

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on April 5, 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 Senator
Tom Beck

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE JOINT RESOLUTION 31

Presentation and Opening Statement by Sponsor:

Representative Vernon Westlake, House District 76. See
exhibit 2 for his testimony.

List of Testifying Proponents and What Group They Represent:

Ted Neuman representing the Montana Council of
Cooperatives

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ted Neuman - "I come from the farming industry. I really
appreciate the services we get from extension services.
I have been a long time 4-H member and a 4-H leader.
It has meant a lot to me. As technology increases in
agriculture, the extension services in one of the
vehicles, we need in the future, to help us compete
with the Japanese and the European countries."

Questions From Committee Members: None

Closing by Sponsor: Representative Westlake urged the committee to support HJR 31.

DISPOSITION OF HOUSE JOINT RESOLUTION 31

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Devlin moved HJR 31 TO BE CONCURRED IN. The motion carried unanimously.

Senator Beck was assigned to carry HJR 31.

HEARING ON HOUSE BILL 754

Presentation and Opening Statement by Sponsor: Hal Harper, House District 44, stated "HB 754 will address the overcrowding of rivers. This bill will deal with that problem by shrinking fishable stretches of river. This bill puts a fee on people who fish. There will be a 50-cent increase in the cost of a Class A resident fishing license and a Class AAA sportsman's license and a \$1 increase in the cost of a Class B nonresident fishing license. We will directly use this money to improve and to rehabilitate fishable stretches of water across this state...This money will be available for stretches of water all over the state. The money is needed to help these streams. I urge you to support this bill."

List of Testifying Proponents and What Group They Represent:

Representative Bob Marks representing House District 75
Representative Bruce Simon representing House District 91
Representative Ed Grady representing House District 47
Robert Van DerVere representing himself
Don Chance representing FFOAM
Chris Hunter representing the Montana Chapter American Fisheries Society
Tony Schooner representing Skyline Sports
Janet Ellis representing the Montana Audubon Legislature Fund
George Ochenski representing Alliance for Montana Water

Stan Bradshaw representing Montana Council of Trout Unlimited
Brant Quick representing the Northern Plains Research Council
Ken Wilson representing Montana Chapter of Sierra Club
Bill Holdorf representing Skyline Sports
Ray Tilleman representing Trout Unlimited
Mike Bay representing himself

List of Testifying Opponents and What Group They Represent:

Lorents Grosfield representing the Montana Association of Conservation Districts
Dave McClure representing the Montana Farm Bureau
Ole Ueland representing Headwaters Commission
Kim Enkerud representing the Montana Public Lands Council
Jerry Jack representing the Montana Stockgrowers Association
Marvin Barber representing the Agriculture Preservation Association
Don Allen representing the Montana Wood Products Association
Kay Norenberg representing WIFE and the Cattle Feeders Association
Dueane Calvin representing the Montana Water Resource Association

* Written Testimony handed in *

Everall Holman representing the Dodson Irrigation District
Ted Ereaux representing the Malta Irrigation District
Mark Etchart representing himself from Glasgow, Montana

Testimony:
Proponents:

Representative Bob Marks - "If you look at the language there on page 3, in sub-section 4 and 5, this language will clear up any misconceptions of the bill. It says 'the department shall consult with local conservation districts regarding the appropriateness of the project and any applicable permit requirements. The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.' There is not a heck of a lot to fear with this. With that, I urge you to support HB 754."

Representative Bruce Simon - "I am a fisherman and I stand in strong support of this bill. There are a lot of streams throughout Montana that could use this kind of work. We have had erosion of banks in several streams around Montana and we could use a bill like this. Even if the fishing license is free, if there isn't a decent place to fish, then it isn't worth much."

Representative Ed Grady - "I am very aware to what has happened to our stream banks in high water. I think this is a real start into giving us some help to control these stream banks. I think this bill is very beneficial to agriculture and sportsman. It is using sportsman dollars to help the agriculture people out. Every time we have high water, more of our state goes on down to some other state. This is beyond our control and we are losing valuable land. I hope the Senate passes this bill; the State of Montana needs it."

Robert Van DerVere - "This is a good bill and I hope you will support it 100%."

Paul Roos - See exhibit 3 for testimony.

Don Chance - "We are strongly in support of this legislation. We are more than willing to help finance and to provide the funding necessary for a program like this in place."

Chris Hunter - "We are aware, as anybody is, the problems that this legislation would correct. We strongly support this legislation."

Tony Schooner - "By being in the business as an outfitter, I can testify to the millions of dollars that are brought into the state through the fishing industry. In a nation wide survey, over 50% of the people fish. I sure there are more than that in Montana because we have a place to fish. The sportsman are willing to pay for this. This is a good bill and I urge your support."

Janet Ellis - "We support this bill like a similar bill that has passed the Senate...I want to point out, you can't do anything on private land without the landowners consent. I urge you to support this bill."

George Ochenski - "The landowners will be protected under this bill. It certainly is a consideration we have taken into account. The landowners were not specifically what we had in mind, when we put this bill

together. We are talking about the rivers and the fisheries. I will pass out to you a clipping from a Trout Magazine. It lists the one hundred best trout streams in the nation." See exhibit 4. "Montana has the best trout streams. We are losing good miles of fisheries through natural and manmade problems. We should be gaining more miles. So we can handle the increase of people that are coming into this state. I hope this committee will pass this bill."

Stan Bradshaw - "This bill is not intended to damage agriculture in anyway. One of the things I have been reading in the paper about this bill--This bill is redundant because the Department of Fish, Wildlife, and Parks already have huge sums of money to do this kind of work. I was a little startled at that, so I went down to the department to see what kind of funding they have to do this work. There is not a designated source of fund to do this kind of work. They may have some additional dollars to apply to this kind of thing. The availability of this money is highly unreliable and it is only a small amount of money. There is not a reliable source of money in any department to do this work. It is work that can be to the benefit of both the fisheries and the landowners. I urge your support of HB 754."

Brant Quick - "Our organization supports HB 754. This bill will do nothing but benefit this state and we urge your support."

Ken Wilson - "I want to go on record in support of HB 754."

Bill Holdorf - "Our three hundred and fifty members support this bill. We hope you will pass 754."

Ray Tilleman - "All the comments, that I might make, have already been made. I support this bill fully."

Mike Bay - "I want to go on record as supporting HB 754."

Testimony:

Opponents:

Lorents Grosfield - "I believe the this bill has become more controversial than it ever needed to. I had a hard time deciding which one to appear as, an opponent or a proponent. The Montana Association of Conservation Districts supports the general intent of projects to clean-up and improve fisheries and streams."

Conservation Districts, as you know, have local jurisdictions over all the streams within their boundaries. We have some permitting authority over those streams. I would like to thank the sponsor of the bill for agreeing to put Conservation Districts in the bill. We are suggesting a little stronger rule with these amendments. It doesn't change the bill it explains it a little better." See exhibit 5 for amendments. Mr. Grosfield explains the amendments.

Dave McClure - "We rise in opposition only to the present wording. We will support the bill with the adoption of the Grosfield amendments. We will work to make it a successful program."

Ole Ueland - "I want to go on record in opposition to HB 754."

Kim Enkerud - "The membership of these organizations, that I represent, are all public land users. This bill does not specifically address private lands. Our streams and river are found across all ownerships of land. We rise in opposition to this bill."

Jerry Jack - "We rose against this bill over on the House side. We offered a series of amendments. Some of those amendments we had incorporated in the bill. We are in agreement with the Conservation District amendments. We feel, if these amendments can be incorporated in the language of the bill, you will have our support on this."

Marvin Barber - "We want to be a positive opponent and support the bill with Mr. Grosfield's amendments on it."

Don Allen - "I just had a chance to review the amendments since the hearing started. I find that most of the concerns that we had, have been resolved by the Grosfield amendments. I would like to support the bill with those amendments in there. I have one other concern which is on page 2, line 5. I would like to ask the committee to change the words 'maintain and restore the integrity' to something like 'protect for beneficial uses'. Unless you say 'beneficial uses', it could lead in the future to some real disagreements to what activities can occur. I hope you will support these amendments."

Kay Norenberg - "We are opposing the bill as written. We would like to support the amendments that Mr. Grosfield offered."

Dueane Calvin - "We rise in opposition to the bill as written. We have reviewed the amendments that Mr. Grosfield submitted. In light of those amendments, we feel we could support those amendments as well as the bill."

* Written Testimony handed in *

Everall Holman - See exhibit 6 for testimony.

Ted Ereaux - See exhibit 7 for testimony.

Mark Etchart - See exhibit 8 for testimony.

Representative Harper handed in an amendment to be discussed with the committee. See exhibit 9.

Questions From Committee Members: Senator Aklestad - "What expertise does the fish and game have within their own department to design--In some areas, they can physically repair the banks. It seems like the expertise is already available. The conservation offices or the ASC offices--I don't know if the fish and game has that much expertise in that area?" Representative Harper - "In many projects other people are going to be involved. This is besides the fish and game. I want to maintain the fish and game as the lead agency under this bill."

Senator Beck - "You are not for amendment number 8 in the Grosfield amendments?" Representative Harper - "The way I would like to see that is, if you left the existing language in, but at the very end you put in 'appropriateness of the project and contain any applicable permits'."

Senator Beck - "You don't think this would be appropriate to have this under the Conservation District?"

Representative Harper - "What I am asking fisherman to ante up 50-cent from instate and a \$1 from out of state. They're going to demand that their agency give the money to who is going to be the lead agency in charge. You can't ask fisherman to raise money and then give it to some other agency of the government. That isn't right. We are giving them legal power to what they think is appropriate."

Senator Williams - "It seems like getting eight out the nine amendments would be great. Are the others hinged on this?" Lorents Grosfield - "The discussion is over the word 'consult'. How much force does that word have? I

think Mr. Allen had an excellent point on beneficial uses. That will fit in fine at the end. I am not sure the word 'consult' is quite strong enough. What does that mean?"

Closing by Sponsor: Representative Harper - "I think we had a good hearing and I urge you to support this bill."

DISPOSITION OF HOUSE BILL 754

Discussion: None

Amendments and Votes: Senator Galt moved to strike subsection (b), line 9, on page 3; Senator Aklestad seconded the motion. The motion carried unanimously.

Senator Bengtson moved the Harper amendment (exhibit #9). The motion carried unanimously.

Senator Jergeson moved to amend 'river' means a river, stream, creek, or other naturally occurring body of flowing water. Senator Jergeson stated this was an alternative amendment #4 on the Grosfield amendments. The motion carried unanimously. Senator Beck stated that motion took care of #1 and #4 of the Grosfield amendments.

Senator Thayer moved the language, "The legislature further finds that some of our state's rivers and fishery are diminished in value by water pollution, water storages, and repairen erosion and that there is a need for a program to promote the beneficial use and productivity of our river systems". The motion carried unanimously.

Senator Thayer moved #3 Grosfield amendment. The motion carried unanimously.

Senator Bengtson moved amendment #5 of the Grosfield amendments. The motion carried unanimously.

Senator Bengtson moved amendment #6 of the Grosfield amendments. The motion carried unanimously.

Senator Bengtson moved amendment #8. The language stated, "The department shall consult with the local conservation districts regarding the appropriateness of the project and obtain any applicable permits." The motion carried unanimously.

Senator Devlin moved to clean-up the language on page 2, lines 9, 10, 11, and 12. The language reads, "Is a sound method to ensure that rivers and fisheries will continue to serve the state and its people". The motion failed with Senator Abrams, Senator Bengtson, Senator Jergeson, and Senator Williams voted no.

Recommendation and Vote: Senator Williams moved HB 754 TO BE CONCURRED IN AS AMENDED. The motion carried unanimously.

Williams A. Hunt submitted written testimony for the committee to review on HB 775. See exhibit 10 for testimony.

ADJOURNMENT

Adjournment At: 2:43 P.M.


SENATOR TOM BECK, Chairman

TB/jj

ROLL CALL

AGRICULTURE

COMMITTEE

DATE

4/5/89

51st LEGISLATIVE SESSION 1989

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

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

April 5, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HJR 31 (third reading copy -- blue), respectfully report that HJR 31 be concurred in.

Sponsor: Westlake (Beck)

BE CONCURRED IN

Signed:



Thomas A. Beck, Chairman

H.C.
4/5/89
3:29 p.m.

SENATE STANDING COMMITTEE REPORT

page 1 of 2
April 6, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 754 (third reading copy -- blue), respectfully report that HB 754 be amended and as so amended be concurred in:

Sponsor: Harper (Walker)

1. Page 2, line 2.
Following: "that"
Insert: "some of"

2. Page 2, line 4.
Strike: "development"
Insert: "erosion"

3. Page 2, line 5.
Strike: "maintain and restore the integrity"
Insert: "promote the beneficial use"

4. Page 2, line 18.
Strike: "shorelines, wetlands, and riparian vegetation"
Insert: "and immediately adjacent lands"

5. Page 2, line 24.
Following: line 23
Insert: "(5) "Restoration" means to restore to a good condition, regenerate, or make over in an improved form."
Re-number: subsequent subsection

6. Page 2, line 24.
Following: "other"
Insert: "naturally occurring"

7. Page 3, lines 4 and 5.
Strike: "the following activities"
Insert: "physical projects to improve rivers and their associated lands in order"

8. Page 3, lines 6 through 11.
Following: "habitat" on line 6
Strike: the remainder of line 6 through "law" on line 11

9. Page 3, line 18.
Strike: "CONSULT WITH"
Insert: "present projects to"

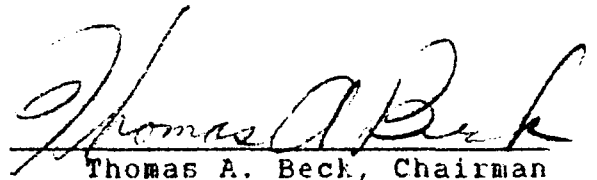
10. Page 3, lines 19 and 20.
Strike: "REGARDING THE APPROPRIATENESS OF THE PROJECT"
Insert: "for review and recommendations"

11. Page 3, line 20.
Following: "AND"
Insert: "obtain"
Following: "APPLICABLE"
Strike: "PERMIT REQUIREMENTS"
Insert: "permits"

12. Page 3, line 24.
Following: line 23
Insert: "(6) No project conducted under the program may restrict
or interfere with the exercise of any water right."

