

## **MINUTES**

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

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN BOB RANEY**, on March 22, 1991, at 1:30 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.

#### **EXECUTIVE ACTION ON SB 313**

**Motion:** REP. O'KEEFE MOVED SB 313 BE CONCURRED IN.

**Motion:** REP. O'KEEFE moved REP. REAM's amendments to SB 313.  
**EXHIBIT 1**

**Discussion:** REP. HOFFMAN asked what the amendments do. REP. O'KEEFE said amendments 3-6 are renumbering amendments because of the addition of the new Section 6. He helped draft the storage policy segment of the water plan. After it was discussed in public hearings, the Water Policy Advisory Group decided to add a study of recreational water users to determine their capability and culpability for funding future water storage projects.

That angered him because it disregarded consumptive users, who are the major users of water storage programs. The amendments say that if the state is going to study the addition of a \$1 fee on fishing licenses to promote and develop off-stream tributary storage, then the state should study the feasibility of increasing user fees for people who consumptively use water. **REP. REAM** drafted the amendments. To fund these projects in the future, the state must look at all users, not just non-consumptive users.

**REP. HOFFMAN** said that historically, diversionary consumptive users paid for these projects through fees. He doesn't understand what SB 313 accomplishes. He asked if there would be a study of a different fee that would be in proportion to recreational use. **REP. O'KEEFE** said it is true that water users pay for water by the acre-foot. But consumptive water users in Montana have been subsidized for 100 years. The state is trying to get rid of projects that are subsidized year after year.

**REP. HOFFMAN** said two projects in his district, including Ruby Reservoir, are being paid for by consumptive users. Recreationists have used the lake since it was built and haven't paid anything for it. In light of that, he doesn't understand what the bill is trying to accomplish.

**REP. O'KEEFE** said he disagreed. The subsidy that agricultural users got was paid for by recreationists and other citizens' tax dollars. Everyone benefitted. The state will get in trouble if it builds new storage projects and limits cost assessment to recreationists.

**REP. HOFFMAN** said he doesn't think the bill puts the entire cost on recreationists. It provides for a study of the possibility of assessing recreationists for some of the cost. He asked if that was correct. **REP. O'KEEFE** said yes. **REP. HOFFMAN** said he didn't see anything that would prohibit diversionary users from paying for it as well.

**REP. O'KEEFE** said consumptive use of the state's water has been the subsidy that has never been paid for. If there is water in a stream and a person files for a permit to use the water, the person pays \$35 for the permit and receives free water for life.

**REP. TOOLE** said it appears that by bringing in diversionary and recreational uses through **REP. REAM's** amendment, both will be studied, even though diversionary uses have been paying all along. Both need to be evaluated to determine a proper rate.

**REP. O'KEEFE** said reports have to be done by July 1, 1992. Agriculture also will benefit.

**CHAIRMAN RANEY** said he doubts anyone has ever done a study to find out if consumptive users are paying proportionately. It would be interesting to know.

REP. HOFFMAN said the whole thing is faulty to begin with. He asked how the value of water use can be prorated among recreational and consumptive use.

CHAIRMAN RANEY said it probably can be done. Both uses should be looked at simultaneously.

REP. KNOX said the benefits of water use is enormous over time. Without this type of program, agriculture production would not exist.

REP. HOFFMAN said a subsidy is passed back to the consumer in the form of lower-priced agricultural products.

REP. O'KEEFE said the study could determine those things. He agrees with other committee members' comments, but it hasn't been studied and shown to the Water Policy Committee that this is the case, nor have recreational benefits been studied. The Water Policy Committee wants to study recreational benefits. He recommended agricultural benefits be studied too.

REP. FOSTER asked how the study would be funded. REP. O'KEEFE said he doesn't know. He assumes the Water Policy Committee is funded by the General Fund. There isn't an appropriation in SB 313 for a study.

CHAIRMAN RANEY said that according to the fiscal note, the Department of Fish, Wildlife and Parks (FWP) is going to spend \$90,000 to do the feasibility study.

Stan Bradshaw, Trout Unlimited, said that since the fiscal note came out, FWP met with people in the Senate. The fiscal note is no longer correct.

Pat Graham, FWP Deputy Director, said that when the fiscal note was drafted, FWP understood that a full-blown evaluation of the state's dams and recreational sites was desired. The Governor's Office and the Department of Natural Resources and Conservation (DNRC) said they would settle for a feasibility-level study. Originally, it was thought it could be done with in-house staff, without additional revenue. CHAIRMAN RANEY said there is no fiscal note. Mr. Graham said no, there isn't.

CHAIRMAN RANEY asked how that can be addressed, who will do the study and where the money will come from. REP. O'KEEFE said it actually comes from the Resource Indemnity Trust (RIT) because the RIT finances all DNRC's FTEs. But the committee doesn't have control over that money. He would leave it in the bill as a directive to the Water Policy Study Committee. DNRC would have to absorb the costs, which is the same thing being asked of FWP under recreation.

CHAIRMAN RANEY said the amendment would have the study done with money from the existing budget. The result may not be much of a

report. REP. O'KEEFE said yes, but he doesn't think that is the way the Water Policy Committee works.

REP. GILBERT said the committee should listen to REPS. HOFFMAN and KNOX. Even though water to agriculture is somewhat subsidized, it goes to a project that, in theory at least, produces tax dollars for the state. Recreational activities normally do not. They say that because agriculture pays some and recreational use is increasing, recreationists should pay something. He doesn't usually agree with agriculture, but in this case, recreationists are the ones who are getting subsidies.

REP. COHEN said SB 313 calls for a study of recreational user fees to help pay for water storage projects. REP. REAM is saying that if the state is going to study the benefits received by recreationists, it should also study the benefit to present users so that fees are proportionate to benefits. The additional study is proposed so that the state will look at everyone, not just recreational users. He asked if he were correct. CHAIRMAN RANEY said he sees it that way.

REP. KNOX said the study would have to be massive, but no funding is available for it so it probably won't be worth anything when it is done.

REP. HOFFMAN said users are so intangible that there is no way to compare them. Consumptive users have always paid fees on water storage projects, so that part doesn't need to be studied. What has never been looked at is recreational use.

CHAIRMAN RANEY said REP. KNOX is asking how the value of consumptive use and recreational use can be quantified. Other bills try to do the same thing in areas such as access to state lands. Montanans take recreational use for granted and place no value on it. It's part of being a Montanan. He asked how a study could be done to quantify that value.

REP. O'KEEFE said tourism and recreation are the state's No. 2 industry. There is as much economic benefit from those things as subsidizing agricultural water. The state should look at it all. If the committee doesn't want to look at it all, the recreational section should be taken out.

A well-balanced, well-written policy statement came out of statewide public hearings. A lot of compromise went into it. One part of the plan calls for this study. If the study is removed, he thinks the plan remains whole. But the committee has to decide if it is still whole. He also thinks the plan remains whole if the other study is added.

The committee has two options. The only controversy about this was the recreation study. Recreationists didn't like that portion of the water storage plan. If it is left in and the other study is added, everyone is slightly happy. If the committee takes the

recreation study out, then there is a whole coalition again.

**CHAIRMAN RANEY** said the committee should either put a study in or take one out, and **REP. O'KEEFE** is proposing to put one in.

**REP. GILBERT** suggested the committee vote on the amendment. If it stays on, it'll go and if not, the committee won't have to talk about it anymore.

Vote: Motion to amend SB 313 carried 12-6. **EXHIBIT 2**

Motion: **REP. HOFFMAN** moved **SEN. LORENTS GROSFIELD's** amendments to SB 313.

Discussion: **REP. O'KEEFE** said Section 8 and Section 9 on Page 10 was struck. **SEN. GROSFIELD** wants Section 8 to be put back into the bill. The core of it is on Line 25, Page 11. The bill would have raised the coal severance tax that goes into the water development program from 1.25 percent to 2.5 percent. **SEN. AKLESTAD** removed it in the Senate.

There also was a provision on Page 16 (vii) that 25 percent of the receipts of the RIT would go to the water storage state special revenue fund. The debate is whether more coal tax money should be put into water development. If that is desired, the question is where the money should be spent.

