

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on March 17, 1989, at  
1:00 p.m.

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 413

Discussion: Doug Sternberg explains the amendments to HB 413. See exhibit 1.

Senator Aklestad-"Was there something brought up about a fiscal note? Was there one prepared for it?" Senator Beck-"I don't think there was."

Representative Westlake-"We requested that to be looked at when the EQC drew this up in the first place. They said no there is no need of a fiscal note."

Amendments and Votes: Senator Devlin moved the amendments to HB 413; the motion was seconded by Senator Aklestad. The motion carried unanimously.

Recommendation and Vote: Senator Thayer moved HB 413 BE CONCURRED IN AS AMENDED; the motion was seconded by Senator Aklestad. The motion carried unanimously. Senator Boylan was assigned to carry the bill.

DISPOSITION OF HOUSE BILL 542

Discussion: Doug Sternberg explained the amendments to HB 542. See exhibit 2.

Senator Galt wanted to know the definitions of "clear and convincing" and "substantial credible". Don MacIntyre-- "The burden of proof is by a standard either clear and convincing or substantial credible. You're saying that burden remains on that party throughout the process. In law there are basically three standards. The standards are preponderance of evidence, clear and convincing evidence, and beyond a reasonable doubt. Beyond a reasonable doubt is saved for criminal cases. The basic standard in courtroom work is preponderance of evidence. Clear and convincing is saved for special cases. Substantial credible is generally a reviewing standard. For example, after a trial you go to the Montana Supreme Court, the Montana Supreme Court would look at the record to see whether there was substantial evidence in the record to uphold the verdict. If they thought there was they wouldn't do it. The term substantial credible has snuck in, in my opinion, to replace preponderance of the evidence. Clear and convincing is a much higher standard. Clear and convincing is the words indicating the evidence is very strong evidence. You are convinced as a reasonable person that the fact that should be believed. When you are generally talking about substantial credible, substantial evidence can be made by one witness. There could be seven witnesses on the other side that are arguing the other side of the issue. Substantial evidence can be produced by the one witness."

Amendments and Votes: Senator Thayer move the amendment to HB 542; the motion was seconded by Senator Aklestad. The motion carried with Senator Bengtson voting no.

Recommendation and Vote: Senator Aklestad moved HB 542 BE CONCURRED AS AMENDED; Senator Devlin seconded the motion. The motion carried unanimously.

#### DISPOSITION OF HOUSE BILL 399

Discussion: Ron Waterman explained the proposed amendment on page 5, line 8.

Senator Aklestad--"The existing water rights that burden of proof would have to be placed on the new appropriator, does that...?"

Senator Beck--"That's the way I understand it."

Senator Aklestad--"Is that right, Mr. Waterman? The new applicant would have to bear the burden of proof that

there is not going to be an adverse affect?"

Ron Waterman-"As the language now reads that would be another element that the applicant still has to prove. That is if there is not an adverse affect. However, the experience I have seen is that what happens, that burden gets picked up on by the objector, simply because the objector usually has the hydrological information that's available as to what will happen with respect to a new use application. The way it reads now, the burden of proof is on the applicant to show that there is no adverse consequence that you're approving a negative. What I have seen before the Department of Natural Resources has been that type of proof is usually satisfied quickly; there is water available for appropriation and we don't think there is going to be any adverse effect upon this hearing. Then the burden of proof shifts. Those objectors who then come forward with the evidence showing 'Yes, indeed there will be an adverse effect on the right'."

Senator Aklestad-"The proposed amendments would do what?"

Senator Beck-"It would get rid of on page 5, line 8, eliminate at 'the proposed point of diversion'. Am I correct in saying?"

Senator Aklestad-"The question is, is the policy the department has been following they have determined at the proposed point of diversion, that's the policy what are you going to do now? If it's taken out?"

Gary Fritz-"I think it's a very clear policy choice. If you leave the bill as it is, you go ahead and take a close look at whether permits ought to be issued or not. You change the bill the way the farm bureau wants you to, then its going to be much more difficult for people to get permits for new uses. That's the way we...542 and 399 combined, the way its amended you're going to make it extremely difficult for people to get permits for new uses in the State of Montana. That's what I'm saying. It's a clear policy choice that you have to make on 542 and 399. That's the bottom line difference."

Senator Aklestad-"That clarifies for me and I guess I agree with that. I think we have a situation in the state where we are the department and we are over-appropriating water, which I think is going to lead us into litigation. I think we should strike the language."

Senator Bengtson-"Why is there a need for flexibility? Is it important in the state as we look to people that need water?"

Gary Fritz-"The real situation that we're faced with in the state, our large downstream facilities have serious consequences on people upstream being able to use water. The question in this bill, someone would have to prove that waters are or are not totally appropriated by that downstream hydropower right or can an irrigator that wants to irrigate 80 acres, show that their water is available right at his point of diversion and then he still has to answer the question whether there is an adverse impact to that down stream power right. That's the real-life serious implication that's involved in this bill. You want to try to encourage new development or are you going to block the water up in this state solely for those who have existing permits? I'm not saying that's the question you are being presented to you. If you change this bill the way the opponents would like you to do, that's a step in that direction you are taking. Those who have the water rights it will be easy for them to keep them. Those who don't it will be difficult."

Senator Aklestad-"I agree. I think it's going to be more difficult. I think it should be more difficult, but it is in no way locking out new development. We have a bill we passed the other day that put primarily the same language in; it passed by almost an unanimous vote. We passed 'clear and convincing'--it's underground water we were dealing with. It's far more restrictive than taking the words out of this bill (HB 399)."

Senator Bengtson-"I agree that was a policy change as well. Well, it just doubles the trouble, that's what it does. I'm going to oppose deleting that language. You know times are changing. There has to be a policy decision that there is a sharing. Just like you know I've got mine and its--and what is mine is mine forever. I think there has to be some flexibility. I would reject deleting that language."

Senator Aklestad-"I would like to interject one other point the committee has already taken action on and that was the proposal that came in before this committee to open up the time for them to apply for water. And there was a lot of convincing evidence here that have to do with that but were overrode that, thinking we would just open the floodgates and those people didn't have their application in on time. And we realize that there were

limited amounts of water in these streams for applicants to apply for. I think that's why we voted that particular down. That coincides with what we're trying to accomplish here."

Senator Bengtson-"I think it's diametrically opposed to what the governor wanted in the water policy."

Amendments and Votes: Senator Aklestad moved to amend HB 399 page 5, line 8, on "at the proposed point of diversion". The motion failed with Senator Aklestad and Senator Beck voting yes.

Recommendation and Vote: Senator Thayer moved HB 399 to BE CONCURRED IN; Senator Devlin seconded the motion. The motion carried with Senator Aklestad and Senator Beck voting no. Senator Weeding was assigned to carry the bill.

#### DISPOSITION OF HOUSE BILL 367

Discussion: Doug Sternberg explained the amendments to HB 367. See exhibit 3.

Representative O'Keefe-"The amendments were brought to me by Senator Himsl. The long-range building people thought those amendments ought to go in. The department had no problem with them. I thought they were great."

Amendments and Votes: Senator Jergeson moved to amend HB 367; the motion was seconded by Senator Aklestad. The motion carried.

Recommendation and Vote: Senator Bengtson moved HB 367 BE CONCURRED IN AS AMENDED; Senator Devlin seconded the motion. The motion carried unanimously. Senator Weeding was assigned to carry the bill.

#### DISPOSITION OF HOUSE BILL 477

Discussion: Senator Bengtson explained her amendment. See exhibit 4.

Amendments and Votes: Senator Bengtson moved to amend HB 477. The motion failed with Senator Abrams, Senator Jergeson, and Senator Bengtson voting yes. Senator Thayer, Senator Aklestad, Senator Devlin, Senator Galt, Senator Williams, and Senator Beck voting no.

Recommendation and Vote: Senator Galt moved HB 477 BE CONCURRED IN. The motion carried with Senator

Bengtson, Senator Devlin, and Senator Jergeson voting no. Senator Beck, Senator Thayer, Senator Abrams, Senator Aklestad, Senator Williams, and Senator Galt voting yes. Senator Beck was assigned to carry the bill.

DISPOSITION OF HOUSE BILL 465

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Jergeson moved HB 465 BE CONCURRED IN; the motion was seconded by Senator Devlin. The motion carried unanimously. The bill was assigned to Senator Jergeson.

DISPOSITION OF HOUSE BILL 701

Discussion: Doug Sternberg explained the amendments to HB 701. See exhibit 5.

Senator Beck-"Anyone here from the hail board? Do these include private hail insurance companies too?"

Mike Murphy-"I'm not sure if those (amendments) do include private hail insurance companies or not."

Senator Aklestad-"Who has the obligation to pull the lien after the money, the indebtedness has been satisfied?"

Doug Sternberg-"Generally the creditor."

Senator Aklestad-"Is that in statue right now enough that it is taken care of?"

Doug Sternberg-"I believe so. The creditor is required to give notice when the lien is satisfied."

Cort Harrington-"Under the proposed amendments, the treasurer is required to file the lien release. I have talked to numerous county treasurers around the state, they're not particularly interested in having that additional duty. The process now is, the person comes in to the assessor and arranges to have hail insurance. Then the assessor notifies the treasurer to add that on to the tax bill. Sometimes the assessor files a lien and sometimes they don't, depending on the particular farmer or rancher."

Senator Bengtson-"Whose amendment is this?"

Senator Beck-"The Department of Agriculture."

Amendments and Votes: Senator Thayer moved the amendments to HB 701 (See exhibit 5). The motion passed.

Senator Galt moved the amendments (HB070101.ADS) that concerned the hail board. The motion carried with Senator Thayer and Senator Aklestad voting no.

Recommendation and Vote: Senator Bengtson moved HB 701 BE CONCURRED IN AS AMENDED. The motion passed unanimously. Senator Thayer was assigned to carry the bill.

#### DISPOSITION OF HOUSE BILL 650

Discussion: Doug Sternberg explained the question Senator Jergeson had on the funding, on page 15, "setting up the limitations on what debt could be incurred on behalf of the subdistricts. He requested whether this is cumulative, whether there is 18.75% for the district and then additional 18.75% for subdistrict. Look at the language of subsection (2) 'an irrigation district may not become indebted in any manner for any purpose for any one year in an amount exceeding 18.75% of the assessed valuation of the district, except as provided in subsection (4)'. That appears to me to be the exception to the funding that would be allowed to a district."

Amendments and Votes: None

Recommendation and Vote: Senator Bengtson moved HB 650 BE CONCURRED IN; the motion was second by Senator Aklestad. The motion carried unanimously. Senator Bengtson was assigned to carry the bill.

#### DISPOSITION OF HOUSE BILL 616

Discussion: Senator Jergeson explained some statistics by using some visual techniques. "I think for the industry to blame the state insurance program for a loss of their business is absolute nonsense."

Senator Devlin-"On this wheat and barley crop total values, where did you get those figures?"

Senator Jergeson-"The Montana Department of Agriculture got it for me."

Senator Devlin-"So it doesn't really reflect the amount that was insured?"

Senator Jergeson-"No, it was the bushels produced and the average price."

Senator Devlin-"So you did take into consideration those that didn't insure at all?"

Senator Jergeson-"The disaster program requires for us, next year in order to get our disaster payments we have to buy federal crop insurance. Well, after I have spent 2 or 3 bucks on crop insurance, I'm not going to buy much other insurance. Unless, I've got one hell of a crop sitting out there."

Senator Bengtson-"There must be some interrelationship there, why they wanted to have increased coverage and the state hail insurance and...it's the same for the cost of production, maybe there is something else in there too that they need additional money. There is a reason for wanting increased coverage."

Senator Jergeson-"I think in 1989, whether we pass this bill or not, private insurance premiums are going to go down as the percentage of total premiums are paid in the State of Montana. They're also going to go down in relationship to the value of crop because we all have to take the federal crop insurance. So we're going to reduce our other insurance by that amount."

Senator Bengtson-"So it isn't just the state hail insurance that is in the competition?"

Senator Aklestad-"I don't think this bill is going to pass or fail on the merits of the bill as much as it is on the philosophy whether the state should be in the insurance business and how many of your constituents carry insurance. Why don't we get with the program?"

