

MINUTES OF THE MEETING
LONG RANGE PLANNING SUBCOMMITTEE
50TH LEGISLATIVE SESSION

The meeting of the Long Range Planning Subcommittee was called to order by Chairman Rep. Robert Thoft on February 17, 1987 at 8:00 a.m., in Room 202B of the State Capitol.

ROLL CALL: All members of the Long Range Planning Subcommittee were present except Rep. Donaldson who was excused.

Tape 78:A:000

WATER DEVELOPMENT PROJECTS

Milk River Irrigation Project:

Proponents:

John Overcast, Milk River Irrigators, said the coal severance tax loan program would buy the bonds of the Milk River Irrigator. Mr. Overcast said the overall plan would be 1) water would go through a hydroplant and be pumped out at Big Sandy for irrigation use, 2) additional water would improve fishery, 3) benefits to two Indian reservations, 4) recreational benefits. Mr. Overcast said they would release water through an auxiliary plant and two tunnels. Mr. Overcast said the Bureau of Reclamation determines the quantity of water which will be released. Mr. Overcast stated the maximum amount of water that can be released is 2,200 sec./ft. (150)

Mark Echart, Glasgow Irrigation District, submitted a work sheet for the Subcommittee (Exhibit #1). (172)

Nelson Jacobs, Tudor Engineering, Denver, said that there is an addition of \$2.5 million to the cost of \$10.6 million that was estimated in 1982 for the original design, engineering, and construction. Mr. Jacobs said there is a 10% contingency. Mr. Jacobs said the costs have escalated because of the delay of the project. Mr. Jacobs said 1991 is the on line date. (300)

Mr. Jacobs said there will be a debt service of one year. He said the capitalized interest fund is included in the loan amount.

Cost of Engineering	\$18.4 million
	2.7 million
Insurance Costs	180,000
Debt. Service	
Capitalized Interest	<u>4.7 million</u>

\$25.6 million

Mr. Jacobs said \$2.3 million would be the annual debt service. (441)

Sen. Hammond spoke in favor of the project.

Sen. Hammond said that if Montana Renewable Resources developed the project, 4% of the profits would go to Chester and Liberty County, 8% would go to other Montana stockholders, and 88% would go out of state.

(78:B:000)

Sen. Jergeson said he was in favor of the project.

Opponents: (036)

Sen. Kolstad said he is not in favor of the project.

Sen. Kolstad said there should be an offer made to the Milk River Irrigators to 1) reimburse past costs, 2) give the Milk River irrigators a share of the project.

Rep. Iverson said he was not in favor of the project. (123)

Rep. Iverson said they should not be competing with private monies and that the power is not needed.

Robert Mogue, Liberty County Commissioners, said he was not in favor of the project.

Ray Standford said he was not in favor of the project and submitted a fact sheet (Exhibit #2). (280)

Sterling Wardell, Liberty County Commissioner, said he was not in favor of the project. (327)

Ken Osterman, South Liberty County Water Users Association, said he was not in favor of the project.

Charlie Fry, Highline Sportsman Club, said their club is concerned that the project could harm the fisheries. (409)

A.W. Anderson, retired teacher, said he does not want the fisheries destroyed. (463)

Rep. Brown said he was not in favor of the project. (517)

(79:A:000)

John Cote, President, Montana Renewable Resources, said he was not in favor of the project.

Steve Browning, Montana Renewable Resources, submitted a fact sheet to the Subcommittee (Exhibit #3).

George Ochenski, Montana Environmental Information Center, said he would oppose any project that would be environmentally unsound.

Questions:

Chairman Thoft said he does not see any difference in the impact of the two groups. Mr. Underseer said if too much water is discharged the banks of the river will erode.

Mr. Jacobs said the difference of the two projects is the cost and the megawatts.

Cost of the 2 projects	Mega Watts
\$25.6 million	12
\$10.0 million	8

(223) Mr. Jacobs said the irrigation project will cost \$60 million to divert water from the Missouri to the Milk River.

Rep. Bardanouve asked what the power requirement would be for pumping water from Virgelle to the Milk River. Mr. Jacobs did not have a figure. (352)

Rep. Bardanouve asked what percent of MRR is Montana-owned? Mr. Browning said 50% of the monies comes from Montana stockholders. (544)

Mr. Echart said the Milk River has a 220 ft. lift, and an annual pumping cost of \$85,000. (110)

Chairman Thoft asked what the distance is between Virgelle and the ridge divide. Mr. Browning said two miles. (226)

ADJOURNMENT: There being no further business the Long Range Planning subcommittee adjourned at 10:20 a.m.



Chairman Rep. Bob Thoft

DAILY ROLL CALL

LONG RANGE PLANNING

SUBCOMMITTEE

DATE February 17, 1987

[illegible]

THE TIBER DAM HYDROELECTRIC PROJECTS

A STATUS REPORT

EXHIBIT 1
HB 41787

In 1983, the legislature authorized a coal severance bond issue of \$17,869,000, increased in 1985 to \$19,655,900, to finance the construction of a hydroelectric power project at Tiber Dam by the eight Milk River Irrigation Districts. Due to an increase in estimated project costs, primarily to ensure protection of the downstream trout fishery, the legislature is now being asked to reauthorize an issuance of coal severance bonds for this project, and to raise the amount to \$25,600,000.

In a submission dated January 26, 1987, Montana Renewable Resources, Inc. ("MRR") suggested that the legislature should not reauthorize this bond issue. The Districts believe that MRR has wrongly and unfairly portrayed the Districts' Tiber Dam Project.

