

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN DICK KNOX, on March 24, 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: SB 346 and SB 280
Executive Action: None

HEARING ON SB 346

Opening Statement by Sponsor:

SEN. BILL YELLOWTAIL, SD 50, Wyola, stated SB 346 maintains
instream flow and affirms that a water right is a property right.
SB 346 allows for the transfer of instream rights only through a

change in appropriation. The bill does not encourage the sale of water out-of-state, although some proponents of the bill think this is true. Instream water rights, enforced by the Department of Natural Resources and Conservation (DNRC), are still mandated by SB 346. The sale of these water rights is not new.

Proponents' Testimony:

George Swan, Sheridan rancher, said although he opposed prior instream flow legislation, (SB 212), he now supports sale of water rights by a willing buyer and seller. Agriculturists need to become pro-active and work to resolve water legislation and the development of free markets. **EXHIBIT 1**

Gary Giem, Twin Bridges rancher, told the committee that SB 346 will help preserve habitat in river valleys. The bill offers a means to preserve agriculture and help Montana industry recover, he concluded. **EXHIBIT 1a**

Alan Carroll, Twin Bridges, timberman, stated that current water law does not deal with reality.

Kathy Hadley, representing the Montana Wildlife Federation, stated it is time to protect tourism and wildlife and change water rights to instream water rights. SB 346 puts water back into the rivers. **EXHIBIT 2**

Ted Doney, Helena attorney, emphasized to the committee that SB 346 is not an instream flow bill. Montana currently has Murphy Water Rights, a water leasing program and stock water rights that serve as instream flow legislation. SB 346 allows water rights to be severed from the land which, is not new legislation. The purpose of use, the point of diversion, and storage are new uses. Contrary to opponent testimony, SB 346 will care for Montana streams. **EXHIBIT 2a**

Stan Bradshaw, Montana Trout Unlimited, testified in support of SB 346.

Ron Spoon, on behalf of the American Fisheries Society, noted that current water law stands in the way of solving Montana's water problems. SB 346 broadens the scope of current water law, he said. **EXHIBITS 2b and 2c**

Robin Cunningham, Fishing and Outfitters Association, said the bill provides a tool for cooperative effort.

Marshall Bloom, Montana Trout Unlimited, spoke in support of SB 346.

Alan Rollo, Great Falls, said without SB 346, water problems will occur. Agriculture is responsible for 90% of water usage in this state. **EXHIBIT 2d**

Tony Schoonen, on behalf of the Billings Rod and Gun Club and the Billings chapter of Trout Unlimited, testified in support of SB 346. EXHIBIT 3

Dianne McDermund, Medicine River Canoe Club, Great Falls, stated SB 346 is important legislation. EXHIBIT 4

Jim McDermund, Great Falls, said he was testifying on behalf of Montana rivers and streams. EXHIBIT 5

Janet Ellis, representing Montana Audubon Legislative Fund, offered support for passage of SB 346.

Bruce Farling, Clark Fork Coalition, testified in support of SB 346.

Jim Rokosch, Stevensville biologist, said SB 346 will expand property rights by allowing individuals to determine the amount of water diverted. EXHIBIT 6

Art Whitney, on behalf of the Montana Chapter of the American Fisheries Society, submitted proponent testimony. EXHIBIT 7

Allen Schallenberger, Sheridan, stated SB 346 designates instream flow as a beneficial use and provides for the leasing and sale of water rights to individuals. EXHIBIT 8

Pat Simmons, Bozeman, representing recreationists for Montana streams and rivers, supports SB 346. EXHIBIT 9

Harry McNeal, Bozeman, said he supports the bill. EXHIBIT 10

Joe Gutkoski, Bozeman, submitted facts regarding stream flow in Montana. EXHIBIT 11

Glenn Hockett said he supports willing sellers and buyers developing a market for instream flow. EXHIBIT 12

Sam Babich, representing Skyline Sportsmen Association, stated instream flow will protect fisheries and allow for recreational use of Montana streams. EXHIBIT 13

Jack Mavers, Bitterroot Chapter of Trout Unlimited, submitted supportive testimony. EXHIBIT 14

Eugene Johnson, Upper Missouri Sierra Group, supports SB 346 as a benefit to both ranchers and recreationists. EXHIBIT 15

G. Vince Fischer, Skyline Sportsmen, Butte, said all Montana citizens deserve water usage. EXHIBIT 16

Clay Landry, Montana Trout Unlimited, presented a graph depicting instream flow laws in western states. EXHIBIT 17

Chris Clancy, representing the Montana Chapter of the American Fisheries Society, testified in support of SB 346. EXHIBIT 18

Paul Roos, Vice-President, Private Lands Committee of the Blackfoot Challenge, submitted proponent testimony. EXHIBIT 19

Sue and Dale Spartas, Bozeman, support instream flow. EXHIBIT 19a

Walter Zimmerman, Turlock, California, stated SB 346 is a reasonable compromise regarding instream flow protection. EXHIBIT 19b

Opponents' Testimony:

SEN. CHUCK SWYSGOOD, SD 37, Dillon, told the committee that SB 346 is not a simple piece of legislation. The point of measurement and the point of diversion are not the same as expressed in SB 346. As water leaves Montana, it belongs to downstream states.

REP. BILL TASH, HD 73, Dillon, said SB 346 interferes with irrigators ability to divert water. Water should be left only in reservoirs, not in streams.

SEN. TOM BECK, HD 24, Deer Lodge, testified water leasing laws have not been given enough time to work and told the committee selling water will not solve Montana water problems. He advised not to sell Montana's water down the river.

John Bloomquist, representing 3,500 members of the Montana Stockgrowers Association, said existing law allows the Department of Fish, Wildlife and Parks to lease water for instream purposes from an appropriator. SB 346 is therefore unnecessary legislation. EXHIBIT 20

Einer Stenson, Bitterroot Chamber of Commerce, stated the sale of water eliminates all use on watersheds as instream use removes all agricultural use.

Vernon Westlake, representing the Agricultural Preservation Association in the Gallatin, Madison, Jefferson and Broadwater areas, said SB 346 will establish instream flow as a beneficial use and allow for the sale of water rights for instream flow. EXHIBIT 21

Larry Descheemaeker, rancher, submitted opponent testimony. EXHIBIT 22

J.B. Anderson, Jr., Dillon attorney, said SB 346 will cause confusion, create litigation, and adversely affect junior water rights. EXHIBIT 23

Jim Hagenbarth, Dillon, suggested the bill is too broad and does not protect water right holders. EXHIBIT 24

Bill Garrison, Silver Bow rancher, noted SB 346 does not cover everyone's water rights concerns.

Shirley Bugli, Stevensville, testified in support of property rights. The majority of water used in Montana returns to its streams and aquifers. Instream flow creates out-of-state flow. EXHIBIT 24a

Lorna Frank, representing 4,500 Montana Farm Bureau members, submitted written testimony opposing SB 346. EXHIBIT 25

Ed Lord, Phillipsburg rancher and president of the Montana Stockgrowers Association, said he opposes SB 346 as written. EXHIBIT 26

Dean Hall, Billings, testified in opposition to the bill.

Steve Christensen, Bitterroot Stockgrowers Association and junior water right holder, opposes the bill.

John Robbins stated there are too many unanswered questions associated with SB 346.

Mike Volesky, Montana Association of Conservation Districts, submitted opponent testimony. EXHIBIT 28

Brian Weidenaar, on behalf of the Montana Seed Potato Growers (MSPG), said MSPG strongly opposes SB 346 as it does not benefit farmers. EXHIBIT 29

Terry Murphy, St. Ignatius, opposes the bill. EXHIBIT 30

Barry Hedrich, Ringling, testified in opposition to the bill. EXHIBIT 30a

John Matovich, member of the Montana Stockgrowers Association, stated water left in streams will affect land use. EXHIBIT 31

REP. SHIELL ANDERSON, HD 81, Livingston, testified in opposition to the bill.

Charles Crane, Choteau, representing Teton Water Users, said SB 346 could be an attorney's dream. EXHIBIT 32

Darrell Stott, Choteau, on behalf of the Eldorado Co-op Canal Company, spoke in opposition to instream uses as represented in SB 346. EXHIBIT 33

Tack Van Cleve, Big Timber, stated agriculture and food production should take precedence over recreation. EXHIBIT 34

W. L. Newman, Corvallis, testified in opposition. EXHIBIT 35

Ken Kershner, Stevensville, stated that the sale of water rights can prove disastrous. EXHIBIT 36

James Freeman, Victor, submitted opponent testimony. EXHIBIT 37

Jerry Nypen, Chairman, Montana Water Users Association, said they oppose SB 346 but will support a more prudent and economically sound instream flow program. EXHIBIT 38

W. A. Eiroff, Victor, opposes SB 346. EXHIBIT 39

Bill Hodge, Corvallis Grange #17, asked the committee not to contribute to the de-watering of Montana agriculture. EXHIBIT 40

Duane Burkenpas, Gallatin Equipment Company, submitted opponent testimony. EXHIBIT 41

Ronda Johnston, Melville, stated she could not condone SB 346 at the expense of Montana economy and private property rights. EXHIBIT 42

Foy and Judy McCollum, Lewistown, stated current water law should be given a chance to work. EXHIBIT 43

Eugene Manley, Drummond, opposes the bill. EXHIBIT 44

Merle D. Lloyd, Executive Director, Grassroots for Multiple Use, suggested SB 346 is in opposition to itself. EXHIBIT 45

Olaf A. Billquist, representing the Montana State Grange, testified the bill will devastate the agricultural and rural industries of Montana. EXHIBIT 46

Glen Donohoe said he opposes the bill because it does not protect downstream water users. EXHIBIT 47

Don Berg, Martinsdale, testified in support of water leasing. EXHIBIT 48

Sybil and Chris Branger, Helena, submitted opponent testimony. EXHIBIT 49

James and Sue Klessens, Luther, opposed SB 346. EXHIBIT 50

Bill Garrison, Glen, stated SB 346 will levy additional costs to water users. EXHIBIT 51

Petitioners opposing SB 346 submitted testimony. EXHIBIT 52

Questions From Committee Members and Responses:

REP. BROOKE said SB 346 defines instream flow as a beneficial use

and restricts the out-of-state sale of water. Mr. Doney responded that current law restricts the sale of water out-of-state adding that it is almost impossible to move water out of Montana. DNRC approval is still required for changes in a water right. Applicants must show they are not adversely affecting downstream water users.

REP. BIRD asked Mr. Doney what problems are associated with the bill. Mr. Doney stated he would like to see a restriction in the bill allowing only FWP to buy water rights. He added the public interest is best served with this agency only owning water rights.

REP. HARPER asked Mr. Doney if the bill can be used to sell water out-of-state. It would be possible, he explained, for someone to come 10 feet below and divert the water right thus restricting instream flow. If this point of diversion is restricted, the bill is purposeless.

REP. SWANSON asked Mr. Bloomquist to explain his concerns with SB 346. Mr. Bloomquist responded the bill is too open-ended and lacks a comfort zone for junior appropriators.

REP. SWANSON asked if junior appropriations were considered in current water law. Mr. Bloomquist said there have been some changes regarding surface water law since 1973.

REP. SWANSON asked for an explanation of problems associated with the bill if the only change proposed relates to the point of diversion. Mr. Bloomquist stated that once the point of diversion is changed, there are no more rights to diversions.

REP. SWANSON asked what scenario regarding instream flow is likely today. Mr. Bloomquist noted SB 346 is an attempt to bring instream flow into existing law. Water is used and reused as it proceeds downstream.

REP. STOVALL asked Mark Simonich, Director, DNRC, if the department supported the bill as written. Mr. Simonich stated DNRC is pleased with current water leasing law which is still in its infancy and would like, therefore, to wait to see if leasing will be successful. If SB 346 passes, the DNRC will administer instream flow regulations.

REP. TOOLE asked Mr. Doney to comment on the number of water right transfers. Mr. Doney said it is unlikely there could be a deluge of transfers. Objections to junior water rights, however, could be raised.

REP. TOOLE questioned how SB 346 changes current law as this law relates to transfers. Mr. Doney said he did not see a difference between SB 346 and current law.

REP. TOOLE asked how current law differs from SB 346. Mr. Doney replied that both scenarios can create more situations where appropriators will need to take notice of situations on streams.

REP. RANEY asked if there is less returned water in basins. Mr. Doney said if the water is left in the streams, there will be a substantial effect on what is occurring.

REP. FELAND questioned how many transfers DNRC processes each year. Gary Fritz, DNRC, said approximately 200 changes in appropriations are granted each year, the majority reflect changes in the point of diversion with a lesser number requesting a change in usage.

REP. RANEY asked Mr. Fritz how many of these changes are questioned. Mr. Fritz said objections are raised on approximately one-fourth of the requests.

REP. RANEY asked who will be involved in these objections. Mr. Fritz said the burden of proof lies with the objectors. If the point of diversion is moved, there could be costs assessed.

REP. ORR said there is concern that Montana water will be given away if SB 346 passes. Water in rivers has to be diverted between agricultural and recreational uses.

REP. BROOKE said the fear associated with SB 346 stems from concerns over leasing and selling. Mr. Doney said change and fear go hand-in-hand. People need to be educated about how the law will work.

REP. STOVALL asked Mr. Doney to describe the need for lease revocation. Mr. Doney said this provision was put in the bill as a safeguard to protect existing water right holders.

Closing by Sponsor:

SEN. YELLOWTAIL remarked that appropriators cannot make changes unless there is proof the change will not adversely affect another's water rights. He emphasized the currently de-watered Montana streams are headwater streams. SB 346 will not prevent the diversion of water but rather incorporates a measurement issue. The bill does not sacrifice agricultural uses for recreational uses, he further emphasized, but contains beneficial use clauses. SEN. YELLOWTAIL proposed amendments to the bill.

EXHIBIT 53

HEARING ON SB 280

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 41, Big Timber, presented SB 280, the Montana Water Plan. The bill addresses, for the first time, the

relationship between water quality and water quantity. Meetings designed for public input were held prior to adoption of this water plan. SEN. GROSFIELD detailed the bill with proposed amendments. EXHIBIT 54

Proponents' Testimony:

Mark Simonich, Director, DNRC, presented amendments to SB 280. EXHIBIT 55

Ted Doney, on his own behalf, said he will support the bill only as amended. SB 280 introduces a significant new concept; making water quality a criteria for new water uses or changes.

John Bloomquist, Montana Stockgrowers Association, supported the bill with amendments.

Lorna Frank, Montana Farm Bureau, supported the bill with amendments.

Jo Brunner, Montana Water Resources Association, offered support for the bill as amended.

Stan Bradshaw, Montana Trout Unlimited, said although he supports SB 280, he disagrees with SEN. GROSFIELD'S statement that SB 280 is the most significant water change in history.

Jim Jensen, Montana Environmental Information Center (MEIC), appointed to the Water Planning Steering committee, said groundwater protection is important and has been undervalued.

Bruce Farling, Clark Fork Coalition, stated that although the Coalition supported the bill, the proposed amendments remove the bill's bite.

Jay Chamberlain, President, Montana Water Resources Association (MWRA), said MWRA supports SB 280 as amended.

Dan White, on behalf of ARCO, presented amendments to the bill, EXHIBIT 56, but said ARCO will support the legislation with or without amendments.

Karen Fagg, on behalf of Governor Racicot's administration, stated the Administration did not share the same concerns as other proponents but does support the process. SB 280 is a property rights protection bill.

Terry Murphy, St. Ignatius, said he will support the bill as amended.

Opponents' Testimony: None

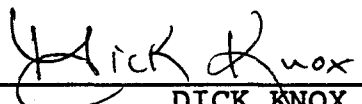
Questions From Committee Members and Responses: None

Closing by Sponsor:

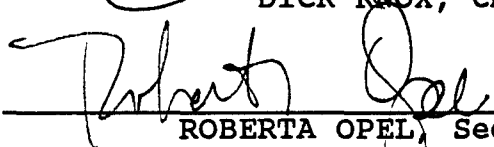
SEN. GROSFIELD stated that SB 280 does not include all work accomplished by the Water Policy Committee. Evolutionary, rather than revolutionary, change is needed. Proposed amendments pose some frustration. The water planning process incorporates the water policy committee concerns about water quality and quantity.

ADJOURNMENT

Adjournment: The meeting adjourned at 8:55 p.m.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

3/24/93

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	✓		

HR:1993

wp.rollcall.man

CS-09

Mr. Chairman, members of the committee, for the record my name is George Swan, rancher, Sheridan Montana.

It is with some difficulty that I testify today for SB 346 in direct opposition to my lifelong ranching colleagues, some of whom are aligned on the other side of this issue. There are times however, when one must stand up and be heard on an issue in which you truly believe to be in the best interests of your State and the many diverse interests which it encompasses.

Ranching is not new to me! I'm no Johnny come lately to the pressures and everyday rigors of livestock production, for I have been actively engaged in ranching and water management for over forty five years. So when SB 212 arrived in the legislature 2 years ago I jumped off the tractor and ran to Helena to testify against it!

So what's happened in the last two years? Why have I changed my mind, and what circumstances surrounded a change in my position on this instream flow legislation?

This question is answered in general terms by saying I became informed! The emotional reactions I experienced were dispelled after a series of meetings, when all parties concerned, began to focus on exactly how the new bill, SB 346 would affect agriculture and also address the instream flow requirements of other vital industries in our state.

During this period of gathering information on water rights, it became quite apparent from scrutinizing the bill given on SB 212, that most objectors didn't support the present water law, for if they did, most of the objections would be mute and irrelevant. SB 346 is not a bill threatening to steal our water rights, allow out of state companies to buy permits for new water rights or the taking of private property rights.

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Simply a bill that permits the sale of an existing water right in stream flows. The rules for this transfer are already in place. They are the same as those that govern the sale of water to municipalities, mining, industry, or another agricultural user. Instream flow sales are on exactly the same footing as water sales for any other use.

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The bottom line is that any transfer cannot adversely affect anyone. It means all other water rights holders - Junior or senior.

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SB 346 does nothing more than put instream flow sales on the same footing as sales of water for other uses.

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As in agriculture have been, and I hope always will be, the sale of private property rights. We market our crops and livestock and resent, abet, even fight any interference by laws that restricts these rights. How, in good conscience, can we not be in favor of a free market for our land? We won't allow laws restricting the sale of our land, so why should we allow laws restricting the sale of our water, as long as it doesn't adversely affect others.

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NUMBER	OLD PURPOSE	NEW PURPOSE	FLOW RATE	VOLUME	DATE ISSUED	CURRENT OWNER OF RECORD
41F-V(P)132324	Stock & Irrigation	Mining	15 cfs	100 af	06/15/82	Luzenac America Inc 9000 E Nichols Ave Englewood CO 80112 <i>EXHIBIT 1a</i> <i>DATE 3-24-93</i> <i>SB 346</i>
41C-V(W)042471	Irrigation	Domestic	8 gpm	5.33 af	03/30/84	Norman & Diane Degner PO Box 74 Alder MT 59749
41C-V(W)042470	Irrigation	Stock	5 gpm	3.33 af	09/07/84	Irwin & Linda Krull Rt 2 Box 42 George IA 51237
41L-V(P)001017	Irrigation	Stock & Lawn and Garden	15 gpm	3.77 af	02/27/85	James & Robin Nanini PO Box 714 Cut Bank MT 59427
41H-V(W)154134	Irrigation	Municipal	5.62 cfs	451.9 af	04/29/85	City Of Bozeman PO Box 640 Bozeman MT 59715
76LJ-V(P)022105	Fire Protection	Municipal	900 gpm	25 af	03/07/86	City Of Columbia Falls Drawer G Columbia Falls MT 59912
41I-G(W)000009	Irrigation	Industrial	147 gpm	80 af	03/07/86	Montana Tunnels Mining Inc PO Box 176 Jefferson City MT 59638
41I-G(W)038508	Irrigation	Industrial	129 gpm	70 af	03/07/86	Montana Tunnels Mining Inc
41B-G(W)088228	Irrigation	Exploratory Drilling	500 gpm	465.9 af	11/09/87	Marathon Oil Company PO Box 2690 Cody WY 82414
41G-G(W)195425	Commercial	Municipal	50 gpm	81 af	12/08/88	City Of Three Forks PO Box 187 Three Forks Mt 59752
76F-G(W)099508	Irrigation	Waterfowl	4 cfs	1,920 af	12/09/91	Montana Dept Of Fish, Wildlife & Parks 1420 E Sixth Helena MT 59624
76F-G(W)033714	Irrigation	Wildlife & Waterfowl	15 cfs	160 af	02/10/92	USA Fish & Wildlife Service PO Box 25486 Denver CO 80225

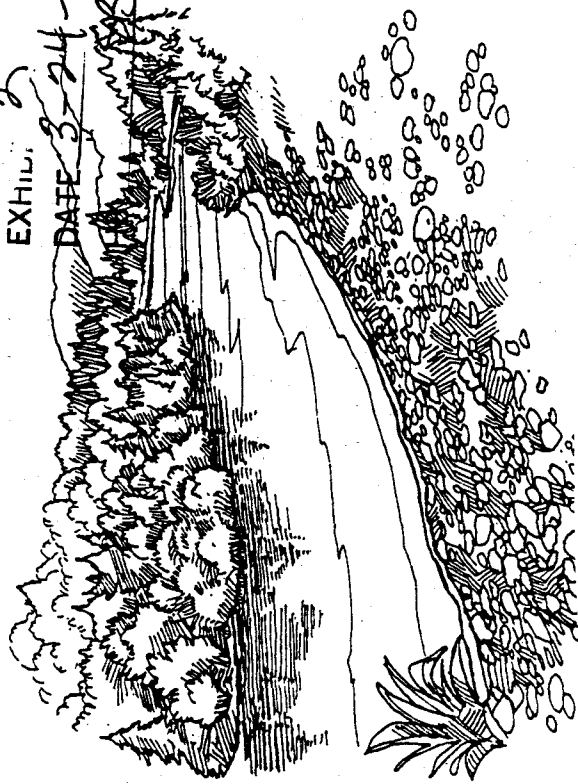
SENATE BILL 346 WOULD ALLOW PURCHASE OR LEASE OF WATER RIGHTS FOR IN-STREAM USE

● Irrigated land pays an average of \$2.30 per acre in county and school property taxes. Non-irrigated crop land pays an average of \$1.70 per acre, or a difference of 60 cents per acre. As an example, if a water right used to irrigate 100 acres were purchased and changed to an in-stream use, converting those 100 acres from irrigated to non-irrigated would result in reduced tax revenues of only \$60.

● The costs associated with buying or leasing existing water rights will tend to limit the number of changes in use. For economic and practical reasons, this legislation would not result in widespread conversion of irrigated land.

● SB 346 would complement Montana's present water leasing program. Under the present leasing program, only the Department of Fish, Wildlife and Parks is authorized to lease water for in-stream flows. Many landowners have been reluctant to lease to the Department. The present leasing program will continue to be an important part of Montana water law. The proposed legislation would broaden the opportunity for securing in-stream flows by allowing purchasing as well as leasing, and by allowing private individuals to buy or lease water rights for in-stream use.

*Published by the Montana Wildlife Federation
Montana Chapter of Trout Unlimited*



Current Montana water law disenfranchises sportsmen and other wildlife advocates because it does not allow a person to buy or lease a water right for in-stream use.

Many Montanans are supporting Senate Bill 346, which would allow the voluntary sale or lease of consumptive water rights for in-stream uses through agreements between willing buyers and willing sellers. The proposed legislation simply would allow an existing water right to be sold, leased or given for an in-stream use, just as consumptive uses now may be sold, leased or given for consumptive uses.

Not only are conservationists united on this in-stream legislation, a number of respected Montana ranchers are active supporters of SB 346.

SENATE BILL 346 WOULD ALLOW PURCHASE OR LEASE OF IN-STREAM WATER RIGHTS

CURRENT LAW Under present Montana law, a person may obtain a water right, by diverting, impounding or withdrawing water for a "beneficial" use. Under the law, beneficial uses are consumptive uses: irrigation, livestock watering, domestic, industrial, mining, municipal supply or power generation. A person may not obtain a water right for a non-consumptive (in-stream) use. Not only is a person unable to obtain a water right for an in-stream use under current Montana law, a water right holder who does not use all of the volume protected by right may lose his water right.

PROPOSED LEGISLATION Senate Bill 346 would:

- allow the owner of an existing water right to sell, lease or give his water right to another person for an in-stream use;
- allow the owner of an existing water right to change his use from a consumptive use to an in-stream use;
- allow any person, not just the Department of Fish, Wildlife and Parks, to buy, or lease a water right to be used for in-stream purposes on a willing seller-willing buyer basis;
- provide other water users the same protection that they now enjoy by requiring the person proposing to change his water right to an in-stream flow to prove that other water users will not be adversely affected;
- recognize that water rights are private property.

The bill would not:

- take away any person's water right;
- take away any private property rights;
- allow permits for new water rights for in-stream flows;
- impose the public trust doctrine;
- establish minimum in-stream flows;
- allow out-of-state transfer of Montana water.

The legislation would allow a person to work within the present private market system to buy or lease an existing water right from a willing holder. **No one's water right would be jeopardized, and no new permits would be allowed for in-stream uses.**

Process to Change a Water Right Under existing law, before a person may change the purpose, location, or point of diversion for a water right, he must apply to the Department of Natural Resources and Conservation for approval. The applicant must demonstrate that the change will not adversely affect any other water users. Other water users are notified of the application, and may file an objection. If an objection is filed, the Department holds a hearing before deciding whether to award the change. **Existing water right holders would have this same protection for applications to change a consumptive use to an in-stream use under SB 346.**

In-stream flows are vital for maintaining Montana's famous fish and wildlife resources, and for fostering a growing travel and recreation industry. Legislation can help keep streams flowing without affecting Montana's first-in-time, first-in-right water law, now more than 130 years old.

EXHIBIT 2

DATE 3-24-93

SB 346

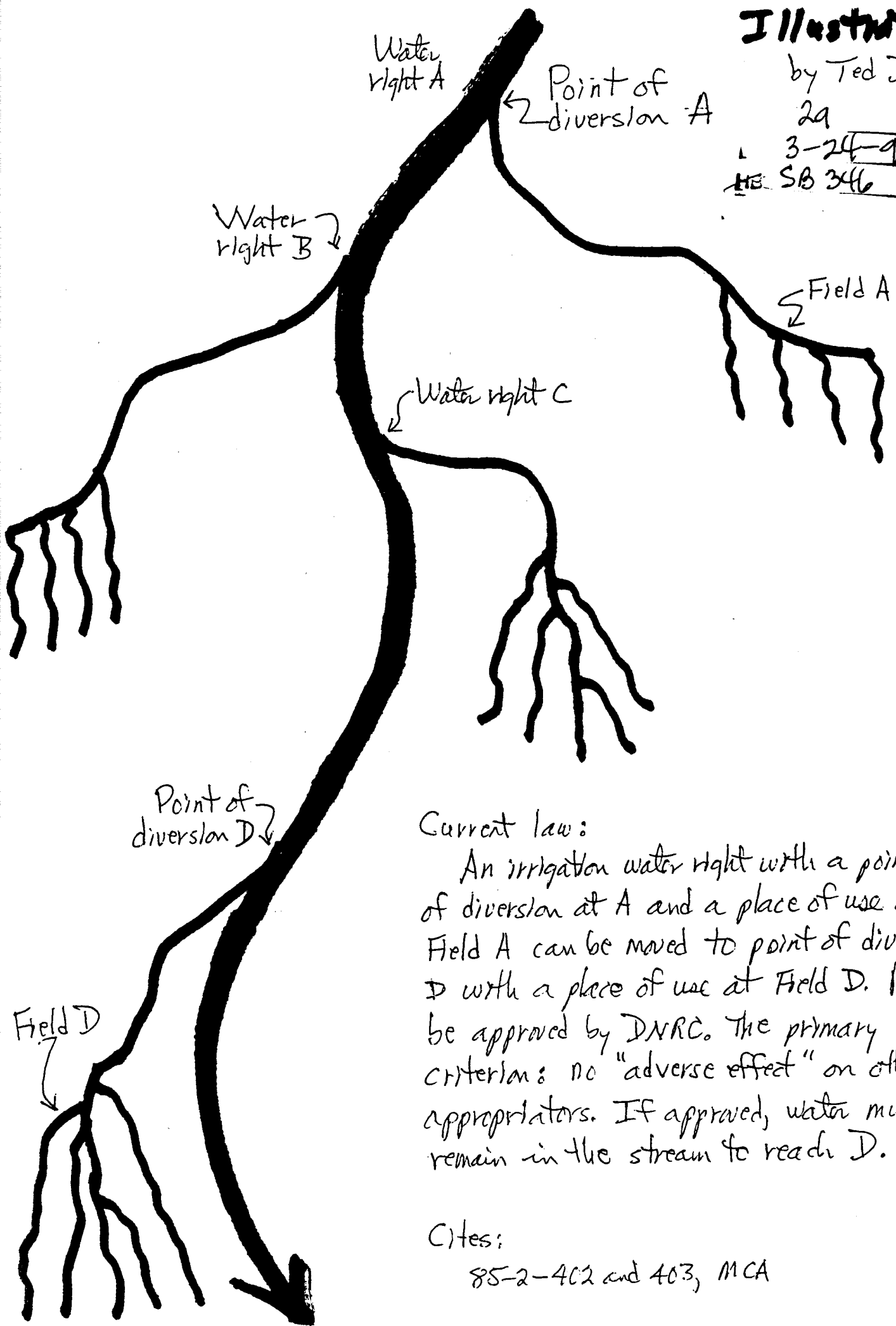
Illustration #2

by Ted Dorey

2a

3-24-93

HE SB 346



Current law:

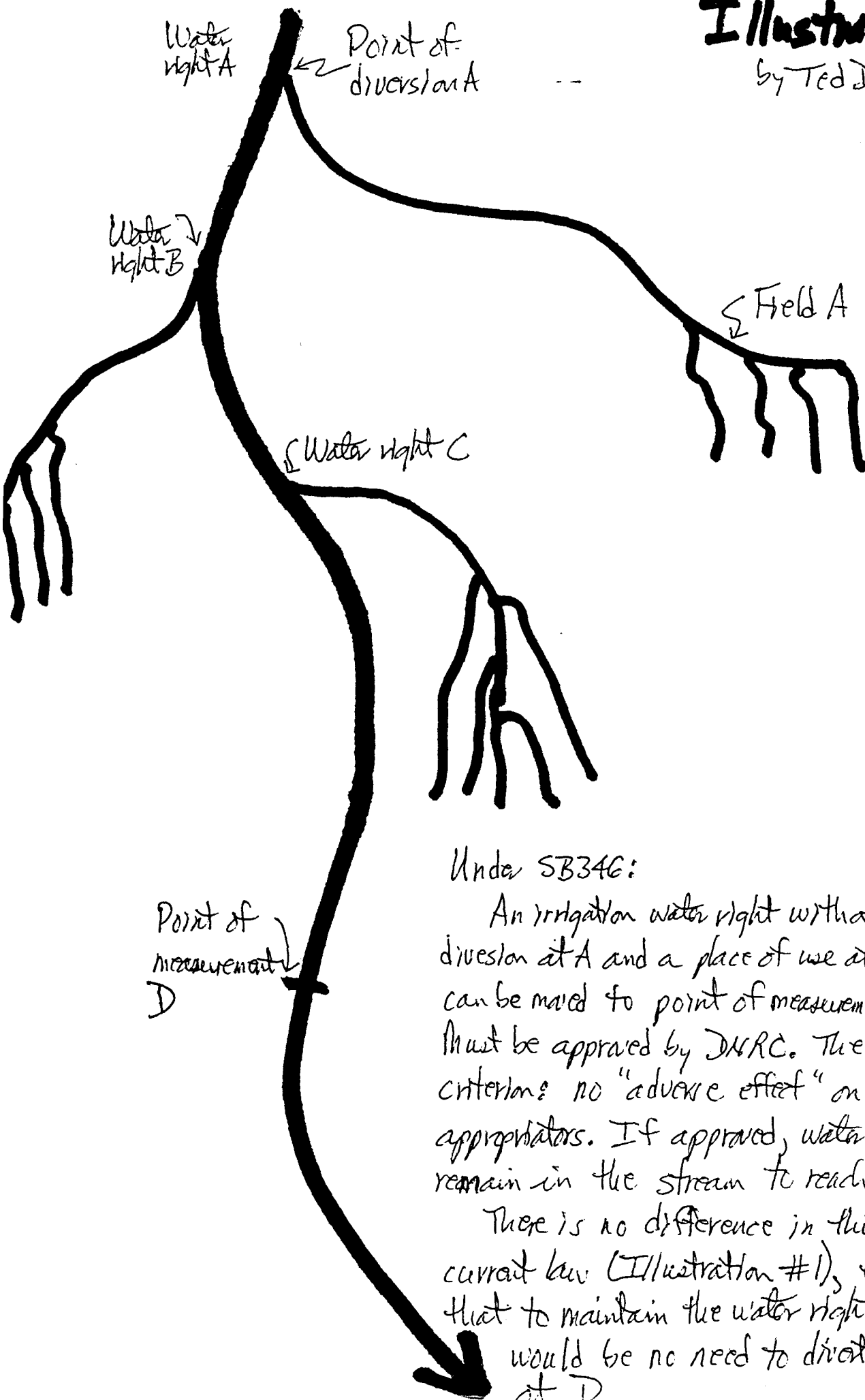
An irrigation water right with a point of diversion at A and a place of use at Field A can be moved to point of diversion D with a place of use at Field D. Must be approved by DNRC. The primary criterion: no "adverse effect" on other appropriators. If approved, water must remain in the stream to reach D.

Cites:

85-2-402 and 403, MCA

Illustration #2

by Ted Dorey

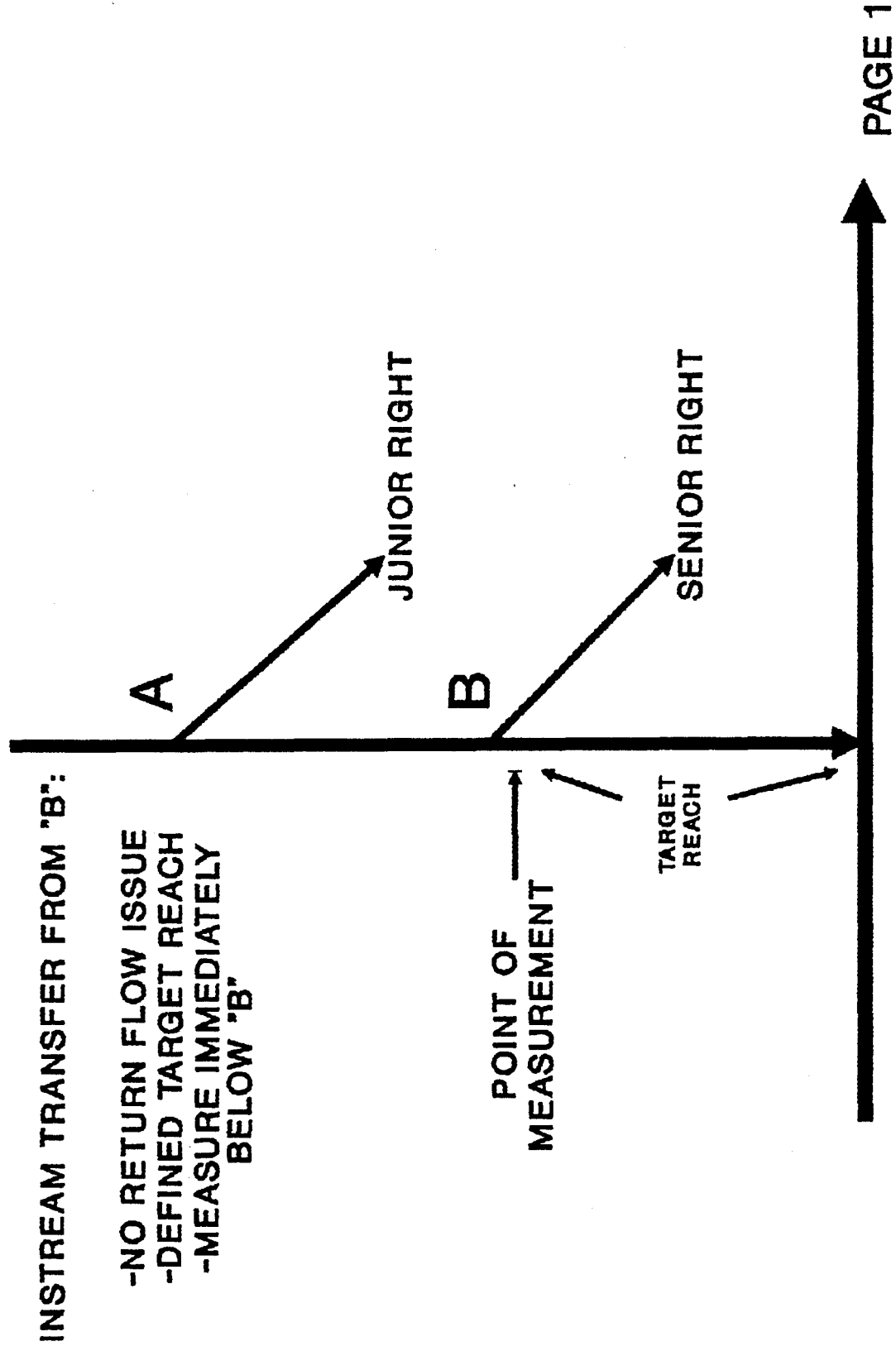


Under SB346:

An irrigation water right with a point of diversion at A and a place of use at Field A can be moved to point of measurement D. Must be approved by DWRC. The primary criterion: no "adverse effect" on other appropriators. If approved, water must remain in the stream to reach D.

There is no difference in this from current law (Illustration #1), except that to maintain the water right there would be no need to divert the water at D.

EXAMPLE OF POTENTIAL INSTREAM TRANSFER (MOST LIKELY)



EXAMPLE OF POTENTIAL INSTREAM TRANSFER (COMPLEX)

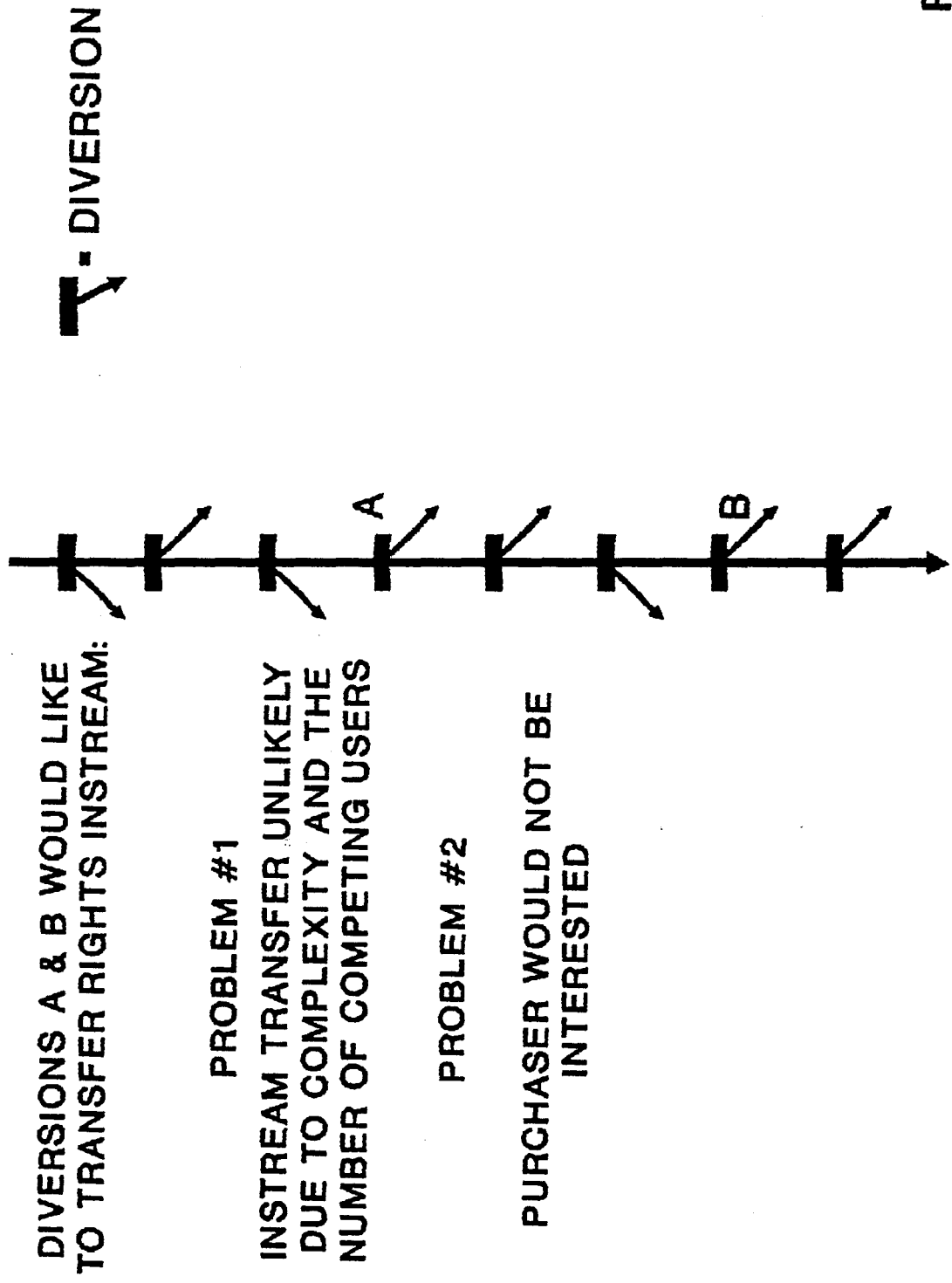


EXHIBIT 26
DATE 3-24-93
11 SB 346

TRIBUTARY
EXAMPLE OF TRIBUTARY REACH THAT
DOES NOT RECEIVE RETURN FLOWS

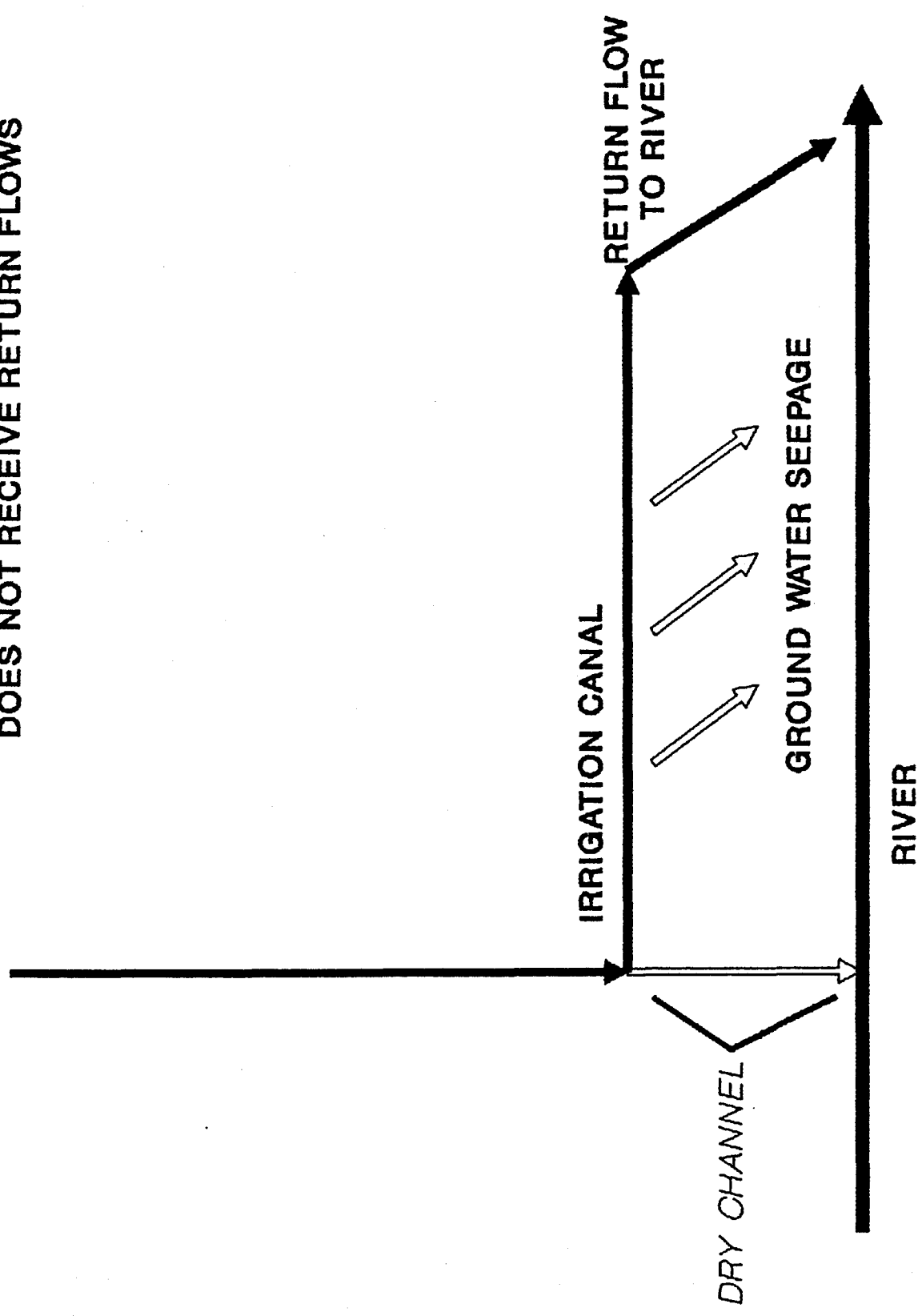


EXHIBIT ¹ C
DATE 3-24-93
HB SB 346

Instream Transfer Legislation (SB 346)

Testimony on behalf of the
Montana Chapter of the American Fisheries Society
before the
House Natural Resources Committee
March 23, 1993

Mr. Chairman, members of the committee, my name is Ron Spoon, and I am a fisheries biologist testifying on behalf of the Montana Chapter of the American Fisheries Society. I am here today to briefly share some observations and experience I have had concerning the instream flow issue in Montana.

In the past eight years, I have worked in the Bitterroot and Upper Clark Fork drainages, and I currently work in the Upper Missouri and Jefferson River drainage. I think you will recognize these as some of our more challenging areas from the standpoint of stream flow.

If I have learned anything during the course of my work on these streams, it is that many water users are willing, if not eager, to assist efforts to maintain at least some water in Montana's streams and rivers. However, I think one of the major stumbling blocks in getting this done is that current water law not only does nothing to accommodate or reward voluntary assistance, it has the potential to discourage it.

Although I know of no instance where anyone has lost their water right because they have chosen to leave a portion of it in the river, that is exactly what the law says should be done to those willing and able to contribute. Leave some of your water in the stream, and you lose it. Try to leave some water flowing and convince your downstream neighbor to let it pass by, and whatever water you let pass is left unprotected. If 9 out of 10 users want to leave a small amount of water instream, and a single remaining user is unwilling to cooperate, he or she can divert the donated or purchased water and thwart the effort.

Last year, two ditch companies and a variety of private users provided about 2000 AF of water to two spawning tributaries of the Missouri River near Townsend. Thousands of juvenile trout were produced in a tough year when Deep Creek and Dry Creek would have been dewatered. Under current water law, one user could decide pull the plug on this project and divert every drop being donated (and I mean donated, we have asked but they are not interested in leasing or payment of any kind). Why are the potential saboteurs able to do this? Because that donated water has no recognized standing under current Montana Water Law. It is illegitimate water.

By treating instream water rights differently from virtually all other uses of our water, I believe, Montana Water Law does two very harmful things. Number one, it provides no incentive for water users to participate in solving some of our water problems and in fact it discourages their participation. And perhaps more importantly, current law tells average Montana citizens that do not own water rights, that their interest in Montana's water is not important. I believe this latter point has generated much of the conflict we see today. It has created an environment where people are unable to work out constructive solutions because they are too busy blaming one another for the problems. In turn, water users, being human, spend their time and resources defending themselves and attacking their opponents, rather than working on solutions.

Please help us get past this stalemate. From someone who works with this issue almost daily, I am asking you for something fairly simple: kick a few rocks out of the way so agriculture and sportsmen can begin working on some solutions. I agree there are some unknowns with this bill. We don't know exactly how it will work in all cases. But just as water use has evolved in different ways in different systems, so too will instream transfers. This bill challenges us all, as professionals, water users, sportsmen, and as legislators. It challenges the sportsmen and biologists to put their time and resources into solutions rather than complaints, it challenges the water users to be open and look for opportunities within their systems, and it challenges our legislators to lead us through this process.

DATE 3-24-93
HB SB 346

24 March 1993

House Natural Resources Committee

SUBJECT: SB346

Mr. Chairmen and committee members,

I am Alan Rollo from Great Falls and I am here in support of SB346. There will be many here though that will oppose this simple bill primarily due to the lack of understanding of what it really says, also the reluctance to change and the last is misinformation, unfortunately.

You will hear from the opponents that this bill will hurt junior water right holders and that it will be hard to manage. Everyone should realize that this bill allows for the transfer of water ONLY between WILLING parties and works in the framework of existing water laws. We should also realize that farmers are effected far more by those that STEAL water from our streams than the PERCEIVED threat of this bill.

Lets remember that the amount of water available to the state is relatively fixed, but the number of persons using it increases every day. So how do we share fairly the water that too many people need for too many purposes? And how do we use it wisely?

So when we look out across our state and see dried up streams and the barrow pits are full of water from over irrigation, is that a wise use - of course not. The once pristine waters have been transformed by pressures of society into just gravel bars - that not even a bird can survive from.

The problem is that instream flow uses are like a poor step-child who has never received the recognition it deserves. Now that child is trying to show that fish and tourists do not come back tomorrow if the stream is dry today. Every time a stream goes dry or becomes extremely low for just one day, things die and not just fish, and these losses can take years to recover.

Another perceived problem is that water left in a stream will cost agriculture and the state too much - not true. By becoming more efficient, water can be sold that will not effect the land at all, but the present system provides NO incentives to preserve or become more efficient. This bill will eliminate the use it or lose it attitude. The money that a farmer receives from selling a PORTION of the water he saves can be used to become even more efficient, while preserving our streams at the same time. So isn't there enough water to share a little, just enough to keep the fish and the whole aquatic system alive.

We also talk about bringing other industries into Montana, but we are driving away the second biggest industry in the state - tourism. I do not understand why some feel the farming industry is any more important than tourism or other water related activities. Many Montanans, including our governors, have recognized that tourism is an important industry. Just look at the Fort Peck and Libby Dam issues (see attachments) our Governors statements that say recreation deserves to be recognized equally with other uses of the river. And we prove it by spending millions in advertisement, telling the nation to come to our state for our great fisheries and scenic rivers, only to have them

get here and find the streams dry. We must do something to protect and enhance tourism.

Even if the citizens in this state do agree that it is beneficial to leave water in the streams, it is quite another to get through these committee hearings that must take place before we can move forward with good water management. Can we make these changes or does it remain that governmental policies are too often determined by special interests, rather than by proper water management practices. Water is THE natural resource most beset by bureaucratic multiplicity, it is also the resource that has suffered actual deterioration in the past decades. At our rate of consumption, which adds approximately 2000 new water permits each year, even the cities that use only 1% of the water will soon have problems getting enough for their citizens. With agriculture using for irrigation 98% of the surface water removed and only 20% - 50% reaching its intended purpose, it should be simple math to see why we need this bill. A PORTION of the amount used by irrigators can be just enough to save our aquatic system in our streams and ensure fishermen and tourists will come back each year.

Farming practices must change with the times and can be achieved in cooperation with other ideas that benefit the state. Unless competition and conflicts are put aside, unless there is a willingness to cooperate and compromise and this issue is based on it's OWN merit and feasibility instead of fear, then we surely will not succeed in making the maximum and best use of this limited resource.

We are not the farmer's enemy, we are his neighbors that have looked at their ideas and compromised. And this bill is a compromise, that individuals from BOTH sides worked hard to come to an agreement.

So lets stand together and be strong enough to say that NOW is the time to try something different. It is time to consider ALL of us as Montanans, a time to share this valuable resource and a time to pass SB346.

Thankyou.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Rollo". The signature is fluid and cursive, with the first name "Alan" and last name "Rollo" clearly distinguishable.

Alan Rollo
808 52nd Street South
Great Falls, Montana 59405

EXHIBIT 2d

DATE 3-24-93

1 SB 346

Great Falls Tribune

MONTANA

11 MAR 93

Racicot alarmed by shrinking lakes

HELENA (AP) — Montanans are "gravely concerned" about depleting upstream reservoirs to benefit downstream fish populations, Gov. Marc Racicot told a regional power planning board Wednesday.

Racicot spoke in particular of a plan to store water behind the Libby Dam in northwestern Montana for later release to augment downstream water flows for salmon and sturgeon in the Columbia River system.

"We remain gravely concerned with the precedent set by this experimental operation," the Republican governor told the Northwest Power Planning Council.

"Altering the operation of Montana's reservoirs, leaving boat ramps high and dry and damaging resident fish populations, should not become integral to sturgeon and salmon recovery plans," Racicot said.

Tourism has become Montana's fastest-growing industry and one the state cannot afford to jeopardize by diminishing recreational opportunities on the reservoirs, Racicot said.

"We have strained the limits" of Montanans' good will already and

Lake behind Libby Dam may hit record low

KALISPEL (AP) — Water levels well be 30 feet lower, depending on uncontrollable factors like weather, Harris said.

The lowest the reservoir has been in late summer was 40 feet below full pool in 1977.

"It's devastating," said Linda McClure, manager of Mariner's Haven near Eureka. "We won't have a marina, as it stands now."

McClure said mud flats exposed by low water are drying out and filling the Tobacco Valley air with dust.

The corps, along with the Bonneville Power Administration and

Gov. Marc Racicot, have agreed to keep water in Lake Kootenai two months longer than originally planned.

Chuck Lobdell, field supervisor for the U.S. Fish and Wildlife Service in Boise, called the agreement a "step in the right direction."

Under the agreement, water ordinarily flushed downstream in March will be saved until June, according to the Corps of Engineers.

The planned release will generate power and provide water for salmon in the Columbia River.

Racicot

The power planning council at its Helena meeting gave unanimous approval to a fisheries improvement plan designed to mitigate losses of fish and fish habitat, caused by construction and operation of the Hungry Horse Dam.

The plan was developed by Montana wildlife officials and the Confederated Salish and Kootenai

Tribes

Hungry Horse Dam, built in 1952 on the South Fork of the Flathead River, blocked migratory bull trout and cutthroat trout from Flathead Lake from access to more than 40 percent of their historic spawning habitat. The plan includes a mix of habitat improvements, fish passage improvements and hatchery production.

15 May 93

ND THE REGION

Progress made in river suit

HELENA (AP) — Some progress was made Thursday toward settling a lawsuit filed by Montana and two other states against the U.S. Army Corps of Engineers over its operation of Missouri River dams.

Officials from Montana, North Dakota and South Dakota met in Billings with representatives from the federal agency and the U.S. Department of Justice to work on an agreement.



Gov. Stan Stephens, who attended the 2½ hours of negotiations, said the three states are holding fast to their demand that the Corps of Engineers change the way it treats the

needs of the upper Missouri River basin states.

"We're pushing that recreation deserves to be recognized equally with all other uses of the river," Stephens said. "We reinforced that today."

The three states have criticized the government agency, saying it shortchanges the upstream recreation needs by releasing too much water from dams to satisfy navigation needs of barge traffic in Missouri, Nebraska, Iowa and Kansas.

The settlement talks were ordered by U.S. District Judge Jack Shanstrom as a means of avoiding lengthy and costly litigation for both sides in the dispute.

On Thursday, he put the suit on hold as the parties agreed to meet again June 3.

Neither Stephens nor Karen Bar-

clay Fagg, director of the state Department of Natural Resources and Conservation, would provide details of about the talks but both were optimistic about chances for an agreement.

Stephens said the upstream states made it clear they will not agree to dismissal of the suit until they are convinced the Corps of Engineers will change the way it manages the river.

Neither Stephens nor Fagg were sure how a related suit filed by Missouri this week will affect settlement talks. Missouri claims the Corps of Engineers illegally shortened the downstream navigation in each of the last five years.

Stephens said the fact Montana and the Dakotas have relatively tiny congressional delegations should not be a factor in the legal battle.

Chairman Dick Knox
Members of the Natural Resources Committee

For the record, my name is Tony Schoonen and I'm representing the Billings Rod and Gun Club, The Magic City Chapter of Trout Unlimited and myself.

We support S.B. 346 because it is a historic compromise between ranchers, public agencies and sportsmen. The benefits of this historic compromise will be far reaching and beneficial to all citizens of Montana. Water is a public resource and should be used under a multiple use concept which benefits all users.

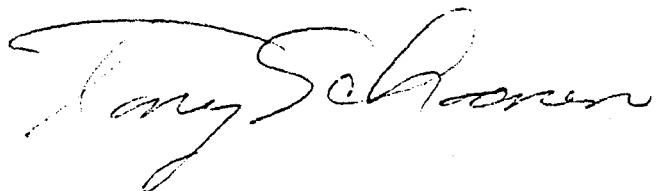
Our water resources provide abundant fish populations in many areas of the state and fishing opportunities are sought after by millions of tourists annually. We are fortunate here in southwestern Montana to have several Blue Ribbon trout streams that have national renown. These fisheries bring in over \$200 million annually, much of this money is spread throughout small communities all across Montana. These recreational opportunities provide jobs and a lively hood for hundreds of Montanans. This is a resource worth protecting to be shared by all users.

When rivers and streams are dried up, no one benefits, we all lose. Much needed water for our communities and municipalities is degraded by lower water quality and quantity. Health problems, boil orders and rationing are usually the end result. Minimum flows must be maintained to flush contaminants through our river systems so that consumptive users can benefit.

S.B. 346 goes a long way in allowing water to be sold or leased on a willing seller, willing buyer basis. No one will be forced to sell or lease their water under this bill, no one will lose their water rights. Unlike the misinformation fed to the agricultural communities to whip them into an angry condemnation of S.B. 346. This misinformation really isn't a fair way to address this bill or such a valuable resource.

Our groups commend the ranchers and other participants who worked out this very difficult compromise. We hope that the members of this committee will sort out the facts from the hysteria and fiction and give S.B. 346 a "DO PASS", allow the entire House to evaluate the work that was put into drafting this bill.

Thank you..



The Economic Value of Hunting and Fishing in Montana

Activity	A Measurement of Costs to Sportsmen			A Measurement of Benefits Received by Sportsmen		
	Expenditures* Per Day (The amount spent per day by individual resident/nonresident sportsmen.)	Expenditures* Per Trip (The amount spent per trip by individual resident/nonresident sportsmen.)	Annual Expenditures* (The total amount spent annually by all resident/nonresident sportsmen.)	Net Economic Value Per Day (The additional amount individual resident/nonresident sportsmen said the activity was actually worth, per day, over and above actual expenditures*)	Net Economic Value Per Trip (The additional amount individual resident/nonresident sportsmen said the activity was actually worth, for the same trip, over and above actual expenditures*)	Annual Net Economic Value (Total number of angler and hunter days multiplied by the Net Economic Value Per Day for that activity)
Sport Fishing (Streams)	\$ 48	\$ 97	\$52.4 million	\$102	\$113	\$122 million
Sport Fishing (Lakes)	\$ 38	\$ 91	\$47.3 million	\$ 70	\$ 89	\$ 93 million

EXHIBIT 3
3-24-93
SB 346

Medicine River Canoe Club

Great Falls, Montana

March 24, 1993

EXHIBIT 4
DATE 3-24-93
HB SB 346

House Natural Resources Committee
State Capitol
Helena, Montana

Mr. Chairman and Members of the Committee:

My name is Dianne McDermid and I am speaking today for the Medicine River Canoe Club in Great Falls. Having a vested interest in water issues, our organization feels that Senate Bill 346 is an extremely important piece of legislation

When our water law was written well over a century ago it served the needs of the society that existed at that time. The men that formulated this law were not *men of vision* who could anticipate the needs of the future. They were very ordinary people like most of us and could not imagine the very numbers of us that would make demands on our water resources. They could not envision the economic value of the recreational aspect of water and they took for granted the aesthetic values because their rivers were not chronically dewatered. Our archaic water laws do not serve the needs of today's society.

A survey by the DFWP shows that 2,500 miles of Montana rivers are chronically dewatered and that 1,200 additional miles are periodically dewatered. (See page three for further explanation.) A dewatered river is not just a matter of a few dead fish. Those narrow, green riparian zones nourish ALL aquatic life plus support 80% of land species. When a stream is dewatered everything that depends on it may die or be displaced.

When a stream has been chronically dewatered, suddenly to be able to release water down that stream does not automatically enable it to return to its previous state. Shriveled insect larvae do not spring to life; dried fish eggs do not miraculously hatch; lifeless vegetation does not automatically regenerate; beaver, muskrat, and otter do not magically reappear in the pools. In fact, recovery can take many seasons. A minimal amount of water should at all times flow down a stream so, even if there is a decline in the populations of riparian dependent species, at least some can survive. A river also serves to sustain the water table and to feed adjacent wetlands, extremely important adjuncts.

Not to be overlooked or diminished in importance is a river's ability to recharge the human spirit. Free flowing water has a tremendous aesthetic value and the recreational opportunities afforded by rivers (fishing, floating, swimming, camping, bird watching,

hiking, etc.) contribute immeasurably to our quality of life, not to mention the economic benefits. Our wildlands and **our rivers** are a major contributing factor to induce people to visit or to live in Montana.

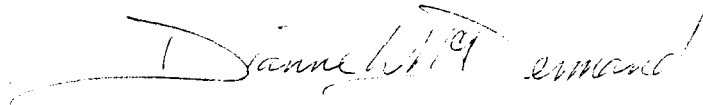
The adversaries of SB 346 will use different approaches to oppose it; one will be to point to our current water leasing law and cite this as the salvation for all our dewatering problems. This leasing law is inadequate for the task. It is cumbersome to implement and in the four years of the program's existence only one lease has been consummated.

The leasing law's structure makes it possible to address only small feeder streams. In the best case scenario, if all the leases allowed under the law could be implemented, perhaps 30 miles of streambed on very small tributaries might be improved. This would help provide critical spawning access for fish, however the amount of water involved in leasing is likely to be extremely small and would not contribute in any noticeable way to the larger streams into which they flow. The water leasing program can do little or nothing towards solving the disastrous dewatering problems of many of our rivers.

Our current water law serves best the agricultural community who comprise 5% of our population but who account for over 97% of diverted waters. Many of them, especially those terrified of change even though it will not affect their rights, will oppose this bill. At least one will try to support his testimony with a phrase we have heard far too often, "If it ain't broke, don't fix it." Let me assure you, our current water law is very badly broken and desperately in need of repair. I'd like to offer another quote that's far more relevant, an old Indian proverb states, **"A frog does not drink his own pond dry,"** yet that is exactly what we Montanans are doing.

SB 346 offers a trickle of hope at revising our water law to fit the real needs of our people. Please support this legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dianne L. McDermand", with a long horizontal flourish extending to the left.

Dianne L. McDermand
Medicine River Canoe Club
3805 Fourth Avenue South
Great Falls, MT 59405

Ph. 761-0303

The Montana Department of Fish, Wildlife and Parks has done a survey of dewatered streams in the state. In the initial effort, only streams *with fisheries* were considered. The Department concedes that some streams may have been overlooked. It was determined that virtually all dewatering is due to irrigation withdrawals with a little due to dam operations.

They have used the following definitions in their report:

DEWATERING - A reduction in stream flow to a point where fish habitat is impacted.

CHRONICALLY DEWATERED - Those streams in which dewatering is a significant problem virtually every year.

PERIODICALLY DEWATERED - Those streams in which dewatering is a problem in drought years (i.e. when snow pack and precipitation are below normal)

The survey I have gives a total of 2,474.7 miles of CHRONICALLY dewatered streams and 1,237.0 miles of PERIODICALLY dewatered streams. This survey, listing precisely each affected reach of stream is available from the Department. The totals may change as the survey is updated but one would not anticipate a decrease in overall affected miles.

EXHIBIT 4
DATE 3-24-93
SB 346

EXHIBIT 5
DATE 3-24-93
HB SB 346

March 24, 1993

House Natural Resources Committee
State Capitol
Helena, Montana

Chairman Knox and Members of the Committee:

My name is Jim McDermid and I am from Great Falls. I am speaking today in favor of Senate Bill 346 but, even more importantly, I am speaking for the rivers and streams of Montana.

MONTANA WATER LAW: Laws which say "First in Time is First in Right". This has been the basis for water use in Montana for over 130 years! However, I would like for you to go back even further in history with me; before the settling of the west; even before Lewis and Clark used the rivers as highways of exploration. Who was "First in Time and First in Right" then? --- I believe that the rivers and streams themselves were.

These arteries of the west were not just running water in a stream bed waiting to be diverted so that they could then become beneficial! The water running in those streams was already beneficial, and indeed vital, to the ecosystems that they sustained. This water provided habitat for aquatic insects and plants, which in turn supported the fish, birds, and animals that depend on these streams and riparian areas for their nourishment, their homes, and their very lives.

Now, let us return to the present! What has changed? Certainly not the needs of the plants and creatures I just spoke of, nor their dependency upon the flowing water which determines their very existence. But now MAN is upon the scene and he wants to share this natural resource of running water to make his existence better. This is not wrong, for man himself is a part of nature. But when man goes beyond sharing with nature and exploits this water so that it threatens the stream itself, as well as its dependent ecosystem, then this is wrong!--- and it is happening to a greater extent every year.

I believe in the concept of our water law that says "First in Time is First in Right". But it must extend beyond man's narrow interpretation that it only applies to his diverted and consumptive use of water.--- It must apply to the rivers and streams themselves, and it must be interpreted to mean that they have the first right.--- The right to maintain at least a minimum existence which will support their ecosystems.

Making instream flow a beneficial use of our water through the passage of Senate Bill 346, will provide these streams, that have shared so much with us, the opportunity to flow and to sustain life. This in turn will enhance our lives, and the lives of future generations.

Respectfully yours,

James W. McDermid

James W. McDermid
3805 4th Ave. South
Great Falls, MT 59405

EXHIBIT 6
DATE 3-24-93
HB SB 346

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Jim Rokosch BILL NO. SB 346

ADDRESS 4653 Hoover Lane DATE 3-24-93

WHOM DO YOU REPRESENT? self

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: I am a biologist and an agricultural producer using irrigated water on a small acreage in the Bitterroot valley, and speaking for my family, support SB 346. This bill will not endanger existing water rights of farmers & ranchers. It will actually expand the property rights of individuals by allowing us to choose how much water we wish to divert or to leave in a stream, or to decide to whom and for what use we may wish to sell or convey water for which we have a legal right. This bill affirms free market principles by allowing willing sellers and buyers to exercise all possible options for uses of water from and within our streams. This bill simply defines water used for instream flow as a 'beneficial use' without requiring the water to be diverted from streams. Legal standing for water flowing in stream to be recognized as a beneficial use is long overdue. As a biologist working on various water quality and fisheries projects on various western Montana streams, I can attest to the importance of stream flow in maintaining water quality, biological productivity, and healthy fisheries. As a private citizen, these things are important to the quality of life my family cherishes. As a member of society, I recognize these things support a host of business activity that is, indeed, growing and is increasingly important to the economic well-being of valleys across Montana. These comments are not meant to downplay the importance of agriculture, or to pit fisheries and the business activity
HR:1993 they support, against farming and ranching. The point is, Montana needs
CS15 both - we need a healthy agricultural industry and we need healthy streams for economic reasons, and to promote the resources and way of life we

The Key. SB 346 is the necessary tool to create and cement opportunities for cooperative efforts in valleys throughout Montana. It is sad to see and hear Montanans fall into the trap of making this issue one of farming versus fishing. It is a false argument. We need to put the 'hayfork versus flyrod' mentality behind us and move forward - together. We need to cooperate with each other and work together - we owe it to ourselves, our children, and our great state of Montana. Passing SB. 346 will spearhead great opportunity for cooperation, and I sincerely hope this committee will move forward today by sending this bill to the fall House for consideration.



AMERICAN FISHERIES SOCIETY

MONTANA CHAPTER

EXHIBIT 7
DATE 3-24-93
HB SB 346

Senate Bill 346

Testimony on behalf of the
Montana Chapter of the American Fisheries Society
before the
House Natural Resources Committee
March 24, 1993

Mr. Chairman and members of the committee, my name is Art Whitney and I am here on behalf of the Montana Chapter of the American Fisheries Society. The American Fisheries Society is an international organization of fisheries and aquatic professionals that promote the wise use and management of fisheries and aquatic habitat.

The professionals within our Society may well have a unique perspective concerning the instream flow issue because they have worked on Montana's rivers and streams on a daily basis and are intimately familiar with fisheries issues related to water shortages. In addition, many of our members work closely with the agricultural community through Senate Bill 310, a bill that was itself very controversial during the mid-1970's. Relationships have developed since the passage of SB 310, which have provided fisheries professionals a better understanding of the needs and constraints of Montana farmers and ranchers. Therefore, the American Fisheries Society is committed to finding ways to improve the health of our aquatic ecosystems in a manner that is compatible with the needs of agriculture. We believe that SB 346 will improve stream flows in some areas and that it will do so with the voluntary assistance of agriculture.

Under current water law, the owner of a water right can sever the water right from the land on which it is used, use it somewhere else, use it for another purpose, or even sell or lease it to another person for use somewhere else. The owner can also sell, lease or give his/her water right to another off-stream use such as irrigation, industrial, municipal or mining. Under all scenarios, a water right change process is used to ensure that transfers or changes will not adversely affect other water users. Among the few things a current water right owner cannot do is transfer the water right to an instream use.

MAFS testimony
March 24, 1993

Senate Bill 346 simply allows the owner of a water right to sell, lease, or give his right to another for instream use on a willing seller, willing buyer basis AS LONG AS IT DOES NOT ADVERSELY AFFECT THE RIGHTS OF OTHER USERS. We believe that it is reasonable that existing water law be modified to subject instream water rights to the same processes as off-stream rights. This includes retaining the current means of protecting the rights of other water users in the basin.

