

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on February 13, 1989,  
at 1:00 p.m.

ROLL CALL

Members Present: Senators: Hubert Abrams, Gary Aklestad,  
Esther Bengtson, Gerry Devlin, Jack Galt, Greg  
Jergeson, Gene Thayer, Bob Williams, Chairman Beck.

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

DISPOSITION OF SENATE BILL 166

Discussion:

Senator Aklestad said he had a concern about adjudicated rights and is not convinced about the waste water provision in the bill. He mentioned that there were a couple irrigation projects where they do have extra water and they call it waste.

Senator Aklestad said he was not sure if there were different definitions of waste. He pointed out that the Muddy Creek coming off the Fairfield bench water would be waste. Senator Galt pointed out that waste was described as the unreasonable loss of water through the design and operation of any application of water through anything but a beneficial use.

Senator Aklestad pointed out another concern in the manner in which you can go in and readjudicate adjudicated water rights. It seems as though you could run through a preliminary decree or temporary preliminary decree. The water rights are nailed down now, have gone through the court systems, and now one more option is given to reopen that up. Chairman Beck pointed out that SB 76 opened up adjudicated rights.

Recommendation and Vote: Senator Galt moved that SB 166 DO PASS AS AMENDED. The motion passed with Senator Aklestad voting no.

#### DISPOSITION OF SENATE BILL 167

Discussion: A suggestion of a technical amendment to SB 167 and SB 169 made by Mr. Ross from the Denver consultants appears on the first page that accompanies the amendments to SB 167. These amendments were not included in the grey bill draft. If these provisions are to be included in the bill, the committee will need to act on them.

Amendments and Votes: Senator Galt moved the amendments. The question was called. The motion passed unanimously.

Recommendation and Vote: Chairman Beck said that SB 167 now had the technical amendments. A motion was made to move the bill as amended. Senator Jergeson said he was concerned that this bill provided for the reopening of streams that had final decree. He asked, "How many years could these be reopened?" He pointed out that these water bills could end up in conference committee in order to review them. It was pointed out that it was not sure that everyone had their day in court. If the final decree, came out and someone in another basin never had a chance to speak up but was affected by that final decree then they would have a chance to protest and have a day in court.

Senator Aklestad said that he had more opponents on the bill than proponents and wanted to know if the concerns of the Water Association, the Stockgrowers, and Ed Steinmetz had been taken care of. Chairman Beck pointed out that their concerns were the same as the Water Court, the DNRC, and the Water Compact. Mr. Steinmetz commented that the concerns were addressed.

Senator Galt moved that SB 167 DO PASS AS AMENDED. The motion carried unanimously.

#### DISPOSITION OF SENATE BILL 169

Doug Sternberg said that the Ross amendment, which was another technical amendment, needed to be acted on.

Amendments and Votes: Senator Galt moved to pass the technical amendments. The motion passed unanimously.

Recommendation and Vote: Chairman Beck said that SB 169 with the technical amendments and the amendments discussed last Friday were before the committee. Senator Galt moved that SB 169 DO PASS AS AMENDED. The motion passed unanimously.

#### HEARING ON SENATE BILL 387

Presentation and Opening Statement by Sponsor: Senator Gene Thayer, District 19 Great Falls, introduced SB 387. He explained the bill as an effort to give the department the tools to work with to help the situation where one grain company is purchasing warehouse receipts and maybe buying that grain from another elevator. Under federal law you are required to deliver the exact grain, and that calls for a warehouse receipt. The practical matter is that seldom ever happens and it is usually impossible to do that. Warehouses are storing a quantity of grain and do not necessarily add the exact grain in. Normally the person buying the grain works that out with the shipping elevator and they work out an agreement by a contract. This bill would allow the flexibility of loading on a different type of grain. He pointed out that there is nothing in the law that describes weights and proteins. The only thing the department of Agriculture can do at the present time is to have a hearing. The Department wishes to resolve those types of differences.

#### List of Testifying Proponents and What Group They Represent:

Ralph Peck, Montana Department of Agriculture  
Dan Place, Broadwater Grain, Townsend, Montana

#### List of Testifying Opponents and What Group They Represent:

None

#### Testimony: Proponents:

Ralph Peck stated that the department had been working with Senator Thayer on the bill and the U.S. Inspection Service concerning a class A and a class X and Y wheat. He stated that it is not a U.S.D.A. classification. He submitted amendments (Exhibit 4). He said that these amendments would be in line with USDA classification. He explained that a class X is an official weighing of a grain lot, a truck, or a hopper car by an official authorized weigher licenced by the U.S. Grain

Inspection Services. The scale must be officially tested. A class Y is someone that does this under supervision of USGIS but is not considered an official weight. It would allow the use of the USGIS grain inspection classes of X or Y and would still require that the scales be tested and approved (Exhibit 5).

Questions From Committee Members: Senator Aklestad asked Senator Thayer if this bill was dealing with destination or origin in weights in grains. Senator Thayer said it provides for either one depending on whether the officials are available. Sometimes it is not available at the origin. Ralph Peck replied that the bill actually deals with both.

Ralph Peck introduced Will Kissinger from the department. He clarified that the bill was referring to not so much a matter of destination but a matter of warehouse receipts disagreeing. This bill is a means of resolving them.

Senator Thayer pointed out that at the present time there were one or two options. If a load of grain is received exactly what the warehouse receipt calls for, then the department can enforce that. However, in a practical matter it is not possible or feasible to do that. They are not asked to be that specific, so instead a contract is entered into to provide for premiums or discounts if they load something that is different than what that grade calls for. Senator Thayer pointed out that the problem is the department having any jurisdiction in settling disputes. The bill would give the department more teeth or tools to work with to make people do what they are supposed to do. He said that the language was taken out of the national grain dealers rules and the amendments were technical in nature.

Senator Aklestad asked whether the dispute of price difference in grain would be taken at the time the grain was delivered, or at the time the dispute arose would this then be settled by the department?

Senator Aklestad clarified that this was not just grain companies. He had done this himself, deciding he was pulling grain out of a terminal, an elevator, and going someplace else. In the past when he hauled in 14 % protein spring wheat, 60 pound grain and asked or demanded that back, under the old law that is what he got back. Under this law he wouldn't get 14 % but would get back a lesser class. This would mean a difference in price. Senator Aklestad-"When is this

established, at the time when that individual farmer delivered or at the time when the dispute arose? Would that dispute be handled by the Ag Department?"

Ralph Peck replied that people still have the right to receive what is on the warehouse receipt. If you agree with the warehouse that you would take something different than what was agreed to on a contract, then if the warehouse could not deliver, the department would get involved. However, if an agreement was made outside of that warehouse receipt, the department could not get involved.

Closing by Sponsor:

Senator Thayer pointed out that this bill doesn't change what is current; that if you demand what the warehouse receipt calls for you have a right to receive it. This bill gives the department something to work with in the event of problems in not being able to deliver the exact grain. Senator Thayer closed.

HEARING ON SENATE BILL 357

Presentation and Opening Statement by Sponsor:

Senator Harding presented SB 357. She said the bill was given to her by one of the major potato growers in Lake County. The object of the bill is to prevent the importation of communicable diseases. It allows for not planting noncertified seed in order to control and prevent contagious diseases. Right now, there is not a problem in Montana, but they wanted this entered on the books so that everyone that is in the potato business would plant certified seed potatoes in order to control the spread of diseases.

List of Testifying Proponents and What Group They Represent:

Steve McCullough, Northwest Potato Sales  
Dan Place, Broadwater Grain, Townsend, MT  
Rep. Vernon Westlake, H.D. 76, Gallatin County

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Proponents:

Steve McCullough, owner and operator of Northwest Potato Sales of Townsend, Montana, presented testimony in support of the bill (Exhibit 7).

Rep. Vernon Westlake, H.D. 76, testified in favor of the bill. He pointed out that a good bit of the certified seed potato is grown in his district. Additional research is being proposed at MSU in the certified seed industry. Montana is number one in the nation in certified seed and would like to stay that way.

John N. Schutter, Schutter Seed Farms of Manhattan, Montana, testified in support of the bill. He represents not only a certified seed grower but also a member of the national potato council. (See Exhibit 8).

Mike Sun, Extension Plant Pathologist in charge of Montana Seed Potato Certification for Montana State University, testified in support of the bill (Exhibit 9).

Questions From Committee Members:

Senator Jergeson asked about other counties producing seed potatoes if this act would apply to them. Senator Harding pointed out that Lake County was concerned about the potential problem of diseased seed.

Senator Aklestad said he interpreted the law to read that any county that is raising seed potatoes that aren't certified wouldn't fall under these laws. He asked whether you have to be specifically designated in order to fall under the provisions of it.

It was clarified that only those counties that have certified seed growers would be covered under this law. Under this section the department is required to have a survey each year to determine which counties are under this. Chairman Beck said that if you are certifying seed you go through the Department of Agriculture. They are identifying the counties where the seed is being grown now. The bill is protection to the certified seed growers.

Senator Thayer asked Mr. Sun how the virus was spread. Mr. Sun said it could be spread by human, animal, or water. Senator Thayer asked if you had a county designated as a seed producing county, would the exemption that anybody could raise potatoes in home gardens or in areas less than 3 acres what is to prevent somebody that lives right next to one of the growers from contaminating his seed? Is this self defeating from what these people are trying to do?

Mr. Sun replied that home gardens should buy only certified seed. Chairman Beck commented that you should not have

to tell people that they can only buy certified seed, since the disease is not that serious of a problem at this time. The growers are known to furnish certified seed to help keep the disease out if it is necessary.

Closing by Sponsor:

Senator Harding pointed out that the certified growers in Lake County do provide certified seed potatoes to their neighbors. She said this was a good bill for the potato industry and recommended it do pass.

HEARING ON SENATE BILL 265

Presentation and Opening Statement by Sponsor:

Senator Bengtson, Senate District 49, presented SB 265. She pointed out that in 1978-79, the water reservation law was passed for the Yellowstone River Basin. The purpose of that bill was to address the energy industrial companies developing and the sale and marketing of water by South Dakota. She discussed the reservation system on the Yellowstone that is the 10-year review period by the Board of Natural Resources and Conservation. All of the reservants have come in with their reports, the in-stream flow reservants, the agricultural reservants, and the municipal reservants.

Senator Bengtson pointed out that as all of the reports came into the board, there arose a question about the board's authority. Right now it is very clear in the law, refer to page 6, line 6, section 10, sub A concerning the review of existing legislation to ensure the objectives of the reservations are being met. Where the reservations are not being met the board may extend, revoke, or modify a reservation. Senator Bengtson pointed out the scope of power and authority that the board does have as they review those reservations at the 10-year review period. When they put that into the law about review every 10 years, something may not be altogether perfect and that it indeed needs reviewing. This law is not completely concrete. There is room for changes. She pointed out that it does not say "reallocate" in that particular section of the law. It does say "reallocate" when it addresses the in-stream flow. This bill has combined subsections 10 and 11 into one and clarified the water reservation law by providing exclusively that the Board of Natural Resources and Conservation may reallocate any water reservation. In order to do so, the board must find after notice and hearing that:(1) all or part of the reservation is not required for the purpose it was reserved for; and (2) the need for reallocation has

been shown by the applicant to outweigh the need shown by the reservant. The bill combines subsections 10 and 11 of existing law.

Senator Bengtson said it wasn't until 1987 that the power was put to the board to reallocate in-stream flow. It is important now that the board is reviewing those reservations that they have clear authority.

List of Testifying Proponents and What Group They Represent:

Anne Sheehy, Yellowstone County  
Steve Brown, Board of Natural Resources & Conservation

List of Testifying Opponents and What Group They Represent:

Joe Steiner, City of Billings  
Gerald D. Underwood, City of Billings  
Bonnie Sutherland, City of Billings  
Michael Fraser, City of Livingston

Testimony:  
Proponents:

Mr. Steve Brown, Chief Counsel of the Department of Natural Resources and Conservation, testified in support of the bill. He said the board wanted to make sure the committee understood the reservation process and supports the notion that the board should be granted statutory authority to transfer and reallocate water reservations other than in-stream flow reservations.

Mr. Brown informed the committee that the Yellowstone reservations started in the mid-70's. In December of 1978 after a lengthy hearing in Billings, Montana, a number of reservations were granted. These were separated into four categories. Municipal reservations were given priority throughout the Yellowstone River Basin. Agriculture had the second priority below the Big Horn River. Below the Big Horn River in-stream flows had second priority behind municipal reservations. There were a few reservations for industrial purposes. The municipal reservations themselves were granted based on testimony by various cities along the Yellowstone River with projected increases of population and other developments within those cities. The reservations granted were designed to reserve water for those future domestic and other development purposes. The in-stream reservations--the biggest being granted to the Department of Fish, Wildlife, and Parks and the Department of Health and Environmental Sciences.



Mr. Brown said the agricultural reservations were designed to deal with potential future development along the main stem of the Yellowstone and its tributaries. He pointed out that the controversy which generated the last declaratory ruling before the Board of Natural Resources began with a petition for a transfer of a portion of the City of Billings, Livingston, and Columbus's reservations by Yellowstone County. The purpose of the petition was basically to address some water needs of several subdivision areas located outside the city limits of Billings. Those subdivisions in question had water right permits by DNRC priority dates in the 80's, so they were junior to reservations which had a 1978 date. This past summer with the drought situation the flow on the Yellowstone River decreased substantially. A call was made on that water by Fish, Wildlife, and Parks, indicating that they might require the subdivisions that were are not incorporated in the city limits to stop withdrawing water from the Yellowstone. They never were actually forced to shut down their withdrawals, but the letter was issued and it pointed out the problem in this controversy. Billings indicated to these particular subdivided areas that they would agree to supply water and sewer through their municipal system if these subdivisions agreed to be annexed and would also agree to paying some fees associated with hooking up the system. That in turn generated the present controversy and the board has no interest in getting in the middle of an annexation battle.

Mr. Brown pointed out that as part of the 10-year review process, the petition had to be addressed that was filed by Yellowstone County. The two basic issues as they related to Yellowstone County and the City of Billings were:(1) is Yellowstone County a qualified reservant or applicant under the reservation process; and (2) did the Board of Natural Resources and Conservation have the authority to transfer any or all of the portion of the City of Billings' water reservation or the City of Livingston's water reservation to Yellowstone County. The board decided that Yellowstone County was a qualified applicant and could apply. But second, the board had no authority under existing law to make such a transfer of any water right other than an in-stream reservation.

The board asked the Legislature to address the public policy issues raised by the County of Yellowstone's petition. Those questions are should other reservations other than in-stream reservations be transferable? Within

that context there are two potential categories of transfers that could occur. One is a voluntary transfer where an agreement could be worked out. If the parties involved can't get along, should the board have the right to transfer any or all or a portion of a municipal reservation?

Another issue that should be addressed with legislation is, "What about a water reservation that is actually relinquished? That situation right now exists with BLM having two reservations for agricultural purposes on one of the stems of the Yellowstone River." They decided for economic reasons that it was not feasible to develop those reservations and have relinquished those reservations. The question is, Does the Board have in its present statutory authority the right to allocate or transfer those relinquished reservations? It is clear that existing law allows the transfer or reallocation of in-stream flow. The board understands that they do not have such a petition pending at this time. What must be kept in mind is if such a petition is filed, the same provisions of the law that would apply to a municipal reservation being transferred under Senate Bill 265 already apply to that particular situation. The board would have to find the purposes of those in-stream reservation were not being met and that the need for the reallocation has been shown by the applicant to outweigh the need by the reservant. Keep in mind that the original intention of the board in setting up these categories of reservations was to make a quantity of water available for specific purposes, in-stream vs. agriculture. What the board wants is the flexibility to deal with specific facts situations that come along.

Mr. Brown pointed out the population projections that the water reservations had been based on. He discussed a case where the City of Billings had sued in District Court to revise the population projections upward for a flow rate based on a population of 250,000 in the service area. Billings also requested a 30% contingency over and above that for future industrial development that was denied by District Court. In the affidavit submitted to the board for the 10-year review process, Billings indicated that in one-third of the time that the reservation has been in place, Billings has used 10% of its reserved water. The present service area in Billings in 1986 is 87,000, but they have a reservation for 250,000. He pointed out that a similar situation exists for other municipal reservants. Projections have not been borne out yet. Times change and that is why the Legislature granted

the board authority to conduct 10-year reviews and also granted the board authority to transfer in-stream flows. What must be decided as a matter of public policy is whether it is also good public policy to allow the board transfers of other reservations.

Anne Sheehy, representing the Yellowstone County Commissioners, submitted testimony in support of the bill. She pointed out that the bill would give the board and reservants more options (See Exhibit 11).

Testimony:  
Opponents:

Joe Steiner, Plants Supt., Gerald D. Underwood, Public Utilities Director, and Bonnie Sutherland, Assistant City Attorney, from the City of Billings submitted testimony recommending a modification of SB 265 to reflect language included in a proposed amendment (See Exhibit 13).

Mr. Steiner showed a graphic presentation to the committee (See Exhibit 13).

Gerald D. Underwood, Public Utilities Director to the City of Billings, submitted a report (Exhibit 14). He pointed out that the current water laws offered reasonable solutions to today's problems and that changes would benefit so few at the expense of so many.

Bonnie Sutherland testified that if the bill was passed it would effectively undermine the integrity of the water reservation system. She said that the water reservation system is beneficial to the public. If SB 265 is passed allowing involuntary transfers of a water reservation, it is going to affect every reservant in the Yellowstone Basin. The board could be taking away a water right from the City of Billings, one that has been invested a great deal of money and time and may not be constitutional in court. Water reservations are tied into water law and property rights. She pointed out that property rights cannot be transferred without the consent of the owner, just like a water right is not transferred unless the owner consents to it. The water reservation is another type of water right. It is inconceivable that we should now enact a process that would allow the Board of Natural Resources and Conservation to involuntarily take water rights or water reservations away from entities.

Mike Frasier, City Manager of the City of Livingston,

testified in opposition to the bill. He presented a letter from the City of Laurel in opposition to the bill (Exhibit 10). He said the bill would make it extremely difficult for a municipality or any agency to plan for the future, that according to the bill every 5 years there would be a reshuffling of the deck. The bill has the potential to pit county against city and city against city in a bitter struggle that has long-reaching implications for water rights.

Questions from the Committee:

Senator Galt asked if anyone thought that a water reservation was the same as a water right.

Closing by Sponsor: Senator Bengtson closed. She said this was an important policy decision. The system has to be flexible and dynamic. She said the board needed to be able to reallocate. She said that these were not water rights. An entity to review this is needed.

HEARING ON SENATE BILL 264

Presentation and Opening Statement by Sponsor:

Senator Bengtson presented SB 264. Senator Bengtson discussed the proposed amendment. She said the amendment would require that the applicant either own the property where the diversion or withdrawal occurs, have written consent of the property owner to use the diversion or development works, or have a court order to access the diversion or development works. The concern addressed by this bill is the right of the landowner who is affected by the water right owner who crosses his property to get to the point of diversion or well site. For constitutional and statutory reasons, the water right owner certainly has this right. This bill simply attempts to ensure that the water rights owner respects the rights of the landowner by requiring up front that he either have consent or a court order prior to the issuing of the permit or change approval.

List of Testifying Proponents and What Group They Represent:

None

List of Testifying Opponents and What Group They Represent:

Ted Doney, from the law firm of Doney and Thorson in Helena

Testimony:  
Opponents:

Ted Doney, from the law firm of Doney and Thorson in Helena testified against the bill. He said that his firm specialized in water law by about 80%. His testimony only represented his firm and not his clients. In their practice they represent many clients on either side of the issue in getting or opposing permits or changes. He pointed out a problem with the bill is that it would put a serious damper on water development. More water development is needed in the state. Even the environmental community is in agreement that off-stream storage project are needed to enhance in-stream flow. Projects will require landowner consent. Under this bill, if someone wanted a permit they would need landowner consent; but if they could not get landowner consent, then to condemn it. And condemnation is allowed under part 3. He pointed out that under the Constitution of the State of Montana any private person, entity, corporation, partnerships, etc., can condemn rights-of-way for ditches and canals, headgates, and reservoirs in the State of Montana. Under this bill the applicant for a permit or change is required to get that permission in advance of getting a permit or a change. The problem he sees with that is that very few applicants are going to spend the money to hire attorneys and engineers to go out and get landowner consent and if they can't get consent to condemn the property before they come in to confirm this. No one would condemn the site for a reservoir, spend the money for it, and then come into the department and have their permit denied for the water right.

Questions From Committee Members:

Senator Williams asked Mr. Doney if he had any suggestions to fix the bill. He replied that he did not agree with the bill at all.

Senator Bengtson asked about the damper on development. She said that constituents of hers were very interested in property rights. The property owners are interested in putting them through the hoops so that they have to get a permit or have to get a court order or have to have the consent of the landowner. This bill is strictly to protect property rights.

HEARING ON SJR 11

Presentation and Opening Statement by Sponsor:  
Senator Tom Beck, District 24 presented SJR 11. He

explained that this bill was a committee bill to urge Congress and the Department of Agriculture to support efforts in trying to reobtain 1080 strychnine programs for the control of rodents in the state of Montana.

List of Testifying Proponents and What Group They Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Senator Beck closed.

DISPOSITION OF SJR 11

Discussion:

Amendments and Votes: Senator Jergeson moved the bill.

Recommendation and Vote: The question was called. The motion passed unanimously.

Senator Aklestad moved to place SJR 11 on the consent calendar. The motion passed unanimously.

ADJOURNMENT

Adjournment At: 2:57 p.m.

  
\_\_\_\_\_  
TOM BECK, Chairman

TB/jj



14-

SENATE STANDING COMMITTEE REPORT

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February 14, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 166 (first reading copy -- white), respectfully report that SB 166 be amended and as so amended do pass:

1. Title, line 9.

Following: "DECREE"

Insert: "OR A PRELIMINARY DECREE"

2. Title, line 10.

Strike: ", OR A PRELIMINARY DECREE"

3. Page 2, line 14.

Strike: "subbasin"

Insert: "hydrologically interrelated portion of a water division as described in 85-2-231(2)"

4. Page 2, line 20.

Strike: "over the subbasin in which a controversy arises"

5. Page 2, lines 21 and 22.

Following: "decree" on line 21

Strike: the remainder of line 21 through "in" on line 22

Insert: ". In"

6. Page 2, line 24.

Following: line 23

Insert: "district court having jurisdiction may enforce the"

7. Page 2, line 25.

Following: "85-2-231"

Insert: ", as modified by a water judge after objections and hearings"

8. Page 3, line 24.

Strike: "chapter"

Insert: "part"

9. Page 3, line 25.

Following: "85-2-221"

Insert: "or an amended claim of existing right"

10. Page 4, line 3.

Following: "decree"

Insert: "or a preliminary decree"



11. Page 4, line 4.

Strike: "or a preliminary decree"

12. Page 4, line 16.

Following: "chapter"

Insert: "or when a basin is the subject of a temporary preliminary decree or preliminary decree, as modified after objections and hearings"

13. Page 4, line 17.

Following: "controversy"

Insert: "or any person whose rights are or may be affected by enforcement of the decree"

14. Page 4, line 19.

Following: "~~other~~"

Insert: "or other"

15. Page 4, lines 21 and 22.

Following: "~~decree~~"

Strike: "resolution of the controversy under subsection (3)"

Insert: "the issuance of the final decree"

16. Page 4, line 23 through page 6, line 5.

Following: "(3)" on line 23 of page 4.

Strike: the remainder of subsection (3) in its entirety.

Insert: "A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court that issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, ~~the~~ court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) If an action to enforce a temporary preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5)(a) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree may appeal a determination made pursuant to subsection (2) if he requested a hearing and appeared and entered objections to the temporary preliminary decree or preliminary decree.

(b) The water judge is not bound by a supreme court determination on an appeal entered under this subsection in issuing any subsequent decree under part 2 of this chapter."

17. Page 6, line 11.

Following: "jurisdiction,"

Insert: "including temporary preliminary, preliminary, and final decrees issued by a water judge,"

18. Page 9, line 8.

Following: "applicability."

Insert: "(1)"

19. Page 9, line 13.

Following: line 12

Insert: "(2) A person whose existing rights are determined in a temporary preliminary decree or a preliminary decree issued before [the effective date of this act] may petition the water judge for relief concerning any matter in the decree prior to enforcement of the decree."

20. Page 9, line 17.

Strike: ", \_\_Bill No. \_\_ [LC 685],"

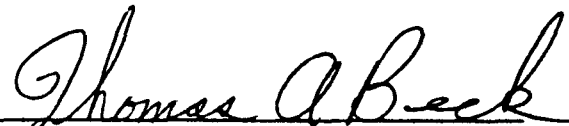
21. Page 9, lines 20 and 21.

Following: "[LC 683]" on line 20

Strike: ", \_\_Bill No. \_\_ [LC 685],"

AND AS AMENDED DO PASS

Signed:

  
Thomas A. Beck, Chairman

SENATE STANDING COMMITTEE REPORT

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February 14, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 167 (first reading copy -- white), respectfully report that SB 167 be amended and as so amended do pass:

1. Title, lines 5 and 6.  
Following: "ALL" on line 5.  
Strike: "TEMPORARY PRELIMINARY DECREES,"  
Following: "PRELIMINARY DECREES" on line 6  
Strike: ", "
2. Title, lines 7 and 8.  
Strike: "A RETROACTIVE"  
Insert: "AN"  
Following: "DATE" on line 8  
Insert: "AND RETROACTIVE APPLICABILITY"
3. Page 1, line 12.  
Following: "(1)"  
Strike: "Within 180 days following [the effective date of this act], the"  
Insert: "The"
4. Page 1, line 15.  
Strike: "temporary preliminary,"
5. Page 1, line 16.  
Following: "preliminary"  
Strike: ", "
6. Page 1, line 17.  
Following: "courts"  
Strike: "prior to [the effective date of this act]"  
Insert: "but have not been noticed throughout the water divisions"
7. Page 1, line 24.  
Strike: "subbasin"  
Insert: "basin"
8. Page 2, line 1.  
Strike: "subbasins"  
Insert: "basins"

9. Page 2, line 2.

Strike: "subbasin"

Insert: "basin"

10. Page 2, lines 4 through 12.

Following: "(b)" on line 4.

Strike: the remainder of line 4 through "85-2-217." on line 12

Insert: "A person may not raise an objection to a matter in a reopened decree if he was a party to the matter when the matter was previously litigated and resolved as the result of a previous objection process."

11. Page 2, line 15.

Following: "notice"

Insert: "by mail"

12. Page 2, line 18.

Following: "85-2-232"

Insert: "(1)"

13. Page 2, lines 19 and 20.

Following: "of a" on line 19

Strike: "temporary preliminary,"

Following: the second "preliminary" on line 20

Strike: ", "

14. Page 2, lines 22 and 23

Following: "which" on line 22

Strike: "in total"

15. Page 2, line 23.

Following: "divisions"

Strike: "in the general stream basin"

16. Page 2, line 24.

Strike: "subbasin"

Insert: "basin"

17. Page 3, lines 6 and 7.

Following: "within" on line 6

Strike: "180 days after entry of the order under subsection (1)"

Insert: "the original 180-day period or any extension of it"

18. Page 3, line 8.

Following: "shall"

Strike: "notify"

Insert: "provide notice to"

19. Page 3, line 10.

Strike: "both"

Following: "claimant"

Strike: "and"

Insert: ", "

Following: "objectors,"

Insert: "and other interested persons,"

20. Page 4, line 2.

Strike: "temporary preliminary or"

21. Page 4, line 4.

Strike: "temporary preliminary or"

22. Page 4, line 18.

Strike: "temporary preliminary decrees,"

23. Page 4, line 19.

Following: "decrees"

Strike: ", "

24. Page 4, lines 21 through 23.

Following: "act]." on line 21

Strike: the remainder of line 21 through "act]." on line 23

25. Page 5, line 3.

Following: "[LC 683],"

Strike: ", "

Insert: "or"

Following: "[LC 684]"

Strike: ", or \_\_Bill No. \_\_ [LC 685]"

26. Page 5, line 6.

Strike: ", "

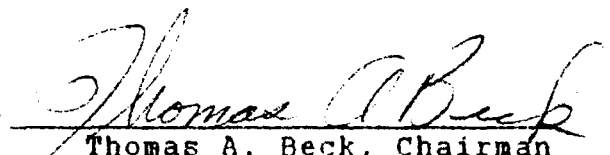
Insert: "or"

27. Page 5, line 7.

Strike: ", or \_\_Bill No. \_\_ [LC 685]"

AND AS AMENDED DO PASS

Signed:

  
Thomas A. Beck, Chairman

2-14-89  
1:05  
P. 29

SENATE STANDING COMMITTEE REPORT

page 1 of 3  
February 14, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 169 (first reading copy -- white), respectfully report that SB 169 be amended and as so amended do pass:

1. Title, line 12.

Following: "85-2-233"

Insert: "AND 85-2-235"

2. Page 1, line 18.

Following: "decree."

Insert: "(1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights."

Renumber: subsequent subsections

3. Page 2, line 9.

Strike: "(5)"

Insert: "(1,"

4. Page 3, lines 10 through 16.

Strike: subsection (5) in its entirety

5. Page 3, lines 18 and 19.

Following: "shall"

Strike: "use the temporary preliminary decree issued under subsection (5)."

Insert: "incorporate the temporary preliminary decree for the basin as modified by objections and hearings. [The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is conclusive, enforceable, and administrable according to its terms among parties ordered by the water judge under 85-2-406.]"

6. Page 3, lines 19 and 20.

Following: "decree,"

Strike: "when issued"

Insert: "as modified after objections and hearings"

7. Page 3, line 20.

Following: "shall"

Insert: "upon issuance"

8. Page 4, lines 1, 5, 8, 16, and 17.

Strike: "subbasin"

Insert: "basin"

9. Page 5, lines 3 and 4.

Strike: "temporary preliminary decree or"

10. Page 5, lines 6 and 7.

Following: "which"

Strike: "in total"

11. Page 5, lines 7 and 8.

Following: "divisions"

Strike: "in the general stream basin"

12. Page 5, line 8.

Strike: "subbasin"

Insert: "basin"

Following: "located."

Insert: "This notice must be provided before the final decree for  
the basin is issued."

13. Page 5, line 24.

Strike: "subbasin"

Insert: "basin"

14. Page 6, line 2.

Strike: "subbasins"

Insert: "basins"

15. Page 6, lines 4 and 6.

Strike: "subbasin"

Insert: "basin"

16. Page 6, lines 7 through 15.

Following: "(b)" on line 7

Strike: the remainder of line 7 through line 15

Insert: "A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary decree if he was a party to the matter previously litigated and resolved as the result of an objection raised in a temporary preliminary decree."

[(c) A person who has received notice of the availability of a temporary preliminary decree waives the right to object to the enforcement of the temporary preliminary decree under 85-2-406 if he failed to object to a temporary preliminary decree.]"

17. Page 6, lines 22 and 23.

Following: "made" on line 22

Strike: the remainder of line 22 through "decree" on line 23

Insert: "prior to expiration of the original 180-day period or any extension of it"

18. Page 8, line 10.

Following: line 9

Insert:

"Section 4. Section 85-2-235, MCA, is amended to read:

"85-2-235. Appeals from final decree. A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; or

(2) his rights or priorities as determined in the temporary preliminary decree or the preliminary decree were ~~altered~~ affected as the result of a ~~hearing requested~~ objection filed by another person."

NEW SECTION. Section 5. Coordination instruction. If Senate Bill No. 166 [LC 684] is not passed and approved, the bracketed language in [section 1 of this act] is void."

Renumber: subsequent sections

19. Page 8, line 20.

Strike: ", Bill No. [LC 685],"

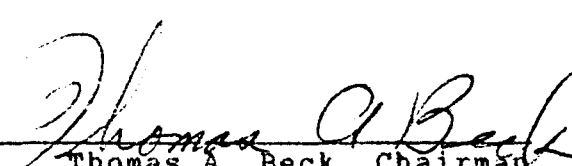
20. Page 8, lines 23 and 24.

Following: "[LC 684]" on line 23

Strike: ", Bill No. [LC 685],"

AND AS AMENDED DO PASS

Signed:

  
Thomas A. Beck, Chairman



SENATE STANDING COMMITTEE REPORT

February 13, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SJR 11 (first reading copy -- white), respectfully report that SJR 11 do pass.

DO PASS

Signed: \_\_\_\_\_



Thomas A. Beck, Chairman

To be placed on consent calendar.

*Y.C.  
2/14/89  
9:56  
A.M.*

Amendments to Senate Bill No. 166  
Introduced Reading Copy  
For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
February 11, 1989

1. Title, line 9.  
Following: "DECREE"  
Insert: "OR A PRELIMINARY DECREE"
2. Title, line 10.  
Strike: ", OR A PRELIMINARY DECREE"
3. Page 2, line 14.  
Strike: "subbasin"  
Insert: "hydrologically interrelated portion of a water division  
as described in 85-2-231(2)"
4. Page 2, line 20.  
Strike: "over the subbasin in which a controversy arises"
5. Page 2, lines 21 and 22.  
Following: "decree" on line 21  
Strike: the remainder of line 21 through "in" on line 22  
Insert: ". In"
6. Page 2, line 24.  
Following: line 23  
Insert: "district court having jurisdiction may enforce the"
7. Page 2, line 25.  
Following: "85-2-231"  
Insert: ", as modified by a water judge after objections and  
hearings"
8. Page 3, line 24.  
Strike: "chapter"  
Insert: "part"
9. Page 3, line 25.  
Following: "85-2-221"  
Insert: "or an amended claim of existing right"
10. Page 4, line 3.  
Following: "decree"  
Insert: "or a preliminary decree"
11. Page 4, line 4.  
Strike: "or a preliminary decree"
12. Page 4, line 16.  
Following: "chapter"  
Insert: "or when a basin is the subject of a temporary  
preliminary decree or preliminary decree, as modified after

Ex #1  
2/13/89  
SB166

objections and hearings"

13. Page 4, line 17.

Following: "controversy"

Insert: "or any person whose rights are or may be affected by enforcement of the decree"

14. Page 4, line 19.

Following: "~~other~~"

Insert: "or other"

15. Page 4, lines 21 and 22.

Following: "~~decree~~"

Strike: "resolution of the controversy under subsection (3)"

Insert: "the issuance of the final decree"

16. Page 4, line 23 through page 6, line 5.

Following: "(3)" on line 23 of page 4.

Strike: the remainder of subsection (3) in its entirety.

Insert: "A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court that issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) If an action to enforce a temporary preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5)(a) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree may appeal a determination made pursuant to subsection (2) if he requested a hearing and appeared and entered objections to the temporary preliminary decree or preliminary decree.

(b) The water judge is not bound by a supreme court determination on an appeal entered under this subsection in issuing any subsequent decree under part 2 of this chapter."

17. Page 6, line 11.

Following: "jurisdiction,"

Ex. #1  
2/13/89  
SB 166

Insert: "including temporary preliminary, preliminary, and final decrees issued by a water judge,"

18. Page 9, line 8.  
Following: "applicability."  
Insert: "(1)"

19. Page 9, line 13.  
Following: line 12  
Insert: "(2) A person whose existing rights are determined in a temporary preliminary decree or a preliminary decree issued before [the effective date of this act] may petition the water judge for relief concerning any matter in the decree prior to enforcement of the decree."

20. Page 9, line 17.  
Strike: ", \_\_Bill No. \_\_ [LC 685],"

21. Page 9, lines 20 and 21.  
Following: "[LC 683]" on line 20  
Strike: ", \_\_Bill No. \_\_ [LC 685],"

SENATE AGRICULTURE

EXHIBIT NO. 812

DATE 2/13/89

FILE NO. SB167

Amendments to Senate Bill No. 167  
Introduced Reading Copy

For the Committee on Senate Agriculture

Prepared by Ross/Sternberg  
February 11, 1989

1. Page 3, lines 6 and 7.

Following: "within" on line 6

Strike: "180 days after entry of the order under subsection (1)"

Insert: "the original 180-day period or any extension of it"

Ex. #2  
2/13/89  
SB167

Amendments to Senate Bill No. 167  
Introduced Reading Copy

For the Committee on Senate Agriculture  
Prepared by Doug Sternberg, Committee Staff  
February 10, 1989

1. Title, lines 5 and 6.  
Following: "ALL" on line 5.  
Strike: "TEMPORARY PRELIMINARY DECREES,"  
Following: "PRELIMINARY DECREES"  
Strike: ", "
2. Title, lines 7 and 8.  
Strike: "A RETROACTIVE"  
Insert: "AN"  
Following: "DATE" on line 8  
Insert: "AND RETROACTIVE APPLICABILITY"
3. Page 1, line 12.  
Following: "(1)"  
Strike: "Within 180 days following [the effective date of this act], the"  
Insert: "The"
4. Page 1, line 15.  
Strike: "temporary preliminary,"
5. Page 1, line 16.  
Following: "preliminary"  
Strike: ", "
6. Page 1, line 17.  
Following: "courts"  
Strike: "prior to [the effective date of this act]"  
Insert: "but have not been noticed throughout the water divisions"
7. Page 1, line 24.  
Strike: "subbasin"  
Insert: "basin"
8. Page 2, line 1.  
Strike: "subbasins"  
Insert: "basins"
9. Page 2, line 2.  
Strike: "subbasin"  
Insert: "basin"
10. Page 2, lines 4 through 12.  
Following: "(b)" on line 4.  
Strike: the remainder of line 4 through "85-2-217." on line 12  
Insert: "A person may not raise an objection to a matter in a reopened decree if he was a party to the matter when the

Ex. #2  
2/13/89  
SB 167

matter was previously litigated and resolved as the result of a previous objection process."

11. Page 2, line 15.

Following: "notice"

Insert: "by mail"

12. Page 2, line 18.

Following: "85-2-232"

Insert: "(1)"

13. Page 2, lines 19 and 20.

Following: "of a" on line 19

Strike: "temporary preliminary,"

Following: the second "preliminary" on line 20

Strike: ", "

14. Page 2, lines 22 and 23

Following: "which" on line 22

Strike: "in total"

15. Page 2, line 23.

Following: "divisions"

Strike: "in the general stream basin"

16. Page 2, line 24.

Strike: "subbasin"

Insert: "basin"

17. Page 3, line 8.

Following: "shall"

Strike: "notify"

Insert: "provide notice to"

18. Page 3, line 10.

Strike: "both"

Following: "claimant"

Strike: "and"

Insert: ", "

Following: "objectors,"

Insert: "and other interested persons,"

19. Page 4, line 2.

Strike: "temporary preliminary or"

20. Page 4, line 4.

Strike: "temporary preliminary or"

21. Page 4, line 18.

Strike: "temporary preliminary decrees,"

22. Page 4, line 19.

Following: "decrees"

Strike: ", "

Ex. #2  
2/13/89  
SB 167

23. Page 4, lines 21 through 23.

Following: "act]." on line 21

Strike: the remainder of line 21 through "act]." on line 23

24. Page 5, line 3.

Following: "[LC 683],"

Insert: "or"

Following: "[LC 684]"

Strike: ", or \_\_ Bill No. \_\_ [LC 685]"

25. Page 5, line 6.

Strike: ", "

Insert: "or"

26. Page 5, line 7.

Strike: ", or \_\_ Bill No. \_\_ [LC 685]"



Amendments to Senate Bill No. 169  
Introduced Reading Copy

For the Committee on Senate Agriculture

Prepared by Ross/Sternberg  
February 11, 1989

1. Page 6, lines 22 and 23.

Following: "made" on line 22

Strike: the remainder of line 22 through "decree" on line 23

Insert: "prior to expiration of the original 180-day period or  
any extension of it"

Ex. # 3  
2/13/89  
SB 169

Amendments to Senate Bill No. 169  
Introduced Reading Copy

For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
February 11, 1989

1. Title, line 12.  
Following: "85-2-233"  
Insert: "and 85-2-235"
  
2. Page 1, line 18.  
Following: "decree."  
Insert: "(1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights."  
Renumber: subsequent subsections
  
3. Page 2, line 9.  
Strike: "(5)"  
Insert: "(1)"
  
4. Page 3, lines 10 through 16.  
Strike: subsection (5) in its entirety
  
5. Page 3, lines 18 and 19.  
Following: "shall"  
Strike: "use the temporary preliminary decree issued under subsection (5)."  
Insert: "incorporate the temporary preliminary decree for the basin as modified by objections and hearings. [The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is conclusive, enforceable, and administrable according to its terms among parties ordered by the water judge under 85-2-406.]"
  
6. Page 3, lines 19 and 20.  
Following: "decree,"  
Strike: "when issued"  
Insert: "as modified after objections and hearings"
  
7. Page 3, line 20.  
Following: "shall"  
Insert: "upon issuance"
  
8. Page 4, lines 1, 5, 8, 16, and 17.  
Strike: "subbasin"  
Insert: "basin"
  
9. Page 5, lines 3 and 4.  
Strike: "temporary preliminary decree or"
  
10. Page 5, lines 6 and 7.

Ex. #3  
2/13/79  
SB 169

Following: "which"  
Strike: "in total"

11. Page 5, lines 7 and 8.  
Following: "divisions"  
Strike: "in the general stream basin"

12. Page 5, line 8.  
Strike: "subbasin"  
Insert: "basin"  
Following: "located."  
Insert: "This notice must be provided before the final decree for the basin is issued."

13. Page 5, line 24.  
Strike: "subbasin"  
Insert: "basin"

14. Page 6, line 2.  
Strike: "subbasins"  
Insert: "basins"

15. Page 6, lines 4 and 6.  
Strike: "subbasin"  
Insert: "basin"

16. Page 6, lines 7 through 15.  
Following: "(b)" on line 7  
Strike: the remainder of line 7 through line 15  
Insert: "A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary decree if he was a party to the matter previously litigated and resolved as the result of an objection raised in a temporary preliminary decree.  
[(c) A person who has received notice of the availability of a temporary preliminary decree waives the right to object to the enforcement of the temporary preliminary decree under 85-2-406 if he failed to object to a temporary preliminary decree.]"

17. Page 8; line 10.  
Following: line 9  
Insert:  
"Section 4. Section 85-2-235, MCA, is amended to read:  
"85-2-235. Appeals from final decree. A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:  
(1) he requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; or  
(2) his rights or priorities as determined in the temporary preliminary decree or the preliminary decree were altered"

Ex. #3  
2/13/89  
SB 169

affected as the result of a hearing requested an objection filed  
by another person."

NEW SECTION. Section 5. Coordination instruction. If Senate  
Bill No. 166 [LC 684] is not passed and approved, the bracketed  
language in [section 1 of this act] is void."

Renumber: subsequent sections

18. Page 8, line 20.

Strike: ", \_\_Bill No.\_\_ [LC 685],"

19. Page 8, lines 23 and 24.

Following: "[LC 684]" on line 24

Strike: ", \_\_Bill No.\_\_ [LC 685],"

MONTANA DEPARTMENT OF AGRICULTURE

RECOMMENDED Amendments To SB 387

Page 2, Line 1  
Strike "a class A" insert "an"

Page 2, Line 3  
Strike "less" insert "other"

Page 2, Line 4  
Strike "Class A" insert "Official"

Page 2, Line 7, 10, and 13  
Strike "III" insert "X or Y"

Class X

An official weighing of the grain lot (truck or hopper car) by an official authorized weigher licensed by USGIS.

Scales must be officially tested and approved by USGIS.

Class Y

Supervision of someone doing the weighing - not consider official weight.

Scale must be officially tested and approved by USGIS.

*La Vair Newall*      *Moscow, ID Field office of USGIS*  
*202-882-4233*

In compliance with a written request, there is hereby submitted a Fiscal Note for SB357, as introduced.

EXHIBIT NO. 6DATE 2/13/89BILL NO. SB 357DESCRIPTION OF PROPOSED LEGISLATION:

SB357 would prohibit the importation or planting of noncertified seed potatoes in order to control and prevent the spread of contagious potato diseases.

ASSUMPTIONS:

1. Approximately 3,000 cwt of certified seed will be imported for planting purposes with a federal/state inspection rate of 4 cents per cwt.
2. On-site inspections will be conducted simultaneously with other federal/state inspections.
3. The Department of Agriculture will conduct inspections and annual surveys to determine whether or not counties are exempt from quarantine utilizing existing general fund staff.
4. The Dept. of Agriculture will absorb in its existing budget the cost of approximately \$250 for rule development/printing and distribution of mandatory quarantine notice.
5. There is no quantifiable state fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

If certified seed is not planted, the proposed bill would eliminate commercial potato growers in 1991 in the following four counties: Flathead, Lake, Madison and Broadwater. There are six other counties (Hamilton, Lewis and Clark, Wheatland, Golden Valley and Carbon) that currently show production of commercial potatoes, but that do not have any certified seed producers in the county.

*Ray Shackelford*

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/11/89

DATE

ETHEL M. HARDING, PRIMARY SPONSOR

Fiscal Note for SB357, as introduced

# NORTHWEST POTATO SALES

Steven R. McCullough

SENATE AGRICULTURE

EXHIBIT NO. 7

DATE 2/13/89

FILE NO. SB 357

Box 1287 • Townsend, Montana 59644

Phone: (406) 266-5610

(406) 266-3070

S.B.357

2-13-89

Chairman and Members of the Committee:

For the record I am Steve McCullough owner and operator of Northwest Potato Sales, Townsend, Montana.

I am a proponent of S.B.357

I feel the major issue on this Bill is the ease of transmission of potato diseases. Potato disease can be spread by man or animal contact, by water, or even wind. A disease ridden commercial field could spread into the Montana seed potato fields. This would cause economic loss to the commercial grower, then seed grower and finally to the reputation of the Montana seed industry.

I have a commercial operation in my valley. They are friends and excellent farmers. However, due to the labor intensive nature of potatoes we share some of the same employees and Montana Department of Agriculture inspectors. There lies the easiest form of disease contamination for my farm.

Washington State is the largest single users of Montana Seed potatoes. They are also the largest producer per acre in the nation averaging in excess of 25 ton per acre.

To protect this industry the commercial growers in Washington banded together to form the Washington Potato Commission. The Commission then lobbied the legislature to put these same rules into effect. Namely making it mandatory to plant certified seed.

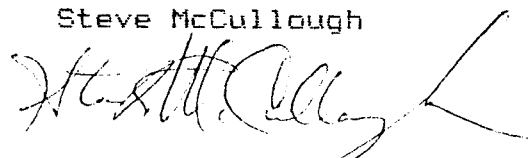
Many of our Montana producers are already using certified seed. There are approximately 500 acres of commercial potatoes grown in the State requiring approximately 10,000 cwt of seed.

The Montana Seed Growers are producing approximately 2 million cwt on 7,300 certified acres.

Availability of seed would not be a problem. This would be an improvement to the entire potato industry.

Respectfully Submitted,

Steve McCullough





This proposed legislation comes at a very opportune time.

Out of the Potato industry, commercial and seed growers and processing industry came about 4 years ago the request to eradicate the Ring rot disease.

The Nat. Potato Council became involved, and it appointed a "Task Force" which has to come up with guidelines for the eradication of the Ring Rot disease.

Also Federal moneys were requested and granted for this purpose.

One of the guidelines to accomplish this is let every state have a mandatory seed law, which means ~~seed~~ <sup>all</sup> potatoes planted, have to be certified seed potatoes. Several potato producing states have already a seed law, and Montana should have one for sure, as it produces several seed potatoes.

This disastrous bacterial TB disease is still with us, even though all states producing seed potatoes have a zero tolerance.

An infection of this disease in a certified seed growers field is disastrous in can wipe him out.

The bacteria is very tough and long lived, it survives being on a dry surface for a year, and if taken mistreated is still active.

The most dangerous source of infection is a commercial growing area and especially out of a state where

EXHIBIT NO. 8

DATE 2/13/89

BILL NO. SB357

P. 2

*there is no mandatory lead laws.*

EXHIBIT NO. 9DATE 2/13/89BILL NO. SB 357

## SUPPLEMENT SB 357

MIKE SUN : EXTENSION PLANT PATHOLOGIST IN CHARGE OF MONTANA SEED  
POTATO CERTIFICATION FOR MONTANA STATE UNIVERSITY

I represent Montana State University to support this Bill  
stemming from the following reasons:

1. Montana seed potato industry, in cooperation with MSU have  
cleaned up all the important potato diseases of concern. Today,  
only disease-free seed sources are used for increase by the seed  
potato growers. There is no future *introductions* of the important  
diseases in the seed potato growing areas in Montana.

2. Non-certified seeds often have infections of *contagious*  
disease such as potato bacterial ring rot and potato leaf roll  
virus both of which are very destructive to production. Growing  
non-certified seeds provides a source of the disease and nullify  
all the efforts by the seed industry.

3. Using certified seeds not only reduces the risk of getting  
the destructive diseases but also increases yield and improves  
physiological condition of the potato. The benefits paid and  
saved than offset the costs of the seed buyers. Because of that  
reason, most of the commercial growers producing strains have been  
switching to certified seeds for commercial production. Montana  
seed potato industry has been recognized as one of the best of its kind  
producing areas.

4. Montana State Law requires all potato produced in Montana  
to be certified. By passing this Bill, it complements the  
certification law.

(SB 357)

# City of Laurel

SENATE AGRICULTURE

EXHIBIT NO. 10

DATE 2/13/89

BILL NO. SB 265

LAUREL, MONTANA 59044

February 10, 1989

PUBLIC WORKS

DEPARTMENT

P.O. BOX 10  
PHONE: 628-8791

TO: SENATE AGRICULTURE COMMITTEE

FROM: James A. Flisrand  
Director of Public Works  
City of Laurel

SUBJECT: Senate Bill 265

The intent of water reservation is to reserve water for future demands. As a municipality grows in population or industry, the NEED for additional water is imminent.

A short term reservation as promised through Senate Bill 265 will be a hindrance to municipalities concerning future planning of Water Treatment facilities and water transmission lines. Most municipalities require State or Federal assistance through the grant or loan process when attempting to enlarge their water facilities. The overall time frame can very easily take 4 to 6 years involving planning, design, grant application, review, construction and etc. If Senate Bill 265 is passed, every 5 years the water reservation can be reduced or possibly eliminated mid-way through the proposed improvements.

Montana Water Use Act (MCA 85-2-316) controls and regulates water reservations. If studied I believe our current regulations are adequate and responsive to all water reservants.

I respectfully request a no vote on Senate Bill 265.

EXHIBIT NO. 11

DATE 2/13/89

DATEBILL NO. 1/13/89 SB265

NAME: Anne Sheehy

ADDRESS: Yellowstone County Courthouse, Billings MT 59107

PHONE: 1-256-2745

REPRESENTING WHOM? Yellowstone County Commissioners

APPEARING ON WHICH PROPOSAL: SB 265

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: The bill would give the Board authority to provide a needed mechanism for reservants' water reservations to be reallocated only if the purposes of the reservation are not being met.

The reallocation would be allowed by the board only upon notice and hearing and a showing of need that outweighs the parent reservation's fulfillment of objectives.

The security of water reservations would not be very different than it is now. The "property right" of the water reservation is currently defined in terms of objectives to be met and reviews to be held - mandatory. A water reservation whose objectives are not being met is currently subject to revocation by the BNKC. This bill would give the board (and reservants) more options.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

*Anne Sheehy*





SENATE AGRICULTURE  
EXHIBIT NO. 13  
CITY OF BILLINGS DATE 2/13/89  
PUBLIC UTILITIES DEPARTMENT BILL NO. SB 265  
P.O. BOX 30958  
BILLINGS, MT 59111  
PHONE (406) 657-8305

February 13, 1989

TO: Senate Agriculture Committee  
FROM: Gerald D. Underwood, P.E., Public Utilities Director  
SUBJECT: Senate Bill 265

The City of Billings recommends that Senate Bill 265 be modified to reflect the language included in the enclosed amendment.

A reservation is an appropriative water right protected by law. Senate Bill 265 compromises that water right for all reservants whether they are municipalities or agricultural users.

Attached is more detailed information on the reservation process and the impact of Senate Bill 265 on that process. Should you have any questions pertaining to this information, please call me at 657-8305.



CITY OF BILLINGS  
PUBLIC UTILITIES DEPARTMENT

P.O. BOX 30958  
BILLINGS, MT 59111  
PHONE (406) 657-8305

February 13, 1989

TO: Honorable Tom Beck, Chairman  
Senate Agriculture Committee

RE: HEARING ON SENATE BILL 265  
(February 13, 1989)

We respectfully provide the following testimony regarding Senate Bill 265 on behalf of the City of Billings, Montana:

1979 WATER USE ACT AMENDMENTS

The City of Billings opposes the adoption of Senate Bill 265. Before addressing the shortcomings of this bill, however, we would first like to briefly mention two amendments to the Montana Water Use Act that were adopted by the State Legislature in 1979. (Understanding the intent and purpose of these amendments helps to better understand the issue at hand.)

One of the amendments prohibited the Montana Board of Natural Resources and Conservation (BNRC) from allocating future instream water reservations in excess of 50 percent of the average annual flow on gauged streams. The other amendment authorized BNRC to reallocate instream--and only instream--water reservations.

The 50-percent cap was set by the 1979 Legislature because it obviously felt that BNRC had granted too large of instream reservations in the Yellowstone River Basin in 1978. Under their 1978 order, BNRC had granted instream reservations in that basin equal to about 66.5 percent of the average annual flow of the Yellowstone River. Or in other words, about 16.5 percent more than the Legislature deemed adequate for instream reservations on gauged streams.

It appears that the 1979 Legislature granted BNRC the power to reallocate instream reservations for the express purpose of utilizing the surplus water (16.5%) in the instream reservations to take care of unforeseen needs such as Yellowstone County's. Hence it seems reasonable that BNRC would favorably respond to a instream reallocation request by Yellowstone County, does it not?



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Is it fair for BNRC to reallocate only instream reservations to meet unforeseen needs? We think it is, especially when you consider the following:

- The instream reservations are the only reservations that have a 16.5-percent surplus. Further, the offstream reservations, especially the agricultural and municipal, are much too small to be used for that purpose.

- Moreover, the instream reservants did not have to spend any money to perfect their reservations (put them to beneficial use). They were deemed perfected by BNRC on the date it approved such reservations. Thus, the instream reservants would not lose any capital investment if their reservations were reallocated. On the other hand, offstream reservants have to spend thousands or even millions of dollars to develop and perfect their reservations. (The City of Billings, for example, has spent over \$20,000,000 for improvements to its water system since it received a reservation.) Therefore, offstream reservants would suffer a tremendous loss of capital investment if their reservations were reallocated.

- Finally, the instream reservants get to utilize the other reservants water a good share of the time. For example, any water not used by the other reservants stays in the stream and functions as an instream reservation. Currently, the amount of unused water is substantial because most of the offstream reservants are unable to develop their reservations due to the depressed economy. Consequently, the instream reservants are actually getting the benefit of 99.63 percent of the total water reserved in the Yellowstone River Basin. Consequently, a few small instream reallocations, such as Yellowstone County's, would have little affect on these overly large instream reservations.

#### SENATE BILL 265

The City of Billings opposes the adoption of Senate Bill 265 for the following reasons:

- It allows BNRC to reallocate offstream reservations in addition to instream reservations, which is in direct conflict with the intent and purpose of the amendments to the Montana Water Use Act adopted by the State Legislature in 1979.

- It uses the sledgehammer approach to problem solving. That is, it may help solve Yellowstone County's problem, but in doing so, it considerably weakens or even destroys the overall water reservation process.

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• It opens the backdoor for the many instream advocates to come in and steal the offstream reservations--especially the agricultural and municipal reservations. Everyone knows that there is currently a concerted move to increase the instream reservations. But where will the water come from to do so? If offstream reallocations are allowed as proposed under Senate Bill 265, it will come from the agricultural and municipal reservations, that's where.

• It allows BNRC to reallocate offstream reservations, including agricultural and municipal, without the owner's permission, which is contrary to established law--like water rights, reallocations/transfers of water reservations should be on a consensual basis only.

• It allows BNRC to flip flop and intermix the reservation priorities instead of using the principle of "first in time, first in right," which is the principle used to set the priorities for water rights and the principle used by ENRC to establish the priorities for the original reservations back in 1978.

• It would substantially reduce the value of even having a water reservation. For example, why have a reservation if you cannot depend on it? And if you cannot depend on it, how can you raise capital to develop it and put it to beneficial use. Further, even if you are lucky enough to raise the capital necessary to develop it, what happens to your investment if BNRC reallocates your reservation? Equally important, what happens if BNRC grants someone else a reservation with a higher priority than yours and, as a result, your facilities must lie idle and unproductive due to lack of water? Who compensates you for your downtime?

#### PROPOSED AMENDMENT TO SENATE BILL 265

Because Senate Bill 265 is a very negative, overkill-type bill that benefits only a few at the expense of a great many, the City of Billings would like to offer an amendment (see attached amendment) to this bill that does essentially two things:

1. It clearly establishes that water reservations are, in fact, water rights and are protected by law; and
2. It gives ENRC the statutory authority to approve consensual water reservation transfers (but not offstream reservation reallocations).

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The City's amendment accomplishes several good things:

1. It strengthens--rather than weakens or destroys--the overall reservation process by statutorily establishing that water reservations are water rights and are protected by law;
2. It substantially increases the value of offstream reservations by protecting them from frequent predatory attacks by instream advocates; and
3. It gives BNRC a valuable tool to solve problems--like Yellowstone County's--which may crop up in the future.

#### YELLOWSTONE COUNTY'S OPTIONS

Yellowstone County currently has many options it can exercise to solve its water supply problem:

- The County can apply to BNRC for a Water Use Permit.
- The County can apply to BNRC for a water reservation on unreserved waters in the Yellowstone River Basin.
- The County can apply to BNRC for a reallocation of an instream reservation.
- The County can request that BNRC approve a consensual transfer of an unused reservation (which is currently allowed by administrative rule but not by law).
- The County can purchase a perfected water right from someone who no longer needs such a water right.

Thus, the County is not without hope or recourse, for it can still solve its water supply problem even if Senate Bill 265 were to be killed.

#### CITY OF BILLINGS' RESERVATION

The County has made claims that the City has a large enough water reservation to serve both the City and the County. That is just not the case, especially when you consider the following:

- In 1978 BNRC refused to grant the City any water in its reservation for the purpose of serving areas located in Yellowstone County such as Shepherd, Huntley, Ballantine, Worden and Custer.

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• The City's current reservation was sized to serve until the Year 2020. However, the City may grow for the next 100, 200, 500, or even 1,000 years. Who can say? Thus the City's current reservation must last forever. And in that case, is it really big enough even to meet the City's future needs?

• Currently the City is negotiating with three different industries that want to locate within the City's water service area. These three industries--a malt barley plant, a leather processing plant, and a meat packing plant--all use substantial quantities of water. Collectively they will use between three to four million gallons of water per day, which is the equivalent water use of a City with a population between 12,000 and 16,000 people. Meeting these kind of water demands can deplete the City's water reservation very quickly. And the City is not the only entity that benefits from having these industries locate in Billings. Yellowstone County and our agricultural neighbors greatly benefit too.

Thank you for allowing us this opportunity to present the City's testimony regarding Senate Bill 265. It was very kind of you to give us so much of your precious time.

Sincerely,



Gerald D. Underwood, PE  
Public Utilities Director

cc: Mayor & City Council  
City Administrator  
file

1 CITY OF BILLINGS' PROPOSED AMENDMENTS  
2 TO SECTION 85-2-316, M.C.A., TO ALLOW  
3 VOLUNTARY TRANSFERS OF WATER RESERVATIONS  
4 AND TO RECOGNIZE THAT A WATER RESERVATION  
5 IS AN APPROPRIATIVE WATER RIGHT

6 85-2-316. Reservation of waters. (1) The state or any  
7 political subdivision or agency thereof or the United States or  
8 any agency thereof may apply to the board to reserve waters for  
9 existing or future beneficial uses or to maintain a minimum  
10 flow, level, or quality of water throughout the year or at such  
11 periods or for such length of time as the board designates.

12 (2) (a) Water may be reserved for existing or future benefi-  
13 cial uses in the basin where it is reserved, as described by the  
14 following basins:

15 (i) the Clark Fork River and its tributaries to its conflu-  
16 ence with Lake Pend Oreille in Idaho;

17 (ii) the Kootenai River and its tributaries to its confluence  
18 with Kootenay Lake in British Columbia;

19 (iii) the St. Mary River and its tributaries to its conflu-  
20 ence with the Oldman River in Alberta;

21 (iv) the Little Missouri River and its tributaries to tis  
22 confluence with Lake Sakakawea in North Dakota;

23 (v) the Missouri River and its tributaries to its confluence  
24 with the Yellowstone River in North Dakota; and

25 (vi) the Yellowstone River and its tributaries to its conflu-  
ence with the Missouri River in North Dakota.

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(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement shall be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

- (i) the purpose of the reservation;
- (ii) the need for the reservation;

1 (iii) the amount of water necessary for the purpose of the  
2 reservation;

3 (iv) that the reservation is in the public interest.

4 (b) In determining the public interest under subsection  
5 (4) (a) (iv), the board may not adopt an order reserving water for  
6 withdrawal and transport for use outside the state unless the  
7 applicant proves by clear and convincing evidence that:

8 (i) the proposed out-of-state use of water is not contrary to  
9 water conservation in Montana; and

10 (ii) the proposed out-of-state use of water is not otherwise  
11 detrimental to the public welfare of the citizens of Montana.

12 (c) In determining whether the applicant has proved by clear  
13 and convincing evidence that the requirements of subsections  
14 (4) (b) (i) and (4) (b) (ii) are met, the board shall consider the  
15 following factors:

16 (i) whether there are present or projected water shortages  
17 within the state of Montana;

18 (ii) whether the water that is the subject of the application  
19 could feasibly be transported to alleviate water shortages  
20 within the state of Montana;

21 (iii) the supply and sources of water available to the  
22 applicant in the state where the applicant intends to use the  
23 water; and  
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(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions



1  
2 it considers necessary for the protection of the objectives of  
3 the reservation.

4 (8) Any person desiring to use water reserved to a conserva-  
5 tion district for agricultural purposes shall make application  
6 for such use with the district, and the district upon approval  
7 of the application must inform the department of the approved  
8 use. The department shall maintain records of all uses of the  
9 districts, for rendering technical and administrative assistance  
10 within the department's staffing and budgeting limitations in  
11 the preparation and processing of such applications for the  
12 conservation districts. The department shall, within its  
13 staffing and budgeting limitations, complete any feasibility  
14 study requested by the districts within 12 months of the time  
15 the request was made. The board shall extend the time allowed  
16 to develop a plan identifying projects for utilizing a dis-  
17 trict's reservation so long as the conservation district makes a  
18 good faith effort, within its staffing and budget limitations,  
19 to develop a plan.

20 (9) A reservation under this section shall date from the date  
21 the order reserving the water is adopted by the board and shall  
22 not adversely affect any rights in existence at that time.

23 (10) The board shall, periodically but at least once every 10  
24 years, review existing reservations to ensure that the objec-

1 tives of the reservation are being met. Where the objectives of  
2 the reservation are not being met, the board may extend, revoke,  
3 or modify the reservation.  
4

5 (11) The board may modify an existing or future order origi-  
6 nally adopted to reserve water for the purpose of maintaining  
7 minimum flow, level, or quality of water, so as to reallocate  
8 such reservation or portion thereof to an applicant who is a  
9 qualified reservant under this section. Reallocation of re-  
10 served water may be made by the board following notice and  
11 hearing wherein the board finds that all or part of the reserva-  
12 tion is not required for its purpose and that the need for the  
13 reallocation has been shown by the applicant to outweigh the  
14 need shown by the original reservant. Reallocation of reserved  
15 water shall not adversely affect the priority date of the  
16 reservation, and the reservation shall retain its priority date  
17 despite reallocation to a different entity for a different use.  
18 The board may not reallocate water reserved under this section  
19 on any stream or river more frequently than once every 5 years.

20 (12) A water reservation or portion thereof may be trans-  
21 ferred to a qualified applicant if the transferring reservant  
22 consents and if the Board finds, following notice and hearing,  
23 that the need for a transfer exists. The transfer shall not  
24 adversely affect the priority date of the reservation, and the  
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1 reservation shall retain its priority date despite its voluntary  
2 transfer to a different entity for the same or different use.

3 (13) A reservation is subject to protection under the act and  
4 is an appropriative water right protected by law.

5 ~~(12)~~ (14) Nothing in this section vests the board with the  
6 authority to alter a water right that is not a reservation.

7 ~~(13)~~ (15) The department shall undertake a program to educate  
8 the public, other state agencies, and political subdivisions of  
9 the state as to the benefits of the reservation process and the  
10 procedures to be followed to secure the reservation of water.  
11 The department shall provide technical assistance to other state  
12 agencies and political subdivisions in applying for reservations  
13 under this section.

14 ~~(14)~~ (16) Water reserved under this section is not subject to  
15 the state water leasing program established under 85-2-141.  
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CITY OF BILLINGS  
PUBLIC UTILITIES DEPARTMENT

P.O. BOX 30958  
BILLINGS, MT 59111  
PHONE (406) 657-8305

February 2, 1989

TO: Agricultural and Municipal Reservants  
Yellowstone River Basin

SUBJECT: SENATE BILL 265 (Senator Bengston, D-Shepherd, and  
others)

SENATE BILL 265

SB 265 was introduced last week in the Montana Legislature and assigned to the Senate Agriculture Committee, which is chaired by Tom Beck, R-Deer Lodge. (See attached bill)

WHAT IT DOES

This bill proposes to amend the Montana Water Use Act (MCA 85-2-316), and if passed, it will allow the Montana Board of Natural Resources and Conservation (BNRC) to reallocate any water reservation not more than once every five years. Under current law, BNRC may reallocate only instream reservations, but not offstream reservations such as agricultural, municipal, and multiple purpose. If passed, the proposed bill will also allow any reallocated reservation to keep the same priority date as the parent (original) reservation.

RECOMMENDED ACTION

If passed by the Legislature, this bill can adversely affect your water reservation in the Yellowstone River Basin. Accordingly, we recommend that you vigorously oppose passage of this bill by immediately contacting your state legislators and informing them of your opposition.

ADVERSELY AFFECTS YOUR WATER RESERVATION

Listed below are some of the ways that passage of SB 265 can adversely affect your water reservation:

0 It would allow BNRC to reallocate all or any part of your reservation to another reservant or a new applicant without your consent.

0 It would allow BNRC to assign the same priority of use on the reallocated reservation as your original reservation.

0 It would substantially shrink your reservation's value because it opens the door to more frequent predatory attacks on your reservation (every 5 years).

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### SENATE BILL 265 RAISES MANY QUESTIONS

Passage of this bill would also raise several questions about the value of the overall reservation process: Where is the security of having a reservation if it's almost constantly being preyed upon and reviewed? How can you raise capital and spend thousands or millions of dollars to develop your reservation and put it to beneficial use under these unsettled conditions? Is a reservation a property right protected by law or not? And what happens to a reservant's current investment in water supply facilities if the reservant's reservation is reallocated? Or if someone is later granted a higher priority and suddenly there is no water for this reservant to put his facilities to productive use?

#### WHY SB 265?

Yellowstone County did not take part in the original water reservation process for the Yellowstone River Basin in the late 1970s. Consequently, Senator Bengston had Senate Bill 265 specially drafted to give BNRC the power to grant, retroactively, a high-priority water reservation to Yellowstone County. But BNRC already has the power to grant the County a high-priority water reservation under the existing law, MCA 85-2-316(11). This law specifically allows BNRC to reallocate a portion of the instream reservations now held by various state and federal agencies to a qualified applicant, such as the County.

#### IMPACT ON RIVER MINIMAL

Furthermore, the amount of water needed by the County (15,000 acre-feet) is very small compared to the amount held by these agencies (3,679,968 acre-feet at Billings). Therefore, if BNRC were to reallocate part of the instream reservations to the County, it would have only minimal impact, if any, on the Yellowstone River.

#### 1979 STATE LEGISLATURE

Back in 1978, BNRC granted instream reservants 75% of all the water reserved in the Yellowstone River Basin and granted multiple purpose (storage) reservants 15%. (Instream and multiple purpose reservants consist of only state and federal agencies.) At that same time, BNRC granted agricultural reservants only 8.8% and municipal reservants just 1%. Recognizing that BNRC had granted overly-large instream reservations, the State Legislature subsequently amended the Montana Water Use Act in 1979 by adopting MCA 85-2-316(11), which allows BNRC to reallocate instream, and only instream, reservations to meet unforeseen water needs.

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In other words, the existing reservation reallocation law was specifically adopted in 1979 by the State Legislature to handle unforeseen problems that might arise in the future, such as the County's lack of a water reservation. Why not use the existing law to grant the County's water reservation request? Why is BNRC so reluctant to do so? It certainly makes more sense than passing another needless bill, such as Senate Bill 265, which jeopardizes all the very small agricultural and municipal reservations in the Yellowstone River Basin.

Thus it's apparent that if Senate Bill 265 is passed, BNRC is going to reduce only the agricultural or municipal reservations rather than the instream reservations to provide water to meet unforeseen needs. But why are the instream reservations so sacred? Why can't they be used to meet unforeseen needs rather than the extremely small agricultural or municipal reservations? Are such very large instream reservations really necessary? Evidently, the 1979 State Legislature didn't think so back in 1979.

OTHER SENATE AGRICULTURE COMMITTEE MEMBERS

The other Senate Agriculture Committee members are: Gerry Devlin, R-Terry, vice chairman; Gary Aklestad, R-Galata; Gene Thayer, R-Great Falls; Jack Galt, R-Martinsdale; Esther Bengston, D-Shepherd; Hubert Abrams, D-Wibaux; Greg Jergeson, D-Chinook; and Bob Williams, D-Hobson.

BACKGROUND INFORMATION

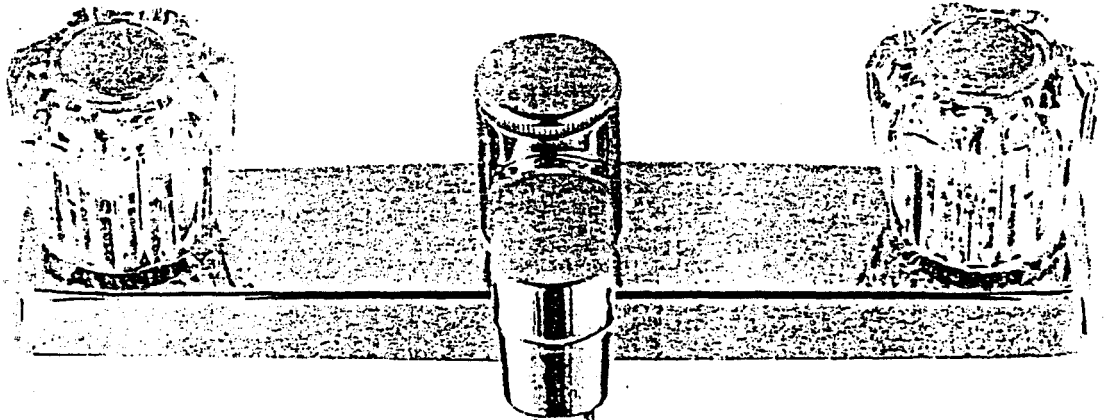
Attached for your review and use is some background information we have put together concerning the current water reservation laws, the Yellowstone River Basin reservations, and an overview of the reservation process. Please call me at 657-8300 if you have any questions concerning this information or Senate Bill 265.

Sincerely,

*Gerald D. Underwood*

Gerald D. Underwood, PE  
Public Utilities Director

cc: file



IT'S NOT BROKE,

SO DON'T FIX IT.

### CAPSULE REVIEW

Montana's water rights are presently being adjudicated by the water courts, and since 1979 it's been an ongoing process with no completion date in sight. Thus almost all water users are uncertain of the extent and priority of their water rights: Who gets to use the water? Who gets to use the water first?

The goal of the Montana Water Use Act is "to preserve waters for existing or future beneficial uses or maintain a minimum flow or quality of water." This Act set the framework for the Montana water reservation process--a process that allows public bodies to reserve water for municipal, agricultural, and fish and wildlife uses as well as future storage projects. Like water rights, water reservation priorities are determined by the principle of "first in time, first in right."

The only Montana river basin on which the reservation process has been completed is the Yellowstone. It was completed in 1978 and is now undergoing its first ten-year review. Instream uses captured the biggest reservations, 5,579,000 acre-feet (75.2%); next came offstream multiple purpose uses (storage), 1,112,000 acre-feet (15.0%); then offstream agricultural uses, 655,000 acre-feet (8.8%); and in last place, offstream municipal uses with only 73,000 acre-feet (1.0%), giving an instream/offstream ratio of 3:1. (See Figure 1) But municipal uses were winners too, being granted the highest priority--with instream uses above the mouth of the Big Horn River second and agriculture uses third, agricultural uses below the mouth of the Big Horn River second and instream uses third, and offstream storage fourth, or lowest priority. (See Figure 2)

Instream flows are the hub of the reservation process: it is the reserve from which to draw if a reallocation of water is needed. (See Figure 3) That need will be determined using the same process that was used to allocate the parent reservation, and the reallocated reservation will have the same priority date as its parent.

All water reservations are junior to any water rights that existed prior to the approval of such reservations. And during times of drought, those water rights have first priority for use of the scarce water. In consequence, until the water courts complete the adjudication process, the real value of water rights and water reservations will remain unknown.

Meantime, Montana's water laws are doing well, providing insightful solutions to new problems caused by the drought. Thus, rather than changing or amending these laws, protect them, they're worth saving.



# YELLOWSTONE RIVER BASIN ANNUAL WATER RESERVATIONS

INSTREAM USES  
5,578,892 •  
[ 75.2 % ]

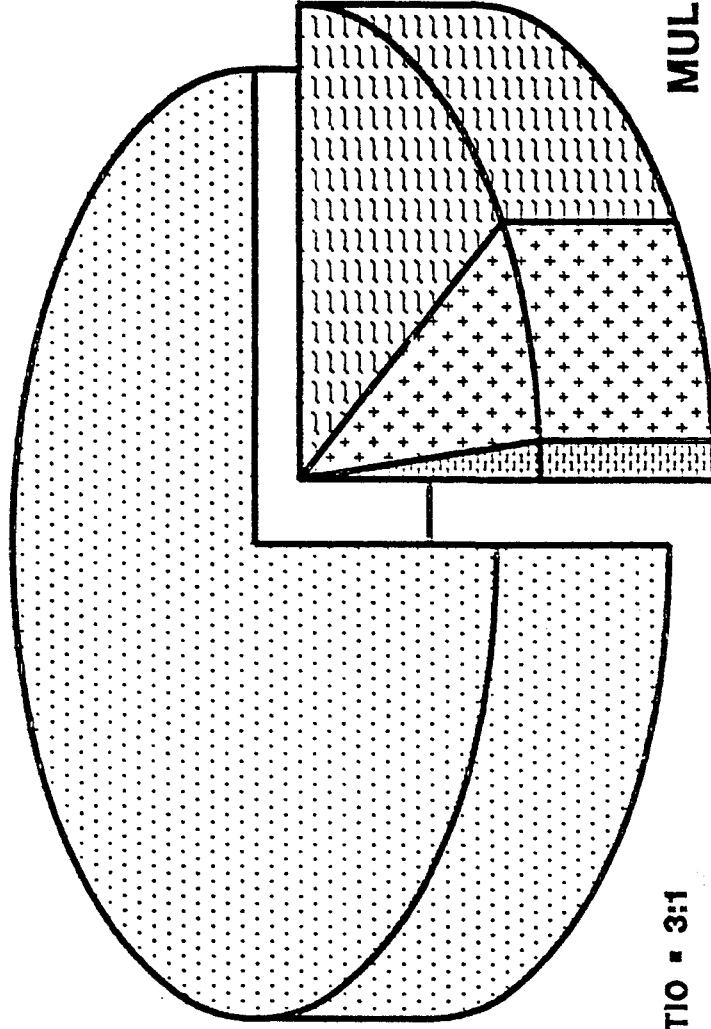


Figure 1

INSTREAM/OFFSTREAM RATIO = 3:1

MUNICIPAL USES  
73,234 •  
[ 1.0 % ]

MULTIPLE PURPOSE USES  
1,111,800 •  
[ 15.0 % ]

AGRICULTURAL USES  
655,324 •  
[ 8.8 % ]

• ACRE-FEET PER YEAR

# WATER RESERVATION PRIORITIES

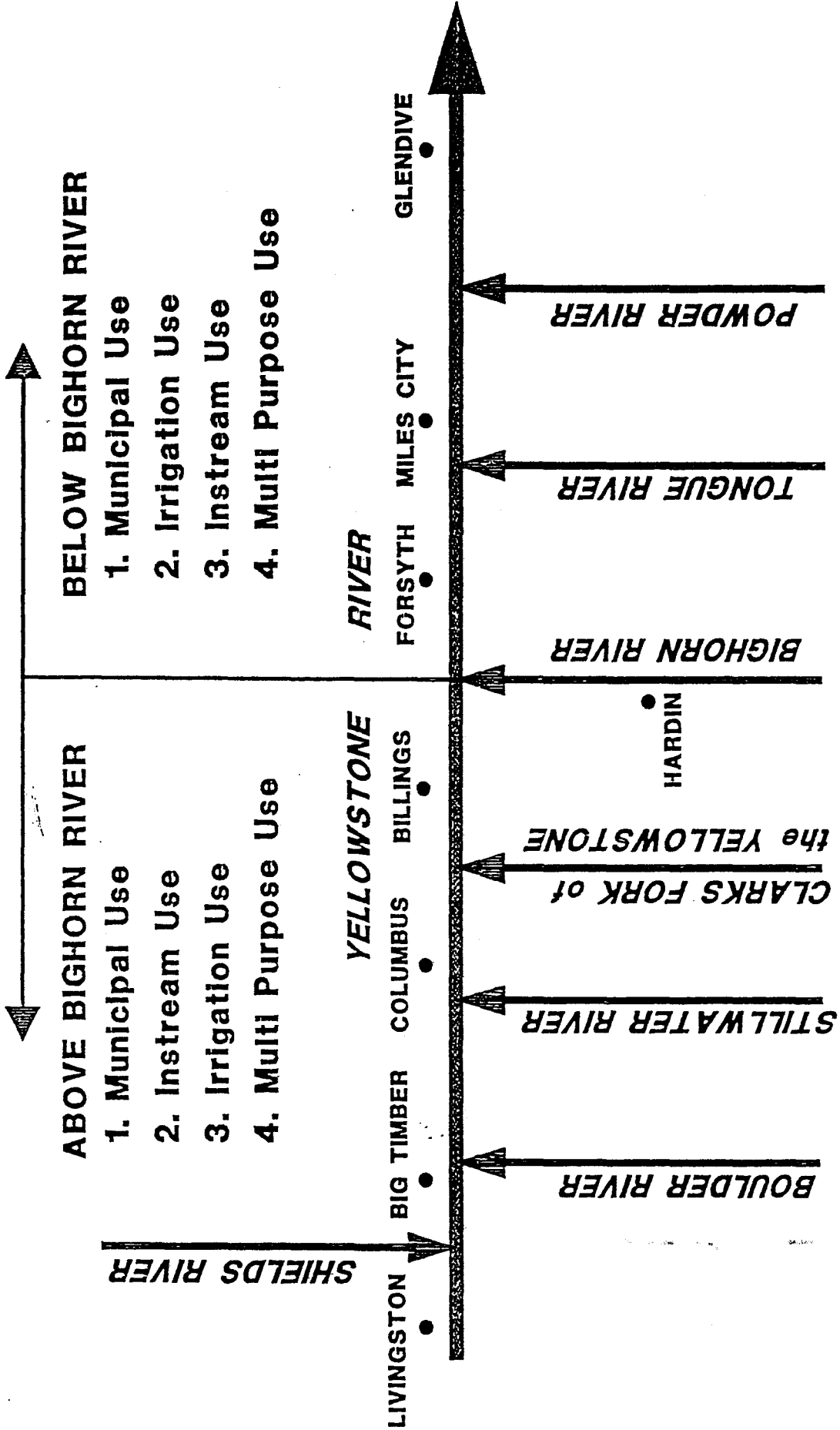


FIGURE 2

# OVERVIEW OF WATER RESERVATION PROCESS

(Current Law 1988)

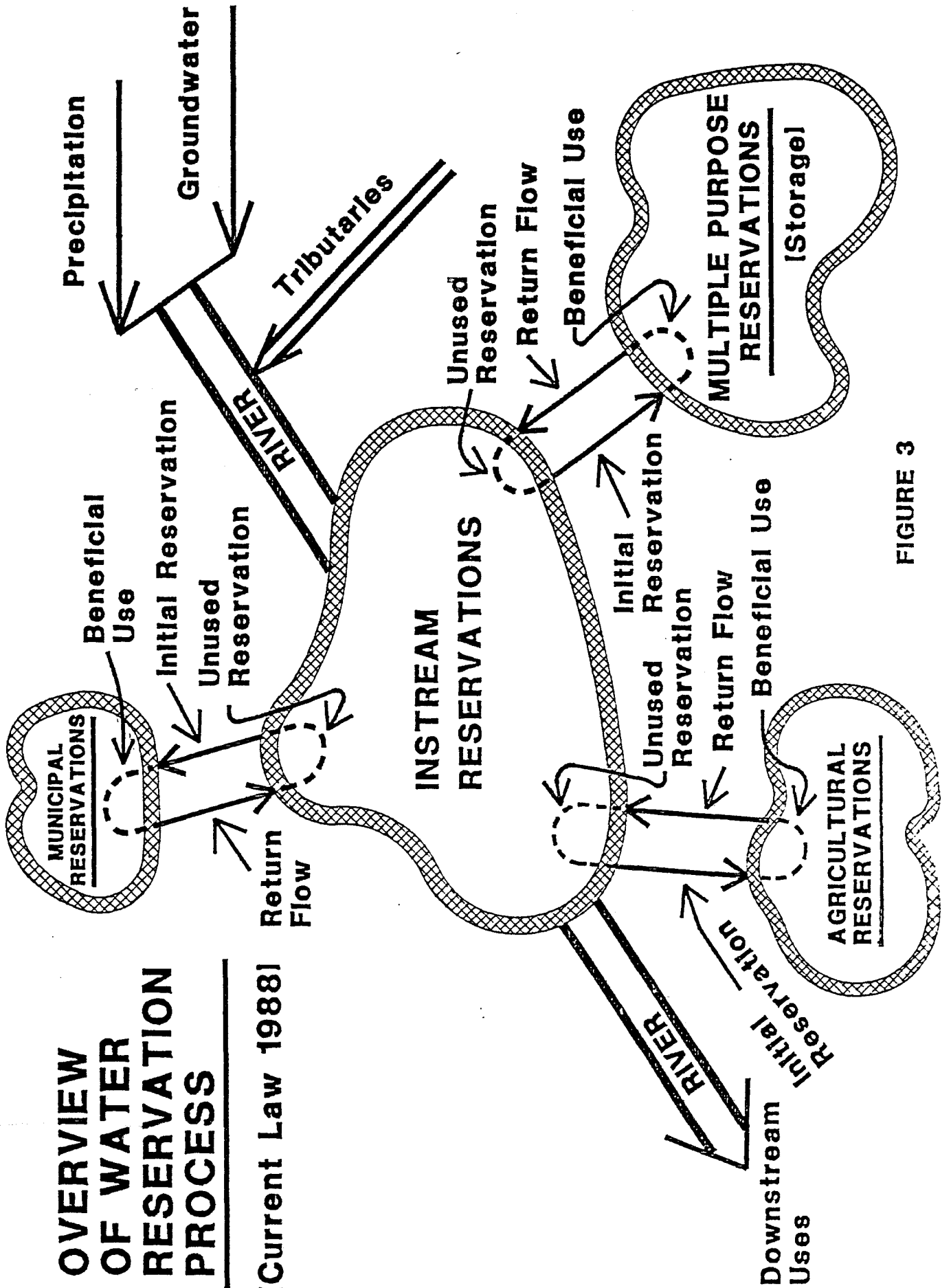


FIGURE 3

MONTANA'S WATER RIGHTS  
& WATER RESERVATIONS

"IT'S NOT BROKE, SO DON'T FIX IT"

SEN 15  
EXH  
DATE 2/13/89  
BILL NO. SJR 11

MONTANA DEPARTMENT OF AGRICULTURE

AN ISSUE PAPER

CONTINUED USE OF STRYCHNINE AND 1080  
AS VERTEBRATE PESTICIDES

In March of 1988 a US District Court ordered EPA to cancel the registrations for the above ground use of strychnine. The court agreed with environmental groups that by maintaining these registrations EPA was in violation of the Endangered Species Act, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. EPA appealed the court order and asked for a stay of the order until the outcome of the appeal. The request for a stay was denied. Presently, the sale, distribution and use of strychnine rodenticides is prohibited under the court order.

The acts cited under the court order take a zero risk approach to species protection. EPA, under its law, takes a risk/benefit approach to the registration of pesticides. If the philosophy applied by the court is upheld, it will have a far reaching effect on the registration of many other pesticides used in Montana agriculture.

Under a separate action, EPA has issued an intent to suspend the rodenticide uses of strychnine and 1080 to registrants for failure to meet data call-in requirements issued by EPA several years ago. Registrants, mostly government and small private companies have not had sufficient funding to complete the necessary studies to comply with the registration requirements. Even if the court order is over turned, these products, many of which are used by Montana agricultural producers, will not be available unless the required registration data are submitted.

Most pesticides are registered by large chemicals companies that regain their registration costs by sale of the pesticide products. Because of the low profit margins and small market for vertebrate pesticides, few companies are willing to expend the necessary funds to register products that may take many years of sales to recoup their costs. For this reason, state and federal agencies and small private companies in cooperation with government agencies have been the primary registrants of vertebrate pesticides. To retain these registrations funding will most likely have to come from public sources, primarily the federal government. It may be that the best approach is for agricultural interests in Montana and other western states to work with their state and congressional delegations to provide sufficient funding.

Because of funding restrictions it may not be possible to pursue registration of both strychnine and Compound 1080 for field rodent control. If a choice must be made, it is the opinion of the Montana Department of Agriculture that Compound 1080 be the option chosen. We feel that Compound 1080 will be effective over

Ex. #15  
SJR 11  
2/13/89

a wider range of rodent species and will present less environmental risk.

In recent conversations with the USDA, they have indicated that they intend to pursue data collection on their present strychnine rodenticide registrations and the registration for the Livestock Protection Collar including registration for technical 1080. They have also designated funding priorities for data collection toward registration of Single Lethal Dose Baits for coyote control. They have no plans at this time to pursue registration of 1080 as a rodenticide, citing funding limitations.

The USDA states that livestock losses to predatory animals in the US is estimated to be approximately \$86,000,000. While this is significant, rodents cause an estimated \$400,000,000 in damage annually in the US.

There are other rodenticide alternatives presently under patent by chemical companies but they are not being considered for field rodent registration because of the cost. Cooperative efforts toward registration could be pursued between the companies and state and federal agencies. These materials are likely to be effective, economical and perhaps have less environmental risk than either strychnine or Compound 1080.

Also, under a separate action by EPA is a data call-in for the Livestock Protection Collar recently registered for the control of coyotes depredating sheep. This technique is currently being used by some Montana sheep producers with success. This registration will end unless some basic product chemistry data is completed. The US Department of Agriculture, APHIS, Animal Damage Control Division, which holds the basic registration, should be encouraged to complete these data requirements as soon as possible.

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