AND AS AMENDED BE CONCURRED IN

Signed:


Thomas A. Beck, Chairman

41 C.
4/6/89
11:49
h.m.

AGRICULTURE
EXHIBIT NO. 1
DATE 4/5/89
BILL NO. HJR 31
HB 754

BILL SUMMARY--SENATE AGRICULTURE COMMITTEE
APRIL 5, 1989

PREPARED BY DOUG STERNBERG, COMMITTEE STAFF

HJR 31 A resolution recognizing and supporting the contributions of cooperative extension services through honoring the 75th anniversary of the Smith-Lever Act of 1914

HB 754 Section 1: outlines the purposes of the river restoration program

Section 2: defines five terms used in the act

Section 3: establishes a river restoration program to be administered by the department of fish, wildlife, and parks, in order to conserve and enhance fish and wildlife habitat through physical projects and the lease or purchase of water from storage facilities if authorized by law; requires departmental cooperation and consultation with certain entities; allows the department to contract with private organizations to implement specific projects; requires the department to receive consent from the landowner or lessee of associated lands before initiating physical projects

Section 4: establishes the river restoration account to receive funds for program purposes

Section 5: sets levels of license fees to be deposited in the river restoration account

Section 6: raises Class A resident fishing license by 50 cents

Section 7: raises Class B nonresident fishing license by \$1

Section 8: adds 50 cents to the Class AAA sportsman's license rate in effect until March 1, 1994

Section 9: adds 50 cents to the Class AAA sportsman's license rate in effect March 1, 1994

Section 10: extends present agency rulemaking authority

Section 11: applies license increases to fishing seasons beginning on or after March 1, 1990

Section 12: provides a July 1, 1989, effective date



The Big Sky Country

SENATE AGRICULTURE

EXHIBIT NO. 2

DATE 4/5/89

BILL NO. HJR 31

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE VERNON L. WESTLAKE

HOUSE DISTRICT 76

HOUSE ADDRESS:
CAPITOL STATION
BOX 122
HELENA, MONTANA 59620

COMMITTEES:
AGRICULTURE LIVESTOCK &
IRRIGATION
HIGHWAYS & TRANSPORTATION
STATE ADMINISTRATION

APRIL 5, 1989

TESTIMONY - HJR 31

SENATE AGRICULTURE COMMITTEE:

SENATOR TOM BECK - CHAIRMAN
SENATOR GERRY DEVLIN - VICE CHAIRMAN

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM VERNON WESTLAKE, REPRESENTATIVE, HOUSE DISTRICT #76 IN GALLATIN VALLEY.

I AM HERE THIS AFTERNOON FOR CONSIDERATION OF HJR 31. I CONSIDER IT A PRIVILEGE FOR ME TO SPONSOR THIS RESOLUTION HONORING THE 75TH ANNIVERSARY OF THE SMITH-LEVER ACT OF MAY 8, 1914, AND ITS ROLE IN ESTABLISHING OUR NATION'S SYSTEM OF STATE COOPERATIVE EXTENSION SERVICES, INCLUDING THE MONTANA EXTENSION SERVICE.

I AM SURE WE ARE ALL VERY AWARE OF THE MANY SERVICES INCLUDING 4-H FOR OUR YOUNG PEOPLE, HOME EXTENSION FOR OUR-HOMEMAKERS, VALUABLE FIELD INFORMATION FOR IRRIGATION, WEED CONTROL, INSECT IDENTIFICATION AND CONTROL, JUST TO NAME SOME OF THE MORE VALUABLE PROGRAMS THAT ARE AVAILABLE TO BOTH RURAL AND URBAN COMMUNITIES.

Ex. #2
4/3/89
HJR 31

APRIL 5, 1989
PAGE 2

I PERSONALLY AM VERY GLAD THAT THE COOPERATIVE EXTENSION SERVICE WAS CREATED AS THIS WAS HOW I MET MY WIFE. SHE WAS OUR COUNTY AGENT'S SECRETARY AND I CONTACTED THE OFFICE TO RENT A SET OF SEPTIC TANK FORMS THAT WERE AVAILABLE THROUGH THE EXTENSION SERVICE. THE COUNTY AGENT WAS OUT OF THE OFFICE THIS PARTICULAR DAY BUT SHE INFORMED ME THAT THE FORMS WERE AVAILABLE AND IN THE BASEMENT. SHE PROCEEDED TO SHOW ME WHERE THE FORMS WERE AND ASKED ME IF I DIDN'T HAVE SOMEONE TO HELP ME LOAD THEM AS THEY WERE QUITE HEAVY. I REPLIED NO AND SHE THEN VOLUNTEERED TO HELP ME. IN CASE SOME OF YOU DON'T KNOW MY WIFE, SHE IS VERY SMALL. WELL I TOLD HER THAT SHE WAS TOO LITTLE TO HELP ME DO ANYTHING, AND 6 MONTHS LATER WE WERE MARRIED.

VERNON L. WESTLAKE

VW:KC

Senator Tom Beck, Chairman
Committee Members
Senate Agriculture Committee

April 5, 1989

Testimony in SUPPORT OF HB 754

submitted by Paul S. Roos, FFOAM Board Member
1630 Leslie
Helena, MT 59601

FFOAM supports HB754 as an important vehicle to enhance the resources upon which our industry depends.

We believe that with the expertise provided by the Department of F,W,& P, fishery habitat could be enhanced in a cooperative-everyone wins manner. Consultation with the local conservation district and the consent of the landowner or lessee would have to be obtained.

As an outfitter and lifelong Montana fisherman, I know the need is there for this type of fund. Montana's streams are seeing an ever increasing use by both in-state and out-of-state fishers. One of the most intelligent, long reaching solutions to increased pressure on our streams is to improve the quality of fishing in marginal waters. Increasing the number of miles of quality fisheries will dilute the pressure and increase the value of our state as a fishing paradise.

Landowners stand to gain most of all. Good trout streams have stable banks. Unstable banks are one of the most troublesome problems facing ranchers and farmers. Topsoil and acres are lost rapidly when erosion of banks is excessive. The sportsman and the agriculturalist can work together through this bill to do stream restoration projects approved by all parties.

Absolutely no one benefits when our water races down a degraded, eroded streambed to harass some poor soul on a flood plain somewhere downstream.

This is an important bill. Montanans deserve an affirmative vote from this committee on HB754.

PAUL ROOS
OUTFITTERS

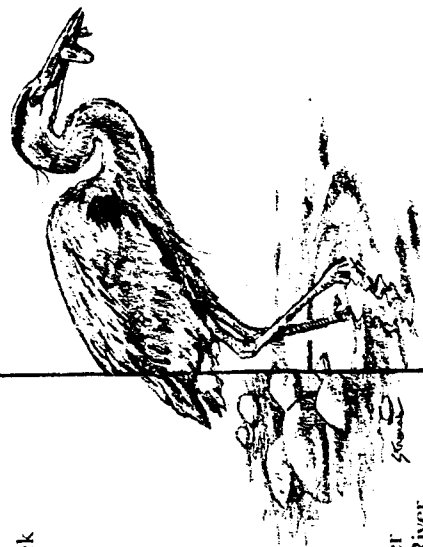


Rocky Mountains

- Arizona**
Colorado River
- Colorado**
Dolores River
Frying Pan River
Gunnison River
Roaring Fork of the Colorado River
South Platte River
- Idaho**
Henry's Fork of the Snake River
Kelly Creek
Lemhi Creek
Lochsa River
Middle Fork of the Salmon River
Silver Creek
South Fork of the Boise River
South Fork of the Snake River
Wood River
- Montana**
Armstrong's Spring Creek
Beaverhead River
Big Hole River
Bighorn River
Bitterroot River
Gallatin River
Lower Madison River
Middle Yellowstone River
Missouri River
Nelson's Spring Creek
Rock Creek
Smith River
- New Mexico**
San Juan River
- Utah**
Green River
- Wyoming**
Firehole River
Gibbon River
Green River
North Platte River
Upper Madison River
Upper Yellowstone River

