

MINUTES OF THE MEETING OF THE WATER COMMITTEE
February 12, 1981

CHAIRMAN AUDREY ROTH called the meeting to order at 1:00 p.m. in Room 436. All Committee Members were present as was Bob Person, Legislative Council Researcher.

HOUSE BILL 596

REPRESENTATIVE J. MELVIN WILLIAMS, sponsor of House Bill 596 stated that this bill was introduced to provide a secondary easement for entry to and maintenance of a canal; to prohibit encroachments upon or impairment of easements for canals or ditches used for irrigation or other lawful domestic or commercial purposes.

PROPONENTS

ED LENHARDT, Big Ditch Co. and High Ditch Co., Billings stated that people are building on, or close to, the irrigation ditches making it impossible to maintain the ditches in the proper manner. He feels this bill will consolidate other pieces of legislation into one statute, thus recognizing the "secondary easement." (EXHIBIT 1)

CHARLES CRANE, Executive Director, Montana Water Development Association, Butte, Montana concurred that all the cities of Montana were having the same trouble.

BILL ASHER, representing the Agricultural Preservation Association, Park County Legislative Association, Sweetgrass County Preservation Association, Stillwater County Agriculture Legislative Association stated all four groups would like to be shown in support of this bill.

PAT UNDERWOOD, Montana Farm Bureau agreed with the previous proponents and supports the bill.

ROBERT ELLIS, Chairman of the Board of the Helena Valley Irrigation District supports the bill.

REP. TED NEUMAN, District 33, Cascade County went on record as supporting this bill, stating that the problem is a serious one.

REP. HERB HUENNEKENS, Billings also went on record as in favor of this bill.

OPPONENTS

There were no opponents.

REP. KEMMIS stated that without this law that anyone with a ditch easement does have a secondary easement and the right to maintain that easement.

MR. LENHARDT explained that it took a 1969 court judgement to obtain a secondary easement. He went on to tell of various cases of people obstructing the ditches and the problems involved.

The hearing closed and the committee went into Executive Session.

EXECUTIVE SESSION

HB 596

REP. TOM CONROY made a motion to DO PASS on HOUSE BILL 596.

REP. KEMMIS expressed some reservations regarding this bill. In certain cases where urban sprawl has encroached on ditch easements, a property owner may have to go to court to protect ditch rights and secondary easement rights. He felt it unfair to have to go to court repeatedly. The rest of the bill states in very specific terms what the case law already provides in much fuller terms. There just is no doubt, he said, that the case law is just as valid as this statute; and, in a statute like this, there may be a narrowing of those rights. The words used are all the rights will be provided. The court will consider the statute to be controlling and anything not named as a right will no longer be allowed, he said. He also agreed with the provision that pays attorney fees. He said he would inquire as to whether the case law might provide broader rights.

REP. HUENNEKENS gave a couple of examples of what had happened to him at his home west of Billings. During irrigation season the ditch rider checks up and down the ditch, and knows what is going on; but as soon as you turn the water off, people will actually build right on the ditch, he said. He thought the committee should check on this to be sure rights are not being given away. He considered this an essential bill to handle this problem.

REP. HAROLD BRIGGS, Beaverhead County stated that landowners are asked to remove the structures and they do. It has never been a problem, he said. He thought there must be a law that requires people to replace bridges, fences, etc.

CHAIRMAN ROTH asked if there are any laws to that effect.

REP. KEMMIS stated that no one has the right to encroach on an easement. The law is so written, he said.

CHAIRMAN ROTH asked if there is any required amount of land necessary to go with an easement to protect it.

REP. KEMMIS stated whatever is necessary in order to maintain the ditch.

REP. CURTISS remarked that this goes back to the enabling act, where people were entitled to an easement for a ditch right-of-way. She thought it was about ten feet.

REP. MCLANE stated that her right-of-way is a little different. Her property is on a cove ditch, but their easement is 40 feet from the center of the ditch. It was included with her deeded right-of-way, she said.

CHAIRMAN ROTH stated she felt it varied with each easement.

REP. HUNNEKENS stated that a lot of the problem is with the prescriptive right, rather than the deeded easements.

ED LENHARDT stated that the deeded easements have no problems because the law is specific in that regard. In some cases, land belongs to a ditch company. This law refers to the prescriptive rights of ditches or secondary easement, he said.

The DO PASS motion was seconded and passed UNANIMOUSLY.

REP. WILLIAMS thanked the committee, stating that this bill was not an attempt to take rights away from anyone. The sponsors were just trying to prescribe specific rights for those people who find themselves involved in the irrigation canal situation.

REP. NEUMAN asked if it would take very long for REP. KEMMIS to check this thing out with Dr. Stone.

REP. KEMMIS said he would do it as quickly as he could.

REP. NEUMAN stated that if there were any problems, he just as soon consider them in committee before it gets to the floor.

CHAIRMAN ROTH told the committee that House Bill 596 would be held for a few days.

HOUSE BILL 551

REP. KEMMIS reported he is in the process of working out some amendments to HB 551, and would like another day or two for completion.

CHAIRMAN ROTH commented that it is necessary for the committee to move these bills out of committee as soon as possible.

A discussion of what bills were still in committee was made.

HOUSE BILL 432

CHAIRMAN ROTH stated that HB 432 was cancelled by its sponsor.

REP. HUENNEKENS moved that HB 432 be indefinitely postponed.

MOTION PASSED UNANIMOUSLY.

SENATE BILL 59

REPRESENTATIVES CONROY and NEUMAN were excused.

SEN. STEVE BROWN entered the meeting and explained SB 59, "An Act to Amend Section 85-2-306, MCA, To Provide That the Exemption For A Stock Watering Pit Of Less Than 15 Acre-Feet Applies Only If The Parcel On Which The Impoundment Is To Be Constructed Is 40 Acres In Size Or Larger; And To Provide Retroactive Application."

He stated that it was his understanding that the committee wanted some sort of foot limitation from the boundary, and that would be acceptable. It was not his intent to bring everybody under the bill including the land owner. This requires that, if the parcel was a 40 acre parcel or smaller, a property owner would have to apply for the permit first, then the agency and the neighbor could approve the location of the pond. Second, a possible high ground water situation and its impact should be considered.

REP. KEMMIS moved that the Committee RECONSIDER action on SB 59.

MOTION PASSED UNANIMOUSLY.

REP. THOFT asked if this bill was in direct conflict with HB 324.

REP. HUENNEKENS stated there would be a conflict if a person put in a pond and then asked for a permit. The Department rejects the permit if they found that it could adversely affect someone else's water supply. He felt they would have to address this conflict, making an exception in certain cases.

SEN. BROWN stated that except for those parcels of 40 acres or smaller, Rep. Burnett's bill should be amended to make reference to the two bills. Then when the codifier does the coding, she can reconcile the two conflicts.

REP. ASAY commented on the larger parcels of land as having a conflict.

SEN. BROWN stated he was not interested in the larger parcels and did not want to get into that at all.

Legislative Researcher, BOB PERSON said he felt there is no conflict with the two bills. Neither did REP. KEMMIS. Sen. Brown's bill would still say that you do require a permit before an impoundment on a parcel of 40 acres or smaller, and Rep. Burnett's bill would say that in other cases, a permit would have to be obtained within 60 days after you begin construction.

BOB PERSON stated that the amendment being inserted on line 10 through 13 at the end of the sentence would qualify the acreage limitation. Rep. Burnett's bill amends different parts of that exact subsection so that his would apply the same way it does now, except to his amended provision for stock permits. The only substantive change that Senator Brown is proposing is the way that the amended exception would apply.

REP. HUENNEKENS stated that on page 2, line 9-10, the maximum capacity 15 acre feet was stricken and in Senate Bill 59 it is still maintained in the bill.

BOB PERSON said it had been amended back in. As originally introduced, Rep. Burnett's bill would have conflicted but as it was amended and passed by the committee, it no longer conflicted.

REP. ASAY moved to pass Senate Bill 59.

MOTION PASSED.

SEN. BROWN thanked the committee.

The meeting adjourned at 1:45 p.m.



CHAIRMAN AUDREY ROTH

HOUSE BILL # 596

Ed Lenhardt

The reasoning behind this bill has been brought on by what I would call progress in our State over many years.

A very large percentage of our canals and ditches in Montana were constructed in the 1880's and early 1900's. I would suspect that very few of them were constructed on deeded right-of-ways. Therefore, we have been operating these canals and ditches on a right-of-way by prescription or conveyance.

Now we are in an era of urban sprawl. One can find single unit housing or full fledged subdivisions in all of our irrigated valleys.

In a good deal of these parcels of land sales both the real estate sales person and the buyer are unaware of where the ditches go; or what purpose they serve; 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 water's edge. This would prevent The Ditch Co., farmers, and other users from using whatever modern day equipment it takes to maintain the ditch in a reasonable manner.

This is very important since we are bound by law to control and use this water in these canals and ditches. The Ditch Co. can be held liable if we run water on an innocent party due to negligent care or maintenance of a canal or ditch.

I firmly believe that unless we get a statute in this regard passed, our entire irrigation systems in the State of Montana will deteriorate to serious proportions within a few years.

I believe this bill states in a very simple explanation the requisites needed to maintain and operate a ditch or canal in a normal efficient method.

Water, becoming a more precious resource each day, should be used and protected.

It is the obligation and responsibility of the ditch or canal owners and agents to maintain these waterways in a fashion not to restrict the free flow of waters.

There are bits and pieces of past legislation in our statutes pertaining to this subject. This bill would consolidate these "bits and pieces" into one statute pertaining to "canals and ditches" which have no deeded right of way as such, by recognizing the "secondary easement".

WITNESS STATEMENT

NAME Bill H. [unclear] BILL No. H.B. 596
ADDRESS Madison DATE Feb 12 1981
WHOM DO YOU REPRESENT St. Bernard
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Representative: Agricultural Preservation Association
Park County Legislative Association
Sedgewick County Preservation Association
Stallion County Agricultural Legislative Association

NAME: PAT Underwood DATE: FEB 12, 1981

ADDRESS: Box 1207 Bozeman, MT. 59715

PHONE: 587-3153

REPRESENTING WHOM? MONTANA Farm Bureau

APPEARING ON WHICH PROPOSAL: SB 596

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: The Montana Farm Bureau supports
SENATE BILL 596 and HERBY goes on
record with affirmative support. We
recommend you give this Bill a "Do
Pass" vote!

Pat Underwood

Water

COMMITTEE

596

Date 2-12-81

Williams

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE Water COMMITTEE

BILL 432

Date 2-12-81

SPONSOR Mendison

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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.