He wants to amend the bill to go to 2.5 percent because more money is needed in water development; but the percentage should be lowered from 25 percent to 22 percent. That puts an additional \$380,000 in the water development loan and grant program, and an additional \$15,000 in the water storage account.

He is concerned that if the committee opens up that section of the law dealing with the 2.5 percent, there may be an attempt to amend where coal tax money goes. That is the risk the committee would take if it attempts to insert the language **SEN. GROSFIELD** wants back in the bill.

**CHAIRMAN RANEY** said another thing to realize about **SEN. GROSFIELD's** amendment is that it is being classified as coal tax money. What the committee would be doing, if it puts on **SEN. GROSFIELD's** amendment, is taking \$90,000 out of the General Fund. The question is whether this is worth \$90,000 of General Fund money with all the other issues this session.

**REP. KNOX** asked **CHAIRMAN RANEY** if **SEN. GROSFIELD** shared his concerns. **REP. O'KEEFE** said yes. **SEN. GROSFIELD** would love to see more money go into water development, but he isn't sure he can get it done in the Senate.

**REP. O'KEEFE** said he would like **REP. HOFFMAN** to withdraw his motion, continue to explore the possibilities, and bring it to the House floor if the committee decides to amend it. **CHAIRMAN**

RANEY said OK.

REP. O'KEEFE said the part he doesn't like about the bill is that 25 percent of the money that goes to small projects around the state will end up in the water storage account and couldn't be spent for two years. The money is needed in there for SEN. JOE MAZUREK's bill, which addresses funding for the Sun River Dam as part of the negotiated settlement with the tribes. This puts him in a bind. He is going to vote against the bill because he has an affinity for the small water development loan and grant program, but he thinks SB 313 is a good bill.

Karen Barclay, DNRC Director, said the money will be deposited in the water storage account on a quarterly basis over the biennium, so it won't be sitting there collecting dust.

REP. FOSTER asked if any projects that were considered this session will be jeopardized. Ms. Barclay said the Long Range Planning Committee took into account that this money would be deposited for storage. Funding is based upon passage of this bill. Projects that were recommended will not be impacted. Additional projects with technical feasibility are in question because they were not on the initial priority list of the Long Range Planning Committee.

REP. HOFFMAN said he isn't clear what the money in the water storage state special revenue account will be used for. Ms. Barclay said it would be used according to priorities established in this bill -- to first rehabilitate high-hazard, unsafe facilities and then other unsafe facilities. The third priority would be to look at new water storage projects. The money could be used for private, and state or local government facilities.

REP. O'KEEFE said there may be an impact. Money is available for projects further down the list, even if the bill dies. He is concerned about changing the distribution of the money because there are people who have struggled to get funding for two years. The money is being taken away and put somewhere else. That is his only objection to the bill.

Ms. Barclay said that has been her concern also. She has tried to set a minimum amount that should be available in the grant program. If this money goes into those grants programs, some bills that are trying to use RIT funds will be funded, rather than some of these projects. It is a constant battle with these programs. That is why DNRC is trying to establish a minimum amount that should remain in every biennium.

The water development account is supposed to have water storage as a priority. DNRC believes that the 25 percent earmarked money is consistent with that. It allows the agency to move forward with some of the objectives of the state, beyond rehabilitation of water storage projects, to resolve federal and tribal water rights. If these issues are not resolved, they will be litigated.

Then the question would be where the money would come from for litigation. Hopefully it wouldn't be the RIT account.

**REP. GILBERT** said the needs of the whole state have to be considered.

**REP. O'KEEFE** said that when the rules for the program were written, preference was given to storage. There is a \$3 million problem at Tongue River Dam and there isn't a Legislature or administration that will seek \$3 million to fix it. The small loan and grant program is being tapped for money for that, and that isn't right. Storage and family farms are a priority of this program. The problem is the state doesn't have the money to fix Tongue River Dam or negotiate tribal settlements. This is a good bill, but there are problems with it philosophically. He would prefer General Fund money be used to fix the big projects.

**Vote:** SB 313 BE CONCURRED IN AS AMENDED. Motion passed 14-4, with **REPS. WANZENRIED, FOSTER, REAM** and **O'KEEFE** voting no.

#### EXECUTIVE ACTION ON SB 268

**Discussion:** Mr. Sihler distributed proposed amendments as requested by **SEN. PAUL SVRCEK. EXHIBIT 3-4** He noted that **EXHIBIT 3** adds DNRC, DHES and the Department of Administration to the list of agencies responsible for recycling programs.

**CHAIRMAN RANEY** asked how SB 268 lines up with HB 160. Mr. Sihler said he doesn't think anything in SB 268 conflicts with HB 160. The primary addition is the 15 percent preference for recycled materials. That is above and beyond what HB 160 provided. Section 6 gives the Department the authority to adopt rules to carry out these purposes. He doesn't know if the rules would be any different from what HB 160 has a task force doing. There would be rules developed under this bill. HB 160 does not require development of rules.

**CHAIRMAN RANEY** asked if the primary difference were the 15 percent preference. Mr. Sihler said yes.

**Motion:** **REP. SOUTHWORTH** MOVED SB 268 BE CONCURRED IN.

**Motion:** **REP. SOUTHWORTH** moved SB 268 be amended. **EXHIBIT 3-4**

**REP. HOFFMAN** asked if the amendments affect the fiscal note. Mr. Sihler said he didn't believe so. DNRC already has a recycling program in the Capitol complex. The intent is to make the bill consistent with the existing program and HB 160.

**CHAIRMAN RANEY** asked why the bill requires an FTE. He said the FTE would be covered in HB 160. **REP. GILBERT** said SB 268 as introduced was intended to go beyond HB 160 because some people didn't believe HB 160 went far enough. SB 268 doesn't do anything more than HB 160. Since HB 160 is mute on how much more could be

paid for recycled paper, an agency could pay up to 15 percent more. SB 268 isn't needed. **CHAIRMAN RANEY** said he agrees.

Vote: Motion to amend SB 268 carried unanimously.

Discussion: **CHAIRMAN RANEY** said the question is whether the committee wants to spend \$24,000 on preference for 15 percent mandatory recycled use. He doesn't believe the FTE applies.

Motion/Vote: **REP. HOFFMAN** MADE A SUBSTITUTE MOTION THAT SB 268 BE TABLED. Motion passed 13-4. EXHIBIT 5

EXECUTIVE ACTION ON SB 425

Motion: **REP. GILBERT** MOVED SB 425 BE CONCURRED IN.

Motion: **REP. HOFFMAN** moved **SEN. GROSFIELD's** amendments. EXHIBIT 6

Discussion: **CHAIRMAN RANEY** said everyone basically concurred with the bill. It has to be decided whether 10 streams and 10 years are enough. He has a problem with both. Ten streams are probably more than would get done in the next two years so there probably isn't much to worry about. The 10 years may be a problem because it may be difficult to get a return on capital improvements in 10 years.

**REP. TOOLE** asked why the level of activity of this program is a problem. **CHAIRMAN RANEY** said the fear all along was that this was the beginning of a "water grab," to take water from agriculture for in-stream flow.

**Mr. Graham, FWP,** said there was a lot of fear when the process first started so a lot of misinformation was spread. It has been difficult to find anyone to participate in the program. The agency found a couple of development projects but the lease term is too short.

**REP. BARNHART** asked if the amendment will improve the situation. **Mr. Graham** said FWP was considering another amendment that would put water development projects in a separate category. Stock growers prefer not to have different categories of leases. They would agree to a 20-year lease period instead of a 10-and-10. FWP said that would be adequate. He recommended that be modified.

**CHAIRMAN RANEY** asked if the people who would object the most to any of this agree with the 20-year period. **Mr. Graham** said yes. **REP. KNOX** said that is a major concession. It would have been unheard of two years ago.

**Mr. Bradshaw, Trout Unlimited,** said stock growers agreed that the 20-year term would be acceptable if projects involved capital improvements. He doesn't believe the intent was to change the provision that allows a 10-year term with a possible renewal for another 10 years.



Susan Brooke, Montana Stockgrowers Association, said that is correct.

**CHAIRMAN RANEY** said that rather than amending the amendments in the bill, the committee needs another amendment which says that in instances where capital improvements are made, it would be a 20-year lease.

Mr. Sihler said he would be happy to meet with involved parties to work out amendment language.

Motion/Vote: **CHAIRMAN RANEY** said the committee heard the proposed amended amendments. Motion carried unanimously.

Motion: **REP. GILBERT** MOVED SB 425 BE CONCURRED IN AS AMENDED.

Discussion: **REP. COHEN** said he intends to vote for the bill, but the committee should realize it is putting an appropriation into the bill. Bills with appropriations are supposed to start in the House, not the Senate. Senators have been doing this throughout the session. They push bills through the Senate, then they bring in amendments with an appropriation in them when they get to the House.

**REP. GILBERT** said the appropriations are out of federal money and the special revenue account. He wondered if this would be applicable to the appropriations system. It is money the Department already controls.

Vote: SB 425 BE CONCURRED IN AS AMENDED. Motion passed unanimously.

#### EXECUTIVE ACTION ON SB 195

Motion: **REP. O'KEEFE** MOVED SB 195 BE CONCURRED IN.

Motion: **REP. O'KEEFE** moved to amend SB 195. EXHIBIT 7

Discussion: **REP. O'KEEFE** said the bill requires notation on anything recorded on a plat for water systems under the subdivision law. **CHAIRMAN RANEY** said the committee also has an amendment for coordination instructions. If **REP. GILBERT's** big bill passes, SB 195 isn't needed.

Vote: Motion to amend SB 195 carried unanimously.

Motion/Vote: **REP. O'KEEFE** MOVED SB 195 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

#### HEARING ON SB 434

**SEN. THOMAS BECK, SD 24 - Deer Lodge,** said SB 434 asks for a temporary closure on the designated portion of the Upper Clark Fork River Basin. A reservation is being filed on the river by

FWP. An effort is being made to determine the amount of water in the drainage. It is felt that the moratorium would stop any filings for surface water through 1994. The termination date of June 30, 1995, will be proposed in an amendment later. It is hoped that an agreement will be reached by that time.

Most of the surface water has already been filed on. There isn't any danger to any surface filings. SB 434 excludes the Blackfoot River and Rock Creek. He isn't sure everyone is aware of what is being done, but they will be included in the study. Groundwater has been excluded because wells will be drilled, and there doesn't appear to be a shortage of groundwater in the basin.

**Proponents' Testimony:**

**Gary Spaeth, attorney for the Headwaters Resource Conservation District in Butte, distributed written testimony on behalf of the Washington Water Power Co., which supports the bill. EXHIBIT 8**

He said three reservation applications are pending in the Upper Clark Fork by FWP and the Granite Conservation District for two storage facilities. An opportunity exists for public entities to reserve water for in-stream flows, municipal use, and agriculture use and storage. His group was asked to represent agriculture interests.

He outlined the parties involved in discussions to develop the bill, and their opinions. He said the moratorium would affect the area above Milltown but excludes the Rock Creek and Blackfoot River basins, which were not part of the in-stream flow reservations. A stretch of the Clark Fork River above Milltown also would be excluded. He reviewed the bill, and distributed and reviewed proposed amendments. EXHIBIT 9

Two exceptions to the moratorium would be domestic use and groundwater. Commercial and industrial use is not included in the municipal exception. The Blackfoot River and Rock Creek would be included in the study. He read EXHIBIT 8

**Mr. Graham, FWP, supported SB 434 and Mr. Spaeth's proposed amendments. EXHIBIT 10**

**Holly Franz, Montana Power Co., supported SB 434 and Mr. Spaeth's proposed amendments. EXHIBIT 11**

**Mr. Bradshaw, Trout Unlimited, said the bill is attempting to set up a planning process. He urged support of the bill and amendments.**

**Peggy Parmalee, Montana Association of Conservation Districts, supported SB 434 and proposed amendments. EXHIBIT 12**

**She read written testimony in support of the bill and amendments by Jo Brunner, Montana Water Resources Association. EXHIBIT 13**

Bruce Farling, Clark Fork Coalition, supported SB 434. EXHIBIT 14

He submitted a letter in support of SB 434 on behalf of the City of Missoula by Jim Nugent, Missoula City Attorney. EXHIBIT 15

Ole Ueland, a farmer, rancher and irrigator from Silver-Bow County, and a member of the Headwaters Resource Conservation District, supported SB 434 with proposed amendments.

He also spoke on behalf of Jim Densmore, Granite County Conservation District, who also supported the bill.

Mr. Ueland said an opportunity exists to develop upstream storage. It would be marginal for agriculture benefits alone. Many other beneficiaries could help. He hopes that through development of a water plan and working with other interests, cooperation can be achieved.

Downstream irrigators have water storage projects and a better water supply. They are concerned with the pressure being put on agriculture from non-agriculture interests, added restrictions and regulations being proposed by various interest groups, and the increasing demand for water. He shares irrigators' apprehension.

Bob Whalen, West Slope Chapter of Trout Unlimited in Missoula, said Montana trout fishermen strongly support SB 434.

#### Opponents' Testimony:

Ron Kelley, West Side Ditch Co., said the company is probably the largest agricultural user of the Clark Fork River. Water appropriations date back to 1864. Agriculture interests have opposed FWP's proposed in-stream flow. In 1987, the DNRC began working on the water reservation of FWP. Three studies were written specifically to address FWP's in-stream flow in the Granite County Conservation District, which wants additional storage.

Some people want the committee to believe SB 434 will save legal fees and the expense of resolving this issue. The bill will prolong it. Hundreds of thousands of dollars have been spent in three or four years already. Another four years of study won't benefit anyone. Everyone is ready to go to a contested case hearing this July to determine whether in-stream flow is needed.

FWP isn't prepared to defend its position in July and has rallied groups behind it to pass special interest legislation to avoid the situation. Agriculture is divided because several people want additional storage, such as the Granite County Conservation District, Mr. Ueland and others. They have been told they may get some.

Most agriculture users didn't have time to attend the hearing and

they can't afford to hire an attorney to represent them. A considerable number are opposed to SB 434. The Headwaters Resource Conservation District hasn't met since the bill was introduced, but it was clear at the group's Clark Fork Basin committee meeting that the majority in attendance opposed the bill. The Headwaters Resource Conservation District isn't properly representing agriculture.

This 11th-hour legislation caught off guard the people who are directly involved, except the ones who have full-time paid lobbyists and attorneys on staff. He questioned whether many of the 1,700 water users affected by the bill know it exists. These people are not being represented properly. There isn't one person who signed this agreement who directly represents farmers irrigating out of the Clark Fork Basin.

He was excluded from participating in development of the bill. The Northern Lights organization told him in a letter that it wasn't appropriate to directly notify him when it would meet or what was taking place, because it may be contrary to the agreement. He was told to direct his questions to the task force.

The groundwater issue came up after the bill was proposed. Everyone admits surface water was the only concern. It was suggested the entire basin should be closed to any appropriation of groundwater, other than for domestic household use. That would close out agriculture and industry.

That position was softened with a handful of amendments that he pushed because proponents agreed they wouldn't amend the bill. The amendments make the bill more tolerable, but it is getting difficult to read. If groundwater is going to be left out of the bill, it should have been left out entirely. Attempts continue to be made to restrict groundwater.

The Clark Fork Coalition suggested closure of the basin would promote economic development. He cannot imagine how that is possible if water isn't available. The bill opens the door for inappropriate in-stream flows. He urged careful consideration. The matter should be resolved in a contested case hearing. The people who are affected the most by the bill are not present to represent themselves. He represents the majority of the irrigators in the basin, except a few who want additional storage.

John McDonald, Upper Flint Creek Valley Irrigators, said the Upper Flint Creek Valley Irrigators group is unique because it operates under a federal decree. None of the area's irrigators was consulted about this matter. The group opposes SB 434 because of the time and expense involved in the preparation of an EIS.

#### Questions from Committee Members:

CHAIRMAN RANEY asked SEN. BECK to comment on opponents' claims

that a significant number of people were not contacted or consulted about the closure. **SEN. BECK** said the bill was not circulated much. The agreement to proceed with the bill came late in the session. He wanted to get the bill introduced before transmittal. Not everyone was informed about it. People along the Blackfoot and Rock Creek basins were excluded from the moratorium. He didn't think any more surface water could be filed on in the Upper Clark Fork, and he didn't know of anyone intending to file a major water right. He thought the key players in the issue were aware of the bill and that word had gotten around.

