

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIR RANEY, on April 22, 1991, at 1:30 pm.

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)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Members Excused: Bob Ream (D)

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

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

HEARING ON SB 472

Presentation and Opening Statement by Sponsor:

SEN JOE MAZUREK, SD 23 - Helena, stated HB 472 is an act to ratify the compact entered into by the state of Montana and the Northern Cheyenne Tribe. The compact represents two years of involved negotiations. The objective of the compact was to quantify the Indian Reserve Water Rights, the amount of water they get, and to protect the non-Indian water users. The compact will also allow for the repair and enlargement of Tongue River Dam. It is unlikely that the dam would be repaired or enlarged without the Compact. **SEN. MAZUREK** provided an overview of the Northern Cheyenne/Montana Compact. **EXHIBIT 1**

SEN. MAZUREK stated that the Compact negotiations involved many people: the Reserved Water Rights Compact Commission (RWRCC), the Department of Natural Resources and Conservation, the Attorney General's Office, the Governor's Office, the Northern Cheyenne Tribe, the Crow Tribe, and local water users.

The reason why the Compact is being discussed this late in the session is because negotiations were completed one week ago Saturday. It is similar to the Fort Peck Compact in that a decision needs to be made quickly. While much thought and preparation went into the Compact, it is time to act quickly. The Justice Department is pushing the Cheyenne to litigate. It is a concern that if litigations occur, any resolution to this point would be dissolved, non-Indian users would lose the water they now have, and the court fees would be exceedingly high.

The Big Horn Reservoir (Yellowtail) Storage is a very important reward part of the settlement. It is crucial to the non-Indians to obtain some water rights to the reservoir. Because Rosebud Creek has so little water in it, 30,000 acre feet per (AFY) will be allocated from the Yellowtail Reservoir to the Cheyenne as part of the settlement. The history of the Compact is involved. At the beginning of negotiations, the Northern Cheyenne requested the first block of water from the Bighorn Reservoir be allocated to the Tribe. The Crow objected primarily for three reasons:

1. it gave the Cheyenne water that the Crow felt they had claims to,
2. the water is from water behind a dam located on the Crow reservation,
3. it may set a precedent of rights to water on the Big Horn for the Cheyenne.

REP. MAZUREK stated that he felt the Compact is beneficial to the Crow. It will set precedence of water allocation to tribes in the settlement of reserved water rights. Additionally, the posting of water is available to lease. There is plenty of water to allocate. The Crow need not worry that they won't get their share.

In exchange for the 30,000 AFY allocation, the Cheyenne agreed to the concession to protect non-Indian users on Rosebud Creek and Tongue River. Rosebud Creek has very little water in it and a high amount of agricultural pressure. It was agreed that no dams or impoundments could be built on Rosebud Creek. The water can be marketed from Big Horn or Tongue River.

SEN. MAZUREK stated that the compact is a very historic settlement. He urged that the committee not amend the bill as it is the result of years of compromises and hard work.

Proponents' Testimony:

Chris Tweeten, RWRCC, supported SB 472. He stated that the handout (Exhibit 1) explains the contents and the administration

of the Compact. He emphasized some major points of the handout. The compact includes administrative provisions of water rights adjudication that are agreed upon. By including the administrative provisions, great expense and ill feelings are avoided by the State and the Tribes. Solving water rights through litigation does not include the administrative provisions and would cause many problems as demonstrated by what has happened with the Wind River Reservation in Wyoming. The Tribes will administer their own water rights. They will adopt a tribal water code that will determine how water will be allocated on and off the reservation. Non-Indian water rights will be administered under DNRC. The Compact does not change the jurisdictional power that is given to any court to resolve water rights claims.

Another main issue is that the Northern Cheyenne will be able to market their storage water from the Tongue River Dam and water allocated from the Big Horn Reservoir. The marketing has limitations. The Compact is subjugated to provisions of the Yellowstone Compact, which essentially prevents transportation of water out of the Yellowstone River Basin without the consent of the states of Montana, North Dakota, and Wyoming. The Yellowstone Compact encourages the marketing of water within the basin from which it arises. Before the Tribe can market the water within the basin, it must meet transfer requirements similar to those of the State. The Compact is a settlement of disputed litigation matters.

Once the Compact goes into effect and the Tongue River Dam is completed, the water rights lawsuits filed by federal court in the mid-1970's will be dismissed. The Compact will be entered into the water courts as part of the adjudication process of the Tongue and Rosebud Basins. When a final decree is issued, the State of Montana will have final determinations of the water rights claims of the Northern Cheyenne Tribe.

Calvin Wilson, attorney for the Northern Cheyenne Tribe, supported SB 472. He stated it is to everyone's benefit not to litigate. The repair and enlargement of the Tongue River Dam is very important as it has been unsafe for years. The Compact is the first step toward resolving the water rights issue. He urged passage of the bill.

Karen Barclay, DNRC and representing Governor Stan Stephens, supported the Compact. She stated that **Gov. Stephens** feels the compact is like a puzzle. Every piece is important to the whole picture. Disruption of one piece could cause the entire Compact to fall apart. He urged that the committee pass the Compact without amending it. Passage of the Compact will enable the rehabilitation of the Tongue River Dam, protect an important recreation area, add potential water flow to protect threatened and endangered species, and will resolve water right conflicts.

Ms. Barclay stated the Tongue River Dam is the highest priority

state water project. It is a very high hazard dam. Loss of life could result if the dam fails. The dam is in desperate need of repair. It is eroding and malfunctioning. The current snowpack of over 140% of normal is very threatening should it run off quickly. The original estimate to replace the dam was \$183 to \$188 million. Because of new technology, the current estimate is \$48 million. The opportunity to acquire funding to fix the dam as a result of the passage of Compact is extremely beneficial. The dam probably would not be fixed otherwise.

Harley Harris, Attorney General's Office, supported HB 472. He stated that many key figures were involved in the negotiations. The Compact is the result of hard negotiations and scrutiny.

Dave Pennington, Bureau of Indian Affairs (BIA), supported HB 472. He stated that he was on the federal negotiating team that has been involved for approximately one year. All interests were well represented. He said he admired the spirit of compromise and cooperation. If the Compact is ratified, the Justice Department will drop litigations. To be ratified, the Compact must first go to the Northern Cheyenne Tribal Council and then to the Secretary of the Interior.

REP. MARIAN HANSON, HD 100 - Ashland, supported HB 472 and submitted written testimony from **Herb Mobley, Tongue River Water Users Association**. **EXHIBIT 2**

Jo Brunner, Montana Water Resources Association, supported HB 472. She stated that Herb Mobley was very involved in the negotiations. The Tongue River Water Users Association made significant compromises during the negotiation process. The repair of Tongue River Dam is an added bonus to the Compact.

