

MINUTES OF THE MEETING
NATURAL RESOURCES
MONTANA STATE SENATE

January 11, 1977

The first meeting of the Natural Resources Committee was called to order by Senator Elmer Flynn, Chairman, at 9:30 a. m. on the above date in Room 405 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Senator Galt. Chairman Flynn introduced the Committee Secretary.

Senator Flynn then introduced Eileen Shore and Tala Skari of the Environmental Quality Council. Mr. Larry Weinberg, of the Legislative Council, was also introduced.

CONSIDERATION OF SB 26: An Act to generally revise and clarify the laws relating to water use.

Mr. Larry Weinberg, Staff Attorney from the Legislative Council working with the Natural Resources Committee, reviewed Senate Bill No. 26. He stated that in going through various codes numerous problems arise in the present codes. The same material is said in different places, material which is obsolete. This bill is to clean up the material. He stated that they were recodifying the present water codes. He also said that SB 26 tries to clear up problems which they couldn't clear up by simply rearranging the material. Pamphlet on Recodification of the Laws Relating to Water Use was handed out to Committee members. (Attached)

At this time it was decided by the Committee that Mr. Weinberg would explain the highlights of the bill. Mr. Weinberg then explained the bill Section by Section. (See Attachment #1)

Mr. Weinberg did say that the Department of Natural Resources would like on Page 2 on Line 14 after the underlined word "involved" to see the following words inserted "and has a water marketing contract with the department".

Senator Smith then questioned Section 2, Line 25, stating that water in the state is property of the State of Montana. Mr. Weinberg said yes, this was true.

Regarding Section 5, on Page 11, Senator Manley stated that he was involved in a project right now like this and this would be rather expensive as they are all in inches. He wondered if this wouldn't be a rather serious problem. Mr. Weinberg stated that he didn't think that would matter.

Senator Flynn also stated that he deals in inches all the time in a Stock Company. He said if we choose not to go to acre feet would they be in violation. Mr. Weinberg stated that technically you wouldn't be in violation yet. He said he would suggest another bill if you don't like it in inches.

Senator Flynn wondered how much inconvenience to corporations it would be to those using inches. Mr. Weinberg said if you could afford an \$8.95 calculator it would work out.

Senator Flynn asked if there would be anything wrong to where a company could have their choice. Mr. Weinberg said that is a substitute amendment and that they were hoping to keep those kind of amendments out of here. Senator Flynn stated that it kind of strikes him that miner's inches is status quo now - not acre feet.

Senator Dover wanted to know how much of a problem it would be to change this back to inches. Mr. Weinberg said it is no big problem if someone wants to.

Senator Smith stated that in his area they are talking about potash developing. He wondered how this would be affected. Does this only pertain to coal? Mr. Weinberg said as it reads now it would not include potash.

Senator Flynn said by "slurry" you mean just coal. Mr. Weinberg said as it reads now, yes.

Pertaining to the definitions under Section 7 Senator Smith wondered in this change what the problem would be for someone to drill a well for livestock use.

Mr. Weinberg said that he thought they had the same difference in mind. For some reason they used "sought" in one and "obtained" in the other. He said in recodification he can't make a substitute change.

Senator Smith said that that's why I ask that question. We have had this problem before the Department of Natural Resources and we would have to have a permit to even drill a livestock well. I want to be real careful in making it this way. Mr. Weinberg stated that he thought on division on wells there had been no change.

Mr. Gordon McGowan, of the Montana R. R. Association, a visitor, stated that you don't have to have a permit for less than 100 gallons per minute.

Senator Smith said that he just wanted to be real sure.

After further discussion, Senator Smith moved to delay action on Senate Bill No. 26 until the end of the week. Motion was seconded by Senator Dover and carried unanimously.

CONSIDERATION OF SB 2: An Act to generally revise and clarify the laws relating to environmental protection.

Diana Dowling, Director of Legal Services, reviewed Senate Bill No. 2 section by section for the Committee members. (See Attachment #2)

Mr. Bob Biggerstaff, representing Montana Association of Conservation Districts, next appeared as an opponent of Senate Bill No. 2. He stated that they were opposed to Page 1 through Page 5, Line 5, which has to do with Senate Bill 310. He stated he would like to have the Committee hold out on these changes until at least the next Legislative Session. We have a verbal agreement with Fish and Game and want no changes in the law at this session he stated.

