

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Lawrence Stimatz, on February 11, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: Steve Doherty (D)

Staff Present: Michael Kakuk (EQC).
Roberta Opel, Secretary

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

Announcements/Discussion: None

HEARING ON SB 265

Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, provided committee members with his amendments to SB 265. (EXHIBIT #1). The bill clarifies who owns water that is salvaged, Grosfield explained. SB 265 establishes within the statutes that the owner of the water right is the owner of water that he salvages, said Grosfield. The burden is on the appropriator to prove that he is truly saving the amount of water he claims, Grosfield noted.

Proponents' Testimony:

Ed Lord, Montana Stockgrowers Association, appeared in support of SB 265 and submitted an amendment to the bill's Statement of

Intent. (EXHIBIT #2).

Gary Fritz, Department of Natural Resources and Conservation (DNRC) told the committee that SB 265 was being introduced at the request of the governor as it is a product of the state water plan. (EXHIBIT #3).

Holly Franz, on behalf of Montana Power, appeared in support of SB 265 which supports the use of "better efficiencies of water." Franz stated that she felt there was an ambiguity in the definition of salvaged water. Franz said the bill should not allow an appropriator to use water that was previously returned to the source of supply. In agricultural use of water, a large part of that water returns back to the source of supply and is used by subsequent appropriators (commonly called return flows). "I don't believe this is the intent of this bill," Franz stated. Franz's suggested to the committee that the language used in SB 265 is not the language water attorney's are accustomed to using. Franz suggested inserting the phrase that if you take water that otherwise would be lost and put that water to beneficial use, then you should be entitled to that water. (Franz did not provide a copy of this amendment).

Ted Doney, an attorney with Doney and Thorson Law Firm, told the committee he specialized in water law and was appearing in support of SB 265 on his own behalf. Doney stated that he shared the concerns of Franz and felt there needed to be statutes adopted that would allow people to salvage drainage and waste water. Doney stood in support of Franz's proposed amendment which he said would clarify the definition of the word salvage so that drain and waste water, rather than return flow, would be incorporated.

Jo Brunner, Montana Water Resources Association, appeared in support of SB 265 and the amendment proposed by Franz.

Stan Bradshaw, Montana Trout Unlimited, presented an amendment to SB 265 to committee members. (EXHIBIT #4). Bradshaw also offered support of the amendment by Franz.

Scott Snelson, Montana Wildlife Federation, stated SB 265 was a "very good law to hold instream water rights".

Lorraine Gillies, Montana Farm Bureau Federation, testified in support of SB 265. (EXHIBIT #5).

Opponents' Testimony:

There were no opponent's to SB 265.

Questions From Committee Members:

Senator Hockett asked why there was a 10 year period objection period in Ed Lord's amendment. Lord explained that time period was consistent with current leasing time spans.

Chairman Stimatz asked Lord if he had any technical data or books on return flow and the length of time return flow might take. Lord told the committee that every situation differed. In some cases it may take a month for water to travel underground and in other cases it may take two days.

(Ted Doney provided a presentation on water runoff and irrigational situations to the committee). The purpose of SB 265 is to make it clear that an appropriator can capture drainage and waste water (NOT the return flow) and put it back to use, Doney said.

Senator Keating asked for the DNRC's response to the presentation by Doney. Gary Fritz, DNRC, told the committee that he was glad the question about the amendments presented by Holly Franz were raised because they presented the fundamental policy decision that the legislature will have to make. These amendments would only allow an irrigator to salvage water that is otherwise irretrievable. This amount of water is typically a very, very small amount, said Fritz. By accepting those suggested amendments, Fritz said, you will be allowing irrigators the right to claim on a very small amount of salvaged water. DNRC has chosen to write this bill, Fritz said, to allow an irrigator to salvage not only the water irretrievably lost through evaporation or deep groundwater but also to salvage this return flow as long as others are not adversely impacted. (Fritz presented amendments with the same wordage as those proposed by Senator Grosfield).

Closing by Sponsor:

Senator Grosfield told the committee that the amendment offered by Franz and Doney "doesn't quite solve the problem because it doesn't allow those irrigators to lease that water." Grosfield added that he was "not enthusiastic" about the amendments offered by Stan Bradshaw.

HEARING ON SB 266Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, told the committee that SB 266 defines the term groundwater as any water beneath the ground's surface and also clarifies the recording of water rights with respect to county clerk's and recorder's. Grosfield distributed amendment's to the committee. (EXHIBIT #1).

Proponents' Testimony:

Gary Fritz, Department of Natural Resources and Conservation (DNRC) told the committee that the bill was at the request of the DNRC. Fritz stated that there had been "confusion" regarding the terms surface water and groundwater which SB 266 would help to clear. Another change within the bill in which the DNRC no longer providing counties with water rights information is based on recent experience with county clerk's who stated they did not know how to refer to the information. Fritz said people seem to be going to the water resource field offices rather than the county courthouse to receive this information.

Lorraine Gillies, Montana Farm Bureau Federation, appeared in support of SB 266. (EXHIBIT #3).

Jo Brunner, Montana Water Resources Association, supported SB 266.

Holly Franz, on behalf of Montana Power, told the committee there were parts of the bill she would support and parts she would not support. She was specifically concerned with wells put in along rivers that will eventually impact surface users.

Opponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, told the committee he could not support SB 266 in its entirety because of some drafting language. Bradshaw said he was concerned about the interests of a landowner (downstream) who did not have a water right but whose land could be adversely affected by a diversion that was put in dealing with a claimed water right.

Scott Snelson, Montana Wildlife Federation, stated the federation supported the majority of the bill but did have some concern about the definition of groundwater found within the bill.

Questions From Committee Members:

Senator Hockett inquired about the backlog of reviewing permit issuances to make sure certified copies of water use are being turned in. This bill would not require the permit holder for permits already issued to go back and file for certification, Fritz said. The DNRC would still have to work through the backlog, he added, but SB 266 would prevent any further backlog by requiring the permittee to certify how the water project was put into place.

Closing by Sponsor:

Senator Grosfield told the committee he felt SB 266 was straightforward and did not make any substantial changes in

Montana water law.

HEARING ON SB 225

Presentation and Opening Statement by Sponsor:

Senator Gage, District 5, presented SB 225 to the committee.

Proponents' Testimony:

Jim Nelson, member of the Board of Oil and Gas appeared in support of the bill. The bill will now require proper public notification for meetings of the board, Nelson said.

Doug Abelin, Northern Montana Oil and Gas, supported SB 225.

Opponents' Testimony:

There were no opponents to SB 225.

Questions From Committee Members:

Chairman Stimatz asked how often the Board of Oil and Gas would meet. Nelson stated the board met every six to seven weeks.

Closing by Sponsor:

Senator Gage on discussion of SB 225.

EXECUTIVE ACTION ON SB 225

Motion:

Motion by Vice Chairman Weeding that SB 225 DO PASS.

Discussion:

There was no discussion on SB 225.

Amendments, Discussion, and Votes:


Motion by Senator Keating to place SB 225 on the Consent Calendar.

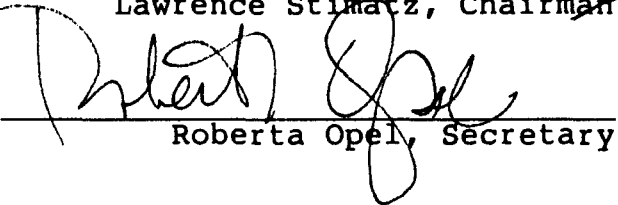
Recommendation and Vote:

Both motions by Senator Keating and Vice Chairman Weeding carried unanimously. SB 225 was placed on the Consent Calendar.

ADJOURNMENT

Adjournment At: 5:00 p.m.


