

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Senator Larry Stimatz, on February 22, 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)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: none

Staff Present: Michael Kakuk (EQC).

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

Announcements/Discussion: There were no announcements.

HEARING ON SB 377

Presentation and Opening Statement by Sponsor:

Senator Jergeson, Senate District 8, explained that SB 377
would provide liability protection for underground storage tank
installers.

Proponents' Testimony:

Leo Berry, a Helena attorney representing Burlington
Northern Railroad, appeared in support of SB 377 only if his
proposed amendment clarifying intentional employee violation of

the law was adopted. The amendment would strike the underlying language found on Page 1, line 15-17, and insert "the person who is an employee acting within the course of their employment is not liable under this section unless the violation is a result of a grossly negligent or willful act," Berry explained.

James T. Mular, Chairman of Joint Rail Labor Legislative Council (comprised of five senate rail labor unions) stated that HB 377 had been proposed at their request and asked for the committee's support in passage of the bill.

Gene Fenderson, representing Montana State Trade and Labor Unions, testified in support of the bill but in opposition to the proposed amendments. Fenderson stated he felt the amendments were already covered under other sections of the law for State of Montana employees.

Opponents' Testimony:

There were no opponents to SB 377.

Questions From Committee Members:

Senator Doherty asked Frank Gessaman if he had comments on the bill or the amendments.

Frank Gesseman, Department of Health and Environmental Sciences, told the committee that SB 377 addresses the issue of licensed installers for underground storage installation and closures. Gesseman stated that he was not sure whether the proposed amendment was necessary.

Gesseman told the committee that the licensing procedure for underground tank installers requires special duties and responsibilities. At each site there must be at least one licensed individual present. If you choose not to be a licensed installer, which is permissible under the law, then you must employ the services of an inspector, Gesseman stated.

Senator Keating asked Senator Jergeson if there was an incident that prompted this change in law or if this bill was just an "ounce of prevention".

Senator Jergeson stated that Section 75.11.211, MCA of the bill would give DHES power to define and modify conditions rather than revoking a license should the installer violate state or federal law. " This bill proposes that license revocation is sufficient punishment and a \$10,000 fine then would be unnecessary," Jergeson stated.

Closing by Sponsor:

Senator Jergeson told the committee he supported the bill as written but that he could accept the amendments if the judgement

of the committee determined they were "the right thing to do."

HEARING ON SB 386

Presentation and Opening Statement by Sponsor:

Senator Bengtson, District 49, told the committee that SB 386 would clarify Montana water rights and allow an individual to obtain and use another persons water rights on a temporary basis. The bill is a product of the state water plan, Bengtson stated.

Proponents' Testimony:

Gary Fritz, Department of Natural Resources, told the committee that SB 386 was a product of the state water plan within the drought management section. (EXHIBIT #1 and #2). DNRC supports this bill, Fritz stated, but the bill was not drafted by the Department. The State Water Plan Steering Committee then determined that it would be a "good idea" to allow existing water right holders the ability to transfer and change those water rights on a temporary basis. The bill would be helpful, for instance, if a municipality or city suffering from water shortage during drought would be able to lease an irrigators water rights on a temporary basis, Fritz said. The bill allows for the lease to be continuous for a period of up to ten years and then, if needed, the transfer authorization could be extended for another ten years, Fritz added. SB 386 provides that the person leasing the water rights to someone else would be protected from abandonment. The bill protects both parties which is not the case with an informal water rights transfer, Fritz said. Additionally, the bill does not allow water right holders to lease their water rights for instream flow purposes, Fritz added.

Stan Bradshaw, Montana Trout Unlimited and Chairman of the Committee for Drought Management Steering Committee, testified in support of SB 386. Bradshaw proposed amendments to the bill. (EXHIBIT #2a).

Opponents' Testimony:

There were no opponents to SB 386.

Closing by Sponsor:

Senator Bengtson asked the committee for a DO PASS ON SB 386.

HEARING ON SJR 24

Presentation and Opening Statement by Sponsor:

Senator Bengtson distributed to the committee a draft of the Montana Pick-Sloan Initiative: A Water Management Agenda for Tomorrow (EXHIBIT #1). An advisory panel or a task force was appointed during the last legislative session to come up with a management initiative, Bengtson said, and SJR 24 asks the legislature to support and endorse this particular management plan.

Proponents' Testimony:

Gary Fritz, DNRC, told the committee he had been involved in the preparation of the Pick-Sloan Initiative which originally was a product of the 1944 Flood Control Act. The Initiative became infamous in Montana, Fritz stated, because the state never received all the benefits they were entitled to under the 1944 Flood Control Act. Last year, the DNRC appointed a steering committee to research the Initiative currently, he said.

Opponents' Testimony:

There were no opponents to SJR 24.

Questions From Committee Members:

There were not questions from the committee.

Closing by Sponsor:

Senator Bengtson stated there are six different categories the state could access for funding or support from Congress for this bill.

EXECUTIVE ACTION ON SJR 24

Motion:

Senator Kennedy made a motion that SJR 24 DO PASS.

Discussion:

None.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

The motion by Senator Kennedy that SB 386 DO PASS carried unanimously.

HEARING ON SJR 25

Presentation and Opening Statement by Sponsor:

Senator Stimatz told the committee that SJR 25 requests the water policy committee to conduct an interim study of the need for, and feasibility of, state regulation of Montana's geothermal resources.

Proponents' Testimony:

There were no proponents to SJR 25.

Opponents' Testimony:

There were no opponents to SJR 25.

Questions From Committee Members:

There were no questions from the committee.

Closing by Sponsor:

Senator Stimatz closed.

EXECUTIVE ACTION ON SJR 25

Motion:

Senator Hockett moved that SJR 25 DO PASS.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Senator Hockett's motion that SJR 25 DO PASS carried unanimously. Senator Stimatz will carry the bill.

HEARING ON SB 425Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, presented SB 425 to the committee. The bill would extend and increase the water leasing study passed in the last legislative session, Grosfield stated. House Bill 707 restricted the study of water leasing to five streams and SB 425 would increase the number of streams to 10 and extend the time for the leasing study until 1995, Grosfield added. The purpose of this leasing study is "to answer some very important questions that there are no answers for right now," Grosfield said.

Proponents' Testimony:

Jo Brunner, Executive Secretary of the Montana Water Resources Association, appeared in support of SB 425. (EXHIBIT #1).

Peggy Trenk, Director of the Western Environmental Trade Association favored SB 425. (EXHIBIT #2).

Lorraine Gillies, speaking on behalf of the Montana Farm Bureau, testified in support of SB 425.

Jim Peterson, Montana Stockgrowers' Association, stated that two years ago the Association was opposed to water leasing studies but reversed its position. Not only does SB 425 double the size of the streams, Peterson said, it offers the opportunity for substitution if a stream is not available. The Association supports the restrictions that go with the study because in-stream flow is a new area for the State of Montana, Peterson said.

Gary Spath, Montana Water Users Coalition, told the committee he agreed with Jim Peterson's testimony and asked the committee for a DO PASS.

K.L. Cool, Director of Montana Fish, Wildlife and Parks, appeared in support of SB 425. (Exhibit #3).

Opponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, appeared in opposition to SB 425 unless his proposed amendments became adopted. (EXHIBIT #4). Bradshaw stated he didn't think the bill went far enough. The decision to lease water is relatively slow to unfold, Bradshaw added.

Scott Snelson, Montana Wildlife Federation, appeared in opposition to SB 425. Nearly every year, over 2500 miles of Montana's streams go dry, Snelson said, and unless you own a water right, there isn't anything that can be done about it. "The

majority of us that do not own water rights are, for all practical purposes, ignored in the decision making process regarding how our water ought to be managed in our state," Snelson explained. "We believe that this is a miscarriage of the public trust and we believe that the practice should end. We that don't hold water rights do not believe that we are somehow less deserving of a say in how we should manage the public's water and that is why we oppose Senate Bill 425. The state needs water laws that treat all Montanans, irrigators and fishermen, farmers and floaters, as equals in the allocation of our water. We ask that this committee please reconsider the tabling of Senate Bill 212 and give all Montanans an equal opportunity to be an equal partner in water management for our state. If not, at least pass this legislation with Mr. Bradshaw's amendments," Snelson concluded.

Questions From Committee Members:

Senator Bengtson asked how many man hours had been worked and how many reports had been made to the Board of Natural Resources or the Fish and Game Commission and Water Policy Committee over the last few years.

Larry Peterman, Administrator of the Fishery Division, told the committee there wasn't a compilation of the total number of hours but that Department of Natural Resources and the Water Policy Committee has made numerous presentations to the Department and approximately ten to 14 presentations to major agricultural groups and conservation districts over the past year.

Senator Bianchi asked if it was an impediment to have to identify streams that are drying up before you are planning to buy water and then go out and purchase it on those streams or would you be better off to be able to identify those dewaterable streams and then negotiate.

Peterman explained that dewatered streams are identified and people interested in going through the leasing process are contacted before going to the Department of Natural Resources Board. If there is interest in leasing, Peterman said, then we go to the board of natural resources with a report indicating that we have an interest in these streams and would like to proceed ahead.

Senator Hockett asked K.L. Cool, Director Department of Fish, Wildlife and Parks, if funding for water leasing was currently available.

K.L. Cool stated there is the possibility of using funds in a trust fund set up by the Nature Conservancy. If those funds are not adequate to consummate a lease, there would be an opportunity to redirect funding from another source, Kool explained. If the project is to work appropriately, there needs to be adequate

dollars and adequate flexibility for the agency to be able to consummate those leases when they are available, Kool said.

Senator Anderson asked K.L. Cool if there was ever thought given to leasing storage water.

Kool said FWP viewed the leasing of storage water as a significant opportunity and told the committee there were, in fact, water leasing systems on Painted Docks Reservation for user groups to augment in-stream flow over the reservoir. Kool said FWP would like to do more of this type of water leasing.

Senator Doherty asked K.L. Cool why, if water leasing is indeed a FWP priority, money had not been appropriated within FWP's budget?

K.L. Cool explained that the law, as it is currently written, provides opportunity for use of either Department money or donated money. There is the possibility, too, Cool said, for internal redirection through some of FWP programs to consummate this need and with the speed that water leases are moving, there is also a need for a track history to bring to the appropriations committee. Kool told the committee there should have been a ballpark figure for appropriations up to \$50,000 calculated into the budget. The question of funding, Kool said, is unanswered and needs to be addressed.

Senator Weeding asked if the Habitat Acquisition Fund would be a likely source of alternative funding.

K.L. told the committee he felt "that would be mixing apples and oranges between the agencies."

Senator Bianchi asked if the DNRC owned the water in the Painted Rock Reservoir.

Karen Barclay, Director DNRC, told the committee there were actually two different recreational acquisitions at Painted Rock. The original acquisition in the early 1950's when the department actually purchased 5000 acres from Painted Rock. The second is a 10,000 acre per foot lease by FWP.

Senator Bianchi asked Barclay if there were measuring devices on the Bitterroot River so the DNRC could determine the amount of water being released and how much water an individual was diverting.

Water released and diverted from the reservoir, as well as the Bitterroot, is monitored, Barclay said.

Closing by Sponsor:

Grosfield told the committee that the bill, in some form, needs to pass and that this would not be the last time water law

in Montana would be discussed. "It's important to understand that the bill is not about water sales but water leasing," Grosfield said. The bill is supported by agricultural groups and the majority of sportsmens groups, Grosfield noted.

HEARING ON SB 426

Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, told the committee that SB 426 would clarify the water reservation concept for federally designated wilderness areas. The bill allows a water right (under the water reservation system) that is adequate for the purposes of wilderness areas, Grosfield said. Grosfield noted that he agrees with some of the wilderness groups who say that Montana law is not sufficient for wilderness water rights.

Proponents' Testimony:

Don MacIntyre, provided testimony in support of HB 426. (Exhibit #1).

Jo Brunner, Executive Secretary of the Montana Water Resources Association testified in support of SB 426. (Exhibit #2).

Lorraine Gillies testified in support of SB 426 and on behalf of the Montana Farm Bureau. (EXHIBIT #3).

Opponents' Testimony:

There were no opponents to SB 426.

Questions From Committee Members:

Grosfield told committee members that the current plan would be to allow states more input when wilderness areas were being created.

Senator Doherty asked Don Macintyre, DNRC, why the present concern was focused only on wilderness. There are also other federal lands that have been designated for uses besides wilderness uses, Doherty said.

Macintyre explained that a primary issue before congress is the creation of wilderness areas.

Senator Doherty wondered if wilderness designation would change if a new Clean Water Act was passed.

Senator Grosfield explained that periodically there may be bills introduced that would change the boundaries of areas designated for wilderness. The water reservation, then, can be

adjusted, Grosfield said.

Closing by Sponsor:

Senator Grosfield told the committee that SB 426 is a state's rights issue and has "very little to do with congress, at the present time." The next step, if the bill passes, Grosfield said, will be for people interested in state's rights relating to water to "bug" congressional delegations to insure that the language used to define wilderness areas will incorporate state law.

EXECUTIVE ACTION ON SB 426

Motion:

Senator Tveit moved that Senate Bill 426 DO PASS.

Discussion:

There was no discussion on SB 426.

Recommendation and Vote:

Motion by Senator Tveit that SB 426 DO PASS carried unanimously.

EXECUTIVE ACTION ON SB 340

Motion:

Senator Bianchi moved to table SB 340.

Discussion:

There was no discussion.

Recommendation and Vote:

The motion by Senator Bianchi to table SB 340 carried unanimously.

EXECUTIVE ACTION ON SB 425

Motion:

Motion by Senator Doherty that SB 425 DO PASS.

Discussion:

There was no discussion.

Recommendation and Vote:

The motion by Senator Doherty that SB 425 DO PASS carried unanimously.

EXECUTIVE ACTION ON SB 386

Motion:

Senator Bengtson moved that Senate Bill 386 DO PASS.

Discussion:

There was no discussion on SB 386.

Recommendation and Vote:

The motion by Senator Bengtson carried unanimously.

EXECUTIVE ACTION ON SB 377

Motion:

Senator Keating moved that Senate bill 377 DO PASS. Senator Grosfield made a substitute motion to adopt the amendment offered by Mr. Perry, Burlington Northern. (EXHIBIT #1).

Discussion:

Michael Kakuk, EQC staff attorney, told the committee it appeared as though someone acting within the course and scope of his employment would not be liable unless there was a negligent or willful act. The amendment would remove a lot of violations that are currently subject to civil penalties, Kakuk said.

Senator Grosfield stated that was not his intention nor the purpose of Perry's amendment.

Senator Stimatz stated he felt that Burlington Northern had all the protection it needed under existing doctrines and therefore, SB 377 should be passed without an amendment.

Amendments, Discussion, and Votes:

Senator Grosfield's substitute motion failed. Senator Tveit and Grosfield voted against SB 377.

Recommendation and Vote:

Senator Keating's motion passed 9 to 2.

EXECUTIVE ACTION ON SB 268

Motion:

Senator Keating moved that SB 268 DO NOT PASS.

Discussion:

Senator Keating explained that with the passage of SB 268 would come a request from finance and claims to provide one million dollars in additional funding to pay the difference in costs for what is being purchased.

Chairman Stimatz noted that purchasing recycled goods raises the cost but is, nevertheless, a good conservation measure. Senator Doherty told the committee that he felt it was important for the state to "get into the business of recycling....regardless of cost." Doherty said he felt the bill would provide a mechanism for local governments, who may not be as well off as other communities, to be able to come to the state, through purchasing pools, for recycling information.

