

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 31, 1997, at 1:00 p.m., in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: Sen. Thomas F. Keating (R)

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 162, 1/27/97
SB 175, 1/14/97

Executive Action:

HEARING ON HB 162

Sponsor: REP. MATT DENNY, HD 63, MISSOULA

Proponents: Jan Sensibaugh, Department of Environmental Quality

Opponents: None

Opening Statement by Sponsor:

REP. MATT DENNY, HD 63, MISSOULA introduces HB 162 at the request of the Department of Environmental Quality to allocate approximately \$34,000 per year in fees that are collected for the

registration of hazardous waste generators to the fund for the administration of their program.

Proponents' Testimony:

Jan Sensibaugh, Department of Environmental Quality (DEQ), states the DEQ has operated a safe hazardous waste program for facilities statewide under an authorization agreement with the U.S. EPA since 1981. In 1983, the Hazardous Waste Act was amended to allow DEQ the authority to establish a schedule of fees and procedures for the collection of those fees associated with hazardous waste generation and management facilities. As the amendment was silent on where the fees were to be placed, they were deposited in the State General Fund. In 1993, the Act was amended to create a special revenue account for the deposit of fees associated with the filing and review of applications for new hazardous waste management facilities and for the operation of commercial hazardous waste management facilities. The concern at that time was to insure adequate department funding for the processing of new commercial facility permits and for compliance oversight of existing commercial hazardous waste management facilities. Money in the hazardous waste special revenue account may be used by the department only for the administration of the hazardous waste provision of the Act. This bill would further amend the Act to allow the department authority to utilize all hazardous waste fees currently collected by requiring fees associated with the registration of hazardous waste generators and from the modification and reissuance of hazardous waste permits to be deposited into the existing hazardous waste special revenue account. Approximately \$34,000 in fees is collected annually by the DEQ from hazardous waste generators and the reissuance and modification of hazard waste facility permits. Hazardous waste program activities are funded from a renewable grant from EPA and from the hazardous waste special revenue account for RIT funds. Passage of this bill will provide the department the ability to offset the RIT money currently as matched for the federal grant with the hazardous waste fees and allow the DEQ to maintain its current level of services. Failure to obtain the transfer of revenue will require the department to use RIT or General Fund money to match or to curtail its hazardous waste inspection and compliance assistance activities. The department has requested the use of these fees for the hazardous waste program in its budget request. The provisions of this bill do not provide the department with additional fee assessment authority; it merely allows the department the ability to utilize the fees it is currently collecting. Those funds are needed to support DEQ activities that serve to promote a higher compliance rate through inspections, education and compliance assistance.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MACK COLE states that last session there was a bill that de-earmarked everything out. Is this marking them back again?

REP. DENNY replies yes, in the case of these two fees which are similar to fees already earmarked under the current section of law. There are about 378 different earmarked funds remaining after last session's de-earmarking bill.

SEN. FRED VAN VALKENBURG asks how the executive budget in DEQ is constructed. Does it recognize these fees as a revenue source now?

Ms. Sensibaugh responds the DEQ currently recognizes the RIT funds as the total state contribution to the program. With the caveat this bill passes, we would take \$34,000 less in RIT money and put these fees in its place.

SEN. VAN VALKENBURG assumes the overall executive budget includes this money in the General Fund. So this would result in a \$34,000 per year reduction in General Fund.

Ms. Sensibaugh is sure that is correct.

Closing by Sponsor:

REP. DENNY states SEN. DALE MAHLUM has agreed to carry this bill to the senate floor should the committee give the bill a do pass recommendation.

