

MINUTES OF THE MEETING OF THE SELECT COMMITTEE  
ON WATER  
April 2, 1981

The Select Committee on Water convened at 1:05 p.m. in Room 436 of the Capitol Building, with CHAIRMAN AUDREY ROTH presiding. All members were present except for REPRESENTATIVE BRIGGS.

HJR 53

At this time CHAIRMAN ROTH read written testimony from Representative Ray Jensen, responding to testimony presented at the hearing of HJR 53 on March 26 given by Laurence Kenmille, Vice-chairman of the Tribal Council, Confederated Salish and Kootenai Tribes of the Flathead Reservation. (EXHIBIT I)

CHAIRMAN ROTH asked if the committee wished to reopen the hearing and the committee declined to do so. The bill remains indefinitely postponed.

SB 409

SENATOR MANNING opened the hearing on SB 409, saying it was time to begin a comprehensive Water program for the State of Montana. He felt that SB 409 would help Montana now and in the future, and also would be helping the nation. 9.3 million feet of Montana water is exported to the gulf every year for the last 40 years, he said, and he felt a water program was vital.

PROPONENTS:

SENATOR GALT testified that the legislature has done everything with water except put it to use. This bill attempts to use money from a non-renewable resource (the coal severance tax) to build up a renewable resource. He said it will create a water development program by developing off-stream storages, help the Soil Conservation Districts put the reservations on the Yellowstone, repair state-owned dams and create water projects. Money from the Water Projects would be used, as would other funds. (See EXHIBIT I)

LEO BERRY, Department of Natural Resources, presented written testimony and a chart (EXHIBIT II) explaining them both. He felt SB 409 was the most comprehensive piece of legislation that has been introduced in recent years. He said that the chart explained where the money will come from for the program, and how it will be spent. One of the first priorities of the program will be to rehabilitate the water projects that have fallen into disrepair, he said. Money from water projects would go back into the fund to effect this.

BERRY continued that amendments to the DNR budget in the Senate

have reduced the available funds to \$1.3 million. The main parts of the act are found on page 10 through 16. He discussed those parts for the committee. He then explained that the controversial HB 851 had originally been a part of the bill and had been drawn up separately at Senator Turnage's request.

SB 409 sets up a separate clearance account. Money is diverted for 6 months and is invested by the board, and if it isn't used for projects, it automatically is transferred into the permanent trust. Appropriation of money must have 3/4 approval of the legislature, he said. If HB 851 does not pass, the money would not be appropriated in that account. The department plans to place \$250,000 into the account and then approve projects on a case-by-case basis. He told the committee that matching federal funds would be available on some projects. Another stipulation is for 15% of the interest earnings from the trust will go back into the permanent account to replace any money lost due to debt service on the bonds. He estimated that the account will be receiving \$50,000,000 per year by 1983. He said that the money can actually be used without being spent.

ELLEN DITZLER presented written testimony to the committee (See EXHIBIT III) favoring the bill. She said that the 3/4 vote needs to be maintained for approval on a project by project basis, or needs to confine the water development plan to water development and treat non-water related development separately.

CHARLIE CRANE urged support of the bill. He commented on the applications for grants and said the 3/4 vote was unnecessary for each and every project, and that 13 senators could stop a good project.

JO BRUNNER, representing Women In Farm Economic presented testimony in favor of the bill. (EXHIBIT IV).

RAY BECK, representing the Montana Association of Conservation Districts, the Montana Association of the State Grazing Districts, the Montana Stockgrowers and the Montana Cowbells, said all those organizations would like to be on record as supporting SB 409. (EXHIBIT V)

PAT UNDERWOOD, representing the Montana Farm Bureau, asked to be placed on the record as supporting SB 409. (EXHIBIT VI)

WILLA HALL, lobbyist for the League of Women Voters, supported the bill with the exception of New Section 24, page 25. She

feels that section does not contain adequate criteria, and urged amendment. She hoped that would be removed from the bill, separating it from the water provisions of the bill.

PAT OSBORNE, Northern Plains Resource Council representative supported the bill but felt the department did not fully state what the trust will finance. He referred to New Section 24, and suggested careful reading of it. He also commented on the 3/4 vote requirement and felt the bill was open-ended, not clearly defined as to projects. He also wondered if this legislature had the authority to tell future legislatures what they could do.

PETE JACKSON, representing the Western Environmental Trade Association, supported the bill as a means to have dams and irrigation projects built, but suggested a language change on grants.

DONALD JOHNAASEN, of the National Farmers' Organization, supported the bill. (EXHIBIT VII)

OPPONENTS:

SENATOR CHET BLAYLOCK said his appearance wasn't really as an opponent to the bill, but as an opponent to the part where the 3/4 vote has been omitted. He referred to the chart (EXHIBIT II) presented by Leo Berry of the DNRC, and said the allocation to the diversionary account (on the left side of the right hand chart) thwarts the purpose of the constitution and that there is \$34 million in the fund at this time. He said the coal tax should be spent not only on this, but future generations. He proposed an amendment on page 29, line 2, to insert that there be a 3/4 vote of the legislature for each project.

REP. MANNING said that "pork-barreling" is not good and that provisions have to be provided to "get the show on the road." He agreed with Blaylock's statement that the fund contains \$34 million, but said it could have been worth more had the country not been "OPECized". He urged the committee to "buy something now for the future" which would also provide gainful employment.

SENATOR GALT commented that he felt that the concerns of the EIS and WIFE were identical. He also said that economic development and water development were inseparable and that if you require a 3/4 vote on every project, there will be a great deal of "pork-Barreling".

QUESTIONS FROM THE COMMITTEE:

REP. KEMMIS asked if this bill diverts the money within the coal tax trust and HB 851 appropriates the money.

BERRY said that HB 851 was originally part of this bill. SENATOR TURNAGE requested it become separate. SB 409 sets up the account, and HB 851 appropriates the money into the account, he said.

REP. KEMMIS asked how much money the bill appropriated. BERRY replied up to \$250 million for the use of this bill. It appropriates the proceeds from the trust.

REP. KEMMIS commented that money was being appropriated that didn't exist from coal that hasn't been mined yet. He wondered how this legislature could appropriate trust fund money that didn't yet exist. He also commented that the entire trust fund could be eliminated by a 3/4 vote.

LEO BERRY said the intent is to appropriate money into a water development project and take it out "piece by piece". He said it isn't any different than school funds. The legislature could take out the whole fund if they chose, he said.

REP. KEMMIS said he wondered how we could appropriate future funds. BERRY said that neither the \$34 million or any future revenues will be touched by provisions of this bill.

REP. HUENNEKENS felt the bill allowed funding for projects that have no relationship to water and asked Galt to explain. Galt said that every proposed project would have to come up before the legislature and that the intent of the bill (to develop water) would be taken into consideration. He also said that industry would probably pay for most projects.

REP. HUENNEKENS asked if the sponsors had faith in legislators to pass on projects, but not enough to require the 3/4 vote on all the projects.

REP. ASAY asked who would grant the spending of funds. SENATOR GALT said the department (DNRC) would work up the project and the Board of Examiners would allow the funds to be used, after the legislature approved it.

In response to a question from REP. CONROY about bonds, MR. BERRY said that this bill creates a set amount. If you use bonds, you create full-time revenues.

It was the consensus of the committee that further study was

necessary before action could be taken on the bill.

The hearing was closed.

REP. ROTH announced that a subcommittee would be appointed to study SB 409 in depth and make recommendations to the committee.

REP. KEMMIS moved that the Water Committee requested HB 851 to be brought into the committee for study at the same time as SB 409. The motion was seconded and carried UNANIMOUSLY.

CHAIRMAN ROTH appointed REPRESENTATIVES THOFT, CONROY and ROTH to serve on the subcommittee for SB 409.

The meeting adjourned at 2:13 p.m.

Audrey Roth  
AUDREY ROTH, Chairman

rj

## VISITORS' REGISTER

HOUSE 707

## COMMITTEE

Date 4-2-81

R. LL 58 104

SORRY FOR THE DELAY

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

July 1981

HSR 53?

WITH NO DESIRE TO QUARREL WITH OR CRITICIZE MR. LAURENCE KENMILLE, VICE-CHAIRMAN, TRIBAL COUNCIL, I AM OBLIGED TO CALL ATTENTION TO TWO SERIOUS OMISSIONS IN HIS TESTIMONY BEFORE THE HOUSE SELECT WATER COMMITTEE WHICH WAS ALSO PUBLISHED IN THE MISSOULIAN MARCH 27, 1981.

HE SAID "THE PROJECT (IRRIGATION) WAS BUILT IN THE EARLY 19TH CENTURY WITH FUNDS FROM THE SALE OF RESERVATION LANDS." HE SAID NOTHING ABOUT THE ACT OF MAY 18, 1916 (39 STAT. 123, 141) WHICH PROVIDED FOR THE PAYING BACK TO THE TRIBES ONE HALF OF THIS MONEY, AND THE ACT OF MAY 25, 1948, SEC. 5, SUB (a): "THE SUM OF \$64,161.18, WITH INTEREST THEREON AT THE RATE OF 4 PER CENTUM PER ANNUM FROM MAY 18, 1916, AND THE SUM OF \$409.38, WITH INTEREST THEREON AT THE SAME RATE FROM DECEMBER 1, 1925, TO BE USED TO REPAY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION IN MONTANA THE BALANCE REMAINING DUE THEM UNDER THE ACT OF MAY 18, 1916 (39 STAT. 123,141). THE AGGREGATE PRINCIPAL AMOUNT OF \$64,570.56 SO REPAYED SHALL BE ADDED TO THE CONSTRUCTION COSTS OF THE PROJECT AND SHALL BE REIMBURSABLE."

HE NOTED THAT MOST OF THE PROJECT'S STORAGE RESERVOIRS, CANALS AND WATER-REGULATIVE SYSTEMS ARE ON TRIBAL LANDS. HE SAID NOTHING OF THE PUBLIC LAW 554, SECTION 5, SUB (b) WHICH IS VERY EASILY UNDERSTOOD: "THE SUM OF \$400,000 TO BE DEPOSITED IN THE UNITED STATES TREASURY TO THE CREDIT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION IN MONTANA; OF WHICH SUM ONE-HALF SHALL BE IN FULL SETTLEMENT OF ALL CLAIMS OF SAID TRIBES ON ACCOUNT OF THE PAST USE OF TRIBAL LANDS FOR THE

PHYSICAL WORKS AND FACILITIES OF THE IRRIGATION AND POWER SYSTEMS OF THE PROJECT, OR FOR WILDLIFE REFUGES; AND THE OTHER ONE-HALF SHALL BE IN FULL PAYMENT TO SAID TRIBES FOR A PERMANENT EASEMENT TO THE UNITED STATES, ITS GRANTEES AND ASSIGNS, FOR THE CONTINUATION OF ANY AND ALL OF THE FOREGOING USES, WHETHER HERETOFORE OR HEREAFTER INITIATED, UPON THE TRIBAL LANDS NOW USED OR RESERVED FOR THE FOREGOING PURPOSES. THE SAID TRIBES SHALL HAVE THE RIGHT TO USE SUCH TRIBAL LANDS, AND TO GRANT LEASES OR CONCESSIONS THEREON, FOR ANY AND ALL PURPOSES NOT INCONSISTENT WITH SUCH PERMANENT EASEMENT. THE AMOUNT DEPOSITED IN THE TREASURY PURSUANT TO THIS SUBSECTION SHALL BE ADDED TO THE CONSTRUCTION COSTS OF THE PROJECT AND SHALL BE REIMBURSABLE."

I would also like to call your attention to  
to Mr. Kammalle's testimony before the  
admitted that 75% of the irrigable land  
was in the Non-Indian ownership

1       HOUSE JOINT RESOLUTION NO. 53  
2       INTRODUCED BY James T. Clegg

3       WHEREAS, the Legislature of the State of Montana  
4       believes that the operation of the districts can be more  
5       efficiently and readily accomplished if the project is  
6       administered locally by elected Commissioners who form the  
7       Joint Board of Control and whose responsibilities flow  
8       directly to the users of the districts' services.