West Coast

- Alaska**
Agulukpak River
Copper River
Goodnews River
Kanektok River
Naknek River
Newhalen River
Sitkoh Creek
Situk River
Talachulitna River
Talarik Creek
Togiak River
- California**
Fall River
Hat Creek
McCloud River
Smith River
Upper Sacramento River
- Oregon**
Deschutes River
North Fork of the Umpqua River
Williamson River
- Washington**
Hoh River
Quinalt River
Sauk River
Sol Duc River



**AND THE PEOPLE WHO
CHOOSE THEM...**

- Ed Van Put
- John Randolph
- John Rasmus
- Nathaniel Pryor Reed
- Terry D. Roelofs
- E. H. Rosborough
- Tom Rosenbauer
- Bob Saile
- Monte Seehorn
- Mary Sherman
- Gary Soucie
- Doug Swisher
- Spencer E. Turner
- Robert Urich
- Charles F. Waterman
- Ray J. White
- Dave Whitlock
- Leonard M. Wright, Jr.
- Lee Wulff

- Gaylord R. Alexander
- Gerald A. Almy
- George Anderson
- Robert A. Bachman
- John Bailey
- Christopher M. Batin
- Robert J. Behnke
- Gary A. Borger
- Silvio Calabi
- J. Leon Chandler
- Russell Chatham
- Yvon Chouinard
- Donald A. Duff
- David James Duncan
- Dave Engerbretson
- Michael Fong
- Keith Gardner
- Jerry Gibbs
- John Givrach
- Delano R. Graff
- Jack Hemingway
- David L. Hughes
- Robert L. Hunt
- Bob Jacklin
- Verlyn Klinkenborg
- Thomas McGuane
- Patrick F. McManus
- R. Barry Nehring
- Geoffrey Norman
- Leigh H. Perkins
- Datus C. Proper

CONSERVATION DISTRICTS AMENDMENTS
HOUSE BILL NO. 754
SENATE AGRICULTURE COMMITTEE

1. Delete word "River" throughout bill

Insert: "Stream" throughout bill

2. Page 1, Line 15

Delete: "Statement of Intent through Section 1."

3: Page 1, Line 15

Insert: "NEW SECTION. Section 1. Purpose. The purpose of this act is to establish a river restoration program to be conducted by the department of fish, wildlife, and parks in coordination, communication, and cooperation with local landowners, lessees, and conservation district officials so that projects conducted under the program will benefit the river resource and all parties involved.

3. Page 2, Line 17

Delete: "(1) "Associate lands" means the beds, banks, shorelines, wetlands, and riparian vegetation associated with a river.

Insert: "(1) "Associate lands" means the beds, banks and immediate adjacent lands associated with a stream."

4. Page 2, Line 24

Delete: "(5) "River" means a river, stream, creek, or other body of flowing water.

Insert: "(5) "Stream" means a stream, which, in its natural state, historically flows continuously at all seasons of the year and during dry as well as wet years.

5. Page 3, Line 1

Insert: "(6) "Restoration" means to restore to a good condition; regenerate, or make over in an improved form."

6. Page 3, Line 5

Delete: "activities"

Insert: "projects"

7. Page 3, Line 12

Insert: "(c) "Maintenance and enhancement of storage facilities."

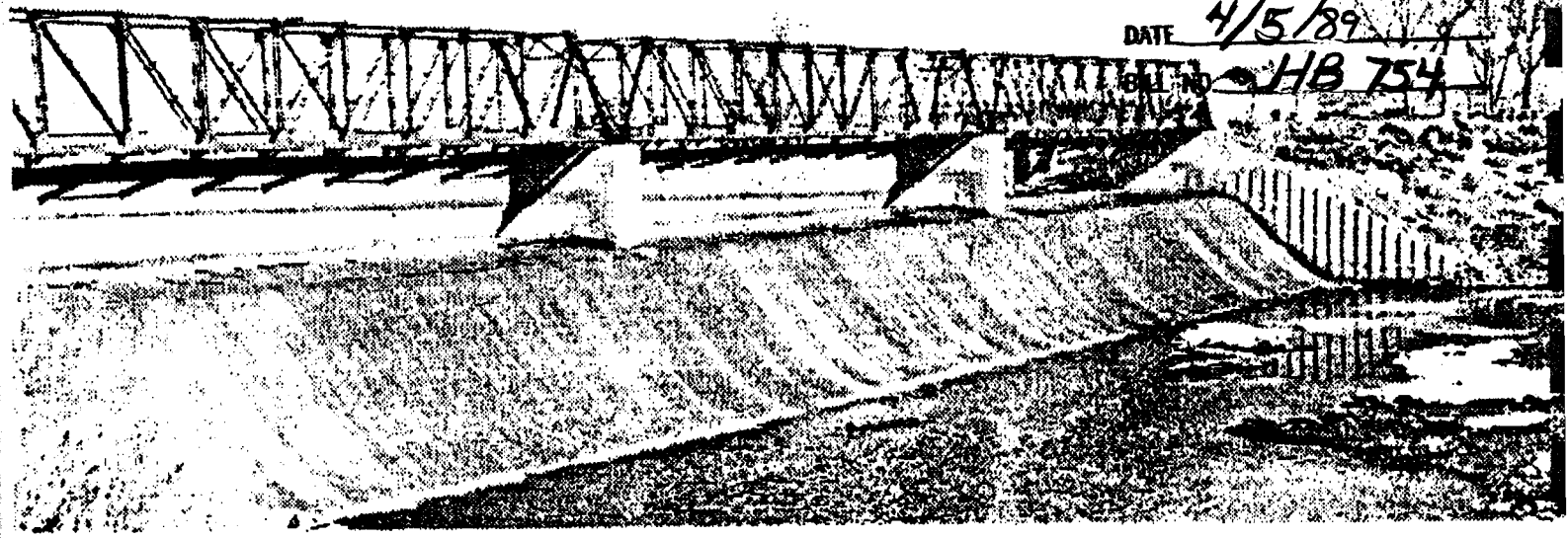
8. Page 3, Line 18

Delete: "(4) "THE DEPARTMENT SHALL CONSULT WITH THE LOCAL CONSERVATION DISTRICT REGARDING THE APPROPRIATENESS OF THE PROJECT AND ANY APPLICABLE PERMIT REQUIREMENTS"

Insert: "(4) "The department shall obtain approval from the local conservation district for any proposed project."

9. Page 3, Line 21

Insert: "(5) "All necessary permits shall be obtained before any project is begun."



Senator Tom Beck, Chairman Room 439
Senate Agriculture Committee
Montana State Capitol
Helena, Montana 59620

Dear Mr. Beck, Members of the Senate Agriculture Committee and other Interested Persons:

We are writing to you in regard to H. B. #754 "An Act Establishing a River Restoration Program and a River Restoration Account" and we would recommend that this bill be killed as the following portions present real problems.

This would be under the Fish, Wildlife & Parks Department and would be creating a new Department and would constitute an increase in taxes.

Sec. 2, Item (2) "Riparian Vegetation" under "Associated Lands" are not clearly defined and could include private canal banks.

(5) "or other body of flowing water" could be expanded to include laterals and canals under the District.

Sec. 3 (1B) The lease or purchase of water from present storage facilities would require infringing on prior rights as all stored water is presently allocated.

