

MINUTES

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

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By CHAIRMAN JOE BARNETT, on March 7, 1995, at
3:00 P.M.

ROLL CALL

Members Present:

Rep. Joe Barnett, Chairman (R)
Rep. Don Larson, Vice Chairman (Minority) (D)
Rep. Jon Ellingson (D)
Rep. Dick Green (R)
Rep. Harriet Hayne (R)
Rep. Rick Jore (R)
Rep. Gay Ann Masolo (R)
Rep. Judy Murdock (R)
Rep. Karl Ohs (R)
Rep. George Heavy Runner (D)
Rep. William M. "Bill" Ryan (D)
Rep. Dore Schwinden (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Kenneth Wennemar (D)

Members Excused: Rep. Sam Rose

Members Absent: None

Staff Present: Connie Erickson, Legislative Council
Jaelene Racicot, Committee Secretary

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

Committee Business Summary:

Hearing: SB 144
Executive Action: HB 207 ACTION POSTPONED

{Tape: 1; Side: A; Approx. Counter: 000; Comments: n/a.}

HEARING ON SB 144Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, stated there were a number of people were involved in bringing this bill to the committee. She stated they had been meeting as the Upper Clark Fork Steering Committee for over three years to develop a management plan for the Upper Clark Fork River basin. She stated this committee was directed to submit a report to the 53rd Legislature. **SEN. BROOKE** referred to the Water Management Plan for the Upper Clark Fork River Basin. (She indicated all agriculture committee members had received a copy of this plan.) This plan contributed to the drafting of SB 144.

SEN. BROOKE passed around the latest newsletter commenting on the issues of the Upper Clark Fork Steering Committee. In addition, she passed around a the Clark Fork Comments Blue Book. This book contained many written remarks individuals submitted during the process.

Proponents' Testimony:

Jim Dinsmore, Granite County Conservation District and member of the Upper Clark Fork Steering Committee, stated the purpose of the Upper Clark Fork Steering Committee was not to solve all of the problems in the basin, but to help steer the decision-making process. It brought people together who had a stake in water management within the basin. **Mr. Dinsmore** believed the make-up of the committee was fair and effective. He felt the future committee structure needed to be addressed as time goes on.

Mr. Dinsmore said the general background of the committee members should be agricultural. He said, "Agriculture is the major user of water and must take a lead role on the committee."

Holly Franz, attorney on behalf of the Montana Power Company, handed in written testimony. **EXHIBIT 1 Ms. Franz** also presented an amendment to the committee and said this amendment would require the committee to take a look at this relationship between surface water and ground water. **EXHIBIT 2** She said with the amendment, they would support SB 144.

Jim Quigley, rancher and member of the Clark Fork Steering Committee representing the Little Blackfoot Basin, said the committee spent a lot of time trying to solve the water problems within the basin. Many individuals' hard work and dedication went into the creation and development of the Water Management Plan for the Upper Clark Fork River Basin. He said the committee was formed by the Governor to maintain water management plans. **Mr. Quigley** said in the future the need will surpass "today's wants." He said he would like to see many original members of the committee stay on and help solve other problems.

He said section 5 was added because of a personal experience and many other individuals' experiences. He said attorney fees had cost him \$26,000 because of the adjudication process. In January of 1994 he had four court cases. All of his rights have been decreed and all have been through the Supreme Court of Montana. He said he went back to court and was tried again for the incidents in the past.

Bruce Farling, Montana Trout Unlimited, urged the committee to pass SB 144 with the amendments. He said this steering committee is a good example of how to continue to resolve potential resource disputes in the state. He said people sitting down throughout rural communities, discussing their differences, coming to some consensus, and then going to their lawmakers to affect legislative change, can make it happen "on the ground." He said people in the Bitterroot and the Big Hole are looking at trying the same kind of process.

In Section 3, the composition of the committee would involve the Director of Department of Natural Resources with the current mix and number with the ongoing steering committee and in two years the steering committee will come to the Legislature and make recommendations concerning the long-term recommendations pertaining to the members of the Clark Fork Basin Steering Committee. The mix at the present time is 8 or 9 members from the agriculture community, two members are from the municipalities (Anaconda, Deer Lodge and Missoula), two members are from industry/utilities (Montana Power Company and ARCO), and two members are representing a conservation group and four agencies to provide background information.

Eugene Manley, Flint Creek Basin and member of the Upper Clark Fork Steering Committee, said they decided early in the process, in order to get more input they would have to go to watershed committees. He said this was explained on page 33 of the Water Management Plan. In addition, he told the committee on page 3, the reference to watershed committees was found in this section of the bill. He stated they set up six different water shed committees. He wanted the committee to understand there was very little attendance from the public representing the lower Clark Fork. However, he stressed to the committee there was good representation by agricultural people who serve on the Clark Fork Steering Committee.

Larry Brown, Agricultural Preservation Association, echoed the previous comments by Mr. Farling and Mr. Manley. Mr. Brown explained that the watershed work groups that are coming forward and stated the agencies were part of the workgroups by invitation in an advisory capacity only. In local governments in reservation applications (on line 8 and 9) in regard to industries adding the words "mining and timber and or other industries," he felt this would help clarify that part of the bill. He said section 5, page 8 applies to all areas of the state and he felt it should only apply to the Clark Fork Basin.

Mr. Brown said section 6 dealt with the Upper Clark Fork River Basin Instream Flow Pilot Project and the word in this section was inconsistent with **REP. KNOX'S** instream flow bill for the state which was HB 472. He suggested that an opportunity may exist to provide consistent wording.

Steve Fry, Washington Water and Power, stated part of his duties with the Washington Water and Power is a lightnings administrator and working with the Noxon Rapids Hydroelectric project. He said they were water rights holders of over 50,000 CFS water on the Clark Fork River and they have been concerned about the water availability on the Clark Fork River. He stated their concerns were similar to the concerns of Montana Power Company.

At Noxon, in a normal year, there are approximately 22 days to fulfill their right, usually in late May or early June when there is enough water to fulfill the water right. He felt with the work of the steering committee that they were able to develop a good comprehensive water management plan. He said the approach used by the steering committee to get the people involved along the Clark Fork River Basin was good. "It's not in the best interest of anybody to have an entity outside of the basin such as a federal entity to come in and dictate what should go on within the basin."

Mr. Fry explained to the committee the educational impact dealing with the public through the 80+ public meetings held. The three and one-half year process was long and a lot of work went into establishing this plan. He stated SB 144 helped further the process. They recommended adoption of the plan (this is found on page 4 of the bill) and also the existence of the steering committee.

Jo Brunner, member of the Upper Clark Fork Basin Steering Committee, stated through the 3½ year process the members needed to educate each other on the wants and needs of water. She said this was not only in the Clark Fork Basin, but throughout the state of Montana. She said section 6, which was the Upper Clark Fork River Basin Instream Flow Pilot Project, was the direct result of sitting down with Fish, Wildlife and Parks and Trout Unlimited and several other organizations to work out an instream flow pilot project. What they kept in mind when they developed this section was whether this would be accepted by the legislature and the state of Montana.

She stated initially the instream flow pilot project included the sale of water, and she supported this because agriculture needs to take care of their own interests. She said, "If the day comes and this body decides there will be the sale of water, agriculture better know what they're getting into." She explained that a leasing water contract would be written between two parties and many things can only be addressed in a contract that could not be addressed by legislation. She said they tried very carefully to not intertwine the two.

Ms. Brunner said the existing right was protected under existing law. She said one would have to go through a change process as the law would require at the present time if someone should enter into a contract. She said if the contract was stopped for any reason one would not have to go back through the change process in order for it to go back to the original owner.

Ms. Brunner addressed ground water. She said she's very concerned about the ground water in the state of Montana and at first they had addressed ground water in the bill. She asked the committee to include an amendment that would allow the committee to study what happens when the aquifers are "mined." She then addressed the language **Mr. Brown** wanted the committee to change concerning the language of **REP. KNOX'S** bill and the state program instream flow. She said, "It's our understanding that specific language such as we have in our pilot program overrides the general language and so you don't have any need to change that." She said they felt it was better for a local steering committee to make decisions on what happens within the basin rather than having the government make those decisions.

Mike Murphy, Montana Water Resource Association, stated although they have not taken a position regarding section 5, in the end, the loser pays the provision. He said they discussed it and had some concerns. He urged the committee to support SB 144.

Ole Ueland, Headwaters RC &D Area, Inc., handed in written testimony. **EXHIBIT 3**

Mark Simonich, Department of Natural Resources and Conservation, stated they had been very actively involved in the Upper Clark Fork Basin for the last 3½ years and they were very committed to the activities of the committee. **Mr. Simonich** echoed what previous proponents had stated. He handed in written testimony. **EXHIBIT 4**

Stan Bradshaw, Trout Unlimited, urged the committee to support SB 144.

Gary Ingman, Montana Department of Health and Environmental Sciences submitted written testimony as a proponent to SB 144. **EXHIBIT 5**

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. CLIFF TREXLER asked **SEN. BROOKE** where several areas were lined out on page 3, why this section is being omitted. **SEN. BROOKE** said the language deleted were the instructions from the steering committee. She said this language guides the process to bring about a management plan to be completed and presented to the 55th Legislature and was specific about what their task

should be during the years 1991 through 1995. She said the new language was what the committee wanted.

REP. TREXLER asked **SEN. BROOKE** about the amendments and language inserted to benefit the fishery resource seven times and wondered if it was "now slightly outweighed." **SEN. BROOKE** said no. She said what happened when the bill was being reviewed in the Senate, **SEN. GROSFIELD** sought to amend to mirror the consensus bill of **REP. KNOX's** HB 472. She said HB 472 addressed instream flow statewide.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. DON LARSON asked **SEN. BROOKE** to explain to the committee why the Senate elected to take out the domestic use provision in the front page of the bill. **SEN. BROOKE** replied the Senate took out the ground water provisions. She said there was a lot of controversy in committee about closure for ground water and that was where the domestic exemption came in.

REP. LARSON stated the concern among the communities around Deer Lodge where they would not be able to expand their water systems as a result of this closure to ground water provisions in the bill. Are fears be taken care of? **SEN. BROOKE** said there were no longer ground water restrictions within the bill.

REP. LARSON asked **SEN. BROOKE** is one could drill a well. **SEN. BROOKE** said they could with the proper permit.

REP. ROBERT STORY asked **Mark Simonich** about the closure of the Upper Clark Fork and the section that allowed for permits to be obtained to do environmental clean-up. He said he read there was a limit for flow and why there was no volume mentioned. **Mr. Simonich** stated he did not have the information and the bill was the direct result of what came out of the steering committee.

REP. STORY asked **SEN. BROOKE** to answer the question. **SEN. BROOKE** stated there was a lot of concern about that exemption. She said during the Senate, it was agreed to tighten that section. She said the industry seemed to be agreeable to the language. She said the basin should be closed and that was the agreement and then they started to carve out exceptions. She said people got real concerned that they were carving out too many exemptions out and there wouldn't be any closure, so a lot of people agreed that was a good amendment.

REP. STORY asked **Mr. Dinsmore** about section 4 that allowed for the recovery of legal fees. He asked if the intent was to be a statewide application. **Mr. Dinsmore** stated that it was his belief that they went through the process that they were dealing with part closure of the basin and not statewide.

REP. STORY asked **Jo Brunner** that she did not have this instream flow leasing bill sitting out there and did the attorney fee

issue merely address the costs of consumptive use to an instream flow use. He asked would the people recover the costs for those processes? **Ms. Brunner** asked **REP. STORY** if he wanted to know if it would be covered within the basin or a statewide program. **REP. STORY** asked **Ms. Brunner** to explain why that section was in there. **Ms. Brunner** replied that every meeting she attended, there was not a time someone had not requested they do something about the recovery of fees. She said the way it was written it would affect people statewide on the recovery of attorney fees.

REP. STORY asked **Bruce Farling** if he was heavily involved in **REP. KNOX'S** instream flow bill and if he thought coordination language could be drafted into this bill and **REP. KNOX'S** bill. **Mr. Farling** stated there was not a huge difference between the two bills. He said some language in **REP. KNOX'S** bill was not present in SB 144, such as the requirement that the owner of a water right make a call on water rather than the person making the lease. He said if the committee wanted to coordinate the language, he would not have a problem with it.

REP. STORY asked **Mr. Farling** why the benefit of a fishery was in the bill. **Mr. Farling** stated he could not speak for **SEN. GROSFIELD**. **Mr. Farling** said **SEN. GROSFIELD** was worried about the possibility of leasing occurring so water could be added to a stream so people could float on it. He said this would work for very small tributaries for a limited number of weeks out of the year for specific fishery benefits. He said by possibly taking care of fish, they may be taking care of human health concerns as well.

REP. LILA TAYLOR asked **Mark Simonich** how the steering committee members' names were submitted and how they were selected to serve. **Mr. Simonich** stated his predecessor selected them. He described that the Department of Fish, Wildlife and Parks applied for a water reservation to be used for a future use of instream flow in the Upper Clark Fork. He said the approach the steering committee took was similar to their existing state water planning process. He said DNRC is directed under state law to develop a state water plan. He added the steering committee was directed to follow the state water planning process and they did follow the same committee structure.

REP. TAYLOR asked **Jim Dinsmore** if the future committee would need to be addressed and if he meant the make-up of the committee or who would serve on the committee. **Mr. Dinsmore** said he was referring to both the make-up of the committee and who would serve on it. **REP. TAYLOR** asked **Mr. Dinsmore** if he thought new people should come serve or did they want specific people serving. **Mr. Dinsmore** stated they currently have a group of people who are willing to serve on the board, but he realized that representation by individuals may need to include more people.

REP. TAYLOR asked **Mr. Dinsmore** if people had requested to be on the committee or the ones that still serve on the committee were the original ones appointed. **Mr. Dinsmore** said he had been involved as long as anyone on the committee and the group they had now was formed by the people who were interested and they were local people. He said he felt they needed "new blood" to serve on the committee.

REP. SAM ROSE asked **Mark Simonich** if he was willing in HB 192 to appoint members as was done by his predecessor, Karen Barkley. **Mr. Simonich** stated he did not know how they would deal with the composition of the committee on the Clark Fork. He said it began under the existing state water planning process. He said the committee members from the Clark Fork Basin proceeded under the same venue. The committee members would be appointed or reappointed by the director of the department and during the interim one of their accomplishments is a plan for the long term, such as what the composition of the committee should be. He said in HB 192, what they were suggesting is that it be amended to do what this bill does and he said the department currently had that authority now. He said they were trying to change having the department do that.

REP. ROSE asked **Mark Simonich** about the closure of the Teton Basin and the Department of Transportation requested if while building a road if they could siphon tanks of water and if this arrangement was clarified in the bill to allow road construction use of water. **Mr. Simonich** stated this bill would deal with some exceptions within a closed basin for environmental use, but he did not think it would deal specifically with highway construction needs. **REP. ROSE** asked **Mr. Simonich** if the Fish, Wildlife and Parks have a reservation on it. **Mr. Simonich** stated that his understanding was the recommendations from the committee require the reservation application from both the conservation districts and Fish, Wildlife and Parks continue to be suspended throughout the time period of the basin closure.

Closing by Sponsor:

SEN. BROOKE encouraged the committee to ask her questions in the next few days regarding SB 144. She said one of the mandates was to bring to the committee opposing views and sit down and work them out. She said after her 1991 Legislative Session, Director Karen Barkley asked for recommendations to serve on the committee. They were looking for new members to serve on this committee who could devote the time to effectively serve. She urged the committee to consider the amendments by **Holly Franz** and to keep in mind the ground water issue and that it needed to be a priority with the committee. They want to examine if ground water and surface water play a role in the depletion of water.

SEN. BROOKE stated the real work of the continuing committee is to prevent litigation. She wanted this bill to protect existing legitimate water rights and that was what was stressed when the

steering committee came together. **SEN. BROOKE** stated **REP. LARSON** would carry the bill on the House floor. **CHAIRMAN BARNETT** asked **Jo Brunner** if she was referring to the same amendments by **Holly Franz**. **Jo Brunner** said the amendments she was referring to was during **Larry Brown's** testimony looking at coordinating the language.

EXECUTIVE ACTION ON SB 207

Motion: **REP. RYAN** MOVED SB 207 BE CONCURRED IN.

{Tape: 2; Side: B; Approx. Counter: 000; Comments: n/a.}

Discussion: **CHAIRMAN BARNETT** stated they had some amendments to SB 207.

REP. STORY said he saw the amendments to SB 207. During the taxation meeting that morning nursery operators were concerned that SB 207 may not protect their operation. He said they were not classified as agricultural for taxation purposes. At the same time, they learned feedlots and poultry farms were not considered agricultural. He was afraid of what the amendment would do to the commercial section of the bill and that it might leave "a big hole in the law and leave a bunch of people out that I think they are trying to protect with this law."

REP. TREXLER stated on page 2, line 16 if this would address the concerns he had. **REP. STORY** said that it may but the amendment he saw would amend that particular line and that it would take out the reference to the \$1,500 and put in classified agricultural for taxation purposes. **REP. TREXLER** stated that they did not have to accept the amendments. **REP. STORY** said that was true.

CHAIRMAN BARNETT asked **REP. STORY** if he was speaking about the amendments. **REP. STORY** said because he was unable to attend the hearing for this bill, he did not think he could support it until he was satisfied that it would protect everyone it was intended to protect.

REP. LARSON said if **REP. RYAN** would withdraw his motion the committee could defer taking executive action on the bill until a later date.

REP. RYAN withdrew his motion.

CHAIRMAN BARNETT stated they could take executive action on SB 207 next Thursday. **REP. RYAN** stated he and **REP. STORY** would get together with **SEN. MESAROS** to discuss SB 207.

Connie Erickson said another amendment had been offered the day the committee heard SB 207. The amendment was offered by the

HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

March 7, 1995

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League of Cities and Towns and it had to do with local ordinances and the exemptions.

REP. ROSE asked **REP. RYAN** and **REP. STORY** to keep him informed because he was assigned to carry SB 207 on the House floor.

CHAIRMAN BARNETT asked the committee if they would like to take executive action on SB 144. The members agreed to wait until another date to take action.

ADJOURNMENT

Adjournment: 4:53 P.M.



JOE BARNETT, Chairman



JAELENE RACICOT, Secretary

JB/jr

HOUSE OF REPRESENTATIVES

Agriculture

ROLL CALL

DATE 3/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Sam Rose Vice Chairman, Majority	✓		###
Rep. Don Larson, Vice Chairman, Minority	✓		
Rep. Jon Ellingson	✓		
Rep. Dick Green	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Rick Jore	✓		
Rep. Gay Ann Masolo	✓		
Rep. Judy Rice Murdock	✓		
Rep. Karl Ohs	✓		
Rep. Jay Stovall	✓		
Rep. Bill Ryan	✓		###
Rep. Dore Schwinden	✓		
Rep. Robert Story	✓		###
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Ken Wennemar	✓		###
Rep. Joe Barnett, Chairman	✓		

TESTIMONY IN SUPPORT OF SENATE BILL 144
PRESENTED BY HOLLY FRANZ
ON BEHALF OF THE MONTANA POWER COMPANY
MARCH 7, 1995

My name is Holly Franz. I am testifying on behalf of the Montana Power Company in support of Senate Bill 144. SB 144 is the result of almost four years of work by the Upper Clark Fork River basin steering committee. The steering committee is composed of local interests and users in the Upper Clark Fork River basin, including the Clark Fork River and all its tributaries above the Milltown Dam. I represented the Montana Power Co. on the steering committee. The Montana Power Co.'s interest in the Upper Clark Fork arise from its ownership of the Milltown and Thompson Falls dams and the associated water rights.

There are three basic provisions contained in SB 144. Sections 1 and 2 amend the existing basin closure in the Upper Clark Fork; Section 3 creates a permanent steering committee; and Sections 4 through 10 and 13 create a ten year instream flow pilot project. I will address Sections 1 and 2 of the bill dealing with basin closure.

When the various interests in the Upper Clark Fork began to meet in 1990, the first matter they agreed on was the basin was overappropriated. As a result, legislation was passed by the 1991 legislature closing the Upper Clark Fork River basin to new surface water permits. The only exceptions to the 1991 closure were domestic and Superfund uses, and groundwater. The 1991 legislature directed the Upper Clark Fork River basin steering committee to make recommendations in the management plan on whether to continue, terminate or modify the closure.

The steering committee is suggesting a number of changes to the basin closure. First, the existing closure does not apply to the Blackfoot River or Rock Creek. These areas were originally excluded since they did not have any representatives on the group which proposed the original closure. After meeting with water users in these areas, it is now suggested that they also be included in the closure.

Second, the changes are suggested to the specific exemptions to the closure. The proposed exemptions include stockwater, storage projects, limited Superfund use, power generation at existing hydroelectric dams, and groundwater. I will address each exemption individually. Stockwater is exempted for a number of reasons including the small consumptive nature of this use, the practicality that cows are going to drink from a stream if they can get to it, and a recognition that as pressure is brought to remove cattle from stream banks, ranchers need the opportunity to develop alternative water sources. Storage is exempt because it generally seeks to appropriate water during high runoff, the only time of year when it is available. Power generation at existing

hydroelectric dams is exempt to the extent that more power can be produced without consuming additional water.

The continuing exemption for Superfund was one of the more controversial exemptions. Some people supported continuing this exemption in light of the importance of cleaning up the Clark Fork and concern that if an exemption was not allowed, the federal government would try to preempt state water law. Others opposed it claiming that an unlimited Superfund exemption would allow ARCO and the EPA to apply for large amounts of water for dilution and other uses. Many thought ARCO should purchase existing water rights for its use. The steering committee compromised by allowing the Superfund exception continue for five more years at existing sites as long as water is not used for dilution. The Senate amended the bill to add the additional limitation that no more than 10 cubic feet per second can be appropriated under this exception.

The bill as originally drafted also closed groundwater except for domestic and municipal use. The idea to include groundwater in the basin closure came from members of local watershed committees who felt it was unfair to close surface water while allowing groundwater uses that may impact surface water. This concern was based on the hydrologic connection between surface water and groundwater in the intermountain basins of the Clark Fork. The use of groundwater may intercept water which would otherwise flow underground to the river or may draw water from the river itself. Surface water users were concerned that someone could drill a well in 1994 and in low water periods continue to pump when a surface water user with a much earlier priority date is shut off.

Despite these concerns, the Senate amended Senate Bill 144 to eliminate the closure of groundwater. The Steering Committee is willing to accept this amendment but believes the issue of groundwater will not go away and needs to be looked at. To insure that this occurs, the Steering Committee supports the amendment requiring it to review and prepare a report on the relationship of groundwater and surface water, and the cumulative impacts of groundwater withdrawals in each subbasin. If there is groundwater that can be developed without impacting other water right holders, it should be developed.

The bill does not include a specific exception for domestic or municipal use. However, basin closure should not prevent these uses since groundwater remains open to appropriation. Most municipalities are looking to groundwater due to the restrictive treatment standards for surface water.

There is one more important element of the basin closure. The steering committee and the watershed committees do not pretend to know what will happen in the future. To allow the basin to respond to changes and problems which may arise, the basin closure must be reviewed by the steering committee every five years. While the basin closure may be amended sooner than every five years, it must

EXHIBIT 1
DATE 3-7-95
SB 144

be reviewed at least that frequently. This will ensure that the closure continues to meet the needs of the basin.

I urge your strong support of Senate Bill 144. Thank you.

Amendments to Senate Bill No. 144
Third Reading Copy

EXHIBIT 2

DATE 3/7/95

HB 3B144

Requested by Sen. Brooke
For the Committee on Agriculture

Prepared by Michael S. Kakuk
March 7, 1995

1. Page 4.

Following: Line 1

Insert: "(d) prepare and submit a report concerning the
relationship between surface water and ground water and the
cumulative impacts of ground water withdrawals in each
subbasin;"

Renumber: subsequent subsections

HEADWATERS RC&D AREA, Inc.
Economic Development District
305 W. Mercury, Suite 211
Butte, Montana 59701
(406) 782-7333 • FAX #782-9675

EXHIBIT 3
DATE 3/7/95
HB 36144

Alc. Ullrich

RESOLUTION FOR UPPER CLARK FORK BASIN
STEERING COMMITTEE PLANNING

January 26, 1995

WHEREAS, the 1991 Legislature passage of SB 434 authorized the creation of a Steering Committee to draft a "Comprehensive Water Management Plan" for submission to the 1995 legislature; and

WHEREAS, this action was brought on by certain Water Reservation Applications of Fish, Wildlife & Parks for instream flow, and the Granite Conservation District for storage projects in order to avoid going to contested case hearings, and

WHEREAS, studies to date reveal there is little or no unappropriated water available for water right appropriations or permit, therefore making water right reservations not applicable or of no consequence in this basin, and

WHEREAS, the demand for stable water quantity supplies continue to exist for most all present and potential water needs, and

WHEREAS, the potential exists for Water Right Holders to sell, lease, or otherwise manage their rights through so called best management practices, structural and non-structural storage projects, in order to stabilize water flows on a watershed by watershed basis, and to fully compensate water right holders who may be adversely affected, and

WHEREAS, much has been accomplished to date by the Steering Committee in communication toward an analysis of the situation, expression of ideas, etc.,

THEREFORE, it is recommended that a Steering Committee representing all water use interests continue to be authorized by the legislature to function on a basin, sub-basin, or watershed by watershed basis, in collaboration with other resource groups to formulate proposed water resource conservation and development plans for inclusion in an overall state water plan for adoption or modification on a periodic basis by the state legislature.

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON SENATE BILL 144

Mark Sumner

BEFORE THE HOUSE AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

MARCH 7, 1995

A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE UPPER CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS; AMENDING THE DUTIES OF THE UPPER CLARK FORK RIVER BASIN STEERING COMMITTEE; PROVIDING FOR A 10-YEAR UPPER CLARK FORK RIVER BASIN INSTREAM FLOW PILOT PROGRAM; PROVIDING FOR THE AWARDING OF REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY IN WATER USE PERMIT AND CHANGE APPROVAL PROCEEDINGS; AMENDING SECTIONS 85-2-102, 85-2-125, 85-2-335, 85-2-336, 85-2-338, 85-2-402, 85-2-404, AND 85-2-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

The Department of Natural Resources and Conservation strongly supports the watershed activities of the Upper Clark Fork River Basin Steering Committee. Over the last four years this committee has collaborated with the local community, building consensus, to develop "*The Upper Clark Fork River Basin Water Management Plan*". On February 10, 1995, the Board of Natural Resources approved the adoption of this plan as a State Water Plan Section. This is the first plan section addressing the issues and opportunities specific to one of the state's hydrologic basins.

Senate Bill 144 is the implementing legislation for Upper Clark Fork Management Plan. The Department of Natural Resources and Conservation supports Senate Bill 144.

The Upper Clark Fork River Basin Steering Committee was authorized by legislation passed in 1991. The Steering Committee was to develop a water management plan which

- ▶ identified and made recommendations regarding the resolution of water-related issues in the basins¹, and
- ▶ developed recommendations concerning the Upper Clark Fork River Basin Closure,

The official appointment of members to the Steering Committee was made by the Director of DNRC as directed by statute.

¹ In 1991, the issue of predominate concern to many of the basin's water interests were the potentially conflicting applications to reserve water for storage or for instream fishery flows.

From DNRC's perspective Senate Bill 144 implements three principle accomplishments of the Upper Clark Fork River Basin Steering Committee.

- ▶ Senate Bill 144 resolves the immediate conflicts and issues related to new water right development and instream flows for fishery and water quality protection. A basin closure proposal is the keystone of the Management Plan and the Bill. The basin closure recommendation is also one of the specific issues placed before the Steering Committee by the 1991 legislature. Although considered a permanent closure, an internal watershed specific review and assessment is called for every 5 years. This review was specifically requested by the local Watershed Committees. Through this review the community and the state can reevaluate changing conditions.
- ▶ This bill develops a pilot program, specific to this watershed, where willing parties "test" water right leasing to enhance instream flow. The ten (10) year test or pilot program provides 1) additional provisions to address possible third party impacts, 2) establishes additional evaluation of individual leases, and 3) requires an assessment of several potential community wide impacts such as the affect to local property tax. The program will discontinue unless the legislature takes specific action to extend it.
- ▶ Most importantly, the watershed stakeholders desire to continue to rely on consensus and their collaborative process to address future water resource issues. The bill recognizes the continued existence of the Upper Clark Fork Steering Committee and updates their duties reflecting the current status of basin water issues.

The Steering Committee has a new model for developing resource management plans and for resolving local conflicts. Their process is collaborative, consensus based, and involves a broad spectrum of local stakeholders.

Steering Committee members live or work in the basin. To further incorporate local interests, the Clark Fork process has relied upon the advice of six local watershed advisory committees. The Steering Committee has effectively incorporated government assistance into this partnership. In the Clark Fork, government is providing technical support to local water interests.

The Upper Clark Fork River Basin Steering Committee is a successful example of the partnerships Governor Racicot called for in his recent State of the State Address.

EXHIBIT

DATE 3/7/95

HB 53144

**TESTIMONY OF GARY INGMAN
BEFORE THE HOUSE AGRICULTURE COMMITTEE
MARCH 7, 1995**

Chairman Barnett, Vice-chair Rose and members of the Committee, my name is Gary Ingman and I speak today on behalf of the Montana Department of Health and Environmental Sciences and as the Department's representative on the Upper Clark Fork River Basin Steering Committee for the past three years.

The Montana Department of Health and Environmental Sciences supports Senate Bill 144 because it represents a common sense, consensus-based and fiscally responsible approach to resolving a long history of water use conflicts, chronic water shortages and water quality problems in the upper Clark Fork River Basin. This legislation will bring more than three years of committee work and public participation to fruition and will immediately create opportunities for grassroots-level, collaborative water problem-solving. Senate Bill 144 gives basin residents and local water users the tools to fix problems themselves. It decreases reliance on government agencies and it is largely voluntary in nature.

The Department is keenly aware of the importance of streamflow volume to the protection of water quality. Maintenance of adequate streamflows in the Clark Fork, which will be enhanced by passing this bill, is essential for diluting permitted municipal and industrial wastewater discharges to the Clark Fork. Minimum flows are also important for maintaining acceptable water temperatures and dissolved oxygen levels for cold water aquatic life, which is a designated use of the Clark Fork River under the Montana Water Quality Standards. Any further depletion of streamflows will result in increased wastewater treatment costs and will quickly eliminate improvements in water quality resulting from past and planned pollution control measures. Measures securing long-term protection for instream flows in the upper Clark Fork Basin, like those contained in Senate Bill 144, were recommended in a 1993 three-state water quality management plan for the entire Clark Fork-Pend Oreille Basin which was mandated by the U.S. Congress in the 1987 federal Clean Water Act. Thank you for the opportunity to endorse Senate Bill 144.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Agreement

COMMITTEE

BILL NO.

SB 144

DATE

3/7/95

SPONSOR(S)

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Jo Brunner	Uic FSC	144		X
Steve Fry	Washington Water Power	144		X
Jim Dinsmore	Granite CD	144		X
Stan Bradshaw	Trot Unlimited	144		✓
Jim QUIGLEY	STEERING COMMITTEE	144		✓
Bruce Farling	Mt. Trout Unlimited			✓
Nancy Bach				
MIKE MURPHY	MT. WATER RES. ASSN	144		X
Eugene Stanley	Flint Creek Basin			X
Larry Brown	Arg Pros. Assoc.	144		X
Gary Ingman	MT Dept. of Health, WPD	144		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
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