MINUTES OF THE MEETING OF THE HOUSE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE, JANUARY 26, 1983

The meeting was called to order by Chairman Jacobsen on Wednesday, January 26, 1983 at 12:30pm in Room 129, State Capitol. All members of the Committee were present.

HEARINGS

HOUSE BILL 409. REP. DENNIS VELEBER, District 98. Missoula, testified as sponsor of the bill, advising the Committee many landowners are unable to use ditches for which they are assessed. He said the assessment is unfair and the appeal process is not only expensive but contributes to already congested courts. Rep. Veleber referred committee members to page 5, line 7 of the bill, which states, "A separately owned tract of land of lacre or less is considered unable to receive water when the tract does not adjoin a ditch capable of conveying water to the tract. a tract is entitled to relief from district charges after filing of an affidavit by the owenr of the tract attesting to the inability of the tract to receive water as defined in the subsection."

PROPONENTS

MR. MIKE SEHESTADT, Missoula Deputy County Attorney, said there are there are between 10 and 12 landowners in the Missoula Irrigation District, which was originally subdivided between 1910 and 1912. He told the Committee the owners are assessed approximately \$12 annually for water they do not use, but it would cost each of them between \$200 and \$500 in legal fees to be removed from the water district, adding the cost is unjust since the problem was created by legislation. He said the bill would provide relief for small tract owners.

MR. R.A. ELLIS, Helena Irrigation District, told the Committee he opposed the bill as the landowners should have known the irrigation district existed when they purchased the property. He said the problem is not the fault of the districts, which are federally funded and governed by metes and bounds, size and other regulations, adding the bill would harm irrigation districts in the State.

MR. RON SCHOFIELD, Helena Valley Irrigation District Manager, explained the districts are formed by petition of landowners to the district courts and must by assessment, pay the federal government for indebtedness, adding his

district is still able to deliver water and provide drainage to the landowners. He said landowners can request their board of directors to delete them from the district and as a user, the landowner can vote to elect district representatives who are willing to reclassify land in the district.

OPPONENTS

MR. KEN KELLY, Montana Water Development Association, endorsed testimony of Mr. Ellis in opposition to the bill. He told the Committee a bill introduced in the Senate would conflict with House Bill 409 and asked the Committee to table the bill.

QUESTIONS

CHAIRMAN JACOBSEN asked if language on page 5, lines 7-13 of the bill described just one way in which a tract of land would receive water. Mr. Sehestadt said the legislature added the provision for small tracts of land during the 1981 session, adding the charge would be no less than \$5 against any separately owned tract of land able to receive water. He explained there must be private condemnation or purchase rights in areas destroyed by subdivisions.

REP. SCHULTZ asked how many acres were involved, to which Mr. Sehestadt replied 600 to 700 parcels of land in the Missoula area alone were affected.

REP. SAUNDERS asked Mr. Schofield if the landowners were cognizant of water assessments when titles to their property were prepared. Mr. Schofield replied he did not know.

REP. ELLERD asked what the penalty would be for nonpayment of assessments. Mr. Sehestadt said the county could eventually obtain title to the property, adding tax appeals boards have no jurisdiction in these matters. Rep. Ellerd then asked if water would be available if all eligible landowners were to request it. Mr. Sehestedt replied it would be if the elevation were correct and referred the Committee to page 2, lines 14-22, of the bill wherein assessments pertaining to federal involvement are addressed.

MR. JOHN MACMASTER, Legislative Council, said the Committee might want to add language to page 5, lines 7-13, at the beginning of Section 3, clarifying which tracts of land are considered unable to receive water.

REP. KOEHNKE asked if unused water rights would be sold to others, to which Mr. Sehestedt replied he was not aware of this practice in the Missoula district.

REP. BENGSTON asked if landowners were assessed differently in each district. Mr. Sehestadt advised by statute the current minimum charge is \$5 and the assessment in Missoula, \$12 to \$15 on a per tract basis. Rep. Bengston told the Committee in her district a landowner is not assessed for water not used.

REP. LYBECK asked what percent of the Helena district is served by flooding. Mr. Ellis replied it was about 75%, adding the problem would be resolved if the charges were permissive.

REP. BACHINI asked what users thought of the \$5 fee. Mr. Sehestedt replied it would be preferred.

CHAIRMAN JACOBSEN told the Committee more information was necessary prior to executive action, particularly as to whether or not landowners were aware of water districts when purchasing their property.

REP. BENGSTON asked if it were possible for the districts to resolve the matter themselves.

REP. VELEBER asked if the Legislative Council could provide Chairman Jacobsen with the requested information. Chairman Jacobsen said he thought the information should come from the districts themselves.

REP. JENSEN asked if the main problem were caused by the need to repay construction costs advanced by the federal government.

MR. SCHOFIELD commented a poll could be taken in several irrigation districts for opinions, prior to corrective action.

REP. SPEATH told the Committee there is an obligation to the federal government concerning unpaid costs, but he sees no need for assessment except for maintenance, on a paid up irrigation district.

IN CLOSING, Rep. Veleber said he received many complaints while campagining for office and asked the Committee to give the bill its approval.

CHAIRMAN JACOBSEN advised executive action would be taken January 31, 1983.

HOUSE BILL 349. REP. GARY SPAETH, District 71, testified as sponsor of the bill, which was introduced at the request of the conservation districts within the State. the Committee there were four substantive changes in the bill, beginning with page 1, which provides two options for supervisor areas of which there are presently five. He said the second option would allow election of supervisors at large, since the districts would like latitude to establish fewer than five districts and still elect supervisors at large. Referring to page 2, line 3, Rep. Spaeth said essentially the section indicates a supervisor be elected in the primary and general elections in even numbered years with the county picking up administrative election costs. He told the Committee page 3, lines 7-10 allow supervisors to appoint associate supervisors which act in the capacity of an advisor or advisory board and will hold no powers, adding the advisory position is necessary to represent the diverse interests and provide additional input in the districts.

REP. SPAETH explained page 3 would allow the board of supervisors, upon unanimous consent, to provide compensation for their time, citing the 1939 stream bank law as an He said the law requires large numbers of applications example. to be inspected annually and that page 4, line 9 would eliminate lack of staff as an excuse for county attorneys to provide assistance to the districts. Rep. Speath advised page 4, line 20 through page 5, line 14, provides a formula for general funding to assist conservation districts statewide and cleans up existing statute, adding deletions on pages 6 and 7 are merely housekeeping matters. He told the Committee in the past, the general mill levy allowed municipalities to withdraw from the districts and the bill would bring municipalities in line with the Attorney General ruling on the matter. Referring to page 7, line 9 of the bill, he said conservation districts are not a subdivision of the county but of Montana and with the changes on page 8, lines 2 only 10 signatures would be necessary to change a conservation district.

PROPONENTS

MR. STEVE MEYER, Montana Association of Conservation Districts, stated his support of the bill and urged the Committee to act favorably.

MR. RAY BECK, Department of Natural Resources and Conservation, told the Committee the proposed changes were necessary.

MRS. JO BRUNNER, Women Involved in Farm Economics, stated her support of the bill in prepared testimony (exhibit).

OPPONENTS

MR. WILLIAM ROMINE, Montana Association of County Clerk and Recorders, referring to page 2, line 9 of the bill pertaining to payment of election costs, said the intent in 1979 was the elections would be held by counties with the county costs to be reimbursed by the districts. He said the districts should be required to cover their own election costs instead of the counties and provided a statement from Joanne M. Peres, Fort Benton, MT (exhibit).

QUESTIONS

REP. BENGSTON asked if supervisor areas were based on population or geographical boundaries. Rep. Spaeth said they were drawn along population lines and a supervisor must reside within the district.

REP. BENGSTON told the Committee she thought conservation districts were taking up concerns outside their original perameters, adding they were established to address rural and agricultural lands.

REP. JENSEN asked for further clarification of compensation for district supervisors. Rep. Speath said the per diem applies only to the state and not to conservation districts.

REP. SCHULTZ told the committee he is not satisfied with the provision allowing two supervisors to be elected at large, adding there should be a period on page 4, line 22. He asked what would be done with funds set aside by counties for conservation districts. Rep. Spaeth replied the districts are audited annually to preclude mishandling of funds.

REP. BENGSTON asked Mr. Romine what election costs were now, who replied he would have to look into the matter.

IN CLOSING, Rep. Spaeth said attorneys disagree on the 1979 quandry, but the Attorney General issued an opinion with which he, as an attorney, agrees and told the Committee it was determined the legislature did not intend that counties pay for elections. He urged the Committee to pass the bill.

EXECUTIVE SESSION

HOUSE BILL 85. REP. BENGSTON moved the bill Do Pass. Rep. Bachini seconded the motion.

CHAIRMAN JACOBSEN read proposed amendments to the bill (exhibit). Rep. Roush moved the amendments be approved. Rep. Lybeck seconded the motion, which was unanimously approved by the Committee.

REP. BENGSTON moved the bill Do Pass as Amended. Rep. Roush seconded the motion which was unanimously approved by the Committee.

HOUSE BILL 324. REP. BLISS moved the bill Do Pass. Rep. Koehnke seconded the motion.

REP. BLISS commented if rights are not policed, owners would be in court each time a problem occurred. The bill was given unanimous approval of the Committee.

CHAIRMAN JACOBSEN provided members with notices of the Department of Revenue's proposed rule changes in agricultural land assessment and classification, to be heard February 17, 1983. He told the Committee there is a problem with using income for valuations and a need for agricultural input to impose a moratorium on the proposed rule changes.

REP. BLISS asked what rule-making authority the Department of Revenue possessed and told the Committee agricultural land used to be valued on productivity. Chairman Jacobsen advised the Department's rule-making authority could be regulated by the Legislature and read the notice to the Committee.

REP. SCHULTZ asked if it were the intent of the Committee to discuss the proposed changes with the Department prior to the February 17, 1983, hearing.

CHAIRMAN JACOBSEN advised the Committee a date would be established for such a meeting.

REP. BLISS said the Montana Stockgrowers Association hared a consultant, who was previously employed by the Department of Revenue and might be willing to testify on the proposed changes.

The meeting was adjourned at 2:10pm.

REP. GLENN JACOBSEN, CHAIRMAN

Joann T. Gibson, Secretary

STANDING COMMITTEE REPORT

•-			JAKUARY 26	19
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Amend Section 2 on page 2 line 18 by asserting the following words after the words "vertebrate pasts." "Management is the correct identification of a vertebrate pest, recognition of its biology and engironmental needs, assessment of the pest's damage, injury or nuisance to agriculture, industry or the public prior to selecting and implementing any integrated or individual control AS AMENDED, methods to reduce, prevent or suppress these damages, nuisances, DO PASS or injuries, and evaluating the effects of these control methods.

REP. GLENN JACOBSEN

Chairman.

STATE PUB. CO. Helena, Mont.

DO PASS

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STANDING COMMITTEE REPORT

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REP. GLENN JACOBSEN

Chairman.

VISITOR'S REGISTER

	HOUSE_	Agriculture	COMMITTEE
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SPONSOR	114/5/150		

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R.H.Ellis	Helena Valley	W.I, FI- Helona inllay (19 Dist Mont Water 1700 el ofwai	۲	X
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RON SCHORIGED	HELENA	Missoula County HELENA VALLEY TRE DIST		X
K.M. Kelly	Helema Mr.	Mont. Water Develop Ar		X
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE agriculture	COMMITTEE
BILL HB341	DATE 1/26/83
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

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Name RON SCHOSIELD	Committee On /
Address 3840 N. MONTANA HELENA	
Representing HELCHA VALLEY IRR. DIST	•
Bill No. <u>HB</u> 409	
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Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

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Name K.M. Kelly	Committee On Africy - 12
Address Helend	Date 1/26/53
Representing Montana Water Rendot Non	
Bill No. 400	Oppose
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Name Robert A. Ellis	Committee On Harle!
Address 1735 Siorer Holon Valley 1979 fost Representing Mental Refer Savalogue	Date 1/24/83
Representing Mentaliaton Dailalogues	Support
Bill No. <u>HB 407</u>	Oppose
·	Amend
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Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



Aortana Association Of Conservation District

7 Edwards Helena, Montana 5960 Ph. 406-443-5711

January 26, 1983

Mr. Chairman, Members of the Agriculture Committee:

I am Steve Meyer and I represent the Montana Association of Conservation Districts.

