

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRPERSON BOB RANEY**, on March 14, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

EXECUTIVE ACTION ON HB 718

Motion: REP. O'KEEFE moved to amend HB 718. **EXHIBIT 1**

Discussion: REP. MEASURE asked who requested the amendments. REP. O'KEEFE said they represent a combination of the amendments from the Department of Health and Environmental Sciences (DHES) and **Steve Brown, Noranda Minerals**. The amendments have been redrafted.

Gail Kuntz, EQC, said HB 718 allows the Board of Health to adopt fee schedules. It also allows DHES to collect fees for services

provided in permit review, under the Water Quality Act, and permits handled by other state agencies. **Mr. Brown** wanted to establish an appeals procedure, which is provided for under amendment No. 11.

REP. O'KEEFE said the committee adopted the amendments already, but in language submitted in draft form. This enables the committee to re-adopt the amendments in the proper language and insert them in the proper place in the bill.

Ms. Kuntz said a question was raised about the time frame for the Department to adopt rules. In his set of amendments, **Mr. Brown** proposed elimination of the immediate effective date to allow the bill to go into effect in October this year. She discussed the matter with **Greg Petesch, Legislative Council Code Commissioner**. He recommended the committee add an applicability section to the bill to say DHES is authorized to begin rule making immediately, but rules would not be effective until October 1. That would address these concerns.

REP. O'KEEFE said he talked to **Mr. Brown** about the effective date but not the applicability option. An immediate effective date is not needed to begin drafting rules. It may be better to adopt these amendments and the applicability language. That would allow the Department to immediately begin drafting rules and make the bill effective upon the approval of the rules, rather than October 1. They may get the rules done earlier or after October 1. This will ensure the Department won't be charging fees prior to rule adoption.

Vote: Motion to amend HB 718 carried unanimously.

Motion: **REP. O'KEEFE** moved to adopt approval of applicability language, which allows the Department to begin adopting rules immediately and makes the bill effective upon final approval of the Board of Health rules.

Discussion: **REP. DOLEZAL** asked if this will slow down the rule-making process. He asked what would stop the Board from dragging its feet if a deadline is not established. **REP. RANEY** asked **REP. O'KEEFE** how he felt about having the bill become effective Oct. 1, 1991, or upon completion of the rules. **REP. O'KEEFE** agreed.

Motion/Vote: **REP. O'KEEFE MADE A SUBSTITUTION MOTION THAT HB 718 BECOME EFFECTIVE OCT. 1, 1991, OR UPON COMPLETION OF THE RULES.** Motion carried unanimously.

Motion/Vote: **REP. O'KEEFE MOVED HB 718 DO PASS AS AMENDED.** Motion carried unanimously.

HEARING ON SB 211

Presentation and Opening Statement by Sponsor:

SEN. JOHN HARP, SD 4 in Kalispell, said SB 211 increases the maximum civil penalties for water quality violations from \$10,000 to \$25,000. Originally the bill was simple. The intent was to increase the maximum civil penalty. DHES could ask district courts to hold people responsible for violating provisions of the Montana Water Quality Act. There were substantial amendments by the Senate Natural Resources Committee. They changed the concept of the bill, which is now in conflict. DHES has some amendments to offer.

Proponents' Testimony:

Kevin Keenan, Enforcement Officer for DHES' Water Quality Bureau, said the Department supports SB 211 with amendments mentioned by **SEN. HARP**. The amendments are designed to clarify the difference between judicial and administrative penalties. He reviewed the amendments. **EXHIBIT 2**

Stan Bradshaw, Montana Trout Unlimited, offered amendments. **EXHIBIT 3** He said SB 211 resembles HB 414, which was introduced by **REP. COHEN**, passed out of this committee, and is headed to the Appropriations Committee. In SB 211, civil penalties are being increased to \$25,000 and the money is going into the Environmental Quality Protection Fund. HB 414 assesses the same penalty that is already in place, \$10,000, but earmarks up to \$20,000 per year for a Water Quality Rehabilitation Fund for emergency water pollution events. The rest of the money would go into the General Fund. The two bills are trying to do different things with the same pot of money. He stated that he wasn't sure which is more appropriate, although Cohen's bill is more appealing. The Water Quality Bureau supports both. Trout Unlimited's amendments would turn **SEN. HARP's** bill into **REP. COHEN's** bill, but with a \$25,000 penalty instead of \$10,000. He also supports Water Quality Bureau amendments.

Richard Parks, Northern Plains Resource Council (NPRC), said NPRC concurs with amendments supported by the Department and Trout Unlimited. He urged support of SB 211.

Opponents' Testimony: None.

Questions by Committee Members:

REP. RANEY said **Mr. Keenan** would answer questions on behalf of **SEN. HARP**, who had to leave the hearing.

REP. COHEN asked if **SEN. HARP** was proposing one bill or the other, or if he wanted to coordinate them. **Mr. Keenan** said he thought **SEN. HARP** felt they needed to be combined. **REP. COHEN** asked **Mr. Keenan** if he looked at the possibility of combining them. **Mr. Keenan** said no. **REP. COHEN** asked if the Environmental Quality Protection Fund already exists. **Mr. Keenan** said yes.

REP. COHEN said the fund he was creating with his bill would

require a loan from appropriations. The bill was sent to Appropriations so the two bills could be coordinated when SEN. HARP's bill arrived. He asked if that sounded appropriate, or if this committee should do it. Mr. Keenan said he wasn't the person to answer the question. REP. COHEN asked Mr. Keenan if he could determine how the two bills could work together. Mr. Keenan said yes.

REP. FOSTER asked Mr. Keenan if he knew SEN. HARP's opinion on amendments proposed by Trout Unlimited. Mr. Keenan said he would have to talk to the bills' sponsors to see what possibilities exist to combine the two bills. There is general agreement on the intent.

REP. COHEN asked if SB 211 caps the Environmental Quality Protection Fund or if it can continue to grow. His bill would have money above a certain level revert to the General Fund. He asked if any money in SB 211 will revert to the General Fund. Mr. Keenan said SB 211 does not cap the Environmental Quality Protection Fund. It would continue to grow, except for the amount used by the Department each year.

Closing by Sponsor: REP. RANEY said no one was available to close on the bill.

HEARING ON SB 136

Presentation and Opening Statement by Sponsor:

SEN. THOMAS BECK, SD 24 in Deer Lodge, said SB 136 would allow creation of local water quality districts. It spells out the voting procedure on how they can be established and what they can do. A number of amendments have been put into the bill that concur with almost everyone who was involved with the bill. A major hearing was held before its introduction in the Senate. The bill would give local governments authority to establish rules, through water districts, to clean up and control water pollution in their areas.

Proponents' Testimony:

Jim Carlson, Director of the Environmental Health Division of the Missoula City-County Health Department, testified in support of SB 136. He read letters of support from the Missoula Chamber of Commerce, Missoula County Board of Commissioners and Missoula Water Quality Advisory Group.

EXHIBIT 4

Will Selser, Executive Director of the Lewis and Clark City-County Health Department, said he also was testifying on behalf of the Butte-Silver Bow and Gallatin city-county health departments. He said these counties have potential threats to their aquifers. They support SB 136 because they do not want to get into the position Missoula is in. SB 136 is a consensus bill.

Amendments address all concerns. SB 136 is patterned after local air-quality standards. He read testimony from the Flathead City-County Health Department. EXHIBIT 5-5a

John Ward, owner of Litt'l John's Septic Service in Helena, supported SB 136. He said the bill will give local jurisdictions legal authority to micromanage where needed. Education is needed, as is the ability to enforce, raise money and research contamination.

Dennis Taylor, Chief Administrative Officer for the City of Missoula, supported SB 136. He said the bill is an important tool for local governments to work cooperatively to protect water quality. Missoula wants SB 136 to be amended to ensure concurrence of city and county governments when a local water quality district is established within 4.5 miles of the corporate limits of the city. Adoption of the amendment will ensure intergovernmental, community coordination and cooperation. EXHIBIT 6

Arvid Hiller, Mountain Water Co. Vice President and General Manager, said the privately owned company serves about 50,000 residents in Missoula. He stated Mountain Water Co. supports SB 136. The company has been involved in an interagency task force to protect the aquifer. More recently, the company has worked on a wellhead protection plan. A local water quality district is the vehicle to continue what the company has tried to support with its private dollars and effort with city-county government. Mountain Water Co. has no authority to regulate or enforce. It would be appropriate through the funding mechanism and SB 136 to allow local control over water quality.

John Arrigo, DHES Water Quality Bureau Groundwater Program Supervisor, said the Department supports SB 136. The agency administers the Montana Water Quality Act, which is a powerful tool to address water quality problems in the state. More often than not, the state does not address smaller water quality issues that are common statewide. Local governments do not have the authority to address these issues. SB 136 will grant this authority, and enhance pollution control and prevention.

Ted Doney, Mountain Water Co., ASARCO Inc., and Montana Dairymen's Association, said the mining industry and agriculture community support SB 136. He read from the bill, beginning on Page 18, Line 24. He said the list of local ordinances districts may adopt is the key provision in the bill. It tells districts what they can do to regulate water quality. Page 19 lists five things districts can regulate. Mining companies and agriculture are satisfied with amendments to the bill.

Kim Wilson, Clark Fork Coalition, read from a petition, which he said was signed by more than 6,000 people. It urges the Missoula City Council, City-County Board of Health and the Water Quality Bureau to protect water quality. SB 136, as drafted and amended,

will address the needs and desires of the people who signed the petitions. Prevention is less costly than clean-up. The coalition believes local control and regulatory authority is needed to deal with these problems. He urged committee support of the bill.

Peggy Parmelee, Montana Association of Conservation Districts Executive Vice President, said the association opposed the bill when it went before the Senate Natural Resources Committee. But as amended, SB 136 is acceptable to the association. It says that if a substantial amount of land in a water quality district is in a conservation district, a conservation district supervisor will be on the board of directors. She referred to Page 10, Lines 9-12; Page 11, Lines 2-8; and Page 17, Lines 9-10. SB 136 also states that in developing the program, the board of directors will consult with the conservation district board of supervisors. Section 9 requires that a referendum be approved by voters. The association believes there are many cases in which conservation districts can continue their lead role in protecting water quality without water quality districts. There are some cases, such as when water quality issues are tied to major urban areas, when a special district should be considered.

