

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 21, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:35 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present, with Senator Roberts arriving from another meeting at 10:40 and Senator Warden being excused at 10:00 a.m. to attend another meeting.

WITNESSES PRESENT TO TESTIFY:

Representative Keyser - District 81, Ennis
Representative Day - District 54, Glendive
Gail Stoltz - director, dept. of cooperation, Montana Farmers Union
Fran Mertes - Glendive Chamber of Commerce & Richland and Dawson Co. Conservation District
Wayne Haas - Buffalo Rapids Irrigation Project
Tom Weir - Yellowstone Basin Water Use Assn.
Ted Doney - Dept. of Natural Resources, chief legal counsel
Duane Erickson - Buffalo Rapids
John Peplinski - Glendive Area Farmers
John Marciniok - Wibaux, Montana
Representative Huennekens - District 68, Billings
Representative Baeth - District 21, Libby
Margaret Davis - League of Women Voters of Montana
Jim Beck - Department of Highways, attorney
Representative Johnston - District 13, Cut Bank
Ray Blehm - Montana Firemen's Assn.
Dennis Haddow - Air Quality Bureau, SDHES

CONSIDERATION OF HOUSE BILL 226:

Representative Keyser, sponsor of this bill, explained that it has a more severe approach to providing a penalty for reckless driving when a driver attempts to flee from or elude officers.

CONSIDERATION OF HOUSE BILL 310:

Representative Day, chief sponsor of this bill, told the committee that he had introduced it at the request of the Department of Natural Resources. He then explained the bill and said that there had been a moratorium put on water which will expire on March 11, 1977, and that this bill would extend it to January 1, 1978. Also, that this bill has the possibility of extending the moratorium to March 1, 1979, when the legislature could take the appropriate action it deems necessary.

The first proponent of H. B. 310 was Gail Stoltz, Montana Farmers Union, who read the attached statement to the committee. (See Exhibit 1)

The next proponent was Fran Mertes, representing the Glendive Chamber of Commerce and the Richland and Dawson Counties Conservation District, who said that the moratorium should be extended so that the study can be completed. He said that the purpose of the moratorium was for the use of the agriculture interests, the farmer-rancher, but that the crops are worse today than they were then. Further, that it is more imperative now than it was before; that the economics of the counties affected are 3/4 agriculture and they want to keep it that way. They need to have use of the water. He said that data published by the Dept. of Natural Resources tends to give people complacency and that it is misleading. He also said that the adjudication is not complete and that the Indian water rights do not yet say how much water, and that they feel that the concepts should be generously conclusive in their water because the economy of eastern Montana is vital.

Wayne Haas, Buffalo Rapids Irrigation Project, was the next proponent to testify. He is an irrigating farmer in the Yellowstone Basin. He asked that the moratorium be extended so that the water reservations can be acted on because they are vital to Montana.

Tom Weir, representing the Yellowstone Basin Water Use Assn., was the next proponent and he told the committee that they strongly support H.B. 310, because there are many requests by coal companies for a lot of water in his area, and the moratorium in effect said "stop and look" before we approve a lot more water to industry. He said that we should look at the water needs of everyone and the purpose and objective of the moratorium have not been fulfilled. He reminded the committee that the agricultural units are not recognized and agriculture is the largest industry in Montana. Therefore, their water cannot be cut off.

Ted Doney of the Dept. of Natural Resources, chief legal counsel, referred the committee to a copy of their report submitted last month "The State of the Yellowstone River". He said that it contained the reasons why they want to have this bill passed.

Also appearing in support of H.B. 310 were: Duane Erickson of Buffalo Rapids, John Peplinski of the Glendive Area Farmers, and John Marciniek of Wibaux, Montana.

No opponents.

Representative Day, in closing said that we are going to lose our water to down stream states, because there is no other plan that will tie up this water immediately. He asked that the committee concur in H.B. 310 and said that the House committee hearing it had only 4 votes against it.

The Chairman then allowed a question and answer period. Senator Towe suggested some amendments, but they were rejected.

Senator Regan moved that H.B. 310 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 5:

Representative Huennekens, District 68, Billings, sponsor of the bill, said that it was desirable to give the legislature more control and this would establish the office of court administrator, and that, at the present time, the draw on the state treasury is small because of federal funding.

Margaret Davis, representing the Montana League of Women Voters, said that they fully support the bill and read a statement in support of these functions.

There were no opponents present at this meeting.

CONSIDERATION OF HOUSE BILL 483:

Representative Baeth of District 21, Libby, said that he had introduced this bill at the request of the Highway Patrol, and introduced the attorney for the Department of Highways, Jim Beck, who read a statement explaining the bill in which he said that the private property owner prevails and that there is no statutory guidelines for attorney fees. He said that the attorney usually gets what he asks for and that some judges are generous and even grant the attorney more than he seeks. He further told the committee that this bill is patterned after the Washington statute which calls for a fee for attorneys of \$50 an hour which he felt was fair.

There were no opponents, so the Chairman allowed the committee members to question Mr. Beck. Senator Regan suggested to Mr. Beck that the bill be amended on page 1, section 1, line 18, following "fees" by inserting "shall be computed on an hourly basis and". Mr. Beck had no objection to the amendment. It was also decided that page 1, line 15, should be amended following "customary" by inserting "hourly" and that page 1, lines 16 and 17, should be amended following "held" by striking ", provided that reasonable and necessary attorney fees may not exceed \$50 and hour". Sen. Towe moved the adoption of the previous amendments. The motion carried unanimously. Senator Towe then moved that H.B. 483 as amended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE JOINT RESOLUTION 7:

Representative Johnston of Cut Bank, sponsor of the resolution, explained what it would do regarding permits for pollution or fires. He said that it would not apply where the Forest Service is in control of the land.

The first proponent was Ray Blehm, representing the Montana Firemen's Assn. who said that they support the resolution and that most burning permits are given by the pollution control department so they have trouble verifying them. His association would like to have them go through the fire department.

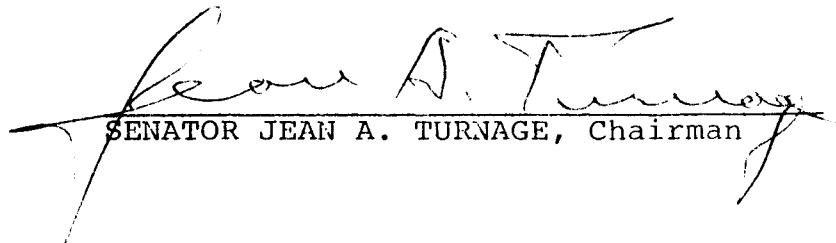
Dennis Haddow of the Air Quality Bureau, S.D.H.E.S., said that they have a couple of questions. He testified that his department gives out approximately 15,000 permits a year and that the state foresters and forest service only issue permits during certain months of the year. He said further that they do not require incident by incident permits and that the administrative rule applies state-wide. The main purpose of the bill is so the fire fighters know there is a fire being burned.

Since there were no opponents present, the committee members were allowed to ask questions of the witnesses. The Chairman said this resolution would be taken under advisement.

DISPOSITION OF SENATE BILL 125:

Senator Lensink moved that S.B. 125 DO NOT PASS. The motion carried unanimously.

There being no further business at this time, the committee adjourned at 11:15 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION -- 1977

Date 2-21-77

(Ex. 1)

TESTIMONY BEFORE THE JUDICIARY COMMITTEE, MONTANA STATE SENATE,
HEARING ON HOUSE BILL 310, MONDAY, FEBRUARY 21, 1977.

I am Gail Stoltz, director of the department of cooperation for Montana Farmers Union, a statewide farm and ranch organization of approximately 7,500 family members, with headquarters in Great Falls.

Just as our organization supported the Yellowstone River water moratorium at its inception in 1974, we now support House Bill 310 to permit the Board of Natural Resources and Conservation to make final determinations on applications for reservations of water in the basin.

With hearings scheduled past mid-February across the state by the Department of Natural Resources and Conservation pursuant to the Montana Water Use Act, it is obvious the original moratorium deadline of March 11, 1977, is no longer appropriate.

We especially want the Board to have adequate time to assess the needs of agriculture in evaluating the complex issue of beneficial uses versus industrial demands.

Just as vital as agriculture is to the Montana economy, so is water vital to agriculture. And, although no single piece of legislation can answer all of our questions and fears about an adequate agricultural water supply, House Bill 310 is a sorely needed safeguard in this instance.

The value of the moratorium already has been demonstrated and we would not want to see it ended before the job is completed and possible legal complications are averted.

Thank you, for hearing me out, and for considering agriculture's viewpoint.

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Montana's dry, but wettest in the West

BY FLYNN J. ELL
Of the Gazette Staff

Refrains of "how dry I am" are reverberating through the West, but nobody is laughing.

The mountains are dry and so are the valleys.

California is in its third year of drought. In Utah, surveyors used to running snow courses in the mountains are walking on bare trails. There is no need for snowshoes or skis.

In Montana, all eyes are on the Yellowstone River.

How much water will there be in the Yellowstone in 1977?

Montana is the "bright spot in the picture" according to Phil Farnes, of the Soil Conservation Service (SCS) in Bozeman.

But that's not very bright.

To the east, drought was reported in Minnesota and North and South Dakota last year, and farmers said there was no submoisture for eight feet.

Clarks Fork irrigators depending on the Beartooth range normally face shortages by mid-July.

If there is no snow in the mountains, mid-July will come a lot sooner.

Winter wheat fields in some parts of eastern Montana and near Broadview may have been hurt by dry conditions last fall, experts say. High winds that followed may have blown much of the crop away.

Without snow cover, further damage can occur, and some experts are predicting that farmers will be forced to reseed crops to spring wheat.

In Colorado, the director of the Colorado Water Conservation Board predicted that 1977 will be the "worst year in recorded history" for water supplies.

Felix L. Sparks, made the remark at the 19th annual meeting of the Missouri River Basin Commission.

Sparks said imminent drought is the most immediate problem confronting the 10 states forming the commission, which includes Montana, Wyoming, North and South Dakota, Colorado, Minnesota, Iowa, Kansas and Missouri.

The Colorado legislature, in a move to head off impending shortages, has authorized \$190,000 to seed clouds with silver iodides over three mountain ranges within that state.

In Montana, moisture content dropped the past month on snow courses that SCS measures.

The Beartooth Mountains, have dropped from a moisture content of about 60 per cent of normal, to only 50 per cent of normal.

Yellowstone Park snowpack is 70 per cent below normal.

The only truly bright spot in the state is the north end of the Big Horn Mountains where snowpack is up to 20 per cent above normal.

Farnes reported that the lack of snow is the same for most parts of the state. Bridger, Bitterroot and Kootenai ranges are all down.

Only isolated sections in central Montana mountains are showing snowpack readings above 50 per cent.

"The chances of coming out of the present situation now are fairly remote," said Farnes, adding that SCS will begin advising farmers and ranchers on what adjustments they can make for shortages.

Ranchers, he said, will be advised to get

rid of cows, or find more pasture to offset deterioration of existing grasses.

Irrigators will be told to grow small grains, which require less water than row crops.

More efficient use of agricultural water will be encouraged.

"It looks like a poor year to get involved in a new irrigation project, or new industry," Farnes said.

Winter wheat farmers near Jordan, who don't depend on irrigation, reported Friday that they aren't worried.

Snow cover on their fields is about five inches, but submoisture is down.

"When that snow goes, there won't be much left," said Ken Padgett, an SCS field coordinator.

Farmers and ranchers who irrigate from streams without storage, are facing serious problems unless new snow falls in the mountains, or spring rains change the picture.

(More on Drought, Page 14A)

In Cheyenne, Wyo., residents are being advised to use less water as the year progresses.

The cause of the West's problems is the same as the cause of the East's where heavy snowfall and biting cold weather has plagued residents.

Dr. Stephen Schneider of the National Center for Atmospheric Research in Boulder, Colo., says that upper-level winds that changed course are responsible for weather troubles East and West.

The winds, he said, brought warm air to Alaska, and pushed Great Plains snowfall and cold weather eastward.

Energy and water crises will be the major topics of a Pacific Northwest Regional Commission meeting March 8 in Portland, to which Gov. Tom Judge has been invited.

Some agriculture leaders in Oregon plan to let fields lie fallow in 1977 if the water picture doesn't brighten.

An aide to Oregon's Gov. Bob Straub may have best summarized the position of the Western states.

"We are in trouble, very serious trouble," said Ken Fobes, Straub's administrative assistant. "The question is how soon will we get rain (or snow) and how bad is the financial crunch going to be?"

Billings 16 Feb 77

Interior to Montana: 'Cut water, power use'

From Gazette News Services

WASHINGTON -- Interior Secretary Cecil Andrus has called upon residents of Montana and other northwestern states to reduce water and electricity use by 10 per cent in an effort to ease drought conditions in the northwest.

Andrus said if voluntary efforts to ease the drought in the Pacific Northwest don't work, "there will be no alternative but to institute mandatory measures."

Other states called upon to make reductions were Washington, Oregon, and Idaho.

Because 90 per cent of the region's power is generated hydroelectrically, officials hope to save on water by using less electricity.

Andrus said he has instructed the Bonneville Power Administration, the Bureau of Reclamation and other Interior Department agencies to cooperate in the conservation program.

The secretary also sent telegrams to governors in the Northwest supporting a combined conservation effort by the Northwest Power Pool.

Northwest mountain snowpacks range from 0 to 40 per cent of normal amounts, he said. Even if there were normal snowfall and rainfall through July, there will still be severe shortages, much worse than in 1973, the last year of drought, he said.

Andrus said one reservoir that normally had a depth of 120 feet now was running at about 20 feet.

"If voluntary cutbacks do not bring savings," Andrus said, "there will be no alternative but to institute mandatory measures to reduce usage."

He did not elaborate.

Meanwhile, the Agriculture Department reported there is "a very high degree of certainty" that drought in California, Washington and Oregon will continue for at least the next nine months, increasing the likelihood of higher costs for fresh produce at the nation's checkout counters.

The combination of drought in the California and frost-destroyed winter fruit and vegetable crops in Florida will mean there will be

less produce going to market this spring.

An Oakland, Calif., television station reported recently that water levels in California growing areas have dropped 75 per cent and farmers required are reducing their planted acreages proportionally.

The USDA weekly crop weather report, released Tuesday, said there could be "extremely serious" water shortages for urban residents as well as farmers.

"Marin County in the San Francisco area has already adopted strict regulations on using water," the report said. "This will be very common before the summer of 1977 is over."

Agriculture Department specialists said their forecast of nine more months of drought was based on estimates of how far precipitation had fallen below normal in California, Washington and Oregon through the first of February.

These estimates were compared with historical records showing the likelihood of improvement during February, March and April -- the final months of the normal western rainy season.

Yellowstone won't run dry

By FLYNN J. ELL.
Of The Gazette Staff

The future of the Yellowstone River is looking better.

It should still be a river in 2020, with plenty of water only "slightly" diminished in quality.

Only a short time ago it was feared that users were applying for more water than the river carried.

Panic fired the cries of environmentalists, fishermen, farmers and ranchers.

Robert Madsen, study manager of the Yellowstone Basin and Adjacent Coal Field Area Level B Study, wants to replace emotional argument with technical analysis.

Madsen is one year into a \$2.4 million federal-state funded study on availability of water in the Yellowstone Basin for energy and agricultural use.

He said Wednesday the report for the Missouri River Basin Commission should be out by next August.

A peek into the future, minus speculation and emotionalism, looks a lot differ-

A new \$2.4 million study will find far less water needed for energy and agriculture

ent than it did before, he said.

The Yellowstone River flows about 8.8 million acre-feet (maf) annually, and when coal development was first being investigated, it was estimated that energy-related water uses would amount to 2.8 million acre-feet.

But Madsen said his study indicates that total energy water needs ("under the most extensive development") in the Yellowstone Basin and Western North Dakota will amount to no more than 550,000 acre-feet.

That includes gasification, coal-fire generators, and slurry pipelines, he said.

The study estimates that agricultural

irrigation in Montana and Wyoming will require a maximum of 450,000 acre-feet and total use including municipal will be 1.5 million acre-feet.

For comparison, an earlier study indicated that the Crow Indian reservation alone would use 2 million acre-feet.

In another study, the Bureau of Reclamation last year estimated that 1 million acre-feet would be needed in Montana by the year 2020 for energy and irrigation.

The Montana Department of Natural Resources at that time wanted to reserve 7 million acre-feet in the Yellowstone for fish.

How can Madsen's figures be so different from those earlier estimates?

Basically it's a question of how much development is economically feasible. In Madsen's view, many earlier studies projected more development than the land and the economy could conceivably support.

Water quality, under the most exten-

(More on Water, Page 12A)

Water

sive energy development ever projected for Fort Union coal deposits in the Northern Great Plains Program study, would diminish only slightly, Madsen said.

If projects are scaled to what is economically feasible under Madsen's study, the effect on water should be even less.

Madsen is also looking at deterioration of water from agricultural use.

And transportation of coal is also being studied.

Madsen sees a railroad bottleneck as demands increase on 100-car unit trains.

Alternatives to stepped-up coal movement are single or double automated tracks and slurry pipelines.

But Montana and Wyoming have already turned thumbs down on slurry pipelines, which would use state water mixed with crushed coal to move the mixture to a power generating source.

"Restricting slurry forces North Dakota development," Madsen said; half of all the coal conversion will be done in North Dakota if Montana and Wyoming don't change their position, Madsen said.

But North Dakota Gov. Arthur Link

has said his state won't accept that much of the burden alone, Madsen said.

The best way to transport energy appears to be by electric lines from coal-fired generators, Madsen said.

Agriculture also is limited by what is economically feasible.

Estimates range from 60,000 acres of river-irrigated land by private money to a maximum of 350,000 acres under the best economic conditions backed by government financing.

The study involves environmental concerns, too. Wilderness, wild and scenic rivers, fish and wildlife are all being weighed, Madsen said.

The major question being asked is: "Will the water supply be adequate in quantity and quality to meet the forecasted demands while maintaining the quality of life and social well-being of all the people?"

Madsen says he doesn't want to prejudice his findings, but it appears that an appraisal without emotion based on technical analysis could be "yes."

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppos
John Young, Vice-Chair	League of Women Voters	310	*
Henry Glens	Rep. Dist. #81	276	*
John G. Clegg	DOH	482	*
John G. Clegg	Self	407	*
John G. Clegg	DOH	407	*
John G. Clegg	Self	407	*
John G. Clegg	DOH	407	*
John G. Clegg	Self	407	*
Margaret Stavis	✓ League of Women Voters of MT	HB5	*
Ray Blehm	✓ Mont Firemen's Assoc	HB5	*
Ted T. Dorey	✓ DNR & C	310	*
Orrin Ferris	✓ "	310	*
Dennis Haddow	✓ SDHEs - Air Quality	HB5	*
John L. Ferguson	✓ Glendale Area Farmers	310	*
Tom Mortgs	✓ Glen Chamber, Richland County	310	*
William Day	✓ State Rep. Dist 56, Liberal	310	*
Wesley Hock	✓ Buffalo Rapids Twp. Board	310	*
Thomas E. Atie	✓ Yellowstone River Working Group	310	*
Duane L. Erickson	✓ Buffalo Rapids	310	*
Tail M. Stott	✓ Montana Farmers Union	310	*
Kevin F. Olsen	✓ Trout Unlimited	310	*
John Marciinjuk	✓ Wildcat Project	310	*