

MINUTES OF THE SELECT COMMITTEE ON WATER
April 3, 1981

The Select Committee on Water convened at 2:45 p.m. in room 436 of the Capitol on April 3, 1981, with CHAIRMAN AUDREY ROTH presiding. All members were present except REPRESENTATIVES BRIGGS and KBMMIS.

SB 409.

CHAIRMAN ROTH announced that a continuation of the SB 409 hearing would be held at that time.

CHAIRMAN ROTH asked the committee members to review the amendments each had received for SB 409. (EXHIBITS I, II, and III)

REP. CONROY announced that the committee had also studied SB 851, and had attempted to narrow the scope of SB 409.

BOB PERSON, committee researcher, went through the amendments with the committee.

REP. CONROY MOVED THE AMENDMENTS (EXHIBIT IV). He explained that the "2/3" provision was a compromise between a simple majority and the "3/4" provision. Some committee members disagreed with the "2/3".

RON WATERMAN, attorney, responded to members of the subcommittee's concern over constitutionality of the bonding provision. He told them that the first thing that will occur is a test case. If the funding provision is approved by the Supreme Court, all the bonds thereafter sold would have the protection of a constitutional ruling of the Supreme Court. The 2/3 majority of 3/4 vote would be examined at the early law suit and the constitutionality would be judged, said Mr. Waterman.

REP. HUENNEKENS said the reason for the "3/4" provision should be examined more closely, he felt. He thought it was placed in the bill so that money in the trust could only be used after very careful consideration, and felt that each project should be considered individually.

REP. THOFT said this bill was not an appropriation bill, but was for approval of a project. He agreed there would be great difficulty in getting approval if a 3/4 vote were required. CHAIRMAN ROTH agreed.

REP. ASAY said the \$250 million is not money that is going to be appropriated, but is for bonding.

REP. HUENNEKENS said there is going to have to be a bill stating that the legislature approves a certain amount of money

for a certain project.

REP. CURTISS asked if the committee thought the language deletion regarding other capital improvements would restrict other improvements being made.

REP. CONROY said the subcommittee discussed it quite thoroughly and thought "we could bail out Anaconda" with that provision.

CHAIRMAN ROTH said the bill was specifically for water development.

REP. CONROY MOVED that a deletion starting on page 25, lines 24 through 26, line 4. The MOTION FAILED.

MR. BERRY said the advantage of retaining that language was that it can be used to defend the suit (test case). It is extra language, but has a purpose, said Mr. Berry.

REP. THOFT said he felt grants for public interest should come before private individuals.

MR. BERRY said that REP. CONROY was concerned that storage should receive the highest priority. But, Mr. Berry said, when there is a limited amount of money, the project that will benefit the most may not always be storage.

REP. CONROY's motion for the first 12 amendments (see Standing Committee Report) PASSED UNANIMOUSLY.

REP. CONROY MOVED an amendment to page 29, line 2 (see Exhibit I). The amendment motion PASSED with REP. HUENNEKENS VOTING NO.

REP. CONROY MOVED THAT SB 409 DO PASS AS AMENDED. THE MOTION PASSED UNANIMOUSLY.

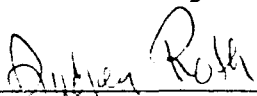
HB 851.

REP. CONROY MOVED THAT HB 851 DO PASS. He told the committee that it should be on the floor before SB 409, as it is the funding mechanism for SB 409.

The motion was seconded and PASSED UNANIMOUSLY.

CHAIRMAN ROTH suggested that the bill be moved on the floor to go back to Appropriations Committee.

The meeting adjourned at 3:40 p.m.



AUDREY ROTH, CHAIRMAN

rj

I

Amendment to SB 409 to place the substance of a Senate amendment in a more appropriate section.

That SB 409 be amended in its third reading copy as follows:

1. Page 14, line 10.

Following: "and"

Insert: "and"

2. Page 14, line 14.

Strike: "AND"

Insert: "."

3. Page 15, lines 15 through 17.

Strike: subsection (6) in its entirety

4. Page 17, line 15.

Following: "made"

Insert: "or 25% of the total project cost, whichever is less"

Amendment to Senate Bill 409 to restrict the potential application of coal severance tax bonds to water resource development projects and activities.

That Senate Bill 409 be amended in its third reading copy as follows:

1. Page 25, lines 24 and 25.

Strike: ", other capital improvements, and economic development"

2. Page 28, lines 22 and 23.

Strike: ", other capital improvements, or economic development"

3. Page 28, line 25 through page 29, line 1.

Following: "PROJECT" on line 25

Strike: ", "

Insert: "or"

Following: "ACTIVITY" on page 25

Strike: ", OTHER CAPITAL IMPROVEMENT OR OTHER ITEM OF DEVELOPMENT"

Senator Blaylock's amendment to Senate Bill 409.

That Senate Bill 409 be amended in its third reading copy as follows:

1. Page 29, line 2.

Following: "BY"

Insert: "a three-fourths vote of"

HOUSE BILL NO. 846
 INTRODUCED BY Clayton DeLoach, R-Butte
 BY REQUEST OF Curran
 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
James H. Hootman

1 CHEYENNE TRIBES, THE DEPARTMENT OF NATURAL RESOURCES AND
 2 CONSERVATION, AND THE FEDERAL GOVERNMENT CAN PROVIDE A
 3 COST-EFFECTIVE MEANS OF PRESERVING ALL EXISTING PROJECT
 4 BENEFITS, PROVIDE WATER FOR FUTURE AGRICULTURAL AND TRIBAL
 5 USE, AND PROVIDE SUFFICIENT WATER TO FACILITATE THE
 6 NEGOTIATION OF A COMPACT BETWEEN THE NORTHERN CHEYENNE TRIBE
 7 AND THE RESERVED WATER RIGHTS COMPACT COMMISSION REGARDING
 8 TRIBAL RIGHTS TO WATER FROM THE TONGUE RIVER; AND
 9 WHEREAS, A STATE COST SHARE IS ESSENTIAL IN
 10 EXPEDITIOUSLY SECURING THE FEDERAL FUNDS NECESSARY TO
 11 CONSTRUCT A JOINT TRIBAL-FEDERAL-STATE PROJECT.

12 IMMEDIATE EFFECTIVE DATE."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 WHEREAS, the Tongue River Dam is in a dangerously
 15 unsafe condition; a flood, which is expected to occur once
 16 every 68 years, is capable of washing out the present dam;
 17 and the dam almost failed during a flood that occurred in
 18 the spring of 1978 and would have failed during a flood that
 19 occurred in 1923 had the dam been in place at that time; and

20 WHEREAS, dam failure would result in devastating
 21 property damage downstream along the Tongue River and to the
 22 communities of Birney and Ashland and might cause loss of
 23 life; and

24 WHEREAS, an enlarged Tongue River reservoir that is
 25 federally funded and jointly managed by the Northern

14 Section 1. Appropriation for rehabilitation of the
 15 Tongue River Dam. (1) There is appropriated to the
 16 department of natural resources and conservation for
 17 pursuing the option to rehabilitate the Tongue River Dam as
 18 recommended in the department of natural resources and
 19 conservation's report to the legislature, "Tongue River Dam
 20 Project Summary Report":

21 (a) from the net earnings available for appropriation
 22 in the resource indemnity trust account, created by
 23 15-38-201, the sum of \$40,732 for the period beginning on
 24 the effective date of this act and ending June 30, 1981; and
 25 (b) from the water development earmarked account,

1 created by section 5, Senate Bill 409, out of funds
 2 available under section 5(3)(b), Senate Bill 409, the sum of
 3 \$395,331 for the biennium ending June 30, 1983.

4 (2) The department shall:

5 (a) maintain the reservoir at the lowest level
 6 possible to meet existing water contracts until safety and
 7 other problems with the dam are rectified;

8 (b) develop, implement, and maintain an emergency
 9 warning and downstream evacuation system for residents
 10 living below the Tongue River Dam;

11 (c) work with the Northern Cheyenne Tribe and the
 12 federal government to develop a jointly managed and funded
 13 project on the Tongue River that provides for a larger
 14 reservoir behind a safe dam; and

15 (d) cooperate with the Northern Cheyenne Tribe and the
 16 reserved water rights compact commission, established in
 17 2-15-212, to reach a negotiated settlement of the tribe's
 18 water right in conjunction with a joint tribal-state
 19 rehabilitation of Tongue River Dam.

20 Section 2. Authorization of state of Montana coal
 21 severance tax bonds for Tongue River Dam rehabilitation. (1)
 22 The board of examiners is hereby authorized to issue up to
 23 \$10 million worth of state of Montana coal severance tax
 24 bonds pursuant to sections 25 through 44 of Senate Bill 409
 25 for the state of Montana's share of the construction costs

1 of the Tongue River Dam rehabilitation as established in a
 2 joint sharing of project costs between the state, the
 3 federal government, and the Northern Cheyenne Tribe. This
 4 authorization is contingent upon approval by the board of
 5 natural resources and conservation of a detailed project
 6 plan that includes a resolution of Northern Cheyenne water
 7 right conflicts in the Tongue River Basin and upon the
 8 appropriation of federal funds to construct the project
 9 approved by the board of natural resources and conservation.