Senator Jergeson asked if Mr. Biggerstaff was opposed to changes where it strikes the word. He stated that he was not opposed to any of these changes brought up here, but when this goes through it opens up SB 310 to other changes. We don't think there should be any changes at this time as it is running real smoothly he said.

Senator Devine stated that he didn't see anything that's really that substantive.

Senator Manley said that a decision like this to head off changes in SB 310 by this gentleman and his association and for this Committee to state that we are against this bill would be a little bit premature.

Senator Dover said that he didn't think the Committee had the power to change this. All we can do is correct some wording he said.

Senator Jergeson said that this bill should not be the vehicle used to amend SB 310.

After further discussion Senator Manley said he would like to delay action on this bill until we find out what other legislation there is going to be.

Senator Jergeson said he thought the bill could be acted on today.

Senator Manley said he would like to ask the Committee to delay action until the next meeting on Thursday.

Motion was made by Senator Manley that action on SB 2 be deferred until the next meeting. Senator Roskie seconded the motion and motion carried unanimously.

ANNOUNCEMENTS: Senator Flynn informed the members of the Committee that there would be a meeting on Thursday.

ADJOURNMENT: There being no further business, Senator Flynn adjourned the meeting at 11:10 a. m.



SENATOR ELMER FLYNN, CHAIRMAN

ROLL CALL

NATURAL RESOURCES COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 1-11-77

Each day attach to minutes.

SENATE NATURAL RESOURCES COMMITTEE

BILL 2 § 26

VISITORS' REGISTER

DATE 1-11-77

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Dab Biggerstaff DATE: 1-11-77

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Montana Assoc of Conservation Districts

APPEARING ON WHICH PROPOSAL: SB- 2

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

HOUSE MEMBERS

ROBERT L. MARKS

CHAIRMAN

FRANCIS BARDANOUVE

OSCAR KVAALEN

PAT MCKITTRICK

ROSE WEBER

EXECUTIVE DIRECTOR

PAMELA DUENSING

ADMINISTRATIVE ASSISTANT

ROBERTA MOODY

SUPERVISOR, ALTER SYSTEM

SENATE MEMBERS

NEIL J. LYNCH

VICE CHAIRMAN

GLEN DRAKE

CARROLL GRAHAM

FRANK HAZELBAKER

DIANA DOWLING

DIRECTOR, LEGAL SERVICES;
CODE COMMISSIONER

ROBERT PERSON

DIRECTOR, RESEARCH

Montana Legislative Council

State Capitol

Helena, 59601

December 3, 1976

TO: Persons Interested in the Recodification of the Laws
Relating to Water Use

FROM: Laurence Weinberg, Legal Division

RE: Proposed Recodification of Title 85, Water Use

Enclosed with this letter you will find a memorandum concerning proposed Title 85; a list of suggested amendments, a short outline, and a detailed preliminary outline of the title; a list of suggested cross-references; an allocation table; and the mailing list utilized for this title. Your comments, suggestions, and criticisms on ANY AND ALL of these items are welcomed. Please review the memorandum and those areas of the water law which are of interest and PLEASE make your opinions known. The object of recodification is a more usable code, and without outside comments, this cannot be accomplished. Also, suggestions for indexing are most useful.

Keep in mind that under recodification no substantive changes are permitted. If you believe any substantive changes have occurred, BLOW THE WHISTLE! Feel free to WRITE me, VISIT me (Room 117), or PHONE me (449-3064). Thank you.

LW:hm
Enc.

HOUSE MEMBERS

ROBERT L. MARKS
CHAIRMAN

FRANCIS BARDANOUVE

OSCAR KVALEN

PAT MC KITTRICK

ROSE WEBER
EXECUTIVE DIRECTOR

PAMELA DUENSING
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY
SUPERVISOR, ALTER SYSTEM



SENATE MEMBERS

NEIL J. LYNCH
VICE CHAIRMAN

GLEN DRAKE

CARROLL GRAHAM

FRANK HAZELBAKER

DIANA DOWLING
DIRECTOR, LEGAL SERVICES;
CODE COMMISSIONER

ROBERT PERSON
DIRECTOR, RESEARCH

Montana Legislative Council

State Capitol

Helena, 59601

December 3, 1976

TO: Diana S. Dowling, Code Commissioner

FROM: Laurence Weinberg, Legal Division

RE: Recodification of Proposed Title 85: Water Use

This title is primarily a rearrangement of Title 89, R.C.M. 1947, with only a few sections brought into Title 85, Montana Code Annotated (M.C.A.) from other portions of the R.C.M. 1947.

Several chapters of Title 89 have been moved to other titles of the M.C.A. -- Chapter 33, County and Municipal Participation in Flood Control and Water Conservation, (to Local Government or Land Use); Chapter 35, Floodway Management and Regulation, (to Land Use); Chapter 36, Renewable Resource Regulation, (to Planning, Research, and Development); and Chapter 37, Protection of Lake Areas, (to Land Use). What remains is indeed a water use code.

Two chapters are recommended for non-recodification (i.e. don't repeal, but don't recodify), with a suggestion that one be considered for repeal. Chapter 32, Columbia Interstate Compact, deals with a compact which Montana has ratified, but which has not been ratified by several other signatory states and the United States. Discussion with personnel at the Department of Natural Resources and Conservation (DNR) indicates that the probability of ratification of the compact, as it presently stands, is quite low. Since the compact is not in effect at this time, codification will only create the impression that the chapter is law. It would be best, therefore, not to recodify the material. Given the unlikelihood that the compact will ever become law, as it is written, consideration should be given to repeal. Chapter 30, Sage Creek Basin, is concerned with water administration in a basin located both in the United States and Canada and provides for the establishment of an agreement to facilitate this administration. An agreement is presently in effect, although it is informal in nature. Chapter 30 should not be repealed, as it provides a statement of legislative intent with respect to the contents of the agreement, but there is no need to recodify the chapter.

HOUSE MEMBERS

ROBERT L. MARKS
CHAIRMAN

FRANCIS BARDANOUIVE

OSCAR KVAALEN

PAT MCKITTRICK

ROSE WEBER
EXECUTIVE DIRECTOR

PAMELA DIJENSING
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY
SUPERVISOR, ALTER SYSTEM



SENATE MEMBERS

NEIL J. LYNCH
VICE CHAIRMAN

GLEN DRAKE

CARROLL GRAHAM

FRANK HAZELBAKER

DIANA DOWLING
DIRECTOR, LEGAL SERVICES
CODE COMMISSIONER

ROBERT PERSON
DIRECTOR, RESEARCH

Montana Legislative Council
State Capitol
Helena, 59601

LC 0049

1977 Legislature
Code Commissioner Bill - Summary

Senate Bill No. 26

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO WATER USE AND REPEALING SECTIONS 89-128, 89-1901, AND 89-2818.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 89-105. In subsection (2) an incorrect reference to "this section" is deleted as erroneous and superfluous. The phrase "whenever an association is involved" is added to 89-105(2) to indicate that the section applies when a water user association is not involved (in which case securing approval of such an association would be impossible). In 89-105(3) the reference to investigation is deleted as it is covered by 89-132.1, which deals with the state water plan.

Sections 2 and 3. 89-115 and 89-401. Section 89-115(5) provides that income from operation of a water project goes into the general fund (a 1973 amendment which replaced water fund by general fund). This conflicts with 89-401, which provides for income being placed in appropriate earmarked funds. Since the 1973 amendments to 89-115 are more recent they should prevail and with this in mind the reference to the general fund was deleted from 89-115 and 89-401 was re-written to accommodate the change.

Section 4. 89-125. Subsection (7) is deleted. As enacted in 1933 it related to water laws at that time and with the new water permit system the subsection is obsolete.

Section 5. 89-319. Subsection (1) of the amendment inserts a sentence which was erroneously dropped.

Section 6. 89-823. The reference to "inch", with respect to measurement of water, is changed to "cubic foot of water per second" (c.f.s.) because of 89-817.

Sections 7 and 8. 89-867 and 89-2911. The definitional sections are amended so that the surface and ground water codes can be brought together. The restrictions on use of water for transportation are added to 89-2911(d).

Sections 9 and 10. 89-899 and 89-2930. A sentence permitting the Department of Natural Resources and Conservation (DNR) to employ legal counsel is added. The purpose is to permit the creation of one section under recodification so that the surface and ground water laws can be combined.

Section 11. 89-907. The reference to 89-810 is deleted as this section was repealed in 1973. As the amended section reads, an applicant would list any notice of appropriation filed with the clerk and recorder.

Section 12. 89-911. In the proviso, "shall" is changed to "does" to indicate that the exemption of the section is conditional and not that reservoirs must be less than 20 acre-feet.

Section 13. 89-1015. The phrase "in the premises" is deleted. It is a relic of older legal jargon and is confusing in light of present day terminology.

Section 14. 89-1202. The awkward phraseology in connection with determining the proper court for filing the petition is revised to be clearer.

Section 15. 89-1204. The section is extensively rewritten for clarity.

Section 16. 89-1205. The section is rewritten for clarity, and the bonding amount requirements are deleted, as they are superseded by 89-1208 according to an opinion of the Attorney General (Vol. 14, page 119).

Section 17. 89-1208. The penalty provision is keyed to the official misconduct section of the criminal code. The penalty at present would stay the same but changes in the criminal code would be reflected in 89-1208.

Section 18. 89-1220. The word "present" is deleted since its presence would necessitate a constant reference to statutes in existence at the date 89-1220 was enacted. The apparent intent was simply not to conflict with other irrigation district laws.

Section 19. 89-1311. In (1)(c), reference to a duly "organized" agent of a corporation is changed to "authorized". The original act had "authorized", and apparently by error it was changed to "organized".

Section 20. 89-1319. As it stood, this one sentence section lacked a verb. It has been rewritten to remedy this situation.

Section 21. 89-1320. Use of "inch" to measure water is changed to "c.f.s." to comply with 89-817.

Section 22. 89-1322. "Inch" is changed to "c.f.s." and the word "proposed" (by law) is changed to "imposed" (by law), for clarity.

Section 23. 89-1411. The references to "official" newspaper are changed to a paper of "general circulation". Declaring one newspaper as the official county newspaper may have consequences with respect to freedom of the press.

Section 24. 89-1616. The section is rewritten to incorporate the language of the criminal code. Note that the penalty appears to be substantially increased. This is illusory, however, since under the present 89-1616 one could still be prosecuted under Title 94 if the conduct violated the criminal code.

Sections 25 and 52. 89-1701 and 89-1901. Section 89-1901 is repealed and 89-1701 is extensively rewritten to combine the provisions on limitations on indebtedness.

Section 26. 89-1703. Subsection (1) is considerably rewritten for clarity.

Section 27. 89-1704. The references to "demurrer" and "demur" are deleted as they are obsolete under the new Rules of Civil Procedure.

Section 28. 89-1705. The provisions relating to the gold standard are deleted. They seem inappropriate at present with the United States off the gold standard.

Section 29. 89-1713. The last portion of the section is rewritten for clarity.

Section 30. 89-1801. Subsection (3) is rewritten to provide a definition of the "United States contract fund", which is referred to elsewhere. The special fund referred to is enlarged to encompass amounts due in general and not just to the federal government.

Sections 31, 32, 33. 89-1803, 89-1805, 89-1806. The phrase "except as otherwise provided by law" is added to make clearer the fact that different lands may bear different charges.

Section 34. 89-1811. The section refers to a United States contract fund established pursuant to 89-1809. This is not the correct sectional reference; 89-1809 is replaced by 89-1801(3) where the fund referred to is defined.

Sections 35 and 36. 89-1816 and 89-1819. The references to section 89-2235 are replaced by "law". Section 89-2235 was repealed in 1941 and by using "law" the various modes of selling county tax lands are made available.

Section 37. 89-2003. "Description of" is replaced by "Described" for clarity.

Sections 38 and 52. 89-128, 89-2109, 89-2818. The object of this amendment is to create a general "liberal interpretation" section for the entire title rather than to have several such sections for various chapters (89-2109 is amended, the other sections repealed).

Section 39. 89-2126. The "or" connecting disapproved and disaffirmed is changed to "and", in order to parallel the structure for approved and affirmed.

Section 40. 89-2203. The reference to "this section" is deleted, as 89-2201 is the section which imposes the requirements on the number of signers of the petition.

Section 41. 89-2302. The requirement that a commissioner be a resident of county containing some portion of district lands is rewritten for clarity.

Section 42. 89-2348. Since there are several types of assessments discussed, a reference to a specific section (89-2342) is added for clarity.

Section 43. 89-2411. The words "they have" are added for grammar and clarity, with reference to notice by the commissioners.

Section 44. 89-2701. The amendment will give the commissioners of older drainage districts the same powers as those of more recent districts.

Section 45. 89-2711. The reference to "demurrs" is deleted because of the new Rules of Civil Procedure.

Section 46. 89-2810. In the phrase "easement of and said", "and said" is deleted for clarity.

Section 47. 89-2926. The phrase "without beneficial use" is deleted from the first sentence. As it read, there was a problem with both waste and beneficial use "coexisting".

Section 48. 89-2929. "Filled" is changed to "filed" to correct an error.

Section 49. 89-3425. The penalty provisions are amended to coincide with the criminal code.

Section 50. 89-3449. The reference to "conservation commission" is deleted as this commission no longer exists and its work is carried out by the Department of Natural Resources and Conservation.

Section 51. Severability.

Section 52. Repealer. See the comments for sections 25 and 38.

HOUSE MEMBERS

ROBERT L. MARKS
CHAIRMAN

FRANCIS BARDANOUVE
CAR KVALEN
AT MCKITTRICK

ROSE WEBER
EXECUTIVE DIRECTOR

PAMELA DUENSING
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY
SUPERVISOR, ALTER SYSTEM



SENATE MEMBERS

NEIL J. LYNCH
VICE CHAIRMAN

GLEN DRAKE
CARROLL GRAHAM
FRANK HAZELBAKER

DIANA DOWLING
DIRECTOR, LEGAL SERVICES;
CODE COMMISSIONER

ROBERT PERSON
DIRECTOR, RESEARCH

LC0013

Montana Legislative Council
State Capitol
Helena, 59601

1977 Legislature
Code Commissioner Bill - Summary

Senate Bill No. 2

REVISION AND CLARIFICATION OF LAWS RELATING TO ENVIRONMENTAL PROTECTION.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 26-1514. Added "upon" to clarify subsection (8) which said that the supervisors could extend the request rather than the time limit upon the request.

Section 2. 26-1517. In (2) added "of its receipt" in order to specify the beginning of the 5-day time limit. Also deleted "actions" in (4) because the solution is for an emergency, not an emergency action.

Section 3. 32-4728. Grammar changes to make the predicate agree with the singular subject.

Section 4. 69-3911. Deleted "from it" because permits are obtained from the department, not the board.

Section 5. 69-3912. Replaced "it" with "the department" in order to make it clear that it is not "the representative" who requests entry.

Section 6. 69-3914. Added reference to 69-3921.1 because it establishes the civil penalty whereas 69-3921 only authorizes criminal prosecution. When 69-3921.1 was added in 1975, this section should have been amended.

Section 7. 69-3915. Grammatical changes only.

Section 8. 69-3916. In (3) changed "subsection (a)" to "subsection (1)". In (6) deleted repetitive language and deleted "which accompanied the request for variance" because the department must determine the sum of the fee before the fee accompanies the request. As written, the sentence didn't make sense.

Section 9. 69-3917. In (4)(b), replaced "executive officer" (of board of health) with "chairman", as the person served with notice of appeal because there is no executive officer of the board.

Section 10. 69-4820.1. Replaced "69-4806" with "69-4809.1" because 69-4809.1 is the section under which permits are issued. 69-4806 merely lists the activities which may not be performed without permits.

Section 11. 69-4824. Section 69-4820(6) does not specify the statement to accompany the order; it only gives an alternative to issuing an order. Section "69-4820(6)" is changed to "69-4820(5)" which describes the order.

Section 12. 69-5003. "Mission" changed to "missing" in subsection (3)(b) because the sentence made no sense.

Section 13. 69-5602. Changed "construction" to "constructing" to make the section grammatically correct.

Section 14. 69-5603. Added "or" because "state" modifies "health officers". It should read "state or local health officers".

Section 15. 69-5607. Added "he shall be punished" in order to complete the sentence.

Section 16. 69-5803. Added a definition for department because department is used in later sections without specifying which department. Deleted the other references to "of health and environmental science" because the department is now defined.

Section 17. 69-5806. Reference to 69-5811 erroneous. 69-5812 gives the license procedure.

Section 18. 69-6807. Added "junk vehicle collection and graveyard" to explain which county budget is to be paid by the department. Deleted (1)(b) as temporary.

Section 19. 69-6811. Added a phrase to clarify what kind of stream bank reinforcement is prohibited. As it was, the section prohibited all reinforcement of stream banks.

Section 20 26-339 repealed. Section 26-339 had outdated and incomplete provisions for punishing water pollution violators. The violations are dealt with more stringently in other sections.