

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on March 1, 1989, at  
1:00 P.M.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator Gary  
Aklestad, Senator Esther Bengtson, Senator Gerry  
Devlin, Senator Greg Jergeson, Senator Gene Thayer,  
Senator Bob Williams, and Senator Tom Beck

Members Excused: None

Members Absent: Senator Jack Galt

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 461

Presentation and Opening Statement by Sponsor:

Representative Ream, House District 54, stated "This is  
an act to encourage water use efficiency projects or  
programs under the Montana Water Development Program.  
There has been projects funded by the Montana Water  
Development Program such as fixing irrigation districts  
and repairing ditches."

List of Testifying Proponents and What Group They Represent:

Andrew C. Neal representing the Montana Farmers Union  
and the Montana Farm Bureau  
Jo Brunner representing the Water Resources Bureau  
George Ochenski representing the Alliance for Montana  
Water  
Carol Mosher representing the Montana Stockgrowers  
Association and the Montana CattleWomen  
Association  
Stan Bradshaw representing Trout Unlimited

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Andrew Neal - See exhibit 1

Jo Brunner - "We support this bill fully. It is beneficial to our members because many of our members are irrigators. It is beneficial for us to save water because we are saving money."

George Ochenski - "I wish to go on record as supporting HB 461."

Carol Mosher - "We would like to go on record as support of this bill."

Stan Bradshaw - "We just like you to support the bill."

Questions From Committee Members: None

Closing by Sponsor: Representative Ream closed.

## DISPOSITION OF HOUSE BILL 461

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Jergeson moved HB 461 TO BE CONCURRED IN. The motion carried unanimously.

Senator Jergeson was assigned to carry HB 461.

## HEARING ON HOUSE BILL 584

Presentation and Opening Statement by Sponsor:

Representative Ream, House District 54, expressed "HB 584 addresses the situation where permits are filed for unappropriated water. Under the current statute, the people that have appropriated rights can file objections. HB 584 states when there is a situation where the quality of an appropriators water supply is impacted, (one) may file an objection. (2) When the proposed water use will interfere unreasonably with the ability of the person to comply with the requirements of a water quality discharge permit, (one) may also file an objection. It doesn't mean the objection is going to go anywhere. It just says you have the right to file an objection."

List of Testifying Proponents and What Group They Represent:

Stan Bradshaw representing Trout Unlimited  
George Ochenski representing Alliance for Montana Water  
Jim Jensen representing the Montana Environment  
Association

List of Testifying Opponents and What Group They Represent:

Jo Brunner representing the Montana Resources  
Association, the Montana Stockgrowers, and the  
Montana Farm Bureau

Testimony:

Proponents:

Stan Bradshaw - "We would like to go on record in support of this bill. This should not affect existing water rights. What the intent of this bill? Does this address the limit of discharge permit holders find themselves in when additional permits are issued? We should give them a chance to voice their concerns about the impact of the new permit law."

George Ochenski - "We would like to go on record supporting the bill for the same reasons. I think it is in times when we have low water and great use of that water, there is a danger that those people who rely on water quality have an interest at stake. As the levels of water in the river go down, the pollutants of the water are more concentrated. We found a very nasty situation last summer in Missoula. Because the city was discharging its municipal waste into the Clark Fork, there was very little water coming down the Clark Fork to dilute that waste. Under the Federal Water Quality Act, the city of Missoula could have been sued \$10,000 a day plus costs to make them shut-off that discharge. Water quality, indeed, is very important of issuing new permits. This consideration needs to be taken into account."

Jim Jensen - "We stand in support of the bill."

Testimony:

Opponents:

Jo Brunner - See exhibit 2.

Questions From Committee Members: Senator Williams - "What would Missoula do if they had to shut down their facility?" George Ochenski - "That was faced last

summer. They didn't know what to do, if they were put in that position."

Senator Williams - "There must be some plan?" George Ochenski - "What do you do when you shut down the municipal discharge plan? You can't tell people to quite flushing, I don't think. It's bad situation. Under the Federal Water Quality Act, literally any citizen could have hired the best attorney they could find, and take those people to court to stop that."

Senator Williams - "Do you know of any case that has happened?" George Ochenski - "No, I don't. I have never researched that specifically."

Senator Beck - "You are saying title 75, chapter 5, part 4, is 4,000 acres larger. What are you saying?" George Ochenski - "I'm saying that on page 3, line 12, which is sub-section two--I don't have a copy of Ms. Brunner's testimony. I think she read those protections are for a major permit being issued, not minor."

Senator Thayer - "I want to ask Jo Brunner to reply on this." Jo Brunner - "The sections that I pointed out, are the sections that are in the law, 85-308 and 85-311 and I quoted it out of those sections."

Senator Jergeson - "Would you have any problems with moving sub-section (g)? The permits under 4,000 acre feet may not cause a problem for the discharge permits. So much as those moving that particular sub-section two so that it would be a consideration for the permit application." Representative Ream - "We are talking about drought years. I guess it depends on the nature of the permit or permits. I guess, I feel there should be a procedure or process by which affected parties can object. That's all we are asking for here. It doesn't mean their objection is necessarily going to be listened to, but someone just has the right to object."

Senator Beck - "What do you figure to gain with this bill?" George Ochenski - "To make it very clear what some people think is implied. If a permit is going to adversely affect any use of the water that is based on quality, then you have a right to object. It doesn't mean they are going to be listened to and it doesn't say it automatically stops the permit being issued. It says they have a right to object...I will provide the committee with a list of discharge permits and municipalities and industries across the state."

Closing by Sponsor: Representative Ream closed.

HEARING ON HOUSE JOINT RESOLUTION 22

Presentation and Opening Statement by Sponsor:

Representative Ream, House District 54, stated "HJR 22 tries to encourage Congress and the agencies to pay more attention to, and authorize use of Pick-Sloan funds to benefit some of the upstream states, particularly Montana. There is a substantial amount of money available under the Pick-Sloan program and we have not benefited from that. We do have some of the old Pick-Sloan projects in Montana that need rehabilitation. This resolution urges Congress to authorized the use of the Pick-Sloan program." See exhibit 3 for further testimony.

List of Testifying Proponents and What Group They Represent:

Gary Fritz representing the Department of Natural Resources  
Andrew C. Neal representing the Montana Farm Bureau and the Montana Farmers Union  
Jo Brunner representing the Montana Water Resources Association and WIFE

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Gary Fritz - "We support the resolution and it is a product of the State Water Plan...One of the issues that came out of the Water Plan, is a lot of irrigations systems around the state, were built many years ago and those irrigations systems are in need of repair. This resolution would put Montana on record supporting the use of Pick-Sloan funds for the use of rehabilitating those aging irrigation systems that need rehabilitation...The way the Pick-Sloan funding works. The Bureau of Reclamation does the farm budget and derives the amount of money that irrigators can afford to pay. If the project cost more than that, then the Pick-Sloan Fund will pick up that balance...We are asking that the resolution to be amended to included the use of Pick-Sloan Basin Power for three specific projects in the lower Yellowstone. We have been working on these projects with the Bureau of Reclamation for several years now. We certainly support this resolution."

Andrew C. Neal - See exhibit 4 for testimony.

Jo Brunner - "We certainly do support this bill. This would be very beneficial to our members to use Pick-Sloan Funds. We would like to see you include the amendment that Mr. Fritz just spoke about. We urge you to support this resolution."

Questions From Committee Members: Senator Jergeson - "I haven't seen the amendment that Senator Abrams is going to recommend an adoption of. Does those amendments dilute, in anyway, the pressure to get the Milk River project done?" Gary Fritz - "No, it doesn't."

Closing by Sponsor: Representative Ream closed.

DISPOSITION OF HOUSE JOINT RESOLUTION 22

Discussion: None

Amendments and Votes: Senator Thayer moved to amend HJR 22 (HJR002201.ADS). The motion carried unanimously.

Recommendation and Vote: Senator Thayer moved HJR 22 TO BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Senator Yellowtail was assigned to carry HJR 22.

ADJOURNMENT

Adjournment At: 2:17 P.M.

  
SENATOR TOM BECK, Chairman

TB/jj

ROLL CALL

AGRICULTURE COMMITTEE

DATE 3/1/89

51st LEGISLATIVE SESSION 1989

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

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 1, 1989

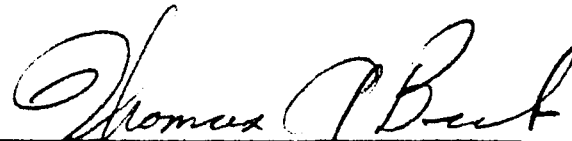
MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 461 (third reading copy -- blue), respectfully report that HB 461 be concurred in.

Sponsor: Ream (Jergenson)

BE CONCURRED IN

Signed:



Thomas A. Beck, Chairman



SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:


We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HJR 22 (third reading copy -- blue), respectfully report that HJR 22 be amended and as so amended be concurred in:

Sponsor: Ream (Yellowtail)

1. Title, line 8.  
Following: "STATES"  
Insert: "AND PICK-SLOAN MISSOURI BASIN POWER FOR IRRIGATION PUMPING FOR IRRIGATION PROJECTS IN THE UPPER MISSOURI BASIN STATES"
2. Page 3, line 1.  
Following: "projects"  
Insert: "and the use of Pick-Sloan Missouri Basin Plan electric power for irrigation pumping on irrigation projects"
3. Page 3, line 11.  
Following: line 10  
Insert: "BE IT FURTHER RESOLVED, that the United States Congress is urged to authorize the use of Pick-Sloan Missouri Basin Plan power for irrigation pumping for irrigation projects located in the Yellowstone River Basin in Montana."

AND AS AMENDED BE CONCURRED IN

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

  
Thomas A. Beck, Chairman



**MONTANA FARM BUREAU FEDERATION NO.**

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

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 3/1/89

HB 461

BILL # HB 461 ; TESTIMONY BY: Andrew C. Neal  
DATE 3/1/89 ; SUPPORT yes ; OPPOSE \_\_\_\_\_

Mr. Chairman, members of the Committee, for the record, my name is Andrew C. Neal, Executive Vice-President of the Montana Farm Bureau. I am here today representing over 3500 Farm Bureau members from all across the state.

Mr. Chairman, Farm Bureau recognizes that Water is one of our most vital resources. We encourage continued development of water resources including construction of additional water storage facilities. It has always been our policy to encourage projects that improve water use efficiency, and the maintenance of those projects that are already in use. We must rehabilitate and up-grade our older, less efficient systems, as well as strive to make use of the most cost-effective projects that have already been approved.

Farm Bureau supports passage of HB 461.

Thank you.

SIGNED: \_\_\_\_\_

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 3/1/89

BILL NO. HB 584

MONTANA WATER RESOURCES ASSOCIATION

HB584

REAM

MARCH 1, 1989

MONTANA WATER RESOURCES ASSOCIATION,

JO BRUNNER EXECUTIVE SECRETARY

SUPPORT

OPPOSE

X

AMEND

Mr. Chairmen, the Montana Water Resources Association is in firm opposition to House Bill 584.

Under this bill, any permit request, on any stream reach would be subject to its effect on water quality for any domestic use on all that stream reach and would hinge on its effect on discharge permits within the stream reach.

We do not argue that water quality is not of great importance, we do argue that such a sweeping law, as this would be, would in effect, maintain existing instream flows by not allowing permits for water use on a stream capable of carrying further permits.

The existing law for both objections, Section 1, page 1 lines 19 through 25 and line 1 on page 2, and for the issuance of a permit, Section 2, pages 2 lines 22 through 25 and page 3 lines 1 through 4, is very comprehensive in the protection of existing right and use holders.

It is the opinion of the MWRA that there need not be further qualifications written into a law that already covers the situations seemingly addressed within this bill. MCA 85-2-311 paragraph 1, (b) states that the water rights of a prior appropriator will not be effected--(c) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

Paragraph (2) sub (a) states that the rights of a prior appropriator will not be effected.

Sub (c) (i) says that substantial credible evidence shall be based on consideration of the following: which includes municipal water supplies, irrigation systems and minimum streamflows for the protection of existing water rights.

(iii) says the effects on the quantity and the quality of water for existing beneficial uses in the source of supply must be considered.

The amendments to the law contained in this bill would stop the issuance of permits on any given stream, and again, have the effect of maintaining instream flow. We ask that you do not pass HB 584 out of committee.

## HJR 22

## OVERVIEW

In 1944 Congress passed the Flood Control Act. Incorporated into this act was the Pick-Sloan Missouri Basin Plan. The impetus for this plan came largely from the effects of the droughts of the 1930's and the floods of the 1940's.

The Pick-Sloan Plan included over 100 dams and reservoirs on the upper Missouri and it's tributaries. The plan was to provide water for irrigation projects, municipalities, industries, and recreation, as well as for navigation, flood control, and hydroelectric power.

The O'Mahoney-Miliken Amendment later prioritized consumptive uses over those for navigation. Further, this amendment insured the upper basin states, (Montana, Wyoming, North and South Dakota), that their sacrifice of productive lands, (due to dam construction and flooding), for the benefit of the lower states, would be compensated for by full development of other potentialities in the upper basin states.

HJR 22 seeks to urge Congress to authorize the use of Pick-Sloan Missouri Basin Funds for rehabilitating Montana irrigation project facilities. Further, it seeks to implement the Montana State Water Plan, by obtaining Pick-Sloan Grants and any matching funds for Montana.



**MONTANA FARM BUREAU FEDERATION**

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STATE AGRICULTURE

EXHIBIT NO. 4

DATE 3/1/89

BILL NO. HJR 22

BILL # HJR 22 ; TESTIMONY BY: Andrew C. Neal  
DATE 3/1/89 ; SUPPORT yes ; OPPOSE \_\_\_\_\_

Mr. Chairman, members of the Committee, for the record, my name is Andy Neal, and I represent the Montana Farm Bureau.

The Montana Farm Bureau supports HJR 22 and the use of Pick-Sloan Funds for rehabilitation of irrigation projects in the State of Montana.

Farm Bureau believes that the enhancement and improvement of water projects provides for future use of water in this state by ALL Montanans, and will help to alleviate problems, such as last year's drought, by storing and slowing down water for many applications in Montana.

I thank you for the opportunity to testify before this Committee today.

SIGNED: \_\_\_\_\_