Opponents' Testimony:

John Ward said he isn't opposed to the bill, but he opposes the proposed amendment submitted by **Mr. Taylor**. **EXHIBIT 6** The bill already gives cities authority over what they should have authority over.

Questions from Committee Members:

REP. O'KEEFE said county commissioners have to seek approval from the city. It doesn't say anywhere in the bill that city leaders have to seek approval from county commissioners if a water quality district is going to be established within city limits. He asked **Mr. Taylor** if that would be appropriate. **Mr. Taylor** said that would be fine with him. The idea is to get jurisdictions to work together. He anticipated a water quality district would be adopted in Missoula to include a large portion of the city and county, and for the City-County Board of Health to provide leadership. Local governing bodies do not want enabling statutes that can be used to frustrate annexation or other issues. The city of Missoula strongly supports this bill. SB 136 is a way to get resources and a cooperative program in place. There have been cases in which special single-purpose districts have been used for other purposes to frustrate the rational growth of urban areas.

REP. FOSTER asked **SEN. BECK** to address **Mr. Taylor's** proposed amendment in his closing statement.

Closing by Sponsor:

SEN. BECK said **Mr. Taylor's** amendment was denied by the Senate.

He supports the amendment proposed by Mr. Carlson and doesn't want the bill to usurp something already in the law that local governments can use. That is what his amendment addresses. The bill in its original form allowed a lot of latitude and that raised a lot of concerns. It has been amended to the satisfaction of almost everyone and will solve some of the problems that exist. He noted that REP. WANZENRIED agreed to carry the bill on the floor.

HEARING ON SB 195

Presentation and Opening Statement by Sponsor:

SEN. ESTHER BENGTON, SD 49 in Shepherd, said SB 195 was introduced on behalf of the Montana Water Users Association. It requires water-user entities to be notified of subdivision development so that laterals and canals show up on subdivision plans. The bill has been amended to address problems identified by surveyors. She read item C on Page 10 and said the language relates to major and minor subdivisions.

The bill has not met much opposition. A lot of development in cities ends up to be inappropriate. Water users want to be notified and to review plans. They would have no power to stop development, but it is in everyone's interest to have these things noted on plats. Surveyors originally objected to the bill because they often didn't know where laterals were located and the information would be required on a certificate of survey. Language was added requiring the information to be a public record, which would make it easy for them to find the information at a courthouse.

The bill establishes time frames in which this has to be accomplished so that water users cannot delay the process. She referred to Pages 12-13.

Proponents' Testimony:

Jo Brunner, Montana Water Resource Association, said buyers often do not realize that the canal running beside their property is not included in their property and shouldn't be landscaped or have a bridge built across it. A person buying an older home is less likely to be aware that a storage facility exists a mile or so away. Then a lawsuit follows. While irrigators believe these problems and others should be self-evident, that is not the case.

To date, she is unaware of any water users losing a lawsuit filed against them, but it takes time and money to defend the case. Entities are forced to budget thousands of dollars to fight legal battles. Just recognizing this in subdivision planning and surveying will not stop a lawsuit, if the party is determined to sue. But the association believes that if entities are described, it would deter many from that effort.

The law does not require approval of the water entity in the planning of the subdivision. It will require the surveyor to spend a little extra time finding out why a ditch runs through a field. While the association realizes some ditches may not be recorded, that has been addressed in the section referred to by **SEN. BENGTON**.

Lines 12-13 on Page 2 were discussed in the Senate. The language did not mean only county records. It meant records in the county. That includes records of irrigation districts and water users, which usually have maps, and records of easements, acres owned by individuals, improvements, etc. A surveyor has only to go to the office and request help. While it may be more cumbersome, it will be more beneficial to water users, counties, developers and landowners. She urged the committee to pass the bill.

Opponents' Testimony:

Rick Gustine, Montana Association of Registered Land Surveyors, said Sections 1 and 2 of the bill deal with water-user entities in the master plan process. The association has no problem with that. Section 3, beginning on Page 5, deals with amendments to the Subdivision and Platting Act. This isn't workable. He has been a surveyor for 24 years and is well aware of which public records are and are not available. When it comes to ditches and canals, records are almost nonexistent.

There are a few large ditches and canals in Montana. Generally they were public works projects from years ago. Records of a deeded easement or right of way can be found in the clerk and recorder's office. Surveyors can and do track down this information as a matter of practice and put it on certificates of survey. But there are thousands of miles of laterals, ditches and water sources for which there are no records.

Surveyors are concerned that even if the information is of public record, they will be unable to find anyone to review it. In Section 1, under definitions for the master plan process, a definition of public record was inserted. The definition was not included in the Subdivision and Platting Act and the language leaves things wide open. Some ditch companies have records, but surveyors don't know how to find these people. Irrigation districts are formed through a procedure in district court. Those records are kept in the court, but they are not indexed by section, township and range. He has been told that he will have to search through boxes of files to find such records. He sympathizes with water users' concerns, but he doesn't see how it can be done.

Questions from Committee Members:

REP. FOSTER asked **Mr. Gustine** if he is aware of irrigation districts in Gallatin County. **Mr. Gustine** said there are none on record that he has been able to find. **REP. FOSTER** asked if he is

aware of an irrigation district in Lewis and Clark County. **Mr. Gustine** said yes. Some are scattered around the state. Even if it can be determined that there is an irrigation district, he doesn't know how he will find someone to review a survey, before it is recorded, to ensure such information is properly placed on the survey.

REP. FOSTER asked **Ms. Brunner** what kind of information a surveyor could obtain about irrigation ditches from the Helena Valley Irrigation District. **Ms. Brunner** said a surveyor can find out anything he wants just by calling and making an appointment. The Helena Valley Irrigation District is one of many irrigation districts that pays tax money to the clerk and recorder. Each water user receives an individual tax bill. It will be a shock to members of the irrigation district to learn there are no county records and they are being assessed taxes. Most irrigation districts have maps for reference. She sympathizes with **Mr. Gustine's** concern that it will take extra time to look for this information. There are 175 water-user districts and organizations statewide. Some are quite large. Not all the information may be available at the courthouse, but it certainly is at the water-user office.

REP. O'KEEFE asked if SB 195 would be needed if these provisions are put in HB 671 and it passes. **Ms. Brunner** said no.

REP. O'KEEFE asked if the Department of Natural Resources (DNRC) keeps a record of all the irrigation districts and water-user associations in Montana. **Steve Schmitz, DNRC**, said the planning section keeps records of irrigation districts. It is not considered to be a formal record.

REP. O'KEEFE asked **Mr. Gustine** if he ever obtained that list. The last time he used the list, 182 water-user associations and irrigation districts were listed, including addresses and phone numbers. **Mr. Gustine** said he has seen the list, but it probably covers about 10 percent of the ditches, laterals and canals in the state. **REP. O'KEEFE** said the list covers 98 percent of the districts and associations. **Mr. Gustine** said it is difficult to find these records, let alone a responsible party for that particular entity. He spent weeks trying to find the owner of a particular ditch on a survey. He searched through boxes at the clerk of court's office because he couldn't get the needed information from Helena. He never found the information he needed.

REP. ELLISON said this is not the first time this issue has come up in the Legislature. He asked **Mr. Gustine** if ditches with rights-of-way are the only ones recorded on plats, and if he is having trouble with the ones involving easements. **Mr. Gustine** said yes. Some ditches extend from one property owner to the next. They share the ditches, but they don't necessarily belong to anyone. They come from a water source and stretch along 10-12 farms or ranches. In many cases, nothing was legally formed for

the ditch. Property owners know how much water they have coming off it. They hire a ditch writer, but there is no legal entity for that particular series of ditches and laterals.

REP. ELLISON asked how surveyors determine the width of the easement. Mr. Gustine said that is where he runs into problems. He can find the ones that are recorded.

REP. ELLISON said he is trying to determine what the Legislature will accomplish with this bill. He is hearing the same problems that have been heard before. He recounted a previous bill from a past session and said he believes the Legislature did about all it could legally do then. REP. BENGTON asked REP. ELLISON if he were implying that this bill is unnecessary. She said there have been a number of lawsuits since that time. There hasn't been a lawsuit a ditch company has lost because rights-of-way have been there.

Closing by Sponsor:

REP. BENGTON said she is baffled by surveyors' opposition to the bill. If it is not a public record, they do not have to worry about anything. They would not be required to put it on their certificate of survey. She assumed Mr. Gustine was talking about private irrigation districts in Gallatin County, where he struggled to find owners. This bill applies to only public irrigation districts. There are records all over the place. If the information is not on record, then they are off the hook. It serves notice to water-user associations or entities to get it on record so that surveyors have a place to go.

Realtors say they want informed buyers and sellers. All they're asking is to have this information noted on the certificate of survey. Water-user associations will have to notify irrigation districts that this is their responsibility to get this on record someplace. Surveyors should develop a process. They should look at this and find a way to get it into the certificate of survey. It isn't known what will happen to HB 671. Testimony given by surveyors doesn't hold water. She urged passage of SB 195.

HEARING ON SB 265

Presentation and Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41 in Big Timber, said SB 265 was requested by the governor. It is a salvage water bill. He read Section 1 on Pages 1-2, the definition of salvage on Page 4, and part E on Page 9.

Proponents' Testimony:

Ed Lord, Montana Stockgrowers Association Vice President, supported SB 265. EXHIBIT 7

Gary Fritz, DNRC, said he saw a similar bill last session. SB 265 is not a product of bureaucracy. It is a product of the state Water Plan. The Drought Management Steering Committee thought it would be a good idea to clarify state law to ensure it provides incentive for existing water users to conserve water. He distributed a copy of the Drought Management Section of the Montana Water Plan. **EXHIBIT 8**

Through the water planning process, the bill's concept received widespread support. Reference to the legislation is on Page 6, Item 12. The bill defines what is meant by salvage. The water user who invests money in a project that saves water has the right to use the saved water.