SEN. TOM TOWE, HD 46 - Billings, stated he was speaking as the attorney for the Crow. He said in the Senate he spoke against the Compact. Several amendments that protected the Crow's legal position and that alleviated the concern that the Cheyenne had a market advantage were adopted. With these amendments he stated he would support the Compact.

Opponents' Testimony:

REP. ANGELA RUSSELL, HD 99 - Lodge Grass, opposed HB 472 from the perspective of the Crow Nation. She stated that it is the eleventh hour and good decisions can not be made at this time. This is a major piece of legislation. The puzzle is flawed. A close examination of it is necessary. The Compact is part of a divide and conquer strategy. Tribes are being taken on one by one, divided and conquered. There was no discussion with the Crow people. The Crow feel that litigation is a better alternative than the Compact negotiations. Major deals are being agreed upon in this Compact.

The inclusion of the rehabilitation of Tongue River Dam in the

Compact is incomprehensible. This major threat should be taken care of outside the auspices of the Compact. The community of Bernie has been threaten for years and nothing has been done about it. The whole process sounds similar to the land grabs of one century ago. The Cheyenne will have an unfair marketing edge over the Crow. This is a permanent settlement.

REP. RUSSELL strongly urged the Committee to consider its actions and to try to understand the complicated issue.

Robert Van De Vere, opposed SB 472. He stated that, from the viewpoint of a concerned citizen, the Crow Tribe is getting shafted. It is a very bad bill. The dam should be fixed regardless of the Compact. It is disgraceful it has not been fixed yet.

REP. BOB GERVAIS, HD 9 - Browning, opposed SB 472. He stated he was not representing the Tribe but only HD 9. He said that a great injustice is being done to the Northern Cheyenne and the Crow. In 1977 the whole process started. At that time, the BIA were protectors of the Tribe. The BIA no longer is the protectorate. Repair of Tongue River Dam should not be tied to the Compact. It has nothing to do with the primary issues. It appears that the tribes are getting numerous false promises and receive nothing in return. The government is pitching one tribe against another. This Compact sets some very dangerous precedents, especially with water marketing. There needs to be study of water rights and potential impacts that involves all the tribes. He urged the committee not to concur in SB 472.

REP. JIM SOUTHWORTH, HD 86 - Billings, opposed SB 472 for reasons previously stated. The Cheyennes are pawns to the Federal government attempts to gain Yellowtail water. He suggested the Committee delay adoption of the Compact until studies have been completed.

Questions From Committee Members:

REP. MARK O'KEEFE asked **Mr. Wilson** if the Northern Cheyenne have any potential or existing contracts for marketing water for Yellowtail Dam at this time. **Mr. Wilson** replied no. The Tribe has no plans to market the water. They would like the water for future use. **REP. O'KEEFE** inquired when, at the earliest, could the Northern Cheyenne market the water. **Mr. Tweeten** replied that once the Northern Cheyenne Tribal Council, the State Legislature, and the appropriate federal executive agency approves it, the water will be available. **Rich Aldrich** clarified that the marketing aspects of the Compact does require congressional ratification. **REP. O'KEEFE** stated that he had several technical questions, one concerning the derivation of the figures on the back page of the handout. **CHAIR RANEY** asked **REP. O'KEEFE** if he would wait until after the hearing and meet with the individual people to discuss the technical questions. **REP. O'KEEFE** agreed to do so.

REP. VIVIAN BROOKE asked Mr. Tweeten if the water could be allocated to anyone in the basin. Mr. Tweeten responded that the Cheyenne will have control over water use on the reservation. If they want to take it off the reservation then they need to follow the transfer rights process. If they want to market the water outside the basin, then they have to follow DNRC regulations. If they market outside the Yellowstone Basin, they'd have to follow the Yellowstone Compact. REP. BROOKE repeated her question. Mr. Tweeten said yes, within Yellowstone. REP. BROOKE asked if anything was unusual about allocating 30,000 AFY. Mr. Tweeten replied that there was nothing unusual in allocating 30,000 AFY.

REP. DAVE WANZENRIED asked what would happen if the Compact was amended. SEN. MAZUREK replied that the Compact is a contract. All involved parties would have to be faxed the changes and agree to them. The proposed amendment doesn't change the Compact. It clarifies that the Crow has rights in the Big Horn. REP. WANZENRIED asked when will repairs on the dam occur. SEN. MAZUREK stated that in 1997 the repairs will be completed.

Closing by Sponsor:

SEN. MAZUREK stated it is very important to approve this Compact this session in order to save litigation costs. The compromise was fair and reasonable. Neither of the tribes sold themselves out. It is not a divide and conquer plan. Water that was allocated to the Cheyenne was water that was open to anyone. It will not affect the Crow Tribal rights. It is an historic deal and should pass.

HEARING ON SJR 28

Presentation and Opening Statement by Sponsor:

SEN. KOEHNKE, SD 16 - Townsend, stated that SJR 28 requests that an energy study be developed. It differs from HJR 21 in that it requests input from all the government agencies and private parties. There is no fiscal impact as the study will be funded by the participating groups.

Proponents' Testimony:

REP. ROBERT CLARK, HD 31 - Ryegate, supported SJR 28. He stated the main difference between HJR 21 and SJR 28 is that there is no fiscal impact with SJR 28. The people who want to help with developing energy policies will fund their way.

Gary Willis, Montana Power Company (MPC), supported SJR 28. He said the Senate Resolution is very similar to HJR 31. An energy policy is needed. For that reason he supports SJR 28 and HJR 21.

Herschel Robbins, Mussel Valley Developers Corporation, supported SJR 28 for reasons previously stated.

Opponents' Testimony:

Jim Jensen, Montana Environmental Information Center (MEIC), opposed SJR 28. He stated the bill is completely unnecessary. HJR 31 provides for an energy study and plan. It seems that it would be impossible to fund a legislative study using private funds and ensure that it was unbiased. Mr. Jensen urged the committee to kill SJR 28.

Questions From Committee Members:

CHAIR RANEY, directing his comments to REP. CLARK, stated that REP. CLARK said that no funding would be necessary. There is a cost associated with an interim study that involves legislators. REP. BROOKE stated that all the other interim subcommittees are appointed by the Speaker and the President, and they are always legislators. REP. CLARK replied that all the people will be appointed by the governor. REP. BROOKE asked where in the bill does it say that. REP. CLARK did not answer the question.

Closing by Sponsor:

SEN. KOEHNKE stated that he hoped the committee would act favorable on SJR 28.

Announcements: CHAIR RANEY announced that there will be an informational hearing on the impacts of coal development on Huntley, Montana.

**Informational Hearing on the Impacts of
Coal Development in Huntley, Montana**

REP. JOHN SCOTT, HD 97 - Ballantine, explained that his constituents requested a hearing because their concerns have been ignored up to this point. Meridian mines located a temporary coal loading facility for the Bull Mountain mining operation in Huntley during the summer of 1990. The temporary facility may develop into a permanent one. The residents' concerns are: their quality of life; the safety issues related to an increase in road use; the problems with the scoping process; and the air quality problems resulting from the coal dust.

Jim Pope, spokesperson and resident of Huntley, stated that Huntley is a small and quiet community situated just north of Billings. It is a desirable place to make a home. In 1990, Meridian located a coal load out facility in Huntley within a 1000 ft of a residential area. The impacts were tremendous. Coal dust, diesel exhaust, and noise pollution dominated the atmosphere. Coal loading was continued into the night making sleep impossible. The coal dust was so thick that windows

couldn't be left open. Residents suffered health problems from the dust. Asthmatics were forced to take excessive amounts of medication. The residents approached the city council with their concerns, especially the concern of coal dust. They were told that the air quality wouldn't be monitored unless it exceeded a certain amount and that temporary facilities usually are not monitored. The residents of Huntley are frustrated that their concerns are not being addressed.

Steve Erb, Huntley, stated that no dollar amount can quantify the life style and quality of life found in Huntley. He stated the scoping meetings were very confusing. The communities that were likely to be impacted the most were not included in the scoping process. Huntley was one of these communities. **Mr. Erb** distributed maps of the proposed Loadout facility. **EXHIBIT 3**. He stated that in the plans for the proposed loadout facility, it is stated that the "Huntley Fire Department" will provide fire protection for the facility. The "Huntley Fire Department" is a volunteer operation. The volunteer firefighters were never contacted for their input. Six fires that occurred at the loadout facility resulted from spontaneous combustion caused by spraying the coal with water. It seems that the operators of the facility should know that spontaneous combustion results from mixing water and coal. The whole process of locating and operating both the temporary and the proposed permanent loadout facility has excluded the input of Huntley residents.

Monica Lindeen, Huntley, stated that generations of their family have lived in the Huntley area. It is a wonderful community and a special place to raise a family. When Meridian started hauling coal and loading out of Huntley, the quality of life plummeted. Coal dust permeated everything. The simplest of life's pleasures couldn't be enjoyed because of the dust. Windows had to be kept shut. It was impossible to sit outside on lawn furniture without being covered with thick layers of coal dust. The filth was incredible. Residents complained but the coal dust was not controlled.

Road safety became a concern. It was no longer safe to allow children to ride their bikes along the side of the roads. The impacts of the increased truck traffic was not adequately addressed in the permitting process. Highway 312 apparently was overlooked. Issues such as road safety and the impact of the traffic on the bridges and road surfaces were not adequately addressed. Meridian Minerals response to the Department of State Lands deficiency letter addressed only 50 loads one way every 15 minutes for 250 days. They didn't address the return traffic. It appears that Meridian is not doing a thorough or even adequate job of providing the information that is requested of them.

Jackie Stearns, Huntley, stated she moved to Huntley because she was attracted to the lifestyle there. The thick, black, dust during the summer of 1990 has caused respiratory problems for people. The noise and air pollution resulting from the load out

facility were atrocious. The residents contacted the county commissioners about the problems and were told that nothing could be done because it was a test pit and a temporary situation. It was mere speculation that the air quality met the minimum standards. Tests were never taken. It was very clear to the residents that the standards were not being met. The citizens were told that the company regulates its own air quality. The opportunity for bias is built into the system. In order to determine the affect on air quality, it seems that it would be necessary to conduct baseline studies, which are not being done. It is speculated that the coal stockpile will be four times the size of a football field and the plans do not indicate that a covering will be used, which is in violation of the Clean Air Act of 1979. **Ms. Stearns** requested that the loadout site be located outside the community of Huntley where it won't detrimentally affect the lives of hundreds of people. She stated that the Billings Department of State Lands (DSL) office was very helpful to them.

Gary Amestoy, DSL, stated that no loading currently is occurring. In the fall of 1989, DSL issued Meridian a permit to mine and ship a maximum of 250,000 tons out of a test berm. Meridian mined and shipped less than the maximum amount. Currently Meridian has filed a permit application for an underground mine in the Bull Mountain site. Air quality and traffic issues will be addressed in the evaluation of that permit. DSL has already determined that an environmental impact statement (EIS) will be required. All issues will be considered during the EIS process. Both verbal and written comments will be considered.

Jeff Chaffee, Department of Health and Environmental Sciences, Air Quality Bureau (AQB), stated that an air quality permit will be required. The county will be the permit reviewer. During the permitting process, public hearings will occur and the public will be involved through the whole process. AQB recognizes that a problem occurred in the past. The situation will be monitored.

Don Cromer, Department of Highways, stated that the Department asked Meridian to develop a transportation plan. Currently, the Department is collecting data to help supplement the plan. Safety will be a major issue addressed.

ADJOURNMENT

Adjournment: 3:30 pm.


HOUSE NATURAL RESOURCES COMMITTEE

April 22, 1991

Page 10 of 10



BOB RANEY, Chair



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 9/22/91

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	✓		

**SB472: Northern Cheyenne/Montana
Water Rights Compact**

1. Tongue River Basin. The Tribal water right in the Tongue River basin consists of the right to divert up to 32,500 acre-feet per year (AFY), from a combination of direct flow of the river and storage from the raised and repaired Tongue River Reservoir. Present Tribal uses for irrigation will be subtracted from the 32,500 AFY. An existing Tribal water purchase contract for 7,500 AFY remains in effect, and is in addition to the 32,500 AFY. The two components of the Tribe's 32,500 are as follows:

a. Direct Flow. The Tribe can divert up to 12,500 AFY from the direct flow of the Tongue River, and deplete up to 9,375 AFY, with a priority date of October 1, 1881. The Tribal direct flow right is subordinated to Miles City Decree rights, as finally adjudicated by the Water Court, with a priority date of March 24, 1909 or earlier. The direct flow right is also subordinated to diversion water rights on Tongue River tributaries, as finally decreed. This means that the Miles City Decree rights and tributary rights will be treated as if they're senior to the Tribe's direct flow rights.

b. Storage Right. The Tribe has a right to divert and deplete up to 20,000 AFY from the enlarged Tongue River Reservoir. This right essentially allocates all the new storage to the Tribe. The Tribal storage right is subject to specified shortages, and its availability will fluctuate depending on the schedule the Tribe selects for diversions of its direct flow right. Tribal use of direct flow and storage will not affect existing state storage contracts of 40,000 AFY.

c. Excess Water. The calculations of water availability for both tribal and non-Indian uses have been based on a computer water model which makes certain assumptions about existing Montana and Wyoming water uses. If, in the future, these assumptions change, any "excess" water that is available will be used to "firm up" the Tribe's water allocation of 32,500 acre-feet. Any water over and above this amount will then be available for future non-Indian uses.

