

MINUTES

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

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on March 2, 1995, at
3:00 p.m.

ROLL CALL

Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Bruce D. Crippen (R)
Sen. William S. Crismore (R)
Sen. John R. Hertel (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Judy H. Jacobson (D)
Sen. Terry Klampe (D)

Members Excused: Senator Bob Pipinich

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Serena Andrew, Committee Secretary

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

Committee Business Summary:

Hearing: HB 62, HB 122, HB 312
Executive Action: HB 62, HB 122, HB 312

{Tape: 1; Side: A}

HEARING ON HB 62

Opening Statement by Sponsor:

REPRESENTATIVE MARIAN HANSON, HD #1, ASHLAND, told the committee her bill would prohibit the use of rifles for spring turkey hunting. Purpose of the bill is safety - in the spring turkeys are still close to ranch buildings where they have been feeding throughout the winter, and buildings have been shot.

Proponents' Testimony:

REPRESENTATIVE JACK WELLS, HD #27, BOZEMAN, commented that it was a matter of ethics as well as safety. He said he had recently hunted turkeys from a blind while wearing camouflage clothing. Other hunters drove nearby and he heard a high-powered rifle. He was sure those hunters couldn't see him. With the popularity of turkey hunting, he could foresee the possibility of a bad accident, and didn't want to see that happen. A restriction is needed on spring gobbler season. Toms are very vulnerable in their spring mating season and can be easily taken with a shotgun. He recommended a do pass vote on the bill.

JEAN JOHNSON, MONTANA OUTFITTERS & GUIDES ASSOCIATION (MOGA), distributed testimony from Russ Greenwood (EXHIBIT #1), who was adamantly opposed to hunting turkeys with a rifle in the spring.

She stated that while people say there are rifle loads that can be safely used, birds that have been shot are sometimes able to travel for a distance. Hunters should be close enough to finish off a wounded bird. Mr. Greenwood has found birds that have died after being wounded by a side-to-side shot.

Opponents' Testimony:

TONY SCHOONEN, ANACONDA SPORTSMEN'S CLUB, said his organization didn't see any need for this bill. The Fish, Wildlife & Parks Commission has the authority to set seasons and regulations and a landowner can dictate the type of weapon to be used on his land. The weather is also a factor in determining the type of weapon. He didn't like to see opportunities limited.

It is better to shoot with a rifle in some cases. He had taken turkeys with a rifle and found pellets in them, indicating that they were wounded by a shotgun from too far away. He felt this bill would take away the public's right to select a weapon.

BILL HOLDORF, SKYLINE SPORTSMEN, commented that once the choice of weapon is taken away in the spring, the fall hunt will follow. He didn't know of one case in Montana where someone was killed with a rifle while hunting turkeys. He asked the committee to vote against HB 62.

JIM RICHARD, MONTANA WILDLIFE FEDERATION, characterized the bill as a loss of opportunity, and pointed out that landowners can regulate the type of weapon used on their lands.

Informational Testimony:

PAT GRAHAM, DIRECTOR, DEPARTMENT OF FISH, WILDLIFE & PARKS (DFWP), said his department would not take a position on the bill but furnished informational testimony (EXHIBIT #2).

Questions From Committee Members and Responses:

SENATOR BRUCE CRIPPEN, SD #10, BILLINGS, asked if the bill were the first step toward eliminating rifle season for turkeys in the fall. REPRESENTATIVE HANSON assured him that was not her intent. In the spring gobblers are close to buildings and that was her only reason for introducing the bill.

SENATOR AL BISHOP, SD # 9, BILLINGS, asked if the Fish, Wildlife & Parks Commission could presently regulate the means of taking as to rifle or shotgun. Mr. Graham replied that they could.

CHAIRMAN MESAROS asked if the reason REPRESENTATIVE HANSON only wanted to eliminate the use of rifles in the spring was that turkeys are close to buildings in the spring but dispersed in the fall. REPRESENTATIVE HANSON said that was correct. She never sees a turkey until January, but then they are around until April when hunting season starts. Hens are away, but gobblers stay in close.

SENATOR JUDY JACOBSON, SD #18, BUTTE, said Mr. Graham's testimony mentioned that the department hasn't done a survey on this issue recently, and asked if one were planned. Mr. Graham said he didn't know of any specific plans. It would depend on whether or not there is sufficient interest from hunters. He was sure the commission would authorize a survey if one were requested.

SENATOR JACOBSON asked if the commission could make changes if a survey indicated a change should be made. Mr. Graham indicated that it could.

SENATOR BISHOP asked if anyone had requested a change in the means of taking during spring turkey season. Don Childress, Administrator, Wildlife Division, DFWP, replied that the commission had received a number of requests over the years and the turkey issue was addressed three years ago. Statewide public comment indicated a lack of interest in a statewide restriction. Western Montana is already on a spring permit basis with shotguns and archery the only means of taking.

Closing by Sponsor:

REPRESENTATIVE HANSON said the Fish, Wildlife & Parks Commission had been asked to address this situation and chose to ignore it so she was asked to carry this legislation.

HEARING ON HB 122Opening Statement by Sponsor:

REPRESENTATIVE BOB RANEY, HD #26, LIVINGSTON, said his bill resulted from the desire of citizens to become more involved in development of fishing access sites and state parks. When DFWP decides to proceed with improvement or development, a plan is

drawn, public input accepted and a report written. However, public involvement does not mean the department listens to the public.

The bill will require DFWP to consider potential impacts on existing uses and users when considering development. It costs money to develop recreational sites and then it costs more money to maintain and operate them; consequently, fees must be raised. Montanans like things natural. Major developments, unwanted by the public, have proceeded anyway.

When a majority of people submit comments regarding a proposed development, under this bill the department will be forced to listen. If half or more are against the development, the agency will not be allowed to proceed until the project is redesigned and approval gained. If the department decides to go forward as planned, it will be required to take the proposal to the commission and let both sides of the issue present their views before the commission makes its decision.

As examples of unwanted development, he cited Spring Meadow Lake in Helena, Black Sandy north of town, Rock Creek near Missoula and Dailey Lake near Livingston where the department took public comment and then spent \$150,000 in unwanted development.

REPRESENTATIVE RANEY said the department has admitted it made a mistake, but he wanted to be sure it didn't happen again.

Proponents' Testimony:

DAVID WISTEY, DAILEY LAKE USERS ASSOCIATION, strongly supported the bill for the same reasons given by **REPRESENTATIVE RANEY** (EXHIBIT #3).

GENE LEMBEKE, WALLEYES UNLIMITED, said his organization feels the public should have some say in what happens to lakes and rivers and didn't want to see a Dailey Lake situation happen anywhere else.

BEN MAR, LIVINGSTON PERCH FISHERMAN, supported the bill. He said Dailey Lake is unique. It is a beautiful little lake and the users have always taken good care of it. It took nature 30,000 years to build and in a matter of days it was changed into nothing but a rest area.

DFWP is a state department. It belongs to the people. He also wanted people to have more say in what happens to the land that belongs to them. This bill is a step in the right direction.

The department promised one thing and did something else. **Pat Graham** said he was sorry the mistakes were made and promised there would be no more of this. Five days later at a meeting in Livingston people reported what the director said and **Dick Vincent**, Fisheries Manager from Bozeman, said he didn't know anything about Dailey Lake. Meetings are still being held. The

Governor sent a letter saying that the department will try to put the lake back as it was before development.

Opponents' Testimony:

PAT GRAHAM, DFWP, opposed the bill and explained the department's position on the Dailey Lake development (EXHIBIT #4).

{Tape: 1, Side B}

JANET ELLIS, MONTANA AUDUBON LEGISLATIVE FUND, said her organization supported the intent of SB 122, but didn't think this bill was the best process. She recommended not concurring.

JIM RICHARD, MONTANA WILDLIFE FEDERATION, thought there were better ways to involve the public than this bill. He understood REPRESENTATIVE RANEY'S frustration, but thought there should be a better way to make government decisions.

Questions From Committee Members and Responses:

SENATOR KLAMPE asked what would happen if HB 122 did not pass. Mr. Graham said the commission has stated it would move forward on a process to address public concerns. The public had his word and that of the commission.

SENATOR CRIPPEN commented that the House amendment inferred that a majority of the people of Montana would be needed to stop a development, and he didn't think that was the sponsor's intent.

