

MINUTES

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

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on February 8, 1995,
at 12:35 p.m.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
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: None

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 275, SB 289, HB 137
Executive Action: SB 207, HB 170, SB 275, SB 289

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

EXECUTIVE ACTION ON SB 207

Discussion:

CHAIRMAN SWYSGOOD referred to page 2, line 6 of SB 207 regarding the conversion from one agricultural activity to another. He was concerned that if you were an alfalfa farmer or had cattle and you wanted to switch to some other activity that might be detrimental to surrounding homes, such as a hog operation or something that might have an impact on the value of your

property, the impact needs to be looked at. In talking to **SENATOR KEN MESAROS** we have come up with some language hopefully to correct this.

Doug Sternberg said on line 6, following the word "another", the phrase would be inserted as follows "provided that the conversion does not adversely impact adjacent property owners". That would still allow conversion to occur and still fall within the protective language of Section 1, but it would say that the conversion is considered to be an agricultural activity as long as it doesn't adversely impact adjacent property owners. If that was the case, then a person who wanted to protest a conversion use could make a point that conversion is outside the scope of the protection afforded by this bill.

SENATOR TOM BECK said one of his constituents wanted to include timber harvesting, thinning, or regeneration.

Doug Sternberg noted there were several people that came to testify suggesting that they would like to be added to the list of agricultural exemptions. In amendment number 2, on line 6, after "another", he included the language that says "provided that the conversion does not adversely affect adjacent property owners". We're adding a new subsection (O) which will cover timber harvesting, thinning and timber regeneration; a new subsection (P) that deals with burning and stubble and slash disposal and (Q) which deals with plant nursery and commercial greenhouse activities. On line 20 following the word "trees", we would inserting the words "including commercial timber" so that both trees and commercial timber would be considered a farm product as it applies to this act. On line 29 we are taking out the words "applied to" and insert the word "prohibit" so that now the sentence would read "zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of the municipality and then incorporated into that municipality by annexation." Those amendments cover the concerns that were raised.

Motion/Vote:

SENATOR GREG JERGESON MOVED the amendments. The **MOTION CARRIED UNANIMOUSLY.**

Motion/Vote:

SEN. JERGESON MOVED SB 207 AS AMENDED. The **MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 170

Discussion:

CHAIRMAN SWYSGOOD said this was **REPRESENTATIVE ROSE'S** bill allowing members in an irrigation district to petition to require board of commissioners to impose an acreage limitation on the size of farms that would be serviced by an irrigation district.

SENATOR RIC HOLDEN said he talked to Buffalo Rapids Irrigation project and they said that as long as it's enabling legislation it's fine, if we start to dictate what they're going to do on each irrigation project, then it won't be fine. They understood it to mean that it was enabling legislation. Is that how it is?

Doug Sternberg said that was his impression. It does allow limitations to occur. Another aspect of the enabling part of the legislation is that subsection (2)(a) and (b) sets out two conditions upon whether an acreage limitation can be imposed. The first is that the board of commissioners of the irrigation district can submit the question to the qualified electors by the special election process that is already in place or under (b) when the 60% the landowners representing not less than 60% of irrigated land choose to impose that limitation, they can do that themselves. It's self-generating either by the board of commissioners or the irrigation district members themselves.

SEN. JERGESON had a question on the mandate to the political subdivisions of the state of Montana. He asked whether or not such a restriction adopted by an irrigation district would constitute a taking. A regulation that merely decreases the value of property is not necessarily a taking. It's only clearly a taking when it eliminates a property value.

Motion/Vote:

SENATOR DON HARGROVE MOVED HB 170. The **MOTION CARRIED UNANIMOUSLY.**

SEN. HARGROVE will carry HB 170 on the Senate floor.

Discussion:

CHAIRMAN SWYSGOOD said that three subcommittees have been appointed.

SENATOR GERRY DEVLIN said they were waiting for the "gray bill" to come out with amendments.

CHAIRMAN SWYSGOOD entertained a motion that there is a need to have a committee bill for the game farms.

SEN. DEVLIN said their researcher thought it would not fit under either of the bills.

SENATOR TOM BECK said the bill could be challenged on the floor.

Doug Sternberg said it could be challenged anywhere along the line and for the protection of the committee's work it was his advice to put it in the context of a committee bill to remove any doubt.