Amendments, Discussion, and Votes:

Michael Kakuk, staff attorney, presented three sets of amendments by Senators Svrcek, Kennedy, and Bengtson. (EXHIBITS 2, 2a and 2b).

Recommendation and Vote:

Amendments by Senator Bengtson were passed unanimously.

Subsequent motion by Senator Keating that SB 268 DO NOT PASS.

Senator Kennedy made a substitute motion that his amendments DO PASS. These amendments passed 7 to 4.

Senator Kennedy moved that SB 268 DO PASS as amended.

Clarification was needed by Kakuk regarding the change on page 2, line 1 following "agency" the word "conservation" was struck and "procurement" inserted, thus adopting only amendment 1 from Senator Svrcek's amendments.

The motion that SB 268 DO PASS as amended carried unanimously.

ADJOURNMENT

Adjournment At: 7:30 p.m.

Lawrence Stimatz, Chairman

Roberta Opel, Secretary

LS/tp

2-22-91

Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
- Walt Steingruber	A P A	425	X	
- Kay Norzberg	W I F E	425	✓	
- Gary Fritz	D N R C	386 425 425 5874	✓	
- Marvin Barber	H. P. H.	425 426	L	
- FRANK BERGMAN	S D H E S	377		
- JAMES T. MULAR	MONT JOINT RAIL LABOR LEGIS COUNCIL BUREAU-ALB WIL-TCH	377	✓	
- GENE FENDERSEN	MONT STATE TRADES & LABOR AFL-CIO			
- Raymond WEST	U W U	377	✓	
- Percy Ahelin	N. M. OIL & GAS	377 426	C	
- Peggy Olson Thord	WETA	425 425	✓ ✓	
- Lorraine Gillies	MT Farm Bureau	426	✓	
- Jim Petersen	m s t a	425	✓	
- CAROL MOSHER	MT. CATTLE WOMEN	425	L	
- Jim Jensen	MELC	377	X	
- Janet Ellis	MT Audubon	425	w/TO amendments	
- Stan Bradsburn	MTU	425	✓	
- Stan Bradsburn	"	386 426	✓	
- Scott Johnson	MWF	425		X
- Larry Peterman	DFWP	425	✓	

ROLL CALL ~~NOTE~~

SENATE COMMITTEE Natural Resources

Date 2/22/91 Bill No. _____ Time _____

NAME <u>Natural Resources</u>	YES	NO
Senator Anderson	✓	
Senator Bengston	✓	
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield	✓	
Senator Hockett	✓	
Senator Keating	✓	
Senator Kennedy	✓	
Senator Tveit	✓	
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

[Signature]
Secretary

Chairman

Motion: _____

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 426 (first reading copy -- white), respectfully report that Senate Bill No. 426 do pass.

Signed:

Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

41 2-23-91
Amd. Coord.

26 2-23 10:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Joint Resolution No. 25 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 25 do pass.

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

91-255-91
Amd. Coord.

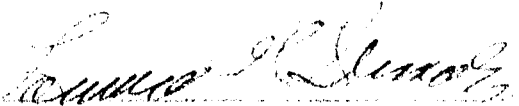
91-255-91
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 377 (first reading copy - white), respectfully report that Senate Bill No. 377 do pass.

Signed: 
Lawrence G. Stimatz, Chairman

SR 2-23-91
Amd. Coord.

SR 2-22-91 (2)
Sec. of Senate


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 386 (first reading copy -- white), respectfully report that Senate Bill No. 386 do pass.

Signed:


Lawrence G. Stimatz, Chairman

191 2-23-91
Am. Coord.

191 2-23 10:30
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 268 (first reading copy white), respectfully report that Senate Bill No. 268 be amended and as so amended do pass:

1. Title, line 5.

Following: "BY"

Strike: "PUBLIC"

Insert: "STATE"

Following: "A"

Insert: " VOLUNTARY STATE AGENCY"

2. Title, line 9.

Following: "BY"

Insert: "PUBLIC AND"

3. Page 1, line 19.

Following: "public"

Insert: "and state"

4. Page 1, line 23.

Following: line 22

Insert: "(1) ensure that all recycled materials purchased by the state meet applicable safety standards;"

Re-number: subsequent subsections

5. Page 2, line 1.

Following: "agency"

Strike: "conservation"

Insert: "procurement"

6. Page 2, line 19.

Following: "district,"

Strike: "state agency,"

7. Page 3, line 7.

Following: "a"

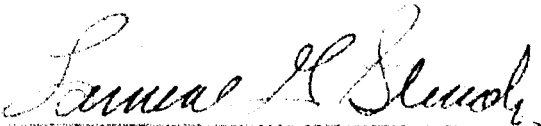
Strike: "public"

Insert: "state"

8. Page 3, lines 8 and 11.
Following: "any" on line 8
Strike: "public"
Insert: "state"
Following: "use" on line 8
Strike: "shall"
Insert: "may"
Following: "A" on line 11
Strike: "public"
Insert: "state"
Following: "agency" on line 11
Strike: "shall"
Insert: "may"

9. Page 6, line 2.
Following: line 1
Insert: "(5) The department shall implement the provisions of
this section within available resources."

10. Page 6, line 24.
Following: "enhance"
Strike: "public"
Insert: "state"

Signed: 
Lawrence G. Stimatz, Chairman

Ref 2-73-91
Amd. Coord.

SR 2-23 10:50
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 425 (first reading copy - white), respectfully report that Senate Bill No. 425 do pass.

Signed:

Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

for 7-33-91
And. Coord.

10 12 10.20
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 23, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Joint Resolution No. 24 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 24 do pass.

Signed:

Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

Jan 23-91
Amd. Coord.

Jan 23
Sec. of Senate

EXHIBIT NO. 1

DATE

2-22-91

BILL NO.

SB 377

Proposed Amendments to SB 377
Prepared by Leo Berry
for Burlington Northern Railroad

1. Page 1, line 15, following "violation" strike: the remainder of line 15 through "section" on line 17, and insert: "A person who is an employee acting within the course and scope of his employment is not liable under this section unless the violation is the result of a (~~grossly negligent or~~) willful act."

Exhibit

58386
16-22-91
DATE
OF
MONTANA DEPARTMENT OF NATURAL RESOURCES

MONTANA WATER PLAN

FINAL

December 1990

Section: Drought Management

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INTRODUCTION

Montana's water supplies vary from year to year. Some years there is too much water and flooding occurs. In other years, there is too little water and drought results. Drought is an inevitable part of Montana's climate. It will happen again as it has happened in the past.

Most Montanans understand that drought is inevitable. This does not mean that they can do nothing to reduce drought effects. Although the state may not be able to make it rain or snow, it can help its citizens prepare for and minimize the effects of drought.

The questions are whether, how, and when the state should use its authority to ease the effects of drought. This section of the state water plan proposes an answer to these questions. A policy is proposed that defines the proper role of the state in drought management. Then, this plan section recommends specific actions to fulfill that role.

BACKGROUND

Drought threatens all water needs. Dryland agriculture is particularly vulnerable. Drought also increases the threat of wildfire. These drought-related impacts arise primarily from soil moisture deficiencies. However, the most controversial drought issues typically surround the use of water from our streams, lakes, and aquifers.

The prior appropriation doctrine determines who gets to use scarce water from these sources. This doctrine of "first in time is first in right," which will continue to be the basis for water allocation and use in the state, assigns priority to water uses based solely on the date of appropriations. Given the unadjudicated status of most water rights in Montana, drought presents several problems for Montana water users. These problems include: (1) procedural difficulties in enforcing unadjudicated water rights; (2) the expense of beginning to enforce water rights in areas that historically lacked enforcement; (3) a lack of water conservation incentives in the law; and (4) legal restrictions and practical difficulties associated with changes in the use of water rights.

Under these circumstances, how can important water uses be protected? In extreme, life-threatening emergencies, the government has the authority to take water rights, with pay, to protect the public good. Such a situation is better avoided. Less intrusive ways to cope with the effects of drought, or possibly to prevent them, are preferred.

Another approach is to better inform water users about the probability of drought. Where drought appears likely,

water users may be asked to consider options that would minimize their risk and extend limited water supplies. This approach requires planning. Planning may also reduce the vulnerability of agriculture and forests to drought. Because drought occurs with greater warning and frequency than other kinds of disasters, planning has great promise for reducing its effects.

Much was learned in recent years about the types of impacts and conflicts that are likely during drought. Perhaps the most important lesson is that the best time to reduce the impacts of drought is before they happen. Recent experience has shown the need for a larger box of tools to prevent and mitigate drought-related problems.

POLICY STATEMENT

It is the policy of the State of Montana to support proactive drought management at the local level to protect the natural resources, economic base, and lifestyles of Montana citizens. This policy requires programs for drought monitoring, assessment, preparedness, mitigation, and assistance.

The state must consider the needs of all water users during drought, including dryland and irrigated agriculture; municipal and rural water suppliers; energy producers; mining and mineral processing, forest products, tourism, recreationists, and recreation-based businesses; and individual water users. Incentives should be provided for all water users to act to prevent or reduce the effects of drought. State technical and financial assistance should be provided to water users in a consistent and predictable manner. Water users should consider the risks posed by drought when making major management decisions and should know what to expect from government if drought occurs.

ISSUES, OPTIONS, AND RECOMMENDATIONS

Eight functions are identified as necessary for accomplishing the state's proactive drought management policy. The issues are how to accomplish these eight functions.

Issue 1 - Drought Monitoring and Early Warning

Drought monitoring means collecting data, analyzing it, and reporting on the probability and severity of drought. Several government agencies and a few private entities are involved. Current monitoring efforts can be improved to provide better early warning of drought conditions.

2-22-91

Gary Fitz

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-22-91

BILL NO. SB 386

SA⁺ 24

2-22-91

THE MONTANA PICK-SLOAN INITIATIVE: A WATER MANAGEMENT AGENDA FOR TOMORROW

Montana Pick-Sloan Advisory Committee

Presented to the Fifty-Second Montana Legislature
by Governor Stan Stephens

February 15, 1991

Amended

"AMENDMENTS" TO SENATE BILL 388 **SENATE NATURAL RESOURCES**
Montana Trout Unlimited
February 22, 1991

EXHIBIT NO. 2a
DATE 2-22-91
BILL NO. SB 346

The following changes would make this "leasing bill" consistent with the other leasing bill, for "Instream flows, found at section 85-2-436 MCA (HB 707).