2. Rosebud Creek Basin. The Compact creates two Tribal rights to the water of Rosebud Creek. The first right allows the Tribe to proceed with phased-in development over the next two years. The second right is subordinated to existing non-Indian diversion rights, North and South of the Reservation, as decreed by the Water Court.

a. First Tribal Rosebud Right. This right may be used only for agricultural purposes, and allows the Tribe to develop up to 600 acres of land or divert 1,800 AFY, whichever is less. Approximately 200 of the 600 acres are presently in use. Of the

remaining 400 acres, the Tribe will develop no more than 200 acres before July 1, 1993 by methods that involve pumping of alluvial groundwater. The final 200 acres may be developed after July 1, 1993. The entire 400 new acres can be developed earlier by non-pumping methods, such as water spreading, during higher spring flows.

b. Second Tribal Rosebud Right. This right allows the Tribe to divert up to 19,530 AFY, or enough water to irrigate 6,510 acres of land, whichever is less. This right is subordinated to existing non-Indian diversion rights, as decreed by the Water Court. Again, this means that these rights will be treated as if they are senior to the Tribal rights in this paragraph. They will be junior to the Tribal rights in paragraph 2a. The Compact places a cap on protected off-Reservation acreage, as follows:

- i. North of the Reservation, 8,100 AFY or enough water to irrigate 2,700 acres, whichever is less;
- ii. South of the Reservation, 540 AFY or enough water to irrigate 180 acres, whichever is less.

c. Dams and Impoundments. The Tribe may not construct dams or impoundments to store water naturally arising in Rosebud Creek or its tributaries. The Tribe may import water into the basin for such impoundments.

d. Until such time as the Department of Natural Resources and Conservation finds that there is water available over and above the entire Tribal right to Rosebud Creek water, there will be a moratorium on the issuance of new state water right permits.

3. Big Horn Reservoir (Yellowtail) Storage. As part of the Tribal water right, the Secretary of the Interior will allocate 30,000 AFY to the Tribe from Big Horn Reservoir.

4. Groundwater. The Tribe has a right to use both alluvial and non-alluvial groundwater in lieu of its surface water rights in the Tongue and Rosebud basins; withdrawals of greater than 100 gallons per minute of either kind of groundwater are subtracted from the Tribal right in that basin. The Tribe may also develop deep (non-alluvial) groundwater by either applying to the State for a permit or establishing a special right to it under federal law. This would be over and above the Tribal water right established in this Compact.

5. Stockwater Impoundments. The Tribe may construct stockwater impoundments on the Reservation, if the capacity of the impoundment is less than 15 AFY, and it is constructed on a non-perennial stream.

6. Subirrigation. The Tribe is entitled to take advantage of any natural subirrigation occurring on the Reservation. Where otherwise consistent with State law, persons outside the

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4/22/91
SB 477

Reservation also are entitled to take advantage of natural subirrigation.

7. Water Marketing. The Tribe may not market water naturally arising in Rosebud Creek or its tributaries, although the Tribe may enter into agreements where, for compensation, it defers use of its Rosebud water. The Tribe may market any other part of the Tribal water right for use on or off the Reservation.

COMPACT WATER ALLOCATIONS AND PRIORITIES

TONGUE RIVER		ROSEBUD CREEK	
1 st	<p>Miles City Decree water rights: Priority dates July 6, 1886 to March 24, 1909 as finally adjudicated</p> <p>State diversion rights on tributaries, as finally adjudicated</p>	1 st	<p>NC Tribe: 600 acres/1,800 AFY</p> <p>Priority date: October 1, 1881</p> <ul style="list-style-type: none"> - 200 acres existing - 200 acres May 1, 1991 to July 1, 1993 - 200 acres thereafter, earlier if by nonpumping methods
2 nd	<p>NC Tribe: 12,500 AFY (9,375 AFY depletion)</p> <p>Priority date: October 1, 1881 - Shall not interfere with State contracts</p>	2 nd	<p>State diversion rights, as finally adjudicated, not to exceed:</p> <ul style="list-style-type: none"> - 2,700 A/8,100 AFY N. of Reservation - 180 A/540 AFY S. of Reservation
1 st	<p>State Contracts: 32,500 AFY</p> <p>NC Tribe: 7,500 AFY State Contract firm supply</p>	3 rd	<p>NC Tribe: 6,510 A/19,530 AFY future use</p> <ul style="list-style-type: none"> - No impoundments of Rosebud natural flow - Moratorium on issuance of State permits unless water available over and above tribal water right
2 nd	<p>NC Tribe: 20,000 AFY from an enlarged reservoir</p> <p>Subject to shortages</p>	BIG HORN RESERVOIR	
		30,000 AFY to Northern Cheyenne Tribe	

Ex. 1
4/22/91
JB 477

Administration of the Tribal Water Right

1. Uses on the Reservation. The Tribe will administer uses of their water right on the Reservation pursuant to a Tribal water code. The Compact requires the Tribe to adopt regulations to ensure that uses of the water right are not wasteful and do not degrade water quality. The State will administer any state water rights on the Reservation pursuant to State law.

2. Uses off the Reservation in the basin. Uses of the Tribal water right off the Reservation, but within the Tongue and Rosebud Creek basins, are subject to special procedures set forth in the Compact. The Tribe must obtain any permits required under State law concerning siting, construction and operation of the off-Reservation facilities. In addition, the Tribe must give 180 days advance notice to the State of the proposed use, and must show, among other things, that the use:

- a. is a beneficial use under State law;
- b. has an adequate means of diversion;
- c. will not adversely affect specified state law water rights; and
- d. does not cause adverse environmental impacts.

The special procedures allow the proposed use to be challenged by the State or an affected water user in court, where the Tribe would have the burden of proving that the Compact requirements are met.

3. Other Off-Reservation Uses. All other uses of the Tribal water right off the Reservation are administered under State law in effect at the time the use is initiated.

4. Use of Water from Yellowtail Reservoir. When Yellowtail storage water is used on the Reservation, it will be administered under the Tribal water code, except that the Tribe must obtain any permits required under State law concerning siting, construction and operation of off-Reservation facilities. All other Tribal uses of Yellowtail water will be governed by applicable State and federal laws.