Motion:

SEN. DEVLIN moved the committee vote for the introduction of a committee bill on the game farm legislation.

Discussion:

SEN. BECK wanted to look at the bill before voting.

Vote:

The MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. BECK said that in talking with **Doug Sternberg**, the same way on the decontrolling of milk they were liable to come up with a bill that's not in the parameters of either bill also, and that they would definitely let him take a look at it first. He said in order to get this process moving they may want to consider that bill, too.

CHAIRMAN SWYSGOOD said these three bills, which are somewhat contentious in nature, need to be out so they can be acted on by Friday. One Senate bill is scheduled for Friday and the rest of the day will be allotted to action on these bills.

SEN. BECK suggested that if there was no bill or an agreement reached that they up or down the bill by **SENATOR MIKE SPRAGUE**. He was concerned that if they did come up with an agreement between the producers and the Governor's people, they should have the authority to have the bill written and ready for discussion on Friday.

CHAIRMAN SWYSGOOD said the nature of the title of the bills creates some problem in trying to compromise between the parties because one completely deregulates it, as in the case of the milk bill, and in the case of the game farm bill it's entirely different.

SENATOR BOB PIPINICH said he talked to both sides of the milk control bill, as well as **Doug Sternberg**, and he was going to have Senate amendments made up. If an agreement can't be reached, the amendments will be presented.

CHAIRMAN SWYSGOOD said that was the subcommittee's prerogative.

Opening Statement by Sponsor:

SENATOR GERRY DEVLIN, SD 2, Terry, explained the change in fees charged to nurseries from 2 years ago. He presented an amendment for a new two-tiered fee structure.

Proponents' Testimony:

Harold McHayhay, representing a landscaping firm in Stevensville, President of Montana Association of Nurserymen, said he was in support of this bill. He said that in the past they have been self-funded and want to make sure they could continue to do this by having this licensing change.

Greg Chadwick, representing Chadwick Landscaping in Helena, Vice-President of Montana Nurserymen Association, rose in support of this bill. He is concerned that the "Ma and Pa growers" in the state be taken care of as well as his business. He would like the fee to remain so their money base could continue to support them.

Dwight Walton, owner of Walton Nursery in Florence, and President of Valley Landscape in Missoula, felt the graduated scale protects the smaller growers as well as allowing the bigger businesses to handle their fees.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. BECK asked if there was a problem if someone at a farmer's market exceeded \$3,000 in sales. Would they have to buy the license? **SEN. DEVLIN** said there could be some that exceeded that amount.

SENATOR BECK asked if there was a difference if you sold flowers or vegetables. **SEN. DEVLIN** answered that they should read the nursery definition.

Leo Giacometto from the Department of Agriculture said that there were two different licenses.

SEN. BECK asked if there was a graduated scale for a produce seller. **Mr. Giacometto** replied that he did not have the specifics with him, but that there were some exceptions. He said that he did not believe that this would be in violation.

SEN. JERGESON asked what constitutes a nurseryman. Would someone that digs up trees from his farm and sells his trees all over the state be a nurseryman? **Leo Giacometto** stated he would be.

SEN. JERGESON asked if he should be licensed? **Leo Giacometto** replied he should be. **SEN. JERGESON** asked if they had found someone who was not in compliance, what would they do? **Leo Giacometto** replied that it would depend on how they had been noticed by the board and it would depend on a lot of different things. They try to work with those individuals who did not know there was a license required. They explain the law and verify what their sales are.

Closing by Sponsor:

SEN. DEVLIN replied they had quite a time with the fiscal note because there was no criteria by which they could determine how many people would fall into that new category. He said the budget now is around \$78,000.

HEARING ON SB 289

Opening Statement by Sponsor:

SENATOR VIVIAN BROOKE, SD 33, Missoula, presented SB 289 regarding the authority of the Department of Agriculture in issuing compliance orders. In Missoula they have had a problem at a sewage treatment facility. Both the Department of Agriculture and the Department of Health have been involved in the clean-up. SB 289 would clarify that the Department of Health would be the actual agency issuing compliance orders. For those two cases [seen in lines 23-25] and if agricultural chemicals have caused or are likely to cause contamination of water. The bill was coordinated through the Department of Health and the Department of Agriculture to address the problem of the two agencies trying to address one problem. SB 289 would make it more efficient for government.