Amendments and Votes: Senator Thayer moved to amend HB 616 from \$32 to \$28 on dry land; \$56 to \$52 on irrigated land. Senator Aklestad second the motion. A roll call vote was called; Senator Abrams and Senator Williams voted no. The motion carried.

Recommendation and Vote: Senator Williams moved HB 616 BE CONCURRED IN. Senator Thayer entertained a substitute motion to lay HB 616 on the table. A roll call vote was called; Senator Bengtson, Senator Devlin, Senator Galt, and Senator Thayer voting yes. Senator Abrams,



Senator Aklestad, Senator Jergeson, Senator Williams, and Senator Beck voting no. The motion failed.

Senator Williams moved HB 616 BE CONCURRED IN AS AMENDED; the motion was seconded by Senator Abrams. The motion carried with Senator Devlin, Senator Galt, Senator Jergeson and Senator Thayer voting no. Senator Beck, Senator Bengtson, Senator Aklestad, Senator Abrams, and Senator Williams voting yes.

#### DISPOSITION OF HOUSE BILL 655

Discussion: Doug Sternberg explained the amendments to HB 655. See exhibit 6.

Senator Aklestad-"The third amendment, page 3, line 14, inserting "recreation"; it seem like recreation was a concern and I see that was just inserting...I have a note that says take section 5 out or kill the bill. I don't see 5 come out, I see it getting coerced around... Are you satisfied with those amendments?"

Senator Galt-"Yes."

Amendments and Votes: Senator Galt moved to amend HB 655; the motion was seconded by Senator Bengtson. The motion carried.

Recommendation and Vote: Senator Bengtson moved HB 655 BE CONCURRED IN AS AMENDED. The motion carried unanimously. Senator Mazurek was assigned to carry the bill.

#### DISPOSITION OF HOUSE BILL 516

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Bengtson moved HB 516 BE CONCURRED IN. The motion carried. Senator Jenkins was assigned to carry the bill.

#### DISPOSITION OF HOUSE BILL 707

Discussion: Senator Galt explained the amendments to HB 707. See exhibit 10. Senator Jergeson asked Chairman Beck if he could segregate the amendments Senator Galt explained. Chairman Beck agreed to allow the segregation.

Senator Jergeson-"The amendment 37 with the consent of the board when it comes to having the department make a report to the next session of the legislature about the water leasing program. I think as a legislature I want to report whether the board thinks it is appropriate or not."

Senator Galt-"I had a question about that. That could be fixed."

Senator Jergeson-"We might not take that amendment (37) just simply...It requires that the department will report to the legislature."

Senator Galt-"Just scratch out "the department" and insert "board"."

Senator Aklestad-"What's wrong with the existing language?"

Senator Thayer-"The existing language would work. Let's just delete the amendments."

Senator Galt-"No! What I want to do is get the Board involved in this thing. I don't want to see departments in this whole thing."

Doug Sternberg-"So we would strike "department" in two places on line 19 and insert "board"?"

Senator Galt-"Yes."

Senator Jergeson-"I guess I have a bit of a problem with amendments 22 and 23, 24 and 27. I don't know if there is alternative language to be used, but I guess I'm concerned about the concept of I don't want Senator Bengtson to sue me, but if you do I'll pay your attorney's fees. It's almost an invitation, and I'm not sure that we want to invite any extra business going on. I want to maximize the people to protest and defend their rights."

Amendments and Votes: Senator Galt moved to amend HB 707. See exhibit 10. As a substitute motion Senator Jergeson moved to segregate number 37 to read "the board". Questions have been called for. The motion carried.

Senator Jergeson moved to delete amendment number 22.

Senator Aklestad-"Would it be possible to eliminate the last sentence of that and keep the first sentence so the

department will still be responsible for substantial credible evidence? They wouldn't necessarily have to pay legal fees, but they'd still have to have some responsibility as far as proving that there was an adverse (pause)."

Senator Aklestad-"As I understand this, the Department of Fish, Wildlife, and Parks has the responsibility to prove to the board by substantial credible evidence. If we wanted to tighten that up and coincide with the bill we just passed today, we'd say "clear and convincing" but."

Senator Galt-"I'm going to change that. Sooner or later that will be changed."

Senator Aklestad-"My proposal, by leaving the sentence, the Department of Fish, Wildlife, and Parks would have to prove to the board that there is not being an adverse effect to the existing water right. It has nothing to do with the legal."

Senator Beck-"Would you like to propose an amendment?"

Senator Aklestad-"Well, I'm asking Senator Jergeson if he would be open to that?"

Senator Jergeson-"I guess my concern is, there really are problems. I would withdraw my amendment if you were going to offer that as a substitute."

Senator Aklestad-"Ok, I'll offer it as a substitute."

Senator Aklestad-"If he proves that he was adversely affected then he gets his cost; if he doesn't prove then he doesn't get his cost?"

Senator Galt-"That's right."

Senator Devlin-"He's got to successfully object."

Senator Galt-"This is just in the proposal stage."

Senator Aklestad-"I guess my amendment is a happy medium between you (Senator Galt) and (Senator) Jergeson."

Senator Galt-"I guess."

Senator Aklestad moved to amend to HB 707 delete "the department of"...down to "rights" and delete the rest of that. See exhibit 10. The motion failed with Senator Abrams, Senator Bengtson, Senator Thayer,

Senator Williams, Senator Galt voting no.

Senator Galt-"There is a little technical amendment I might put in. Is this the time to do it? On amendment 22, I would like to strike "substantial credible evidence" and put in "according to 85-2-402". I don't know whether it is necessary, but Bob Thompson thought it might be. It concerns the difference between a huge lease like for 4,000 acre feet and 5.5 cubic feet per second. You have to have legislative approval."

Senator Galt moved to amend HB 707 on line 22, strike "substantial credible evidence". The motion carried unanimously.

Senator Jergeson moved to amend HB 707 with the Hammond amendment number 3. See exhibit 9. The motion carried.

Executive action will be taken at a later date.

ADJOURNMENT

Adjournment At: 2:54 p.m.

  
TOM BECK, Chairman

TB/jj

ROLL CALL

AGRICULTURE COMMITTEE

DATE 3/17/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	/		
SENATOR GARY AKLESTAD	/		
SENATOR ESTHER BENGTSON	/		
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

March 20, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 413 (third reading copy -- blue), respectfully report that HB 413 be amended and as so amended be concurred in:

Sponsor: Westlake (Boylan)

1. Title, line 5.

Strike: "REMOVING AUTHORITY OF"

Insert: "ALLOWING"

2. Title, line 6.

Following: "CONSERVATION"

Insert: ", IN CONJUNCTION WITH ONE OR MORE HOLDERS OF VALID WATER RIGHTS IN THE SOURCE,"

3. Title, line 7.

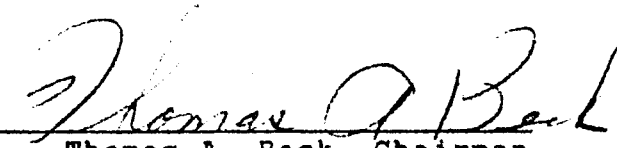
Strike: "MANDATORY"

4. Title, line 9.

Following: "ISSUED;"

Insert: "PROVIDING THAT THE DEPARTMENT MAY BE INCLUDED IN THE APPORTIONMENT OF COSTS IF IT APPLIES FOR APPOINTMENT OF A WATER COMMISSIONER;"

AND AS AMENDED BE CONCURRED IN

Signed: 

Thomas A. Beck, Chairman

3-20-89  
18  
3:55

SENATE STANDING COMMITTEE REPORT

March 17, 1989

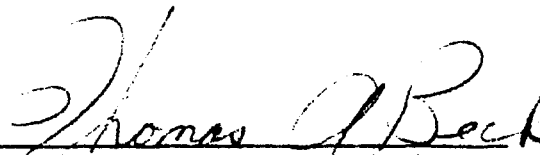
MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 399 (third reading copy -- blue), respectfully report that HB 399 be concurred in.

Sponsor: O'Keefe (Weeding)

BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

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a:a

SENATE STANDING COMMITTEE REPORT

page 1 of 4  
March 20, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 367 (third reading copy -- blue), respectfully report that HB 367 be amended and as so amended be concurred in:

Sponsor: O'Keefe (Weeding)

1. Title, line 11.

Following: "SECURED;"

Insert: "CREATING THE WATER DEVELOPMENT LOAN LOSS RESERVE FUND;"

2. Title, line 12.

Following: "85-1-102,"

Insert: "85-1-603,"

Following: "85-1-604,"

Insert: "85-1-613,"

Following: "85-1-615"

Insert: "85-1-617"

3. Page 7, line 22.

Following: line 21

Insert: "Section 2. Section 85-1-603, MCA, is amended to read:

"85-1-603. Water development debt service fund created -- coal severance tax allocated -- water development loan loss reserve fund created. (1)(a) There is created a water development debt service fund within the debt service fund type established in 17-2-102.

(2) (b) The state pledges and allocates and directs to be credited to the water development debt service fund, as received:

~~(a)~~(i) ~~1%~~ of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of such tax under 15-35-108(1) and (2);

~~(b)~~(ii) any principal and accrued interest under 85-1-613(3)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

~~(c)~~(iii) all interest income earned on proceeds of water development bonds; ~~and~~

~~(d)~~(iv) revenue or money otherwise required to be paid into the water development state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the water development loan loss reserve fund as the result of a loan loss.



(2)(a) There is created a water development loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the water development loan loss reserve fund all accrued interest under 85-1-613(3)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the water development loan loss reserve fund must be transferred to the water development debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

Renumber: subsequent section

4. Page 10, line 16.

Following: line 15

Insert: " Section 4. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) No loan for a water development project or activity may be made from the water development state special revenue account or water development account that exceeds the least of \$200,000, 10% of the estimated total funds potentially available for loans in the water development state special revenue account and water development account in the biennium in which the loan will be made, or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) The period for repayment of loans may not exceed 30 years.

(3) The board shall from time to time establish the interest rate at which loans may be made under this part that is sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs."

Renumber: subsequent section

5. Page 12, line 6.

Following: line 5

Insert: "Section 6. Section 85-1-617, MCA, is amended to read:

"85-1-617. Issuing bonds. (1) When authorized by the legislature, and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state

in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development debt service fund will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, notes, and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds and notes issued and sold.

(5) There is created a water development account within the state special revenue fund established in 17-2-102.

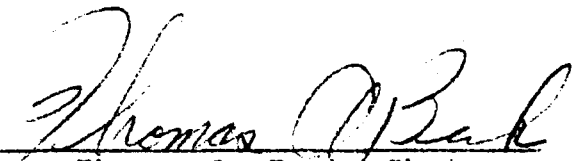
(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development debt service fund and the water development loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the water development debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Renumber: subsequent sections

AND AS AMENDED BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

W.C.  
3/20/89  
2: p.m.

SENATE STANDING COMMITTEE REPORT

March 17, 1989

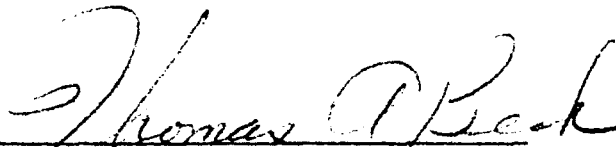
MR. PRESIDENT,

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 477 (third reading copy -- blue), respectfully report that HB 477 be concurred in.

Sponsor: Grady (Beck)

BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

J.C.  
3/18/89  
9:46  
G. mm

SENATE STANDING COMMITTEE REPORT

March 17, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 465 (third reading copy -- blue), respectfully report that HB 465 be concurred in.