If adopted, we do not expect this bill to significantly disrupt current water use in Montana, nor do we expect it will solve all of our dewatering problems. More realistically, this water transfer bill is another tool to be used to assist with dewatering problems at specific locations and during confined periods of water shortage. Likewise, we do not believe it will result in the removal of irrigation water from large tracts of land.

Finally, we are aware that many water users are willing, if not eager, to help solve some of the dewatering problems in Montana. For those water users who are willing to volunteer their assistance, it is important that Montana water law provide them with a tool to do so. The Montana Chapter of the American Fisheries Society believes that Senate Bill 346 is the best tool available for addressing some of our dewatering problems and for reducing conflict between Montanan's who probably have more in common than they may think.

EXPERIENCE MONTANA
53 Elser Lane
Sheridan, MT 59749-9604
842-5134

EXHIBIT

DATE

8
3-24-93

HB

SB 346

House Natural Resources Committee

Mar. 20, 1993

Dear Chairman Knox, Vice Chairman Tunby, Representatives Bird, Brooke, Fagg, Feland, Foster, Gilbert, Harper, Orr, Raney, Schwinden, Stovall, Swanson, Toole and Wagner:

We need your help in passing Senate Bill 346 one of the most significant bills on water use to appear in the legislature in many years. It makes instream flow a beneficial use and provides for leasing and sale of water rights to individuals to provide instream flow.

It is very important that we do not damage our wonderful rivers and streams by dewatering them to the point that they are no longer living systems. Montana citizens benefit greatly from healthy waterways and tourists also highly appreciate our trout rivers and streams. In 1992 tourism brought 900 million dollars to Montana and when the turnover effect is considered the impact was over 2.1 billion dollars to local economies. Certainly tourists did not come here to see the Blue Ribbon Big Hole River dried up to a trickle or the mighty Jefferson River only a dribble surrounded by mud.

Under present law a person may not obtain a water right for non-consumptive use. Also if a person has excess water rights through efficient water use he cannot leave that water in the river because he will lose the right to it. Instream flows are vital for maintaining Montana's nationally famous waterways and fish and wildlife resources. Instream flows will benefit our expanding travel and recreation industry.

This bill involves only willing buyers and sellers and lessors and lessees. It does not take away any person's water right; remove private property rights; allow new permits for instream flow; reduces the chance of a law suit to impose the public trust doctrine; does not establish minimum instream flows; or allow out of state transfer of water.

This legislation complements the current leasing program which may be applied to 20 streams in the state but is only active on two.

I am a Montana native, experienced wildlife research and management biologist, livestock rancher, outfitter and educational tour leader and have 20 years irrigation work.

Sincerely,

Allen Schallenberger

Allen Schallenberger

P.S. Please include this letter in the hearing record.

FOX, ETC), WE FOUND OUT WE COULDN'T DO THAT. WE HAD TO BUILD A POND, SPENDING LOTS OF TIME AND MONEY, IN ORDER TO GET A WATER RIGHT FOR THE ANIMALS. THIS BILL WOULD HAVE ALLOWED US TO FILE FOR THE WATER RIGHT ON ALL THE CREEKS WITHOUT BUILDING COSTLY MAN-MADE STRUCTURES.

I THINK THIS BILL IS A BEGINNING STEP FOR MONTANANS TO WORK TOGETHER TO START PROTECTING SOME OF MONTANA'S HERITAGE - OUR BEAUTIFUL AND BLUE RIBBON WATERWAYS. IT ALLOWS THE MARKET TO DO THIS WITHOUT DIRECT GOVERNMENT INTERVENTION. IT LETS LANDOWNERS, WITH WATER RIGHTS, KEEP THE WATER IN THE STREAM FOR THE FISH AS A BENEFICIAL USE, IF THEY WANT TO. AND IF THEY DON'T WANT TO SELL THEN THEY'RE NOT AFFECTED BY OTHERS WHO DO SO, BECAUSE ALL WATER RIGHTS ARE PROTECTED. I URGE YOU TO PASS THIS BILL AND LETS TRY IT OUT. WE NEED TO UNLOCK THE GRIDLOCK THAT KEEPS MONTANANS FIGHTING EACH OTHER FOR USE OF THE SAME RESOURCES. CAN'T WE SHARE THE WATERWAYS WITH ALL USERS AND THE WILDLIFE? THANK YOU FOR SUPPORTING SB 346.

Pat Simmons

MARCH 24, 1993

I AM PAT SIMMONS, FROM BOZEMAN. I'M REPRESENTING ALOT OF SPORTSPEOPLE AND RECREATIONISTS FOR MONTANA'S STREAMS & RIVERS WHO COULDN'T GET OFF WORK TODAY. I AM ~~ABLE TO~~ ^{ing} TAKE VACATION LEAVE FROM MY JOB TO ATTEND THIS HEARING, AND ITS WORTH IT BECAUSE I FEEL THIS IS A VERY IMPORTANT ISSUE, FOR YOU TO HEAR MY VIEWPOINT. I ALSO AM CONCERNED BY THE SCARE TACTICS IN THE LETTER SENT OUT BY THE AGRICULTURAL PRESERVATION ASSOCIATION TO BRING IN THEIR MEMBERS. I HOPE YOU WILL WEIGH ALL THE INFOR- MATION AND FACTS ABOUT THIS LEGISLATION AND NOT BE SWAYED TOTALLY BY THE NUMBERS OF PEOPLE IN ATTENDANCE TODAY.

I AM SUPPORTING SB 346 BECAUSE I AM VITALLY CONCERNED ABOUT THE WATER LEVELS OF MANY OF OUR GALLATIN VALLEY STREAMS AND RIVERS. I WANT THERE TO BE ADEQUATE WATER IN THE STREAMS TO SUPPORT THE FISH AND OTHER AQUATIC LIFE, AND FOR RECREATIONAL ACTIVITIES THAT I DO - FISHING AND BOATING. I AM VERY SADDENED BY DE-WATERED STREAM BEDS, SUCH AS COTTONWOOD CREEK NEAR GALLATIN GATEWAY, WHICH IS DRAINED COMPLETELY DRY EVERY YEAR. WE CAN MAKE A LIVING ON THE LAND AND WATERS, BUT WE CANNOT DESTROY THE AQUATIC RESOURCE IN THE PROCESS.

HOW CAN MAN DEFINE THAT NATURAL FREE FLOWING WATERS IN THE STREAM BED, CREATED BY GOD, ARE NOT A BENEFICIAL USE? I HAVE BEEN A LAND OWNER FOR THE PAST TEN YEARS AND THIS PIECE OF LAND HAS SEVERAL NATURAL SPRING CREEKS ON IT. WHEN MY PARTNER & I MET WITH THE DEPT OF NATURAL RESOURCES TO FILE WATER RIGHTS, TO LEAVE THE WATER IN THE CREEKS FOR FISH AND WILDLIFE USE (DUCKS, DEER,

over

March 24, 1993 - 3 p.m.

Water is one of our most essential resources. It is essential for all forms of life, and it is our responsibility to see that all these forms of life receive the amount of water needed for existence.

When water laws were developed in our nation, and particularly in western states, our citizens were generally located on small land parcels in rural areas, and they naturally used available water to their advantage, generally without consequence. Today, our population is much more urban, and becoming more-so each year, and thus our needs and expectations are changing. Today's citizens have more free time, much more than when I was a kid back on the farm, and many of these citizens want to use that time for some type of outdoor recreation.

Fishing, hunting, trapping, hiking, sight-seeing are all popular forms of recreation in Montana, for both resident and non-resident alike. According to District 3 FW&P personnel, Montana sold 156,000 resident and 161,000 non-resident fishing licenses in 1990, probably more in 1991 and 1992. If we subtract the young and the elderly, who do not need to buy fishing licenses, from our 800,000 Montana population, then it looks like the 156,000 resident fishermen probably represent at least one member of nearly every Montana household. Resident and non-resident outdoor recreationists put millions of dollars into Montana's economy each year, and they expect, in fact they deserve, to see water in our streams and lakes.

Instream flow for use by fish, and all other forms of life, should be recognized as a beneficial use of water. Those holding

EXHIBIT

11

Joe Gutkoski

DATE

3-24-93

304 N. 18th. Av.

HB

SB 346

Bozeman MT 59715

March 23, 1993

Comments to House Nat. Rec. Co
on SB-346, Instream Flow Bill

Facts Regarding the Stream Flow Issue SB-346 Support

- o Each year (not just drought years) hundreds of miles Montana's streams go dry or are severely de-water due to water withdrawals (FW&P).
- o 97.6% of surface water that is removed from streams is used for agricultural uses, 75% to 80% is used for hay and pasture (DNRC figures). 97.6% of Montana's water is controlled by less than 5% of Montanans.
- o On average one in every 5 acre-foot of water that is diverted from Montana streams ever reaches crops (DNRC).
- o Non-resident Travel generated approximately \$159 million in labor income for Montana in 1988 (UofM Institute for Tourism and Recreation.)
- o Agriculture generated \$209 Million in Montana labor income in 1988 (U.S. Department of Commerce).
- o The Montana Constitution (Article IX, section 3:3) states:

All surface, underground, flood and atmospheric waters within the boundaries of the state are the property of the state for the use of it's people and are subject to appropriation for beneficial uses as provided by law.

MCA 85-2-102,2: "Beneficial use" a use of water for the benefit of the appropriator, other persons, or the public including but not limited to agriculture (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and.....

The stream flow issue is not just a fish versus farms issue. Stream flows directly effect the health of Montanan's by diluting heavy metal and other toxic waste concentrations, providing water for waste water treatment and industry effluent dilution, recharging groundwater, and providing clean drinking water for municipalities.

Stream flows are vital to Montana's economy. Non-Resident travel was a \$1.454 billion industry in 1988, providing 22,500 jobs for Montanans. Dry streams are not likely to attract many visitors to Montana. MWF conducted an informal mail survey of non-residents that purchased fishing licenses in 1988. Approximately 83% of the 230 respondents said they would be more likely to visit Montana to fish if water legislation is passed that increases stream flows and fishing opportunity.

MWF believes that irrigated agriculture and adequate stream flows can be compatible. A 4% increase in agriculture water use efficiency would free

more water for stream flows than is currently being consumed by all non-agriculture users. On average in Montana, for every acre-foot of water that is used by crops 4.9 acre-feet of water is diverted from our streams (DNRC).

Streams play an important part in the quality of life of Montanans. In a statewide public opinion survey commissioned in June of 1989 by the MWF, 90% of 515 randomly sampled Montanans felt it was very important (39.8%) or somewhat important to maintain enough water flow for fish to survive even if it means reducing the amount of water available for other uses such as agriculture. 2.3% responded it was not at all important. Forty-two percent of those questioned had been fishing in the last 12 months.

The Montana Wildlife Federation's Intentions and Position

The Montana Wildlife Federation believes current stream flow conditions in Montana are unacceptable and requires immediate action. MWF is asking the 1991 Montana State Legislature to pass legislation that will protect the public's interest in maintaining minimum stream flows. Current water leasing provisions are inadequate.

We strongly believe the 1991 Legislature has the responsibility to the people of our state to provide minimum stream flows to protect the public's health, to provide stable economic growth and to assure that Montanan's can have the kind of quality of life that makes this state the "last, best place on earth".

If the legislature refuses to pass adequate stream flow protection measures, MWF will be left no other option but to put the stream flow issue in the hands of the people of Montana in the form of a ballot initiative in the 1992 election cycle.

We suggest the following legislative concepts to address Montana's stream flow crisis.

- o Instream Flow Act of 1993

- Would delete the requirement that instream water rights must be diverted to be retained.

- Would allow any person or agency to appropriate water for instream use.

- Would authorize the voluntary transfer (by sale, lease or gift) of existing water rights to and from traditional consumptive uses to instream flows.

EXHIBIT 11
DATE 3-24-93
SB 346

o Conservation of Montana's Instream Water Resources

Provides for a state administered process to conserve and protect Montana's water resources.

Requires the state to develop a list of endangered streams, rivers and lakes that are threatened by water diversion depletions.

Establishes minimum water levels necessary to preserve the essential characteristics of the endangered stream, lake or river.

Provides for monitoring of endangered water resources during the irrigation season.

Provides for enforcement, through the district court, to restore water levels to minimum levels needed to sustain the instream resources.

EXHIBIT 12
DATE 3-24-93
~~HB~~ SB 346

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME GLENN HOCKETT BILL NO. 346

ADDRESS 745 DOANE RD. DATE 3-24-93

WHOM DO YOU REPRESENT? SELF

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: SUPPORT WILLING SELLERS & BUYERS
DEVELOPING A MARKET FOR WATER
FOR INSTREAM FLOW (NON DIVERSION)
SHOULD THIS BILL NOT PASS
WHAT ALTERNATIVES REMAIN
FOR THOSE CONCERNED ABOUT
WATER FLOWING IN MONTANA
STREAMS. PLEASE SUPPORT
THIS BILL AS A COMPROMISE
THANK YOU

HOUSE OF REPRESENTATIVES
Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME SAM BABICH BILL NO. SB 346
ADDRESS 626 EVANS DATE 3/24/93
WHOM DO YOU REPRESENT? SKYLINE SPORTSMAN ASS
SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: SKYLINE FEELS THAT IN
STREAM FLOW WILL PROTECT OUR
FISHERIES AND ALLOW MORE RECREATIONAL
USE OF IMPORTANT STREAMS. WE
BELIEVE THAT THE STATE SHOULD
BE ALLOWED TO ACT AS ANY
PERSON TO PURCHASE WATER ON
A WILLING BUYER WILLING SELLER
AGREEMENT.

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Tach Mavee BILL NO. SB 346

ADDRESS 4640 W. HLn DATE 3/24/93

WHOM DO YOU REPRESENT? Bitterroot Chapter of Trout Unlimited

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: I support the bill for the following
reasons: 1) It allows for the legal transfer
of water for instream purposes. This transfer
could have a positive impact for certain spawning
tributary streams on the Bitterroot River where
recruitment of young trout back into the river
has been sorely lacking

2) It would allow for cooperative
effort between irrigators and recreationist for
the benefit of the fishery. It is a win-win
proposal.

3) As a footnote the Bitterroot Chapter of T.U.
is a member of the Bitterroot Chamber of Commerce.

HOUSE OF REPRESENTATIVES

Nat'l Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Eugene Johnson BILL NO. SB 346
ADDRESS 685 Coach Ave. Vaughn MT. DATE Mar 24 1993
WHOM DO YOU REPRESENT? Upper Missouri Sierra Group
SUPPORT X OPPOSE _____ AMEND _____

COMMENTS: As a native Montanan (3rd generation)
an outdoor person, a former dairy farmer
and currently a small truck gardener, I
support this bill because it will do
the most for both recreation, farming
and ranching. It does not take any
body's water away it only gives them
another option for how it may be
used. This bill will help achieve a
balance between the many uses of
water that supports Montana Ag
and the private and public recreation
activities.

EXHIBIT 16
DATE 3-24-93
48 SB 346

HOUSE OF REPRESENTATIVES

Natural Resources

COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME G. Vince Fischer BILL NO. SB 346

ADDRESS 52 No. Lake Butte 59701 DATE 3/23/93

WHOM DO YOU REPRESENT? Skyline Sportsmen - myself

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: Montana water is a natural resource
and all sectors of its citizens are deserving
of some portion of water "use".
No single group of water users has
the right to monopolize its use. The total
use should be determined by a cooperative
division based on a multiple-use concept

G. Fischer

EXHIBIT 17
 DATE 3-24-93
HB SB 346

WATER QUALITY CONSIDERATION IN OTHER WESTERN STATES

Montana Trout Unlimited
 Compiled by Clay Landry

State	Quality Criteria	Public Interest Criteria	Regulating Agency	Frequency	Objectors
Alaska	Yes; by statute	Yes	Yes; Dept. of Natural Resources	Occasionally Condition	DNR
Arizona	Yes; by statute	No	No	None	---
Colorado	No	No	Yes; State Water Board	None	---
Idaho	Yes; Case Law	Yes	Yes; Dept. Water Resources	Occasionally Condition	Public
Nevada	Yes; by statute	No	Yes; State Engineer.	None	---
New Mexico	Yes; Case Law	Yes	Yes; State Engineer.	Occasionally Condition	Public
Utah	No	Yes	No	None	---
Washington	Yes; Implied	Yes	Yes; Dept. of Ecology	Often Deny & Condition	Public
Wyoming	No	No	No	None	---

INSTREAM FLOW LAWS OF OTHER WESTERN STATES

Montana Trout Unlimited
Compiled by Clay Landry

DATE 3-24-93

HB SB 346

17

State	Authorized	Transfers of Existing Rights	New Appropriations	Instream Right Holders	Speculative Activity	Activation of Statute
Alaska	1980	Yes: In reservations form	Yes: In reservation form	Any Public or Private entity	None	No transfers 11 new approp.
Arizona	1919	Yes: For Recreation and Wildlife	Yes	Public entity only	None	4 transfers 8 new approp.
Colorado	1973	Yes: To Colorado Water Conservation Board	Yes: To CWCB	Colorado Water Conservation Board	None	5 transfers 1,232 new approp.
Idaho	1978	No	Yes	Idaho Water Resource Board	None	No transfers 49 new approp.
Nevada	1988	Yes: established by a court ruling	No	Any Public or Private entity	Possible but none	3 transfers No new approp.
New Mexico	has not yet addressed the issue of instream flows.					
Oregon	1987	Yes: with approval by Water Resource Comm.	Yes	Department of Water Resources	None	1 transfer 533 new approp.
Utah	1986	Yes	No	Division of Wildlife Resources	None	1 transfer no new approp.
Washington	1967	No	Yes: minimum flow requirement	Department of Ecology	None	No transfers 472 new approp.
Wyoming	1986	Yes	Yes	State of Wyoming	None	No transfers 7 new approp.

Mr. chairman, members of the committee:

My name is Chris Clancy, I live in Hamilton and I am representing the Montana Chapter of the American Fisheries Society.

I ask you to support SB 346.

Today, I will discuss only one issue pertaining to this bill. That is the question of need for this legislation.

We have heard and may hear again that much of the water that is diverted from streams in Montana returns to those streams by way of groundwater and wastewater.

This is true, much of the water that is diverted does eventually return to a stream and often it is vital to the life of the stream. But in many cases it does not return to a location that is helpful to the stream it was diverted from.

Please refer to diagram page ___, the ___ page that was submitted to you. That is a diagram of a typical dewatering situation in many of our streams.

Commonly, water is diverted from a small tributary and eventually the lower ends of these tributaries are dry where they enter a river. Some of the water that is diverted is used for it's intended purpose, some evaporates, some goes underground and some is eventually returned to a body of water.

In the diagram, the dry channel is the area of concern. Return flows do not help this area. The only answer would be to leave some water in the creek. These dewatered reaches may be less than a mile or several miles long.

Regardless of how the water returned to the river, it does not help in the area of the dewatered stream.

Many of the fish species from the river use the lower ends of these streams for spawning. When the streambed is dry, they cannot be used.

The Montana Legislature wisely declared the cutthroat trout as our state fish. Cutthroat trout usually lay their eggs in June or July, and need most of the summer for their eggs to develop, which means midsummer dewatering is particularly damaging to them.

Our native State fish has suffered as much as any species from dewatered streams. This is caused by dewatering in the lower reaches of tributary streams.

Allowing for instream flows in some of these streams will be a benefit to a true Montana native. Return flows may help in some instances but do not help in many, many key streams.

I ask you to please give careful consideration to the testimony you hear today from supporters of the Bill.

Please support SB 346.

Wm. C. Ching 3/24/93

EXHIBIT 19
DATE 3-24-93
HB SB 346

March 23, 1993

Representative Dick Knox, Chairman,
and Committee Members
House Natural Resources Committee
Montana House of Representatives
Helena, MT 59620

Re: SB 346

Dear Chairman Knox and Committee Members:

For the record, I live at 1200 Floweree, Helena, Montana. I have been a river guide since 1967 and an outfitter since 1970. I am one of the founders of the Big Blackfoot Chapter of Trout Unlimited and presently serve as vice-president. I chair the Private Lands Committee of the Blackfoot Challenge, a cooperative resource management effort for the entire Big Blackfoot corridor.

Over the years, I have worked closely with many ranchers and farmers due to the fact that we were either floating through their property or accessing fishing water on or near private land. It is my strong belief that the environment is better off with long-standing economically viable ranches and farms. For the most part, they have proven that they love the land and care for it.

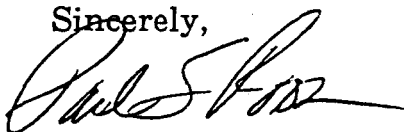
I therefore would support no legislation which I thought would erode the rights or the economic potential of Montana landowners. SB 346 does just the opposite. It offers additional options for a water-right owner. It provides other opportunities for the water-right owner to make a buck. It preserves the process for affected parties to challenge a new use.

But, every bit as important to the ranchers, farmers, and other water-right owners, SB 346 provides a meaningful, workable option to work constructively on an issue that isn't going to go away, in-stream flows.

Many individuals and groups from all sides of this issue have worked hard to find middle ground. The time to act is now, for the benefit of all.

Please support SB 346. Thank you.

Sincerely,



Paul S. Roos



Dale C. Spartas

Outdoor Photographer/Writer

March 18, 1993

EXHIBIT

199

DATE

3-24-93

HB

SB 346

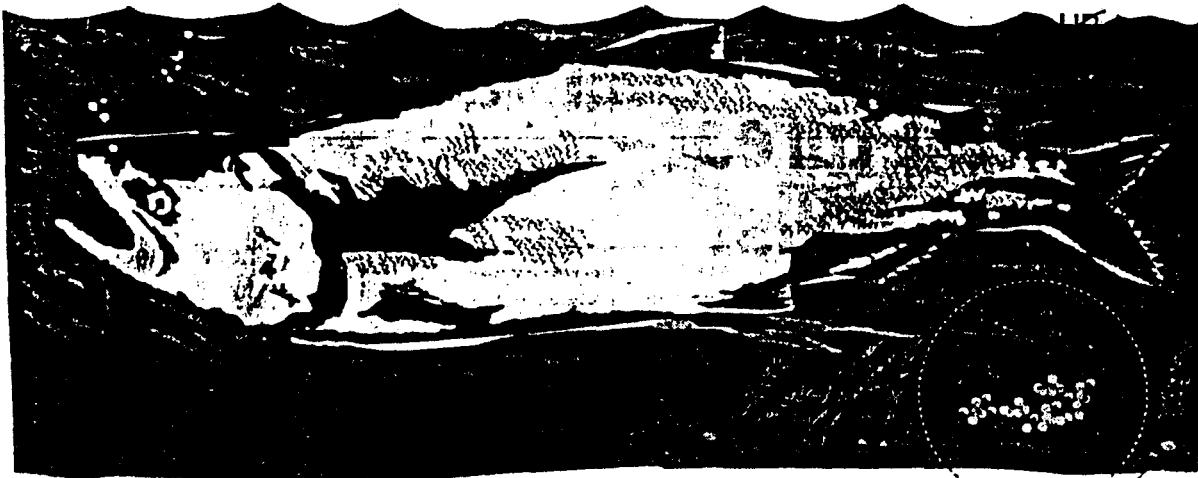
Re: Instream Flow Bill
SB 346Capitol Station
Helena 59620

Please be advised we support instream
flow! It is vital for the well being
of Montana's wildlife!

Sincerely,

Sue & Dale Spartas

DATE 3-24-93
SB 346



SIRS - SB346
IS A REASONABLE
COMPROMISE --
INSTREAM FLOW
PROTECTION -- I live
in California but spend 3 months
in Montana every year ---
and tourist \$ do count -- even
more than votes?!?

