

**MINUTES**

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

**COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION**

**Call to Order:** By **VICE CHAIRMAN GERRY DEVLIN**, on February 13, 1995, at 12:40 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: None  
Executive Action: SB 116 and SB 144

{Tape: 1; Side: A}

**EXECUTIVE ACTION ON SB 116**

**Motion/Vote:**

**SENATOR BOB PIPINICH MOVED** to TABLE SB 116. The MOTION CARRIED UNANIMOUSLY.

**Discussion:** Discussion on SB 364. **SENATOR TOM BECK** asked if **Doug Sternberg** had drawn up an amendment.

**Doug Sternberg** replied he did. The amendment reflects the amendment proposed by **Ward Shanahan** and the interim study by the auditor.

**SEN. BECK** said they decided to put in the amendment proposed by **Ward Shanahan** and also the interim study. They would hear SB 364 and **SEN. SPRAGUE** would carry the bill. If they want to do something more with it, that can be decided in the House. That is the recommendation of the subcommittee.

**SEN. DEVLIN** asked if there had been a study before.

**SEN. BECK** replied he did not know.

**SENATOR GREG JERGESON** replied there had been two. He said currently the legislative appropriations subcommittee is looking at reducing the legislative office by five FTE's and this would have them doing another study. He said both of those things could not be done.

**SEN. DEVLIN** replied that would be decided in the HB 2 Conference Committee.

**SEN. JABS** asked if another committee could do the study besides the audit committee? Perhaps a committee made up by the producers that would be financed by a check-off or something. They want to have a study to come up with a recommendation.

**SEN. DEVLIN** replied they could not have it in the industry. It was a legislative function.

**SEN. PIPINICH** replied he could not agree with the amendments. He said they were going to take (b) and (c) out of section 7 and leave the retail prices in. He said they were after the wholesale price and the jobbers price. They were left in the bill and he could not agree with that.

**SEN. BECK** said one of the things they wanted to do was to reduce the price of milk to the consumer. If they leave the retail or the producers controlled, what would the consumer gain?

**SEN. PIPINICH** replied at one time they had taken (d) out of section 7 also. He said the amendments were not doing anything.

**SEN. BECK** replied he was concerned with just throwing the bill out. If they can take the amendments and go back and accomplish something to reduce the price of milk to the consumers, they have accomplished quite a bit. He also recognized a takings problem here. He said he talked to a small retailer in Deer Lodge and they were very concerned that larger grocery stores were going to control the milk market, they would not be able to sell milk for a profit, and they were going to be put out of business. He said he could not guarantee they would not be put out of business. They recommended to the committee that the amendments be put into SB 364.

**SENATOR DON HARGROVE** asked if they had done anything about the milk going across the border and back to get lower prices.

**SEN. BECK** replied that emphasis of the amendments say that if the Board of Milk Control does not do something about it, there will no longer be a Board of Milk Control in the future.

**SENATOR RIC HOLDEN** said heard the testimony that wholesalers were going across the border and they do not need to study that another 2 years if they know what the problem is. If they are going to act on it at all then they should act on it in the next few days, not 2 years later.

**SEN. BECK** asked **SEN. HOLDEN** to give him the wording to put into SB 364 to solve what he was saying.

**SEN. JERGESON** replied that the amendments could be divided with respect to the study.

**SEN. BECK** replied they could strike the study from the amendment. They could add an amendment saying that there could be absolutely no interstate manipulating of milk, but he has to have the terminology for it.

**SEN. HOLDEN** replied he would ask **Doug Sternberg** to draft that. The first amendment says "requiring the retail milk price formula to be computed so that the reductions in the wholesale cost are reflected in the retail price."

**Doug Sternberg** replied they would be left with amendment number two saying: "The Board of Milk Control shall establish a formula for the minimum retail price of Class I milk to be computed in a manner that reductions in the cost of milk at the wholesale level are reflected in the price to consumers at the retail level."

**SEN. HOLDEN** asked **SEN. PIPINICH** if that was what everyone was talking about.

**SEN. PIPINICH** replied that was right, but they want to stop the milk from going across the border and coming back in, and the amendments do not stop that.

**SEN. DEVLIN** suggested that whoever wanted to suggest amendments bring them on Wednesday when they hear SB 364.

**SENATOR REINY JABS** asked if it was possible to stop them from going across the border without deregulating milk completely. We cannot make a law to do that.

**Doug Sternberg** said that it was already technically illegal to sell milk in Montana at a price other than the minimum price established by the Board of Milk Control. He suggested that they take a look at the other provisions in SB 364 because there are also some suggestions the amendment does not address. They need to look at the whole approach of SB 364.

**SEN. BECK** said if they decontrol or stop the milk from going out-of-state and coming back in, there is nothing in SB 364 that says the schools would be getting the milk at a lower price and they could go up to the same rate as the stores. Then they might have made it worse.

**SEN. DEVLIN** replied the committee agrees on most of the things they want to put a stop to. They drew up amendments, and if anyone else wants to suggest amendments, that is what the committee wanted.

**SEN. SWYSGOOD** replied they have to be careful about drafting amendments because of the loophole. They cannot regulate interstate commerce. That is the problem they have when trying to get that industry to say they would not do it anymore, that putting something in law saying they would not do it, because they cannot regulate interstate commerce. It would have to be something they would agree to in front of the committee. The committee would realize a reduced rate to the consumer in the process and if it did not happen, the next session the entire thing would be gone, including the producers.

**SEN. JABS** said the reason they did not take (b), (c), and (d) out of section 7 was because the wholesalers and the producers did not want to take them out. They were trying to protect the producers also.

**SEN. PIPINICH** said they left (a) in there, (b) and (c) are the wholesaler and the jobber price. If those can be driven down it would take the price of milk down.

**SEN. JABS** replied he realized that, but the producers said they did not want to take that out.

**SEN. PIPINICH** asked if the producers said that.

**SEN. JABS** replied that was correct. They do not want to do that at the present time.

**SEN. DEVLIN** replied they had a few days to draft some amendments to SB 364 and they would hear the bill on Wednesday.

#### EXECUTIVE ACTION ON SB 144

##### Discussion:

**SEN. DEVLIN** asked **SEN. HOLDEN** to explain to the committee what the subcommittee had done on SB 144.

**SEN. HOLDEN** said there were three parts of contention in SB 144; the ground water, how much water ARCO should be allowed for their clean-up efforts, and whether or not they should maintain the steering committee or change the committee make-up that is designed in the bill. The subcommittee talked extensively about

the ground water issue. He said it would be appropriate for **SEN. BECK** to make a motion on the ground water and briefly explain to the committee what he would like to see the ground water issued in SB 144 since it is his basin that is being affected.

**Holly Franz** said that on page 2, line 4, section (2), presently says "an application for permit to appropriate ground water for domestic use". If they wanted it to be appropriated for any use. they could strike "for domestic use".

**SEN. BECK** replied that was correct.

**Motion:**

**SEN. BECK MOVED** the amendment "an application for a permit to appropriate ground water."

**Discussion:**

**SEN. DEVLIN** asked if they were crossing out "for domestic use".

**SEN. BECK** replied "for domestic use" was on line 4. He said there was a reference to 35 gallons per minute.

**Holly Franz** replied there was not an actual reference to that in SB 144, because they were exempt from the permit process. She said they may want to get rid of the definition of "domestic use" on page 18, line 1.

**SEN. BECK** replied they did not need the definition of "domestic use" on line 18, page 1. The title may have to be checked also.

**SEN. DEVLIN** asked if the amendment would be taking out all mention of "domestic use" throughout the bill.

**SEN. JERGESON** said by striking "for domestic use" subsection (2), says "the provisions of subsection (1) do not apply to an application or permit to appropriate ground water." That is all they need to say to not apply the closure in the basin to ground water.

**SEN. BECK** replied he did not see anything in the title that states ground water. He wanted to make sure the surface water was still under closure and it is.

**Doug Sternberg** replied he wanted to check the taking of "domestic use" out of those sections. He would want to make sure the phrase was not used somewhere else.

**SEN. BECK** replied that if it was used in another section they would want it taken out of that section also.

**SEN PIPINICH** asked where they came up with the 35 gallons per minute.

SEN. BECK replied a person does not need a permit to drill a well for less than 35 gallons per minute. He stated he did not want to get rid of the permit. If a person was drilling a well for over 35 gallons per minute they still have to get a permit.

SEN. DEVLIN replied they were on the amendment to take out the words "domestic use" on page 2, line 4 and they would follow that up throughout the bill.

Doug Sternberg said he did not see any other section where the reference was made toward "domestic use". He said they could also strike the definition on page 1, line 18 through 21.

SEN. BECK replied it was the definition of "domestic use" in SB 144.

Doug Sternberg replied they would take out the definition on page 1, line 18. On page 4 they would take out "for domestic use".

SEN. DEVLIN asked if that took care of the amendment.

SEN. JERGESON replied he did not approve of the amendment, but he would not resist the amendment because it would jeopardize the passage of SB 144. He said they did not know much about ground water. If in the future the drilling of more wells and the use of ground water is proven to adversely affect the surface water, how do they go back and fix that. A moratorium on ground water would be appropriate because they would continue the studies to see if there was a connection between the two.

Vote:

The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON AMENDMENT CONCERNING THE ARCO EXEMPTION

Motion:

SEN. BECK replied ARCO said they might need as much as 10 more cubic feet of water for their purposes. He said he was not getting rid of the exemption. SEN. BECK MOVED to put an amendment in that would put a parameter on ARCO that they could not exceed 10 cubic feet per second.

Discussion:

SEN. PIPINICH asked if that was in SB 144.

SEN. BECK replied they were exempt from surface water for Super Fund activities. He was trying to put a cap on how much water they were going to get. The reason for SB 144 was that there was a strain on surface water. It would be on page 2, line 8.

SEN. DEVLIN asked what that would limit them to.

**SEN. BECK** replied it would limit Arco to 10 cubic feet per second.

**SEN. HOLDEN** asked if that would be enough water to clean up the pollution problem. He said that **SEN. BECK** told him he was told by ARCO that was what they needed.

**Doug Sternberg** replied the amendment would be on page 2, line 8, following the added "1994" a new sentence would be added saying "The total flow rates for all permits issued under subsection (2) (b) may not exceed 10 cubic feet per second."

**Vote:**

The **MOTION CARRIED UNANIMOUSLY.**

**Discussion:**

**SEN. HOLDEN** stated that dealing with the steering committee make-up, they have to decide if they want to keep the steering committee and if they do, make the steering committee make-up appropriate to handle two duties.

**SEN. JERGESON** replied they ought to keep the steering committee and they could not create a closure and then walk away. There should be a steering committee in place to review the closure.

**SEN. DEVLIN** asked what the make-up of the steering committee was.

**SEN. BECK** replied the make-up of the steering committee was on page 3 of SB 144.

**SEN. DEVLIN** asked the committee if they were satisfied with the membership of the committee.

**SEN. BECK** replied there was the argument that the steering committee was overloaded against agriculture. There were not very many actual people from the grassroots of the basin and some did not approve of the Northern Lights moderating the committee, but Northern Lights did an excellent job. Line 26 under the steering committee it says "make recommendations to the 1997 legislature concerning representation, terms, and the method of appointing members to the steering committee".

**SEN. PIPINICH** asked if they wanted more people from agriculture on the steering committee.

**SEN. BECK** replied there were agriculture organizations, conservation districts, departments in state government, environmental organizations, industries, local governments, reservation applicants, and utilities. There are also water user organizations and that is part of agriculture. He said he would

be willing to leave the committee as it is and in 1997 let the steering committee give their recommendation if it needed some improvements.

**SENATOR DON HARGROVE** said it read "The director should appoint the members". They are guidelines and the director could do whatever he wants. Is that the point they should address?

**SEN. BECK** replied he did not know who should actually make the appointments.

**SEN. HARGROVE** asked if it would be a good idea to take the "but is not limited to" out of the bill? Then they would leave the steering committee membership the way it was and they would know who would be on the committee.

**SEN. BECK** said they could leave it somewhat the way it is, but there ought to be a limit to the number of people on the committee.

**SEN. DEVLIN** said maybe it would be better to say "one person from each of the following". That would help on the size of the committee.

**SEN. BECK** replied the way it was structured was it had agriculture organizations and water user organizations. If they only had one member each, the committee would be unbalanced. He did not feel as if the steering committee was too unbalanced before. He would recommend the same steering committee come back with recommendations during the next legislature. He said they came from a number of sides on the committee.

**SEN. PIPINICH** replied there were 22 members.

**SEN. DEVLIN** asked if they thought the total steering committee ought to be cut back in numbers.

**SEN. HOLDEN** replied there were nine areas. Twenty one would be too many and nine would not be enough.

**SEN. BECK** said he they would have to weigh the organizations. He did not have that information to make that decision.

**SEN. JERGESON** replied that on that the current steering committee was appointed by the Director of Natural Resources and Conservation and they tried to balance that to their ability. They have to leave it to the current director of DNRC. They probably do not want it to grow beyond their ability to be able to have a meeting and have enough people there to participate. To try and limit it beyond the judgement of the director would be a mistake. They should leave it the way it is.

**SEN. PIPINICH** said the people were qualified who were members of the steering committee and they have done a good job.



SEN. DEVLIN asked if there were any other amendments.

SEN. JERGESON replied there was a technical amendment on page 21, line 5. It inserts "permits and water reservations" following "rights."