**CHAIRMAN RANEY** asked **Mr. Kelley** if more water could be claimed out of the Upper Clark Fork. **Mr. Kelley** said no, and he doesn't think any more water should be appropriated out of the basin. It isn't that he opposes closure of the basin. There is a method by which to close the basin and it should be done in this way if it is to be done at all. SB 434 circumvents rules and regulations governing closure.

**CHAIRMAN RANEY** asked FWP why SB 434 should be rushed if a process exists to close a basin and 1,500 irrigators are unaware of the intent to close it. **Mr. Graham** said FWP is one of several parties to the bill. It has been suggested that FWP is driving the process. That isn't true. It also isn't true that FWP isn't ready to go forward with its reservation. FWP began preparing in 1980, not 1987.

He met with a group of people in Anaconda and discussed the reservation a number of months ago. The idea of a basin closure came up at that time. People are saying there can't be a reservation because there is no more water. In response, the agency has asked why the basin isn't closed then if there isn't any more water available. A closure must be initiated by users, not FWP. The only way FWP can get water is through the reservation process. The agency was prepared to do that, but a group of people felt there may be alternatives to a case hearing.

What is being proposed is a temporary closure while affected parties try to work out their concerns. Some people feel the agency shouldn't be involved in the Clark Fork Basin adjudication process and want to delay the reservation.

**REP. O'KEEFE** asked **Mr. Spaeth** if domestic use is defined anywhere else in the statutes. **Mr. Spaeth** said no, not that he could find. **REP. O'KEEFE** asked if it were necessary to define domestic use. **Mr. Spaeth** said yes. It is necessary to define what would be excluded from the moratorium. **REP. O'KEEFE** said expanded and municipal users have been included under the definition. **Mr. Spaeth** said yes.

**REP. O'KEEFE** said the existing groundwater definition has been left in the law, but clean-up legislation passed out of committee changed it. That means there will be two definitions for

groundwater in the state of Montana, one of which applies only in the basin that has a moratorium. He asked if it is good policy to treat different parts of the state differently. Mr. Spaeth said yes. The groundwater definition in the bill deals with his group's concerns. Excluding something from the moratorium puts pressure on that as a water source. It is important to clarify that groundwater has nothing to do with surface water and would have no impact.

REP. O'KEEFE asked Mr. Kelley if he believes there is no unappropriated surface water. Mr. Kelley said not totally. There are several adjudicated streams in the basin that do not have available water, but he isn't convinced water isn't available along the entire Clark Fork River. Water above Garrison Junction isn't available for agriculture use. Some unappropriated water may run down the stream between November and February, but this bill closes all streams in four counties.

REP. O'KEEFE asked if an effective date of June 1 or July 1 would allow enough time for people to get their claims filed. Mr. Kelley said it would address the concerns of someone who wanted to file a claim now. He doesn't think that is the major issue. It is a drastic measure to institute a moratorium by legislative process, rather than the normal process.

REP. BROOKE asked Ms. Franz if she had any comment about the process. Ms. Franz said her group made an effort to notify everyone. It has been suggested that the only way to close a basin is through the DNRC process, but the statutes specify two ways to close a basin. One is through DNRC rule-making and the other is through the Legislature. This is not a unique process. The advantage of going before the Legislature is that things can be done more creatively. The Legislature can allow a temporary closure so that water users in the basin can get together to develop water management plans to help all water users.

#### Closure by Sponsor:

SEN. BECK said he isn't trying to hurt agriculture or anyone else through SB 434. The original intent was to try to solve a problem with the litigation process on a water reservation. Maybe this isn't so, but he believes the water reservation will be a reality once case hearings take place. Once there is a water reservation, water that may have been available for other users may not be there. He asked for time to examine the proposed amendments.

CHAIRMAN RANEY asked SEN. BECK to also review a proposed amendment by ARCO. EXHIBIT 16

#### HEARING ON SB 355

#### Opening Statement and Presentation by Sponsor:

SEN. BECK said SB 355 would clarify that inspection of certain

underground storage tanks would not necessarily be required. The bill applies to tanks of 1,100 gallons or less, and tanks that are not leaking. The bill comes from DHES.

Proponents' Testimony:

John Geach, Underground Storage Tank Section Supervisor for DHES, said the Department doesn't want to weaken the underground storage tank program. It is comprehensive, but SB 355 would make it more practical, especially for small tank owners. He distributed a copy of his testimony and highlights of the Montana Hazardous Waste and Underground Storage Tank Act. EXHIBIT 17

Opponents' Testimony:

Chris Kaufmann, Montana Environmental Information Center (MEIC), opposed SB 355. She said it will weaken the state's tank program. This is not a clarification. It will change the agency's policy statement. If the Department wants the authority to waive fees, that is fine. She has a problem with waiving the requirement for inspection of installations and closures on any farm or residential tank that is under 1,100 gallons.

It doesn't establish criteria for determining who will be exempt from inspections. The agency says it will do most of the inspections, particularly on installations, but the bill doesn't say that. It gives the Department authority to not do it if it doesn't want to. Some of the tanks are in remote areas and are inconvenient to schedule. That isn't good criteria.

The fiscal note says requirements can be waived when appropriate information indicates that health and environmental concerns have been satisfactorily addressed. That information is not in the bill. This is a bad idea. Inspection is a critical time in the life of a tank. A lot of leaks occur because of improper installation. She pointed to tank installations by the Church Universal and Triumphant.

Closure may occur after a tank leaked. If someone is closing a tank without inspection, there is incentive not to report leakage, especially because no funds are available to tank owners to clean up contaminated soils.

The Department is already under fire for charging a \$20 fee. People want to know what they are getting for the fee. It isn't smart to reduce services. The Department also could be charged with being arbitrary in its requirements because no criteria are in place to determine how inspections will be done. SEN. BECK said this applies to tanks that have not leaked. That isn't always known until the situation is at hand.

The Department referred to certain environmental criteria it would like to see put in place, but the bill does not say the agency will do this. The committee should either reject this bill

or it should be amended on Page 4 to put a period after "inspection" on Line 1; strike the rest of Line 1, all of Line 2 and the word "department" on Line 3; and have a new sentence there. That would give the Department the authority to waive the fee but not to waive an inspection of an installation.

Questions from Committee Members:

REP. COHEN asked Mr. Geach to respond to Ms. Kaufmann's comments. Mr. Geach said the Department is trying to use part of the \$20 fee to finance inspections, but there are locations where groundwater does not exist and others where the closest well may be five miles from a ranch. The closest inspector may be two hours away. It may be difficult for the agency to provide an inspection under those criteria, especially if the agency has to abide by the act as it is now and charge for an inspection to recover costs.

The Department would like to use part of the fee to have the inspector show up when soil samples are taken to verify the condition of the tank. Up to four people can be put in the field at one time. The agency has issued 1,200 tank permits. The majority are small tanks. A lot of the counties are not ready to help yet. The Department doesn't believe it will be able to have an inspector in each county. That is a concern in light of the current tank activity.

REP. COHEN asked if all 1,200 tanks have been inspected. Mr. Geach said no. The agency has been trying to use free gratis inspectors, fire marshals and local fire officials. The majority of tanks have been inspected by a third party, though not necessarily a licensed inspector. Licensed inspectors have only come on since October 1.

REP. COHEN said uninspected tanks have been going into the ground while the law has been in effect. Mr. Geach said most of the 1,200 permits have been for tank removals. A lot of the commercial tanks were done by licensed installers who verified the competency. There have been about four or five installations of small farm tanks during that period. The majority of the small tank owners are electing to remove their tanks and replace them with above-ground tanks. The larger tanks have been inspected or put in by commercial installers.

CHAIRMAN RANEY asked if the committee could address the matter by amending the bill to allow the agency to waive the fees. The Department could still use free gratis inspectors. Mr. Geach said the agency has worn out its welcome with free gratis inspectors. Many of them are volunteer firefighters who have been doing the service after hours and on weekends. The agency could serve people well if it could waive the fees. If the committee wants the Department to maintain its inspection level, it will do whatever it can to inspect them all. It may be necessary to schedule inspections, which may not be as convenient for tank



owners.

**CHAIRMAN RANEY** asked about waiving the absolute inspection requirement on installations, but requiring it for removals. **Mr. Geach** said installation is important. There is probably more of a need to inspect installations than removals. Tanks nowadays are guaranteed for 30 years. They will probably be in the ground for 30-50 years. That is a long-term commitment to the environment. The agency wants to inspect such installations.

**Closure by Sponsor:**

**SEN. BECK** said installations probably should be pretty closely scrutinized. It also is important to make it simpler for the person removing a tank to ensure everything is done properly.

**HEARING ON SB 377**

**Opening Statement and Presentation by Sponsor:**

**SEN. GREG JERGESON, SD 8 - Chinook**, said an employer would be subject to a violation if there were a problem with an installation. Most installers must be licensed. They would lose their licenses and possibly their jobs if they made minor mistakes that caused a leak. The \$10,000 per violation requirement could financially destroy a person. There may be a lot of people who are skilled at this work but wouldn't take these kind of jobs because of the potential fine.

The exemption would not apply if the violation resulted from gross negligence or a willful act of the employee. That amendment was put on at the request of Burlington Northern Railroad (BN). All the parties involved in the bill agree with the language as it appears now. He also is satisfied with the bill.

**Proponents' Testimony:**

**Mathias W. Pepos, Brotherhood of Maintenance of Way Employees**, said he is licensed by the state. The bill would protect him from financial ruin. He agrees with the wording of the amendment. If someone knowingly violates the rules governing underground tank removal, they should be fined. Otherwise, the railroad has agreed that employees shouldn't be held responsible. He supports the bill.

**Leo Berry, BN**, said an employee acting within the course and scope of his employment should not be held responsible. That duty should fall upon the employer. But when an employee acts outside that scope through gross negligence or a willful act, then the employee ought to be held responsible. BN supports the bill with the proposed amendment.

**Raymond West, United Transportation Union**, said he represents operating brotherhoods and supports SB 377.

Jim Jensen, MEIC, supported the bill.

Opponents' Testimony: none

Questions from Committee Members: none

Closing by Sponsor:

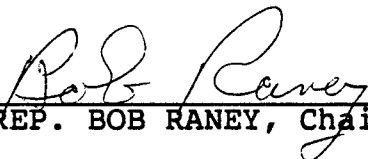
SEN. JERGESON noted that environmentalists, labor and management favor his bill. He said REP. ED GRADY agreed to carry it.

EXECUTIVE ACTION ON SB 377

Motion/Vote: REP. O'KEEFE MOVED SB 377 BE CONCURRED IN. Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:40 p.m.

  
\_\_\_\_\_  
REP. BOB RANEY, Chairman

  
\_\_\_\_\_  
LISA FAIRMAN, Secretary

BR/lf

**HOUSE OF REPRESENTATIVES**  
**NATURAL RESOURCES COMMITTEE**

**ROLL CALL**

**DATE** 3-22-91

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 23, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 313 (third reading copy -- blue) be concurred in as amended .

Signed: \_\_\_\_\_  
Bob Raney, /Chairman

Carried by: Rep. Schye

And, that such amendments read:

1. Title, line 14.

Following: line 13

Insert: "REQUIRING A STUDY OF THE FEASIBILITY OF INCREASING WATER USER FEES TO PAY FOR CONSTRUCTION AND REHABILITATION OF STORAGE STRUCTURES AND TO IMPROVE COORDINATION AND ACCOUNTING OF THE FEES;"

2. Page 7, line 8.

Following: line 7

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 to diversionary water users to assist in the repayment of a greater portion of water storage project costs associated with diversionary benefits and to assess opportunities for improving coordination and accounting of those fees. The options the department must assess include but are not limited to requiring diversionary water users to pay standardized fees to the department for the use of public water that is provided by water storage projects:

(a) on a per-volume-used basis; and

(b) 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

3. Page 21, line 12.

Following: "section"

Strike: "7"

Insert: "8"

4. Page 26, line 7.  
Following: "section"  
Strike: "7"  
Insert: "8"

5. Page 26, line 15.  
Following: "Section"  
Strike: "7"  
Insert: "8"

6. Page 26, line 18.  
Strike: "7"  
Insert: "8"

HOUSE STANDING COMMITTEE REPORT

March 23, 1991

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 425 (third reading copy -- blue) be concurred in as amended .

Signed: \_\_\_\_\_  
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 10.

Following: " ; "

Insert: "PROVIDING AN APPROPRIATION ; "

2. Title, line 11.

Following: "PROVIDING"

Insert: "AN IMMEDIATE EFFECTIVE DATE AND"

3. Page 4, line 2.

Following: "years"

Insert: " , but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years "

4. Page 4, line 16.

Following: " - "

Insert: "Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to his rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402."

5. Page 5, line 10.

Strike: "measuring"

6. Page 5, line 14.

Following: "board"

Strike: "and"

Insert: ", "

Following: "commission"

Strike: "a"

Insert: ", and water policy committee an annual"

7. Page 5, line 15.

Following: "December 1"

Strike: ", 1991"

Insert: "of each year"

8. Page 5, line 19.

Following: "December 1"

Strike: ", 1991"

Insert: "of any year"

9. Page 5, line 25.

Strike: "1992"

Insert: "1998"

Following: "."

Insert:

"(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired."

Strike: "1995"

Insert: "1999"

10. Page 6, line 20.

Page 7, line 2.

Strike: "1995"

Insert: "1999"

11. Page 6, line 22.

Page 7, line 8.

Strike: "1995"

Insert: "1999"

12. Page 7.

Following: line 2

Insert:

"NEW SECTION. Section 5. Appropriation. There is appropriated for the biennium ending June 30, 1993, to the department of fish, wildlife, and parks \$22,500 from the federal special revenue fund and \$7,500 from the state special revenue fund provided for in 87-1-601(1) to lease existing water rights as provided in 85-2-436(2) (a)."

Renumber: subsequent sections

March 23, 1991  
Page 3 of 3

13. Page 7.

Following: line 8

Insert:

"NEW SECTION. Section 8. Effective date. [This act] is  
effective on passage and approval."



4-2-91  
JDB

*Ja*  
*Dum*

HOUSE STANDING COMMITTEE REPORT

April 2, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 195 (third reading copy --blue) be concurred in as amended.

Signed: \_\_\_\_\_  
Bob Raney, Chairman

Carried by: Rep. \_\_\_\_\_

And, that such amendments read:

1. Page 14, line 16.

Following: line 15

Insert: "NEW SECTION. Section 8. Coordination instruction. If House Bill No. 671 is passed and approved, then [sections 2 through 7 of this act] are void."

HOUSE STANDING COMMITTEE REPORT

4/2/91  
4:25 PM  
Bob  
April 2, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report  
that Senate Bill 377 (third reading copy -- blue) be concurred  
in.

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

Bob Raney  
Bob Raney, Chairman

Carried by: Rep. Grady

EXHIBIT 1  
DATE 3-22-91  
~~SB~~ SB 313

Amendments to Senate Bill No. 313  
Third Reading Copy

Requested by Rep. Ream  
For the Committee on Natural Resources

Prepared by Gail Kuntz  
March 21, 1991

1. Title, line 14.

Following: line 13

Insert: "REQUIRING A STUDY OF THE FEASIBILITY OF INCREASING WATER USER FEES TO PAY FOR CONSTRUCTION AND REHABILITATION OF STORAGE STRUCTURES AND TO IMPROVE COORDINATION AND ACCOUNTING OF THE FEES;"

2. Page 7, line 8.

Following: line 7

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 to diversionary water users to assist in the repayment of a greater portion of water storage project costs associated with diversionary benefits and to assess opportunities for improving coordination and accounting of those fees. The options the department must assess include but are not limited to requiring diversionary water users to pay standardized fees to the department for the use of public water that is provided by water storage projects:

(a) on a per-volume-used basis; and

(b) 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

3. Page 21, line 12.

Following: "section"

Strike: "7"

Insert: "8"

4. Page 26, line 7.

Following: "section"

Strike: "7"

Insert: "8"

5. Page 26, line 15.

Following: "Section"

Strike: "7"

Insert: "8"

6. Page 26, line 18.

Strike: "7"

Insert: "8"

EXHIBIT 2  
DATE 3-22-91  
SB 313

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-22-91 SENATE BILL NO. 313 NUMBER 1

MOTION: Rep. O'Keefe Moved Rep. Ream's amendments to SB 313.

NAME	AYE	NO
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	✓	
TOTAL	12	6

Amendments to SB 268  
Third Reading

1. Page 4, line 21  
Following: "department"  
Insert: ", in conjunction with the department of natural resources and conservation and the department of health and environmental sciences,"
2. Page 6  
Following: line 6  
Insert: "(5) The department shall provide guidelines to state agencies on the application of computer technology to reduce the generation of waste paper through: the use of electronic bulletin boards; the transfer of information in electronic rather than paper form; and other applications of computer technology."  
Renumber: subsequent subsection
3. Page 6, line 10  
Following: "department"  
Insert: ", in conjunction with the department of natural resources and conservation and the department of health and environmental sciences,"

Amendments to SB 268  
Third Reading

1. Page 1, line 10  
Following: "by"  
Strike: "PUBLIC AND"
2. Page 1, line 20  
Following: "encourage"  
Strike: "public AND"
3. Page 2, line 21 through 23  
Strike: subsection 2 in its entirety  
Renumber: subsequent subsections
4. Page 6, line 20  
Following: "state"  
Strike: "and other public"

EXHIBIT 5  
DATE 3-22-91  
SB 268

HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-22-91 BILL NO. SB 268 NUMBER 1

MOTION: Rep. Hoffman made a substitute motion to table SB 268.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		/
REP. BOB GILBERT	/	
REP. BEN COHEN	/	
REP. ORVAL ELLISON	/	
REP. BOB REAM <i>did not vote</i>	/	
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	/	
TOTAL		

13 4

DRAFT  
Amendments to Senate Bill No. 425  
Third Reading Copy

EXHIBIT 6  
DATE 3-22-91  
~~SB~~ SB 425

Requested by Senator Grosfield  
For the Committee on Natural Resources

Prepared by Paul Sihler  
March 21, 1991

1. Page 4, line 2.

Following: ".\_"

Insert: ", but may be renewed once for up to 10 years"

2. Page 4, line 16.

Following: ".\_"

Insert: "Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to his rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402."

3. Page 5, line 10.

Strike: "measuring"

4. Page 5, line 14.

Following: "board"

Strike: "and"

Insert: ", "

Following: "commission"

Strike: "a"

Insert: ", and water policy committee an annual"

5. Page 5, line 15.

Following: "December 1"

Strike: ", 1991"

Insert: "of each year"

6. Page 5, line 19.

Following: "December 1"

Strike: ", 1991"

Insert: "of any year"

7. Page 5, line 25.

Strike: "1992."

Insert: "1998"

Strike: "1995"

Insert: "1999"



8. Page 6, line 1.

Strike: ")"

Insert: "; and

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired."

9. Page 6, line 20.

Page 7, line 2.

Strike: "1995"

Insert: "1999"

10. Page 6, line 22.

Page 7, line 8.

Strike: "1995"

Insert: "1999"

11. Page 7.

Following: line 2

Insert:

"NEW SECTION. Section 7. Appropriation. There is appropriated to the department of fish, wildlife, and parks \$22,500 from the federal special revenue fund and \$7,500 from the state special revenue fund provided for in 87-1-601(1) to lease existing water rights as provided in 85-2-436(2)(a) for the biennium ending June 30, 1993.

Renumber: subsequent sections

12. Page 7.

Following: line 8

Insert:

"NEW SECTION. Section 8. Effective date. [This act] is effective upon passage and approval."

7  
DATE 3-22-91  
SB 195

Amendments to Senate Bill No. 195  
Third Reading Copy

Requested by the Committee on Natural Resources

Prepared by Gail Kuntz  
March 22, 1991

1. Page 14, line 16.

Following: line 15

Insert: "NEW SECTION. Section 8. Coordination instruction. If House Bill No. 671 is passed and approved, then [sections 2 through 7 of this act] are void."

DATE 5-22-91  
HB 55434

Good afternoon. My name is Tom Paine. I'm ~~Manager of~~  
Governmental Relations for The Washington Water Power Company.  
I'm here today to lend my company's support to  
Senate Bill 434 sponsored by Senator Tom Beck.

Our support stems first from concern that senior water rights holders, like ourselves, will be impacted by overallocation of the Clark Fork River's water. By a temporary moratorium on the issuance of new rights, this bill provides the "breathing room" needed to effectively plan the future of water allocation in the upper basin.

We are also supportive because the bill promotes a collaborative approach to resolve prospective conflicts among competing users of this great resource. The diverse coalition which has formed in support proves this approach to be preferable to the contentious alternatives. And the cross-section of interests shows that all those actively working on this issue understand its importance to the future of the Clark Fork.

We support the thoughtful planning the bill provides. And we're hopeful this effort to collectively and comprehensively plan water resource uses will become a model for similar efforts elsewhere in the basin.

For these same reasons, I encourage your support of the bill, as well.

Amendments to Senate Bill No. 434  
Third Reading (Blue) Copy

For the Committee on Natural Resources

Prepared by Doug Sternberg  
March 22, 1991

1. Title, line 6.  
Following: "APPROPRIATIONS"  
Insert: ", EXCEPT APPROPRIATIONS FOR GROUND WATER"
2. Title, line 9.  
Following: "BASIN;"  
Insert: "REQUIRING AN APPLICANT FOR A GROUND WATER PERMIT TO  
SUBMIT A REPORT REGARDING THE SOURCE OF THE GROUND WATER AND  
DEPARTMENT FINDINGS REGARDING THE SOURCE;"
3. Page 1, line 16.  
Strike: "3"  
Insert: "4"
4. Page 1, line 20.  
Following: line 19  
Insert: "(2) \"Domestic use\" means use of water common to family  
homes, including use for culinary purposes, washing,  
drinking water for humans and domestic pets, and irrigation  
of a lawn or garden of less than 1 acre, not to exceed a  
total of 3.5 acre-feet per year. The term includes municipal  
uses for expanded domestic use but does not include  
commercial or industrial use.  
(3) \"Ground water\" means any water that is beneath the  
land surface or beneath the bed of a stream, lake,  
reservoir, or other body of surface water and that is not a  
part of that surface water."  
Renummer: subsequent subsection
5. Page 2, line 8.  
Strike: "DECEMBER 31, 1994"  
Insert: "June 30, 1995"
6. Page 2, line 11.  
Following: "use"  
Insert: "or water for domestic use"
7. Page 2, line 21.  
Strike: "SURFACE"  
Following: "water"  
Insert: ", except ground water,"
8. Page 2, line 24.  
Following: line 23  
Insert: "NEW SECTION. Section 3. Ground water permit  
applications -- report required. (1) During the period of  
basin closure provided in [section 2(1)], an applicant for a

ground water permit in the Upper Clark Fork River basin shall submit a report prepared by a professional engineer or hydrologist verifying that the source of the ground water is not a part of or substantially or directly connected to surface water. If the applicant fails to submit the report required in this section, the application is considered defective and must be processed pursuant to 85-2-302.

(2) In addition to the criteria of 85-2-311, the department shall find, based on substantial credible evidence, that the source of the ground water is not a part of or substantially or directly connected to surface water."

Renumber: subsequent sections

9. Page 4, line 1.

Strike: "and"

10. Page 4, line 4.

Following: "basin"

Insert: "; and

(e) include the Blackfoot River, designated as subbasin 76F, and Rock Creek, designated as subbasin 76E, in any considerations made under subsections (2)(a) through (2)(d) "

11. Page 4, line 6.

Strike: "progress report"

Insert: "management plan"

12. Page 4, lines 9 and 12.

Strike: "3"

Insert: "4"

DATE 3-22-9  
SB 434  
HB

SB 434

March 22, 1991

Testimony presented by Pat Graham, Dept. of Fish, Wildlife and  
Parks to the House Natural Resources Committee

The Department of Fish, Wildlife and Parks participated in the negotiations which led to the introduction of this bill and we strongly support its passage. and the amendments proposed by Mr. Spaeth.

The process described in this bill represents a significant departure from past methods of addressing the controversial area of water allocation in Montana. Diverse interests were poised to enter into administrative litigation through a full scale contested case hearing over our department's water reservation application for the upper Clark Fork River Basin. However, agricultural groups, environmental organizations, utilities and state agencies sat down to seek a better alternative. Frankly, I think that all who were involved were surprised when we came up with a compromise solution, which is now embodied in a signed agreement and in this bill. This compromise is to maintain the status quo in the basin while we take time to constructively consider the full range of possible water management solutions for the basin.

It is unlikely that an agreement involving so many diverse interests will win unanimous support; however, I think we have come remarkably close when you consider the list of signatories to this agreement.

The department believes that this agreement may also serve as a model for future water controversies in some basins. Substantive negotiations can save both time and money if litigation and confrontation can be avoided.

We hope the water issues in the Clark Fork Basin can be better understood through the planning process authorized in this bill.

TESTIMONY OF THE MONTANA POWER COMPANY  
ON SENATE BILL 434

EXHIBIT 11  
DATE 3-22-91  
~~HB~~ SB 434

My name is Holly Franz. I am an attorney in private practice who represents the Montana Power Company in water right matters. I am testifying today on behalf of the Montana Power Company and in support of Senate Bill 434.

Senate Bill 434 is the result of negotiations between representatives of the major interests on the Upper Clark Fork River. These interests were brought together through the efforts of the Northern Lights Institute, a public interest group dedicated to resolving natural resource disputes through negotiation. The Montana Power Company was included in this process due to its large water rights at the Milltown and Thompson Falls dams.

The negotiation group included agricultural interests (Granite Conservation District, Headwaters RC&D, Montana Water Resources Association and the Montana Association of Conservation Districts), utility interests (Montana Power Company and Washington Water Power Company), municipal interests (City of Missoula), conservation interests (Trout Unlimited and the Clark Fork Coalition), and state agencies (Department of Fish, Wildlife & Parks and Department of Health). From the outset, every member of the group expressed concern about a lack of accurate information on the physical and legal availability of water in the Upper Clark Fork. The group was also concerned about overappropriation in the basin. These concerns were highlighted by the upcoming water reservation process.

The Granite Conservation District and the Department of Fish, Wildlife & Parks have filed applications for water reservations in the Upper Clark Fork. Objections to the applications have been filed and a contested case is scheduled for July 22, 1991. The hearing is scheduled to last a minimum of two weeks. All of the negotiation participants are objectors to one or both of the applications.

As a result of the negotiations, the parties have identified a number of areas in which they can work together. The parties have also expressed a desire to allow the affected water users and interests to study and make recommendations to resolve the water conflicts in the basin. Senate Bill 434 is designed to allow breathing room for this process to go forward without adversely affecting the rights of existing water users and water reservation applicants. It offers a unique opportunity to allow the affected parties to identify innovative solutions to their water problems. The process may not succeed but it is certainly worth trying. The alternative is protracted litigation and polarizing disputes. I urge your support of Senate Bill 434.

EXHIBIT 12  
DATE 3-22-91  
SB  
434

SB 434  
March 22, 1991  
House Natural Resources

Peggy Parmelee, Executive Vice President of the Montana Association of Conservation Districts.

We support SB 434 with the amendments that have been offered.

*Granite CD submitted a reservation application*

We are in an era where it is more acceptable for people with conflicting interests, philosophies, or needs to sit down with each other and work toward understanding each other and then coming to a compromise that fits the needs of each of the participants (or the interests they represent) as closely as possible.

That is just exactly what this bill will allow the interests in the upper Clark Fork River Basin to do.

This bill will allow time for what could have been a win/lose situation to turn into a win/win situation. Can you visualize all of the different needs on the Clark Fork River Basin waters and all of the interests involved pulling in different directions and eventually each of them getting a piece of the water, but in the end the pieces are tattered and torn. With this process it is possible that those same interests will come to a mutual conclusion on how the pie (or water) should be divided and the pieces will be ~~not~~ and everyone will get the size <sup>everyone</sup> they want <sup>or</sup> needs.

*shape*  
There is opposition to this bill from people that our association represents, but as the representative of MACD I strongly urge you to pass the bill and give the Clark Fork River Basin water interests four years to develop a "management plan."

Thank you, Mr. Chairman.

*Peggy L. Parmelee*

Peggy L. Parmelee  
Executive Vice President



EXHIBIT 13  
DATE 3-22-91  
SB 434  
HB

SB434

SENATE AGRICULTURE

March 22, 1990

SUPPORT

The Montana Water Resources Association was asked to participate in this negotiation process primarily because our membership includes water users organizations and individual members within the basin, and because I have, as a representative of MWRA, participated in numerous efforts, much along this line in the past two/three years.

So, although I was involved as a representative of some of our individual members, MWRA having a great concern for the outcome of the negotiations, has a position, seperately from the individual members, of support for this bill. We have found that negotiations are beneficial in the development of trust, understanding and education for all those involved. And, we recognize that it may take several meetings to develop from full fledged confrontations at the first meeting to beneficial discussions.

In negotiations everybody must be willing to listen, to try and understand other viewpoints and perhaps to make concessions. And this effort was no different.

It was always the intent that other interests, other than the actual negotiators, participate in the process. And that has been so. Those ~~who~~ <sup>who</sup> had concerns with the negotiated decisions have had opportunity to participate, although not by voting, and have indeed helped to bring about further changes.

Upon passage of the bill, others who wish to participate may take advantage of the opportunity.

MWRA supports the amendments offered by the negotiating team and as I have never heard otherwise, I have to assume that the individual members I represent will support them also. Please consider the amendments and judge them on the merits of beneficial contributions to the original bill.

Thank you.

Go Branner

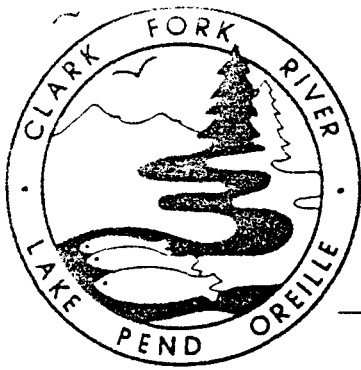


EXHIBIT 14  
DATE 3-22-91  
SB 434

## Clark Fork Coalition

P.O. Box 7593 • Missoula MT 59807 • (406) 542-0539  
P.O. Box 1096 • Sandpoint ID 83864 • (208) 263-0347

### **Testimony of Bruce Farling, deputy director of the Clark Fork Coalition, to the House Committee on Natural Resources, March 22, 1991**

Proposed Legislation: SB 434 (moratorium on upper Clark Fork water rights applications)

Mr. Chairman and members of the committee, I'm Bruce Farling deputy director of the Clark Fork Coalition, a regional conservation group dedicated to protecting and enhancing water quality, stream flows and aquatic resources in the Clark Fork-Lake Pend Oreille watershed. I also represented the Coalition in the negotiating sessions that produced the bill you are now considering, and helped develop the amendments the negotiating group now offers.

Water policy in Montana, and especially the Clark Fork basin, is very much the Coalition's business. During our six year history, we have worked hard to help ensure the river and its tributaries carried enough water year-round to satisfy demands for recreation, fish and wildlife, industry, dilution of pollution, hydroelectric power generation, agriculture and the interests of local economic businesses who depend on an attractive environment. We understand water policy.

We also understand that our bill hurts no one. It will not change the prior appropriation system, does not harm valid existing water rights and appropriations, and will not discourage economic development. In fact, it aids current water right holders by helping ensure there are no additional junior users who can complicate an already complicated appropriation system. It also helps economic development by triggering a grass-roots planning process that will help identify how much water, where and when may be available in the future for uses not already served by valid water rights. Moreover, the moratorium also ensures that planning proceeds without being complicated by the moving target of additional water use permits. The moratorium is both logical and beneficial to every water interest in the Clark Fork basin.

The bill, with the amendments offered by the negotiating group, was crafted with the potential domestic water needs of communities such as Anaconda and Deer Lodge in mind. It has been turned inside out repeatedly, and modified to assuage the suspicions of a handful of irrigators in the upper basin who emerged in the eleventh hour. Most importantly, it has been developed through consensus of a broad-based group representing every major water interest in the upper basin. It is a product of dialogue that has been largely absent from other water policy discussions in this and previous Legislatures. It could represent a new era in cooperation between agriculture and other water users. It is a model of cooperation and good sense, and deserves your enthusiastic support



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614

EXHIBIT 15

DATE 3-22-91

~~RE~~ SB 434

91-111

March 21, 1991

House Natural Resource Committee  
Montana State Legislature  
Capitol Station  
Helena, Montana 59620

RE: SUPPORT FOR SB-434

Honorable House Natural Resource Committee Members:

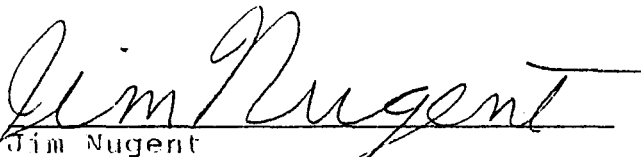
The City of Missoula would like to express its support for SB-434 scheduled for House Natural Resource Committee hearing on Friday, March 22, 1991. SB-434 is entitled "An Act Temporarily Closing the Upper Clark Fork River Basin to Further Applications for Reservations in the Upper Clark Fork River Basin; Modifying Priority Dates for Pending Water Reservations in the Upper Clark Fork River Basin; Creating and Establishing Duties for an Upper Clark Fork River Basin Steering Committee."

Clark Fork River flows at Missoula are of important interest to the City of Missoula. The City of Missoula is concerned about maintaining sufficient and adequate instream water flows in the Clark Fork River for fishery, wildlife and recreation purposes, aesthetics, and dilution of any Montana Health and Environmental Sciences Department permitted wastewater effluents discharges into the Clark Fork River.

SB-434 provide an opportunity for both a moratorium and a comprehensive management plan study for the Upper Clark Fork River basin. The City of Missoula welcomes an opportunity to resolve these instream water reservation and pending future water use permit applications in a manner and process that does not involve an adversarial, confrontational, contested case of litigation setting.

Further, while a moratorium may not include Rock Creek and the Blackfoot River, both Rock Creek and the Blackfoot River should be included in the comprehensive management plan which plan should be completed by December 31, 1994. Please support SB-434. Thank you.

Yours truly,

  
Jim Nugent

City Attorney

cc: Missoula County Representatives; Mayor Dan Kemmis; Dennis Taylor; City Council; Joe Aldegarie; Tim Hunter

EXHIBIT 16  
DATE 3-22-91  
~~SB~~ SR 434

Amendments to Senate Bill No. 434  
Third Reading Copy

Requested by Rep. Raney  
For the Committee on Natural Resources

Prepared by Gail Kuntz  
March 21, 1991

1. Page 2, line 9.  
Following: "apply to"  
Insert: ": (a)"

2. Page 2, line 11.  
Following: "use"  
Insert: "; and

(b) an application for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7"

DHES SUPPORTING TESTIMONY

SB 355

The Department of Health and Environmental Sciences supports SB 355.

We believe the passage of this bill would clarify sections of the current Montana Underground Storage Tank Installer and Licensing Act. It would also help to alleviate inconveniences and financial burdens which may be placed on non-commercial small tank owners who elect to preform their own tank work. This bill would allow state and local underground storage tank inspectors to concentrate their efforts on the tank installations, modifications and removals which pose the greatest concern to the environment. The Department believes these objectives can be achieved while still maintaining adequate oversight of these tank activities without sacrifice to environmental protection.

Based on underground storage tank permit records, the majority of the small farm, residential and heating oil tank work being conducted are tank closures. Many of these closures have occurred in remote areas of the state which do not pose serious environment threats. In addition, many of these remote areas do not have licensed inspectors available to conduct tank inspections. If a local inspector is not available a department inspector must be scheduled to conduct the inspection.

With the passage of this bill, the Department proposes to conduct the review and inspection of small farm, residential and heating oil tanks installations, modifications and closures in the following manner: (1) All tank and piping installations, conducted by a tank owner, would receive an inspection by either a licensed local or department inspector. It is essential these installations be inspected since they pose a long term liability to the environment. (2) An attempt will be made to inspect as many tank and piping closures as possible using local and department

inspectors. With the information which is required to be included with the tank permit application, the Department will be able to rank the environmental sensitivity of the tank's location. Sites located in areas of shallow groundwater or close to public water supplies will be given the highest priority and will require closure inspections. Closure sites located in less sensitive areas will be given a lower priority. If a local licensed inspector is not available and if an inspection by a department inspector can not be conveniently scheduled for the tank owner, the Department would have the discretion to allow alternative methods of site closure certification to be used in lieu of an inspection. These methods might include the submission of photographs of the tank and its excavation and the use of third party witnesses to verify the environmental conditions of the removal or closure. This information along with the results of the closure soil samples, which are required for all closures, will enable the Department to adequately review and certify the closure.

When an inspection is conducted the costs for reimbursement of the inspection services will be funded using permit application and annual tank registration fees. Funding inspections in this manner, will enable the Department to waive inspection fees for owners of small non-commercial farm, residential and heating oil tanks.

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
Solid and Hazardous Waste Bureau  
Helena, MT 59620

EXHIBIT 17

DATE 3-22-91

~~NO~~ SB 355

Montana Hazardous Waste  
and  
Underground Storage Tank Act

75-11-209. Permits - requirement for licensed installer. (1) An owner or operator of an underground storage tank may not install or close, or cause to be installed or closed, an underground storage tank without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank unless the installation or closure is:

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217.

75-11-212. - application procedure - issuance. (1) Before the installation or closure of an underground storage tank, the owner or operator shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the tank installation or closure;

(b) the location of the tank installation or closure;

(c) the type of construction of the tank;

(d) the contents of the tank being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank or, if the owner or operator is not going to have the underground storage tank installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204(1), the department shall issue the permit.

75-11-213. Inspection of installations and closures - fee. (1) After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the department of the date and location of the underground storage tank installation or closure and shall establish with the department the time when an inspection may be conducted.

(2) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(3) An inspection fee must be paid by the owner or operator to the department to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(4) Department officials or local government officers, such as local health officers, sanitarians, local fire chiefs, or other persons designated or hired by the department, shall conduct inspections on behalf of the department.

(5) The department shall pay the person conducting an inspection on the department's behalf, as provided in subsection (4), from the underground storage tank license and permit account established in 75-11-227 up to 80% of any fee collected by the department for the inspection. When an inspection is conducted by an officer of a county or city, the payment must be made by the department to the appropriate county or city treasurer. A county or city shall use payments received under this section only for costs incurred in conducting inspections under this section.

(6) A copy of an installation inspection report must be kept on file by the owner or operator for as long as the department may require by rule. A copy of a closure inspection report must be kept by the owner or operator for 3 years after the date of closure.

(7) The department may enter and inspect the premises or any appurtenant property of an owner or operator at any time to ensure compliance with laws or rules pertaining to underground storage tanks.

75-11-217. Exemption. The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored shall obtain a permit for the installation or closure of the tank but is not required to obtain the services of a licensed installer.



**HOUSE OF REPRESENTATIVES  
VISITOR REGISTER**

Natural Resources

COMMITTEE

BILL NO. SB 434

DATE 3/22

SPONSOR(S) Sen Beck -

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
OLE DELAND	HDWTRS RCD	✓	
SILVER BOW, MT.			
Peggy Parmelee	MACD	✓	
Bruce Farling	CLARK Fork Coalition	✓	
Row Kelley	West Side Nitch Co.		✓
John McDonald	Upper Flat Creek Valley Irrigators		✓
Bob Whalen	West slope Trout Unlimited	✓	
James H. Kuske	T.V. Board	✓	
Holly Franz	Montana Power Co	✓	
Jim Denismore	Dravitt County CD	✓	
Shirley Spawt	HDWTRS RCD	x	
Tom Paine	Washington Water Power	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 355  
DATE 3/22/91 SPONSOR(S) Sen Beck - Underground tank fee increase  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

[illegible]

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 377  
DATE 3/22 SPONSOR(S) Sen. Ferguson - Exempt certain tax install  
from penalties  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
FRANK Gessamen	SDAES JUST	Information	
D. B. DITZEL	Boro of Loco Engin	X	
R.R. WEST	UTU	X	
C. J. Knudson	Chadwick	X	
Mr. Pappas	BMW E	X	
AM Pappas		X	
Jim Garrison	MEIC	X	

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