

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 17, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

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

Committee Business Summary:

Hearing: SB 282, SB 340, SB 363
Executive Action: None.

HEARING ON SB 282

Opening Statement by Sponsor:

Senator Swysgood, Senate District 37, stated that SB 282 is a bill to close the Jefferson River and Madison River basins to further consumptive appropriations, except appropriations for ground water, certain storage projects, and domestic, municipal, and stock uses. Section 3 nullifies certain water reservations in the Jefferson River basin, which Senator Swysgood commented would be the only contentious part of the bill as it relates to

the reservation process. He noted that other bills on basin closures are somewhat similar in context but different in their approach. He read to the Committee the Order from the Board in the final draft of the Missouri River Basin.

Proponents' Testimony:

John Bloomquist, representing various water users in the Jefferson basin, stated his support for SB 282, and noted his clients feel the basin should be closed and the Board's Order put into effect. He noted amendments would be offered to close the basin and ignore the Board's Order and allow the Department of Fish, Wildlife and Parks to have the reservation. He urged the Committee to think carefully about that because of the message that will be sending.

Jo Brunner, executive director, Montana Water Resources Association, stated many members of her association live in the affected area, and they are strong supporters of the basin closure and SB 282.

Lorna Frank, Montana Farm Bureau, said their members in Beaverhead and Madison counties feel strongly that SB 282 should be passed as it is and the river basins closed.

Holly Franz, representing Montana Power Company, stated her support of the concept of basin closure in the Madison and Jefferson River areas.

Opponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, stated their opposition to SB 282. He noted Section 3 is offensive in that it declares only two of the reservations granted in that basin null and void: the Department of Fish, Wildlife and Parks and the Department of Health and Environmental Sciences (DHES). He asked why only the non-consumptive reservations are being singled out if closure is really about protecting existing users from further depletions in the basin. He noted that Senator Swysgood appeared at a public hearing on the reservation and testified in emphatic terms about the Fish, Wildlife and Parks reservation. Mr. Bradshaw said that while part of Senator Swysgood's testimony in passing addressed the over-appropriation issue, the primary thrust of his testimony was that he does not like or trust Fish, Wildlife and Parks and that he does not want them involved in water management discussions in the basin. He concluded the only reason for this closure is that it is punitive to Fish, Wildlife and Parks and DHES. Mr. Bradshaw said if the basin is closed, it should be closed to protect against further depletions in over-appropriated basins.

Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife and

Parks, presented to the Committee prepared testimony in opposition to SB 282 (Exhibit #1).

Mark Daspit, Montana Audubon Legislative Fund, stated their opposition to SB 282 for the same reasons as outlined by Stan Bradshaw of Montana Trout Unlimited.

Questions From Committee Members and Responses:

Senator Bartlett asked Senator Swysgood why the non-consumptive uses are singled out in SB 282. Senator Swysgood said the uses singled out are in direct relation to what the Board of Natural Resources said in its order dated June 30, 1992. He said a basin closure allows no further permits to be issued for surface water rights, so any water available after the adjudication process will be available with a priority date of July 1, 1985 and it will be for instream flows.

Senator Kennedy asked if the purpose was to get water for later reservation rights. Senator Swysgood said it was not.

Senator Bianchi said there are some people who filed for water rights after 1985. He asked if they would be affected under the basin closures, and if it is Senator Swysgood's intent to get more water for them. Senator Swysgood said that was not his intent.

Senator Weeding asked if it was the intent of SB 282 to allow the conservation districts to perfect those reservations using Fish, Wildlife and Parks and the Department of Health's water.

Senator Swysgood said he intended to put in law what the Board of Natural Resources directed regarding these particular reservations in the Board's order dated June 30, 1992.

Senator Weeding asked Gary Fritz if reserved waters are exempt from a closure. Gary Fritz, Department of Natural Resources and Conservation (DNRC), said the way he interprets SB 282 is that the only preclusion for this closure would be for reservations adopted in the future and that the closure would not apply to the consumptive reservations already adopted by the Board.

Mr. Fritz said conservation districts would not lose their reservations if SB 282 passed, but if the basin were closed without Section 3 in the bill, that would be the case. This bill discriminates between instream and consumptive reservations because it indicates that the instream reservations would be null and void but the consumptive reservations for the conservation districts are not mentioned and presumably not null and void. He noted that Section 3 of SB 282 as it reads now is not the same as the Board's order.