Montana's conservation districts asked Representative Spaeth to sponsor HB 349 on their behalf and are in agreement with the proposed changes stated in this act. I will expand briefly on several of the changes.

The change in 76-15-301, subsections 1 & 2 on page 1 were requested so that supervisor areas would be more representative of the resource areas in a district. Many times there are less than 5 different type of resource areas in a district. This change allows districts the flexibility to develop supervisor areas to deal with the different situations that arise in each district. The new subsection 3 in 76-15-311 on page 3 of this act gives the supervisors authority to appoint interested individuals to an advisory capacity to the district. Associate supervisors can obtain valuable knowledge of conservation district operations and are better suited to fill the position of full board member if they are elected.

The change in 76-15-313, subsection (3) on the bottom of page 3 is in response to a poll conducted in June of 1982. 75% of the districts responding felt that each district should be given the discretion of compensating supervisors for time spent on district work. This is especially true in the case of field inspections for 310 permits.

We feel that all of the changes enumerated in HB 349 are necessary to the continued smooth operation of a conservation district and we urge a "Do Pass" recommendation on HB 349.

Thank you.

Steven R. Meyer

Steven R. My

Executive Vice President

NAME JOANNE M. PERES	BILL No. HB 349
ADDRESS FORT BENTON, MT.	DATE JANUARY 26, 1983
WHOM DO YOU REPRESENT MONTANA ASSOCIATION OF	CLERKS AND RECORDERS
SUPPORTOPPOSE	AMEND X
PLEASE LEAVE PREPARED STATEMENT WITH SECR	ETARY.

Comments:

Subsequent to the enactment of SB65 in 1979, due to complicated language in13-1-302 relating to payment of costs to the county for handling elections, and due to the interpretation of Conservation Districts legal counselGary L. Spaeth, counties have been unable to obtain reimbursement of election costs from Conservation Districts, even though the intent of the legislation was that various districts would reimburse the county general fund for conduct of those elections.

There also seems to be an opinion coming from the Legislative Council's Diana Dowling - holding that constitutional amendments may have to be voted on in off-years and that the definition of a general election could also include those held in odd-numbered years. The Conservation District's contention would then be void. See attached copy of memo from Gary Spaeth.

I therefore recommend that lines 8 and 9 on page two be deleted from this bill in order to bring it into line with the intent of the original legislation and insert that Conservation Districts must reimburse election costs.

The confusion arose when the law was written and these districts were expected to have their election in even numbered years, but Spaeth ruled that they were multi-county districts entitled to have their elections in even numbered years.

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Address 32 So Euriq	Date 1/26/83
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Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WIFE Women involved in Farm Economics

MAME JO B	runner		BULL NO.	HB 3/10
ADDRESS 5	63 Brd St	Helena	DATE Jan.	•
REPRESENT	Women I	nvolved in Far	n Beenomies	
SUPPORT	X	OPFOSE	AMEND	

COMMENTS:

Mr. Chairman, members of the committee, my name is Jo Brunner and I speak today for the members of the Women Involved in Farm Economics organization in cooncurring with HB 349.

In discussing this bill with the Conseration people, we find that much of it is obsolete and no longer effective for several years that it is accordy securing practices put into effect

for practical purposes and certainly simplyfying certain procedures that will speed up any programs approved by the conservation districts. W.I.F.E. does concur with HB 349. Thank you.

"Hell has no fury like a woman scorned".

MEMORANDUM

TO: Ole Ueland, Administrator

Conservation Districts Division

FROM: Lew Ross

Legal Intern

APPRVD: Gary L. Spaeth

Legal Counsel^

RE: Conservation District Elections

DATE: October 22, 1979

BRIEF ISSUES/ANSWERS

As a result of SB 65 amending the state election laws, must Conservation District Supervisors be elected in 1979?

No, the next elections should be held in 1980.

II) What is the process of election?

See Discussion.

III) Must the Conservation Districts pay their share of the election costs?

No, even-numbered year general elections must be paid for by the counties unless specified otherwise.