Proponents' Testimony:

Peter Nielsen, Environmental Health supervisor at the Associated County Health Department, also a supervisor of Missoula County water quality district, said they were in support of the proposed amendments. They believe they are in compliance with the legislature's original intent. The law has been interpreted to allow the Department of Agriculture to regulate in nonagricultural sites. He said the Agriculture Department has only a few staff available to regulate urban sites and the department lacks education in areas such as public health hydrology, and others that would allow them to regulate large complex industrial clean-up sites. He said the Department of Agriculture knows how to work with ranchers to solve pollution problems. The proposed amendments would clarify that the Department of Agriculture would not have the authority to issue enforcement authorities at wood treatment sites or sites where a public water supply may be affected. They support SB 289 with the amendments.

Maureen Cleary-Schwinden, representing WIFE, said they supported SB 289.

Jim Foster, President of the Montana Water Resources Association, stated they were in support of SB 289.

Leo Giacometto, representing the Department of Agriculture, stated he was in support of SB 289. They believe it will help keep intact the Agricultural Chemical Ground Water Protection Act, which is very important. He said their intent was to protect the people in Montana. This act is not just for farmers and ranchers. There are a lot of complaints in the urban areas. He urged the passage of SB 289.

Bill Allen, representing the Montana Audubon Legislative Fund, stated they supported SB 289.

Bob Robinson, representing the Department of Health, stated they supported SB 289 because it would clarify the departments' responsibilities.

Ann Hedges, representing the Montana Environmental Information Center, stated she supported SB 289.

John Bloomquist, stated he supported SB 289.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

CHAIRMAN SWYSGOOD asked **Leo Giacometto** about line 24 of the bill where it says "when agricultural chemicals have caused or are likely to cause contamination of the public water supply system as defined in 75-6-102". 75-6-102 defines the public water supply as at least 10 service connections used by year-round residents or that regularly serves at least 25 year-round residents. He asked why the department would be willing to give up the control that they have over the possible contamination of ground water by agriculture chemicals that would affect a public water supply system and why that should go to the Department of Health? **Leo Giacometto** replied under the former Memorandum of Understanding (MOU) between the two departments, the magnitude of that level, they cannot issue enough direct support or staff to go over that. They would be very much involved any time a public water supply has been affected. In the past they had to give that up to the Department of Health because they have more expertise in that area. He said there was no problem in which the way it was being run, but this bill would give it clarification. **CHAIRMAN SWYSGOOD** asked if they currently operate in that manner, then why does it need to be in the bill? **Leo Giacometto** replied that the

overall issue is to see that the environment remains safe. They have less than 23,000 farmers and ranchers in the state and when there are 50,000 people, they have to react with tact and integrity when dealing with the whole community. They are trying to work with the communities to ensure safe chemical use.

SEN. DEVLIN asked if the Department of Agriculture would still have some small communities. **Leo Giacometto** replied they would. He said it would not be an issue in the smaller communities. If an issue gets to the point where they cannot handle it, they are looking out for the public's best interest.

SEN. BECK asked how serious a problem was this. **Leo Giacometto** replied he did not want to say that there were not going to be some major issues out there. There are some issues that they do not want to get into.

SEN. DEVLIN asked if there were any personality conflicts in this. **Leo Giacometto** replied there are not. SB 289 only puts into law what they are already doing.

SEN. DEVLIN asked if **Mr. Robinson** was going to have to have any additional FTE's. **Mr. Robinson** replied no. Their Super Fund employees are able to handle those issues.

Closing by Sponsor:

SEN. BROOKE said in addition to the proponents, there was some written testimony that she would like to submit from **Arvid M. Miller (EXHIBIT #1)** She urged the committee's support on SB 289.

HEARING ON HB 137

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT STORY, JR., HD 24, Park City, presented HB 137, which was requested by the Department of Natural Resources. The points of interest on the bill start with section 1, on page 4, which reduces the number of people at the department. The water courts have to send notices of preliminary decrees and they have sent them to anyone who had anything to do with the water right. That created a lot of excess work and confusion. Page 6, line 20, allows the department to issue temporary decrees in closed basins. HB 137 would allow two exemptions. One for highway construction and one for environmental clean-up. The temporary permits are limited to less than 1 year in length and less than 10 acre-feet in volume, so the department has a handle on who is using the permits.

Proponents' Testimony:

Mark Simonich, the director of the Department of Natural Resources and Conservation, read his written testimony. (EXHIBIT #2)

{Tape: 1; Side: B}

Dan Andrews, read his written testimony. (EXHIBIT #3) He offered an amendment to HB 137. (EXHIBIT #4)

Jim Foster, the President of the Montana Water Resources Association, stated they supported HB 137.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SEN. BECK asked **Mr. Simonich** about the Super Fund sites. It had been stated that there had been a couple of instances where people have been stealing water for that purpose and now they were going to give them a permit to steal the water. **Mr. Simonich** replied they wanted to bring people in so that they knew who was there. If there is public objection, they would not be able to obtain a permit. He said they were not presently aware that was going on. **SEN. BECK** asked about permanent closures. There are some permanent closures going on and he asked if they were agreeable to the amendment of the 1 year and 10 acre-foot limit. **Mr. Simonich** replied they are. Originally they talked about short-term temporary uses, and they had come up with that limit. **SEN. BECK** said he could not believe that there was a real need for that, that if it was really that serious of a problem. **Mr. Simonich** replied they had two instances last summer and it may be more widespread than that. They do have problems in the basins that are not closed because someone would be using the water without a permit. The point is to protect prior existing rights. **SEN. BECK** asked if it was highway contractors that were abusing the law or was it the environmental clean-up. **Mr. Simonich** replied they were both highway situations. There may be some other situations.

SEN. PIPINICH asked what they were going to do when there was a forest fire? **Mr. Simonich** said he would refer that to **Jack Stults** from the DNRC. **Jack Stults** replied that would be under the emergency appropriations declared in statute.

CHAIRMAN SWYSGOOD said he had a problem with the temporary permit and the retroactivity in HB 137. That would affect his basin, which is closed because there is no more water. They cannot issue a permit without taking someone's water. It will cause

everyone of those people to come in and object to the permit, which is a cost to them. **Mr. Simonich** replied he understood those concerns. The intent was to try to make sure that if the water is available the people should be able to use that water. He said they could deal with the retroactivity of the water. **CHAIRMAN SWYSGOOD** asked if they had been to his basin. **Mr. Simonich** replied he could not answer that. **Jack Stults** replied they had not been specifically within the Beaverhead, but one was in the Gallatin and another one was on the Musselshell.

CHAIRMAN SWYSGOOD asked **Dan Andrews** if he currently had a water right out of the Muddy River. **Dan Andrews** replied he did not. **CHAIRMAN SWYSGOOD** asked if he understood that he wanted to pump water from the Muddy to irrigate. **Dan Andrews** replied yes. It would be a center pivot and wheel lines set up on dry land acreage. **CHAIRMAN SWYSGOOD** asked how he was supposed to do that when he did not have a water right? **Dan Andrews** replied he would have to go through the permit process that would be permitted by the amendment he offered.

SEN. BECK asked if there were permits on the Muddy at the present time. **Dan Andrews** replied that there were.

SEN. BECK asked if a highway contractor was to come to him and pump water out of his ditch, does the contractor need a permit to do that? **Mr. Simonich** replied the contractor needs permission from the rancher, not from the department. **SEN. BECK** asked if he said the contractor could, would he still need a permit to do that? **Mr. Simonich** said he did not believe he did, but he referred the question to **Jack Stults**. **Jack Stults** replied under present interpretation of the statute they believe that they need to get a change of usage from the department.

SENATOR REINY JABS asked **Mr. Simonich** if there was a charge for the permit? **Mr. Simonich** replied there was. **SEN. JABS** asked if they checked with the public before issuing the permit? **Mr. Simonich** replied they do. They notify all of the water right users in the area who might be impacted by the issuing of the permit.

CHAIRMAN SWYSGOOD asked **Mr. Simonich** if they also charged for objections. **Mr. Simonich** replied that was correct.

Closing by Sponsor:

REP. STORY said that he had not seen the amendment and they might look at the circumstance. He urged a do pass recommendation.

EXECUTIVE ACTION ON SB 275

Motion:

SEN. DEVLIN MOVED the amendments to SB 275, starting on line 20 where \$5,000 will be stricken and \$3,000 inserted. On line 21 the \$25 fee will be stricken and \$30 inserted. The language of submitting a notarized affidavit added to know for sure that they fall into that category between 1,000 and 3,000 gross sales. On line 22 where it says "earns \$5,000 or more" should read "earns \$3,000 or more".

Discussion:

SEN. HOLDEN asked why he changed that.

SEN. DEVLIN replied the smaller growers were the people who he was trying to protect. The nurserymen felt uncomfortable with the \$5,000 and thought that was too high.

Vote:

The MOTION CARRIED UNANIMOUSLY.

Motion:

SEN. DEVLIN MOVED SB 275 AS AMENDED.

Discussion:

CHAIRMAN SWYSGOOD stated that the effective date was January 1, 1996, and asked if that was because we are already into the 1995 year?

SEN. DEVLIN replied that was correct.

CHAIRMAN SWYSGOOD asked if he put in the notarized affidavit?

SEN. DEVLIN replied that was correct.

Vote:

The MOTION CARRIED 8 to 1 with SENATOR TOM BECK voting no.

EXECUTIVE ACTION ON SB 289

Motion:

SEN. PIPINICH MOVED TO DO PASS SB 289.

Vote:

The MOTION CARRIED 8 to 1 with CHAIRMAN SWYSGOOD voting no.

EXECUTIVE ACTION ON HB 137

Discussion:

SEN. BECK asked to wait for Executive Action on HB 137.

CHAIRMAN SWYSGOOD replied he had a lot of problems with the two parts of the bill and if they are taken out there would be nothing left of the bill.

SEN. JERGESON replied he liked the bill and there were people in his basin who needed the temporary permit.

CHAIRMAN SWYSGOOD asked if his basin was closed.

SEN. JERGESON replied the Milk River Basin was the first basin closed in the state.

SEN. BECK asked if the Muddy was on the Milk River.

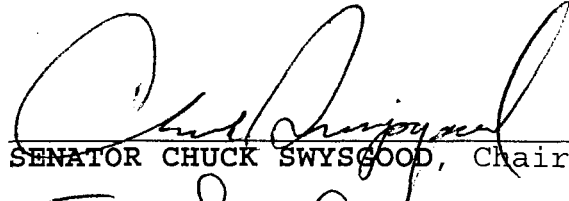
SEN. JERGESON replied that it was not.


SEN. PIPINICH MOVED to TABLE HB 137.

SEN. BECK replied they were not going to table the bill, but they would hold off on Executive Action.

ADJOURNMENT

Adjournment: 2:00 p.m.


SENATOR CHUCK SWYSGOOD, Chairman


JENNIFER GAASCH, Secretary

cs/jg

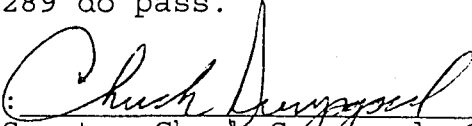
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 289 (first reading copy -- white), respectfully report that SB 289 do pass.

Signed:



Senator Chuck Swygood, Chair



Amd. Coord.
Sec. of Senate

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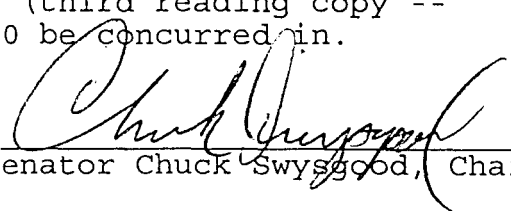
SENATE STANDING COMMITTEE REPORT


Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB 170 (third reading copy -- blue), respectfully report that HB 170 be concurred in.

Signed:


Senator Chuck Swysgood, Chair


Amd. Coord.
Sec. of Senate

Sen. Hargrove
Senator Carrying Bill

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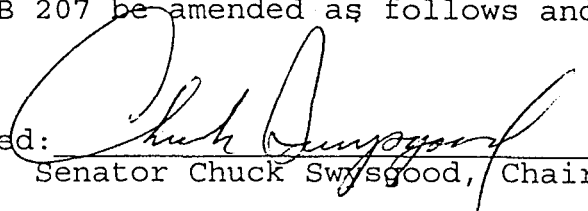
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 207 (first reading copy -- white), respectfully report that SB 207 be amended as follows and as so amended do pass.

Signed:


Senator Chuck Swysgood, Chair

That such amendments read:


1. Page 2, line 5.
Strike: "and"

2. Page 2, line 6.
Following: "another"
Insert: ", provided that the conversion does not adversely impact adjacent property owners;
(o) timber harvesting, thinning, and timber regeneration;
(p) burning and stubble and slash disposal; and
(q) plant nursery and commercial greenhouse activities"

3. Page 2, line 20.
Following: "trees"
Insert: ", including commercial timber"

4. Page 2, line 29.
Strike: "apply to"
Insert: "prohibit"

-END-


Amd. Coord.
Sec. of Senate

331425SC.SRF

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 275 (first reading copy -- white), respectfully report that SB 275 be amended as follows and as so amended do pass.

Signed: 
Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 1, line 20.

Strike: "\$5,000"

Insert: "\$3,000"

Following: "stock"

Insert: "and that submits a notarized affidavit to that effect to the department"

2. Page 1, line 21.

Strike: "\$25"


Insert: "\$30"

3. Page 1, line 22.

Strike: "\$5,000"

Insert: "\$3,000"

-END-

 Amd. Coord.

SA Sec. of Senate

331458SC.SRf



MOUNTAIN WATER COMPANY

P. O. Box 4826 • 1345 West Broadway • Missoula, Montana 59806 • Phone (406) 721-5570

ARVID M. HILLER
V.P. and General Manager
(406) 721-5570

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-8-95

BILL NO. SB 289

**TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
IN SUPPORT OF**

SENATE BILL 289

SENATE COMMITTEE AGRICULTURE, LIVESTOCK AND IRRIGATION

MR. Chairman Swysgood, Ladies and Gentlemen of the Committee,

I am the Vice-President and General Manager of Mountain Water Company which is a privately owned Montana Corporation which supplies potable water to 50,000 residents of the Missoula and Superior communities. I encourage your support of the above referenced Senate bill. I believe when a public water supply is involved the appropriate agency to issue compliance orders and oversight would be the State Department of Health and Environmental Sciences. When the contamination or potential contamination of a public water supply is identified it becomes an issue of public health. It seems more logical to me that when potable water quality is the issue that the State agency commissioned with the responsibility of seeing it is safe would be the lead agency. I do not see this as an additional control issue by government but just a shift of responsibility to where it ought to be.

Thank You for Your Consideration in This Matter.

Arvid M. Hiller

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 137

BEFORE THE SENATE AGRICULTURE, LIVESTOCK, AND IRRIGATION COMMITTEE

FEBRUARY 8, 1995

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER LAWS; PROVIDING FOR NOTICE OF AVAILABILITY OF DECREES TO BE SENT TO THE SUCCESSORS OF THE ORIGINAL OWNERS OF WATER RIGHTS; PERMITTING THE ISSUANCE OF TEMPORARY WATER RIGHT PERMITS IN HIGHLY APPROPRIATED BASINS THAT ARE CLOSED BY LEGISLATIVE OR ADMINISTRATIVE ACTION; AMENDING SECTIONS 85-2-232, AND 85-2-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."

My name is Mark Simonich; I am director of the Department of Natural Resources and Conservation.

Representative Story graciously agreed to sponsor HB 137 at our request.

HB 137 does two things:

1. It provides for notice of availability of decrees to be sent to the successors of the original owners of water rights.
2. It provides for exceptions to basins that are closed by legislative or administrative action.

WATER RIGHT DECREE NOTICE

HB 137 eliminates notice of water right decrees being sent to former owners who have transferred ownership to a successor. It provides for notice of decrees to be sent to the current owner as documented in the Department's records.

Sending notice to former water right owners increases the time, effort and cost of decree mailings. Former owners are often confused when they receive these notices since they no longer have an interest in the water rights.

We estimate this change would save \$48,297 over the life of the water rights adjudication program.

EXCEPTIONS IN BASINS CLOSED TO WATER RIGHT PERMIT APPLICATIONS

Many closure areas presently have exceptions for stock, domestic, municipal and non-consumptive uses, and for storage of high spring flows. Even so, closure areas do not allow persons to file applications for small temporary surface water uses which have less potential impact than typical exempted uses. The proposed amendment would specifically allow a person to apply for a temporary permit to use a small amount of water. Under the proposed amendment, a person could apply to use up to only 10 acre-feet of water if the duration of use would be less than one year. This exception would apply to surface water drainage basin rule closure areas and legislatively imposed closure areas. This exception would not apply to a closure area where temporary uses are specifically prohibited.

Highway construction, land reclamation, exploratory drilling, and hydrostatic testing are some typical temporary uses of surface water. The use of this water is for short periods of time (several weeks to nine months) and the amount or volume of water consumed is usually only several acre-feet per project. Usually local water right users have no objection in allowing these low-volume, short-term water uses. The permit would be denied, however, if water is not available or the use would cause adverse affects to senior water users.

In many legislative closure areas, individuals cannot even file a permit application to use surface water because these temporary uses are not listed as exceptions to the closure. These types of activities are often important for public safety and environmental remediation. Many of these water use activities are occurring illegally.

The department received two complaints this past summer involving water appropriated without necessary permits. The primary option available to resolve the need for water was to appropriate water from a groundwater source, since surface water was not available to consumptive appropriations because of a basin closure. Finding a groundwater source was very restrictive and basically forced the violators to find another surface source that was less conspicuous in terms of direct public view. Apparently they proceeded to use water without a water right permit, since no permit application for water was received by the department.

The solution to the above identified problem is to approve the new proposed subsection (6) to §85-2-319, MCA. Passage of this amendment would provide an avenue for these types of users to become legal water users. It would enable the DNRC to notify prior appropriators who may be adversely affected before any temporary water use occurs. It would reduce complaints against these types of presently illegal water users and the expense in dealing with complaints.

No fiscal impact is expected.

NAME Dan Andrews

ADDRESS 1051 2nd RD NE Power Mt

HOME PHONE 467-2960 WORK PHONE _____

REPRESENTING self

APPEARING ON WHICH PROPOSAL? HB 137

DO YOU: SUPPORT OPPOSE _____ AMEND

COMMENTS:

Ms. Chairman and members of the committee:

I am Dan Andrews from Power Mt. I am here as a concerned landowner to propose an Amendment to HB 137. The Amendment would read as follows: see attached statement:

If this Amendment is passed, it would allow permits to be issued on Muddy Creek only. It does not open the entire Basin. By allowing permits on Muddy Creek water could be taken out of the stream and reduce erosion of the stream-bed. Less erosion will reduce sediment behind dams in Great Falls

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

NAME Don Andrews

ADDRESS _____

HOME PHONE _____ WORK PHONE _____

REPRESENTING _____

APPEARING ON WHICH PROPOSAL? _____

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

Less erosion would lessen the impact to the City of
Great Falls and less erosion would lower the cost
of current programs to slow the erosion on Muddy Creek
itself.

Passage of this Amendment would allow land-owners
like myself to pump water out of Muddy Creek. I
have approximately 460 acres next to Muddy Creek,
that if I was granted a water permit, I could pump
out of Muddy Creek and sprinkle irrigate this acreage.
This pump site is up-stream of the current work being
done on Muddy Creek stream-bed. My project alone

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

793
EXHIBIT 3
DATE 2-8-95
HB 137

NAME Dan Andrews

ADDRESS _____

HOME PHONE _____ WORK PHONE _____

REPRESENTING _____

APPEARING ON WHICH PROPOSAL? _____

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

would use approximately 10 cfs of water. The majority of this water would be pumped out of the creek when stream flows would be at their highest levels.

Passage of this Amendment would allow for direct de-watering of Muddy Creek and would be a win-win situation for everyone involved in Muddy Creek.

I would like to thank Rep Sam Rose and the Muddy Creek people for their help and support of this ~~Amendment~~ Amendment to HB 137

Thank you for your time

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATE AGRICULTURE

EXHIBIT NO. 4

DATE 2-8-95

BILL NO. HB 137

Amendment to HB 137

Add section:

For conservation practices only, water permits may be issued on Muddy Creek. Permits will be issued to reduce water quantity to positively effect erosion.

This will sunset in three years, 1998.

DATE February 8, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SB 275, SB 289, HB 137

Executive Action, SB 207, HB 170

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Please Print ↓↓				
Harold M'Gaughay	MT Assoc Nurs	SB 275	✓	
Don Andrews		HB 137	✓	
DWIGHT WALTON	MT ASSOC NURSEYMAN	SB 275	✓	
Gres Chadwick	mt ASSOC NURSEY	SB 275	✓	
Peter Nielsen	Missoula Health Dept	SB 289		
MAUREEN CLEARY Schwinden	WIFE			
LARRY Brown	Ag. Pres. Assoc	HB 137		✓
Bill Allen	MT Audubon	SB 289	✓	
MARK Simonich	D NRC	HB 137	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY