

MINUTES OF THE MEETING  
AGRICULTURE, LIVESTOCK AND IRRIGATION  
MONTANA STATE CAPITOL

April 13, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 325 of the State Capitol Building, at 8:00 a.m., by Chairman Galt.

ROLL CALL: Senators Ochsner, Lane and Aklestad excused. All other members present.

CONSIDERATION OF HOUSE BILL 908: Senator Galt opened the meeting, drawing the committee's attention to the amendment by the Rules Committee which was not included when their committee report was drawn up. He said the Agriculture Committee should adopt this amendment. Exhibit #1.

Senator Lee moved to include the amendment on page 1, line 10, inserting "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER" following "MARKETING". Motion carried unanimously.

Representative Hal Harper, HD 30, Helena, told the committee the bill reverses a long-standing state policy and puts the state in the process of marketing water. Once you get to market water, you will not reverse it for a long time and you set the process for the future, according to Harper. That is one of the basic purposes of HB 908. He emphasized the South Dakota sale of water to ETSI for 1.4 billion dollars, and the court cases pending for out of state water sales. He said the coal slurry ban is as strong as it can be and there is not going to be any water sold for coal slurry. HB 908 repeals the ban on out of state sale of water and decides which water can be moved out of state and which can't. He said Montana doesn't want to participate in a water war between the states. Any hasty action taken will give more push in Congress. If the laws are changed in Congress, Montana has a lot to lose. Representative Harper handed the committee amendments, Exhibit #2, and ran through the bill pointing out on page 5 the provision for replacement of pipelines. He said the rest are minor changes, until the top of page 16. The bill broadens authority. The amendments, in addition to acquiring water, authorize the state to acquire storage. Most of the other amendments relate to this section. The amendments were worked out in conjunction with the Department of Natural Resources to make them more workable. Amendment #3, the Department is limited by law to acquire water from the government for industrial uses. The other amendments basically state that the State of Montana is going to assume there are unappropriated waters in the federal reservoirs. For that reason, any purchase of water storage will be through the issuance of a permit so that criteria will be checked out. In order to get a permit a person has to prove they are on unappropriated waters, etc. The new language on page 17, 18 and 19 are for appropriations of more than 10,000 acre feet. We need to make sure certain criteria are met. Section 9 is a repealer. The out of state ban is repealed. Section 10 is the "heart" of

the bill. It is a study of water marketing. Representative Harper said he had a whole list of questions that need to be answered before they can draw up a water marketing bill.

PROPONENTS:

James T. Mular, representing the Brotherhood of Railway, Local Engineers and United Transportation, referred to page 20, line 17 and the impact it had on railroad jobs in Montana. He was opposed to coal slurry and didn't feel there was a need for coal slurry. Water is more important, he felt. Once you get one pipeline, you may get 50. There are 6,000 railway employees in the state with 1500 out of work because of economic conditions. He reminded the committee of state lands put in trust by enabling acts. Water is their last resource. He said some amendment should be included to protect land for future use. Water should not be excluded from that. A study that will look at coal slurry is important.

Susan Cottingham, Director, Montana Environmental Center, said this is the most important water resource bill. Their department has studied coal slurry and has supported this bill as the best approach. It is a study bill. There are a number of legal issues involved in the water export laws. They believe the export ban is unconstitutional. This bill repeals that. One provision puts all large pipe lines under the Siting Act. If the State of Montana is going to have control, it should have some jurisdiction. She drew attention to page 20, line 13, item b. All water uses in Montana are based on the 1944 Flood Control Act. Montana should take a leadership role in negotiating a resolution. She considered line 22, e, very important and said it is very important to take a grave look at how the state sets up a system and how the permitting process will work. She urged passage of the bill.

Leo Berry, Department of Natural Resources, was concerned that the export ban in the statutes is unconstitutional. Pages 17 and 18 of the bill is a mechanism to clarify that problem. It is critically important to address that issue, but Montana would not have the authority to exercise that under the current laws. He called attention to 1) the legal challenge of the export laws; 2) South Dakota's interest in marketing Missouri River water. Regarding the study portion of the bill, he didn't think a great deal would be gained, but there is the possibility of setting up the mechanisms. If some of the questions are not answered, we should head in that direction.

Willa Hall, League of Women's Voters, Exhibit #3; and Toni Kelly, Northern Plains Resource Council, Exhibit #4, supported the bill.

