

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

April 14, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date by Chairman Galt, in Room 325 of the State Capitol Building at 7:30 a.m.

ROLL CALL: All members present.

DISPOSITION OF HB 908: Representative Harper's amendments were presented to the committee. Exhibit #1.

Mr. Mockler thought the third amendment went further than it was intended to go.

Don MacIntyre, Department of Natural Resources, said it refers to the permitting sections of the law and not this part of the bill. It says that when they comply with the permitting section, (part 3 is the permitting section of the code), it is now extended to any federal reservoir.

Senator Kolstad moved Representative Harper's amendments #1, #2, and #3, Exhibit #1. Motion carried unanimously.

Mr. Mockler's amendments were presented. Exhibit #2.

Senator Galt said it takes out the Facility Siting Act and leaves in the 10,000 acre feet or better to come before the legislature. The amendments leave the study which is the "guts" of the bill.

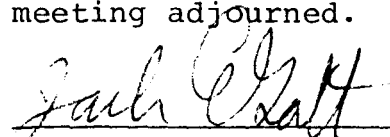
Senator Lee made a motion to place at the end of the bill, on page 22, line 5, "Everything in this study will terminate July, 1985." He felt that, in 1985, they could come in with new language so the study would not go on forever. He felt the study committee could approach the next legislature with their findings and we would be in better shape to write a practical bill. If it was an agreement to a water sale, you could put language into the contract regarding the sale. This also deals with sale of new water from out of state.

Roll call vote on Senator Lee's motion showed 5 Yes, 3 No and one abstaining. Motion carried.

Senator Lee moved to accept Mr. Mockler's amendments, numbers 4 through 8 and numbers 10 through 14, shown on Exhibit #2. Motion carried unanimously.

Senator Kolstad moved HB 908, as amended, BE CONCURRED IN. Motion carried. For the record Senators Ochsner and Conover voted No. Senator Lee will carry the bill.

There being no further business, the meeting adjourned.



Jack E. Galt

SENATE COMMITTEE AGRICULTUREDate 4-14-83 H Bill No. 908 Time 7:53

NAME	YES	NO
SENATOR KOLSTAD	✓	✓
SENATOR AKLESTAD		
SENATOR BOYLAN	✓	✓
SENATOR CONOVER		✓
SENATOR GRAHAM	✓	
SENATOR LANE		✓
SENATOR LEE	✓	
SENATOR OCHSNER	✓	
SENATOR GALT, Chairman		✓

Rita Tenneson

Secretary

5 3
Jack E. Galt 1 abst.

Chairman

Motion:

The study will terminate in
July 1985 + Title also will conform
to the amendment

(include enough information on motion--put with yellow copy of
 committee report.)

Eq #1
ag 414-83

Proposed Amendments to HB 908 (Rep. Harper)

1. Page 16, line 2.

Following: "."

Insert: "(1)"

Following: "water"

Insert: "or water storage"

2. Page 16, line 5.

Following: "industrial"

Strike: "use"

Insert: "and other uses"

3. Page 16, line 10.

Strike: "as" through "85-2-311"

Insert: "as it considers appropriate, except as provided in subsection (2)."

(2) Until a final decree has been issued pursuant to 85-2-234 concerning the waters in a federal reservoir, the department may sell, rent, or distribute such water only after a permit has been issued to an applicant for purchase, rent, or distribution of water in accordance with part 3 of this chapter"

4. Page 18, line 2.

Following: "findings"

Strike: "pursuant to"

Insert: "whenever required by"

5. 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"

Amendments to HB 908

Exhibit #2
Mockler Amendments

1. Page 1, line 5: Following "ENTITLED:"
Delete balance of line
2. Page 1, line 6: Delete in entirety
3. Page 1, line 7: Delete "MAJOR FACILITY SITING ACT;"
4. Page 1, line 11: Following "SECTIONS"
Delete balance of line
5. Page 1, line 12: Delete "75-20-304, 75-20-1202,"
6. Page 1, lines 17-25: Delete in entirety
7. Pages 2-14: Delete in entirety
8. Page 15, lines 1-24: Delete in entirety
9. Page 16, line 13: Following "in"
Delete "subsections (2) and (3)"
Insert "subsection (2)"
10. Page 17, lines 10-25: Delete in entirety
11. Page 18: Delete in entirety
12. Page 19, lines 1-2: Delete in entirety
13. Page 19, line 3: Delete "(3)"
Insert "(2) permits for the use of water
in excess of 10,000 or more acre feet
per year or 15 or more cubic feet per
second issued on applications for
permits filed with the department of
natural resources and conservation
after the effective date of this act
shall not be valid until approved by
the legislature."
14. Page 19, line 12: Following "control"
Delete "any of the"

HOUSE BILL NO. 908

INTRODUCED BY HARPER, BARDANOUVE, IVERSON,

VINCENT, KENNIS, ASAY, FABREGA

A BILL FOR AN ACT ENTITLED: ~~"AN ACT ADDING CERTAIN~~
~~PIRELINES TO THE DEFINITION OF FACILITY UNDER THE MONTANA~~
~~WATER FACILITY SITING ACT"~~ PROHIBITING THE ISSUANCE OF
 PERMITS FOR CERTAIN AMOUNTS OF WATER WITHOUT LEGISLATIVE
 APPROVAL; PROVIDING FOR A STUDY BY A SELECT COMMITTEE OF
 WATER MARKETING; PROVIDING AN APPROPRIATION; AMENDING
 SECTIONS ~~75-20-104, 75-20-216, 75-20-218, 75-20-304,~~
~~75-20-304, 75-20-102, 85-1-205,~~ AND 85-2-311, MCA;
 REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE
 EFFECTIVE DATE."

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

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the

context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility

1 employing geothermal resources but does not include the
 2 gathering of geological data by boring of test holes or
 3 other underground exploration, investigation, or
 4 experimentation;
 5 (c) the commencement of eminent domain proceedings
 6 under Title 70, chapter 30, for land or rights-of-way upon
 7 or over which a facility may be constructed;

8 (d) the relocation or upgrading of an existing
 9 facility defined by (b) or (c) of subsection (10), including
 10 upgrading to a design capacity covered by subsection
 11 (10)(b), except that the term does not include normal
 12 maintenance or repair of an existing facility.

13 (8) "Department" means the department of natural
 14 resources and conservation provided for in Title 2, chapter
 15 15, part 33.

16 (9) "Department of health" means the department of
 17 health and environmental sciences provided for in Title 2,
 18 chapter 15, part 21.

19 (10) "Facility" means:

20 (a) except for crude oil and natural gas refineries,
 21 and facilities and associated facilities designed for or
 22 capable of producing, gathering, processing, transmitting,
 23 transporting, or distributing crude oil or natural gas, and
 24 those facilities subject to The Montana Strip and
 25 Underground Mine Reclamation Act, each plant, unit, or other

1 facility and associated facilities designed for or capable
 2 of:
 3 (i) generating 50 megawatts of electricity or more or
 4 any addition thereto (except pollution control facilities
 5 approved by the department of health and environmental
 6 sciences added to an existing plant) having an estimated
 7 cost in excess of \$10 million;

8 (ii) producing 25 million cubic feet or more of gas
 9 derived from coal per day or any addition thereto having an
 10 estimated cost in excess of \$10 million;

11 (iii) producing 25,000 barrels of liquid hydrocarbon
 12 products per day or more or any addition thereto having an
 13 estimated cost in excess of \$10 million;

14 (iv) enriching uranium minerals or any addition thereto
 15 having an estimated cost in excess of \$10 million; or

16 (v) utilizing or converting 500,000 tons of coal per
 17 year or more or any addition thereto having an estimated
 18 cost in excess of \$10 million;

19 (b) each electric transmission line and associated
 20 facilities of a design capacity of more than 69 kilovolts,
 21 except that the term does not include an electric
 22 transmission line and associated facilities of a design
 23 capacity of 230 kilovolts or less and 10 miles or less in
 24 length;

25 (c) each pipeline and associated facilities designed

1 for or capable of transporting gas (except for natural gas),
 2 water, or liquid hydrocarbon products from or to a facility
 3 located within or without this state of the size indicated
 4 in subsection (10)(a) of this section;

5 ~~1d1. each pipeline greater than 20 inches in diameter~~
 6 ~~or 20 miles in length and associated facilities designed~~
 7 ~~AND INTENDED for or capable of transporting water or using~~
 8 ~~water as a transport medium;~~

9 ~~(d1e1) any use of geothermal resources, including the~~
 10 ~~use of underground space in existence or to be created, for~~
 11 ~~the creation, use, or conversion of energy, designed for or~~
 12 ~~capable of producing geothermally derived power equivalent~~
 13 ~~to 25 million Btu per hour or more or any addition thereto~~
 14 ~~having an estimated cost in excess of \$750,000;~~

15 ~~(d1f1) any underground in situ gasification of coal.~~
 16 ~~(11) "Person" means any individual, group, firm,~~
 17 ~~partnership, corporation, cooperative, association,~~
 18 ~~government subdivision, government agency, local government,~~
 19 ~~or other organization or entity.~~

20 ~~(12) "Transmission substation" means any structure,~~
 21 ~~device, or equipment assemblage, commonly located and~~
 22 ~~designed for voltage regulation, circuit protection, or~~
 23 ~~switching necessary for the construction or operation of a~~
 24 ~~proposed transmission line.~~

25 ~~(13) "Utility" means any person engaged in any aspect~~

1 of the production, storage, sale, delivery, or furnishing of
 2 heat, electricity, gas, hydrocarbon products, or energy in
 3 any form for ultimate public use."

4 Section 2. Section 75-20-216, MCA, is amended to read:
 5 "75-20-216. Study, evaluation, and report on proposed
 6 facility -- assistance by other agencies. (1) After receipt
 7 of an application, the department and department of health
 8 shall within 90 days notify the applicant in writing that:

9 (a) the application is in compliance and is accepted
 10 as complete; or

11 (b) the application is not in compliance and list the
 12 deficiencies therein; and upon correction of these
 13 deficiencies and resubmission by the applicant, the
 14 department and department of health shall within 30 days
 15 notify the applicant in writing that the application is in
 16 compliance and is accepted as complete.

17 (2) Upon receipt of an application complying with
 18 75-20-211 through 75-20-215, and this section, the
 19 department shall commence an intensive study and evaluation
 20 of the proposed facility and its effects, considering all
 21 applicable criteria listed in 75-20-301 and 75-20-503 and
 22 the department of health shall commence a study to enable it
 23 or the board of health to issue a decision, opinion, order,
 24 certification, or permit as provided in subsection (3). The
 25 department and department of health shall use, to the extent

1 they consider applicable, valid and useful existing studies
 2 and reports submitted by the applicant or compiled by a
 3 state or federal agency.

4 (3) The department of health shall within 1 year
 5 following the date of acceptance of an application and the
 6 board of health or department of health, if applicable,
 7 within an additional 6 months issue any decision, opinion,
 8 order, certification, or permit required under the laws
 9 administered by the department of health or the board of
 10 health and this chapter. The department of health and the
 11 board of health shall determine compliance with all
 12 standards, permit requirements, and implementation plans
 13 under their jurisdiction for the primary and reasonable
 14 alternate locations in their decision, opinion, order,
 15 certification, or permit. The decision, opinion, order,
 16 certification, or permit, with or without conditions, is
 17 conclusive on all matters that the department of health and
 18 board of health administer, and any of the criteria
 19 specified in subsections (2) through (7) of 75-20-503 that
 20 are a part of the determinations made under the laws
 21 administered by the department of health and the board of
 22 health. Although the decision, opinion, order,
 23 certification, or permit issued under this subsection is
 24 conclusive, the board retains authority to make the
 25 determination required under 75-20-301(2)(c). The decision,

1 opinion, order, certification, or permit of the department
 2 of health or the board of health satisfies the review
 3 requirements by those agencies and shall be acceptable in
 4 lieu of an environmental impact statement under the Montana
 5 Environmental Policy Act. A copy of the decision, opinion,
 6 order, certification, or permit shall be served upon the
 7 department and the board and shall be utilized as part of
 8 their final site selection process. Prior to the issuance of
 9 a preliminary decision by the department of health and
 10 pursuant to rules adopted by the board of health, the
 11 department of health shall provide an opportunity for public
 12 review and comment.

13 (4) Within 22 months following acceptance of an
 14 application for a facility as defined in (a) and (d) of
 15 75-20-104(10) and for a facility as defined in (b) and (e)
 16 of 75-20-104(10) which is more than 30 miles in
 17 length and within 1 year for a facility as defined in (b)
 18 and (e) through (d) of 75-20-104(10) which is 30 miles or
 19 less in length, the department shall make a report to the
 20 board which shall contain the department's studies,
 21 evaluations, recommendations, other pertinent documents
 22 resulting from its study and evaluation, and an
 23 environmental impact statement or analysis prepared pursuant
 24 to the Montana Environmental Policy Act, if any. If the
 25 application is for a combination of two or more facilities,

1 the department shall make its report to the board within the
2 greater of the lengths of time provided for in this
3 subsection for either of the facilities.

4 (5) The departments of highways; commerce; fish,
5 wildlife, and parks; state lands; revenue; and public
6 service regulation shall report to the department
7 information relating to the impact of the proposed site on
8 each department's area of expertise. The report may include
9 opinions as to the advisability of granting, denying, or
10 modifying the certificate. The department shall allocate
11 funds obtained from filing fees to the departments making
12 reports to reimburse them for the costs of compiling
13 information and issuing the required report."

14 Section 3. Section 75-20-218, MCA, is amended to read:
15 "75-20-218. Hearing date -- location -- department to
16 act as staff -- hearings to be held jointly. (1) Upon
17 receipt of the department's report submitted under
18 75-20-216, the board shall set a date for a hearing to begin
19 not more than 120 days after the receipt. Except for these
20 hearings involving applications submitted for facilities as
21 defined in (b) and (c) of 75-20-104(10), certification
22 Certification hearings shall be conducted by the board in
23 the county seat of Lewis and Clark County or the county in
24 which the facility or the greater portion thereof is to
25 be located.

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

6 (3) At the request of the applicant, the department of
7 health and the board of health shall hold any required
8 permit hearings required under laws administered by those
9 agencies in conjunction with the board certification
10 hearing. In such a conjunctive hearing the time periods
11 established for reviewing an application and for issuing a
12 decision on certification of a proposed facility under this
13 chapter supersede the time periods specified in other laws
14 administered by the department of health and the board of
15 health."

16 Section 4. Section 75-20-303, MCA, is amended to read:
17 "75-20-303. Opinion issued with decision -- contents.
18 (1) In rendering a decision on an application for a
19 certificate, the board shall issue an opinion stating its
20 reasons for the action taken.

21 (2) If the board has found that any regional or local
22 law or regulation which would be otherwise applicable is
23 unreasonably restrictive pursuant to 75-20-301(2)(i), it
24 shall state in its opinion the reasons therefor.

25 (3) Any certificate issued by the board shall include

1 the following:

2 (a) an environmental evaluation statement related to
3 the facility being certified. The statement shall include
4 but not be limited to analysis of the following information:
5 (i) the environmental impact of the proposed facility;
6 (ii) any adverse environmental effects which cannot be
7 avoided by issuance of the certificate;
8 (iii) problems and objections raised by other federal
9 and state agencies and interested groups;

10 (iv) alternatives to the proposed facility;

11 (v) a plan for monitoring environmental effects of the
12 proposed facility; and

13 (vi) a time limit as provided in subsection (4), during
14 which construction of the facility must be completed;

15 (b) a statement signed by the applicant showing
16 agreement to comply with the requirements of this chapter
17 and the conditions of the certificate.

18 (4) The board shall issue as part of the certificate
19 the following time limits during which construction of a
20 facility must be completed:

21 (a) for a facility as defined in (b) ~~1. less than 10~~ or ~~fewer~~ ~~than~~ ~~10~~
22 of ~~75-20-104 through 75-20-110~~ that is more than 30 miles in length,
23 the time limit is 10 years.

24 (b) for a facility as defined in (b) ~~1. less than 10~~ or ~~fewer~~ ~~than~~ ~~10~~
25 of ~~75-20-104 through 75-20-110~~ that is 30 miles or less in length, the

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1 time limit is 5 years.

2 (c) The time limit shall be extended for periods of 2
3 years each upon a showing by the applicant to the board that
4 a good faith effort is being undertaken to complete
5 construction. Under this subsection, a good faith effort to
6 complete construction includes the process of acquiring any
7 necessary state or federal permit or certificate for the
8 facility and the process of judicial review of any such
9 permit or certificate.

10 (5) The provisions of subsection (4) apply to any
11 facility for which a certificate has not been issued or for
12 which construction is yet to be commenced."

13 Section 5. Section 75-20-304, MCA, is amended to read:
14 "75-20-304. Waiver of provisions of certification
15 proceedings. (1) The board may waive compliance with any of
16 the provisions of 75-20-216 through 75-20-222, 75-20-501,
17 and this part if the applicant makes a clear and convincing
18 showing to the board at a public hearing that an immediate,
19 urgent need for a facility exists and that the applicant did
20 not have knowledge that the need for the facility existed
21 sufficiently in advance to fully comply with the provisions
22 of 75-20-216 through 75-20-222, 75-20-501, and this part.

23 (2) The board may waive compliance with any of the
24 provisions of this chapter upon receipt of notice by a
25 utility or person subject to this chapter that a facility or

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1 associated facility has been damaged or destroyed as a
 2 result of fire, flood, or other natural disaster or as the
 3 result of insurrection, war, or other civil disorder and
 4 there exists an immediate need for construction of a new
 5 facility or associated facility or the relocation of a
 6 previously existing facility or associated facility in order
 7 to promote the public welfare.

8 (3) The board shall waive compliance with the
 9 requirements of subsections (2)(c), (3)(b), and (3)(c) of
 10 75-20-301 and 75-20-501(5) and the requirements of
 11 subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3),
 12 and 75-20-303(3)(a)(iv) relating to consideration of
 13 alternative sites if the applicant makes a clear and
 14 convincing showing to the board at a public hearing that:

15 (a) a proposed facility will be constructed in a
 16 county where a single employer within the county has
 17 permanently curtailed or ceased operations causing a loss of
 18 250 or more permanent jobs within 2 years at the employer's
 19 operations within the preceding 10-year period;

20 (b) the county and municipal governing bodies in whose
 21 jurisdiction the facility is proposed to be located support
 22 by resolution such a waiver;

23 (c) the proposed facility will be constructed within a
 24 15-mile radius of the operations that have ceased or been
 25 curtailed; and

1 (d) the proposed facility will have a beneficial
 2 effect on the economy of the county in which the facility is
 3 proposed to be located.

4 (4) The waiver provided for in subsection (3) applies
 5 only to permanent job losses by a single employer. The
 6 waiver provided for in subsection (3) does not apply to jobs
 7 of a temporary or seasonal nature, including but not limited
 8 to construction jobs or job losses during labor disputes.

9 (5) The waiver provided for in subsection (3) does not
 10 apply to consideration of alternatives or minimum adverse
 11 environmental impact for a facility defined in subsections
 12 (10)(b), (c), (d), (e), or (f) of 75-20-104, for an
 13 associated facility defined in subsection (3) of 75-20-104,
 14 or for any portion of or process in a facility defined in
 15 subsection (10)(a) of 75-20-104 to the extent that the
 16 process or portion of the facility is not subject to a
 17 permit issued by the department of health or board of
 18 health.

19 (6) The applicant shall pay all expenses required to
 20 process and conduct a hearing on a waiver request under
 21 subsection (3). However, any payments made under this
 22 subsection shall be credited toward the fee paid under
 23 75-20-215 to the extent the data or evidence presented at
 24 the hearing or the decision of the board under subsection
 25 (3) can be used in making a certification decision under

1 this chapter.

2 (7) The board may grant only one waiver under
3 subsections (3) and (4) for each permanent loss of jobs as
4 defined in subsection (3)(a)."

5 Section 6. Section 75-20-1202, MCA, is amended to
6 read:

7 "75-20-1202. Definitions. As used in this part and
8 75-20-201 through 75-20-203, the following definitions
9 apply:

10 (1) (a) "Nuclear facility" means each plant, unit, or
11 other facility designed for, or capable of,

12 (i) generating 50 megawatts of electricity or more by
13 means of nuclear fission,

14 (ii) converting, enriching, fabricating, or
15 reprocessing uranium minerals or nuclear fuels, or

16 (iii) storing or disposing of radioactive wastes or
17 materials from a nuclear facility;

18 (b) "nuclear facility" does not include any
19 small-scale facility used solely for educational, research,
20 or medical purposes not connected with the commercial
21 generation of energy.

22 (2) "Facility," as defined in 75-20-104(7)(10), is
23 further defined to include any nuclear facility as defined
24 in subsection (1)(a) of this section."

25 Section 7. Section 85-1-205, MCA, is amended to read:

1 "85-1-205. Acquisition of water in Fort-Peck-Reservoir
2 federal--reservoirs. The department may acquire water by
3 purchase option or agreement with the federal government
4 from the--Fort-Peck-Reservoir any federal reservoir for the
5 purpose of sale, rent, or distribution for industrial use.
6 In such cases, the department is not required to construct
7 any diversion or appropriation facilities or works, and it
8 may sell, rent, or distribute such water at such rates and
9 under such terms and conditions as it considers appropriate
10 as are established under the provisions of 85-2-311."

11 Section 8. Section 85-2-311, MCA, is amended to read:

12 "85-2-311. Criteria for issuance of permit. The 111
13 Except--as provided in subsection (2) and--the
14 department shall issue a permit if the applicant proves by
15 substantial credible evidence that the following criteria
16 are met:

17 (1) there are unappropriated waters in the source
18 of supply:

19 (a) at times when the water can be put to the use
20 proposed by the applicant;

21 (b) the amount the applicant seeks to
22 appropriate; and

23 (c) throughout the period during which the
24 applicant seeks to appropriate, the amount requested is
25 available;

1 (2)(b) the rights of a prior appropriator will not be
2 adversely affected;

3 (2)(c) the proposed means of diversion, construction,
4 and operation of the appropriation works are adequate;

5 (2)(d) the proposed use of water is a beneficial use;

6 (2)(e) the proposed use will not interfere
7 unreasonably with other planned uses or developments for
8 which a permit has been issued or for which water has been
9 reserved;

10 (3) on application for an appropriation of 10,000
11 acre-feet or more and 15 cubic feet per second or
12 more, proved by clear and convincing evidence that the rights
13 of a prior appropriator will not be adversely affected;
14 (3) except as provided in subsection (4), the
15 applicant proves by substantial and credible evidence the
16 criteria stated in subsections (1) through (5).

17 (2) the department may not issue a permit for an
18 appropriation of 5,000 10,000 or more acre-feet of water, a
19 year or 15 or more cubic feet per second of water, unless:

20 (i) the department makes an affirmative finding that:

21 (a) the criteria in subsection (1) are met;

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

25 (c) the proposed appropriation is in the public

1 Interest, and
2 (i) the legislature affirms the findings pursuant to
3 subsection (2)(c);

4 (b) in making such a finding, the department shall
5 consider:

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

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

12 (iii) the economic feasibility of the project;

13 (iv) the effects on the quantity, quality, and
14 availability of water of existing beneficial uses in the
15 source of supply;

16 (v) the effects on private property rights by any
17 creation of or contribution to saline seepage and

18 (vi) the probable significant adverse environmental
19 impacts of the proposed use of water as determined by the
20 department pursuant to Title 75, chapter 1, article 75,
21 chapter 20.

22 (c) a permit for an appropriation for a diversion for
23 a consumptive use of 5,000 10,000 or more acre-feet of water
24 a year or 15 or more cubic feet per second of water, under
25 subsection (2), may not be issued unless the department

1. permits for the use of water in excess of 10,000 or more acre feet per year or 15 or more cubic feet per second issued on applications for permits filed with the department of natural resources and conservation after the effective date of this act shall not be valid until approved by the legislature.

~~447. 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 appropriations, diversions, impoundments, or other restraints. 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.~~

NEW SECTION. Section 9. Repealer. Section 85-1-121, MCA, is repealed.

NEW SECTION. Section 10. Study of water marketing. (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.

(2) The select committee on water marketing shall

1 undertake a study of the economic, tax, administrative, 2 legal, social, and environmental advantages and 3 disadvantages of water marketing.

4 (3) The select committee shall study the desirability 5 and feasibility of in-state and out-of-state marketing of 6 limited amounts of water for industrial purposes from 7 existing state and federal reservoirs and from proposed 8 reservoirs with water reservations.

9 (4) The study must include:

10 (a) the present and future in-state demands for water 11 for domestic, municipal, agricultural, industrial, 12 recreational, in-stream flows, and other beneficial uses;

13 (b) how best to encourage a negotiated resolution of 14 the conflicting demands of water users within the Missouri 15 River basin and to discourage litigation and congressional 16 action initiated by lower basin states;

17 (c) the potential effects of a coal slurry pipeline on 18 coal production and the economic and environmental effects 19 of increased coal production;

20 (d) the effects of a coal slurry pipeline on the 21 railroad industry and rail rates for noncoal shippers;

22 (e) alternative structures for a water marketing 23 program;

24 (f) alternative uses of revenue derived from water 25 marketing; and

1 (g) the potential ecological effects of the
2 installation and operation of coal slurry pipelines.

3 (5) The select committee shall solicit the advice of
4 the department of natural resources and conservation,
5 various interested industries, conservation groups,
6 appropriate state and federal agencies, and the public in
7 carrying out its duties under this section.

8 (6) The environmental quality council shall provide
9 staff assistance to the select committee. The select
10 committee may contract with experts and consultants, in
11 addition to assistance from the environmental quality
12 council staff, in carrying out its duties under this
13 section.

14 (7) The select committee shall report its findings and
15 recommendations for legislation, if any, to the 49th
16 legislature.

17 NEW_SECTION. Section 11. Appropriation. There is
18 appropriated from the renewable resource development
19 clearance fund account to the environmental quality council
20 for the biennium ending June 30, 1985, \$80,000 for the study
21 of water marketing by the select committee on water
22 marketing required by section 10.

23 NEW_SECTION. Section 12. Severability. If a part of
24 this act is invalid, all valid parts that are severable from
25 the invalid part remain in effect. If a part of this act is

1 invalid in one or more of its applications, the part remains
2 in effect in all valid applications that are severable from
3 the invalid applications.

4 NEW_SECTION. Section 13. Effective date. This act is
5 effective on passage and approval.

-End-

delegated
by S. Rules

STANDING COMMITTEE REPORT

April 14 1983

MR. **PRESIDENT**

We, your committee on **AGRICULTURE, LIVESTOCK AND IRRIGATION**

having had under consideration **HOUSE** Bill No. **908**

Harper (Lee)

Respectfully report as follows: That **HOUSE** Bill No. **908**

third reading blue, be amended as follows:

1. Title, line 10.

Following: **"MARKETING"**

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

2. Title, lines 11 and 12.

Strike: **"75-20-104,"** on line 11 through **"75-20-1202,"** on line 12.

Following: **"85-1-205"** on line 12

Strike: **","**

3. Title, line 14.

Following: **"DATE"**

Insert: **"AND A TERMINATION DATE"**

XXXXXX

(CONTINUED)

4. Page 1, line 17 through line 24 on page 15.
Strike: Sections 1 through 6 in their entirety
Renumber: subsequent sections

5. Page 16, line 2.
Following: "."
Insert: "(1)"
Following: "water"
Insert: "or water storage"

6. Page 16, line 5.
Following: "industrial"
Strike: "use"
Insert: "and other uses"

7. Page 16, line 10.
Strike: "as" through "85-2-311"
Insert: "as it considers appropriate, except as provided in subsection (2). (2) Until a final decree has been issued pursuant to 85-2-234 concerning the waters in a federal reservoir, the department may sell, rent, or distribute such water only after a permit has been issued to an applicant for purchase, rent, or distribution of water in accordance with part 3 of this chapter"

8. Page 17, line 17 through line 2 on page 19.
Strike: These lines in their entirety
Insert: "(2) 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 on applications filed with the department after [the effective date of this act] may not be issued unless the department petitions the legislature and the legislature affirms the issuance by the department."

9. Page 19, line 12.
Strike: "any of the"

10. Page 22, line 6.
Following: line 5
Insert: "NEW SECTION. Section 7. Termination date, This act terminates on July 1, 1985."

And, as so amended, BE CONCURRED IN