5. Trans-Basin Diversions of Storage. The Compact has special provisions for Tribal projects that divert water from Big Horn or Tongue River Reservoirs and transport the water out of the basin for use on the Reservation. The Compact requires 180-day advance notice to the State of such projects, and provides that the project may be reviewed under existing State, federal, or Tribal law.

6. Operation of Tongue River Dam. Tongue River Dam will continue to be owned and operated by the State. The Compact creates a five member advisory committee to assist in drafting reservoir operation procedures that are consistent with the purposes of the Compact. The Committee will have representatives from the State, the Tribe, the Tongue River Water Users Association, the United States, and a fifth member selected by the other four.







Dispute Resolution

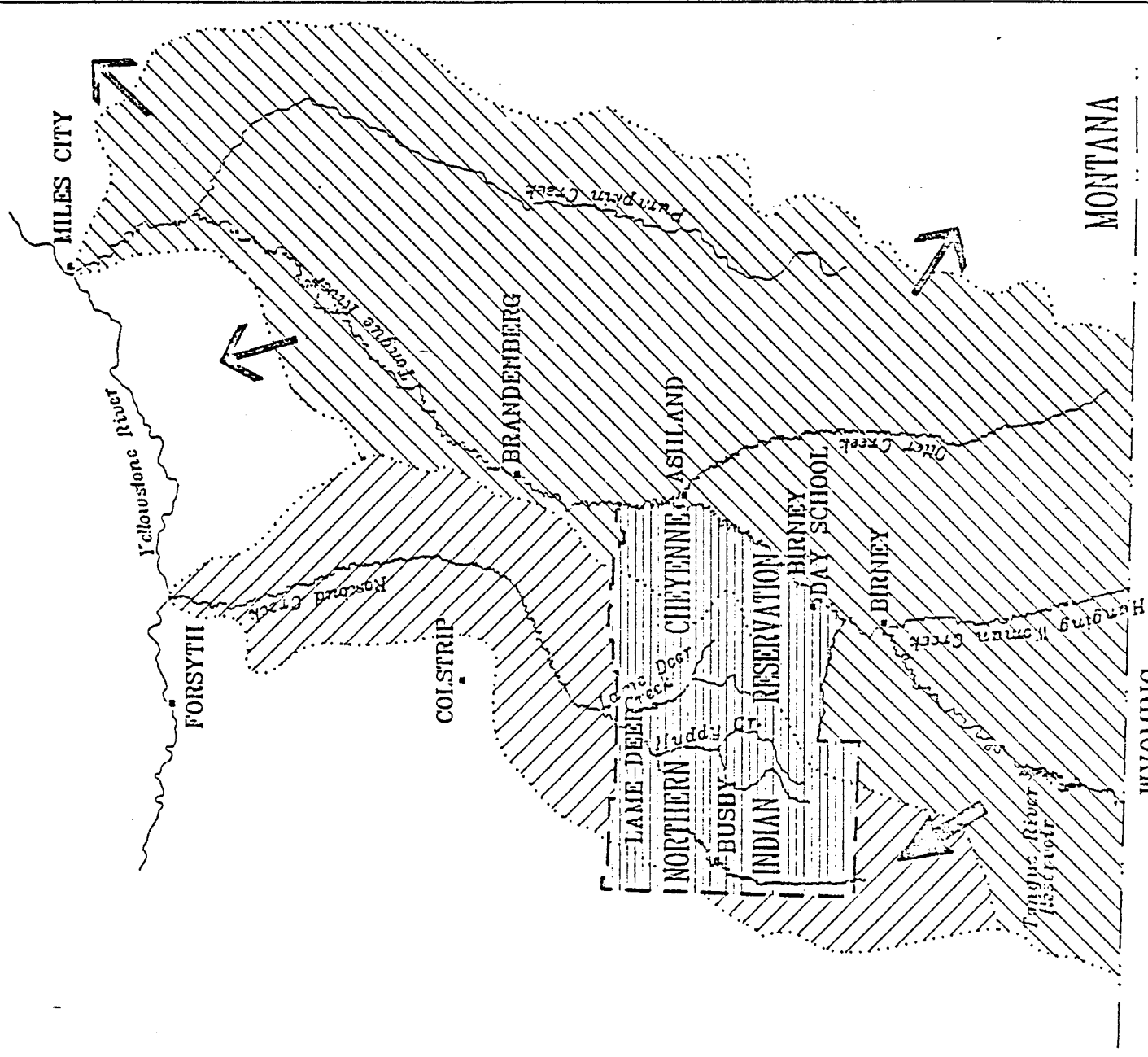
Water use disputes between users of the Tribal water right, on the one hand, and users of state water rights, on the other hand, will be reviewed by a Compact Board. The Board has three members: one appointed by the Montana Governor, one appointed by the Tribe, and a third selected by the other two. Rulings of the Board may be appealed to a state, federal, or tribal court that otherwise has jurisdiction over the matter.

Effective Dates

The Compact will be final as between the State and the Tribe when it is ratified by the Montana Legislature and the Northern Cheyenne Tribal Council. However, most provisions of the Compact will not be enforceable until the completion of the repair and enlargement of the Tongue River Dam. The respective state and federal financial contributions to this project are currently being negotiated. It is contemplated that when these negotiations are complete, the agreement will be included in the Compact. Because federal funding is sought for the dam project, the Compact also will be ratified by Congress. After completion of the dam project, the Compact will, pursuant to State law, be entered into the Water Court decrees in the Tongue and Rosebud basins.

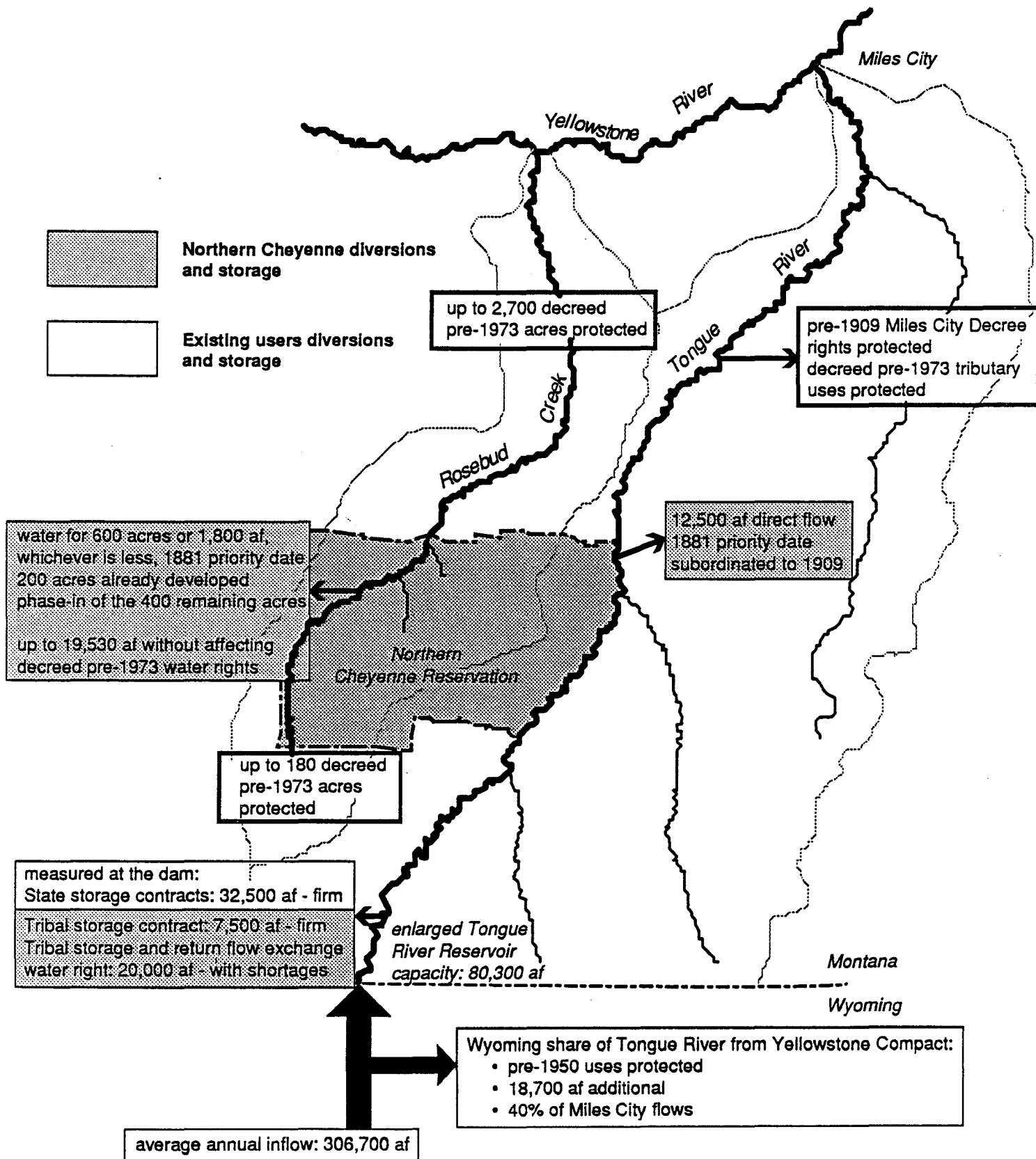
ADMINISTRATION OF THE NORTHERN CHEYENNE TRIBAL WATER RIGHT

-  On-Reservation use of tribal water right pursuant to tribal water code.
-  Off-reservation use of tribal water right within the Tongue River Basin: 180 day notice to State of Montana demonstrating compliance with substantive public interest criteria in compact; off-reservation facilities subject to state siting and construction laws.
-  No off-reservation use of Rosebud Creek tribal water right within the Rosebud Basin, except through deferral agreements with water users; no transfers out of basin.
-  Off-reservation use of Tongue River Reservoir water in Rosebud basin with 180 day notice, compliance with substantive public interest criteria and state siting and construction permits.
-  Transfer of tribal water right from Tongue River Reservoir or Yellowstone Reservoir to Rosebud Basin: 180 day notice to State; injunctive relief afforded affected parties pursuant to applicable federal, state, and tribal laws.
-  Off-reservation tribal water use outside of Tongue River Basin pursuant to state law.



WATER ALLOCATION

Rosebud Creek and Tongue River Basins



4/22/91
SB 477

NORTHERN CHEYENNE COMPACT -- SB472
ALLOCATION OF YELLOWTAIL WATER 30,000 AFY

- The proposal to allow the Bureau of Reclamation to allocate 30,000 AFY of water stored in Yellowtail Reservoir to the Northern Cheyenne Tribe was agreed to by the State's Negotiating Team in exchange for Northern Cheyenne concessions to protect non-Indian users on Rosebud Creek and Tongue River. This agreement was contingent on federal approval. The State's negotiating team is concerned that if this issue goes to court these water users could be displaced by the Northern Cheyenne's senior water right.
- The Federal Negotiating Team, acting on behalf of the Department of the Interior as trustee for both the Crow and Northern Cheyenne Tribes, has approved this allocation. They would not have agreed if this proposal would have had a negative impact on the water right of the Crow Tribe.
- The Crow Tribe has known of this proposal since last summer and wrote a letter asking the parties to look for water elsewhere. They attended negotiating sessions last fall and winter in Billings and have met with the Northern Cheyenne Tribe and the Federal Team. They are given notice of all Commission Meetings and have attended several of these.
- It is acknowledged by all parties that the Crow Tribe has a reserved water right to at least a portion of the natural flow of the Big Horn River. Most likely, this water right would have a priority date of 1868 which is senior to any water stored in Yellowtail which was built in the 1960s. The Crow Tribal Attorney opposed the bill in the Senate, because he felt the language in the Compact was not clear as to the Crow Tribe's water rights. The State, the Federal Team, and the Northern Cheyenne all agreed to amend the Compact to clarify that none of the provisions in the Compact will affect the rights of any other Indian tribe to assert claims to this water. (Amendments: Third reading, copy p. 17, line 5 and p. 41, line 20.)
- There is no case law to support or refute the claim that Indian tribes have a reserved right claim to stored water. The law is silent on this issue. The State therefore felt, and has repeatedly made the point to the Crow Tribe, that the allocation of storage water to the Northern Cheyenne Tribe is a positive precedent for the Crow Tribe in future negotiations over their water rights.
- The Bureau of Reclamation analyzed water available for marketing from Yellowtail in a 1983 EIS and determined that 300,000 acre feet of water could realistically be marketed from Yellowtail and Boysen Reservoirs after all anticipated future upstream and downstream depletions had occurred,

INCLUDING ALL CROW RESERVED WATER RIGHTS. Presently, the only contract in place for water delivery from Yellowtail is 6,000 AF contract with Montana Power Company for their Colstrip power plant operation.

"Based on the above, the following future demands could be supplied from Yellowtail Reservoir:

Hardin Bench (41,000 Acres)	173,000
Northern Cheyenne Allocation	30,000
Water for future industrial	207,000
Irrigation Development *	<u>646,000</u>
	1,056,000

* This amount reduced by the 6,000 acre-feet contract with Montana Power Company and 30,000 acre-feet proposed settlement with the Northern Cheyenne Tribe Allocation . . . included in the 646,000 acre-feet future development are the estimated Crow Indian reserved water rights as well as other downstream developments."

