

HOUSE NATURAL RESOURCES COMMITTEE MINUTES  
March 23, 1983

The House Natural Resources Committee convened at 12:30 p.m., on March 23, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Reps. Brown, Metcalf and Nordtvedt, who were excused. Chairman Harper opened the meeting to a hearing on House Joint Resolution 36.

HOUSE JOINT RESOLUTION 36

REPRESENTATIVE KERRY KEYSER, District 81, chief sponsor, said the bill requests a study to identify and provide for preservation of the rights of landowners adjacent to public land and waterways and to identify and provide for rights of the public to access and use public land and waterways. Rep. Keyser said there had been an access study done in depth and there is a lot of material available on that but nothing concrete came from the study. He said there are two bills dealing with this area in the Senate now which is why this bill is late in being introduced. He said there are strong feelings on this issue on both sides and that is why it is important to look at the issue and see what can be done.

KEN KNUDSON, Montana Wildlife Federation, said they support the resolution. He said they have been involved all along with the navigability controversy. He said they have met with some of the groups on this issue and he felt a dialogue was being started. He said he would like to be informed so he could participate in the study. He said they have learned a lot and could contribute to an interim study.

WILL BROOKE, Montana Wool Growers, said they support the concept of the study. He said this is a volatile issue and a storm is growing in the countryside. He said they would like to be informed so they could be active participants in a study.

BILL ASHER, APA, SCPA, PCLA, said they support this study. He said they opposed HB 888 hoping there would be a study. He said the study if possible should include people from many segments besides the legislature.

LORENTZ GROSFIELD, Big Timber, representing self, spoke in support. A copy of his testimony is Exhibit 1a. Exhibit 1b is a copy of a suggested joint resolution requesting an interim examination of the navigability issue in Montana. Exhibit 1c is titled "Navigable Streams - What's In Them for Montana?" Exhibit 1d is further information on the issue which Mr. Grosfield left for the record.

There were no opponents.

REPRESENTATIVE KEYSER in closing said he knew this would take a lot of cooperation.

Questions were asked by the committee.

Rep. Ream asked how a handle was going to be had on this. Mr Grosfield said the study would look into ways to handle conflicts before they arise.

Rep. Keyser said he lives on the Madison and knows part of the problems. He said there are floaters and bank fishermen that use the area. He said there is some animosity at times. He said the upper area is strictly open to fly fishermen and floaters can't go through that.

Rep. Ream said information is needed on the amount and kind of conflicts. He said he doesn't see that in the bill.

Rep. Keyser said there is a need to clarify the right of the public using the waterway and to identify the waterways that can be used by the public. He said he didn't try to make this a very broad based approach. He said with the language in the bill, it will meet the concerns of any member of the committee. He said it is broad enough to cover the spectrum.

Chairman Harper closed the hearing on this bill and opened the meeting to a hearing on HB 914.

#### HOUSE BILL 914

REPRESENTATIVE TOM ASAY, District 51, said this legislation concerns the assessment of the potential for a joint water development project between Montana and Wyoming on the Clark Fork of the Yellowstone River. A copy of a fact sheet he used in his testimony is Exhibit 2 of the minutes.

GARY FRITZ, Department of Natural Resources and Conservation, said they support the logic and there is a need to work with Wyoming to determine what our rights are in the Clark Fork.

KEN KNUDSON, Montana Wildlife Federation, said they support the bill. He said this should include a representative of the Fish, Wildlife and Parks Department to take care of instream flows.

There were no opponents.

REPRESENTATIVE ASAY closed. He said this is a beautiful valley and that the stream is almost totally accessible.

Questions were asked by the committee.

Rep. Bertelsen said the date on page 2, line 15 is possibly a misprint. He said he also has a problem with two person committees and he would be more comfortable with a different number. Rep. Asay said he had no problem with that.

House Natural Resources Committee Minutes  
March 23, 1983  
Page 3

Rep. Hand asked if they had water storage in mind when they talk of development.

Rep. Fagg said there had been a study that said they had poor irrigation practices on the Clark Fork. He asked if this would be looked into.

Rep. Asay said they have undergone a great change in the last ten years. He said he didn't know if they would go into irrigating practices.

Rep. Fagg said things could have changed in the past six years. He said they should study everything including irrigation practices.

Rep. Ream asked about financing and Mr. Fritz said it doesn't specify but he thought the 30 percent for water development would come out first and this would come out of the remaining 70 percent. Rep. Ream asked if 30 percent wasn't allocated to projects on a review process. He asked if there was an application for this study in that. Mr. Fritz said this didn't go through that.

Chairman Harper closed the hearing on this bill and opened the meeting to an executive session.

EXECUTIVE SESSION

SENATE BILL 441 Rep. Hand moved to strike on page 1, line 16, the word "regularly"; on page 2, line 12, following "of" to insert "all"; page 2, lines 18 and 19 to strike "the" on line 18 through "percentage" on line 19 and insert "the royalty owner's net value"; and the date on the end and in the title. This motion carried unanimously with all present, absent were Reps. Brown, Nordtvedt and Metcalf.

Rep. Hand moved AS AMENDED BE CONCURRED IN.

Rep. Iverson said he had been hearing from little producers that feel this requirement could be a harrassment. He said the penalty is fairly severe. He said he would vote against the bill.

A roll call vote was taken and the motion carried with 11 voting yes; five no (Asay, Curtiss, Iverson, Jensen, Neuman); and three absent (Brown, Nordtvedt and Metcalf).

SENATE BILL 182 Rep. Asay moved BE NOT CONCURRED. Rep. Addy seconded it and Rep. Bertelsen gave it a third. Rep. Hand said what they are talking about is burying it everyday which costs about \$50 an hour, two to three hours a day. He said this is pretty good sized liability.

Rep. Bertelsen said for 15 to 20 years he had a pasture near an open dump and it was the most miserable thing on this side of anywhere. He said they had problems with people out of the neighborhood using it. He said they never found a solution to this until they decided they could get something better. He said he would never vote to go back to that kind of a system once they had been forced to try a different solution. He said he wouldn't want to see his community go backwards.

The question was called and the motion carried unanimously with all present (absent were Reps. Brown, Nordtvedt and Metcalf).

SENATE BILL 118 Rep. Fagg moved to remove this bill from the TABLE. The motion carried with Reps. Hand, Curtiss, Iverson and Asay voting no and absent were Reps. Brown, Nordtvedt and Metcalf.

Rep. Fagg said there is one more amendment on page 1, line 22, following "Hearing" to insert "or public meeting". Rep. Fagg moved the amendments.

Rep. Mueller said he had no problem with the amendments, basically. He said if we are saying the state is going to pay for a meeting if 15 or more people request it, we are leaving ourselves wide open. He said it should be at the discretion of the State Land's Commissioner as an arbitrary number could create problems.

Rep. McBride said we wouldn't want to strike the whole amendment and so suggested on line 25, following "Transfer" to insert "and that further public input would be desirable."

These motions carried unanimously with all present.

Rep. Fagg moved AN AS AMENDED BE CONCURRED IN.

Rep. Mueller said he opposed the motion. He said he thought people were becoming paranoid and overreacting on this issue. He said there were numerous ways that the state of Montana would be notified. He said they have to give a 60-day notice to the Governor, the Commissioner of State Lands would be notified right away. He said if there are problems the Governor can request a public meeting, and Rep. Mueller said he had no doubt the federal agency at that time would have a public hearing. He said public agencies have become very sensitive to public reaction. He felt the legislation was not necessary.

Rep. Fagg said there are a lot of little things and people could become very concerned and want a public hearing. He said we should not overlook the need for public input.

House Natural Resources Committee Minutes  
March 23, 1983  
Page 5

Rep. Curtiss said she opposes the bill as it adds more burdens on another agency. She said it is too bad we had to listen to the bill twice.

Chairman Harper said he apologizes for that as, he said, he took that on himself.

Rep. Quilici said he personally didn't think the bill was that important because he felt anything the bill provides for could be done now.

A roll call vote was taken and the motion carried with 11 voting yes; 5 no (Asay, Curtiss, Hand, Mueller, Quilici); and three absent (Brown, Metcalf, Nordtvedt).

HOUSE BILL 893 Rep. Neuman went through the amendments which are Exhibit 3 of these minutes. Rep. Ream moved that amendments 2, 3, 6, and 7 pass.

Chairman Harper said there was another set of suggested amendments from the Department of Natural Resources and Conservation.

Leo Berry, Director of DNRC, said the amendments put HB's 908 and 893 together. He said he would be glad to explain them. A copy of these is Exhibit 4.

Rep. Mueller said this is a very complex issue and we need to spend enough time on it.

Rep. Ream withdrew his motion for now.

Chairman Harper encouraged the members to take the suggested amendments with them and examine them as time permitted.

HOUSE JOINT RESOLUTION 36 Rep. Iverson moved the bill DO PASS. Rep. Fagg said he would favor a proposal to put public members on the committee. He said we should get both sides to sit down together along with legislators. He said there might be a member that represented landowners, one that represented the stockman's association and one from an environmental association.

Rep. Harper asked if he had in mind specific groups or generic cataloguing. Rep. Fagg said just as well groups.

Rep. McBride said there might be some problem with having people other than legislators named on the committee.

Ms. Debbie Schmidt, EQC, was asked for an opinion and said there is a problem with compensating others unless they are an advisory council.

House Natural Resources Committee Minutes  
March 23, 1983  
Page 6

Rep. Iverson said he was a little unsure about doing this and said he would rather trust in the hearing process. He said this thing is hot and volatile and we could blow it all up by leaving out some group. He said it should be left to a legislative group, as unbiased as possible.

Rep. Fagg said he had been involved in the Wild River legislation and knew that the hearing process doesn't always work too well. He felt it would be better if they were directly involved.

Rep. Jensen suggested that the EQC might fit the categories and would be the best place to put the study.

Rep. Iverson said they don't have anyone that is embroiled in this but they do have public members and so might be a good place for it.

Rep. Fagg moved to amend and have the committee include two recreationists and two landowners. This motion failed with Reps. Fagg, Jensen, Veleber and Ream voting yes and absent were Reps. Brown, Metcalf and Nordtvedt.

Rep. Hand moved to amend on page 2, line 11, following "study" to insert "committee"; and following "shall" to insert "cooperate with all interested persons to the fullest extent possible to". This motion carried unanimously with all present (same absent).

Rep. Iverson changed his motion to AND AS AMENDED DO PASS. This motion carried unanimously with all present (absent were Reps. Brown, Metcalf and Nordtvedt).

HOUSE BILL 914 Rep. Asay moved to amend on page 2, line 21, to strike "two" and insert "four" and strike "from South Central Montana". This amendment carried with those present. Absent now were Reps. Brown, Metcalf, Nordtvedt and Fagg.

Rep. Asay moved that HB 914 AS AMENDED DO PASS. He said this study would lay the ground work for an indepth study. He said it is to determine if there is some meeting ground. He said the study should cover about anything.

Rep. Ream suggested the funds be taken from the 30 percent that goes to water projects. Rep. Iverson said it was too late for that. Chairman Harper asked if there was any way to say it is coming from the DNRC budget.

The question was called and the motion carried unanimously with those present (same absent as previous vote).

Meeting adjourned at 2:05 p.m.

Respectfully submitted

  
\_\_\_\_\_  
HAL HARPER, CHAIRMAN

Emelia Satre, Sec

# VISITOR'S REGISTER

HOUSE                      NATURAL RESOURCES                      COMMITTEE

BILL HJR 36 DATE 3/23/83

SPONSOR REP. KEYSER

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MARCH 23, 1905  
Exhibit 1a

Mr. Chairman, Members of the House Natural Resources  
Committee:

I am Lorent's Grosfield, Melville Route, Big Timber, MT 59011.  
I am a cattle rancher.

In my study of the navigability issue in Montana,  
I have written a possible resolution to address the  
issue. However, many of my concerns have been  
well-expressed in HJR 36 and therefore I  
submit to the Committee my resolution, not as a  
substitute, but as a further explanation of my  
concerns, including some additional areas that I  
feel should be studied.

I would hope that this committee take these  
suggestions under advisement to the end of  
adequately and decisively addressing the issue.  
My suggestions on the formation of the interior  
commission echo the concerns of the other proponents,  
namely we need a good study with interested parties  
involved.

Respectfully submitted,  
Lorent's Grosfield



JOINT RESOLUTION

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM EXAMINATION OF THE NAVIGABILITY ISSUE IN MONTANA.

WHEREAS, "navigable waters" are nowhere clearly defined in Montana law; and

WHEREAS, the ownership of lands under navigable waters is also nowhere clearly defined in Montana law; and

WHEREAS, recent Montana court cases have been able to call into question the status of streams and the ownership of streambeds throughout Montana; and

WHEREAS, although the increasingly popular use of certain waters of Montana for recreational floating and other recreational purposes is a relatively new phenomenon not generally contemplated in Montana water law, nevertheless several legislative bills introduced into the 48th Legislature have tended to equate the historical essence of "navigable" with recreationally "floatable", without distinguishing between the two; and

WHEREAS, the uncontrolled growth of all manner of recreational use of Montana waters will result in conflicts amongst recreationists as well as between recreationists and landowners; and

WHEREAS, future water appropriations that might be detrimental to established instream recreation may be subject to legal challenge; and

WHEREAS, the navigability and floatability issue is potentially a very divisive issue for the people of our State; and

WHEREAS, the Legislature desires to avoid this divisiveness as well as to provide for a Legislature-approved method to make the designations of recreationally accessible streams responsible, fair, and well-defined;

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

(1) That an appropriate interim commission be appointed to examine the legal, equity, and administrative issues relating to the navigability/floatability issue.

(2) That the Majority and Minority Leaders of the Senate and of the House of Representatives each appoint one legislator, one agricultural landowner (whose primary living comes from agriculture), and one recreationist (whose primary living does not come from agriculture), for a total of 12 equally bi-partisan persons to serve on the commission.

(3) That the Directors of the Departments of Fish, Wildlife and Parks, State Lands, and Natural Resources and Conservation serve in an advisory and technical capacity to the commission as needed within their staffing and budgeting limitations.

(4) That the interim study herein authorized include but not be limited to an examination of:

(a) the definition of "navigable" in relation to the definition of "floatable" (as well as of "non-navigable" and "non-floatable"), and under what authority and conditions should the differences be determined;

(b) the ownership of the beds of navigable streams and the location of the boundaries thereof;

(c) the ownership of the beds of floatable streams and the location of the boundaries thereof;

(d) the relationship of, role of, and necessity for due process and just compensation for recreational uses of streams on private lands;

(e) a landowner's rights and liabilities regarding streambeds on his land;

(f) a recreationist's rights and liabilities regarding or resulting from recreational uses of navigable and floatable waters of Montana;

(g) the extent to which administrative control should be exercised over recreational uses of Montana waters and the proper roles of governmental entities such as, but not limited to the Department of Fish, Wildlife and Parks, regarding recreational uses of Montana waters;

(h) the effect and necessity for control of recreational uses on future diversionary demands for water from a navigable or floatable stream; and

(i) sections of Montana law concerned with navigation and recreational uses of water including, but not limited to: 70-1-202, 70-16-201, 70-16-301, 70-19-405, 77-1-112, 85-1-112, 87-2-305, and 87-1-Part 3, MCA, the Articles of Statehood, the Montana Constitution, and the federal navigability definitions.

(5) That the interim commission prepare and submit to the 49th Legislature a comprehensive report of its findings together with its recommendations for legislation necessary to implement these findings including decisively defining "navigable" and "floatable" and how the designation of each is to be made and administered in a fair, reasonable, and readily definable manner.

# NAVIGABLE STREAMS--- WHAT'S IN THEM FOR MONTANA?

In 1944 the U.S. Congress passed the Flood Control Act which provided among other things for the future development of large water projects in the Missouri River Basin. At that time, several foresighted Senators were concerned that the semi-arid western states might be precluded from developing mainstem and tributary projects for agriculture and industry because of the demands below Sioux City in the Missouri River, and subsequently on the Mississippi, for maintaining a high enough flow in the river to perpetuate navigation. Today, navigation is indeed an important use of the river below Sioux City, especially for barge shipment of grain. Yet a recent \$85,000 study, authorized and funded by the 1981 Montana legislature, shows that agricultural water development in the mainstem and tributaries in upstream states including Montana, probably cannot proceed very much further without detrimental effects on the navigation below Sioux City. This study further shows that the total navigation industry in the lower river ceased because of upstream development, the net economic losses resulting would not be as great as the potential benefits from agricultural water development in Montana alone, not to mention the other upstream states or industrial water development. Those foresighted Senators attached an amendment to the Flood Control Act of 1944 which said, "The use for navigation ... of waters ... shall be only such use as does not conflict with any beneficial consumptive use, present or future, ... of such waters for domestic, municipal, stock water, irrigation, mining, or industrial purposes." (Emphasis added.) Although this amendment had primarily to do with protecting upstream states rights to develop in light of large downstream water developments for flood control and aid to navigation, it should be obvious that if so-called "recreational navigation" is allowed a free hand to develop in Montana, at some future time there will be conflicts between the navigational use of water, and uses for agriculture and industry. In retrospect, the words of a primary sponsor of this amendment (Senator O'Mahoney) seem not only applicable but even ominous to thoughtful Montanans considering the navigability issue today. "In the meantime they have built their barges, they have built their docks, they have established their trade routes. They built their wharves, they have built all of the accessories, and would then be claiming to be a vested interest recognized by Congress. Now these are the things we've got to guard against." As this Montana "Use It or Lose It Study" says "We did guard against this, he made sure by his amendment that navigation and its accessory works were not vested interests, that they would not block the future depletion of the water by future consumptive uses." Again, the Senator, "There never was any intention, and could not possibly be any intention, upon the part of Congress to compel the residents in the dry land states ... to sit at their doorsteps and watch the water flow unused by their farms and ranches."

Three things should emerge quite clear from this little bit of history. First, if we legislate to open all navigable streams in the state to all manner of recreational floating craft, we are among other things vesting an interest in the use of these waters for recreation. At some future date, if a rancher or farmer wants to develop a new irrigated field that would result in lowering the water level in a stream to the detriment of recreational floating, there would be a strong legal argument for an organization such as the Coalition for Stream Access or the Montana Department of Fish, Wildlife, and Parks to object and even file suit seeking injunction against the water use because of the public injury that would result from depleting a navigable stream that has been successfully floated for a number of years. In the "Use It or Lose It Study," the number one strategy listed for defending Montana's water resources from outside interests and thereby to protect future Montana water needs and development, is that "The state should rely upon the 1944 Flood Control Act and the O'Mahoney-Milliken Amendment as its first line of protection." It would seem that the State of Montana would be hard pressed to argue that

future Montana water development rights should be superior to downstream navigation needs because of this amendment, while arguing (through the Fish, Wildlife, and Parks) the opposite inside the state. It would seem to me that any Montana recreational navigation legislation should contain this same forward looking amendment, to protect the future of our agricultural base.

The second thing that should emerge is that navigation has traditionally been thought of in terms of rivers. The Army Corps of Engineers today considers three rivers in Montana as Phase 1 and navigable: the Kootenai, the Missouri, and the Yellowstone. As most farmers and ranchers will know, generally a permit from the Corps (and several other agencies) is necessary before work can begin for any structure on or work in, under, or over these rivers; most will also know that the Corps or its agents frequently fly over these rivers looking for violations. And now, many people are seeking to have all floatable streams in Montana declared navigable. While the upshot may not be the actual involvement of the Army Corps, one can well imagine the increased bureaucratic encroachment on any activities on or near any stream declared navigable by state law.

The third thing that emerges is that traditionally, when we spoke of "navigation", we were talking about commerce. We were talking about moving the products of the land. We were talking about physically maintaining adequate channels, and about two way traffic, down and up. My dictionary defines "navigable" as "wide or deep enough, or free enough from obstructions, to be travelled on by ships: as, a navigable river." It doesn't say rubber rafts, it says ships.

At present, the word "navigable" appears in Montana law in several places, that is, to designate a stream navigable has many specific legal connotations, besides any judicial interpretations. For example: 1. A fisherman may angle within the high water marks; 2. The state owns the land under it and all islands in it; 3. The state owns all lands which "at any time in the past comprised such an island or any part thereof"; 4. State lands bordering on navigable streams cannot be sold; 5. Navigable streams are to be considered as public ways (or roads); 6. "All persons shall have the same rights therein and thereto"; 7. All streams that can in fact be navigated are navigable (the law doesn't now specify: navigated by what); 8. The Fish and Game "commission may adopt and enforce rules governing recreational uses of all ... streams which are legally accessible to the public". Except for the last, (which is even broader in scope), all these and probably several other effects concern navigable streams. Is it really correct, or desirable, or even sensible to equate floatable with navigable? Is it proper to class recreational floating with navigation? Isn't that a little like apples and oranges?

Well, like it or not, the fact is that the traditional meaning of "navigable" is dramatically changing and with it on the horizon is evolving a dramatic change in the way we view private property and a landowner's rights thereon. According to the Coalition for Stream Access and the Montana Fish, Wildlife, and Parks and the two recent Montana lower court decisions regarding recreational navigation (as well as other cases in other states), it is proper to class recreational floating with navigation, and further it's proper that the public shall have unlimited access on floatable streams for all manner of recreation. Though one might think that a stream would have to be easily navigable or at least have a history of navigation, neither is necessarily the case. In Judge Bennett's decision on the Dearborn River, he stated, "The requirement for establishing navigability (under present state law) is not, however, a showing that the navigation is easy but simply that it is possible." He feels the rule should be: "A Montana stream is navigable and accessible for recreational purposes over so much of its entire course as is navigable by recreational craft at any given time." And "Once recreational navigation is established, navigation is not limited to water craft. The angler may wade between the high water lines and the hiker may walk." And, one would assume, the hunter may hunt, the camper may camp, the motorcyclist may cycle, the four wheel drive

enthusiast may drive, the snowmobiler may snowmobile, the prospector may prospect, the trapper may trap, the squatter may squat, the cross-country skier may ski, in short, any member of the public may conduct any otherwise legal recreational purpose or ventures thereon. And certainly by expanding the traditional commerce definitions of navigability to include recreation, he does not now propose to limit navigation to recreational uses--- I believe the popular phrase nowadays is "multiple use". Any otherwise legal activity would appear to have equal standing, things such as commercial movement of products, prospector dredging, commercial trapping, commercial guiding and outfitting, etc. And the real kicker is Bennett's reference to a sentence from an old U.S. Supreme Court case from 1870 involving an interstate dispute: "And they (rivers) are navigable in fact when they are used or are susceptible of being used in their ordinary condition as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel." (Emphasis added.) In other words, the Bennett decision implies that if a stream is so much as capable of being recreationally floated, whether it is actually floated or not, it is then accessible to the public. Judge Shanstrom, in his decision on the Beaverhead River, essentially agrees and goes even further to conclude that "The following water depths are the minimum required for recreational floating: ... Canoe-kayak- 0.5 (feet) Driftboat, rowboat, raft- 1.0 (feet) .... if the most shallow parts ... known as riffles ... are at least of these depths, then the river is suitable for recreational floating." And "The evidence established that a flow ... of approximately 175 cfs would result in at least a one foot depth of water in all of the riffles of the Beaverhead River." (Presumably the 0.5 foot depth would require only approximately half the 175 cfs, and even less on a channel narrower than that of the Beaverhead.) Further, he held that "A stream is not ... non-navigable simply because an occasional shallows, rapids, or falls interrupts navigation." And "Even if, however, the river were dry for a portion of the year or so low as to make floating difficult, such fact would not render the river non-navigable." And again, Judge Bennett, "Navigation ... would include travel for hunting and fishing and all those things we generally include under the general heading of recreation."

Although Judge Bennett denied a motion by the Department of Fish, Wildlife, and Parks for a declaration that the Montana Constitution should be interpreted as making all waters (navigable or not) open to public use, and although neither Shanstrom nor Bennett specifically say it, after having taken so many big steps from the traditional commerce definitions of navigation, it would seem only a small further step to sum it up and say, "Therefore all navigable streams in Montana that are now capable of being navigated as above described, are accessible to all members of the public for all lawful purposes, recreational and otherwise, at any time during the year and along any stretch of their reach." And whether these particular judges would take this small step or not, once accessibility on all these streams or portions thereof is established, it is only a natural progression to proceed to attempt to establish the least possible unlimited access to all these streams. We've seen many pushes in the past for easements or access to all other forms of public lands--- these efforts may well pale alongside a general push for unlimited access across private lands to navigable streams. (And I hesitate to pursue the logical progression further but if it ever happens that general access across private lands to navigable streams is established, that access too will probably not be limited to access for purposes of navigation or even for purposes of getting to the stream. At that point in time a judge might say, "All lands in Montana are accessible to all members of the public for all recreational and other purposes." I hope that time never arrives as it will mean that private ownership of land is no longer a possibility, and I certainly hope that no members of the Coalition for Stream Access or the Fish, Wildlife, and Parks has that goal even in the far back of their mind.)

At any rate, there are now two bills directly involving navigability that have

passed one house of our legislature and have been transmitted to the other house for consideration. By far the most significant is HB 888 which will be heard by the Senate Agriculture Committee in Room 415 of the Capitol at 1:00 P.M. on March 11th. In fairness I need to say that this bill is an attempt to compromise, during the delaying rush before transmittal, at least five navigability bills. However, the language and amendments in this bill are such that virtually all the pronouncements referred to have in court cases affecting stretches of the Beaverhead and Dearborn Rivers will become state law for all recreationally navigable streams in Montana, effective the date the Governor signs this bill. Furthermore, the state will, without compensation or consideration, without notice, without so much as confronting you as a landowner in court with condemnation proceedings, without leaving you any meaningful ability for protest, be in a position to acquire title to all lands underlying recreationally navigable streams including all islands at least up to the low water mark and probably up to the high water mark (wherever that continually changing line is). Title transfer will be automatic in many cases and at least possible if not automatic, in all cases. And you'll still pay the taxes due from these lands because either the state will decline to go to the expense of meandering all streams (that is, surveying the property lines on both sides) and therefore these lands will still appear on your tax bill, or else, if the state should so delineate its borders (through the use of your tax dollars, I might add, at the going rate of approximately \$1,000-2,000 per meandered mile times two for both sides of the stream), and "relieve" you of the taxes thereon, those taxes need to come from somewhere and the tax rates on your lands bordering the stream will merely increase to the point necessary to compensate for the lost revenue. (At least in the latter case, you would have a specifically defined boundary for tax purposes, for insurance purposes, for mineral purposes, in a word, for purposes of clear title to land.) Even further, if you had stand it, HB 888 says that any landowner receiving compensation for any recreational purpose on any of his land bordering a navigable stream (how far away from a stream must one be before he's no longer on land "bordering" it?) is liable for any injury to person or property that occurs while such person is using the land. There are several other problems with the language in this part of the bill not the least of which is the amendment that adds that a landowner has no protection from liability if he "creates an obstruction to the navigation of the stream for the harassment of persons navigating the stream." This could well have the effect of subjecting a landowner to litigation concerning whether the diversionary structure for his headgate needs to be quite as big as it is or extend quite as far into the channel as it does or whether there is an underlying element or intent of harassment; that is, irrigators will be placed in the position of being subject to having the state tell them how to build their headgates and diversionary structures so as to involve the least impact on recreational floating (this would probably occur through more aggressive involvement by the Fish, Wildlife, and Parks in the 310 permit process, which most farmers and ranchers should be familiar with).

I do not mean to imply that all these are the intent of HB 888. I firmly believe that most of those people directly involved with this bill did not intend these results. Nor do I believe, as Judge Bennett would have it, that "when the early legislature used the word 'navigation' they meant something other than commercial transport ... this would include travel for hunting and fishing and all those things we now include under the general heading of recreation." I have an idea that the members of that "early legislature" in 1933, during the depression years, had more pressing matters on their minds than recreational floating. The bottom line, in the final analysis, intentions don't seem to matter. What matters is the ways that language can be interpreted, and I believe that if HB 888 is passed as currently amended, it can and will be interpreted as I've suggested. The only thing I can think of that would make this bill as amended a lot worse for landowners and a lot better for recreationists, is if it were amended to guarantee recreationists



unlimited public access over private land to get to the so-called "navigable streams". As the bill stands even now, it is close to a worst possible solution from an agricultural landowner's point of view, and it is undoubtedly close to a best possible solution from a recreationist's point of view. The point is, an equitable solution lies somewhere between the extremes and not at either extreme.

By far, the most harmful part of this bill does not even appear in the bill itself. It is the fact that this bill is being supported by several members of the loosely knit "ag coalition", namely, the Montana Stockgrowers Association, the Montana Farm Bureau Federation, and WIFE. Are they so naive as to believe that this bill will solve the problem or improve landowner-sportsmen relations, or that the Coalition for Stream Access, the Montana Fish, Wildlife, and Parks, and sportsmen and recreationists are going to limit their access to those few large streams that have been commercially floated over the past few years? One of the leaders of the Coalition for Stream Access testified in court, under oath, in the Dearborn case that one of the reasons for forming the Coalition in the first place was to address the "problem in gaining and maintaining access on some of Montana's rivers and streams ... (including) smaller streams rather than what are commonly known as rivers ... (including) some blue ribbon spring creeks." HB 888 states "all waters ... capable of being navigated by a craft ... are 'navigable in fact' .... 'craft' means a canoe, kayak, inflatable boat, (etc.)." Once this law is passed the most it will take to prove a stream "navigable" under the law, will be a professional kayaker, accompanied by a photographer. The most it will take for title of that streambed to pass to the state will be one court case against one rancher who's seeking for whatever reason to block access for any form of recreation. I might add at this point that even the Department of Fish, Wildlife, and Parks as recently as 1977, purchased lands adjacent to the lands of the defendant in the Beaverhead case, including the streambed. In 1979, the Department purchased riverbottom land downstream from the defendant's property on the same river for in excess of \$2,000 per acre. And as recently as 1981, the Department was involved in negotiations with the defendant himself for the purchase of his streambed under the River. If they believed then that the land underlying navigable streams belonged to the state, as they now contend, why did they offer to purchase it? It would appear that they have realized that that route is too limited and expensive (especially in this time of legislative fiscal conservatism), and that they can better and cheaper achieve a general access through court action, and now, through legislation.

The second bill affecting the recreational navigation issue is SB 347, which will be heard by the House Judiciary Committee in Room 224A of the Capitol on March 8<sup>th</sup> at 8 A.M. This bill is simple and straightforward. It states that a recreational easement by adverse possession cannot be obtained. As the law now stands, adverse use of land for five years by a few recreationists can be cause for acquiring a court ordered public easement on or across your land for whatever otherwise legal purposes the adverse use entails. This bill seeks to protect not only the water-courses across your land but the rest of your land as well. I can see no reason why a landowner should not actively support this bill. There's no need for recreationists not to negotiate with landowners for access either through seeking permission or through a leased or permanent easement through contract, as any other person or legal entity would expect to do. Recreational interests would do well to support this bill also--- they would have little to lose by supporting it, and it would be an excellent show of good faith in their continued efforts to improve sportsmen-landowner relations.

In conclusion, especially because of the potentially explosive emotional nature of this issue, from both sides, and because of the many inherent complexities, it is not to be disposed of lightly or merely cosmetically. It needs in-depth, careful, conscientious study and a negotiated legislative settlement through a co-ordinated effort by open-minded landowners and open-minded recreationists, if there are any (of either) left. Maybe a general legislation covering all streams of a



given certain size or quality during all seasons and on all stretches could be equitable and practical. Or maybe different seasons and different streams and segments thereof need to be addressed and listed individually to better solve the issue in a workable, practical, and equitable manner. This needs to be discussed by both sides. Perhaps the legislature might direct for example the majority and minority leaders of either or both houses of the legislature to appoint an interim study commission, with each leader appointing, say, two agricultural landowners, two recreationists, and a lawyer, with the purpose of presenting the 1985 legislature with a workable compromised proposal.

In summary, the navigability issue is perhaps the biggest confrontation to Montana landowners in modern times because the effects are far-reaching, unfamiliar, non-traditional, and numerous. Of all the many issues involved, there are four that stand out:

The number one issue in the controversy really has nothing to do with navigation or recreation--- it is a question of land ownership: ~~Who owns~~ that land?

The number two issue has more to do with water than with recreation: Will future water development potential in Montana for agriculture and industry be protected?

Number three involves a definition: Given the many effects, is it sensible to equate recreational floating with navigation, or should we be using another word backed up by another distinctive body of law?

And the number four issue involves recreational access: Of the total stream mileage in Montana under what conditions should what stretches be available to the public for recreation and other uses?

It remains that we agriculturalists and recreationists live in this state together. Many facets of the issues herein discussed are paramount in the reasons that each of us chooses to remain in Montana. We do have a democratic form of government. We do therefore have the opportunity to work out our differences, and to discover our likenesses.

---Lorena Grosfield

The question remains, I suppose, how is a reasonable agricultural landowner to put all this together in his mind in such a way that he can determine a meaningful, prudent, and fair position on the issue? It is not easy because so many of the elements are so potentially emotional. My personal feelings are, and this doesn't mean that I'm done thinking or learning about it, or that my mind is closed on the subject:

1. Except in the obvious cases meandered by the federal government, where a landowner has not paid taxes on a streambed, the streambed or watercourse is and should rightfully be the property of the adjacent landowner--- this is how it has been and assumed to have been historically, both in title and in fact. This is the only practical way to view the situation and avoid such insurmountable problems as surveying a continually changing high water property boundary on each side of all streams for tax purposes, for insurance purposes, for mineral purposes, in a word, for purposes of clear title to land.
2. The water itself belongs to the state and the state thereby has some rights to control and plan for the development and use of that water. These rights belong to the state and should never be given up to the federal government. These states' rights include rights to control various activities on many watercourses such as fishing, the building of water development structures, the operation of return flow water treatment plants, and diversionary and non-diversionary uses of water, including for irrigation and recreation.
3. The public right to use meandered public waters and lands for any legal purposes within the meander lines is not at issue.
4. Future agricultural and industrial water development in semi-arid Montana needs express legislatively guaranteed protection from present or future pre-emption by navigation or recreation. It is a simple matter of economic priority.
5. There are many streams or segments thereof, unmeandered, that need legislative recognition of vested public recreational rights including recreational navigation (which I prefer to call recreational floating). Equally needed in these cases is landowner protection from liability, harrassment, or expense relative to or arising out of these recreational rights. There is not going to be an answer that is satisfactory to all the participants involved in the issue.
6. Especially because of the potentially explosive emotional nature of this issue, from both sides, and because of the many inherent complexities, it is not to be disposed of lightly or merely cosmetically. It needs in-depth, careful, unprejudiced study and a negotiated legislative settlement through a co-ordinated effort by open-minded landowners and open-minded recreationists, if there are any (of either!) left.
7. Finally, it's helpful to remember that a large part of the reason that we citizens of Montana remain in Montana has to do with a quality of life that we find here. There are ample opportunities for outdoor recreation, for "productive and enjoyable harmony between man and his environment", for solitude, for communion with nature on your terms, and for sharing "the good life" with those you care for. In this context, as a recreationist, there is ample occasion for refuge from the demands of society as well as restful and meaningful alternatives for enjoying life to the fullest. From the recreationist's point of view, Montana offers a quality of life that is increasingly threatened and encroached upon by a growing population seeking more recreational opportunities, by a bureaucracy and conservative traditionalism that frustrate recreational accessibility, and by continuing development of natural resources. Oddly, the conservative traditionalism is instrumental in keeping Montana unique from the fast-paced, impersonal

urbanized states, and further, the development of our natural resources is due largely to the natural inclination of modern man to progress, to improve his state of being, to develop the physical means that will make life easier and more pleasant for ourselves and our heirs, thus allowing, among other things, more time for leisure and for recreation, that is, to enjoy the quality of life that keeps the agriculturalist in Montana in the first place. It's a sort of "Catch 22".

In this same context of opportunity, as an agricultural landowner, there is ample occasion to witness the fruit of your labor and the response of the land to your decisions. From the agriculturalists point of view, it is a quality of life that is increasingly threatened and encroached upon by a growing population seeking more recreational opportunities, by more demands for social services that inevitably results in increased disproportionate taxes, and by an ever increasing bureaucracy. Oddly, the success of this bureaucratic encroachment results largely from the major ingredient in the quality of the agriculturalist's life--- individuality; your decisions are your decisions. And to subjugate your individuality to a bureaucracy is distasteful; to subjugate it even to a stable united agricultural front in the form of, for example, a lobbying effort or resistance to the bureaucracy, though often desirable is nevertheless too seldom successful, on any except patently radical issues, for the same reason--- to subjugate your individuality to the will of a group is to lose a part of that "rugged individualist" quality of life that keeps you in Montana in the first place. It's a sort of "Catch 22".

It remains that we live in this state together. We have a democratic form of government. We do therefore have the opportunity to work out our differences, and to discover our likenesses.

Finally, the navigability issue is perhaps the biggest confrontation to Montana landowners in modern times because the effects are far-reaching, unfamiliar, non-traditional, and numerous. Of all the many issues involved, there are four that stand out:

The number one issue in the controversy really has nothing to do with navigation or recreation--- it is a question of land ownership: Who owns that land?

The number two issue has more to do with water than with recreation: Will future water development potential in Montana for agriculture and industry be protected?

Number three involves a definition: Given the many effects, is it sensible to equate recreational floating with navigation, or should we be using another word backed up by another distinctive body of law?

And the number four issue involves recreational access: Of the total stream mileage in Montana, under what conditions should what stretches be available to the public for recreation and other uses.

## VISITOR'S REGISTER

HOUSE      NATURAL RESOURCES

COMMITTEE

BILL HB 914

DATE 3/23/83

SPONSOR                      REP. ASAY

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## FACT SHEET

### For Legislation Concerning the Assessment of the Potential for a Joint Water Development Project Between Montana and Wyoming on the Clarks Fork of the Yellowstone River

#### NEED

The Clarks Fork River is located in the South Central part of Montana. It is an interstate tributary of the Yellowstone River and its headwaters originate within the Shoshone National Forest in the State of Wyoming. The drainage area of the Clarks Fork River forms one of the main agricultural valleys in Carbon County, Montana.

The most important source of income to residents living in the Clarks Fork basin is agriculture. Livestock production has historically dominated agricultural activity, however as irrigation projects developed, diversified farming has gained importance.

Apportionment of water on the Clarks Fork River comes under the jurisdiction of the Yellowstone River Compact. This compact was signed by the states of Montana, Wyoming and North Dakota in 1950, and intended to allocate surplus water on a percentage basis. Of the unused and unappropriated water in the Clarks Fork River after 1950, Montana is entitled to 40% and Wyoming is entitled to 60%.

There is a need for legislation authorizing funding for data collection, computer modeling and discussion for a joint water development project that can satisfy the needs of both states. The following facts reflect this

situation.

Both present and future agricultural, municipal and mineral development in the Clarks Fork basin depend on a firm supply of water. Mainstem storage would help alleviate water shortages and economic losses such as those that have been experienced in the 1930's, 1940's and 1960's.

The Clarks Fork of the Yellowstone is highly developed for irrigation of such cash crops as beets, beans, wheat, oats, barley and alfalfa hay. ~~On~~ farm livestock amounts to over 100,000 head which is evenly split between cattle and sheep production.

There is concern in Montana about three reservoirs that are presently being proposed in the state of Wyoming in the Clarks Fork basin. The construction and operation of these reservoirs will undoubtedly affect water users in Montana. The following is a summary of the data relating to these projects:

1. Badger Basin  
Applicant: Allen Fordyce (large rancher)  
Location: Sec 7 T57N R101W  
Date: November 28, 1975  
Use: Reservoir- irrigation and industrial  
Amount: 69,267 AF per year
2. Clark Reservoir  
Applicant: Allen Fordyce  
Location: Sec 13 T57N R102W  
Date: November 28, 1975  
Use: Reservoir- irrigation and industrial  
Amount: 30,400 AF per year
3. Clarks Fork Reservoir  
Applicant: Shoshone-Heart Mountain Irrigation District  
Location: Sec 16 T56N R103W  
Date: May 14, 1980  
Use: Hydroelectric Power Generation  
Amount: 444,330.9 AF per year

Wyoming development could adversely affect Montana's existing uses as well as Montana's future uses of its legal share of water under the terms agreed

upon in the Yellowstone River Compact. Each states share of water, however, has never been quantified and a method of compact administration has never been established.

Lastly, there are no cost-effective reservoir sites in Montana on the Clarks Fork River.

#### PURPOSE OF THE PROPOSAL

The threat of overdevelopment by Wyoming and the subsequent impact upon water users in Montana make it imperative that the state of Montana determine its rights under the terms of the Yellowstone Compact as well as assess the feasibility of a joint storage project with Wyoming. This strategy of cooperation will help to mutually satisfy the present and future needs of both states and avoid costly litigation later. The purpose of this proposal is two-fold. Legislation should be drafted which will authorize funding to complete the following tasks:

1. Department of Natural Resources and Conservation

Collect all relevant data, build hydrologic computer simulation models and conduct any necessary water availability studies to determine Montana's and Wyoming's allocable share of water under the terms of the Yellowstone Compact.

2. State Legislature

Create a special legislative commission comprised of legislators within the area who in close cooperation with the DNR&C conduct discussions with legislators, the State Engineer, and the Water Development Commission from Wyoming regarding the feasibility of one or more joint reservoir projects in Wyoming that would mutually satisfy the present and future needs of both states.

Results of these discussions and scientific investigations could be formulated in a "Memo of Understanding" or "Agreement" which will bring the project to the point where a joint appraisal level study can begin.

BUDGET

I WATER AVAILABILITY ANALYSIS

Operating Expenditures

Personnel Services	\$	0
Contracted Services	\$	10,000
Computer Time	\$	2,000
Supplies and Materials	\$	100
Communications	\$	200
Travel	\$	800
Contingencies	\$	500

---

\$ 13,600

II Determination of Feasibility of a Joint Project

Operating expenditures for Legislators  
and DNR&C personnel

Travel	\$	2,000
Legal Assistance	\$	5,000
Communication	\$	100

---

\$ 7,100

GRAND TOTAL \$ 20,700



--- AMENDMENTS HB893  
(Introduced Bill White copy)

1. Title, lines 6 through 7  
Following: "TO"  
Strike: "AUTHORIZE A STUDY OF WATER MARKETING,"
2. Page 15, lines 6 through 8  
Following: "until"  
Strike: ":"
  - (a) July 1, 1987; or
  - (b) "
3. Page 17, line 10  
Following: "[section 6]"  
Strike: ", until July 1, 1987"
4. Page 19 line 8 through line 10, page 20  
Strike: Section 11 in its entirety  
Re-number: all subsequent sections
5. Page 21 lines 19 through 22  
Strike: subsection (1) in its entirety  
Re-number: subsequent subsection
6. Page 25, line 12  
Strike: "water,"
7. Page 25, lines 14 and 15  
Strike: "or water as a transport medium"  
Insert: "coal slurry"

## AMENDMENTS TO HB 893

## Introduced Bill (White Copy)

1. Page 8, line 10 through line 19, page 9  
Strike: Section 3 in its entirety  
Penumber: all subsequent sections
2. Page 15, lines 6 through 8  
Following: "until"  
Strike: ":  
    (a) July 1, 1987; or  
    (b) "
3. Page 17, lines 6 through 10  
Following: "(2)" on line 6  
Strike: the remainder of the material in its entirety  
Insert: "The use of water for slurry transport of coal is not a beneficial use of water except upon affirmation by the legislature of the findings and determinations of the department made under 85-2-311."
4. Page 17, line 12 through line 25, page 18  
Strike: section 10 in its entirety through subsection (2)  
Insert: "Section 9. section 85-2-311, MCA, is amended to read:  
  
    "85-2-311. Criteria for issuance of permit. ~~The~~  
    ~~(1) Except as provided in subsections (2) and (4), the~~  
    department shall issue a permit if the applicant  
    proves by substantial credible evidence that the  
    following criteria are met:  
    ~~41~~ (a) there are unappropriated waters in the  
    source of supply;  
    ~~42~~ (i) at times when the water can be put to the  
    use proposed by the applicant;  
    ~~43~~ (ii) in the amount the applicant seeks to  
    appropriate; and  
    ~~44~~ (iii) throughout the period during which the  
    applicant seeks to appropriate, the amount requested  
    is available;  
    ~~45~~ (b) the rights of the prior appropriator will  
    not be adversely affected;  
    ~~46~~ (c) the proposed means of diversion,  
    construction, and operation of the appropriation works  
    are adequate;  
    ~~47~~ (d) the proposed use of water is a beneficial  
    use;  
    ~~48~~ (e) the proposed use will not interfere  
    unreasonably with other planned uses or developments  
    for which a permit has been issued or for which water  
    has been reserved;

(6) an applicant for an appropriation of 10,000 acre feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5);

(2) (a) The department may not issue a permit for an appropriation of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water unless:

(1) the department makes an affirmative finding that:

(A) the criteria in subsection (1) are met;

(B) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; and

(C) the proposed appropriation is in the public interest; and

(b) In making a finding under subsection (c) shall consider:

(i) existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the economic feasibility of the project;

(iv) the effects on the quantity, quality, and notability of water of existing beneficial uses in the source of supply;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20;

(vii) the use of water is reasonable;

(viii) the use of water is not detrimental to the public welfare.

(c) a permit for an appropriation for a diversion for a consumptive use of 10,000 or more acre feet of water a year or 15 or more cubic feet per second of water under subsection (2) is not valid and water may not be used pursuant to the permit until the legislature affirms the findings of the department.

5. Page 10, lines 5 through 6

Following: "in" on line 5

Strike: "subsection (1), including subsection (f)"

Insert: "subsections (1) and (2)"

6. Page 19  
Following: line 7  
Insert: (4)

"(4) An appropriation, diversion, impoundment, restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state except in accordance with this section."

7. Page 25, line 12  
Strike: "water"
8. Page 25, lines 14 and 15  
Strike: "or water as a transport medium"  
Insert: "coal slurry"
9. Page 26  
Following: line 10  
Insert: "Section 14"

NEW SECTION. Section 14. Section 75-20-218, NCA, is amended to read:

"75-20-218. Hearing date - location - department to act as staff - hearings to be held jointly. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. ~~Except for those hearings involving applications submitted for facilities as defined in (b) and (c) of 75-20-104(10) certification~~ Certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion thereof is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department of health and the board of health shall hold any required permit hearings required under laws administered by those agencies in conjunction with the board certification hearing. In such a conjunctive

hearing the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department of health and the board of health."

10. NEW SECTION. Section 15. Repealer. Section 85-1-121, MCA, is repealed.

11. Renumber: subsequent sections

# STANDING COMMITTEE REPORT

March 23, 1983

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE JOINT RESOLUTION** Bill No. **36**

~~LINE~~ reading copy ( ~~WHITE~~ )  
color

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY  
AND PROVIDE FOR PRESERVATION OF THE RIGHTS OF LANDOWNERS ADJACENT  
TO PUBLIC LAND AND WATERWAYS AND TO IDENTIFY AND PROVIDE FOR  
RIGHTS OF THE PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS;  
REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.**

Respectfully report as follows: That **HOUSE JOINT RESOLUTION** Bill No. **36**

**be amended as follows:**

**1. Page 2, line 11.**

**Following: "study"**

**Insert: "committee"**

**Following: "shall"**

**Insert: "cooperate with all interested persons to the fullest  
extent possible to"**

**AND AS AMENDED**  
**DO PASS**

~~XXXXX~~  
**DO PASS**

**HAL HANFEN**

Chairman.

# STANDING COMMITTEE REPORT

March 23, 19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **914**

**first** reading copy ( **white** )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR ANALYSIS OF  
THE POTENTIAL FOR A JOINT WATER DEVELOPMENT PROJECT BETWEEN  
MONTANA AND WYOMING ON THE CLARKS FORK OF THE YELLOWSTONE RIVER;  
AND TO APPROPRIATE MONEY FOR THE ASSESSMENT."**

Respectfully report as follows: That **HOUSE** Bill No. **914**

**be amended as follows:**

**1. Page 2, line 21.**

**Strike: "two"**

**Insert: "four"**

**Strike: "from South Central Montana; one"**

**Insert: "two"**

**2. Page 2, line 22.**

**Strike: "one"**

**Insert: "two"**

**AND AS AMENDED**

**DO PASS**

**DO PASS**

**MR. HARPER**

Chairman.