

MINUTES OF THE SELECT COMMITTEE ON WATER
March 5, 1981

The Select Committee on Water convened on Thursday, March 5, at 1:30 p.m., in Room 436 of the Capitol with CHAIRMAN AUDREY ROTH presiding. All members were present except REPRESENTATIVES THOFT, CONROY AND HUENNEKENS who were excused, and REPRESENTATIVE NEUMAN who was absent.

SENATE BILL 285

SENATOR STORY opened the hearing on the bill which is to prohibit the Board of Natural Resources and Conservation from granting a minimum flow reservation a preference over or priority date earlier than an agricultural reservation considered concurrently.

SENATOR STORY said the bill is a simple one which adds three sentences to the law. The purpose of it is to give the water that was given to the Conservation Districts on the Upper Yellowstone usable. The water given to the conservation districts was not usable because it was given a later priority date than the instream flows. Therefore, he said, the conservation districts have not invested money in a water program. He called attention to page 2, lines 24 and 25 and to page 3 lines 1 through 8, where changes in the law are made.

PROPONENTS:

RAY BECK, Montana Association of Conservation Districts, presented written testimony (EXHIBIT I).

FRANKLIN GROSSFIELD, Big Timber, presented written testimony (EXHIBIT I-A) in favor of the bill.

PETER JACKSON, representing Western Environmental Trade Association, said that 70% of the population lived on the land many years ago, but that now only 4% do. Mankind needs water to drink and they have to have food. The luxury use of water has to come second to the production of food, he felt.

ANNE HOWE testified in favor of the bill (EXHIBIT I-B).

CHARLIE CRANE, lobbyist for the Montana Water Development Association, supported the bill as it would mean a great deal to communities, he said. The largest industry is still agriculture and this bill would increase the use of water for agriculture, he felt, and that it would not reduce the tourist industry significantly.

VIRGE HOLLIDAY, a cattle rancher on the Shields River (a tributary of the Yellowstone River) read a prepared statement (EXHIBIT II) in support of the bill.

RAY ELLIS, Montana Water Development Association supported Senate Bill 285.

OPPONENTS:

JOHN SCULLY, former representative stated that we "soon forget" that agriculture feeds us. He said that municipalities and energy companies are again wiping out agriculture. This is a preference system bill, he said. It was difficult for him to oppose a bill with agriculture for its preference, but he felt it necessary to look "further down the line" as to the long range effect of the bill. A preference system has never, historically, worked he said, and he felt it wouldn't in the future.

LEO BERRY, representing the DNRC, feels this bill is a dangerous route to take in changing priority dates. He understands that at one time the board established a hearing and reduced the flow for the Upper Yellowstone, giving more water to agriculture, and he felt that could be done again. If the conservation districts aren't happy, perhaps they should initiate a request for the DNRC to look at the allocations of water. He felt certain the board would listen to the request.

WILLA HALL, League of Women Voters, opposed the bill because it is a "preference" bill, she said.

PETE TEST, a civil engineer, spoke in opposition to the bill, suggesting that off stream storage would be a good way to provide adequate water for agriculture, recreation and industry, while providing sufficient instream flows. Even small dams are expensive to build, he said. But if Senate Bill 285 passed, the possibility exists that a small stream could be dried up, even though a reservoir was built to protect the stream. This would mean the public and agencies concerned would be no longer interested in participating in instream storage. The existing law allows for the best use of all. He also pointed out that this bill pertains to more rivers than just the Upper Yellowstone.

NOEL ROSETTA, representing the Montana Wildlife Federation, read testimony written by WILBUR W. REHMANN (EXHIBIT III) in opposition to Senate Bill 285.

ROBERT I. AUGER, a rancher in the Upper Yellowstone Valley, testified in opposition to the bill (EXHIBIT IV).

WOODY WRIGHT, representing the Department of Fish, Wildlife and Parks read prepared testimony written by JAMES FLYNN, Director of the department. (EXHIBIT V).

TOM TRAVIS, owner-operator of a tackle shop and fishing guide service read a prepared statement in opposition to the bill. (EXHIBIT VI).

CARROLL SPECK, Whitehall, Montana, said he comes from an area which suffers from dewatering during the summer months. The Jefferson, Gallatin and Bighole Rivers flow close to Whitehall, he told the committee and he felt this bill would worsen existing problems.

ELLEN DITZLER, Montana Environmental Information Center, felt this bill would force a polatization between agriculture and other water users, and can see no reason to do this. She feels that existing problems can be worked out through the reservation system.

WILL CLARK, Billings, speaking as a private citizen, read prepared testimony opposing the bill (EXHIBIT VII).

REP. KEMMIS said that he preferred to speak at this time rather than wait for Executive Session. He said he had concern about the bill because it looks at the situation on the Yellowstone, but includes all rivers in Montana. He felt that the reservation system addresses the problems raised. He presented a graph to show the fluctuations in water quantities at different times of the year. He said that agriculture will have a priority under the provisions of this bill, but that they may end up with little less than before.

SENATOR STORY said a change was made in the law stating that only 50% of the water could be reserved. In the Yellowstone, 2/3 had been reserved and he felt the 50% figure was much better. He said this bill did not make agriculture first, but only stated that it could not be last. He said that domestic use should be and is first. SENATOR STORY said the bill did not create a preference system, but attempted to eliminate one. He also stated that no streams would be dried up. He suggested that water rights be prorated during years of water shortages.

SENATOR STORY said that polarization already exists and witnessed by the people present. In answer to testimony that the conservation districts didn't have enough money to develop their water rights, he said that without the bill, it would be impossible for them to develop them with or without the money. There is a need for more irrigated lands and this bill would allow for the needed development.

QUESTIONS FROM THE COMMITTEE:

REP. BRIGGS said he would like a clarification on the setting of priorities. SENATOR STORY said the DNR considered all the applications and then signed them at different times, and the first signed were first in priority.

REP. BRIGGS asked about the statement that there is only enough water in 8 out of 10 years. SENATOR STORY said that was an "educated guess".

REP. BRIGGS asked why more water wasn't allocated to take care of the dry years when there was an abundance. MR. CLARK said the board works with average figures.

REP. CURTISS asked if the board (of the DNRC) is going to re-evaluate reservations by December, 1981, Mr. Clark said that people holding reservations must come to the board with a statement of their planned use of the water. If they have not done anything with their reservation for several years, the board may revoke their reservation.

REP. CURTISS asked what entities are required to report on their water reservations.

MR. CLARK said all of them were, including the Department of Fish, Wildlife and Parks.

SENATOR STORY said there is a difference between the Fish, Wildlife and Park's report to the board and other persons' reports. They can simply say: "Yup, the fish are drinking, and loving it." But the Soil Conservation districts have a real problem with funding, and are in a difficult position, he said.

REP. ASAY asked if there might be a better way to handle this problem. MR. FRITZ, DNRC, said the board would be very receptive to help the conservation districts work out a problem. He said that he thought the problem already had been worked out, but now this bill is in the legislature to address it. He felt the CDs should further explore getting the DNRC to further reduce the in-stream flow.

CHAIRMAN ROTH asked why offstream storage hadn't been mentioned in attempting to solve this problem. SENATOR STORY said it didn't pertain to this bill.

REP. ASAY asked SENATOR STORY if the problem couldn't be addressed through the DNRC board, as suggested by MR. FRITZ. SENATOR STORY said that was a possible avenue, but so was the bill.

SENATOR STORY then closed the hearing on SB 285.

SB 110.

SENATOR STORY opened the hearing on SB 110. He said it addresses elimination of "certifying" adjudicated rights. The Senate felt that rights should be certified, but didn't kill the bill as there were some rights that couldn't be certified, due to lost court house records, according to the Senator. Some rights were adjudicated during territorial days, he told the committee,

and the papers have been missing for many years. This bill is to solve the problem of certifying those rights without having to go to court.

PROPONENTS:

GARY FRITZ, DNRC, supported the bill.

RAY ELLIS, representing himself, said that he has water rights that fit into this category and thus, supports the bill.

CHARLIE CRANE, MWDA, appeared in support of the bill.

OPPONENTS: There were none.

QUESTIONS FROM THE COMMITTEE:

REP. CURTISS wondered how the water rights could be otherwise verified. SENATOR STORY said the right holder would have to go to court and do his best to prove his right, by witnesses or however he could.

REP. BRIGGS asked if prima facia (use of the water right over a period of time) evidence could be used. SENATOR STORY didn't feel that would help in this case. CHAIRMAN ROTH said she understood that Judge Lessley was using abstracts for verification. RAY ELLIS said the only thing he had was a handwritten decree written during the time of Lincoln's presidency.

SENATOR STORY said this bill only applies to adjudicated rights. He then closed the hearing.

The meeting was adjourned at 2:00 p.m.



AUDREY ROTH, CHAIRMAN

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VISITORS' REGISTER

HOUSE

Water

COMMITTEE

R LL

SB 285

Date: Mar. 5, 1981

SOR

Story

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Beck, Ray	Helena	MACD	X	
Pete Jackson	Helena	WETA	X	
Noel Rosetta	Helena	Wildlife Federation		X
PETE TEST	HELENA			X
Franklin Grafield	Big Timber	Self	X	
Thomas M. Travis	Livingston	Self		X
Robert I. Auger	EMIGRANT	Self		X
E. Carroll Speck	Whitehall	Self		X
Hen Dittler	Helena	ETC		X
Viggo Halliday	Wilsall	Self	X	
Berna Lee Sanders	Wilsall	Self	X	
Zune M. Moore	Livingston	Selfwater, Santa Clara Parks Bulletin & Self	X	
Leo BERRY	Helena	DNRC		X
John W. Wright	Helena	DFWP		X
Chad G. Gann	Butte	MWDPA	X	
John Brunner	Helena	W. I. F. E.	X	
Ed Ellis	Helena	MWDPA Mt water Pavaloy	X	
John D. Wally	Bozeman			X
Mon. H. Westlake	Bozeman	A. P. A.	X	
Jack Byrdon	Bozeman	A P A	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

5-5-81 EX I
WITNESS STATEMENT

NAME Ray Beck BILL No. SB-285
ADDRESS 7 Edwards Helena DATE 3/5/81
WHOM DO YOU REPRESENT MACID
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Montana Association of Conservation Districts would like to be shown in the record as being in Support of SB 285

EX 1

TESTIMONY ON SB 285

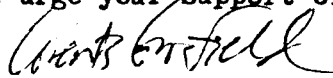
On December 15, 1978, the Montana Board of Natural Resources granted water reservations in the Yellowstone River Basin. Technically these reservations were granted on a priority basis through the Board's signing them at specific times. Thus, the municipal reservations were granted first priority and were signed at 12:30 P.M. The instream reservations above Billings were then signed at 4:13 P.M., the Conservation District's reservations at 4:18 P.M., the instream reservations below Billings at 4:21 P.M., and the others including the storage reservations at 4:23 P.M. In effect, the Board granted a preference to instream rights over agricultural rights above Billings; by signing the order for Upper Yellowstone instream reservations exactly 5 minutes before signing the agricultural reservations, the Board was stating that it is the policy of Montana to recognize an instream water use preference over agriculture in the Upper Yellowstone. This is contrary to the policy of the Montana Water Policy Review Advisory Council's policy recommendation which stated: "Water rights preference systems are not beneficial to the wise use of Montana's water."

There are two other points I'd like to make. The first point is that I can't understand for the life of me why this priority is so important to the instream holders. The instream reservation at Billings is for 3,914,455 acre feet a year; the total of all four Conservation District's reservations above Billings is only for 149,801 acre feet a year. Even if the Conservation District's reservations in their entirety were withdrawn from the instream reservations, it would only affect the total by 3.8%--- I doubt if this small a percentage is even capable of being measured by a gauging station on the main stem. What happened in the reservation process on the Yellowstone is that the instream interests asked for the sky and they got it; I know several persons in the Department of Natural Resources who were surprised when the instream interests got as much water as they did and I would guess that even the Fish and Game Department was surprised though the closest I ever came to hearing them admit it was the statement, "We were not disappointed." Now I personally think that the reservation system has the potential of being of benefit to Montana. But I must conclude that, given the small amounts of water reserved for Conservation Districts above Billings and the instream holders' vociferous defense of their priority, the instream reservation holders and defenders of the reservation concept are not very politically adept

because I submit that a change in the priority above Billings giving Conservation Districts the legal benefit, instead of the instream holders, would not affect their ^(instream) reservation much and would long ago have defused the situation to the point where there'd probably not be a single piece of legislation introduced into this legislative session regarding reservations. In other words, the reservation concept and the Yellowstone reservations in particular would probably be without challenge.

The other point I'd like to make is that though I can't see much effect on the instream reservations by a priority change, I can see a tremendous effect on Conservation District's reservations. Until last November, districts could only count on water 65 years out of 100 for future irrigation development. Unfortunately, most of the good land that's easily irrigable has already been irrigated, which means that to irrigate further lands will be expensive. No one in their right mind would put much money into developing water that they could only hope for 65 years out of 100. Last November, the instream reservation holders decreased their reservations to the point where they thought water would be available to the districts 80 years out of 100. The rationale was that this would serve to pacify the districts because bankers have indicated that they'd loan money on an 80% sure thing. But that doesn't help--- let me illustrate. If my banker loaned me \$100,000 to develop a new sprinkler system, you can bet he's going to demand enough collateral so he doesn't get hurt too bad if the investment doesn't work out; which means I'm left holding the bag and the problem is that having water 80 years out of 100 means that I don't have it 20 years out of 100. Now if those 20 years were spread out, one here and one there, I might consider it, but more often they come in series of 3-5 years in a row, and by the looks of things we may well be in the beginnings of a drought right now. In our district, we've had no applications for using this third priority reservation water, and I submit it's because we have no one dumb enough in our area to mortgage themselves for say a \$100,000 water development when they know full well they'll not have water available 2 years out of 10, 20 out of 100. And until this priority situation is remedied, I doubt we will have any application, which tells me that we don't have a very worthwhile reservation, and that agriculture has gotten the short end of the reservation deal.

I therefore urge your support of SB 285.

 Lorents Grosfield, rancher, and
Supervisor, Sweet Grass Conservation District

Grosfield

+ 9

WITNESS STATEMENT

NAME Franklin Grosfield BILL No. SP 285
ADDRESS Big Timber, DATE Mar 5, 1981
WHOM DO YOU REPRESENT Self
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Printed copy of testimony attached

Grosfield

Testimony of Franklin Grosfield on SB 285
to the House Select Water Committee - March 5, 1981

Madame Chairman, Members of the Committee:

My name is Franklin Grosfield, I'm a rancher from Sweet Grass County, and I'm here in support of SB 285.

This bill, if enacted, would correct one of the several serious deficiencies that exist in the water reservations system.

As you know, various reservations of water for future use were granted by the Board of Natural Resources and Conservation on Dec. 15, 1978 for the Yellowstone Basin. Among other things, the Board decided that instream flow reservations granted to the Dept. of Fish, Wildlife and Parks would have a higher priority than agricultural reservations in the Upper Basin above Billings. In other words, the instream flow reservation of about 3.9 million acre feet per year at Billings must be fully satisfied before agriculture can get a drop.

This is well and good as long as the stream flow is average or above. Drought periods and low flows have been known to occur in that part of the world however, and that's where the problem exists. It is during these periods when agriculture needs water to survive, that the Board in its wisdom decided we'd have to make do without.

Under the initial December 1978 order, this would occur as often as 35% of the time. The Board later amended its order at the request of the Dept. of Fish, Wildlife and Parks who generously gave up some of its instream flow so that now it appears agriculture only has to do without water about 20% of the time. The way it looks to me, agricultural people irrigating with reserved water would now be allowed about 15% more time to starve out than they were before.

The conservation districts, who hold the agricultural reservations, have not yet found a single person who is dumb enough to want the kind of water right that guarantees him a crop failure 1 out of 5 times. I don't think they're going to find any. This would indicate to me that the reservation system isn't working very well for agriculture.

I would strongly suggest to you that if the concept of reserving water for future beneficial use is going to be made to work, it has to work reasonably well for everyone; cities and towns, agriculture, industry, instream interests and the rest. Because, if it doesn't work for everyone, especially agriculture, the whole system is going to fail.

While it might seem at first glance that SB 285 is only helping a few potential irrigators in the Upper Yellowstone, the ultimate effect of this bill is that it will help save the water reservations system.

So, from that standpoint, I would be very surprised if there were any opposition at all from the instream interest groups.

1-15

Mr. [unclear] [unclear] [unclear] of the committee
lacked [unclear] [unclear] [unclear]

My name is [unclear] [unclear] and I come from
Paradise Valley, Livingston, Park County.

I am representing Stillwater County Agricultural
Legislative Assoc, Sweetgrass County Preservation,
Park County Legislative Assoc. and the Agricultural
Preservation Assoc. These four groups are in favor
of Senate Bill 285.

I am a rancher and an avid fisherman so I
feel I can fairly judge both the pros and cons of
SB 285.

I would like to see a minimum flow maintained
in the Yellowstone River, but not at the expense of
eliminating any agricultural ground due to lack of
water for irrigation purposes.

Unfortunately this planet is getting to the
point of not being able to grow enough food to sustain
its millions of people. Survival will become a
most familiar word. We must put our priorities
in order. Food production must come before recrea-
tion.

Therefore, as a property owner on the Upper
Yellowstone River, I urge the passage of
Senate Bill 285.

Holliday 5-5-81 EX 11
WITNESS STATEMENT

NAME Virge Holliday BILL NO. SB 285
ADDRESS Rte 2, Wilsall DATE Mar. 5, 1981
WHOM DO YOU REPRESENT Self
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Reasonable minimum flow - if it
doesn't compete with agricultural needs,
would be acceptable but it mustn't
have priority.

- Madam chairman and members of the committee.

- My name is Virge Holliday. We have a cattle ranch on the Shields River - a tributary of the Yellowstone in Park County.

- This Monday our ranchers were here to defend their water rights and projects from sale by the Dept. of Natural Resource and Conservation.

- Since ~~they~~ ^{we} are right in the middle of calving, ~~they~~ ^{they} find it impossible to take off more time.

- We wives are pinch hitting for them.

- We support this bill, SB285 totally.

- I myself can't imagine anything taking precedence over production of food which is the first, most important basic need.

- Please don't anyone forget - 'Agriculture serves you Three Times a Day.'

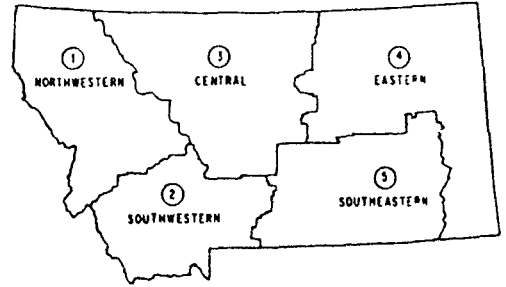
- I support SB285.

Thank you,
Virge Holliday
Rte 2
Wilcoll, MT

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

TESTIMONY ON SB 285



Madam Chairman,

My name is Wilbur W. Rehmann and I am the Executive Director of the 2000-member Montana Wildlife Federation. Our organization represents hunters, anglers and recreationists many of whom are members of our twelve affiliated local rod & gun clubs.

Madam Chairman, the Montana Wildlife Federation is unalterably opposed to SB 285. We are opposed because SB 285 creates an artificial conflict between agriculture and sportsmen. We do not need this kind of confrontation legislation at this time.

Water and water law is a very sensitive issue in Montana and its an issue that sportsmen and ranchers should be working together - not fighting.

The Board of Natural Resources acted in a very careful and cautious manner when it allocated the water in the Yellowstone River. It followed established rules in its determination and fish and farms, ranchers and anglers all had their chance to plead their case.

The system works, let's let it continue!

One example of the Board's cautious and balanced multiple-use approach to the reservation system, is the allocation of the Yellowstone River.

In that case, the Board granted agriculture a generous quantity of water in the upper river, but balanced that generosity by giving instream uses an earlier priority date in the upper river. In the middle and lower Yellowstone, the Board gave agriculture a higher priority than instream uses.

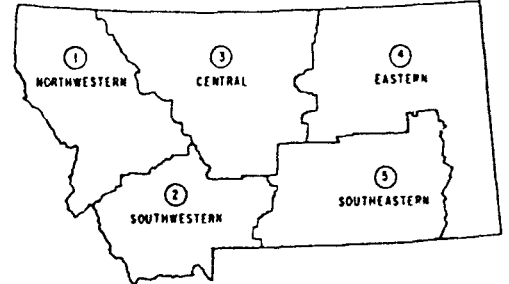
This decision accomplished a couple of things:

- (1) It protected Montanas most valuable trout stream, a resource that generates a considerable sum of money to the states economy and irrigation needs were met.
- (2) It helped assure water for downstream agricultural users. These downstream agricultural users who because of length of growing season, and soil type and development have the highest development potential.
- (3) Guaranteed multiple use of the water throughout the entire Yellowstone River system. Agriculture, fish, water quality, recreation, cities and power development can be served.



Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION



page 2

What this committee must ask is, "What will SB 285 do to the reservation system and to the mighty rivers of Montana?"

Sadly, the answer appears to be that SB 285 would restructure the allocation and priority system such that the Yellowstone River would be depleted in its upper end. Only agriculture would be served by such a decision and agriculture is only a part of our great state. It is an important part, but so is fishing and related recreational activities.

Let us work together, sportsmen and farmers, under the current rules. Let us cooperate instead of arguing. We must work together or surely we will perish alone.

Water is a very precious resource, let us work together to use it wisely.

Thank you

A handwritten signature in cursive script, reading "Wilbur W. Rehmann".

Wilbur W. Rehmann
Executive Director



HOUSE SELECT COMMITTEE CHAIRMAN
and
HONORABLE COMMITTEE MEMBERS

I am a rancher in the upper Yellowstone Valley near Emigrant, Montana. I am strongly against Senate Bill 285.

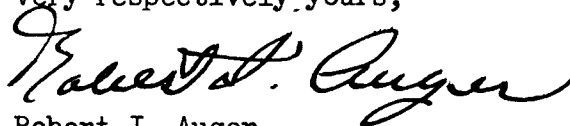
I believe this bill is unfair and detrimental to preserving a great water shed. It could open the door to irreparable abuse to our rivers and streams. As a rancher and having worked on other ranches in the past, I believe the present system of allocation and minimum flow maintainance by the Board of natural resources and conservation, will provide adequate water for agriculture.

I believe the Dept. of Fish, Wildlife and Parks and the Agriculture Industry have been striving towards working together to preserve our water supply and water quality.

Bill 285 will threaten the future of the recreation industry, and the habitat for the fish in our waters.

I use and depend on water for irrigation but I think it is more important that we have controls to prevent abuse and maintain quality. We must consider the needs and enjoyment of sportman conservationist and preserve the rivers and streams for our children and grandchildren to use and enjoy.

Very respectfully yours,



Robert I. Auger

TESTIMONY OF JAMES W. FLYNN, DIRECTOR
DEPARTMENT OF FISH, WILDLIFE & PARKS

March 5, 1981

In House Select Committee on Water on SB 285

Mr. Chairman, members of the committee, my name is Jim Flynn, I appear today on behalf of the Department of Fish, Wildlife and Parks in opposition to SB 285.

Water allocation is no doubt one of the most important and complex tasks being undertaken in this state. As it proceeds, we will find each drainage with its own characteristics, its own values, its own unique set of circumstances. In order to adequately address these individual and varied drainages for all Montana people, the board needs to have all its options open. We feel that the present system allows this necessary flexibility. Senate Bill 285 in essence says that one user shall dominate water allocation at all times and in all places with the legal right and legislative encouragement to dewater any stream regardless of any other values.

SB 285 is aimed at curtailing the flexibility of the Board of Natural Resources in making instream flow reservations and reservations to other users - in this case, agriculture.

The board, in fact, did make a distinction between agricultural uses and instream uses when it granted the Yellowstone reservation. Basically, they gave agriculture a higher priority in the lower Yellowstone and instream uses a higher priority in the upper

Yellowstone. The effect of this was to recognize agricultural development in that part of the state where growing seasons are longest, soil is better developed, and cash returns tend to be highest. At the same time, it recognized the "Blue Ribbon" instream values of the upper river. This reservation also ensured that water quality was preserved so everyone along the river had usable water.

The reservation process allowed all Montana water users to state their case and allowed the Board to weigh the relative merits and make water reservations based on those relative merits. This significant accomplishment must be remembered when efforts to alter this process are discussed.

As is evident from the Yellowstone reservation, the State of Montana has laid claim to a significant portion of the waters of the Yellowstone River, from where it enters the state at Gardiner, to where it leaves the state near Sidney, for those uses which Montanans most value and cherish and for those uses which traditionally have formed the economic backbone of the state.

I would point out to this committee that a reservation authorized to the Department of Fish, Wildlife and Parks is a reservation granted to a public agency. This Department is not an independent entity, but rather an integral part of state government subject to the control and direction of both the Governor and the State Legislature.

The supposition that the reservation granted to this agency will be used in a cursory manner to the detriment of the public

good does not have merit. The department itself is very much aware of the responsibilities it faces with the reservation and also aware of the need to be responsive to the directions established by our state's Chief Executive and Legislative mandates.

In long river systems, choices must be made. Do we strive to deplete rivers at their headwaters, or do we try and make them useful and usable their entire length? If a stream is depleted at its source, hardship spreads the length of the entire system. It falls just as hard on downstream agricultural users as it does on fish and wildlife. If we protect the headwater flows then the multiple benefits of the river spread to everyone along its course.

While these principles are simple to state, they are difficult to achieve. The board is responsible for developing these compromises and allocations, and it is questionable whether those options should be limited.

I assure you, most people working with the Yellowstone reservation are making a good faith effort to make the system work. As originally granted, the reservation had some tough restrictions on agriculture in a portion of the river. That order has already been modified.

It is the stated Executive and Legislative intent to develop Montana's water resources. That development, in order to be successful, should be a process which is responsive to the dynamics of Montana's many river systems and to the needs of all Montanans. A major benefit to future water development projects

can be enhanced streamflow and achieving that benefit may best be accomplished by instream reservations. At least the opportunity to pursue this alternative ought to be left to the Board of Natural Resources.



YELLOWSTONE CUSTOM FLIES & TACKLE SERVICE

THOMAS M. TRAVIS
P. O. Box 1320
Livingston, Montana 59047
Phone 406 - 222 - 0783



YELLOWSTONE GUIDE SERVICE

LICENSED HUNTING AND FISHING GUIDE

TO: The House Select Water Committee
Chairman-Rep. ~~Roth~~ and Honorable Committee Members

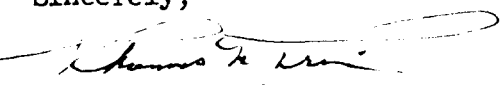
As the quality of life in Montana depends, to a substantial degree on the fish, wildlife and scenic beauty of this State, and Montana's streams and riverbottoms are particularly beautiful and productive places, and the reservation of instream flow is crucial to the protection of fish, wildlife, water quality, and scenic beauty, I wish to do my part to preserve the amenity values of Montana for both the clients I serve and the Montana people who cherish this state's outdoor heritage.

After giving careful study to Senator Story's water bill, Senate Bill 285, I believe that this bill will not protect the outdoor heritage of Montana streams; as in the case of the Yellowstone River, where the Yellowstone itself is somewhat an endangered species as it is one of the last major free-flowing streams in the country. I am appalled at any legislation which would damage this viable resource.

The rivers of the State must be insured a minimum instream flow for the protection and incubation of fish eggs, such as trout, whitefish and other game fish found in our State waters. As a small businessman from the Livingston area, I can foresee economic hardships to a number of area businessmen if the fisheries and scenic beauty of the Yellowstone were damaged. Not just to those who guide fishermen and pleasure floaters on the rivers, but to the gas stations, grocery stores, gift shops, hotels and motels that these people use while they are visiting our Big Sky Country.

I commend the Board of Natural Resources and Conservation for its courageous and far-sighted decision in allocating the waters of the Yellowstone drainage. I urge the agricultural and recreational interests to strive to compromise their differences on water allocation questions so that Montana's agricultural productivity is protected while its unique environment is preserved. I believe that this bill tends to protect the agricultural industry at the expense of the people of Montana by severely threatening the recreational values of the rivers.

Sincerely,


Thomas M. Travis
Box 1320
Livingston, MT 59047

*I am not opposed to Ag having need water but not at the
price of the present system, we can work within the present
system to solve these problems.*
JMT

Testimony on SB 285 (Senator Story) concerning changes in
the Water Reservations process and
priorities.

Given - March 5th, before Representative Audrey Roth's Committee

My name is Dr. Will Clark, from Billings. I'm speaking as a private citizen, but from February 1973 through December 1980, I was a member of the State Board of Natural Resources and Conservation, and was heavily involved in the long process and in the final decisions in the Yellowstone Water Reservations case.

Having heard the testimony of Senator Story and of various proponents of his bill, I wish to make several brief points, and to correct some mis-statements of facts:

The points are these:

1. The Board decisions were not made casually, nor made at the behest of anyone group or applicant. We had to "bite-the-bullet" and endeavor to find reasonable ground and plausible accomodation among the many applicants. A tremendous amount of study, work, calculation, and discussion occurred.
2. The Conservation District requests in most cases were honored to a major extent. In the upper river (above Billings) Yellowstone CD and the Stillwater CD received their full request. The other three (Carbon, Sweetgrass, Park CD's) received all that they said they really could use --- but they were denied those portions which depended on storage being built, for they said they had no plans at all to build such storage.
3. The reservation system is flexible. Since the date of the reservation decision and order (Dec. 1978) there have

been two negotiated adjustments of reservation quantities. In one case, the City of Billings was assigned some additional water, by the State Fish and Game Department and the State Health Department agreeing to a reduction of their in-stream reservation at Billings. In the other case, to answer the need expressed by the Conservation Districts above Billings for assured water at least 8 years out of 10 (which the CD's stated was a reasonable financial base for irrigation investments), the Fish and Game and the Health Department further reduced their in-stream reservation at Billings so that during the irrigation months the instream reservation at Billings would assure water 8 out of 10 years --- which the CD's said was adequate. Now a few irrigators (not necessarily speaking for the CD's) seem to want a guarantee of 10 years out of 10 --- and old Mother Nature doesn't give that. Neither can the State Board.

The point is, adjustments are possible, as demonstrated by these two cases.

4. The Law calls for review of reservations at least once every ten years. The Board specified that all reservation holders report on progress within 3 years --- in order to see what efforts are being made to realize or to prepare to realize the goals the reservants stated. It isn't only the CD's that must report. Even the instream reservants must report on how they are progressing on refining the data on

streams, by installing more gauging stations. At the review, the Board cannot capriciously change a reservation. However, if after several review periods no progress is being shown, the Board may revise a reservation.

5. The Reservation system is sound. The cries from above Billings will not be satisfied short of being given a wide open water claim system --- which, in terms of the multiple demands on the river, is unrealistic, illogical, arbitrary, and selfish, and damaging to all other uses downstream.

I add my voice to that of other opponents to SB 285. The statements by various people show some fancy footwork with facts, distortions of the reservation process, wide generalities that just are not true, and a closed mind to the welfare of people, municipalities, and agriculture downstream.

FANCY VS FACT

The following statements have been made by various proponents. This sheet endeavors to put those fanciful statements into perspective, and to state what the facts are.

1. Fancy: "The irrigation reservation at Livingston is only 2% of the instream flow."

Fact: Irrigation reservation = 41,694 Acre ft. for only those months. Instream total for the whole year is 1,879,813. The 2% comes from $\frac{41,694}{1,879,813}$, but it is com-

paring 4 months with the whole year.

The total instream for those irrigation months is 1,115,002 acre ft. So $\frac{41,694}{1,115,002} \times 100 = 3.73\%$.

2. Fancy: "The instream applicants asked for the sky and got it."

Fact: As the Board Order will show to a person interested in the facts, the Board in almost every station on the main rivers sharply reduced the amount received by the instream applicants.

3. Fancy: "Instream (above Billings) will get its flow before any agriculture gets a drop."

Fact: That is a ridiculous statement. All present and prior water rights have priority over water reservations. Above Billings, irrigation reservants are receiving ample water, and the only bind may come in the late irrigation months possibly 1 1/2 years out of 10.

Testimony on SB 235 (Senator Story) concerning
changes in the Water Reservations process
and priorities.

Given - March 5, before Representative Audrey Roth's
Committee.

(apologies for it not being typed -- have no typist)

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all that they said they really could use -- but they were denied those portions which depended on storage being built, for they said they had no plans at all to build such storage.

3. The reservation system is flexible. Since the date of the reservation decision and order (Dec, 1978) there have been two negotiated adjustments of reservation quantities. In one case, the City of Billings was assigned some additional water, by the State Fish and Game Dept and the State Health Dept agreeing to a reduction of their in-stream reservation at Billings. In the other case, to answer the need expressed by the Conservation District above Billings for assured water at least 8 years out of 10 (which the C.D.s stated was a reasonable financial base for irrigation investments), the F & G and the Health Dept further reduced their in-stream reservation at Billings so that during the irrigation months the in-stream reservation at Billings would assume water 8 out of 10 years -- which the C.D.s said was adequate. Now a few irrigators (not necessarily speaking for the C.D.s) seem to want a guarantee of 10 years out of 10 -- and old Mother Nature doesn't give that. Neither can the State Board.

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stream, by installing more gaging stations. At the review, the Board cannot expeditiously change a reservation. However, if after several review periods no progress is being shown, the Board may revise a reservation.

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Supplement to SB285 Testimony by Will Clark

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Howe

WITNESS STATEMENT

NAME Anna M. Howe BILL No. 285
ADDRESS Rt. 38, Box 212, Livingston, N.Y. DATE 3-5-81
WHOM DO YOU REPRESENT Stillwater, Sweetgrass, Park, Gallatin & self
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: See attached

VISITORS' REGISTER

HOUSE

Water

COMMITTEE

RL

SB 110

Date: Mar. 5, 1981

SOR

Story

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.