

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN CHUCK SWYSGOOD, on February 13, 1995,
at 11:35 a.m.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Ric Holden (R)
Sen. Greg Jergeson (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: This was a subcommittee meeting
concerning SB 144.
Executive Action: None

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

Discussion:

CHAIRMAN SWYSGOOD said SB 144 was the closing of the Clark Fork River Basin to further appropriations and the purpose of the subcommittee is to address the concerns of three different issues. One area was the ground water, one was the committee and the other was the Arco. He asked if SENATOR VIVIAN BROOKE wanted to address the amendments they have proposed.

SENATOR GREG JERGESON asked if they could briefly review what each of the issues constitute.

CHAIRMAN SWYSGOOD replied that in relation to the ground water issue, the basin was closed to all ground water in SB 144 as currently written, except for stock use, water storage, or power generation. He said that the concern by the people was very restrictive. The issue of Arco was allowing them the exemption from the closure of surface water rights because of the clean-up and other things associated with the super fund. The concern

about the committee was the make-up of the committee and whether there was a need to continue the committee and what was going to be accomplished if the committee was continued. Those are the three areas of concern that were in SB 144.

SEN. JERGESON said when he thought about the process that had gone on for a 4 year period some of the decisions that they might make in the legislature and in committee can impact whether or not those kinds of negotiations will be successful in other areas of the state. He said that he hoped they would not make major departures from the product of this process.

CHAIRMAN SWYSGOOD replied he did not live in the Clark Fork Basin, but his basin has been through this process and is currently closed and has a ground water study going on in that basin. He said there are concerns expressed and they will address some of those concerns to see if they can be worked out without upsetting the work that has been done.

SEN. BROOKE said she offered a minor amendment to include the wording "permits and reservation" that had been left out and it was a clean-up amendment to make the language consistent throughout the bill regarding changes in permits and reservation. She said at the time of the hearing and discussions with people who were concerned about the groundwater closure there have been some amendments that have been prepared for the committee's consideration. She said she did not want to say at that time that the steering committee was in support of those amendments because what they have put in the bill was their best effort at trying to address the issues they heard during the meetings. She said they have requested to leave the language the way it is and it would be up to the legislature to change it as they saw fit. For that purpose some of the people have proposed amendments for that consideration.

CHAIRMAN SWYSGOOD asked that those people in the audience who had concerns about groundwater to give the subcommittee an explanation of what the concern is.

Terry Lindsey, representing the Montana Water Well Drillers Association, said the bill closes the filling of over 35 gallons per minute. Their concern was that it needs to be based on a scientific study and not on if an individual thinks water table drops three feet and that could be a natural occurrence. He said that it should be based on science so when they drill a well even if they can prove it would have no effect on the surface water. He said underground water that is not attached to rivers that is their position, that the deeper underground waters have direct attachment and never have had in 99% of the cases and if they were shut off it would be a disservice to the economy of Montana and the area.

Bob Chamberlin, a water well driller who had a ranch in the Clark Fork River Basin, said he agreed with the comments of the previous gentleman. He said that running a business in the valley he always thought he might want to drill a well on his place because he does not have any surface water there.

CHAIRMAN SWYSGOOD said the way SB 144 was written the basin would be closed to any well drilling except for the use of stock water purposes, application to store water, or an application for power generation. He said he did not think there was an indication in the bill that would allow for emergency drilling of a well.

Holly Franz replied she did not know what he meant by an emergency purpose.

CHAIRMAN SWYSGOOD replied he was talking about if there was an existing well and something went wrong with it under the language in SB 144 would it allow for the drilling of another well.

Holly Franz replied that was a replacement well. It would be the same permit and the same priority date, they just drill a replacement well. It would not be covered by the bill and it is a different subject. There is also the domestic exemption for groundwater.

CHAIRMAN SWYSGOOD said there were no exemptions for industrial.

Holly Franz replied that was correct.

SENATOR RIC HOLDEN replied if they excepted the amendment and then in a few years it showed to be a problem they could come in and do something with the groundwater.

CHAIRMAN SWYSGOOD replied he was sure that could be done.

SEN. BROOKE replied that **Mr. Evan Barrett** who testified at the hearing and has since reconsidered his position and he supported the bill. His concern was the industrial position.

Doug Sternberg replied that there were three amendments and one of the amendments would strike the definition of domestic use on page 1, and strike the reference to domestic use on page 2, line 4 and insert the new section 85-2-337 which would require the Department find by preponderance of the evidence that either the source of the ground water was not part of or connected to surface water or that the proposed amount would reduce surface water flows during the low periods of July through March. It limits the scope of the appropriations to that low flow period. A lot of the other references change internal references throughout the bill to correspond to the adding of the new section.

CHAIRMAN SWYSGOOD asked if that was the amendment they had looked at.

Terry Lindsey replied they did not look at an amendment pertaining to domestic uses.

Holly Franz replied it would apply to any permit. Any well over 35 gallons per minute. None of that would apply to wells under 35 gallons per minute because they do not need a permit.

CHAIRMAN SWYSGOOD replied it applied to those wells of 35 gallons per minute or over. In applying for the permit a professional engineer or hydrologist would verify the source of the ground water and that it is not connected to surface water and the proposed appropriations would not reduce water flows during the low flow period of July through March. He said that would allow for the drilling of the wells as long as they met the criteria.

CHAIRMAN SWYSGOOD asked **Holly Franz** about "the proposed appropriation will not reduce water flows during the low flow period of July through March." How would the person asking for a permit to drill ever prove beyond a reasonable doubt that the well would not reduce the flows, that seems to be broad in its implications. How would they prove that it would not.

Holly Franz replied that it was up to the expert opinion by a professional engineer or hydrologist. She said when it comes to the amendments they need some expert opinion concerning the water rights. Of the different proposed amendments there an amendment dealing with non-alluvial water that it goes to the deeper aquifers which have a less direct tie to surface water and she suggested that amendment if the committee wanted to limit it. It would be a lot simpler.

CHAIRMAN SWYSGOOD asked if the amendment she proposed would preclude about any shallow well.

Holly Franz replied yes, the information is that there is a shallow alluvial aquifer about 25 foot deep in the Deer Lodge Valley. She said that was generally how most of those valleys are.

CHAIRMAN SWYSGOOD asked him about the amendment proposed by **Holly Franz**.

Terry Lindsey said the question was the non-alluvial ground water. If they were talking about the 25-30 feet right next to the river they would have to agree that would be alluvial ground water. In some valleys that goes for 500-800 feet deep which is not directly connected to the surface conditions at all. He said he did not know if they could just draw a line and say you cannot use alluvial ground water because there is a lot of alluvial ground water that is not connected to the river.

CHAIRMAN SWYSGOOD replied neither one of the amendments are simple and they both have an impact as to the ability to drill ground water. He said he had a problem with the amendment offered by **Holly Franz**. The only problem he had with the other amendment was how it related to the water flows during a low flow period. That is a real concern, not that they would not want to have some criteria if that was the case, it is how do they prove it.

SEN. JERGESON asked if **CHAIRMAN SWYSGOOD** had a problem with the bill without an amendment addressing that particular issue.

CHAIRMAN SWYSGOOD replied that he had a problem that they close the basin to ground water development. He said a closure was permanent. He replied he did not have a problem with the service water and it was probably already over appropriated. The key here is the connection between ground water and surface water. He said the other part of it is in the areas where they drill a well for a purpose such as an irrigation purpose and the person uses as sprinkler system there is no credit given to how it replenishes the aquifer at a later period of time and that has to be considered. He said this is an area that has a lot of impact as it relates to the basin. The way the bill is currently written whatever is there now is about all that is going to be there, other than some home building. The rest of it is restricted from ground water development and that is why he has a problem with the bill.

SENATOR TOM BECK would propose an amendment to take the ground water out of the bill. He said he was speaking for living on the Clark Fork drainage. He said the studies have not been done and they do not know where they are at with the ground water. There is plenty of ground water at the present time because there does not seem to be any drop in the water table. They should take a look at what they are doing to ground water, but it should not be in the bill. On the amendment offered by **Holly Franz**, that is putting it very subjective as to where they are going to drill the well. He said he did not know who was going to determine that because the studies are not there. He said he was not sure about the Blackfoot and if they wanted to leave the moratorium on then he did not know. He did not think that it would be any different in the two basins. He said he would come in with an amendment to take ground water out of the bill.

CHAIRMAN SWYSGOOD replied the amendment would completely eliminate the reference to ground water in SB 144.

SEN. JERGESON asked if **SEN. BECK** would take ground water out even for the ground water that would impact the surface water or was he suggesting that there was none of that.

SEN. BECK replied he was suggesting that there was none of that. He replied he did not know of any wells that are affecting the surface waters. Most of the wells if a person was going to drill far enough down to get the type of water that they want are down 300-400 feet and that would be below the alluvium. He said the only wells that are 25 foot wells are house wells.

SEN. JERGESON said if they took ground water out completely and the permits were issued for a long draw on ground water and it was found to impact the surface water then where would they be.

Terry Lindsey replied the DNRC already addresses that. If they can prove direct contact to the river currently they will not give them a permit under their present permitting laws.

SEN. BECK replied he thought the laws were already in place that a person cannot drill a well that would directly affect surface water.

Doug Sternberg replied he thought that was correct.

Holly Franz replied that was the language they put in the Clark Fork with the direct or substantial impact. If the cone of depression of that well was to intersect surface water they cannot get a permit. He said if they were going to take ground water out, take it out for all of the sub-basins. The sub-basins should be treated equally.

CHAIRMAN SWYSGOOD asked if it was the consensus of those members of the audience that were on the steering committee that if the ground water came out for one sub-basin that it should come out for all of the sub-basins.

Lion Lindberg replied yes.

CHAIRMAN SWYSGOOD replied they would recommend to the full committee what they had discussed and it would be up to the full committee to take the amendments or not.

SEN. JERGESON suggested the amendment which was fairly long was pretty much a middle ground between those who would suggest they do not amend anything with respect to ground water and those who suggest taking ground water out of the bill. The amendment says that the closure would only apply to that water that is connected to the surface water. He said that would clarify for that purpose of the closure that it would be the situation. If it was proved that it was substantially directed to the surface water then it may in fact affect water flows during low flow periods.

CHAIRMAN SWYSGOOD replied he was reading the amendment to say that in order to get a permit the department shall find, based upon substantial credible evidence, that the source of ground water is not a part of, or substantially or directly connected to

surface water. They cannot currently issue a permit under law that would allow that to happen. That was just a restatement of what is in current law. They then say that the proposed appropriation will not reduce surface water closed during low flow periods. It does not have anything to do with the connection to surface water. It was saying that it would not reduce surface water flows. He said that was the question mark.

Holly Franz replied that was correct.

CHAIRMAN SWYSGOOD said during low flows just about anything could affect low flows. That is the only problem with the amendment.

SEN. JERGESON asked if that part was not added then the closure would be effective on ground water if it was substantially or directly connected to surface water. Whether it effected water flows or not. In order for the ground water application to be closed it also has to be proven that it was directly or substantially connected, but if it also reduces the surface water flow. The person who has to grant the permit has to prove two things.

CHAIRMAN SWYSGOOD replied the person drilling the well would have to prove those two things.

Terry Lindsey asked how do they prove that.

CHAIRMAN SWYSGOOD replied they have had a study for five years in his basin and he was not sure that there was some viable information that was going to prove what the connection would be. He said the costs associated with proving that would for go the drilling of any wells.

Jo Brunner, a member of the steering committee, said perhaps the one way that it could be proved if they had an irrigator with a deep well and has been irrigating for some time and there is a low flow and another deep well has been allowed they might find that they have allowed another well or several more wells that will, at low flow time, upset and drain the irrigators well.

CHAIRMAN SWYSGOOD replied he was not sure where she was coming from, but in his area where that study is in place to prove that very thing, they took an area where there was a heavy concentration of deep irrigation wells and they showed on a chart every time the pumps are turned on and the exact day they are turned off because the aquifer will drop. There are so many of them that go on around May 15 when the irrigation starts and that aquifer levels out and it will stay that way until they shut them off to cut hay. Then the aquifer comes back up and when they are turned on after the hay is off, it goes down and reaches that point and it stays there. That shows that the aquifer was being drawn down, but it does not show that it had a connection to the Beaverhead River which is 4 to 5 miles west of the wells. That is what this is all about, when proving it would reduce the flow

of the Beaverhead or if someone else wants to put another well in, it might have more effect on the other 15 wells than the flow in the river. He said he did not know they could prove it. He thinks it puts a financial burden on the applicant and it would be hard to scientifically prove.

Holly Franz replied he had a point, and the deep wells were not the concern as much as the alluvial wells. 25% of the surface water comes in and out of the river as recharge, discharge as it goes from losing and gaining stretches and that is the real concern.

EXECUTIVE ACTION ON AN AMENDMENT TO SB 144

Motion:

SEN. JERGESON MOVED the amendment as a recommendation to the full committee.

Vote:

The MOTION FAILED with SENATOR SWYSGOOD AND SENATOR HOLDEN voting no.

EXECUTIVE ACTION ON A SECOND AMENDMENT TO SB 144

Motion:

SEN. JERGESON MOVED the amendment to clean-up the language on page 21, line 5.

Vote:

The MOTION CARRIED UNANIMOUSLY.

Discussion:

CHAIRMAN SWYSGOOD said some of the amendments when the full committee takes executive action on SB 144 can be offered and the committee will vote on them at that time. There was the Arco issue to resolve. There was some concern as to why they were being exempt from the process. He said they could discuss the amendments as it relates to what has been proposed in the Agriculture Committee meeting. He said SENATOR TOM BECK has an amendment that he would like to offer about the 10 cubic feet per second on page 2, line 8. He said that dealt with the super fund and the Arco situation. Following "1994" SEN. BECK would probably have an amendment saying something like "the total flow rates for all permits issued under this subsection 2 (b) may not

exceed 10 cubic feet per second." The way it is currently as the bill relates to Arco's exemption would be that there was no restriction on what they can get.

Holly Franz replied that was correct. There is a time period in which they can apply, but there is not restriction on the flow rate that they can be permitted.

SEN. HOLDEN asked if **SEN. BECK** had an amendment made up that dealt with ground water.

CHAIRMAN SWYSGOOD replied he did not think he did. He said that **SEN. BECK** had previously stated his position that he wanted ground water eliminated from the bill. He said they would have to put language in that applies to all sub-basins within the Clark Fork drainage, which was the suggestion of **Holly Franz**.

SEN. HOLDEN asked if he was going to take that motion when they meet as a whole committee.

CHAIRMAN SWYSGOOD replied that was correct.

SEN. JERGESON said the focus on the issue of the amendment by **SEN. BECK** as to the Super Fund issue and Arco. What they do not know about ground water and waiting until a problem arises before they do something or allowing things to go on until they create a problem is ironic in that was the attitude that they let Arco do things over the years and now they are cleaning up a problem and it is costing a lot of money on the part of Arco and the tax payers to clean up that problem. He hoped they remembered that when they decide that they were not going to do anything about ground water because no one had proven that a problem exists. He said they would then be reversing something that was in place. He said that would be extremely expensive and hard to do.

CHAIRMAN SWYSGOOD said Arco's exemption was to the surface water. Their exemption was to the surface or the ground water. They were being exempt from any of the restrictions that are on the other users of water in that basin. He said that is why he would like **SEN. BECK** to address that issue. He said he would assume there was some concern as to Arco as it relates to all of the ponds they have and the flow that was going into those ponds and why that cannot be used in some other clean up process. He said they would have to address that issue when **SEN. BECK** was present. The bill does exempt Arco from both the moratorium on surface water rights and ground water rights.

SEN. JERGESON replied he did not have a problem with the language. The only thing is the exemption as it is in the bill is part of the cost of not having dealt with problem years ago while it was manageable and now they were cleaning up a mess.

CHAIRMAN SWYSGOOD said his point was well taken. He said it would be his intent if they were not through with SB 144 after

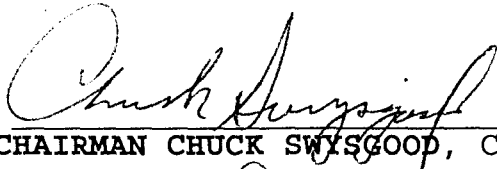
the full committee meeting they would try to continue on with the subcommittee upon adjournment of the Senate if that was alright with **SEN. BROOKE**.


SEN. BROOKE replied that would be fine.

CHAIRMAN SWYSGOOD asked the members of the audience to stay around because the full committee would be starting. . If they could they would continue with SB 144.

ADJOURNMENT

Adjournment: 12:35 p.m.


CHAIRMAN CHUCK SWYSGOOD, Chairman


JENNIFER GAASCH, Secretary

CS/jg

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE
SUBCOMMITTEE ON SB144

ROLL CALL

DATE _____

2-13-95

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SEN:1995
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DATE February 13, 1995

SENATE COMMITTEE ON Sub Committee SB 144

BILLS BEING HEARD TODAY: none

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Check One

Name	Representing	Bill No.	Support	Oppose
Please Print				
TERRY LINDSAY	Montana Water Well Drillers	144		✓
LINDA LINDSAY	Montana Water Well Drillers	144		✓
Larry Brown	Ag Pres. Assoc	144		✓
Bob Chamberlin	MONTANA WATER WELL DRILLERS - LAND OWNER	144		✓
Jim Quigley	Big Blackfoot River Steering Committee Member	144	✓	
Gary Ingman	MT. Dept. of Health, WQ Div.	144	✓	
Land Lindbergh	Big Blackfoot River Steering Committee	144	✓	
Jim Dinsmore	Granite Cons. Dist	144	✓	
Eugene Monkey	Flint Creek Basin	144	✓	
Virian Drake	SD 33	144	✓	
Holly Franz	Montana Power Co	144	✓	
Jo Brunner	Steering Com	144	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY