

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on February 15, 1989,
at 12:30 p.m.

ROLL CALL

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

Members Excused: Senator Hubert Abrams

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: A tour of MSU's agriculture
program. See exhibit 1.

DISPOSITION OF SENATE BILL 357

Discussion: Senator Beck-"There was a concern about the 3
acres being too much land in there."

Senator Beck-"Is there a definition for garden size? Can a
garden be 40 acres?" Senator Thayer-"Not unless you're
crazy."

Senator Aklestad-"The Hutterites might call theirs a
garden."

Amendments and Votes: Senator Thayer moved that subsection
"3" be deleted; the motion was seconded by Senator
Aklestad. The motion carried.

Recommendation and Vote: Senator Aklestad moved that SB 357
DO PASS AS AMENDED; the motion was seconded by Senator
Galt. The motion carried unanimously.

DISPOSITION OF SENATE BILL 387

Discussion: Doug Sternberg explained the amendments to SB
387.

Amendments and Votes: Senator Galt moved the amendments; the motion was seconded by Senator Aklestad. The motion carried.

Recommendation and Vote: Senator Thayer moved that SB 387 DO PASS AS AMENDED; the motion was seconded by Senator Aklestad. The motion carried unanimously.

DISPOSITION OF SENATE BILL 265

Discussion: Senator Jergeson-"The board can look at a reservation, let's say the municipal reservation, extend it. They can modify it. Now, if they can modify it that says to me that could cut the reservation in half. Why would they need to reallocate it?" Senator Bengtson-"The board chose to feel that they did not have the authority to reallocate. They wanted it cleared up."

Senator Jergeson-"If they reallocated the water to some reservant, the priority date follows along. But if they modified the reservation something less than it currently is, wouldn't that free up that water?" Senator Bengtson-"I don't know."

Senator Bengtson-"There's some critical need that needs to be addressed. Somebody has to have some flexibility to do that."

Amendments and Votes: None

Recommendation and Vote: Senator Galt moved that SB 265 DO PASS; the motion carried with Senator Jergeson and Senator Williams voting no.

DISPOSITION OF SENATE BILL 264

Discussion: Senator Beck-"Was there an easement granted for that well and was there property rights given to the previous owner of the well?" Senator Bengtson-"No, not at all."

Senator Aklestad-"Wasn't one of the big problems was where you're trying to develop new water and your point of diversion isn't on your own property, you have to get either a condemnation or an easement before you can ever go to the DNRC? You can spend thousands of dollars if you ever had to go through condemnation to get those lands tied up and then the DNRC could still

turn you down for the water right after you went through all that expense. Wasn't that one of the biggest problems?" Senator Williams-"That's what I understood Doney to say. You'd have to go through all of this before you go through the DNRC."

Senator Galt-"This particular property owner could have protected herself when she sold that land. Now, she must have given that fella a water right or a right to the well or something. He had every right in the world to sell it."

Amendments and Votes: None

Recommendation and Vote: Senator Bengtson moved that SB 264 be tabled. The motion carried unanimously.

Senator Jergeson discussed some additional amendments to SB 111. Executive action will be taken at a later date.

Senator Thayer moved to take SB 28 from the table. The motion carried.

HEARING ON SENATE BILL 390

Presentation and Opening Statement by Sponsor: Senator Galt, District 16, "This will extend the permission that we granted the Department of Natural Resources 2 years ago to issue a term permit to pump water out of the mines at Roundup. This bill would extend that for another 2 years."

List of Testifying Proponents and What Group They Represent:

Representative Robert Clark, House District 31
Doug Parrott representing the Dead Man's Basin Water Users Association
Karen Barkley representing DNRC
Shirley Parrott representing the lower Musselshell County Water District

List of Testifying Opponents and What Group They Represent:

Virgil Jones representing himself
Robert Lee representing himself
Kelly Stephenson representing himself
Joyce Egeler representing herself
Dona Adams representing herself

Testimony:
Proponents:

Representative Robert Clark-"This would extend the title for this test pump. That's what this is, a test pump! If this testing is not done, I feel we will never know exactly what is in the mine. We know there is some water in there and that's all we know for sure. The safeguards that are being taken by the DNRC in their grant application cover the environmental aspect."

Doug Parrott-"We were here 2 years ago as to testifying for the RIT funding for the test of this mine and for some water management studies along the Musselshell River. The Dead Man's Basin Water Users Association requested a bill to allow DNRC to pump an excess of 3,000 acre-feet, in the year's time for this test, which requires legislative approval. The legislature gave that approval and set a time limit on it as September 1989. As it turns out, the availability of our RIT funds, it has taken us a year or more to start receiving the funds. So we are asking that you extend this period."

Karen Barkley-"The Department of Natural Resources supports SB 390." See exhibit 2.

Shirley Parrott-"I would like to stress strongly that we still support the testing pumping project. Because of the opposition, we have written numerous safeguards into the program to protect them."

Testimony:
Opponents:

Virgil Jones-"I feel we have ground water rights prior to any irrigation rights that are being discussed here. We've got 80 irrigators downstream; we've got over 400 property owners of wells in the area. Irrigators have their surface rights and we have our ground water rights; if Dead Man's Basin users would only make a better allocation of the water they have." Mr. Jones used visual techniques to explain Dead Man's Basin area.

Robert Lee-"This test pumping allows the harm to be done first. There is no liability status. Who is liable for the harm that will be done if this pumping causes harm? What is the recourse of the landowner when his house or his land growth subsides. There is physical evidence from the last pumping when the mines were working. There were spring boxes built in the 30's when the mines became mechanized. It allowed more

water and people had to build spring boxes because water disappeared. Pretty soon those springs dried up entirely and wells had to be drilled right beside the old springs. That's the physical evidence."

Kelly Stephenson-"I would ask you people, because there was such short notice of the hearing today, to let us get written testimony to you." See exhibit 6 for additional testimony.

Joyce Egeler-"What do we do if there are harmful effects on our well? What do we do with land that has no water? How do we sell land that has no water? How do we get our money back out of it that we put into it? I would like you to think about these issues."

Dona Adams-"When we moved into our tract of land, there was no one mentioning we would lose our water. We live on a small tract of land and the possibility of losing water is frightening."

Willa Dale-See exhibit 9.

Questions From Committee Members: Senator Aklestad-"They had a 2-year program on, am I to understand there hasn't been any pumping done yet?" Mr. Marvin Miller (Montana bureau of mines) -"No, there was only a short test run. The test was about a few hours."

Senator Aklestad-"Why wasn't there more water pumped?" Mr. Wayne Van Voast (Montana Bureau of Mines) -"We made two attempts to pump. We wanted to find out if this pump would go down this mine entry and be useable. We tested for a few hours and found this (pump) was geometrically too large to be inserted down in the mine entry. It wasn't really a water test, it was a pump test."

Senator Aklestad-"Did you ask the Department to come in and testify?" Senator Galt-"No, they volunteered."

Senator Williams-"Did you have any measurements on how much the water raised at any given period of time in a year since the abandonment of the mines?" Mr. Van Voast-"There was no monitoring done when the mines were shut down. We've been monitoring water levels over the last year."

Senator Bengtson-"Is anybody here from state lands?" (There was not.)

Senator Thayer-"Looking at lines 2 through 7 on page 2 of the bill (he reads that part of the bill), it sounds to me like there could be, if this is successful, some beneficial effect of having more water available. How are you going to do this to prevent any significant environmental problems? How would you ease these people's minds that testified here today?" Gary Fritz-"We've visited with the people from the Roundup area a number of times and I think they are well aware of each of the concerns that have been raised. We have addressed those in the preliminary environmental review that was done for this project. We are going to put monitoring wells all the way around the test pumping well. These wells are monitored or will be drilled and monitored that encircle this test pumping well. We will be able to tell if they are causing an effect in the area. If the test pump occurs, it's going to be a very heavily monitored operation."

Closing by Sponsor: Senator Galt-"Just remember that this is an experiment to see if this large body of water could be available for irrigation purposes on the Lower Musselshell. It would benefit not only those 80 irrigators, it would benefit all of Musselshell County as you all well know. No one's going to get hurt and I urge your acceptance of it."

HEARING ON SENATE BILL 386

Presentation and Opening Statement by Sponsor: Senator Galt, District 16, stated: "This was an act to allow the legislature or the governor to revise the state water plan. There is no provision for the legislature to change it. We felt that the legislature should have a hand in it and this bill will simply state the laws. As you can see on the third page, on top of the third page (lines 1-4 on page 3), it will get the legislative branch more involved with the state water plan."

List of Testifying Proponents and What Group They Represent:

Carol Mosher representing the Montana Stockgrowers and the Montana CattleWomen

Lorna Frank representing the Montana Farm Bureau

Jack Salmond representing Western Environmental Trade Association

George Ochenski representing Alliance for Montana Water

List of Testifying Opponents and What Group They Represent:

Jo Brunner representing the Montana Water Resource Association

Testimony:
Proponents:

Carol Mosher-See exhibit 10.

Lorna Frank-See exhibit 11.

Jack Salmond-"We support the bill and I hope you give it a do pass."

George Ochenski-Mr. Ochenski's main concern was, how does the public take part in the process? Mr. Ochenski indicated he did not want to be recorded as an opponent or a proponent; he just wanted to address the issue of the public's participation.

Testimony:
Opponents:

Jo Brunner-See exhibit 12.

Questions From Committee Members: Senator Jergeson-"Is the water plan that the department's been working on, does that have to be adopted in the courts?" Senator Galt-"No."

Senator Jergeson-"The concerns that were raised about this particular language in sub "(4)"; wouldn't we guarantee legislative and gubernatorial involvement in changing the water plan? You say this water plan would have to be adopted in courts of the Montana administrative code and the legislature by law could change the provisions?" Senator Galt-"Well, I think there was a Supreme Court decision not too many years ago that the legislature can't get involved with the administrative codes."

Senator Beck-"The governor does have the discretion to change it with the approval of the legislature."

Closing by Sponsor: Senator Galt closed.

HEARING ON SENATE BILL 416

Presentation and Opening Statement by Sponsor: Senator Anderson, District 37, see exhibit 14.

List of Testifying Proponents and What Group They Represent:

W.G. Gilbert III (an attorney in Dillon) representing himself

Byron Bayers representing himself

Jerry Engle representing himself

Carol Mosher representing the Montana Stockgrowers and the Montana CattleWomen

Mark Josephson (an attorney in Big Timber)

Lorna Frank representing the Montana Farm Bureau

Steve Aller representing himself

Jeff Walker representing himself

List of Testifying Opponents and What Group They Represent:

None

Testimony:Proponents:

W.G. Gilbert III-"Our area probably has some of the oldest water rights in Montana. I think some go back to 1862. The section which we seek to amend set up a conclusive presumption of an abandonment if the filing was not made within the required time. A conclusive presumption is, if you think about the word somewhat of an inconsistency within itself. The effect that many of us fear is that there will be a forfeiture of those water rights to people who by accident, mistake, mishap, and other reasons failed to file--failed to get their filings on time. We don't think that is right. Many water lawyers that I have discussed this with believe that presumption is unconstitutional and unenforceable. I think it has caused a great hardship and I have seen examples of that in my practice and that's why I am here. (Mr. Gilbert held up a file full of papers. These papers were signed by a small rancher in his area. The time to sign the papers took approximately 2 hours.) I would urge you to pass this bill."

