

MINUTES OF THE MEETING
SENATE NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE
January 21, 1985

The first meeting of the Senate Natural Resources Committee was called to order at 1:04 p.m., January 21, 1985, by Chairman Dorothy Eck in Room 405, State Capitol Building.

ROLL CALL: All members were present with the exception of Senators Daniels and Stimatz, who were absent, and Senator Manning, who was excused. Ruth Carrington, of Hysham, Montana, attended the meeting and took notes at the request of Senator Manning.

CONSIDERATION OF SB112: Senator Story, sponsor of SB112, opened the hearing by stating that the purpose of the bill is to force the federal government to comply with the same laws that the citizens of Montana have to comply with regarding streambed protection. Senator Story informed the committee that since the drafting of SB112, he has become aware of several problems. The first problem is that it is difficult for a state to force the federal government to comply with its laws. Senator Story felt the state could possibly make more progress by "asking" for compliance rather than "demanding" compliance. The second problem is that Senator Story has learned that the Conservation Districts' budget cannot withstand the impact of SB112. Senator Story informed the committee that while the federal government does have a mandate for a permitting system, it only applies to streams having a flow of an average of five cubic feet per second (hereafter CFS) or 200 miner's inches. There is no permit required for streams having an average flow below these levels. Senator Story then submitted copies of proposed amendments (see Exhibit 1) to the committee. These amendments provide for notification to a Conservation District when a permit is approved and a mailing of a copy of the approval to the private landowner. This would enable a private landowner to determine whether the federal government is in compliance with the law. Senator Story informed the committee that there are times when the federal government does authorize its agencies to enter into agreements with states and to comply with state laws. These agreements are referred to as "Memorandums of Understanding." Senator Story feels these agreements would be more effective in dealing with the federal government than if we demanded compliance. Senator Story testified that in some circumstances the federal government can perform certain acts on private land that landowners themselves are prohibited from doing.

PROPOSERS: Allen Carter, a landowner from Park County, testified that the Forest Service had notified him they would be using his land to access a county road. In essence, the

Forest Service took out over 150 feet of streambed. The Forest Service, in addition, was able to undertake stream-bank modification, which Mr. Carter had also attempted to do, but was denied permission. When questioned by Mr. Carter, the Forest Service stated that as a federal agency, it did not need permission.

Dave Donaldson, representing the Montana Association of Conservation Districts, testified in support of SB112 and the proposed amendments. Mr. Donaldson felt that SB112 would enable the Conservation Districts to be more aware of what was happening on the federal level.

Jim Flynn, from the Montana State Department of Fish, Wildlife, and Parks, testified in support of SB112 and the proposed amendments. Mr. Flynn felt that the passage of SB112 with the proposed amendments would be a great benefit to his department (see Exhibit 2).

Ray Beck, from the Conservation Districts Division, Department of Natural Resources and Conservation, and Ken Jacobson, from the Army Corp of Engineers, offered their assistance to the committee in answering questions.

There being no further proponents and no opponents, the hearing was opened to questions from the committee.

Upon question from Senator Gage, Jim Flynn stated that notices to Conservation Districts are not given on every occasion, but are given when a Memorandum of Understanding exists. When questioned by Senator Anderson, Senator Story reminded the committee that a permit was only required on streams with an average annual flow rate above five CFS. This was done by means of a form used to administer the permitting requirement under Section 404 of the Clean Water Act.

Senator Halligan questioned Ken Jacobson as to whether this form was required when alteration of a streambed was contemplated. Mr. Jacobson stated that even if a streambed would be altered, no permit would be required on those streams below five CFS.

Chairman Eck questioned Senator Story as to why his proposed amendment four was limited to the Army Corps of Engineers. Senator Story felt that by entering into an agreement with the Army Corps of Engineers, other federal agencies would also have to comply. Ken Jacobson stated that an agreement with the Army Corps of Engineers would not mandate compliance by other federal agencies. Senator Story agreed with Chairman Eck's proposal to include other federal agencies in the proposed amendment four.

Senate Natural Resources
January 21, 1985
Page Three

Senator Gage feels that notice should be given to the Conservation District, but if no district exists, notice should be given to the appropriate county.

Senator Story confirmed the question of Senator Harding that unless the federal government agrees to enter into Memorandums of Understanding, the law would be basically the same as it is now.

Senator Shaw questioned Senator Story as to whether these types of situations are occurring often enough to warrant SB112. Senator Story replied that he suspects there are other instances besides the incident in Park County. Senator Story feels SB112 is justified. Senator Story also stated that there are 26,000 miles of new roads proposed to be created on Forest Service land, and this land is usually surrounded by privately owned land.

Senator Story closed by stating it was his intention, if SB112 passes, to take the legislation to Representative Marlenee. Senator Story believes Representative Marlenee will be able to convince the federal government to comply with our state laws, and would also be able to put pressure on the U. S. Forest Service.

There being no further business to come before the committee, the meeting was adjourned at 1:30 p.m.



Senator Dorothy Eck, Chairman

ROLL CALL

Natural Resources

COMMITTEE

48th LEGISLATIVE SESSION -- 1985

Date 012185

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
<u>ECK, Dorothy (Chairman</u>	X		
<u>HALLIGAN, Mike (Vice Chairman)</u>	X		
<u>MANNING, Dave</u>			Ruth Carrington X
<u>MOHAR, John</u>	X		
<u>DANIELS, M. K.</u>		X	
<u>FULLER, David</u>	X		
<u>STIMATZ, Larry</u>		X	
<u>TVEIT, Larry</u>	X		
<u>GAGE, Delwyn</u>	X		
<u>ANDERSON, John</u>	X		
<u>SHAW, James</u>	X		
<u>HARDING, Ethel</u>	X		

Each day attach to minutes.

DATE January 21, 1985

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
JIM FLYNN	DEPT FWP	SB 112	X	
Dave Donaldson	Mt. Assoc. of Cons. Dist	SB 112	X	
Scott Ross	Walleyes Unlimited	SB 112	X	
Allen R Carter	Land owner	112	X	
Howard Carter	Rancher	112	X	
Pat Wilson	Thermal Energy/Maintenance			
Lorna Lubonis	WIFE	112		
B. A. Ellis	SELF	112	X	

(Please leave prepared statement with Secretary)

Proposed Amendments to SB 112

1. Title, line 6.

Following: "TO"

Insert: "CERTAIN ENTITIES OF"

Following: "GOVERNMENT"

Strike: "AND ITS ENTITIES"

Insert: "; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND
PARKS TO MAKE AGREEMENTS PROVIDING FOR NOTICE BY THE ARMY
CORPS OF ENGINEERS TO CONSERVATION DISTRICTS OF FEDERALLY
APPROVED PROJECTS WITHIN DISTRICTS"

2. Page 1, line 11.

Following: "government."

Strike: "This"

Insert: "Except as provided in 75-7-103(4), this"

3. Page 2, line 3.

Following: "agencies"

Insert: "engaging in a project on a stream whose natural flow is
less than five cubic feet per second"

4. Page 2, following line 16.

Insert: "NEW SECTION. Section 3. Department authorized to make
agreements. The department may enter into agreements with the
federal army corps of engineers providing for notification to the
district of each permit applied for or granted within the
district pursuant to 33 U.S.C. 403."

Renumber: subsequent sections

5. Page 2, line 18.

Strike: "Section 1 is"

Insert: "Sections 1 and 3 are"

BREND3/ee/Amendments to SB 112

SENATE NATURAL RESOURCES COMMITTEE

EXHIBIT NO. 1 (STORY)

DATE 012185

BILL NO. SB112

SB 112

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

January 21, 1985

The Montana Department of Fish, Wildlife and Parks supports SB 112.

Senate Bill 112 proposes to address an information gap which now exists in the permitting of stream alterations. Local conservation districts have a list of private projects that were permitted by them through the Natural Streambed and Land Preservation Act of 1975 (commonly referred to as "the 310 Process"). Federal stream alteration project information is much harder to come by and certainly is not available at the Conservation District office.

Because conservation districts have on file those projects permitted under the state process, it would seem appropriate that any list of federal stream projects within their counties should be on file on their offices. This central repository could avoid future concerns.

SB 112 will close this gap in stream project information availability, create less confusion regarding instream projects, and in the long term help stream-related resources.