- Memo received from the Bureau of Reclamation dated April 18, 1991: "Determination of available water for marketing from Yellowtail Dam and Reservoir."

- THE NORTHERN CHEYENNE - MONTANA WATER RIGHT COMPACT IS THE RESULT OF TWO YEARS OF VERY INTENSIVE NEGOTIATIONS AND IS A CAREFULLY CRAFTED COMPROMISE. THE DEFEAT OF THIS HISTORIC SETTLEMENT WOULD, IN ALL LIKELIHOOD, RESULT IN PROTRACTED AND EXPENSIVE LITIGATION. THE END RESULT OF THIS LITIGATION IS LIKELY TO BE THE DISPLACEMENT OF A SIGNIFICANT NUMBER OF AGRICULTURAL WATER USERS. IT IS VITALLY IMPORTANT THAT THE MONTANA LEGISLATURE RATIFY THE AGREEMENT. A VOTE FOR THE MOTION TO SUSPEND THE RULES WILL ALLOW THIS IMPORTANT MEASURE TO RECEIVE FULL SCRUTINY BY THE HOUSE OF REPRESENTATIVES.

TONGUE RIVER WATER USERS ASSN.
ASHLAND, MONTANA 59003

EXHIBIT

DATE 4/22/91

~~HB~~ SB 472

April 21, 1991

Mr. Bob Raney, Chairman
Montana House Natural Resources Committee
Capitol Station
Helena, Montana 59601

Dear Sir:

Tongue River Water Users Association is a group of 73 individual farmers and ranchers organized in 1937 for the purpose of operating and maintaining Tongue River Dam through the Water Marketing Contract as amended with the Montana State Water Conservation Board.

We have attempted to keep abreast of negotiations with the Montana State Compact Commission and the Northern Cheyenne Tribe through the years.

We are pleased with the progress made through these negotiations these recent months. At last we may proceed. We realize there have been concessions given on both the State and the Tribal views. We do believe, however, that the Compact you have before you today is reasonable for all parties concerned, providing all parties involved in the future interpret as the Montana State attorneys do at present.

On April 4, 1991, our Board of Directors met with all five members present and voted unanimously in favor of and I quote "The Board of Directors of Tongue River Water Users Association fully supports the rehabilitation and enlargement of the Tongue River project, and suitable financial arrangements are being negotiated between the Department of Natural Resources and the water users."

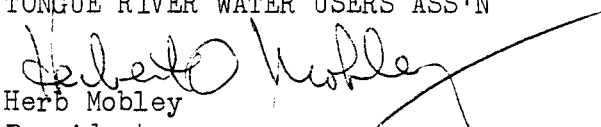
Therefore, I urge you to pass into law this Northern Cheyenne Water Rights Compact Agreement.

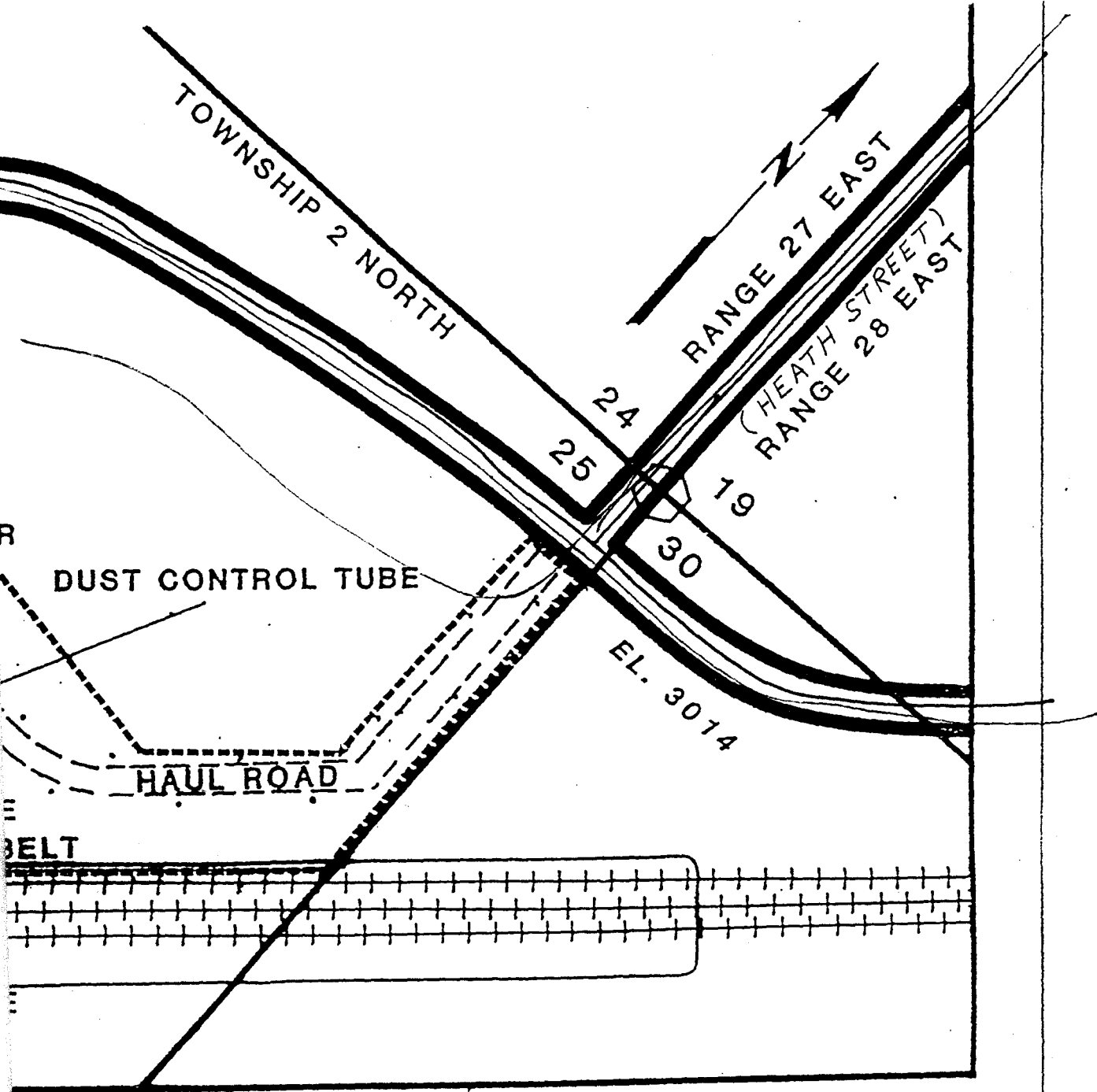
I believe you have listed this as Senate Bill #472.

Please pass!

Sincerely,

TONGUE RIVER WATER USERS ASS'N


Herb Mobley
President



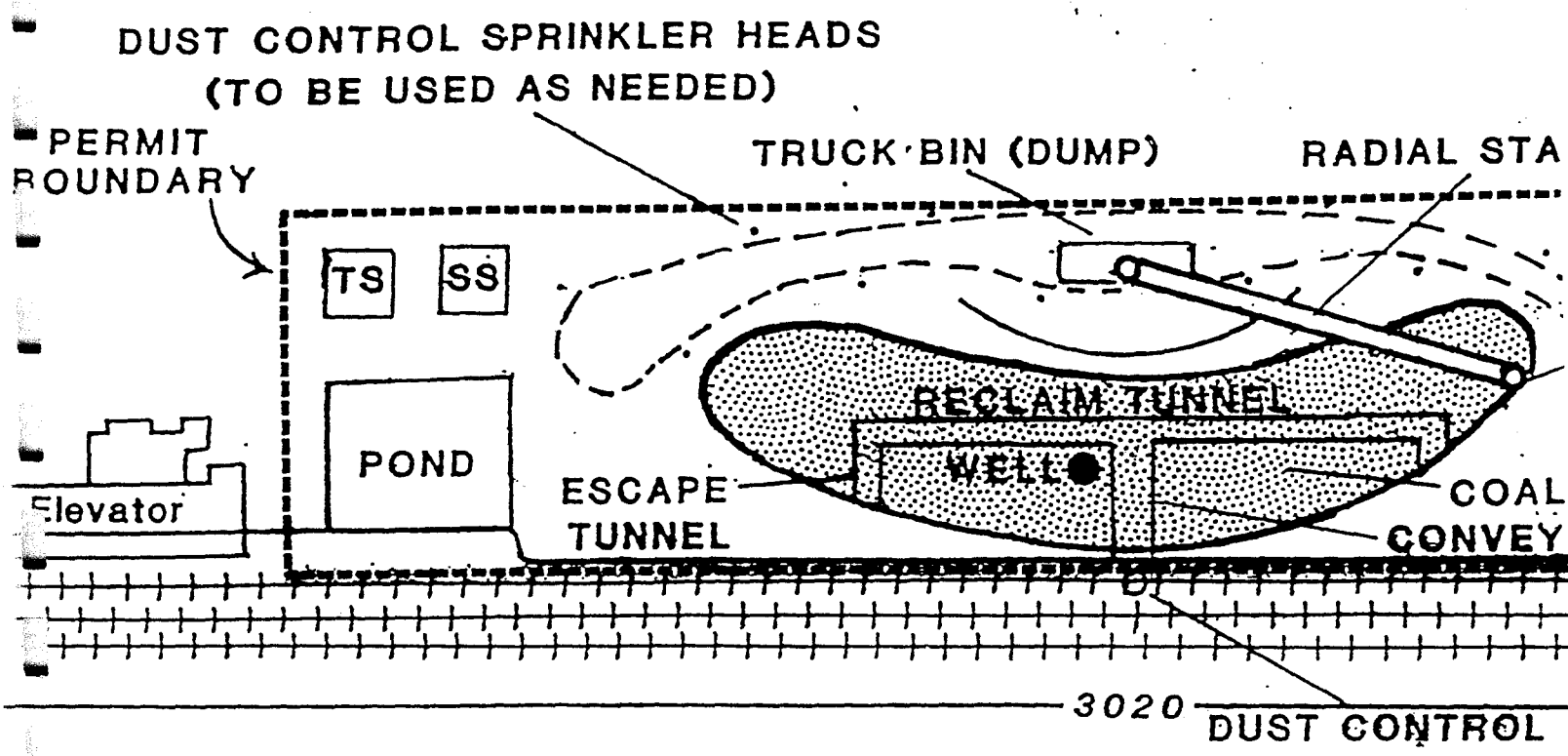
MERIDIAN MINERALS COMPANY
BULL MOUNTAINS MINE NO. 1
PERMIT APPLICATION
HUNTLEY LOADOUT FACILITY
Yellowstone County, Montana
JANUARY 6, 1991

SCALE: 1 inch = 200 feet
CONTOUR INTERVAL: 20 feet

EXHIBIT 5
DATE 4/22/91
WFB info hearing on
Huntley, MT

NORTHERN AVENUE

Sugar Beet F



Grain Hauling Trucks (Cows & Harvest states)
Sugar Beet Hauling Trucks (Western Sugar)

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources

COMMITTEE

BILL NO.

SB 472

DATE 4/22/91

SPONSOR(S) Sen Mazurek - Water Compact

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>J. Hanner</i>	<i>MWRD - Longview, WA</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Marian H. Hanson</i>	<i>Dist 100</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Chris Tweeten</i>	<i>RWRCC</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>David W. Pennington</i>	<i>B/A</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>James A. Rawlings</i>	<i>Fed. Neg. Team</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Harley Harris</i>	<i>Mont. Atty Gen</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>CAL Wilson</i>	<i>Northern Cheyenne Tribe</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Susan Cottingham</i>	<i>RWRCC</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Karen Barclay</i>	<i>DNUR + C</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Angela Russell</i>	<i>HD 99</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Bob Lewis</i>	<i>HQ 9</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SJR 28
 DATE 4/27/91 SPONSOR(S) Sen Krehnke - energy policy
 PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Washel Robbins	MUSE VALLEY Dev. Corp	X	
Gary Willis	Montana Power Co.	X	
Jim Jensen	METC		X

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

Informational Meeting in Huntley MT

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. Informational
DATE 4/22/91 SPONSOR(S) Hearing

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jackie Stearns	Huntley, MT			
Monica Lindgren	Huntley, MT			
John Scott	Ballantine			

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

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

al Esquivel

COMMITTEE

BILL NO.

SB 472

122/91

SPONSOR (S)

Sen Mazurk - Watel Compact

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
James	MARA - Longview	✓	
James H. Henson	Diet 100	✓	
W. T. T. T. T.	RWRCC	✓	
W. Pennington	B/A	✓	
A. A. A.	Fed. Neg Team	✓	
W. H. H.	Mont. Atty Gen	✓	
W. Wilson	Northern Chapmen Tribe	✓	
W. C. C.	RWRCC	✓	
W. B. B.	DRR + C	✓	
W. K. K.	HO 99		✓
W. L. L.	HQ 9		✓

E SUPPORT

WE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 FILE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

FORMS