EXECUTIVE ACTION ON AN AMENDMENT TO SB 144

Motion/Vote:

SEN. JERGESON MOVED the technical amendment. The MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. DEVLIN asked if the committee would like to hear from some of the interested groups in the audience.

SEN. HOLDEN said yes, if there was anyone who wanted to speak for 1 to 2 minutes per person and move on.

SEN. DEVLIN said those people with a few words to say could speak for a few minutes.

Jim Dinsmore, a steering committee member from the Flint Creek Valley, stated that they were concerned with ground water. No one on the steering committee had any intent of saying they should not develop ground water if it was available. He said he was very concerned if ground water was left open, what would become of his property right and his water right. It was in a small creek. If someone drilled a well above him that would diminish his water supply. If it was an individual, or another irrigator, he felt confident that he could proceed within state laws to defend himself. If it was a 500-house subdivision or a big cooperation state laws would not really come into play. It was still a property right he had to defend. Leaving ground water open would be putting a burden on the small users.

Jo Brunner, a member of the steering committee, stated that over the years the committee worked on the issue, they were mandated by the legislature to come up with certain specifics. The first thing was to consider all benefits and balance all uses of the Upper Clark Fork River Basin. The committee was balanced. There were nine that represented agriculture. She said the legislation requests continuing for 2 years in order to get the program into local hands. After that the legislature would make the determination of who would make up the committee. She said it was important to keep the committee. It was not a one-time minute response and request for the closure of ground water. At everyone of the meetings, there was at least one and sometimes several requests, to close ground water. The main reason was to protect the existing rights. There is a correlation between

ground water and surface water and there is a correlation between deep water. There was a great concern of the agricultural community that those deep aquifers had to be protected. She requested if they were going to eliminate any protection of the existing agriculture rights or other rights, that they put into it some type of a vehicle that would allow for the study of ground water. They need to know where the water comes from.

**Terry Lindsey, representing the Montana Water Well Drillers Association**, said they needed the scientific studies and they are going on through Montana Technology in Butte. They have laws to protect existing water rights and users.

**SEN. DEVLIN** asked if they were going to drill water for a large subdivision, would they not be surpassing 35 gallons and would they not have to get a permit from the DNRC.

**Jim Dinsmore** restated the exemption for domestic use and whether it was in a single household or for a multiple purpose well or a multiple user well.

**SEN. DEVLIN** said he thought they would have to get a special permit for 35 gallons or more.

**Jim Dinsmore** replied they did.

**SEN. DEVLIN** replied that would surpass the argument on a large subdivision coming in.

**Jim Dinsmore** replied it could still have some argument dealing with single house wells. He said his comments were coming from the area he resides in.

{Tape: 1; Side: B}

**SEN. DEVLIN** said they would take executive action on SB 144.

EXECUTIVE ACTION ON SB 144

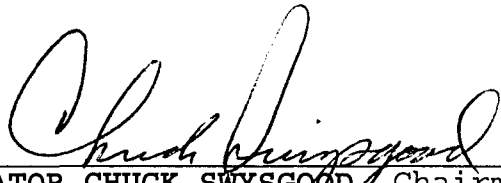
Motion/Vote:

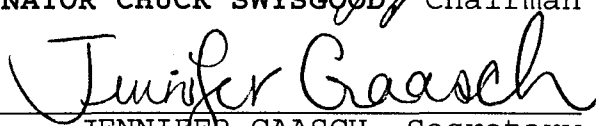
SEN. PIPINICH MOVED TO PASS SB 144 AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

The EXHIBITS #1 AND #2 were handed out before the committee meeting, but those parties did not testify in front of the committee.

ADJOURNMENT

Adjournment: 2:05 p.m.

  
\_\_\_\_\_  
SENATOR CHUCK SWYSGOOD Chairman

  
\_\_\_\_\_  
JENNIFER GAASCH, Secretary

CS/jg

MONTANA SENATE  
1995 LEGISLATURE  
AGRICULTURE COMMITTEE

## ROLL CALL

DATE \_\_\_\_\_

2-13-95

[illegible]

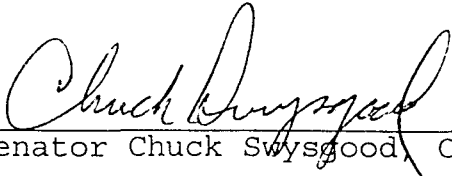
SEN:1995  
wp.rollcall.man  
CS-09

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 13, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 144 (first reading copy -- white), respectfully report that SB 144 be amended as follows and as so amended do pass.

Signed:   
Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 1, lines 18 through 22.

Strike: "Domestic" on line 18 through "(3)" on line 22

2. Page 2, line 4.

Strike: "for domestic use"

3. Page 2, line 8.

Following: "1994."


Insert: "The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second."

4. Page 21, line 5.

Following: "rights"

Insert: ", permits, and water reservations"

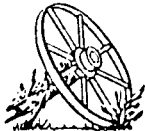
-END-

  
Amd. Coord.  
SA Sec. of Senate

371420SC.SPV

EUGENE MANLEY  
Broker

SB 144



15 Willow Tree Lane  
Hall, Montana 59837  
(406) 288-3409

Ranch Broker Consultant

Water Rights Consultant

January 29, 1995

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-13-95

BILL NO. SB 144

Chairman Swysgood, Chairman  
Senate Agriculture Committee  
Capitol Station  
Helena, Montana

Dear Chairman Swysgood;

As a member of the upper Clark Fork Steering Committee I feel I must answer some of the criticisms I heard during last Friday's hearings on Senate Bill No. 144.

I missed only three of the seventy five meetings outside of my basin and can only wonder where were those who spoke as opponents of the plan when these meetings took place. I think the committee went the extra mile through ads and news releases to get more of the public involved. One of the reasons we set up watershed committees was to get more grassroots input and much of the plan reflects that public involvement.

In regard to the comment to the effect that storage is not adequately represented on the committee, I would have some disagreement with that. My irrigated lands are almost totally dependent on waters from the two storage facilities used in our basin.

For fifty five years I have been actively involved in the East Fork storage as a contract holder and as Executive Secretary of the Allendale Irrigation Company. That time period covers the entire history of that storage project. I spent many days and hours in those years helping make that a more efficient system.

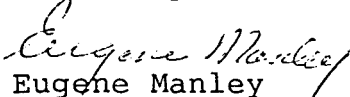
Even though I own no water in the Willow Creek Dam, my water right on Willow Creek is totally dependent on return flows from that facility after early June of each year.

On June 10, 1992 I conducted a tour of the Upper Clark Fork Steering Committee through the entire Flint Creek Basin and two of the topics highlighted were our storage facilities on Willow Creek and the East Fork of Rock Creek. I also stressed the role return flows from these facilities play throughout the basin.

I would most urgently plead with you too keep the Upper Clark Fork Steering Committee as it presently exists. Let us, as a committee, make recommendations to the 1997 legislature as to representation, terms, and methods of appointment, as Senate Bill 144 calls for. The past meetings and those meetings for the next two years should give the committee special insights, through what they have observed and will observe, as to how the Upper Clark Fork Steering Committee should be structured after 1997.

We now have a committee of twenty very dedicated people, and I consider it an honor to have been associated with them in this endeavor to draw up the Upper Clark Fork River Basin Water Management Plan. As someone with many years of water management experience, I realize much remains to be done, and the continuity of the present committee is a very necessary element for the progress we hope to make in the next two years.

Sincerely

A handwritten signature in cursive script, appearing to read "Eugene Manley".

Eugene Manley

Member Upper Clark Fork Steering Committee



## TESTIMONY

## SENATE BILL 144

GOOD AFTERNOON. MY NAME IS JIM QUIGLEY, RANCHER AND IRRIGATOR, REPRESENTING THE LITTLE BLACKFOOT RIVER ON THE CLARK FORK STEERING COMMITTEE.

I WOULD LIKE TO SAY I HAVE ENJOYED WORKING WITH THE OTHER STEERING COMMITTEE MEMBERS AND BEING A PART OF THE STEERING COMMITTEE, ITSELF.

THE CLARK FORK WATER MANAGEMENT PLAN MAY NOT BE PERFECT IN EVERY WAY, DUE TO THE COMPLEX AND IMPORTANCE OF WATER ISSUES AND THE TIME-FRAME IN WHICH THE COMMITTEE HAD TO WORK.

I FEEL THIS STEERING COMMITTEE AND CLARK FORK RIVER MANAGEMENT PLAN, IF ALLOWED TO CONTINUE, IS A MAJOR START ON WORKING WITH ALL ENTITIES THAT ARE SO DEPENDENT ON ONE OF OUR MOST LIMITED AND VALUED RESOURCE.

THIS COMMITTEE AND THE WATER MANAGEMENT PLAN HAS THE START IN ADDRESSING THE WANTS OF TODAY. THE BIG JOB IT WILL HAVE IS ADDRESSING THE NEEDS OF TOMORROW.