

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on January 13, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

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

Committee Business Summary:

Hearing: HB 102
Executive Action: HB 84

HEARING ON HB 102

Opening Statement by Sponsor:

REP. TED SCHYE, HD 18, Glasgow, stated he was carrying HB 102 for the Department of Natural Resources (DNRC). The bill proposes a date change and cleanup language regarding water reservations on the Missouri River.

Proponents' Testimony:

Gary Fritz, Administrator, Water Resources Department, Department of Natural Resources and Conservation (DNRC), stated HB 102 became necessary as a result of legislative action taken during the 1992 special session. HB 102 relates to the water reservation process on the Missouri River. EXHIBIT 1

Jo Brunner, Executive Director, Montana Water Resources Association (MWRA), stated MWRA supports HB 102.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. SCHYE thanked the committee and stated he generally carries simple bills and HB 102 was no exception.

EXECUTIVE ACTION ON HB 84

Motion: REP. FAGG MOVED HB 84 DO PASS.

Motion: REP. FAGG moved to adopt his amendment to HB 84.
EXHIBIT 1a

Discussion: REP. FAGG told the committee his amendment states that the bill is requested by the Water Policy Committee.

Motion/Vote: TO ADOPT THE FAGG AMENDMENT. Motion carried unanimously.

Motion: REP. FOSTER moved to adopt his amendments to HB 84.
EXHIBIT 2 He then withdraw his motion.

Motion: REP. GILBERT moved to adopt his amendment to HB 84 which would change the term "high hazard" dam to "Class 2" dam.
EXHIBIT 3

Discussion: REP. GILBERT stated he was uncomfortable using the words "high hazard" dam when, in fact, there is only the potential to be a high hazard dams. He said a high hazard dam is defined as a dam that contains more than 50 acre feet of water and has the possibility of causing loss of human life. He also noted these dams could also be the most solid dams in the world and never pose a problem.

REP. GILBERT wondered what would happen if a rancher advertising the sale of his ranch in Agri-News, for example, listed the animal units, out-buildings, two stock corrals, and two high hazard dams. "Who in their right mind would want to buy the

ranch?"

REP. TOOLE asked REP. GILBERT how the change he proposed compared to Class 2 dam language used in other states? REP. GILBERT noted the language differences weren't relevant since the dams are in different states with laws that do not intertwine. Montana Class 2 dams are only those dams that the Water Policy Committee chose to call high hazard. He noted that some states have used Class 2 for high hazard while some have not.

REP. HARPER said the Water Policy Committee studied this issue in its entirety. He also said the entire committee sat through every dam safety hearing held. The committee decided to keep the current name since legislative rules would have to be changed and there would be a cost consideration, even though it may be minor.

REP. HARPER stated he did not agree with REP. GILBERT that everyone knows the definition of a Class 2 dam. The Water Policy Committee wanted to retain the name high hazard and require that anyone moving into the hydraulic shadow of the dam would not be able to sue unless it could be shown that the owner was negligent. The tradeoff, however, is how do people know they're moving into a place where their house will be safe? They see Class 2 dam and they don't know what it is, REP. HARPER continued. He added the Water Policy Committee tried to balance the package based on information from dam owners. He also suggested that REP. GILBERT should be on the Water Policy Committee next legislative session.

REP. TOOLE asked if the tradeoff, then, was to retain the term "high hazard dam" in exchange for releasing the dam owners from ordinary responsibilities that dam owners have under current law.

REP. HARPER said he did not want to characterize the committee's decision from anyone else's point of view but his own. The same liability would prevail whether someone was living within the hydraulic shadow or not.

REP. TOOLE stated he found it abhorrent that at every turn, someone in one industry or another asked to be relieved of their responsibility as citizens to use care in the performance of daily tasks. He added that he didn't think it was a tradeoff to retain the name high hazard dam in exchange for something as bad as the elimination of responsibility.

REP. FELAND asked REP. GILBERT if those buying property would already have an understanding of the term "high hazard dam"?

REP. GILBERT responded that it would depend on the type of property. A developer proposing a subdivision below a dam would, for example, be required to have this dam classification information.

REP. BROOKE, a member of the Water Policy Committee, said she agreed with REP. GILBERT'S amendments. The qualifications of a

dam, i.e. carrying capacity, strength, structure, etc., require some type of classification to be made. REP. BROOKE stated she wished the Water Policy Committee could have used letters and numbers, rather than the nomenclature currently before the committee.

REP. GILBERT stated all he had changed in his amendment was the name, not a change in classification, construction or inspection. REP. GILBERT said he felt the committee was placing too much importance on the term "high hazard."

REP. FOSTER said he respected the work and recommendations of the Water Policy Committee. He stated he felt REP. GILBERT was "on the right track" with his amendment. REP. FOSTER said he was concerned about the connotation that goes along with a certain designation.

REP. FAGG said he agreed with REP. GILBERT that the term "high hazard" has some unfavorable connotations. The DNRC preferred to retain the term "high hazard" because their materials already use this term. "High hazard" is better suited to federal dam regulatory agency nomenclature rather than Class 2, REP. FAGG noted. The Water Policy Committee instructed the DNRC to coordinate with federal agencies and other states in developing coordinated terminology for all types of dams. REP. FAGG said he felt REP. GILBERT'S amendments should not be passed out of committee.

REP. STOVALL asked REP. HARPER how an individual would learn about the locations of high hazard dams. REP. HARPER stated that if no one was living under the dam and loss of life wasn't imminent, it currently would not be classified as high hazard.

REP. STOVALL asked what differences there would be between Class 2 and high hazard dams. REP. HARPER said he agreed that the name was far less important than the fact that some dams pose danger. The Water Policy Committee did not want to downgrade that potential danger, REP. HARPER added.

Vote: TO ADOPT REP. GILBERT'S AMENDMENT. Motion carried 9 to 7.

Motion: REP. FOSTER moved to adopt his amendments to HB 102.

Discussion: REP. FOSTER told the committee that he would like to direct some criticism at the DNRC. REP. FOSTER explained that he felt Laurence Siroky, DNRC, gave credible testimony before the Natural Resources Committee. However, he said he heard that Mr. Siroky was criticized by DNRC for his testimony. REP. FOSTER noted that if DNRC had testimony that differed from Mr. Siroky's, they should send additional people to testify.

REP. FOSTER said his amendment provides the option for DNRC to inspect dams. DNRC department needs, including FTE levels, would not be altered by this option. Services provided by DNRC will,

in fact, be reimbursed by the dam owner. Either state dam inspections should be allowed or the state should not be involved in the inspection process. If a building burns down and a fire marshall inspected it, the state is equally as involved in this liability as in dam liability. Dam inspection would still be required but the public is going to have to find inspectors and report to the agency involved. The amendment has become a matter of principle and policy for the state, REP. FOSTER said.

REP. SWANSON asked how the money flowed if the state is recovering the cost from the dam owner, does the money go into the general fund or directly to the DNRC? Gary Fritz, DNRC, stated that some fees, including dam fees, do go back into the general fund.

REP. BOB RANEY stated that the term "full cost", as used in REP. FOSTER'S amendments, needed clarification.

REP. FOSTER stated that "full cost" would be defined by the rules.

REP. RANEY asked if the costs were actual or beyond? Michael Kakuk, EQC Staff, stated that costs would be defined by the DNRC.

REP. RANEY noted that the amendment required rule-making to collect the costs. Mr. Kakuk replied that would be his interpretation.

REP. RANEY asked if REP. FOSTER'S amendments were adopted would there be a need for a Statement of Intent that says the DNRC will do rulemaking to determine costs? Mr. Kakuk noted the authority for rulemaking has already been granted.

REP. RANEY said he believed DNRC would have to have rulemaking to see what costs would be collectible under this Act. Mr. Kakuk stated the authority of the DNRC to adopt rules and to charge fees is part of existing law. Inspections are currently being done on high hazard dams. New inspections could be conducted under current rules, he said.

REP. RANEY asked if the costs were "direct" and "indirect" or just "direct" as used in this amendment. Mr. Fritz stated the costs would be "direct."

REP. RANEY said that REP. FOSTER'S statement that there would be no cost to DNRC or to taxpayers is not true. "Direct" costs would be reimbursable whereas "non-direct" costs would not be.

REP. FAGG asked Mr. Fritz if DNRC had a position on the proposed Foster amendment. Mr. Fritz stated that he felt DNRC employees should not be doing dam inspections. This position was presented to the Water Policy committee by former DNRC Director, Karen Barclay. The liability factor is one reason the DNRC does not want to be involved in these inspections. Neighboring states do,

want to be involved in these inspections. Neighboring states do, in some instances, have their department engineers inspect dams. States have been sued when their employees have inspected dams which later fail and cause damage downstream. The state is self-insured, Mr. Fritz noted. If DNRC engineers were to become dam inspectors they would be in direct competition with other engineers.

Mr. Fritz stated the total time involved to inspect dams would be about 1,400 hours. The inspection would lead to possible remedial work as well as requests by dam owners to have DNRC perform additional work on the dams.

REP. GILBERT reminded committee members that their jobs as legislators is to set policy rather than micro-manage.

REP. FAGG noted the definition of an engineer, as used in this bill, is "a professional engineer who is licensed to practice in the state of Montana."

REP. HARPER stated that as a member of the Water Policy Committee he was contacted by the Society of Engineers who wondered if they would be able to handle the inspection load. Reverse privatization was also discussed with the engineers, REP. HARPER said.

REP. TOOLE asked Mr. Fritz if the DNRC had a part in implementing the role of the engineer. Mr. Fritz stated that the dam owner has the responsibility of having the dam inspected and then applying for an operating permit. As a part of this application, there must be proof of the inspection. A decision is then made by the DNRC to issue an operating permit. Mr. Fritz added that the DNRC's position is regulatory rather than technical.

REP. TUNBY told the committee he would be in favor of REP. FOSTER'S amendment.

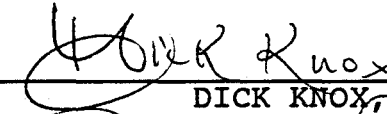
REP. FOSTER called for the question.

Vote: TO ADOPT REP. FOSTER'S AMENDMENTS. Motion failed 9 to 7.

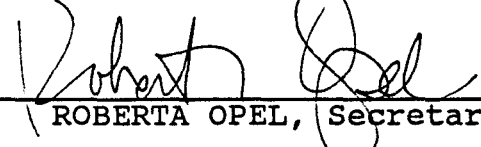
Motion/Vote: REP. FAGG MOVED THAT HB 84 DO PASS AS AMENDED. Motion carried with REP. TOOLE voting no.

ADJOURNMENT

Adjournment: 5:30 p.m.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

1/13/93

| NAME | PRESENT | ABSENT | EXCUSED |
|---------------------------------|---------|--------|---------|
| REP. DICK KNOX, CHAIRMAN | ✓ | | |
| REP. ROLPH TUNBY, VICE CHAIRMAN | ✓ | | |
| REP. JODY BIRD | ✓ | | |
| REP. VIVIAN BROOKE | ✓ | | |
| REP. RUSS FAGG | ✓ | | |
| REP. GARY FELAND | ✓ | | |
| REP. MIKE FOSTER | ✓ | | |
| REP. BOB GILBERT | ✓ | | |
| REP. HAL HARPER | ✓ | | |
| REP. SCOTT ORR | ✓ | | |
| REP. BOB RANEY | ✓ | | |
| REP. DORE SCHWINDEN | ✓ | | |
| REP. JAY STOVALL | ✓ | | |
| REP. EMILY SWANSON | ✓ | | |
| REP. HOWARD TOOLE | ✓ | | |
| REP. DOUG WAGNER | ✓ | | |
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HOUSE STANDING COMMITTEE REPORT

January 14, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 84 (first reading copy -- white) do pass as amended .

Signed: _____
Dick Knox. Chair

And, that such amendments read:

1. Page 1, line 3.

Insert: "By Request of the Water Policy Committee"

2. Title, line 6.

Following: "COMPLAINTS;"

Insert: "CHANGING THE TERM "HIGH-HAZARD DAM" TO "CLASS 2 DAM";"

3. Page 9, line 1.

Insert: "NEW SECTION. Section 10. Name change -- directions to code commissioner. Wherever the name "high-hazard dam", meaning a dam that meets the requirements of 85-15-106, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "class 2 dam".

Renumber: subsequent sections

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 102, FIRST READING

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

JANUARY 13, 1992

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TIME FOR THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ACT ON APPLICATIONS FOR RESERVATIONS OF WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM AND THE LITTLE MISSOURI RIVER BASIN; AMENDING SECTION 85-2-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

The department supports this bill extending the lower Missouri basin water reservation proceeding by one year.

The Missouri basin water reservation proceeding was initiated by the 1985 Legislature as a legal means to protect Montana's water resources in an interstate water apportionment proceeding. It was also to serve as a process for planning future water use in the basin. Due to the large size of the basin, the proceeding was split at Fort Peck Dam. Public entities have submitted applications to reserve water for both consumptive and instream uses above Fort Peck Dam. Following completion of an environmental impact statement (EIS) and the holding of hearings, the Board of Natural Resources and Conservation reached a decision on these applications in June 1992. Only applications to reserve water in the basin below Fort Peck Dam, including the Milk and Little Missouri River basins, remain pending. By existing statute, the Board of Natural Resources and Conservation has until December 31, 1993 to act on these lower basin applications.

During the January 1992 special session of the Legislature, however, the department was directed to reduce spending. In response, the department cut \$87,000 from the Missouri reservation proceeding budget. This money would have been used to prepare an EIS addressing the lower basin applications, and to notice existing water users and hold hearings. In making the funding cut, the Legislature acknowledged that the December 31, 1993 deadline for a Board decision on lower basin reservation applications would need to be extended by one year. Since the special session dealt solely with budget matters, the department was to propose the needed change during the 1993 regular session.

Without receiving the requested time extension, the department would not be able to complete the process. Approving the extension would allow department staff to complete their analysis of the lower basin applications and prepare the EIS, and allow the board time to reach its decision.

EXHIBIT 1A
DATE 1-13-93
HB 84

Amendments to House Bill No. 0084
First Reading Copy

Requested by Rep. Fagg
For the Committee on Natural Resources

Prepared by Todd Everts
January 7, 1993

1. Page 1, line 3.

Insert: "By Request of the Water Policy Committee"

Amendments to House Bill No. 84
First Reading Copy

EXHIBIT 2
DATE 1-13-93
HB 84

Requested by Rep. Foster
For the Committee on House Natural Resources

Prepared by Michael S. Kakuk
January 6, 1993

1. Title, line 6.

Following: "COMPLAINTS;"

Insert: "ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION ENGINEERS TO INSPECT HIGH-HAZARD DAMS;
REQUIRING THE DEPARTMENT TO RECOVER THE FULL COSTS OF
DEPARTMENT INSPECTIONS;"

2. Page 7, line 20.

Following: "qualified"

Insert: "private or department"

3. Page 8, line 1.

Following: "necessary."

Insert: "The department shall recover from the dam owner the full
costs for an inspection completed by the department under
this section, as provided by rules adopted pursuant to 85-
15-110(6)."

EXHIBIT 3
DATE 1-13-93
HB 84

Amendments to House Bill No. 0084
First Reading Copy

Requested by Rep. Gilbert
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
January 7, 1993

1. Title, line 6.

Following: "COMPLAINTS;"

Insert: "CHANGING THE TERM "HIGH-HAZARD DAM" TO "CLASS 2 DAM";"

2. Page 9, line 1.

Insert: "NEW SECTION. Section 10. Name change -- directions to
code commissioner. Wherever the name "high-hazard dam",
meaning a dam that meets the requirements of 85-15-106,
appears in the Montana Code Annotated or in legislation
enacted by the 1993 legislature, the code commissioner is
directed to change the name to "class 2 dam".

Renumber: subsequent sections

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 102

DATE 1/13/93

SPONSOR(S) REP. SCHYE

PLEASE PRINT

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|--------------|---------|--------|
| Gary Fritz | DNRC | ✓ | |
| Jo Brunner | MARA | ✓ | |
| Larry Dolan | DNRC | ✓ | |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.