Sponsor: Iverson (Jergeson)

BE CONCURRED IN

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

*Thomas A. Beck*  
Thomas A. Beck, Chairman

U.C.  
3/18/89  
9:46  
9:46

SENATE STANDING COMMITTEE REPORT

page 1 of 3  
March 20, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 701 (third reading copy -- blue), respectfully report that HB 701 be amended and as so amended be concurred in:

Sponsor: Swysgood (Thayer)

1. Title, line 7.

Strike: "AND"

2. Title, line 8.

Following: "71-3-902,"

Insert: "80-2-207, 80-2-226, AND 80-2-230,"

Following: "SECTIONS"

Insert: "71-3-131,"

3. Page 3, line 14.

Following: "means a

Insert: "crop"

4. Page 3, line 15.

Following: "or"

Insert: "a lien"

5. Page 3, line 19.

Following: "date"

Strike: "there is filed"

Insert: "the lienor files"

6. Page 10, following line 7.

Insert: "Section 8. Section 80-2-207, MCA, is amended to read:

"80-2-207. Delinquent taxes -- application by delinquent -- crop lien. (1) No owner of land who has more than 1 year's delinquent taxes on his land ~~shall~~ may be allowed hail insurance under the provisions of this part, unless his application is accompanied by a cash payment for the amount that would be due on ~~said~~ the application in the event of a maximum levy for that year.

(2) Any grain grower unable to secure state hail insurance under the provisions of this part on account of delinquent taxes or for other reasons may make application to the county assessor of his respective county and said county assessor is hereby authorized to receive and accept ~~such~~ the applications ~~where~~ if the applicant furnishes a sufficient crop lien subject only to a seed lien, ~~provided that such~~ However, the crop lien ~~shall~~ may be accepted only under such rules and requirements as ~~may~~ be prescribed by the board of hail insurance, ~~and provided that the~~

The board may cancel any hail insurance accepted in violation of said rules and requirements. Upon receipt of ~~said the~~ application, the county assessor shall make record thereof of it and shall file ~~the original a statement of agricultural lien as provided in 71-3-125~~ in the office of the ~~clerk and recorder of said county secretary of state.~~ He ~~The county assessor~~ shall also cause an assessment for the proper amount to be made on the assessment rolls in the same manner provided for in the case of other special levies or assessments.

(3) No tenant who has delinquent hail insurance which was secured by a crop lien only and not secured by real estate shall be allowed another policy in any succeeding year until he pays his delinquent account or accounts or until he pays cash for the current hail insurance.

(4) If any tenant becomes delinquent for his hail insurance after having failed to apply for relief as provided by the board under 80-2-229, he may apply to the board for a reduction. If his reasons for requesting a reduction are approved by the board, the board may reduce his charge to not less than one-half the original amount charged."

Section 9. Section 80-2-226, MCA, is amended to read:

"80-2-226. Crop lien -- when created -- assessment. (1) In addition to the lien created in 80-2-225 on the land of the insured, the levy for such hail insurance ~~shall constitute~~ constitutes a lien on the crops insured with the exception that the crop lien may not apply to owners of unencumbered land or to the land or crops of those who pay cash for hail insurance. The applications of these persons ~~may not~~ must be filed with the county clerk and recorded ~~as provided for in 80-2-207.~~ The clerk shall file a statement of agricultural lien in the office of the secretary of state. The crop lien shall be included in all applications for hail insurance, with the above exceptions, and shall be enforced as provided in 80-2-230 and 80-2-231 against all insured except those owning unencumbered land or those who have paid cash for hail insurance.

(2) All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land."

Section 10. Section 80-2-230, MCA, is amended to read:

"80-2-230. Collection of levies -- release of lien. (1) The county treasurer in each county in the state shall collect all levies made under this part in the same manner as other property taxes are collected and shall keep all moneys collected by him or for him for hail insurance in a separate fund to be known as the hail insurance fund and remit the same to the state treasurer in

the same manner as provided by law for the remittance of other moneys due to the state. All county treasurers shall use due diligence in making the collections of the levies provided herein. Also the board may furnish assistance needed at any time in making collections or may take over the collection of any levy at any time, depositing any collections therefrom with the treasurer of the county where the levy therefor was made.

(2) All insurance levies, whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full and not in semiannual payments on or before November 30 of each year in which such levies are made.

(3) Whenever the amount due on any hail insurance secured by a crop lien is paid, the county treasurer shall promptly ~~endorse on the lien on file in the office of the county clerk and recorder~~ file the appropriate notice of lien release with the office of the secretary of state as provided in Title 71, chapter 3. the amount paid thereon with the date of payment and such endorsement shall be a satisfaction and release of such lien."

Renumber: subsequent sections

7. Page 10, line 8.  
Following: "Sections"  
Insert: "71-3-131,"

AND AS AMENDED BE CONCURRED IN

Signed:   
Thomas A. Beck, Chairman

*Handwritten note:*  
H.C. 189  
3/20/05  
5:05 p.m.



SENATE STANDING COMMITTEE REPORT

March 17, 1989

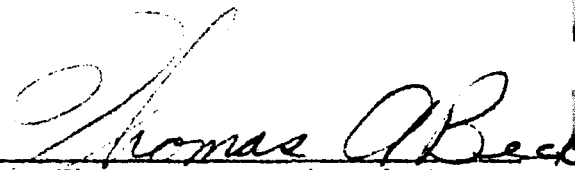
MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 650 (third reading copy -- blue), respectfully report that HB 650 be concurred in.

Sponsor: Swysgood (Bengtson)

BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

4/10/89  
3/18/89  
9:46  
a.

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 616 (third reading copy -- blue), respectfully report that HB 616 be amended and as so amended be concurred in:

Sponsor: DeMars (Williams)

1. Page 1, line 17.

Strike: "\$32"

Insert: "\$28"

2. Page 1, line 19.

Strike: "\$56"

Insert: "\$52"

3. Page 2, line 16.

Strike: "\$32"

Insert: "\$28"

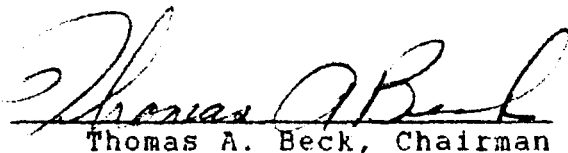
4. Page 2, line 17.

Strike: "\$56"

Insert: "\$52"

AND AS AMENDED BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

y/c.  
3/20/89  
5:05 p.m.

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 655 (third reading copy -- blue), respectfully report that HB 655 be amended and as so amended be concurred in:

Sponsor: Harper (Mazurek)

1. Title, line 8.  
Following: "FOR"  
Strike: "A MANAGEMENT PLAN AND"
2. Page 3, lines 8 and 9.  
Following: "the" on line 8  
Strike: "Fort Logan bridge on Meagher County route 360"  
Insert: "Camp Baker state fishing access site in Meagher County"
3. Page 3, line 14.  
Strike: "(1)"  
Following: "primary"  
Insert: "recreational"
4. Page 3, line 19.  
Strike: "(a)"  
Insert: "(1)"  
Following: "existing"  
Insert: "recreational and public land"
5. Page 3, line 21.  
Strike: "(b)"  
Insert: "(2)"  
Following: "maintain"  
Insert: "the opportunity to enjoy"
6. Page 3, line 23.  
Strike: "(c)"  
Insert: "(3)"
7. Page 3, line 25 through page 4, line 2.  
Strike: subsection (2) in its entirety

AND AS AMENDED BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

SENATE STANDING COMMITTEE REPORT

March 17, 1989

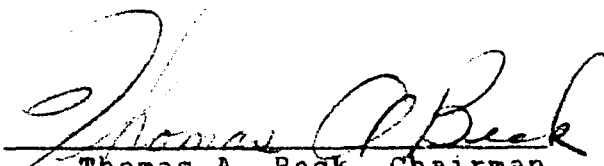
MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 516 (third reading copy -- blue), respectfully report that HB 516 be concurred in.

Sponsor: Hanson, M. (Jenkins)

BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

Y.C.  
3/18/89  
9:46  
P.G.M.

Amendments to House Bill No. 413  
Third Reading Copy

For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
March 16, 1989

1. Title, line 5.

Strike: "REMOVING AUTHORITY OF"

Insert: "ALLOWING"

2. Title, line 6.

Following: "CONSERVATION"

Insert: ", IN CONJUNCTION WITH ONE OR MORE HOLDERS OF VALID WATER  
RIGHTS IN THE SOURCE,"

3. Title, line 7.

Strike: "MANDATORY"

4. Title, line 9.

Following: "ISSUED;"

Insert: "PROVIDING THAT THE DEPARTMENT MAY BE INCLUDED IN THE  
APPORTIONMENT OF COSTS IF IT APPLIES FOR APPOINTMENT OF A  
WATER COMMISSIONER;"

Proposed Amendments to House Bill No. 542  
Third Reading Copy

Requested by Representative Guthrie  
For the Senate Committee on Agriculture, Livestock and Irrigation

March 13, 1989

1. Title, line 8.  
Following: "~~FILED,~~"  
Insert: "CHANGING THE BURDEN OF PROOF FROM SUBSTANTIAL CREDIBLE EVIDENCE TO CLEAR AND CONVINCING EVIDENCE FOR CERTAIN WATER PERMIT CRITERIA IF A VALID OBJECTION TO THE APPLICATION IS FILED;"
2. Title, lines 10 and 11.  
Following: "CONVINCING"  
Strike: "SUBSTANTIAL CREDIBLE"  
Insert: "CLEAR AND CONVINCING"
3. Page 1, line 21.  
Following: "~~part,~~"  
Insert: ", or by clear and convincing evidence if a valid objection to the application is filed according to this part,"
4. Page 5, lines 9 and 10.  
Following: "~~convincing~~" on line 9  
Strike: "SUBSTANTIAL CREDIBLE"  
Insert: "clear and convincing"

Amendments to House Bill No. 367  
Third Reading Copy

Requested by Rep. O'Keefe  
For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
March 10, 1989

1. Title, line 11.  
Following: "SECURED;"  
Insert: "CREATING THE WATER DEVELOPMENT LOAN LOSS RESERVE FUND;"

2. Title, line 12.  
Following: "85-1-102,"  
Insert: "85-1-603,"  
Following: "85-1-604,"  
Insert: "85-1-613,"  
Following: "85-1-615"  
Insert: "85-1-617"

3. Page 7, line 22.  
Following: line 21  
Insert: "Section 2. Section 85-1-603, MCA, is amended to read:  
"85-1-603. Water development debt service fund created --  
coal severance tax allocated -- water development loan loss  
reserve fund created. (1)(a) There is created a water development  
debt service fund within the debt service fund type established  
in 17-2-102.

(2)(b) The state pledges and allocates and directs to be  
credited to the water development debt service fund, as received:  
(a)(i) 1 1/4% of all money from time to time received from the  
coal severance tax collected under Title 15, chapter 35, and  
remaining after allocation of such tax under 15-35-108(1) and  
(2);

(b)(ii) any principal and accrued interest under 85-1-  
613(3)(a) received in repayment of a loan made from the proceeds  
of bonds issued under 85-1-617;

(c)(iii) all interest income earned on proceeds of water  
development bonds; and

(d)(iv) revenue or money otherwise required to be paid into  
the water development state special revenue account pursuant to  
85-1-604, as determined by the board of examiners in connection  
with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the water development loan loss  
reserve fund as the result of a loan loss.

(2)(a) There is created a water development loan loss  
reserve fund within the debt service fund type established in 17-  
2-102.

(b) The state pledges and allocates and directs to be  
credited to the water development loan loss reserve fund all  
accrued interest under 85-1-613(3)(b) received in repayment of a  
loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has  
occurred on a loan made pursuant to this part, funds from the

Ex. #3  
HB 367  
3/17/89

water development loan loss reserve fund must be transferred to the water development debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

Renumber: subsequent section

4. Page 10, line 16.

Following: line 15

Insert: " Section 4. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) No loan for a water development project or activity may be made from the water development state special revenue account or water development account that exceeds the least of \$200,000, 10% of the estimated total funds potentially available for loans in the water development state special revenue account and water development account in the biennium in which the loan will be made, or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) The period for repayment of loans may not exceed 30 years.

(3) The board shall from time to time establish the interest rate at which loans may be made under this part that is sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs."

Renumber: subsequent section

5. Page 12, line 6.

Following: line 5

Insert: "Section 6. Section 85-1-617, MCA, is amended to read:

"85-1-617. Issuing bonds. (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for



Ex. #3  
3/17/89  
HB 367

that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development debt service fund will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, notes, and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds and notes issued and sold.