WALTER
ZIMMERMAN
PO BOX 3711
TURLOCK CA

95381

Clark Fork
2nd grade coalition
member

TESTIMONY
S.B. 346, AN ACT ALLOWING THE CHANGE OF
APPROPRIATED WATER TO INSTREAM USE
HOUSE NATURAL RESOURCES COMMITTEE
MARCH 24, 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS JOHN BLOOMQUIST AND I AM A WATER RIGHTS ATTORNEY FROM DILLON, AND THE SPECIAL ASSISTANT FOR THE MONTANA STOCKGROWERS ASSOCIATION. THE MONTANA STOCKGROWERS ASSOCIATION REPRESENTS APPROXIMATELY 3,500 RANCHERS AND WATER USERS LOCATED THROUGHOUT MONTANA. I AM TESTIFYING BEFORE YOU TODAY IN OPPOSITION TO S.B. 346.

THE MSGA'S OPPOSITION TO THIS BILL IS BASED UPON SEVERAL CONCERNS. FIRST, THERE PRESENTLY EXISTS WITHIN MONTANA LAW, THE OPPORTUNITY FOR THE DEPARTMENT OF FISH, WILDLIFE AND PARKS TO LEASE WATER FROM AN APPROPRIATOR FOR INSTREAM PURPOSES. MCA 85-2-436 (SEE ATTACHMENT). MSGA SUPPORTS THE WATER LEASING PROGRAM AND THE INFORMATION AND ANALYSIS THAT THIS PROGRAM IS TO PROVIDE CONCERNING INSTREAM USE OF WATER. THE DFWP IS PRESENTLY ENTERING THEIR FIRST LEASE FOR INSTREAM USE AND IS IN THE PROCESS OF NEGOTIATING POTENTIAL LEASES ON SEVERAL OTHER STREAMS IN MONTANA. FURTHERMORE, S.B. 383, PASSED IN THIS SESSION, WILL EXPAND THE WATER LEASING PROGRAM TO 20 STREAMS AND ALSO EXPANDS THE FUNDING AVAILABLE TO THE DFWP TO PURSUE LEASES. THE WATER LEASING STUDY WILL PROVIDE VALUABLE INFORMATION CONCERNING THE RAMIFICATIONS OF INSTREAM FLOW USE. ISSUES SUCH AS RETURN FLOW, LAND USE IMPACT, HABITAT IMPACT, AND EFFECT ON JUNIOR WATER USERS, WILL BE ANALYZED IN THE WATER LEASING STUDY PROGRAM. THE LEASING PROGRAM WAS SUPPORTED BY ADVOCATES FOR INSTREAM FLOW USE IN THE PAST AND THE INFORMATION WHICH WILL PROVIDED BY THE STUDY SHOULD BE ANALYZED BEFORE FULL FLEDGED WATER MARKETING IS PURSUED IN MONTANA.

ALSO, IN MONTANA, THE PROTECTION OF INSTREAM FLOWS FOR FISHERIES PURPOSES HAS BEEN SUPPLIED BY THE LEGISLATURE IN THE FORM OF WATER RESERVATIONS AND BY

RECOGNITION OF PRE-1973 WATER RIGHTS FOR INSTREAM PURPOSES UNDER "MURPHY RIGHTS". THEREFORE, TOOLS EXIST TO PROTECT INSTREAM FLOW FOR FISHERIES PURPOSES BY THE DEPARTMENT OF FISH, WILDLIFE AND PARKS IN FORM OF RESERVATIONS, MURPHY RIGHTS, AND THE LEASING STUDY PROGRAM.

ANOTHER CONCERN WITH THIS BILL LIES IN THE STATEMENT OF INTENT ON PAGE 3. THE STATEMENT OF INTENT INDICATES THAT ENFORCEMENT OF INSTREAM FLOW WATER RIGHTS WILL BE "CRUCIAL" TO REALIZING THE GOALS OF THE BILL. THE STATEMENT OF INTENT FURTHER INSTRUCTS THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DEVELOP STREAM FLOW MEASURING PLANS ON SOURCES SUBJECT TO INSTREAM FLOW WATER RIGHTS, AND THAT SUCH WATER RIGHTS WILL BE ENFORCED BY THE DNRC. THE EFFECT OF THIS PROVISION MAY BE TO ELEVATE THE INSTREAM FLOW WATER RIGHT, AND THE ENFORCEMENT THEREOF, TO A STATUS NOT ENJOYED BY OTHER WATER RIGHTS. IN OTHER WORDS, THE DNRC UNDER THIS BILL MAY GET INTO THE BUSINESS OF ENFORCING INSTREAM FLOW WATER RIGHTS.

ANOTHER CONCERN WITH THIS BILL LIES IN THE DEFINITION OF "INSTREAM USE" ON PAGE 5, AND THE STATUTORY ELIMINATION OF THE DIVERSIONARY REQUIREMENT RECOGNIZED UNDER ESTABLISHED PRINCIPLES OF MONTANA WATER LAW. THE MONTANA SUPREME COURT HAS RECOGNIZED THE DIVERSIONARY REQUIREMENT FOR THE RECOGNITION OF A VALID WATER RIGHT IN THE CONTEXT OF THE BEAN LAKE CASE. THE SIGNIFICANCE OF THIS BILL AND THE DEFINITION OF INSTREAM USE ON PAGE 5 WILL BE TO ELIMINATE THE DIVERSIONARY REQUIREMENT UNDER MONTANA LAW.

THE PORTION OF THIS BILL WHICH IS OF MOST CONCERN TO MSGA LIES IN THE ADMINISTRATION OF WATER AFTER A WATER RIGHT WOULD BE SOLD FOR INSTREAM USE. UNDER THE CHANGE PROCEDURE DESCRIBED ON PAGE 12 OF THE BILL, AN APPLICANT TO CHANGE AN INSTREAM FLOW WATER RIGHT, WOULD BE ABLE TO STATE THE AMOUNT OF WATER WHICH MAY BE CHANGED TO INSTREAM USE, AND ALSO SELECT THE POINT OF MEASUREMENT FOR THE RIGHT. THE CONCERN WITH THIS PROVISION LIES WITH THE POTENTIAL FOR AN

INSTREAM FLOW WATER RIGHT TO CHANGE THE HISTORIC POINT OF MEASUREMENT BELOW JUNIOR WATER RIGHT USERS THEREBY SUBJECTING RECOGNIZED WATER RIGHTS TO A "CALL" FOR WATER BY A DOWNSTREAM SENIOR TO WHICH THEY HAVE NEVER BEEN SUBJECT TO BEFORE.

ALSO, BECAUSE THE AMOUNT OF WATER WHICH IS TRANSFERRABLE IS NOT SPECIFIED, IT IS CONCEIVABLE THAT IN INSTREAM FLOW QUANTITY WOULD INTERFERE WITH DOWNSTREAM JUNIOR WATER RIGHTS WHICH HAVE HISTORICALLY RELIED UPON THE RETURN FLOW OF THE UPSTREAM IRRIGATOR TO SUPPLY THE UTILIZATION OF THEIR WATER RIGHT. THE PRESENT WATER LEASING STATUTE RECOGNIZES THIS CONCERN AND STATES THAT THE AMOUNT WHICH MAY BE TRANSFERRABLE FOR INSTREAM USE CANNOT EXCEED THE AMOUNT HISTORICALLY CONSUMED BY THE LESSOR OF THE WATER RIGHT. MCA 85-2-436(2)(d). THE UNCERTAIN NATURE OF THIS CHANGE PROVISION IN THIS BILL WILL CREATE ADMINISTRATIVE PROBLEMS BOTH FOR THE DNRC, THE DISTRICT COURT, AND POTENTIALLY CREATE SERIOUS PROBLEMS FOR JUNIOR WATER USERS DOWNSTREAM OF A PURCHASED WATER RIGHT SHOULD A POINT OF MEASUREMENT BE DROPPED BELOW THE JUNIOR APPROPRIATORS.

AS A RESULT OF THIS BILL, ANY ENTITY MAY ENTER A BASIN AND PURCHASE WATER FOR INSTREAM USE. THE POINT OF MEASUREMENT MAY THEN BE MOVED TO AN AREA BELOW JUNIOR WATER USERS FORCING THE JUNIOR USERS TO DEFEND THEIR WATER RIGHTS IN AN ADMINISTRATIVE HEARING BEFORE THE DNRC. THESE PROCEEDINGS ARE VERY COSTLY AS ATTORNEYS, HYDROLOGISTS, AND OTHER EVIDENCE MAY NEED TO BE UTILIZED.

FOR THE REASONS SET FORTH ABOVE, THE MONTANA STOCKGROWERS ASSOCIATION STRONGLY URGES A VOTE OF "DO NOT PASS" ON SENATE BILL 346 AND THAT THE WATER LEASING STUDY AS EXPANDED BE ALLOWED TO CONTINUE. VALUABLE INFORMATION CONCERNING THE RAMIFICATIONS OF INSTREAM FLOW USE WILL BE ANALYZED IN THIS PROGRAM PRIOR TO OPEN WATER MARKETING BEING RATIFIED. THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY.

85-2-420 reserved.

85-2-421. Purpose. The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership on both the state and local levels by requiring that water right transfers be filed with the department and that the department notify the water court and the county clerk and recorder of each transfer filed.

History: En. Sec. 1, Ch. 674, L. 1983; amd. Sec. 1, Ch. 271, L. 1985; amd. Sec. 146, Ch. 370, L. 1987.

Cross-References

Transfer of appropriation right, 85-2-403.

85-2-422. Definition. As used in 85-2-421 through 85-2-424 and 85-2-426, "water right" means the right to use water as documented by a claim to an existing right, a permit, or a certificate of water right.

History: En. Sec. 2, Ch. 674, L. 1983; amd. Sec. 147, Ch. 370, L. 1987.

Cross-References

Transfer of appropriation right, 85-2-403.

85-2-423. Water right transfer certificate. (1) The chief water judge and the department shall prescribe the form and content of the water right transfer certificate.

(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

History: En. Sec. 3, Ch. 674, L. 1983.

85-2-424. Filing. (1) The transferor of a water right or his agent or representative shall file with the department a water right transfer certificate within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person the form prescribed under 85-2-423 for the transfer of water rights. The recording of the deed or other instrument shall not be delayed because of the transfer of the water rights.

(3) The county clerk and recorder shall send to the department a list of all transfers that involve transfers of water rights. The list must be sent every month and must include all transfers for the month immediately preceding the date of submittal to the department. The list must include the names and addresses of all parties to the transfer and a legal description of the land subject to the transfer.

History: En. Sec. 4, Ch. 674, L. 1983; amd. Sec. 2, Ch. 271, L. 1985; amd. Sec. 10, Ch. 805, L. 1991.

Compiler's Comments

1991 Amendment: Deleted (4) that read: county clerk and recorder in the county in which the transfer occurred". Amendment effective July 1, 1991.

85-2-425. Repealed. Sec. 6, Ch. 271, L. 1985.

History: En. Sec. 5, Ch. 674, L. 1983.

85-2-426. Fee. (1) The board of natural resources and conservation shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department and the county clerk and recorder in processing the transfer certificate. The fee must be paid at the time of filing of the water right transfer certificate.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318.

History: En. Sec. 6, Ch. 674, L. 1983; amd. Sec. 3, Ch. 271, L. 1985.

85-2-427 through 85-2-430 reserved.

85-2-431. Penalty. (1) The transferor of a water right is responsible for the filing of a water right transfer certificate with the department in accordance with 85-2-424.

(2) A person who violates 85-2-424(1) is liable for a civil penalty of not more than \$50.

(3) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district.

(4) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318.

History: En. Sec. 4, Ch. 271, L. 1985.

85-2-432 through 85-2-435 reserved.

★ **85-2-436. (Temporary) Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow on volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) 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; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the

department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of an application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to his rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by substantial credible evidence that his water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the

reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease. If the department of fish, wildlife, and parks has not leased water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (*Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.*)

History: En. Sec. 6, Ch. 658, L. 1989; amd. Sec. 1, Ch. 740, L. 1991.

Compiler's Comments

1991 Amendment: In (2)(e) increased lease term from 4 years to 10 years and after "years" substituted "but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years" for "but may be renewed for up to 10 years per renewal, if allowed by law and upon notification to the department. If this section terminates without reauthorization by the legislature, all leases and lease authorizations expire on the date of termination"; in (2)(f), before "lease", deleted "original"; in (2)(i), after "terms", deleted "the renewal of the lease"; in (2)(j), after "installing", deleted "measuring"; inserted (3)(a) requiring Department to submit to Board, Commission, and Water Policy Committee by December 1 annual progress

report, including lease information, and requiring Department to provide compelling information justifying any water rights not leased by December 1 of any year in progress report; in (3)(b), before "study", inserted "final" and at end extended date from 1990 to 1998; inserted (4) providing that section does not create right to bring suit to compel renewal of expired lease; and made minor changes in style. Amendment effective May 1, 1991.

Cross-References

Definition of appropriate and beneficial use, 85-2-102.

Changes in appropriation rights, 85-2-402.

Abandonment of appropriation right, 85-2-404.

Contributions for leasing appropriation rights, 87-1-610.

85-2-437. (Temporary) Board designation of eligible stream reaches. (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the board for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The board may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The board may designate no more than 10 stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the board may remove the designation

from that stream reach and designate another stream reach pursuant to this section. (*Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.*)

History: En. Sec. 4, Ch. 658, L. 1989; amd. Sec. 2, Ch. 740, L. 1991.

Compiler's Comments

1991 Amendment: In (3) increased Board authority to designate stream reaches from 5 to 10 and inserted second sentence authorizing Board to remove designation from stream reach and to designate another stream reach if Department determines water lease cannot be reasonably obtained on designated stream reach. Amendment effective May 1, 1991.

85-2-438. (*Temporary*) Lease validity. All leases entered into prior to June 30, 1999, remain valid until the expiration date of the lease. (*Terminates June 30, 1999—sec. 7, Ch. 740, L. 1991.*)

History: En. Sec. 3, Ch. 740, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 740, L. 1991, provided that this section is effective on passage and approval. Approved May 1, 1991.

Part 5

Ground Water

Part Cross-References

Board of Water Well Contractors, 2-15-3307.

Water well contractors, Title 37, ch. 43.

Metal mine monitoring of water quality and quantity, 82-4-355.

85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(3) "Ground water" means any water that is beneath the ground surface.

(4) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part); amd. Sec. 1, Ch. 561, L. 1979; amd. Sec. 11, Ch. 805, L. 1991.

Compiler's Comments

1991 Amendment: In definition of ground water substituted "water that is beneath the ground surface" for "fresh water beneath the land surface or beneath the bed of a stream,

lake, reservoir, or other body of surface water and which is not a part of that surface water." Amendment effective July 1, 1991.

85-2-502. Administrative rules. The board may prescribe and the department shall enforce reasonable rules concerning and providing for

under which the construction of weirs or other measuring devices may be required, and such other similar matters as are required by and consistent with the administration of this part.

History: En. Sec. 21, Ch. 237, L. 1961; amd. Sec. 177, Ch. 253, L. 1974; R.C.M. 1947, 89-2931.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-2-503. Controlled ground water subareas. For purposes of administration, large ground water areas may be divided into convenient administrative units known as subareas.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).

85-2-504. Standards for determining fresh water. Fresh water shall be considered to be water fit for domestic, livestock, or agricultural use. The department, after notice and hearing, may fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).

Cross-References

Water quality — classification and standards, Title 75, ch. 5, part 3.

85-2-505. Waste and contamination of ground water prohibited. (1) No ground water may be wasted. The department shall require all well producing waters which contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination, or pollution of ground water through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided, however, in the following cases the withdrawal or use of ground water shall not be construed as waste under this part:

(a) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground water;

(b) the inadvertent loss of ground water owing to breakage of a pump valve, pipe, or fitting, if reasonable diligence is shown by the person effecting the necessary repair;

(c) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility land by draining the same or that must be removed from a mine to permit mining operations or to preserve the mine in good condition;

March 24, 1993

HEARING ON S.B. 346
HOUSE NATURAL RESOURCES COMMITTEE
REPRESENTATIVE DICK KNOX, CHAIRMAN.

EXHIBIT 21
DATE 3-24-93
HB SB 346

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE:

I am Vernon Westlake, representing the Agricultural Preservation Association in the Gallatin, Madison, Jefferson and Broadwater areas, and also as an irrigator with water rights in the West Gallatin River.

Mr. Chairman, for the Record, we are opposed to S.B. 346. We are opposed to this legislation because it will give instream flow rights standing as a water right. It will establish instream flow as a beneficial use, and allow the sale of water rights for instream flow.

If this legislation is enacted, what will be the effect on existing water use? The major concern is that the junior right holders are most likely to suffer an adverse effect, particularly during a dry or low stream flow season. The adverse effect on the junior right holders is the fact that the bill would allow a senior right holder to sell for instream flow, and change the point of measurement from the original point of diversion to a point downstream. This point could be below the junior right holders' point of diversion. Historically, a point of diversion for measurement has never been allowed to be moved downstream.

I firmly believe S.B. 346 does provide a basis for public interest criteria for water use in Montana. Examining the bill, starting with Line 25, Page 1, through Lines 1, 2, & 3, Page 2, I quote:

"WHEREAS, the Legislature finds that this integration of instream use into Montana's prior appropriation system is an effective and efficient method of satisfying the public's interest in water resources."

The proponents say that the quoted paragraph does not establish the public interest criteria. I say, if that is the case, then delete the paragraph.

Invoking the public's interest criteria for maintaining a certain flow in the Gallatin River during a dry year could take precedence over even senior water rights. This would cause major losses to producers of potatoes, small grains, and alfalfa in this area, as well as to producers of sugar beets or corn in areas where they are raised.

Agriculture is still the major economy in Montana. In dryer years, there would be a severe decrease in income to agriculture, thus decreases in tax revenues for the state of Montana. You people know, better than anyone, that Montana cannot adequately fund its present needs, so let's not bite the hand that feeds us.

There is no need for legislation such as S.B. 346 at this time. Leasing of water rights is a viable option for instream flow, and has been expanded and extended to maintain minimum flow where stretches are subject to de-watering. I suggest to the Committee that water leasing can work. Agriculture in general supports this option.

I recommend that the Committee kill this piece of legislation, since there is no need for it at this time.

Thank you, Mr. Chairman & members of the Committee, for the opportunity to be heard this afternoon.

A handwritten signature in cursive script that reads "Vernon L. Westlake".

Vernon L. Westlake
3186 Love Lane
Bozeman, MT 59715

NC 85 Box 4270
Lewis Town, MT, 59457

EXHIBIT 22

For the record my name is Larry Descheemaeker. I am DATE 3-24-93
HB SB 346
speaking in opposition to Senate Bill 346.

I am a rancher and a fisherman. I was raised on Rock Creek in Carbon County. I lived on the Beaverhead and Poindexter Slough for a year. I then moved to a ranch on the Ruby River and lived there for 14 years. I've irrigated out of all of these streams and I've spent many wonderful evenings on these streams catching wild Brown Trout. I feel this background qualifies my testimony.

The bill starts out saying "the Legislature finds that this integration of instream use into Montana's prior appropriation system is an effective and efficient method of satisfying the public's interest in water resources," and in this statement of intent it says "Further, it is the intent of the legislature to discourage water resource speculation and the unauthorized out-of-state transport of Montana's water."

Well I want to remind you if you pass this bill you are authorizing the transport of water out of this state.

Why has the legislature been spending valuable time addressing such regressive legislation?

Why don't you be progressive and legislate to conserve and expand our uses of Montana water?

Why don't you discuss off stream storage? If the money is there to buy instream flow, I feel it should be there for off stream storage. Let's invest in something that returns dividends, rather than sending our water down the stream and out of the state as fast as it will run.

In the last 30 years I can recall only two years that the Ruby River could qualify as being dewatered and this was for a very short time in the spring until waters from Ruby Dam and irrigation recharge brought the flows back up. I might add the trout survived both droughts.

The trout and the irrigators also had to survive a few springs during those 30 years when Montanas' rivers ran so high and wild you couldn't get close to the original stream bed in many places.

Let's grab that high water and store it for a dry year. It won't solve all the problems but it will sure help.

Be progressive and oppose Senate Bill 346. Thank You.

EXHIBIT
DATE 3-24-93
HB SB 346

LAW OFFICES
J. BLAINE ANDERSON, JR.
112 S. WASHINGTON
DILLON, MONTANA 59725
(406) 683-2303

J. BLAINE ANDERSON, JR.
CATHERINE S. SANDS

FAX: (406) 683-2304

March 24, 1993

TESTIMONY OF J. BLAINE ANDERSON, JR.

REGARDING SENATE BILL 346--THE WATER SALE BILL

Dear Mr. Chairman:

I am an attorney practicing law in Dillon, Montana, and also am a rancher. I represent clients in the Big Hole Valley on the Beaverhead River and on the Ruby River. A large portion of my practice of law is involved in water rights.

In theory, I support the concept of a water sale bill allowing existing appropriators to sell their water for an instream flow use to enhance wildlife, fisheries, and recreational values. However, I must register my strong opposition to this particular bill as written. This bill will simply cause confusion, create litigation, and for that reason adversely affect the rights of junior appropriators.

My objections to the bill as written, are as follows:

1. The bill fails to define a stream reach and designate the distance for which an instream flow right may be protected;

2. The bill does not provide for a stream flow measuring plan and what is more egregious leaves the decision to develop a measuring plan to the Department of Natural Resources and Conservation and yet, provides that an instream flow may be protected notwithstanding absence of a measuring plan. The problem here is twofold;

1. It grants the DNRC the discretion to develop a plan; and

2. What is there to be protected if it is isn't measured? Until the readjudication process is completed, all of our water rights are uncertain.


3. This bill will subject junior water right appropriators to unknown risks, the greater being that they may be subjected to substantial attorneys fees in protecting their junior rights.

Testimony of J. Blaine Anderson, Jr.
March 24, 1993
Page Two

4. Water leasing is in place, there are ongoing negotiations to obtain water leases.

This proposed legislation, Senate Bill 346, is too vague on the above noted points to be enacted into Montana Law. Amendments need to be added to the bill to define how the water rights remaining instream will be measured; where they will be measured; and attorneys fees provision to protect junior water rights holders who have to engage an attorney to protect their water rights. If these amendments are not made to this bill, it should be killed.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Blaine Anderson, Jr.", written in dark ink.

J. Blaine Anderson, Jr.
Attorney at Law

JBA/dje

EXHIBIT 1
DATE 3-24-93
HB SB 346

3/24/93
Hagenbarth Livestock
Jim Hagenbarth
P.O. Box 1128
Dillon, MT 59725

Representative Knox
Committee Members
Natural Resource Committee
Room 437
Capitol Station
Helena, MT 59620

Re: Senate Bill 346

Dear Representative Knox and Committee Members:

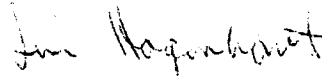
I am asking you to oppose S.B. 346. Even though I believe a water right to be personal property and having value if severed from the land, this bill is too broad, not specific, and does not offer enough protection to the "other water right holders".

There is:

- no mention of wetlands and the loss thereof.
- no mention of loss of irrigated cropland and the subsequent impact on counties and schools.
- no mention of refunding court costs and legal fees to an successful objector who would have suffered damages from a sale.
- no mention of the responsibility, cost, method and point of water measurement.
- no method for determining the amount of saleable water and stream reach applicability.
- no mention of loss of return flows and groundwater recharge.

A leasing mechanism is in place to satisfy instream flows and gain more data and knowledge so a better bill in the future can be developed, if desired. This bill has real problems and is premature.

Thanks for your opposition,



Jim Hagenbarth

March 24, 1993

I am Shirley Egall of Stevenageville, Mt. I am here today to give testimony for:

BILLY BOB BROCKGROVER
 BRASS ROOMS FOR MURKIN LEO
 BILLY BOB BROCKGROVER
 BILLY BOB BROCKGROVER

We will surely, in time, find Montanans enter the oil field with the same excitement, devotion, and energy that we have seen in the economic development of our state is indispensable. Agriculture, an integral industry will not be the revenue source that it is today, except incidentally. We are not ready for the abandonment of Montana's agriculture lands and we are, we are quite interested in agriculture and all the valuable natural resources whether some people like it or not. We would hope that all the technology and research that we have so long supported in the past, will continue in the future, both in hand working together toward solutions to the common problems of the growing nation. Unofficial examples are the following:

...the ...
...the ...
...the ...
...the ...
...the ...

[illegible]

On October 10, 1964, the FBI advised that they have advised Kennedy's father and brother and that the Bureau is conducting a thorough investigation of the assassination of Kennedy. The father told the FBI that only a few of his friends had been in Dallas, Texas, at the time of the assassination and that he had been in New Orleans, Louisiana, at the time of the assassination. He also stated that he had been in New Orleans, Louisiana, at the time of the assassination.

[illegible]

systems? We need protection for our water from those problems but not with the loss of our water for agriculture.

Lets get on with our adjudication process, lets open the door for water storage instead of all the spring run away and then plan for the future when we may have available marketable water.

Instream flow makes out of state flow!

We can not make more water but we can store more water!

Please do not support SB 242 ~~SB 242~~

Thank you

Shirley Bugli
Shirley Bugli
3067 Bugli Lane
Steavenville, Mt. 29870



MONTANA FARM BUREAU FEDERATION

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

DATE 3-24-93
HB SB 346

March 24, 1993

Mr. Chairman, members of the committee, for the record, I am Lorna Frank, representing over 4500 Farm Bureau members throughout the state.

Farm Bureau members are opposed to the sale of water for instream purposes because we feel instream flow legislation should be based on additional storage. Another concern is that the water can no longer be used to grow crops to feed the people of this country and the world.

We also oppose the sale of water because we have the leasing program in place. This program has been working the past couple years as evidenced by the contracts that have been signed or are being

negotiated.

We feel that leasing is the better way to go rather than selling the water and will accomplish the same objectives.

The sale of water to any group is a drastic change to Montana water law and I don't believe the people of Montana are ready for this kind of a change.

This bill does answer some of our other questions about the protection of all water rights, and that the transaction takes place between a willing buyer and a willing seller. We are also concerned about where the point of measurement would be. Our members believe it should be as near as possible to the recorded point of diversion.

Many farmers and ranchers are asking what is going to happen to the land values when the water is removed from the land? That is a legitimate question.

For these reasons we oppose SB-346 and urge this committee to
not concur.

Lorna Frank
Lorna Frank, Lobbyist

EXHIBIT 25
3-24-93
SB 346

Testimony before the House Natural Resources Committee on SB 346.

Chairman Knox, members of the Committee, ladies and gentlemen, for the record my name is Ed Lord. I am a rancher from Philipsburg and the president of the Montana Stockgrowers Association. I am also president of the Flint Creek Waterusers Association, a Montana DNRC Project in the Flint Creek Valley. As an irrigator, we have Decreed Water Rights, Appropriated Rights and Use Rights. In addition, we use an 1100 Acre Foot contract with the Flint Creek Waterusers Association.

While I am not opposed to the concept of obtaining water for fish, wildlife and recreatinal purposes in emergency situtations, I am opposed to SB 346 in its present form. This bill would be a major change in Montana Water Law. My opposition stems from two separate and distinct reasons.

1. I am concerned about protecting the water rights of the junior appropriators..

2. I feel certain that this bill will create an administrative nightmare in many drainages.

The proponents of this bill claim that water rights are property rights, therefore, water right holders should be able to sell to the highest bidder. While I am a strong advocate of private property rights, I disagree with this particular concept. Water rights are a very unique property right. Our forefathers or predecessors claimed and appropriated and in many cases were adjudicated a specified

amount of water to be used on a specified piece of land during the irrigating season. I am aware of a few changes in the beneficial use of water but these were the exception rather than the rule. These changes were generally brought about by some unusual circumstances.

I realize that the bill attempts to protect existing water rights in Section 3-2a Temporary and after July 1, 1999 of 85-2-402 MCA. However, the only opportunity a water right holder has to object to a change of use is at the time the appropriator makes an application. For various reasons, the potentially damaged water right holder, may not object at that time. Possible reasons might be:

1. He didn't read the legal notices in the paper every week.
2. He wants to get along with his neighbor.
3. He is uncertain how the change may effect his water right.
4. He can't afford the legal help necessary to make a proper objection.

A year or two after the change is approved and damage is obvious, his only recourse is through the court system. As you all know, litigation is a very expensive and time-consuming process.

My second point of apprehension is the administration and implementation of this Bill. For emphasis, let me quote from the Statement of Intent of SB 346, starting on line 23, page 2 and continuing to line 7, page 3.

"The legislature directs the department to adopt rules that effectively and efficiently implement the provisions of this bill. Additionally, the legislature recognizes that **enforcement** of instream flow water rights will be crucial to realizing the goals of this bill and further directs the department to assist in the development of

streamflow measuring plans that will allow enforcement of instream flow water rights BY THE DEPARTMENT, SUBJECT TO THE PROVISIONS OF 85-2-114."

This statement of intent anticipates the problems we say are inherent in the bill. This wording places a tremendous burden on the DNRC at a time when they are facing drastic funding reductions. Many questions came immediately to mind, some of which were answered by amendments to the original Senate Bill. Several still remain, however.

1. Where will the water be measured?
2. Who will call for the water?
3. Who will measure the water?
4. Who pays for who measures the water?
5. Who determines how much water is lost to seepage, evaporation and plant and tree use?
6. Who determines when junior water users rights are satisfied?
7. Who settles disputes arising from ownership of water?
8. Where does the legal authority rest?
9. Who engineers the measuring devices?
10. Who maintains the measuring devices?
11. Who pays for the maintenance of the measuring devices?

I have more questions but I hope these will make my point.

In order to illustrate the practical application of some of these questions, I have prepared a schematic diagram of a typical small drainage. For discussion purposes, let's make the following assumptions:

1. Historically, Fish Creek started with 300 MI and ended at Rolling River with 150 MI in the month of August due to losses from evaporation, seepage, and streambank vegetation uptake.
2. Rancher A appropriated 200 MI in 1885 to irrigate 200 acres.
3. Rancher B appropriated 100 MI in 1890 to irrigate 100 acres using natural flow and Rancher A's return flow.
4. Rancher C appropriated 50 MI in 1895 to irrigate 50 acres using natural flow and Rancher B's return flow.
5. In 1994, Trout Unlimited purchases Rancher A's water right to supplement Fish Creek between its confluence with Rolling River and Rancher A's point of diversion.
6. It takes a minimum of 150 MI to maintain a fishery in Fish Creek.

Assuming that measuring devices are required, where, relative to the diagram of Fish Creek, does the DNRC or the new water right holder install a measuring device? Immediately downstream of Diversion Point A, upstream or downstream of Diversion Point B, upstream or downstream of diversion Point C, immediately above the confluence of Fish Creek and Rolling River or all of the above? Knowing that large measuring devices are very expensive, what type and size device will be installed that can measure 200 MI of water and still withstand the flood waters of Fish Creek?

Who controls the headgates on Fish Creek? Who pays his or her salary? Who determines when and if Rancher B and Rancher C's water rights are satisfied?

Even if all these questions are satisfactorily answered and Rancher A and Rancher B are left whole, Trout Unlimited has still not

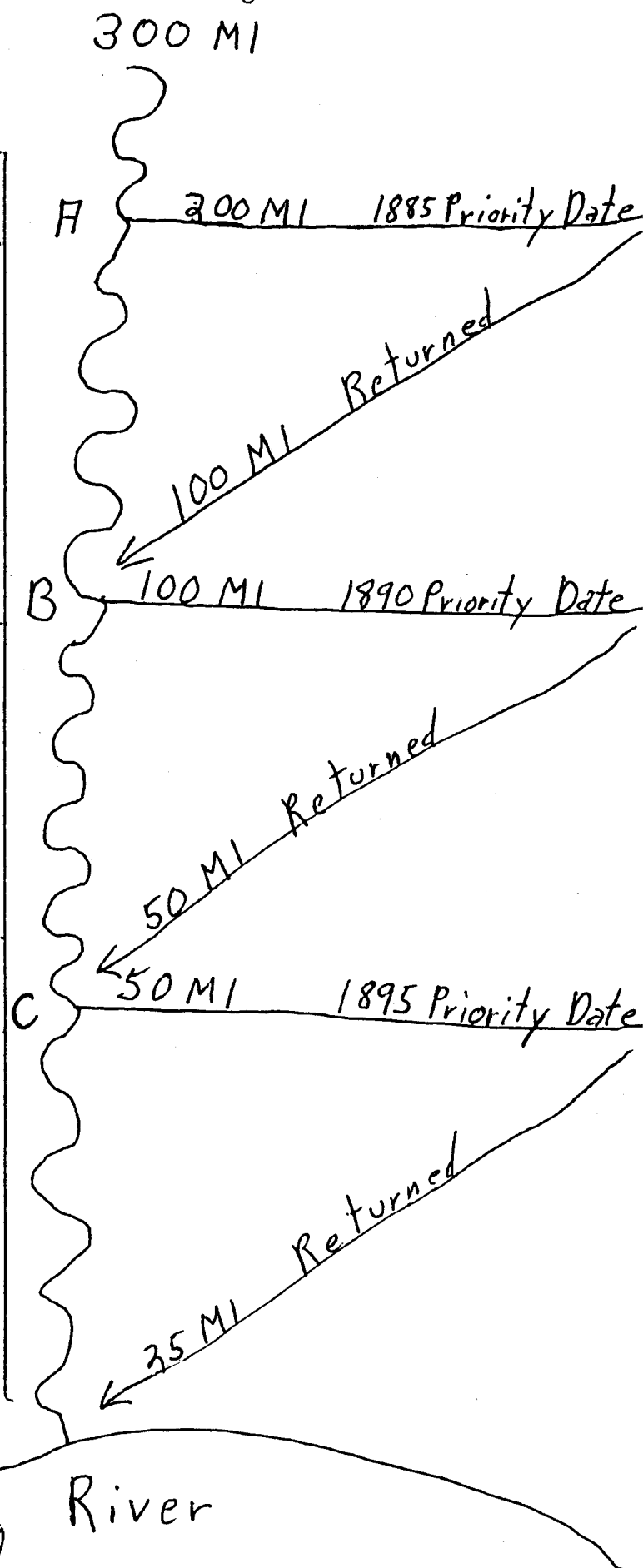
EXHIBIT 26
DATE 3-24-93
SB 346

met their goal of a minimum flow of 150 MI throughout the stream. In light of the uncertainties, I recommend that SB 346 not pass and that low flow problems be solved with stream leasing involving all affected parties or water purchases from State or Federal projects.

Thank you for this opportunity to comment.

edtest

Flow Rate Before 1885	Flow Rate After 1885	Flow Rate After 1994
300 MI 300 MI	300 MI 100 MI	300 MI 300 MI
- 50 MI Evap.	- 50 MI Evap. + 100 MI Return	- 50 MI Evap. + 0 MI Return
250 MI 250 MI	150 MI 50 MI	250 MI 150 MI
- 50 MI Evap.	- 50 MI Evap. + 50 MI Return	- 50 MI Evap. + 50 MI Return
200 MI 200 MI	50 MI 0 MI	150 MI 100 MI
- 50 MI Evap.	- 0 MI Evap. + 25 MI Return	- 50 MI Evap. + 25 MI Return
150 MI	25 MI	75 MI



March 23, 1993

Dear Legislatures;

Re: Senate Bill 346


In my opinion there are too many unanswered questions associated with Senate Bill 346. I will attempt to convey to you my concerns as a water owner and user in the State of Montana.

If a senior water right is sold for in-stream use and it adversely affects junior water rights, what recourse will they have for their loss of water? At what point and by what means will the sold water be measured? And who will pay for the installation and maintenance and monitoring of the measuring devices? If water is sold from a shared ditch, will the seller be required to leave carriage water in the ditch because of the adverse effect it will have on the remaining ditch users? What criteria will be used to prove that said water is being put to a beneficial use? Or, in other words, how will you document that the fishery is benefitting? Why is it suddenly so terribly important to pass a water purchasing bill when we just recently passed a water leasing bill that we have not even given time to see if it will work? If it does not work, what would lead us to believe that a water purchasing bill would be any different; except that if the Department of Fish, Wildlife & Parks obtains existing water rights for in-stream flow purposes, they will develop standing to object to any new water right requests. This will limit future development and provide extra costs and work to water users who will have to defend their existing rights in the general adjudication. Currently Fish, Wildlife & Parks does not have standing to object to existing rights in the State-wide adjudication. This very bill will grant Fish, Wildlife & Parks this standing, that the Montana Water Court has denied them in the past.

Also, the fiscal note attached to this bill which says the only costs incurred by DNRC will be \$1000 is in my opinion very misleading. I cannot imagine any government agency printing new forms, drafting rules and policies, sending out notices, conducting hearings on the rules will ever be able to do all of this for a mere \$1000.

Last, I think it should be noted that Farmers & Ranchers are just as concerned about the fisheries and streams as anyone else, and I really believe that with a little effort all of us could cooperate to improve the fisheries and maintain the in-stream flows in our creeks, streams and rivers without alot of legislation and expense that will be born by the taxpayer. It is therefore my hope and request that you will vote no on Senate Bill 346. Thank you.

Sincerely, John Robbins



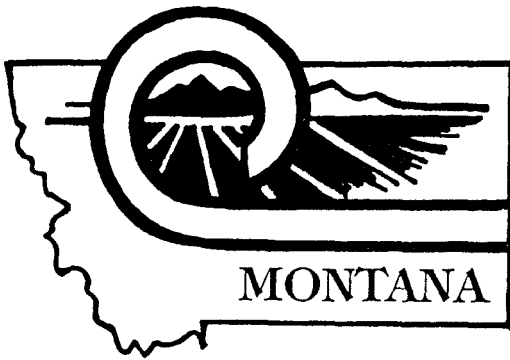


EXHIBIT 28
DATE 3-24-93
HB SB 346

Association of Conservation Districts
501 North Sanders, Suite 2
Helena, MT 59601
(406) 443-5711
FAX (406) 449-0119

MACD POSITION ON SB 346

OPPOSE

Reasons:

A. SB 346 allows for private ownership of instream flow rights.

1. Since instream flow benefits the public and not just particular individuals, rights should be held by a public entity that is accountable to public wishes.
2. In certain cases, instream flow may not be beneficial to the public. Agency regulation of instream flow keeps in check these instances.
3. Private ownership of instream flows could make it very difficult for conservation districts or other water rights or reservation holders to make any changes in the status of their present rights or to obtain new rights. Public agencies may be less confrontational.

B. Permanent transfer of water to instream flow may be detrimental to the local economic base.

1. Since Conservation Districts are supported in large part by taxes on real property, any erosion of the tax base by lowering the value of the land base in a district (i.e. -- depleting the value of irrigated land because its water was removed) would impact the ability of the district to serve the needs in its area.
2. The permanent removal of water from the land to enhance instream flow only promotes the either/or concept rather than striving to find a way to help all segments of the economy.
3. Although recreation is a growing industry in some areas of the state, it is not a replacement for the traditional industries that continue to provide year-around employment and a stable tax base to support local governments. It is an industry that can expand and compliment the existing economic base in Montana and as such should be developed in a manner that does not weaken existing industry.

C. The present leasing study should be continued.

1. The effect of transferring water from diversionary uses to instream flow or what mechanisms need to be in place to ensure the rights of junior users is not yet known. The leasing study was put into place to find these answers and should be given a chance to work. What is not needed is a rush to change water law to put into place a concept that might create more problems than solutions.

2. Leasing water is preferable to its outright purchase and separation from the land. Leasing allows for both traditional use and new use access to the resource. In most years diversionary users would be able to maintain their operations, but in dry years instream flows could be protected.

3. As leasing becomes more common and its effects are more thoroughly understood, leases will be easier to make and the transfer of water through this method may occur more frequently.

D. Methods already exist to protect instream flow--the leasing study and the water reservation process. Both rely on public agencies to protect the public resource.

E. Outright purchase of water rights to enhance instream flows may be an alternative in the future, but only after study shows that it is workable and actually provides a solution to the problem.

Figure 1. Schematic representation of the experimental design. The subjects were divided into two groups: the control group and the experimental group. The control group was divided into two subgroups: the control group and the experimental group. The experimental group was divided into two subgroups: the control group and the experimental group. The control group was divided into two subgroups: the control group and the experimental group. The experimental group was divided into two subgroups: the control group and the experimental group.

[illegible]

Refer
TO
-M.S.A.T.
85-2-114

ΑΤΟΛΑ

Please do not leave home until I guarantee you that it will
be a great change in the agricultural scene in Northern and
central Texas and make out of farming completely. I thank you
for time and would appreciate your continuing on this
note.

EXHIBIT 29
DATE 3-24-93
SB 346

Mr Chairmen: Thank you for the opportunity to express my opinion on S.B 346.

The desire to improve fisheries is admirable However, in this case the vehicle used is unexceptionable. There fore I must voice opposition to S.B. 346 based on the following points.

1) The allowing of the point of measurement to be moved from where the original right was measured is simply ludicrous. The loss of water through stream seepage is naturally occurring. By moving the point of measurement to a point directly below an area of seepage, the instream flow purchaser can require that 100% of this natural loss be made up by Junior right holders.

2) The movement issue also opens the door for the purchase of Montana water for out of state uses.

3) This bill does not address any specific needs of a particular stream. There is no maximum amount of water that can be purchased for the purpose of instream flows. There fore the potential exist for instream flows to exceed the streams normal flows to a point where erosion is facilitated. The net result maybe more harm to the fishery than good. An analogy of this would be like taking medicine the proper dosage will benefit an individual an over dose may kill you.

4) The removal of irrigation will have a very negative impact on a great many species including a net loss of wet lands. The benefit of instream flow increase will benefit only a select few if it has any benefit at all.

5) What will be the effect on the local aquifers if irrigation is removed? Are wells going to dry up.

6) This bill is needless. The ability to lease water for instream flow exists with the Dept. of Fish, Wildlife and Parks under the water leasing study. If there are opportunities for fishery enhancements through instream flows lets utilize the leasing program. After all this program is a study so lets get the results before we go on. Remember at this point we do not even know if instream flows will work.

Conclusion:

Irrigation in Montana arrived with the Jesuits 150 years ago. It is an intricate part of Montana that has benefited all who live here, be it Man or beast. Montana has put considerable effort into establishing Quality water laws. it is not sound thinking to want to radically change what we have especially when it works. Agriculture is the Heart and Soul of Montana's Economy. S.B 346 is simply hostile towards our number one industry. If environmental groups are so concerned with instream flows then why don't they pursue cooperative agreements with irrigators that would enhance irrigation efficacy and allow for the water saved to remain instream. Or simply donate the money intended for instream purchase to the Dept. of Fish Wildlife and Parks ear marked for the lease program. Either of these approaches will save on needless litigation and further animosity between Agriculture and Environmentalists. Regardless of the good intentions of S.B. 346 the bottom line is that is legislation is bad for Montana. It is in the best interest of the State that this bill be terminated.

One last Point IF Montana has done such a poor job of Managing the Last Best

EXHIBIT 309
DATE 3-24-93
HB SB 346

MR. CHAIRMAN

LADIES AND GENTLEMAN OF THE COMMITTEE

MY NAME IS BARRY HEDRICH, MY FAMILY OPERATES A FARM AND
RANCH EAST OF RINGLING MONTANA.

I COME HERE TODAY TO PROVIDE TESTIMONY IN OPPOSITION TO
SENATE BILL NO. 346 AN ACT ALLOWING FOR THE CHANGE OF
PREVIOUSLY APPROPRIATED WATER TO AND FROM INSTREAM USES.

SENATE BILL 346 WOULD AFFORD FEW BENEFITS FOR THE STATE OF
MONTANA AND ITS CITIZENS. I BASE MY OPPOSITION TO THIS
PROPOSED LEGISLATION ON THREE CONCERNS:

1-- THE LEGAL IMPLICATIONS OF THIS BILL

2-- THE ECONOMIC IMPACT OF THE PROPOSED LEGISLATION

3-- THE LONG TERM ASPECTS OF THIS ACT

EXHIBIT 31
DATE 3-24-93
~~HB~~ SB 346

TESTIMONY ON SENATE BILL 346
AN ACT ALLOWING THE CHANGE OF USE OF WATER
TO AND FROM INSTREAM USES
HOUSE NATURAL RESOURCES COMMITTEE
MARCH 24, 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS

John Maroulet, AND I AM TESTIFYING IN OPPOSITION TO S.B.
346.

ONE ASPECT OF INSTREAM USE WHICH HAS NOT BEEN DISCUSSED IS THE EFFECT OF LEAVING WATER INSTREAM AND THE ASSOCIATED IMPACT ON THE LAND USE OF AN AREA. THERE CAN BE NO DOUBT THAT LAND WHICH HAS HISTORICALLY BEEN IRRIGATED AND CEASES TO BE IRRIGATED, WILL BE LESS PRODUCTIVE AND PERHAPS LEFT IN DISREPAIR.

SHOULD WIDE SPREAD WATER MARKETING IN FACT TAKE PLACE, MANY OF THE COUNTIES AND SMALL TOWNS WHICH DEPEND ON IRRIGATED AGRICULTURE WILL BE PLACED IN JEOPARDY BY LARGE OUTSIDE INTERESTS PURCHASING WATER AND LEAVING IT INSTREAM.

IN COLORADO, WHERE WATER MARKETING OCCURS, THE LAND IS VALUED AT A FRACTION OF THE AMOUNT THAT THE WATER IS SOLD. WATER MARKETING MAY NOT BE IN MONTANA'S BEST INTEREST.

UNTIL THE EFFECTS OF INSTREAM FLOW USE ARE ANALYZED AS IS BEING DONE WITH THE PRESENT WATER LEASING STUDY, WIDE SCALE WATER MARKETING IN MONTANA SHOULD BE AVOIDED.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

& he may use it for 2 weeks & then another irrigator will get to use the water for a while thus making it possible for several users to use the same water.

I & the six of game get some of the early unused rights down by Fort Benton & there are large unadjudicated rights, ~~there~~ we in the Choteau area will be very much damaged.

I would suggest an economic ^{& environmental} impact statement be prepared before this law be implemented.

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Charles Crane BILL NO. 346

ADDRESS Rt 2 Box 153 Chetumut 55422 DATE March 24, 1993

WHOM DO YOU REPRESENT? Teton Coop Canal Co & Teton River water users

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: This Bill will be an ~~ant~~ attorney's dream.

The teton river has not yet been adjudicated & there are several ^{large} early rights at the lower end of the river that have never been used fully & would be prime targets for purchase by fish & game for out of state interests. The removal of this water from the over permitted river would adversely affect all of the irrigators on the teton river. Until the teton is adjudicated the legitimacy of these early ^{right} permits are going to be in question & the lawyers are going to get rich.

I realize that the teton is not really a blue ribbon trout stream but we can blame the mud fish & game for this partially because since the mid 1950's they have been dumping alkali water into the river from freeze & priest lake for their duck pond & so I assume they would like to dilute the pollution they add to the
HR:1993
CS15 river.

