

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

March 13, 1985

The meeting of the House Natural Resources Committee was called to order by vice-chairman Mike Kadas at 4:05 p.m. in Room 312-1 of the Capitol Building.

ROLL CALL: All members of the committee were present except Representative Iverson and Representative Harp, who were excused.

SENATE JOINT RESOLUTION 16: Sen. William Yellowtail, District 50, introduced SJR 16, which he sponsored. He explained that the resolution asks the governments of Montana and Wyoming to appoint a team to resolve differences regarding the Powder River. Sen. Yellowtail said that Wyoming is delivering "marginally usable" water to Montana in the Powder River, and that further planned development may make Powder River water unusable for agriculture in Montana.

Sen. Yellowtail outlined several areas of conflict between the states, such as the effect of water quality degradation on existing uses in Montana; questions over the validity of water rights proposed for development; disagreement over the jurisdiction of the Yellowstone Compact Commission; and conflict over legal and technical water quality issues.

These conflicts, he said, could lead to costly litigation. He said that the formation of a negotiation team could prevent that litigation, and result in a cooperative management plan for the Powder River basin.

He noted the reasonable cost of the project, noted in the fiscal note as \$1,000.

Representative Marian Hanson, District 100, which encompasses a portion of the Powder River basin, spoke as a proponent of the bill. She said the bill is important legislation to the people in her district, who would be seriously harmed if Wyoming development makes Powder River water unusable. She asked the committee for a do pass recommendation so that negotiation of the issue could begin promptly.

Gary Fritz, staff attorney for the department of natural resources and conservation, said the resolution would help solve problems facing people who depend on the quality of the Powder River. Without negotiation, he said, the

conflicts will certainly end up in litigation. If the intended negotiation is successful, the state could save the cost of litigation and avoid serious damage done to agricultural users who rely on the Powder River for irrigation.

Brace Hayden, representing the governor's office, said the resolution has the support of Governor Schwinden. He said that the governor of Wyoming has indicated a willingness to cooperate in negotiating the use and development of the Powder River basin.

Jo Brunner, a representative of Women in Farm Economics, said WIFE has given its full support to the resolution. She noted that when WIFE organizations were started in Montana and Wyoming, chapters from both states worked together in many areas. However, conflicts over water issues have resulted in a split between the groups, so that very little cooperation remains. She said that WIFE believes that negotiation and resolution of water use conflicts will lessen problems between Montana and Wyoming. A copy of her testimony is attached as Exhibit 1.

Russ Brown, representing the Northern Plains Resource Council and several member ranchers who were unable to attend because of spring calving, said NPRC supports the resolution on behalf of its Powder River members who will be adversely affected if degradation of the Powder River continues.

Rep. Tom Asay supported the resolution on behalf of many of his constituents, who depend on the quality of the Powder River. He specifically noted the importance of negotiation that would avoid lengthy and costly litigation.

There were no opponents to SJR 16.

Rep. Ream asked Sen. Yellowtail how members of the negotiation team would be selected, and was told they would be appointed by the governor. Rep. Ream then urged Sen. Yellowtail to try to get more funding for the project than the \$1,000 noted in the fiscal note. SJR 16 is a good cause, he said, and legislators involved in the effort to maintain the quality of the Powder River should not have to travel to do so at their own expense.

Rep. Yellowtail closed by saying that it is important for the legislature and the people of Montana to be aware of water issues, and to work to maintain water quality. He said the resolution does not intend to usurp the authority or responsibility of the Yellowstone Compact Commission, but is intended as complimentary legislation. He told the committee that Rep. Marian Hanson, a co-sponsor, would carry the bill on the floor of the House.

SENATE BILL 166: Senate Bill 166 was introduced by the sponsor, Sen. George McCallum, District 26. Sen. McCallum said he introduced the bill at the request of the department of state lands. The bill would eliminate the 10-day posthearing deadline imposed on the board of land commissioners in determining whether to complete an exchange of timbered state land. The change is needed, he said, because it is "virtually impossible" to complete all the necessary work required for a decision within ten days after a hearing.

He noted that he agreed to carry the bill for DSL because he had personal knowledge of an instance in which the department required a full year in which to make a decision to exchange lands.

Kelly Blake, representing the department of state lands, spoke in favor of SB 166. He listed several reasons why the department requested the change, indicating that it is impossible to do a thorough, responsible job within the 10-day limit. A copy of his testimony is attached as Exhibit 2.

There were no opponents of SB 166.

Rep. Ream asked Mr. Blake if it was the department's position that they should be under no time limit in making a decision on whether to exchange lands. Mr. Blake said that the department has statutory obligations to address a number of specific concerns, and to follow certain procedures. The department should be granted the time necessary to meet those obligations, and be held responsible for doing so in a timely fashion. Specific time limits would not be necessary, he said.

Rep. Kadas suggested to Sen. McCallum that the senator find a sponsor to carry the bill on the floor of the House.

Sen. McCallum closed by saying that the state, through DSL, has an obligation to trade for lands of equal or greater value when making an exchange of timbered lands. The 10-day limit does not allow the department the time needed to make a careful, considered, decision and should therefore be stricken, he said.

SENATE BILL 365: Senator Dorothy Eck, district 40, introduced SB 365, which she sponsored at the request of the department of natural resources and conservation. She explained that the bill extends the definition of what can be termed a controlled groundwater area for purposes of DNRC regulation.

Senator Eck explained that some areas of the state are facing a problem caused by the fact that groundwater is being extracted faster than it is being recharged into the water table. In some instances this situation is causing diminishment of the quality of the remaining groundwater. She said that the groundwater commission has found that when groundwater is being removed at a faster rate than it is being replenished, it sometimes causes a "migration" of brackish water into the good water.

She distributed a handout prepared by the groundwater council which explains how such migration can contaminate a source of good groundwater. The handout also sets out the recommendation of the council that the board of natural resources be allowed to form and regulate "management areas" in which groundwater could be given additional regulatory protection to avoid such contamination. That recommendation, she said, is reflected in SB 365. A copy of the information presented by Senator Eck is attached as Exhibit 3.

Gary Fritz, attorney for the department of natural resources and conservation, spoke in support of SB 365, which he said would protect groundwater quality by setting aside areas for regulatory control.

No opponents spoke against SB 365.

Rep. Cobb asked Mr. Fritz how many areas would be set aside for special regulations to protect groundwater. Mr. Fritz said the department has no figures as to how many areas would be included. He noted, however, that there are currently two areas in the state that are being regulated by the department as a result of excessive withdrawal of groundwater. He noted that in both instances, the resultant problem was lack of quantity of groundwater, not contamination of remaining groundwater.

Rep. Grady asked if the legislation would have an effect on large irrigation wells that draw from groundwater. Mr. Fritz said that it is unlikely those uses would be affected, unless the users were suffering from water migration, and petitioned the department for relief.

Rep. Ream asked what the advantages of SB 365 are over current statutory provisions, and Mr. Fritz replied that the bill would allow DNRC regulatory control beyond that now included in the permitting process for groundwater uses. That control would allow the department to limit withdrawal in areas suffering from water migration, he said.

Senator Eck closed by saying that Montanans should recognize that groundwater is an essential resource, and needs as much protection as more visible assets. She noted the need to continue to collect and study groundwater data, in order to predict and avoid groundwater contamination through migration. SB 365, she said, is an integral part of the state's plan for maintaining quality groundwater.

Senator Eck said that Rep. Gay Holliday would carry the bill in the House.

EXECUTIVE ACTION:

SENATE BILL 166: Rep. Asay moved that SB 166 BE CONCURRED IN. That motion was approved by a unanimous voice vote.

SENATE BILL 365: Rep. Raney moved that SB 365 BE CONCURRED IN. That motion was approved by a unanimous voice vote.

SENATE JOINT RESOLUTION 16: Rep. Ream moved that SJR 16 BE CONCURRED IN. That motion was approved by a unanimous voice vote.

There being no further business before the committee, the meeting was adjourned at 5 p.m.


Rep. MIKE KADAS, Vice-Chairman

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date MARCH 13, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)			
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			
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		

STANDING COMMITTEE REPORT

March 13

19⁸⁵

MR. SPEAKER

We, your committee on NATURAL RESOURCES

having had under consideration SENATE JOINT RESOLUTION 16

Bill No.

THIRD

reading copy (BLUE)
color

A RESOLUTION URGING THE GOVERNMENTS OF MONTANA AND WYOMING
TO RESOLVE THEIR DIFFERENCES ON THE POWDER RIVER THROUGH
NEGOTIATION OF A BASIN MANAGEMENT PLAN

Respectfully report as follows: That SENATE JOINT RESOLUTION 16

Bill No.

BE CONCURRED IN

~~DONPASS~~

STANDING COMMITTEE REPORT

March 13

19 85

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE BILL 166 Bill No.

THIRD reading copy (BLUE)
color

AN ACT ELIMINATING THE 10-DAY POSTHEARING DEADLINE FOR
BOARD OF LAND COMMISSIONERS' DECISIONS ON PROPOSALS FOR
EXCHANGE OF TIMBERED STATE LAND

SENATE BILL 166

Respectfully report as follows: That..... Bill No.

BE CONCURRED IN

XXXXXX
DO PASS

STANDING COMMITTEE REPORT

March 13

95

19.....

SPEAKER:

MR.

NATURAL RESOURCES

We, your committee on

SENATE BILL 365

having had under consideration Bill No.

THIRD

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reading copy (.....)
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AN ACT ADDING TO THE FACTS THAT MAY BE ALLEGED TO SEEK

DESIGNATION OR MODIFICATION OF A CONTROLLED GROUND WATER AREA

SENATE BILL 365

Respectfully report as follows: That Bill No.

BE CONCURRED IN

**XXXXXX
DO PASS**

EXHIBIT 1
3/13/85



WIFE Women Involved In Farm Economics

NAME Jo BRUNNER COMMITTEE H. Nat. Res.
ADDRESS 1496 Kodiak Road DATE March 13/85
REPRESENT W.I.F.E. BILL NO. SJR 16
SUPPORT X AMEND OPPOSE

Mr. Chairman, members of the committee for therecord, my name is Jo Brunner and I represent the Women Involved in Farm Economics at this committee meeting.

Mr. Chairman, the W.I.F.E. organization is in full support of Senator Yellowtails proposal that the gov^rnments of Montana andWyoming negotiate toward settleing any differences our respective states have concerning any water problems.

Perhaps W.I.F.E. looks at this from a different angle than some of you. Both Wyoming and Montana have active W.I.F.E. organizations and when we first began, we worked well together and because of our common border, and our common heritages we accomplished a great deal.

But, before long, water differences arose and little by little the Wyoming chapters withdrew not only from communication on water issues but on other issues important to both our states.

Montana W.I.F.E. believes that if we can negotiate and resolve our differences between states it will lessen the problems between the citizens of those states. We know that not all people on both sides of the border are so involved as our members are, perhaps because we are so agriculture in our needs and projected needs, but we have long standing policy that whenever possible, and as long is feasible, we will support negotiations where water is concerned.

We ask a do pass for SJR 16.

Thank You.

EXHIBIT 2
3/13/85

TESTIMONY ON SENATE BILL 166

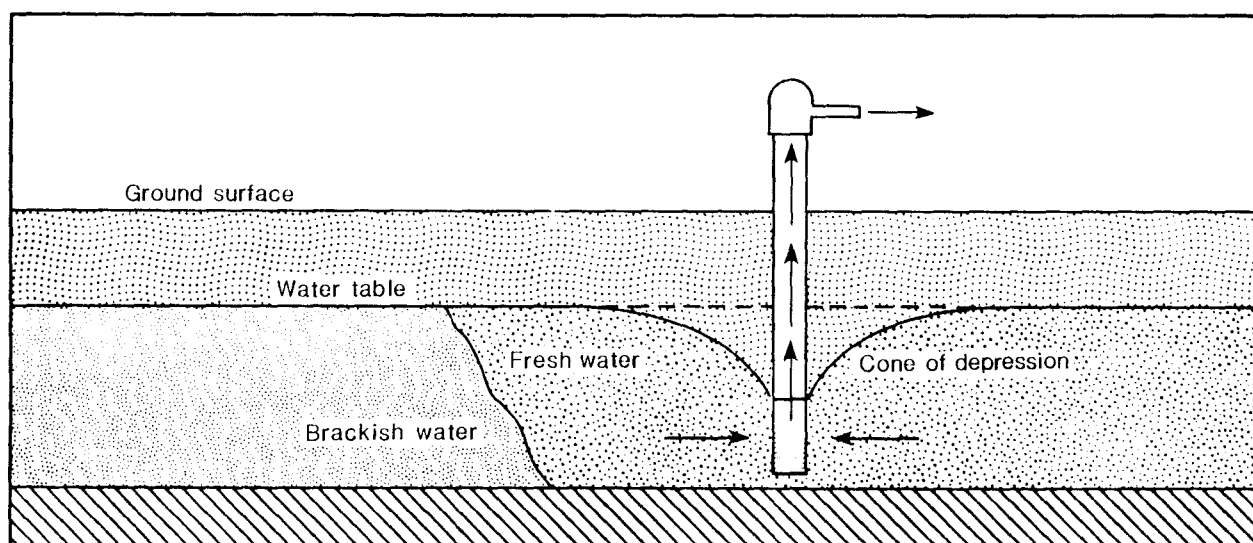
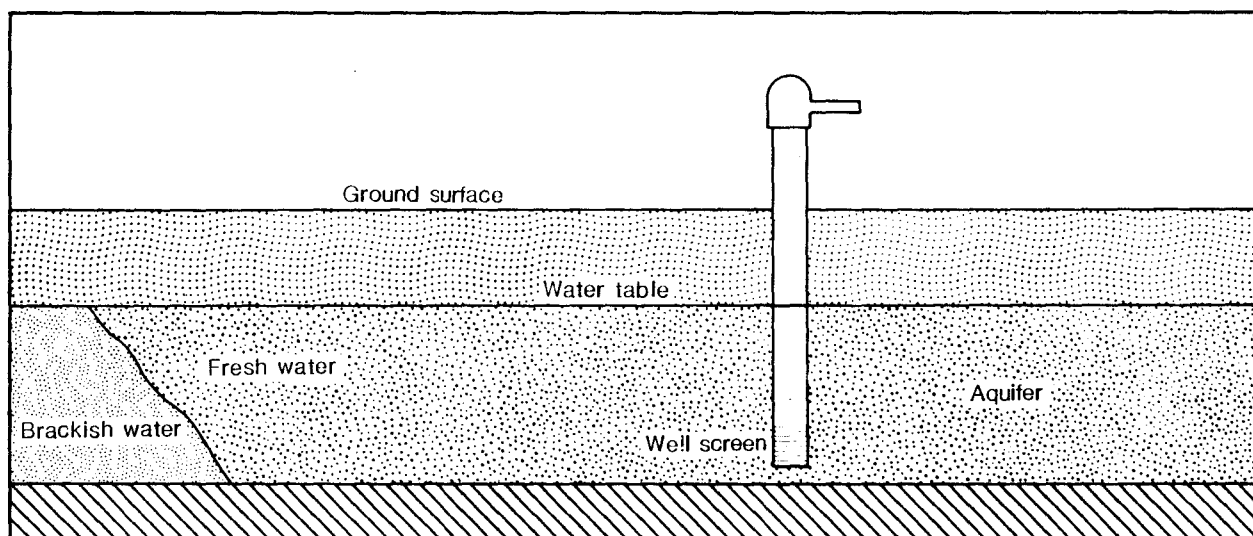
FROM DENNIS HEMMER, COMMISSIONER, DEPARTMENT OF STATE LANDS

The Department of State Lands supports House Bill 166. Currently the Board of Land Commissioners has the authority to exchange timbered state lands for other lands. The procedures for accomplishing this are set forth in statutes and Board policy. There must be a hearing where the public may voice objections to or concerns with the exchange. As it now stands, by statute, the Board, within 10 days of the hearing, must dismiss the exchange or proceed to complete the exchange. The problem arises that it is impossible to have a decision from the Board within 10 days of the hearing. First, there may be concerns expressed at the hearing that would take more than 10 days to investigate. Secondly, the Land Board only meets once a month. It is virtually impossible to hold a hearing, perform any additional investigation, and prepare the material for the Board and notice the meeting within 10 days. Likewise, the date of hearing is then dictated by the date of the Board meeting which may force the hearing to be held at an inopportune time for those who wish to attend. For these reasons Section 77-2-216 MCA, should be amended by eliminating the 10 day requirement.

GROUND WATER QUALITY AND QUANTITY INTERACTION

Degradation of ground water quality can occur where pumping from one aquifer induces recharge, either vertically or laterally, from another portion of the same aquifer or another aquifer system that contains water of poorer quality (Figure 9). Ground water quality problems can also develop where pumping an aquifer with hydraulic connection to a poor-quality, surface-water body creates a cone of depression that intercepts the surface-water body, causing the polluted surface-water body to recharge the aquifer. If the stream carries a pollutant that is not removed by percolation through the aquifer, the contaminant will be drawn into the ground water system and subsequently withdrawn through wells tapping the aquifer.

Figure 9. How pumping can affect ground water quality



In both of the cases cited above, the quantity of ground water withdrawal can influence the quality of water within the aquifer. Faster rates and larger volumes of withdrawal often create more significant head differences between the area of pumping and the contaminant source, which in turn increase the rate of migration of the poor-quality water.

The relationship between ground water withdrawal and ground water quality is not currently recognized in Montana water statutes. Water quality statutes are directed at point- and nonpoint-source pollution caused by the addition of contaminants to ground water by humans. Yet in many cases, contaminants such as salts are already present because of natural processes and can be induced to migrate into an aquifer by ground water withdrawals. While state statutes deal with the problems of excessive ground water withdrawal and the effects of these withdrawals on the quantity of ground water available to other users, the law does not deal with the effects of withdrawals on the quality of the remaining available ground water.

Council Recommendations

The Council recommends that the language of statute MCA 85-2-506, giving authority to the Board of Natural Resources and Conservation to form controlled ground water areas, be changed to allow formation of such a management area in response to water quality degradation caused by excessive withdrawals and contaminant migration.

Why the Council Adopted the Recommendations

The existing statute governing the formation of controlled ground water areas does not currently recognize water quality problems associated with over-withdrawals as a justification for regulating those withdrawals through the formation of a controlled ground water area.

What is Needed to Follow the Recommendations

DNRC should prepare draft legislation to modify MCA 85-2-506 accordingly.

VISITORS' REGISTER

NATURAL RESOURCES

COMMITTEE

BILL NO. SB 365

DATE MARCH 13, 1985

SPONSOR SEN. ECK

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE NATURAL RESOURCES

COMMITTEE

BILL SB 166

DATE MARCH 13, 1985

SPONSOR Mc CALLUM

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.