REPRESENTATIVE RANEY said it meant a majority of the people residing in the State of Montana and submitting comment.

SENATOR CRIPPEN asked if there were some way the concerns expressed in the preceding testimony could be addressed in a hearing before the Fish, Wildlife & Parks Commission.

REPRESENTATIVE RANEY replied that was the intent of the bill.

SENATOR CRIPPEN said he was still concerned - a majority of the people interested in a development might be a minority of the people. People who are really opposed come to a hearing and others don't. REPRESENTATIVE RANEY said he wasn't talking about a minority in many cases. The department had the figures and proceeded anyway on Dailey Lake. Thirty-six percent of the respondents had only wanted some trees planted. If the department were told they couldn't proceed they might go to the commission; however, he didn't see why a commission hearing would be necessary if the public didn't want a development. Perhaps all development should be considered by the commission.

Closing by Sponsor:

REPRESENTATIVE RANEY stated that he represented the people - that was why he carried the bill. Fishing access sites and parks

belong to the people so the people should make the decisions. The department decides and comes to the public with a plan already in place. Most fishing access sites are used by the people who live in an area most of the year. The director asked the committee to let the department work with the commission. He asked that the committee read commission minutes. The commission does what the department wants done. The people should be involved statutorily.

REPRESENTATIVE RANEY asked the committee to ensure that the people of Montana are involved in making decisions so that development could be stopped, not just modified. He didn't believe the commission could handle the issue.

HEARING ON HB 312

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD, HD #62, MISSOULA, told the committee HB 312 was the "Hunter/Voter Bill." The bill requires that a voter registration form be made available when a Montana citizen appears in person to purchase a license from DFWP, DFWP wardens or from license agents for the department.

This bill was unsuccessful when introduced last session by Senator Lynch. Today's voter registration card does not have to be witnessed; the bill only requires that the cards be available to the public.

Proponents' Testimony:

JOE KERWIN, Election Bureau Chief, Secretary of State's Office, supported the bill as a common sense approach to voter registration. It does not force work on anyone. Voters fill in cards themselves and mail them in. The burden is on the voter.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

SENATOR CRIPPEN commented that the title read "...purchase a license from DFWP and department wardens...." **REPRESENTATIVE BRAINARD** responded that the department had amended the bill, and he didn't have any problem with the amendment.

SENATOR CRIPPEN asked why wardens were included. **REPRESENTATIVE BRAINARD** said there was no reason for wardens to be included and he didn't want to saddle wardens with carrying voter registration cards, he just wanted cards in places of business where licenses are sold.

SENATOR MILLER asked why the bill was introduced and what it would accomplish. REPRESENTATIVE BRAINARD said he thought it would assist a number of people in getting registered to vote. He said there appeared to be a national move to make voter registration easier.

SENATOR MILLER asked where the voter registration cards would appear next. REPRESENTATIVE BRAINARD replied that he didn't know how it would turn out in the long run. HB 327 would make registration cards available through all agencies that receive federal money. This bill was just an extension of that to get to sportsmen as well.

SENATOR JOHN HERTEL, SD #47, MOORE, asked if REPRESENTATIVE BRAINARD had visited with some of the people who sell these licenses and if they were in favor of the bill. REPRESENTATIVE BRAINARD said he had heard no complaints; all they have to do is put the cards on the counter.

SENATOR HERTEL said he knew some businesses have a line of customers the day before hunting season. When a similar bill was heard before, business establishments were against it because it meant more work. REPRESENTATIVE BRAINARD acknowledged that the 1993 cards created some controversy.

SENATOR HERTEL commented that this bill did add to the responsibility of the store person selling a license.

SENATOR KLAMPE asked if it were necessary to buy a license or if you could just pick up a card. REPRESENTATIVE BRAINARD replied that a card could just be picked up.

SENATOR MILLER asked what happens if a business runs out of cards and if there were a penalty. REPRESENTATIVE BRAINARD responded that stores would get plenty of cards.

Closing by Sponsor:

REPRESENTATIVE BRAINARD thanked the committee for a good hearing.

EXECUTIVE ACTION ON HB 62

Motion: SENATOR CRIPPEN MOVED TO CONCUR.