HEARING ON SB 175

Sponsor: SEN. CHUCK SWYSGOOD, SD 17, DILLON

Proponents: Chris Tweeten, Reserved Water Rights Compact
Commission

Joe Mazurek, Attorney General

Faye Bergan, Reserved Water Rights Compact

Commission

Tim Bozorth, Bureau of Land Management

Holly Franz, Montana Power Company

Bud Clinch, Department of Natural Resources &
Conservation

Mike Volesky, Montana Association of Conservation
Districts

Mike Murphy, Montana Water Resources Association

Opponents: None

Opening Statement by Sponsor:

SEN. CHUCK SWYSGOOD, SD 17, DILLON, introduces the Compact agreement between the State of Montana and the Bureau of Land Management (BLM). This Compact covers two areas relating to the reserved water rights on the Upper Missoula Wild and Scenic River and the Bear Trap Canyon Recreation Area. The Upper Missouri was designated by Congress as a component of the Wild and Scenic River system on October 12, 1976. This designation includes 149 miles of the Missouri River from Fort Benton downstream to the Fred Robinson bridge. The Reserved Water Rights Commission and the BLM were unable to agree on primary purposes for quantification of the reserved water right but agreed that when Congress designated the wild and scenic river, it anticipated future state development. This Compact sets aside a large volume of water by month to meet the future needs of the state. The volume that has been set aside is sufficient to irrigate approximately 100,000 acres of new direct-flow full service irrigation, municipal and industrial needs plus approximately 500,000 acre feet of new storage. Domestic, non-consumptive, supplemental lawn and garden and instream stock uses, lake claims and other federal and Indian reserved rights are not counted against the state's cap. Water availability in most of the state has exhausted the available water supply. The basin above the downstream boundary of the Upper Missouri National Wild and Scenic River will be closed until new appropriations for that month. Reserved water rights for instream flow is limited to the water left after the state's future developments. You have an amendment that has been agreed upon by the BLM. (EXHIBIT #1) There is a concern the Montana Power Company expressed. The BLM will address that with them and we may have to put language in to satisfy their concern.

Proponents' Testimony:

Chris Tweeten, Reserved Water Rights Compact Commission, gives a brief history of the commission's negotiations with the BLM over the reserved water right for the wild and scenic river. The wild and scenic designation occurred in 1976; in 1979 the Compact commission was created; in 1984 the BLM contacted the commission and presented a proposed contract. At that time, the legislation that authorized the Compact commission was not clear with respect to whether we had the authority to negotiate federal reserved water rights having a priority date later than 1973. The commission was created as part of SB 76, water rights adjudication, which was designed to quantify water rights that came into existence prior to 1973. In 1991 the legislature clarified our authority and allowed us to negotiate with federal agencies on reserved water rights claims that have priority dates later than 1973. In 1993 we resumed our negotiations with the BLM. The Wild and Scenic Missouri River consists of 149 miles of Missouri River beginning at Fort Benton and terminating at the Fred Robinson bridge north of Lewistown. It is commonly known as the Missouri Breaks, a very remote area with substantial

historical significance for the State of Montana back to the time when Lewis and Clark traveled through that area and wrote about it extensively in the early 1800's. In the late 1960's the Corps of Engineers, in the course of studying potential dam sites on the Missouri River, identified a potential sight, the construction of which would have flooded part of the Missouri Breaks area. This prompted attempts to provide some protection for the scenic and historic values that exist in that stretch of the river. Three separate bills were proposed at various times in Congress; all failed. Finally, in 1975, Senator Metcalf introduced legislation which would include this stretch of river and designate it as a component in the wild and scenic river system. The congressional delegation worked hard to secure passage of this bill and in the process included specific language recognizing the fact that this is an area that lies at the heart of some important economic development in Montana. There are large agricultural operations on both sides of the corridor with existing water rights; it was understood there was the potential for irrigation both adjacent to and upstream from the corridor that had to be protected. The legislation specifically recognizes that although a reserved right is created to maintain a free flowing river through the wild and scenic stretch, that right was not intended to completely displace water use under state law. The wild and scenic act specifically created a reserved right for this corridor but left the extent of the right and the quantity of the water unclear. The reserved water rights doctrine holds that when a federal reservation such as this wild and scenic river is created, there is set aside from the then unappropriated waters available, a sufficient quantity of water to satisfy the purposes for which the reserve is created. With respect to this particular stretch of river there has not been an agreement between the state of Montana and the federal government regarding the specific purposes for which the stretch was created. The government takes a much broader view of the purposes of the wild and scenic designation than we believe is supportable by the legislation itself. It was apparent early in the negotiations that it would be difficult to reach a quantification of the water right that would be agreeable to both sides because of the unclear issue of statutory interpretation. We did agree that it is clear in the legislation and the legislative history that Congress was making provision for the protection of existing water rights and the fact that there would be future appropriations that would have an effect on the flow of the river through the wild and scenic stretch. Both sides agreed that was the case and began exploring ways in which we could reach a Compact that would provide for protection of those values in the wild and scenic corridor that the federal government felt strongly needed to be protected while, at the same time, giving the state the flexibility to provide for the protection of existing uses of water and for the development of future uses of water that we believed was clearly called for in the federal legislation. The approach we came up with tries to quantify the amount of water needed for all other purposes under state law. We reached an agreement with the federal government that existing