Byron Bayers-"I agree what the two gentlemen preceding me said. I have faced the same problem in my own ranching business where we have filed a decree almost as big as he (Mr. Gilbert) has shown you and yet we missed one. So I personally know of the problem you can run into. I think there were problems that were overlooked or for one reason or another weren't able to get it done. I would like to ask you to give this serious consideration for passage."

Jerry Engle-"I am a manager for an absentee rancher. There

is no excuses, I come on to the ranch about 2 years ago. The fella (the absentee rancher) was under the impression that everything was taken care of and done. I started doing some digging and two-thirds of it was not done. I am a "Johnny-come-lately" on it and am trying to get matters put into the right perspective and we are having some problems. I urge you to support this bill."

Carol Mosher-See exhibit 13.

Mark Josephson-"I currently represent 10 late claimants in the Upper Yellowstone Basin. I don't want to go into the legality of why that statute is constitutional; I want to talk about why it is fair to have this bill. The range of facts of why people missed the deadline, just in the people that I represent, is tremendous. We had people who from day one, in 1979, diligently pursued their water rights. They got a thick file together like that (pointed to Mr. Gilbert's file) and simple because of the old decrees, the old title abstracts, old water right records, just missed it and filed it late. Other people were confused about the deadline filing date and mailed them--they were post marked that Friday and the office didn't receive them until that Monday. One client who mailed it in plenty of time, early in the week, had a digit or two wrong on the street address. It got returned to him. He mailed it Friday and it got back to the proper place on Monday...There does need to be a finality of this process. This bill provides that finality much the way any lawsuit defines finality. It is just plain fair. Please pass this bill."

Lorna Frank-"We do support SB 416."

Steve Aller-"Through no fault of our own, we have a problem with this late claim problem. The only way out is through expensive litigation. Two years of work so far for us. I would ask you to give this bill a do pass."

Jeff Walker-"I would ask you to support this bill. The biggest problem that it solves, and I don't think it has been adequately addressed yet, is the way the current law is worded right now. It says we all have to be perfect. It says we not only have to be perfect, but since there was no confirmation filing sent to anyone, that if there was a missed file no one would ever know about it. If they did happen to find out about it, there would be no recourse in solving that problem. If you don't file, you'll pay for it for the rest of your life. It goes beyond that. My sons and

daughters will have to pay for it the rest of their lives and their sons and daughters--for a simple mistake in paperwork! It's not acceptable to treat people like this in our society. We even treat criminals better than that. I urge this committee to pass this bill."

Testimony:

Opponents:

None

Questions From Committee Members: Senator Aklestad-"There isn't a new deadline established in this bill, it's open-ended? Is that correct?" Senator Anderson-"I think that's correct."

Senator Aklestad-"Are we going to have a conflict between those two documents--this and the final decree? We have two conflicting documents." Mark Josephson-"The deadline would be the preliminary decree state of whatever particular basin, if you decide on basin by basin. The point is, up until the time the court is ready to issue the final decree. One of the reasons it seems fair to give that kind of a deadline; it would change basin to basin depending on the status. I don't know what the effect of opening up the basins is going to have."

Closing by Sponsor: Senator Anderson-See exhibit 14.

HEARING ON SENATE BILL 432

Presentation and Opening Statement by Sponsor: Senator Bengtson, District 49, stated "This was requested to me by a local irrigation district. I'm going to let my Huntley Project irrigation manager explain what it is."

List of Testifying Proponents and What Group They Represent:

Dueane Calvin representing the Huntley Project Irrigation District
R.A. Ellis representing the Montana Resource Association;
also the Commissioner for the Helena Valley Irrigation District

List of Testifying Opponents and What Group They Represent:

None

Testimony:
Proponents:

Dueane Calvin-See exhibit 16.

R.A. Ellis-"I support this bill fully. It is hard to collect the taxes for the irrigation district. Our county treasurer does allow this. We have other counties that do not allow this. I can see that this (SB 432) will clarify this so everybody will be on an equal status. Please pass the bill."

Testimony:
Opponents:

None

Questions From Committee Members: Senator Bengtson: "All those amendments do is reinstate the language that was deleted, because our attorney misunderstood. Those amendments were given just to reinsert the language." See exhibit 17.

Closing by Sponsor: Senator Bengtson closes.

DISPOSITION OF SENATE BILL 432

Discussion: None

Amendments and Votes: Senator Bengtson moved the amendments on SB 432. The motion carried.

Recommendation and Vote: Senator Bengtson moved SB 432 DO PASS AS AMENDED; the motion was seconded by Senator Devlin. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 3:06 p.m.



TOM BECK, Chairman

ROLL CALL

AGRICULTURE COMMITTEE

DATE 2/15/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS			✓
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSO	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 357 (first reading copy -- white), respectfully report that SB 357 be amended and as so amended do pass:

1. Page 5, line 16.

Strike: "(b) potato fields of less than 3 acres;"

Renumber: subsequent subsection

AND AS AMENDED DO PASS

Signed: _____


Thomas A. Beck, Chairman

H.C.
2/16/89
2:10 p.m.

scrsb357.216

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 387 (first reading copy -- white), respectfully report that SB 387 be amended and as so amended do pass:

1. Title, line 6.
Strike: "A CLASS A"
Insert: "AN"
2. Title, line 7.
Strike: "III"
Insert: "X OR Y"
3. Page 2, line 1.
Strike: "a class A"
Insert: "an"
4. Page 2, line 3.
Strike: "less"
Insert: "other"
5. Page 2, line 4.
Strike: "class A"
Insert: "official"
6. Page 2, lines 7, 10, and 13.
Strike: "III"
Insert: "X or Y"

AND AS AMENDED DO PASS

Signed: _____

Thomas A. Beck
Thomas A. Beck, Chairman

SENATE STANDING COMMITTEE REPORT

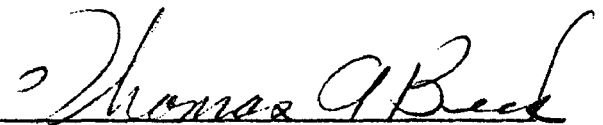
February 15, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 265 (first reading copy -- white), respectfully report that SB 265 do pass.