Lawrence Stimatz, Chairman


Roberta Opel, Secretary

LS/ro

ROLL CALL

Natural Resources COMMITTEE

DATE 2-11-91

52nd

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson			✓
Senator Bianchi	✓		
Senator Doherty			✓
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman, Stimatz	✓		

Each day attach to minutes.

DATE 2-11-91

COMMITTEE ON Natural Resources DATE _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Eugene Lewis Hrosgafel				
Mandrel Palmer	SF 7			
Norvin Barber	A P A	265 266	C C	
Syl Gurfeld	self			
Mary Sampson	self			
Stan Brakeman	MTU	265 266	(amended)	V
Kirk Baker	Montana Public Util. Assoc.	268	V	
Ed Lord	MSGH & S	265	V	
Lorraine Gillies	Montana Farm Bureau	265 266	V	
Chuck Rein	SGCPA	265	V	
Nancy Epper				
Jim Nelson	Board of Oil & Gas	225	V	
Jr Brown	MAPA	265 266	C	
Holly Franz	MT Power Co.	265 266	V (with amendment)	
Scott SNELSON	MT Wildlife Federation	265 266	V	V
Doug ABELIN	N. MONTANA OIL & GAS	229	V	

(Please leave prepared statement with Secretary)

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE

2-11-91

BILL NO.

SB 265

Amendments to Senate Bill No. 265
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 11, 1991

1. Title, line 8 through line 10.

Following: "WATER;" on line 8

Strike: "ESTABLISHING" on line 8 through "FORFEITED;" on line 10

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-11-91

BILL NO. SB 265

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
AMENDMENTS TO SENATE BILL NO. 265

1. Title, lines 8 through 10

Following: "WATER;"

Strike: "ESTABLISHING" on line 8 through "FORFEITED;" on line 10

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2-11-91

BILL NO. SB 265

ED LORD, RANCHER
MONTANA STOCKGROWERS ASSOCIATION
TESTIMONY ON SENATE BILLS 265
February 11, 1991

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

I AM TESTIFYING IN SUPPORT OF SENATE BILL 265, BUT RESPECTFULLY SUBMIT THE FOLLOWING AMENDMENT TO THE STATEMENT OF INTENT, BEGINNING ON LINE 22:

"THE LEGISLATURE FURTHER DIRECTS THE DEPARTMENT OF NATURAL RESOURCES TO ISSUE TEMPORARY PERMITS TO APPROPRIATE SALVAGED WATER FOR A PERIOD OF 10 YEARS. AT THE END OF THE 10-YEAR PERIOD, THE PERMIT WILL NOT BE MADE PERMANENT IF ANY OTHER APPROPRIATOR SUBMITS EVIDENCE OF ADVERSE EFFECTS TO THEIR RIGHTS THAT HAVE NOT BEEN CONSIDERED PREVIOUSLY. IF NEW EVIDENCE IS SUBMITTED, A NEW PERMIT AUTHORIZATION MUST BE OBTAINED ACCORDING TO THE REQUIREMENTS OF 85-2-402."

AGAIN, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON SENATE BILL 265 AND WE URGE YOU TO VOTE "DO PASS" ON SENATE BILL 265 WITH THE AMENDMENT.

LC 0906

SB 265

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

February 11, 1991

DATE 2-11-91
BILL NO. SB 265

By request of the Governor:

A Bill for an Act entitled:

"An Act clarifying the right to beneficially use, sell, or lease salvaged water; defining "salvage"; providing criteria for approval of changes in appropriation rights involving salvaged water; establishing the period of non-use after which the right to salvaged water is forfeited; amending sections 85-2-102 and 85-2-402, MCA."

Purpose

The purpose of this bill is to provide an incentive for water conservation by clarifying that water users retain the right to the water they salvage. The bill would provide the appropriator with the options of using the salvaged water for any beneficial purpose, selling it to another individual for any beneficial use, or leasing it for instream purposes under the leasing study.

Background

This legislation is recommended by both the "Agricultural Water Use Efficiency" and "Drought Management" sections of the State Water Plan. As such, the concept of water salvage has undergone extensive public review and comment over the last three years.

To salvage water, a water right holder must obtain state approval and follow the same procedure used by any other appropriator desiring to change his appropriation right. Other appropriators have the right to object, and the use of salvaged water may not adversely affect another water right user from the source of supply.

An important part of considering a water right change application involving salvaged water is determining the amount of water that is salvaged. This bill places the burden of proof upon the applicant to show that water saving methods will salvage the amount of water claimed.

Implementation

This bill leaves it to individual water users to apply for a water right change involving salvaged water. The DNRC is responsible for administering existing laws governing water right change proceedings.

Fiscal Impact

Hearing costs could increase for complicated change applications involving salvaged water. It is difficult to predict how many such applications would be received. About \$5,000 in new costs related to processing an additional 4 change applications per year. In addition, another \$2,750 in start-up costs related to rules adoption and forms revision and printing are projected for the first fiscal year.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 2-11-81
BILL NO. SB 265

SENATE BILL 265
Proposed Amendments to SB 265
Proposed by Montana Trout Unlimited

Page 2, Line 10, strike "lease", and insert in its place "TRANSFER".

Page 2, Line 11, strike "." and insert "OR AS OTHERWISE EXPRESSLY AUTHORIZED BY LAW."



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

2-11-91
SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 3-11-91

BILL NO. SB 265

BILL # SB 265; TESTIMONY BY: Lorraine Gillies

DATE 2-11-91; SUPPORT Support; OPPOSE _____

Mr. Chairman, members of the Committee:

For the record, I am Lorraine Gillies, representing Montana Farm Bureau.

We speak in support of SB 265 as a means of giving definitive wording in regard to the right of leasing or selling salvaged water, making clear the appropriation rights to salvaged water. The definition of salvaged water, and also the requirements are clearly and satisfactorily stated.

We urge the committee give do-pass recommendation to SB 265.

Thank you.

SIGNED: _____

Amendments to Senate Bill No. 266
First Reading Copy

1
2-11-91
SB 266

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 19, 1991

1. Page 10, line 23.

Following: line 22

Insert: "(3) A person has standing to file an objection under
this section if the property, water rights, or interests of
the objector would be ~~adversely~~ affected by the proposed
appropriation."

DATE 2-11-91

BILL NO. SB 266

Amendments to Senate Bill No. 266
First Reading CopyRequested by Senator Grosfield
For the Committee on Natural ResourcesPrepared by Michael S. Kakuk
February 11, 1991

1. Title, line 8.
Following: line 7
Strike: "PERMIT EXCEPTIONS"
Insert: "OBJECTIONS"
2. Title, line 11 through line 13.
Following: "APPROVALS;" on line 11
Strike: "INCLUDING" on line 11 through "AUTHORIZATION;" on line 13
3. Title, line 16.
Following: "AN"
Strike: "IMMEDIATE"
Following: "AND"
Strike: "A RETROACTIVE"
Insert: "AN"
4. Page 10, line 23.
Following: line 22
Insert: "(3) For an application for a reservation of water, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-316 are not met."
5. Page 29, line 8.
Following: "Section 13."
Strike: "Retroactive applicability"
Insert: "Applicability"
6. Page 29, line 9 through line 15.
Following: line 8
Strike: "(1)" on line 9 through "(2)" on line 15
7. Page 29, line 16.
Following: line 15
Strike: "professional engineer"
Insert: "person with experience in the design, construction, or operation of appropriation works,"
8. Page 29, line 16 through line 17.
Following: "apply"
Strike: "retroactively" on line 16 through "1-2-109," on line 17
9. Page 29, line 17 through line 18.
Following: "permits" on line 17
Strike: "for" on line 17 through "on" on line 18
Following: "and" on line 18

Strike: "to"

10. Page 29, line 21.

Following: "effective"

Strike: "on passage and approval"

Insert: "July 1, 1991"

LC 916

SENATE BILL 266

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

February 13, 1991

By request of the Department of Natural Resources and Conservation:
A Bill for an act entitled:

"An Act revising the Montana Water Use Laws; defining the term "groundwater"; clarifying objections; making permissive and authorizing fees for the submission of department records of water rights to the county clerk and recorder; requiring the verification of completions of permits and change approvals; amending sections 85-2-102, 85-2-113, 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-402, 85-2-424, and 85-2-501, MCA; repealing section 85-2-317, MCA; providing a retroactive applicability and an effective date."

Purpose

The purpose of this bill is to improve the management of water resources in Montana by amending the water use laws in a variety of ways.

Background, Proposed Changes, and ImplementationDefining Groundwater

The proposed definition of "groundwater" is to clearly and precisely define groundwater and surface water for the purpose of administration of the Montana Water Use Act. If groundwater is hydrologically connected to surface water, then statutory and administrative requirements for surface water must apply. This requires the Department of Natural Resources and Conservation and/or the water user to determine whether the groundwater is hydrologically connected to surface water. The proposed definition would reduce the amount of technical and legal judgement necessary for administering and interpreting the Montana Water Use Act.

Water Rights Records

The proposed amendment is to eliminate the mandatory requirement of quarterly and annual reports of water right permits, certificates, and transfers to the county clerk and recorders as well as transfer reports to the chief water judge. The reports would instead be provided as requested and for a fee to cover the department costs.

The water rights reports currently provided to the 56 county clerk and recorders are seldom used by the public and are expensive to produce.

Although the Department of Natural Resources and Conservation has assisted each county in the use of the reports, most of the counties do not feel capable, nor do they have the time to spend helping the public research the water right records and reports. The counties often direct the water users to one of the Department's nine local water resources field offices or to the central office in Helena where the water right records appurtenant to a given area are located with individual detailed information and assistance available.

The chief water judge will continue to receive this information under an administrative rule adopted by the Montana Supreme Court.

Objections

Anytime amendments are made to the criteria for water right permits in 85-2-311 MCA, or water reservation in 85-2-316 MCA, or change authorizations in 85-2-402 MCA, corresponding changes must be subsequently made to 85-2-308 MCA describing the contents of an objection filed against the proposed application. Simply referencing 85-2-311, 316, and 402 MCA in 85-2-308 MCA would eliminate the requirement for duplicative wording each time the criteria is modified by the legislature.

Project Completion Notices

The Department of Natural Resources and Conservation does not have sufficient staff to reconcile water right permits, and change authorizations with actual development. This needs to be done and kept current so that the water right records are accurate. The current backlog this will take 10-15 years to complete.

To help resolve this problem, the proposed amendment would require the owner of the water use permit or change authorization to submit certified information concerning actual development. The information would have to be certified and completed by a person with experience in the design, construction, or operation of appropriation works.

Groundwater Appropriations

The Department proposed to repeal Section 85-2-317, MCA. It requires legislative approval to appropriate more than 3,000 acre-feet of groundwater for all uses except municipal and irrigation of cropland. The original purpose of Section 85-2-317, MCA was to prevent groundwater speculation and diversion of large quantities of groundwater out-of-state.

The reasonable use criteria outlined in Section 85-2-311, MCA, along with the "clear and convincing" burden of proof, provides clear legislative policy for protection for existing water rights against large and sometimes speculative new appropriations of water.

Fiscal Impact

None.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

EXHIBIT NO. 3
DATE 2-11-91
BILL NO. SB 266

BILL # SB 266 ; TESTIMONY BY: Lorraine Gillies

DATE 2-11-91 ; SUPPORT Support ; OPPOSE _____

Mr. Chairman, Members of the committee:

For the record, I am Lorraine Gillies, representing
Montana Farm Bureau.

We stand in support of SB 266. The clear & concise
definition of ground water is to the point and the bill
generally revises the original bill to be more precise
and understandable.

Thank you.

SIGNED: _____