Water users in our area take turns

EXHIBIT 83
DATE 3-24-93
HB SB 346

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME DARELL STOTT BILL NO. SB 346

ADDRESS CHOTEAU DATE 24 MAR 93

WHOM DO YOU REPRESENT? ELDORADO COOP. CANAL CO.

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: LEASING WATER INSTREAM

GUARANTEES THAT THE WATER

ORIGINATING IN MONT. IS GOING TO

RUN OUT OF OUR STATE FOR SOMEONE

ELSE TO USE.

IF WE CONTINUE ON A COURSE OF

USING ALL THE WATERS OF MONT. ONLY

FOR RECREATION, SOONER OR LATER THE

PRODUCTION OF FOOD AND FIBER WILL CEASE.

WHAT DO WE DO THEN? EAT OUR

FLOAT TUBES AND WATER SKIS?

HOUSE OF REPRESENTATIVES

Nat. Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME TACK VAN CLEVE BILL NO. SB 346
ADDRESS Box 530, Big Timber 59011 DATE 23 March 93
WHOM DO YOU REPRESENT? self
SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: We have got to get our priorities
straight! Agriculture / food production has to
take precedence over recreation. Agriculture
earns more revenue for the state than the next
two sources - tourism and logging - combined.

Once water is lost to agriculture in
Montana, it is gone forever, and can never be
reclaimed. Further, this bill, if enacted, has
the potential for negatively affecting other water
rights on the same stream.

The many out-of-staters and non-agri-
culturists purchasing land in Montana have the
potential for accelerating the loss of agricultural
water.

HOUSE OF REPRESENTATIVES

NATURAL RESOURCE COMMITTEE

WITNESS STATEMENT

EXHIBIT

35

DATE 3-24-93

HB SB 346

PLEASE PRINT

NAME

W. L. HEWMAN

BILL NO.

SB 346

ADDRESS

1379 Summerville Corvallis 59828

DATE

3/24/93

WHOM DO YOU REPRESENT?

Self

SUPPORT

OPPOSE

X

AMEND

COMMENTS:

1. SB 212 2 years ago Proposed
The same legislation basically & was tabled.
The legislature approved a bill to Permit
Water leasing with a Provision of a year
Study for application. SB 346 is in
Contradiction to this action.

2- When water is removed from a Piece
of land its vegetation will die out
and noxious weeds will grow rampantly
leaving this land useless for agriculture
or Wildlife as well as less of Value of
The land

3- Removal of irrigation water will remove
The underground Aquifer when under irrigation
The Aquifers are fed and moist - the water
moves to stream & low.

DATE 3-24-93
HB SB 346

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE H2

WITNESS STATEMENT

PLEASE PRINT

NAME W H Newman BILL NO. 346

ADDRESS 1379 Summerdale Rd (Cawley) DATE 59828

WHOM DO YOU REPRESENT? Self

SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS: _____

4- Water Rights were assigned to the land and need to remain

50,
5- ~~the~~ Loss of Agricultural Production
#1 source of income will be drastically
affected by this bill in the State
of Montana.

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Ken Kershner BILL NO. S.346
ADDRESS 940 Nature Way, Stevensville ⁵⁹⁸⁷⁰ DATE March 24, 1993
WHOM DO YOU REPRESENT? Self
SUPPORT OPPOSE AMEND

COMMENTS: Oldtimers report the Pitterroot and other rivers would have stretches that were dry (no water flowing) during fall & winter months. After irrigation became established the water from the fields seeped back into the river and has, since then, avoided dry spots in the main channels. Fish and wildlife specialists have told me that having constant year around flow of water enhances the fish population and the local water wells are also benefitted by the charging of the countryside with water and enhances wildlife habitat.
The sale of water rights, especially first water rights, can be disastrous to those with succeeding water rights and owners of domestic wells in the area.

The taking of irrigation ^{water} from ~~previously~~ irrigated land usually leaves the land in a less productive condition than it was as virgin land. With our increasing population it becomes increasingly important that our farm land nationwide maintains its productivity.

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME James Freeman BILL NO. SB 346

ADDRESS 1637 Red Crow Rd., Victor MT DATE 3/24/93

WHOM DO YOU REPRESENT? Myself.

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: Selling water rights for in-stream flows
will eventually obligate the State of Montana for
the continuation of those flows outside our
borders. We will become more restricted through
the need to provide flows for navigation, out-of-
state recreation and additional endangered species
habitat mitigation. In low water years this will
be disastrous to all.

March 24, 1993

EXHIBIT 38
DATE 3-24-93
HB SB 346

Written testimony

SB 346, Beck

Montana Water Resources Association

Mr. Chairman - My name is Jerry Nypen. I am the legislative committee chairman for MWRA.

MWRA is in opposition to SB346. The bill involves the transfer of water from Montana's leading industry, particularly the prime segment of that industry, irrigation agriculture, the State's largest water user. It's fact that severing water from the land has negative impact on agriculture, and consequently negative impacts on state and local economies. Can the loss of an irrigated farm grossing \$100,000 every year be offset economically by a transfer of three cubic feet per second? In addition to the possible negative economic impact, it is likely that there will be reduction in habitat for game since flora common to irrigated land will diminish.

The State seems to have developed the notion that instream flows can be accomplished only by compromising agriculture and other industries, possibly some power generation, or perhaps even municipal uses. We are stale on looking for other ways to accomplish instream flow by other means such as water conservation, development of water routing facilities, development of storages, not massive main stem dams, but smaller off-stream storages. Passage of this bill will allow this attitude to continue.

We have recognized instreamflow as a beneficial use of water and have once supported similar legislation. We continue to support the State's water leasing program as a mechanism for water transfer. This program will hopefully provide some valuable insight on the many unknown effects of transfer without selling the farm, so-to-speak. Our support indicates our willingness to move into the instreamflow right concept, but in a more cautious mode than that proposed in SB346.

We are very concerned about location monitoring and measuring instreamflows. Neither necessity has been adequately defined by State law or by any State agency.

Please oppose SB346 and support a more prudent and economically sound instreamflow program.

EXHIBIT 39
DATE 3-24-93
HB SB 346

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME W. A. Groff BILL NO. 346

ADDRESS Victor M. Tol DATE _____

WHOM DO YOU REPRESENT? Self

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: _____

EXHIBIT 40
DATE 3-24-93
HB SB 346

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Bill Hodge BILL NO. 346

ADDRESS 975 E. Side Hwy Corvallis DATE 3-

WHOM DO YOU REPRESENT? Corvallis Grange # 17

SUPPORT _____ OPPOSE X AMEND _____

COMMENTS: _____

Please do not contribute to the
dewatering of Montana Agriculture

Defeat 346

Thank you

Gallatin Equipment Co.

EXHIBIT 41
DATE 3-24-93
HB SB 346



"We would rather explain our quality, than apologize for anything less."

20 March 1993

Charles Brooks
Montana Hardware & Implement Assoc.
318 North Last Chance Gulch - 2A
Helena, MT 59601

Ref: SB346 - The Instream Flow Act

Dear Charles:

Please review Senate Bill 346 - The Instream Flow Act. You will find it has severe negative impact to our Montana farmers and ranchers. Some of the key problems with SB346 are:

1. The bill allows for an instream flow buyer to change the point of measurement to some location other than where the water right was originally measured.
2. This new point of measurement may subject downstream junior water rights to a "call" for water which they have never before been subject to, thereby preculding them from using their rights.
3. This bill will allow for open water marketing in Montana. Any person or entity may buy a water right and transfer the instream point of measurement wherever they wish.
4. The ability to lease water for instream flow exists with the Department of Fish, Wildlife & Parks under the water leasing study. Give the leasing study a chance to work and provide information on the effects of instream flow before full scale water marketing is adopted. Leaseing is for a limited period, and is not permanent like the sale of water to some unidentified buyer.

P.O. Box 1140 • 6600 Jackrabbit Lane at Highway I-90 Exit #298 • Belgrade, Montana 59714-1140
FAX 406/388-4170 • Ph. 406/388-4177

Agricultural

Industrial

Lawn Care

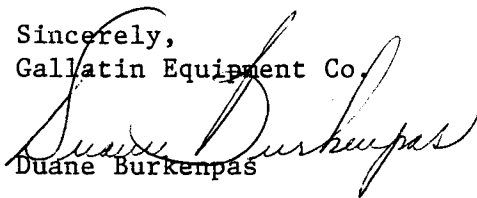
Charles Brooks
Montana Hardware & Implement Assoc.

5. Instream use will have impacts on aquifiers, wetlands, land use and conditions, tax bases and return flow patterns. Leasing by DFWP is the better approach to the instream flow issue.

If agriculture loses water rights, our industry can expect a very large and severe impact to our businesses. Please take a few minutes of your valued time to testify against SB346 at its scheduled hearing on 24 March.

Thank you for your usual co-operation and understanding to issues directly affecting our businesses in Montana.

Sincerely,
Gallatin Equipment Co.


Duane Burkenpas

cc: Jerry Manning - Manning International Inc. Box 71 - Hysham, MT 59038
Dwayne Simanton - Malta Mercantile Co. - Drawer S - Malta, MT 59538
Barbara Sell - The Color Shop - Box 930 - Big Timber, MT 59011
Dick Henry - Davey Motor Company - Box 89 - Columbus, MT 59019

EXHIBIT 42
DATE 3-24-93
HB SB 346

Roberta

March 24, 1993

~~Bill Wagner~~ *DICK KNOX*
Natural Resource Committee
Capitol Station
Helena, MT 59624

Re: SB 346 I oppose it!

Dear Mr. Tunby:

I am a life time citizen of Sweet Grass County, Montana. I am a property owner, sportsperson and a member of the Montana Wildlife Federation.

Adjusting the law to provide for instream flow water rights has a devastating effect on Montana's water management and conservation practices.

The bad outweighs the good. I can not condone SB 346 at the expense of Montana's economy and private property rights.

Respectfully,

Ronda Johnston
Box 274
Melville, MT 59055

Ronda Johnston

Roberta

EXHIBIT 43
DATE 3-24-93
SB 346

Lewistown, Montana
March 19, 1993

HOUSE NATURAL RESOURCES COMMITTEE

✓ Rep. Dick Knox, Chair
✓ Rep. Rolph Tunby, Vide-Chair
✓ Rep. Jody Bird
Rep. Vivian Brooke
Rep. Russell 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

Re: S B 346 - Sale of Water for Instream Use

Please OPPOSE S B 346. The current law, enacted in the last legislature, provides for a study on leasing water for instream flow to the Montana Fish, Wildlife and Parks Department. At the time this legislation was passed, it was agreed upon that ten years was needed to study the potential implications of selling water for instream flow.

Let's give the present law a chance to work.

Again, please OPPOSE S B 346.

Thank you.

Foy & Judy McCollum
Foy and Judy McCollum
Route 1 Box 1836
Lewistown MT 59457
Phone: 406 538 9880

MR. CHAIRMAN, MR. VICE CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM EUGENE MANLEY OF DRUMMOND, MONTANA. I AM A RANCHER, A RANCH BROKER. I SERVE ON THE BOARD OF DIRECTORS OF MONTANA WATER RESOURCES ASSOCIATION, BOARD OF DIRECTORS HEADWATERS AG WATER COMMITTEE, AND AS CHAIRMAN GRANITE COUNTY'S WATER PLANNING COMMITTEE.

I AM ALSO A CHARTER MEMBER OF THE FISHING CLUB OF AMERICA.

I ALSO SERVED ALMOST FORTY YEARS AS EXECUTIVE SECRETARY OF ALLENDALE IRRIGATION COMPANY. AT THE SAME TIME I WAS THE IRRIGATOR ON SOME 500 ACRES ON OUR RANCH. IT WAS IN THIS DUAL ROLE THAT I LEARNED A GREAT DEAL ABOUT THE LOGISTICS OF WATER DELIVERY, HOW TO ALLEVIATE IRRIGATION DEFICITS, HOW TO BETTER MANAGE RETURN FLOWS, AND HOW THE WHOLE PROFILE OF A BASIN CHANGES FROM EARLY SPRING THROUGH FALL BECAUSE OF CHANGES IN RETURN FLOW PATTERNS.

AS AN OFFICER WITH ALLENDALE IRRIGATION I GOT AN UNUSUAL PERSPECTIVE OF WATER USAGE WITHIN A BASIN, AND HOW CHANGES IN WATER USAGE IMPACTED THE ENTIRE BASIN. IN MY POSITION I HAD SOME TWENTY STOCKHOLDERS TO ANSWER TO, COMPLICATING MATTERS WAS THE PRESENCE OF THREE DISTINCT FACTIONS IN THAT COMPANY. OUR WATER WAS DELIVERED UNDER A CONTRACTUAL RELATIONSHIP WITH FLINT CREEK WATER USER'S ASSOCIATION WHO HAD SOME FORTY SIX OTHER CONTRACT HOLDERS, AND MOST OF OUR WATER WAS DELIVERED THROUGH TWO STREAMS WITH SOME SEVENTY-SEVEN DECREED USERS.

ON JUNE 10, 1992, WE CHARTERED A BUS AND I TOOK THE UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE ON A TOUR OF THE FLINT CREEK BASIN TO AQUAINT THEM WITH WATER USAGE WITHIN THAT BASIN. THIS BASIN IS SOME FORTY FIVE MILES IN LENGTH. JUST BELOW GEORGETOWN LAKE WHERE THE SKALKAHO ROAD BRIDGE CROSSES FLINT CREEK THERE WAS TWELVE HUNDRED INCHES OF WATER, JUST BELOW THIS IS WHERE IRRIGATION REALLY BEGINS IN OUR BASIN. THAT AMOUNT OF WATER ALONG WITH SOME OTHER APPROXIMATELY FIFTEEN HUNDRED INCHES OF

NATURAL FLOW WATERS SUPPLIES SOME 15,000 INCHES OF DECREED RIGHTS THROUGHOUT THE LENGTH OF FLINT CREEK. BY NATURAL, OR ORIGINAL FLOW WATERS I MEAN THOSE WATERS THAT WOULD BE PRESENT NATURALLY WITHOUT IRRIGATION RETURN FLOWS.

THERE ARE SOME FIVE OTHER BRIDGES ALONG THE FORTY-FIVE MILE LENGTH AND WHAT ONE WOULD HAVE OBSERVED ON THAT TOUR WAS THAT THE NATURAL FLOW UNDER ALL OF THOSE BRIDGES DID NOT VARY MUCH FROM THAT AT THE VERY UPPER BRIDGE. BY THE TIME WE TOOK THE TOUR RETURN FLOWS WERE PROBABLY AT EIGHTY PERCENT OF WHAT THEY WOULD FINALLY REACH, AND THEY WOULD ACCOUNT FOR WHY THE FLOWS WERE SO EVEN THROUGHOUT MOST OF THE BASIN. MY OBSERVATIONS OF OUR BASIN OVER MANY YEARS HAS CONVINCED ME THAT FOR EVERY ACRE FOOT OF WATER AVAILABLE IN THE UPPER BASIN THERE IS SEVEN OR MORE ACRE FEET OF USAGE THROUGHOUT THE BASIN.

WHILE SOME FLOOD IRRIGATED LANDS MAY USE FROM EIGHT TO EIGHTEEN ACRE FEET PER ACRE, RETURN FLOWS CREATE SO MUCH ADDITIONAL WATER PER SEASON THAT WHEN YOU DIVIDE TOTAL IRRIGATED ACRES BY ORIGINAL FLOWS AVAILABLE YOU COME UP WITH AN AVERAGE ACRE FOOT USAGE OF APPROXIMATELY TWO AND ONE-HALF ACRE FEET PER ACRE.

WHAT WE MUST ALWAYS REMEMBER IS THAT THE OVERLY APPROPRIATED BASINS IN THE STATE OF MONTANA HAVE BEEN IN A DEVELOPMENT PROCESS FOR OVER SOME ONE HUNDRED TWENTY YEARS. SOME HIGHLY SOPHISTICATED BASIN CONCEPTS HAVE DEVELOPED. WE LEARN THAT, AS THE IRRIGATION SEASON DEVELOPS, THE SOURCE FOR EVEN THE MOST SENIOR RIGHT CHANGES AS RETURN FLOWS ALTER THE HYDROLOGICAL PROFILE OF THE BASIN TO THE EXTENT THAT THIS MOST SENIOR RIGHT, AS HISTORICALLY USED, DOES NOT EVEN EXIST IN SECTIONS OF THE BASIN. I HEAR TALK OF SELLING WATER FOR INSTREAM FLOW, AND IT IS GENERALLY THE MOST SENIOR RIGHT NEAR THE MOUTH OF THE BASIN, THAT MANY CONSIDER THE MOST DESIRABLE. I THEN WONDER, IF THAT RIGHT IS SOLD FOR INSTREAM FLOW, HOW IS ONE GOING TO MAKE THAT A DESIGNATED FLOW THROUGHOUT THE LENGTH OF

TO USE
— NOT ABUSE



TO CONSERVE
— NOT PRESERVE

PLEASE REPLY TO:
1034 Hamilton Heights
Corvallis, MT 59828
PH: 406-961-3300
FAX: 406-961-4770

March 23, 1993

The Honorable Dick Knox, Chairman
Committee on Natural Resources
Montana House of Representatives
Helena, Montana 59620

EXHIBIT 45
DATE 3-24-93
HB SB 346

Dear Mr. Chairman and Committee Members:

Please place in the Hearing Record for opposition to SB 346 and SB 280.

SB 346 is in conflict with it's self when it states; 'Change previously appropriated water to or from instream use', (page 2, line 6). Once the water is placed in instream flow where there is not a priority of Beneficial Use, the avenue is open to forever deny the land the water needed for food production to help supply the people of the United States.

This Legislation could dry up the aquifer for domestic wells where irrigation has been proven to resupply the underground water source.

Drying up irrigated farm land introduces good weed production, placing a greater demand for money for weed control.

This Legislature is trying to tax irrigated farmland higher than dry land. Taking the water from the land will result in lower taxes for the county in which the previously irrigated land lies. Result, financial losses for schools, roads, other services and loss of business to suppliers for the previous irrigated operation.

In this time of financial shortfall, it would seem more practical to get the basic industries, farming, ranching mining, timber harvest, energy production, among others back to work, instead of allowing them to be eliminated by Environmental Hysteria.

SB 280 has no base, proof or evidence that a Department would not align itself in an operation that would be unobtainable. The result could be total elimination of the States Basic Industries.

Is it hard to realize that if there is no production, there is no money; no money, no jobs. Without income who can pay taxes.

Respectfully Submitted,
Merle D. Lloyd
Merle D. Lloyd
Executive Director

MDL/a



Montana State Grange

EXHIBIT 46
DATE 3-24-93
HB SB 346

Olof A. Billquist
5980 Helen Rd
Anaconda, Mt, 59711

As Master (president) of the Montana State Grange, representing 2000 Agriculture and rural families, we are opposed to S.B. 346. It is a bill that would devastate the Agriculture and rural industries that rely heavily on water.

The sale of instream water would devalue the Agriculture land and place it at the mercy of manipulators and speculators.

The Grange also believes there are some underlying reasons, not specified for pursuing the instream water sale and we are using all caution to keep from being victimized by law changes.

Olof A. Billquist, Master
Montana State Grange

EXHIBIT 47
DATE 3-24-93
HB SB 346

3-21-93

Dear Committee,

I am opposed to SB 346. I urge you to stop this bill. I do not believe there is enough protection of downstream water users. I also don't think the areas of adverse effect on the recharge of springs and groundwater or effects on wetlands created by irrigation has been looked at closely enough.

This bill will be another nail in the coffin of agriculture in Montana. We all know ag is the backbone of many counties economy and tax structures. I again urge you to stop this bill.

Sincerely
Shen Donohue

Don Berg

Martinsdale, Mt.

Committee Members;

I oppose Senate bill 346; To sell water for in stream flow will be very hard to administer. We have a water leasing law and I think it would be better to let the leasing of water get established before we change to water sales. A lease has a turmanation a sale is final if it dosen't work you can't get it back.

When water right is changed to in stream flow it will change the tax base of the land it was used on reducing the income to the state and counties.

In order to protect a juinor water right holder there would have to be a water measuring devise at every headgate along the river.

I am curantly; Chairman of the Upper Muselshell Water Users Assoc.

Member of Muselshell Water Advisory Committee

Irrigator

3/20/93

House National Resource Committee
Capital Station
Helena MT 59620

EXHIBIT 49
DATE 3-24-93
BY SB 346

RE: Senate Bill #346

Gentlemen:

I am writing in opposition to above Bill. I and my family are 3rd generation Ranchers who derive our livelihood entirely from the Natural resources provided by the beautiful State of Montana & wish to keep Montana Wild. Truly the Last Best Place!

Sincerely,

Sylvia & Chris Branger

EXHIBIT 50
DATE 3-24-93
HB SB 346

March 21, 1993
Luther, Montana 59051

To Whom It May Concern;
We are opposed to passage of
Bill #346.

Sincerely,
James and Sue Klessens.

I would like to give testimony in opposition to Senate Bill 346 as presented.

In 1974⁸ the water users in Montana were forced to rerecord their water rights if they were going to keep them. To begin with, the State of Montana was going to do it, but they decided that would be too costly so the burden was put on the water users. This process proved to be very costly to the water users. All the waters in Montana are to be adjudicated to protect the water for Montana and the Montana water users, this too will be an added expense to the water users. The adjudication is far from being finished and some think it will never be finished.

Now we have legislation before us that would allow any person or entity to buy the water away from the land for instream flow. This could let the water run out of state unused for whatever purpose they want it for. This doesn't make much sense.

We presently have a bill on the books to lease water for instream flow purposes. When this legislation was passed last session it was supported by a large number of the parties involved. It was verbally agreed upon between the parties that the leasing bill would cover most everyone's concerns and agreed to give it a trial basis to see how instream flow would affect agriculture, recreation, and the State of Montana. Let's let it work before we pass legislation as drastic as Senate Bill 346.

This whole situation goes back to the old saying, you can't have your cake and eat it too. I think Senate Bill 346, as presented, has the potential, as far as the State of Montana goes, to eat its cake and frosting both.

Bill Dawson

Box 6 Glen, Mont 59732

EXHIBIT 52
 DATE 3-24-93
 # 58 346

March 24, 1993

House Natural Resources Committee
 Capitol Station
 Helena, MT

We the undersigned would like to see your committee
VOTE AGAINST S.B. 346.

We feel that allowing the sale of water rights will just enable groups hostile to agricultural interests to purchase the water essential to the future of Montana's agriculture. Once that water is lost, it will be lost forever. We don't have the budgets or the time of special interest groups, so we'll fight this the only way we know how. Our votes.

Sincerely,

Charles Hackett
 858 Groff Lane
 Stevensville, MT 59870

Charles Hackett

Rob McCray
 Rt.1 Box 45
 Geyser, MT 59447

Rob McCray

Bryan Gatz
 Rt.1 Box 1846
 Lewistown, MT 59457

Bryan Gatz

Rex Phipps
 Box 7
 Brusett, MT 59318

Rex Phipps

Brian T. Duke
 2670 Avalon Rd.
 Billings, MT 59102

Brian T. Duke

Eric Gunderson
 217 S. Iowa
 Conrad, MT 59425

Eric Gunderson

Ron Bacon
 Box 175
 Wisdom, MT 59761

Ron Bacon

Matt Wagner
 1707 Greekway
 Bozeman, MT 59715

Matt T. Wagner

Lane Little
 Box 16
 Geraldine, MT 59446

Lane Little

Clint Boe
 Box 401
 McLeod, MT 59052

Clint Boe

Chris L. Rindal
 Box 504
 Lewistown, MT 59457

Chris L. Rindal

Jason Rorabough
 1685 Laknar Lane
 Dillon, MT 59725

Jason Rorabough

EXHIBIT 53
DATE 3-24-93
HB SB 346

SB 346
PROPOSED AMENDMENTS
Sen. Bill Yellowtail
March 24, 1993

Page 1, Delete lines 1-10.