uses would be protected first and that a level of future use sufficient to protect all foreseeable interests would be allowed. Anything remaining would constitute the reserved right of the federal government for the Wild and Scenic Missouri River. We have reached a quantification that provides for a large quantity of water be available for agricultural, municipal and industrial needs in the upper Missouri River basin. There was substantial interest in minimizing the extent to which the BLM would be a player in the water adjudication process. We agreed that the BLM will not have standing to appear in water adjudication and object to water rights claims that are being pressed in the upper Missouri River basin. The BLM will not have the opportunity to object to new permits. This Compact strikes an appropriate balance between the interests of the federal government and the State of Montana.

Joe Mazurek, Attorney General, congratulates **SEN. SWYSGOOD** and other members of the Compact Commission and BLM for reaching this Compact settlement. This agreement highlights what the benefits of negotiations are, in that they can be flexible in creating and resolving disputes that you may not have if you go to court. This is a unique reserved water right Compact and there is no court history in similar circumstances. One of the charges the Department of Justice has is to monitor negotiations and work closely with the Compact Commission. We have done that through the course of these negotiations and urge your support of this legislation.

Faye Bergan, Reserved Water Rights Compact Commission, states her responsibility is to explain SB 175. She handed out an outline (**EXHIBIT #2**) and fact sheet (**EXHIBIT #3**).

Tim Bozorth, Bureau of Land Management, handed in his testimony in support of SB 175. (**EXHIBIT #4**)

Holly Franz, Montana Power Company (MPC), states the MPC has nine dams located on the Madison and Missouri Rivers. Consequently, we have a large interest in the area affected by this Compact. As has been testified, the Bear Trap section is immediately downstream from the Madison Dam. We think the flow of 1,100 cfs is very practical and we are in support of it. The MPC has been releasing this amount of water through informal agreements with Fish, Wildlife and Parks for years. All of these dams are currently going through a FERC relicensing process. We support the Bear Trap portion of this Compact.

MPC generally supports the Missouri River portion of this Compact. We have an initial concern about page 7, line 24 which speaks of the prohibition of future mainstem impoundments and approval by the U.S. We have been discussing this with the BLM and Compact Commission and believe we have an agreement that we can provide to you, by amendment, prior to executive action. This amendment will clarify that we're including the Federal Energy Regulatory Commission (FERC) so any relicensing will go

through the process one time only. The relicensing that is currently ongoing and should cover the river for the next 50 years does not envision any increased capacity. I ask that you support this bill.

Bud Clinch, Department of Natural Resources & Conservation (DNRC), states water management appropriation and adjudication is one of the many aspects the DNRC is involved in. Consequently, we have been intimately involved in the negotiations that precipitated the Compact before you today. We concur with those recommendations as they appear before you. For all the reasons stated by the people testifying earlier, we urge your concurrence with this and respectfully request a do pass.

Mike Volesky, Montana Association of Conservation Districts, states conservation districts are public entities designated by the state to hold water reservations for future agricultural use. Districts have water reservations totaling approximately 33,000 acres for irrigation upstream from the wild and scenic section of the Missouri. The Compact Commission has worked with conservation districts and other water right holders to insure that their interests are protected. This Compact protects the conservation district reservations and prevents the BLM from making a call which would shut down those projects. There are a host of water users who would probably not fare as well if this matter ever went to court. On behalf of the conservation districts, I commend the Commission for their work on this Compact and urge your support of the bill.

Mike Murphy, Montana Water Resources Association, wishes to go on record in support of this legislation.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. VAN VALKENBURG asks when this agreement was finalized and is there any public notice of the fact that it has been finalized other than the posting of the committee hearing notice?

SEN. SWYSGOOD responds this agreement was finalized 2 days ago. We had a tract that was very similar to this bill when we held public hearings in early December on all parts of the Compact. The only part not brought up in these hearings is what has recently been agreed upon with the BLM. There was no substantive change to the Compact; consequently, the hearing posting is the only notification since the amendment was created.

SEN. VIVIAN BROOKE states page 16, lines 21-24 references the transbasin diversions. **Ms. Bergan** gave an example of the Missouri and the Milk, are there any other transbasin diversions or are there plans for others?

Ms. Bergan states there are no plans. This was added because the BLM was concerned that sometime in the future there may be transbasin diversions to feed Southern California or some place else and how this would affect the wild and scenic stretch of the river. There are no current plans for a transbasin diversion.

CHAIRMAN GROSFIELD asks for clarification on the 33,000 amount **Mr. Volesky** mentioned.

Ms. Bergan states it is water for 33,000 acres.

CHAIRMAN GROSFIELD asks **Mr. Bozorth** about his submitted testimony. In the first few lines you talk about a draft compact, please clarify what the word "draft" means in your testimony.

Mr. Bozorth states the word "draft" is a typographical error. We didn't mean to allude to a draft compact that we are still working on. The form and amendments before you today are considered final by the BLM.

CHAIRMAN GROSFIELD asks **Mr. Bozorth & Mr. Tweeten** a question regarding public notices. Is it your opinion that these amendments are not substantive and that the people are not likely to have objections to these two amendments?

Mr. Bozorth states that is correct. I believe these are minor changes that needed to be made to clarify things between the U.S. and the State of Montana but it would make no change in how it would be administered or on how much water is available.

Mr. Tweeten responds that he agrees with what **Mr. Bozorth** said. The amendment is simply a clarification of what our understanding had been all along regarding the accounting for water that might be taken for a transbasin diversion. With respect to the relicensing position, I believe that simply clarifies the existing language in the Compact to what constitutes federal approval for purposes of an enlargement of a mainstem reservoir. I don't think those are substantive changes at all.

CHAIRMAN GROSFIELD asks who will be drafting the amendment pertaining to FERC relicensing and when can we expect it.

Ms. Bergan states they will be meeting immediately after this hearing to work on the amendment. We will have it for you to review during executive action.

SEN. VAN VALKENBURG thanks everyone for their work on this.

Closing by Sponsor:


SEN. SWYSGOOD states he believes the amendment before you actually benefits the state and the users associated with this.

This has been a long, difficult, complex and frustrating process. I'd like to thank Mr. Kwitkowski, BLM, who was an immense help. My biggest thanks go to the technical staff of the state and the BLM. What you have before you is the end result that protects existing and future users and protects the federal government reserve.

CHAIRMAN GROSFIELD states he served on the negotiating team in the early days of this negotiation and remembers the difficulties. He, too, commends the Commission and the BLM on the results.

ADJOURNMENT

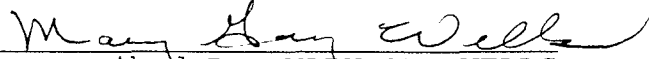
Adjournment: 2:10 p.m.



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary



Transcribed By: MARY GAY WELLS

LG/GH