

MINUTES OF THE MEETING  
NATURAL RESOURCES COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

February 18, 1985

The meeting of the House Natural Resources Committee was called to order by vice-chairman Mike Kadas at 7:10 p.m. on February 18, 1985, in Room 325 of the State Capitol.

ROLL CALL: All members of the committee were present.

HOUSE BILL 680: House Bill 680, the "water policy bill," was introduced by its sponsor, Rep. Dennis Iverson, District 12. Rep. Iverson explained that HB 680 is the product of two years of work by the select committee on water marketing. He noted that HB 680 is not, however, a water marketing bill, but a much broader plan for management of the state's water resources. He submitted a copy of the summary of the report of the select committee, which is attached hereto as Exhibit 1. - *See Separate Binder*

The select committee was formed through the direction of HB 908, passed by the 48th legislature to address the state's water policy. The intent of that bill was to develop a means of protecting the state's water from improper use, within Montana's boundaries or outside them, Rep. Iverson said.

HB 680 addresses three main areas of water management:

- 1) regulating the interstate movement of water;
- 2) the state water leasing program; and
- 3) maximizing Montana's share of Missouri River basin water.

Within each of these three main categories are several sub-categories, which were outlined for the committee by Rep. Iverson. The attached summary report (Exhibit 1) provides detailed information.

Rep. Iverson explained that the committee determined that Montana's export ban could be ruled unconstitutional, and recommended that it be repealed. He said the state's ban on the use of water for coal slurry should also be repealed, but emphasized that the repeal of the ban is expressly conditioned on maintaining all other portions of the bill.

The ban on the use of water for coal slurry, he said does not protect the state's water, and does not provide a control over coal development. Further, it violates the equal

protection clause of the constitution, he said. To leave the ban intact invites expensive litigation, which the state would almost surely lose, said Rep. Iverson.

In describing the proposed water leasing program, Rep. Iverson explained that the department of natural resources and conservation would be allowed to appropriate and act as proprietor for up to 50,000 acre feet of water annually, which water could be marketed only out of storage, and not out of stream-flow. He noted that in this situation, with the state acting as proprietor, the price is negotiable and could be discriminatory in the marketplace, offering a lower price to agriculture than to other users. The proceeds from any water leasing would go to the state general fund. Renewable leases, not to exceed 50 years, would be required for transport outside of specified water basins, or for any beneficial water use in which consumption would exceed 4000 acre feet per year and 5.5 cubic feet per second. Water for the leasing program would be obtained from specified existing federal reservoirs or other existing or future reservoirs in adjudicated basins.

Other select committee recommendations outlined by Rep. Iverson include completion of the stream adjudication process, development of a water resources data management system, appropriating additional funds for the management of water reservations, preparing a state water plan and creating a permanent legislative committee on water policy to advise the legislature.

Rep. Iverson introduced John Thorson, an attorney specializing in water policy issues, who assisted the select committee. Mr. Thorson provided an appendix outlining the sections of HB 680 (Exhibit 2) and described the provisions of the bill.

PROPOSERS: Larry Fasbender, director of the department of natural resources and conservation, spoke as a supporter of HB 680. He noted that the select committee had put a great deal of time into the complex bill, and that DNRC is confident that the bill adequately addresses the issue of water policy. He asked, however, that the committee look carefully at the portion of the bill that states DNRC shall provide financial and technical assistance to Missouri River basin water projects. He said that requirement could mean problems for the department, and that when money is lacking, the department's responsibility to provide financial assistance should be conditional upon legislative funding.

Willa Hall, of Helena, spoke on behalf of the League of Women Voters in support of the bill. She commended the select committee on water marketing for its work, and said HB 680 is a good response to the need for a state water policy. She

said the LWV supports the legislation only if all of its provisions are adopted, and that the DRNC remains the sole proprietor in water leasing programs. She also noted that the provisions of the bill that place some pipelines under the Major Facility Siting Act are very important, and must be maintained.

Jim Flynn, director of the department of Fish, Wildlife and Parks, said the bill would maximize Montana's interest in the allocation of Missouri River basin water. Water policy is critical, he said, and he urged adoption of HB 680 in its entirety. A copy of his testimony is attached hereto as Exhibit 3.

Robert Green, a farmer from the Tongue River area near Miles City, testified in support of HB 680 on behalf of the Northern Plains Resource Council. He said passage of HB 680 in its present form would enable the state to protect its water resources and provide for orderly development. The bill is neither burdensome nor restrictive upon agriculture, he said. A copy of his testimony is attached hereto as Exhibit 4.

Terry Murphy of Great Falls, testifying on behalf of the Montana Farmers' Union, said the majority of the members of that group support HB 680. He cautioned that farmers support the sale or lease of excess water only, and that profits must go toward state water policy control.

Ted Doney, an attorney specializing in water law, and former director of the department of natural resources and conservation, spoke in support of HB 680. He said he has long been opposed to Montana's ban on using water for coal slurry. He said the limited leasing program outlined in HB 680 maximizes the state's control over its water resources. HB 680 is not perfect, he said, but future legislators will have time to fine tune the legislation once it is in place.

Ken Kelly spoke in support of the bill on behalf of the Montana Water Development Association. He said the Association has supported the concept of water leasing for years. He said that if anyone fears a price will be put on water that would effectively eliminate agricultural users from the market, those fears should be allayed by the assurance that the state could discriminate on pricing, and offer a lower price to agricultural users.

Phillip Davis, an attorney from Bozeman, spoke in support of HB 680 on behalf of the Environmental Information Center. He said he is convinced that the positive aspects of the bill provide adequate safeguards for Montana's water. He said the EIC supports the bill as a complete unit, and would

closely scrutinize any proposed amendments. He specifically supported Section 10 of HB 680, which would place pipelines over 30 miles in length and seventeen inches in diameter under the Major Facility Siting Act. He presented a sheet of information concerning that provision, which is attached hereto as Exhibit 5. A copy of his testimony is attached as Exhibit 6.

Don Reed, also representing the Environmental Information Center, said that group had participated in the interim committee's deliberations, and endorses HB 680 as a package. He offered a number of comments of the issue of pipeline coverage under the siting act. A copy of his testimony is attached hereto as Exhibit 6A.

Don Skaar supported HB 680 on behalf of the 1,200 members of the Montana chapter of the Sierra Club. He said the bill would protect the state's water from out-of-state interests and uses that are not in the best interests of Montanans. He said the bill forms a cohesive policy in which the whole is stronger than the parts, and objected to any substantive amendments or deletions.

Lavina Lubinas offered support of HB 680 on behalf of Women in Farm Economics. She said WIFE recognizes that water is a commodity that should be marketed, and endorsed the methods set up under HB 680.

Scott Ross of Walleyes Unlimited said that group supports HB 680, particularly those provisions that require water reservation to ensure the instream flow needed for quality fisheries. He noted that these fisheries contribute to Montana's recreation-based tourist industry. A copy of his testimony is attached as Exhibit 7.

John Shontz, a former representative from Sidney, and member of the select committee on water marketing, said that the legislature should avoid the "little Montana attitude," and look beyond the state's borders when considering water policy questions. He noted that water leasing is not a sales program, it is a contractual arrangement that allows the state to maintain control over the price, the buyer and the future uses of its water.

No further proponents rose in support of the bill.

OPPONENTS: Bill Asher, representing the Montana Agricultural Preservation Association, the Park County Legislative Association and the MEagher County Preservation Association, rose in opposition to HB 680. He said he had been following the water policy issue for five years, and believed that the interim water committee did the best job it could, but that the result, HB 680, does not adequately

address the concerns of agricultural water users. He said he agrees with some portions of the bill, specifically those that urge adjudication of water rights through the state's water court, and the creation of a legislative water policy committee. He said that spokesmen from the groups he represented would provide further statements in opposition to the bill.

Vernon Westlake, chairman of the water committee of the Gallatin Agricultural Preservation Association, said that group opposes HB 680 with reservations. He said that repealing the ban on exportation of the state's water is premature and unnecessary. He said that changing the permit criteria for water appropriation is not in the best interests of irrigated agriculture. He said that allowing water to be used in coal slurry projects could increase the financial problems faced by railroads in Montana, and result in higher freight rates for the transportation of agricultural products. Mr. Westlake said the state should postpone any water leasing activity until the stream adjudication process now underway is completed throughout the state. He also said that water courts, and not the DNRC, should have the eventual authority to sell or lease water. A copy of his statement is attached hereto as Exhibit 8.

Bill Black of Gallatin Gateway, representing the Agricultural Preservation Association, opposed HB 680. He said that group is opposed to any sale or lease of water until the entire adjudication process is completed. He expressed particular concern about granting rule-making authority to the DNRC, and said the legislature should maintain strict control over rule-making. A copy of his statement is attached hereto as Exhibit 9.

Joe Brand of Helena spoke as a private citizen against HB 680. He said legislation on water policy should not be made until all the state's basins have been adjudicated. He also cautioned against the practice of removing water from reservations for leasing. He said that the impact of a water level change could severely damage aquatic plant and animal life. He also expressed concern that in dry years, the state's responsibility for fulfilling water leasing contract could leave Montanans without water. He said that the coal slurry ban should be left in place, so that no job loss would occur in the railroad industry.

James T. Mular, representing the Brotherhood of Railway and Airline Clerks, with about 8000 members, said any water policy legislation should be delayed until after water rights are adjudicated statewide. He spoke against the repeal of the ban on using water for coal slurry, saying that it would cause losses to the railroads, and rates "would go sky high to absorb coal haul losses." A copy of his testimony is attached as Exhibit 10.

Gary Spaeth, House District 84 representative, rose against HB 680 on his own behalf. He noted that although he was not necessarily representing his constituents, he believed that most of them would agree with his position on HB 680 if he had been able to discuss the matter with them. Rep. Spaeth said he has been very much involved in the water reservation process, and had been somewhat supportive of it in the last session. The problem with the reservation process, he said, "is that we haven't admitted we want instream flows." He said that agriculture is a "poor sister" in the reservation process, and has only been added to it to lend credibility. He questioned why the state should have water reservations if it does not have adequate water to appropriate to various needs. The reservation process, he said, "may not leave anything to protect."

Bill Rostad spoke against the bill as a representative of the Meagher County Protective Association. He said that in years of low water he wondered how the water needs of Montanans would be addressed, especially considering that state contracts required certain amounts of water to be leased.

There were no further opponents, and the floor was opened to questions from committee.

Rep. Addy asked Mr. Shontz about Mr. Brand's concern that a lease is in effect a contract, and asked if there is any protection for the state's water users in dry years. Mr. Shontz said that a contract is a negotiable document, and that the legislature has the right to define the terms of any water leasing contract. He said he was sure the department would take the "dry year" question into consideration, and that prior right appropriations would always have precedent over water leases.

Rep. Addy asked if the reservation system would set up a battle between competing interests for water, which would leave Montana at a disadvantage as compared to wealthier out-of-state interests. Mr. Shontz said the object of the reservation system is to do the exact opposite.

Rep. Raney asked if it would be possible to leave the ban on the use of water for coal slurry in the state's water policy, removing it only if it is shown to be unconstitutional. Mr. Shontz said that there is no ban on the coal slurry pipelines that use substances other than water in which to transport coal, and the ban on water use only is clearly unconstitutional. He said if the ban is left in the law and challenged, the state would be forced to go to court on the basis of an old statute. Rep. Iverson said he thought that the water ban did nothing except give the railroads a "false security."

Rep. Raney noted that several opponents of the bill asked that no action be taken until after the state's waters have been adjudicated, and wondered if it was necessary to institute a water policy now. Rep. Iverson noted that no leasing of water would take place in a basin until after adjudication was complete, but there is no reason for locking up the whole state because one basin might not yet be adjudicated.

Rep. Krueger asked for an explanation of the specified diameter for pipelines included under the Major Facility Siting Act, that is, 17 inches or more. Rep. Iverson explained that the figure was arrived at after considerable study, and would include coal slurry pipelines, but exclude gas gathering lines.

Rep. Ream asked if the specified length of pipelines covered under the Major Facility Siting Act would allow inclusion of a 48 mile line, only 20 miles of which is within the state's boundaries. Mr. Thorson said such a line would not fall under the MFSA provision, because the intent of that section is to cover only action within the state.

Rep. Driscoll asked Rep. Iverson for confirmation of the state's ability to legally discriminate on the price of water, and was told that as the proprietor, the state would have that right.

Rep. Raney asked if the bill would give too much power to DNRC, and Rep. Iverson said any extension of authority could be accompanied by a statement of intent specifically outlining and limiting that power.

Rep. Iverson closed by stating that almost every fear of HB 680 could be eliminated through a careful reading of the public interest criteria portions of the bill. He told the committee that HB 680 is a carefully written, comprehensive piece of legislation that should be approved, and must remain intact.

There being no further questions, and no further business before the committee, the hearing was ended at 10:10 p.m.

  
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REP. DENNIS IVERSON, Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 2/18/85

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry	X		
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John	X		
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		



APPENDIX D:  
PROPOSED LEGISLATION

PART I: TABLE OF CONTENTS TO LC 660

- Section 1 [p. 2]: Definitions (water) [MCA § 85-2-102]
- Section 2 [p. 5]: Department powers over state waters [MCA § 85-1-204]
- Section 3 [p. 7]: Right to appropriate [MCA § 85-2-301]
- Section 4 [p. 9]: Criteria for issuance of permit [MCA § 85-2-311]
- Section 5 [p. 13]: Terms of permit [MCA § 85-2-312]
- Section 6 [p. 14]: Fees for environmental impact statements [MCA § 85-2-124]
- Section 7 [p. 17]: Changes in appropriation rights [MCA § 85-2-402]
- Section 8 [p. 25]: Definitions (Major Facility Siting Act)  
[MCA § 75-20-104]
- Section 9 [p. 29]: Study, evaluation, and report on proposed facility  
(Major Facility Siting Act)[MCA § 75-20-216]
- Section 10 [p. 33]: Hearing date -- location -- department to act as  
as staff -- hearings to be held jointly (Major  
Facility Siting Act)[MCA § 75-20-218]
- Section 11 [p. 34]: Opinion issued with decision -- contents (Major  
Facility Siting Act)[MCA § 75-20-303]
- Section 12 [p. 36]: Waiver of provisions of certification proceedings  
(Major Facility Siting Act)[MCA § 75-20-304]
- Section 13 [p. 38]: Definitions (Major Facility Siting Act)  
[MCA § 75-20-1202]
- Section ~~13~~<sup>14</sup> [p. 39]: Water leasing program (New Section)

- Section 15 [p. 42]: Acquisition of water in federal reservoirs [MCA § 85-1-205]
- Section 16 [p. 43]: Reservation of waters [MCA § 85-2-316]
- Section 17 [p. 49]: Reservations within Missouri River basin (New Section)
- Section 18 [p. 50]: Department duties [MCA § 85-2-112]
- Section 19 [p. 51]: State water plan [MCA § 85-1-203]
- Section 20 [p. 53]: Report to the legislature [MCA § 85-1-621]
- Section 21 [p. 54]: Water policy committee (New Section)
- Section 22 [p. 56]: Penalties [MCA § 85-2-122]
- Section 23 [p. 56]: Extension of authority (New Section)
- Section 24 [p. 56]: Termination date [§ 7, ch, 706, Laws of 1983]
- Section 25 [p. 56]: Repealer (New Section)[MCA § 85-2-104]
- Section 26 [p. 56]: Codification instruction (New Section)
- Section 27 [p. 56]: Severability (New Section)
- Section 28 [p. 57]: Applicability (New Section)
- Section 29 [p. 57]: Effective date (New Section)

EXHIBIT 3  
2/18/85

HB 680

Testimony Presented by Jim Flynn, Department  
of Fish, Wildlife and Parks

February 18, 1985

Mr. Chairman, members of the committee, I appear before you today in support of HB 680, a bill to maximize Montana's interest in the interstate allocation of water, to provide for water reservations in the Missouri River Basin, and amend criteria for water appropriation. Water has always been a critical commodity in the West, and the creation of a permanent Water Policy Committee, proposed by this bill, illustrates the seriousness of this issue.

The concept of "water marketing" was introduced in the 1983 legislature. It was unfamiliar to most of us and raised more questions than it answered. The Select Committee on Water Marketing investigated the water marketing issue in detail and recognized the need to address broader water policy concerns.

We have reviewed HB 680 and commend the Select Committee for its efforts. This bill is timely and comprehensive. It protects Montana's fair share of the Missouri River and provides safeguards for existing and future needs. An accurate and timely adjudication is needed to quantify existing use in the basin. The timetable for the Missouri River water reservations will ensure that future consumptive and in-stream uses of water are quantified.

The fish and wildlife of the Missouri River Basin are nationally recognized. They are assured adequate consideration in a water reservation process and the adoption of reasonable use criteria. The Department supports HB 680 and would urge this committee to adopt the measure.

# NORTHERN PLAINS RESOURCE COUNCIL

Exhibit 4  
2/18/85

Field Office  
Box 858  
Helena, MT 59624  
(406) 443-4965

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Billings, MT 59101  
(406) 248-1154

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

## TESTIMONY OF ROBERT GREEN ON HB 680

My name is Robert Green. My address is Tongue River Stage, Miles City I live and work on the Tongue River as a member of a family farm corporation. We have developed about 350 acres of irrigation in the past 10 years and see the potential for another 300 acres in the future.

I am here today representing the Northern Plains Resource Council.

The Northern Plains Resource Council applauds the efforts of the Select Committee on Water and supports passage of the end results of those efforts, HB 680, in the form it was presented to you.

HB 680 is a far reaching and foresighted bill which enables the state to better protect it's water resources and provides for orderly development of those resources. It is neither burdensome nor restrictive upon agriculture. Rather, it provides protection for existing rights and ensures availability of water for future agricultural development.

As an example of the need for this, I live next to the Powder River Basin. During the early 70's two industrial appropriators applied for permits to divert water for consumptive use. The Powder River has only enough unappropriated water to allow development of one of these applications. If and when that development takes place any future agricultural development would necessitate purchasing water from the Company. Just one industrial appropriation would close the Basin to future development for generations to come.

The lease concept embodied in HB 680 can prevent situations such as this in the future.

This bill also contains other provisions which would facilitate orderly development in the future:

The public interest criteria are necessary to give the Department of Natural Resources and Conservation a fair means of evaluating and judging an application.

We strongly support placing pipelines under the Major Facilities Siting Act.

We believe the expeditious development of a Reservation System on the Missouri River is imperative.

The formation of a standing Joint Water Committee and the development, implementation and periodic review of a State Water Plan also have our support.

Water has become very scarce and precious in some other western states. Water development in those states was not done in a prudent and orderly manner and some are now over appropriated. We will continue to see an increasing

number of High Court rulings affecting our rights and ability to develop our water resources. Passage of HB 680 will place Montana in a very good position with respect to recent rulings while at the same stroke providing a means of review to help maintain Montana's control over it's waters.

The only caution we would urge is that the bill be kept whole. A puzzle forms a complete picture when all the pieces are in place. This is a well researched well thought policy allowing Montana to maintain maximum control over it's water resources.

It will work as a package. It must be kept a package.

I wish to thank the Chairman and members of this committee for the opportunity to comment here today.

EXHIBIT 5  
2/18/85

PIPELINES UNDER THE  
MAJOR FACILITY SITING ACT

HB 680, SEC. 10

HB 680, recommended by the Select Committee on Water Marketing, Sec. 10 would place pipelines over 30 miles in length and seventeen inches in diameter under the Major Facility Siting Act (MFSA).

ENVIRONMENTAL IMPACTS

The environmental impacts of pipelines are similar to transmission lines, which are covered under the MFSA. Pipelines belong under the act. They can have significant environmental impacts when covering varied terrain. The disturbance of native ground cover in the right-of-way can cause problems with noxious weed invasion. There is also a need to separate topsoil from sub-surface soils for use in reclamation. Crossing diversified terrain causes problems with stream crossings and other "sensitive" areas (such as fragile alpine slopes, marginal vegetative cover, erosion-prone hillsides, etc.). Another major problem is the use of large volumes of water for hydro-static testing (which can dewater marginal streams and cause water pollution).

COMMITTEE RECOMMENDATIONS

The Select Committee recommends placing pipelines under the MFSA. The committee's recommendations are based on the need for adequate environmental review of possible coal slurry or water pipelines. Covering all types of pipelines is necessary for the statute to be constitutional, since pipelines of a similar environmental impact should not be regulated differently.

OPTIONS TO THE LEGISLATURE

1. Adopt current HB 680 language of seventeen inches and thirty miles.
2. Raise the diameter to twenty inches as supported by the oil and gas industry.
3. Lower the diameter to twelve or sixteen inches to cover all lines that require building an earthen pad for construction.
4. Base the cut off on something other than size.

RECOMMENDATIONS

\* All lines that require the construction of level workpads should be covered by the MFSA. Such lines have significant environmental impacts since they require grading large right-of-ways (40 to 50 feet).

\* Pipelines should be covered by the MFSA irrespective of the content of the line. Coverage of pipelines should be based on the environmental impacts, not the contents of the pipeline.

EXHIBIT G  
2/19/85

Testimony of Philip W. Davis  
Before the House Natural Resources Committee  
In Support of HB 680, February 18, 1985

My name is Philip Davis. I live and practice law in Bozeman. I serve on the Board of the Montana Environmental Information Center and I speak for the members of MEIC tonight.

The Montana Environmental Information Center has been actively involved in the question of water marketing since it became a hot issue in the 1983 Legislative session. We have closely followed the Select Committee's proceedings and publications and we have heard the arguments for eliminating the historic bans on exportation of water and on use of water for coal slurry purposes. While we accept these arguments as persuasive, our members are loath to give up these important safeguards too easily.

We are persuaded that the positive aspects of this bill provide adequate substitute safeguards to enable us to support it. In particular, the imposition of public interest criteria for applications to appropriate large quantities of water, the completion of the water reservation system, and the inclusion of appropriately sized pipelines under the Major Facilities Siting Act, are aspects of the legislation which we strongly support.

Our position, then, on HB 680 is that we can and do support it as a whole package and as it is presently constituted and we will work for its passage. We will closely scrutinize amendments and if this bill, and its positive aspects, are undermined in any significant way, we will have no choice but to withdraw our support and devote our efforts to defeating the legislation as so amended.

TESTIMONY IN SUPPORT OF HB 680

By Don Reed, Montana Environmental Information Center  
February 18, 1985

Mr. Chairman and members of the House Natural Resource Committee, I'm Don Reed and I'm here on behalf of the members of the Montana Environmental Information Center in support of HB 680.

The Montana EIC has participated extensively in the interim committee's deliberations and endorses the package of recommendations in HB 680.

I would like to focus on one little-discussed element of HB 680, placing pipelines under the Major Facility Siting Act. The Select Committee specifically requested comments on what pipelines to cover. We offer our comments here not to criticize the bill, but to let you know what we think is most appropriate.

Section 10 of HB 680 calls for placing all pipelines over seventeen inches in diameter and 30 miles in length under the Siting Act. The key strength of the provision is that it covers all lines regardless of what is transported in the line. This is crucial given the finding of the Select Committee that future coal slurry pipelines might not use water as the transportation medium. More likely candidates are carbon monoxide and methane. Limiting Siting Act coverage to lines which use water would not cover such coal slurry lines.

Second, the determination of which lines ought to be covered should revolve around the environmental impacts of the pipelines. Major pipelines crossing diverse terrain have environmental impacts similar to those found with large electrical transmission lines, which are currently covered by the Siting Act. Such "linear facilities" cross diverse terrain, streams, roads, and environmentally sensitive areas. Moreover, a large pipeline requires the building of a level earthen pad in construction. This has a significant environmental impact. The right-of-way is graded. This creates the potential for noxious weed infestations in the right-of-way and requires the separation of topsoil for reclamation.

According to the Department of Natural Resources and Conservation, pipelines sixteen inches in diameter and greater require the building of earthen pads. We believe that this is the most appropriate cutoff for which pipelines ought to be covered by the Siting Act. It is based on environmental impacts, not what is carried in the line.

Those who oppose placing pipelines under the Siting Act often argue that the process is too cumbersome and takes too



long to permit a facility. Such arguments seemed to be based on the experience with power plants. The Siting Act also covers power transmission lines. Numerous powerlines have been permitted under the Siting Act.

An analysis of those power lines already covered by the Siting Act shows that some eighteen transmission lines have received Siting Act certificates. The average time between submission of a completed application and receiving the certificate has been fourteen and a half months. This shows that the Siting Act is capable of dealing with facilities similar to pipelines rather quickly.

We believe that experience shows that the regulation of pipelines under the Siting Act will not present an undue regulatory burden. The benefits of covering pipelines far outweigh those limited regulatory costs.

In summary, Montana EIC supports HB 680 in general, placing all pipelines regardless of contents under the Siting Act, and setting a size cutoff for pipelines that would cover pipelines sixteen inches in diameter and greater.

Thank you for this opportunity to comment.

# Walleyes Unlimited OF MONTANA



BOX 1067  
WOLF POINT, MONTANA 59201

February 18, 1985

EXHIBIT 7  
2/18/85



Testimony Before the House Natural Resources Committee  
HB680

*-Wolf Point-*

My name is Scott Ross. I am from ~~Helena~~. I represent Walleyes Unlimited of Montana, an organization of nearly four thousand Montana fishermen.

Walleyes Unlimited stands in support of HB680. Some of our concerns have been met by the development of a water leasing program which would be subject to review under Public Interest Criteria.

Walleyes Unlimited further supports the development of water reservations in the Missouri River Basin to insure that instream flow requirements for fisheries maintenance will be met. These fisheries contribute substantially to Montana's recreation resources and its recreation-related tourist industry. They merit protection by the development of reservations within the Missouri River Basin.

Thank you.

February 18, 1985

EXHIBIT 8

2/18/85

House Natural Resources Committee  
State Capitol  
Helena, Montana

Mr. Chairman and Members of the Committee:

For the Record, I am Vernon Westlake, chairman of the Water Committee for the Agricultural Preservation Association. Again, for the Record, Gallatin A.P.A. and Park County Legislative Association oppose H.B. 680 with reservations. I should like to explain why these groups have taken a position with reservations.

We are very concerned with Part A of the Recommendations to the 49th Legislature by the Select Water Marketing Committee. In our opinion, repealing "The Ban on Exportation of Water" at this time is premature, and Section 24 of H.B. 680 is not necessary.

We feel that changing the permit criteria from 10,000 acre-feet/year and 15 cubic feet/second to 4000 acre-feet/year and 5.5 cubic feet/second is not in the best interests of agriculture and especially for future instate development of irrigated agriculture, 4000 acre-feet or 5.5 cubic feet/second is not a large water right. In terms of miners inches, 5.5 cubic feet/second is a flow of 220 miners inches, and I venture to say that the majority of water rights in Gallatin, Park and Meagher counties exceed that amount.

We realize that the recommended change is addressing the unappropriated water in Montana, however, if this criteria is used to consider agricultural water right applications for the unappropriated water, it would, for all practical purposes, eliminate future development of irrigated agricultural land in Montana because the minimum is too small.

We think that Montana should be very careful about using water for coal slurry. Our main concern is the possible effect of causing railroads an additional financial problem. This, in turn, could reflect

in higher freight rates for transporting agricultural products to market.

We would support coverage of pipelines under the Major Facility Siting Act if and when, the pipelines were to be constructed. We believe that the general water adjudication process must be completed before any water pipeline construction should be permitted.

Part B of the Committee's recommendations addresses the State Water Leasing Program. Our groups feel that this program is premature, and that no leasing should be permitted until the general water adjudication process is completed. I should like to include a very important concept to consider in the future plan for water leasing.

Our groups are on record in support of the concept of Senator Story's S.B. 299. We recommend to the Committee that the DNRC should not have the authority to approve an application for either a permit or a temporary decree in the name of the Department for unappropriated water to sell or to lease. We believe that only the Court system should have jurisdiction for water appropriation. The DNRC should function only as an administrative agency for the State of Montana, regarding water use in state or out of state.

Part C of the Committee's Recommendations, titled Maximizing Montana's Fair Share of the Missouri River Basin Water, is the part of the bill that our groups very strongly support. We are on record as having supported general stream adjudication for the past several sessions, but we believe that the language in the bill is not adequate.

We believe that general stream adjudication must be completed in all the basins of Montana and preliminary decrees issued to all claimants before unappropriated water can be filed on for selling, leasing, irrigation, domestic, or other purposes, either intrastate or interstate use. We realize that this bill does provide that a

basin is adjudicated before unappropriated water could be filed on. Our groups do not approve a piece-meal basin-to-basin approach for allocation of unappropriated water. We feel that completion of the adjudication process will provide a complete inventory of the existing water use, and, in turn, give a real basis for a responsible water plan, thus enabling the development of a realistic water policy.

We believe that completion of the existing water use record will put Montana in a much stronger position, legally, than pushing for the immediate sale or lease of water for out-of-state use. Judge Lessley is predicting a completion of general stream adjudication within the next five to six years, and we feel that the Water Courts will be able to accomplish the task in this period of time, and will issue preliminary decrees in all basins by 1990.

We support Sections 15 through 21 of H.B. 680. We believe that former Senator Jean Turnage, now Chief Justice, was referring to these Sections in his letter to the Legislature. I quote: "Many of these recommendations specify those actions that should be taken by the 49th Legislature. Other recommendations set for an agenda of water issues that must be systematically addressed by the Legislature and citizens of the State in years to come."

I conclude by saying; Let's complete the general stream adjudication and then see how much unappropriated water we have for other uses, including sales, leasing, and all other purposes. We should move with caution in the development of a policy for marketing Montana water. There is sufficient time and adequate legislation to satisfy Constitutional requirements for control of Montana water to the benefit of all Montana water users.

Thank you for this opportunity of present our position.

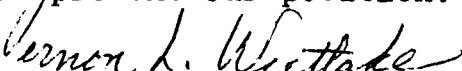
  
Vernon L. Westlake, chairman  
Water Committee, A.P.A.

EXHIBIT 9  
2/18/85

February 18, 1985

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

For the Record, I am Bill Black, Gallatin Gateway, MT representing the Agricultural Preservation Association regarding HB680 'WATER MARKETING'.

We are opposed to selling any water, in-state or out-of-state, until the adjudication process is completed. The INSTREAM FLOW RESERVATION must be approached very carefully--when the water leaves the state's boundries we've lost the beneficial use of this water.

At such time in the future, after the adjudication process is completed, and when our present and future water needs have been addressed a plan to market surplus water may be acceptable.

New section 23, (in HB680) lines 7-11 gives the board and the department of Natural Resources and Conservation the power to make and execute rules. I am fearful of this rule-making power regarding our water.

I want to give two examples of this fallacy:

1. June 7, 1984, Revenue Oversight Committee Hearing: I was present when a committee member asked the head of the Department of Revenue what rules they were going to implement. It was revealed that wells and sewer systems would be added to the property tax roll. A committee member noted that this might be like 'chasing a grizzly bear with a very short stick'.
2. Tuesday, February 5, 1985, Hearing on SB234 'To Prohibit the Department of Revenue From Using Replacement Cost As A Substitute For Market Value When Appraising Property For Tax Purposes'.  
(This is a good bill--How would you like to have your house appraised at replacement cost rather than market value?)

My point here is that it was reported in the hearing by the Department of Revenue personel that the department had changed manuals and were presently using a manual that listed machinery at a much higher value and it was also noted this manual listed obsolete items that parts are no longer available for. What is going to happen to International Farm Equipment sold today & in the next year or so regarding tax valuation? Dealerships have been notified to ship all parts on hand back to the factory--this machinery is totally obsolete, still being new.

The Department of Revenue personel stated it was up to the department to make the rules that can only be removed by the legislature or for the legislature to make the laws.

The marketing of water in Montana must not be put in the hands of the Department of Natural Resources or a board with rule making authority. Water is the most important element known to mankind, therefore, we must have the most qualified people that we can find in charge.

In closing, may I remind you of April 15, the date we must have our IRS taxes paid. Do you qualify for a tax shelter or other tax relief or are you, like so many, caught-up in vast rules made by the IRS?--a department given its authority by your U. S. Congressmen!!

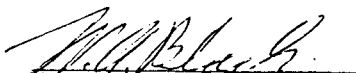
  
W. A. Black  
75255 Gallatin Road  
Gallatin Gateway, MT 59715

Exhibit 10  
2/18/85



# BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

440 Roosevelt Drive

AFL-CIO-CLC

18th-February-1985

JAMES T. MULAR  
State Director

~~406-867-8804~~

Butte, MT 59701

Phone 406-494-2316

## S T A T E M E N T     O F

James T. Mular, State Legislative Director,  
Brotherhood of Railway & Airline Clerks,  
in opposition to House Bill # 680. Before  
the Montana House of Representatives Natural  
Resources Committee.....

Mr. Chairman, members of the Committee- For the record  
my name is James T. Mular,.. I am the State Legislative  
Director of the Brotherhood of Railway & Airline Clerks.  
By direction of our Montana membership; which consists of  
over 2300 active and retired railroad clerks- This office  
opposes HB 680's repealer on the ban for the use of water  
for coal slurry purposes, pursuant to Section 85-2-104 MCA.

### B A C K G R O U N D

The 48th Legislative Assembly created an Interim Water  
Marketing Committee, because of the complexities of water  
sales in commerce. Specifically to address legal language  
and decisions made by the U.S. Supreme Court in the celebrated  
Sporhase Case. Montana did resolve a 2 year suspension on  
another statute that prohibited the export of Montana water.  
And that's what Sporhase was all about. The Court in that  
Case did not address Appropriation States rights to determine  
what constitutes a BENEFICIAL USE OF WATER.. It merely addressed  
reciprocity between Nebraska and Colorado, in the transport of  
GROUND WATER. Many legal scholars have hassled with Western  
State water laws. But- They've never come to a legal conclusion  
premised on the Common Law Doctrine of Water Uses by appropriation.  
Or for that matter any legal bans on specific uses such as  
coal slurry transport.

In fact, Spohase addressed the transport of GROUND WATER and did not speak to free-flowing or stored surface water. That case dealt with water pumped from underground through a pipe that moved between Colorado and Nebraska. There was no coal mixed in with that water. Surface water in HB 680 in excess of 4,000 acre feet or 5.5 cubic feet per second became the sole jurisdiction administered by the State Department of Natural Resources and Conservation. It becomes a part of the Judicial Branch of state government and preempts certain judicial decisions.

We would direct the Committee to Senator Turnage's summation of a two-year study conducted by the Select Committee on Water Marketing. On page two of the report, Chairman Turnage stated:

"These recommendations concern a strategy for a water policy for Montana in an interstate setting."

The Committee addressed those key words of INTERSTATE SETTING. They, in fact, recommended that Section 85-1-121 MCA was suspect banning out-of-state exports of water. This alone resolved legal ambiguities in the Sporehase Case. We allege the Select Committee did not approach Common Law Doctrine outlining APPROPRIATION OF WATER FOR SPECIFIC BENEFICIAL USE. Whenever an appropriation defines a beneficial use and denies a beneficial use for a specific undertaking -- that preempts the beneficial use such as denying the use of water and coal mixture for transporting coal.

Another factor surfaces relating to the transport of coal by water slurry pipelines. The only commodity that a slurry pipeline will transport is coal. If the railroad loses this traffic, I am sure that freight rates will increase drastically on agricultural commodities, forest products, and many industrial-mining commodities.



RAILROAD EMPLOYMENT IMPACT

My office submitted an inquiry to Burlington Northern's legal department on January 7, 1985, requesting present coal train operations and employee earnings. I am attaching a copy of that response for your information. Based on present coal haulage, the state realizes state income and property taxes on a two million dollar annual payroll. Multiply this times 50 years, and a 200 million dollar payroll becomes extinct if coal slurry comes into existence. What taxes will the coal slurry pipeline provide for Montana? And will the sale of water be earmarked for only water marketing plans? I suggest that this state will be building beaver dams all over the state, which will give no tax relief to its citizens -- just build more dams.

Montana's ban on coal slurry has been in existence for over 10 years. Chairman Turnage acknowledges the Committee's demonstration of wisdom on page one, where he states:

"There has been no serious interest in the purchase of water from Fort Peck. In fact, the sale by South Dakota of 50,000 acre feet of water per year from Oahe Reservoir to the ETSI coal slurry pipeline conglomerate has fallen through."

Mr. Chairman and members of the Committee, I submit these questions of fact for your deliberations:

"Why does the DNRC want 50,000 acre feet as legislated in HB 680?"

"Could it be that Circle West is emerging because of the 30-mile criterion set in the bill?"

"Or does BN Holding Company, a resource-based entity, seek to build a coal slurry line in competition with its subsidiary BN railroad and CNW? After all, BN Holding owns El Paso Gas and Electric."

On the other hand, if DNRC does not have a prospective purchaser or leasee, why should we repeal the ban on coal slurry?

Senator Turnage said it well for the Select Committee when he concluded:

"This agenda is too important and too complex to be addressed by ONE INTERIM COMMITTEE or ONE LEGISLATIVE SESSION." , , , , , "The deliberations must be ongoing."

We submit that the good Senator is right. Because there is no known user large enough to build a coal slurry pipeline other than those mentioned herein.

Mr. Chairman, members of the Committee, I would direct you to the Mineral Leasing Act of 1920, as amended, in the U.S. Congress numbered as H.R. 1010, specifically page 19 of the Congressional report:

"Section 207 (a) of act specifies that State Law will control both substance and procedure for the acquisition and use of water within any state for coal pipelines" ...

And the report went on further to state:

"...that the use of eminent domain authority granted by this legislation should be subordinated to state authority...", etc.

Congress did in fact say that Montana's present ban on coal slurry preempts the commerce clause of the U.S. Constitution.

Therefore, Mr. Chairman and members of the Committee, we would offer an amendment striking the repealer on Montana's ban for the use of water in a coal slurry mixture, because surfacing Congressional legislation dealing with coal slurry transport would protect Montana's present law. Thank you.



BRAC PROPOSED AMENDMENT TO HB 680

Beginning on line 14, page 1, after the word COMMITTEE, strike REPEALING THE BAN ON THE USE OF WATER FOR COAL SLURRY.

On line 20, page 1, strike REPEALING SECTION 85-2-104, MCA.

On page 5, line 22, after the word PURPOSE, add a semi-colon ";", and the words: OTHER THAN FOR THE MIXTURE OF WATER FOR COAL SLURRY PURSUANT TO SECTION 85-2-104, MCA.



## BURLINGTON NORTHERN RAILROAD

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General Counsel - Billings Region

K. KENT KOOLEN (406) 256-4454  
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Assistant General Counsel

CHARLES C. DEARDEN (406) 256-4416  
Attorney

MICHAEL Y. CRILLY (406) 256-4388  
General Manager Claims

January 15, 1985

Mr. Jim Mular  
R.R. 1 - 440 Roosevelt Dr.  
Butte, Montana 59701

Dear Jim:

In response to your inquiry, I have been advised that there are two coal trains per day leaving Sheridan via Forsyth - Glendive. The annual wages for crews and support personnel are as follows:

- A. Train and Engine Crew wages earned within Montana \$1,928,242.00 per year. This figure is arrived at by taking the gross earnings per trip, earned within Montana, \$1,785.41 times the number of trips, 1,080.
- B. Support Wages, Station and Office personnel and Maintenance of Way:
  1. Station and Office personnel, Hardin to Wibaux, approximate gross annual wage \$981,600.00. After reducing this figure to provide a pro-rata share for the 1,080 coal trains the figure is \$34,356.00.
  2. Maintenance of Way Gangs approximate gross annual wage is \$1,765,000.00. After the same appropriate reduction the figure is \$61,775.00.

Therefore, the approximate Montana gross annual wages attributable to the 1,080 coal trains running to and from Sheridan via Montana is \$2,024,373.00.

I hope this is the information you were seeking, if not or you need additional information, please advise.

Very truly yours,



Tom Spence

TS/sm  
CC - Mr. John Delano

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL 680

DATE 2/10/85

SPONSOR Iverson

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Willa Hall	Helena	League of Women Voters	✓	
Laura Nicholson	Helena	League of Women Voters	✓	
JAMES T. MULAR	Butte	PRO of RAILWAY CLERKS	AMEND	
K.M. Kelly	Helena	Mont. Water Devel. Assoc.	✓	
Ted J. Doney	Helena	Self	✓	
Scott Ross	Helena	Walleyes Unlimited	✓	
VERNON WESTLAKE	BOZEMAN	A.P.A.		✓
Angie Murphy	GT Falls	Mt. Farmers Union	✓	
Phil Postler	Montevideo	Member Co. President		✓
W.W. Williams	Bozeman mt	A.P.A.		✓
John Shantz	Sidney MT	Richland CTY	X	
W.A. Black	Kalataw Highway	agregulator Prossad.		✓
Scott Brown	Helena	Compact Commission		
BRIAN DIETRICK	HELENA	SELF		
ROBERT GREEN	MILES CITY	NPRC	X	
GILL ASHUR	BOZEMAN	APA, PCA + MCPA		✓
Lang Smith	Silesia	self		✓
Don Reed	Helena	Montana EIC	✓	
Wink Davis	Bozeman	Montana EIC	✓	
Joe BRAND	HELENA	SELF		✓

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

