

## **MINUTES**

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

#### **SUBCOMMITTEE ON FISH & GAME**

**Call to Order:** By **CHAIRMAN BILL TASH**, on March 4, 1995, at 9:00 a.m.

#### **ROLL CALL**

**Members Present:**

Rep. Bill Tash (R)  
Rep. Hal Harper (D)  
Rep. Dick Knox (R)  
Rep. Bob Raney (D)  
Rep. Paul Sliter (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Doug Sternberg, Legislative Council  
Patti Borneman, Subcommittee Secretary

**Please Note:** These are summary minutes. Discussion is paraphrased and condensed.

**Committee Business Summary:**

Discussion on amendments for HB 349.

**Discussion:**

**REP. BOB RANEY** said that HB 349 is controversial. He said when the original bill was written, he was unfamiliar with the budget Department of Fish, Wildlife and Parks' (FWP) budget. He met with **SEN. LORENTS GROSFIELD**, who liked the idea of the bill, but rewrote some language. Input from individuals, organizations and communities throughout Montana was received. **REP. RANEY** said they want "to launch a significant and new effort in managing fish habitat and improving fish habitat where we can. And not a token effort, but a major new effort. And the reason being that many of us feel that the fishery habitat and the fisheries in our streams and rivers is in trouble." After extensive research, he found that protection of habitat is important, to have and maintain a wild fishery. With encroachment by development upon the rivers and streams, Montana habitat is rapidly being lost.

**REP. RANEY** said the unofficial gray bill of March 1, 1995, incorporates new amendments which include the addition of rivers, streams and lakes; and initiate a public hearing process to work with FWP to establish a program with priorities and locations and

then to proceed. He said again that the goal is to improve wild fish habitat. **EXHIBIT 1**

**REP. RANEY** also proposed to change the source of revenue and explained what happened when the 50% from fishing license revenue was deemed unacceptable. After extensive research into the FWP budget, \$4.5 million was included in capital improvements for the Blue Water Fish Hatchery at Bridger, \$2.5 million this session, and \$2 million the next. He said a significant amount of money is being spent on hatcheries and not much on habitat. They decided to suspend the improvement at the Blue Water Fish Hatchery, and leave \$250,000 out of the \$2.5 million for necessary maintenance of the hatchery, because the next Legislature would have to review this. They would request a study of privatization of hatcheries, of purchasing fish, of the potential for the federal government supplying fish or turning their hatcheries over to the state, etc. Then they discovered a large ending fund balance and decided to apply that toward this new program.

**CHAIRMAN BILL TASH** opened the meeting for discussion.

**REP. DICK KNOX** asked **REP. RANEY** how he envisioned working with the landowners.

**REP. RANEY** said that wasn't addressed adequately in the language of the bill and addressed the question to **REP. HAL HARPER**.

**REP. HARPER** passed out proposed amendments for discussion and stressed the addition of the word "voluntary" in the bill. He said the program should be voluntary. The amendments describe the process of working with landowners and recognize that FWP would develop a coordinated and unified process for conducting the projects. A bill of this magnitude would require extra FTE. He described how FWP might try to accommodate personnel needs and said specially trained employees would be required. He stated the importance of including that the participation of landowners always be voluntary.

**REP. PAUL SLITER** described a negative situation in his hometown when the county commissioners hired a negotiator to work out problems between the Solid Waste Board and the public. He thought contracting for a negotiator was not a good idea because it appeared to the citizens that the commissioners "didn't have the guts to come face us themselves and talk about it."

**REP. RANEY** asked **John Wilson, Trout Unlimited**, to comment.

**Mr. Wilson** said he had worked with a land trust and stated that rather than negotiating, they would work with the Nature Conservancy to determine stream improvement needs.

**CHAIRMAN TASH** asked if they would act as an intermediary.

**Mr. Wilson** replied yes, and that they would work with the FWP to conduct projects such as those now being done, i.e., the river restoration program, who solicit applications from other sources and have been successful.

**CHAIRMAN TASH** said lessee's agreements such as conservation easements have contributed to this success.

**Mr. Wilson** said he wasn't referring to water leases or conservation easements for the river restoration program, but rehabilitation of habitat on the ground. He cited the Blackfoot River project where miles of tributary and spawning habitat have "been essentially reassembled in cooperation with those private landowners up there." He said the U.S. Fish and Wildlife Service (USFWS), Montana Department of FWP, and the Blackfoot Chapter of Trout Unlimited and landowners have all worked together to reach consensus on accomplishing these goals.