(5) There is created a water development account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development debt service fund and the water development loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the water development debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Renumber: subsequent sections

Amendments to House Bill No. 477  
Third Reading Copy

Requested by Senator Bengtson  
For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
March 16, 1989

1. Title, line 11.

Following: "FUND"

Insert: "IN PARTICIPATING COUNTIES"

2. Page 2, line 9.

Following: "(b)"

Strike: "The"

Insert: "Unless the local governing body of the county in which  
the tax is collected opts not to participate in grant  
programs financed by the noxious weed management trust fund,  
the"

Amendments to House Bill No. 701  
Third Reading Copy

For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
March 10, 1989

1. Page 3, line 19.  
Following: "date"  
Strike: "there is filed"  
Insert: "the lienor files"

EXPLANATION OF PROPOSED AND AGREED AMENDMENTS TO HB 655  
PREPARED BY BOB LANE, DFWP

The attached amendments represent an agreement between the Department of Fish, Wildlife and Parks and those landowners along the Smith River who still had concerns and who testified as to those concerns before the Senate Agriculture, Livestock and Irrigation Committee hearing on March 13, 1989. The landowners generally were concerned that the bill could be read more broadly than to just allow the regulation of recreational use of a section of the Smith River. The Department was concerned that amending out Section 5 would remove the delegation of responsibility to the Department to carry out rules regulating recreational use adopted by the Fish and Game Commission.

Both the landowners and Department were satisfied that the attached amendments clarify and properly restricted the department's authority without removing the Department's designation to administer recreational use regulations. Subsection (2) of Section 5 that would require the Department to develop, adopt and update a Smith River management plan is being removed at the request of the landowners. They felt more comfortable with this requirement removed. Finally, the upper portion of the Smith River subject to regulation under HB 655 was shortened to start at the Camp Baker state fishing access site rather than starting as the Fort Logan Bridge on route 360. The change was made at the request of the landowners. The Department had not intended to immediately propose recreational use regulation for this section of the river but had included this in the bill in case increases in use warranted regulation.

Ex. #6  
3/17/89  
HB 655

Amendments to House Bill No. 655  
Third Reading Copy

Requested by Department of Fish, Wildlife & Parks  
For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
March 15, 1989

1. Title, line 8.  
Following: "FOR"  
Strike: "A MANAGEMENT PLAN AND"
2. Page 3, lines 8 and 9.  
Following: "the" on line 8  
Strike: "Fort Logan bridge on Meagher County route 360"  
Insert: "Camp Baker state fishing access site in Meagher County"
3. Page 3, line 14.  
Strike: "(1)"  
Following: "primary"  
Insert: "recreational"
4. Page 3, line 19.  
Strike: "(a)"  
Insert: "(1)"  
Following: "existing"  
Insert: "recreational and public land"
5. Page 3, line 21.  
Strike: "(b)"  
Insert: "(2)"  
Following: "maintain"  
Insert: "the opportunity to enjoy"
6. Page 3, line 23.  
Strike: "(c)"  
Insert: "(3)"
7. Page 3, line 25 through page 4, line 2.  
Strike: subsection (2) in its entirety

SENATE AGRICULTURE

EXHIBIT NO. 7

DATE 3/17/89

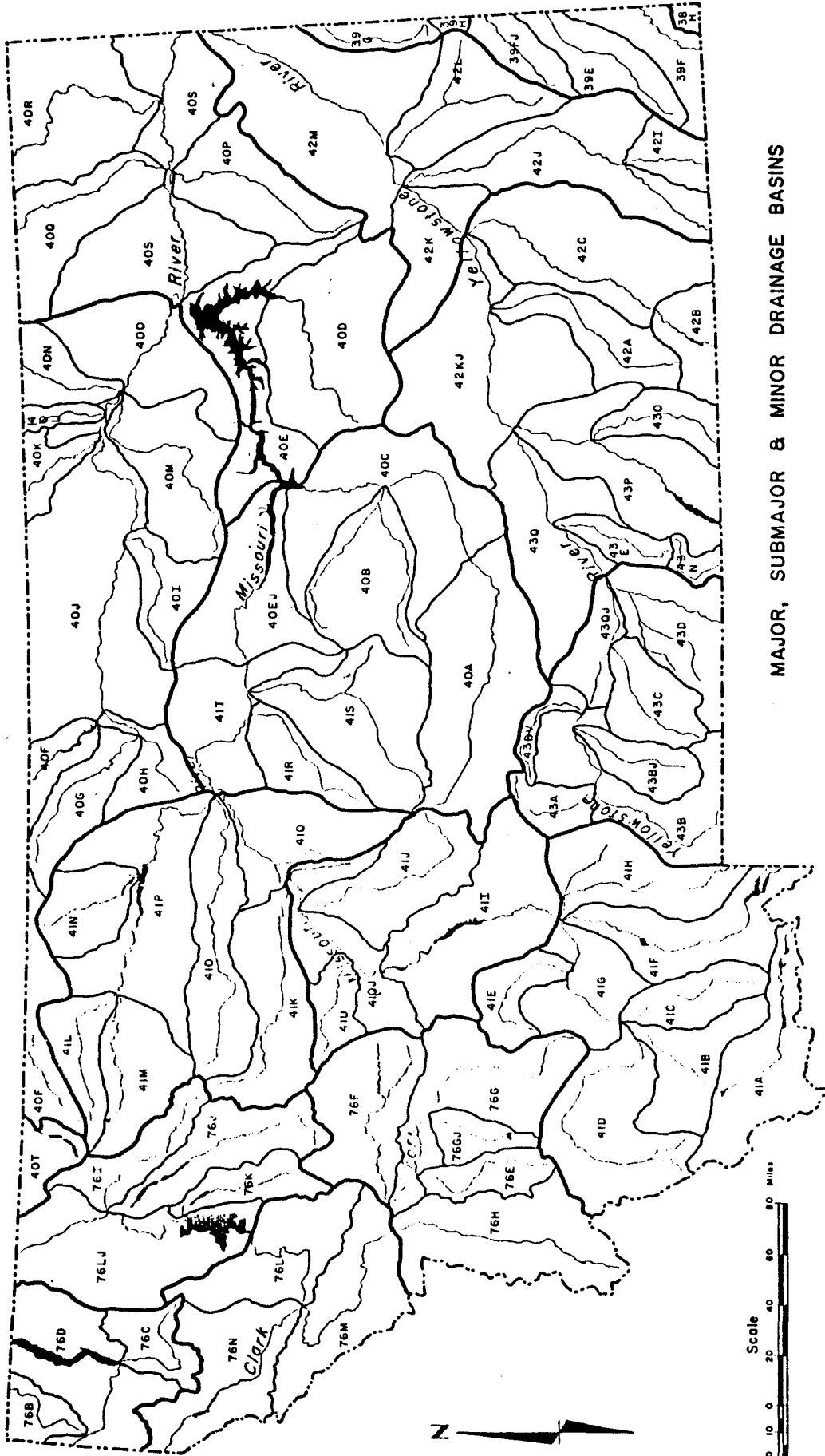
BILL NO. HB 707

While this map shows the river basins in Montana, it must be noted that House Bill 707 would require the Board of Natural Resources and Conservation to name up to ten stream reaches where leasing could occur. These stream reaches would include specific streams and not entire basins.

90. Senator Bengtson

Frank Brown Sunday

2x. #1  
3/17/89  
HG 707



MAJOR, SUBMAJOR & MINOR DRAINAGE BASINS

MAJOR, SUBMAJOR & MINOR  
DRAINAGE BASINS

Ex. #7  
3/17/89  
HB 707

COLUMBIAN RIVER BASIN

KOOTENAI

- 76B Yaak River
- 76C Fisher River
- 76D Kootenai River

FLATHEAD

- 76I Middle Fork Flathead River
- 76J South Fork Flathead River
- 76K Swan River
- 76L Flathead River below Flathead Lake
- 76LJ Flathead River to and including Flathead Lake

UPPER CLARK FORK

- 76E Rock Creek tributary of Clark Fork River
- 76F Blackfoot River
- 76G Clark Fork above Blackfoot River
- 76GJ Flint Creek
- 76H Bitterroot River

LOWER CLARK FORK

- 76M Clark Fork between Blackfoot River and Flathead River
- 76N Clark Fork below Flathead River

MISSOURI RIVER BASIN (AND ST. MARY DRAINAGE)

UPPER MISSOURI TRIBUTARIES

- 41A Red Rock River
- 41B Beaverhead River
- 41C Ruby River
- 41D Big Hole River
- 41E Boulder River tributary of Jefferson River
- 41F Madison River
- 41G Jefferson River
- 41H Gallatin River

MISSOURI-SMITH

- 41I Missouri River above Holter Dam
- 41J Smith River
- 41QJ Missouri River from Holter Dam to the Sun River
- 41U Dearborn River

MISSOURI-SUN-MARIAS

- 41K Sun River
- 41L Cut Bank River
- 41M Two Medicine River
- 41N Willow Creek
- 41O Teton River
- 41P Marias River
- 41Q Missouri River from Sun River to Marias River

MISSOURI-MUSSELSHELL

- 40A Musselshell River above Roundup
- 40B Flatwillow Creek including Box Elder Creek
- 40C Musselshell River below Roundup
- 41R Arrow Creek
- 41S Judith River
- 41T Missouri River from Marias River to and including Bullwhacker Creek
- 40EJ Missouri River between Bullwhacker Creek and Musselshell River

MILK

- 40F Milk River above Fresno Reservoir
- 40G Sage Creek
- 40H Big Sandy Creek
- 40I Peoples Creek
- 40J Milk River between Fresno Reservoir and Whitewater Creek
- 40K Whitewater Creek
- 40L Frenchman Creek
- 40M Beaver Creek tributary of Milk River
- 40N Rock Creek tributary of Milk River
- 40O Milk River below Whitewater Creek including Porcupine Creek

MISSOURI-FORT PECK

- 40D Dry Creek
- 40E Missouri River between Musselshell River and Fort Peck Dam
- 40P Redwater River
- 40Q Poplar River
- 40R Big Muddy Creek
- 40S Missouri River below Fort Peck Dam
- 40T St. Mary River

YELLOWSTONE RIVER BASIN (AND LITTLE MISSOURI DRAINAGE)

UPPER YELLOWSTONE

- 43A Shields River
- 43B Yellowstone River above and including Bridger Creek
- 43BJ Boulder River tributary of Yellowstone River
- 43BV Sweet Grass Creek
- 43C Stillwater River
- 43D Clarks Fork Yellowstone River
- 43QJ Yellowstone River from Bridger Creek to the Clarks Fork Yellowstone

MIDDLE YELLOWSTONE

- 43E Pryor Creek
- 43N Shoshone River
- 43O Little Bighorn River
- 43P Bighorn River below Greybull River
- 43Q Yellowstone River between Clarks Fork Yellowstone and Bighorn River
- 42A Rosebud Creek
- 42B Tongue River above and including Hanging Woman Creek
- 42C Tongue River below Hanging Woman Creek
- 42KJ Yellowstone River between Bighorn River and Tongue River

LOWER YELLOWSTONE

- 42I Little Powder River
- 42J Powder River below Clear Creek
- 42K Yellowstone River between Tongue River and Powder Rivers
- 42L O'Fallon Creek
- 42M Yellowstone River below Powder River

LITTLE MISSOURI

- 39E Boxelder Creek
- 39F Little Missouri River above Little Beaver Creek
- 39FJ Little Beaver Creek
- 39G Beaver Creek tributary of Little Missouri River
- 39H Little Missouri below Little Beaver Creek
- 38H Belle Fourche River above Cheyenne River



Amendments to House Bill No. 707  
Third Reading Copy

For the Committee on Senate Agriculture  
(Grossfield Amendments)

Prepared by Doug Sternberg, Committee Staff  
March 16, 1989

1. Page 16, line 7.

Following: "(6)"

Strike: the remainder of line 7 through "affected." on line 11

Insert: "If during the term of a lease or a renewal of a lease under subsection (5) the water right of an appropriator, other than an appropriator described in subsection (9), is adversely affected by the exercise of the lease, the appropriator may file a complaint with or submit new evidence to the department as provided in subsection (5). Upon receipt of a complaint or new evidence under subsection (5), the department shall investigate the allegations contained in the complaint or new evidence. If as a result of the investigation the department determines that the terms of the lease are not being followed or that exercise of the lease is creating an adverse effect, the department shall, after notice, require the department of fish, wildlife, and parks to show cause why the lease should not be modified or revoked. If the department of fish, wildlife, and parks fails to show sufficient cause, the department shall modify or revoke the lease."

2. Page 18, line 18.

Following: line 17

Insert: "NEW SECTION. Section 7. Recovery of attorney fees. If a final decision of the department to lease, renew a lease, or modify or revoke a lease pursuant to [section 4] is appealed to district court, the court shall, in addition to damages resulting from the exercise of a lease that has caused adverse effect to a water right, award reasonable attorney fees and court costs to the adversely affected party if he prevails in the appeal, unless the court finds that the position of the department of fish, wildlife, and parks was substantially justified or that special circumstances make an award of attorney fees and court costs unjust."

Renumber: subsequent sections

3. Page 19, lines 2 and 5.

Following: "4"

Strike: "and"

Insert: ", "

Following: "5"

Insert: ", and 7"

SENATE AGRICULTURE

EXHIBIT NO. 9

DATE 3/17/89

BILL NO. HB 707

Amendments to House Bill No. 707  
Third Reading Copy

Requested by Senator Hammond  
For the Committee on Senate Agriculture

Prepared by Deborah Schmidt  
March 15, 1989

1. Page 3, line 10.

Following: "program."

Insert: "Because the Milk River Basin is chronically water-short and because it is the subject of considerable negotiation of federal and Indian reserved rights, leasing may not be undertaken in this basin until these issues are successfully resolved."

2. Page 14, line 15.

Strike: "AFTER"

Insert: "Except for the Milk River Basin, after"

3. Page 15, line 12.

Following: "by the"

Strike: "lessor"

Insert: "lessor's crop, if applicable, and excluding water used as recharge or return flow"

PROPOSED AMENDMENTS TO HB 707  
(Third reading copy -- blue)  
Prepared for the Senate Committee on Agriculture  
March 14, 1989

1. Title, lines 8 and 9.  
Following: "PURPOSE OF"  
Strike: "ENHANCING OR MAINTAINING"  
Insert: "PROVIDING"
2. Title, line 9.  
Following: "FOR"  
Strike: remainder of line 9  
Insert: "THE BENEFIT OF FISHERIES"
3. Page 2, line 2.  
Following: "of"  
Strike: "maintaining or enhancing"  
Insert: "providing"
4. Page 2, line 3.  
Following: line 2  
Strike: "fish, wildlife, or recreation"  
Insert: "the benefit of fisheries"
5. Page 2, lines 6 and 7.  
Strike: "enhance" on line 6 through "recreation" on line 7  
Insert: "provide for fisheries"
6. Page 2, line 9.  
Following: "parks"  
Insert: "that have the approval of the fish and game commission"
7. Page 3, line 4.  
Following: "conservation"  
Strike: "will"  
Insert: ", with the consent of the board, shall"
8. Page 3, lines 23 and 24.  
Following: "authorization" on line 23  
Strike: remainder of line 23 through "contract" on line 24
9. Page 4, line 2.  
Following: "conservation"  
Strike: "should"  
Insert: ", with the consent of the board, shall"

3-17-89

PROPOSED AMENDMENTS, HB 707  
page 2 of 5

10. Page 4, line 5.

Following: "are not"

Strike: "or probably will not be"

11. Page 5, line 17.

Following: line 16

Insert: "(6) "Commission" means the fish and game commission  
provided for in 2-15-3402."

Renumber: subsequent subsections

12. Page 14, line 13.

Following: "to"

Strike: "enhance or maintain"

Insert: "provide"

13. Page 14, line 14.

Following: "for"

Strike: "fish, wildlife, or recreation"

Insert: "benefit of fisheries"

14. Page 14, line 16.

Following: "parks"

Insert: ", with the consent of the commission, "

15. Page 14, lines 17 and 18.

Following: "of" on line 17

Strike: "maintaining or enhancing"

Insert: "providing"

Following: "for" on line 17

Strike: "fish, wildlife, or recreation"

Insert: "the benefit of fisheries"

16. Page 14, line 22.

Following: "department"

Insert: ", with the consent of the board,"

17. Page 14, line 23.

Following: "of"

Strike: "maintaining or enhancing"

Insert: "providing"

18. Page 14, line 24.

Following: "for"

Strike: "fish, wildlife, or recreation"

Insert: "the benefit of fisheries"

19. Page 15, lines 5 and 6.

Following: "streamflow" on line 5

Strike: "will" through "enhanced" on line 6

Insert: "must be provided"

Following: "must" on line 6

Strike: "provide"

Insert: "include"

20. Page 15, line 8.

Strike: "will"

Insert: "must"

21. Page 15, line 14.

Following: line 13

Strike: "enhance or maintain"

Insert: "provide"

22. Page 15, line 21.

Following: line 20

Insert: "(5) The department of fish, wildlife, and parks has the responsibility to prove to the board by substantial credible evidence that a proposed lease authorization does not adversely affect existing water rights. The department of fish, wildlife, and parks shall pay the cost, including reasonable attorney fees, for any appropriator who successfully objects to a proposed department of fish, wildlife, and parks lease."

Re-number: subsequent subsections

23. Page 16, line 4.

Strike: "(9)"

Insert: "(10)"

24. Page 16, line 6.

Following: "."

Insert: "If an appropriator proves adverse effects to his water rights, the department of fish, wildlife, and parks shall pay to the appropriator an amount equal to the damages that resulted from exercise of its lease and the costs of proving the adverse effects, including reasonable attorney fees and court costs. This provision applies only to water leases entered into under this section."

25. Page 16, line 8.

Following: "department"

Insert: ", with the consent of the board,"

3-17-89

PROPOSED AMENDMENTS, HB 707  
page 4 of 5

26. Page 16, line 10.

Strike: "(9)"

Insert: "(10)"

Following: "by"

Strike: "substantial credible"

Insert: "a preponderance of the"

27. Page 16, line 11.

Following: "."

Insert: "If an appropriator proves adverse effects to his water rights, the department of fish, wildlife, and parks shall pay to the appropriator an amount equal to the damages that resulted from exercise of its lease and the costs of proving the adverse effects, including reasonable attorney fees and court costs. This provision applies only to water leases entered into under this section."

28. Page 17, line 5.

Following: "parks,"

Strike: "in consultation with the department"

Insert: "with the consent of the commission"

29. Page 17, line 7.

Following: "to"

Strike: "maintain or enhance"

Insert: "provide"

30. Page 17, line 12.

Following: line 11

Strike: "maintain" through "recreation"

Insert: "provide for fisheries"

31. Page 17, line 14.

Insert: "(3) Upon declaring a stream reach eligible for leasing, the board shall request the department to prepare an analysis concerning whether longer term solutions to the critical low flows in the stream reach are feasible. Longer term solutions to be considered include storage enhancement or development and recharge from ground water sources. The preparation of or recommendations resulting from the analysis may not preclude, inhibit, or delay the negotiation or implementation of leases on the stream reach as provided in [section 4]."

Renumber: subsequent subsection

PROPOSED AMENDMENTS, HB 707  
page 5 of 5

32. Page 17, lines 21 through 23.

Following: "to" on line 21

Strike: "maintain" on line 21 through "enhance" on line 22

Insert: "provide"

Following: "for" on line 22

Strike: remainder of line 22 through "purposes" on line 23

Insert: "the benefit of fisheries"

33. Page 17, line 24 through page 18, line 1.

Following: "TO" on line 24

Strike: remainder of line 24 through "ENHANCE" on line 25

Insert: "provide"

Following: "STREAMFLOWS" on line 25

Strike: remainder of line 25 through "PURPOSES" page 18, line 1

34. Page 18, line 8.

Following: "of"

Strike: "maintaining or enhancing"

Insert: "providing"

35. Page 18, line 9.

Following: "flows"

Strike: "for" through "recreation"

36. Page 18, lines 14 and 15.

Following: "TO" on line 14

Strike: "MAINTAIN OR ENHANCE"

Insert: "provide"

Following: "STREAMFLOWS" on line 14

Strike: remainder of line 14 through "PURPOSES" on line 15

37. Page 18, line 19.

Following: second "DEPARTMENT"

Insert: ", with the consent of the board,"

EXHIBIT NO. 11

DATE 3/21/89

BILL NO. HB 707

# DRAFT

51st Legislature

HB 0707/03

HB 0707/03

1 HOUSE BILL NO. 707

2 INTRODUCED BY IVERSON, HARPER, GLASER, RANEY, O'KEEFE,

3 WALKER, SIMON, HANNAH, GRADY, HARP, MERCER, LYNCH,

4 BENGTON, DRISCOLL, YELLOWTAIL, MCLANE, BISHOP, D. BROWN

5 BY REQUEST OF THE GOVERNOR

7 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LEASING

8 OF EXISTING WATER RIGHTS FOR THE PURPOSE OF ENHANCING OR

9 <sup>PROVIDING</sup> ~~MAINTAINING~~ STREAMFLOWS FOR FISH, WILDLIFE, OR RECREATION

10 DURING CRITICAL LOW FLOW PERIODS IN STREAM REACHES

11 DESIGNATED BY THE BOARD OF NATURAL RESOURCES AND

12 CONSERVATION; SPECIFYING THAT THE DEPARTMENT OF FISH,

13 WILDLIFE, AND PARKS IS THE LESSEE AND ALLOWING THE

14 DEPARTMENT TO ACCEPT CONTRIBUTIONS FROM PUBLIC OR PRIVATE

15 ENTITIES FOR THE PURPOSE OF ACQUIRING LEASES OR FOR

16 DEVELOPING STORAGE FACILITIES; SPECIFYING THAT THE

17 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL MAKE

18 A REPORT TO EACH REGULAR SESSION OF THE LEGISLATURE;

19 AMENDING SECTIONS 85-2-102, 85-2-402, AND 85-2-404, MCA; AND

20 PROVIDING A TERMINATION DATE."

### STATEMENT OF INTENT

23 A statement of intent is provided for this bill in  
24 order to give additional guidance to the board of natural  
25 resources and conservation and the involved state agencies

1 concerning the review and processing of lease applications  
2 for the purpose of <sup>providing</sup> ~~maintaining or enhancing~~ stream flows for  
3 ~~the benefit of fisheries~~ <sup>fish, wildlife, or recreation.</sup>

4 The legislature intends that the board designate stream  
5 reaches eligible for water leasing in areas where leasing is  
6 necessary or likely to be necessary to <sup>provide for fisheries</sup> ~~enhance or maintain~~

7 fish, ~~wildlife, or recreation~~. Upon receipt of a list of  
8 stream reaches from the department of fish, wildlife, and  
9 parks, the board shall act expeditiously to designate

10 eligible stream reaches. However, the legislature also  
11 encourages the board to select stream reaches where leasing  
12 has a good chance of success and where all interests may be

13 satisfied.  
14 The legislature also intends that the review process  
15 for lease applications be thorough and provide ample  
16 opportunity for consideration and input by concerned

17 persons. As required in [section 4], the process should  
18 involve notice and opportunity for objections and hearing in  
19 the same manner provided for proposed changes in

20 appropriation rights. The legislature contemplates that the  
21 department of fish, wildlife, and parks will meet with  
22 appropriators along each designated stream reach to assess

23 and consider any concerns before filing applications for  
24 lease authorizations. The legislature also encourages the  
25 department of fish, wildlife, and parks to assemble lease





1 desires to emphasize that the department of natural  
 2 resources and conservation ~~should~~ <sup>with the consent of the board shall</sup> consider and, if  
 3 potentially feasible, recommend supplemental or alternative  
 4 strategies that provide long-term solutions to problems that  
 5 are not ~~or probably will not be~~ addressed adequately by  
 6 water leasing in the board-designated stream reaches. These  
 7 strategies may include storage enhancement or development  
 8 and recharge from ground water sources.

9 the application and lease authorization is critical to a  
 10 successful leasing program. <sup>Because the Milk River Basin is chronically...</sup> Upon issuance of a lease  
 11 authorization with an identified stream reach, the  
 12 legislature intends that the entire leased appropriation may  
 13 be protected to the extent provided under Title 85, chapter  
 14 2, in any part of the stream reach that is above the  
 15 lessor's point of diversion. However, only the historical  
 16 consumptive use of the right, or a smaller amount if  
 17 specified in the lease authorization by the department of  
 18 natural resources and conservation, may be protected in any  
 19 part of the stream reach that is below the lessor's point of  
 20 diversion. Finally, the legislature intends for the lessor  
 21 to be responsible for taking action, if necessary, to  
 22 protect the instream flow amount specified in the lease  
 23 authorization, ~~though the lessor and lessee may specify~~  
 24 ~~otherwise by contract.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires  
 otherwise, in this chapter the following definitions apply:  
 (1) "Appropriate" means to:  
 (a) divert, impound, or withdraw (including by stock  
 for stock water) a quantity of water; or  
 (b) in the case of a public agency, to reserve water  
 in accordance with 85-2-316; or  
 (c) in the case of the department of fish, wildlife,  
 and parks, to lease water in accordance with [section 4].

(2) "Beneficial use", unless otherwise provided,  
 means:  
 (a) a use of water for the benefit of the  
 appropriator, other persons, or the public, including but  
 not limited to agricultural (including stock water),

1 domestic, fish and wildlife, industrial, irrigation, mining,  
 2 municipal, power, and recreational uses; and  
 3 (b) a use of water appropriated by the department for  
 4 the state water leasing program under 85-2-141 and of water  
 5 leased under a valid lease issued by the department under  
 6 85-2-141-1 AND

7 (C) A USE OF WATER BY THE DEPARTMENT OF FISH,  
 8 WILDLIFE, AND PARKS PURSUANT TO A LEASE AUTHORIZED UNDER  
 9 [SECTION 4].

10 (3) "Board" means the board of natural resources and  
 11 conservation provided for in 2-15-3302.

12 (4) "Certificate" means a certificate of water right  
 13 issued by the department.

14 (5) "Change in appropriation right" means a change in  
 15 the place of diversion, the place of use, the purpose of  
 16 use, or the place of storage.

17 (6) "Commission" means...  
 18 (7) "Declaration" means the declaration of an existing

19 right filed with the department under section 8, Chapter  
 20 452, Laws of 1973.

21 "Department" means the department of natural  
 22 resources and conservation provided for in Title 2, chapter  
 23 15, part 33.

24 "Existing right" means a right to the use of water  
 25 which would be protected under the law as it existed prior  
 to July 1, 1973.

3-17-89

10  
 11 (10) "Groundwater" means any water beneath the land  
 12 surface or beneath the bed of a stream, lake, reservoir, or  
 13 other body of surface water, and which is not a part of that  
 14 surface water.

15 (11) "Permit" means the permit to appropriate issued by  
 16 the department under 85-2-301 through 85-2-303 and 85-2-306  
 17 through 85-2-314.

18 (12) "Person" means an individual, association,  
 19 partnership, corporation, state agency, political  
 20 subdivision, the United States or any agency thereof, or any  
 21 other entity.

22 (13) "Political subdivision" means any county,  
 23 incorporated city or town, public corporation, or district  
 24 created pursuant to state law or other public body of the  
 25 state empowered to appropriate water but not a private  
 corporation, association, or group.

26 (14) "Waste" means the unreasonable loss of water  
 27 through the design or negligent operation of an  
 28 appropriation or water distribution facility or the  
 29 application of water to anything but a beneficial use.

30 (15) "Water" means all water of the state, surface and  
 31 subsurface, regardless of its character or manner of  
 32 occurrence, including but not limited to geothermal water,  
 33 diffuse surface water, and sewage effluent.

34 (16) "Water division" means a drainage basin as defined

1 in 3-7-102.

2 <sup>17</sup>~~(16)~~ "water judge" means a judge as provided for in  
3 Title 3, chapter 7.

4 <sup>18</sup>~~(17)~~ "Water master" means a master as provided for in  
5 Title 3, chapter 7.

6 <sup>19</sup>~~(18)~~ "Well" means any artificial opening or excavation  
7 in the ground, however made, by which groundwater is sought  
8 or can be obtained or through which it flows under natural  
9 pressures or is artificially withdrawn."

10 **Section 2.** Section 85-2-402, MCA, is amended to read:  
11 **"85-2-402. Changes in appropriation rights.** (1) An  
12 appropriator may not make a change in an appropriation right  
13 except as permitted under this section and with the approval  
14 of the department or, if applicable, of the legislature.

15 (2) Except as provided in subsections (3) through (5),  
16 the department shall approve a change in appropriation right  
17 if the appropriator proves by substantial credible evidence  
18 that the following criteria are met:

19 (a) The proposed use will not adversely affect the  
20 water rights of other persons or other planned uses or  
21 developments for which a permit has been issued or for which  
22 water has been reserved.

23 (b) Except for a lease authorization pursuant to  
24 [section 4] that does not require appropriation works, the  
25 proposed means of diversion, construction, and operation of

1 the appropriation works are adequate.

2 (c) The proposed use of water is a beneficial use.

3 (3) The department may not approve a change in purpose  
4 of use or place of use of an appropriation of 4,000 or more  
5 acre-feet of water a year and 5.5 or more cubic feet per  
6 second of water unless the appropriator proves by  
7 substantial credible evidence that:

8 (a) the criteria in subsection (2) are met;

9 (b) the proposed change is a reasonable use. A  
10 finding of reasonable use must be based on a consideration  
11 of:

12 (i) the existing demands on the state water supply, as  
13 well as projected demands of water for future beneficial  
14 purposes, including municipal water supplies, irrigation  
15 systems, and minimum streamflows for the protection of  
16 existing water rights and aquatic life;

17 (ii) the benefits to the applicant and the state;

18 (iii) the effects on the quantity and quality of water  
19 for existing uses in the source of supply;

20 (iv) the availability and feasibility of using  
21 low-quality water for the purpose for which application has  
22 been made;

23 (v) the effects on private property rights by any  
24 creation of or contribution to saline seep; and

25 (vi) the probable significant adverse environmental

-x. 11  
3-17-89

1 impacts of the proposed use of water as determined by the  
2 department pursuant to Title 75, chapter 1, or Title 75,  
3 chapter 20.

4 (4) The department may not approve a change in purpose  
5 of use or place of use for a diversion that results in 4,000  
6 or more acre-feet of water a year and 5.5 or more cubic feet  
7 per second of water being consumed unless:

8 (a) the applicant proves by clear and convincing  
9 evidence and the department finds that the criteria in  
10 subsections (2) and (3) are met; and

11 (b) the department then petitions the legislature and  
12 the legislature affirms the decision of the department after  
13 one or more public hearings.

14 (5) (a) The state of Montana has long recognized the  
15 importance of conserving its public waters and the necessity  
16 to maintain adequate water supplies for the state's water  
17 requirements, including requirements for reserved water  
18 rights held by the United States for federal reserved lands  
19 and in trust for the various Indian tribes within the  
20 state's boundaries. Although the state of Montana also  
21 recognizes that, under appropriate conditions, the  
22 out-of-state transportation and use of its public waters are  
23 not in conflict with the public welfare of its citizens or  
24 the conservation of its waters, the following criteria must  
25 be met before out-of-state use may occur:

1 (b) The department and, if applicable, the legislature  
2 may not approve a change in appropriation right for the  
3 withdrawal and transportation of appropriated water for use  
4 outside the state unless the appropriator proves by clear  
5 and convincing evidence and, if applicable, the legislature  
6 approves after one or more public hearings that:

7 (i) depending on the volume of water diverted or  
8 consumed, the applicable criteria and procedures of  
9 subsection (2) or (3) are met;

10 (ii) the proposed out-of-state use of water is not  
11 contrary to water conservation in Montana; and  
12 (iii) the proposed out-of-state use of water is not  
13 otherwise detrimental to the public welfare of the citizens  
14 of Montana.

15 (c) In determining whether the appropriator has proved  
16 by clear and convincing evidence that the requirements of  
17 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the  
18 department and, if applicable, the legislature shall  
19 consider the following factors:

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

22 (ii) whether the water that is the subject of the  
23 proposed change in appropriation might feasibly be  
24 transported to alleviate water shortages within the state of  
25 Montana;

1 (iii) the supply and sources of water available to the  
2 applicant in the state where the applicant intends to use  
3 the water; and

4 (iv) the demands placed on the applicant's supply in  
5 the state where the applicant intends to use the water.

6 (d) When applying for a change in appropriation right  
7 to withdraw and transport water for use outside the state,  
8 the applicant shall submit to and comply with the laws of  
9 the state of Montana governing the appropriation and use of  
10 water.

11 (6) For any application for a change in appropriation  
12 right involving 4,000 or more acre-feet of water a year and  
13 5.5 or more cubic feet per second of water, the department  
14 shall give notice of the proposed change in accordance with  
15 85-2-307 and shall hold one or more hearings in accordance  
16 with 85-2-309 prior to its approval or denial of the  
17 proposed change. The department shall provide notice and may  
18 hold one or more hearings upon any other proposed change if  
19 it determines that such a change might adversely affect the  
20 rights of other persons.

21 (7) The department or the legislature, if applicable,  
22 may approve a change subject to such terms, conditions,  
23 restrictions, and limitations as it considers necessary to  
24 satisfy the criteria of this section, including limitations  
25 on the time for completion of the change. The department

1 may extend time limits specified in the change approval  
2 under the applicable criteria and procedures of 85-2-312(3).

3 (8) If a change is not completed as approved by the  
4 department or legislature or if the terms, conditions,  
5 restrictions, and limitations of the change approval are not  
6 complied with, the department may, after notice and  
7 opportunity for hearing, require the appropriator to show  
8 cause why the change approval should not be modified or  
9 revoked. If the appropriator fails to show sufficient cause,  
10 the department may modify or revoke the change approval.

11 (9) The original of a change approval issued by the  
12 department must be sent to the applicant, and a duplicate  
13 must be kept in the office of the department in Helena.

14 (10) A person holding an issued permit or change  
15 approval that has not been perfected may change the place of  
16 diversion, place of use, purpose of use, or place of storage  
17 by filing an application for change pursuant to this  
18 section.

19 (11) A change in appropriation right contrary to the  
20 provisions of this section is invalid. No An officer,  
21 agent, agency, or employee of the state may not knowingly  
22 permit, aid, or assist in any manner such an unauthorized  
23 change in appropriation right. No A person or corporation  
24 may not, directly or indirectly, personally or through an  
25 agent, officer, or employee, attempt to change an

1 appropriation right except in accordance with this section."

2 **Section 3.** Section 85-2-404, MCA, is amended to read:

3 **"85-2-404. Abandonment of appropriation right.** (1) If  
4 an appropriator ceases to use all or a part of his  
5 appropriation right with the intention of wholly or  
6 partially abandoning the right or if he ceases using his  
7 appropriation right according to its terms and conditions  
8 with the intention of not complying with those terms and  
9 conditions, the appropriation right shall, to that extent,  
10 be deemed considered abandoned and shall immediately expire.

11 (2) If an appropriator ceases to use all or part of  
12 his appropriation right or ceases using his appropriation  
13 right according to its terms and conditions for a period of  
14 10 successive years and there was water available for his  
15 use, there shall be is a prima facie presumption that the  
16 appropriator has abandoned his right in whole or for the  
17 part not used.

18 (3) If an appropriator ceases to use all or part of  
19 his appropriation right because the land to which the water  
20 is applied to a beneficial use is contracted under a state  
21 or federal conservation set-aside program:

22 (a) the set-aside and resulting reduction in use of  
23 the appropriation right does not represent an intent by the  
24 appropriator to wholly or partially abandon the  
25 appropriation right or to not comply with the terms and

1 conditions attached to the right; and

2 (b) the period of nonuse that occurs for part or all  
3 of the appropriation right as a result of the contract may  
4 not create or may not be added to any previous period of  
5 nonuse to create a prima facie presumption of abandonment.

6 (4) The lease of an existing right pursuant to  
7 [section 4] does not constitute an abandonment by the lessor  
8 or serve as evidence that could be used to establish an  
9 abandonment by the lessor of any part of the right.

10 (4)(5) Subsections (1) and (2) do not apply to  
11 existing rights until they have been determined in  
12 accordance with part 2 of this chapter."

13 **NEW SECTION. Section 4.** Leases to enhance or maintain  
14 ~~streamflows for fish, wildlife or recreation~~ <sup>the benefit of fisheries</sup> -- department  
15 ~~authorization.~~ <sup>SUBJECT FOR THE MILK RIVER BASIN,</sup> THE department of  
16 ~~(1) THE AFTER JULY 1, 1991,~~ <sup>A WITH THE CONSENT OF THE COMMISSION,</sup> fish, wildlife, and parks may lease existing rights for the  
17 purpose of ~~maintaining or enhancing~~ <sup>providing</sup> streamflows for ~~fish~~  
18 ~~wildlife or recreation~~ <sup>the benefit of fisheries</sup> DURING CRITICAL LOW FLOW PERIODS in  
19 stream reaches determined eligible by the board pursuant to  
20 [section 5]. This section is the exclusive means by which  
21 appropriations may be changed to an instream flow purpose.

22 (2) The department shall authorize a lease of an  
23 existing right for the purpose of ~~maintaining or enhancing~~ <sup>providing</sup>  
24 streamflows for ~~fish, wildlife, or recreation~~ <sup>the benefit of fisheries</sup> DURING  
25 CRITICAL LOW FLOW PERIODS in an eligible stream reach if the

1 applicant submits a completed application and meets the  
2 requirements of 85-2-402.

3 (3) The application for a lease authorization must  
4 include specific information on the length and location of  
5 the stream reach in which the streamflow ~~will be maintained~~ <sup>shall be provided</sup>  
6 ~~or enhanced~~ and must ~~provide~~ <sup>include</sup> a detailed streamflow measuring  
7 plan that describes the points where and the manner in which  
8 the streamflow ~~shall~~ <sup>shall</sup> be measured.

9 (4) The maximum quantity of water that may be leased  
10 is the amount historically diverted by the lessor. However,  
11 OF THE AMOUNT LEASED, only the amount historically consumed  
12 by the ~~lessor~~ <sup>lessor's crop, if applicable...</sup>, or a smaller amount if specified by the  
13 department in the lease authorization, may be used to  
14 ~~enhance or maintain~~ <sup>provide</sup> streamflows below the lessor's point of  
15 diversion. THE LEASE MUST TAKE INTO ACCOUNT THE HISTORICAL

16 USE OF THE WATER RIGHT, INCLUDING BUT NOT LIMITED TO THE  
17 USUAL SHUTOFF OF ALL OR A PORTION OF THE WATER SUBJECT TO  
18 THE WATER RIGHT DUE TO NORMAL IRRIGATION PRACTICES,  
19 HARVESTING, NORMAL CLIMATE CONDITIONS, AND COOPERATIVE  
20 PRACTICES WITH OTHER IRRIGATORS.

21 <sup>(5)</sup> The lease may not be issued for a term of more  
22 than 10 years but may be renewed for up to 10 years per  
23 renewal upon notification to the department. Upon receiving  
24 notice of a lease renewal, the department shall notify other  
25 appropriators potentially affected by the lease and shall

1 allow 30 days for submission of new evidence of adverse  
2 effects to other water rights. A lease authorization is not  
3 required for a renewal unless an appropriator, other than an  
4 appropriator described in subsection <sup>(10)</sup> ~~(9)~~, submits evidence  
5 of adverse effects to his rights that has not been  
6 considered previously. *If an appropriator proves adverse effects...*

7 <sup>(1)</sup> During the term of the original lease, the  
8 department <sup>with the consent of the board</sup> may modify or revoke the lease authorization if  
9 an appropriator, other than an appropriator described in  
10 subsection <sup>(10)</sup> ~~(9)~~, proves by ~~substantial credible~~ <sup>a preponderance of the</sup> evidence that  
11 his water right is adversely affected. *If an appropriator proves...*  
12 <sup>(8)</sup> The priority of appropriation for a lease under  
13 this section is the same as the priority of appropriation of  
14 the right that is leased.

15 <sup>(9)</sup> Neither a change in appropriation right nor any  
16 other authorization is required for the reversion of the  
17 appropriation right to the lessor's previous use.

18 <sup>(10)</sup> A person issued a water use permit with a priority  
19 of appropriation after the date of filing of an application  
20 for a lease authorization under this section may not object  
21 to the exercise of the lease according to its terms, the  
22 renewal of the lease, or the reversion of the appropriation  
23 right to the lessor according to the lessor's previous use.

24 <sup>(11)</sup> THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS SHALL  
25 PAY ALL COSTS ASSOCIATED WITH INSTALLING MEASURING DEVICES

I

(23)

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Ex. #11

3-17-89

1 OR PROVIDING PERSONNEL TO MEASURE STREAMFLOWS ACCORDING TO  
2 THE MEASURING PLAN SUBMITTED UNDER THIS SECTION.

3 NEW SECTION. Section 5. Board designation of eligible  
4 stream reaches. (1) The department of fish, wildlife, and  
5 parks, ~~in consultation with the department~~, <sup>with the consent of the Commission</sup> may apply to the  
6 board for designation of stream reaches for which water  
7 leasing to ~~maintain or enhance~~ <sup>provide</sup> streamflows pursuant to  
8 [section 4] may occur.

9 (2) The board may declare a stream reach eligible for  
10 leasing pursuant to [section 4] only if it finds that water  
11 leasing is necessary or ~~is likely to~~ <sup>is necessary to</sup> be necessary to  
12 ~~maintain or enhance fish, wildlife, or recreation~~ <sup>provide for fisheries</sup> DURING  
13 CRITICAL LOW FLOW PERIODS.

14 (3) <sup>4</sup> The board may designate no more than 10 stream  
15 reaches in the state where water leasing pursuant to  
16 [section 4] may occur.

17 NEW SECTION. Section 6. Contributions for leasing  
18 appropriation rights OR DEVELOPING STORAGE FACILITIES. (1)  
19 The department may accept contributions from public or  
20 private entities for the purpose of:

21 (A) leasing appropriation rights to ~~maintain or~~ <sup>provide</sup>  
22 ~~enhance~~ instream flows for ~~fish, wildlife, or recreation~~ <sup>the benefit of fisheries</sup>  
23 ~~purpose; OR~~

24 (B) DEVELOPING STORAGE FACILITIES TO ~~maintain or~~ <sup>provide</sup>  
25 ~~enhance~~ STREAMFLOWS FOR ~~FISH, WILDLIFE, RECREATION, AND~~

1 ~~OTHER PURPOSES.~~

2 (2) Any contributions accepted by the department under  
3 this section must be deposited in the fish and wildlife  
4 mitigation trust fund established in 87-1-611.

5 (3) The department shall expend money obtained under  
6 this section SUBSECTION (1)(A) and deposited in the fish and  
7 wildlife mitigation trust fund ~~EXCLUSIVELY~~ <sup>providing</sup> to lease existing  
8 rights for the purpose of ~~maintaining or enhancing~~ <sup>providing</sup> instream  
9 flows ~~for fish, wildlife, or recreation~~ <sup>UNLESS EXPENDITURE</sup>  
10 FOR A DIFFERENT PURPOSE IS AUTHORIZED PURSUANT TO 87-1-611.

11 (4) THE DEPARTMENT SHALL EXPEND MONEY OBTAINED UNDER  
12 SUBSECTION (1)(B) AND DEPOSITED IN THE FISH AND WILDLIFE  
13 MITIGATION TRUST FUND ~~EXCLUSIVELY~~ <sup>provide</sup> TO DEVELOP STORAGE  
14 FACILITIES TO ~~maintain or enhance~~ <sup>provide</sup> STREAMFLOWS ~~FOR FISH~~  
15 ~~WILDLIFE, RECREATION, AND OTHER PURPOSES~~ <sup>UNLESS AN</sup>  
16 EXPENDITURE FOR OTHER PURPOSES IS AUTHORIZED PURSUANT TO  
17 87-1-611.

18 NEW SECTION. SECTION 7. REPORT TO THE LEGISLATURE --  
19 <sup>with the consent of the board</sup>  
20 BY THE DEPARTMENT. THE DEPARTMENT SHALL REPORT TO EACH  
21 REGULAR SESSION OF THE LEGISLATURE AS TO THE OPERATION OF  
22 [THIS ACT].

23 NEW SECTION. Section 8. Extension of authority. Any  
24 existing authority to make rules on the subject of the  
25 provisions of [this act] is extended to the provisions of  
[this act].

II



1           NEW SECTION.   **Section 9.** Codification instruction. (1)  
2   [Sections 4, ~~and 5~~ <sup>and 7</sup>] are intended to be codified as an  
3   integral part of Title 85, chapter 2, part 4, and the  
4   provisions of Title 85, chapter 2, part 4, apply to  
5   [sections 4, ~~and 5~~ <sup>and 7</sup>].  
6           (2) [Section 6] is intended to be codified as an  
7   integral part of Title 87, chapter 1, part 6, and the  
8   provisions of Title 87, chapter 1, part 6, apply to [section  
9   6].

10           NEW SECTION.   **Section 10.** Termination. [This act]  
11   terminates October 1, 1999.

-End-

# QUESTIONS AND ANSWERS ON THE INSTREAM FLOW LEASING BILL

## WHAT IS THE PURPOSE OF THE BILL?

The purpose of the instream flow leasing bill is to allow the Department of Fish, Wildlife and Parks (DFWP) to lease water rights from willing individuals or groups to maintain or enhance free-flowing water in certain streams for fish, wildlife, and recreation (Section 4(1)). Several of these points should be emphasized.

First, the only entity that is allowed to lease water for instream flow purposes is the DFWP. However, other public and private agencies are allowed to contribute funds and other resources to the DFWP for the purpose of leasing water for instream flow protection (Section 6).

The DFWP may also accept contributions for developing water storage to maintain or enhance streamflows (Section 6(1)(B)). The DFWP must expend such contributions exclusively for such storage facilities unless otherwise authorized under Section 87-1-614, MCA (Section 6(4)).

Second, the DFWP may only lease water only from "willing" parties. No one will be forced to lease water to the DFWP for instream flow purposes.

Third, the DFWP may lease water from willing parties to both maintain existing resources as well as to enhance or increase instream flows in dewatered streams. While the bill provides the DFWP an alternative mechanism to maintain existing instream resources (in addition to the reservation process (Section 85-2-316, MCA) and water storage), it is most likely to be used to enhance instream flows in dewatered streams.

Fourth, the DFWP's opportunity to lease water for instream flow purposes is limited to only 10 stream reaches identified by the DFWP and approved by the Board of Natural Resources and Conservation (Section 5). Fifth and finally, the DFWP may only lease water to protect and manage fish, wildlife, and recreational resources.

## HOW DOES THE BILL PROTECT EXISTING WATER RIGHTS?

First, the DFWP can only lease water from a "willing" party. That is, instream flow leases are voluntary; they are not required and do not result in the confiscation of water rights without compensation. Where the two parties cannot be mutually benefited, a lease arrangement makes bad economic sense and is not likely to be entered into.

Second, according to the "Statement of Intent," it is anticipated that the DFWP will meet with appropriators along selected stream reaches to assess and consider any concerns before proceeding with an instream flow lease.

Third, the DFWP must provide the Board of Natural Resources and Conservation (BNRC) with a list of specific stream reaches on which leasing is desired (Section 5). The BNRC must then declare or designate only 10 stream reaches where instream flow leases may occur if it finds that leasing is necessary. Individuals or groups with existing water rights would have an opportunity to express their concerns before the Board regarding instream flow leases on particular stream reaches.

Fourth, a proposal for an instream flow lease must be processed through the same change of use proceeding as other water right changes and transfers (Section 2). In short, this means that individuals with water rights would have an opportunity to object to the lease and to provide evidence on how and why the lease would adversely affect the use of their water right. If a proposed lease would result in an adverse affect, it would not be allowed.

Fifth, the Department of Natural Resources and Conservation (DNRC) maintains jurisdiction to modify or revoke the lease during the lease period if third parties provide new evidence that the lease adversely affects the use of their water right (Section 4(6)).

## HOW WILL THE BILL AFFECT FUTURE WATER PERMITTEES?

An individual or group that applies for and receives a water use permit with a priority date after the date of the instream flow lease authorization would not be allowed to object to the exercise of the lease, the renewal of the lease, or the reversion of the appropriation right to the lessor (Section 4(9)). This is consistent with the prior appropriation doctrine ("first in time, first in right), and does not constitute a change in Montana's water law.

## HOW MUCH OF AN EXISTING WATER RIGHT IS LEASABLE?

The amount of water that may be leased from an existing water user for instream flow purposes is generally up to the lessor and the DFWP. However, the maximum quantity of water that may be leased is the amount historically diverted

by the lessor; only the amount historically consumed may be leased below the lessor's point of diversion (Section 4(4)). The DNRC may specify in the lease authorization that an amount of water smaller than that historically consumed by the lessor is leasable.

An instream flow lease must take into account the historical use of the water right, including but not limited to the shutoff of a diversion associated with a water right under normal irrigation practices, harvesting, climatic conditions, and cooperative practices with other irrigators (Section 4(4)).

#### HOW WILL THE LENGTH OF THE STREAM REACH TO WHICH THE LEASE APPLIES BE IDENTIFIED?

The length of stream reach to which an instream flow lease applies is generally up to the lessor and the DFWP. However, specific information on the length and location of the stream reach must be included in the instream flow lease authorization (Section 4(3)). In addition, the BNRC may establish the streams and stream reaches where leasing may occur.

#### HOW WILL THE INSTREAM FLOW BE MEASURED?

The details for measuring a leased instream flow are up to the DFWP. However, a lease authorization must include an instream flow measuring plan that describes the points where and the manner in which the instream flow will be measured (Section 4(3)).

The DFWP must pay all the costs associated with installing measuring devices or providing personnel to measure streamflows according to the measuring plan (Section 4(10)).

#### HOW LONG IS THE LEASE PERIOD?

An instream flow lease may be authorized by the DNRC for no more than 10 years (Section 4(5)). The lease may also be renewed (for up to 10 years per renewal) if nobody objects to the renewal and provides new evidence showing how the lease adversely affects the use of a water right, and if the leasing statute is recodified after the 10 year sunset provision.

#### HOW OFTEN MAY THE LEASE BE EXERCISED?

The DFWP may lease existing water rights only during critical low flow periods (Section 4(1)).

#### WHAT IS THE PRIORITY DATE FOR AN INSTREAM FLOW LEASE?

As in any water right change, the priority date for an instream flow lease authorization is the same as the priority of appropriation of the water right that is leased (Section 4(7)).

#### WHO MAY ENFORCE INSTREAM FLOW LEASES?

According to the "Statement of Intent," the lessor is responsible for taking action, if necessary, to protect the instream flow lease. However, the "Statement of Intent" goes on to say that the lessor and the DFWP may agree to a different arrangement if agreeable to both parties.

#### WILL A LEASED WATER RIGHT BE CONSIDERED ABANDONED?

In leasing an existing water right, the lessor does not abandon any part of the right (Section 3(4)).

#### WHEN CAN THE DEPARTMENT OF FISH, WILDLIFE AND PARKS BEGIN TO LEASE WATER RIGHTS?

The DFWP may not enter into a lease before July 1, 1991 (Section 4(1)). This will allow the DFWP and the BNRC to identify specific stream reaches where instream flow leases are needed and to determine if there are any parties willing to lease water. It will also give the legislature an opportunity to review the leasing program during the 1991 session before any leases are authorized.

#### REPORT TO THE LEGISLATURE

The DNRC must report to each regular session of the legislature on the operation of the instream flow leasing program (Section 7).

GENERAL LAW ON ATTORNEY'S FEES

In the United States the rule generally adopted by both the federal and state courts, as concerns administrative matters, is that the prevailing litigant is not entitled to collect a reasonable attorney's fee from the loser. This is known as the "American rule". The major exception to this rule is cases involving civil rights actions where civil rights enforcement rests with the citizens who generally have little or no money with which to hire an attorney. But even in the civil rights cases attorney's fees are not allowed to the prevailing party against the government if it is determined that the government position was substantially justified.

AWARDING OF ATTORNEY'S FEES UNDER H. B. 707

An amendment to H.B. 707 would allow attorney's fees only against the state of Montana, no other party would share this liability. The awarding of attorney's fees solely against a government agency is contrary to the accepted standard. The proposed amendment to House Bill No. 707 not only creates a single responsible party for the payment of attorney's fees, it also establishes a minimal standard for claiming fee's, i.e., proving of any adverse effect to other water rights. There is no

latitude for the state to prove that its position was substantially justified. This creates an atmosphere in which a few litigious attorneys can utilize the administrative scheme to generate law suits and subsequent attorney's fees. By allowing attorney's fees singularly against the state there is posed a serious threat of harassing litigation with its potentially adverse consequences for administrative independence in reaching wise water resource decisions. If there is a concern that attorney's fees should be allowed in the water resource decision-making process, then the focus should be on the entire permitting process, and not simply the limited scenario of leasing of water rights for instream uses by a state agency.

How would an instream flow lease be applied on a "losing" or "shrinking" stream?

The existing law allows the department to condition its approval of a change in water use based on the existing circumstances and to avoid adverse affects to other water users. In the case of a losing stream, the department could reduce the amount that would be used for instream flow based on existing stream flow conditions. For example, if a stream naturally disappears at some point, the DNRC would not allow a change to instream flow beyond that point. If a stream naturally reduces by 20 percent, the DNRC could reduce the amount that could be used for instream flow by 20 percent.

Furthermore, a water commissioner on the stream is best qualified to allocate flows based on the specific factors that contribute to or diminish stream flow. The commissioner has discretion to allocate the flows based on the particular characteristics of the stream.

## METHOD FOR CALCULATING THE CONSUMPTIVE USE PART OF AN IRRIGATION WATER RIGHT

The total consumptive part of an irrigation water right consists of evapo-transpiration (ET) and irrecoverable losses associated with a particular irrigation practice. ET is the sum of water used by the crop in transpiring and building plant tissues and water evaporated from adjacent soil and plant foliage. Irrecoverable losses include deep percolation that recharge ground water and nonbeneficial ET used by riparian vegetation (e.g. cottonwoods, willows, cattails, weeds) along conveyance systems.

The Soil Conservation Service (SCS) has developed methods specific to Montana for estimating crop irrigation requirements on a seasonal, monthly, and peak daily basis. The methods are based on the generally accepted Blaney-Criddle procedure as presented in the SCS Technical Release 21 entitled, "Irrigation Water Requirements". The methods account for crop type, climate, elevation, soil type, type of irrigation system, and other important factors. Knowing the above information and total number of acres irrigated, it is reasonably straight forward to calculate the ET component of consumptive use. Crop ET generally accounts for between 70 and 90 percent of total consumptive use.

Estimating irrecoverable loss is based on the type of conveyance and on-farm irrigation system being used and underlying geohydrology. Irrecoverable losses account for between 10 and 30 percent of the total consumptive use.

## CHANGES IN WATER RIGHTS -- A SUMMARY REVIEW

Under western water law, water is the property of the state. However, individuals may appropriate water for beneficial uses as provided by state law. Further, water rights are transferable: they are not tied to the ownership of land. In Montana, severing water rights from the land dates back to at least 1885 when the Montana legislature passed a law providing that:

the person entitled to the use of water may change the place of diversion, if others are not injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

This philosophy is sustained under Montana's Water Use Act which allows for changes in a point of diversion, the place of use, purpose of use, or place of storage (Section 85-3-402 MCA). At the same time, the law provides that a water right may not be changed if the proposed appropriation works are inadequate or if the proposed use of water is not a beneficial use under Montana law. Most significantly, *a proposed change may not adversely affect the water rights of other users, including those with junior priority dates.*

The process by which a water right is changed is similar to that used when acting on applications for new water use permits. The Department of Natural Resources and Conservation publishes a legal notice advising water users in an area of a requested change. In addition, those users who may be affected by the change are provided individual written notice. Any user may object to the approval of a change if an existing right may be affected. As necessary, a legal hearing may also be held. On the basis of information presented in the objections and any hearing, as well as a technical analysis by the department, the requested change will be approved, modified, or denied. The expense of participating in the legal change process is the individual responsibility of both the applicant and the objector.

Each year about 160 requests for water right changes are submitted; 125 are approved and the balance are either withdrawn or denied by the department. Over half of the requests are for changes in point of diversion. Of those, most deal with small wells (under 100 gallons per minute) for domestic and livestock purposes. The balance of the applications involve agricultural water rights and changes in the place where water is used.



se rules against the severance of water rights from the land to which the water was originally applied, (2) the necessity to protect the interests of third parties, and (3) the difficulty of establishing just what water is for sale.

## [2] Appurtenancy

Appurtenant rights are usufructory rights and are not tied to ownership of land. Thus, they should be transferrable apart from the land provided there is no injury to other right holders.<sup>1</sup> But, to promote bona fide settlement, some states tied water to land. Today, appurtenancy requirements are not perceived as fulfilling valid public purpose and have been relaxed by legislatures. For example, New Mexico declares that irrigation water is appurtenant but allows it to be severed with the consent of the surface owner.<sup>2</sup> Today, appurtenancy is primarily a conveyancing rule; water rights pass with a conveyance of the surface estate unless there is an express severance. In most states, water rights are not appurtenant to land.<sup>3</sup>

Appurtenancy laws are important in only a few states, and these states have engrafted so many exceptions to the requirement that the exceptions have shallowed the rules. For example, irrigation water rights are appurtenant in Oklahoma, but they may be severed if it becomes impracticable to beneficially or economically use the water for irrigation.<sup>4</sup> Wyoming circumvents the restrictions of its appurtenancy rules by allowing all reservoir rights to be sold without restriction<sup>5</sup> and direct flow rights may be sold for industrial use.<sup>6</sup>

<sup>1</sup> Cf. *Clodfelter v. Reynolds*, 68 N.M. 61, 358 P.2d 626 (1961) (right to change point of diversion inherent in nature of water right).

<sup>2</sup> N.M. Stat. Ann. § 75-5-23. See *Mathers v. Texaco, Inc.*, 77 N.M. 239, 421 P.2d 771 (1966). The consent of remaindermen to a severance meets the statutory consent requirements. *Lowe v. Adams*, 77 N.M. 111, 419 P.2d 764 (1966).

<sup>3</sup> Mont.: *Brennan v. Jones*, 101 Mont. 550, 55 P.2d 697 (1935).

Utah: Utah Code Ann. § 73-3-3.

<sup>4</sup> Okla. Stat. Ann. § 105.22.

<sup>5</sup> Wyo. Stat. Ann. § 41-3-320.

<sup>6</sup> Wyo. Stat. Ann. § 41-3-103. See Trelease and Lee, "Priority and Progress—Case Studies of the Transfer of Water Rights," 1 *Land & Water L. Rev.* 1 (1966).

FROM

5-69

Tarlock, A. Dan. 1988. *Law of Water Rights and Resources*. Clark Boardman Company. New York.



ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 3/17 Bill No. HB 399 Time #1

NAME	YES	NO
Senator Hubert Abrams #8		✓
Senator Gary Aklestad #1	✓	
Senator Esther Benatson #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	✓	

2 . 7

Jaelene Johnson  
Secretary

Tom Beck  
Chairman

Motion: Delete amendment on page 5, line 8. "at the proposed point of discussion:" failed

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 3/17 Bill No. HB399 Time #2

NAME	YES	NO
Senator Hubert Abrams #8	✓	
Senator Gary Aklestad #1		✓
Senator Esther Benetson #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		✓
	7	2

Jaelene Johnson  
Secretary

Tom Beck  
Chairman

Motion: HB 399 to BE CONCURRED IN. -passed

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 3/17 Bill No. HB477 Time #1

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		/

3 . 6

Jaelene Johnson  
Secretary

Tom Beck  
Chairman

Motion: Senator Bengtson's Amendments  
EXHIBIT 4 - failed



ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 3/17 Bill No. HB701 Time #1

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	✓	

7 . 2

Jaelene Johnson  
Secretary

Tom Beck  
Chairman

Motion: Hail board amendment  
HB701 OI.ARS - passed









ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 3/17 Bill No. HB707 Time \_\_\_\_\_

NAME	YES	NO
Senator Hubert Abrams #8		✓
Senator Gary Aklestad #1	✓	
Senator Esther Benotson #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	✓	

4 . 5

Jaelene Johnson  
Secretary

Tom Beck  
Chairman

Motion: Substitute Motion Amend  
line 22 - failed