

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

JOINT SUBCOMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN ROGER DEBRUYCKER**, on February 10, 1995, at 9:00 a.m. in Room 402 of the State Capitol.

ROLL CALL

Members Present:

Rep. Roger DeBruycker, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Judy H. Jacobson (D)
Sen. Loren Jenkins (R)
Rep. John Johnson (D)
Rep. William R. Wiseman (R)

Members Excused: none

Members Absent: none

Staff Present: Mark Lee, Legislative Fiscal Analyst
Roger Lloyd, Legislative Fiscal Analyst
Florine Smith, Office of Budget & Program
Planning
Debbie Rostocki, Committee Secretary

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

Committee Business Summary:

Hearing: Department of Natural Resources & Conservation
- Oil and Gas Conservation Division
- Reserved Water Rights Compact Commission
Executive Action: Department of Natural Resources & Conservation
- Oil and Gas Conservation Division
- Reserved Water Rights Compact Commission
Department of Commerce
- Economic Development Division
Department of Fish, Wildlife and Parks
- Parks Division
Department of State Lands
- Forestry Division

**EXECUTIVE ACTION ON Department of Commerce
Economic Development Division**

Motion/vote: SEN. THOMAS KEATING moved to reopen consideration of the budgets of the Department of Commerce and the Department

of Fish, Wildlife and Parks (FWP). The motion carried unanimously.

Motion/vote: SEN. JUDY JACOBSON made a motion to remove the accommodations tax from the funding totals of the 1996-7 budget of the Economic Development Division. SEN. LOREN JENKINS seconded the motion. The motion carried unanimously.

**EXECUTIVE ACTION ON Department of Fish, Wildlife & Parks
Parks Division**

Motion: SEN. JACOBSON moved, and SEN. JENKINS seconded the motion, to remove the Accommodations Tax from the funding totals for the 1996-7 biennium budget of the Parks Division, amounting to a \$350,000 reduction in present law including applicable reductions in FTE, and a reduction in New Proposal No. 3 on p. C-38 as well.

Discussion: In response to REP. JOHN JOHNSON, SEN. JACOBSON said it was her understanding that this action would appear to be reducing the funding for this division in HB 2 but the funding would show up as a statutory appropriation. Mr. Roger Lloyd, Legislative Fiscal Analyst (LFA), said the department can request any amount up to their allocation of the Accommodations ("bed") Tax as statutorily appropriated through the Office of Budget and Program Planning (OBPP). He added that if the motion was accepted the reduction would also include those FTE funded by the bed tax.

REP. WILLIAM WISEMAN wanted to know how many "phantom" FTE were presently funded in this way. Mr. Lloyd said the only other budget with this type of situation which this committee dealt with was the Department of State Lands and only involves one FTE. He mentioned that SB 83 attempts to eliminate the statutory appropriations that fund FTE and other operations.

SEN. JACOBSON explained that when SB 83 left the Finance Claims Committee the bed tax was in a special revenue fund which meant it would have been appropriated. However, doing this was decided against. Her intention was to make HB 2 clear that this money is not appropriated by the Legislature. She was in favor of reviewing those budgets funded by statutory appropriations but submitted that even if the funding was appropriated by the Legislature it would not prevent those programs from using excess revenues above the appropriated amount and doing whatever they wanted to.

Vote: The question was called for and the motion carried unanimously.

Discussion: Mr. Lloyd pointed out that this committee only saw FWP's operational budget: they also have a capital budget which is heard in the Long Range Building Subcommittee. The executive

budget has included \$100,000 in bed tax for the biennium in the Long Range Building bill (HB 5). There was general agreement that Mr. Lloyd should write a letter to the Long Range Building Subcommittee to inform it of this committee's actions.

Motion/vote: SEN. JACOBSON moved and it was seconded to close the sections on the Departments of Commerce and FWP. The motion carried unanimously.

EXECUTIVE ACTION ON Department of State Lands
Forestry Division

Motion: REP. JOHNSON moved to reopen consideration of the Department of State Lands (DSL) Forestry Division's budget; SEN. JACOBSON seconded the motion.

Discussion: In response to SEN. JENKINS, Mr. Lloyd said there is a statutory appropriation in the Land Administration Division giving the department authority to spend recreational use access permit funds and part of that money is being used to fund one FTE. However, that statutory appropriation has been removed from HB 2 already.

Vote: The motion carried with SEN. KEATING and REP. WISEMAN opposed.

Motion: REP. JOHNSON moved to accept New Proposal No. 1 on p. C-72; SEN. JACOBSON seconded the motion.

Discussion: REP. JOHNSON pointed out that the three FTE in this proposal are funded by federal funds from President Bush's America the Beautiful Program. He rose in support of the work these FTE are doing and the importance of these persons in communities that have no forester on staff.

In response to SEN. JACOBSON, Mr. Lloyd said the total FTE removed from this committee's budgets due to the removal of the bed tax appropriation from HB 2 amounted to 21.33 FTE in the Montana Promotions Division of the Department of Commerce and approximately 6-7 FTE from FWP. The net FTE reduction for the Department of Commerce is three.

REP. WISEMAN questioned the need to spend \$150,000 for three foresters. He suggested the smaller communities utilize the services of the foresters in the larger cities.

REP. JOHNSON stressed the value of the service Glendive had received from the community forester stationed there. SEN. JENKINS suggested utilizing the services of the County Extension Office or the Soil Conservation office.

Vote: The question was called for and the motion failed with REP. JOHNSON and SEN. JACOBSON voting "yes."

Motion/vote: REP. WISEMAN moved to close the section on DSL; SEN. KEATING seconded the motion. The motion carried unanimously.

Discussion: Mr. Lloyd read a draft letter to the Chairman of the Long-Range Building Committee informing him of this committee's action on the bed tax. EXHIBIT 1 There was general agreement that the letter should be presented to REP. ERNEST BERGSAGEL, chairman of the Long Range Building Subcommittee.

Tape No. 1:B:000

HEARING ON Department of Natural Resources and Conservation
Oil and Gas Conservation Division

Mr. Mark Simonich, Director of the Department of Natural Resources and Conservation (DNRC), spoke briefly. The Board of Natural Resources was having a meeting and he had to attend that. The two parts of DNRC that are "attached-to" agencies, the Board of Oil and Gas Conservation and the Reserve Water Rights Compact Commission, will present their budgets prior to the department overview.

Mr. Mark Lee, Legislative Fiscal Analyst (LFA), gave an overview of the division's budget (pp. C-102-104). The main present law adjustment concerns the Underground Injection Control (UIC) Program. In 1987 legislation directing DNRC to establish this program to meet Environmental Protection Agency (EPA) regulations and guidelines was enacted. They have been attempting to get primacy and have not spent much of their appropriation. The EPA has formally rejected their request. The LFA takes an issue with this program because they have used appropriations for this program on equipment. Under New Proposal No. 1, three FTE which have never been hired (because primacy has not been granted) are being removed and replaced with contracted services funding. In essence the UIC Program will end up being appropriated approximately the same amount of funds it has been in the past.

Ms. Florine Smith, OBPP, mentioned that this division has a statutory appropriation (not contained in HB 2) for the Damage Mitigation Account, which currently has about \$200,000 in it. The funds are to be used for plugging and restoring gas and oil drilling sites. In addition she distributed some language which had been requested for HB 2 to provide for contingency appropriation of federal funds in the UIC Program. EXHIBIT 2

Mr. Tom Richmond, Administrator and petroleum engineer for the Board of Oil and Gas, gave an overview. The Board is a quasijudicial board attached to DNRC for administrative purposes. It is composed by statute of three oil and gas industry members, two landowners, one with and one without minerals, and two members from the public. It is required that one of the members be an attorney, as well. The Board has staff in Billings, Shelby and Helena. The staff consists of one petroleum engineer, one

petroleum geologist, one chief field inspector and five field inspectors, a statistician and two statistical clerks, a draftsman and three administrative support positions. The Board has hearings six times per year in Billings. The principal programs the board operates are data management programs in support of the Board's regulatory program. In 1993 the Legislature gave them duties under the Enhanced Recovery and Horizontal Tax Incentive legislation and new rules have been adopted to implement this program.

In the recent years one of the division's principal activities has been the plugging of orphan wells. One source of the funding for this is statutorily appropriated funds. The Damage Mitigation Account receives a \$50,000 biennial appropriation from Resource Indemnity Trust (RIT) interest income.

Mr. Richmond reviewed the board's activities as a member of the Interstate Oil and Gas Compact Commission.

The Underground Injection Control (UIC) Program is a federally delegated program being operated in the state by the EPA, Region 8.

The board's environmental coordinator position has been delegated to working on the UIC primacy program. At present the position is vacant and there is no funding to fill it. They are continuing to work on the program with the help of a consultant who is also working with the division on another program developing a risk-based data management system. They hope to utilize this system in the UIC program to reduce the amount of staff time spent in the program.

Mr. Richmond said the industry feels strongly that the state should manage the UIC Program, mainly because it would ensure more timely permitting.

Questions: **REP. WISEMAN** wanted **Mr. Richmond** to walk him through why the EPA turned down the application for primacy and also the definition of "underground injection." **Mr. Richmond** said there were numerous reasons why the application was turned down. He feels the issues of concern to the EPA can be addressed without any statutory changes.

Mr. Richmond explained that the UIC program is intended to protect underground sources of drinking water from contamination via oilfield water being injected either for disposal or for enhanced recovery. The program only applies to waste products brought to the surface by a producing oil well.

Mr. Richmond said the board's funding is derived solely from the license and privilege tax for oil and gas production. Another source of income is drilling permit fees.

CHAIRMAN DEBRUYCKER wanted to know why this board was not housed in the Department of Commerce's POL Bureau. **Mr. Richmond** said they are a regulatory agency and not a licensing board.

REP. WISEMAN wanted to know what the consequences would be if the state told the EPA it didn't want primacy. **Mr. Richmond** said the industry tells him an average injection well takes from three months to a year to permit with the EPA. **Tape No. 2:A:000**

On the other hand, the division would issue permits through a board process that would take about 60-90 days. **REP. WISEMAN** wanted to know how many permits were reviewed per year. **Mr. Richmond** said most of the man-hours involved in the process would involve about one FTE's worth of time. Two of the other FTE were intended to be field inspectors. The other position is for administrative support. Regarding the funds intended for these FTE being spent on equipment, he said part of the money was spent for a computer system and part was spent for a field inspection vehicle for the Oil and Gas Program.

Regarding the number of permits per year, he said it was difficult to give an accurate answer because the area permits involve multiple wells. He guessed about 25 permits were processed per year. At present there are about 1,400 injection wells in the state, part of which will have to be re-permitted. Most of the wells are secondary recovery or disposal wells.

In response to **SEN. JENKINS**, **Mr. Richmond** discussed the history of the four FTE which had been approved but not hired (other LFA issues, p. C-104). The 2.5 FTE left after the three are eliminated are currently vacant positions but had been filled when the budget was in better shape. **Mr. Lee** said the \$110,000 of federal funds mentioned on p. C-104 was appropriated through a language appropriation only. The \$280,000 in state special revenue is not in the base because less than \$1,000 of it was spent. In FY88 about \$40,000 worth of computer equipment was purchased and in FY93 about \$16,000 was spent for a vehicle. These were the purchases out of the UIC appropriation.

Mr. Richmond added that the cost of the UIC Program would be paid by permit fees on injection well operators and not on the general industry.

SEN. KEATING wanted an update on the progress of the program to plug orphan wells. **Mr. Richmond** said over the years seven or eight grants have been received for this program. All the wells on those grants have been plugged but one. Three new grants have been received. **SEN. KEATING** wanted to know what happened to unexpended funds. **Mr. Richmond** said they stayed in the state special account, which currently has about a \$2,000 balance.

Ms. Gail Abercrombie, Executive Director of the Montana Petroleum Association, then spoke. The Association has formed a group called Montana Producers for UIC Primacy. The groups twelve

contributors are funding an experienced consultant who is helping the department in this effort. She stressed the importance of timely permitting and expressed optimism about the program's chances of getting primacy, which have improved since the federal elections in November.

SEN. JENKINS asked for **Ms. Abercrombie's** opinion on the proper level of staffing for the UIC Program. She was in support of providing for staff via contracted services until primacy can be gotten.

SEN. KEATING stressed the economic importance of timely permit processing, especially in the case of marginal wells.

Mr. Richmond commented that the last special session of the Legislature had given an incentive for enhanced recovery. In order to do this injection wells are necessary. The incentive project has until 2002 to develop a program.

SEN. JENKINS wanted to know how long it would be until the next application for primacy would be filed. **Mr. Richmond** said the contractor provided by the industry has suggested a target date of October 1995.

Tape No. 2:B:000

After about a 90-day transition period, the program will have full primacy. Part of what has to be demonstrated to the EPA is the department's ability to run the program and he did not think they would get primacy with the current staffing level. **Mr. Lee** said contingency funds for state special revenues would be unlikely to be approved under the budget amendment process unless there was an emergency.

SEN. JENKINS was concerned that the funding for the four FTE in the UIC program was remaining in the base. **Mr. Richmond** explained that the FTE had been converted to contracted services. There is only one FTE remaining in the budget but there is enough money to cover contracting for three more. **Ms. Smith** explained that if the new proposal is accepted, three of the four FTE and \$139,000 in funding will be eliminated from the base. **SEN. JENKINS** argued that the one FTE program manager was a vacant position and did not need to be left in the base either. **Mr. Lee** said the \$609,000 base budget does not include the funds associated with the UIC Program personnel.

EXECUTIVE ACTION ON DNRC
Oil and Gas Conservation Division

Motion: **SEN. KEATING** moved to accept PL Adjustments No. 4, 5 and 6 on p. C-103, and to line-item the funding in PL No. 4 for use only in the UIC Program. **REP. WISEMAN** seconded the motion.

Discussion: **Mr. Richmond** said there would be a short period of time in which they would need to run the program on a contingent delegation and he was unsure how this would work.

Vote: The question was called for and the motion **carried** with **CHAIRMAN DEBRUYCKER** opposed.

Motion: **REP. WISEMAN** moved to accept New Proposal No. 1 on p. C-103; **SEN. KEATING** seconded the motion.

Discussion: In response to **SEN. JENKINS**, Mr. Richmond said his principal concern with removing the program manager position from the base would be that this might jeopardize the program's chances of getting primacy from the EPA.

Tape No. 3:A:000

Hiring a program manager through contracted services would be questionable. Mr. Lee said with three of the four FTE removed, the UIC Program would have about \$280,000 per year in authority. If an additional FTE reduction was approved, appropriation authority would be \$255,000.

Substitute motion/vote: **SEN. JENKINS** made a substitute motion to accept New Proposal No. 1, amending it to a reduction of 6.5 FTE, but authorizing through a language appropriation additional funds to reinstate one FTE to the UIC Program if the granting of primacy to the program was imminent; **CHAIRMAN DEBRUYCKER** seconded the motion. The substitute motion **carried** with **REP. WISEMAN** opposed.

Motion/vote: **SEN. KEATING** moved to include language in HB 2 to appropriate to the Board of Oil and Gas Conservation \$110,000 of federal revenue each year of the 1997 biennium, contingent upon receiving federal funds from the EPA for the UIC Program, as presented in EXHIBIT 2. **REP. WISEMAN** seconded the motion. The motion **carried** unanimously.

HEARING ON DNRC Reserved Water Rights Compact Commission

Mr. Lee gave an overview of the Commission's budget (pp. C-113-114). The Commission is set up to negotiate water rights with the federal government and with Indian Tribes in the state. The intention is to reduce the amount of litigation that would be going on.

Mr. Chris Tweeten, Chairman of the Commission, spoke. The Commission was established in 1979 as part of the statewide water adjudication process. It was intended that the adjudication would include both water rights under state law and federally reserved water rights. He reviewed the differences between state and federal water rights. He stressed the complicated process litigation over federal reserve water rights is: in Wyoming the process has been going on for more than 15 years and has cost many millions of dollars.

Since the mid-1970's the Reserved Water Rights Compact Commission has negotiated three water rights settlements with two of

Montana's Indian Tribes and the National Park Service that have been ratified by the Legislature. A fourth compact has passed the Senate and if ratified will complete the water rights claims on the National Park Service in Montana. The Commission has saved the state millions of dollars in litigation costs in this process.

The water rights claims at the Fort Peck Reservation which were ratified in 1985 were quite extensive. The claims on the Northern Cheyenne Indian Reservation which were ratified in 1991 carry with them an investment by the federal government of upwards of \$50 million for the purpose of renovating the Tongue River Dam.

Four legislators, four members of the public appointed by the Governor and one member appointed by the Attorney General serve on the Commission. Commission staff consists of eleven currently filled FTE positions. The Commission divides itself up into negotiating teams and the staff divides itself up into technical teams when tackling the job of negotiating. He described the complicated process involved in the technical work of negotiating a quantification of a federal reserve water right.

Questions: CHAIRMAN DEBRUYCKER asked if the Commission had an estimated date for the completion of its activities. Mr. Tweeten said under the current legislation the Commission sunsets in 1999. He did not think they would be finished by then but that significant progress will have been made. He estimated the Commission would be able to achieve a settlement with the Rocky Boy Tribes in the coming few years. In addition they are working hard with the Bureau of Land Management over some of their water rights claims in the state. Progress is also being made in negotiations with the Crow Tribe and at Ft. Belknap.

The Blackfoot have terminated negotiations with the Commission and are presently in litigation in water court. Ongoing settlement discussions are being conducted by the Attorney General with the assistance of the Commission.

In response to SEN. JENKINS, Mr. Tweeten detailed the negotiations with Ft. Belknap. The reservation has submitted two different settlement proposals. The problem with Ft. Belknap is they have a substantial damages claim against the federal government that they are trying to roll in with their water rights claim.

The Rocky Boy negotiations have made a lot of progress. The Bearpaw Resource Alliance has worked with the Commission and provided valuable input.

Tape No. 3:B:000

Ms. Susan Cottingham, Staff Director for the Commission, spoke. Tough lessons were learned from the Northern Cheyenne Compact. The compact was negotiated and ratified by the Legislature but Congress had a lot of concerns. With the Rocky Boy negotiations

the Commission is trying to get feedback from Congress before the final agreement is negotiated.

In response to **SEN. JENKINS, Ms. Cottingham** reviewed that the Ft. Peck Compact was different from the others because millions of acre-feet of water was available for the Tribe. The intention of negotiations is to ensure there is enough water for both the Tribe and the local users. In the Northern Cheyenne and Rocky Boy cases it is complicated by the fact that there are unquantified federal water rights.

In order to satisfy all parties the supply of water usually has to be augmented. In the Northern Cheyenne case it is proposed to raise the level of the Tongue River Dam. In the Rocky Boy case that supply may need to be augmented as well, possibly with a pipeline.

EXECUTIVE ACTION ON DNRC Reserved Water Rights Compact Commission

Motion/vote: REP. JOHNSON moved to accept PL Adjustments No. 4 and 5 on p. C-114; SEN. JENKINS seconded the motion. The motion carried with REP. WISEMAN voting "yes" by proxy.

Motion/vote: SEN. JENKINS moved to accept New Proposal No. 1 on p. C-114; SEN. JACOBSON seconded the motion. The motion carried unanimously.

Adjournment: 11:45 a.m.



ROGER DEBRUYCKER, Chairman



DEBBIE ROSTOCKI, Secretary

RD/dr

This meeting was recorded on three 60-minute audiocassette tapes.

EXHIBIT 1
DATE 2/10/95
HB _____

MEMORANDUM

February 10, 1995

TO: Representative Ernest Bergsagel
Chairman, Long-range Building Committee

FROM: Representative Roger DeBruycker *Roger*
Chairman, Natural Resources and Commerce Subcommittee

RE: Fish, Wildlife and Parks' Lodging Facilities Use Tax

Since the lodging facilities use tax allocated to the Department of Fish, Wildlife and Parks is statutorily appropriated to the department by 15-65-121, MCA, for maintenance of facilities in state parks, the Natural Resources and Commerce Subcommittee did not appropriate the funds to the department in House Bill 2.

The subcommittee recommends that you consider our subcommittee action concerning the funds and also not appropriate the funds in House Bill 5, since they are already appropriated by statute.

EXHIBIT 2
DATE 2/10/95
HB _____

REQUESTED LANGUAGE - OIL AND GAS REGULATION

The Board of Oil and Gas Conservation is appropriated \$110,000 of federal revenue each year of the 1997 biennium, contingent upon receiving federal funds from the Environmental Protection Agency for the Underground Injection Control Program.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

COMMITTEE _____

BILL NO. _____

DATE 2/10

SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GAIL ABERCROMBIE	MT Petroleum Assn		

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