

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By Senator Greg Jergeson, on February 20, 1991,
at 3:00 P.M.

ROLL CALL

Members Present:

Greg Jergeson, Chairman (D)
Francis Koehnke, Vice Chairman (D)
Gary Aklestad (R)
Thomas Beck (R)
Betty Bruski (D)
Gerry Devlin (R)
Jack Rea (D)
Bernie Swift (R)
Bob Williams (D)

Members Excused: None

Staff Present: Doug Sternberg (Legislative Council).

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

Announcements/Discussion: None

HEARING ON SENATE JOINT RESOLUTION 22

Presentation and Opening Statement by Sponsor:

Senator Steve Doherty, District 20, stated he is presenting SJR 22 which requests an interim study to develop a state policy to encourage use and production of ethanol products and other liquid fuels in Montana. Those types of products are derived from agricultural and timber products. The resolution presents good reasons why there should be concern in doing something about ethanol-based fuels. A number of ethanol bills have been presented because the idea of ethanol has been around for some time, but they must find out exactly what the barriers and obstacles are to making the production a reality. He stated his interest lies in the fact that anything that can be done to add value to Montana's agriculture products is important; they would like to have a plant in Great Falls, and it may even result in having a packing plant again in Montana. He indicated that Japan has reduced its reliance on imported oil, and the Japanese economy is twice as energy efficient as America's, using about

30% less energy to fuel its homes, cars and appliances. They are doing something about energy efficiency, and it is his belief we need to also do something. He believes the study will put it all together.

Proponents' Testimony:

CHARLES YARGER, Past Chairman of the Northern Plains Resource Council, stated he is testifying on behalf of that organization. He read and presented his written testimony to the committee (Exhibit #1).

Mr. Yarger also advised that Mr. Al Kurki, Alternative Energy Resources Organization (AERO) was unable to remain for the hearing, but indicated that AERO also supports this resolution.

DON STERHAN, Business Consultant, Helena, stated he is representing Alcotech Partnership which is Montana's sole producer of ethanol at the present time. He believes that the bill, as written, and the intent of the sponsors is very sound. He sees this as an opportunity to explore the potentialities surrounding ethanol and its various markets, as well as a chance to identify barriers and impediments that may exist. He believes their goal can only be achieved through the advisory committee. He cautioned that the committee make sure that the private sector is well represented on that advisory committee so that the "real world" regarding the realities of the ethanol and other alternative fuel industries is blended with state government and with the optimum goals and objectives of any industry in a growth stage. He concluded by stating they lend their support to the joint resolution, and he again cautioned that a strong advisory committee be appointed.

KAY NORENBERG, Women Involved in Farm Economics, advised that their group wished to support this resolution. As a point of interest, she stated WIFE organized a convoy twelve years ago to Washington, D.C. using ethanol. This indicates it has been around for a long time, but it does not seem to be moving very fast in this state.

BOB STEPHENS, Montana Grain Growers, stated they are here to support this resolution. He, personally, had an interest in a ethanol plant in 1980-81. It was a guess and go project, and he believes a study like this would be worthwhile. He urged support of the committee.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Devlin asked if the resolution addresses the incentive levels that we have provided this industry.

Senator Doherty responded that he believed it was covered on page 2, lines 12-19, of the resolution.

Senator Rea asked why only 10% of ethanol can be used rather than 20%. Don Sterhan advised that the 10% blend has been accepted nationwide. He believes it comes down mainly to a cost factor, but it also works best from a performance level.

In response to a question by Senator Devlin, Mr. Yarger informed that he gets his supply of ethanol from the Cenex Station in Circle. They have carried it for about six years. It is blended in Glendive, then it is carried by tanker to Circle. Mr. Sterhan further advised that up in that area Cenex receives the product from North Dakota.

Closing by Sponsor:

Senator Doherty stated that ethanol has held so much promise for so many years and seems to make so much sense, but something must be wrong. He believes a plan must be made and a commitment made to that industry if we are ever to improve energy efficiency and do something about adding value to some Montana products. He asked for the committee's concurrence on SJR 22.

HEARING ON SENATE BILL 409

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, District 23, advised that he is presenting SB 409 at the request at the Department of State Lands. He presented to the committee some amendments to the bill (Exhibit #2). By way of background, he informed that over the past three years the Department of State Lands has been named as defendant in about 30 lawsuits foreclosing mortgages on farms and ranches. They are brought into these actions because of the fact that a landowner who has mortgaged his farm or ranch also has a state agricultural grazing lease on land owned by the state. The Department has no interest in these lawsuits since they are essentially creditor-debtor disputes, but they must get involved, make an appearance, and defend their position. This bill attempts to change the way security interest is created in leases of state lands. Under the present section, a farmer or rancher can mortgage his interest in the lease. This bill would prohibit the right of a farmer or rancher to mortgage or pledge, but rather an assignment of the lessees' interest in the lease as security of the loan could be made. It would eliminate the necessity of the Department being named as a defendant in these

lawsuits. A mortgager would file proof of assignment with the Department. The Department would then transfer the lease to the person who had foreclosed, assuming that person had met the requirements.

Proponents' Testimony:

LON MAXWELL, Staff Attorney, Department of State Lands, advised that he has been in that position for about one year and he observed that the suits being filed were really an unnecessary problem. By changing the mortgage procedure, the Department of State Lands will not end up as a defendant in a lawsuit when someone files a mortgage foreclosure. According to Mr. Maxwell, it would save much work for the Department, and he urged support of SB 409. The Bill in no way intends to take away anyone's right in that the leasehold interest can still be used as collateral. Instead of putting it on a mortgage, which goes to the courthouse and gets recorded, it will be put on an assignment filed with the Department. He presented written testimony setting forth the reasons for the legislation, and proposals to correct this situation (Exhibit #3).

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Aklestad asked if the banks actually put a value on the land, or do they take the mortgage so they can hold the unit together. Senator Mazurek stated that would be the same function under this bill. It will not impede the ability of a bank to look at this whole thing as a unit. The leasehold interest will be assigned to the bank as security for the loan, and the record of that will be held with the Department of State Lands.

Senator Aklestad wished confirmation that the lease land is not severed from the rest of the property at the time of foreclosure, and the bank or whoever foreclosed would pay the rentals on the land until something was done with the land. Senator Mazurek answered in the affirmative, adding that if it lapsed it would still be subject to all the normal rules.

Senator Williams asked what determined the amount the lending institution can loan. Mr. Maxwell informed that some bankers think the lease has some worth, but he did not know what value it had as collateral. Senator Mazurek stated he believed the bank would look at the ranch as an operating unit; part of that operating unit is the value of the lease land. They will not value the land in terms of the market value of the acreage, but rather look at the value of the unit.

Senator Beck asked what was the need for Section 2, (2). Mr. Maxwell informed that it is a clarification of constitutional law.

Senator Devlin asked if the lease terminates during the time the bank has it, would they have the preference to meet the bid. Mr. Maxwell advised that the lessee would still have the preference because he still has the use of the lease.

Senator Aklestad asked how improvements would be handled at the time of a foreclosure, and would the original lessee be compensated for improvements. Mr. Maxwell stated that the lenders acquire whatever interest the lessee had, including his interest in improvements. He added that is really a problem between the lender and the debtor more so than the Department.

John North, Department of State Lands, advised that would be a contractual matter between the bank and the lessee, and it should be stipulated at the time they sign the lease. If the lease happens to be canceled or expires, then there is an arbitration procedure.

Closing by Sponsor:

Senator Mazurek stated that he believed the committee members had scrutinized the bill pretty thoroughly. He reiterated that it is not intended to change substantively what goes on between the debtors and creditors, but rather it is to eliminate the need for the Department to participate in lawsuits where it actually should not be a defendant. He asked for the committee's favorable consideration of SB 409.

HEARING ON SENATE BILL 368

Chairman Jergeson turned the Chair over to Vice-Chairman Koehnke.

Presentation and Opening Statement by Sponsor:

SENATOR GREG JERGESON, District 8, chief sponsor of SB 368, advised that the Water Resources Association and one of the Board members, an irrigated farmer in his county, approached him to see if he would be interested in sponsoring this bill. The primary purpose of the bill is to provide for timely resolution of conflicts over the use of water. The Department would investigate rapidly and seek, if necessary, the proper temporary or permanent injunction to resolve the problem. He stated he would also offer amendments to provide for disposition of fines that are contained in Section 2 (2).

Proponents' Testimony:

Jo Brunner, Executive Secretary, Montana Water Resources Association, advised that it has been a lengthy and tiring

process to get this piece of legislation to the point where MWRA believes it will be able to accomplish their purpose - a timely and fair solution to misuse of water rights. She urged the committee to give it careful consideration, and presented and read her written testimony (Exhibit #4).

MAX MADDOX, Chinook Irrigation District and a member of the Board of Directors, Montana Water Resources Association, was not present at the hearing but requested Ms. Brunner to submit his written testimony to the committee in support of SB 368 (Exhibit #5).

DON MacINTYRE, Attorney, Montana Department of Natural Resources, advised that this bill is the result of a request of the Department of Natural Resources but they have worked with people who are interested in this bill and agree with it. He stated that the Department is not interested in being any kind of a police force to "take on" irrigators. They find the general problem is that in the case where they have issued permit, the affected water user complains because of that operation. The Department now has the authority to revoke that permit, but to go through that process takes some time and does not give the existing water user the relief they are seeking. This bill would allow the Department of Natural Resources to go into court and get a temporary restraining order against that particular permit holder and prevent use of the water during that irrigation season. They receive 10 to 12 complaints per year in each of nine field offices. Out of those 100 complaints they would expect to be involved in court action approximately five times. He stated they will not be hiring a person that is not a FTE at the present time. It will be a question of prioritizing programs and using existing personnel. He presented written testimony from the Department of Natural Resources and Conservation (Exhibit #6).

STAN BRADSHAW, Montana Trout Unlimited, stated he is in support of SB 368. He believes that good water management has benefits for everybody. It is his opinion the civil penalty has some value because it provides an incentive for the recalcitrant who would use water until someone stops him. With this provision they are on notice that if they take that path, it will cost them.

GARY SPATH, Montana Coalition of Water Users, a coalition of water users in the Bitterroot, Dillon-Beaverhead, Madison County area, Deer Lodge area, and Big Timber-Sweetgrass County area, stated that on behalf of that coalition he would like to record support for SB 368. He believes it clarifies the Department's responsibility and authority; gives the water user another tool in the event there is a violation of water rights, and is a good piece of legislation.

1 INTRODUCTION BY *Senate Bill No. 409*
 2 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
 3
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 6 ASSIGNMENT OF LEASES OF STATE LANDS AS MORTGAGE SECURITY;
 7 *MORTGAGES AND PLEDGES OF LEASES OF*
 8 *ELIMINATING THE NECESSITY TO HAVE THE DEPARTMENT OF STATE*
 9 *INTERESTS IN STATE LANDS,*
 10 *LANDS IN FORECLOSURE ACTIONS,* AMENDING SECTIONS 77-6-401,
 11 77-6-403, AND 77-6-404, MCA; AND REPEALING SECTION 77-6-402,
 12 MCA."
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15
 16 **Section 1.** Section 77-6-401, MCA, is amended to read:
 17 "77-6-401. Pledge-or-mortgage Assignment for security
 18 purposes of leasehold interest in state lands. Any A lessee
 19 of a grazing or agricultural lease of state lands *may* ~~be~~ *hereby* ~~authorized to~~ *not* ~~pledge~~ *pledge* ~~the lease or mortgage~~ *his leasehold interest,*
 20 ~~assign for security purposes his leasehold interest in said~~ *but he may*
 21 ~~the lands as part of a transaction involving the mortgage of~~
 22 ~~private lands. The assignment must be on a form prescribed~~
 23 ~~by the department and must have attached to it a copy of the~~
 24 ~~mortgage of the private lands. The assignment applies to the~~
 25 ~~lease and any renewal of the lease as long as the assignee~~
 26 ~~remains the lessee or until a release or proof of payment of~~
 27 ~~the underlying debt is filed pursuant to 77-6-404. The~~

1 assignment becomes effective when proof of foreclosure or
 2 conveyance is filed pursuant to 77-6-403. After an
 3 assignment is filed, the department shall mail to the
 4 assignee a copy of each notice of delinquency, notice of
 5 competitive bid, and notice of cancellation."

6 **Section 2.** Section 77-6-403, MCA, is amended to read:
 7 "77-6-403. Transfer of lease. Upon (1) Except as
 8 provided in subsection (2), upon due proof of--the
 9 acquisition-of-such--lease--or--leasehold--interest--by--any
 10 person--under--or--pursuant--to--such--pledge--agreement--or
 11 mortgage that the assignee has acquired through foreclosure
 12 or conveyance the private lands covered in the mortgage
 13 accompanying the assignment, the board shall transfer said
 14 the lease to said person the assignee who shall thereupon
 15 be is subject to all the conditions, obligations, and
 16 liabilities and entitled to all the rights and privileges
 17 provided for in said the lease.

18 (2) Nothing in this section may be construed to require
 19 the board to complete the transfer of a lease to an assignee
 20 whom the board considers unqualified as a lessee of state
 21 lands."

22 **Section 3.** Section 77-6-404, MCA, is amended to read:
 23 "77-6-404. Proof of termination or release of
 24 satisfaction of pledge or mortgage to be filed. The lessee
 25 assignee of any grazing or agricultural lease of or

INTRODUCED BILL

SB 409

assigned
~~pledged~~

1 leasehold interest in state lands which that is ~~pledged~~
2 ~~mortgaged~~ as provided in this part shall, within 30 days
3 after payment of the indebtedness secured thereby or within
4 30 days after the pledge agreement ^{or Mortgage} is terminated ~~at the~~
5 ~~leasehold interest is released from the mortgage~~, file with
6 the department proof of that fact. ~~If the assignee fails to~~
7 ~~file the proof within the time required by this section, the~~
8 ~~lessee may file the proof anytime thereafter."~~

9 NEW SECTION. Section 4. Repealer. Section 77-6-402,
10 MCA, is repealed.

11 NEW SECTION. Section 5. Saving clause. [This act] does
12 not affect rights and duties that matured, penalties that
13 were incurred, or proceedings that were begun before [the
14 effective date of this act].

-End-

Amendments to Senate Bill No. 409
First Reading Copy

Requested by Senator Mazurek

Prepared by Becky Barnhart
February 20, 1991

1. Title, lines 7 and 8.

Following: "ELIMINATING" on line 7

Strike: remainder of line 7 through "ACTIONS" on line 8

Insert: "MORTGAGES AND PLEDGES OF LEASEHOLD INTERESTS IN STATE
LANDS"

2. Page 1, line 17.

Following: "may"

Insert: "not"

Following: "mortgage"

Strike: "or"

Insert: "his leasehold interest, but he may"

3. Page 2, line 23.

Strike: "release of"

4. Page 3, lines 1 and 2.

Following: "is" on line 1

Strike: "pledged or mortgaged"

Insert: "assigned"

5. Page 3, lines 4 and 5.

Following: "agreement" on line 4

Insert: "or mortgage"

Following: "terminated"

Strike: remainder of line 4 through "mortgage" on line 5

TED DONEY, attorney in private practice in Helena, specializing in water law, advised he is representing only himself because of his great interest. He stated he testifies frequently on water law bills. In his opinion, the "guts" of this bill is on page 2, line 8, in the word "must". It is up to the court to grant the injunctions and the TRO. The Department will have a tool it does not have now to enforce violations of the water laws, and much more rapidly.

KAY NORENBURG, Wives Involved in Farm Economics, advised that she is a dry land farmer and does not know much about irrigation, but her group would like to go on record in support of SB 368.

LORRAINE GILLIES, Montana Farm Bureau, presented written testimony in support of SB 368 (Exhibit #7).

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Swift asked if the number of ditch riders and commissioners would have to be increased. Mr. Doney said that on adjudicated streams like in Senator Swift's area, he does not anticipate this being used very often. Mr. Doney stated this bill is for non-decreed streams.

Senator Aklestad asked what would be the time frame - three days as far as the voluntary compliance, then how long does it take to get a TRO. Mr. MacIntyre replied that a temporary restraining order can be issued by the court the same day that it was requested. Senator Aklestad also asked what point in time does the \$1,000 fine take place. Mr. MacIntyre stated it would be made at the time the court determines there is a violation.

Closing by Sponsor:

Senator Jergeson stated that anything they do with water law is bound to affect somebody one way or the other, but he is in favor of those who have the strongest legal right to the use of water. It is his contention that if the water law means anything, and if having a senior right means anything, then a way must be found to expeditiously enforce the law in a timely manner. He stated that is what SB 368 is all about, and he urged adoption by this committee.

* * * * *

Senator Jergeson resumed Chairmanship of the committee.

Senator Jergeson requested Doug Sternberg, Legal Counsel, to explain the amendment. Mr. Sternberg stated the intent of the amendment is to make it clear that fines collected under Section 2 would flow into the Department's account rather than to the general fund of the county where the Court presides, which is the case under current law.

Senator Williams wondered if the district courts would be upset about this action since they are hurting for funds.

Senator Jergeson said there is a question of how often this procedure would ultimately be used, and it most probably would act, to a degree, as an incentive for people to make sure they are not using water illegally.

EXECUTIVE ACTION ON SENATE BILL 368

Amendments, Discussion, and Votes:

Senator Swift made a motion that the amendments for SB 368 be adopted. Those in favor - 9; opposed - 0. MOTION CARRIED.

Recommendation and Vote:

Senator Aklestad made a motion that SB 368 DO PASS AS AMENDED. Those in favor - 9; opposed - 0. MOTION CARRIED.

EXECUTIVE ACTION ON SENATE BILL 409

Amendments, Discussion, and Votes:

Senator Devlin made a motion that the amendments for SB 409 be adopted. Those in favor - 9; opposed - 0. MOTION CARRIED.

Recommendation and Vote:

Senator Devlin made a motion that SB 409 DO PASS AS AMENDED. Those in favor - 9; opposed - 0. MOTION CARRIED.

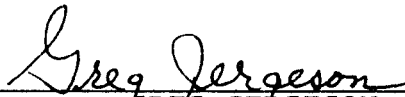
EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 22

Recommendation and Vote:

Senator Koehnke made a motion that SJR DO PASS. Those in favor - 9; opposed - 0. MOTION CARRIED.

ADJOURNMENT

Adjournment At: 5:00 P.M.



GREG JERGESON, Chairman



DOROTHY QUINN, Secretary

GJ/dq

ROLL CALL
AGRICULTURE COMMITTEE

DATE

2/20/91

52nd
LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. JERGESON	X		
SEN. KOEHNKE	X		
SEN. AKLESTAD	X		
SEN. BECK	X		
SEN. BRUSKI	X		
SEN. DEVLIN	X		
SEN. REA	X		
SEN. SWIFT	X		
SEN. WILLIAMS	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 21, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Joint Resolution No. 22 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 22 do pass.

Signed: Greg Jergeson
Greg Jergeson, Chairman

2-21-91
Am. Coord.

2-21-91
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 21, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 368 (first reading copy -- white), respectfully report that Senate Bill No. 368 be amended and as so amended do pass:

1. Title, line 6.

Following: "LAWS;"

Insert: "PROVIDING FOR DISPOSITION OF PENALTIES;"

Following: "85-2-114"

Strike: "AND"

Insert: ", "

Following: "85-2-122,"

Insert: "AND 85-2-123,"

2. Page 3, line 14.

Following: line 13

Insert: "(3) Fines collected by a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

Section 3. Section 85-2-123, MCA, is amended to read:
"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124 and 85-2-241, all fees and penalties collected under this chapter shall be deposited in the water right appropriation account established in 85-2-318. At Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Renumber: subsequent section

Signed: _____

Greg Jergeson, Chairman

Amd. Coord.

Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 21, 1991

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration Senate Bill No. 409 (first reading copy -- white), respectfully report that Senate Bill No. 409 be amended and as so amended do pass:

1. Title, lines 7 and 8.

Following: "ELIMINATING" on line 7

Strike: remainder of line 7 through "ACTIONS" on line 8

Insert: "MORTGAGES AND PLEDGES OF LEASEHOLD INTERESTS IN STATE
LANDS"

2. Page 1, line 17.

Following: "may"

Insert: "not"

Following: "mortgage"

Strike: "or"

Insert: "his leasehold interest, but he may"

3. Page 2, line 23.

Strike: "release of"

4. Page 3, lines 1 and 2.

Following: "is" on line 1

Strike: "pledged or mortgaged"

Insert: "assigned"

5. Page 3, lines 4 and 5.

Following: "agreement" on line 4

Insert: "or mortgage"

Following: "terminated"

Strike: remainder of line 4 through "mortgage" on line 5

Signed: _____

Greg Jergeson, Chairman

1991 2-21-91
Amd. Coord.

SB 221-91 4-0
Sec. of Senate

Northern Plains Resource Council

SENATE AGRICULTURE

EXHIBIT NO. #1

DATE 2/20/91

BILL NO. SJR #22

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

MY NAME IS CHARLES YARGER. I AM PAST CHAIRMAN OF NPRC.
I AM TESTIFYING ON BEHALF OF THAT ORGANIZATION.

I RAISE CATTLE AND I FARM. I HAVE BEEN USING ETHANOL ON
MY FARM FOR THE LAST FIVE YEARS. I USE IT IN CARS, PICKUPS,
TRUCKS, TRACTORS AND ALL MY STATIONARY MOTORS - FROM NEW
HONDA MOTORS TO OLD BRIGGS AND STRATTON MOTORS THAT MY
GRANDAD USED. I GET BETTER GAS MILEAGE. MY ENGINES RUN
CLEANER, SMOOTHER AND I HAVE HAD VIRTUALLY NO TROUBLE WITH
THEM. MY COST PER GALLON IS THE SAME AS NO LEAD AND A PENNY
A GALLON CHEAPER THAN REGULAR.

THE IMPORTANCE OF THIS RESOLUTION IS THAT IT SAYS THE
MONTANA STATE LEGISLATURE IS WILLING TO MAKE A BI-PARTISAN
COMMITMENT INVOLVING ALL INTERESTED PARTIES; LEGISLATORS,
PRODUCERS, CONSUMERS, INDUSTRY, ENVIRONMENTAL INTERESTS AND
AFFECTED STATE AGENCIES - TO ASK THE TOUGH QUESTIONS, FIND
OUT THE ANSWERS AND THEN DO SOMETHING ABOUT IT.

THE PRODUCTION OF ETHANOL ISN'T NEW. FROM 1978 THROUGH
1987 ETHANOL PRODUCTION GREW FROM 10 MILLION TO 900 MILLION
GALLONS.

THE PRODUCTION, DISTRIBUTION AND USE OF ALCOHOL PRODUCED
FROM GRAIN AND OTHER AG PRODUCTS AS A SUBSTITUTE FOR FOSSIL
FUELS IS NATIONAL SECURITY ISSUE - IT'S AN ENERGY POLICY AND
IT'S AN ECONOMIC DEVELOPMENT POLICY.

WE HAVE HUNDREDS OF THOUSANDS OF BRAVE YOUNG MEN AND WOMEN IN THE PERSIAN GULF BECAUSE A MAD MAN WANTS TO CONTROL A MAJORITY OF THE WORLD'S OIL RESERVES. WE CANNOT ALLOW THIS TO HAPPEN. WITHOUT FOSSIL FUELS, THIS NATION WOULD GRIND TO A HALT. WHILE WE ARE SWIMMING IN A SEA OF EXCESS GRAIN IN THIS COUNTRY, WE ARE BEING HELD HOSTAGE BY MIDDLE-EAST OIL. WE HAVE TO CHANGE THAT.

ENVIRONMENTALLY, THERE ARE MANY REASONS FOR BURNING ETHANOL. IT BURNS CLEANER THAN STRAIGHT GASOLINE. IT REDUCES POLLUTION. IT IS AN OCTANE BOOSTER THAT REDUCES CARBON MONOXIDE EMISSIONS BY UP TO 30%. THE CLEAN AIR ACT MANDATES THAT WE CLEAN UP OUR ACT AND OUR AIR, ESPECIALLY IN THE CITIES. IT'S AN ENERGY SOURCE THAT'S AVAILABLE, ABUNDANT, ENVIRONMENTALLY SAFE AND TOTALLY RENEWABLE.

AND FINALLY, THE PRODUCTION OF GRAIN ALCOHOL COULD BE ONE OF THE MOST SIGNIFICANT ECONOMIC POLICIES IN THIS STATE'S AND NATION'S HISTORY.

IN THE LAST FIVE YEARS WE'VE LOST 500,000 FAMILY FARMERS IN THIS NATION. OMB PREDICTS WE'LL LOOSE ANOTHER 500,000 IN THE NEXT FIVE YEARS. THIS IS PRIMARILY BECAUSE WE SELL GRAIN FOR LESS THAN WHAT IT COSTS TO PRODUCE IT. WE PRODUCE MORE THAN WE CAN CONSUME - OR SO THE EXPERTS SAY.

AS GOES THE ECONOMY OF FARMERS, SO GOES THE ECONOMY OF THE STATE AND THE NATION. WHEN FARMERS GO BROKE, BUSINESSES GO BROKE, BANKS GO BROKE, COMMUNITIES DRY UP AND THE STATE OF

MONTANA WONDERS WHERE IT WILL GET THE MONEY TO OPERATE.

WHO KNOWS? - IT MIGHT EVEN RAISE THE PRICE OF WHEAT.

THERE ARE AROUND 600 PEOPLE IN THE COMMUNITY I LIVE IN. IF WE RAISED THE PRICE OF WHEAT BY \$1.00 IT WOULD PUMP \$10 MILLION DOLLARS DIRECTLY INTO THAT COMMUNITY. THAT'S ECONOMIC DEVELOPMENT.

PRESIDENT BUSH IS PROPOSING A CHANGE IN USDA BUDGET FOR FISCAL YEAR 1992. ONE OF THE PROPOSALS IS THAT HE IS SEEKING A REMOVAL OF THE SPENDING LID ON EXPORT SUBSIDIES UNDER THE USDA'S ENHANCEMENT PROGRAM, INCLUDING AUTHORIZATION TO RAISE THE CURRENT YEAR'S SPENDING BY \$475 MILLION TO \$900 MILLION. WHAT THIS MEANS IS THAT THE TAX PAYERS OF THIS COUNTRY GIVE THE GRAIN TRADE \$900 MILLION TO EXPORT OUR SURPLUS WHEAT TO FOREIGN COUNTRIES. ONE OF THE ISSUES THAT COULD BE ADDRESSED IN A RESOLUTION SUCH AS THIS IS WHAT WOULD HAPPEN IF WE KEPT AT LEAST PART OF THIS GRAIN AND THE MONEY HOME TO BE INVESTED IN LOCAL ECONOMICS FOR THE PRODUCTION OF ETHANOL.

WHEN WE PRODUCE ENERGY FROM ALCOHOL WE DON'T HAVE TOXIC WASTE THAT WE DON'T KNOW WHAT TO DO WITH, WE DON'T HAVE INCINERATOR ASH THAT WE HAVE TO TRY TO DUMP SOMEWHERE ELSE.

WE HAVE INSTEAD, DISTILLERS DRIED GRAIN, A HIGHLY NUTRITIOUS FOOD ENHANCER WITH 40% PROTEIN AND 10% FIBER.

THE MASH CAN BE USED FOR LIVESTOCK FEE. THAT MEANS MORE FEEDLOTS, WHICH MEANS MAYBE WE CAN KEEP A PACKING PLANT IN THIS STATE. THE LIST GOES ON AND ON. IT ALL MEANS VALUE

ADDED JOBS, ECONOMIC DEVELOPMENT - MONEY - SPENT HERE,
INVESTED HERE AND THAT STAYS HERE.

WE NEED TO KNOW HOW MUCH WE CAN REDUCE POLLUTION AND OUR
DEPENDENCE ON FOREIGN OIL. WE NEED TO KNOW HOW MANY GALLONS,
WHAT'S THE DEMAND AND THE COST. HOW MANY JOBS, AND HOW MUCH
INCOME GENERATED FOR THE CITIZENS OF THIS STATE.

IF THIS RESOLUTION PASSES, I BELIEVE WE CAN HAVE THESE
ANSWERS. I ASK THAT YOU SUPPORT IT.

BUT IT DOESN'T DO ANY GOOD IF IT ISN'T FUNDED. AFTER YOU
VOTE TO PASS IT, I URGE YOU TO SUPPORT FUNDING OF THIS
RESOLUTION AS STRENUOUSLY AS WE WILL BE.

SINCERELY,

CHARLES YARGER

TESTIMONY OF LON MAXWELL, DEPARTMENT OF STATE LANDS

Senate Agriculture Committee

February 20, 1991

SENATE BILL 409

The purpose of these changes is to keep the department from becoming embroiled in foreclosure suits between its agricultural and grazing lessees and their lenders. This type of litigation is increasing, and the department must spend valuable time and resources in defense. However, the department has no real interest in what essentially are creditor/debtor disputes. The department's only concern is protecting the integrity of the school trust lands that become involved in the suits on account of mortgages of the lease-hold interest.

The department would not have to be named as a party to foreclosure actions if the leases were not mortgaged because then no encumbrance of the leasehold interest would appear on the land records and title foreclosure reports. Present law permits mortgaging of leases, so amendment is necessary to prevent mortgaging. The proposed changes eliminate lessee's authority to pledge or mortgage their state leases and create the substitute method of "assignment for security purposes." (Such label will distinguish these assignments from the assignments for use of the lease tract as provided by Section ~~77~~-6-208.) It should be emphasized that these changes are intended only to alter the method of encumbering a leasehold interest. Lessees may continue to offer their leases, and lenders could accept them, for whatever collateral value the parties deem them to have. This legislation does not alter the substantive rights of the parties.

As in past practice with mortgages, it is contemplated that these security assignments would only occur as part of a larger transaction involving the mortgage of private lands. The difference here is that the lender would not record a mortgage covering the lease but instead would file a security assignment with the department. There is no loss of protection for either a lessee or a lender by this change in procedure. Persons who deal subsequently with the lessee will not be harmed by the absence of notice of encumbrance of the lease in the land records, since the fact a state tract is involved is discoverable from the land records and such persons are always free to inquire of the department regarding the status of leases.

If these proposals become law it should be understood that the effect will be gradual. Doubtless there are many existing mortgages of state leases, and to the extent they are foreclosed the department will remain a necessary party to litigation. Over time, however, such mortgages will pass from the scene and the full benefits of this legislation will be realized.

For the information of this Committee, a check of the Department's files discloses that 31 foreclosure suits naming the Department as a party defendant have been filed within the past 5 years, with the majority of those within the last 3 years. 18 cases have been or are in state court, the other 13 in federal court. Due to the large amounts of money involved (average well into 6 figures, a few over 7), the number and nature of the parties, etc., even maintaining a "low profile" defense can be time consuming and expensive. By the simple device of changing the method of securing a state leasehold interest, SB 409 would eliminate the necessity of suing the Department in foreclosure actions.

The Department therefore urges your support for SB 409.



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

SENATE AGRICULTURE
EXHIBIT NO. #4

DATE 2/20/91

BILL NO. SB 368

Senate Agriculture Committee

February 20, 1991

SB368

Senator Jergeson

Support

Jo Brunner, Executive Secretary, Montana Water Resources Association.

It has been a lengthy and tiring process to get this piece of legislation to the point where MWRA believes we will be able to accomplish our purpose, a timely and fair solution to misuse of water rights. I hope that you will give it careful consideration.

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

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

While we have high hopes of such not happening, if it weren't for the intensive grilling I put several of the DNRC people through concerning the rules and regulations now in existence, the means they use for investigations of complaints, the problems they have with the present situations, we might not have gone forward with this bill, even though there usually is a great need for urgency in the problem we are addressing in the bill.

The SB368 amendments to 85-2-114 would allow the department, upon complaint, to accomplish an investigation, in compliance with the rules and methods in existence now, and upon determining that there could be a violation of water use, contact the person in question, and make reasonable attempts to obtain voluntary compliance. Should such efforts be unsuccessful, request the district court to issue a temporary, preliminary or permanent injunction to prevent the continuation of the violation.

It was not our intent to tie the departments hands by mandating perimeters for discussions as to the voluntary compliance. If it is a broken headgate, a measuring device not operating correctly, a plugged up culvert, they ought to be able to give the respondent a reasonable time to get his problems straightened out. If the investigation has determined with reasonable cause, that the respondent is diverting more water than he has a right to divert, or that he is wantonly wasting water, the effort must still be made to work it out and allow

compliance.

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

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

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

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

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

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

We do support the amendment for the allocation of the fines to the department to accomplish the necessary work. It has been suggested that to have such an account would encourage the Department to go out and harass the irrigators and perhaps even nit pick the users. To the contrary, we think that if one or two \$1,000.00 per day fines are assessed, there won't be very many mis-users unwilling to discuss the situation and do something about it.

It is our hope that having this change of law in place will indeed discourage intentional misuse of water rights.

Thank you.

SENATE AGRICULTURE
EXHIBIT NO. #5
DATE 2/20/91
BILL NO. SB 368

Senate Agriculture Committee

February 20, 1991

SB368

Senator Jergeson

Support

Testimony from: Max Maddox, Chinook, Montana, Chinook Irrigation District. Board of Directors, Montana Water Resources Association.

The need for an enforcement provision enabling the Department of Natural Resources to act in a timely fashion has been determined.

The key word is timely. The present process takes too long. In irrigated agriculture plant populations are high, therefore creating the need for adequate water on a timely basis. Late water placement can devastate a crop in days, not weeks.

If this process cannot be speeded up to protect the irrigators crop then perhaps this legislation is in vain.

I urge you to support this bill and our intent for quick resolution in regard to water disputes.

Thank you to the committee members and a special thanks to Senator Jergeson for carrying this bill for us.

Max Maddox

SENATE AGRICULTURE

EXHIBIT NO. #6

DATE 2/20/91

BILL NO. SB 368

SENATE BILL 368

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

February 19, 1991

A Bill for an act entitled:

"An Act establishing enforcement provisions for violations of the Montana Water Use Act; amending sections 85-2-114 and 85-2-122, MCA; and providing an immediate effective date.

Purpose

The purpose of this bill is to clarify the Department's responsibility and strengthen its ability to enforce water rights violations that adversely affect other water users. It's anticipated that the implementation of the bill will help reduce the escalating number of alleged violations, and thereby decrease the amount of staff time required to resolve such complaints.

Background

The Department has been receiving a significant and increasing number of water rights complaints each year. Many of these complaints are valid and represent meaningful injury to water users. Drought conditions exacerbate the severity of the complaints.

The use of water is more often a function of the location of water users on the stream and/or the aggressiveness of the water users, rather than a process of observing priority dates and/or beneficial uses. On some streams, the lack of water right enforcement leads to cooperation and shortage sharing; on other streams chaos and massive water chicanery result.

The Department is often contacted by water users who allege that they are being injured by other water users. The complaining parties expect the Department to enforce the water use laws and correct the alleged wrongdoing. However, the Department does not have the authority to administratively require a water right user to change or stop their illegal appropriation -- even though the Department frequently understands what is needed to correct the situation and is usually aware of the facts surrounding an alleged violation. The Department attempts to resolve complaints primarily through discussions with the involved parties. The Department rarely becomes involved in litigation to resolve complaints, because the Department cannot prove any irreparable harm to the department that would allow the court to issue a temporary injunction.

Water users would be more effectively served if the Department

convincingly demonstrated an ability to enforce and correct blatant violations. A strong enforcement program by the Department would serve as a deterrent to many water right violators, thereby reducing the number of complaints from injured parties.

Implementation

Under current law, the Department may petition the district court for relief in limited situations. If this bill is enacted the Department will be able to petition the district court for relief for any violation of the water rights laws set out in Chapter 2 of Title 85. Judicial enforcement will only occur after reasonable attempts have been made to obtain voluntary compliance. Voluntary compliance will be attempted through warning, conferences, negotiation or other reasonable discussion means.

The Department will be able to ask the district court to issue a temporary restraining order to immediately stop any violation that may be causing harm or injury. The Department may also ask the district court to issue preliminary restraining orders and permanent injunctions for violations of the water rights laws administered by the Department.

In addition the existing maximum possible penalties for violators will increase from \$500 to \$1,000 fine per violation, per day.

Fiscal Impact

The time and effort spent in responding to complaints will be reduced when complaints are resolved through administrative enforcement of the water right statutes. In this respect, staff resources used to investigate complaints, collect data and information, and appease disputing parties will be better directed to resolving issues through enforcement procedures. Some minimal costs to prepare and file legal documents may be incurred. Therefore, the fiscal impact is expected to be minimal.

However, if the Department is required to bring judicial action after trying to obtain voluntary compliance, fiscal impacts would be generated. The bill should be amended to eliminate this requirement.



MONTANA FARM BUREAU FEDERATION

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

SENATE AGRICULTURE

EXHIBIT NO. #7

DATE 2/20/91

FILE NO. SB 368

BILL # SJR 22 ; TESTIMONY BY: Lorraine Gillies

DATE 2/20/91 ; SUPPORT Support ; OPPOSE

Mr. Chairman, members of the Committee:

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

We support the precept of using renewable resources that are a product of the State of Montana to replace other, non-renewable, imported products and resources.

We urge a do-pass recommendation for HJR 22

Thank you.

SIGNED: Lorraine Gillies

— FARMERS AND RANCHERS UNITED —

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

Date: 2/20/91

Bill No: SB 368

Time:

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK		
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN

GREG JERGESON

Secretary

Chairman

Amendment: Motion: Senator Swift made a motion that the amendments be adopted. In favor - 8; opposed - 0. MOTION CARRIED.

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

Date: 2/20/91

Bill No:

SB 368

Time:

4:58

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK	X	
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion: Senator Aklestad made a
motion that SB 368 DO PASS
AS AMENDED. In favor - 8;
Opposed - 0. Motion CARRIED.

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

Date: 2/20/91

Bill No:

Time:

409

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK		
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion:

Senator Devlin moved the amendments to

SB 409. In favor - 8;

Opposed - 0. Motion CARRIED.

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

DATE: 2/20/91

Bill No.
SB 409

Time:
5:00 P.M.

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK		
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN

Secretary

GREG JERGESON

Chairman

Motion: Senator Devlin made a
motion that SB 409 DO PASS
AS AMENDED. In favor - 8;
Opposed - 0. Motion CARRIED.

ROLL CALL VOTE

SENATE COMMITTEE

AGRICULTURE

DATE: 2/20/91

SJR 22

TIME:
5:03 P.M.

NAME	YES	NO
SEN. AKLESTAD	X	
SEN. BECK		
SEN. BRUSKI	X	
SEN. DEVLIN	X	
SEN. REA	X	
SEN. SWIFT	X	
SEN. WILLIAMS	X	
SEN. KOEHNKE	X	
SEN. JERGESON	X	

D. QUINN

GREG JERGESON

Secretary

Chairman

Motion: Senator Koehnke made a motion that SJR DO PASS.
In favor - 8; opposed - 0.
Motion CARRIED.