

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on March 4, 1993, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council
Jaelene Racicot, Committee Secretary

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

Committee Business Summary:

Hearing: SB 383, SB 369, SB 350
Executive Action: SB 369, SB 259, (SB 350 - Delayed)

HEARING ON SB 383

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41, Big Timber, said SB 383, which deals with water leases, water leasing study, and use of river restoration funds for water leasing, was amended in the Senate where the number of streams authorized for water leasing was 10,

were increased to 20 streams. At the present time, there are seven streams in the state that are authorized for water leasing. Currently, there are leases on one stream, Milk Creek. He said the intent of SB 383 was to increase the limit from 10 streams to give the Department of Natural Resources more flexibility. **SEN. GROSFIELD** explained that the water leasing option is part of a study to determine the effects of leasing the water. He said the study will be terminated in 1999.

Proponents' Testimony:

Bob Lane, Department of Fish, Wildlife, and Parks, presented written testimony. **EXHIBIT 1**

Jo Brunner, Montana Water Resource Association, said that the Association always supports good water legislation. She urged the committee to support SB 383.

Gary Fritz, Department of Natural Resources, stated that SB 383 would broaden the opportunities for Fish, Wildlife and Parks to enter into negotiations and be successful with water leasing. He urged the committee to support SB 383. **EXHIBIT 2.**

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. ROSE asked **Mr. Lane** how the water leasing was going to lead to river restoration process. **Mr. Lane** explained that it would aid in the restoration program by adding water to the streams if there is a shortage.

REP. ROSE also asked **Mr. Lane** why the number of authorized streams was changed from 10 to 20. **Mr. Lane** explained that it was amended in the Senate to 20 streams due to the fact the committee was uncomfortable leaving the authority wide open. If there is a lot of activity, it will give a lot more flexibility in the program. If there is a lot of interest, the department won't be restricted by the 10 stream limit.

REP. ROSE asked how long this process has been in effect. **Mr. Lane** replied that it has been four years.

REP. ROSE asked **Mr. Lane** how many leases there are. **Mr. Lane** said there are two leases on Milk Creek and two other leases the department hopes to solidify in the future.

REP. STOVALL asked **Mr. Lane** if the existing water rights were weakened through the leasing process. **Mr. Lane** replied no.

Closing by Sponsor:

SEN. GROSFIELD said the river restoration program currently does not have a lot of money it. He said there is a bill that was

drafted this session which would provide more money for the program. He said it would take some of the federal funds received by the Department of Natural Resource and add them to the river restoration program. SEN. GROSFIELD then explained the study of the water leasing program.

HEARING ON SB 369

Opening Statement by Sponsor:

SEN. JACK REA, SD 38, Three Forks, explained SB 369 which deals with the registration and sale of certain pesticides in the state. He thanked them for their attention and urged the committee to concur in SB 369.

Proponents' Testimony:

Ralph Peck, Deputy Director, Department of Agriculture, testified for Leo Giacometto, Director. EXHIBIT 3

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. REA closed.

REP. BARNETT was asked to carry SB 369 on the House floor.

HEARING ON SB 350

Opening Statement by Sponsor:

SEN. FORRESTER, SD 49, Billings, explained that SB 350 raises the maximum administrative fee that may be charged by an irrigation district to \$75. The current maximum fee of \$25 was established in 1979 and has not been increased since that time. He also presented the committee with amendments. EXHIBIT 4

Proponents' Testimony:

Jerry Nypen, Montana Water Resource Association, said that the Association supports the amendments presented by SEN. FORRESTER. He said that the Association wanted to change the language to read that the board may charge an additional administrative charge of \$5 to \$75. They don't want a duplication of charges. At the present time, there has been some misinterpretation of existing law.

Jay Chamberlain, manager of the East Irrigation District in

Dillon and the Montana Water Resource Association, stated that he called the Hamilton Irrigation District to see how SB 350 would affect areas that are being heavily subdivided. He was told that in the last year eight farm operations were split creating 40 to 60 new parcels of land, and with these new parcels, water must be designated to them. It is the responsibility of the irrigation district to determine where that water is going to go within those subdivisions. The current maximum administrative fee of \$25 is not enough to cover the costs. SB 350 will help recoup the costs that irrigation districts are forced to deal with.

Max Maddox, member of the Montana Water Users Association and the Chinook Irrigation Division Association, explained that SB 350 would help alleviate the costs associated with subdivisions. He urged the committee to concur in SB 350.

Dean Hoff, Director of the Montana Resource Association, explained that with subdivisions, irrigation districts are required to deliver water for more individuals instead of the previous owner. He said that the costs have gone up to deliver the water to these subdivisions owners.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. SPRING asked Mr. Hoff about how he administers the water to these subdivisions. Mr. Hoff replied that he takes the water and rotates the use of the water to meet the needs of the subdivision owners.

REP. STOVALL asked Mr. Hoff how he determines what to charge the individuals. Mr. Hoff said that all users are assessed. It does not matter how large the subdivision is, the first acre costs \$70, after that, it is based on a specific per acre charge for the number total number of acres you own. Everyone is charged the same amount per acre.

Closing by Sponsor:

SEN. FORRESTER explained that he amended SB 350 before he agreed to sponsor the bill. He stated the irrigation district wanted a fee increase to \$125, however, he did not want to go above the \$75 maximum administrative fee.

REP. ROSE was assigned to carry SB 350 on the House floor.

EXECUTIVE ACTION ON SB 369

Motion: REP. MASON MOVED SB 369 TO BE CONCURRED IN. The motion carried unanimously with REP. LARSON AND REP. SCHWINDEN voting by proxy.

REP. ANDERSON asked the committee to delay executive action on SB 383 until next week.

REP. DAVIS wanted the committee to take executive action on SB 350 at the next meeting.

EXECUTIVE ACTION ON SB 259

Motion: REP. MASON MOVED TO TAKE SB 259 OFF THE TABLE FOR DISCUSSION.

REP. MASON stated he would like the committee to amend SB 259 with the amendment as drafted by Dave Bohyer.

Discussion: Mr. Bohyer explained the amendment for the committee. EXHIBIT 5

REP. MASON asked if a landowner was willing to negotiate for the removal of a powerline would this law apply. Mr. Bohyer replied the law would not apply because the landowner was not petitioning in court for the removal of the powerline. It has to be done by court order for SB 259 to apply.

REP. STOVALL asked Mr. Bohyer if it was stated in the law if you pay for an easement it would be recorded at the local court house. Mr. Bohyer replied that he did not know.

REP. SPRING asked if SB 259 addressed issues with transmission lines. Dave Bohyer said that the definition of an overhead utility line says that it is a facility for the transmission or distribution of electricity or telephone messages along wires or cables suspended above the ground between single or double poles and their respective anchors.

REP. MASON said that "SB 259 is trying to get rid of a piece of legislation that the Supreme Court has ruled is no longer constitutional".

REP. ANDERSON asked Mr. Bohyer if he was aware of any provisions in the law which provided for payment of relocation costs of these lines. Mr. Bohyer replied that neither he nor Greg Petesch were aware of any provision.

Motion/Vote: TO TAKE SB 259 OFF THE TABLE. The motion carried with REPS. DAVIS, LARSON and SCHWINDEN voting no.

Motion: REP. ANDERSON MOVED SB 259 BE CONCURRED IN.

Discussion: REP. BARNETT stated he was going to support the bill for the purpose of clarifying the law.

REP. ANDERSON said that the committee has made SB 259 more confusing than it really is. This bill addresses a narrow

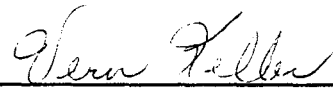
situation of relocating a powerline.

REP. BACHINI said that he agreed with REP. ANDERSON that the committee has to pass SB 259; otherwise it would be confusing for a person looking in the statutes wherein it states that the power company would pay for half the cost of relocation of the powerline.


Motion/Vote: SB 259 Be Concurred In. The motion carried unanimously.

ADJOURNMENT

Adjournment: 4:25 P.M.



VERN KELLER, Chairman



JAELENE RACICOT, Secretary

VK/jr

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

3/4/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY	✓		
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.	✓		
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING	✓		
REPRESENTATIVE WAYNE STANFORD	✓		
REPRESENTATIVE JAY STOVALL	✓		
CHAIRMAN VERN KELLER	✓		

HOUSE STANDING COMMITTEE REPORT

March 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 259 (third reading copy -- blue) be concurred in .

Signed: _____
Vern Keller, Chair

Carried by: Rep. Spring

HOUSE STANDING COMMITTEE REPORT

March 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 369 (third reading copy -- blue) be concurred in .

Signed: _____
Vern Keller, Chair

Carried by: Rep. Barnett

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/4/93 BILL NO. SB 259 NUMBER

MOTION: Rep Anderson SB259 BE
Concurred In.

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.	✓	
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE	✓	
REPRESENTATIVE DORE SCHWINDEN	✓	
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

EXHIBIT 1
DATE 3/4/93
SB 383

SB 383
March 4, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the House Agricultural Committee**

Section 1 subparagraph (3) of the bill amends the annual reporting requirements for the Department of Fish, Wildlife & Parks by requiring a discussion of stream designation activity by the Board of Natural Resources and Conservation and a summary of the past year's leasing activity on already designated streams. The department included this information in our first annual report submitted in November 1992.

Section 2 of the bill changes the water leasing study program by increasing the limit from 10 to 20 stream reaches where leasing may occur. As the board has approved only seven streams for leasing in the four years since the water leasing study was authorized, removing the limit will have little, if any, influence on the rate at which streams are designated for water leasing.

Section (3) of the bill authorizes the use of River Restoration Program funds for water leasing. The River Restoration Program is funded by a 50 cent resident and \$1.00 nonresident fee added to the cost of a fishing license. The program expends these funds twice a year for improvements to streams and rivers by local, state, federal and private entities who apply for project funding.

Projects currently authorized by the program include streambank fencing to improve riparian vegetation, improvement of water quality resulting from land management activities and other sources, and modification of irrigation diversion structures.

Currently, program funds cannot be used for improvement in streamflows. This can only be done through the water leasing program. The water leasing program can improve streamflows by leasing existing water rights and transferring those consumptive rights to instream uses. Under this bill, water leasing would be added to the allowable types of projects which can improve fish habitat.

The department supports the provisions of SB 383.

EXHIBIT 2
DATE 3/4/93
SB 383

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON SENATE BILL 383, FIRST READING

BEFORE THE HOUSE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

MARCH 4, 1993

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE ANNUAL REPORT REQUIREMENTS FOR THE WATER LEASING STUDY; REVISING THE PROVISION LIMITING ELIGIBLE STREAMS TO 20 STREAM REACHES; AUTHORIZING THE USE OF RIVER RESTORATION FUNDS FOR WATER LEASING; AMENDING SECTIONS 85-2-436, 85-2-437, 87-1-257, AND 87-1-610, MCA; AND PROVIDING AN EFFECTIVE DATE."

The Department of Natural Resources and Conservation supports this legislation which will allow the Department of Fish, Wildlife, and Parks (DFWP) to expand its efforts, where necessary, to lease water to improve the state's valuable fishery resource.

In accordance with the water leasing study authorized by Montana law, DFWP is presently authorized to pursue the leasing of existing water rights on ten stream reaches within the state. Working in consultation with the Legislature's Water Policy Committee, DFWP will assess the varied implications of leasing existing water rights for purposes of maintaining key fishery resources. Presently, DFWP is actively working on water leases involving seven stream reaches in various parts of Montana. Amending the statute, as provided by Senate Bill 383, will increase the number of stream reaches on which leasing may be considered and will provide the opportunity to evaluate the implications of water leasing in more diverse circumstances. The additional reporting requirements should also prove useful in evaluating the performance of the water leasing program.

In summary, the Department of Natural Resources supports this legislation which provides broader opportunities to address one of the Montana's critical water resource issues. At the same time, and as provided by the current water leasing statute, it does so in a very controlled fashion that assures the rights of existing water users are fully protected.

EXHIBIT 5
DATE 3/4/93
SB. 369



MARC RACICOT
GOVERNOR

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.

PO BOX 200201

HELENA, MONTANA 59620-0201

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DIRECTOR
(406) 444-3144

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MARCH 4, 1993

SENATE BILL 369

HOUSE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE

MONTANA DEPARTMENT OF AGRICULTURE

LEO A. GIACOMETTO, DIRECTOR

Chairman Keller and members of the Committee. For the records, I am Leo Giacometto, Director of the Montana Department of Agriculture.

The department requests your support for passage of Senate Bill 369.

A

A

Amdnment to SB350

Page 5 lines 23, also page 6, line 24 Insert

The Board may charge an additional administrative charge of \$5.00 to
\$75.00 against each.....

Delete The Board may charge \$5.00 to \$25.00 against each

Page ~~5~~ Line 24 and 25, also ⁵⁰ page 7 line 1 & 2

Delete and the administrative charge authorized in 85-7-21034(1)

Senate Members
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VICE CHAIRMAN
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J.D. LYNCH

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EXHIBIT 3
DATE 3/4/93
SB 350

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ANDREA MERRILL

March 4, 1993

TO: Rep. Vernon Keller, Chairman, House Committee on Agriculture, Livestock,
and Irrigation
Members of the House Committee on Agriculture, Livestock, and Irrigation

FROM: Dave Bohyer *Dave B.*

RE: Senate Bill No. 259

This memorandum responds to the Committee's request for additional information regarding Senate Bill No. 259, an act clarifying that an agricultural property owner who petitions for the relocation of an overhead utility line shall pay the full cost of relocating the line.

BACKGROUND

Senate Bill No. 259 (SB 259) was introduced at the request of Senate Judiciary Committee on the recommendation of the Code Commissioner. The Code Commissioner's recommendation was made because the language contained in section 69-4-404, MCA, was ruled unconstitutional by the Montana Supreme Court in *McTaggart v. Montana Power Company*, 184 Mont. 329 (1979).

The facts in McTaggart are, essentially, that McTaggart had previously been compensated for an easement to the Montana Power Company (MPC) for the location of an overhead utility line. Subsequently, McTaggart legally petitioned the court, seeking to have MPC relocate the utility line for the purpose of McTaggart installing a center pivot irrigation system. McTaggart's petition claimed that installing the irrigation system was a public use of water and that therefore the legal theory of eminent domain applied. The District Court agreed with McTaggart, ordered relocation of the line, and divided the cost of the

relocation equally between the parties as provided in section 69-4-404, MCA. The MPC appealed.

On appeal, the Supreme Court affirmed in part and reversed in part:

. . . (1) more efficient use of water and irrigation of farmland is public use for which right of eminent domain will lie, but (2) where land is condemned and utility has paid for easement once, it is unfair that it be required to pay for easement again, and thus landowner must bear cost of relocation of power line. (McTaggart at 330)

. . . Section 69-4-404, MCA, provides that the costs of relocation shall be divided equally between the landowner and the owner of the power line. Appellant [MPC] argues that the statute does not provide for just compensation. Appellant maintains that the principle of just compensation requires that the owner of condemned property be made whole for all of the damages sustained and that there must be full compensation. Appellant contends that 50 percent compensation is only half of the compensation properly due appellant.

With this proposition we fully agree.

Article II, Section 29, of the 1972 Montana Constitution, states:

"Private property shall not be taken or damaged for public use without just compensation *to the full extent of the loss* having been first made to or paid into the court for the owner." (McTaggart at 336)

. . . Here, there is just compensation in one sense; the utility is compensated for the easement which it already has. The statutes require that the landowner offer land upon which the utility may plot an alternative route for its power line. It is nonetheless a fact, however, that the utility must also bear half the cost of relocation. Where the land is condemned and the utility has paid for the easement once, we think it unfair that it be required to pay for the easement again. The relocation of the power line comes at the insistence of the landowner, and it is he who should properly bear the costs of relocation. We find therefore that section 69-4-404, MCA, does not provide for just compensation, and we declare it unconstitutional.

Accordingly, we . . . order that respondent [McTaggart] pay the entire cost of relocating the overhead utility line. (McTaggart at 337)

Because the Montana Supreme Court ruled section 69-4-404, MCA, unconstitutional, the existing language in the Montana Code Annotated conflicts with case law. Consequently, the Code Commissioner, as required under section 1-11-204, MCA, recommended legislation accommodating the court's ruling. Section 1-11-204, MCA, states, in part:

- 1-11-204. Duties of code commissioner.** (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and, as provided in 5-11-210, submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation that will:
- (a) eliminate archaic or outdated laws;
 - (b) eliminate obsolete or redundant wording of laws;
 - (c) eliminate duplications in law and any laws repealed directly or by implication;
 - (d) clarify existing laws;
 - (e) correct errors and inconsistencies within the laws. . . . (emphasis added)

SUMMARY OF SB 259

As drafted, SB 259 incorporates the court's decision in McTaggart.

Under the revised version of section 69-4-404, MCA, the costs of relocating an overhead utility line as ordered under section 69-4-403, MCA, must be paid by the owner of the land.

Under section 69-4-403, MCA, a court may, after a hearing and finding evidence of substantial improvement in agricultural productivity, order the owner of an overhead utility line to relocate the line. If so ordered, the owner of the overhead utility must move the utility line to land to be provided by the owner of the land at no cost to the owner of the line. (See section 69-4-402, MCA.) Under McTaggart, the cost of the relocation must be paid by the landowner, not the owner of the utility line.

It is important to note that SB 259 and all of Title 69, chapter 4, part 4, MCA, apply only to the court-ordered relocation of an overhead utility line on the basis of substantial improvement in agricultural productivity. More specifically, section 69-4-403, MCA,

Memorandum to the House Committee on
Agriculture, Livestock, and Irrigation
March 4, 1993
Page 4

provides for the taking, by eminent domain, of property for a public use. Concomitantly, Article II, section 29, of the 1972 Montana Constitution and the court's ruling in McTaggart require that the taking of property be accompanied by "just compensation to the full extent of the loss".

Neither SB 259 nor Title 69, chapter 4, part 4, MCA, applies to any other type of easement, right-of-way, or property right.

OPTIONS AVAILABLE TO THE COMMITTEE

Under the duties and responsibilities of the Code Commissioner provided in section 1-11-204, MCA, SB 259 directly and succinctly clarifies existing law and corrects errors and inconsistencies within the law.

The options available to the Committee exceed those available to the Code Commissioner. For example, at page 1, line 15, of the bill, the following language could be added following "land.":

If the relocation of an overhead utility line does not result from a petition filed under 69-4-402 and an order to relocate the overhead utility line issued under 69-4-403, the costs of relocating the line must be paid as otherwise provided by law.

Although the optional language is redundant with language contained in section 69-4-404, MCA, it may provide some sense of additional protection to those persons who see opportunity for confusion, mischief, or other undesirable consequences.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture

COMMITTEE

BILL NO.

SB 383

DATE

March 4, 1993

SPONSOR(S)

Grassfield

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bob Long	DFWP	X	
Chris Hunter	DFWP	X	
Bob Hoffman	A.P.A. - Ag. Pres. Assoc	X	
Gary Fritz	DMRC	✓	
Art Mulla		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture

COMMITTEE

BILL NO. SB 350

DATE March 4 1993 SPONSOR(S) Forrester

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JERRY NYDEN	MWR A	X	
Peter G. Robish	East B. IRR Dillon	X	
John Handley	Chick Canyon Water Sup.	X	
John B. Munns	East Branch Riv		
Mary M. Saldorf	MWR A	✓	
Don Hall	Chick Canyon Div. Irr Assoc	X	
Herb Mobley	B.R.N.A.	X	
	Tongue River Water Users	✓	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 369
DATE March 4, 1993 SPONSOR(S) Rea

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ralph Peck	Department of Agriculture	✓	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.