

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION**

**Call to Order:** By CHAIR LINDA NELSON, on March 19, 1991, at 3:00 p.m.

#### **ROLL CALL**

##### **Members Present:**

Linda Nelson, Chair (D)  
Don Steppler, Vice-Chairman (D)  
Bob Bachini (D)  
Joe Barnett (R)  
Gary Beck (D)  
Jane DeBruycker (D)  
Roger DeBruycker (R)  
Jim Elliott (D)  
Marian Hanson (R)  
Harriet Hayne (R)  
Vernon Keller (R)  
Don Larson (D)  
Jim Madison (D)  
Ed McCaffree (D)  
John Phillips (R)  
John Scott (D)

**Staff Present:** Doug Sternberg, Legislative Council  
Claudia Johnson, Committee Secretary

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

#### **HEARING ON SB 19**

##### **Presentation and Opening Statement by Sponsor:**

**SEN. GREG JERGESON**, Senate District 8, Chinook, presented history of the bill and said it may not stay the same bill throughout the hearing. He distributed information. **EXHIBIT 1** In the last several years grain companies have offered more "no price established" (NPE) grain contracts. He said the effects these kinds of contracts have on the market with unpriced grain can have a depressing affect on the market for the rest of the grain growers who do not participate in these kinds of contracts. With

this idea in mind, and at the request of some of the producers in Montana, the bill was drafted to eliminate the NPE. When he presented this before the Senate Agriculture Committee, the room was full of opponents and no proponents. As a consequence, he asked the Senate Agriculture Committee to place SB 19 on the table. He said a week before transmittal he had read an article in a farm journal about money troubles with grain companies in Iowa. A De Moines grain company had filed bankruptcy on December 31, 1990. Included among the losses of the De Moines grain company was \$4.1 million of corn and soy beans that was considered NPE. He said the committee became concerned that if this situation happened in Montana and the grain companies went under, the producers would be caught in the middle. After spending two days talking to the legislators and the bankers in the affected communities in Iowa, he was informed they were considering three bills in response to the problems of the grain companies. He received copies of these bills, but the transmittal deadline had already passed. He prevailed upon the Senate Agriculture Committee and the Senate as a whole to bring SB 19 back and send it the House Agriculture Committee. He worked with the Grain Elevator Association and the Grain Growers Association with the copies he had received and distributed amendments that were proposed from those meetings. **EXHIBIT 2** Rather than eliminate the NPE, they would require a "for credit sale contracts", a security protection by the grain companies, e.g., in the form of an escrow account, bonds, or an insurance policy. Those options were not satisfactory to the people at the meeting. These amendments change the bill. They eliminate the prohibition of "no price established" contracts entirely from SB 19. It establishes that the Department of Agriculture shall by rule establish a notice of financial risk to be printed on the front of credit sale contracts. The intent of the amendments recommended to the Department of Agriculture, will adopt language under the "Statement of Intent". It informs the seller that in the event of a foreclosure or bankruptcy of a grain company, the contract is equivalent to an unsecured loan to the purchaser. The wording "unsecured loan", came from the bankers he spoke with in Iowa. When their customers told them they had lost money through the De Moines grain companies, the bankers had to inform them that when they signed the credit sale, deferred payment, or forward contracts, an unsecured loan had been made with the grain company. If the amendments are adopted, this bill would provide for a warning on all contracts stating there is a financial risk to the producer, who would then determine to take that risk.

#### Proponents' Testimony:

Roger Jergeson, Blaine County, said he is a cattle and grain producer. He is in favor of the amendments. He wanted everyone to know that the NPE was never established for the good of the producer. He said it should fall under the scheme or device by the grain companies to keep their pipelines full, their employers and employees busy, and to keep their money in circulation. The grain the farmers delivered under the NPE would leave town

shortly after it was delivered. They didn't have a warehouse receipt, which means they couldn't change their minds or take it back. They couldn't place it under government loans because it wasn't there. When the banks demanded money from this grain, the farmers usually had to sell it to the grain company at a lower cost. He said farmers deserve more protection for their products. He urged the committee to give SB 19 serious consideration.

Randy Johnson, Montana Grain Growers Association, said he is pleased with the persistence that SEN. JERGESON has brought some sort of resolve to this problem. He supports SB 19 as amended. It gives the grain companies enough latitude as an industry. It provides a warning that will be meaningful to producers, but not harm anyone in the industry. He said they would be willing to work toward this proposal if the bill passes.

Kay Norenberg, WIFE, said these contracts are risky business and requested that the amendments be adopted.

#### Opponents' Testimony:

Tom Reitter, Harvest States Cooperatives, said they are not vehemently opposed. He said this bill is in the best interest of the producers with Montana in mind. He said NPE is not mandated. Each producer can make his own decision. Relative to market price effects, Montana raises 150 million bushels of wheat a year, approximately 5% of the national production. They view the amendments as more of an administrative inconvenience for Harvest States. They have 119 producers in 19 states they represent and do business with. He said SEN. JERGESON'S intentions are admirable in this effort, but mildly opposed.

Questions From Committee Members: None

#### Closing by Sponsor:

SEN. JERGESON said the statement of risk should apply to all grain companies. There are considerable financial risks involved with most financial institutions. In signing these contracts, there is a great risk. Producers involve themselves with a lot of money and a financial risk that needs to be admitted. He urged the committee to adopt the amendments and concur in SB 19.

#### HEARING ON SB 368

#### Presentation and Opening Statement by Sponsor:

SEN. GREG JERGESON, Senate District 8, Chinook, distributed amendments. EXHIBIT 3 This bill was requested by a local irrigator in Blaine County, who is a member of the Montana Water Resources Association. This bill attempts to speed up the resolution of water use conflicts between users on particular streams. During the summer when an irrigator is entitled to

water and it should be available, but someone up the line has overused their water rights, that person isn't receiving his water when he needs it and can suffer substantial financial loss. This will speed up the process of those conflicts in a timely manner so those entitled to the water can receive it. When the Department of Natural Resources and Conservation (DNRC) receives a complaint about someone wasting water or using water they are not entitled to, or preventing the water from moving to an area where another person has a right, DNRC shall investigate and try to get voluntary agreement and resolution of the conflict within the 3 day period. If they fail in the 3 day time period, the department can go to the district judge and receive a temporary restraining order.

#### Proponents' Testimony:

Jo Brunner, Montana Water Resources Association, said in past years, the association has been very frustrated with the slowness of any process to stop illegal use of water during the irrigation season. This bill has been given the name of the "enforcement bill"; they hope it will become law so it will induce those who use water illegally to recognize it as a means to rectify as quickly and beneficially as possible. She spent a great deal of time with DNRC learning about the rules and regulations they now utilize in reviewing and investigating complaints. With the problems they have with the present system and the benefits, the association is satisfied that this bill, combined with existing means for enforcement, will benefit the water users by implementing the enforcement in a shorter time frame. This will allow DNRC to contact the person in question and make attempts at voluntary compliance. If unsuccessful, DNRC requests the district court to issue a temporary preliminary or permanent injunction to prevent continuation of that violation. EXHIBIT 4

Don MacIntyre, Chief Legal Council, DNRC, said the amendment allows the district court to place the fines they collect in the appropriate account for purposes of enforcing the law under this section. It also allows fines collected by DNRC to go into that fund. Normally, the agency levies the fine against the violator who would either negotiate, voluntarily pay the fine or go to district court to enforce it. The law as it exists, the money collected only by the district court goes into this fund. This bill allows for any money collected to go into the fund. He said this is a good bill and gives the state a valuable tool. He gave an historical synopsis of the department on violations. When the department received a violation and needed to go out and investigate, they did not have the power to go into district court to get a temporary injunction. They had to inform the water user that is effected it is their responsibility to go into district court to get the restraining order; DNRC accompanies them, but the person harmed has to take the lead. If this bill is passed, it will give DNRC the ability to take the lead. They will not go into a civil action suit in a local community on their own. They invite the person being harmed to be a party to

that action.

Stan Bradshaw, Montana Trout Unlimited, said that Trout Unlimited has become increasingly involved with this issue. When someone is violating the water laws, it has ramifications well beyond the diversion where the violator is taking extra water for off-stream use. The violation affects in-stream users, which Trout Unlimited have interest in. This bill offers a orderly process to deal with those problems. The invocation of civil penalties are a good incentive for the violator to not continue the violation. He urged the committee to support SB 368.

Carol Mosher, Montana CattleWomen, said the association is in support of SB 368.

Kay Norenberg, WIFE, said this is a good bill and would like go on record in support of SB 368.