DO PASS

Signed: _____



Thomas A. Beck, Chairman

4/10/89
2:16
1:03
1:03

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 432 (first reading copy -- white), respectfully report that SB 432 be amended and as so amended do pass:

1. Page 1, line 19.
Following: "~~district~~"
Insert: "the district"
2. Page 1, line 20.
Following: "~~the~~"
Insert: "county in which the"
3. Page 1, line 21.
Following: "~~thereof,~~"
Insert: "or some portion of the division"

AND AS AMENDED DO PASS

Signed: _____

Thomas A. Beck
Thomas A. Beck, Chairman

SENATE AGRICULTURE

EXHIBIT NO. 1DATE 2/15/89BILL NO. Announcement

**TENTATIVE AGENDA
TOUR OF MSU COLLEGE OF AGRICULTURE,
AGRICULTURAL EXPERIMENT STATION, AND
EXTENSION SERVICE FACILITIES AND PROGRAMS
for the
HOUSE AND SENATE AGRICULTURAL COMMITTEES
OF THE 51ST LEGISLATIVE SESSION**

Saturday, March 4, 1989
MSU Plant Growth Center

1:30 p.m. Introductory remarks by Dr. James R. Welsh, Dean, MSU College of Agriculture; Director, Montana Agricultural Experiment Station and Extension Service.

Tour of Plant Growth Center, including program visits with MSU personnel:

- Tom Blake and Don Baldrige - small grains improvement and alternative crops;
- Jim Bauder - water quality;
- Tom Carroll and Jack Riesselman - plant diseases;
- Greg Johnson - research and education on the Russian wheat aphid;
- Dave Sands - biotechnology applications in agriculture;
- Bob Nowierski - biological control of weeds;

2:40 p.m. Depart for Oscar Thomas Nutrition Center, Department of Animal and Range Science.

2:50 p.m. Tour of Nutrition Center with Mark Peterson, including program visits with MSU personnel:

- Rosemary Newman - barley and human nutrition;
- Andrea Pagenkopf - red meat, diet and human health issues.

3:30 p.m. Depart for Hadleigh Marsh Veterinary Research Lab.

- Tour of VRL with C. A. Speer.

4:20 p.m. Depart for Linfield Hall.

4:30 p.m. Wrap up, Room 109 Linfield Hall, program visit with Myles Watts, ag economist.

5:30 p.m. No-host dinner at Overland Express.

7:30 p.m. Cats vs UNR Wolfpack basketball game, Brick Breeden Fieldhouse.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

TESTIMONY ON
SB 390

The DNRC supports SB 390 because it allows the sponsors of the Roundup abandoned coal mine pumping project the ability to proceed with the project if they can secure all other necessary permits and authorizations. In supporting SB 390, DNRC does not pre-judge the action the agency will take on the interim permit before it now, or the action it will take on any future interim permit application for this project.

The water users along the Musselshell River have faced chronic water shortages not just in the drought year of 1988, but in many other dry years. In the late 1970s, the DNRC, in response to requests from Musselshell River water users, evaluated offstream storage sites in the basin. Water users felt the cost of storage identified in that analysis to be beyond their capability to pay for water.

THE PROJECT

Local citizens then proposed the concept of pumping from the abandoned underground coal mines near Roundup. Preliminary studies indicate that the mines may be a source of water that could help alleviate water shortages in the Musselshell River.

The 1987 Legislature provided RIT funds to the Lower Musselshell Conservation District to pursue development of the

Ex. #2
2/15/89
SB 390

abandoned mines. The legislature also approved any interim permit necessary for test pumping of these mines. The legislature made it clear that the project sponsors would have to secure DNRC approval of the interim permit as required by statute.

The project is to proceed in four phases. Each phase must be approved by the DNRC before the next phase can proceed.

Phase 1. Compilation of a resource evaluation that addresses concerns such as:

- (a) subsidence
- (b) geology, hydrology, water quality, historic mining activities
- (c) well and spring inventory
- (d) installation of observation wells
- (e) selection of a pumping site
- (f) acquisition of all necessary permits

Phase 2. Completion of experimental short-term pumping. The DNRC has before it the interim application for this test pumping of up to 31 acre-feet over a seven-day period. If the permit is issued, it will be heavily conditioned to protect against injury to existing water users as well as addressing other concerns of local citizens.

Phase 3. Completion of a longer-term pumping test. The interim permit required for this pump test is the subject of SB 390. The purpose of the test is to evaluate the potential for withdrawing from the mine workings water of adequate quality and quantity to significantly supplement low flows in the Musselshell River. Two 90-day pumping events are proposed for successive years, each at a maximum of 30 cubic feet per second up to 5,500 acre-feet.

Phase 4. Development of a computer model based on data collected during the first three phases to assess storage capacity and recharge characteristics of the mines, to evaluate the quality of mine water and its compatibility with existing and proposed uses, and to determine the economic feasibility of using storage in the mines on a long-term basis.

WATER PERMITTING ACTIVITY

In September 1986, the Deadman's Basin Water Users Association filed a provisional water use permit application for 40 cfs up to 13,363 acre-feet/year from the abandoned coal mines. Because the groundwater appropriation under the permit could exceed 3,000 acre-feet, legislative approval was required. The 1987 Legislature passed SB 151, which authorized DNRC to issue only an interim permit for testing purposes. Any interim permit issued will expire on September 30, 1989, as provided in SB 151. Further testing involving withdrawals of more than 3,000 acre-feet/year will require legislative approval. SB 390 represents

that approval. In the meantime, action on the water right permit application filed in 1986 has been suspended pending the completion of the four phases of the project.

A Preliminary Environmental Review will be prepared for each permit and interim permit application. AN EIS may be necessary, depending on the findings contained in the PER. Each interim permit, if issued, will contain conditions designed to prevent adverse impacts to existing users. In the event the conditions cannot be met or certain allowable limits are exceeded, no further pumping will be allowed.

PROJECT OPPOSITION

A group called "POWER" (Protect our Water and Environmental Resources) has formed to oppose the mine pumping project. Its main concern is that withdrawal of water from the mines will adversely impact both the quantity and quality of groundwater that presently supports residential and agricultural developments overlaying and adjacent to the mines. As indicated, if the DNRC feels that these concerns are valid, the necessary permits will not be issued. If water permits are issued, they will be conditioned to ensure that adverse impacts do not occur.

DEPARTMENT POSITION

The DNRC supports SB 390 because it would allow the project sponsors to apply for necessary permits and authorization to put

Ex. #2
2-15-89

their project in place. Passage of SB 390 does not guarantee the project will be implemented.

DNRC supports the concept of phasing the project such that the project, at any phase, can be halted if it is determined that it would cause adverse impacts to water users, excessive environmental impacts, or is technically or financially unfeasible.



TED SCHWINDEN, GOVERNOR

EXHIBIT # 3

2/15/89 SB 390

APR 27 1988

MONT. DEPT. of NATURAL
RESOURCES & CONSERVATION

STATE OF MONTANA

(406) 444-2074

1628 ELEVENTH AVENUE
HELENA, MONTANA 59620

April 25, 1988

Mr. Les Pederson
Water Development
DNRC
Helena, MT. 59601

RE: Lower Musselshell Project

Les:

I have reviewed the draft document entitled "Ground Water From Abandoned Mine Workings for Irrigation and Instream Flows, Lower Musselshell River".

As you know, my staff and I have written several letters concerning the potential for increased or accelerated mine subsidence because of pumping activities in the abandoned mines. It is an accepted fact that water fluctuations in abandoned underground mines, as will occur with this project, are known to and logically will cause increased potential for mine subsidence.

With the above in mind, the draft agreement is inadequate to protect the state in case of catastrophic subsidence, i.e., road or dwelling collapse.

On page 4, "subsidence potential" is referenced under Literature search as a topic area. I would expand this into a separate and discrete item based on our existing understanding that shows subsidence to be a potential problem. They should be required to utilize all existing data to identify all existing data on subsidence potential. These data will have to be extrapolated from similar situations nationwide, since nothing specific will be found at the Roundup mines.

On page 30, Section 19. Indemnity and Liability, the statement is inadequate to protect the state agency since it is very likely that any damage or injury that occurred due to subsidence would not be as a result of error, omission, or negligent act. It is known that there is now active subsidence in the area, and it is known that the pumping activities will accelerate subsidence. What is not known is the extent or time frame. The beneficiary of the irrigation research must accept this liability and the state must clearly point out to the lower Musselshell Conservation District that they are accepting this liability and cost of reclamation.

In closing, the state must protect itself from potential lawsuits and costs due to subsidence on this project. Subsidence reclamation nationwide is costing hundreds of millions of dollars with no end in sight.

Sincerely,

Richard J. Juntunen, Chief
Abandoned Mine Reclamation Bureau

c: Gary Amestoy
Dennis Hemmer

Mine pumping opponents outline their concerns

Editor's Note: In last week's Roundup Record-Tribune was an article submitted in support of the idea of pumping water out of abandoned coal mines in the Roundup area to supplement Musselshell River irrigation water. Opponents of the idea asked for an opportunity to present their views. The following article was delivered to the Record-Tribune offices by Mr. Lowell Rathbun, a representative of that group.

In response to the article recently submitted to the Roundup Record-Tribune by Mr. Doug Parrott, Chairman of the Water Development Committee, Deadman's Basin Water Users Assn., as "facts to dispell rumors" regarding legislation being requested from the State legislative bodies to appropriate substantial new water rights for irrigation purposes in the Lower Musselshell Conservation District, we submit for your reader's consideration the reason for local ranchers and residents proper and legitimate concern.

First of all, we are not now and never have been opposed to any project or endeavor by citizens of the community which would benefit a large segment of the City of Roundup or residents of the County providing the project does not infringe on the rights and needs of other residents to carry on their various established occupations, businesses and livelihoods. As everyone knows, especially in an arid climate such as ours, an adequate and dependable water supply for primary ranch, residential and business usage is absolutely essential. This is the principal reason for our concern.

As stated by Mr. Parrott, "In recent years studies have been made to determine if additional water could be stored along the Musselshell River. These studies identified sites along the river which could be developed for additional storage." This type of planning by the Irrigation Water User's Association certainly appears to be logical and fitting to address future needs. However, as noted by Mr. Parrott, "the costs of developing these off-stream storage sites is prohibitive in light of the crops that can be reasonably grown in this area given the average

climate and growing seasons." Consequently attention was focused on the potential of water storage in existing abandoned coal mines of the Roundup area. Record-Tribune readers were led to believe that the Deadman's Basin Water User's plan was to extract water "from the mines which have a direct connection to the river and are filled with spring floods" (February 11, 1987 issue).

Since that time much concern arose when we learned that apparently instead of storing and extracting river water from those abandoned mines, the actual proposal being submitted was to use existing ground water sources in the mines. These concerns were profoundly confirmed when several ranchers and residents traveled to Helena on March 4th to find that Senate Bill 151 had already been passed by that legislative body authorizing a "permit to appropriate ground water in the amount of 13,000 acre feet annually as requested by the Deadman's Basin Water User's Association. Nothing in this Bill (see attached copy, SB 151-please print for readers) made reference to or even inferred that the water extraction was to come from storage of Musselshell River water. The language of this legislation was then clearly "to appropriate ground water," which in effect would constitute a new water right and source in the amount of 13,000 acre feet annually to come from the Musselshell County ground water sources. On the same date SB 151 came before a Committee of the Montana House of Representatives at which time we voiced our objections to the legislation as proposed.

Why are we concerned about legislation which will permit the extraction of 13,000 acre feet annually from Musselshell County ground water supply? At first glance, the pumping of existing water from abandoned mines may appear to be of no consequence as to effect upon local water supply. If you accept Mr. Parrott's "fact" as claimed in the Record-Tribune of March 4th that "historical data on wells and springs in and around the mine area have shown no effect on water tables, one way or the

other, prior to, during or after mining and pumping operations" as indisputable, you may agree. We do not believe that this claim can be established. In fact, we have been advised by old time residents of the County that the long term effect of pumping and wasting this ground water into the Musselshell did indeed change the flow of various springs and wells in the nearby watersheds. In fact, to claim that long term extraction of substantially high ground water quantities from the coal mining areas will have no adverse effect on surrounding water supply wells and springs is quite contrary to simple principles of ground water hydrology which everyone can logically understand. Residents of the County are well aware that climatic trends of considerable duration such as an extensive drought period are directly reflected in the varying supply of water from various wells and springs. Dropping water tables (elevation of the water at the source) are the inevitable result of extended drought conditions or excessive extraction from the water supply basin. Upstream (underground) water supply will also diminish as increased flow through existing aquifers result from excessive pumping in lower water basins.

Perhaps the easiest way to understand the amount of groundwater proposed to be pumped from the Roundup basin area is to describe the quantity of acre feet in simple terms. An acre foot is 43,560 cubic feet or approximately 326,000 gallons. Thus, 13,000 acre feet annually would be more than enough water to cover two sections of land (1280 A.) to a depth of 10 feet. Relative to small water wells pumping continuously at the rate of 10 gallons per minute (gpm), 24 hours a day, 365 days a year, the equivalent of 805 wells.

Ranchers and other residents of the County who depend on limited water supplies of existing wells and springs have a legitimate and real reason to be concerned about the long range effect of large scale extraction of ground water from the Musselshell County basin. We have no surface storage basins for reserve to augment our supply. Our only source is ground water which is already limited by existing inadequate natural underground storage areas, varying climatic conditions and continuing growth of the area.

In perspective, we have considerable rational reason to believe that implementation of a project to extract large quantities of existing ground water (rather than storing and extracting available river water) from the abandoned coal mine areas will diminish and eventually deplete much of the limited natural ground water supply of adjacent Musselshell County drainage areas to the detriment of many ranchers and other residents.

We believe that we and others like us comprise the substantial majority of City and County residents, the property owners and taxpayers, and economic business contributors of all Musselshell County. We have and will continue to devote much of our time and talent to any viable endeavor that will contribute to improved progress of the community including good water supply improvements whenever possible. Such goals should be reasonable, realistic and fair to all involved or affected by the work.

LOWELL RATHBUN, NICK T. RATHS, ED SPIDEL, KELLY STEPHENSON, VIC STEPHENSON

EXHIBIT NO. 4

DATE 2/15/89

CL. NO. SB 390

NAME: Vergil Jones

ADDRESS: #9 Placer Dr Roundup

PHONE: 323 - 1535

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 390

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS: This bill helps^{"so"} irrigators at the expense of over 400 home owners in the area with wells.

The wells of the homeowners are registered by law and use ground water.

Irrigators have rights to surface water.

Please do not let this bill pass

Deadmans should better allocate the water that is theirs.

NAME: Robert LeeDATE: 2/15/89BILL NO. SB 390ADDRESS: 21A Bundy Ste LARINA, MontPHONE: 667-2230

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: Senate Bill 390DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: The burden of Proof as to the harm that can be done by this project is being placed upon those that will be harmed while the question of liability for the project remain unresolved if not being placed upon the residences of two countries while it will only benefit a few.

the Department of Natural Resources seems to be a bias agency to conatrol this project in not investigating the harm that can be done before proceeding.

it should not be extended.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT NO. 6

NAME: Kelly Stephenson

DATE: 2-15-89

BILL NO. SB390

ADDRESS: 519 4th W. Roundup, Mont.

PHONE: 328-2477

REPRESENTING WHOM? P.O.W.E.R

APPEARING ON WHICH PROPOSAL: S.B. 390

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Opposed to any bill that will use
groundwater for any purpose other than
Residential or livestock in eastern Montana.
Also opposed to any belief that abandoned mine
workings could serve reliable storage area for
water.

Would like 10 day extension for written comments
on this. We were not notified of this hearing in
time.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying

EXHIBIT NO. 11.)

EX 7

DATE

2/15/89

BILL NO.

SB 390

DATE:

2-15-89

NAME: Toyce EgelerADDRESS: 3286 Hwy. 87 S. Roundup, MT. 59072PHONE: 323-1137REPRESENTING WHOM? my family, P.O.W.F.R.APPEARING ON WHICH PROPOSAL: SB 390DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENT: I oppose SB 390 because I have reasons to believe any pumping from the abandoned coal mines would cause hardships to over 300 families in the Bull Mountains. Adverse effects from pumping would cause irreparable problems of wells drying up in the surrounding area and over 300 families would be facing drastic devaluation of their property. The economy of Musselshell County has been boosted by small tract developing ~~by~~ by tax paying citizens who largely commute to jobs outside of Roundup. Faced with water shortages or dry wells and having paid more for land than it would be valued at under these circumstances, what are all we people living in this area going to do if our already fragile water supply is harmed or lost due to pumping for irrigation? PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

I feel there are better and more sure means of providing water for irrigation without tampering with pumping mines and creating worse problems for families and the economy of Musselshell County.

(This sheet to be used by those testifying on)

EXHIBIT NO. 11.1 EX 8

DATE 2/15/89

BILL NO. SB 390

DATE: 2-15-89

NAME: DONA Adams

ADDRESS: 16 Aspen Rd Roundup Mt. 59072

PHONE: 323-3289

REPRESENTING WHOM? My family

APPEARING ON WHICH PROPOSAL: 380

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT:

In numbers alone more people
are against pumping water from
abandoned mines in musselshell Co.
~~that live in Musselshell Co.~~

Where drought is effecting already
fragile economy - Timing is absolutely
frightening to families in Ball Mountain

Everything should have an order
possibly take care of existing irrigation
water available. possibly use water measuring device

Quality of water is questionable
Use available monies on project you know to be sound

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

117

(This sheet to be used by those testifying on a bill)

EXHIBIT NO. 9

DATE 2/15/89

NAME: Willa Dale Evans

BILL NO. SB 390
DATE: 2/15/89

ADDRESS: 4221 Hwy 87 So Rendlesham, MA 59072

PHONE: (406) 323-1677

REPRESENTING WHOM? Self and P. D. R. E. R.

APPEARING ON WHICH PROPOSAL: SB 390

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT: I join my neighbors in opposing this bill, as past pumping ^{of over amount} from the mine from 1922 to 1946 resulted in identifiable depletion in area springs and wells. I lived in Klein from 1930 through 1939 and experienced scarcity of water supply in my well. I own land, a home, and water rights in the immediate area, all of which would be adversely affected by this as the foreseeable future. Participation 20 yrs. We need a time extension to get our members' participation in, having had no advance notice

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE AGRICULTURE

EXHIBIT NO. 10

DATE 3/15/29

BILL NO. SB 386

Mosher

We are in support of SB 386. ~~At present~~
~~of the~~ The Legislature and the
 Governor should be kept ~~kept~~ informed
 as to all the workings of the state water plan
 as this bill spells out and those two identities
 should have the ability for input to the water plan.
 We ask that you vote yes on this bill.

opponents - Stockgrowers - Farm Bureau - Uita
 opponents



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

SENATE AGRICULTURE

EXHIBIT NO. 11

2/15/89

BILL NO. SB 386

BILL # SB 386 ; TESTIMONY BY: Lorna Frank
DATE Feb. 15, 1989 ; SUPPORT Yes ; OPPOSE _____

Mr. Chairman, members of the committee, for the record my name is Lorna Frank, representing 3600 Montana Farm Bureau members.

Farm Bureau supports SB 386, giving the Legislature or the Governor power to revise the State Water Plan. We feel this is one more way for the people of Montana to have some input into the State Water Plan. Perhaps the issue of water storage would have been addressed in the current water plan, if the Legislature or the Governor would of had this power in the begining.

We urge your support of SB 386.

SIGNED: Lorna Frank

SENATE AGRICULTURE

EXHIBIT NO. 12
DATE 2/15/89
BILL NO. SB 386

_____ SB386 _____ Senator Galt _____ Feb. 15, 1989 _____

Support _____ Oppose _____ X _____ Amend _____

_____ Montana Water Resources Association _____

_____ Jo Brunner, Executive Secretary _____

Mr. Chairman, members of the Committee, the Montana Water Resources Association reluctantly rises in opposition to Senate Bill 386.

Our opposition is not with the general changes within the bill, including the report to the Legislature indicated on page 2, lines 20.

Our opposition is with paragraph 4, line 2 on page 3 which states , or the Governor may revise the state water plan.

The Legislature, may, according to this revision, revise the state water plan presented to them, by joint resolution, indicating that both houses will agree to a resolution and then it will go before both houses for approval.

However, on line 2, the Governor may just revise the state water plan. We are not sure, by the wording, whether or not he has to even have Board of Natural Resources approval, once his revision is accomplished, but we have to assume from previous law, that he would.

The Montana Water Resources Association does not believe that the Governor, whoever he may be, should have such wide sweeping authority to undo in one sweep, all the work that has been accomplished throughout the time frame for any given subject under consideration for the State Water Plan.

According to the early paragraphs of this law, and proposed amendments, not only the department, but the public will have had a say in the material presented to the Legislature. Should a Governor disapprove of any of it, this bill would allow him to revise any decisions made previously by any or all of those involved.

Montana Water Resources Association opposes SB386 and asks that you do not concur.

Ex. #13

2/15/89

SB 416

Mosher

2-15-89 Mts. Jackgrowers & cattle homes

The support SB 416 because we see the
passionate need to allow people to file these late claims
within the law. ~~Adding that's time just~~
~~life to~~ Some people who

purchased property during these years mentioned
in the bill have found that ^{some} water claims
were not properly filed and need this bill to
straighten the situations out. We realize
that the time can not be extended continually
but we do think there is ~~a~~ good reason
to pass this bill ~~to~~ in an effort to help these
claimants.

EXHIBIT NO. 13
DATE 2/15
BILL NO. SB 416

~~_____~~

Sen. Agric.

Ex. #14

2/15/89

SB 416

PS

Anderson

The water rights this bill is intended to rebut are not abandoned ditches. They have been used as always before Apr. 30, 1982 and continue since.

In view of the situation where the user of this water has failed to file claim by deadline of Apr. 30, 1982 the ditch or water right has been presumed to be abandoned, as provided in Sec. 85-2-226.

This bill amends Sec. 85-2-226 and sets up a procedure to follow where a factual basis for the water court to consider to establish the rebuttal of the presumption of the abandonment.

I think this is a fair bill which gives people an opportunity to claim their water right as is recognized and confirmed by Montana's Constitution.

Closing remarks

I understand there are approx 3000 or more instances where ranchmen or farmers have failed to ^{file} make claim by Apr 30 - 1982.

In most of these cases people have been innocent in not realizing their claim filing was a must.

Many did not pay enough attention to what was said in the news media e.t.c. - Instances of property in process of sale from one owner to another and each dependent on the other to file.

Some were in process of being probated. Constitution is clear as to the protection of water rights. Court actions would perhaps be a way to prove your claim but costly.

Comment on Constitution Provision

SENATE AGRICULTURE

EXHIBIT NO. 121

DATE 2/15

PL. NO. SB 4116

PS 2

EXHIBIT NO. EX 15
DATE 2/15/89
DATE FILED NO. 5B416

NAME: Jeff Walker

ADDRESS: Box 81 Glen, MT 59732

PHONE: 406-835-2731

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 416

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: The law as currently written presumes that our water users are perfect. This is unrealistic. Since no confirmation of filings were sent there was no opportunity to detect mistakes until too late & when no chance to remedy mistakes. This is not the way we treat people neighbors or strangers. Even criminals are given a chance to remedy their mistakes. ~~If~~ mistakes in filing are all ~~remediable~~ amendable but a mistake of missing a filing punishes you for life with no recourse. It goes beyond this and punishes your sons and daughters and their sons a daughter forever!

Presumptions and conclusions are opposites. Conclusion is arrived at after facts are gathered. Without facts its a presumption. Presumptions are unfortunate at least they should be rebuttable.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

To support the current wording throws away the good-faith basis of our laws. To support "rebuttable" sons we are all human and that at least our opportunity to correct our imperfection is possible. It best makes an accurate inventory possible.

Ducane Calvin for
Huntley Project Irrigation District;
Before the Senate Committee on Ag., 2-15-89

SB432 and amendments.

We support this bill on the basis of the following three items;

1. Three clarifications with regard to ownership of "irrigated" lands as a part of the qualifications for a Commissioner. This will make the qualification consistent with other areas of the law.

2. The appointment of commissioners to fill vacancies in an irrigation district board is currently done by the district courts. We feel that this is costly, inefficient and time consuming. It also places an undue burden on the court system.

3. District involvement in printing and collecting assessments. It is my understanding that this may be permitted under other Titles of the law. We support clarifying this opportunity this action within Title 85. This could effectively reduce the immediate workload for the Counties and substantially reduce conflicts within the districts.

Amendments to Senate Bill No. 432
First Reading CopyRequested by Senator Bengtson
For the Senate Committee on Agriculture

February 15, 1989

1. Page 1, line 19.
Following: "district"
Insert: "the district"
2. Page 1, line 20.
Following: "which-the"
Insert: "county in which the"
3. Page 1, line 21.
Following: "thereof,"
Insert: "or some portion of the division"

COMMITTEE ON

DATE

2/15/89
1983

Agriculture

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Vergil Jones	Self	390		X
Don E. Belcher	Dead Man's Basin	390	X	
Doug Parrott	" " "	390	X	
Walter Taylor	Deadman's Basin	390	X	
Vivian Nole Evans	Self & POWER.	390		X
Dona Adams	Self	390		X
Joyce Egeler	Self	390		X
Galvin Stephenson	Self - P.O.W.E.R.	390		X
Shirley Parrott	Lower Musselshell C. Dist	390	X	
Robert Lee	Self	390		X
Ducane Calvin	Huntley Project Inc. D.	432	X	
Mary A. Porter	Self	111	X	
John Hoyt	Self	111	✓	
Ed Steinmetz	Montana Water Court			
BYRON BAYERS	SELF	SB416	X	
Sharon Engle	Self	SB416	X	
JERRY Engle	Self	SB416	X	
Jeff Brown	Mines	SB386		X
Jeff Walker	Self	SB414	X	
J.C. Gilbert III	Self	SB414	X	
John H. Anderson	Spanner	SB416	X	
Mark Josephson	Self	SB416	X	
Steve Allen	Self	SB411	X	
Murray Miller	MT Bur. of Mines & Geology	SB380	X	
Wayne Van Voast	MT Bur Mines & Geol	SB390		
George CHERNSKI	ALLIANCE For Mont. Water	SB386		AMEND

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 2/15 Bill No. SB265 Time _____

NAME	YES	NO
Senator Hubert Abrams #8		
Senator Gary Aklestad #1	✓	
Senator Esther Bengtson #27	✓	
Senator Gerry Devlin #47		
Senator Jack Galt #46	✓	
Senator Greg Jergeson #48		✓
Senator Gene Thayer #23	✓	
Senator Bob Williams #39		✓
Senator Tom Beck #44	✓	

Jaelene Johnson
Secretary

Tom Beck
Chairman

Motion: DO PASS SB265