**REP. KNOX** asked **REP. RANEY** if this program would rehabilitate streams on private land, this will be a "selling job," and those contacting the landowners must have a background in commercial production agriculture in addition to knowledge of fisheries work. He said it's absolutely vital that the contacts have a clear understanding of the economic impacts of this bill, "and can talk the same language as the landowner."

**CHAIRMAN TASH** said this is a good point because they've seen many efforts toward collaboration and the importance of establishing trust and confidence with the landowner. There are many opportunities for compatible use of water and "it's in the best interest of Montana ... to prove these kinds of examples of where they can irrigate and recreate with the same water and it's not at one or the other's expense." He cited the situation at the headwaters of the Missouri River in Beaverhead County where they have been able to educate the public to the advantages of multiple use, resulting in multiple benefits. He said a group involving all water users, in particular agricultural water users, will be essential in carrying out the program. He said there's a suspicion that exists unless they can have input on the individual and local level.

**George Ochenski, Trout Unlimited**, said when they put the bill together and talked to **SEN. GROSFIELD**, he added the language "public meeting with commission approval" to address the issues brought up by the Chairman. He suggested there be a review panel of water users to encourage cooperation with landowners.

**CHAIRMAN TASH** asked **Mr. Ochenski** if Trout Unlimited should be the facilitator.

**Mr. Ochenski** replied no, he didn't care. He said a review panel could be appointed by the Governor with a seat held by a Trout Unlimited member, but it wouldn't be necessary. He would be more concerned with the review panel satisfying the Legislature's

requirements as they consider the landowners' needs. He said that bridges need to be rebuilt between the conservation community and the landowners. He said a six-person review panel could look at the project proposals and then go to the commission for final approval. This could be added to the bill.

**CHAIRMAN TASH** stated that this would give some direction for the bill.

**REP. KNOX** agreed that there would have to be a review panel for projects of this type. He stressed that the person making contact with the landowner must be someone with an agricultural background or the project will fail. **CHAIRMAN TASH** agreed.

**Pat Graham, Director, FWP**, said they already have a program that does the work they are talking about, but said it is probably not big enough to accomplish the work they want to do.

**CHAIRMAN TASH** asked if it was the group on the Big Hole project.

**Mr. Graham** said it was a different area, but said they have a grant program now that is working and this bill would just expand what they're already doing. He described the amendments made to the bill and focused on how the project will be funded. They arrived at consensus about leaving in the section on wildlife conservation and extended the date because the Department is involved with addressing urgent problems such as whirling disease and they don't want to rush this project. Since they're looking at a long-term plan, they need time to get people involved. He discussed the task force that would help put together a plan with the Department. They just reworked the language and didn't get around to funding.

**REP. RANEY** said he first noticed the starting date of October 1997 and said their goal was to get started right away. He said October 1997 was too far away.

**Mr. Graham** said it should have been January 1, 1996, not 1997.

**REP. RANEY** asked how FWP envisioned handling the personnel needs of this project.

**Mr. Graham** said they'd consider utilizing existing personnel, hiring new people, and possibly contracting the work out as well. He said the Blackfoot project would continue, so they'd utilize people who have similar experience as that needed for this project, and they could possibly contract with the Nature Conservancy.

**REP. RANEY** said he heard about someone with the St. Ignatius Conservation District who would be great for this project because they're already doing similar work. He said he's also heard of people who are good biologists but who can't talk to landowners effectively.

**CHAIRMAN TASH** said it's crucial to hire someone who has credibility with landowners and when contracting must keep this in mind. He cited the Big Hole project.

**Tape 1 - Side B**

**REP. RANEY** said he was talking with **SEN. GROSFIELD** about the antagonism that exists between landowners and conservationists and said the conflict shouldn't be there. He and **SEN. GROSFIELD** discussed the best way to address that in the bill.

**REP. HARPER** asked **Mr. Graham** who the Department uses to make contact with landowners. He replied that the biologists make contacts when needed, but the contract does not require personal contacts, so that hasn't been an issue.

**CHAIRMAN TASH** said that many landowners have a suspicion of "experts," and said the enforcement people have been more effective than biologists and satisfying landowner concerns because it's perceived they are doing it in a more responsible, credible way. He mentioned Dick Kennedy, a Conservation District employee, who worked very effectively with those involved in a similar project.

**REP. HARPER** said that the extra money put into this project could result in it being multi-faceted and requiring input from many people, and he said he couldn't see existing personnel being used to do the work.

**Mr. Graham** said in those cases they would contract for the work.

**REP. RANEY** said the water leasing aspect of the project would require someone knowledgeable about water to negotiate effectively with the landowner. He asked **Mr. Graham** if the Department has employees that could do this.

**Mr. Graham** replied that they have two part-time employees that work through details with landowners, but there are others in water rights that assist when needed.

**REP. RANEY** suggested that John Bloomquist from the Montana Stockgrowers might take a major role in this area.

**Mr. Graham** said it's difficult to lease water from a landowner if the trade-off is "do I produce crops, or do I lease you my water?" He used the Big Hole project as an example where they've had water leasing situations. He agreed that someone other than a FWP employee should be involved in dealing with water leasing.

**CHAIRMAN TASH** cited a USFWS waterfowl project in the Beaverhead area that is a good example of compatible use. Through good negotiations, they have an opportunity to create more wetlands and irrigate agricultural land in a more efficient way. A cooperative agreement came out of this.

**Mr. Ochenski** said that **REP. KNOX'S** instream flow bill will affect how water leasing is done in the state and said he lobbied the bill through the session. He said having the Department be the only entity that could lease water created a lot of suspicion. He said **REP. KNOX'S** bill opens a new door to encouraging cooperation, and it might work best to have people working outside the Department to develop cooperative agreements and then bring them to the review panel with their recommendations. He said they envisioned the project being run by conservation groups, agricultural producers, loggers and miners, and "whoever is out there that has a stream that could be a viable spawning area if it was fixed up." He stressed the need for these people to collaborate and then apply for the funds this bill will make available.

**Mr. Wilson** said he works with ranchers and farmers in the conservation field and has found that they understand the mutual benefits of good fishing and wildlife habitat and good agriculture. He said the Stockgrowers organization could take a critical role if they could be the applicant together with the landowners, which would provide "a vehicle of trust." The Stockgrowers would have no incentive other than providing a membership service, so they could be reimbursed for the necessary administrative costs.

**John Bloomquist, Montana Stockgrowers Association** said that making improvements on the ground is more than the Department or the legislature can do. He said they need to watch the language in the bill, specifically the term "functioning" spawning areas. He wondered who determines what's functioning or not, and it is not necessary for the intent of the bill, which he sees is a mechanism to get funding for riparian improvement. The Department's proposal, Section 1, might be a better approach because he sees it establishing a funding source. He said if the focus is on voluntary leasing of water for improving range management, then the Montana Stockgrowers will assist the project. He said the on-the-ground improvements will contribute to the functioning of spawning areas and didn't think it needed to be in the bill.

**REP. RANEY** said that was no problem.

**CHAIRMAN TASH** said this was an important issue and would be addressed.

**REP. HARPER** said that the conservation districts were already a wealth of information and were not named in the bill because they had problems in another bill when they did, and he asked **Mr. Graham** what the Department's view is on this. He said it was appropriate to include them because they do so much of this work already and are in contact with landowners on a regular basis.

**Mr. Graham** asked if his intent was to include conservation districts in the list of those involved in the planning groups.

**REP. HARPER** asked about future entitlements or restrictions that would be placed in the working agreement with the landowner and related the concern that landowners have about any restrictions they might have should they participate in a program of this type.

**Mr. Graham** said that they would have to check the federal requirements even though this project would not utilize federal funds.

**CHAIRMAN TASH** said they have been more comfortable working with USFWS because they are not restrictive on multiple use and said that when livestock needs and streambank preservation have to be considered, they can be managed with both in mind.

**Mr. Ochenski** described the negotiation process as one where the landowner can learn about the importance of the project, why their cooperation is encouraged and necessary, and the benefits that can result.

**REP. RANEY** said the other big issue is the funding of the project and said the Appropriations Committee will make that decision, but another meeting will be necessary to clean up language and discuss funding.

ADJOURNMENT

Adjournment: 10:00 a.m.