It should be noted, however, that the Districts are qualified applicants for assistance of coal severance bond financing. All of the "issues" raised by MRR before this committee are properly pending before the Federal Energy Regulatory Commission (FERC) in Washington, D.C., which has the ultimate authority to render a final decision on licensing of the project. We strongly urge that the Legislature reauthorize the issuance of bonds for the project, and leave the issue of who is entitled to the license to the FERC, which has considerable experience and expertise in this area.

1. The Competing Projects.

The Irrigation Districts, MRR and the City of Gillette, Wyoming, each propose to build a hydroelectric power project at Tiber Dam. MRR is an affiliate of a New York based investment entity, National Renewable Resources. While Liberty County and Chester are participants with MRR, the extent of their involvement is essentially in name only. It is acknowledged that their stake in the MRR project is extremely small, amounting, we understand, to only 4% of the project revenues.

The Districts intend to build a 12 megawatt hydro project which is substantially larger than MRR's proposed 8 megawatt development and will generate approximately 66,000,000 kilowatt hours annually, compared to only about 45,000,000 kilowatt hours annually for MRR.

2. The FERC License Applications.

License applications for all three projects have been pending in Washington before the Federal Energy Regulatory

Commission since 1983. MRR has failed to disclose that its license application is under serious challenge. The Districts, Gillette and an intervenor in the proceeding have contended that MRR's license application must be dismissed. Since Liberty County and Chester have merely lent their names to the application, it is contended that MRR has thereby abused the "municipal preference" granted to license applicants under the Federal Power Act. The FERC has dismissed license applications and penalized the applicants in similar situations.

As a result of this preference given to municipalities under Federal law, if the Districts' license application is not successful, then it becomes very likely that Gillette will receive the license.

Apart from this, it is unlikely that the FERC could lawfully issue a license to MRR for its project. The Federal Power Act requires that hydroelectric projects provide for the most comprehensive development of the water resources possible. Given the small size of the MRR project, there are serious doubts that MRR can meet this test.

3. There are no Environmental Issues.

In 1983, the Districts applied for, and in 1984, the Department of Health and Environmental Sciences issued a water quality certification for the Districts' project as required by Federal law. As a result of a subsequent challenge by MRR, in November 1986, the Board of Health and Environmental Sciences changed some of the conditions included by the Department but otherwise affirmed the certification. As a result, the Districts have modified their project design to lower the existing water intake in order to draw water from the same reservoir level as the MRR project.

Insofar as anyone is aware, there are no legitimate environmental or engineering issues associated with this design change. The Districts have submitted specific design drawings prepared by their engineers on this score. While the HiLine Sportsmen Club has appealed the Board's order and has asked the FERC staff to address certain questions, the Club has not stated any basis whatsoever either for its appeal, which is being contested by the Board, or its FERC submission. As demonstrated by the extensive record before the Board, the Club's actions must be considered to be without merit.

4. The Districts' Cooperative Efforts.

As is perfectly clear from the correspondence attached to MRR's January 26 submission, the Districts are willing to consider a joint undertaking with MRR. The problem all along

has been that MRR has consistently refused the Districts' requests to suggest a realistic framework for these discussions.

Discussions have occurred as recently as last week in New York, between the New York investors (Mr. Jeffrey Kossack) who control MRR and the FERC attorneys for the Districts. These discussions are presently pending while the investors who control MRR review the specific legal and economic issues that have been raised by the Districts. Representatives of MRR in New York frankly admitted they had not fully considered the legal ramifications of some of their proposals, and wanted additional time to do so.

In the past, MRR has been unwilling to address or even consider the real life, practical, economic, legal and political concerns the Districts have raised if any joint development were to proceed. In this regard, the prospect of Gillette ultimately obtaining the right to build the project cannot be ignored.

The Districts have stressed that if MRR and its supporters would stop litigating and start offering something concrete to talk about, these discussions might yet prove productive. As of this time, the Districts have not received a constructive response.

DATED this 13th day of February, 1987.

Respectfully submitted,

MALTA IRRIGATION DISTRICT
GLASGOW IRRIGATION DISTRICT
DODSON IRRIGATION DISTRICT
ZURICH IRRIGATION DISTRICT
FORT BELKNAP IRRIGATION DISTRICT
PARADISE VALLEY IRRIGATION DISTRICT
ALFALFA VALLEY IRRIGATION DISTRICT
HARLEM IRRIGATION DISTRICT

By: Sever Enkerud
Sever Enkerud, President

LP/A10/STATUS/REP/021387

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RECEIVED

FEB 21 1984

LAW OFFICE OF
MARBLE & SEIDLITZ

February 15, 1984

BY HAND

Douglas E. Davidson, Esq.
Debevoise & Liberman
26 Broadway
New York, New York 10004

ENCLOSURE 3
DATE 2-17-87
HB

Re: Lake Elwell Settlement Proposal

Dear Mr. Davidson:

After our meeting yesterday, I gave some further thought to the questions you had raised as to how long and complicated the proceedings might be if a settlement is not reached. I am writing to share with you some additional thoughts on this matter. It appears likely that at least the following legal and factual issues will be raised by one or more of the parties:

1. Did the Irrigation Districts have requisite municipal authority when they filed a competing license application? If not, and assuming that they were granted requisite authority after the last day for filing for a competing application, would they be entitled to a retroactive preference or would they either not be entitled to any preference or only to a preference with a deemed filing date later than that of the other competing applicants?

2. Is Gillette entitled to a municipal preference on this Project? This issue has at least two sub-issues:

- a) Does Gillette have authority under Wyoming law to develop the out of state Project and does it have such authority irrespective of when it might be able to utilize the power to meet its municipal load?
- b) Did Congress intend the municipal preference under the Federal Power Act to apply to a completely out of state development such as that proposed by Gillette at Lake Elwell?

3. Does the municipal preference under the Federal Power Act apply where a preference entity intends to sell all or most of the Project power under a long-term contract with a non-preference entity like Montana Power Company?

4. Would an Appellate Court agree with the FERC decision--not yet challenged at the Appellate level--that a municipal preference never applies to a joint public/private applicant, irrespective of the distribution of control, ownership and other Project interests of the public and private co-applicants?

5. Which of the three plans proposed in the Competing License Applications is better adapted? Economically? Environmentally? Technically? In other ways?

6. Should Continental's protest be considered by FERC even though it was untimely filed? If so, is the protest justified and, assuming that it is, what remedy should be granted?

In my opinion, all of the above are substantial issues on which the outcome of a FERC or an Appellate Court decision cannot be predicted with a high degree of certainty. Moreover, the list of issues was prepared by only one attorney--me--based on preliminary work done in a short space of time. If the Competing Applications were contested in proceedings before FERC and/or Appellate Courts, it is reasonable to expect that the three or four law firms representing the interested parties would, in the course of the proceedings, including briefings and oral arguments, raise additional issues or at least a number of additional sub-issues including procedural issues related to the way FERC adjudicates the Competing Applications.

As we discussed the other day, some of the above questions are legal issues, others largely factual issues and some may involve mixed questions of fact and law, depending on the legal rule held to apply. Some of the factual issues which might be deemed relevant to one or more of the six legal questions outlined above are the following:

1. To whom and under what arrangements will Gillette sell the power in the early years of Project operation assuming that it will not itself use the power in those years?

2. Will Gillette be able to wheel Project power or otherwise assure itself of being able to use Project power to meet its own load?

3. To whom and under what contractual terms would MRR, Liberty County and Chester sell Project power? Would Liberty County or Chester make use of the power at any time to meet their own load?

4. To whom and under what contractual terms would the Irrigation Districts sell Project power? Would the Irrigation Districts make use of the power at any time to meet their own load?

5. How would Gillette finance the Project?
6. How would MRR, Liberty County and Chester finance the Project?
7. How would the Irrigation Districts finance the Project?
8. What are the environmental impacts of the plans proposed by each of the Competing Applicants? In what respects, if any, is one better adapted than any of the others?
9. Are there any technical problems with any of the proposed plans?
10. What level of future water diversions upstream of the Project should be anticipated in sizing the Project?

Of course, some of the above factual issues might not be deemed relevant and others might be placed in issue, depending on the legal theories adopted by FERC and/or the Appellate Courts. But, in any event, it is clear that there will have to be factual as well as legal determinations.

This presents the common litigation problem: which should be adjudicated first, the legal or the factual issues. FERC could choose first to adjudicate issues which it deemed purely legal. But this would run the risk that the Appellate Court would differ with FERC as to what issues are purely a matter of law and remand the matter for factual determinations by FERC, with the possibility of a second round of appeals thereafter. Moreover, both FERC and an Appellate Court are likely to want to have a full evidentiary record to guide them in their adjudication of legal issues.

FERC could first adjudicate some of the factual issues, probably by setting an evidentiary hearing before an administrative law judge who FERC also might ask to consider some of the legal issues. But this would take considerable time. Pre-trial procedural stages would be followed by an evidentiary hearing with experts and cross-examination, briefs and oral argument. The Commission might adopt, reverse or modify the decision of the administrative law judge and the Commission decision would be subject to request for rehearing and an appeal. Even after all the factual issues had been resolved, the legal issues related to the scope of municipal preference under the Federal Power Act could be the subject of a petition for certiorari before the U.S. Supreme Court.

In short, whatever procedure FERC chooses to follow, if the parties are willing to spend money on good legal representation, the number and complexity of legal and factual issues will result in protracted proceedings. Moreover, not only the legal and factual issues, but also the politics of the matter are complicated.

This is likely to result in FERC moving slowly and carefully at each stage of the proceedings.

In my opinion, the proceedings will not be finally adjudicated in less than three or four years and might well take seven years or longer to adjudicate.

As we discussed, such lengthy delays will be very expensive even for the victorious party. Not only will legal expenses mount as each party seeks to match or better the skill and thoroughness of opposing counsel, but also profits from the Project which would otherwise be available during the litigation period will be lost and intervening events might make the Project less profitable or even unfeasible. In this connection, we are particularly concerned that the long-term power sales contract with an investor-owned utility like Montana Power Company, which is currently favorable because of a strong position in recent orders by the Montana Public Utility Commission, might be much less favorable at a later time under a different Utility Commission, different Federal or State law or different economic conditions. We understand that the investor-owned utilities are not happy with the Utility Commission orders and we expect they will continue to work to have these orders reversed or modified, or to otherwise undermine the benefits available to small power producers.

There is no need for me to review here any of the other advantages of a settlement to all parties, which we discussed yesterday. But, we believe strongly that if a settlement could be reached, it would truly be to the advantage of all parties. We hope we can continue a constructive dialogue to move forward toward this end.

Sincerely,



Jeffrey Kossak

JK/mj.

cc: Matthew Knierim, Esq.
John Seidlitz, Esq.

EXH - 4
2-17-87

MONTANA RENEWABLE RESOURCES, INC.

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Tiber Hydroelectric Project

Legislative Summary

January 26, 1986

Issue:

Should the legislature authorize \$25,687,000 of coal severance bonds to finance a Milk River Irrigation Districts' hydroelectric project at Tiber Dam in competition with a privately funded \$10,000,000 project?

Background:

1. The Competing Applications.

In 1982, Liberty County, Chester and MRR, a private investment group applied for a license to build an 8MW hydroelectric project in Liberty County at the Tiber Dam. In 1983, the Milk River Districts filed a competing application for a 12MW project and Gillette, Wyoming, for a 14MW project.

2. The Liberty County Group Needs No State Funding.

The Liberty County project would cost \$10,000,000 and would be financed entirely with private funds. The 1983 Legislature authorized \$50,000 to Liberty County for engineering, but none of this money was used as private funds were available.

3. The Milk River Districts Seek To Rely On State Funding.

The Districts sought a \$100,000 grant from the 1983 Legislature and used the entire \$50,000 they received (the other half going to Liberty County and not used). In 1985, the Districts were authorized to use \$17,900,000 in coal severance bonds and on January 23, 1987, they requested \$25,687,000 in a hearing before the Joint Subcommittee on Long Range Building.

4. The Milk River Districts' Plan Is Currently Under Challenge In The Montana District Court And In Washington.

In the fall of 1986, the Board of Health and Environmental Sciences ruled unanimously that the Districts' plan had to be modified to

to meet environmental objections. In December, 1986, the Districts provided sketches of a modified plan in a filing with the Federal Energy Regulatory Commission in Washington. However, the Hi-Line Sportmen's Club has challenged in the District Court the Board of Health Order as too limited and has cited more than a dozen environmental issues in a January 1987 filing with the Federal Energy Regulatory Commission.

5. The Liberty County Plan is Environmentally Sound.

The Board of Health and Environmental Sciences affirmed the soundness of the Liberty County plan, which has the support of the Hi-Line Sportmen's Club, EIC and other environmental groups.

6. The Milk River Districts Have Refused To Consider A Compromise.

For four years, ever since the controversy arose, the Liberty County Group has been requesting a chance to sit down with the Districts and work out a united project which would maximize benefits for both groups and for the State. Repeatedly the Districts have refused to even meet.

7. The Districts Again Refuse To Even Meet.

The most recent correspondence from November and December, 1986 and January 1987 is attached for your review.

Key Points:

For the following reasons, THE DISTRICTS' REQUEST FOR AUTHORIZATION OF \$25,687,000 IN COAL SEVERANCE FUND BONDS SHOULD BE DENIED AND THE DISTRICTS SHOULD BE ENCOURAGED TO SIT DOWN WITH THE LIBERTY COUNTY GROUP AND WORK OUT A WAY TO FORM A UNITED PROJECT USING PRIVATE FINANCING FOR EVERYONE'S BENEFIT:

1. As private funds are available to build the project, use of coal severance funds is a waste of State money.
2. The enormous escalation in the cost of the Districts' project raises serious doubts about the feasibility of their project and their ability to manage the project in a cost effective manner.
3. Authorization of funds is premature because the Districts' plan is under attack in the courts and before the federal licensing agency. Resolution of the environmental issues may require substantial additional expenditures or may result in the rejection of the Districts' application.
4. Authoriztion of funds is premature because the Districts have only presented a few conceptual drawings of their plan and these are totally insufficient to permit accurate estimates of the cost of the project or its feasibility.

- 3 -

5. Authorization of funds for the Districts would provide a State subsidy for one region of the State which is in direct competition with other Montana groups. The Districts have argued that this is proper because the Liberty County group has some Eastern investors. But they have failed to disclose that the majority of the Liberty County group is made up of Montana investors and the local Montana County and City. They have also failed to disclose that the Montana group has brought in out-of-State money and expertise to make a better project and avoid the need for State subsidies.
6. Authorization of funds for the Districts would be taking from the rest of Montana to finance the Project when it is clear that investors from within and without Montana are ready to finance the Project with no State subsidy.
7. Authorization would subsidize a project which will pay no State taxes, whereas the use of private financing would create an additional tax base for the State.
8. There are many other better uses for the coal severance fund.
9. While the authorization would in theory not deplete the coal severance trust, the trust would be depleted if at any time the project ran into trouble. The Districts have no experience in designing, building or operating a hydroelectric project and State funds will, therefore, be at substantial risk.
10. Authorization of the Districts' project is an open invitation for additional requests for State funds -- direct appropriations as well as bonds. The pattern is already well established. The Districts are determined to build the project no matter what the cost and no matter who opposes it and it is to be expected they will come back to the Legislature whenever they need more money.

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January 19, 1987

Mr. Sever Enkerud
P.O. Box R
Malta, MT 59538

Dear Mr. Enkerud:

Thank you for your letter of January 8th responding to our letter of December 12th, in which we had, as you requested, detailed a proposal for the joint development of a hydroproject and requested a meeting to discuss the proposal. We are pleased to see from your response that you remain interested in working with our Group and that you agree with us on the importance of maximizing economic benefits from the Project to Montana.

Your letter mentions that our proposal has raised some questions in your mind. This is certainly understandable as our letter was intended to serve as a starting point for serious good faith discussions. We went to considerable efforts to try, insofar as possible, to anticipate key issues and we are pleased to see that you agree we have made a good and useful beginning.

Several of your questions can only be properly addressed after the benefit of face-to-face discussions. For instance, you ask why our proposal does not provide revenues and sharing to the Districts sooner. Of course, this can be changed, but it will require modifications in other aspects of the proposal. There are any number of approaches and each involves trade-offs. Without sitting down and discussing our respective needs, we could go on for some time writing up new proposals and making little progress.

You also ask which of the proposed Projects would be built and indicate that our Project may be too small to be economically attractive. If we decide to work together, we will both share the same goal of maximizing Project revenues, as we indicated in our December 12th letter. At this time we cannot say for certain which Project would best meet this goal. We have some questions about the cost of your Project, which we believe may have been substantially under-estimated by your consulting engineers. We are also concerned about environmental objections to your project which have recently been raised by the local Sportsmen's Club. It may be that our Project will prove to be more attractive to both of us. But we have an open mind and we urge you to have the same attitude. We feel the only way to decide which Project to build is after discussions and by agreement among ourselves.

'87 01/20 15:00

Z 406 443 0700 BrowningKaleczyc

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Mr. Sever Enkerud
Page Two
January 19, 1987

We agree with you that elimination of Gillette should be an early order of business. We feel that to get this job done both of us will have to work together closely so that we can get maximum cooperation from our Delegation and the various State and local agencies. We can only do this after we have had a chance to sit down and work out a plan of action. This is long overdue. Gillette should be told in as many ways and forums as possible that it is not welcome competing with two Montana groups on a Montana Project. And, the sooner this message gets sent, the better for all of us.

Your letter raises other points. You are obviously unhappy about the new litigation over the Board of Health proceedings and you refer to this as "your" (i.e. our) litigation. We want to make it clear that it is not our litigation. We did not appeal the Board of Health Order. The local Sportsmen's Club did. We would be happy to do what we can to help soften the Club's opposition to your project, but we do not control its actions and can make no commitments or representations on its behalf. You also suggest that our exchanges be kept from the press. None of our members released the December 12th letter and we don't intend to release any future correspondence. However, when things are put in writing and circulated among so many people, it's only natural that somehow the press gets hold of the materials. If our next step in negotiations were a meeting rather than another letter, then there would be no chance for the press to get hold of any hard copy. But, in any event, we will continue to work with you on a "one to one" basis and will not release correspondence--yours or ours--to the press.

We first began requests for meetings this summer. We appreciate your need for prior written proposals and we have tried our best to accommodate these needs. But in reading your letter, we keep coming back to the same question: Shouldn't we all sit down and discuss these matters? How else can we understand each others' needs and begin making real progress? Does churning more paper at this time really make sense for anyone other than our lawyers and consultants? Will our lawyers or consultants pick up the tab if both of our projects are lost after years of wasteful litigation and maneuvering?

At this point, we feel that if discussions are to proceed in good faith, a face-to-face meeting is essential--and the sooner the better. To this end, we suggest a meeting on Friday, January 30, at 12:00 noon at the Ironhorse Restaurant in Havre.

'87 01/28 15:89

2 406 443 8708 BrowningKaleczyc

04

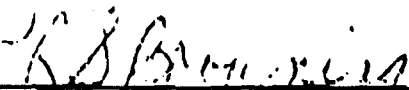
Mr. Sever Enkerud
Page Three
January 19, 1987

We hope you and other District leaders can come. We would appreciate if you would let us know if you can make the meeting as soon as possible so that we can plan accordingly. Please feel free to call me at my office in Butte (723-4378) to confirm a meeting or to work out an alternative time or date.

Sincerely,

MONTANA RENEWABLE RESOURCES, INC.

By 
John S. Cote, President

By 
R. Stephen Browning, Secy.

By 
S. Clark Pyfer, Treasurer

STK/gln

cc: Districts' Director and Offices
Liberty County Commissioners
Mayor, City of Chester
Attorneys for Districts
(New York & Glasgow)

MILK RIVER IRRIGATION DISTRICTS

Box R

Malta, Montana 59538

Phone 654-1440

January 8, 1987

RECEIVED

JAN 9 1987

Mr. John Cote, President
Montana Renewable Resources, Inc.
P. O. Box 162
Helena, Montana 59624

BROWNING, KALECZYK,
BERRY & HOVEN, PC

Dear Mr. Cote:

I appreciate your letter of December 12, 1986, in response to our initial conversation that your group provide the irrigation districts with a more detailed written proposal for a joint development of the hydroelectric power project at Tiber Dam as was explained to you, we thought that in order for us and our counsel to give meaningful consideration to your suggested approach it would first be necessary to have a clearer picture of what MRR has in mind.

Let me begin, however, by stating that the irrigation districts may consider working with your group assuming we could reach terms and conditions which were acceptable to all the districts and were practicable from a legal and economic standpoint. Maximizing the economic benefits to Montana is an important objective the irrigation districts have always sought to achieve.

We have now had a chance to review your December 12, 1986, letter and to discuss it with our counsel. Your letter outlines what MRR sees as our common objectives and provides some details of your thoughts of financing and ultimately managing the hydroelectric project. While we recognize that your proposal is still in a formative state, it strikes us as raising more questions and problems than it answers.

Your proposed financial structure generally suggests a revenue sharing arrangement under which the irrigation districts would not begin to receive any of the project's net revenues until the eighth year of project operation, and then only on a percentage basis. The irrigation districts are disturbed by the absence of any revenues for such a long period of time. However, from the little information you have provided, it is impossible for us to evaluate your proposal further even on a preliminary basis.

Malta Irrigation District
Box R
Malta, Montana 59538

Dodson Irrigation District
Box R
Malta, Montana 59538

Alfalfa Valley Irrigation District
84 Third Street
Chinook, Montana 59523

Fort Belknap Irrigation District
Chinook, Montana 59523

Glasgow Irrigation District
Box R

Paradise Valley Irrigation District
Box R

Zurich Irrigation District

Harlem Irrigation District
Harlem, Montana 59526

Mr. John Cote, President
Page 2
January 8, 1987

For example, you do not indicate which of our two proposed projects would be licensed and constructed. Without knowing that, we have no idea of the net project revenues that may be available to distribute. In this regard, I should point out that our experts have expressed serious doubts that given its small size, a project using the river outlet as you have proposed can generate enough revenues at current rates to make your revenue sharing concept economically attractive.

We are also concerned with what we perceive as a rather casual attitude towards the City of Gillette, Wyoming. Elimination of Gillette from the competition to develop a hydroelectric project at Tiber Dam is certainly necessary before any project could be jointly developed. We are skeptical, however, that at this advanced stage of the proceeding, Gillette can be persuaded to withdraw simply in response to political pressure. In our opinion, your approach ignores the many practical and legal aspects of this problem which must be dealt with at an early stage.

Your letter also does not consider how to address the many FERC licensing problems which any joint development would now create. I do not think it is necessary or useful to raise them here (especially since it is unclear which project would be built) as these are better left to our attorneys who are experts on FERC matters. Nevertheless, I would simply point out that development of the project by either of us will be jeopardized unless these issues are promptly resolved.

Obviously I have not set forth all of the questions we see your letter is raising, but the ones noted above go to the very heart of any proposal to jointly develop a hydroelectric project at Tiber Dam. In summary at least from our reading of your December 12, 1986, letter, the irrigation districts do not believe your proposal has been sufficiently thought out at this point.

Consequently while your letter is a step in the right direction it is not fully responsive to our requests for more specific details of your proposal. We therefore

Mr. John Cote, President

Page 3

January 8, 1987

think it would be more productive for all concerned if you were first to refine your thinking, with particular emphasis on the issues we have raised here, before any meeting between our representatives is scheduled. Otherwise, without any real specifics to consider, we think you will agree that any discussions will be unfocused and not likely to advance matters terribly much.

Our response to your letter was delayed in part because of your new litigation over the Board of Health proceedings. While we are still uncertain as to what is being requested of us or the State in this litigation, it certainly does not facilitate settlement discussions. My initial thoughts are that these legal issues may have to be resolved before these discussions will be productive.

I might also suggest that we attempt these discussion on a "one to one" basis without using radio reporters as intermediaries. While I can appreciate your desire to move this along, we feel that the process would be more productive and less "political" by making our replies directly to you and not through the press. As public entities, we certainly have no objection to the public being fully informed of our discussions. However, we are reluctant to respond to a reporter's inquiries seeking a response to public statements made by a "spokesman" for MRR, when we have yet to respond directly to your letter of December 12.

We will await hearing from you and will continue to give your proposal our prompt attention.

Very truly yours,


Sever Enkerud

SE/ke

cc: District Presidents
Doug Davidson
Matthew Knierim
Faye Seel

MONTANA RENEWABLE RESOURCES, INC.

P.O. Box 162
Helena, MT 59624
406-442-0138

Board of Directors

President, John S. Core (Butte)
Vice President, Leo Kraft (Havre)
Secretary, R. Stephen Browning (Helena)
Treasurer, S. Clark Pyfer (Helena)

J. Stanley Kimmitt (Washington, D.C.)
James P. Lucas (Miles City)
George McCarthy (Butte)
Ralph Nelles (Billings)
Rudy Tramelli (Great Falls)
Stanley Watkins (Shelby)

December 12, 1986

Mr. Sever Enkerud
P.O. Box R
Malta, MT 59533

RE: LAKE ELWELL HYDROELECTRIC PROJECT

Dear Mr. Enkerud:

As per your request, we are writing on behalf of the Board of Directors and Shareholders of the Montana Renewable Resources, Inc., the Montana Partner in MRR. By letter dated November 25, we suggested a meeting and outlined the form of a partnership between our groups. We understand that you would like to have a more detailed proposal in writing before meeting with us. We are pleased that you are interested in working with us and we are writing to give you the details of a proposal.

In making this proposal we have attempted to address what we understand to be the principal concerns and objectives of both of our groups. If we have overlooked something or proposed a form that doesn't fully meet our mutual needs, we will be happy to rework the proposal after discussions with you, your members and/or both of our professional advisers.

Before presenting the proposed points of agreement we feel it is important to review our mutual objectives. These are as follows:

1. Ensure availability of water for irrigation.
2. Provide a revenue source for building, operation and maintenance of the irrigation projects.
- 3.. Provide a revenue source to Liberty County and Chester for general county and municipal purposes.
4. Build the most cost effective Project.
5. Maximize Project net revenues.

December 12, 1986
Page Two

6. Eliminate Gillette, Wyoming from any involvement in the Project.

7. Minimize the need for state subsidization of the Project, freeing state funds for other irrigation district needs and for general public uses.

8. Maximize economic benefits to Montana.

9. Provide a return of monies invested by the Milk River Districts and MRR in developing the Project.

The proposed points of agreement are intended to assure that the above objectives are met. The points of agreement are as follows:

1. Water Rights

The Irrigation Districts will be given a legally binding first right to use of the waters from Lake Elwell in preference to any rights to use the water for hydroelectric purposes.

2. Proposed Financial Structure

a) MRR will advance all funds needed to develop the Project.

b) At financing, Irrigation Districts will be repaid all their expenses and will be provided additional funds, with the sum of repayments and additional funds providing a development fund in the neighborhood of \$250,000 or so to further planning and studies of their irrigation districts

c) Irrigation Districts' share of net proceeds from the Project would be stepped up over time so that they would receive a majority of the benefits after a short period of time. In particular, the Districts would receive 40% of net profits in years 8 through 10, 50% of net profits in years 11 through 15, 60% of net profits in years 16 through 20, and 70% of net profits in years 21 through 35. After the 35th year, the Districts would share all project revenues with Liberty County and Chester. In the first 7 years, net proceeds would go to MRR to reimburse them for development costs and equity investment in the Project.

d) It is recognized that the Irrigation Districts might have to raise funds to match a Federal funding of an irrigation project. At any time after the 7th year of Project operation, the Irrigation Districts would have the right to raise matching

December 12, 1986
Page Three

funds by pledging their share of cash flow from the Project and could use as security, the Project works, subject only to the first mortgage on the Project and the interests of Liberty County and City of Chester.

3. Support for Irrigation Projects

MRR will pledge its best efforts to support the Milk River Irrigation projects. Liberty County and Chester will agree to use their best efforts to resolve any differences with the Milk River Districts so as to permit irrigation projects to move forward.

4. Gillette, Wyoming

The Milk River Districts and the Liberty County Group will jointly request the assistance of the Governor and the entire Montana Congressional Delegation in forcing Gillette to withdraw its Application or otherwise obtaining the ouster of Gillette from consideration on the Project. If needed, MRR will pay for reimbursement to Gillette of its reasonable costs in connection with its pursuit of the Project.

5. Managing Board

The Milk River Districts and Liberty County Groups will each appoint representatives to a managing board, which will have authority over major decisions. During development and construction of the Project, MRR will be the managing group with responsibility of the Project, but will keep the Board fully informed for Project developments on a periodic basis. After the Project is built, the Board will periodically review operation and maintenance of the Project and will have authority to approve any refinancing proposals or proposals for Project modifications or expansions.

We have given careful consideration to shaping the above proposal and hope that you find it helpful and constructive. The proposal is offered by us in the highest good faith. We are certain that after meeting we will be able to elaborate and improve the proposal further. It is important that we start working together as soon as possible to preserve Project benefits before they are lost to all of us. We are convinced that important groups of Montanans like you, us and Liberty County and Chester should join together to further the interests of Montana and each of the groups.

December 12, 1986
Page Four

We know that you will give our proposal careful consideration and we look forward to the opportunity to meet with you at your earliest convenience after you have had a chance to review our proposal. We hope that a meeting to work out any problems and agree on a course of action could be held within 30 days and would welcome any opportunities to keep things moving forward over the coming weeks.

Sincerely,

MONTANA RENEWABLE RESOURCES, INC.

By John S. Cote
John S. Cote, President

By R. Stephen Browning
R. Stephen Browning, Secretary

By D. Clark Pyfer
D. Clark Pyfer, Treasurer

cc: Presidents and Directors,
Milk River Districts
Liberty County Commissioners
Mayor, City of Chester
Attorneys for Milk River
Districts (Glasgow and New York)

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X 486 443 8708 BrowningKaleczyc

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GALLAGHER, ARCHAMBEAULT & KNIERIM, P.C.
PROFESSIONAL CORPORATION - ATTORNEYS AT LAW

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WOLF POINT OFFICE

LAURA CHRISTOFFERSEN
OF COUNSEL:
W. GENE THEROUX

324 MAIN STREET
P.O. BOX 987
WOLF POINT, MT 59206
406-853-2400

November 26, 1986

RECEIVED

DEC 1 1986

Mr. Stephen Browning
P.O. Box 162
Helena, MT 69624

**BROWNING, KALECZYC,
BERRY & HOVEN, PC**

Re: Lake Elwell Project

Dear Mr. Browning:

Your letter of November 25, 1986, to Mark Etchart was referred to me for response.

Judging from the envelope, you are an attorney and we would appreciate it in the future if you directed your correspondence in care of this office. Our designated spokesman for this project is Sever Enkerud, and I handle the legal work in Montana and generally coordinate our efforts in the project. I am aware of your past efforts with Marlenee, John Overcast, and Mark Etchart but I would appreciate in the future if all of your correspondence would be directed in care of this office. It saves us a fair amount of time in getting our responses out to you. Further, since Mr. Kossack is an attorney, I would appreciate it as well if he would direct his comments to this office or Mr. Doug Davidson, and not attempt to communicate with our clients directly as in the past. In short, the districts have no intention of bypassing their attorneys or engineers in your proposed discussions.

Contrary to your group's representations in the press, we have never refused to meet with your group or to discuss possible settlement. However, we have repeatedly urged your group to put its proposals down in writing so that they can be evaluated in depth before any meeting. Our past efforts with your New York underwriters have not been productive in large part due to their hassling and have caused more bad feelings than good. In short, any such meeting should be on a businesslike basis with a clear agenda and input from the experts in advance of the discussion.

Your letter indicates that you are setting forth a "possible proposal." Is this your proposal?

Please advise.

Sincerely,

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Mr. Stephen Browning
Page 2
November 26, 1986

cc: Irrigation Districts
Mark Etchart
Doug Davidson
Nels Jacobs
Faye Seel

The attached letter was sent to the following:

Kay Blatter
Box 642
Chinook, MT 59523

Mr. Rudolph Carroll
Box 1147
Chinook, MT 59523

Mr. William Drugge
75 3rd Street
Chinook, MT 59523

Mr. John Overcast
84 3rd Street
Chinook, MT 59523

Mr. Knute Kulbreck
110 S. Main
Harlem, MT 59526

Mr. Ted Ereaux
P.O. Box R
Malta, MT 59538

Mr. Everall Holman
P.O. Box R
Malta, MT 59538

Mr. Sever Enkerud
P.O. Box R
Malta, MT 59538

MONTANA RENEWABLE RESOURCES, INC.

P.O. Box 162
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Board of Directors

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J. Stanley Kimmitt (Washington, D.C.)
James P. Lucas (Miles City)
George McCarthy (Butte)
Ralph Nelles (Billings)
Rudy Tramelli (Great Falls)
Stanley Watkins (Shelby)

November 25, 1986

Mr. William Drugge
75 3rd Street
Chinook, MT 59523

Re: LAKE ELWELL HYDROELECTRIC PROJECT

Dear Mr. Drugge:

We are writing on behalf of the Board of Directors and Shareholders of Montana Renewable Resources, Inc., the Montana Partner in MRR. As you know, for the past three years, we have been in a contest with your Group and with Gillette, Wyoming for the right to build a hydroelectric project at Tiber Dam in Liberty County. We are writing because we have a deep conviction that this contest is not in either of our best interests. We believe there has been a great deal of misunderstanding about each others motives and goals. Until recently, there has been hardly any dialogue or discussion between us. The only communication has been through lawyers who we have both paid to dispute, and not to find common ground. We think we all ought to first put our best efforts into seeing whether we can further our interests together.

We all recognize that you have an urgent need for additional water for irrigation. Any settlement would recognize irrigation needs as a first priority. In particular, water would be reserved first for irrigation and only second for hydroelectric power. Also, funding would be arranged so that the hydroelectric project could assist the development and construction of needed irrigation projects.

The second point that we think is very important is to preserve the project for Montanans. With us divided, Gillette has a very real chance of winning the project. But with both Montana Groups united, we are confident we can force Gillette to give up on the project.

We also think that we can help each other in building a better and more cost effective project. We both face a number of common problems in developing the project. Perhaps most important will be negotiating a good power sales contract, probably with Montana Power Company. As you know, that would have been easier when we both began work on the project a few years ago.

Mr. Drugge
Page 2
November 25, 1986

also be a number of problems in the design, construction and operation of the project. These will involve legal, financing and engineering issues. Again, together we will have greater experience and resources to handle the problems effectively.

In short, what we are proposing is a partnership that will recognize and address your needs and will allow us to get on with building a constructive project. One approach would be to divide the project 50-50 and each have responsibility for our own portions with a joint oversight board. However, we think it is well worth exploring alternative approaches which might be more attractive given your needs. As a private group with expertise and financial resources, we would be prepared to take the lead in engineering and financing the entire project. One possible proposal would be as follows:

1. We would advance all funds needed to finance the project;
2. At financing, you will be repaid all your expenses and will be provided additional funds so that you will have a development fund in the neighborhood of \$250,000 or so to further planning and studies of your irrigation projects;
3. To compensate for our up front assistance, and to permit you to receive the majority of the project revenues in the later years, net profits would be greater to us in the earlier years and less in the later years.
4. A management board with representatives from both of our groups would oversee important decisions.

Of course, we will only be able to arrive at the best possible arrangement for all of us after we have had a chance to sit down and discuss matters further. We hope you will give our proposal careful consideration and that you will agree to meet with us. We would suggest a luncheon meeting in Havre, on December 12, at the Iron Horse Restaurant. We will bring a few of our Board members, one representative of our partner and one or two of the Liberty County Commissioners.

Mr. Drugge
Page 3
November 25, 1986

Thank you in advance for your consideration of our proposal.
We look forward to the opportunity to meet with you.

Sincerely,

MONTANA RENEWABLE RESOURCES, INC.

By John S. Cote
John S. Cote, President

By R. Stephen Browning
R. Stephen Browning, Secretary

By S. Clark Pyfer
S. Clark Pyfer, Treasurer

VISITOR'S REGISTER

Long Range Planning

SUBCOMMITTEE

AGENCY(S) _____

DATE February 17, 198

DEPARTMENT _____

TIBER DAM PROTEST

NAME	REPRESENTING	SUP- PORT	OP- POSE
GEORGE COHENSKI	MT ENV INF CTR		✓
MARK STUART	GLASGOW IRRIG DIST	✓	
PAH RIGERIN	MT RIVER DISTRICTS	✓	
FAVE SEEL	MAL-A - GLASGOW	✓	
John B. Overcast	Paradise Irrig Dist	✓	
Jim Enkerud		✓	
NELSON JACOBS	TUDOR ENGINEERING CO. DENVER	✓	
John Cate	MRP I		✓
Rody Tramelli	MRP I		✓
Stallman	✓		✓
Clark Cyler	MRP I		✓
Jim Brunner	MRP I	✓	
Ted Schyge	State Rep. H.D. 18	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT
 IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.