Insert: AN ACT PROHIBITING CHANGES IN PURPOSE, PLACE OF USE, AND PLACE OF DIVERSIONS OF WATER RIGHTS; AMENDING SECTION 85-2-102; REPEALING SECTION 85-2-402; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Delete page 1, line 12 through page 3, line 9

Pages 3, line 11, through page 11, line 3, remove all definitions that refer in any way to change proceedings.

Page 11, line 4, repeal section 85-2-402, MCA.

Delete page 11, line 5 through page 25, line 5,

Amendments to Senate Bill No. 280
Third Reading Copy

Requested by Sen. Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 24, 1993

1. Page 2, line 1.
Following: "effects"
Insert: "on the uses of water as classified"
2. Page 3, line 6.
Following: "of"
Strike: "an"
Insert: "a prior"
3. Page 3, lines 16 through 20.
Strike: the second "is" on line 16 through "met" on line 20
Insert: "must contain substantial credible information
establishing to the satisfaction of the department that the
criteria in subsection (1)(g), (1)(h), or (1)(i), as
applicable, may not be met. For the criteria set forth in
subsection (1)(h), only the department of health and
environmental sciences or a local water quality district
established under Title 7, chapter 13, part 45, may file a
valid objection"
4. Page 10, lines 21 through 23.
Strike: subsection (g) in its entirety
Renumber: subsequent subsection
5. Page 11, line 3.
Strike: "through (2)(h)"
Insert: "and (2)(g)"
6. Page 11, lines 4 through 8.
Strike: the second "is" on line 4 through "(2)(h)" on line 8
Insert: "must contain substantial credible information
establishing to the satisfaction of the department that the
criteria in subsection (2)(f) or (2)(g)"
7. Page 17, lines 20 through 22.
Strike: subsection (g) in its entirety
Renumber: subsequent subsection
8. Page 18, line 2.
Strike: "through (2)(h)"
Insert: "and (2)(g)"
9. Page 18, lines 3 through 6.
Strike: the second "is" on line 3 through "(2)(h)" on line 6
Insert: "must contain substantial credible information
establishing to the satisfaction of the department that the
criteria in subsection (2)(f) or (2)(g)"

EXHIBIT 55
DATE 3-24-93
SB 280

AMENDMENTS TO SENATE BILL NO.280
THIRD READING (BLUE COPY)

1. Page 24, lines 16 and 17.

Following: "that" on line 16

Strike: "excessive" on line 16 through "migration" on line 17

Insert: "a deterioration in the quality of water within the
ground water area exists"

EXHIBIT 56
DATE 3-24-93
~~HB~~ SB 280

TESTIMONY
S.B. 280 STATE WATER PLAN
HOUSE NATURAL RESOURCES COMMITTEE
MARCH 24, 1993

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS JOHN BLOOMQUIST. I AM A WATER RIGHTS ATTORNEY FROM DILLON, MT, AND THE SPECIAL ASSISTANT FOR THE MONTANA STOCKGROWERS ASSOCIATION. I AM TESTIFYING BEFORE YOU TODAY IN SUPPORT OF THE STATE WATER PLAN, S.B. 280 AS AMENDED BY SENATOR GROSFIELD.

THIS BILL REPRESENTS A SIGNIFICANT CHANGE IN MONTANA WATER LAW. INTEGRATION OF WATER QUALITY INTO THE WATER ALLOCATION SYSTEM IS A DRASTIC CHANGE IN MANAGEMENT OF THE WATER RESOURCE IN MONTANA BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION. THE RAMIFICATIONS OF THIS APPROACH NEED TO BE CAREFULLY ANALYZED AS THE MANAGEMENT OF THIS VALUABLE RESOURCE IS CRITICAL TO THIS STATE. THE STATE WATER PLANNING PROCESS WAS AN ARDUOUS EFFORT TO IMPLEMENT WATER QUALITY INTO THE WATER QUANTITY ALLOCATION PROCESS. SINCE THE ISSUE IS VERY CONTENTIOUS AND BECAUSE THE RAMIFICATIONS OF ANY APPROACH MAY SIGNIFICANTLY IMPACT THE USE OF THE WATER RESOURCE, MSGA BELIEVES THAT S.B. 280, AS AMENDED BY THE SPONSOR, PROVIDES A REASONABLE APPROACH CONCERNING ISSUES SURROUNDING WATER QUALITY AND THE ALLOCATION PROCESS.

ALTHOUGH THERE ARE GREAT CONCERNS BY WATER USERS LOCATED THROUGHOUT THE STATE WITH THE EFFECTS OF THIS BILL, MSGA SUPPORTS THIS LEGISLATION AS AMENDED IN ADDRESSING WATER QUALITY ISSUES AND THE ALLOCATION SCHEME.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY AND THE MSGA SUPPORTS S.B. 280 AS AMENDED.

Proposed Amendment to Senate Bill 280

In the House Natural Resources Committee

March 24, 1993

Proposed by ARCO

1. Page 24, line 18.

Strike: "or"

2. Page 24, line 21.

Following: "occur"

Strike: "."

Insert: "; or"

3. Page 24.

Following: line 21

Insert: "(g) that water quality within the ground water area
is not suited for a specific beneficial use defined by
85-2-102(2)(a)."

RATIONALE FOR AMENDMENT OF
SB 280 OFFERED BY ARCO

To Section 4, 85-2-506(2), MCA.

(g) that water quality within the groundwater area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

- 1) From the public perspective, this amendment allows a landowner to seek approval of a controlled groundwater area on the basis of water quality concerns where there is no public provider. In rural areas where significant groundwater withdrawals are not an issue, there nevertheless may be water quality concerns which may preclude use of groundwater for a specific purpose. For example, where an owner of property sells to a developer and the seller wants to ensure that a well for use as a domestic supply is not drilled where feed lots or agricultural land uses which have adversely affected groundwater. Uses outside of this specific beneficial use described by the statute such as agricultural, irrigation, etc. could continue.
- 2) With this amendment, a Petitioner may seek to establish a groundwater area where withdrawals would be prohibited for one or more purposes. This provides flexibility to use groundwater for specific purposes which are not limited based upon water quality concerns, while others may be prohibited.
- 3) From ARCO's perspective, the controlled groundwater area provides an essential institutional control mechanism which will supplement engineering controls and treatment remedies. As such, it is important that the statute provide the basis for a Petitioner, whether it be ARCO or a local public health agency, to establish a groundwater area where no groundwater withdrawals are occurring or are reasonably anticipated in the future. There exists then, a basis for establishing a groundwater area solely because of water quality concerns. Groundwater withdrawals (other than those which may be required to implement a selected remedy) are generally counterproductive where the objective of a remedy is to contain and treat groundwater. Therefore, it is important to prohibit future withdrawals which may diminish the success of a selected remedy.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Kevin Bridges</u> <u>Richard J. Marshall</u> <u>ALAN Rollo</u> <u>Great Falls</u>	<u>self</u>		<input checked="" type="checkbox"/>
<u>Jim Hagenbach</u> <u>Dillon</u>	<u>Self</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Lee Jacobson</u>	<u>self</u>		<input checked="" type="checkbox"/>
<u>Don Tamcke</u>	<u>Self</u>		<input checked="" type="checkbox"/>
<u>TERRY Murphy</u>	<u>SELF</u>		<input checked="" type="checkbox"/>
<u>Cherie Hoff</u>	<u>Western mt wife self</u>		<input checked="" type="checkbox"/>
<u>Shirley Bugli</u>	<u>MT MT WIFE GMA. Stockgrowers</u>		<input checked="" type="checkbox"/>
<u>Yvonne E. Miller</u>	<u>Butteront Cow Belles</u>		<input checked="" type="checkbox"/>
<u>Gene Vallance</u>			<input checked="" type="checkbox"/>
<u>Elmer Severson</u>	<u>Self</u>		<input checked="" type="checkbox"/>
<u>Joe Gutkoski</u>	<u>Gallatin ^{Wildlife} National Assoc</u>	<input checked="" type="checkbox"/>	
<u>Ron Spoon</u>	<u>MT Chaptr American Fish Soc.</u>	<input checked="" type="checkbox"/>	
<u>Pat Simmons</u> <u>Bozeman</u>	<u>Gallatin Wildlife</u>	<input checked="" type="checkbox"/>	

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

HOUSE OF REPRESENTATIVES
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Natural Resources COMMITTEE

BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) R. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	MT. T.U.	✓	
Esther McDonald	upper Fl. Creek seep		✓
DAVE VANTIGHEM	RUSSELL COUNTRY SPORTSMAN ASSOC. GREAT FALLS	✓	
Margie Lienemann			
Margie Lienemann	Bitterroot CowBells		✓
John Hontchens	Supply Ditch Ass		✓
Jon H Lienemann	Stockgrowers		✓
Isabelle Hove	Hamilton		✓
TOM FRANCE	MISSOURI	✓	
Kathy Hadley	Montana Wildlife Federation	✓	
Brian Weidenman	APPA self		✓
Louise Mackenrodt	Dillon Mont.		✓
Jim Mackenrodt	Dillon Mont		✓
Mildred Hodge	Corvallis Grange		✓
Lillian Lemmer	BR Stockgrowers		✗

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Natural Resources COMMITTEE

BILL NO. SB 340

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ron White 2519 Ella Mae White ^{White Rd} Manchester	Self		X
Kirk Evenson 2814 3rd Ave. N. Great Falls	Missouri River Flyfishers	X	
Marshall Bloom Hamilton MT	Trout Unlimited	X	
Chris Clapp Hamilton MT	American Fisheries Society	X	
Angie L. Leonard Great Falls	Medicine River Canoe Club	X	
LIVE SCHALLENBERGER SHERIDAN	SELF	X	
Allen Schellenberger Sheridan	Self & Ed Williams Pres. Corns Chamber Camera	X	
Mark F. Towner Twinn Falls	Big Hole River Ranch		X
Roche Towner ^{200 White} Helena	Myself		X
Colleen Meyer	Western MT WIFE		X
Thomas L. Kerkner	Farm Bureau		X
Jim Stenmark ^{Willow Creek, MT}	Montana Trout Association		X
Walt Stenmark ^{Willow Creek, MT}	Montana Trout Association		X
Michael A. Hruska 759 Hwy 12 W Helena	Self		X

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BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) R. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Elwin Freeman	Victor MT		X
James H. Freeman	Victor, MT		X
Geo. Vogt	Hamilton		X
Josephine Vogt	Hamilton		X
Isabelle Howe	Hamilton		X
John R. Matovich	MT Spockeans		X
Francis V. Jacobs	Malta		X
Richard Arent	Self		X
Ed Draper	Self		X
John Weigand	Self		X
Bill Newman	Self		X
Bill Hodge	"		X

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 346
DATE March 24, 1993 SPONSOR(S) B. Yellowtail
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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Richard	MT. Wildlife Fed	X	
Tony Schoonen	Music City D. Chptn Billings Rod & Gun	X	
Barry Hedrick	MSLA SELF		X
GEORGE LIKNES	Montana Chapter American Fisheries Society	X	
J.V. Bennett	MT Wildlife Federation	X	
Sam Babick	SELF & Sky Line Sportsman ^{ASSN}	X	
Gary Sturm	Packy Pec Sportsman	X	
David Cole	Self	X	
HERMAN BROEKEMA	SELF		X
EARL DORSEY	TY	X	
Jim Jensen	WETC	X	
Frank Loomis	Self		X
Jean LaFreniere	Self		X

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Charles R. Brooks	MT Hand Lumber & Imp		X
Janet Ellis	MT Audubon Leg. Fund	X	
Gail Cramer Melrose MT	Self		X
Tom Cramer	Agriculture		X
S.R. Willey	S. Willey	X	
Jeff Brunner	MURBA		X
Don Salsbury-Whitehall	TOMAHAWK RANCH		X
Ed McCauley	Self		X
Gene Compton	Self		X
GEORGE CCHENSKI	SELF	X	
GLENN HOCKETT	SELF	X	
Dick Boylon			X
Bob Addentum			X
Don Berg	self		X

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Frazier	Prickly Pear Sportsmen's association	X	
ROBIN CUNNINGHAM	F.O.A.M.	X	
Randy Perez	Fr. Belknap Water Resources -		
TACK VAN CLEVE Tack Van Cleve	Self		X
Eugene Johnson	Sierra club	X	
John McDonald	Upper Flint Creek Valley		X
Esther J. McDonald	upper Flint Creek - self		X
Eugene Mauley	Self.		X
Bill Frost	SELF		X
Dianne Bromley	Monroe Ranch		X
Charmelle Owens	Triple Creek Ranch		X
Bill Guff	Victor Mt.		X
Ed Hopkins	Corvallis		X
William W. Watson	Hamilton		X

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Virginia A Mandox	self		X
P. J. Kamps	self		X
Evelyn Munson	self		X
Loan W. Harrison	Self		X
B. Prescott Hackett	Self		X
Robert Hoffman	A. P. A.		X
Violet Nelson	self		X
Glenda Bradshaw	Self	X	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB 34
DATE March 24, 1993 SPONSOR(S) S. Yellowtail
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Bloomquist	Mt. Stockgraves		✓
Blundin	Big Hole Ranch, et al		X
Robert D. Peterson	rancher		X
JACK HIRSCHY	Big Hole Ranch		X
Bob Lane	OFAA	X	
Larry Peterman	Fur	X	
ART WHITNEY	MT. CHAPTER AM. FISH. Soc.	X	
Lorna Frank	Mt. Fern Bureau		X
Old Meland	Self, Rancher		X
Bob Decker	SELF	X	
John Ronglase	self	✓	
John Ronglase	Big Sky Pkg	X	
Donald R. Beck	Garrison, no rancher		X
Dave Beck	Self		X

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) D. Yellowtail

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
RAY Lee 10 ISLAND Drive #3 LIVINGSTON MT	Joe Brooks chapter	X	
Steve Christensen	MSG A		X
Leslie J. Dunnington BOX 753 C. HOTELL	Telan Co-op Coal Co.		X
Jain Brinkbecker 3505 Hwy 93 N Stevi MT. 59828	Self. B. J. G.		X
Lee Jacobson	Self		X
Don Tamcke	Self		✓
Norma Sitz	Self		✓
JERRY NYDEN Jerry Nyden	MWRAL GRNFLOS. CRR. DIST		✓
Gene Vallance			✓
Alan C. Carroll Twin Bridges	Self	X	
Alice R. Harbail Box 63 Stamilton MT	Self		✓
James W. McDermond	Self	X	
Mike Wlesky	Mt Assoc. of Cons. Dist		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 340

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Belser 8607 Pickering Dr. - Self -		X	
Ray Chantler	East Ranch Irrigator - Dist		X
Rt 2 Box 153 Charles Crane Choteau	Teton Coop Canal Co & Teton River Watershed		X
RR 1 Box 4 Max Maddy Chinook	Chinook Division Irrigation Assoc.		X
George Stuck	Self	X	
DARRELL STOTT CHOTEAU	EL DORADO COOP		X
Jeff Johnson	MSG A		X
Bill Dawson	MSG A		X
Robert Evans	Self Rancher		X
George Evans	Self "		X
Earl Stuck	Rancher		X
Cal Stuck	Rancher		X
Bob Waldmeyer Ed Butte	Rancher		X

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Brooks Martin Bozeman	Self	X	
MICK JACKSON 3 Forks Stuart L. Westlake 2900 Love Lane Boz	MACH DIRECTOR SAPPINGTON RANCH Jefferson Valley Cons Dist. A.P.A. (Self)		X
Leo Lane	Ranches		X
Judy Jackson	Ranches		X
Suzanne Fouty	Self	X	
James W Stitzman	Self	X	
Bill Holdorf	Skyline Sportmen	✓	
J. N. Skutumpah	Farmer		X
Mike Schetter	Farmer		X
ARMAND	Recreation	X	
Charles F Griffith	Self	X	
Rich Day Missoula	Self	X	

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

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources

COMMITTEE

BILL NO.

SB 346

DATE March 24, 1993 SPONSOR(S)

R. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gayle Wood 7590 NW 412 W	Self		X
VERNON L. WESTLAKE 3186 LOUE LN. BOZ.	A.P.A + SELF		X
Larry Deschermacker HC 85 Box 4270 Lewistown, MT	Self		X
Allen Gadoury PO Box 6045 Bozeman MT 59715	Self	X	
Larry Michnerich 8570 Silvercreek Ln Ogallala 59715	Self	X	
Dennis Kavanagh 1431 S. THIRD B2N 59715	SELF	X	
TWIN BRIDGES MT Henry Kouch	SELF		X
Keith Rash Twin Bridges, MT	SELF		X
Graniffell	BBWA		X
Max Bell (written testimony)	Montana State League		X
James E. Smute	Danellon, MT League		X
Tim & Karen Kidd PO. Box 611 Darby, MT	Self		X
Robert Lane	Self		X
GARY Gien Twicken	Self	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE

BILL NO. SB 346

DATE March 24, 1993 SPONSOR(S) B. Yellowtail

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
S. Vince Fischer-Butte	5270 Lake Skyline Sportsmen	X	
LES CASTREN- 2122 Utah Butte	Skyline Sportsmen	X	
Ken Bennett	It Falls Self	X	
Jerry A. Wilkerson	PRO INC (Helena)	X	
Paul Anderson	Stockgrowers		✓
Clay Landry	MEIC	X	
Robert G. White	Bogeman, Self	X	
Bruce Farling	Clark Fork Coalition	✓	
Jerry Kustich	Twin Bridges (Pintler Chapter Audubon)		
Don L. Brown	Self	X	
JERRY MANLEY	BUTTE T.V.	X	
Cliff Cox	Self		X
Jim Rokosch 4653 Howard Stevensville, MT	Self	X	
Tom Sweet	MONTANA Wildlife Fed	X	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. *SB 28*
DATE *March 24, 1993* SPONSOR (S) *L. Grosfield*
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Rokosch ^{4657 Howard Ave} Stevensville, MT	Self	X	
[Redacted]	[Redacted]		
MARK Simovich	DNR C	X	
Gail Brumer	Self		X
Tom Brumer	Agriculture		X
Jim Jansen	MEIC	X	
Dennis Kavanaugh 1431 S. THIRD AVE	SELF	X	
J. Brown	MURA	X	
	TOMAHAWK RANCH		
Marshall Horn Hamilton MT	Troud Unlimited	X	
Stan Friesler Helenia	Priety Pear Sportsman Association	X	
Ed McCawky	Self		X
Frank Worman	Self		X
Bere Conpton	Self		X

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

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Natural Resources COMMITTEE

BILL NO. SB 376

DATE March 24, 1993 SPONSOR(S) ~~Sen. J. H. ...~~ Crofford

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
DAN WHITE P.O. Box 1715 HELENA	ARCO	w/AMEND X	
Steve Leathe 2817 3rd Av. N. Gt Falls	self	X	
Janet Ellis	MT Audubon Leg Fund	X	
Dane Beck	Self		X
Donald R. Beck	rancher Garrison Mt		X
Don R. Work	Rancher Flanagan Mt		X
Larry Deschamps	rancher	with amendments	
Tom Kemp Manhattan 534 Dutch Hill - Nash.	rancher + Farm Impl Dist		X
Margi Lenneman	Replacer Cow Bells		X
Don Berg	self		X
Sid Kemp	self		X
Lucille Anderson	self		X
Hermit Anderson	Self		X
Paul Radford	Self		X

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HOUSE OF REPRESENTATIVES
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Natural Resources COMMITTEE BILL NO. SB 280
DATE March 24, 1993 SPONSOR(S) L. Grasfield
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
KRI Box 4 Max Maddox Chinook mt	Chinook Division Inspection	X	
RT. 2 Box 169 DARELL STOTT CHATEAU	ELDORADO Loop	X	
Deanfall Billing	BB, W.A. with ant	X	
Harry A Latimer	RAVALLI COUNTY		X
John E. Lam	rancher		X
Marty Settle	Rancher		X
Blundson	Big Hole Ranch, Id.		X
Robert D. Peterson	Rancher		X
JACK HIRSCHY	BIG HOLE RIVER		X
Harry Peterson	Big Hole River	X	
Bob Peterson	Big Hole River	X	
Bruce Farling	Clark Fork Coalition	✓	
DAVE YERK	American Fisheries Society	X	
John R. Lawrence	Idaho		

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Natural Resources COMMITTEE

BILL NO.

SB 280

DATE March 24, 1993 SPONSOR(S)

L. Grosfield

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
TACK VAN Cleve	self		X
Richard C O'Leary	self	X	
Brian J. Shuman	Great Falls MT	X	
John M. Tarnow	self	X	
Esther J. McDonald	Upper Flint Creek		X
John McDonald	self		X
Bill Luff	Upper Flint Creek Valley		X
Ed Hopkins	Gold Mt		X
William Whetstone	Corvallis Mt		X
Ernest Freeman	Hamilton, Mt.		X
James H. Freeman	Victor MT		X
George Vogt	Victor MT		X
Joseph Vogt	Hamilton		X
Usabelle Grove	Hamilton		X

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Francis V Jacobs	self		X
Richard Arent	self		X
Ed Draper	self		X
John Veergand	self		X
Bill Newman	self		X
Bill Hodge	"		X
Brian Weidenman Manhattan 201 ES	APA	X With Grosfield amendment	
JIM MARCHESSAULT	SELF		X
Annie Marcheseault	self		X
Mildred Hodge	Corvallis grange		X
Lillian Renuaker	RR Stockpawers		X
Mary Stark	Grassroots for Multiple Use		X
Ronald Reed	self		X
Jack G. Evans	self		X

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Richard D. Marshall Kevin Bridges Alan Rolfe Great Falls	self		✓
JESS KILGORE THREE FORKS, MT	Self	✓	
	A. P. R.		✓
Alice J. Day	Cowbells		✓
Jim Hagenbach Dikman	Self		✓
Lee Jackson	Bud Jackson & Son		✓
Don Tenhe	Self		✓
Terry Murphy St. Ignace	Self		✓
Alice Thoft	Western Mt. Wife & Daughter		✓
Shirley Bugli	MT WIFE & 9 MILE - B. R. St Ignace		✓
Veronica E. Miller	Butterroot Cow Bells		✓
Gene Vallance			✓
Elmer D. Severson	Self		✓

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gerry Nyssen	MWRA, GRNFOS IRR DIST	✓	
VERNON L. WESTLAKE 3186 LOVE LN BOZ.	A.P.A - SELF - WITH AMEND -	✓	
Pat Simmons 1916 E. 2nd St, Bozeman	Gallatin National Forest Assoc		
Stuart L. Westlake 2900 Love Lane Bozeman	A.P.A. - Self	✓ with Amend	
JUDY JACKSON RT 1 - BOX 184 THREE FORKS, MONT.	SELF	with amend	
Jay Charles	Montana Water Resource ADD	X	
VANDY VASH ARCO 307 E Park Ave 59711	ARCO	✓ WITH AMEND.	
Jack C Mauer 4640 W 11th Ln Stevi 59874	Bitterroot Trout Unlimited	✓	
Annette McLean ^{Twin} Bridges	SELF		
Barry Herbert Zink	MSLA - SELF	WITH AMEND	
Chris Marchion	Anacanda Sportsman Club	✓	
Sidney Smith	SELF	✓	
Wahy Khase	SELF + others	✓	

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