Dan Kemmis, HD 94, Missoula, said Montana has, in the past, constructed two means to avoid the loss of water; the coal slurry and the export ban. He said to think of the two as dams Montana has constructed to keep Montana waters here. The situation we now have is that considerable people are looking at the dams and

one or both might give way. The export one is the most important. It could lead to a state like Arizona coming in and taking it, so we had better build another dam. With the export ban, you can't export water from Montana, but once the supreme court says you can, it won't very likely stand up. Any very large appropriations of water will have to go through a review process and have to have legislative approval whether it is used within Montana or out of Montana because you can't discriminate against out of state users. What it does with the slurry ban is that we think it is foolish to ignore but we should do some study. The Senate Rules Committee took the appropriation out of the bill, but money is needed for study. It could be put back in through HB 447.

Mike Fitzgerald, Montana Trade Commission, gave testimony in favor. Exhibit #5.

#### OPPONENTS:

Jim Mockler, Montana Coal Council, gave the committee Exhibits #6 and #7, saying if they want to amend the Facility Siting Act, they should put a bill in to amend it. Should you decide to amend the act, he had amendments. The bill was done in a large hurry and he referred the committee to pages 17 and 18, lines 2 and 3 where he said you will find there is no 2a and there are two 2 c's. Second, the proposal is not in the public interest. The public interest is a broad term. He asked the committee to note page 23, line 18, referring to consumptive uses and questioned what consumptive uses were. He felt it added one more cloud to the bill. He favored 85-1-121. He said if you read Section 3, page 19, it goes through the same legislative process for the export or any use of water. Line 12 - if you want to build a stock reservoir you have to go through a legislative process. Then you have to go back to the legislature and they will tell you if you can build it, according to Mockler. He did not think the bill solved any problems and called it a horrendous peice of garbage. He said he would recommend the study if there was nothing else.

Ward Shanahan, attorney, appearing on his own right, said he has been working with the Facility Siting Act and this puts another segment of industry under the Act. This particular bill is just a third ban so a project can be held up before it can be built. He agreed with Mockler's amendments. He also supported the water study.

#### COMMITTEE QUESTIONS:

Graham: South Dakota has a lawsuit on a proposed sale of water. If they win the law suits and can go ahead with the sale and we are sitting here studying, what will happen. If we don't have any machinery set up to sell water, could we lose the water?

Berry: The down stream states, if they win the law suits, can appropriate for any water. If they won they would persue for

coal slurry or other purposes. If they put it to use we would then be obligated to pass that water down stream. That is why the Department supported some type of mechanism.

Mockler: If you pass this bill you will still have to wait for another legislature to do anything with your water.

Lee: How much of an appropriation was taken out of this?

Harper: \$80,000 should be put in HB 447 for the study.

Galt: What did Wyoming finally come up with.

Harper: They passed two bills and the governor vetoed both so they are back where they started.

Galt: It would prohibit an agricultural person from getting this?

Berry said he couldn't imagine that.

Galt, referring to page 19, line 9 on through the section, asked if that applied just to 10,000 acre feet or what. Berry answered only those over 10,000 acre feet would have to go to the group.

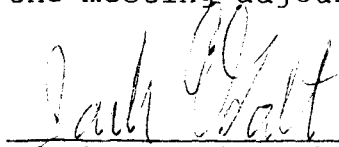
Representative Harper asked the committee to read the whole sentence to the end.

In closing, Representative Harper said the decision we need to make is are we going to market water in Montana and how are we going to do this? What is the water in Montana? How do you sign a 40 year contract to that water? Can the state legally sell water? South Dakota tried; they are now in court. We must think about the effect of our action on congressional action. What is the impact on jobs? We only have one rail line. A large percent of business done by the railroad is coal business. Competition is only applying to coal and you can't reverse the softness of the coal market. What are the effects on the future potential of water? If you don't have water, a lot of Montana land is useless. What are the drought cycles? One point he wished to make was the magnitude of the decision we have to make here. The bill is pretty much self explanatory. What is the public interest criteria? One of the purposes is to put the legislature in a decision making position. If the State of Montana is going to enter into water marketing, it is essential the legislature be involved. As to consumptive uses not being defined - there is not much question. The last amendment points out some of the hydro projects will not be covered and considered for consumptive uses. He was surprised the opponents supported the study but not the remaining part. He said it was the best can of garbage we have going this session.

Senator Galt said he would try to get the committee together for executive action the following morning, as many members were in Finance and Claims at the present time.

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page 5

There being no further business, the meeting adjourned.

  
\_\_\_\_\_  
Jack E. Galt, Chairman

ROLL CALL

AGRICULTURE COMMITTEE

48th LEGISLATIVE SESSION - - 19 83

Date 4-13-83

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald	✓		
GRAHAM, Carroll	✓		
BOYLAN, Paul F.			✓
CONOVER, Max	✓		
LANE, Leo			✓
LEE, Gary	✓		

Each day attach to minutes.

4-13-83

BILL NO. HB 908

# VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)





Ex #1  
Ag 4-13-83

AMENDMENT TO HB 908

(Senate Rules Committee intended to adopt this amendment, as per attached minutes, but inadvertently omitted it from the Committee report.)

1. Page 1, line 10.

Following: "MARKETING"

Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"

Minutes of April 6, 1983  
Ninth meeting of the Senate Rules Committee  
Page Three

SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

This bill was brought to the attention of the Rules Committee because Joint Rule 6-3 provides that a bill should be limited to one subject. Secretary of the Senate said he believed that there is more than one subject in the bill.

Speaker of the House, Kemmis, testified that the bill is in his opinion very coherent and to take out any part of it would destroy the coherency of the bill. He felt that all of the parts related to basically one subject. However, he did state that he would be glad to see the "PROVIDING AN APPROPRIATION" stricken from the title and on page 21, lines 17 through 22, the entire section stricken.

Lobbyist James Mockler spoke, advising that he felt that the bill had three distinct subjects.

Jim Mular of the Railroad Brotherhood disagreed with Mockler.

Senator Towe stated that rules say that no bill shall contain more than one subject, and that the subject of this bill is the use of industrial water.

Senator Turnage thought that the bill deserved a hearing and suggested the following amendments to HB 908:

1. Title, lines 5 through 10.  
Following: "AN ACT" on line 5  
Strike: The remainder of line 5 through "MARKETING" on line 10.  
Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"
2. Page 1, line 10.  
Strike: "PROVIDING AN APPROPRIATION;"
3. Page 21, lines 17 through 22.  
Strike the entire section.

Senator Turnage moved that the bill be reported out of committee as having been properly received for consideration by the Senate and that the bill be referred to the proper committee as amended.

With Senator Aklestad voting No and all other Senators voting Yes, the motion passed.

April 7th, 19 83  
Bill Clerk

MR. PRESIDENT

We, your committee on Senate Rules

having had under consideration House Bill No. 908

Respectfully report as follows: That House Bill No. 908

is reported out of committee as having been properly received for consideration by the Senate and that the bill be referred to the proper committee amended as follows:

1. Title, lines 5 through 10.  
Following: "AN ACT" on line 5  
Strike: The remainder of line 5 through "MARKETING" on line 10.
2. Page 1, line 10.  
Strike: "PROVIDING AN APPROPRIATION;"
3. Page 21, lines 17 through 22.  
Strike: Section 11 in its entirety.

~~DO PASS~~

PROPOSED AMENDMENTS TO HB 908

1. Page 1, line 10.  
Following: ~~"MARKETING"~~  
Insert: "PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER"
2. Page 16, line 2.  
Following: "reservoirs."  
Insert: "(1)"  
Following: "water"  
Insert: "or water storage"
3. Page 16, line 5.  
Following: "industrial"  
Strike: "use"  
Insert: "and other uses"
4. Page 16, line 10.  
Following: line 9  
Strike: "as are established under the provisions of 85-2-311"  
Insert: "as it considers appropriate provided that, if a permit as defined in subsection (9) of 85-2-102 is required, the conditions required under 85-2-311 are met"
5. Page 16, line 11.  
Following: line 10  
Insert: "(2) Until a final decree has been issued pursuant to 85-2-234 concerning the waters in a federal reservoir, the department must exercise the authority granted to it under subsection (1) only in conjunction with the issuance of a permit pursuant to 85-2-311 for any specific sale, rent, or distribution of water from a federal reservoir."
6. Page 18, line 2.  
Following: "findings"  
Strike: "pursuant to"  
Insert: "whenever required by"
7. Page 19, line 2.  
Following: "department"  
Insert: ", except that for purposes of this subsection, the use of water for the purposes of development of hydroelectric power is not a consumptive use"

Ex #3

WITNESS STATEMENT

Name Willa Hall Date 5-13-83  
Address Helena Support ? X 908  
Representing League of Women Voters Oppose ?         
Which Bill ? HB 908 Amend ?       

Comments:

Because of the interest & questions on water marketing and to clear up the constitutional ban on water exporting HB. 908 is very important. The public needs to be involved in the study & important decisions made relating to water.

Please leave prepared statement with the committee secretary.

# NORTHERN PLAINS RESOURCE COUNCIL

Field Office  
Box 858  
Helena, MT 59624  
(406) 448-4965

Main Office  
419 Stapleton Building  
Billings, MT 59101  
(406) 248-1154

Field Office  
Box 886  
Glendive, MT 59330  
(406) 365-2525

CHAIRMAN GALT AND MEMBERS OF THE SENATE AGRICULTURE COMMITTEE  
MY NAME IS TONI KELLEY, MY HUSBAND AND I RANCH IN THE SOUTH DEER  
LODGE VALLEY. I AM CURRENTLY CHAIRPERSON OF THE NORTHERN PLAINS  
RESOURCE COUNCIL. WE SUPPORT HB 903.

AGRICULTURE IS VITALLY DEPENDENT ON WATER. THIS BILL WILL  
HELP ENSURE THAT THIS VITAL RESOURCE IS WISELY USED AND PROTECTED.  
THIS BILL AFFORDS MONTANA THE ABILITY TO PROTECT ITS WATER RESOURCES,  
WHILE WE EXAMINE THE ISSUES SURROUNDING WATER MARKETING AND EXPLORE  
THE RAMIFICATIONS OF REPEALING THE CURRENT BAN ON THE USE OF MONTANA  
WATER IN COAL SLURRY PIPELINES, SUCH AS RAIL SHIPPING RATES AND  
COAL PRODUCTION.

IT PLACES LARGE WATER AND SLURRY PIPELINES UNDER THE MONTANA  
MAJOR FACILITY SITING ACT. THE SITING ACT ALLOWS FOR ORDERLY AND  
THOROUGH REVIEW OF MAJOR DEVELOPMENT PROJECTS AND SEEKS TO MINIMIZE  
THE ADVERSE IMPACTS OF SUCH PROJECTS. THE SITING ACT INCLUDES THE  
LANDOWNERS AFFECTED BY SUCH PROJECTS IN THE EARLY STAGES OF THE SITING  
AND ROUTING PROCESS. IT CONSIDERS REASONABLE ALTERNATIVES SO THE  
VARIOUS OPTIONS CAN BE COMPARED.

HOUSE BILL 908 REPEALS THE CURRENT LAW REQUIRING LEGISLATIVE  
APPROVAL TO EXPORT MONTANA WATER SINCE IT IS BELIEVED TO BE UNCONSTITUTIONAL.  
THIS LAW IS REPLACED WITH IMPROVED PUBLIC INTEREST <sup>CRITERIA</sup> ADDED  
TO THE WATER USE ACT AND REQUIRES LEGISLATIVE APPROVAL OF LARGE AP-  
PROPRIATIONS FOR CONSUMPTIVE USES. THESE WILL ENSURE THAT CURRENT  
USERS WILL NOT BE HARMED AND FUTURE AGRICULTURAL NEEDS WILL BE  
PROTECTED.

HOUSE BILL 903 WILL ALLOW THE STATE TO ACQUIRE WATER OR WATER STORAGE IN OTHER FEDERAL RESERVOIRS ASIDE FROM FORT PECK. WITH THE PROPOSED AMENDMENTS AGRICULTURE WILL HAVE INCREASED ACCESS TO FEDERAL WATER. THIS IS IMPORTANT ON THE LOWER YELLOWSTONE RIVER TO IRRIGATORS, SINCE THEY ARE SO DEPENDENT ON WATER STORED IN YELLOWTAIL RESERVOIR TO ENSURE ADEQUATE SUPPLIES ESPECIALLY IN LOW FLOW YEARS.

ASIDE FROM THE STUDY OF THE LEGAL ASPECTS SURROUNDING WATER MARKETING AND THE IMPACTS OF COAL SLURRY PIPELINES, HOUSE BILL 903 SEEKS TO AVOID LITIGATION OR CONGRESSIONAL ACTION BY DOWNSTREAM STATES TRYING TO PREVENT UPSTREAM WATER DEVELOPMENT. CURRENTLY, SOUTH DAKOTA IS IN COURT OVER ITS SALE TO THE ETSI PIPELINE COMPANY; THE MISSOURI BASIN WATER USERS ASSOCIATION IS SEEKING FEDERAL OVERSIGHT OF UPSTREAM WATER DEVELOPMENTS AND NEBRASKA IS SEEKING DIALOGUE WITH UPSTREAM STATES. HOUSE BILL 903 SEEKS TO AVOID THE WESTERN WATER WAR NOW BREWING: MONTANA CAN TAKE A LEADING ROLE IN PREVENTING IT.

THIS BILL PROVIDES AN OPEN FORUM TO DISCUSS WATER MARKETING AND THE SURROUNDING ISSUES, WHILE PROTECTING LANDOWNERS BEING CROSSED BY LARGE PIPELINES AND GIVING MONTANA WATER USERS THE PROTECTION NECESSARY TO CHART A SOUND COURSE FOR WATER DEVELOPMENT.

I URGE YOUR SUPPORT FOR THIS BILL.

THANK YOU.

Exp #5  
Ag

TESTIMONY

IN SUPPORT OF HB 908 (AMENDED)  
(Water Marketing Study)

BY  
Mike Fitzgerald  
President  
Montana Trade Commission  
Suite 612 - Power Building  
Helena, Montana 59601

BEFORE THE  
SENATE AGRICULTURE COMMITTEE

April 13, 1983



According to MCA 85-2-104, water may not be appropriated for coal slurry because, "The use of water for slurry transport of coal is not a beneficial use of water."

This legislation was passed in 1973 primarily because Montanans felt threatened by the large requests for water by industry, up to 1 million acre feet, primarily from the Yellowstone River Basin.,

- Those demands for water and projected coal development never materialized. Montana coal development, projected in the mid 1970's to be 270 million tons annually by the year 2000, has not yet reached 35 million tons per year and will not likely be 100 million tons annually by the year 2000.
- Montana's 1982 coal production was 32,160,075 tons. 1982 coal severance taxes totaled \$86,186,845.61.
- Wyoming's 1982 coal production was 104 million tons. Their 1982 coal severance taxes totaled over \$152 million.
- Wyoming's coal production is projected to be about 130 million tons annually by 1986.
- Montana's coal production will not likely reach 50 million tons per year by 1990. Our coal production may not reach 40 million tons per year by 1990.
- To increase Montana's coal production, Montana Coal Producers have to improve the delivered price per ton per million BTU's.
- There are only a few ways available to achieve a lower delivered price per million BTU's:
  - A. Lower taxes on the coal (HB 706 would do this).
  - B. Increase the heating value of the coal at the mine (Coal Benefaction - SB 264 provides an incentive to do this).
  - C. Lower the transportation rate by providing an alternative, competitive mode of transportation, ie water slurry.
- Montana now has one railroad serving the largest coal deposit in the U.S. This is unacceptable to any and all potential Pacific Basin Coal Customers.
- Coal slurry is the only competitive form of transportation that is economically feasible in Montana. Wyoming has 3 major railroads serving their coal fields and their legislature is considering 3 separate coal slurry proposals.
- In 1980 the U.S. Department of Energy contracted with CFI, Inc. an economic research firm, to study "The Potential Energy and Economic Impacts of Coal Slurry Pipelines".
- The main conclusion of the CFI study is "...The greatest savings from coal slurry pipelines may be the indirect savings resulting from increased competition..."

- Table 4 below is from the CFI Study, page 156. The entire study is included in my testimony and will be left with the Secretary of the Committee:

TABLE 4  
COMPARISON OF SLURRY AND RAIL COSTS  
(1980 \$/Ton)

	High Rail						Low Rail					
	High Slurry			Low Slurry			High Slurry			Low Slurry		
	Rail	Slurry	Difference	Rail	Slurry	Difference	Rail	Slurry	Difference	Rail	Slurry	Difference
Arizona to Nevada	b	5.73		b	5.73		b	5.73		b	5.73	
Wyoming to Illinois	19.55	12.57	6.98	19.55	7.54	12.01	15.64	12.57	3.07	15.64	7.54	8.10
Illinois to Texas <sup>d</sup>	12.75	13.50	( 0.75) <sup>c</sup>	12.75	7.94	4.81	10.20	13.50	( 3.30) <sup>c</sup>	10.20	7.94	2.26
Wyoming to Texas	17.04	12.70	4.34	17.04	7.01	10.03	13.63	12.70	0.93	13.63	7.01	6.62
West Montana to Minnesota	11.20	9.89	1.31	11.20	5.59	5.61	8.96	9.89	( 0.93) <sup>c</sup>	8.96	5.59	3.37
West Montana to Wisconsin	17.10	13.08	4.02	17.10	7.41	9.69	13.68	13.08	0.60	13.68	7.41	6.27
East Kentucky to N&S Carolina	9.93	8.98	0.95	9.93	5.42	4.51	7.95	8.98	( 1.03) <sup>c</sup>	7.95	5.42	2.53
Wyoming to Ark/Okla/Louisiana	17.21	12.07	5.14	17.21	6.74	10.47	13.77	12.07	1.70	13.77	6.74	7.03
Wyoming to Wash/Oregon	19.36	17.11	2.25	19.36	9.73	9.63	15.49	17.11	( 1.62) <sup>c</sup>	15.49	9.73	5.76
Utah to Nevada	9.60	22.68	(13.08) <sup>c</sup>	9.60	13.60	( 4.00) <sup>c</sup>	7.68	22.68	(15.00) <sup>c</sup>	7.68	13.60	( 5.92) <sup>c</sup>
South Colorado to Texas	13.14	12.54	0.60	13.14	7.59	5.55	10.51	12.54	( 2.03) <sup>b</sup>	10.51	7.59	2.92
New Mexico to Texas	17.21	12.54	4.67	17.21	7.59	9.62	13.77	12.54	1.23	13.77	7.59	6.18
Illinois to S. Florida	20.50	17.34	3.16	20.50	9.94	10.56	16.40	17.34	( 0.94) <sup>c</sup>	16.40	9.94	6.46

<sup>a</sup>The CEUM analysis uses generalized origin-destination pairs and cost functions and as a consequence, those pipelines modeled in the CEUM are not necessarily comparable to specific projects.

<sup>b</sup>Since the Black Mesa Pipeline is currently in operation it does not compete with a rail link.

<sup>c</sup>Indicates slurry price is higher than rail price.

<sup>d</sup>The CEUM does not include a rail link between Illinois and Texas. The rail cost shown represents what the cost would be, based on our coefficients, if there was a rail link for this route.

- There are developing markets in the Pacific Basin for western U.S. steam coal. By 1990 these markets may reach upwards of 60 million tons annually.
- Montana Coal Producers could supply up to 15 million tons annually to Asian customers by 1990 and up to 25 million tons annually by the year 2000.
- However, our Montana coal producers are competing with other Rocky Mountain and Alaska coal producers as well as, Canada, South Africa, Australia, the Soviet Union and in the not too distant future, China.
- At the present time Montana coal is not a serious contender for growing steam coal markets in Japan, Taiwan, Korea and other Asian markets because our coal is relatively low in heating value and we have no competitive transportation which the Japanese believe to be an intolerable situation that they will not committ to.
- If as indicated by the CFI Study, Coal Slurry Pipelines could deliver coal to a western U.S. port 10% to 20% cheaper than the railroad, Montana coal producers could become competitive in the growing Pacific Basin Steam Coal Markets.
- Following are two hypothetical scenarios of potential tax and water revenues that could accrue to Montana State and Local governments if we have competitive coal transportation:

## HYPOTHETICAL CASE

Potential revenues to the state of Montana from sales of water and taxes from additional sales of Montana coal:

I. Potential State and Local revenues from 15 million additional tons of coal annually at \$10.00 per ton Contract Sales Price (CSP):

A. Severance Tax, Gross Proceeds Tax and Resource Indemnity Tax. (1)

$$\begin{aligned} & 15 \text{ million tons} \\ & \times \$10.00 \text{ per ton (2)} \\ & = \$150,000,000 \text{ Annually} \\ & \times 35\% \text{ (combined taxes)} \\ & = \$52,500,000 \text{ State \& Local Tax Revenues Annually} \end{aligned}$$

B. Water Revenues

15 million tons annual coal production would require about 500 acre feet of water per million tons of coal, or 7,500 acre feet total annually at \$450.00 per acre foot. (3)  
Potential revenues from water sales to the State of Montana to slurry 15 million tons of coal annually equals \$3,375,000 annually.

C. Total potential taxes and water revenues to State and Local Governments:

$$\begin{aligned} & - \text{Severance, Gross Proceeds and Resource Indemnity Taxes} \\ & \quad = \underline{\$52,500,000 \text{ Annually}} \\ & - 7,500 \text{ acre feet of water} \\ & \quad = \underline{\$3,375,000 \text{ Annually}} \\ & \text{Total- } \underline{\underline{\$55,875,000 \text{ Annually}}} \end{aligned}$$

- 
- 1) Montana Production Taxes:
- |                            |        |
|----------------------------|--------|
| Severance @                | 30.8   |
| Gross Proceeds @           | 4.62%  |
| Resource Indemnity Trust @ | .5%    |
|                            | <hr/>  |
|                            | 35.12% |
- 2) \$10.00 per ton is the medium range for Montana Coal, (8600 BTU's) 1983. Some is more expensive, some is less, depending on contract amount, location and quality of the coal.
- 3) \$450.00 per acre foot of water is the amount in the ETSI contract with South Dakota.

II. Potential State and Local revenues from 25 million additional new tons of coal annually at \$10.00 per ton Contract Sales Price (CSP):

A. Severance Taxes, Gross Proceeds and Resource Indemnity Taxes.

$$\begin{aligned} &= 25 \text{ million tons} \\ &\times \$10.00 \text{ per ton} \\ &= \$250,000,000 \text{ Annually} \\ &\times 35\% \text{ (combined taxes)} \\ &= \$87,500,000 \text{ Annually to State \& Local Governments} \end{aligned}$$

B. Water Revenues:

25 million tons of coal would require about 500 acre feet of water per million tons of coal or about 12,500 acre feet annually at \$450.00 per acre foot equals \$5,625,000 annual revenues from water sales.

C. Total potential taxes and water revenues to State and Local governments:

- Severance, Gross Proceeds and Resource Indemnity Taxes

$$= \$87,500,000 \text{ Annually}$$

- 12,500 acre feet of water annually

$$= \$5,625,000 \text{ Annually}$$

Total- \$93,125,000 Annually to State \& Local Governments

- Does Montana have sufficient water for coal slurry without jeopardizing water supplies for agriculture, residents, and communities? According to the DNRC Water Sciences Bureau: "Montana has water available for industrial purposes in the Missouri and Yellowstone River Basins. As much as 500,000 acre feet is available from Yellow Tail Reservoir. 200,000 - 300,000 acre feet is reserved for possible industrial use in off-stream reservoirs in the Yellowstone River Basin. An additional 300,000 feet of water can be marketed from Fort Peck Reservoir for industrial purposes. The amount of water still available for industrial development on the Missouri mainstream below Fort Peck Reservoir is unknown, but could be as large as 1,000,000 acre feet per year." (1)
- Montana has already been pre-empted by South Dakota's water contract with Energy Transportation System, Inc. (ETSI). Which provides South Dakota state government \$9 million per year, \$1.45 billion over the next 50 years for 50,000 acre feet of water annually from the Oahe Reservoir. That is 50,000 acre feet of Montana's out-flow which S.D. is selling to ETSI! If the contract for water is not used, ETSI will pay South Dakota \$45 million for what is originally Montana water!
- In October 1982, after two years of comprehensive study by the Water Resources Division of the Department of Natural Resources completed, A WATER PROTECTION STRATEGY FOR MONTANA. This study is properly referred to as the, "Use It Or Lose It," study.
- If you have not, I recommend that you refer to this document for the facts about this issue. The facts present an overwhelming case in support of a state industrial water marketing plan for coal slurry.
- This seems to be the only possible way to pay for other state water development projects that will primarily benefit agriculture.
- Had the Montana Economic Development Project Steering Committee had this information available last summer, I believe we would have overwhelmingly recommended a water marketing program be expedited rather than a study of the issue, which has clearly been comprehensively analyzed already by DNR.
- Finally, but perhaps most importantly, Indian Tribes of Montana are entitled to a reserved water right as ruled by the U.S. Supreme Court in the 1908 Winter's Case on the Fort Belnap Reservation in Montana. The Crow Tribe is interested in industrial water from Yellowtail Reservoir; the Northern Cheyenne Tribe from the Tongue River Reservoir; and the Fort Peck Tribe from Fort Peck Reservoir. A draft compact has

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(1) Coal Slurry Issues Paper - Autumn, 1982  
 DNR, Water Sciences Bureau, Rich Moy, Bureau Chief (449-2872)

been negotiated between the Reserved Water Rights Compact Commission representing Montana and the Fort Peck Tribes which would allow the Fort peck tribes to market at least 480,000 acre feet per year under fifty year agreements, on and off the reservation for industrial purposes from Fort Peck Reservior. The Bureau of Reclamation and the Corps of Engineers only identified 1,000,000 acre feet per year of surplus water for forty years for industrial purposes from the Missouri River System: 400,000 acre feet per year in South Dakota; 400,000 acre feet per year in North Dakota and 300,000 acre feet per year from Fort Peck Reservior in Montana. The State must act now in setting up water marketing legislation before the Indian tribes of Montana, the federal government and the lower basin states (i.e. Iowa, Missouri, Nebraska) prevent Montana from marketing her water.

- Without water marketing revenues, Montana Agriculture and other potential users will not be able to develop water projects and will not be able to compete with the downstream states in an interstate apportionment. Montana's farmers and ranchers will be the big losers.
- I recommend that you approve HB 908 in order to clarify the facts and hopefully, develop recommendations for industrial water marketing. I also recommend that references in HB 908 to the Major Facility Siting Act, be excluded. To provide that coal slurry pipelines come under the MFSA predetermines the outcome of the study.

Thank you.

management of the state's water resources, and its provisions are to be given a liberal interpretation.

History: En. Sec. 66, Ch. 146, L. 1909; re-en. Sec. 7262, R.C.M. 1921; re-en. Sec. 7262, R.C.M. 1935; amd. Sec. 38, Ch. 460, L. 1977; R.C.M. 1947, 89-2109.

#### 85-1-104 through 85-1-110 reserved.

**85-1-111. Public ways.** Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and such transportation. This section shall not be construed so as to affect or impair, in any manner, any rights acquired prior to July 1, 1901, by any person, association of persons, or corporation. The right of any person, association of persons, or corporation to take and use any water, as now provided by law, from any stream or streams for the purpose of irrigation or any beneficial or industrial pursuit shall not be abridged.

History: En. Sec. 2570, Pol. C. 1895; amd. Sec. 1, p. 126, L. 1901; re-en. Sec. 1326, Rev. C. 1907; re-en. Sec. 1604, R.C.M. 1921; Cal. Pol. C. Sec. 2348; re-en. Sec. 1604, R.C.M. 1935; R.C.M. 1947, 89-501.

**85-1-112. Navigable waters.** (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all rivers and streams which are navigable in fact are hereby declared navigable.

History: En. Secs. 1, 2, Ch. 95, L. 1933; re-en. Secs. 3717.1, 3717.2, R.C.M. 1935; R.C.M. 1947, 26-336, 26-337.

#### 85-1-113 through 85-1-120 reserved.

**85-1-121. Out-of-state use of water.** None of the waters in the state of Montana shall ever be appropriated, diverted, impounded, or otherwise restrained or controlled while within the state for use outside the boundaries thereof, except pursuant to a petition to and an act of the legislature of the state of Montana permitting such action. Any appropriation, diversion, impounding, restraining, or attempted appropriation, diversion, impounding, or restraining contrary to the provisions of this section shall be null and void. All officers, agents, agencies, and employees of the state are prohibited from knowingly permitting, aiding, or assisting in any manner such unauthorized appropriation, diversion, impounding, or other restraint. It shall be unlawful for any person, persons, or corporation, directly or indirectly, personally or through agents, officers, or employees, either to attempt to so appropriate, divert, impound, or otherwise restrain or control any of the waters within the boundaries of this state for use outside thereof, except in accordance with the terms of this section.

History: En. Sec. 1, Ch. 220, L. 1921; re-en. Sec. 7135, R.C.M. 1921; re-en. Sec. 7135, R.C.M. 1935; R.C.M. 1947, 89-846.

EX # 6  
435 AG 4-13-83

**85-1-122. Clark Fo**  
be impounded or restrain  
exceeding 25 miles from t  
on said river in the state  
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Any present or future ap  
of Montana for irrigation  
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History: En. Sec. 1, Ch. 3, L.

**85-1-201. Rules of**  
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History: En. 89-102.1 by Sec.

**85-1-202. Departm**  
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be constructed or contra  
prior approval of the bo  
or water user associatio  
works without prior appr

History: En. Sec. 2, Ch. 279,

**85-1-203. State w**  
any source reliable info  
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resources of the state. In  
duct studies; adopt stud  
including federal, region  
employ other competent  
and hold public hearings  
be given an opportunity

(2) The department  
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water plan shall set out  
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effective means by which  
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Ex #7  
Ag 4-13-83

Suggested Amendments to HB 908  
Second Reading Copy

- Page 2, line 13: Following: "compatibility"  
Insert: "or, in the case of a utility, a  
certificate of environmental  
compatibility"
- Page 4, line 1: Following: "facilities"  
Insert: "located within the state of Montana"
- Page 5, line 25: Following: "person"  
Strike: All language through page 6, line 3  
Insert: "furnishing or producing energy within  
Montana and subject to rate of return  
or rate regulation by a state or  
federal regulatory body or protected  
from competition through a guaranteed  
monopoly of service in a given service  
area."
- Page 8, line 17: Following: "in"  
Strike: "(b)"  
Insert: "(a)"
- Page 8, line 18: Following: "(10)"  
Insert: "which is not a utility facility or"
- Page 18, line 25: Following: "issued"  
Insert: "on applications for permits filed  
with the department after the effective  
date of this act"