DISCUSSION

I) Conservation Districts are best characterized as multicounty subdivisions of the state, so they should hold elections in even-numbered years beginning in 1980.

Conservation District Supervisors are elected or appointed in accordance with Chapter 15, Part 3, of Title 76. This chapter has been modified by SB 65 to read:

"76-15-303. General Election. . . .

The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors, which ballots shall be delivered to the election judges . . . prior to each general election and each primary election in which more than four candidates are nominated. The election judges and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election, and tabulate the results of such election in the manner provided in Title 13." Section 369, SB 65, enacted in Chapter 571, 1979 Session Laws; Emphasis added.

This section makes it clear that supervisors are to be elected at general elections but doesn't specify odd or even-numbered year general elections. § 76-15-304, MCA, governs the election of Conservation District supervisors. It is not amended by SB 65, and it is equally vague:

"(1) Two supervisors shall be elected at the second general election following the organization . . . of the district . . . Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections." Emphasis added.

The general election laws hopefully clarify this ambiguity. A general election is held in even-numbered years for:

"federal officers, state or multi-county district officers, members of the legis-lature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election . . " § 13-1-104(1), MCA, as amended by SB 65, Section 4; Emphasis added.

and in odd-numbered years for:

Development of the control of

"municipal officers, officers of political subdivisions wholly within one county, and any other officers specified by law for election in odd-numbered years . . ."
§ 13-1-104(2), MCA as amended by SB 65, Section 4; Emphasis added.

While a Conservation District is a "political subdivision" of the state (13-1-101(13), MCA as amended by SB 65, Section 1), it is not properly defined as a subdivision "wholly within one county." Conservation Districts can potentially cover several counties, so they do not fit the criteria for odd-numbered year general elections. It is arguable that Conservation Districts wholly within one county should have elections in odd-numbered years, and that multicounty Conservation Districts should have elections in even-numbered years. However, this seems an unreasonable, confusion-engendering interpretation. It seems more logical to define a Conservation District as a "multicounty" district, and hence subject to even-numbered year general elections. There are no other statutory sections which add to the above.

Admittedly, SB 65 has not explicitly dealt with Conservation District elections. However, the even-numbered year interpretation seems reasonable and, therefore, is preferable to the odd-numbered year interpretation of this vaque statutory scheme.

- II) The process of conducting Conservation District elections is explained in § 76-15-303, MCA, as amended. The new language, cited above, requires the election administrator in each county to prepare either separate nonpartisan ballots, or to place the candidates' names on the regular election ballot in the same manner as other nonpartisan candidates. The election judges then submit the ballots to the voters and report the results.
- paid for by the counties. Before SB 65 amended the state election laws, Donald D. MacIntyre, Chief Legal Counsel, reached the same conclusion. The principal statute upon which he relied, § 76-106, R.C.M. 1947, now § 76-15-303, MCA as amended, is substantially the same even after SB 65. (See new language above.) The key change made is that the county registrar is no longer responsible for conducting elections, but an "election administrator" supervises general elections. This change is minor and does not alter Mr. MacIntyre's interpretation of the language. His interpretation of the county's role in paying for elections is supported by Section 16 of SB 65 (new MCA section number not known):
 - ". . . Unless specifically provided otherwise, <u>all costs</u> of the primary and general elections regularly scheduled for evennumbered years shall be paid by the counties . . . " Emphasis added.

I can't find any language in SB 65 which specifically places a burden of sharing election costs on Conservation Districts. Thus Section 16 reinforces Mr. MacIntyre's prior interpretation of § 76-106, R.C.M. 1947.

Other sections mentioned in the MacIntyre memo have been repealed by SB 65. § 23-3027 and § 23-3508, R.C.M. 1947, were discussed by Mr. MacIntyre (at page 2) as possibly implying that Conservation Districts should pay for a share of election costs. Even though Mr. MacIntyre concluded that these sections didn't support such a notion, these sections were repealed by SB 65. The memo also discusses § 23-3207, R.C.M. 1947, which was also repealed by SB 65.

In conclusion, Section 16 of SB 65 and § 76-15-303, MCA, as amended, indicate that counties should bear the entire cost of Conservation District elections.

EXCUSE

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