Opponents' Testimony: None

Questions From Committee Members:

REP. BACHINI asked SEN. JERGESON about the penalty section of the bill where it states that the penalty shall not exceed \$1,000 per violation, does each day of the violation constitute a separate violation. SEN. JERGESON said that each day the violation occurs is a separate violation where the maximum penalty is applied. If the temporary injunction was given on the fourth day it will mean they are capping the amount of money that comes in on the violation to \$3,000. Mr. MacIntyre was asked to answer this question. He said the language that is used is standard language used in a lot of civil violation penalties. It basically states if there is a violator taking water from a source of supply they are not entitled to and the action is injuring a water user, that is a violation of law and is subject to a \$1,000 a day penalty. If it happens the next day, the violator is subject to the same penalty. If the violator continues after the temporary injunction has been served, than the court will treat him from a different vantage point. Each day is a separate violation for the 3 days. The penalties are cumulative.

Closing by Sponsor:

SEN. JERGESON thanked the committee for a good hearing. This bill speeds up the resolution process so the people that are entitled to their water can get it when it is needed.

EXECUTIVE ACTION ON SB 368

Motion: REP. BACHINI MOVED SB 368 BE CONCURRED.

Discussion: REP. BACHINI moved to adopt the amendments. Question was called. Motion CARRIED unanimously.

REP. BACHINI said he had a problem with the \$1,000 per day penalty. He thought it was too high. If a person did this unknowingly, they could pick up quit a penalty.

Mr. Sternberg explained the amendments. It is a system of voluntary compliance whereby the department attempts to obtain voluntary compliance for 3 days. There are 3 days that the violator can rectify the situation. That is the 3 working days and the \$3,000 fine. Each of the 3 working days constitute a \$1,000 violation. After the 3-day period, the provisions of subsection (1) (c) would start, with the department going to district court with evidence of violation and evidence of the attempt to get voluntary compliance. If convinced, the court then grants a temporary restraining order. There is a cap implied in the 3 working days. If the violator doesn't comply, than this section gives the department the authority to go to court and speed up the process.

REP. BARNETT rose in support of the bill and amendments.

REP. MCCAFFREE said he is in support of the fine. He knows people that would gladly pay the \$1,000 fine.

Motion/Vote: REP. BACHINI MADE A SUBSTITUTE MOTION THAT SB 368 BE CONCURRED IN AS AMENDED. Question was called. Voice vote was taken.

Vote: SB 368 BE CONCURRED IN AS AMENDED. Motion CARRIED unanimously. REP. SCHYE will carry SB 368 on the House floor.

#### EXECUTIVE ACTION ON SB 19

Motion: REP. BACHINI MOVED SB 19 BE CONCURRED.


Discussion: REP. BACHINI moved to adopt amendments. Question was called. Voice vote was taken.

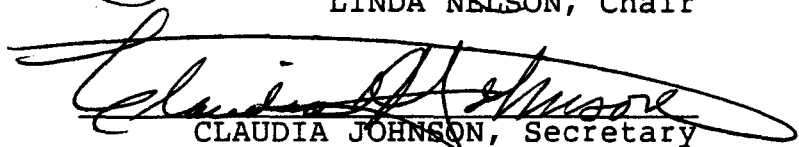
Motion/Vote: REP. BACHINI MADE A SUBSTITUTE MOTION THAT SB 19 BE CONCURRED IN AS AMENDED. Question was called. Voice vote was taken.

Vote: SB 19 BE CONCURRED IN AS AMENDED. Motion CARRIED 15 to 1 with REP. DEBRUYCKER (Roger) voting no. CHAIR LINDA NELSON will carry SB 19 on the House floor.

ADJOURNMENT

Adjournment: 4:30 p.m.

  
LINDA NELSON, Chair

  
CLAUDIA JOHNSON, Secretary

LN/cj

# HOUSE OF REPRESENTATIVES

## AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

ROLL CALL

DATE 3-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DON STEPPLER, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. JOE BARNETT	✓		
REP. GARY BECK	✓		
REP. JANE DEBRUYCKER	✓		
REP. ROGER DEBRUYCKER	✓		
REP. JIM ELLIOTT	✓		
REP. MARIAN HANSON	✓		
REP. HARRIET HAYNE	✓		
REP. VERNON KELLER	✓		
REP. DON LARSON	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. JOHN PHILLIPS	✓		
REP. JOHN SCOTT	✓		
REP. LINDA NELSON, CHAIR	✓		



4150  
3-14-4  
JDB

HOUSE STANDING COMMITTEE REPORT

March 19, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 368 (third reading copy -- blue) be concurred in as amended .

Signed: \_\_\_\_\_  
Linda Nelson, Chairman

Carried by: Rep. Schye

And, that such amendments read:

1. Page 3, line 16.

Following: "BY"

Insert: "the department or"

4:50  
3-19-91  
JDB

HOUSE STANDING COMMITTEE REPORT

March 19, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 19 (third reading copy -- blue) be concurred in as amended .

Signed: \_\_\_\_\_  
Linda Nelson, Chairman

Carried by: Rep. Nelson

And, that such amendments read:

1. Title, lines 4 and 5.  
Following: "TO" on line 4  
Strike: "CLARIFY THAT TITLE TO"  
Insert: "REQUIRE THAT CONTRACTS FOR"

2. Title, lines 5 through 7.  
Following: "CONTRACT" on line 5  
Strike: remainder of line 5 through "CONTRACT" on line 7  
Insert: "CONTAIN A NOTICE OF FINANCIAL RISK IN A FORM ESTABLISHED  
BY DEPARTMENT OF AGRICULTURE RULE"

3. Title, lines 7 and 8.  
Following: "AMENDING" on line 7  
Strike: "SECTIONS 30-2-401 AND"  
Insert: "SECTION"

4. Title, line 8.  
Strike: "IMMEDIATE"

5. Page 1, line 10.  
Insert: "STATEMENT OF INTENT"

A statement of intent is required for this bill because 80-4-422(2)(f) requires the department of agriculture to adopt rules regarding the form of a notice of financial risk required to appear on credit sale contracts for the sale of agricultural commodities. It is intended that the warning appear on the face of the contract, in boldface type, and be in substantially the following form:

NOTICE TO SELLER OF FINANCIAL RISK

The seller recognizes that in the event of foreclosure or bankruptcy, this contract is equivalent to an unsecured loan

to the purchaser. The seller and any of the seller's creditors should be advised of the financial risks involved in this contract."

6. Page 1, line 25.

Strike: "and"

7. Page 2, line 1.

Following: "made"

Insert: "; and

(f) a notice of financial risk involved in the credit sale contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 30-4-403"

8. Page 2, lines 2 and 3.

Strike: "(a)" on line 2

Following: "~~title~~" on line 2

Strike: remainder of line 2 through "title" on line 3

Insert: "Title"

Following: "~~all~~" on line 3

Insert: "all"

9. Page 2, line 21 through page 3, line 3.

Strike: subsection (b) in its entirety

10. Page 3, line 4 through page 5, line 19.

Strike: section 2 in its entirety

Renumber: subsequent section.

11. Page 5, lines 21 and 22.

Following: "effective" on line 21

Strike: remainder of line 21 through "approval" on line 22

Insert: "July 1, 1991,"

12. Page 5, line 22.

Following: "contracts"

Insert: "for agricultural commodities"

13. Page 5, line 23.

Strike: "[the effective date of this act]"

Insert: "July 1, 1991"

# heavy losses to elevators

Associated Press

PIERRE, S.D. — A \$25,000 bond is all that eight South Dakota grain elevators can be assured of receiving for several hundred thousands of dollars in grain sold to a Minnesota buyer in the last year, South Dakota officials say.

"They're looking at getting just over cents on the dollar," says Ed Anderson, deputy director of the Transportation and Warehouse Division in the State Public Utilities Commission.

State Judge Steven Zinter of Pierre recently approved claims of \$407,214 against Barzen International of Stacy, Minn., which bought millet, sorghum and sunflowers from several South Dakota elevators.

The failed grass seed and birdseed company notified creditors in May that it was unable to pay its debts, which totaled more than \$3.5 million.

The \$25,000 bond for the fiscal year ending this past June 30 will be distributed early this month among the eight grain elevator companies.

Doug Eidahl, general counsel for the PUC, says, "It'll be divided between

## AGRIBUSINESS

them on a pro-rata basis according to how much they're owed."

The largest claim of \$203,174 was submitted by Empire Feed and Grain of Lyons, S.D., Eidahl says.

Other claims found to be valid included \$14,601 by the Florence Farmers Elevator; \$26,139 by the Glenham Equity Exchange; \$71,968 by Harvest States Cooperative of St. Paul, Minn.; \$18,748 by HESCO of Watertown; \$4,898 by the Farmers Union Coop Elevator at Kennebec; \$9,412 by Parkston Grain Co.; and \$58,269 by South Dakota Wheat Growers of Aberdeen.

An \$883 claim against Barzen by Kuecker Seed Farm of Webster was denied because it was too old.

Eidahl says Empire Feed and Grain also has pending claims of \$25,955 for the fiscal year ending June 30, 1988, and \$31,556 for the year ending June 30 1989.

If approved by Zinter, a \$25,000 annual bond for each of the two years would pay the bulk of those claims. □

## FARM ECONOMY

# Iowa grain company closes 10 elevators

Associated Press

DES MOINES, Iowa — The Des Moines Grain Co. has filed for bankruptcy protection, closing its 10 country elevators.

The company filed for Chapter 11 protection last week after its biggest creditor, Bankers Trust Co. of Des Moines, told company officials that the bank was calling in a loan.

The company closed elevators in Aplington, Packwood, Pekin, Arthur, Trenton, Webster, Orchard, Alexander, Stockport and Galt.

Bill Brewer, a spokesman for the Iowa Department of Agriculture, says the state has nearly \$8 million in an indemnity fund that will cover most of potential losses for farmers who sold grain for cash to the elevator and who had not yet been paid.

But the indemnity fund will not cover losses to farmers who delivered grain to the elevator under an agreement to be paid at a later date.

"It's possible that in some situations those paid on credit sale contracts may

## AGRIBUSINESS

not be paid all that they were owed," he says.

Dennis Plummer, assistant chief of the state's Grain Warehouse Bureau, says none of the grain was missing during recent inspections. He says the elevators currently have in storage 2.1 million bushels of corn, 1 million bushels of soybeans, 38,000 bushels of oats and 6,000 bushels of wheat.

"There are no shortages that we're aware of at any of the elevators," says company attorney Ron Hansel. "Our understanding is that the company is going to meet all of its obligations."

The business had a \$10 million line of credit with Bankers Trust and had used "somewhat less than \$5 million of that," according to another attorney for the company, Mark Adams.

He says the bank considers the grain business insolvent. "We question the basis for that. They discontinued the line of credit, and that created cash flow problems." □

# hit grain firms

EXHIBIT  
DATE 3-19-91  
SB 19

■ Farmers in at least seven states are assessing the damage in the aftermath of insolvencies of two separate, major grain companies. Officials worry that the toll may grow if small-town elevators that relied on the firms to market their grain get caught in the aftershocks. Meanwhile, they are urging calm and emphasizing the need for all farmers, regardless of location, to use caution when executing grain sales.

Des Moines Grain Company has filed for bankruptcy protection, closing elevators in the Iowa communities of Aplington, Packwood, Stockport, Pekin, Trenton, Webster, Arthur, Orchard, Galt and Alexander. The grain dealer and warehouse licenses of Oskaloosa Feed and Grain have also been suspended since it is primarily owned by Des Moines Grain Company principals.

Financial shortfalls are also being reported by Merchants Grain Corporation, a St. Louis-based company that operates 14 elevators in Indiana, Missouri, North Carolina, Kentucky, Ohio and Tennessee. Michael Lueken, president of Merchants Grain, acknowledges the cash-flow problems, but denies rumors that the company will take bankruptcy.

Richard DeVries, chief of the licensing authority for USDA, explains that the suspension means Merchants Grain elevators may not receive additional grain for storage until the irregularities have been corrected.

✓ Farmers who sold grain to the Des Moines Grain Company and its affiliated companies are owed \$4.8 million, says Bill Brewer, Iowa Department of Agriculture spokesman. Most of that loss, \$4.1 million, was from sales of corn and soybeans under price-later contracts—\$330,384 of which had been paid out in advances. Another \$58,577 worth of credit-sale payments were made with checks that bounced shortly before the company filed for bankruptcy Dec. 31.

Brewer says the company's cash-flow problems surfaced when their biggest creditor called a loan. There were no grain shortages at the elevators. "It does not appear to be symptomatic of any kind of problem like an ailing farm economy. It's an isolated situation."

An \$8-million Iowa state indemnity fund established in 1987 to protect farmers when an elevator fails will cover most losses for farmers who had sold cash grain and had not yet been paid. Losses on cash sales to Des Moines Grain total nearly \$1 million. The protection plan covers 90%, up to \$150,000 per transaction.

But farmers who delivered grain to the elevator with unspecified payment dates are not so lucky. Grain delivered under deferred payment or basis contracts is considered elevator property and therefore not covered by the law. Dealer-to-dealer transactions are not protected by the indemnity fund either. Attorneys for Des Moines Grain maintain that the owners plan to cover all their obligations, even those that do not qualify for the indemnity fund.

Only eight states have grain indemnity funds—South Carolina, Oklahoma, Illinois, Iowa, Ohio, Kentucky, Louisiana and Idaho. Most are farmer funded and do not cover price-later contracts.

—Pam Cole Henderson

SB 19

Amendments to Senate Bill No. 19  
Third Reading Copy

Requested by Sen. Jergeson  
For the Committee on Agriculture

Prepared by Doug Sternberg  
March 18, 1991

1. Title, lines 4 and 5.

Following: "TO" on line 4

Strike: "CLARIFY THAT TITLE TO"

Insert: "REQUIRE THAT CONTRACTS FOR"

2. Title, lines 5 through 7.

Following: "CONTRACT" on line 5

Strike: remainder of line 5 through "CONTRACT" on line 7

Insert: "CONTAIN A NOTICE OF FINANCIAL RISK IN A FORM ESTABLISHED  
BY DEPARTMENT OF AGRICULTURE RULE"

3. Title, lines 7 and 8.

Following: "AMENDING" on line 7

Strike: "SECTIONS 30-2-401 AND"

Insert: "SECTION"

4. Title, line 8.

Strike: "IMMEDIATE"

5. Page 1, line 10.

Insert: "STATEMENT OF INTENT"

A statement of intent is required for this bill because 80-4-422(2)(f) requires the department of agriculture to adopt rules regarding the form of a notice of financial risk required to appear on credit sale contracts for the sale of agricultural commodities. It is intended that the warning appear on the face of the contract, in boldface type, and be in substantially the following form:

**NOTICE TO SELLER OF FINANCIAL RISK**

The seller recognizes that in the event of foreclosure or bankruptcy, this contract is equivalent to an unsecured loan to the purchaser. The seller and any of the seller's creditors should be advised of the financial risks involved in this contract."

6. Page 1, line 25.

Strike: "and"

7. Page 2, line 1.

Following: "made"

Insert: "; and"

(f) a notice of financial risk involved in the credit sale contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403"

8. Page 2, lines 2 and 3.

Strike: "(a)" on line 2

Following: "~~title~~" on line 2

Strike: remainder of line 2 through "title" on line 3

Insert: "Title"

Following: "~~all~~" on line 3

Insert: "all"

9. Page 2, line 21 through page 3, line 3.

Strike: subsection (b) in its entirety

10. Page 3, line 4 through page 5, line 19.

Strike: section 2 in its entirety

Renumber: subsequent section.

11. Page 5, lines 21 and 22.

Following: "effective" on line 21

Strike: remainder of line 21 through "approval" on line 22

Insert: "July 1, 1991,"

12. Page 5, line 22.

Following: "contracts"

Insert: "for agricultural commodities"

13. Page 5, line 23.

Strike: "[the effective date of this act]"

Insert: "July 1, 1991"

EXHIBIT 3  
DATE 3-19-91  
HB SB 368

Amendments to Senate Bill No. 368  
Third Reading Copy

Requested by Sen. Jergeson  
For the Committee on Agriculture

Prepared by Doug Sternberg  
March 19, 1991

1. Page 3, line 16.  
Following: "BY"  
Insert: "the department or"

# MONTANA WATER RESOURCES ASSOCIATION

501 N. Sanders • Helena, Montana 59601 • (406) 442-9666

EXHIBIT 4  
DATE 3-19-91

HB SB 368

SB368

JERGESON

MARCH 19, 1991

Jo Brunner, Executive Secretary, Montana Water Resources Association

The Montana Water Resources Association has given this legislation a great deal of consideration over the years. Our people have been frustrated with the slowness of any process to stop illegal uses of water, specifically during the irrigation seasons when getting the water to the crops is of vital importance.

While this bill has been given the nickname of the 'enforcement bill' we hope it will actually prove to be a law that will induce those who use water illegally, or negligently or wastefully, to recognize it as a means to rectify the situations as quickly and beneficially to all as is possible.

It was never the intent of our people to be able to randomly and without just cause have their neighbors water shut off. Or to have a fisherman walking down the stream decide that too much water was being diverted, or wasted and have an irrigators water turned off.

Before this bill was finalized I spent a great deal of time with people from the Department of Natural Resources learning about the rules and regulations they now utilize in reviewing and investigating complaints, the problems they have with the present system, and the benefits also, and our association was satisfied that this bill, combined with existing means for enforcement would benefit our water users by implementing the enforcements in a shorter time frame.

We are satisfied that SB368 will allow the department, upon complaint, to accomplish an investigation, in compliance with the rules and methods in existence now, and upon determining that there could be a violation of water use, contact the person in question, and make reasonable attempts to obtain voluntary compliance. Should such efforts be unsuccessful, request the district court to issue a temporary, preliminary or permanent injunction to prevent the continuation of the violation.

It was not our intent to tie the departments hands by mandating perimeters for discussions as to the voluntary compliance. If it is a broken headgate, a measuring device operating incorrectly, a plugged culvert, they ought to be able to give the respondent a reasonable time to get his problem straightened out. If the investigation has determined with reasonable cause, that the respondent is diverting more water than he has a right to divert, or if he has no right to the water he is diverting, or even if he is wasting water for any reason, the effort must still be made to work it out and allow compliance.

Given the time frame for investigation of the complaint, the 3 working days for discussion, we are already looking at close to a week. If the 3 working days envelop a week end, and the respondent has indeed been using water not rightfully his, we're more than crowding the loss of a crop, or in the very least a very stressed crop for the irrigator who is not



getting his rightful share of the water.

We have tried to be fair with all parties, discussing this with several legislators, with irrigators and other interested water users. We feel we have leaned over backward to be fairer than is necessary to make sure that irrigation will not be stopped unjustly.

However it is important for you to realize that the people who are requesting this bill are irrigators. They know what its like to see a neighbor actually take water that is not his, shorting another, and not being able to do anything about it under our present system, until long after the crop has been harmed.

They have , in instances, witnessed farmers, without a water right, or a very minor right, irrigate all season, season after season, because it takes to long to get anything accomplished legally, and once the season is over, so is the problem.

Our intent is to speed up the process and afford the rightful owners, or those who do conserve water, who do take care of their diversions and measuring devices, the means to use the water as it should be used.

We discussed quite extensively the need for the \$1,000.00 per day fine. Should you think that excessive, remember that if a person is using another irrigators water, by what every manner, he can afford to pay a lessor fine, say \$250.00 a day, for several days, continue to irrigate until he is over the field, pay a lessor fine and have a crop of greater worth. Consider the cost to the rightful owner of the water . Even four additional days without the necessary water can cost him many thousands of dollars.

We think that if even one or two \$1,000.00 fines are assessed, there won't be many mis-users unwilling to discuss the situation and to do something to rectify the complaint.

It is our hope that having this law in place will indeed discourage intentional misuse of water, by whatever means.

We urge you go pass this legislation.

Thank you.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Agriculture  
DATE 3-19-91

COMMITTEE

BILL NO. SB 19

SPONSOR(S)

Sen. Jorgensen

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
TOM REITTER	HARVEST STATES COOP		X
<del>Ray 41 rancher</del>	WIFE	✓	
Ray Bomser	MT Grain Elev Assn		
Bob Steinhorn	MT Grain Elev Assn	X	✓
Robert Johnson	" "		
Van Pelt	MT Grain Elev Assn Broadwater Grain Supply		
Pam Langley	Montana Grain Elevator Assn		
J. Brumby	MT Grain 368	X	
Robert Johnson	SELF	X	
Robert Johnson	self	✓	

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

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Agriculture COMMITTEE BILL NO. SB368  
DATE 3-19-91 SPONSOR(S) Sen. Jorgeson  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Don McIntyre</u>	<u>DNRC</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Susan Leonard</u>	<u>MT Audubon</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Kay Nozberg</u>	<u>WIFE</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>CAROL MOSHER</u>	<u>MT. CATTLEWOMEN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Stan Braggman</u>	<u>MT P.U.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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