Senator Keating asked John Bloomquist how he perceived the basin

closure with regard to the Board's order. Mr. Bloomquist said when the order was issued, it corresponded with Senator Swysgood's language.

Senator Keating asked if there would be greater instream flow when there is a lot of water. Mr. Bloomquist said there has been very little new permitting after 1985, with most of the permits applying to ground water.

Senator McClernan asked how severe the over-appropriation is. Gary Fritz said if someone came to the Department and asked that the basin be closed, they would have to go through an exhaustive water availability study to determine how often the basin is water short and whether or not there is additional water to be appropriated. He said DNRC does not know the answer to that question right now. He stated there is some severe de-watering on the Jefferson at times, but whether that warrants basin closure, he is not prepared to say.

Senator Bartlett questioned the Board's intent in including the condition regarding the conservation district reservations under discussion and the DHES and FWP reservations. She asked what they wanted to accomplish with this kind of condition.

Robert Throssell, retained counsel for the Board of Natural Resources, stated all discussions on the Board's decisions were public discussions and are a matter of public record. Considerable testimony was presented by FWP about the water, and there was a question of need within the context of the reservation process. Granting the reservation to the instream reservants would meet those needs because of testimony regarding water availability. He said the Board fashioned a closure provision that is in the instream portions; it is the same closure provision that applies to the conservation district.

Senator Bartlett said it was her understanding that the Board would grant this reservation but was uncertain if the reservation would meet the need that had been expressed in testimony. She added that during a basin closure, the reservation essentially is preempted.

Mr. Throssell said the testimony of water rights holders on these streams was that there was no water. The Board said if that was true, the basin would be closed but if the basin is left open for other appropriators, then the instream flows would have the 1985 priority.

Senator Bianchi asked Mr. Throssell if he agreed with the interpretation if the basin were closed, the conservation districts that do not have a water plan would also lose their reservations. Mr. Throssell said he did not believe they would lose their reservations but they would be suspended.

Senator Bianchi asked if the Board reopened the basin, the Fish,

Wildlife and Parks and Department of Health and Environmental Sciences' reservations would not be included since they are excluded in the statute. Mr. Throssell said he believes that is right.

Senator Weeding asked Mr. Bloomquist about how the bill would affect storage. Mr. Bloomquist said it was his opinion that in this bill, new storage was exempted. As far as FWP and DHES reservations, this bill would negate those to irrigation.

Senator Bartlett asked Mr. Bradshaw if he agreed with Mr. Throssell's understanding as to why the Board included the condition regarding consumptive and non-consumptive reservations in the order.

Mr. Bradshaw said not entirely, although there may have been some deliberations that he did not hear. A point made by agricultural objectors to FWP was that they did not like the idea of FWP being able to object and change proceedings that might occur in the basin. They fear FWP might obstruct changes that other irrigators might make.

Mr. Kennedy asked Mr. Bradshaw if he would support the bill with the Fish, Wildlife and Parks amendments. Mr. Bradshaw said he would.

Closing by Sponsor:

Senator Swysgood closed. He stressed that water should be protected as it is an important resource for Montana. He concluded that he had an amendment he would introduce during executive action.

HEARING ON SB 363

Opening Statement by Sponsor:

Senator Bianchi, sponsor, said he is presenting SB 363 because of numerous meetings he attended with water users discussing instream flows and other related procedures. SB 363 is for a statewide closure of all basins in the state with exceptions noted in the bill that still have available water for appropriation. It closes all basins at this point in time until the adjudication process has been completed. When the basin opens up again, DNRC can determine if there is further water to appropriate. He concluded SB 363 would increase the value of water rights that people currently have.

Proponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, said the time has come

for closure of some of the waters in the state, as Montana cannot continue to appropriate water that is not there. He noted he has some problem with SB 363 and therefore is offering an amendment (Exhibit #2).

Opponents' Testimony:

Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife and Parks, testified in opposition to SB 363 (Exhibit #3).

John Bloomquist, representing Montana Stockgrowers Association, stated there may come a time when this is necessary, but SB 363 is such a sweeping closure of the whole state that it is a little misplaced. He felt it would be more appropriate to go basin by basin instead of the statewide approach.

Questions From Committee Members and Responses:

Senator Weeding asked Senator Bianchi who devised the list of rivers to be examined. Senator Bianchi noted it is not necessarily a complete list, but the rivers he included were given to him by Gary Fritz of DNRC.

Senator Weeding said he would like to have Mr. Fritz comment regarding the main stem of the Yellowstone.

Gary Fritz said he indicated to Senator Bianchi a concern that there were areas in the state where there was still water available. He said the rivers shown in the bill were examples and it was not made clear that those were only examples and not an exhaustive list. He stated there is not a list of basins with water availability. There are water reservations in place on the Yellowstone and many would say there is not additional water available on that river, although a few permits are issued there. He said there may be some amounts of water available during certain periods of time. Mr. Fritz concluded until a definitive water availability study is done, they cannot say that a stream is over appropriated.

Senator Tveit asked about the Clark Fork of the Yellowstone. Mr. Fritz said the Clark Fork of the Yellowstone probably has some water available at times. It is a tributary of the main river.

Senator Hockett asked if the tribal problems of adjudication and water appropriation would be affected by the closure. Stan Bradshaw said the tribal claims would be pre-1973, and he did not think they would be affected by the closure.

Closing by Sponsor:

Senator Bianchi closed. He said the difference between SB 363

and SB 282 is that SB 363 is a statewide closures, while SB 282 is a single closure. He concluded that basin closures are to protect existing water rights.

HEARING ON SB 340

Opening Statement by Sponsor:

Senator Steve Doherty, Great Falls, stated SB 340 is the result of a study by the Environmental Quality Council (EQC) of Montana's energy policy. During the study, a recommendation arose that building codes be addressed. He noted that several utilities funded this portion of the study. Senator Doherty stated SB 340 is the result of a collaborative process, and the coalition that developed the bill was brought together for a common good and a common purpose.

Proponents' Testimony:

Gerald Mueller, appearing as the spokesman for the Environmental Quality Council Residential Energy Efficiency Working Group, expressed support for SB 340 (Exhibit #5).

Jim Kembel, Administrator of Public Safety Division, Department of Commerce, recommended passage of SB 340.

Gene Phillips, Pacific Power and Light, stated they were pleased to be a participant in this group, and expressed support for SB 340.

John Ralph, Montana Power Company (MPC), said MPC supports SB 340 and the establishment of a policy for residential energy efficiency. He noted SB 340 would provide for information strategies to assist consumers in making better-informed decisions.

Brian McNitt, Montana Environmental Information Center, stated they were an active part of the working group, and he urged support of SB 340.

Nancy Griffin, Homebuilders Association, stated they were a part of the group and urged support of SB 340. She noted the long term value will allow average Montana working families to build and finance affordable energy efficient housing to all communities.

Jim Morton, Chairman, Human Resources Development Council Association, stated his support of SB 340.

Alan Davis, Department of Natural Resources and Conservation, stated they were a member of the collaborative group and urge support of SB 340.

Denise Peterson, Staff Attorney for the Public Service Commission, expressed their support for SB 340 (Exhibit #6).

Mark Daspit, Montana Audubon Legislative Fund, stated his organization supports SB 340 (Exhibit #7).

Lynn Abercrombie, Northwest Power Planning Council, stated the Council supports passage of SB 340.

Questions From Committee Members and Responses:

Senator Weldon asked Mr. Mueller about efforts in funding the loan reserve account. Mr. Mueller said they went before the long range building committee, but to date no action has been taken on the loan reserve account.

Senator Swift asked Mr. Mueller about code enforcement regarding builder certification of energy. Mr. Mueller said there is not a connection between enforcement and the program to be established by the Board of Housing program. The Board of Housing program would set energy standards that would be higher than code requirements to participate in their program. The Board of Housing program would be voluntary.

Senator Swift said SB 340 sets up five-unit residential dwellings for enforcement and it exempts anything below that. Section 4 says they have to self-certify that they have built according to certain requirements.

Mr. Mueller said in jurisdictions that adopt the state energy code there is enforcement of energy provisions for residences including less than five dwelling units. Outside of the jurisdiction of adopting local governments, there is no code in effect. He said their group agreed to seek a change in the statute that would allow builders to self-certify only the energy provisions that are contained within the code in the areas outside the jurisdiction. Currently about half the homes being built are being built outside the jurisdiction of areas in which there is a code in effect.

Senator Hockett asked how this relates to the Super Good Sense housing construction program.

Mr. Mueller said the Board of Housing program for electric homes will be targeted at the same energy efficiency level as Super Good Sense. He noted the utilities like that because they are now paying on the order of \$3,000 incentive payments for people participating. They will be able to make contributions to the loan reserve fund that is about half of what they are now paying for these electric homes.

Closing by Sponsor:


Senator Doherty closed. He said SB 340 was introduced because the homebuilders, conservation communities and utilities all thought something had to be done.

ADJOURNMENT

Adjournment: 3:00 p.m.



SENATOR DON BIANCHI, Chair



LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES

DATE 2/17/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	✓		
Sen. Hockett	✓		
Sen. Bartlett	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Keating	✓		
Sen. Kennedy	✓		
Sen. Swift	✓		
Sen. Sunsgood	✓		
Sen. McCernan	✓		
Sen. Treitz	✓		
Sen. Weeding	✓		
Sen. Weldon	✓		

SB 282
February 17, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Natural Resources Committee**

The Department of Fish, Wildlife & Parks believes that basin closures, in the proper circumstances, are a desirable, effective and even necessary water management tool. The Jefferson River and Madison River drainages are prime candidates for consideration of basin closures. Rarely is sufficient water available for new permits in these basins, particularly during the irrigation season.

Under normal circumstances, the department would favor the basin closures proposed in SB 282. The closure would protect irrigation and other consumptive use rights and would normally protect the instream flow reservations of the department and the Department of Health and Environmental Sciences that were recently granted by the Board of Natural Resources and Conservation.

The department is particularly troubled with the fundamental unfairness of Section 3 that could completely take away the water reservations recently granted to this department and the Department of Health and Environmental Sciences.

Even if Section 3 was taken out of the bill there is a problem. Because of a condition in the Board's order of June 30, 1992, the reservations granted would no longer exist for practical purposes

under the present version of SB 282. This condition states:

The DFWP reservation shall have no force and effect in any basin, subbasin, drainage, subdrainage, stream, or single source of supply for the period of time and for any class of uses for which permit applications are precluded.

This condition, in conjunction with SB 282, would nullify the reservation process just recently completed for these drainages in the Upper Missouri River Basin above Fort Peck Dam. This whole basin includes approximately one-half the area and waters of the state. Section 3 of the bill would completely eliminate all instream reservations for fisheries, recreation and water quality.

Our agency spent over a half million license and federal excise tax dollars of sportsmen and women that were appropriated and approved by the legislature. The reservation process in the upper Missouri basin was supported by general fund appropriations of approximately \$1.3 million to DNRC to prepare an EIS and to conduct the extensive, lengthy and exhaustive hearing process. Of this amount, the Conservation Districts used general fund appropriations of about \$400,000 to prepare and advocate reservations for irrigation projects. Cities and towns received \$67,000.

The Board granted instream flow reservations in the upper Missouri River Basin to help protect water quality and the outstanding fishery and recreational values of the basin. Many of the rivers affected by this bill, including the Madison, Big Hole, and Beaverhead Rivers, have well deserved national and even international reputations. They are among the best in the world.

At the time the reservations were granted, the department recognized there were significant problems with the Board's condition. Now, in light of this bill and three other basin closure bills, the department believes that SB 202 presents an opportunity to take a careful look at the wisdom of the condition and Section 3. For the following reasons, the Board's condition and Section 3 put the advocates of instream flows and consumptive water users, including irrigators, in a "Catch-22" that harms both instream values and the interests of irrigators and other consumptive water users.

First, Section 3 or an interpretation of the Board's condition that would nullify, at least in part, the instream reservations when they are most needed is both fundamentally unfair and unwise and flies in the face of the granting of instream reservations. The Board concluded after a three year process, following the submittal of reservation applications, that instream flows were needed and in the public interest. In total, the department spent the better part of 10 years in the process. Section 3 and the condition frustrates the public's reliance and faith in a valid public process initiated by the legislature.

During the administrative hearing, holders of existing rights were concerned that their existing rights be protected, and they were. The department holds instream flow reservations on behalf of the public and asks that the public's rights be given this same recognition and protection. The public, through the department, is

entitled to play a role in future water use and management issues in the basin that would affect the fisheries resource. However, the combination of this bill and the Board's order or Section 3 will treat instream flows in a way that no one would consider treating any other vested water rights. They will have no protection under this bill as written. For example, the department could not object to a change in a point of diversion from a mainstem river to a tributary that would completely dewater the tributary and destroy the fishery.

Second, and perhaps more important, the condition or Section 3 may harm the future hopes and expectations of present water users. Users in water short basins hope and dream of someday improving water availability and water management. Although none of us knows exactly what the future may bring, improving water availability through new storage or more efficient delivery systems can only be achieved with capital investments. It is doubtful that irrigators alone can fund such projects by themselves. For future projects to be feasible, a partnership of all interests, including irrigation, fisheries and recreation, will almost inevitably be required. If state, and federal funds, are to be spent on fisheries and recreational benefits, then those benefits must be protected. The only way that instream values for fisheries and recreation can be assured of protection is through an instream flow reservation. These reservations are the one and only opportunity for recognizing and protecting instream values. If the reservations are nullified when they are most needed, this department will not be able to justify

spending money in any partnership to improve storage or delivery systems.

Third, if the condition or Section 3 means that the instream reservations would have no force and effect against any junior consumptive use permits, there is a significant problem. Instream flows would not be protected against any junior permits issued between July 1, 1985, and the date of closure of the basin. July 1, 1985, is the priority date of the Upper Missouri River Basin reservations. Thus at the moment of the basin closure, from a practical standpoint instream flow protection would disappear. These junior rights could then take water that had been protected by the senior instream flow reservations. The closure, in fact, would harm senior irrigation users as well as instream flows because water could be consumed that could not have been used before the closure. This turns the purpose of basin closures on its head. The Board could not have intended this result.

To give you an idea of the magnitude of this concern, there are approximately 557 permits issued or pending with a priority date after July 1, 1985 in the Upper Missouri River Basin above Fort Peck Dam. This includes 35 permits in the Madison and Jefferson River Basins.

The "no force and effect" condition in the Board's order is now proving in SB 282 that it has severe drawbacks. Section 3 goes will

beyond the Board's order and completely eliminates any instream reservations. These factors prevent all of the parties with a legitimate interest from being free to consider basin closures on the merits of the closures themselves. If Section 3 and the Board's condition are removed, then the department supports the closure. An amendment for this purpose is attached.

Without the proposed amendment, the department would have to oppose the bill but not the concept of a closure for the Jefferson River and Madison River Drainages.

PROPOSED AMENDMENT TO SB 282
FIRST (WHITE) COPY

EXHIBIT #1

DATE 2-17-93

SB-282

1. Page 1, line 8.
Following: "USES;"
Strike: "NULLIFYING"
Insert: "PROTECTING"

2. Page 3, line 1 through 7.
Strike: section 3 in its entirety
Insert: "NEW SECTION. Section 3. Validity of
reservations. The closure under [section 2]
does not render an instream reservation
granted by the board in its June 30, 1992,
order of no force and effect, notwithstanding
any condition to the contrary in that order.
The reservations are not affected or
diminished during the closure under [section
2]."

PROPOSED AMENDMENTS TO SB 363
Montana Trout Unlimited
February 17, 1993

Page 3, line 2, after "river":

Delete ".", and insert

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2/17/93

BILL NO. SB 363

- "(v) The Clark Fork River and its tributaries above Milltown Dam;
- (vi) The Flathead River and its tributaries

(3) The basin closure described in subsections (1) and (2) of this section shall not affect a reservation to maintain a minimum flow, level, or quantity of water that was made prior to the closure."

SB 363
February 17, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Natural Resources Committee**

A closure of most of the state to new water use permits would protect the interests of this department. This is a major and wide-sweeping proposal. The department supports the concept of closures to new permits as a wise management tool before water shortages erode the rights of all water users. Closures protect consumptive uses, water quality, fisheries, and recreation.

The department has one particular concern with SB 363. This bill, coupled with a condition in the Board of Natural Resources and Conservation's recent order reserving water in the Missouri River Basin above Fort Peck Reservoir, would nullify, for all practical purposes, the instream reservations for fisheries, recreation and water quality within this basin. This concern has been described in detail in the department's testimony on SB 282 that would close the Madison and Jefferson River basins.

If the Board's condition were removed, then the department would support the closure. An amendment for this purpose is attached.

Without the proposed amendment, the department would have to oppose the bill but not the concept of closures.

PROPOSED AMENDMENT TO SB 363
FIRST (WHITE) COPY

1. Title, line 7.
Following: "PROJECTS;"
Insert: "PROTECTING CERTAIN RESERVATIONS;"
2. Page 3, line 2.
Following: line 1
Insert: "NEW SECTION. Section 3. Validity of
reservations. The closure under [section 2]
does not render an instream reservation
granted by the board in its June 30, 1992,
order of no force and effect, notwithstanding
any condition to the contrary in that order.
The reservations are not affected or
diminished during the closure under [section
2]."
Renumber: subsequent sections
3. Page 3, line 3.
Following: "1"
Strike: "and 2"
Insert: "through 3"
4. Page 3, line 6.
Following: "1"
Strike: "and 2"
Insert: "through 3"



Department of Energy

Bonneville Power Administration
Montana District
800 Kensington
Missoula, Montana 59801-5631

February 17, 1993

In reply refer to: UM
(406) 329-3060

Senator Don Bianchi
Chairman
Senate Natural Resources Committee
State Capitol
Helena, MT 59620

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 2/17/93
BILL NO. SB 340

Dear Chairman Bianchi:

The purpose of this letter is to inform the Senate Natural Resources Committee that Bonneville Power Administration has worked over the past several months with organizations representing the housing industry, state agencies, environmental and consumer groups, and utilities to develop a package of recommendations supporting increased residential energy efficiency in Montana. Senate Bill 340 is part of that package.

We are very encouraged by the progress that these groups have been able to make on issues that have been the subject of much contentious debate for over a decade. We view Senate Bill 340 as a positive step toward improving the efficiency of new residential construction in Montana.

Thank you for the opportunity to comment. I would be glad to provide further information and to answer any questions that committee members may have concerning BPA's work related to Senate Bill 340. I can be reached at (406) 329-3060.

Sincerely,

A handwritten signature in cursive script, reading "Gail Kuntz", is written over a horizontal line.

Gail Kuntz
State and Local Government Coordinator

TESTIMONY OF GERALD MUELLER
BEFORE THE MONTANA SENATE NATURAL RESOURCES COMMITTEE
February 17, 1993

SENATE NATURAL RESOURCES
COMMITTEE
EXHIBIT NO. 5
DATE 2/17/93
BILL NO. SB 340

Chairman Bianchi, members of the Committee, my name is Gerald Mueller, and I live at 7165 Old Grant Creek Road in Missoula. I appear before you in support of SB 340 as the spokesperson for the Environmental Quality Council Residential Energy Efficiency Working Group (Working Group).

The Working Group was established in July of last year by the EQC to seek a consensus statement of policy and implementation strategies regarding residential energy efficiency in Montana. Attached to this testimony is a list of the participants in the Working Group. Notice that it includes representatives of the major interests that have fought for the last ten years before the legislature and in other forums about residential energy efficiency generally, and building codes specifically. The Working Group includes representatives of:

- All four of Montana's private electric and natural gas utilities;
- Rural electric co-ops from western and eastern Montana;
- Both of the federal power marketing agencies which serve our state, BPA and WAPA;
- The Northwest Power Planning Council;
- Members of the home building industry, including home builders, energy conservation consultants, a lumber yard supply company, and home mortgage lenders;
- Environmental and low-income organizations;
- A spokesperson for local government; and
- State agencies, including the Departments of Commerce, Natural Resources and Conservation, and the Public Service Commission.

This group containing several long-time adversaries worked together over the last seven months and succeeded in developing consensus recommendations for a residential energy efficiency policy statement and implementation strategies which the EQC subsequently adopted and included in SB 340.

Briefly, SB 340 does four things:

1. It provides that most residential buildings containing less than 5 dwelling units will now be subject to the energy provisions of the state building code through one of two mechanisms - either the existing process whereby local governments adopt and enforce the state building code including its energy provisions; or self-certification by home builders to only the energy provisions of the state building code;
2. It directs the Department of Commerce in adopting rules concerning conservation of energy to conform those rules to the policy statement contained in section 1 of this bill regarding residential energy efficiency and other policy statements subsequently adopted via the process established

EQC RESIDENTIAL ENERGY EFFICIENCY WORKING GROUP

<u>ORGANIZATION</u>	<u>PARTICIPANTS</u>
Montana Power Company	John Ralph & Dave Houser
Pacific Power & Light	John Graham
Montana Dakota Utilities	Duane Anderson
Great Falls Gas Company & Transmission Co-op	Shiela Rice
Montana Electric Co-operative Assoc.	Mack McConnell
Flathead Electric Co-op	Gary Mahugh
Missoula Electric Co-op	Sharon Jacobson
Bonneville Power Administration	Gail Kuntz
Western Area Power Administration	Diane Noennig
Northwest Power Planning Council	John Hines
Montana Building Industry Assn.	Don Chance & Nancy Griffen
Lumber Yard Supply	Mike Fasbender
Energy Conservation Consultants	H.S. "Sonny" Hanson
Montana Bankers Association	Janeth Martin
Montana Environmental Information Center	Sam Toole
District XI Human Resource Council	Jim Morton
Montana Local Government Energy Office	Tom Marvin
Montana Department of Commerce	Jim Kembel
Montana Department of Natural Resources & Conservation	Alan Davis & Lou Moore
Montana Public Service Commission Staff	Dan Elliott & Denise Peterson
Committee Facilitator	Gerald Mueller

EXHIBIT # 5
DATE 2-17-93
SB-340

February 17, 1993

Testimony of Public Service Commission
on Senate Bill 340

I am Denise Peterson, Staff Attorney speaking on behalf of the Public Service Commission in support of Senate Bill 340. The Commission endorses Senate Bill 340 as an essential step in improving the energy efficiency of all new residential construction.

The Commission has participated in the Working Group because of its strong interest in cost-effective energy conservation. Energy efficiency and conservation are critical components of a state energy policy.

Senate Bill 340 is the result of a collaborative effort to satisfy the utilities, builders, consumers, lending and real estate entities, low income and conservation groups, and state and local governments. Before the formation of the Residential Energy Efficiency Working Group, there was dissension on how residential energy efficiency should best be achieved. Senate Bill 340 resolves this controversy. The energy conservation provisions of the state building code will apply to all residential buildings under this bill.

This bill removes the one through four-plex exception in the building code for purposes of promoting energy efficiency only. The builders have agreed that they should assume the responsibility to self-certify the energy-efficiency provisions. This bill further obtains greater energy conservation by enabling the Department of Commerce to adopt rules concerning the conservation of energy to conform to a state energy policy, as agreed upon by this consensus working group.

The Public Service Commission supports this bill in the interests of all Montana ratepayers. As this state takes steps to support cost-effective energy efficiency and conservation, there will be decreased need for costly building of utility facilities. Conservation as a resource is a benefit to ratepayers and utilities alike.

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2/17/93
BILL NO. SB 340

NAME Mark Daspit

ADDRESS Box 595 Helena, MT 59624

HOME PHONE 447-4984 WORK PHONE 447-5949

REPRESENTING MT Audubon Legislative Fund

APPEARING ON WHICH PROPOSAL? SB 340

DO YOU: SUPPORT X OPPOSE AMEND

COMMENTS:

Senate Bill 340 is the direct result of recommendation #4 from
the HJRC Energy Policy Study. The study contains figures
that would tend to argue that Montana is in need of
residential energy conservation.

The figures show that residential consumption of energy increased
close to 10 trillion Btu's in 30 years. In that time period, residential
sales of electricity went from 935 million kilowatt-hours to 3.8
billion ~~282~~ kilowatt-hours.

Audubon believes that more can be done to conserve energy in
the state of Montana. Encouraging builders to build affordable,
energy efficient houses is a step in the direction of reducing
the amount of energy used.

We encourage you to pass Senate Bill 340.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/17/93SENATE COMMITTEE ON Natural ResourcesBILLS BEING HEARD TODAY: SB 282, SB 340, SB 363

Name	Representing	Bill No.	Check One Support Oppose
Denise Peterson	Public Service Com	SB 340	✓
Mark Dasp.4	MT Audubon Leg. Fund	SB 340	✓
"	"	SB 282	✓
GENE PHILLIPS	PP & L	SB 340	X
W James Kembel	Public Safety Div DOC	SB 340	X
John Ralph	Montana Buer Co	SB 340	✓
Lynn Abercrombie	Northwest River Planning Comm	SB 340	✓
Alan Davis	Montana DWR	SB 340	✓
P. Younger	MT Farm Bureau	SB 282	✓
Jahet Ellis	MT Audubon	SB 280	✓
Larna Frank	MT Farm Bureau	SB 282	✓
Holly Fran	MT Power Co	SB 282	✓
Jim Morton	HRDC	SB 340	✓
Nancy Griffin	Montana Building Industry Assoc	SB 340	✓
Gerald Mueller	BEQC Residential Energy Efficiency Work	SB 340	✓
Jim Rechner	MT. Wildlife Fed Group	SB 363	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY