

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By VICE CHAIRMAN LOREN JENKINS for CHAIRMAN AL BISHOP, on January 23, 1997, at 1:00 p.m., in Room 402

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Loren Jenkins, Vice Chairman (R)
Sen. Vivian Brooke (D)
Sen. William S. Crismore (R)
Sen. Steve Doherty (D)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)

Members Excused: Senator Ken Mesaros

Members Absent: None

Staff Present: Leanne Kurtz, Legislative Services Division
Serena Andrew, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 149, Posted 1/17/97
Executive Action: None

HEARING ON SB 149

Sponsor: SENATOR AL BISHOP, SD #9, Billings

Proponents: Robin Cunningham, Montana River Action
Network; Chairman, Montana Board of Outfitters
Land Lindbergh, Greenough
Paul Roos, Vice Chairman, Montana Board of
Outfitters
Dianne McDermid, Medicine River Canoe Club
Hank Goetz, Blackfoot Valley
Tony Schoonen, Jr., Missoula Wildlife Association
Tony Schoonen, Sr., Anaconda Sportsmen
John F. Herzer, Fishing Outfitters Association
Jim Richard, Montana Wildlife Federation

Mike Penfold, Montana State Parks Association
Peter Funk, Montana Chapter, Trout Unlimited
Janet Ellis, Montana Audubon
Bill Holdorf, Director, Skyline Sportsmen, Butte
Pat Graham, Director, Montana Department of Fish,
Wildlife & Parks
Jean Johnson, Executive Director, Montana
Outfitters & Guides Association
Larry Brown, Agricultural Preservation Association
Jason Campbell, Montana Stockgrowers Association

Opponents: Larry Brown, Agricultural Preservation Association
Jason Campbell, Montana Stockgrowers Association

*{Note: Larry Brown & Jason Campbell registered as both
proponents and opponents of the bill.}*

{Tape: 1; Side: A; Approx. Time Count: 1:10}

Opening Statement by Sponsor:

SENATOR AL BISHOP, SD #9, Billings, told the committee escalating recreational use was beginning to impact some Montana rivers and lakes. Senate Bill 149 would authorize the Fish, Wildlife & Parks Commission (FWPC) and the Board of Outfitters to regulate the number of recreational and commercial users on a specific body of water through the Negotiated Rulemaking Act process. Rules adopted through this process would address impacts caused by recreational users to preserve the diversity of recreational opportunities and to minimize recreational user conflicts.

The bill was not intended to restrict or interfere with existing water rights or private property rights.

SENATOR BISHOP expressed his concerns about limiting public use of Montana's recreational resources.

Proponents' Testimony:

Robin Cunningham, Montana River Action Network & Chairman, Montana Board of Outfitters, said the problem of overuse does exist; this bill addresses recreational conflict and proposes a solution. EXHIBIT #1

{Tape: 1; Side: A; Approx. Time Count: 1:15}

Land Lindbergh, Greenough, said recreational use of the Blackfoot River has increased dramatically in the last 15 years and so have user conflicts. EXHIBIT #2

{Tape: 1; Side: A; Approx. Time Count: 1:19}

Paul Roos, Vice Chairman, Montana Board of Outfitters, thought the bill could provide regulation without allocating numbers on Montana's waterways. **EXHIBIT #3**

{Tape: 1; Side: A; Approx. Time Count: 1:22}

Dianne McDermid, Medicine River Canoe Club, Great Falls, said The Smith River Management Act has improved relationships between recreationists and landowners, but she didn't think the public should have to return to the legislature for each individual waterway in need of protection. **EXHIBIT #4**

{Tape: 1; Side: A; Approx. Time Count: 1:28}

Hank Goetz, a resident of the Blackfoot Valley, supported the bill because it addresses private and commercial use and stipulates use of the Negotiated Rulemaking process. The consensus approach was used to establish the Blackfoot Corridor Management Plan and it has been successful for 22 years.

Tony Schoonen, Jr., Missoula Wildlife Association, lives in the Bitterroot Valley and feels the quality of life in Montana has taken a turn for the worse in the last 3-5 years. This bill would provide a tool for dealing with problem areas and negotiated rulemaking would make it fair.

{Tape: 1; Side: A; Approx. Time Count: 1:33}

Tony Schoonen, Sr., Anaconda Sportsmen's Club, said he has seen serious problems on the Big Hole River where nonresident outfitters come in under a reciprocal agreement with others states. He thought that right should apply only to waters that run between those states.

{Tape: 1; Side: A; Approx. Time Count: 1:36}

John Herzer, Fishing Outfitters Association of Montana (FOAM), Missoula, said passage of the bill would help outfitters give their clients a quality experience. He wanted the committee to know that there is a problem on lakes, as well as rivers.

Jim Richard, Montana Wildlife Federation, supported SB 149 and commented that it has taken a number of years to draft a satisfactory bill.

Mike Penfold, Montana State Parks Association, said decisions must protect the resource as well as the recreationists.

{Tape: 1; Side: A; Approx. Time Count: 1:38}

Peter Funk, Montana Chapter, Trout Unlimited, said the first time a bill of this type came before the legislature, **Trout Unlimited**

opposed it, but people are beginning to understand that a problem does exist. The bill does not mean the FWPC is going to act, but merely that the commission could act if necessary.

Janet Ellis, Montana Audubon, said people were literally loving Montana's lakes and rivers to death. Riparian areas occupy less than 2% of Montana but 50% of its wildlife species depend on those areas. She hoped wildlife would be considered when rules were made.

{Tape: 1; Side: A; Approx. Time Count: 1:42}

Bill Holdorf, Director, Skyline Sportsmen, Butte, thought individual areas should be considered for regulation, instead of developing a statewide plan.

{Tape: 1; Side: B; Approx. Time Count: 1:43}

Pat Graham, Director, Department of Fish, Wildlife & Parks (DFWP), said his department would provide information and data to the FWPC as well as a public forum when needed. He hoped all user groups would participate in the decision-making process.
EXHIBIT #5

Larry Brown, Agricultural Preservation Association, testifying as both a proponent and opponent of the bill, offered numerous editorial changes addressing protection of agricultural interests.

{Tape: 1; Side: B; Approx. Time Count: 1:51}

Jason Campbell, Montana Stockgrowers Association, also testifying as both a proponent and opponent of the bill, suggested additional editorial changes. **EXHIBIT #6**

Jean Johnson, Executive Director, Montana Outfitters & Guides Association, pointed out that 37-47-201, regulating the outfitting industry, brings in the federal government because outfitters use BLM and Forest Service lands. She asked to be part of any group that worked on amendments to the bill.

Opponents' Testimony: None

{Tape: 1; Side: B; Approx. Time Count: 1:56}

Questions From Committee Members and Responses:

SENATOR MIKE TAYLOR commented that there had been testimony about limiting competition and controlling outfitters.

Pat Graham said conflicts on the Madison are between people floating by and people on the bank. Fishing regulations prohibit

fishing from a boat in certain sections of the river. The conflict is not between two business enterprises.

{Tape: 1; Side: B; Approx. Time Count: 2:00}

SENATOR KEN MILLER questioned the fiscal note regarding the consensus council and enforcement costs. **Mr. Graham** said the department was not sure exactly which waters would be proposed for regulation and couldn't project costs until the waters and regulations were specified. It would be difficult to base projections on Smith River data because the Smith is more closely managed than most other waters would be.

SENATOR VIVIAN BROOKE asked how recently Sec. 37-47-201 of current law was written. **Mr. Graham** said he couldn't answer because that section deals with the Board of Outfitters and they are regulated by the Department of Commerce, not DFWP.

Robin Cunningham, Chairman, Montana Board of Outfitters, said 37-47-201 was passed by the 1987 session.

SENATOR BROOKE asked if the intent of SB 149 was to open up Sec. 37-47-201 for review. **Mr. Cunningham** said he didn't think so; it was meant to regulate recreational use. Perhaps it should have been more specific.

{Tape: 1; Side: B; Approx. Time Count: 2:05}

SENATOR BEA MCCARTHY commented that the bill seemed to affect rivers, and asked if lakes would be included. She asked how Flathead Lake would be zoned if that became necessary.

Mr. Cunningham said he didn't know what would be done on flat waters but he knew conflicts have occurred between lakeshore residents and boaters.

SENATOR STEVE DOHERTY asked if "negotiated rulemaking" were a specific type of rulemaking, or if the term could be changed to "diverse" as suggested by **Mr. Brown**. **Mr. Graham** said the Negotiated Rulemaking Act (2-5-101 through 2-5-110) was passed by a previous legislative session. **SENATOR DOHERTY** said in that case "negotiated rulemaking" must be left in the bill.

{Tape: 1; Side: B; Approx. Time Count: 2:08}

SENATOR MIKE TAYLOR asked how the Tribes would be impacted and if they had been contacted. **Mr. Graham** didn't know, but thought actions under the bill would be site-specific. **SENATOR TAYLOR** didn't want problems that might lead to a future court challenge. **Mr. Graham** said they would try to work out specifics before negotiations began.

SENATOR DOHERTY asked what would happen under the Negotiated Rulemaking Act if the commission wanted one thing and the Board

of Outfitters wanted another. **Mr. Graham** said the commission would determine the percentage of total use (or number of trips) allocated to outfitters and the Board of Outfitters would allocate those trips to interested outfitters.

SENATOR DOHERTY suggested adding impacts to the fish and wildlife resource and habitat to issues the FWPC is required to consider when making rules. **SENATOR DOHERTY** clarified his suggestion as "impacts caused by recreational use."

{Tape: 1; Side: B; Approx. Time Count: 2:15}

ACTING CHAIRMAN LOREN JENKINS commented that the fiscal note says "one to two bodies of water per biennium." He asked if the commission would look for waters that are overused by recreationists or if it would wait until complaints are received. **Mr. Graham** said issues would be brought to the commission. Users would identify problems. He wanted to make it clear that the department did not have the capability to address four or five rivers at the same time and he was not asking for more staff. Problems would be addressed first-come, first-served.

SENATOR JENKINS asked how lakes would be handled. **Mr. Graham** said there are problems on a number of lakes in western Montana but at this time commission action must be directed toward public safety. Possible actions include mandating travel in one direction, restrictions on horsepower or regulating times when the lake is used only for fishing.

{Tape: 1; Side: B; Approx. Time Count: 2:20}

SENATOR BROOKE commented that there were many segments on Flathead Lake that define themselves by a small bay. She asked if regulations could be directed toward sections of a lake. **Mr. Graham** said there already are some restrictions on Bigfork Bay. He didn't think this bill would deal with Polson Bay, but might be used on the north half of the lake where the state has jurisdiction.

Closing by Sponsor:

SENATOR BISHOP said he appreciated the large turnout. He felt it was sad that Montana needed to consider regulations - Montana has always been the Big Sky and open spaces. It was once safe to drink water out of the streams in the Beartooth Mountains. The last time he was on the Bighorn he counted over 200 people.

When asked if she had noted all the suggested amendments, **Leanne Kurtz** reminded the committee that an amendment may only be requested by the sponsor or a committee member.

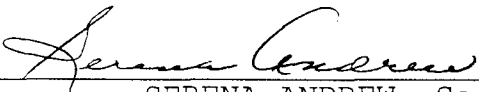
ADJOURNMENT

Adjournment: 2:35 p.m.

{This meeting was recorded on a Lanier recorder.}



SEN. AL BISHOP, Chairman



SERENA ANDREW, Secretary

AB/SA