9       NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
10      OF REPRESENTATIVES OF THE STATE OF MONTANA:

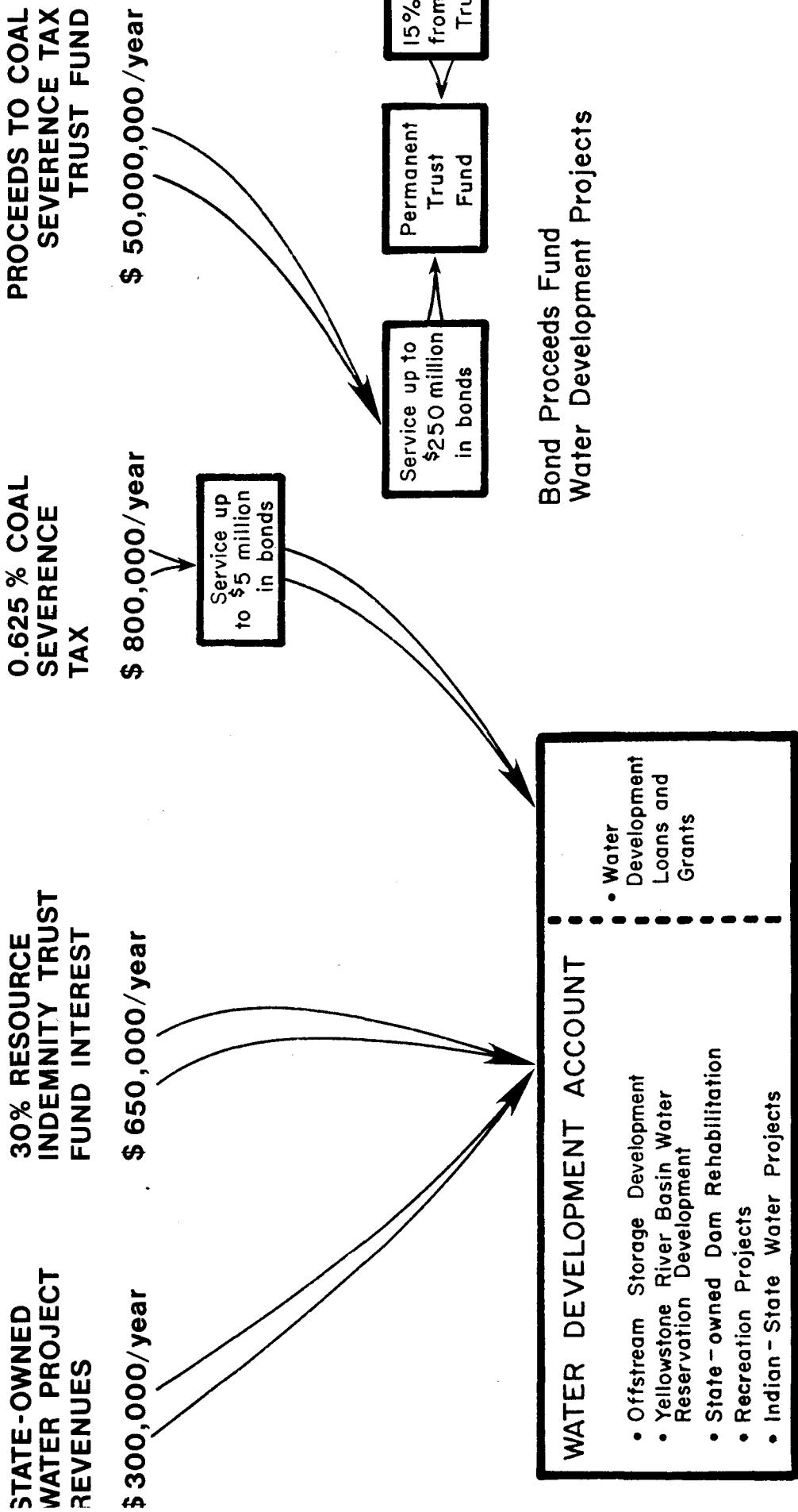
11      That the Montana Legislature urges the Secretary of the  
12      Interior to take steps as soon as possible to cause to be  
13      fully confirmed and guaranteed to the districts their  
14      appropriate water rights and thereafter turn the management  
15      of the project affairs of the Mission, Flathead, and Jocko  
16      Irrigation Districts over to the districts as provided in  
17      the repayment contracts.

18      BE IT FURTHER RESOLVED, that the Secretary of State  
19      send a copy of this resolution to the Honorable James Watt,  
20      Secretary of the Interior of the United States.

21      WHEREAS, repayment has reached the level specified in  
22      the contracts; and  
23      WHEREAS, the districts have petitioned and there is  
24      pending a petition to the Secretary of the Interior seeking  
25      a transfer of the operation of the projects as provided for

-End-

# MONTANA WATER DEVELOPMENT PROGRAM



II

SENATE BILL 409  
AN ACT TO CREATE A WATER DEVELOPMENT PROGRAM

Senate Bill 409, in creating a water development program for Montana, recognizes the importance of water to the state's economic well-being and invests income from non-renewable resources in the development and conservation of water resources. Funds spent on water development today reverberate through today's economy and provide long-term economic stability for future Montanans. Our agricultural, tourism, hydropower and other water-dependent industries will be here long after our coal is mined and our oil recovered.

National criticism has been focused on Montana for salting away millions of dollars in a trust fund for allegedly unspecified use. Montana can demonstrate the validity of the trust fund by providing a means to invest those funds in water resources and other economic development projects that will maintain our economy when the coal is gone. Senate Bill 409 strengthens the need for our coal severance tax.

SB 409 would earmark revenue from state-owned projects, 30 percent of the interest from the Resource Indemnity Trust Fund and 0.625% of the coal severance tax to a water development account. These revenues, about 3.5 million dollars each biennium, would fund water resource projects; examples are:

Irrigation Systems	Streambank Stabilization
Saline Seep Abatement	Erosion Control
Offstream and Tributary Storage	Rehabilitation of Existing Projects
Canal Lining	Development of Conservation District
Water-based Recreation	Water Reservations

In addition, SB 409 would use the coal severance tax proceeds flowing into the permanent trust fund to back bonds sold to finance water projects. Only if projects were unable to fully repay project costs would the severance tax proceeds actually be depleted. The legislature must approve each project before bonds can be sold. Also, 15 percent of the earnings from the permanent trust fund are reappropriated to the trust fund to offset any depletion of proceeds going into that trust fund.



## The Montana Environmental Information Center

\* P.O. Box 1184, Helena, Montana 59601 (406) 443-2520  
\* P.O. Box 8166, Missoula, Montana 59801 (406) 728-2644

TESTIMONY IN SUPPORT OF SB 409  
Before the House Water Committee

April 2, 1981

Madame Chairman, members of the committee, I am Ellen Ditzler. I speak on behalf of the Montana Environmental Information Center, a statewide public interest organization with over 1300 members.

The state water development plan merits the full involvement of conservationists concerned with the efficient use and wise development of Montana's water resources. EIC supports SB 409 as these goals are an integral part of the plan. We believe that with some changes in the bill, Montana will indeed have a sound water development plan with the unified support of all interests.

We do, however, have some specific concerns about SB 409. The first portion of the bill is fairly explicit, with a clearly outlined water development agenda. The second portion of the bill loses that clarity and it is here that we'd like to address our comments.

Part II of SB 409 (begins on p. 25, Section 24) considerably rearranges the present coal tax trust fund. The trust fund is put into the form of bonds "to finance water resource development projects and activities, other capital improvements and economic development..." Please refer also to p. 26, lines 17-20.

Water development projects are given a general description in the definition section of the bill and by the dollar amount appropriated for bond guarantees (\$250-500 million), we know that they will be larger water projects. But we have no clue whatsoever what constitutes "other capital improvement and economic development" nor how they entered a water development plan. We know only that the trust fund would be used to back bonds for any kind of economic development that can be bond financed as long as it is designed to provide a healthy economy and environment and alleviate the impacts of coal development. That, of course, is a major condition and the purpose of the trust fund. With SB 409's very broad definition of what trust fund bonds would be used for, what should rightfully follow is a solid check on the specific uses of the bonds to ensure that this condition is met. That solid check is lacking.

Because Montanans feel that the trust fund should primarily be set aside for the benefit of coal-less generations and when used, used judiciously, the constitution requires that 3/4 of each house of the Legislature approve any tapping of the trust fund. Yet here we see something quite different. First, through a single appropriation (HB 851), the trust fund would be used as bond guarantees for water and other development. That initial appropriation requires the 3/4 vote of approval. Second, once that appropriation is approved, using those bonds for specific projects would be approved by a simple majority of the Legislature. Releasing the trust into the form of bonds requires the 3/4 vote, but their specific use does not. This mechanism of approval weakens Montana's constitutional commitment to safeguard the trust fund.

Some have argued that the 3/4 vote requirement would inhibit the passage of needed development programs. But there are two unique features to this plan: first, we are not dealing with general fund money, but with a trust fund we have promised to safeguard and use with a broad foundation of support in the Legislature. Second, we are appropriating trust fund money (in the form of bond guarantees) for "economic development" that only speculation can define. Certainly we can keep our constitutional safeguards intact when approving specific projects. If a project has merit and meets the goals of the trust fund, it will withstand a 3/4 vote and at the same time the Legislature will have kept good faith with the people of Montana. In the end, that kind of economic development will be the best that present and future generations can have.

There is strong consensus that Montana needs a comprehensive water development plan. Thus far debate has centered on the theme: we need a water development plan - let's pass this bill and at last put the state on the road to utilizing its valuable water resources.

But SB 409 is more than just a water development plan. Parts of it raise serious questions about how you, as legislators, will perform as trustees of our coal tax trust fund.

Please consider SB 409 carefully, including the following points:

- 1) leave in the broad definition of uses of trust fund bonds (water and other development, but maintain a 3/4 vote of approval on a project-by-project basis, or
- 2) confine the water development plan to water development and treat non-water related development separately.

With changes, SB 409 can be that long-awaited water development plan for Montana.

Thank you for considering our comments.

WITNESS STATEMENT

NAME Jo Brunner BILL No. SB 409

ADDRESS Helena DATE 4/2

WHOM DO YOU REPRESENT Women Involved in Farm Economics

SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Madame Chairman, members of the committee, my name is Jo Brunner, and I speak today for Women Involved in Farm Economics. We wish to go on record as being support of Senate Bill 409. It is our policy to support legislation and efforts to utilize our water resources to the benefit of the citizens of our state. At our National Convention last November we listened to programs from other states actually planning the use of our water. For instance ~~XXXXXX~~ New Mexico is very aware that we do not provide for either on-stream or off-stream storage should to the extent we ~~xxx~~. They assume therefore, that we have no need for the water and are making plans to obtain it, as they have proof of their need.

W.I.F.E. also approves of the use of coal severance money and proceeds to be utilized for ~~an~~ projects that would be beneficial to the citizens of our state, such as this, in providing for our welfare now and in future generations.

Thank you.

WITNESS STATEMENT

NAME Ray Borch BILL NO. SB 409  
 ADDRESS 7 Edmunds Hwy DATE 5/2/81  
 WHOM DO YOU REPRESENT MAED / MTSWP  
 SUPPORT x OPPOSE  AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Mt Assoc of Conservation Districts and  
 the Montana Association of State Conservation  
 Districts would like to be shown in  
 the record as in support of SB 409.

Thank you

Also the Mt. Stockgrowers and the  
 Mt. Cattlemen have been asked to be shown  
 in support of SB 409.

VI

WITNESS STATEMENT

NAME Pat Underwood BILL NO. SB 409  
ADDRESS Box 1207 Bezier Road, MT DATE 2 Apr 81  
WHOM DO YOU REPRESENT Montana Farm Bureau  
SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WE SUPPORT the intent of SB 409. The Montana Farm Bureau believes this legislation at least gives us a starting point in which to work from to create a water development program that will benefit all who make their living and who live in Montana. We believe SB 409 is strong in development of all Montana resources, and will consider the interests of agriculture in a fair manner. We recommend a "No Pass" on SB 409.

WITNESS STATEMENT

NAME Donald Johnson BILL NO. 409  
ADDRESS Shell DATE 4/03/81  
WHOM DO YOU REPRESENT NFO  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The National Farmers Organization  
supports the concept of overall  
water management.