10 (2) The state of Montana's share of any revenues from
 11 the rehabilitated Tongue River Dam is pledged first for the
 12 state of Montana's share of the operation and maintenance
 13 costs of the rehabilitated Tongue River Dam. The excess, if
 14 any, of revenues over the operation and maintenance costs is
 15 pledged and allocated to a special bond account, which shall
 16 be part of the sinking fund of the state treasury fund
 17 structure, for the benefit of the bonds approved by this
 18 section. The excess, if any, of revenues over debt service
 19 and operation and maintenance costs is allocated to the
 20 water development earmarked account.

21 Section 3. Effective date. This act is effective on
 22 passage and approval.

-End-

1 **Williams** HOUSE BILL NO. 851
 2 INTRODUCED BY Barbara Smith Robt. Briggs Thayer
 3 BY REQUEST OF THE GOVERNOR Don Brun
 4 McBride Tranter Aug. J. Wolf Sales Trapp
 5 A BILL FOR AN ACT ENTITLED: AN ACT APPROPRIATING COAL
 6 SEVERANCE TAX TRUST PROCEEDS FOR DEBT SERVICE ON Montana
 7 CREATING A STATE DEBT WITH A LIMIT OF \$500 MILLION FOR STATE

bonds
3/4 approved

1 the legislature, authorizes the creation of a state debt in
 2 an amount not to exceed \$500 million for the issuance of
 3 state of Montana coal severance tax bonds approved by the
 4 legislature as provided in [sections 24 through 42 of Senate
 5 bill No. 409].

6 Section 2. Authorization of water development bonds.
 7 The legislature, through the enactment of this section by a
 8 two-thirds vote of the members of each house, authorizes the
 9 creation of state debt in an amount not to exceed \$5 million
 10 and the issuance and sale of water development bonds in this
 11 amount for the purpose of providing funds appropriated to
 12 the water development clearance fund account for loans as
 13 provided in the water development program.

14 Section 1. Appropriation and authorization of state
 15 debt. (1) The legislature, through the enactment of this
 16 section by a vote of three-fourths of the members of each
 17 house of the legislature as required by Article IX, section
 18 5, of the Montana Constitution, appropriates all money in
 19 the severance tax bond subfund to be used for the payment of
 20 principal and interest on all state of Montana coal
 21 severance tax bonds, not to exceed \$500 million worth of
 22 bonds approved by the legislature as provided in and issued
 23 pursuant to [sections 24 through 42 of Senate bill No. 409].

24 (2) The legislature, through the enactment of this
 25 section by a two-thirds vote of the members of each house of

Liberal
6/6/61

1 In all valid applications that are severable from the
2 invalid applications.
3 Section 5. Contingent effective date. This act is
4 effective if, and only if, Senate Bill No. 409 is passed and
5 approved.

-End-

That Senate Bill 409 be amended in its third reading copy as follows:

1. Page 3, line 8.

Strike: "HIGH"

Insert: "the highest"

Following: "PRIORITY"

Insert: "unless a water development project or activity designed to accomplish another objective is demonstrated to be more beneficial to a greater number of people"

2. Page 14, line 10.

Following: "and"

Insert: "and"

3. Page 14, line 14.

Strike: "; AND"

Insert: "."

4. Page 14, lines 15 through 17.

Strike: subsection (6) in its entirety

5. Page 15, lines 2 and 3.

Strike: "or in starting a new business"

6. Page 15, line 4.

Following: "ownership"

Insert: "and operation"

7. Page 17, line 15.

Following: "made"

Insert: "or 25% of the total project cost, whichever is less"

8. Page 25, lines 24 and 25.

Strike: ", other capital improvements, and economic development"

9. Page 26, lines 10 and 11.

Strike: ", other capital improvements, and economic development"

10. Page 26, lines 18 and 19.

Strike: "but are not limited to"

11. Page 28, lines 22 and 23.

Strike: ", other capital improvements, or economic development"

12. Page 28, line 25 through page 29, line 1.

Following: "PROJECT" on line 25

Strike: ",

Insert: "Or"

Following: "ACTIVITY" on line 25

Strike: ", OTHER CAPITAL IMPROVEMENT OR OTHER ITEM OF DEVELOPMENT"

13. Page 29, line 2.

Following: "BY"

Insert: "a two-thirds vote of each house of"

14. Page 36, lines 6 and 7.

Strike: ", other capital improvements, and economic development."

15. Page 46, line 9.

Following: "PROJECT"

Strike: ", "

Insert: "or"

16. Page 46, line 10.

Strike: ", CAPITAL IMPROVEMENT OR ITEM OF DEVELOPMENT"

17. Page 46, lines 11 and 12.

Following: "PROJECT"

Strike: ", "

Insert: "Or"

Following: "ACTIVITY"

Strike: ", CAPITAL IMPROVEMENT, OR ITEM OF DEVELOPMENT"

1000 May 1981

HJR 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 REPAID 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