- 1) Delete the language on page 2, lines 15 - 17 which allow for the renewal of a "temporary change".
- 2) Require a prospective lessee to receive the consent of the Fish and Game Commission and to apply to the Board of Natural Resources to designate the place at which the leased water may be used before the lessee can begin serious negotiation for a lease.
- 3) Place a sunset date on the legislation.
- 4) Establish the legislation as a "study" that requires the lessee to describe:
 - a) the contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering;
 - b) methods and technical means used to monitor use of water under each lease;
 - c) develop a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.
- 5) Require the lessee to report to the Board of Natural Resources on his leases.



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

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2-22-91

BILL NO. SB425

SB425

SENATE NATURAL RESOURCES

FEB. 22, 1991

SENATOR GROSSFIELD

SUPPORT

Mr. Chairman, members of the committee for your record, my name is Jo Brunner, Executive Secretary of the Montana Water Resources Association

MWRA supports SB245. We support extension of stream reaches and we support the 10 year lease provision. It was our contention in the debate on HB707 during the 1989 Legislative session that the leases should be for a long period time, in order to influence more participation by irrigators.

We continue to support the leasing study. We believe that it may provide the means, in some instances for our irrigators to realize, if not a profit during stressful drought times, to at least be able to keep afloat. We support the addition of 5 reaches to be studied, and the amendments that will allow unsuccessful attempts to be abandoned, with Board approval and others added as necessary.

We do have a concern with the lack of further reporting after December 1, 1992. We would prefer that there be a consistent reporting process at regular intervals for several years.

Thank you.

WETA

Western Environmental Trade Association

208 N. Montana Avenue, Ste. 104 - Helena, Montana 59601

Phone (406) 443-5541

Fax # 443-2439

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE

2-22-91

BILL NO.

SB 425

FEBRUARY 22, 1991

SB 425 WATER LEASING STUDY EXTENSION
SENATE NATURAL RESOURCES COMMITTEE

Submitted on Behalf of:

Western Environmental Trade Association

By:

Peggy Olson Trenk, Executive Director

Mr. Chairman, Members of the Committee, my name is Peggy Olson Trenk and I am here today representing the Western Environmental Trade Association. We would like to go on record in support of SB 425, the bill to extend the current water leasing study.

For your information, during the 1989 legislative session, WETA's membership took a leap of faith as it were and stood in support of HB 707 which allowed for the leasing of water rights under certain conditions. While we were not entirely comfortable with the concept, we believed that the state of Montana needed to develop a sound water policy on all fronts if we were going to protect the doctrine of prior appropriation. We felt that such a policy needed to address the issue of instream flow and viewed HB 707 as a means to protect existing water rights via a carefully regulated program of water leasing.

That legislation later evolved into the present water leasing study which, as we are all aware, has progressed very slowly. We should not be surprised by that fact when we consider the magnitude of the task. Because we are attempting to understand the full impact of leasing on private landowners, the agricultural community, fisheries, and others dependent on water as a resource we need to have accurate information and enough experience to decide what, or if, there is a next step. Since it appears the current parameters of the study may not produce the necessary data in a timely manner, we believe some refinements are necessary and we encourage this committee to approve SB 425.

Thank you again for this opportunity to comment.



MONTANA FARM BUREAU FEDERATION

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

Exhibit 2H
Date 2-22-91
Bill # SB
425

BILL # SB-425 ; TESTIMONY BY: Lorraine Gillies

DATE Feb. 22, 1991 ; SUPPORT Yes ; OPPOSE _____

Mr. Chairman, members of the committee, for the record, I am Lorraine Gillies, speaking on behalf of the Montana Farm Bureau Federation.

As much as we fought this bill during the last session we are now supporting SB-425.

The legislature needs to extend the water leasing study bill by increasing the number of streams and the time frame in which to do the study. Two years and five stream reaches was just not enough time. We need this additional time to determine if water leasing is going to work in the state.

This bill also asks for a progress report from the Department of Fish, Wildlife and Parks - something that should of been included in the initial bill.

We urge this committee to pass SB-425. Thank you.

SIGNED: _____

Lorraine Gillies

SB 425
February 21, 1991

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16-cc-2
Ett
NATURAL RESOURCES

Testimony presented by K.L. Cool, Dept. of Fish, Wildlife & Parks

Despite our best effort to obtain water leases, our department has met with only limited success. This bill proposes to address some of the limitations in the original water leasing legislation. SB 425 extends the leasing study for 2 years, increases the number of eligible streams from 5 to 10, provides the board the ability to switch stream designations and increases the term of lease to 10 years.

The current law limits our department to a lease of no longer than 4 years. This could be renewed for up to 10 years only if the legislation does not sunset. The limitations on the term of the lease have caused concern among the water right holders we have negotiated with. At least one of the lease situations we are currently pursuing involves construction of a pipeline and then leasing the conserved water. This project is in the initial planning stage and will take several years to complete. The term of lease is a particular problem in circumstances like this where water may become available through a water development project and a long-term commitment is needed. We suggest that SB 425 be amended to state that the term of lease limitation does not apply when the lease is associated with a water conservation or storage project. The amendment is attached to the copy of the Department's testimony.

While SB 425 is a step toward addressing some of the inherent difficulties in the water leasing legislation, it is only a small step, and additional streamlining of this legislation will be needed in the future. As the water leasing tool demonstrates both its value for instream purposes and that leasing can be accomplished without adversely affecting other uses, the statutes should be streamlined to take full advantage of the concept. After studying water leasing for 2 years, we do not feel that the process merits the concern that is often expressed. We are hopeful the agricultural community will work with us to ensure the success of the program.

SENATE BILL 425

Proposed Amendments of Montana Trout Unlimited
February 22, 1991

- Page 1, line 10:
after ";" insert "APPROPRIATING \$30,000 FOR WATER RIGHTS
LEASES;"
- Page 2, line 18:
strike everything after "." through "." on line 21
- Page 4, line 2:
strike "."
insert ", but may be renewed once for up to ten years."
- Page 5, line 25:
strike "1992",
insert "1994".
- Page 6, line 3:
strike "board"
- Page 6, line 5:
strike everything after "parks" through "." on line 8, and
after "parks", insert "may apply to the department for the
approval of leases on up to ten stream reaches."
- Page 6, line 9:
strike everything through "." on line 15
- Page 6, line 15:
Insert "(2)"
- Page 6, Line 17:
strike "designated", and
strike everything after "," through "." on line 19, and
after "," insert "it may proceed to negotiate for a lease on
another stream reach."
- Page 6, line 20:
strike "1995"
insert "1999"
- Page 7, line 2:
strike "1995"
Insert "1999"

Page 7, after line 2:

Insert "NEW SECTION. Section 5. Appropriation. There is appropriated \$30,000 to the department of fish, wildlife, and parks to lease existing water rights as provided in 85-2-436(2)(a) for the biennium ending June 30, 1993. \$7,500 is appropriated from the state special revenue fund provided in 87-1-601(1) and \$22,500 is appropriated from the federal special revenue fund."

Renumber the remaining sections of the bill

LC 1536

SENATE BILL 426

TESTIMONY OF
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

February 21, 1991

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-22-91
BILL NO. SB 426

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

"An Act clarifying the water reservation process for federally designated wilderness areas;
and amending section 85-316 MCA."

The Department supports this bill and recommends that it pass. The Department concurs with the concept to provide for Congress, when establishing a wilderness area, a state process for a federal agency to obtain a state water right for the wilderness. This act would remove any hurdle in state water law that would make it unattractive for Congress to create a wilderness area without federal reserved water rights. It would also provide a state process for establishing a wilderness water right rather than a time-consuming congressional or court process.

Background

Congress has yet to consider and designate a number of wilderness areas. When new wilderness areas are established, water rights is one of the issues of debate. This bill simply would provide Congress with an option for establishing a water right that is clearly a part of the state's water rights system.

This bill does not conflict with House Bill 361. House Bill 361 provides that an established federal reserved right is subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973.

Implementation

Congress would direct a federal agency to apply for a water reservation through the state water reservation process. Under this process, the Department would notice other potential applicants, and all reservation applications would be evaluated and considered together. This bill provides that the priority date for a wilderness water reservation is the enactment date of federal wilderness enactment--or a later date if established by Congress.

Fiscal Impact

No fiscal impact until Congress establishes a new wilderness area and directs that this avenue be used.



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

SENATE NATURAL RESOURCES
CURRENT NO. 2
DATE 1-22-91
BILL NO. SB 426

SB426

GROSFIELD

SENATE NATURAL RESOURCES

FEBRUARY 22, 1991

SUPPORT

Mr. Chairman, Members of the committee, for the record my name is Jo Brunner and I am the Executive Secretary of the Montana Water Resources Association.

We rise in support of SB246. Our organization is deeply concerned that other than Montana and Montana citizens are making decisions as to water rights.

We hear, especially where wilderness water is concerned that we are better off with the BIG Federal Government watching over us, protecting our water, so to speak, than depending upon our state laws. WE hear, often, that since water within a wilderness must stay in the stream, may not be diverted, unless by presidential acclimation, that since water right holders down stream will be protected at any costs, why are we so concerned that Montana Government not Congress make the decision as to Wilderness water rights. One rejoinder could be--turn that argument around--if all of the reasons mentioned are true--where does that leave the argument that we'd be better off with federal reservations.

We are in agreement with the provisions of this bill. We worked with Senator Grosfield, before he was a Senator, and with the agriculture water users for quite a few months on the issue.

I am not going to belabor the question. Montana, or any state, has the right to adjudicate her waters. I heard a discussion from Congress the other night on the drought situation in California. Several comments were more than just interesting. One was that Secretary Lujan is very firm in his decision that each state has a sovereign right to control its water. The other was made by an earnest California Congressman who declared that he knew if the drought continued California could count on the other western states to share thier water.

The chances of sharing water with California, or other states, unwillingly will be less if the state of Montana controls the headwaters.

Thank you.



MONTANA FARM BUREAU FEDERATION **SECTION NATURAL RESOURCES**
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

BILL # SB-426 ; TESTIMONY BY: Lorraine Gillies
DATE Feb. 22, 1991 ; SUPPORT Yes ; OPPOSE _____

EXHIBIT NO. 3
DATE 2-22-91
BILL NO. SB 426

Mr. Chairman, members of the committee, for the record I am Lorraine Gillies speaking on behalf of the Montana Farm Bureau Federation.

We are in support of SB 426. Farm Bureau and other organizations worked on this issue during the interim.

We believe that because of the demands of the federal government on water rights in wilderness areas, reserved water rights on federal lands should not exist except through filing with the state for a right just as every other appropriator is required to do.