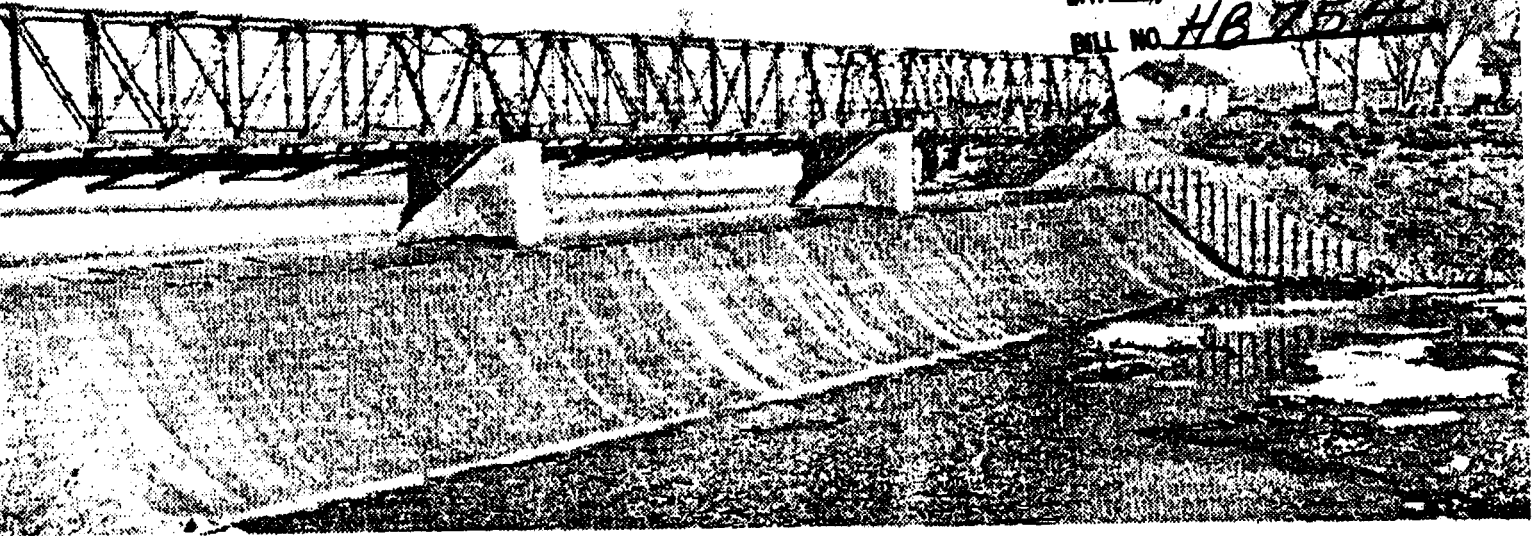
Our recommendation would be to kill H. B. #754.

Sincerely yours,

DODSON IRRIGATION DISTRICT

Everall Holman

President *J.S.*



Senator Tom Beck, Chairman Room 439
Senate Agriculture Committee
Montana State Capitol
Helena, Montana 59620

TO MEMBERS OF THE SENATE AGRICULTURE COMMITTEE AND OTHER INTERESTED PERSONS:

We are writing to you in regard to H.B. #754 "An Act Establishing a River Restoration Program and a River Restoration Account" and we would recommend that this bill be killed as the following portions present real problems.

This is creating a new Department, however small, and an increase in taxes.

Under Sec. 2, Item (2) "associated lands" are not clearly defined and could include much broader interpretation, such as canal banks under "riparian vegetation."


(5) "River" definition is expanded to include more than the River and could include private rights.

Sec. 3 (1b) The lease or purchase of water from storage facilities would be jeopardizing private water rights as water is used several times as it flows down river.

Our recommendation would be to kill H. B. #754.

Sincerely yours,

MALTA IRRIGATION DISTRICT


President

SENATE AGRICULTURE

EXHIBIT NO. 8DATE 4/5/89BILL NO. HB 754

HB 754 IN OPPOSITION

MARK ETCHART

Dear Senator:

This letter is my thoughts on HB 754, the river restoration bill, that is being considered by the Senate Agriculture Committee Wednesday at 1:00 O,clck.

From the title you would think that at last we have a good water bill that is all motherhood, apple pie, chevrolet, and all the other things that every red blooded American should want to see happen.

Upon closer examination we find that it is really a lease purchase of water rights (pg.2, line 25), much as the instream flow bill which was killed in the senate. The difference is that in this bill the Fish, Wildlife and Parks seem to think that in order to restore the stream banks they need to "lease or purchase water rights, etc". The result is that once again the Fish, Wildlife and Parks is after valid, existing water rights.

Fish, Wildlife, and Parks rulemaking powers are expanded to accomplish the purposes of the act (Section 10) and I could foresee deer and elk, with their riparian water rights, free to leap over fences and water pretty near any place they want (as they do now), while domestic livestock might be singled out to not have a riparian water right and might have a tough time watering in the streams and reservoirs they do now. This would further change the water rights as we know them since most ranchers filed for water rights for their livestock based on a formula of so many gallons consumed per head per day. These water rights are waiting for the final adjudication of water in Montana.

There may be a few specific cases where something like this is needed but I would disagree that "there is a need for a program to maintain and restore the integrity and productivity of our river systems". The bill is much to broad in scope, is another water grab by Fish, Wildlife and Parks, and should be killed.

Sincerely,

Mark Etchart

Mark Etchart

SENATE AGRICULTURE

EXHIBIT NO. 9

DATE 4/5/89

BILL NO. HB 754

Amendments to House Bill No. 754
Third Reading Copy

Requested by Rep. Harper
For the Senate Committee on Agriculture

April 5, 1989

1. Page 3.

Following: line 23

Insert: "(6) No project conducted under the program may
restrict or interfere with the exercise of any water right."

rec'd 4/3/89
House Agriculture.

SENATE AGRICULTURE

EXHIBIT NO. 10

DATE HKM 4/5/89

BILL NO. HB 775

March 30, 1989
BZMOFF/272.102

Agriculture, Livestock
& Irrigation Committees
Capitol Station
Helena, MT 59620

HKM Associates
Engineers/Planners

20 East Olive, Suite 3D
P.O. Box 1090
Bozeman, Montana 59715
Phone (406) 586-8834

Airport Industrial Park
P.O. Box 31318
Billings, Montana 59107
Phone (406) 245-6354/259-199
Fax (406) 252-3757

RE: HB 775 AMENDMENT CONCERNING IRRIGATION

SUMMARY: I am requesting your support for the Senate Finance & Claims Committee to amend HB 775 -Water Development Grant and Loan Funding to include partial funding for the PARK BRANCH SEDIMENT CONTROL PROJECT. This project was excised from the priority list submitted to the LONG RANGE PLANNING COMMITTEE by the Water Development Advisory Committee.

This project is for the construction of a series of vanes to prevent the build-up of gravel and sand sediments in inlets to irrigation canals from rivers carrying heavy gravel sediments during the spring runoff periods. The Park Branch Canal has been cited by EPA for violating the Clean Water Act for removing these sediments by dredging or bulldozing (as currently practiced). As irrigation projects along the Musselshell, Bitterroot, Clark Fork, Jocko, Missouri, Milk, Gallatin and Yellowstone Rivers have this same problem, a solution acceptable to the EPA is needed.

LEGISLATIVE ACTION: The Park Conservation District applied for funding from the Water Development Program for this project. It was ranked No. 5 on the priority list submitted by the Water Development Advisory Committee to the Long Range Planning Committee (LRPC). Testimony for this project was given at the LRPC hearing on January 27; the LRPC recommended ZERO funding for this project. As documentation for requesting a reconsideration by the LRPC was not available before HB 775 was passed by the House, this request is directed to the Senate Finance & Claims Committee.

CURRENT STATUS: The attached letter and documentation sent to Senator Pete Story summarizes a restructuring of the financing and gives other factors not available at the January 27 hearing. As the project has serious implications for irrigation projects throughout the state, your support for an amendment to HB 775 will be appreciated.

I will present testimony on HB 775 at the hearing for the Senate Finance and Claims Committee at 8:00 a.m., Friday, April 7.

HKM ASSOCIATES

William A. Hunt
William A. Hunt, P.E.
Branch Manager



March 30, 1989
BZMOFF/272.102

HKM Associates
Engineers/Planners

Senator Pete Story, Chairman
Senate Finance & Claims Committee
Capitol Station
Helena, MT 59620

20 East Olive, Suite 3D
P.O. Box 1090
Bozeman, Montana 59715
Phone (406) 586-8834

Airport Industrial Park
P.O. Box 31318
Billings, Montana 59107
Phone (406) 245-6354/259-1993
Fax (406) 252-3757

Dear Senator Story:

RE: HB 775 - Water Development and Renewable Resources Grants

This is a request to the Senate Finance and Claims Committee to amend HB 775 - Water Development and Renewable Resources Grants to include funding in the amount of \$30,000 from the Water Development Program for the PARK BRANCH SEDIMENT CONTROL PROJECT on the Yellowstone River at Emigrant. This request is based on the following.

A. LEGISLATIVE ACTION:

1. The project, described on p.15 of Renewable Resource and Water Development Programs: Project Evaluations and Recommendations for 1990-1991 Biennium, was ranked No. 5 by the technical review committee and the Water Development Advisory Committee when submitted to the Joint House and Senate Long Range Planning Committee.
2. The Long Range Planning Committee recommended ZERO funding for this project and it was not included in the list of projects appearing in HB 775. Information I received indicated it was stricken from the list for two possible reasons:
 - a. data indicating the Park Branch Canal has low operations and maintenance (O&M) costs presented in the testimony given at the committee hearing on January 27, and
 - b. a request for 100 per cent funding of \$51,000 with no cost sharing from the two water users' associations or other non-state funds.

B. RESPONSE: The following information, obtained since projects were listed in HB 775, justifies considering amending the list to include the PARK BRANCH CANAL SEDIMENT DIVERSION PROJECT in HB 775:

1. The O&M and special assessments charged per unit to the Park Branch Canal and Paradise Valley Canal users appear to be higher than 19 of the 30 projects shown on the enclosed list (Attachment No. 1) of State Water Conservation Projects provided by the DNRC.

Senator Pete Story
3/30/89
p.2.

The relative O&M costs of the different projects cannot be accurately be compared for two reasons:

a. The units against which the charges are based are different for different projects: (i) MI is a miner's inch, a flow rate which is a volume per unit of time, (ii) AF is an acre-ft, a volume of water one foot deep covering one acre (i.e., 43,560 cu ft), and (iii) AC is an acre, a surface area. To be consistent the MI needs to have the time the flow is turned into the irrigated acreage; the AC needs to have the number of inches of water applied to the irrigated acreage during the growing season. For this reason, it is difficult to make valid comparisons.

b. Rick Bondy, Chief, Engineering Bureau, DNRC also indicates that O&M costs for the Park Branch and Paradise Valley users are low because the users do most of their own O&M work and other canal associations contract out the total O&M costs. To make a valid comparison requires an accounting of the "in-kind" services provided by the Park Branch and Paradise Valley users be included in the figures.

2. The request from the Water Development Program is reduced from \$49,715 with matching funds of \$1,285 from Park County Conservation District to \$30,000 with matching of \$30,000 from ASCS pooling agreements and user assessments. The original request for 100 per cent grant was based on interpretation of eligibility guidelines by the grantsperson. Discussions with users groups, SCS and ASCS program personnel following original hearing on January 27 indicates that 50 per cent match can be provided. Subsequent review of project requirements and permitting processes indicates that total cost of project is \$60,000.
3. As a result of dredging operations in the inlet canal of the Park Branch Canal in the summer of 1988, EPA cited the Park Branch Water Users Association (PBWUA) with Administrative Order No. 89-07, a FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE in the matter of a violation of the Clean Water Act (Attachment No. 2).

a. Par. 15 of the FINDINGS OF VIOLATION states:

"The PBWUA has contacted the Montana Department of Natural Resources to seek funding for a permanent

Senator Pete Story
3/31/89
p.3.

solution to such annual or periodic dredging of the side channel and the discharge of this material into the river and its floodplain."

b. Par. 2 of the ORDER OF COMPLIANCE states:

"PBWUA shall develop a plan for a permanent solution to allow irrigation water to be obtained without recurrence of dredging and filling that is damaging to fish and wildlife resources and channel stability and said plan shall be submitted to EPA by August 1, 1989. Said restoration plan shall be subject to the approval of EPA in consultation with the Corps of Engineers, Soil Conservation Service, Montana Department of Natural Resources and Conservation, Montana Department of Health and Environmental Sciences, Montana Department of Fish, Wildlife and Parks, and Park County Conservation District."

NOTE: Although this citation is specifically for the Park Branch Canal, it has statewide implications. The sedimentation of inlets to irrigation canals is also occurring along the Musselshell, Bitterroot, Milk, Jocko, Missouri and Clark Fork Rivers according to discussions with Gordon Klofstad, SCS State Planning Engineer; and Steve Fry and Rick Bondy, Engineering Bureau, DNRC. As the sediment removal at other sites has been by dredging or bulldozing, the irrigation projects may be subject to similar EPA citations.

4. A copy of the application for the Water Development Program was sent to the EPA Regional Office in Denver on January 30 for review as a possible permanent solution to the problem. The review by the EPA (Attachment 3) indicates that "the use of submerged vanes in cobble-bed rivers has merit and their effectiveness should be tested in cobble-bed rivers."
5. An interagency coordination meeting was held March 22 at the SCS office in Livingston to discuss corrective actions for compliance with the directives of EPA Administrative Order 89-07. All the agencies listed in Par. B. 3. b. and the EPA Regional Office in Denver were represented. The consensus of the group was that the use of submerged vanes be pursued as a viable solution to the Park Branch Canal problem.

Senator Pete Story
3/30/89
p.4.

CONCLUSION:

THE STATE OF MONTANA WOULD BE WELL SERVED BY AMENDING
HB 775 TO PROVIDE PARTIAL FUNDING FOR THE PARK BRANCH
CANAL SEDIMENT CONTROL DIVERSION PROJECT.

I will present testimony on HB 775 at the hearing for the Senate
Finance and Claims Committee at 8:00 a.m., Friday, April 7 for
the Park Conservation District, the Park Branch Canal Water Users
Association and the Paradise Valley Water Users Association.

HKM ASSOCIATES

William A. Hunt

William A. Hunt, P.E.
Bozeman Branch Manager

cc: Members, Senate Finance & Claims Committee
Members, Long Range Planning Committee
Members, House & Senate Agriculture, Livestock and
Irrigation Committees
Senator Dorothy Eck
Representative John Vincent
Representative Dorothy Bradley
Representative Norman Wallin

CONTRACT INFORMATION DATA BASE
WATER CONSERVATION PROJECTS
SEPTEMBER 28, 1988

PROJECT	PROJECT NAME	PRINCIPAL	O&M	SPECIAL ASSESSMENT	TOTAL CHARGE	UNIT	TOTAL UNITS OF CONTRACT	TOTAL NUMBER OF CONTRACTS
1	ACKLEY LAKE	0.80	1.40	0.00	2.20	AF	4766	50
1	BROADWATER-MISSOURI	0.91	1.25	0.00	2.16	AF	29218	182
1	COLUMBUS	1.62	3.25	0.00	4.87	MI ✓	1552	43
3	DEADMANS BASIN	0.75	1.00	0.00	1.75	AF	25918	215
3	DELPHIA-MELSTONE	2.50	8.00	0.00	10.50	AC ✓	5598	77
3	DELPHIA-MELSTONE	0.80	2.50	0.00	3.30	AC ✓	750	9
3	FLINT CREEK	1.00	2.50	0.00	3.50	AF	1100	71
3	FLINT CREEK	0.33	2.35	0.00	2.68	AF	3425	9
3	FLORENCE CANAL	2.50	0.25	0.00	2.75	AF	515	17
3	FRENCHMAN	0.75	0.25	0.00	1.00	AF	7000	11
3	FRENCHMAN	2.00	18.00	0.00	20.00	AF	5762	58
3	HYSHAM	0.60	4.75	0.00	5.35	MI ✓	2231	117
3	LIVINGSTON DITCH	1.00	4.75	0.00	5.75	MI ✓	427	34
3	LIVINGSTON DITCH	1.96	0.90	0.00	2.85	AF	7810	115
3	MIDDLE CREEK	1.05	1.20	0.00	2.25	AF	9161	39
3	NEVADA CREEK	1.00	1.70	0.00	2.70	AF	8500	52
3	NILAN	0.50	1.70	0.00	2.20	AF	200	1
3	NORTH SIDE CANAL	2.00	0.00	0.00	2.00	MI ✓	3005	29
3	PARADISE CANAL	1.00	1.85	0.32	3.17	MI ✓	9436	80
3	PARK BRANCH	0.00	6.50	0.00	6.50	AC	4863	18
3	PETROLIA	1.00	0.30	0.00	1.30	AF	21595	337
3	ROCK CREEK	0.56	1.20	1.00	2.76	AF	25025	189
3	RUBY RIVER	0.50	0.55	0.00	1.05	AF	11000	37
3	SMITH RIVER	0.20	0.70	0.00	0.90	AF	3750	8
3	SOUTH SIDE CANAL	2.50	0.52	0.00	3.02	AF	4011	18
3	TONGUE RIVER	1.30	0.52	0.00	1.82	AF	35989	134
3	TONGUE RIVER	2.20	2.50	0.00	4.70	AF	16468	88
3	UPPER MUSSEL SHELL	0.40	2.50	0.00	2.90	AF	4800	17
3	UPPER MUSSEL SHELL	0.00	1.80	0.00	1.80	AF	13655	141
3	VIGILANTE CANAL	0.00	0.25	0.00	0.25	MI ✓	825	5
3	WEST BENCH CANAL	0.30	2.00	0.00	2.30	AF	8550	47
3	WEST BENCH CANAL	0.70	4.55	0.00	5.25	MI ✓	340	3
3	WEST BENCH CANAL	0.75	0.65	0.00	1.40	AF	10753	140
3	WILLOW CREEK	1.83	0.00	0.00	1.83	AF	2000	4
3	YELLOWWATER							

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIIIEXHIBIT # 10
4/5/89 HB 775999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2405

FEB 09 1989

Ref: 8WM-SP

CERTIFIED MAIL
RETURN RECEIPT REQUESTMr. Allyn W. O'Hair, President
Park Branch Water Users Association
P. O. Box 955
Livingston, MT 59047Re: Notice of Violation and
Order, 33 U.S.C. 1319
Docket No. 89-07

Dear Mr. O'Hair:

Enclosed is United States Environmental Protection Agency (EPA) Region VIII Administrative Order No. 89-07 with FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE in accordance with Section 309(a), 33 U.S.C. 1319(a), of the Clean Water Act (CWA) in the matter of a violation of the CWA by you or your representative in the Yellowstone River near Livingston, Montana. EPA requests you meet with EPA and other agencies if you have concerns or questions regarding the FINDING or ORDER. Please direct all your inquiries, notification, or correspondence to:

John F. Wardell, Director
Montana Office
U.S. Environmental Protection Agency
Federal Building Drawer 10096
301 South Park Street
Helena, MT 596-26-0026
(Telephone #406-449-5432)

with a copy of such correspondence to:

Max H. Dodson, Director
Water Management Division Attn: 8WM
U.S. Environmental Protection Agency
Denver Place, Suite 500
999 - 18th Street
Denver, CO 80202-2405

I have assigned John Peters of my staff (303) 293-1579 and Bruce Ray, Assistant Regional Counsel, (303) 294-7182 to assist Steve Potts of our Montana Office in Helena at (406) 449-5486 in implementing compliance with the ORDER.

Sincerely,



Max H. Dodson
Director
Water Management Division

cc: Colonel Donald Hazen
COE, Omaha
John Wardell, EPA, Helena

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

IN THE MATTER OF)	DOCKET NO. 89-07
)	FINDINGS OF VIOLATION
PARK BRANCH WATER USERS)	AND
ASSOCIATION)	ORDER FOR COMPLIANCE
)	
LIVINGSTON, MONTANA)	

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Sections 308 and 309 of the Clean Water Act (CWA), 33 U.S.C. Sections 1318 and 1319, and by the Administrator delegated to the Regional Administrator of EPA Region VIII, and redelegated by the Regional Administrator of Region VIII to the Director, Water Management Division, Region VIII.

FINDINGS OF VIOLATION

1. During the month of July 1988 the Park Branch Water Users Association (PBWUA) or its representatives placed dredged or fill material in a side channel of the Yellowstone River in association with dredging and modification of a side channel and floodplain in Section 8, Township 6 South, Range 8 East; and Section 5, Township 6 South, Range 8 East, Park County, Montana.

2. These unauthorized dredging and filling activities were detected during state and federal investigations. Photographs of the affected river and adjacent floodplain were taken on November 7, 1988.
3. Said dredged or fill material constitutes a "pollutant" within the meaning of CWA Section 502(6), 33 U.S.C. Section 1362(6).
4. Such placement of dredged or fill material in the side channel of the Yellowstone River and its adjacent floodplain constituted a "discharge" within the meaning of the Clean Water Act (CWA) Section 502(12) and (16) U.S.C. Section 1362(12) and (16).
5. The tractor or other machinery used to carry out said dredged or fill activities constitutes "point sources" within the meaning of CWA Section 502(14) 33 U.S.C. Section 1362(14).
6. PBWUA is a "person" within the meaning of CWA Section 502(5), 33 U.S.C. Section 1362(5).
7. The Yellowstone River and the above referenced side channel and adjacent wetlands are "navigable waters", i.e. waters of the United States, within the meaning of CWA Section 502(7), 33 U.S.C. Section 1362(7).
8. CWA Section 301, 33 U.S.C. Section 1311, prohibits the discharge of dredged or fill material from a point source into the waters of the United States by a person except in compliance with a permit issued pursuant to CWA Section 404, 33 U.S.C. Section 1344.

9. PBWUA did not obtain a permit pursuant to CWA Section 404, 33 U.S.C. Section 1344, prior to the above described discharges to the Yellowstone River and its adjacent floodplain area.
10. Said discharges of dredged or fill material in the Yellowstone River as described above without such a Section 404 permit constitute violations of CWA Section 301, 33 U.S.C. Section 1311.
11. Restoration of the affected floodplain riparian area is appropriate because of the harm to fisheries and wildlife resources.
12. Restoration will confer maximum environmental benefits since mere removal of the material will not abate the actual and potential harm from erosion and loss of fish and wildlife habitat.
13. Restoration of the affected riverine riparian vegetation to a condition which approximates a condition prior to its loss is achievable as a practicable matter through commonly used construction, revegetation and best management practices.
14. As determined by EPA, such reasonable and achievable restoration efforts would bear an equitable relationship to the violations and wrongs described herein.
15. The PBWUA has contacted the Montana Department of Natural Resources to seek funding for a permanent solution to such annual or periodic dredging of the side channel and the discharge of this material into the river and its floodplain.

16. These FINDINGS and the ORDER which follows have been made after consultation and coordination with the United States Army Corps of Engineers, Omaha District.

ORDER FOR COMPLIANCE

Based upon the foregoing FINDINGS, and pursuant to the Authority vested in the Administrator of EPA under CWA Sections 308 and 309(a), 33 U.S.C. Sections 1318 and 1319(a), and by him delegated to the Regional Administrator, and redelegated to the undersigned, it is hereby ordered:

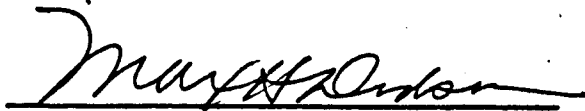
1. PBWUA shall develop a plan that provides for restoration and stabilization of the affected Yellowstone River side channel and channel banks referenced in ~~referenced in~~ FINDINGS Paragraph 1 above, in order to restore the impacted area to its prior state. The plan at a minimum shall allow for revegetation of the eroding channel banks and be submitted to EPA by April 1, 1989. Said restoration plan shall be subject to the approval of EPA in consultation with the Corps of Engineers, Soil conservation Service, Montana Department of Natural Resources and Conservation, Montana Department of Health and Environmental Sciences, Montana Department of State Lands, Montana Department of Fish, Wildlife and Parks, and Park County Conservation District.
2. PBWUA shall develop a plan for a permanent solution to allow irrigation water to be obtained without recurrence of dredging and filling that is damaging to fish and wildlife resources and channel stability and said plan shall be submitted to EPA by August 1, 1989. Said restoration plan shall be subject to the approval of EPA in consultation with

P. Linda Bondy

- the Corps of Engineers, Soil Conservation Service, Montana Department of Natural Resources and Conservation, Montana Department of Health and Environmental Sciences, Montana Department of State Lands, Montana Department of Fish, Wildlife and Parks, and Park County Conservation District.
3. PBWUA shall consult with the U.S. Army Corps of Engineers, Omaha District, Regulatory Branch, P.O. Box 5, Omaha, Nebraska 68102 to determine if the proposed removal and restoration will require a permit from the Corps of Engineers under Section 404 of the Clean Water Act. If necessary such permit shall be obtained prior to implementation of said restoration.
 4. PBWUA shall consult with appropriate State and local agencies (e.g. Montana Department of Health & Environmental Sciences, Montana Department of State Lands, Park County Conservation District, etc.) to determine if the proposed restoration will require additional authorization under State or local law.
 5. PBWUA shall implement said restoration for item 1 in the ORDER prior to June 1, 1989.
 6. A representative of EPA will inspect the completed restoration after notice is provided in writing to EPA that said restoration has been accomplished.

this ORDER shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Clean Water Act for the violations giving rise to this ORDER. The Criminal Fine Enforcement Act of 1984, P.L. 98-596, provides for fines in excess of the amount specified in the statute under certain circumstances. Compliance with the terms and conditions of this ORDER shall not be construed to relieve the orderer of its obligations to comply with any applicable federal, state, or local law.

DATED this 9th day of February, 1989.



Max H. Dodson

Director

Water Management Division

7. PBWUA shall submit all notifications and correspondence to:

John F. Wardell, Director
Montana Office
U. S. Environmental Protection Agency
Federal Building, Drawer 10096
301 South Park
Helena, Montana 59626-0096

Max H. Dodson, Director
Water Management Division 8WM
U. S. Environmental Protection Agency
999 18th Street, Suite 500
Denver Place
Denver, Colorado 80202-2405

8. This ORDER shall be effective upon receipt. EPA requests that PBWUA notify EPA within 10 days of receipt hereof of its intent to comply with this ORDER or if they have concerns or questions about the requirements of this ORDER.

Please be advised that 33 U.S.C. Section 1319(d) authorizes civil penalties of up to \$25,000 per day per violation of Clean Water Act Section 301, 33 U.S.C. 1311, and Section 1319(c) authorizes fines and imprisonment for willful or negligent violations of the Clean Water Act. Issuance of

DATE 4/5/89

COMMITTEE ON Agriculture 1 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ole Meloyd	Headquarters Ag Committee	754		✓
Dwayne Calverin	Mont. Water Res. Assoc	754		✓
Eugene Marley	Headquarters Ag Committee	754		✓
Joe Brunner	MURA	754		✓
Kim Enkerud	State Grazing Dist.	754		✓
Carol Moshier	MT Cattlemen	754		✓
Stan Bradshaw	Montana Trout Unlimited	754	✓	
Kay Norenberg	WIFE	754		✓
Mike Bay	Self	754	✓	
Janet Ellis	Audubon Society	754	✓	
Mike McMill	SELF	754	✓	
Bill Holdorf	Skyline Sportsmen	754	-	
John Heckman	Skyline Sportsmen	754		
Alvin J. J. J.	Skyline Sportsmen	7511		
Walt Van Dusen	Helena	754	✓	
Kevin Gross	Ennis MT	754		
Leon L. Westlake	REP. H.B. # 76	#JR 31	-	
GEORGE CCHENSKI	AMW	754	X	
PAUL S. ROOS	FFOAM	754	X	
James Belsey	TU	754	X	
Ken Knudson	Helena Forest Conservation Coal	754	X	
Kim Wilson	Sierra Club	754	✓	
Tony Schorn	Skyline	754	✓	
Dick Hafer	Clark Fork Council	454		
BOB FITZGERALD	.SELF	754		✓
Geo Schunk	SELF		X	

(Please leave prepared statement with Secretary)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2405

MAR 17 1989

Ref: 8WM-SP

Mr. William A. Hunt, P.E.
Branch Manager
HKM Associates
20 East Olive, Suite 3D
P.O. Box 1090
Bozeman, MT 59715

Dear Mr. Hunt,

This is in reference to your letter of January 30, 1989 with enclosures regarding a proposed solution for the Park Branch Canal Inlet problem in the Yellowstone River near Emigrant, Montana. As you requested, we have reviewed the engineering design concept presented by your firm which uses submerged vanes to minimize or possibly eliminate deposition of gravel during periods of high flow. It appears from our review of the enclosures you provided on the use of submerged vanes in coble-bed rivers has merit and their effectiveness should be tested in coble-bed rivers.

We were please to hear that you recently testified before the Montana legislature to secure funding for a demonstration project using the submerged vanes concept. You are awe that we have issued an Administrative Order (AO) to the Park Branch Canal Company for their failure to comply with the Clean Water Act and obtain a 404 permit before discharging material into waters of the United States. One of the requirements of the AO is that the Park Branch Canal Company submit a proposal for a permanent solution at the inlet to the canal. We commend your efforts to work with the Montana Department of Natural Resources and the Park Branch Canal Company in seeking a permanent solution to their maintenance problem.

Please keep us appraised of your efforts to obtain funding for a permanent solution to the inlet problem for the Park Branch Canal Company in cooperation with the Montana Department of Natural Resources.

Sincerely,



John C. Peters
Environmental Scientist

cc: John Wardell, MO, Helena
Steve Schmidt, MDNC, Helena
Park County Conservation District
Kay L. Cool, MDFWP, Helena
Leroy Ellig, MDFWP, Bozeman
Larry Robson, COE, Billings

