf of the Wilderness Society, told the committee the purpose of the retroactive appointment date was to stagger appointments in off-years so that "no one governor would be able to be elected and then appoint an entire RWRCC."

Alan Mickolson, member of the Montana Water Resources Association, stated the Association agrees with the original legislation that allowed for staggered terms of RWRCC members and the sunset date of 1999 submitted by Representative Harper. Mickolson encouraged an interim reporting requirement for the Commission.

Gary Spaeth, member of RWRCC, testified in support of the bill but in opposition to any amendments other than those that included the 1999 term date.

Chris Tweeten, Vice-Chairman RWRCC, stated that the Commission is required by statute to report annually to the water court regarding activities with each federal Indian reservation.

Senator Joe Mazurek, District 23, emphasized the need for continuity within the Commission.

Gordon McOmber, member RWRCC, submitted testimony in support of HB 360. (EXHIBIT #3).

Opponents' Testimony:

There were no opponents' to the bill.

Questions From Committee Members:

Senator Galt stated that it would be "physically impossible" to report on each entity (Indian tribes, federal entities) by 1995.

Senator Keating asked if the annual report from water quality was in pamphlet form and accessible to the public?

Senator Bengtson stated she had "problems" with the complexity of

the RWRCC.

Closing by Sponsor:

Representative Harper stated that the Commission is reviewed every two years. Harper said he could not support the proposed amendments because "they are against the wishes of my constituents." (EXHIBIT #4).

HEARING ON HB 361

Presentation and Opening Statement by Sponsor:

Representative Harper, District 44, told the committee that HB 361 clarifies that post-1973 federal reserved water rights will be submitted to the RWCC for review.

Proponents' Testimony:

George Ochenski, on behalf of the Wilderness Society, stated that his clients asked for clarification on the post-1973 reserved water rights. "If there are any wildernesses created or any other type of new, federal reserved water rights that come after 1973, the preferred route is to go through the Compact Commission rather than through the court," Oschenski said.

Ted Doney, Helena attorney, said he assisted in the drafting of the bill and its amendments. The bill simply corrects an oversight made in 1973 when the Water Use Act was adopted by the legislature, he explained. The Act was adopted with the intent of adjudicating the pre-1973 water rights. Under the present law, Doney said, it is not clear that the Commission can negotiate compacts with post-1973 reserved water rights.

Don MacIntyre, attorney, DNRC, testified in support of the bill.

Gary Spaeth urged the committee to support the bill.

Jo Brunner, Montana Water Resources Association, said the Association supported the bill.

Lorraine Gillies, Montana Farm Bureau, testified in support of HB 361. (EXHIBIT #1).

Opponents' Testimony:

There were no opponents' to the bill.

Questions From Committee Members:

Senator Grosfield asked for an explanation of "asserted or."

Ted Doney explained that where there isn't any negotiation for reserved rights, there still is a reserved right that has been

implied or expressed.

Closing by Sponsor:

Representative Harper stated he did not have anyone to carry the bill.

HEARING ON HB 908

Presentation and Opening Statement by Sponsor:

Representative Harper, District 44, stated that HB 908 attempts to speed measurement of Montana water in a manner that addresses a "multitude of uses at the same time." The bill requires DNRC to identify water sources that are chronically dewatered. The bill further requires the Natural Resources Board to adopt rules requiring an operator of an appropriation facility to install and maintain devices within a time period specified in the bill. Finally, the bill provides money for grants and loans from the Water Development Fund for measuring devices. Harper proposed an amendment to HB 908. (EXHIBIT #1). The state must move forward in terms of quantification of its water, Harper said.

Proponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, told the committee that water use cannot be managed unless instream flow use is measured. Amendments proposed by Representative Harper were developed through "close consultation with agricultural groups." Bradshaw urged adoption of the bill as amended.

Jo Brunner, Montana Water Resources Association, stated the Association has supported the concept of measuring devices for some time. Brunner added that the Association continues to protest the forcing of installation devices at the expense of the diverter if the benefit is to protect instream flow.

Gary Spaeth, Montana Water User's Coalition, stated support for HB 908 and the proposed amendment. Spaeth stated he felt there was a need to move more "aggressively in this area." Spaeth also suggested the need for "a better handle on our streams and water leasing."

Susan Lenard, Montana Audubon Legislative Fund, testified in support of HB 908.

Susan Brooke, Montana Stockgrower's Association, supported HB 908 as amended.

Lorraine Gillies, Montana Farm Bureau, submitted testimony in support of HB 908. (EXHIBIT #2).

Testimony stating work in progress on land and water resources within the state of Montana was submitted for the record. (EXHIBIT #2a).

Opponent's Testimony:

There were no opponents' to the bill.

Questions from the Committee Members:

Senator Keating asked Gary Fritz, DNRC, what benefit the state would receive from the bill.

Fritz replied that there "could be better water efficiency and management." Water users in the Musselshell area are now using water measuring devices, Fritz said. "They decided themselves it was a good idea to make sure that the people who should be getting the water are getting the water." During drought periods, they discovered that the wrong people were getting most of the water, Fritz said.

Senator Keating asked if these areas were receiving any R.I.T. funds?

Spaeth stated that the conservation district in the Musselshell area had received some grant monies to develop water management plans.

Senator Keating stated that simply, then, the bill provides "a lot of people with money for measuring devices."

Fritz said he didn't feel the grants had to be given. The bill simply states that "dewatered streams should be given a high consideration depending on whether that stream has been designated as dewatered," Fritz said.

Senator Tveit asked if a ditch coming from a stream would be measured?

Bradshaw stated that language was requested by agricultural groups who wanted to confine divergents coming off a natural watercourse.

Senator Grosfield stated the bill did not give any direction to the DNRC regarding designation of dewatered streams.

Fritz stated there are approximately 2,008 miles of chronically dewatered streams that have been identified by Fish, Wildlife and Parks.

Senator Anderson told Gary Spaeth he had received a letter from water users in the Beaverhead area stating they "specifically object to the inclusion of FWP as a party to the determination of dewatered stream regions."

Spaeth said the proposed amendment allows for consultation with "other agencies or organizations." Trout Unlimited, Montana Farm Bureau, Montana Stockgrower's Association should also be included as consultants, Spaeth said.

Senator Bianchi asked how they would enforce those who refused to use measuring devices on chronically dewatered streams.

Spaeth said there is direction within the bill to enforce those who fail to comply. There would not be a fine levied, however, he said.

Senator Keating asked Gary Fritz if there was any "specific appropriation within the bill."

Fritz replied that there were no specific appropriations.

Senator Keating asked how the \$80,000 general fund impact was determined?

Fritz stated that DNRC estimated how many watercourses and measuring devices might be involved. Fritz said DNRC's responsibility was to consult with FWP and identify dewatered streams. The Board of Natural Resources is responsible for adopting rules to require the measuring devices and then the DNRC is responsible for seeing that the measuring devices are put into place.

Senator Bianchi asked if there would be a public hearing to determine which streams are chronically dewatered? Bianchi stated there probably would not be a lot of measuring devices sold within the next biennium.

Fritz stated that was true.

Closing by Sponsor:

The sponsor did not close the hearing.

EXECUTIVE ACTION ON HB 745

Motion:

Motion by Senator Kennedy that HB 745 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Motion by Senator Kennedy that HB 745 BE CONCURRED IN carried unanimously.

EXECUTIVE ACTION ON HB 361

Motion:

Motion by Senator Bianchi that HB 361 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

None.

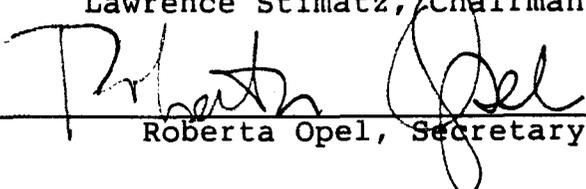
Recommendation and Vote:

Motion by Senator Bianchi that HB 361 BE CONCURRED IN carried unanimously.

ADJOURNMENT

Adjournment At: 5:55 p.m.

Lawrence Stimatz, Chairman



Roberta Opel, Secretary

LS/ro

ROLL CALL

Natural Resources
COMMITTEE

DATE 3-20-91

52ND

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	/		
Senator Bengtson	/		
Senator Bianchi	/		
Senator Doherty	/		
Senator Grosfield			
Senator Hockett	/		
Senator Keating	/		
Senator Kennedy			
Senator Tveit <i>Tveit</i>	/		
Vice Chairman, Weeding	/		
Chairman Stimatz			/

Each day attach to minutes.

DATE 3-20-91

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bradshaw	MT TU	HB 908 HB 360 HB 361	✓	
Don Cunningham	RWRCC	HB 360		
CC Galt	RWRCC	HB 360	✓	
Mr. & Mrs. Gillies	MT Farm Bureau	HB 361 HB 905	✓	
Ms. Tweeten	RWRCC	HB 360		
George Ochenski	WILDERNESS SOCIETY	HB 360 HB 361	✓	
Ms. Leonard	MT Audubon	HB 360 HB 908	✓	
Gay Spruth	MT Water Users Coalition	HB 908 HB 382	✓	
Kevin Barber	A.P.A.	HB 908 HB 382	✗	
Ellen Brooke	MSGA	905	✓	
Tom Bradshaw	MT TU	HB 745	✓	
Willy Franz	Montana Power Company	HB 745	✓	
Jo Brunner	MSGA 360 with amendments	360 382 361 908 745	✓	
Jan Strum	MSGA	HB 908	✓	
CAROL MOSHER	MT. CATTLEWOMEN	HB 908 HB 360	✓	
Gay Spruth	Self	HB 360 HB 361	✓	
ALICE HORTON	MCWF	HB 905	✓	

SENATE STANDING COMMITTEE REPORT

Page 3 of 3
March 20, 1991

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration House Bill No. 392, titled reading copy, do hereby respectfully report that House Bill No. 392 is recommended as

Signed _____
Assistant Secretary

191-3-21-91
App. Coord.

Sec. of Senate

SENATE STANDING COMMITTEE REPORT

February 11, 1911
Hatch, D. C.

MR. PRESIDENT:

We, your committee on Natural Resources, having had under consideration House Bill No. 715, printed and read copy of the same, respectfully report that House Bill No. 715 be concurred in.

Samuel H. Hays
Chairman of the Committee

Samuel H. Hays
Amd. Court.

Samuel H. Hays
Sec. of Senate

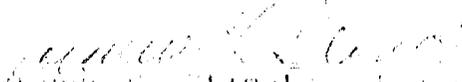
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 21, 1991

MR. PRESIDENT:

By your committee on Federal Personnel Legislation and a consideration House Bill No. 461 (111th reading copy) I do respectfully report that House Bill No. 461 be committed to

Signed by


Andy Conrad, Chairman

March 21, 1991
Andy Conrad

Sen. of Senate

LC910

HOUSE BILL 382

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE

HB 382

3-20-91

TESTIMONY
OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

March 21, 1991

By request of the Department of Natural Resources and Conservation:
A Bill for an act entitled:

"An Act to generally revise the Dam Safety Act; clarifying the definitions of dam and reservoir; exempting nonfederal dams and reservoirs on federal lands that are subject to dam safety review by a federal agency from state dam safety review; amending section 85-15-106 and 85-15-107, MCA; and providing an immediate effective date and a retroactive applicability provision."

PURPOSE

The primary purpose of this bill is to eliminate dual state and federal jurisdiction for dam safety on non-federal, high-hazard dams located on federal property. The bill also clarifies the definitions of "dam" and "reservoir."

BACKGROUND

Several non-federal, high-hazard dams that are located on federal lands are subject to both federal and state regulations. For example, owners of private dams on U.S. Forest Service land must obtain a special use permit from the Forest Service, as well as an operation permit from the Department. The proposed legislation would eliminate this overlapping regulatory authority by exempting non-federal dams and reservoirs located on federal land from a dam safety review by the state if they are reviewed by a federal agency.

The proposed legislation also clarifies the definitions of "dam" and "reservoir." The current definitions cause some dam owners to reduce the necessary freeboard to unsafe levels during construction of a dam so that the dam is smaller than the size required by the Dam Safety Act. Freeboard is the amount of surcharge capacity between the top of the dam and the normal operating pool level. In short, the modified definitions mean that the capacity of reservoirs would be measured to the maximum normal water surface rather than to the top of the dam.

The Montana Dam Safety Act was passed in 1985 to ensure that construction work on new and existing high-hazard dams is designed and performed in a safe manner. It also provides a permitting process for operating existing high-hazard dams. A high-hazard classification is not a description of the structural condition of the dam but the downstream potential for loss of life.

The U.S. Army Corps of Engineers inventoried dams in Montana between 1978 and 1981; it classified 92 dams as high-hazard. A high-hazard dam is defined as a dam of 50 acre-feet impoundment capacity or more and one that, if failure should occur, would likely cause loss of life. The owners of high-hazard dams have until July 1, 1995, to obtain an operating permit from the Department of Natural Resources and Conservation. Three out of the 92 dams have received operating permits.

The Dam Safety Section of the Department of Natural Resources and Conservation has also evaluated an additional 83 dams and 52 proposed dams. This process identified another 13 high-hazard dams, for a total of 105. The owners of these 13 dams were to have obtained operating permits by October 1, 1990. Only four dams have acquired the permits to date.

IMPLEMENTATION

The proposed legislation will reduce the number of high-hazard facilities that have to be reviewed by the Department's Dam Safety Section. Seventeen high-hazard dams, all on Forest Service land, would not need to be reviewed by the Dam Safety Section if they are reviewed and permitted by the Forest Service.

No dam less than 50 acre-feet as proposed has been found to present a threat to life.

The state would yet continue to inspect its own dams that are located on federal land.

FISCAL IMPACT

No impact.

HOUSE BILL 745

TESTIMONY OF
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

February 20, 1991

By request of the Department of Natural Resources and Conservation
A Bill for an Act entitled:

"An Act establishing a partial basin closure in the Beaverhead River Basin and the Red Rock River Basin; and providing an immediate effective date, an applicability date, and a termination date."

Purpose

This proposed legislation closes the Beaverhead River Basin and the Red Rock River Basin to applications for appropriations of groundwater permits until June 30, 1996. The closure does not apply to applications of groundwater with a beneficial use of less than 100 gallons per minute, nor to appropriations of groundwater for domestic, stock, municipal, industrial, or temporary emergency uses. This legislation will allow time to conduct a groundwater study to assess potential impacts of appropriating groundwater as they might affect existing users and future users.

General Information

Many water users, applicants, and objectors need information to intelligently describe the probable effects of appropriating groundwater in the Beaverhead and Red Rock basins where comprehension of the groundwater characteristics is restricted. A grant application was submitted for Water Development and Renewable Resource Development funds to study the groundwater system in the Beaverhead River drainage. The study area includes approximately 100 square miles of alluvial fans and floodplains along Rattlesnake Creek west and southwest of Dillon, and Blacktail Deer Creek drainage south of Dillon.

The drainages have been the subject of considerable groundwater development over the past several decades as shown in the table on page 2. Continuing efforts to further develop groundwater in these drainages are generating conflict. Existing groundwater users are becoming increasingly concerned about preserving the area's groundwater production. Surface water users are also concerned that withdrawals from aquifers in the drainages are contributing to diminished streamflows in the Beaverhead River. Several years of significantly below-normal precipitation have heightened these concerns. Groundwater level data collected since 1982 from irrigation wells in the Blacktail Deer Creek drainage show a downward trend. In order to better understand the groundwater system, the study has been proposed.

**PERMIT & CHANGE APPLICATIONS
IN THE BEAVERHEAD AND RED ROCK BASINS**

Year	Total Applications	Applications without Objections	Applications with Objections	Applications Proceeding to Hearing
1973	0	0	0	0
1974	6	5	1	0
1975	2	2	0	0
1976	6	2	2	2
1977	5	4	1	0
1978	4	3	1	0
1979	8	6	2	0
1980	5	2	3	0
1981	7	4	3	0
1982	6	4	1	1
1983	3	1	2	0
1984	3	0	2	1
1985	2	0	2	0
1986	0	0	0	0
1987	3	3	0	0
1088	4	0	3	1
1989	7	3	2	2
1990	6	4	1	1
TOTAL	77	43	26	8

As more attempts are made to develop the groundwater resource, the amount and type of information to properly manage and protect the resource must be adequate and well-founded. Groundwater information must also be sufficiently representative of the specific areas of concern. This bill provides time for some of that information to be reasonably collected and analyzed pertinent to the groundwater concerns and data needs expected by the Department of Natural Resources and Conservation.

The Department of Natural Resources and Conservation frequently has a need in its administrative decision-making for credible and timely technical information that reasonably describes the groundwater characteristics for groundwater appropriation in the Beaverhead and Red Rock River drainages. With this bill, the Department of Natural Resources and Conservation expects to have an improved opportunity to acquire applicable information to help make informed administrative decisions regarding appropriations from the Beaverhead River and the Red Rock river drainages.

The Department of Natural Resources and Conservation suggests that a temporary closure of the drainages will allow sufficient time to study the groundwater. In this way, administrative decisions to grant, modify, or deny permits or changes can more confidently be rendered.

HB 360

SENATE NATURAL RESOURCES
EXHIBIT NO. _____
DATE 3-20-91
BILL NO. HB 360

FACT SHEET

...
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
...

RWRCC

-established by the 1979 Montana Legislature.
SB 76: "An act to adjudicate claims of existing water rights in Montana"
CH 697. Statutory language attached.

-nine member commission authorized to negotiate with Indian tribes and federal agencies claiming federal reserved water rights in Montana: four members appointed by the governor, four by the legislature (two House, two Senate) and one by the Attorney General. List of Commission members, Indian Tribes and federal agencies attached.

FEDERAL
RESERVED
WATER
RIGHTS

-a federal reserved water right is created when Congress reserves land for a specific purpose (an Indian reservation, a national forest...) from the public domain. This doctrine was confirmed in a unanimous 1908 Supreme Court decision, U.S. v. Winters 207 V.S. 564 (1908), which involved water rights conflicts between the Ft. Belknap Tribe and Milk River irrigators.

LEGAL and
LEGISLATIVE
CHRONOLOGY

-in 1975 the U.S. on behalf of Montana's Indian tribes, filed a lawsuit in federal district court to adjudicate their reserved water rights. The case, along with a parallel one in Arizona, went all the way to the U.S. Supreme Court, which ruled in 1983 that states do have the power to adjudicate these federal rights under the McCarren Amendment 43 USC 666 (1952). see Arizona v. San Carlos Apache Tribe 463 U.S. 561 (1983). Northern Cheyenne Tribe v. Adsit 721 F2d 1187 (9th C. 1983).

-in 1977 a legislative interim committee was established to recommend how the State's water adjudication could be improved. Members included, among others, Representatives Jack Ramirez and John Scully and Senators Galt, Boylan and Turnage. Since the tribal lawsuits were still moving through the federal courts, the committee recommended an innovative way to deal with these conflicts: in SB 76, the Compact Commission was established and the adjudication of federal rights was temporarily suspended until July 1, 1982 (85-2-217 MCA). In 1981, realizing these issues were far from resolution, the Legislature extended the Commission's mandate until July 1, 1985 (HB667).

-by 1985 the U.S. Supreme Court had ruled on the State's power to adjudicate and the Commission had successfully concluded a compact with the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The Commission was extended to 1987 (SB 28) and again in 1987, to July 1, 1993 (SB 92).

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**STATUS OF
NEGOTIATIONS**

- seven Indian Reservations in Montana:
 - Ft. Peck - concluded
 - Northern Cheyenne - nearing conclusion of negotiations with anticipated legislation in 1991
 - Ft. Belknap - Tribal proposal for settlement anticipated this spring; staff technical work essentially complete. (1985 legislature prioritized Milk River Basin adjudication)
 - Rocky Boys/Blackfeet - have signed a cooperative agreement with Ft. Belknap on Milk River Basin; technical work in progress.
 - Crow/Flathead - no active negotiations at present.
 - Turtle Mountain Band of Chippewa (N.D.) have approximately 60,000 acres of "public domain allotments" in Montana. Legal research is being done to determine whether these lands have reserved water rights.

- four federal agencies claim reserved rights in Montana
 - U.S. Fish & Wildlife Service - 5 wildlife refuges; all technical work is complete
 - National Park Service; all technical work complete, no active negotiations since 1986
 - BLM - Missouri Wild and Scenic; technical field work complete, water model for Missouri Basin is currently being developed to determine water availability
 - USDA - claims rights for National forests and research stations; no active negotiations at present.

PROCESS

- once settlements are agreed to by the parties (State, Tribe, Federal government, acting as trustee for the Tribe) the proposed compact is first sent to local water users and public hearings are held.
- the compact must then be ratified by the Montana Legislature and the appropriate tribal entity
- certain provisions of a compact may require Congressional approval
- the compact is then integrated into a preliminary decree(s) for the affected water basin(s) where water users have one final opportunity to object before a final decree is issued. If the water court makes any changes in the compact it must go back to the original parties for re-negotiation.

STAFF

- RWRCC has an authorized staff of 12 FTE's - attorneys, hydrologists, remote sensing computer specialists, an agricultural engineer and a soil scientist.

FUNDING

- FY 92: \$447,624
- FY 93: \$446,840

- 40% general fund
- 60% RIT special revenue account

For more information contact: Susan Cottingham
Program Manager 444-6716

098 9A
16-02-8

EXHIBIT NO. ON IMAGE
DATE
SECRETARY GENERAL

**MONTANA RESERVED WATER
RIGHTS COMPACT COMMISSION**

Senator Jack E. Galt, Chairman (Martinsdale)
Chris Tweeten, Vice-Chairman (Helena)

Gene Etchart (Glasgow)

Carl Davis (Dillon)

Everett Elliott (Conrad)

W. Gordon McOmber (Helena)

Senator Joseph P. Mazurek (Helena)

Representative Gary Spaeth (Red Lodge)

Representative Dennis Iverson (Whitlash)

**FEDERAL AGENCIES CLAIMING
FEDERAL RESERVED WATER
RIGHTS IN MONTANA**

National Park Service

Glacier National Park

Yellowstone National Park

Big Horn National Monument

Big Hole National Battlefield

Custer National Battlefield

United States Fish and Wildlife Service

National Bison Range

C.M. Russell National Wildlife Refuge

Black Coulee National Wildlife Refuge

Benton Lake National Wildlife Refuge

Bowdoin National Wildlife Refuge

United States Bureau of Land Management

Wild and Scenic Missouri River

United States Department of Agriculture

National Forests

Wilderness Areas

Range and Livestock Research Station

Sheep Experiment Station

...It is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act.

..It is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts *for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.*

Montana Code Annotated Section 85-2-701 (1).

The Compact Commission may also enter into separate negotiations with the federal government *concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state...*

Montana Code Annotated
Section 85-2-703.

SENATE NATURAL RESOURCES
 HOUSE BILL NO. 3048 BIT NO. D
 INTRODUCED BY HARPER DATE OF 3-20-91
 BILL NO. HB 360

the president, each from a different political party;

(c) four members designated by the governor; and
 (d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.

(5) ~~Members appointed to the commission shall serve until the week of the commission is completed or until they resign or are otherwise unable to serve.~~ Members are appointed for STAGGERED 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. A vacancy must be filled in the manner of the original appointment.

1 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TERMS
 2 FOR MEMBER OF THE RESERVED WATER RIGHTS COMPACT
 3 COMMISSION; ~~DELETING~~ AMENDING PROVISIONS THAT
 4 ESTABLISH A TERMINATION DATE FOR THE SUSPENSION OF
 5 ADJUDICATION REQUIREMENTS; AND AMENDING SECTION
 6 SECTIONS 2-15-212, 85-2-217, 85-2-231, and 85-2-802.
 7 MCA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
 11 MONTANA:
 12 Section 1. Section 2-15-212, MCA, is amended
 13 to read:
 14 "2-5-212. Reserved water rights compact
 15 commission. (1) There is created a reserved water
 16 rights compact commission.

17 (2) Commissioners are appointed within 30
 18 days of May 11, ~~1979~~ 1990, as follows:
 19 (a) two members of the house of
 20 representatives appointed by the speaker, each from
 21 a different political party;

22 (b) two members of the senate appointed by

1 SECTION 2. SECTION 85-2-217, MCA, IS AMENDED

2 TO READ:

3 "85-2-217. Suspension of adjudication. (1)
4 While negotiations for the conclusion of a compact
5 under part 7 are being pursued, all proceedings to
6 generally adjudicate reserved Indian water rights
7 and federal reserved water rights of those tribes
8 and federal agencies which are negotiating are
9 suspended. The obligation to file water rights
10 claims for those reserved rights is also suspended.
11 This suspension shall be effective until July 1,
12 1993, ~~as long as negotiations are continuing or~~
13 ~~ratification of a completed compact is being sought,~~
14 ~~if approved by the state legislature and tribes or~~
15 ~~federal agencies shall be subject to the special~~
16 ~~filling requirements of 85-2-702(3) and all other~~
17 ~~requirements of the state water adjudication system~~
18 ~~provided for in Title 85, chapter 2, the negotiations~~
19 ~~are terminated pursuant to 85-2-704 July 1, 1999~~
20 only if the procedures and certifications required
21 by subsection (2) have been accomplished. Those

22 tribes and federal agencies that choose not to
23 negotiate their reserved water rights ~~shall be~~ are
24 subject to the full operation of the state
25 adjudication system and may not benefit from the

suspension provisions of this section.

(2) During the 1995 legislative session, the
compact commission shall

(i) certify to the legislature that, as to
each claimed federal reserved water right claim for
which no compact has been reached as of July 1,
1991, negotiations concerning substantive issues
have taken place and substantial progress has been
made;

(ii) If the commission cannot make the
certification required in (i), as to any federal
reserved water right claim, demonstrate to the
legislature that it has made every effort to engage
in substantial negotiations and certify that
negotiations concerning the claimed reserved water
right have been terminated pursuant to 85-2-704,
MCA.

(iii) present to the legislature its
assessment needs and means necessary to reach
compacts with each claimed federal reserved water
right claim, and the reasons therefore.

SECTION 3. SECTION 85-2-231, MCA, IS AMENDED
TO READ:

"85-2-231. Temporary preliminary and
preliminary decree. (1) A water judge may issue a

1 temporary preliminary decree prior to the issuance
2 of a preliminary decree if the temporary preliminary
3 decree is necessary for the orderly adjudication of
4 water rights.

5 (2) (a) The water judge shall issue a
6 preliminary decree. The preliminary decree shall be
7 based on:

8 (i) the statements of claim before the water
9 judge;

10 (ii) the date submitted by the department;

11 (iii) the contents of compacts approved by the
12 Montana legislature and the tribe or federal agency
13 or, lacking an approved compact, the filings for
14 federal and Indian reserved; and

15 (iv) any additional data obtained by the
16 water judge.

17 (b) The preliminary decree shall be issued
18 within 90 days after the close of the special filing
19 period set out in ~~85-2-702(3)~~ 85-2-704 or as soon
20 thereafter as is reasonably feasible.

21 (c) This section does not prevent the water
22 judge from issuing an interlocutory decree or other
23 temporary decree, pursuant to 85-2-321 or as
24 provided in subsection (1) of this section, or if
25 such a decree is otherwise necessary for the orderly

administration of water rights prior to the issuance
of a preliminary decree.

(3) A preliminary decree may be issued for
any hydrologically interrelated portion of a water
division including but not limited to a basin,
subbasin, drainage, subdrainage, stream, or single
source of supply of water, at a time different from
the issuance of other preliminary decrees or
portions of the same decree.

(4) The preliminary decree shall contain the
information and make the determinations, findings
and conclusions required for the final decree under
85-2-234. The water judge shall include in the
preliminary decree the contents of a compact
negotiated under the provisions of part 7 that has
been approved by the legislature and the tribe or
federal agency.

(5) If the water judge is satisfied that the
report of the water master meets the requirements
for the preliminary decree set forth in subsections
(1) and (3) and is satisfied with the conclusions
contained in the report, the water judge shall adopt
the report as the preliminary decree. If the water
judge is not so satisfied, he may, at his option,
recommit the report to the special master with

1 instructions, or modify the report and issue the
2 preliminary decree.

3 (6) In issuing a subsequent preliminary
4 decree, the water judge shall incorporate the
5 temporary preliminary decree for the basin as
6 modified by objections and hearings. The temporary
7 preliminary decree or preliminary decree, as
8 modified after objections and hearings, is
9 enforceable and administrable according to its terms
10 among parties ordered under 85-2-406. The
11 preliminary decree, as modified after objections and
12 hearings, shall upon issuance supersede and replace
13 the temporary preliminary decree."

14 SECTION 4. SECTION 85-2-702, MCA, IS AMENDED

15 TO READ:

16 "85-2-702. Negotiation with Indian tribes.
17 (1) The reserved water rights compact commission,
18 created by 2-15-212, may negotiate with the Indian
19 tribes or their authorized representatives jointly
20 or severally to conclude compacts authorized under
21 85-2-701. Compact proceedings shall be commended by
22 the commission. The commission shall serve by
23 certified mail directed to the governing body of
24 each tribe a written request for the initiation of
25 negotiations under this part and a request for the

designation of an authorized representative of the
tribe to conduct compact negotiations. Upon receipt
of such written designation from the governing body
of a tribe, compact negotiations shall be considered
to have commenced.

(2) When the compact commission and the
Indian tribes or their authorized representatives
have agreed to a compact, they shall sign a copy and
file an original copy with the department of state
of the United States of America and copies with the
secretary of state of Montana and with the governing
body for the tribe involved. The compact is
effective and binding upon all parties upon
ratification by the legislature of Montana and any
affected tribal governing body, and approval by the
appropriate federal authority.

(3) Upon its ratification by the Montana
legislature and the tribe, the terms of a compact
must be included in the preliminary decree as
provided by 85-2-231, and unless an objection to the
compact is sustained under 85-2-233, the terms of
the compact must be included in the final decree
without alteration. ~~However, if approval of the
state legislature and tribe has not been accomplished
by July 17, 1993, all Indian claims for reserved~~

1 ~~water rights that have not been resolved by a~~
2 ~~compact must be filed with the department within 6~~
3 ~~months. These new findings shall be used in the~~
4 ~~formulation of the preliminary decree and shall be~~
5 ~~given treatment similar to that given to all other~~
6 ~~findings." However, if approval of the state~~
7 ~~legislature and tribe has not be accomplished by~~
8 ~~July 1, 1999, all Indian claims for reserved water~~
9 ~~rights that have not been resolved by a compact must~~
10 ~~be filed with the department within 6 months. These~~
11 ~~new findings shall be used in the formulation of the~~
12 ~~preliminary decree and shall be given treatment~~
13 ~~similar to that given to all other findings.~~

HB 360
Revised
Amendment

095 011
16-22-8
9
NATURAL RESOURCES

March 19, 1991

Add the following as a new subsection (3) under Section 2:

(3) Notwithstanding the provisions of subsection (1), in the event the Commission fails to fulfil its responsibilities under subsection (2), the United States shall have until December 31, 1998 to file water rights claims in an applicable court.

RATIONALE

Section 2 of HB 360 grants a suspension to federal agencies that apply to the Compact Commission to negotiate water rights. However, that suspension is dependent on the Commission making certain findings and reporting them to the Legislature during the 1995 Session. If the Commission fails to make the findings or does not report them to the Legislature, Section 2 as written might be interpreted in a way that could result in the federal agencies losing their right to file for water. Adding Subsection (3) provides a fail-safe in the event the Commission fails to perform its duties.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

STAN STEPHENS, GOVERNOR

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699
TELEFAX NUMBER (406) 444-6721

HELENA, MONTANA 59620-2301

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

February 4, 1991

BILL NO. HB 360

Representative Hal Harper
Speaker, Montana House of Representatives
Capitol Station
Helena, MT 59620

Dear Representative Harper:

It has come to our attention that during a hearing on January 30, 1991 on your bill to set term limits for the members of the Reserved Water Rights Compact Commission (HB360), the discussion expanded to include the purposes, accomplishments, and current 1993 sunset provision for the Commission.

At its meeting on January 18, 1991, the full Commission discussed this and other reserved water rights bills before the 1991 Legislature. While there was no inclination on the part of the Commission members to take a position on the bill, some concern has been expressed about continuity of membership on the commission especially since the issue of federal reserved rights is so complex.

As you know, during the interim, the Legislative Water Policy Committee heard testimony about the Compact Commission and its work. At its meeting of September 8, 1989, concerns about the slow pace of negotiations and the structure of the Commission and its staff were raised by Mr. McOmber, who apparently spoke of these same issues at Wednesday's hearing. You will recall that subsequently, on November 9, 1989, Water Policy Committee also heard testimony from Vice Chairman, Chris Tweeten, who represented the majority view of the Commission. He spoke of the benefits of negotiation and the commitment of the 1989 Legislature to expand the scope of the Commission's technical staff's work. He indicated that the Commission continues to believe that negotiations are preferred over litigation because:

1. They promote cooperation, rather than confrontation, between the Tribes and the State;

Representative Hal Harper
February 4, 1991.
Page 2

2. They offer greater flexibility for water management and administration than a court settlement;
3. They are more cost effective for all parties than protracted litigation; and
4. They offer greater opportunities for the protection of state water users, who might be impacted by an early priority date and large quantity of water decreed to a tribe by a court.

At that meeting, Representative Iverson echoed the view that litigation was short-sighted and that the end results of negotiations would be far better for the state. The Wyoming example was cited: After \$25 million and 15 years of litigation to quantify the water right, the parties are back in court fighting over how to administer the water.

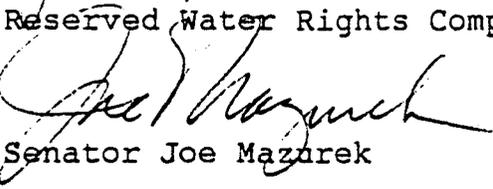
Mr. Tweeten indicated that the issues raised by Mr. McOmber certainly merit consideration by the Legislature and he welcomed scrutiny of the Commission's process and accomplishments to date.

Hal, we want to reiterate our willingness to completely discuss these important issues in the proper forum. We would also welcome the opportunity to present the majority view of the Commission, if you think it necessary, this Legislative Session. Otherwise, we certainly will continue to keep the legislative Water Policy Committee apprised of our work as we have done in the past.

It is our understanding that Chairman Raney, House Natural Resources Committee, has requested a fact sheet on the Reserved Water Rights Compact Commission for the information of committee members. We will be glad to provide this and any other information which would be helpful to you in your deliberations.

Warm regards,


Jack Galt, Chairman
Reserved Water Rights Compact Commission


Senator Joe Mazurek

SC/JG/JM/jmr
Harper.HB360

HB 360

RESERVED WATER RIGHTS
COMPACT COMMISSION



STATE OF MONTANA

Jack E. Galt, Chairman

Chris D. Tweeton, Vice-Chairman
Cari M. Davis
Everett C. Elliott
Gene J. Eichart

Dennis Iverson
Joseph P. Mazurek
W. Gordon McOmber
Gary Spaeth

Stan Stephens
Governor

January 17, 1991

The Honorable C. Bruce Loble
Chief Judge
Montana Water Court
P.O. Box 879
Bozeman, MT 59771-0879

Dear Judge Loble:

In compliance with Section 85-2-705, Montana Code Annotated, the Montana Reserved Water Rights Compact Commission hereby submits to you its biannual report on negotiations with the federal agencies and Indian tribes.

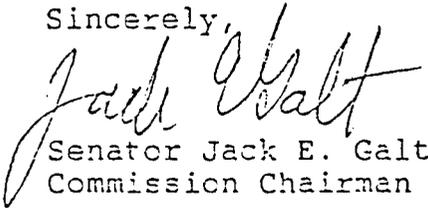
The activities of the Commission and its staff continue to be focused on negotiations with the Northern Cheyenne and with the three tribes in the Milk River basin. Negotiations with the Northern Cheyenne have made steady progress since the fall; many of the major issues have been resolved. One Reserved Water Rights Compact Commission negotiating team for all three of the tribal negotiations on the Milk River has been recently been appointed and we expect it to begin meeting soon. As you may know, last year saw the formation of a Milk River Basin Advisory Committee. This committee is described on a separate page in this status report; we will keep the Court apprised of its status in subsequent reports.

Communications continue with the other tribes and federal agencies claiming reserved water rights in Montana as appropriate. Please do not hesitate to contact me for further

THE HONORABLE C. BRUCE LOBLE
JANUARY 17, 1991
PAGE TWO

information. As always, we welcome you to attend any of our
Commission or negotiating team meetings.

Sincerely,



Senator Jack E. Galt
Commission Chairman

c: Commission Members
Richard Whitesell
Richard Aldrich
Robert Delk
Susan Cottingham

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 3-20-91

BILL NO. HB 360

TRIBE: Blackfeet
UPDATE: January 15, 1991

Informal contacts with the Tribe continued throughout this period; no formal negotiations were held.

TECHNICAL WORK IN PROGRESS:

Preliminary data entry into the RWRCC's geographic Information System has begun. Hydrologic analyses of water availability in St. Mary's Basin are nearly complete. Historical/legal research is also essentially complete.

TRIBE: Chippewa-Cree Tribe of the Rocky Boy's Reservation

UPDATE: January 15, 1991

Early in 1990, the Commission was informed that the Chippewa-Cree anticipated submitting a proposal to quantify their reserved water right claims by June 1. In June, the Tribe reported that the proposal would not be submitted until later in the year. To date we have not received a proposal. It is our understanding that the representatives of the Chippewa-Cree continue to meet with the other Tribes in the Milk River basin to develop a consensus on water quantification, management, and development issues and that they will be meeting with federal representatives early in 1991.

TECHNICAL WORK IN PROGRESS:

The RWRCC technical staff is beginning a scope of work for its technical analysis of the reservation.

TRIBE: Confederated Salish & Kootenai Tribes of the
Flathead Reservation

UPDATE: January 15, 1991

The Commission continues to maintain
communications with the Confederated Tribes when
pertinent issues arise.

TRIBE: Crow

UPDATE: January 15, 1991

Representatives of the Crow Tribe have attended several of the recent negotiating sessions with the Northern Cheyenne Tribe because of their interest in the Northern Cheyenne's proposal regarding Yellowtail water. The two tribes have apparently met on this issue. No formal contacts from the Crow Tribe have been received by the Commission.

AGENCY: National Park Service

UPDATE: January 15, 1991

There have not been any recent communications concerning negotiations between the National Park Service and the Commission because of the focus on the adjudication on the Milk River Basin and Northern Cheyenne negotiations.

TRIBE: Northern Cheyenne

UPDATE: January 15, 1991

During the past six months, negotiations and technical discussions with the Northern Cheyenne Tribe were top priority and significant progress in reaching a settlement has been made. Intensive discussions began in September and are continuing with a goal of introducing a compact in the 1991 Montana legislature.

MEETINGS HELD:

Negotiating sessions between the Northern Cheyenne Tribe, the Reserved Water Rights Compact Commission, and the Federal Negotiating Team:

- September 11, 1990
- September 27-29, 1990: this session included a field trip to Rosebud Creek to meet with Indian and non-Indian irrigators
- October 24, 1990
- November 20, 1990
- December 13, 1991
- January 11, 1991

A meeting of the respective attorneys to draft a compact based on tentative agreements reached on the Tongue River, Rosebud Creek and an administrative framework will be held on January 23, 1991.

The next formal negotiating session will be on Friday, February 1, 1991 at the Governor's Conference Room, Capitol Building, Helena, Montana.

TECHNICAL MEETINGS:

- July 31, 1990
- January 10, 1991

Discussion between respective technical staffs continue. Issues being resolved deal mainly with water availability in Rosebud Creek and Tongue River water modeling for Tongue River Reservoir operations.

TONGUE RIVER STEERING COMMITTEE:

- August 15, 1990
- October 10, 1990
- January 10, 1991

The Committee continues to meet to develop work plans and environmental mitigation analyses for the repair and rehabilitation of the Tongue River Dam.

TECHNICAL WORK IN PROGRESS:

The technical legal and historical staff research is complete. The technical report on land and water resources of the Reservation is complete; a copy is enclosed.

TRIBE: Turtle Mountain Band of Chippewa Indians

UPDATE: January 15, 1991

Additional legal research on reserved water rights and priority date was deemed necessary and is in progress. Reconnaissance level soils analysis is being performed. It is anticipated that the Commission's negotiating team will meet sometime later this spring to formalize staff recommendations and initiate contact with the Tribe.

TRIBE: United States Department of Agriculture for the United States Forest Service, the Range and Livestock Experiment Station, and the Sheep Experiment Station.

UPDATE: January 15, 1991

There have not been any recent communications between the United States Department of Agriculture and the Commission because of the focus on the adjudication in the Milk River Basin and the Northern Cheyenne negotiations. However, the Department of Agriculture has submitted claims to the Tongue River for the Range and Livestock Experiment Station, and staff analysis of those claims is almost complete and recommendations to the Commission will be made on how to proceed.

AGENCY: United States Fish and Wildlife Service

UPDATE: January 15, 1991

All the legal, technical and historical analyses anticipated at this time have been completed. No further contacts with representatives of the Fish and Wildlife Service have occurred.

AGENCY: United States Bureau of Land Management as
Administrator of the Wild and Scenic Missouri
River

UPDATE: January 15, 1991

During the past six months, the development of a computer model of the historic water uses and water flows in the Missouri River basin continued. A meeting of the Missouri River Water Availability Study Technical Task Force was held on July 30, 1990. Participants on the Task Force include representatives of the Commission and the Bureau of Land Management. It is expected that the data obtained from the model will provide useful information for the negotiations concerning the reserved water rights claimed by the Bureau for the Wild and Scenic Missouri River.

Arsenic contamination was discussed and the Montana State Department of Health and Environmental Sciences expressed a desire to eliminate future uses and demands to keep levels of arsenic at a minimum. The water model was being run using dummy data as the USBR numbers had still not been delivered.

There was discussion of the draft proposal on a decision-making framework to manage Canyon Ferry Reservoir, including water leasing/exchange.

No formal negotiating sessions occurred during this six months.

AGENCY: Milk River Basin Advisory Committee

UPDATE: January 15, 1991

The Milk River Basin Advisory Committee (MRBAC) is comprised of presidents of the eight Milk River Irrigation districts, members of four high-line counties' conservation districts, and representatives of each of the three Indian Reservations: Blackfeet, Fort Belknap and Rocky Boys, located on or near the Milk. Two sports groups, both State and Federal wildlife services, Bureau of Land Management, U.S. Bureau of Reclamation, the Compact Commission and Montana DNRC are all represented.

MEETINGS HELD:

September 20, 1990 - The first meeting of the Advisory Committee was held. Issues discussed included the history of the basin in regards to water uses and shortages. Specific problems were identified for future study. Each affected group was provided with an opportunity to air their concerns about present and future water development.

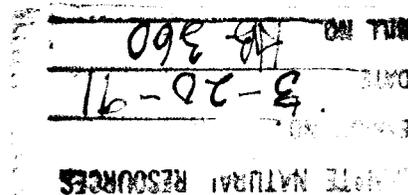
October 25, 1990 - Derwood Mercer, of the U.S. Bureau of Reclamation gave a presentation on alternative storage sites along the Milk River and its tributaries. A review of wetlands mitigation requirements was presented along with justification for maintaining at least the status quo for wildlife habitat. Curt Martin of Montana State DNRC presented explained the State Water Plan.

December 5, 1990 - Gerhard Knudsen Of Montana State DNRC described the Pick-Sloan Program and what programs could be eligible for the monies. The Three-Phased Plan was discussed. Costs for on-site improvements and supplemental water into the basin were discussed. Irrigators along the mainstem of the Milk River brought up the possibility of having temporary preliminary decrees issued for the basin.

January 9, 1991 - Meeting postponed until January 30, 1991 due to inclement weather.



W. Gordon McOmber
531 South Oakes
Helena, Montana 59601
(406) 443-2027



February 25, 1991

Honorable Lawrence G. Stimatz, Chairman
Senate Committee on Natural Resources
Capitol Station
Helena, Montana 59601

Dear Larry:

House Bill 360 has passed the House and is now in your Senate Committee on Natural Resources. The original purpose was to stagger the terms of Reserved Water Rights Compact Commission members.

However, following introduction and public hearing, the bill was amended to make permanent suspension of court resolution of conflicting claims to water rights in a drainage that included claims for Federally Reserved Rights: until after an agreement of the Commission and an Indian Tribe or Federal agency had been approved or rejected by a vote of the legislature or negotiations had been abandoned.

A side effect of the proposal is to make permanent the life and authority of the RWRCC.

In addition to the questionable legality of the action (Art.V, Sec. 2-A, State Constitution) the bill neatly bypassed input from affected citizens and legislative review of the limited success of the 12 year process.

I respectfully suggest that the Senate Committee on Natural Resources consider the postponement of amendments at this time and instead initiate a joint resolution calling for an interim review, including a performance audit of commission activities to date. The review would include evaluation of the approaches of other states and have as its goal the adoption of the best available option for protecting for Montana what belongs to Montana, while recognizing legitimate claims of Indian tribes and Federal agencies.

Included for your consideration is a copy of the December 2, 1991 letter to Speaker Harper and President Mazurek.

Sincerely,

A handwritten signature in cursive script that reads "Gordon".

W. Gordon McOmber
Member, RWRCC

Encl.

Recd
3-11-91

Senator Larry Stimatz

Dear Larry:

Earlier I raised a question in regard to the constitutionality of amendments to H.B. 360. After consultation with other interested parties, I have decided not to pursue the issue at this time. Obviously, if the issue is of interest to others, the Senate will deal with it as they fit.

Sincerely,

A handwritten signature in cursive script that reads "Gordon".

Gordon McOmber

HB 360
draft

0-9E 94 ON THE
16-02-8 DATE
ON THE
GENERAL RESOURCES

March 19, 1991

Add the following as a new subsection (3) under Section 2:

(3) Notwithstanding the provisions of subsection (1), in the event the Commission fails to fulfil its responsibilities under subsection (2), the United States shall have until December 31, 1998 to file water rights claims in an applicable court.

RATIONALE

Section 2 of HB 360 grants a suspension to federal agencies that apply to the Compact Commission to negotiate water rights. However, that suspension is dependent on the Commission making certain findings and reporting them to the Legislature during the 1995 Session. If the Commission fails to make the findings or does not report them to the Legislature, Section 2 as written might be interpreted in a way that could result in the federal agencies losing their right to file for water. Adding Subsection (3) provides a fail-safe in the event the Commission fails to perform its duties.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

1988
16-00-3
ON FILE
SECURITY INFORMATION

BILL # HB 361 ; TESTIMONY BY: Lorraine Gillies
DATE 3/20/91 ; SUPPORT Support ; OPPOSE _____

Mr. Chairman, members of the committee:

For the record, I'm Lorraine Gillies, speaking on behalf of the Montana Farm Bureau Federation.

We support HB 361. It is our opinion that any future federal reserve rights should be subjected to the same process as all other water rights. We urge this committee to give HB 361 a do pass recommendation.

Thank you.

SIGNED: *Lorraine Gillies*

806 9H
16-22-91
DATE
EXHIBIT NO. 3-22-91
NATURAL RESOURCES

Amendments to House Bill No. 908
Third Reading Copy

Requested by Rep. Harper
For the Committee on Natural Resources

Prepared by Deborah Schmidt
March 20, 1991

- 1. Page 10, lines 22 and 23.
Following: "with" on line 22
Strike: the remainder of line 22 through "parks" on line 23
Insert: "other agencies and groups"



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

SENATE NATURAL RESOURCES

DATE 3-20-91
BILL NO. 908 HB

BILL # HB 908 ; TESTIMONY BY: Lorraine Gillies

DATE 3/20/91 ; SUPPORT Support ; OPPOSE _____

Mr. Chairman, members of the committee:

For the record, I am Lorraine Gillies speaking on behalf of the Montana Farm Bureau Federation.

Since the dewatering of a watercourse, or portion thereof, is cause for concern to all of Montana's water users, both current and future, we support HB 908. It is our view that this bill will ensure as far as possible, that each water user's rights will be protected under the law, and that the resource will also be protected. We particularly appreciate the terms "practicability" and "reasonableness" used in the instructions for the process of installing measuring devices.

We urge this committee to give HB 908 a do pass recommendation.

Thank you.

SIGNED: Lorraine Gillies