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REP. BILL TASH, Chairman



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PATTI BORNEMAN, Secretary

BT/pb



# HOUSE OF REPRESENTATIVES

## Fish and Game Subcommittee

ROLL CALL

DATE 3/4/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Tash, Chairman	✓		
Rep. Hal Harper	✓		
Rep. Dick Knox	✓		
Rep. Bob Raney	✓		
Rep. Paul Sliter	✓		

House Bill No. 349 (Unofficial Gray Bill 3/1/95)

Introduced By Rep. Bob Raney

EXHIBIT

1

DATE

3/4/95

HB

349

A Bill for an Act entitled: "An Act creating the future fisheries improvement program; providing for the protection and enhancement of Montana fisheries by requiring enhancement of spawning streams and other habitats for the natural reproduction of fish and growth of populations of wild fish; directing a portion of state ~~and federal~~ fisheries money to fund the future fisheries improvement program; directing the department of fish, wildlife, and parks to establish and administer the program; requiring the department to submit regular program progress reports to the fish, wildlife, and parks commission and to submit a progress report and the anticipated budget and related projections to the legislature; and providing an effective date."

WHEREAS, the rivers and streams of Montana hold one of the state's most important and economically valuable resources--wild fish; and

WHEREAS, the loss of spawning areas and other crucial habitats is one of the greatest threats to the natural reproduction and propagation of the fish resource; and

WHEREAS, the state is presently in a position to address the key issue of these aquatic habitats in order to promote the future viability of Montana's wild fisheries before the continued loss of spawning areas and other habitats diminishes or destroys

the resource; and

WHEREAS, it is a fiscally sound state policy to develop natural spawning areas and other habitats in anticipation of being able to reduce future funding that would otherwise be necessary to cover the ever-increasing costs of the fish hatchery program. and

WHEREAS, a wild fisheries enhancement program will immensely benefit landowner/sportsperson relations.

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Future fisheries improvement program -- funding priority -- reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish a statewide program that ~~ensures that promotes~~ functioning spawning areas ~~tributaries are available for~~ each ~~10 river miles and each 10 stream miles~~ for the rivers, streams and lakes of Montana's cold water fisheries.

(~~32~~) The department shall by January 1, 1996, through a public hearing process and with the approval of the commission, prioritize its efforts regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, ~~and lease~~ or purchase of stored water, ~~fish hatcheries,~~ and other programs that deal with wild fish and aquatic habitats to ensure that the future fisheries improvement program established in this section receives full funding and prioritized department administration. In prioritizing its efforts and implementing the future fisheries improvement program, the department shall respect all existing water rights and the property rights of the owners of streambeds

and property adjacent to streambeds and, streambanks-and lakes.

(23) The following amounts must be expended by the department to enhance future fisheries, as directed by subsection (1) and (2), until the ~~required number of~~ legislature determines that sufficient functioning spawning areas ~~streams~~ or other identified key habitats are established and enhanced for the rivers and, streams, and lakes of Montana's cold water fisheries:

(a) ~~not less than 50%~~ \$1.5 million of the unexpended fund balance ~~amount~~ in the state special revenue fund in 87-1-601 composed of fishing license fees;

~~(b) not less than 50% of federal funds allocated to the state for the conservation of fish;~~

(b) \$1.75 million redirected from the Blue Water Hatchery Phase II project for the 96-97 biennium. It is intended that the source of these revenues become an ongoing funding source for this act.

(c) ~~not less than 50~~100% of the funds in the river restoration account; and

~~(d) not less than 50% of any other funds allocated to the department for the conservation of fish, which funds are not statutorily mandated for other purposes.~~

(4) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 6 months and post a copy of the report on the state electronic bulletin board to ensure public access to the report.

(b) The department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since

the last report and the project schedule and budget schedule for the ensuing 10 years' implementation of the future fisheries improvement program.

NEW SECTION. Section 2. Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1995.

-END-

## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Fish & Game Sub COMMITTEE BILL NO. H13 349  
 DATE 3/4/95 SPONSOR(S) Rep. Bob Raney

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Bloomquist	Mt. Stockgrowes			
GEORGE OCITENSIU	TROUT UNLIMITED			
John Wilson	TROUT UNLIMITED			
Joe Kolman	Bozeman Chronicle			
DAVE Mott	FWP			
Chas Philbert	Fish, Wildlife & Parks			
Larry Peterman	FWP			
Pat Graham	FWP			
SLITER	HD 76			
Raney	Rep 26			
Donk Knox	HD 93			

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