We believe this bill does just that. It also answers the concerns of Trout Unlimited and the Montana ^{WILDERNESS} Wildlife Association in that it exempts the reservation from the 10 year review.

We urge this committee to pass SB-426. Thank you.

SIGNED: Lorraine Gillies

Amendments to Senate Bill No. 268
First Reading Copy

Requested by Senator Svrcek
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 21, 1991

1. Page 2, line 1.
Following: "agency"
Strike: "conservation"
Insert: "procurement"

2. Page 3, line 18.
Following: "Section 3."
Strike: "State"
Insert: "Public"

3. Page 3, line 19.
Following: "Each"
Strike: "state"
Insert: "public"

4. Page 4, line 16.
Following: "department"
Insert: ", in conjunction with the department of natural
resources and conservation and the department of health and
environmental sciences,"

5. Page 6, line 2.
Following: line 1
Insert: "(5) The department shall provide guidelines to state
agencies on the application of computer technology to reduce
the generation of waste paper through:
(a) the use of electronic bulletin boards;
(b) the transfer of information in electronic rather than
paper form; and
(c) other applications of computer technology."

6. Page 6, line 3.
Following: "department"
Insert: ", in conjunction with the department of natural
resources and conservation and the department of health and
environmental sciences,"

Amendments to Senate Bill No. 268
First Reading Copy

Requested by Senator Bengtson
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 21, 1991

1. Title, line 5.

Following: "A"

Insert: "VOLUNTARY"

2. Page 1, line 23.

Following: line 22

Insert: "(1) ensure that all recycled materials purchased by the
state meet applicable safety standards;"

Renumber: subsequent subsections

3. Page 3, lines 8 and 11.

Following: "use" on line 8

Strike: "shall"

Insert: "may"

Following: "agency" on line 11

Strike: "shall"

Insert: "may"

Amendments to Senate Bill No. 268
First Reading Copy

SENATE NATURAL RESOURCES
EXHIBIT NO. 2a
DATE 2-21-91
BILL NO. SB 377

Requested by Senator Svrcek
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 21, 1991

1. Page 2, line 1.
Following: "agency"
Strike: "conservation"
Insert: "procurement"
2. Page 3, line 18.
Following: "Section 3."
Strike: "state"
Insert: "Public"
3. Page 3, line 19.
Following: "Each"
Strike: "state"
Insert: "public"
4. Page 4, line 16.
Following: "department"
Insert: ", in conjunction with the department of natural
resources and conservation and the department of health and
environmental sciences,"
5. Page 6, line 2.
Following: line 1
Insert: "(5) The department shall provide guidelines to state
agencies on the application of computer technology to reduce
the generation of waste paper through:
(a) the use of electronic bulletin boards;
(b) the transfer of information in electronic rather than
paper form; and
(c) other applications of computer technology."
6. Page 6, line 3.
Following: "department"
Insert: ", in conjunction with the department of natural
resources and conservation and the department of health and
environmental sciences,"

Amendments to Senate Bill No. 268
First Reading Copy

Requested by Senator Kennedy
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 21, 1991

1. Title, line 5.
Following: "BY"
Strike: "PUBLIC"
Insert: "STATE"
Following: "A"
Insert: "STATE AGENCY"

2. Title, line 9.
Following: "BY"
Insert: "PUBLIC AND"

3. Page 1, line 19.
Following: "public"
Insert: "and state"

4. Page 2, line 19.
Following: "district,"
Strike: "state agency,"

5. Page 3, line 7.
Following: "a"
Strike: "public"
Insert: "state"

6. Page 3, line 8.
Following: "any"
Strike: "public"
Insert: "state"

7. Page 3, line 11.
Following: "A"
Strike: "public"
Insert: "state"

8. Page 6, line 24.
Following: "enhance"
Strike: "public"
Insert: "state"

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 22 day of Feb, 1991.

Name: Walt Stenger

Address: Box 65

Willow Creek, MT 59760

Telephone Number: 285-6920

Representing whom?

A.P.A. & myself

Appearing on which proposal?

SB 425

Do you: Support? X Amend? _____ Oppose? _____

Comments:

I think we need this Bill to
find out if water basing will work

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21 day of February, 1991.

Name: Franklin Gessman

Address: UST Program, SDNES, Cogswell Building,
Helena, MT

Telephone Number: 444-5470

Representing whom?

SDHES

Appearing on which proposal?

Do you: Support? _____ Amend? _____ Oppose? _____

Comments:

Information from the Department

[illegible]

Figure 1. The effect of the number of nodes on the performance of the proposed algorithm. The figure shows two plots side-by-side. The left plot shows 'Number of nodes' on the x-axis (ranging from 0 to 10) and 'Performance' on the y-axis (ranging from 0 to 10). The right plot shows 'Number of nodes' on the x-axis (ranging from 0 to 10) and 'Performance' on the y-axis (ranging from 0 to 10).

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 22 day of Feb, 1991.

Name: Marvin Barber

Address: 815 North Hoback
Helena

Telephone Number: 442-0924 Helena 932-4374 Big Lake

Representing whom?

Agricultural Preservation Association H.P.A.

Appearing on which proposal?

JP 425 & 426

Do you: Support? X Amend? Oppose?

Comments:

I believe this is very necessary, in order
to address & resolve the water leasing
concept. Thank you.