

MINUTES OF THE MEETING  
AGRICULTURE, LIVESTOCK & IRRIGATION  
MONTANA STATE SENATE

January 19, 1987

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date in Room 415 of the State Capitol, at 1:00 p.m. by Chairman Boylan.

ROLL CALL: All members present.

CONSIDERATION OF SB 102: Senator Pete Story, SD 41, sponsor of the bill, said the purpose is to accomodate the last supreme court ruling and make the water do exactly what it should have done in the first place. The change in subsection 4 may need to be added in subsection (6), which refers to persons, tribes, and federal agencies. The old water law said to measure the amount of water, the rate and volume, included in the right. The new constitution guaranteed that all existing water rights would be protected. The bill to readjudicate those rights mentioned water rate volume. Volume was used in measuring water that went into reservoirs, however, water taken from streams for irrigation was only measured in flow rate. There was no practical way to measure volume because flow rate varies and time and use changes constantly.

An old right might say you are entitled to 100 miners inches, but it didn't say for how long. You were entitled to use it as long as it was beneficial, but you wouldn't use it all the time. Some rights dried up after runoff and you didn't use it when you were taking your crops off. When you talked about volume, you multiplied the days you used the water and got a volume for more than you ever used. You could use the flow right any time you wanted. This bill clarifies that, for irrigation rights, you measure by flow rate if it was historically a flow rate and by volume if it was historically a volume rate. Page 3, subsection 6, you could expand the language on line 20 and include the new measurement requirements. He stressed that it is difficult to measure volume because of inconsistant direction of water flow. He felt if you got rid of the volume requirements where it isn't pertinent to that right it would get rid of a lot of objections.

PROPOSERS: Senator Dorothy Eck, SD 40, said she had served on the water policy board and worked with EQC. Volume vs. flow rate has been before them a long time. She thought the supreme court had taken care of the problem when they declared flow rate was limited to beneficial use. She said one of the prime reasons for the adjudication process was to

be able to verify Montana claims with down stream states, tribes and federal agencies in regard to water rights. In order to do this you had to show how much water was being used. She agreed it was difficult to do and Senator Story's bill would help clarify this. She suggested an amendment that says "except as otherwise provided by law volume is not the legal measure of the water rights; but volume may be used by the Department for statistical purposes in performing its water determining functions in negotiating or litigating water rights, etc., with other states." She said she would get this amendment to the secretary at a later date as she wanted to check with Judge Lesley first.

Lorna Frank, MT Farm Bureau, supported the bill without amendments, because of problems they have had in the Flint Creek area. She will submit written testimony for this tomorrow. (testimony, exhibit #1)

Eugene Manley, Allendale Irrigation, Drummond, said the controversy over volume first arose in his basin. Addressing volume in water rights creates some real problems. In early spring when there is an excess amount of water, you do not use that available water so you don't have the necessary return flow at the end of the year. It will vary from year to year. In a good year you can use a lot of water while in a dry year you may use very little. Three fourth's of the objections in his basin were on volume. He said a flow rate and volume rate are compatible, you can have both in a basin. He was strongly opposed to a volume rate.

Carol Mosher, representing MT Stockgrowers and MT Cattle Women, in support of SB 102.

OPPONENTS: Gary Fritz, Dept. of Natural Resources, appeared as an opponent because legislative rules require people with amendments appear as opponents, he said. The Dept. accepted the concept of Senator Story's bill because it will be easier, simpler and more correct to identify irrigation direct flow rights only by flow right and not by volume. Putting volumes in these decrees has created many problems. Having only flow right in the decree doesn't mean that volume isn't part of the water rights. If someone 20 years from now changed his direct flow water rights and sells it to someone else or changes it to another place of use, it is necessary to have the volume flow associated with that water right so you will know he is not expanding his water right in some way to cover more acres and get more water. DNRC amendments (exhibit #2), concern the fact that a lot of the water rights in the state have not been measured. The amendments indicate how the water be measured in the final decree. He said these amendments make it very clear

that, in the final decree, the irrigation direct flow rights be adjudicated only by flow rights and not by volume. Some rights should be described by both flow rate and volume and they would give the water court that option.

Mike Zimmerman, attorney for MT Power Co., said he does not oppose the concept of the bill, but supports the DNRC amendments because the words, "historically have been measured" creates an ambiguity he would like cleared up pertaining to reservoir rights. Many of their reservoir rights have not been subject to decree in the past, nor have hydro electric reservoir rights. He wanted to be assured that when they go to the water court to make their case they will be able to show the right of both volume and flow so they are not limited through the legislation before the committee.

COMMITTEE QUESTIONS: Senator Bengtson asked if the flow rate necessitates metering all water used for irrigation. Senator Story said it does in situations where it affects another user. There are about 200,000 water rights and probably not an accurate measurement device for one in a hundred. Where there are ditch riders or water commissioners the streams have to have accurate measuring devices. Where the devices aren't in, if a neighbor thinks someone is using more water than he is entitled to and the neighbor also has a right on that stream, he can make him put in a measuring device.

Senator Thayer asked Senator Story to comment on the DNRC amendments. Senator Story said he would like to go over them with his attorney first. He had not heard of the term "water spreading".

Gary Fritz said water spreading was not defined in the statutes but it is a method of irrigation in southeastern Montana. People throw up dikes across small gullies and there is no way the water flowing into those dikes can be controlled. The water flows down the gullies and flows into the dikes and you couldn't determine a flow rate. Those types of dikes would have to be measured by volume.

Hearing closed on SB 102.

CONSIDERATION OF SB 46: Senator Ted Neuman, SD 21, said this bill reauthorizes the use of the link deposit program the legislature put into effect during the special session in March. Testimony attached as exhibit #3.

PROPOSERS: Mike Grove, Governor's Council on Economic Development, served as chairman of the Ag Debt Subcommittee.

They recommend this bill in its entirety. He said the system had not been in force long enough for the lending institutions to fully understand it. Other agricultural states had 2 1/2 to 5% spreads so this was the reason for asking for a 3% spread. Renewing this program for the two year biennium would give lenders time to learn bookkeeping requirements and how to work with the BD of Investments. Farm operating funds have too short a period of time to generate funds. Operating time varies by type of operation. For ranching it can be November to spring and spring to fall for the farmer. When the BD of Investments puts public funds into a Montana lending institution, anything over or above the FDIC or FSLIC coverage, which is \$100,000, has to be secured. The pledging requirement is at the discretion of the Board. They can require all the way from 100% to 50% coverage. If the lender is highly loaned out after 2 loans he would need to secure those loans. They felt it was not imprudent to use the loan generated by the funds as eligible security to pledge because crops could be covered by crop insurance and cattle loans would have a calf crop. The BD of Investments could take some margins and say the loans would have to have a good base to be eligible for the collateral.

Ralph Peck, Department of Agriculture, in support. Testimony attached as exhibit #4.

Kay Norenberg, WIFE, Carol Mosher, MT Stockgrowers and MT Cattle Women, on record in favor.

Terry Murphy, President, MT Farmers Union, on record in support, as well as the MT Grange and MT Cattlemans Associations.

John Cadby, MT Bankers Assoc., hesitated to fully endorse the program. He didn't think it would solve a lot of problems. It has helped 42 borrowers, but the risk of each loan is still with the lenders. There isn't any transfer of risk as in SBA or Farmers Home FmHA loans. Any banker is going to try to transfer his risk if he can, but at the same time give the ag producer the lowest rate of interest. He said bankers would use Farmers Loan Admn. guaranteed loans in preference to this program. The cost to the state will vary depending upon its usage. It has a potential cost to the state of a half million dollars per year. It is impossible for him to predict to what extent the amendments made to the law will increase usage throughout the state of MT.

Bob Pyfer, MT Credit Unions League, endorsed the bill.

OPPONENTS: None.

COMMITTEE QUESTIONS: Senator Beck felt the way the bill is written it makes money available but the problem is that banks are short of good borrowers. He asked if this particular law addressed any of them. John Cadby answered that banks are not short of capital to loan out except in a few instances. The problem is the borrower's ability to repay the loan. Those who have a 30% debt to asset ratio are not the best risk so the lender will have to exercise caution in making those loans. There is no doubt credit will be more restrictive. This bill saves the ag producer about \$1000. To a large unit this is not much of a savings.

Mike Grove agreed with Mr. Cadby saying the problem will be very critical this spring. Because of the state's involvement it does solve the liquidity problem.

Senator Beck asked if 3% is the CD rate they were taking a reduction from. Senator Neuman answered that 3% is the amount the banks may take to service the loans. The BD of Investments places the money in the bank for 1% less than current national CD rates. The banker would tack on 3% to that rate, thus making the ag loan available at 7.75% at the present time. He estimated on a \$50,000 loan the interest saving to the farmer could be \$1500.

Senator Bengtson asked where the new language in the bill was concerning pledging. Senator Neuman answered page 5, line 17. That part refers to using the loan as security.

In closing Senator Neuman said that moving the \$1500 in the direction of the borrower was significant. It may not seem like a lot of money, except when you don't have it. It is a minimal effort on the part of the state. He asked the committee's support and drew attention to some amendments. In drafting the bill all the sections weren't amended to conform to the new law.

Dave Cogley, Legislative Council, presented the amendments, exhibit #5.

Senator Boylan announced the Agriculture Committee would meet Wed., Jan. 21 at 1:00 p.m. to reopen SB 4 and take executive action on SB 46 and SB 102.

Senator Galt said he would not be here Wed., and asked to leave his vote. Senator Boylan said, yes.

There being no further business, the meeting adjourned at 2:10 pm.

  
PAUL F. BOYLAN, Chairman

ROLL CALL

AGRICULTURE

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

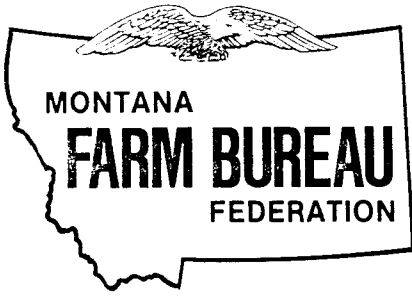
Date 1-19-87

NAME	PRESENT	ABSENT	EXCUSED
ABRAMS, Hubert J.	✓		
BENGTSON, Esther G.	✓		
BECK, Tom	✓		
JERGESON, Greg	✓		
KOLSTAD, ALLEN C.	✓		
LYBECK, Ray	✓		
STORY, Peter R.	✓		
THAYER, Gene	✓		
GALT, Jack VICE CHAIRMAN	✓		
BOYLAN, Paul CHAIRMAN	✓		

Each day attach to minutes.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
RALPH LAEGER	Commerce CEO	SB 46	✓	
Lorna Frank	Mont Farm Bureau	SB 102		
Carol Mosher	Mont. <sup>Montana State Repre</sup> <del>State Repre</del> Mont. Cattle Women	SB 46 SB 102	✓	
Ralph Rick	MT Dept of Ag	SB 46	✓	
MIKE MURPHY	" "	SB 46	✓	
Anne Moylam	Mont. Cath Conference	SB 46		
Fred Godbout	Board of Investments	SB 46		
James R. Penner	" "	"		
Bob Pyfer	Mont. Credit Unions League	46	✓	
Mike Zimmerman	MPCO	SB 102		
Mike Conne	Gov. Council Econ. Develop	SB 46	✓	
John Paddy	MT BANKERS ASSN	SB 46	✓	
Debi Brammer	MT Assn of Crossedbred Dist.	SB 46 SB 102		
Eugene Moulcy	Allendale Jurisdiction	SB 102		
Gay Dorenberg	WIFE	SB 46	✓	
Larry Mungen	MT Farmers Union	SB 46	✓	
Cardace West	DRKS	SB 102		
Tom Hall	DNRC			
Rick Meis	MT Environmental Info Ctr.	SB 102		
K.M. Kelly	MURDA	SB 102	✓	
Stuart Degett	MT Chamber of Commerce	SB 46		



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TESTIMONY BY: Lorna Frank  
BILL # S.B. 102 DATE 1/20/87  
SUPPORT XXX OPPOSE \_\_\_\_\_

Mr. Chairman, members of the committee, for the record my name is Lorna Frank, representing Montana Farm Bureau.

Farm Bureau policy states that "we support legislation that would prohibit Water Courts from reducing the flowrate, volume or season of use of any legitimate water right that was used before 1973."

Senate Bill 102 would do just that by stating how the water in the right is to be measured. Historically is the key word, if the water has been historically measured by flow rate for rivers and streams or by volume for reservoirs that is the way it should be done.

Senate Bill 102 makes this clear and Farm Bureau would like to see this committee give Senator Story's bill a do pass recommendation. Thank you for considering our position on this bill.

SENATE AGRICULTURE  
EXHIBIT NO. 1  
DATE 1-19-87  
BILL NO. SB102

SIGNED: Lorna Frank



DNRC  
AMENDMENTS  
TO SB 102 (INTRODUCED BILL)

1. Page 2, line 18 through line 1, page 3.

Strike: subsection (b) in its entirety.

Insert: "(b) the amount of water that has historically been put to beneficial use, measured as follows:

(i) by flow rate for direct flow rights, such as irrigation rights, except water spreading; or

(ii) by flow rate and volume to the extent that the information appears in or can be derived from the record before the water judge."

CLERK OF COURTS  
COUNT NO. 2  
DATE 1-19-87  
BILL NO. SB 102

Summary - Senate Bill No. 46  
Dave Cogley, committee staff

The bill continues until June 30, 1989, the agricultural production loan linked deposit program set up during the March special session. Under that program the board of investments will deposit public funds available for investment at 1% less than the current rate the board gets for its CD's, in lending institutions which agree to make agricultural production loans. Such loans may not exceed \$50,000 per borrower, and the borrower must derive at least 70% of his income from agricultural production and have debts exceeding 30% of total assets.

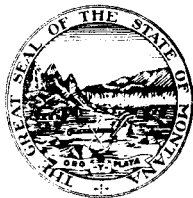
Senate Bill 46 makes only three changes in the original program:

- 1) The allowable spread between the rate on the CD placed with the bank and the agricultural loan rate is increased from 2% to 3%.
- 2) The allowable term of the qualifying loan is changed from 6 months to 1 to 12 months.
- 3) A participating bank is allowed to use the agricultural loan as security for the deposit placed by the board of investments.

The amount of deposits placed by the board of investments at any time may not exceed \$50 million. A companion appropriation bill has been drafted to appropriate money to replace the 1% earnings lost to the funds used to make deposits under the linked deposit program, which at most could be \$500,000 for each year of the biennium.

During the program's life in 1986 \$1,895,000 was loaned by 6 participating lending institutions to 42 borrowers.

SENATE AGRICULTURE  
EXHIBIT NO. 3  
DATE 1-19-87  
BILL NO. SB 46



TED SCHWINDEN  
GOVERNOR

STATE OF MONTANA  
DEPARTMENT OF AGRICULTURE

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KEITH KELLY  
DIRECTOR

TESTIMONY OF MONTANA DEPARTMENT OF AGRICULTURE  
FOR THE SENATE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE  
ON SENATE BILL 46  
MONDAY, JANUARY 19, 1987  
HELENA, MONTANA

Chairman Boylan and members of the Committee. The Montana Department of Agriculture supports Senate Bill 46 for the temporary continuation of the Agricultural Loan Linked Deposit Program.

The problems facing our state's agricultural industry have not disappeared. Studies now indicate that Montana's adverse economic conditions in agriculture and other industry have not yet bottomed out and may not for sometime to come.

High interest rates are one of the primary factors contributing to the cashflow problems facing our farmers and ranchers. The Agricultural Loan Linked Deposit Program will provide relief from high interest rates for some of our state's producers. The availability of the lower interest rate financing may make the difference as to whether or not a farmer or rancher is able to continue in agriculture.

Senate Bill 46 also addresses concerns that have been noted by lenders around the state and the Governor's Council on Economic Development.

For these reasons the Montana Department of Agriculture supports Senate Bill 46.

SENATE AGRICULTURE

EXHIBIT NO. 4

DATE 1-19-87

BILL NO. SB 46

Senate Bill No. 46 Amendments (Introduced bill)

1. Title, line 8  
Following: "17-6-103"  
Strike: "AND"  
Insert: ", "

2. Title, line 8.  
Following "80-14-102,"  
Insert: "80-14-202, AND 80-14-203,"

3. Page 2  
Following: line 18  
Insert: "Section 2. Section 80-14-202, MCA, is amended to read:

"80-14-202. (Temporary) Approval and acceptance of deposit -- deposit agreement. (1) The board may accept or reject the linked deposit loan package or any portion thereof.

(2) Upon acceptance of the linked deposit loan package or any portion thereof, the board may place certificates of deposit for a term not less than 30 days and not to exceed 6 12 months with the eligible lending institution at a rate 1% below the current market rate for such certificates, as determined by the board.

(3) The eligible lending institution must enter into a deposit agreement with the board, which shall specify the recipients, amount, rate of interest, and length of time of loans which the institution will make upon receiving a linked deposit. The agreement must also specify that interest on the linked deposit must be paid at the times determined by the board.

(4) The period of time for which a certificate of deposit is placed with an eligible lending institution may be neither longer nor shorter than the period of time for which the linked deposit is used to provide loans at reduced interest rates."

Section 2. Section 80-14-203, MCA, is amended to read:

"80-14-203. (Temporary) Linked deposit loans. (1) Upon placement of a linked deposit with an eligible lending institution, the institution must lend such funds to each approved eligible agricultural operation listed in the linked deposit loan package required by 80-14-201 and in accordance with the deposit agreement required by 80-14-202. Each loan must be at a fixed rate of interest not exceeding 2 3 percentage points greater than the rate payable on the linked deposit.

(2) All records and documents pertaining to each loan shall be segregated by the lending institution for ease of identification and examination.

SENATE AGRICULTURE

EXHIBIT NO. 5

DATE 1-19-97

BILL NO. SB 46

(3) Each eligible agricultural operation receiving a loan under this chapter shall promptly certify receipt of the loan to the board in the form and manner prescribed by the board.

(4) Any report of noncompliance by an eligible lending institution chartered under the laws of this state must be referred to the financial division of the department of commerce for appropriate action. Any report of noncompliance by an eligible lending institution chartered under federal law must be referred to the office of United States comptroller of the currency or other appropriate federal regulatory agency for appropriate action."

Renumber: subsequent sections