Discussion: SENATOR CRISMORE said he liked the bill.

SENATOR FORRESTER said he could understand REPRESENTATIVE HANSON'S problem. People are all around the house and shooting from the road.

SENATOR MILLER commented that he would have to oppose the bill because DFWP has latitude to act on this issue. He said he didn't like to see the legislature get into something when it was not necessary.

SENATOR CRISMORE commented that in some areas of the Flathead you might be hunting on public land and be within 200 yards of someone's house and that private land might be posted. He liked the bill.

SENATOR KLAMPE asked if the Fish, Wildlife & Parks Commission had the authority to restrict weapons. **SENATOR BISHOP** responded that the commission has already restricted some of western Montana. They can control means of taking, but apparently they're not doing it.

SENATOR FORRESTER said it's hard to distinguish a young gobbler if you're shooting into a group of turkeys. It means taking a chance of taking more than one. He also thought a hunter would want to get a particular bird. He liked the bill.

Motion/Vote:

A FIVE TO FOUR ROLL CALL VOTE TO SUPPORT THE MOTION TO CONCUR ON HB 62 FOLLOWED; SINCE SENATORS SPRAGUE AND PIPINICH WERE ABSENT THE VOTE WAS HELD OPEN.

EXECUTIVE ACTION ON HB 122

Motion:

SENATOR KLAMPE MOVED TO CONCUR IN HB 122.

Discussion:

SENATOR CRISMORE said he had a problem with the bill. Champion International gave the state the Chain of Lakes and he would not want people from Billings telling the local people how to develop those lakes. He thought the bill should be amended to pertain to people living close to a proposed development.

SENATOR KLAMPE said DFWP did a survey of people using Rock Creek, sent the results back to the respondents and outlined the proposed development - which did not correspond to the results of the survey. The bill might not be well written, but the department did not do what people asked, based on its own survey. He thought it would be difficult to rely on the word of the commission.

SENATOR CRIPPEN stated that he agreed with **SENATOR CRISMORE**. He felt sorry for the Dailey Lake users, but didn't want to give decision-making authority to the majority of the people of the state. People who are opposed to issues usually appear at hearings. He thought it would be preferable for the commission to change its procedures to reflect public opinion.

SENATOR BISHOP thought the bill wouldn't be legally acceptable. He became involved in the Dailey Lake issue in November after the

election. He wrote to **Pat Graham** and received a reply admitting that the department had made an error in not preparing an environmental assessment. The letter said they were initiating a new review of this project that would result in something acceptable to more people. There is an archaeological site on the area that the department is attempting to protect. **Mr. Graham** also said the new signs depicting the area as "Day Use Only" have been changed.

CHAIRMAN MESAROS said that he liked the bill when he first read it because there was a similar project near Helena. However, he couldn't support it in its present form. Whether the bill proceeds or not, he thought the committee should send a message to the commission because there is a problem that should be addressed.

SENATOR CRISMORE remarked that two years ago the wilderness issue was put on the local ballot. Seventy-five percent of Lincoln County voters didn't want it. National representatives made another survey in Missoula, where they said more were in favor of wilderness than against. In his opinion, the bill should not pass.

Motion/Vote:

A SEVEN TO TWO ROLL CALL VOTE AGAINST THE BILL FOLLOWED.

Motion/Vote:

SENATOR CRIPPEN MOVED TO TABLE THE BILL BY REVERSING THE VOTE. THE MOTION CARRIED AND HB 122 WAS TABLED.

EXECUTIVE ACTION ON HB 312

Motion:

SENATOR JACOBSON MOVED TO CONCUR ON HB 312.

Discussion:

SENATOR MILLER commented that he couldn't support the bill. The intent of registering hunters and fishermen was good, but soon all special interest groups will come in to have their members registered.

SENATOR BISHOP said he thought the group to be registered would represent a cross-section of Montana citizens.

SENATOR HERTEL said he thought there would be a problem getting people to issue these licenses. He was sure license dealers wouldn't want to be bothered.

SENATOR CRIPPEN remarked that it is sometimes difficult to get down to vote, but it is possible to write in for a registration card.

SENATOR CRISMORE commented that he didn't think the bill was necessary.


Motion/Vote:

A FIVE TO FOUR VOTE AGAINST THE MOTION TO CONCUR FOLLOWED. SINCE SENATORS SPRAGUE AND PIPINICH WERE ABSENT, THE VOTE WAS HELD OPEN.

ADJOURNMENT

Adjournment: The meeting adjourned at 5:30 p.m.


KEN MESAROS, Chairman


SERENA ANDREW, Secretary

KM/sa

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE

ROLL CALL

DATE _____

3/02/95

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MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE
ROLL CALL VOTE

DATE 3/02/95 BILL NO. HB 62 NUMBER _____

MOTION: None to Concur

NAME	AYE	NO
BRUCE CRIPPEN	X	
WILLIAM CRISMORE	X	
GARY FORRESTER	X	
JOHN HERTEL	X	
JUDY JACOBSON		X
TERRY KLAMPE		X
KEN MILLER		X
BOB PIPINICH		
MIKE SPRAGUE		
AL BISHOP, VICE CHAIRMAN		X
KEN MESAROS, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE
ROLL CALL VOTE

DATE 3/02/95 BILL NO. Hb 122 NUMBER _____

MOTION: Move to Concur

NAME	AYE	NO
BRUCE CRIPPEN		X
WILLIAM CRISMORE		X
GARY FORRESTER	X	
JOHN HERTEL		X
JUDY JACOBSON		X
TERRY KLAMPE	X	
KEN MILLER		X
BOB PIPINICH		
MIKE SPRAGUE		
AL BISHOP, VICE CHAIRMAN		X
KEN MESAROS, CHAIRMAN		X

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE
ROLL CALL VOTE

DATE 3/02/95 BILL NO. HL 312 NUMBER _____

MOTION: None to Concur

NAME	AYE	NO
BRUCE CRIPPEN		X
WILLIAM CRISMORE		X
GARY FORRESTER	X	
JOHN HERTEL		X
JUDY JACOBSON	X	
TERRY KLAMPE	X	
KEN MILLER		X
BOB PIPINICH		
MIKE SPRAGUE		
AL BISHOP, VICE CHAIRMAN	X	
KEN MESAROS, CHAIRMAN		X

SENATE FISH AND GAME

EXHIBIT NO. 1DATE 3/02/95BILL NO. SB 62

Dear Representative Hanson,

I would like to thank you for your interest and concerns regarding the safety aspect of hunting with rifles during the spring turkey season. I have been talking with some of our neighbors about this and have been told of one person having her house shot at and watching hunters shoot from the county road at gobblers. Its to bad that some hunters do not take into consideration the end result of the shot they fired. We are very lucky that we have not had a very serious injury or worse yet a death caused by these few inconsiderate individuals. I have talked with Mr. Stan Meyer chairman of the fish and game commission and he is also concerned with the safety aspect of using rifles. He can not say what his commission would do as far as eliminating rifles so I am going to ask you to try and revive HB 62 because if the fish and game commission does not act on this then it will be two years before I could bring this back to your committee. If the bill would pass, then it would be another year before the law took effect and three years is a long time to have hunters using rifles in the spring turkey season. My nine year old grandson calls turkeys very well but on weekends I will not take him out on the Custer National Forest dressed in full camo because of the rifle hunters.

I talked with a rifle hunter last year after he shot an old bird my grandson and I had "played" with for two seasons. When I made a comment about him using a rifle to kill the bird he said "well you have to cheat once in awhile". Even he felt he cheated when he used a rifle. If I see a hunter using a rifle I'll move clear out of the area. I don't know if this letter will change anything or not but thank you for taking the time to read it. You will be receiving a letter from Wilma Melville also. She is the one that had her house shot at. Please keep in touch.

Sincerely,

Russ Greenwood

cc: Representative Douglas Wagner
Representative William Rehbein

House Bill No. 62

March 2, 1995

Testimony presented by Pat Graham
Montana Fish, Wildlife and Parks
before the Senate Fish and Game Committee

The Department is not taking a position on this bill. Rather, we will provide background information for committee consideration. Statute 87-3-401 prohibits the use of rifles to shoot upland game birds unless specifically permitted by the Department. Presently turkeys and mountain grouse are the only upland game bird species that may be hunted with rifles.

The Department and Commission periodically receive similar requests to change the weapons allowed for taking these two species. These requests have focused on safety and ethical issues as the basis for consideration. Proponents and opponents both have valid arguments. Some hunters feel it is more sporting to hunt turkey with a shotgun. Others feel that rifles increase their opportunity to harvest a turkey.

Representative Hanson has proposed to eliminate rifles during the spring turkey season. One of the important points is the difference between spring and fall hunting techniques. The spring turkey season is often referred to as the "gobbler season."

Male or tom turkeys are the only legal bird during the spring season whereas the fall season permits any turkey to be taken. Typically spring turkey hunters are dressed in full camouflage and utilize decoys and calls to entice a gobbler to within shotgun range - usually 50 yards or less. Weapons used by this type of hunter are generally shotguns or archery. Concern by this group is that they are hidden via camouflage and are at risk from rifle hunters. A survey of spring turkey hunters in southeast Montana in 1983 indicated nearly half the hunters utilized shotguns, 20 percent rifles, and 30 percent archery.

Turkey hunting has increased in popularity in recent years. Spring hunting has shown a threefold increase in hunter numbers since 1986 with over 3200 hunters in 1993. The Department has not surveyed hunters to determine whether preferences for type of weapon have changed during this period.

Attached is a summary of weapons allowed in other western states for turkey hunting. Three states allow rifles or handguns for spring turkey, the other seven restrict to shotgun/archery.

Attachment

WESTERN STATES METHOD OF TAKE FOR TURKEYS .

STATE	SEASON STRUCTURE	METHOD OF TAKE	COMMENTS
Arizona	Spring/Fall	no restrictions	
California	Spring/Fall	shotgun/ archery	not larger than 10 ga.
Colorado	Spring/Fall	shotgun/ archery no restrictions	
Idaho	Spring	Shotgun	
Nevada	Spring/Fall	Shotgun	shot restricted to No. 2 or less
New Mexico	Spring/Fall	Shotgun	
North Dakota	Spring/Fall	Shotgun/ Archery	
Oregon	Spring	Shotgun/ Archery	up to 10 gauge and No. 6 BB shot
South Dakota	Spring/Fall	no rimfire cartridge	
Wyoming	Spring/Fall	shotgun/rifle/ pistol/archery	must be larger than 2.2 mag.

Of 10 western states contacted, three allow the use of rifles/handguns for spring turkey hunting: Arizona, South Dakota and Wyoming. Both South Dakota and Wyoming restrict the caliber to larger than 22 mag or centerfire only. Colorado allows rifles/handguns during their fall season.

Data collected during the spring hunt of 1983 in Region Seven indicated 49 percent of the harvest was with shotguns, 21 percent with rifles and 30 percent by archers (R-7 1982-83 upland bird PR report).

Address To Senate Committee
Hearing For HB 122-Raney, et al.
Room 402

DATE 3/02/95BILL NO. HB 122

March 2, 1995

Mr. Chairman and Committee Members:

I am here today to tell you why I support Representative Raney's amendment. I am here to tell you about a wonderful little primitive recreational area in southern Park County called Dailey Lake. The resource that we once enjoyed no longer exists for most of its users.

I have been a frequent user of this very popular area for 13 years. This is the lake on which two of my sons and I learned to windsurf. The famous and frequent winds blowing through the area make this 200 acre lake the best windsurfing site for hundreds of miles around. During calmer times, the site has provided excellent fishing from shore, float tubes, and boats. Water skiers and jet skiers also used the area along with picnickers, swimmers, and the camping public, who all were drawn to this lake — an oasis in the high desert environment.

In the years prior to 1994, parking and camping sites distributed around the east and north shores would accommodate 60 - 80 recreational vehicles, including tents. This came to an end at the completion of the Department of Fish, Wildlife, and Parks' desecration project of 1994. The area now will accommodate approximately 17 units.

Unneeded new 20-foot-wide roads gouge through former parking and camping areas. Over eight hundred creosoted railroad ties have been cemented into the ground to prevent users from achieving that all-important elbow room. The east shore — best for tying up boats during wind — is closed for overnight camping. Large concrete parking slabs are connected by concrete sidewalks which snake through three different areas to finally link with three new latrines for the handicapped.

I find no enjoyment in being here today, but I feel I must tell you about an agency that is out of control. This about discrimination, fraud, waste, and abuse. This is a story I do not like to tell, but I do not like to be lied to or discriminated against by an agency whose director has tried to assure me that FW&P does not conduct business this way. Apparently, Mr. Graham is misinformed.

° **Question for Committee:** Is Dailey Lake Fishing Access Site open for public use? Assumed answer — Yes.

Then why did fisheries biologist, Brad Shepard, tell me that windsurfers had no right to be at the lake because the area was bought and paid for by fishing license dollars and that we windsurfers didn't contribute to his salary? (I had a current fishing license in

my billfold.) Mr. Shepard once shouted at me, "I'm going to call my boss in Helena and tell him not to give you windsurfers anything that you want at Dailey Lake."

Prior to starting construction at the lake, FW&P was required by state law and by the Department's own rules to produce an Environmental Assessment — but failed to do so. FW&P agents told us at one of their meetings that an EA was not necessary due to the small size of the project. FW&P fraudulently deceived the public. We were led to believe that we were attending meetings at which our comments would be considered, but we were lied to and our requests were ignored. We pleaded with the agents not to build the new 20-foot-wide road right through the middle of the most popular camping site, but they bulldozed through anyway. There was no legitimate need for this road. It was put in to carve up the area and reduce user space — already limited at this small area.

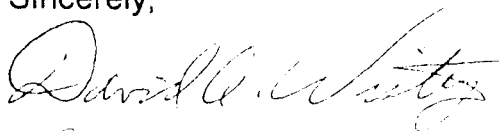
The Department wasted most of a federal grant of \$150,000 of tax payers' money on a project that most of the users did not want. According to the Department's own "Dailey Lake User Survey", (Shepard, 1992), 64% of the respondents said facilities at the lake were adequate or more than adequate for their needs. The Department abused its power and demonstrated that it exists for its own benefit — not for the recreating public at Dailey Lake.

Bruce Rehwinkel, the agent responsible for producing the EA, telephoned me after the project was completed and said he wanted to apologize for not doing an EA. He told me he just "forgot" to do it. I regard this as an insult to my intelligence, and one more example of the questionable character of Department personnel.

The Department broke state law and its own administrative rules and policy in not producing an EA or EIS for this project. The Department showed a callous disregard for the fragile physical environment and showed no regard for the human environment at Dailey Lake. The Department did not follow the guidelines set forth by the Montana Environmental Policy Act (MEPA), but claimed compliance with MEPA in its application for the federal grant from the U.S. Fish & Wildlife Service. I think this is sometimes called "fraud". Also included in the grant application was a claim that the development project was needed to improve access, but reducing availability for parking and camping spots from 80 down to 17 hardly fits anyone else's definition of "improved access".

FW&P is charged to promote optimum recreational opportunities for Montanans and their guests, not to reduce them. The Department has shown it is out of phase with today's recreationalists. We want our beautiful little recreation area back and we do not want FW&P to deceive and to shut out the public from other traditional recreational sites in Montana.

Sincerely,



POB 1258

LIVINGSTON, MT 57047

THB122.SO

House Bill No. 122

March 2, 1995

Testimony presented by Pat Graham
Montana Fish, Wildlife & Parks
before the Senate Fish and Game Committee

HB 122 was introduced by Representative Raney largely in response to a specific situation at Dailey Lake. We made some mistakes at Dailey Lake. I acknowledged that at the hearing in the House and acknowledge it again here today. We have initiated a formal review of the process and are preparing an Environmental Assessment. A second meeting in this process will be held tonight in Livingston. Since HB 122 does not apply retroactively it will not affect the outcome of what happens at Dailey Lake.

The issue before this committee today -- and the issue you must decide -- is whether or not HB 122 provides the BEST possible process for resolving the issues that emerge the next time people have concerns about a state park or fishing access site project. I submit to you that the approach contemplated in HB 122, while well intentioned, remains flawed. I would like to explain why, and suggest a better alternative.

First, the Environmental Assessment process should resolve many of the issues that may arise. Few projects result in any significant issues being raised. Second, HB 122 may give undue control to a minority. No person even commented on 14 of the last 16 Environmental Assessments the Department conducted on fishing access sites. In any of these cases, if one resident of Montana had simply said, "NO, I don't like this project," then the requirements of HB 122 would be triggered. Supporters of projects seldom take the time to offer support.

Third, HB 122 does not distinguish between the number of comments submitted and the substance behind them. Consider an analogy: the legislature. When you are deciding how to vote on a bill, do you base your decision on the number of people who testified in favor of a bill or opposed to it? Many opponents to a bill may signal the is a bad idea. But is this always the case? I expect your decision's on how to vote are based upon the quality and validity of the points made in testimony, not simply on how many people testified pro or con. Since the requirements of HB 122 are triggered only by the number of comments received in opposition to a project, five comments could simply announce support of a project while a single opponent may raise a substantive issue. In this case the minority, which might be a neighboring landowner, would not be in a position to trigger a review.

Fourth, the only comments that count under HB 122 are ones submitted by Montana residents (see page 2, lines 9, 11, and 19-20). Who qualifies as a Montana resident? Someone who has an in-state fishing license? Someone registered to vote? Or someone who owns property next to the site but who only resides her five months out of the year? It is not clear how the Department will make this

determination? Will persons be required to submit proof of residency with their comment?

Fifth, we concurred in amendments to the bill to exclude certain activities from review. The problem in implementation is how will the public be able to distinguish in their comments only those aspects of the project they are permitted to which they can object.

The questions and events that gave rise to HB 122 raise legitimate issues about public participation and government accountability to the people we serve -- and the Department and Commission need to address them. I don't believe, however, because of the flaws I just described, that HB 122 provides the right answer. Instead, I would like to offer an alternative.

I discussed HB 122 with the FWP Commission at its work session last Friday, and the Commission opposed HB 122 primarily because they could implement such procedures without a law. They agreed that an appeals policy would be beneficial and committed to adopting one as a part of an overall policy it is developing on public participation in commission decisions.

Both the Commission and I believe the Department needs an appeals policy that provides anyone who has commented on a proposed development at a fishing access site or state park the opportunity to appeal to the director, and ultimately to the commission, the final decision made in the region. And the decision on the appeal should be based on the appeal's merits as well as the number of appellants. Such an appeals process would provide a formal mechanism for resolving conflicts and rectifying errors. By involving first the director and then the commission, it would also provide another mechanism for problem solving and the resolution of conflicts.

The Commission also asked that I convey to you a request: Please do not constrain the Commission's ability to develop and adopt an appeals policy that efficiently results in good decisions on the ground for our customers.

The circumstances that gave rise to HB 122 raise legitimate issues, but HB 122, while well-intentioned, presents an approach that we believe is flawed. The FWP Commission has committed to developing an appeals policy that is consistent with the spirit and intent of HB 122 but that is based on an approach that makes sense. For these reasons, we urge you to oppose HB 122.

DATE 3/02/95

SENATE COMMITTEE ON Fish & Game

BILLS BEING HEARD TODAY: 2LB 62, 122 + 312

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Check One

Name	Representing	Bill No.	Support	Oppose
GENE LEMBEKE	WALLEYES UNLIMITED	122	✓	
DAVID WISTEY	DAILEY LAKE USERS WINDSURFERS	122	✓	
BEN MAR	^{LIVINGSTON} Persch Technology	122	✓	
Anthony Williams	Livingston	122	✓	
THORN HECHT	WATERMAN EVARTO			
PATRICK HOFFERMAN	OBSERVER ONLY	122	?	
JEAN JOHNSON	MT Creek Fitter & Co	HB 62	X	
BILL HOLDORF	SKYLINE SPORTSMEN	HB 62		✓
Tom Castles	observer	122		
Pat Graham	FWP	122		✓
11	11	62	no position	
Bo Lane	11	312	no position	
Tony Schoonen	Anzcond Sportsman	HB 62		X
JIM RICHARD	MWF	HB 122 HB 122	X	X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

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Check One

Name	Representing	Bill No.	Support	Oppose
Stan Frosier	Self	H/B62		X
Beth Wheatley	MWR	H/D62		X
Jack M. Wells	Self	H/B62	X	
Janet Ellis	MT Audubon	H/B122	X	X
Joe Kerwin	SOS	H/B312	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY