

HOUSE SELECT COMMITTEE ON WATER

February 16, 1979

The meeting was called to order by Chairman Day at 11:35 a.m. with all members present except Representative Hershel Robbins.

HOUSE BILL NO. 615

REPRESENTATIVE ROBERT SIVERTSEN, Chief Sponsor, stated that this bill would address the problems that are occurring as we see urban subdivisions expanding. People are building up around canals and ditches that are being used for irrigation. This bill will prohibit construction of buildings within 25 feet of ditches or canals used for irrigation.

He concluded by submitting amendments to the bill. (amendments attached)

PROPOSERS:

ED LENHARDT, Big Ditch and High Ditch Company, stated that he lived west of Billings. "The problems we have in our area have come about from progress. At the time sales are made on farm lands for new residences, the people purchasing the ground and the realtor's are unaware of where the ditches go; or what type of equipment it takes to maintain a particular ditch. In many cases the new owners will build fences, houses, garages, bridges, or plant trees and shrubs too close to the waters edge, preventing the farmer or ditch company from using whatever modern day equipment it takes to maintain the ditch in a reasonable manner. We are bound by law to control and use this water in these canals and ditches. We can be liable if we run water on an innocent party due to negligent care or maintenance of a canal or ditch. This bill will provide for a clear right-of-way. (complete testimony attached)

ZACK STEVENS, representing Montana Farm Bureau, Montana Farmers Union, and WIFE, rose in full support of the bill.

ROBERT ELLIS, Helena Valley Irrigation District and KEN FINLEY, Lockwood Irrigation District, rose in full support of the bill.

REPRESENTATIVE SIVERTSEN closed by stating that he hoped the committee would give this bill favorable consideration.

Questions were asked by the committee and the hearing on HB 615 was closed.

HOUSE BILL NO. 489

REPRESENTATIVE ESTHER BENGTON, Chief Sponsor, introduced the bill by stating that this bill had been a request made by the Lockwood Irrigation District in Billings. Other districts have the same problems. The law presently states that an irrigation district may charge a minimum charge of \$5 against a separately owned tract of land for an annual fee. This bill will allow for a \$25 minimum charge. If the districts are not allowed to raise their rates they will have to shut down. She concluded by submitting an amendment to allow for those people unable to receive water, a minimum charge of not more than \$5. (amendment attached)

PROPOSERS:

KENNETH FINLEY, Lockwood Irrigation District, stated that these ditches and canals had been built 15 years ago and now there are subdivisions and homes in the area. "We can not supply the lots with water for this small of a fee." He concluded by stating that in some areas of the subdivision we can not even get water.

ROBERT ELLIS, Helena Valley Irrigation District, stated that the added charge would help cover the added expenses from the people that have the water turned on Friday and off Sunday, causing our ditch riders to have to work all week-end.

REPRESENTATIVE BENGTON closed by stating that the board of commissioner will determine the rate and they will not charge more than necessary and will hold the rates at a \$25 maximum.

Questions were asked by the committee and the hearing on HB 489 was closed.

HOUSE BILL NO. 230

REPRESENTATIVE DANIEL KEMMIS, Chief Sponsor, stated that this bill is amending Montana law relating to slurry of coal by striking: "A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter." The definition of water is defined the same way later in the bill. "My feeling is that the law would not sustain a court challenge. Some people may say we are discriminating against interstate commerce." He concluded by submitting the attached amendments, which is a different way to state the use of water for slurry.

PROPOSERS:

ZACK STEVENS, Montana Farm Bureau, and JIM STEVENS, Montana Farmers Union, stated that they were opposed to the use of water for coal slurry in Montana.

CHARLETTE EASTER, EIC, stated that the use of water for transporting slurry is a waste of our most precious resource. The BLM statistics show that one ton of water is used in the Black Mesa Pipeline in Arizona to move one ton of coal. A 1000 mile slurry pipeline would use 20,000 acre feet of water per year. (attached is complete testimony)

RONALD WATERMAN, Montana Railroad Association, stated that he thought the present stress had an adverse effect on our water. Present technology shows that slurry can not be removed, it has to be treated to become usable water.

K.D. CLARK, United Transportation Union, rose in support of the bill.

MARCO KEITH stated that his studies found that after the Yellowstone Moratorium the water is detrimental to the fish and wildlife of the state.

The following persons also went on record as being proponents to the bill: STANTON COOPER, Bitterroot Water Inc., JAN BROWN, JIM MULAR, BAAK, JOHN DELANO, Montana Railroad Association, PETER JACKSON, WELTA-Mont., and CARL J. KNUTSON.

REPRESENTATIVE KEMMIS closed urging the committees support.

Questions were asked by the committee and the hearing on HB 230 was closed.

Representative Dassinger assumes the chair.

HOUSE BILL NO. 733

REPRESENTATIVE WILLIAM M. DAY, Chief Sponsor, introduced the bill by stating that this bill was a request of the Department of Natural Resources and Conservation and he turned further explanation over to Ted Doney.

PROPOSERS:

TED J. DONEY, Department of Natural Resources and Conservation, stated, in the state we are in a quandary about ground water depletion. Some areas in the state where ground water is in a serious situation is Terry, Montana. Under the present law if ground water tables go down there is a chance of a law suit. If there is a problem area it can be designated as a temporary ground water area for a period of two years. The board may extend the time for an additional two years. During the two years the Department shall commence studies necessary to obtain facts needed to assist in the designation or modification of a permanent controlled ground water area. These temporary designations will keep disputes out of the courts. The Department of Natural Resources does not have the needed staff so this bill provides assistance from the Bureau of Mines and Geology.

S.L. GROFF, Montana Bureau of Mines and Geology, stated that he had three geologists on his staff to work with the Department of Natural Resources, as well as with their other records.

REPRESENTATIVE DAY closed and resumed the Chair.

Questions were asked by the committee and the hearing on HB 733 was closed.

HOUSE BILL NO. 717

REPRESENTATIVE FRANCIS BARDANOUVE, Chief Sponsor, stated that this bill was a result of a situation that has become very difficult for the

Department of Natural Resources. Quite a few years ago we had a review done by a special committee on the Daly Ditch project. This ditch was a gift to the Water Board, a questionable gift. Contracts were drawn up with the people on the ditch that would be using the water for irrigation. The contract price was \$3 per acre. These contracts were not time contracts but for perpetuity. With inflation the way it is the cost of maintaining the ditch has gone up, but the contract price stays the same as it was back in 1942 when the ditch was acquired by the state. This project has been losing money from the time we took it over. The Department of Natural Resources has tried to negotiate with the people on the ditch and some of them have drawn up new contracts with them for a fair amount of money. Others have refused, one case is in court now to determine if the contract is a valid one. We hope to turn the ditch over to the landowners and they assume the costs. It is not a perfect solution but a needed one. Attached are informational papers on the ditch and figures for each years credits and depits.

Representative Dassinger assumed the Chair.

PROPOSERS:

TED DONEY AND RICHARD BONDY, Department of Natural Resources, showed the committee slides of the Daly Ditch project. From these slides you were able to see that the ditch is in very poor shape and needs about 2 million dollars worth of repair to put it back in good working order.

Mr. Bondy stated that if the diversion dam would fall they would not be able to get water to the people.

Mr. Doney stated that it would cost 1 million dollars to replace one structure.

There are 405 water users on the system. 174 of these users have signed new contracts and are paying about \$10 per acre. The Department has met many times with these farmers and they do not want to take over the ditch they want us to stick with the \$3 contracts. The Department cannot afford to fix the structures on the ditch without further appropriation. We have asked for this and it has been denied. If the farmers should take over the ditch we would give them all the equipment and buildings and whatever there may be would all go with the project. They felt that they could not continue this way.

JOHN FITZPATRICK, Office of Budget and Planning, stated that the problem with this ditch is the increase the state will have to appropriate to maintain and improve this ditch. At the present time 85 thousand dollars have been appropriated for the ditch project. An additional 125 thousand dollars have been requested for repairs but have not been appropriated. The taxpayers are paying for these peoples' water, this is not fair to those water users that are paying a fair share for their water.

OPPOSERS:

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STANTON COOPER, Users and Bitterroot Water Inc., stated that if the state would have maintained the ditch and kept it up from the beginning it would not cost so much to fix it now. These contracts had been drawn up in good faith and we feel that you should have to honor them.

ALBERT N. WEST, Board of Directors of Water Users, read a letter written by Representative Bob Thoft in opposition to this bill. (letter attached)

ED HOPKINS stated that he had drawn up a contract in 1951, which was a 40 year agreement. He stated that the Department had met with the water users but they were not asked to have the contracts rewritten they were directed and threatened to have their water turned off. Some of the people did draw up new contracts some did not.

SAM HADDON, Bitterroot Stock Farm, stated that this project provided water for about 58% of the land in Ravalli County. What is going to happen to the water if the state abandons the project? Who will be responsible?

Chairman Day resumes the Chair.

HUGH G. COMMING, Ravalli County, stated that these canals deliver some 650 cubic feet of water per second for about 110 miles, when irrigation season is at its peak. It serves 492 users that have no other means of irrigation. (complete testimony attached)

REPRESENTATIVE KEN ROBBINS, rose in opposition to the bill. He stated that we would have a serious problem if this ditch was lost.

REPRESENTATIVE AUDREY ROTH read a letter presented by the Bitterroot Valley Chamber of Commerce in opposition to the bill. (letter attached)

SENATOR ELMER D. SEVERSON, rose in opposition to the bill. He stated that he had worked with the users of this project. He felt that the state should repair the ditch and put it back in the shape it was in when they took it over before leaving it.

All the users attending the hearing rose in opposition to the bill and stated their names. Two others that were opposed to the bill were Alice J. Berg and Glen Moeller.

REPRESENTATIVE BARDANOUE closed by stating that he could understand the feelings of the opponents, but we are given a job to budget the money of the state and we do not feel that the state should support the water users in that area. This project has been losing money for the state since it started and if the users would like to have the ditch, this bill provides for the cancellation and write off of all accounts receivable.

Questions were asked by the committee and the hearing on H.B. 717 was closed.

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EXECUTIVE SESSION:

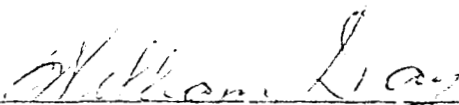
HOUSE BILL NO. 230

Representative Hand moved, DO PASS. The motion was carried unanimously

HOUSE BILL NO. 489

Representative Hand moved, DO NOT PASS. The motion failed 4 to 3, the vote is reversed and the bill passes. Opposed: Curtiss, Day, Dassing, Scully

The meeting was adjourned at 2:25 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary