

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

FEBRUARY 13, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Jones on February 13, 1987, at 12:30 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

HOUSE BILL NO. 657: REP. PAUL RAPP-SVRCEK, District #51, sponsor, stated many years ago, the fishing was good along the Clark Fork River. In the early 1960's, the Noxon Rapids Reservoir was built, and at the time the dam was being built, there was some promise made of a fish ladder being built along side the dam , in order to preseve the fishery. He stated for one reason or another, the fish ladder was never built, and the dam was, which created a large run of the river reservoir. Since that time, trout fishing in that portion of the river has diminished dramatically. The only way to keep the trout fishing going in that part of the river at the present time, is for the DFWP to constantly stock the river. For the last seven years, the Department has done a commendable job in attempting to establish a small mouth bass fishery in the Noxon Rapids Reservoir. Approximately two years ago, in a matter of a couple days, the water level of the reservoir was dropped, estimates run between 30 to 75 feet, and if effectively destroyed five years of work in establishing this bass fishery in that area. So, that is the reason for the bill, and he pointed out to the committee, that his original intention was to prevent that kind of thing from happening ever again, but he found in drafting the bill, you cannot do that, because you would run afowl of the Federal Energy Regulatory Commission rules and says, we cannot regulate federal power facilities. So, what the bill does, is require operators of hydroelectric facilities to consult with these agencies regarding their operations and how they might affect fisheries once that initial consultation takes place, then in the future, if they are going to alter their operations, such that it would adversely affect the fisheries, they would again have to notify these Departments involved and also provide adequate notice that this draw down is going to take place. He urged the committee to support this bill.

PROPOSERS: STAN BRADSHAW representing Trout Unlimited stated they do support this bill, however, he did have one suggestion that may be considered regarding the Department consultation.

He stated this may be cumbersome, therefore, since the focus of the bill is to preserve fishery resources, it might be appropriate to consider with a single agency only, this being DFWP. Other than that, they do support this bill.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support this bill and he urged the committee to give it favorable passage.

JEANNE KLOBNAK representing the Montana Wildlife Federation stated MWF supports the bill. They feel any measure to preserve and protect the wildlife in Montana is wholeheartedly supported by MWF.

DAVID LACKMAN, lobbyist, for the Montana Public Health Association stated their association does stand in support of this bill, and he stated they fell this would be a giant step in the protecting of the fisheries and in turn, helping to protect a valuable resource in the State of Montana.

OPPONENTS: MIKE ZIMMERMAN representing the Montana Power Company submitted testimony (Exhibit 1). He stated the net effect of this bill is to quietly assume control over the operations of hydroelectric projects. The federal government however, has always retained the control being sought. If the Federal government did not have this full regulatory power, then administrative inconsistency causing the waste of national resources would be invited. He added they also oppose the bill because it suggests operators of hydroelectric projects are not required to consider the effect of project operations on fisheries. But, fisheries and other wildlife values are protected by regulation and by agreements made with DFWP and other agencies. As a result, MPC urges you to give HB 657 a "do not pass" recommendation.

RUSSELL SMOLDEN a concerned individual, stated he is opposed to the bill, and felt this could be labeled "a good neighbor policy." They feel the intent is commendable, however, they believe we do not need this bill, because these people are already willing to work with the different Departments and he feels this is where the good neighbor policy would enter in. He pointed out, why do we need to fix something that is not broken.

JERRY NYPEN, a Fairfield resident, submitted testimony in opposition to the bill (Exhibit 2). He stated he is employed for the Greenfield Irrigation District, and if this bill is passed, he stated, it would put them in a very subordinate position. It merely says the DFWP will call the shots on how we can administer our projects. He stated they do not deny that we need to work together on developments that could affect fish concerns and health concerns, but the agencies always come at us with such stone-walling tactics, such as is this bill.

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He stated their water development and conservation projects are important to them, and to the state they live in, and he urged the committee to not pass this bill.

REP. AL MEYERS, District #51, stated for the record he is opposed to the bill, and feels if the fisheries were protected, he wondered what would happen to the reservoirs and the affect this would have on them. He felt sure this would then lead to bigger and more complicated problems, that would eventually end up in front of the Legislature.

RON SCHOFIELD, a concerned individual, stated he feels this is a bad bill, and the voluntary sharing of information between departments and agencies should exist. Therefore, he is opposed to the bill.

NO FURTHER OPPONENTS

REP. RANEY asked Rep. Rapp-Svrcek after hearing all the opposition, he wondered if he thought the bill was still workable. REP. RAPP-SVRCEK stated definitely.

REP. HARPER stated he would like to understand the nature of the consultation between operators of the dam and DFWP and wanted to know who the fishery biologists are, because in looking at the bill, he stated that maybe the committee would feel better if they knew there was an ongoing consultation and we knew especially before large draw downs were planned, there would be a consultation.

JIM FLYNN, Director, DFWP, stated it is his understanding that when these sorts of projects come on line and are licensed by the Federal government, there is a formal process that involves the Department as a fish and wildlife management agency. When the license has been issued by the Federal authorities and the project is approved and on line, changes in the plans are not necessarily required, however, the Department is generally notified when they retain the plan, and changes are anticipated.

In closing, Rep. Rapp-Svrcek stated how important he felt it was to be given notice at the times these draw downs will occur, in order to prevent this type of destruction from happening. He stated we cannot do anything about what has happened in the past, however, this bill can serve to prevent anything like this from happening in the future. He asked the committee's favorable support of HB 657.

HEARING CLOSED ON HB 657.

HOUSE BILL NO. 651: REP. LOREN JENKINS, District #13, stated in the 70's there were ranches that had reservoirs on them, and wells, in addition to their irrigation.

The Federal government tried to get a handle on this sod busting, and developed a program that the operator could seed back to grass, due to all the marginal ground in the area. He stated the problem that was brought to his attention by FCS in the state water laws, says that if you don't use those water rights regarding a reservoir, well, or irrigation for ten years, they are then considered abandoned and you lose those rights. He stated if this in fact, is marginal ground, you would want these reservoirs on them in order to save the grass which would benefit the ranches. It was proposed if an appropriator which is a farmer or rancher, ceases to use all or part of his appropriation right to the land to which the water is applied to or a beneficial use is contracted under a state or federal conservation program, a set aside in resulting reduction in use of the appropriation right is not represented and the attempt by the appropriator to holding or partially abandoning the appropriation right or if they do not comply with the terms and conditions attached to the right as the appropriation of the water right. He felt this bill would serve it's purpose and felt that no major amendments would be proposed to the bill, because he feels it is written tight enough to serve as a clarification, as well as direction for these people involved.

PROPOSAL: BOB STEPHENS, representing the Montana Grain Growers Association stated they support this bill and urged the committee to do the same.

RAY BECK representing the Conservation District Division for the Department of Natural Resources wished to voice support on behalf of DNRC for this piece of legislation.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support this bill, and he felt it would better accommodate the farmers and ranchers that could fall under this act regarding their water rights involving abandoned sites.

STAN BRADSHAW representing Trout Unlimited stated they do support this bill, and he urged the committee's favorable recommendation.

JEANNE KLOBNAK representing the Montana Wildlife Federation stated MWF does support HB 651 and they feel that any measure to protect the rights of the property owners and the water resource is greatly needed in the State.

NO OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing Rep. Jenkins stated he felt this was an important bill, and he urged the committee to give it a "do pass."

HEARING CLOSED ON HB 651.

HOUSE BILL NO. 661: REP. GARY SPAETH, District #84, stated the 310 permits, basically found in HB 310 and implemented controls at work about ten years ago that work in streambeds in the state, are recently trying to have some sort of review process that can be done with regard to the changing of these streambeds. He stated that review process was set up with the primary Conservation District supervisors involved in cooperation and association with the Department of Fish, Wildlife and Parks, and other interested parties. Obviously, irrigation ditches, companies or whatever, are very much involved in the streams, because they have to do with the water, and everthing most likely went along smoothly. However, he was aware of some problems in the state, but it was basically interpreted that they historically had done different types of projects as far as diverting water in streams for the ditch that fills these areas. He stated they were not necessarily reviewed or did not need to be reviewed each time you did it. He stated if you are on a stream irrigating and the stream goes down as it does through the summer, you will have to constantly go up there during the irrigation season and make some adjustments as you go through, particularly some of the fast flowing mountainous type streams in his area, stating Rock Creek would be a good example. He stated the Attorney General came up with a ruling last spring that said of any of those types of diversions were not grandfathered like a lot of the districts were interpreted, and they would have to be regulated and obtain a permit. He stated it takes time to process one of these permits through the conservation districts, having the supervisors come out there and it could occur two or three times during a summer they must go out. This bill addresses that problem, so that those irrigation districts can continue to do pretty much what they have historically been doing out there. He stated he has brought these amendments as a recommendation from everyone involved, and it's what they feel would best work out to accommodate the irrigation companies and ditches in making sure they get their water out of the creek, while at the same time taking care of protecting the streambeds and stream management. He feels this is a prime example of what happens when the parties get together, and their problems can be worked out to the benefit and satisfaction of everyone, and he urged the passage of HB 661 with the proposed amendments.

PROPONENTS: RAY BECK representing the Montana Association Conservation District for the Department of Natural Resources stated DNRC does support the amendments offered by the sponsor.

LARRY ELLIS representing the Water Development Association and the Helena Valley Irrigation District stated both organizations stand in support of this bill.

JIM FLYNN, Director, Department of Fish, Wildlife and Parks submitted testimony (Exhibit 4). He stated the Natural Streambed and Land Preservation Act of 1965 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions. The Conservation Districts have done a commendable job over the years with the administration of this law. HB 661, if amended, should continue with the progress being made in regulating streambed projects. He stated they support the amendments offered by the sponsor. He urged the committee to support HB 661, with the amendments.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated they do support the bill with the amendments offered by the sponsor. He pointed out to the committee, that this would also demand a title change.

STAN BRADSHAW representing Trout Unlimited stated their organization supports this bill and the amendments offered by the sponsor.

OPPONENTS: JEANNE KLOBNAK representing the Montana Wildlife Federation stated they do oppose this bill. She stated as written, HB 661 appears to circumvent any part or purpose of the Natural Streambed and Land Preservation Act. This part being the language that reads "to prohibit unauthorized projects." We are therefore, opposed, and stated the principle as written, contemplates providing a loophole which would in practice exclude projects from 75-7-111, and 75-7-112. Faulty planning of practices may therefore follow. She stated if the committee wishes to recommend passage of this bill, MWF urges them to do so only if they consider the amendments offered by the sponsor.

NO FURTHER OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing Rep. Spaeth stated he would hope the committee would see fit to pass this bill, because he feels it is an important and needed bill.

HEARING CLOSED ON HB 661.

HOUSE BILL NO. 642: REP. GARY SPAETH, District #84, sponsor, stated this is at the request of the Department of Natural Resources.

He stated this bill is basically a revision of the water use laws in the State of Montana, and he stated the three most controversial parts in the bill are on page 13 and 14 that deal with water reservations, in particular, water reservations on the Missouri River, where we are extending the time limits that applications can be submitted and by which the Board of Natural Resources can pass up on those applications. We're extending it from 1989 to 1991 and from 1991 to 1993 respectively, and he stated he understands the parties have looked at this between the in-spring flow applicants and the upper part of the stream as far as water reservations are concerned, are pretty much ready to go and they may be able to accommodate some conflicts that DFWP has concerning those dates, because they want this process to begin immediately. This gives the Board of Natural Resources, under water reservation, the act that was passed in 1985, when a priority date was set as to those applications, to set a priority date and this date would be when the application is passed and approved by the Board of Natural Resources. Priority dates are very important in the usage of water and diversion and the usage for irrigation purposes, as well as in-stream flow purposes.

He stated this was put in there because we did not want to stop water usage and create necessarily an uncertainty out there, so that we would force out types of new water uses in the Missouri Basin. This would allow the Board of Natural Resources to subordinate the reservation of those applications during this interium period, in which these water reservation applications are being processed. If that water rights applicant and the uses they are under do not substantially interfere with the purpose of the water reservation. He urged the committee very strongly to support the passage of this bill.

PROPOSAL: GARY FRITZ representing the Department of Natural Resources stated many of Rep. Spaeth's opening remarks covered the bill quite adequately. However, he felt the need to walk the committee through the bill section by section to explain in further detail. In summary, he stated since 1985, the Department has issued 214 permits, which total 15,048 acre feet, and that for the entire Missouri River Basin, which is about one half of the state. So, there has been some development since July 1, 1985. Statute states the way it is, reservations are eventually adopted by the Board, and these permits and the uses that would be on the ground would be junior to those reservations. We're suggesting that the Board decide which should have priority. He feels this bill will reflect responsible water policy action, to allow the Board to divide the relative priority dates of these permits that are being developed now, and reservations adopted by the Board.

JIM FLYNN, Director, Department of Fish, Wildlife and Parks submitted testimony (Exhibit 5). He stated the Department supports this legislation, however, they have some concern with two portions of the bill located on pages 13 and 14. Subsections 1 and 3 are amended to extend the date for a final determination by the Board from 1991 to 1993. We understand that this is proposed because of the availability of funds to DNRC. While extending the final date is one manner in which to address the funding suggestion, we would suggest another alternative for consideration. The reservation could be limited to the basin upstream from Fort Peck Dam. This would reduce the geographic scope of the reservation and fall within the range of available funds while still being completed by 1991. The second concern is with the amended language in Subsection 4 on page 14. That subsection originally gave a priority date of July 1, 1985 to any reservations granted under this section. The amendment gives a priority date to any permit issued after July 1, 1985, if it does not substantially interfere with the reservation. The section as presented would appear to authorize two priority dates - one for reservation applicants and one for permit applications. In reality, there is little chance that any permit will substantially interfere with a reservation. However, the cumulative impact of a number of permits could affect a reservation. It would seem this amendment only serves to complicate the process.

HARRY ELLIS representing the Montana Water Development Association stated his organization does support this bill and he urged the committee to give it favorable passage.

STAN BRADSHAW representing Trout Unlimited submitted testimony (Exhibit 6). He stated while they have no objections to other parts of the bill, they do object to those sections which have modified those provisions relating to the Missouri River Basin reservation process. First, there seems to be no good reason to make a change in this section at this time. Other than a generalized sense that DNRC does not like this provision, there has been clear indication that the provision as written has caused any problems since its passage. It is premature to modify now. Second, the proposed amendment would encourage speculative filing for permits by offering the encouragement that earlier filings might have a chance to convince the board to subordinate the reservations. TU urges the committee to adopt the changes which they have proposed. Without those changes, TU is unable to support HB 642.

OPPONENTS: JEANNE KLOBNAK representing the Montana Wildlife Federation stated they do stand in opposition to this bill, and asked the committee to consider Mr. Bradshaw's changes.

TERRY MURPHY representing the Montana Farmer's Union stated they do oppose and asked the committee to not pass the bill.

NO FURTHER OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing, Rep. Spaeth stated he felt there were some areas that dealt with some controversy, however, he felt these changes being proposed are extremely needed in the bill. He also pointed out to the committee that he would have no objections to changing Section 7. With that he urged the committee to give this bill favorable passage.

HEARING CLOSED ON HB 642.

EXECUTIVE SESSION

HOUSE BILL NO. 246: REP. COBB moved HB 246 DO PASS. He also moved the amendments to the bill and distributed a copy to the committee (Exhibit 7). Question was then called on the amendments, the motion CARRIED unanimously. Rep. Cobb then moved HB 246 DO PASS AS AMENDED. Question being called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-5.

HOUSE BILL NO. 416 STATEMENT OF INTENT: CHAIRMAN JONES pointed out to the committee they had previously acted on HB 416, however, the Statement of Intent finally caught up with the bill, and required action.

REP. RANEY moved to adopt the Statement of Intent. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 631: REP. SIMON moved to TABLE HB 631. Question was called, the motion CARRIED, with Reps. Raney, Asay, and Russell voting NO.

HOUSE BILL NO. 629: REP. HARPER moved HB 629 DO PASS. Rep. Asay stated he felt the large bonding requirement in the bill would be a real problem, and felt an amendment should be offered in this regard. He stated he really had no objection to the regulations enforced, however, he felt the bond section was a problem and should be altered.

REP. KADAS argued this stating he felt the bonding requirement is relative to the potential impacts, and felt this should remain as written in the bill.

Question being called, the motion CARRIED, with Reps. Asay and Cobb voting NO.

HOUSE BILL NO. 657: REP. SMITH moved HB 657 DO NOT PASS. He felt this was a bad bill.

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REP. HARP then made a substitute motion to TABLE HB 657. Question was called, the motion CARRIED, with Reps. Harper, Miles and Cohen voting NO.

HOUSE BILL NO. 651: REP. SMITH moved HB 651 DO PASS. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 661: REP. RANEY moved HB 661 DO PASS. He then moved the amendments to the bill offered by Rep. Spaeth (Exhibit 8). Rep. Harper pointed out in addition to Rep. Spaeth's amendments, this would also demand a title change, and stated this could simply be included with Rep. Raney's original motion. Question was then called on the amendments, the motion CARRIED unanimously. REP. RANEY moved HB 661 DO PASS AS AMENDED. Question was called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-2.

ADJOURNMENT: Being no further business to come before the committee, the meeting was adjourned at 2:47 p.m.



TOM JONES, Chairman

STANDING COMMITTEE REPORT

FEBRUARY 13

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES
report HB 246

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. TOM JONES

Chairman

1. Title, line 7.

Strike: "ACTUAL"
Insert: "WRITTEN"

2. Page 2, line 9.

Strike: "A"
Insert: "At least 20 days prior to the public hearing, a"

3. Page 2, lines 11 through 13

Strike: "is" on line 11 through line 13 in its entirety
Insert: "shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given."

4. Page 2, line 14.

Strike: "actual"
Insert: "written"

5. Page 3.

Following: line 3

Insert: "NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act."

27-14
FIRST

WHITE

reading copy ()
color

STANDING COMMITTEE REPORT

FEBRUARY 13

19 57

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 629

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. TOM JONES

Chairman

"AN ACT TO GENERALLY REVISE THE LAWS RELATING TO METAL MINE RECLAMATION; AND AMENDING SECTIONS 32-4-303, AND 32-4-335, WCA."

FIRST

reading copy (WHITE)
color

STANDING COMMITTEE REPORT

FEBRUARY 13

19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES
report HB 651

- do pass be concurred in as amended
 do not pass be not concurred in statement of intent attached

REP. TOM JONES

Chairman

STANDING COMMITTEE REPORT

FEBRUARY 15

19 67

Mr. Speaker: We, the committee on NATURAL RESOURCES
report HB 661

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

REP. TOM JONES

Chairman

1. Title, lines 5 through 7.

Strike: "AN" on line 5 through "IRRIGATION" on line 7

Insert: "MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES"

2. Page 2, lines 5 through 9.

Strike: "an" on line 5 through line 9 in its entirety

Insert: "customary and historic maintenance and repair of existing irrigation facilities:

- (i) that do not significantly alter or modify the stream in contravention of 75-7-102, as determined by the team; or
- (ii) for which an annual plan of operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district."

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FIRST

reading copy (WHITES)
color

EXHIBIT 1
DATE 2-13-87
HB 657

2/13/87

HOUSE BILL NO. 657 (RAPP-SVRCK)

The net effect of this bill is to quietly assume control over the operations of hydroelectric projects. The federal government, however, has always retained the control being sought. The Supreme Court of the United States has concluded that the state has no jurisdiction to regulate hydroelectric projects located on navigable rivers. The major theme emphasized by the Court is that duplicative regulation must be avoided because there can be no infringement on the interstate commerce interests of power generation, navigation and conservation. If the federal government did not have this full regulatory power, then administrative inconsistency causing the waste of national resources would be invited.

Fisheries and other recreational and environmental concerns are protected under current regulation. The Federal Power Act, for example, provides that:

(1) Applicants seeking new licenses or renewals of old licenses, as well as operators of existing projects, must consult with federal and state agencies.

(2) FERC, in renewing old licenses, issuing new licenses, or making modifications of operations permitted by existing licenses, must "give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality."

(3) FERC must monitor and investigate project operations to enforce license conditions intended to protect and enhance fisheries.

(4) Any project operator who violates or refuses to comply with any rule or regulation or license condition shall be subject

EXHIBIT 1
DATE 2-18-87
HB 657

to a civil penalty in an amount not to exceed \$10,000 for each day that the violation or refusal continues.

We oppose House Bill No. 657 because it suggests operators of hydroelectric projects are not required to consider the effect of project operations on fisheries. But, fisheries and other wildlife values are protected by regulation (i.e., the imposition of license conditions) and by agreements made with FW&P and other agencies. Here are some examples of license conditions and other measures taken to protect and enhance the recreational and fishery values at MPC's projects:

KERR - Through license conditions, the rate of fill is regulated, as is the maximum and minimum reservoir levels. Water flowing in the river below the dam must not be less than 3200 cfs -- except in certain conditions when it may drop to, but not below, 2200 cfs.

THOMPSON FALLS - In a license application pending before FERC, MPC has outlined operations that would fluctuate the reservoir level only four feet per day. Existing license conditions require MPC to modify project operations to conserve and develop fish and wildlife resources. Further, MPC is required to consult with the state FW&P, U.S.F.S., and U.S.F&W as well as other appropriate state and local agencies to protect natural resource values that include fisheries.

MYSTIC - By license condition, minimum streamflows above and below the powerhouse must be maintained to protect fisheries. If minimum flows can't be maintained, consultation with the Montana FW&P and Federal Fish and Wildlife Service is mandated.

MISSOURI RIVER - By agreement, minimum streamflows below Hebgen Dam must be maintained so that at least 600 cfs is flowing in the Madison River below Quake Lake. During the summer months, minimum flows in the Madison River below Ennis Lake are also maintained at a minimum level of 1100 cfs. Further, MPC attempts to maintain constant river flows so as not to disturb the spring spawning of rainbow trout and fall spawning of brown trout.

1

2-13-87

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In closing, then, the following should be considered:

(1) The State has no power to effect the control suggested by this bill.

(2) Existing regulation provides ample opportunities for concerned citizen of the state agencies to consult with and seek operational restrictions to protect fisheries and other natural resource values.

(3) Additional regulation may be counterproductive to the sensitive balance between the interests of power generation, recreation and protection of fish and wildlife that is effected by existing federal control.

As a result, MPC urges you to give House Bill 657 a "do not pass" recommendation.

The Montana Power Company

Michael E. Zimmerman

2-13-87

657

HB 657

Testimony

Jerry Nypen
Fairfield, Montana

I am an employee of Greenfields Irrigation District and testifying in opposition of HB 657

Our District located northwest of Great Falls has the potential for the development of hydroelectric power. We don't admit to be in the power business, however the resources exist and are an excellent way for us to fund conservation efforts on our existing project. Other irrigation districts have the same opportunities - East Bench, Helena Valley, Milk River, to name a few - opportunity to further develop resources for everyone's benefit.

This house bill if passed would put us in a very subordinate position. It merely says that the Department of Fish, Wildlife, and Parks will call the shots on how we can administer our projects.

We don't deny that we need to work together on developments that could affect fish concerns and health concerns, but the agencies always come at us with such stone-walling tactics such as is presented by this bill. I'm always baffled by the one-sidedness. For instance, our irrigation project has had tremendous positive environmental impacts which are never recognized or for which credit is never received. We are responsible for the existence of two nationally known wildlife areas. In addition the existence of two off-stream storage reservoirs which despite their fluctuating levels provide most popular fishing areas.

I could go on, and the point I'd like to make is that we fear that our water development and conservation projects which are so important to our state will not be treated fairly.

Please vote in opposition to HB 657. Thank you.

Amendments to HB 661

(b) Project does not include customary and historic
maintenance and repair of existing irrigation facilities an
alteration, modification, or diversion of a stream for the
purpose of providing for irrigation if the alteration,
modification, or diversion is consistent with the previous
historical action or usage at the point of diversion.

(i) that does not significantly alter or modify the stream
in contravention of 75-7-102, as determined by the team or

(ii) for which an annual plan of operation has been
submitted to and approved by the district. The plan is subject
to future review and approval by the district at their option.

Any modification to the plan must have prior approval of the
district.

HB 661

February 12, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The Natural Streambed and Land Preservation Act of 1975 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions.

There have been differences of opinion on methods used to divert water, but to date no one has been denied the right to get irrigation water. In fact, the law states specifically that such a right cannot be denied.

Since 1975, this law has provided an avenue for landowners to obtain new ideas and thoughts regarding alternatives to existing methods of diversion - alternatives that are often better from the standpoint of providing long-term, stable water diversion projects and providing less costly alternatives. State agencies, conservation districts and landowners are currently working on several such projects. This department has supported these efforts through the process, as well as financially.

The conservation districts have done a commendable job over the years with the administration of this law. HB 661, if amended, should continue the progress being made in regulating streambed projects.

We support the amendments proposed by the sponsor. The language the committee has before it, coupled with the amendments offered by the sponsor, will serve to continue the progress that has been made to date.

If irrigation diversions are totally exempted, we fear the stream, the irrigator and adjacent landowners could be adversely affected. The results could be unstable streams, increased erosion, and reduced efforts to provide cost effective alternatives for irrigation methods.

The department supports HB 661, with amendment.

EXHIBIT 5
DATE 2-13-87
HB 647

HB 642
February 13, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

While the department supports this legislation, we have some concern with two portions of the bill located on pages 13 and 14.

Subsections 1 and 3 are amended to extend the date for a final determination by the Board from 1991 to 1993. We understand that this is proposed because of the availability of funds to the DNRC. While extending the final date is one manner in which to address the funding suggestion, we would suggest another alternative for consideration.

The reservation could be limited to the basin upstream from Fort Peck Dam. This would reduce the geographic scope of the reservation and fall within the range of available funds while still being completed by 1991.

We suggest this alternative for two reasons. First is that the large capacity of Fort Peck Dam and the dependence by consumptive users on groundwater downstream from Fort Peck make a reservation in that portion of the basin of low priority. In addition, the largest tributary downstream from the dam, the Milk River, is a closed basin.

Second, the extension of a decision by two years will only mean that much longer that the uncertainties will exist on what the decisions will be.

Our second concern is with the amended language in Subsection 4 on page 14. That subsection originally gave a priority date of July 1, 1985 to any reservations granted under this section. The amendment gives a priority date to any permit issued after July 1, 1985 if it does not substantially interfere with the reservation. The section as presented would appear to authorize two priority dates - one for reservation applicants and one for permit applicants.

In reality, there is little chance that any permit will substantially interfere with a reservation. However, the cumulative impact of a number of permits could affect a reservation. We then have the question of which permits are subordinate and which are not. It would seem this amendment only serves to complicate the process.

Under the present law, over 200 permits have been issued in the past 18 months in the basin. All are conditioned to the reservation priority date. This process should continue.

TESTIMONY OF STAN BRADSHAW
MONTANA STATE COUNCIL OF TROUT UNLIMITED
FEBRUARY 13, 1987

Mr Chairman, members of the committee, my name is Stan Bradshaw. I am here today on behalf of the Montana State Council of Trout Unlimited. Our concern with this bill involves the changes to the Missouri River Basin reservation provisions.

While we have no objections to other parts of the bill, we do object to those sections which have modified those provisions relating to the Missouri River Basin reservation process. Specifically, we object to the amendments in sections 7(1), 7(3) and 7(4) of the bill.

Sections 7(1) and 7(3) would set back the completion of the reservation by two years from 1991 to 1993. I have been informed that the reason for the extension is that budget cuts have made it impossible to complete the reservation process by 1991. I also understand that the DNRC feels that it could complete an adjudication of the basin down to Fort Peck Dam by 1991 on the available budget. If that is in fact the case, I would propose an amendment which would provide that the board make a final determination on the reservation process upstream from Fort Peck Dam by December 31, 1991. See the attached amendment.

Section 7(4) would allow the Board to subordinate the reservation to permits issued prior to the granting of the reservation but after the July 1, 1985 priority date. Trout Unlimited objects to this on a number of grounds.

First, there appears to be no good reason to make a change in this section at this time. Other than a generalized sense that the DNRC does not like this provision, there has been no

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clear indication that the provision as written has caused any problems since its passage. It is premature to modify it now.

Second, the proposed amendments would encourage speculative filing for permits by offering the encouragement that earlier filings might have a chance to convince the board to subordinate the reservations. It would encourage a race to file, if you will. The encouragement of such unplanned and hurried filings would violate the spirit of water planning that the Water Development Act embodies.

Finally, the committee should be aware that a number of conservation groups threw their support behind the water development act on the assurance that the current reservation provisions with their 1985 priority date would be included in the act. To emasculate the reservation provisions as proposed by the amendments in this bill would appear to confound the cooperative spirit in which the Water Development Act was conceived. Trout Unlimited urges the Committee to strike the amendments at section 7(4).

Trout Unlimited urges the Committee to adopt the changes which we have proposed. Without those changes , Trout Unlimited is unable to support H.B. 642.

EXHIBIT 6
DATE 2/13/87
HB 642

TROUT UNLIMITED PROPOSED AMENDMENT TO H.B. 642

Page 13, line 23: delete "1991", reinsert "1989".

Page 14, line 3: delete "1993", reinsert "1991".

Page 14, line 5: Delete "1991", reinsert "1989"

Page 14, line 6: after "basin", delete "." and insert "upstream from Fort Peck Dam."

Page 14, lines 8 through 13, strike everything after "1985." on line 8 through "reservation." on line 13.

Rep. Cobb

Amendments to HB 246

1. Title, line 7.

Strike: "ACTUAL"

Insert: "WRITTEN"

2. Page 2, line 9.

Strike: "A"

Insert: "At least 20 days prior to the public hearing, a"

3. Page 3, lines 11 through line 13

Strike: "is" on line 11 through line 13 in its entirety

Insert: "shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given."

4. Page 2, line 14.

Strike: "actual"

Insert: "written"

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. HB 642, 651, 657, 661 DATE Feb. 13, 1987

SPONSOR JENKINS, Rep-Snow, Spruth

NAME (please print)	REPRESENTING	SUPPORT 651, 657	OPPOSE
<u>Michele V. Johnson</u>	<u>CCST</u>		
<u>Billy E. Martin</u>	<u>U.S. Bureau of Reclamation</u>		
<u>James A. Rawlings</u>	<u>U.S. Bureau of Land Mgmt.</u>		
<u>George Ochenski</u>	<u>MT. ENV. INF. CNTR</u>	<u>657, 651</u> <u>661 W/AMENDS. ONLY!</u>	
<u>Dan Thomas</u>	<u>Rep. to D. Schye</u>		
<u>Jeannie K. Welsch</u>	<u>MF</u>		<u>657</u> <u>661</u>
<u>Bob Stephens</u>	<u>MT. Green Growers</u>	<u>651</u>	
<u>Maria Zimmerman</u>	<u>MPC</u>		<u>657</u>
<u>Debi Branner</u>	<u>MACD</u>	<u>651</u> <u>661</u>	
<u>Tom Murphy</u>	<u>MT. Farm Union</u>	<u>651</u>	<u>442 unless amended</u>
<u>Rich Meis</u>	<u>MT Envir Info Center</u>	<u>657, 651</u>	
<u>Bill Ellis</u>	<u>MT Water Power Assoc. Headwaters Valley Proj. D.</u>	<u>651, 661</u> <u>642</u>	<u>657</u>
<u>Ron Schufeldt</u>	<u>Montana Water Development Assoc.</u>	<u>651, 661</u> <u>642</u>	<u>657</u>
<u>Barry Bruck</u>	<u>Conservation Law Fnd. DNR</u>	<u>657, 661</u>	
<u>Scott Ross</u>	<u>self</u>	<u>657</u>	<u>642</u>
<u>John C. McEwan</u>	<u>MT Public Health Inst.</u>	<u>657</u>	
<u>Carol Nasket</u>	<u>MT. Stockgrowers</u> <u>MT. Cattlemen</u>	<u>651</u> <u>661</u>	
<u>Larry Tasbech</u>	<u>DNR C</u>	<u>642/651</u>	
<u>Russell D. Smoldon</u>	<u>Washington Water Power Co.</u>		<u>657</u>
<u>Jerry Myren</u>	<u>Great Falls Dr. Inst.</u>		<u>657</u>

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.