The bill does not change existing law regarding who can object to alleged water savings or whose rights must be protected in terms of impacts from use of saved water. The bill will allow an irrigator to use the saved water on additional lands or lease the water for instream flow purposes of the Department of Fish, Wildlife and Parks (FWP). Other water rights cannot be adversely affected. That part of the statute is not changed.

People who believe they will be adversely affected can object. Depending on the facts of the case, they may be able to stop a water conservation measure from being implemented.

Irrigators on Mill Creek are talking about putting their water in a pipe, irrigating their land by gravity sprinklers and leasing the saved water to FWP under the Instream Flow Leasing Program. This bill clarifies and makes certain that irrigators have the right to do that.

Lorna Frank, Montana Farm Bureau, supported SB 265. **EXHIBIT 9**

Gary Spaeth, Montana Water Users Coalition, supported SB 265. He said the coalition wants to ensure the intent of the bill, as it relates to the definition of salvaged water, does not change the present law regarding the burden of a water right. If it does, the coalition would like to know.

Mr. Stan Bradshaw, Trout Unlimited, said that last session, the bill regarding this issue did not allow leasing. As long as that provision remains in the bill, Trout Unlimited supports it.

Ms. Jo Brunner, Montana Water Resources Association, supported SB 265.

Scott Snelson, Montana Wildlife Federation, supported SB 265.

David Valdseth, Martinsdale rancher, supported SB 265.

Opponents' Testimony: None.

Questions from Committee Members:

REP. DOLEZAL asked how someone determines the amount of water saved. **Mr. Fritz** said the applicant must provide evidence of exactly how much water is being saved. If someone objects, the matter must go through the hearing process. There are formulas and scientific methods that can be used to estimate the amount of water that may be saved.

REP. REAM agreed to carry the bill on the floor. He asked to be recorded as a proponent of the bill.

Closing by Sponsor:

SEN. GROSFIELD said **Mr. Spaeth** is concerned there will be an increased burden on the water in a creek someplace. This bill does not intend to increase the burden. In the change process, it must be shown that no adverse affects will result. That is the key to the bill. If that can be demonstrated, everyone benefits. It provides incentive for improved efficiency in water use. In response to **Mr. Lord's** concern, the Department can approve a change subject to terms, conditions, restrictions, limitations or whatever is necessary to satisfy criteria beginning on Line 6 under subsection 7, Page 13 of the bill.

HEARING ON SB 266

Presentation and Opening Statement by Sponsor:

SEN. GROSFIELD said SB 266 was requested by DNRC and addresses clean-up. It changes the definition of groundwater and reporting requirements. It also provides for some notification. He reviewed the bill.

On Page 3, the current definition of groundwater makes it difficult to determine if it refers to groundwater or surface water. The Department spends a lot of time and expense trying to determine that. Department field offices have arrived at different conclusions about whether water is hydrologically connected to surface water. The proposed definition eliminates that problem and simplifies the definition.

On Pages 9-10, language regarding the quarterly report was struck. DNRC has been sending quarterly reports of all certificates of water right to county clerk and recorders. Counties aren't using the reports. Testimony in the Senate committee indicated some counties didn't know where the information was, and some clerk and recorders asked DNRC to stop sending the reports because they didn't know how to interpret them. A statement of intent at the end of the bill indicates clerk and recorders can request the reports from DNRC.

He reviewed changes on Pages 14 and 19, which indicate a person must notify DNRC when the water is finished being put to beneficial use. Current law requires DNRC to do an onsite inspection. The agency is 8,500 permits behind in its

verification process and estimates it will take 10-15 years at current staff levels to catch up on what is out there now. New language on Page 14 says the person must submit a certified statement of completion before a certificate of water right is granted.

Proponents' Testimony:

Gary Fritz, DNRC, said the definition for groundwater is clearer. It does not change the fact that there is a relationship between surface water and groundwater, except potentially for appropriations of less than 100,000 gallons per minute. Those applications do not go through the permitting process.

Language on Page 10 was removed, then added back in, to ensure people without water rights who have an interest in the water right will still be able to object to an application.

When people complete their project, it is rarely in accordance with the permit or authorization that was issued. DNRC has patterned language after what is done in Idaho, which has excellent experience in having water users certify how water use is occurring. This doesn't address the backlog referred to by **SEN. GROSFIELD**. The bill would apply only to permits issued and changes in the future.

There is a requirement in the statute that the Legislature approve all groundwater applications for more than 3,000 acre-feet. That part of the statute was passed in 1979 so that the Legislature would have to sign off on large groundwater uses. The state subsequently terminated all those groundwater applications because of their speculative nature. There have been only two or three large groundwater applications that have come to the Legislature since the bill was passed.

DNRC believes the water right process is sufficient to protect people against speculative water uses, without applications going through the Legislature. The Legislature requires people using groundwater to have a possessory interest in the place where groundwater is used. That probably is all the protection that is necessary.

Stan Bradshaw, Trout Unlimited, supported SB 266.

Gary Spaeth, Montana Water Users Association, supported SB 266.

Lorna Frank, Montana Farm Bureau, supported SB 266.

Opponents' Testimony:

Scott Snelson, Montana Wildlife Federation (MWF), said the Montana Wildlife Federation is concerned about the definition of groundwater and the question of wells. Inefficient irrigation systems often create an artificial aquifer that is tapped into by

well-water users. There are cases in which the aquifer has disappeared because an irrigator improved efficiency. If the definition of groundwater is changed, it appears those people will have a right to object to increases in irrigation efficiencies.

Questions from Committee Members:

REP. O'KEEFE asked what protects a water user's right to surface water if an upstream water user decides to tap into existing groundwater to build a well for irrigation. The language describing the interrelationship with surface water seems to be struck. **Mr. Fritz** said there may be a problem in the permitting process if the upstream user's well is less than 100 gallons per minute. There is always recourse if it is believed someone has adversely impacted the water supply. If use is under 100 gallons per minute, the certificate does not go through the permit process. In such a case, any adverse impact would have to be addressed in the courts.

REP. O'KEEFE said that is one problem. He asked how the change affects the downstream user's right to object to the upstream user's use of the water, and if the downstream user has to show the upstream user's activities will have an adverse impact. **Mr. Fritz** said SB 266 and the definition do not change the burden of proof or process if groundwater use is more than 100 gallons per minute. The upstream user would have to apply for a permit and the downstream user would still have the right to object to it.

REP. ELLISON asked for comment on **Mr. Snelson's** concern. **Mr. Fritz** said those type of questions arise sometimes. He doesn't see this legislation changing a person's opportunity to object or to try to make claims on the ability to get water based on something someone is doing upstream. He isn't sure this bill applies to that particular situation.

REP. RANEY referred to Section 11. He said that by repealing that section, the Legislature would be saying it is no longer opposed to coal slurry pipeline. **SEN. GROSFIELD** said it seems the Legislature a couple of sessions ago repealed the ban on using the water for coal slurry pipelines. **REP. RANEY** said the Legislature didn't. **SEN. GROSFIELD** said that while the bill would repeal the 3,000 acre-feet, public-interest criteria law has a limit of 4,000 acre-feet. Along with that limitation are a number of other provisions involving public interest. Any application for groundwater or surface water in excess of 4,000 acre-feet per year would have to meet certain criteria. **REP. RANEY** said that is right, but it would not have to garner approval of the Legislature.

Don MacIntyre, DNRC, said cases outside Montana have drawn attention to the fact that Montana's law regarding coal slurry pipelines may be unconstitutional. Rather than wait for the courts to decide the issue, the Legislature repealed the

prohibition on coal slurry and instituted tight water-permit restrictions. Some legislative approval exists.

Specific groundwater limitations weren't aimed so much at coal slurry pipelines as they were to prohibit people from filing appropriations on existing wells above the limits of individuals who had the wells. The fact is, that can't happen in Montana.

REP. RANEY asked if there is some other section of the law that says the Legislature must approve 4,000 acre-feet or more. **Mr. MacIntyre** said he would have to look at the statute to be sure. At the time the bill was passed in 1979, no public interest criteria existed. Criteria were developed in 1985.

Closing by Sponsor:

SEN. GROSFIELD said **REP. O'KEEFE** brought up the 100 gallon per minute limit threshold, which is addressed on Page 9 of the bill. The 100 gallon limit language was struck and a new line was inserted that is tighter. There was some discussion in the Senate committee about whether the threshold should be lowered. The most common figure heard was 35 gallons per minute. As the threshold is lowered, more applications will need to be processed. The Department's position has been that 100 gallons per minute is a reasonable threshold.

It's true that if an appropriator is experienced in design, construction and operation, the appropriator may be able to do his own certification. Often times, a local contractor is hired to do it. They end up with quite a bit of experience in this area. Often times, they are designed by the Soil Conservation Service. That person also would be able to sign off on it.

Mr. MacIntyre said the Legislature in 1985 decided against legislative approval of permitting. Changes require legislative approval. He read the statute.

REP. RANEY said he recalled concerns that California would want an aqueduct from Montana. The state wouldn't want that to happen. He asked **Mr. MacIntyre** if he thinks it is smart to repeal this section, when only public interest criteria could be used. It would certainly be in the public interest of Californians to get access to Montana's water. He asked if it is in the best interest of Montana and its citizens to cut the Legislature out of this major appropriation. **Mr. MacIntyre** said it obviously is a policy decision. The Legislature is setting specific criteria for the agency to follow. It becomes a philosophical question as to what more the Legislature would do, other than make a political decision when standards are being followed. The Legislature decides what those standards are. By doing so, the Legislature says whether the water can be exported. He doesn't believe the Legislature has to have this language.

SEN. GROSFIELD said the language **Mr. MacIntyre** mentioned

regarding the out-of-state transfer is on Page 17 of the bill under 5b, Line 14.

HEARING ON SB 313

Presentation and Opening Statement by Sponsor:

SEN. GROSFIELD said SB 313 is the governor's water storage bill, which arose from the Montana Water Plan process. An advisory council oversaw the plan's development. Four steering committees were established by the advisory council. Three of them addressed water storage. One looked at policy questions. Another looked at finance. The third looked at local, state and federal regulations. SB 313 is based on the state Water Plan. Nothing in the bill is inconsistent with the Water Storage Section of the plan. **EXHIBIT 10**

Water storage was identified as the most important issue to address in the state Water Plan process. He reviewed the bill, noting that the study of recreational user fees under Section 5 was the most controversial part of the bill to the Senate Finance Committee. These funds could be used only for water storage projects that provide recreational opportunities.

Storage financing is very expensive. There isn't enough money available to finance much. Section 8 would have increased the amount of coal severance money that goes into the water development fund. Section 9 was an attempt to get into the Resource Indemnity Trust (RIT).

He distributed a revenue chart, **EXHIBIT 11**, noting that the first bar graph represents the amount of money that would have been available to the program under the bill as it was introduced. The last graph shows what the Senate did to the bill. The middle graph is what he is asking the House committee to do through an amendment to reinstate some of the funding. He distributed proposed amendments, **EXHIBIT 12**, noting that they reinstate the increase in coal severance money. It would be increased from 1.25 percent to 2.5 percent. The amendments do not do anything with RIT. He noted the RIT idea would not have taken place until about 1996 because the trust is not projected to reach \$100 million until then.

Proponents' Testimony:

Karen Barclay, DNRC Director, said **SEN. GROSFIELD** did an excellent job describing the process, the bill's intent and implementation of the priorities. This is the third of four bills recommended through the state Water Plan process. The committee has heard drought management, salvage and storage bills. The final bill is a temporary transfer bill. She hopes the committee will look at these bills as a package because the recommendations were developed as a package for managing water resources in the state.

The recommendations resulted from much discussion and negotiation. SB 313 recognizes storage as a management tool. It has both positive and negative impacts. When storage is the best solution, it should be used. SB 313 establishes priorities for the state in setting financial goals. Those priorities are to manage existing reservoirs and to rehabilitate high-hazard, unsafe projects. SB 313 also establishes a funding mechanism to accomplish these goals. It provides a state special revenue account and a water development account, and states that the money should be used for not only state water projects, but also other governmental reservoirs.

Donald Berg, Chairman of the Upper Musselshell Water Users Association and an irrigator from Martinsdale, supported SB 313. He said the high-hazard dam portion of the bill affects a lot of reservoirs statewide. It is impossible for the association to meet specifications without financial assistance. This is a good use of coal severance tax funding. It adds to the productivity of the state and helps recreation.

Stan Bradshaw, Trout Unlimited, said he was involved in the state Water Plan process, which gave birth to this bill. It was a good process, though it was not based entirely on consensus. The bill reflects that. This is basically a good bill, especially to the extent that it requires rigorous scrutiny of new projects and makes rehabilitation its No. 1 priority. He suggested the committee approve the bill as it came out of the Senate.

Gary Spaeth, Montana Water Users Association, supported the bill.

Lorna Frank, Montana Farm Bureau, said the Montana Farm Bureau favors using a portion of the coal severance tax to develop a water storage plan. She urged the committee to take into consideration the amendment submitted by **SEN. GROSFIELD**. The bureau supports SB 313.

Jo Brunner, Montana Water Resources Association, supported the bill and the amendment.

Scott Snelson, Montana Wildlife Federation, said the Montana Wildlife Federation supports the bill, particularly the way storage project priorities will be established. The federation has expressed its concerns about studying how to tax sportsmen to pay for additional storage. While the federation believes opportunities exist to enhance wildlife values with storage, the blanket study may be inappropriate. The federation is recommending another study be conducted to determine how to increase fees to diversionary users. He submitted proposed amendments. **EXHIBIT 13**

Jim Jensen, Montana Environmental Information Center, supported the bill.

Peggy Parmelee, Montana Association of Conservation Districts

Executive Vice President, supported the bill.

Opponents' Testimony: None.

Questions from Committee Members:

REP. O'KEEFE asked **SEN. GROSFIELD** to clarify his amendment. **SEN. GROSFIELD** said his amendment reinstates **SEN. TOM KEETING's** amendment. He referred to Page 11, Line 25. It increases the percentage from 1.25 to 2.5. It would add \$90,000 to the water development program, bringing the total to \$360,000. Under SB 313, 25 percent of the money in the program goes toward water storage and 75 percent of it would be available for other projects authorized under the Water Development Program. That amounts to \$180,000 per year.

REP. O'KEEFE asked where the 25 percent figure came from. **SEN. GROSFIELD** said public meetings were held all over the state. Much of the public input was for 100 percent or at least 50 percent. It was finally pared to 25 percent, which is an arbitrary number.

REP. O'KEEFE asked **Ms. Barclay** how much money would have been left in the account if 25 percent of the money allocated this year was taken out of the Water Development Program. **Ms. Barclay** said figures on the chart distributed by **SEN. GROSFIELD** are in the governor's budget and reflect the 25 percent taken out of the estimated revenues for that account. **REP. O'KEEFE** asked if it amounts to \$328,000. **Ms. Barclay** said yes. Also, \$986,000 remains in the water development account after that amount was taken out.

REP. O'KEEFE asked which projects were cut with use of 25 percent for water storage. **Ms. Barclay** said the long-range planning committee used the \$986,000 figure. Projects were not cut. **REP. O'KEEFE** asked which projects will not get funding if SB 313 is passed. **Ms. Barclay** deferred the question, but noted that **SEN. GROSFIELD's** amendment would provide more than the additional \$328,000. **John Tubbs, DNRC Resource Development Bureau Chief,** said 25 percent each from the Water Development and Renewable Resource Development Grants (RRD) programs would total approximately \$500,000 without the amendment. Approximately eight projects statewide do not get funded. He listed the projects. He said funding is not only contingent upon these changes, but also on relatively conservative revenue estimates.

REP. O'KEEFE asked where the money will be spent in the next two years if the 25 percent goes into the fund. **Ms. Barclay** said the bill specifically states that there are no plans to spend the money over the next biennium because there are no rules in place. A bill will be introduced this session by **SEN. JOE MAZUREK** that is a companion bill to the Northern Cheyenne Compact. That bill specifically talks about the rehabilitation of the Tongue River Dam. Without rehabilitation, there is no compact with the Northern Cheyenne tribe.

As part of that bill, DNRC has plans to use the storage account as a means of providing the state match of federal dollars to rehabilitate the project. That account will enable the state to rehabilitate a high-hazard, unsafe facility, enhance environmental features and reach compacts with the federal government on Indian reserved rights. This account will accomplish many goals of the state, not just rehabilitation of state water projects.

REP. O'KEEFE asked if opportunities are going to be lost. **Ms. Barclay** said yes. The priority for the water development account is storage. But use of the account is limited. If the money isn't used this biennium, it goes to the next project on the list. There also are limitations on the amount of money that can be spent. With respect to the Tongue River Dam, the state will be spending approximately \$3 million. If the money is not set aside this biennium and added to next biennium, this and future Legislatures will have to determine where it will get the \$3 million. DNRC believes it is a wise choice to put the money into an account now so that the money is available for matching federal dollars. The state must show Congress that the funding mechanism is available now.

REP. REAM referred to the process for establishing priorities in Section 4, Page 5, Lines 6-7. He asked **Mr. Bradshaw** if public uses are designed elsewhere in the statutes. **Mr. Bradshaw** said no. Committee discussion encompassed those kinds of uses. **REP. REAM** asked why Section 5 singles out one user group. He said he realizes this is just a study. **Mr. Bradshaw** said the section started out as a proposal to levy those fees. Once it got into the advisory council, the point was debated at length. Recreational representatives suggested it was inappropriate. This is what the group ended up with.

REP. REAM asked if costs are considered with benefits when priorities are set. **Mr. Bradshaw** said yes. There is language in the section dealing with water storage policy that talks in terms of environmental feasibility. Some argued for stronger language to specifically address environmental cost.

REP. REAM said Section 5 assumes it is legitimate to charge fees if benefits to recreation exceed costs. He asked if mitigation payments would be in order if costs exceed benefits of a project, such as on the Hungry Horse and Libby dams. **Mr. Bradshaw** said he doesn't think the advisory council resolved that issue. The discussion on Section 5 revolved largely around the suggestion that those fees were appropriate. The discussion never got to that level of scrutiny.

REP. RANEY asked **SEN. GROSFIELD** to address in his closing remarks the proposed amendments by the **Montana Wildlife Federation**.

Closing by Sponsor:

SEN. GROSFIELD said Section 5 was perhaps the most controversial part of the water storage process. The committee finally agreed on the recommendation. The committee included representatives from Trout Unlimited, fishing outfitters, Indian tribes and various agencies.

He referred to Issue No. 4 on Page 11 of **EXHIBIT 10**. He said this is where the study came from. Those options are the ones that were adopted by the advisory council. Flood control is the most common public policy reason for building more storage projects. He noted that water users have repaid \$1.5 million of the approximately \$2.2 million cost of the Tongue River Dam project.

It probably isn't necessary to do the kind of study proposed by the federation because that kind of thing is already going on. A similar amendment to do this was defeated. The amendment did not recognize that costs are already being paid, which is what the federation's proposed feasibility study is aimed at.

He referred to option No. 2 under Issue No. 4, Page 11. It was the intent of the committee and advisory council, when they passed these recommendations, to conduct a study on the feasibility of having recreational beneficiaries repay a portion of the project cost associated with recreational opportunities. There is no intent here to put an extra fee on fishing licenses to raise money for building storage projects. The intent is to associate funds raised in this manner with costs associated with recreational opportunities.

He complimented the state Water Plan process, saying it was much improved over the previous process. Diverse interests were brought together and worked cooperatively toward solutions. In response to **REP. O'KEEFE's** question about how else the money might be spent over the biennium, he read Lines 9-16 from Page 2 of the bill. He urged support of the bill and his amendment.

He said **REP. TED SCHYE** agreed to carry SB 313 and **REP. REAM** agreed to carry SB 265.

HEARING ON SB 314

Presentation and Opening Statement by Sponsor:

SEN. GROSFIELD said SB 314 was requested by the Board of Natural Resources. It clarifies the water reservation process. He referred to Pages 5-6, subsection 8. New language was inserted that requires a certified statement to be submitted to a conservation district. It is identical to language discussed in SB 266.

Language struck at the bottom of Page 6 was an amendment that drew opposition in the Senate committee. It said a person who got water use authorization from a conservation district could convert that to a regular water permit after five years. A number

of conservation districts spoke for and against it. He agreed to delete the language with the understanding that the conservation district association and various districts would review the issue over the next two years and decide what they want to do.

Language on Page 8, regarding undeveloped water, means the board, if it revokes part or all of a water reservation, is returning that water back to potential use through the permitting process. That was a policy decision by the board after a test-case hearing that involved the city of Billings and Yellowstone County. An attempt in the last session was made to do the exact opposite.

SEN. BENGTSON tried to pass a bill that was defeated. Subsequently, the board determined it could not voluntarily transfer the city of Billings' water to outlying subdivisions.

Proponents' Testimony:

Gary Fritz, DNRC said the board went through its 10-year review on Yellowstone water reservations and determined these clarifications were needed.

Peggy Parmelee, Montana Association of Conservation Districts, supported the bill as amended.

Jo Brunner said the Montana Water Resources Association supports the bill. Mr. Spaeth of the Montana Water Users Coalition asked her to indicate his support.

Opponents' Testimony: None.

Questions from Committee Members: None.

Closing by Sponsor:

SEN. GROSFIELD said he closed.

EXECUTIVE ACTION ON SB 136

Motion: REP. O'KEEFE MOVED SB 136 BE CONCURRED IN.

Motion: REP. RANEY moved an amendment to SB 136, which was read by Ms. Kuntz.

Discussion: Ms. Kuntz said committee members did not get a copy of the amendment. Its intent was to clarify that amendments limiting what local government can do with a water quality district will not be interpreted in the future as infringing on existing authority of local governments to protect water quality.

She read the language: "Except as expressly provided in this bill, nothing shall be deemed to limit or restrict the authority of local government to adopt rules and regulations authorized by other laws of the state."

REP. RANEY said the language will be inserted in the statement of intent section of the bill.

Vote: Motion to amend SB 136 carried unanimously.

Motion: REP. TOOLE moved to amend SB 136. EXHIBIT 6

Discussion: REP. RANEY said the amendment was proposed by the city of Missoula and addresses the 4.5 mile limit.

REP. WANZENRIED said the Lewis and Clark County Board of Health opposes the amendment. REP. O'KEEFE stated that he doesn't like the amendment unless it gives the county the same kind of approval over the city. The committee is establishing governmental agreements. There is room to participate and negotiate in this bill. He doesn't see the need for the amendment. The fact that it was killed in the Senate and in the subcommittee that worked on the bill indicates there is a lot more opposition to it. The bill is a good compromise and should be left alone.

REP. ELLISON said he agrees. All the amendment will do is get this bill into a conference committee. REP. FAGG said he agreed.

Vote: Motion carried unanimously.

Motion/Vote: REP. O'KEEFE MOVED SB 136 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

REP. RANEY said REP. WANZENRIED would carry SB 136.

EXECUTIVE ACTION ON SB 195

Discussion: REP. O'KEEFE said he would like to move to table the bill because SB 195 language was included in REP. GILBERT's subdivision bill.

REP. RANEY said he wouldn't have a problem taking the bill back off the table if it is needed. He reiterated that SB 195 language is in REP. GILBERT's bill.

Motion/Vote: REP. O'KEEFE MOVED SB 195 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 211

Discussion: REP. COHEN said he would like to wait on the bill. He spoke to Steve Pilcher, DHES Environmental Sciences Division Administrator, and others in Water Quality. They are working on some coordinating amendments for the committee. REP. RANEY agreed to wait.


EXECUTIVE ACTION ON SB 265

Motion/Vote: REP. ELLISON MOVED SB 265 BE CONCURRED IN. Motion carried unanimously.

REP. RANEY said the bill will be carried by REP. REAM.

ADJOURNMENT

Adjournment: 6:30 p.m.



REP. BOB RANEY, Chairman



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3/14/91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that House Bill 718 (first reading copy -- white) do pass as amended.

Signed: Bob Raney
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "ACTIVITY;"

Insert: "REQUIRING THE DEPARTMENT TO PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL PROCEDURE FOR RESOLUTION OF FEE DISPUTES;"

2. Title, line 9.

Following: "AN"

Strike: "IMMEDIATE"

3. Statement of Intent, page 1, line 21.

Following: "MCA."

Insert: "The department may also collect fees for increased effort in reviewing permit, certificate, and license applications and in conducting monitoring for projects and activities that are excluded by rule from the permit or certification requirements of Title 75, chapter 5, part 4, but that require the department's services."

4. Statement of Intent, page 1.

Following: line 24

Insert: "The rules adopted by the board should provide a mechanism for coordinating collection of fees for the review and monitoring of projects and activities as authorized by [section 1] with any other fees that are collected by other state agencies for the review and monitoring of those projects and activities. The fees collected by the department of health and environmental sciences may not duplicate the fees collected by another state agency for services in reviewing permit, certificate, and license applications and in conducting monitoring."

5. Page 2, line 3.

Following: "recovery"

Insert: "-- notice -- appeal"

6. Page 2, lines 6 and 7.

Strike: subsection (a) in its entirety

Renumber: subsequent subsections

7. Page 2, line 8.

Following: "processing"

Insert: "an application for a permit or certificate"

8. Page 2, line 9.

Following: "permit"

Insert: "or certificate"

9. Page 2, line 10.

Following: "in"

Insert: "reviewing an application for a state permit,
certificate, or license or in"

10. Page 2, line 11.

Following: "permit"

Insert: ", certificate,"

11. Page 2, lines 11 through 13.

Following: "license" on line 11

Strike: remainder of line 11 through "review" on line 13

Insert: "that is excluded by rule from the permit requirements of
Title 75, chapter 5, part 4"

12. Page 2.

Following: line 22

Insert: "(4) The department shall give written notice to a
holder of or an applicant for a state permit, certificate,
or license of the amount of the fee to be assessed and the
basis for the department's fee assessment under this
section.

(5) A holder of or an applicant for a permit,
certificate, or license may appeal the department's fee
assessment to the board within 20 days after receiving
written notice of the department's fee determination under
subsection (4). The appeal to the board must include a
written statement detailing the reasons that the
permitholder or applicant considers the department's fee
assessment to be erroneous or excessive.

(6) If part of the department's fee assessment is not
in dispute in an appeal filed pursuant to subsection (5),
the undisputed portion of the fee must be paid to the
department upon written request of the department.

(7) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, apply to a hearing before the board pursuant to this section."

13. Page 3, line 11.

Following: line 12

Insert: "NEW SECTION. Section 4. Applicability. The department of health and environmental sciences may commence proceedings to adopt rules to be effective on the effective date of [this act]."

Renumber: subsequent section

14. Page 3, line 12.

Following: "on"

Strike: "passage and approval"

Insert: "October 1, 1991, or on the date of adoption of rules by the board of health and environmental sciences"

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3/15/91
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HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that House Bill 718 (first reading copy -- white) do pass as amended .

Signed: _____


Bob Raney, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "ACTIVITY;"

Insert: "REQUIRING THE DEPARTMENT TO PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL PROCEDURE FOR RESOLUTION OF FEE DISPUTES;"

2. Title, line 9.

Following: "AN"

Strike: "IMMEDIATE"

3. Statement of Intent, page 1, line 21.

Following: "MCA."

Insert: "The department may also collect fees for increased effort in reviewing permit, certificate, and license applications and in conducting monitoring for projects and activities that are excluded by rule from the permit or certification requirements of Title 75, chapter 5, part 4, but that require the department's services."

4. Statement of Intent, page 1.

Following: line 24

Insert: "The rules adopted by the board should provide a mechanism for coordinating collection of fees for the review and monitoring of projects and activities as authorized by [section 1] with any other fees that are collected by other state agencies for the review and monitoring of those projects and activities. The fees collected by the department of health and environmental sciences may not duplicate the fees collected by another state agency for services in reviewing permit, certificate, and license applications and in conducting monitoring."

5. Page 2, line 3.
Following: "recovery"
Insert: "-- notice -- appeal"

6. Page 2, lines 6 and 7.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

7. Page 2, line 8.
Following: "processing"
Insert: "an application for a permit or certificate"

8. Page 2, line 9.
Following: "permit"
Insert: "or certificate"

9. Page 2, line 10.
Following: "in"
Insert: "reviewing an application for a state permit,
certificate, or license or in"

10. Page 2, line 11.
Following: "permit"
Insert: ", certificate,"

11. Page 2, lines 11 through 13.
Following: "license" on line 11
Strike: remainder of line 11 through "review" on line 13
Insert: "that is excluded by rule from the permit requirements of
Title 75, chapter 5, part 4"

12. Page 2.
Following: line 22
Insert: "(4) The department shall give written notice to a
holder of or an applicant for a state permit, certificate,
or license of the amount of the fee to be assessed and the
basis for the department's fee assessment under this
section.

(5) A holder of or an applicant for a permit,
certificate, or license may appeal the department's fee
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subsection (4). The appeal to the board must include a
written statement detailing the reasons that the
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assessment to be erroneous or excessive.

(6) If part of the department's fee assessment is not
in dispute in an appeal filed pursuant to subsection (5),
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department upon written request of the department.

(7) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, apply to a hearing before the board pursuant to this section."

13. Page 3, line 11.

Following: line 12

Insert: "NEW SECTION. Section 4. Applicability. The board of health and environmental sciences may commence proceedings to adopt rules to be effective on the effective date of [this act]."

Renumber: subsequent section

14. Page 3, line 12.

Following: "on"

Strike: "passage and approval"

Insert: "the earlier of October 1, 1991, or the date of adoption of rules by the board of health and environmental sciences"

CLERICAL

HOUSE Bill No. 718

Date: 3/15/91



Natural Resources
S / H Standing Committee

(Chairman)

Rob Raney

Time: 4:00



S / H Committee of the Whole

SBA
(Legislative Council Staff)

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

✓ Title, line 10.

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

(amendment needed to reflect amendment #13)

Amendment #13 should read:

Insert: "... to be effective on [the effective
date of ^Q this act]."

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 136 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Bob Raney, Chairman

Carried by: Rep. Wanzenried

And, that such amendments read:

1. Statement of Intent, page 3, line 7.

Following: line 6

Insert: "Except as expressly provided in this bill, nothing in this bill shall be deemed to limit or restrict the authority of local governments to adopt rules and regulations authorized by other laws of the state."

CLERICAL

SENATE Bill No. 136

Date: 3/18/91

Time: 3:30

SP-1
(Legislative Council Staff)



Natural Resources
S / (H) Standing Committee

(Chairman)

S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

Amendment #1 should read:

Insert: "Except... (shall be deemed) may be considered
 ¹ ¹ ¹ ..."

Style

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

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3/15/91
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HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Bill 265 (third reading copy -- blue) be concurred
in.

Signed: Bob Raney
Bob Raney, Chairman

Carried by: Rep. Ream

Amendments to House Bill No. 718
First Reading Copy

Requested by the Committee on Natural Resources

Prepared by Gail Kuntz
March 12, 1991

1. Title, line 7.

Following: "ACTIVITY;"

Insert: "REQUIRING THE DEPARTMENT TO PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL PROCEDURE FOR RESOLUTION OF FEE DISPUTES;"

2. Statement of Intent, page 1, line 21.

Following: "MCA."

Insert: "The department may also collect fees for increased effort in reviewing permit, certificate, and license applications and in conducting monitoring for projects and activities that are excluded by rule from the permit or certification requirements of Title 75, chapter 5, part 4, but that require the department's services."

3. Statement of Intent, page 1.

Following: LINE 24

Insert: "The rules adopted by the board should provide a mechanism for coordinating collection of fees for the review and monitoring of projects and activities as authorized by [section 1] with any other fees that are collected by other state agencies for the review and monitoring of those projects and activities. The fees collected by the department of health and environmental sciences may not duplicate the fees collected by another state agency for services in reviewing permit, certificate, and license applications and in conducting monitoring."

4. Page 2, line 3.

Following: "recovery"

Insert: "-- notice -- appeal"

5. Page 2, lines 6 and 7.

Strike: subsection (a) in its entirety

Renumber: subsequent subsections

6. Page 2, line 8.

Following: "processing"

Insert: "an application for a permit or certificate"

7. Page 2, line 9.

Following: "permit"

Insert: "or certificate"

8. Page 2, line 10.

Following: "in"

Insert: "reviewing an application for a state permit,

EXHIBIT 2
DATE 3-14-91
~~SB~~ 211

MARCH 14, 1991

TESTIMONY BY KEVIN KEENAN, ENFORCEMENT OFFICER, WATER QUALITY
ON BEHALF OF THE DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES
STATE OF MONTANA

TESTIMONY IN SUPPORT OF SB 211 WITH AMENDMENTS

HOUSE NATURAL RESOURCES COMMITTEE--ROOM 317

The Department of Health & Environmental Sciences wishes to advise the committee that it supports Senate Bill 0211-Third Reading with the following amendments which are attached in outline form with justification, for the committee's consideration.

Proposed Amendments to Senate Bill 211
Third Reading Copy
Montana Department of Health and Environmental Sciences

Presented to House Natural Resources Committee
March 14, 1991

1. Page 1.

Following: line 12

Insert: " STATEMENT OF INTENT

A statement of intent is provided for this bill because the legislature desires that the department of health and environmental sciences develop penalty guidelines which ensure that the civil penalty provided under Section 75-5-631 is fairly applied to all persons against whom the department initiates proceedings under Title 75, chapter 6. The legislature recognizes that the department may in its initial filings seek the maximum penalty of \$25,000 for each day of violation. However, the legislature emphasizes that the actual amount that may be reached in a settlement should reflect the factors listed in Section 75-5-631(4) and that these factors should be applied uniformly to all violators.

While this act does not direct rulemaking as a vehicle for ensuring uniform application of the factors stated in Section 75-5-631(4), the legislature anticipates that the department will develop detailed enforcement guidelines that describe a process for applying the factors to each violator. These guidelines should include guidance concerning the amount for inclusion in a civil complaint and, more importantly, a format for determining an equitable settlement value. The format might include a clear and concise description of penalty settlement ranges by type of violation. Finally, the Legislature anticipates that these guidelines may be completed by October 1, 1991."

2. Page 2, lines 1 and 2.

Strike: "IN" on line 1 through "TO" on line 2

Insert: "When seeking penalties under"

3. Page 2, line 3.

Following: "ACCOUNT"

Insert: "the following factors in determining an appropriate settlement, if any, subsequent to the filing of a complaint"

4. Page 2, lines 7 and 8.

Strike: "THE DEGREE OF CULPABILITY"

5. Page 2, line 8.

Strike: "OF"

Insert: "or"

6. Page 2, lines 11 through 25.

Strike: subsections (5) and (6) in their entirety

Summary of Amendments Proposed for Senate Bill 211
Third Reading Copy
Montana Department of Health and Environmental Sciences

Amendments 2 and 3: Would ensure that the factors listed in Section 1(4) are factors for consideration in reaching a settlement, and not for ascertaining the amount to be requested in a civil complaint.

The factors include the nature and extent of the violation and characteristics of the violator (e.g., the violator's ability to pay and the money saved by the violator because of his noncompliance).

Comment: The Department feels that the bill as currently amended would essentially require the insertion of a settlement figure in the complaint. The problems with this approach include:

- (a) the Department may not know its settlement value until it is well into formal discovery; and
- (b) the Department is placed in an inequitable bargaining position. Either the Department becomes inflexible and holds to the complaint value (i.e., our settlement bottom line) or settles for a value that is below the bottom line. The former position would likely result in more trials.

Amendments 4 and 5: Would make minor changes to the factors to be considered by the Department. Amendment 4 removes the specific attention given to the violator's degree of culpability, largely because this factor is more important in criminal rather than civil matters. Amendment 5 corrects a technical error, by changing "of" to "or".

Amendment 6: Would strike section 1(5) and (6), thereby removing the rulemaking requirement.

Amendment 1: Would add a statement of intent that requests the department to develop enforcement guidelines by the effective date of the bill.

Comment: This is strongly preferred to rulemaking. Because of the variety of factual situations associated with Water Quality Act violations, it may be nearly impossible to draw categories that fairly address every possible violation. The use of guidelines acknowledges the fact-specific situations that may not fit. The guidelines approach also parallels the approach used by the EPA for judicial actions.

EXHIBIT 3
DATE 3-14-91
SB 211
HB 211

SENATE BILL 211
Proposed Amendments of Montana Trout Unlimited
March 14, 1991

At Page 3, line 13:

Strike everything from "fines" through "fund" on line 14
Insert "Disposition of Fines and Civil Penalties."

At page 3, Line 14:

Strike "fines"

Insert "Except as provided in subsections (2) and (3), fines and civil penalties"

At page 3, line 16:

Strike everything from "envorinmental" through "75-10-104",

Insert "water quality rehabilitation account provied in (section 1 of HB 414, LC 05041."

At page 3, line 17:

Insert "(2) A maximum of \$20,000 in fines and civil penalties may be deposited in the water quality rehabilitation account in any fiscal year. Fines and penalties in excess of \$20,000 must be deposited in the general fund.

(3) Whenever the amount of money iln the water quality rehabilitation account exceeds \$100,000, all subsequent fines and civil penalties must be deposited in the general fund."

At page 3, line 20, before "in ", insert "(1)"

At page 4, line 2:

Strike everything from "costs" through "75-10-704"

Insert "2) any costs and expenses recovered by the depart- ment under subsection 1 actions that the Department financed with money from the water quality rehabilitation account in [Section 1 of HB 414 / LC 0504] must be deposited in the water quality rehabilitation account."

At page 4, line 6:

Strike all of section 5.

**TESTIMONY REGARDING HOUSE BILL 136****March 14, 1991****Before Senate Natural Resources Committee**E 4
DATE 3-14-91
SB 136

Chairman Raney and Honorable Committee Members:

My name is Jim Carlson. I am the Director of the Environmental Health Division of the Missoula City-County Health Department. With the exception of a requested addition to the statement of intent, I am here in support of Senate Bill 136 as amended in the Senate.

The City and County of Missoula are experiencing severe problems with groundwater contamination. We have several square miles of urban Missoula which are affected by chlorinated solvent contamination. Currently Mountain Water has three major wells shut down because the water in those wells exceed the Federal Drinking Water Standard. We also have two other small public water supplies which have been discontinued due to perchlorethylene contamination. Last spring 30,000 people in Missoula had to boil their water for fifteen days because of fecal bacteria contamination in Missoula's largest public well. In the Linda Vista Subdivision area, we have at least 15 homes which have private wells which exceed the State and Federal Standard for nitrate contamination in groundwater. These people cannot get federally insured loans to sell their homes. In the North Reserve Street area, we have two known plumes of contamination. One from a 1973 spill from the Yellowstone pipeline which is gasoline. Another has its source from the rinsing and wash down of pesticides at the county weed control office. In downtown Missoula, we have several square blocks of diesel contamination underlying the Burlington Northern refueling station. West of town we have mostly individual wells. In this area several hundred private wells are contaminated with fecal bacteria. In the late 1980's 28 individual water supply wells were replaced due to a leaking underground storage tank. We have two small public water supply wells which have been abandoned for drinking water purposes due to gasoline contamination, the source of which is unknown. Below the BFI landfill, we have measured violations of the Federal and State standards of heavy metals in monitoring wells.

Missoulians are very concerned about the future viability of groundwater as a source of drinking water. The Missoula valley currently gets 100 percent of it's drinking water from the Missoula Aquifer which is showing the affects of years of abuse.

The Montana Clean Water Act and the administration of that Act have not been adequate to ensure protection of groundwater resources in the State of Montana.

Under current state law, local government does not have the authority or financial resources to take action and remedy some of the problems we have with water quality and/or enforce the Clean Water Act of the State of Montana. This Bill would enable local government take an active role in water quality as a local option.

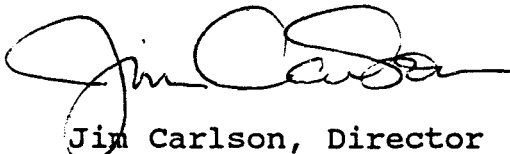
Although this Bill as amended severely restricts broad-based authority for dealing with a large variety of problems, it does allow local government to create and fund the necessary research, administration, public education and, if necessary, regulations for a restricted list of sources as required to maintain our water quality resources.

This Bill is a compromise between a variety of concerned parties including: the mining industry, water companies, local government, state government, agricultural interests and general business interests. Recently our legal council has reviewed the amendments which have been added to the bill. Their major concern with the amendments is that they could be interpreted to limit the existing powers of local government to take action under other sections of State law in the area of water quality. Bases on their review, we are proposing the following addition to the end of the statement of intent:

"Except as expressly provided in this bill, nothing in this bill shall be deemed to limit or restrict the authority of local government to adopt rules and regulations authorized by other laws of the state."

Montana communities cannot grow, diversify the economy, and attract businesses without being able to supply quality water at a reasonable price. It has been shown time and time again in other communities throughout the country, that prevention in keeping ground water clean is much less expensive than trying to clean up groundwater resources after they are contaminated. This Bill as written is an appropriate method of achieving clean water standards. I urge you to pass it and give local government the opportunity to help solve our water quality problems.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Jim Carlson", is written over the typed name and title.

Jim Carlson, Director
Environmental Health

4
DATE 3/14/91
SB 136

March 13, 1991

TO: Chairman and Members of the House Natural Resources
Committee

From: The Missoula Water Quality Advisory Group

RE: SB 136 Local Water Quality Districts

Dear Chairman Rainey and Members:

The Missoula Water Quality Advisory Group consists of hydrologists, soil scientists, water chemists, engineers, and others involved in water quality related professions. This group advises local units of government and government agencies on water quality issues.

We would like to strongly endorse SB 136 which would allow the creation of local water quality districts. This would allow important local aquifers to be protected with local citizen input and local government administration. Statewide there are many aquifers that may not need this provision but there are some where protection is essential to the long-term economy and general public health.

Sincerely

Barry L. Dutton

Barry L. Dutton
Chairman

The Chamber. MISSOULA

EX. 7
3/14/91
SB 136

TO: 1991 Legislative Session
FROM: David Owen, Executive Vice President
DATE: March 14, 1991
RE: Proposed Water District

The Missoula Chamber supports legislative efforts which will allow the creation of Water Protection Districts. The Chamber believes that clean water is essential to the economic health of our community, and the creation of a District to protect ground water is an appropriate public sector function.



BCC-91-165
March 13, 1991EXHIBIT 4
DATE 3/14/91
SB 136

Representative Bob Raney
Chairman, House Natural Resources Committee
Montana State House of Representatives
Capitol Station
Helena, MT 59620


Dear Representative Raney,

We are writing in support of SB 136, which would provide for the establishment of local Water Quality Districts, authorize establishment of fees, authorize governing bodies that participate in a local Water Quality District to adopt local laws related to water quality protection, authorize the Board of Health and Environmental Sciences to approve the local Water Quality Programs, and authorize the Department of Health and Environmental Sciences to monitor implementation of local Water Quality Programs.

Protection of the Missoula Valley Aquifer as a viable source of clean water into the future is of utmost concern to the Missoula County Commissioners. We are in favor of Senate Bill 136 because we see this legislation as a vehicle by which the City and County of Missoula can develop the adequate research, public education, staffing and programs to rehabilitate our aquifer and insure its future viability. Diversification and growth of the Missoula are economy is also one of our top priorities. We cannot attract businesses that can have their pick of hundreds of communities throughout the west without being able to ensure them that we will take care of our air quality and water quality problems. SB 136 will help us address these very important issues. We ask that you help us and the citizens of Montana in ensuring that clean water is available to them.

Sincerely,

BOARD OF COUNTY COMMISSIONERS


Ann Mary Dussault, Chair
Janet Stevens, Commissioner
Barbara Evans, Commissioner

DATE **3-14-91**

SB 136

Flathead City-County Health Department

723 5th Ave. East • Kalispell, Montana 59901

Environmental Health Services 756-5632 • Community Health Services 756-5633



To: Bob Raney, Chairman
House Natural Resources Committee

From: Flathead City-County Board of Health

TESTIMONY: SB 136

In accordance with the position statement of the Flathead City-County Board of Health adopted January 17, 1991, the Board is in full support of the proposed legislation introduced as Senate Bill 136 which will establish local water quality districts.

At this time, local government has very limited authority to take steps necessary to protect against degradation of groundwater and surface water. This Bill would enable local governments to take essential steps to accomplish the very important task of protecting two of our most valuable resources: our water, and the citizens who reside in Montana.

The proposed legislation will solve specific problems within a given jurisdiction. It is also "consumer oriented" and subject to the identified needs of the people.

The Flathead City-County Board of Health fully supports Senate Bill 136.

Respectfully submitted,

Jane Lopp, Chairperson

Jane Lopp, Chairperson

DATE 3-14-91
SB 136

Flathead City-County Health Department

723 5th Ave. East • Kalispell, Montana 59901

Environmental Health Services 756-5632 • Community Health Services 756-5633

ADOPTED JANUARY 17, 1991

The Flathead City/County Board of Health supports legislation that continues coordination of all Public Health Services. This includes continued single-site organization of Personal, Community and Environmental Health Services and the resources and support services necessary for these programs and services.

The Flathead City/County Board of Health supports legislation that will enhance environmental quality and protect the public safety including the areas of Waste Management, Air and Water Quality, Subdivisions, and Underground Storage Tanks.

The Flathead City/County Board of Health supports legislation which will enhance the provision of Personal Health Services through a coordinated delivery plan. Such services would include basic immunization and disease prevention programs, nutrition services for families, family planning services and other basic Public Health Programs for our citizens regardless of ability to pay.

The Flathead City/County Board of Health supports those programs that will positively benefit the Public Health, protect the Public Safety and enhance the environmental quality of the State and support adequate funding of those programs and services by the State or through authorization of such mechanisms to local units of government that they can be adequately funded at the local level.



DANIEL KEMMIS

OFFICE OF THE MAYOR

435 RYMAN MISSOULA, MT 59802-4291 (406) 523-4601 FAX: (406) 728-6690

EXH.B.T. 6
DATE 3-14-91
SB 136

Amendment to Senate Bill No. 136
Third Reading Copy

For the House Committee on Natural Resources

Prepared by Dennis M. Taylor, Chief Administrative Officer
City of Missoula
March 14, 1991

1. Page 5, line 6
Following: line 5
Insert: "(3) The Commissioners may not include within a local water quality district any portion of the area that lies within 4 1/2 miles of the corporate limits of a city or town unless the governing body of the city or town approves the inclusion of the area through interlocal agreement."

MONTANA WATER PLAN

FINAL

December 1990

Section: Drought Management

Introduction	2
Background	2
Policy Statement	2
Issues, Options, and Recommendations	2
Drought Monitoring and Early Warning	2
Impact Assessment	3
Coordination of Governmental Actions	3
Triggering Mechanisms	4
Assistance Programs	5
Funding for Drought Management Programs	5
Research and Educational Programs	5
Drought Mitigation Strategies	5
Plan Implementation	6
Legislative Action	6
Administrative Action	7
Financial Requirements and Funding Strategies	7
Bibliography	8

ED LORD, RANCHER
MONTANA STOCKGROWERS ASSOCIATION
TESTIMONY ON SENATE BILLS 265
March 14, 1991

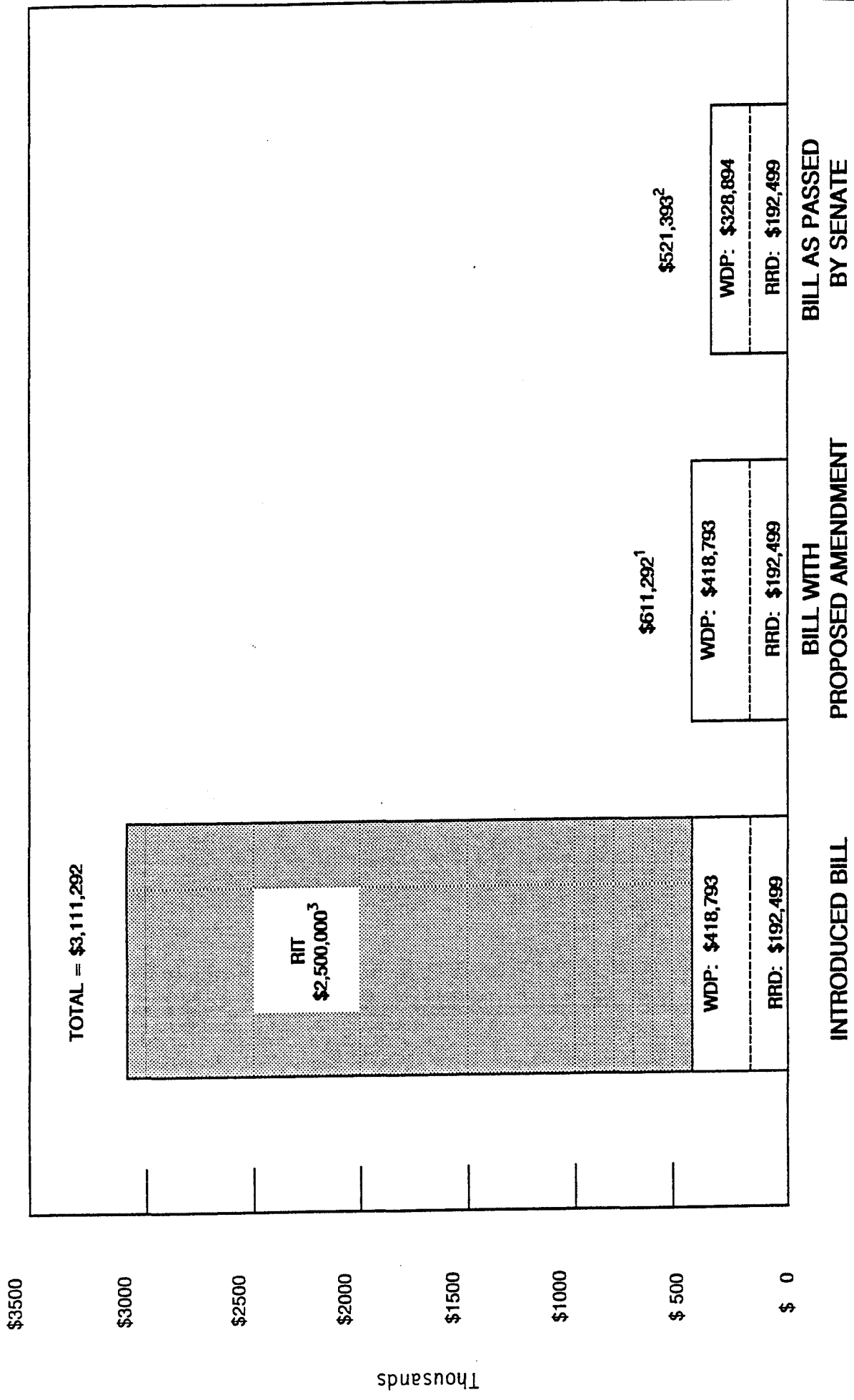
GOOD AFTERNOON MR. CHAIRMAN AND MEMBERS OF THE NATURAL RESOURCES COMMITTEE. THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON SENATE BILL 265. FOR THE RECORD MY NAME IS ED LORD AND I AM A CATTLE RANCHER FROM PHILIPSBURG. I AM THE PRESIDENT OF THE FLINT CREEK WATER USERS ASSOCIATION, A STATE WATER PROJECT. IN ADDITION, I USE DECREED WATER RIGHTS, APPROPRIATED WATER RIGHTS AND USE WATER RIGHTS. TODAY I REPRESENT MY FAMILY AND THE MONTANA STOCKGROWERS ASSOCIATION IN MY CAPACITY AS FIRST VICE PRESIDENT.

I AM TESTIFYING IN SUPPORT OF SENATE BILL 265. AS A PRACTICAL MATTER THIS BILL PROBABLY WON'T DO ANYTHING MORE THAN IS ALREADY BEING DONE AT THE PRESENT TIME. HOWEVER, IT DOES SAY THE PERSON WHO SALVAGES WATER HAS THE RIGHT TO USE THAT WATER ON ADDITIONAL LAND, SELL IT OR LEASE IT TO SOMEONE ELSE PROVIDED HE OBTAINS THE NECESSARY PERMITS FROM THE DNRC. I WOULD ASK THE DNRC GRANT ONLY CONDITIONAL PERMITS PERTAINING TO SALVAGED WATER AND THE DOWNSTREAM USERS BE ALLOWED TO HAVE THE PERMIT REVOKED IF THEY CAN PROVE THEY HAVE BEEN HARMED BY THIS CHANGE OF USE.

AGAIN, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON SENATE BILL 265.

SB 313 REVENUES TO WATER STORAGE ACCOUNT - 1993 BIENNIUM

DATE 3-14-91
 SB 313



¹ \$611,292 in introduced bill represents 25% of the WDP and RRD grant funds after doubling the coal tax for WDP.
² \$521,393 in Senate bill is 25% of available grant funds from RRD and WDP.
³ \$2,500,000 in introduced bill is not available until fiscal years 96-97, and represents 25% of revenues to RIT after the fund exceeds \$100 million.

DATE 3-14-91
SB 313

AMENDMENTS TO SENATE BILL NO. 313
THIRD READING (BLUE) COPY

1. Title, line 16
Following: "ADDITIONAL"
Insert: "COAL SEVERANCE"

2. Page 10.
Following: line 1
Insert:

"Section 8. Section 15-35-108, MCA is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must be allocated according to the provisions in effect the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of the total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state;

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects, and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the

costs of participating in regional and national networking;
(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) ~~1-1/4%~~ 2 1/2% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. (Terminates July 1, 1993 sec. 7, Ch. 541, L. 1983.)

15-35-108. (Effective July 1, 1993) Disposal of severance taxes. Severance taxes collected under this chapter must be allocated according to the provisions in effect the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of the total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state;

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) 1/3 for protection of works of art in the state capitol and other cultural and aesthetic projects, and

(ii) 2/3 for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) ~~1-1/4%~~ 2 1/2% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 9. 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.

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

(i) ~~1-1/4%~~ 2 1/2% 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);

(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;

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

(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 connections with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the water development loan loss reserve fund type established in 17-2-102.

(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: all subsequent sections

Amendments to Senate Bill 313
Proposed by the Montana Wildlife Federation

EXHIBIT 13
DATE 3-14-91
SB 313

Page 1. Line 13:

after "COSTS;"

insert "STUDY THE FEASIBILITY OF INCREASING WATER USER FEES TO
PAY FOR CONSTRUCTION AND REHABILITATION OF STORAGE
STRUCTURES AND IMPROVE COORDINATION AND ACCOUNTING OF
THOSE FEES;"

Page 7. line 7:

after "July 1, 1992."

insert "NEW SECTION. Section 6. Study of water user fees. (1)
The department of natural resources and conservation,
shall conduct and coordinate a study to assess the
feasibility of increasing the fees charged diversionary
water users to assist in the repayment of a greater
portion of those project cost associated with
diversionary benefits and opportunities to improve
coordination and accounting of those fees. Options to be
assessed include but are not limited to:

(a) requiring diversionary water users to pay
standardized fees to the department of natural
resources and conservation for the use of the
public's water provided by storage project on a per
volume used basis;

(b) requiring diversionary water users to pay
standardized fees to the department of natural
resources and conservation for the use of the
public's water provided by storage project according
to the amount of water appropriated to the user by
the department;

(c) requiring diversionary water users to pay
standardized fees to the department of natural
resources and conservation for the use of the
public's water provided by storage project according
to the amount of water appropriated to the user by
the department and the priority date of the
appropriation.

(2) A written report of the study findings must be
submitted to the water policy committee by July 1, 1992.

Renumber subsequent sections

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources

COMMITTEE

BILL NO. SB 211

DATE 3/14/91

SPONSOR(S) Sen. Harp - Water Quality Act violations

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Brackshaw	MTU	✓ w/amendment	
Kevin Keenan	Mt Dept Health	✓ w/amendment	
Richard Parks	APAC	✓ w/amendment	
Don Allen	MWRD	✓	
Joe Brunner	MAK A	✓	
Stuart Doygett	MT Mining Assoc.	✓	
Donald Rupp	self	✓	
David Valbreth	self		
Jim Jensen	MEIC	✓ w/amendment	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Natural Resources COMMITTEE BILL NO. SB 136
DATE 3/14/91 SPONSOR(S) Beck - water quality districts

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JOHN WARD 4525 GLASS DR. HELENA MT	LITTLE JOHN'S SEPTIC SERVICE	✓	
Stan Bradshaw	MTU	✓	
Jim Carlson	Mesa Co	✓	
Will Selser	Lt County	✓	
John Arigo	DHES	✓	
Kim Wilson	Clark Fork Coal Co.	✓	
Marvin Barber	P.P.A.	✓	
Richard Clarke	NPAC	✓	
Jim M. Taylor	City of Missoula	Amend	
Ted J. Dancy	Mountain Water Company ASARCO; Montana Department of Environment	✓	
Joe Brunner	MWRG		
Jim Jensen	MEIC	✓	
Axvid M. Miller	mountain water co.	✓	
Peggy Karmele	MACTD	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SB 195
DATE 3/14/91 SPONSOR(S) Sen. Bengtson - water user review for subdivision

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Martin Barber	H. P. A	X	
J. Brumm	M W R A	X	
Rick Gustine	MARLS		-
Donald Berg	self.	✓	
Robert D. Reis	Self.		✓
David Schmitt	self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources

COMMITTEE

BILL NO. SB 265

DATE 3/14/91

SPONSOR(S) Sen Grosfield - Beneficial use of salvaged
wood

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	MTU	✓	
Ed Lord	MSG A	✓	
Marvin Barber	H.P.A.	✓	
CAROL MOSHER	MT. CATTLE WOMEN	✓	
Jo Brunner	MWA A	✓	
Donald Bang	self	✓	
Lorna Frank	Mt. Farm Bureau	X	
David A. Valhalla	self	✓	
Gary Aspinall	MT. Water Users Coalition	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SB 266
DATE 3/14/91 SPONSOR(S) Sen. Enosfield - Water Use Act revisions

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Marvin Barber	H P H	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ted J. Doney	Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
W. Brunner	MARA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Donald Berg	self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lorna Frank	Mt. Farm Bureau	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Larry Spaulth	Mt. Water Users Coalition	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SB 313
 DATE 3/14/91 SPONSOR(S) Sen. Grosfield - Water Storage Policy act
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	MTU	✓ amend.	
Marvin Barber	A-P-A	X as is	
Ted J. Dorey	Self	✓	
CAROL MASHER	MT. CATTLE-WOMEN	✓	
Joe Brunner	MURA	✓	
Hoggy Parmelee	MACD	✓	
Donald Berg	self	✓	
Lorna Frank	mt. Farm Bureau	X	
David Volborth	self	✓	
Jim Jensen	METC	X w/ TR AMEND	
ALAN BARILAY	DWR + C	X	
Gary Spatch	MT. Water Users Coalition	X	

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**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SB 314
DATE 3/14/91 SPONSOR(S) Grosfield - Water reservations amendment

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Martin Barber	A P H	X	
Ted J. Davey	Self	✓	
CAROL MOSHER	MT. CATTLEWOMEN	✓	
J. Brunner	MURA	✓	
Veggy Karmelice	MACD	✓	
Donall Berg	self	✓	
Lorna Frank	MT. Farm Bureau	X	
David Solbritt	self	✓	
Gay Spradick	MT. Water Users Coalition	X	

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