

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By VICE CHAIRMAN GERRY DEVLIN, on February 3, 1995, at 1:05 p.m.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Vice Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Don Hargrove (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Bob Pipinich (D)

Members Excused: Sen. Charles "Chuck" Swysgood, Chairman (R)

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council
Jennifer Gaasch, Committee Secretary

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

Committee Business Summary:

Hearing: SB 207, HB 170
Executive Action: SB 166

{Tape: 1; Side: A; Approx. Counter: ; Comments: .}

HEARING ON SB 207

Opening Statement by Sponsor:

SENATOR KEN MESAROS, SD 25, Cascade, introduced SB 207. He stated the SB 207 was a bill providing protection for agriculture activities from county nuisance restrictions. The purpose of SB 207 was to address an escalating problem that was in Montana around a lot of urban cities. Because of the economic growth effecting Montana there exists certain problems that may

jeopardize Montana farms and ranches. He said many times with the migration of people into the rural areas which are adjacent to the centers, they sometimes do not fully understand the surrounding agricultural activities in the country. **SEN. MESAROS** said the committee may find many of the ordinary activities associated with farming and ranching, noise, dust, movement of livestock, or anything else, many times lead to political pressures that lead to zoning ordinances that would preclude farming or ranching. In section 2 there were the definitions of agricultural activities. Section 3 had to do with local ordinances. He read the last sentence of that section. He proposed an amendment to the committee that would include on page 2, line 6, insert "timber harvesting", and page 2, line 20, following trees, insert "including timber".

Proponents' Testimony:

Larry Brown, representing the Agricultural Preservation Association, stated they supported SB 207. He stated they were in support of the amendments suggested by **SEN. MESAROS** and possibly thought of adding something to the amendments that are necessary to agricultural burning, describe burning and slash disposal. They believed agricultural burning across the state was something that needed to be taken care of on a periodic basis. He stated it had been an issue in the rural areas of the burning of waste and stubble pits. He expressed his support for SB 207.

John Bloomquist, representing the Montana Stockgrower's Association, stated they were in support of SB 207. He stated the amendment proposed by **Mr. Brown** was needed in certain areas of Montana. He pointed out that neighboring states have similar measures on the book regarding protecting agricultural activities from zoning and ordinance.

Lorna Frank, representing the Montana Farm Bureau, stated they supported SB 207. She suggested on page 1, line 21, new section 1, where it reads, "It is therefore the intent of the legislature to take agricultural activities from", she suggested putting "local governmental zoning and nuisance ordinances" because where it said "from governmental", that could mean most anything and she thought it was the local areas where the problem was occurring.

Al Kington, representing Montana Tree Farm System, stated their concerns were that many of the members were also livestock producers and they thought that the forestry should be included. He said he had not looked at the amendments, but the sponsor of the bill indicated on line 6, where the activities are mentioned, that along with timber harvesting, they believe that vegetation and thinning should be included.

Mike Murphy, representing Montana Water Resources Association, stated they supported SB 207. Also they support the proposed amendments.

Cary Hergreberg, representing Montana Wood Products Association, stated they support the amendment proposed by SEN. MESAROS. They support the bill with the amendment.

Bob Stephens, representing the Montana Grain Growers Association, stated they supported SB 207.

Greg Chadwich, representing the Montana Nursery Association, stated they would like to add nurseries into the agricultural activities. He stated they were an agricultural industry in the state and they were in support of SB 207.

Candace Torgerson, representing the Montana Woolgrowers Association, and the Montana Cattlewomen's Association, and Women In Farm Economics, stated they were in support of SB 207.

Janet Ellis, representing the Montana Audubon Legislative Fund, stated they supported SB 207. She inquired about page 2, line 29, the words "apply to". She stated sometimes zoning was done for agriculture and she wanted to make sure that could still be done. They thought the words "exclude" would better clarify that situation.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SENATOR GREG JERGESON asked **SEN. MESAROS** what if someone had some grazing land and a subdivision was built downwind. The person with the grazing land decided to put in a hog factory and then the fact was that other people would not want to buy the rest of the homes in the subdivision, lowering the property value. **SEN. JERGESON** asked if the law would work both ways, or would the person be able to change the use of his land even though it may affect adversely a neighbor's property value. **SEN. MESAROS** referred the question to **John Bloomquist**. **John Bloomquist** replied that page 2, in section 3, lines 27 and 28, might clarify the question. There might be the argument that the hog factory was not existing.

SENATOR REINY JABS asked **Larry Brown** that they wanted to include burning stubble, but was it not a bad farming practice? **Larry Brown** stated they would like to have it as an activity that was exempt from regulation.

SEN. JABS asked **John Bloomquist** to refer back to the question asked by **SEN. JERGESON**. He stated that maybe the person had a small hog operation, which was not a nuisance and then he expands it to where it becomes a nuisance to the subdivision. How large was existing? **John Bloomquist** replied that already in Montana law, agricultural activities as long as they are conducted in the proper manner, are exempt to public nuisance. He stated maybe the existing language would say the smaller hog operation could be challenged with that.

SENATOR LINDA NELSON asked **Janet Ellis** about the amendment and maybe if the word "exclude" was changed to "prohibit" that would be better. **Jane Ellis** replied that would be fine. They were concerned with the way that it was worded and they would still want zoning for agriculture.

Closing by Sponsor:

SENATOR MESAROS stated as far as the burning was concerned there were already certain regulations on that. He believed in northwestern Montana there was a lot more development coming up and SB 207 was going to be helpful in the future. He urged the committee's support on SB 207.

EXECUTIVE ACTION ON SB 166

Motion: **SEN. BECK** MOVED TO TABLE SB 166.

Vote: The MOTION CARRIED with **SENATORS JERGESON AND JABS** voting no.

Discussion on the amendments of SB 207:

SEN. BECK stated **Lorna Frank** wanted to include "it is therefore the intent of the legislature to protect agriculture activities from local government zoning and nuisance ordinances." He stated that it probably should be local and state government. **SENATOR GERRY DEVLIN** asked **SEN. BECK** and **Doug Sternberg** to put together the amendments.

HEARING ON HB 170Opening Statement by Sponsor:

REPRESENTATIVE JOHN "SAM" ROSE, HD 87, Choteau, introduced HB 170. He stated HB 170 was a continuation of what was going on last session. He said when they started the settlement project, they were limited to 160 acres and now it might be only 60 acres. Now the irrigation district has the ability to pay off the Bureau of Reclamation, they are asking if they still have the right to restrict acreage on the irrigation district. The number of acres they have and for every 40 acres they could actually control the projects. He stated he was a little skeptical of the bill and he had it checked over several times and they looked it over to make sure it was not a takings bill. He showed it to the irrigation district over in Dillon, MT., and they were satisfied with it and he also showed it to the irrigation district in Ronan, MT., and they were satisfied with it. He stated there had to be a 60% vote of the membership and of the land holdings in the district. It did not say and it did not affect irrigated land in the districts. He also said that a person could have a certain number of acres in the districts in order to keep a little bit of control.

Proponents' Testimony:

Mike Murphy, representing the Montana Water Resources Association, stated they supported HB 170. He stated it was a voluntary program. He urged the support of the committee.

Maureen Cleary-Schwinden, representing Women In Farm Economics, stated they supported HB 170.

Larry Brown, representing Agricultural Preservation Association, stated many of their members were under that type of an irrigation district. He stated they would like to address their support for HB 170 because they believed there was enough flexibility in HB 170 to give them the room they need to operate. They are also in support of the concept that it could apply to other irrigated acres.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. JERGESON asked **REP. ROSE** who owned the water right? **REP. ROSE** referred the question to **Mike Murphy**. **Mr. Murphy** replied the water rights belonged to the federal government.

SEN. JERGESON asked **REP. ROSE** about a person who owned 1,000 acres and in existence at the time of limitation the owner sells, would they be limited to the 960 acres. **REP. ROSE** replied they would be under the same conditions as the person from whom they bought the land. They would have the additional 40 acres if the water was available. **SEN. JERGESON** stated the limitation would not apply to the person if they had 960 acres. He stated the bill may need to be looked at and clarified. **REP. ROSE** referred the question to **Mike Murphy**. **Mr. Murphy** replied the district would have the authority to voluntarily put a limit on their excess, so they may have already moved it up to 1,000 acres. Therefore, that individual may already have their land irrigated. **SEN. JERGESON** asked if they did not move it up to the level of that landowner which is in excess of 960 acres and he decides to sell the property, the successor to the interest in that property does not get the exemption that he had. **Mike Murphy** replied that if the level that was currently established was 960 acres, he wouldn't be able to get the water unless it was excess water into that anyway. The 40 acres would be excluded.

SENATOR RIC HOLDEN asked **REP. ROSE** why the bill was introduced and what problem it was addressing? **REP. ROSE** replied that the greenfields district was paying of the Bureau of Reclamation (BLM). **SEN. HOLDEN** asked **REP. ROSE** why he was trying to pass a law that would affect all the districts in Montana. If there was only one district that would want to regulate themselves, they should be enacting some regulation that would tailor to their laws. He stated he did not know if he wanted Buffalo Rapids under these type of records. **REP. ROSE** replied that Buffalo Rapids was still under federal law. **SEN. HOLDEN** stated that he would have the bill faxed to Buffalo Rapids irrigation district.

SENATOR REINY JABS asked **REP. ROSE** if HB 170 would affect the BIA irrigation districts run by the Bureau of Indian Affairs? **REP. ROSE** replied that he assumed not.

SEN. JABS asked **Mike Murphy** the same question. **Mike Murphy** replied that he did not know the answer. **SEN. DEVLIN** stated that might be a question to try and find the answer to.

SEN. HARGROVE asked **REP. ROSE** what kind of an irrigation district was he talking about? It was not defined in HB 170. He asked if there were 960 acres and can it not be 1,000 acres or more now? **REP. ROSE** replied that it could and that there was a gentleman in the audience who had around 1,150 acres and they have excess water. **SEN. HARGROVE** referred the question to **Larry Brown**. **Mr. Brown** replied, "On the project the BLM and most of the projects

across the state." He stated in regard to flood irrigation, supplemental water, existing water rights, whether or not that might be in the state water rights. He stated that the excess acres usually end up in some type of supplemental water. Water availability back here will depend on how much the water of certain acres will get. He stated 960 acres would get full service irrigation and that extra 200 would be left over to get $\frac{1}{4}$ of a full crop requirement depending on availability. **SEN.**

HARGROVE asked **Larry Brown** whether a person could have more than 960 acres, and therefore, when the bill went into effect would then be limited to 960 acres. **Larry Brown** stated that on paper that would appear to be a taking, but in practice it would be an adjustment of the contract.

SEN. JERGESON asked **Larry Brown** under the law congress has passed that if a person was under a BLM project they can have water for 960 acres of irrigation. HB 170 was effective on those projects where they paid off the BLM and were no longer under the rules that were made by congress. He asked about a situation where dad had 960 acres and his son had 960 acres and the loan from the BLM was paid off. The limitation had not been voted in by the people yet and **SEN. JERGESON** assumed he was eligible for the water, but what happens is that he was grandfathered in for the 960 acres. He then wants to sell the farm. What happens to the person who wants to buy the farm? **Larry Brown** replied the water rights sold by the federal government contracts allow the water to be distributed to the land, the original father's holdings and the son's. Someone else that would come in would have a priority date in contractual form. It would depend on where the full irrigation distribution needed to be. He stated it was up to the districts to decide who was to get what when. **SEN. JERGESON** asked what if father and son both had full allocation when the original person before the BLM, what if the son wanted to sell the land. He asked about the exemption of the person could not get the exemption of the contract, if he could not get the irrigation for the amount of land he was buying.

SEN. JABS asked **REP. ROSE** the people were independent and why would they want the government to set the rules for them? **REP. ROSE** replied that they can set their own if they have 60% of the landowners. **SEN. JABS** asked if the people wanted it? **REP. ROSE** stated the commission wanted 60% of the vote. **SEN. JERGESON** stated it was permissive for the district. **SEN. JABS** stated they had the option of 60%, then if they do not get 60%, they do not get it. He stated that was probably alright. **REP. ROSE** stated 60% was high enough and that a simple majority was not enough.

SEN. HOLDEN asked **REP. ROSE** if the Huntley Project was still BLM? **REP. ROSE** stated he thought it was already paid off.

SENATOR TOM BECK asked **REP. ROSE** when the person gets through paying off the Bureau of Reclamation, does the government continue to own the water or does that water revert to the new owners of the system? **REP. ROSE** stated that was correct. **SEN.**

BECK asked if the Bureau was removed from it once the person had made the final payment on the water? **REP. ROSE** replied that was correct and it then goes to the district.

SEN. JABS referred the question that was asked by **SEN. BECK** to **Mr. Jim Foster**. **Mr. Foster** replied that with each individual irrigation district, the contracts vary. He stated the Greenfield irrigation district stated the water right transfers to the irrigation district, but that was not always the case. He stated sometimes the Bureau would contest that. **SEN. JABS** asked why would the independent person want the government to set the rules for them. He said that in the bill with the 60% petition they could set their own rules.

Closing by Sponsor:

REP. ROSE said that if the committee had any questions they should ask their district. He stated the bill was to try to protect the districts when coming out of the Bureau of Reclamation.

Discussion: **SEN. DEVLIN** began a discussion on a committee bill on establishing the wolf to be listed in Montana as a predatory animal. He was a predator in 1975, and the Legislature at that time, in order to send a message that wolves did not exist in the state, took him off the list. **SEN. DEVLIN** stated he would like to see a bill that would declare the wolf a predator and also maybe some other items along the lines of deregulation of the wolf if he was killing livestock.

SEN. BECK asked if he wanted a bounty like they had in Wyoming? **SEN. DEVLIN** replied that Colorado had legislation they put on the books and so does Wyoming. He stated it would take seven of the members in order to bring out a committee bill.

Motion: **SEN. BECK MOVED** to allow the drafting of a committee bill to put the wolf back on the predator list.

Discussion: **SENATOR BOB PIPINICH** stated he would go along with that.

SEN. JERGESON asked if that was a motion for a committee bill or a draft for a committee bill.

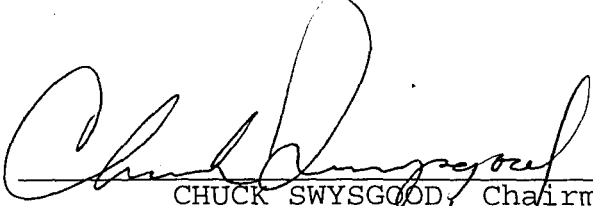
SEN. BECK replied that it would have to be a committee bill because it could be killed. He stated there had to be a committee bill in order to get a draft request.

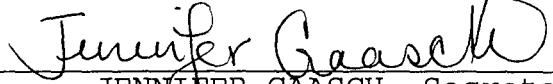
SEN. DEVLIN asked if the motion was for a committee bill? **SEN. BECK** replied that it was for a committee bill.

Vote : The **MOTION CARRIED UNANIMOUSLY.**

ADJOURNMENT

Adjournment: 2:00 p.m.


CHUCK SWYSGOOD, Chairman


JENNIFER GAASCH, Secretary

CS/jg

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE

ROLL CALL

DATE _____

2-3-95

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SEN:1995
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DATE Feb. 3, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 207, HB 170,
Executive Action SB 1166

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Check One

Name	Representing	Bill No.	Support	Oppose
↓ PLEASE PRINT ↓				
Pam Langley	Montana Agri Business Assn	207	✓	
Lorna Frank	mt. Farm Bureau	SB 207	✓	
AL KINGTON	mt. Tree Farm System	SB 207	✓	
Larry Brown	Ag Pres. Assoc	SB 207	✓	
Carleen Torgerson	MT Wool Growers MT Cattlewomen	SB 207	✓	
Greg Chadwick	mta Nursery asso	207	✓	
John Bloomquist	mt. Stockgrowers	207	✓	
MIKE MURPHY	MT. WATER RES. ASSN	170 207	X X	
Cary Hegreberg	MT Wood Prod. Asso.	207	X	
Margaret Cleary-Schwinch	WIFE	HB 170 207	✓	
Janet Ellis	MT Audubon	207	Amend ✓	
Larry Brown	Ag. Pres Assoc.	HB 107	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY