

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN KEN MESAROS**, on February 12, 1997, at 3:11 p.m., in Room 413/415.

ROLL CALL

Members Present:

Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Gerry Devlin (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Walter L. McNutt (R)
Sen. Linda J. Nelson (D)

Members Excused: Sen. Thomas A. "Tom" Beck (R),
Sen. Don Hargrove (R), Sen. Bill Wilson (D)

Members Absent: None

Staff Present: Doug Sternberg, Legislative Services Division
Angie Koehler, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 284 - 02/07/97
Executive Action: SB 281

HEARING ON SB 284

Sponsor: SENATOR MIKE HALLIGAN, SD 34, MISSOULA

Proponents: Jim Carlson, Missoula City/County Health Department
Barbara Evans, Missoula County Commissioner
Art Garner, Missoula
Margaret Morgan, MT Association of Realtors
Tracey Turek, Missoula
Edd Blackler, Missoula
Bill Nerison, Missoula

Opponents: Mike Murphy, MT Water Resources Association
Jim Foster, Helena Valley Irrigation District
Scott Boelman, Greenfields Irrigation District
Ray Tipp, Missoula Irrigation District & Attorney
Lyle Berg, Missoula Irrigation District
Jerry Supola, Missoula Irrigation District
Jon Metropolis, MT Water Resources Association &
Attorney
Les Graham, MT Stockgrowers Association, MT Dairy
Association, MT Cattlewomen Association

Opening Statement by Sponsor:

SENATOR MIKE HALLIGAN, SD 34, MISSOULA: This bill is an issue that has been discussed in Missoula for a long time. What we've been groping for over the years is an avenue to try to deal with an inequitable situation that is taxation without irrigation if you want to say it in a cliché. As we try to transition and change our laws to deal with our urban problems, we want to make sure we're not transferring those or hurting agriculture while we're trying to do it. This situation concerns an irrigation district that was created in 1922 in Missoula and served very large agricultural properties at that time. Now, after the growth of Missoula, about 70 percent of the property is urban without access to a district and is not agricultural property. In fact, about 2 percent of the property is agricultural in the actual irrigation district. There are those who have been dealing with this issue for a lot longer than I have.

I need to disclose to the Committee that I moved from the hill down onto the flat and just realized about a week or two ago that I'm actually paying irrigation district fees. If this bill does pass I will benefit from this bill. I need to disclose that to you as part of our ethics requirement even though I didn't know at the time that I produced the bill that I would benefit. What we're trying to do is change a law by allowing parcels that are five acres or less within an irrigation district that have no access and no reasonable access to the irrigation works to be allowed to petition the district court. The petitioner would pay a \$20 filing fee and send that petition to the irrigation district and allow a reasonable time, in this case 15 days, to object and let the district court decide to have a hearing on those objections or, if the district court judge could determine from the pleadings that no hearing was required, allow a simple order from the court to allow that individual homeowner or property owner to be excluded from the district.

You will hear testimony from people who have tried to use the existing law excluding lands from the district. That has been attempted for years and has been fought by the irrigation district in Missoula for a long, long time. Even with all the valiant attempts by homeowners going door to door trying to get

signatures, it is virtually impossible to meet the existing requirements of the law where you have thousands of homeowners that now exist in an urban area. This bill is an attempt, in a very clean way, to allow people to be excluded from a district only for those parcels that are small. If there is a way to fine-tune this bill to make sure it applies more to the Missoula situation and doesn't affect anybody else, we'll certainly try to do that. It does not affect federal irrigation projects and if you have to make sure that there is language in here to make sure that's clear then we definitely want to do that as well. I have not asked a whole bunch of people to come in deference to the Committee and the time constraints we are under. We could have packed the room, could have packed the Capitol, but you have received correspondence on this. You know the nature of the problem in Missoula and what we're trying to fix.

Proponents' Testimony:

Jim Carlson, Director, Missoula City/County Health Department:

I'm here speaking before you as a contractor, if you will, of the County Commissioners and City of Missoula. About three years ago a task force, created after one of the drownings in Missoula by the City, recommended that someone conduct a mapping study of the Missoula Irrigation District to determine a number of things: where is the district, where are its ditches, who is paying for the use of those districts, how many bridges does the county have to maintain, who has access to the water, where are the ag users, how much land is involved and many of these sorts of questions. What you see up here is a map of the original Missoula irrigation district as described in a 1922 court decree. **(Used large map to show Committee; did not leave as an Exhibit.)** There is some question about these lands over here, whether they're in or out. The main ditch of that district flows from the University of Montana or just north of it through urban Missoula. This is Reserve Street, Fort Missoula, Community Hospital, South Avenue for those that are familiar. The Clark Fork River is to the north and the Bitterroot River comes in from the south.

It's quite urbanized and there are literally thousands of fairly small lots and a number of parcels in this area that have been subdivided. There are a lot of homes and urban/suburban sorts of uses. This map shows irrigation uses. These all happen to be parcels that are paying fees. The red ones are ones that have no access to the ditch. The blue ones do have access to ditch properties. The yellow ones also have access. There was residential use found when somebody walked the ditch. There was a pump or some sort of diversion. The green parcels are agricultural use and again, the parcels over here are in question. When the University students did the study and walked this, the only agricultural use they found on this entire section of ditch going through these thousands of lots was this pasture situation way down here on the very end of this parcel. You have some additional information and I'll go through it quickly.

These are results of that computer mapping process. **(EXHIBIT 1)** Inside the district, having to do with the parcels and use, out of a total of 2,756 parcels in and out of the district which are paying fees, 59 percent of them or 1,600 did not have access to water. Another 11 percent or 296 parcels had access, but were not using water. About 64 parcels were agricultural or truck/farm/nursery use. About 406 parcels were lawn and garden use. There are a number of parcels outside of the district, based on a court decree that we researched, that are paying fees. In fact, 42 parcels are paying fees that use water yet there are 327 parcels outside the district that have somehow, over the years, been added onto the tax rolls. They aren't using water and are still being charged the fee and apparently never were in the district. In terms of fees collected in and out of the district, if you look at the next page, this is all based on 1994 data. About 49 percent of the dollars in fees collected on behalf of the district by the county have no access to water. Fifteen percent have access, but don't use it. Another 9 percent is ag/truck/ farm/nursery use. Sixteen percent is lawn and garden use. Then there are those people out of the district who use it or don't use it. They collect about \$9,372 a year in fees outside of the district where there is no use of the water.

The next chart I'll go over very quickly. It has to do with the acreage as opposed to the number of parcels. Again, about 50 percent have no access and the other 50 percent of the acreage in the district do have access. One of the reasons this issue is getting a lot of attention is, as a result of this study, we found there are a lot of parcels inside the district that were or weren't using the water, but were not paying fees. That was 797 parcels. Last summer, the district added those parcels to the county rolls through the process resulting in increased fees of \$24,819 being collected inside the green areas shown on this map. They made sure they were collecting fees from all the parcels in question. However, the 327 parcels that are out of the district and not using any water were not eliminated from the paid fees. That's one of the reasons there's a lot of public concern in Missoula. There were a lot of people added to the fees and the people being charged incorrectly haven't been removed from those rolls.

{Tape: 1; Side: A; Approx. Time Count: 3:23 p.m.}

Barbara Evans, Missoula County Commissioner: Submitted and read written testimony. **(EXHIBIT 2)** I have discussed this with **Mr. Tipp** and he says they can lay hoses from their homes to the ditch. I would like you to picture, if you will, roughly 3,000 folks with varying lengths of hoses going from their house across other people's property, across the roads, across railroads and then I would assume we will need 3,000 pumps. We all know they're not going to get easements across other people's property for these hoses. It doesn't make much sense to me. If you did not own a car, but you were still required to pay taxes for the car you don't own, would you object to that? Of course you

would. It's the same arrangement the taxpayers of the Missoula Irrigation District are facing. We ask you to please modify this law. Make it fair for the folks. We are not asking to close the ditches. We are asking that folks who pay taxes have access to the services for which they pay.

Art Garner, Missoula: I have property at 4001 Russell Court which is in the very lower corner at the end of the map there. I'm currently paying \$22.00 a year for use of the ditch which I cannot receive any benefit from and the subdivision which I am in is a little over two acres and there are nine parcels in that two acres. This amounts to 4.5 parcels per acre and this creates a revenue for the ditch company of about \$77.00 more per acre with less usage of the ditch. I feel that people who do not have direct access to the ditch be allowed to stop paying for a service they can't use. We all pay taxes for a lot of things that we don't use, but at least we have the opportunity to use it if we want to. This is something we don't have the use of and feel we should not pay for something we cannot use.

Jim Schoenbaum, Missoula: Submitted and read written testimony.
(EXHIBIT 3)

Margaret Morgan, Director, MT Association of Realtors: We support SB 284. The reasoning of the Association is quite simple. The feeling is that homeowners who do not have access or reasonable access to the ditch water should not have to pay maintenance fees.

Tracey Turek, Missoula: I am a property owner that also must pay a fee and my property has not been able to access the ditch for over 20 years. I am also an employee of the Department of Natural Resources and work in the Water Rights Division. However, I am here on my own time because I am a paying property owner in this district. When I explain to you that this is simply a tax issue and not an irrigation issue, I know from my experience of working with water rights for almost eight years that this will not affect ditch rights or water rights. This is simply a tax issue that property owners are being assessed fees for a private ditch maintenance. The individuals that use the ditch benefit from the individuals who do not use it. The current statutes, as others have mentioned, require an individual like myself to obtain permission from at least the majority of the owners, who also represent a majority of the irrigated land within the district, to allow me my tax relief. It's against their interests to allow me out for, if they are using the water, I'm helping reduce their costs.

There are other individuals who like the ditch and that's fine. If they wish to pay for it, that should be their choice. I do not have a choice unless all these other individuals, over 1,500 of them, allow me to get out of the district. We're simply asking for tax relief and allowing an individual to petition, if they wish, to get out of a district and not pay for maintenance

fees that privately benefit other individuals. This is a private ditch. They have their own private water rights. This is not a public entity. It's not like paying taxes for a public benefit. We're not trying to affect anyone's rights or easements or the ditch. We are simply trying to say, let individuals like myself and 2,000 to 3,000 other individuals get tax relief.

Edd Blackler, Missoula: My mother owns property on 3rd Street in the district. I stand as an example of a property owner who has struggled with this for more than 30 years. The scenario being, when we first moved onto the property in 1949 I can recall going with my father, trudging across the neighbor's property to the main ditch and cleaning the laterals in order to try and facilitate water to come across the neighbor's property, under the road and onto our property. We would benefit for approximately 30 minutes or so and usually by that time somebody had deflected the water back so we would go way back across there to the main ditch and get the water going again. This occurred for a few years and we put up with this. Finally it dawned on us that we lived on the river so it made a lot more sense to get a pump and irrigate our property from water out of the river.

Shortly after that, the ditch that served us deteriorated to literally nothing and each time I brought that fact up to my father about paying for this that we didn't get, we would check with the County Commissioners and they always said it's state legislation. It was out of their hands. Just now I learned that it might be possible to maybe get out if the 1,500 other people were foolish enough to allow you out. I didn't even know that was possible. I was really pleased to find out that **SEN.**

HALLIGAN had forwarded this grievous, unjust taxation problem to you. I would hope you would take favorable action in this matter and alleviate this unfair tax burden. I might even go so far as to say that when I was 10 years old we lost my 19 month-old brother in that ditch. From that standpoint, I might say we've paid enough already.

Bill Nerison: I am an architect practicing in Missoula and property owner in Missoula County. I want to thank **Fern Hart**, a Missoula County Commissioner, for asking me to address you today. My wife and I live approximately one mile west of Missoula in Orchard Homes subdivision. It's a semi-rural area that is rapidly expanding with new homes. It's an old subdivision that's been experiencing the phenomenon common to many areas in Montana. As new homes are built, tracts of land are continually being divided into smaller and smaller pieces. The owners of our property also own the adjacent land to and abutting ours. At that time, this larger tract had access to the irrigation district. As time has passed and land was divided into smaller and smaller pieces, various pieces were left with no access to the water the ditch provided. Historically, Orchard Homes area has been agriculturally and horticulturally oriented, but as urbanization has progressed this has become less and less so in contrast to areas of the state not experiencing this rapid

growth. When we purchased our home and property in 1994, we paid approximately \$1,100 in taxes with no knowledge that a portion of that tax was taken to provide ditch maintenance for people who actually were located on and using the ditch. Last year we learned that our taxes would be increased to over \$1,800. Again, a portion of it was being taken to provide maintenance for the ditch. I contacted **Ms. Hart** to ask her why we were paying for a service we were unable to utilize. She explained to me that state law prevented us or any other individual from withdrawing from that irrigation district. I appreciate the need to keep these ditches functioning to provide water for the people that need them. My question to you is, what's fair? When our area was truly rural, the system that's now in place worked well to collect maintenance fees and provide service. Times change and in our area, less than 20 percent of the landowners use that ditch. Is it fair to ask the other 80 percent to basically subsidize the service? I don't think so. We have a serious problem in Missoula County with air pollution. It's just a matter of time before we're going to be required to do automobile emissions testing. Again, is it fair to ask the landowners of rural counties in Montana to subsidize our testing costs? The answer is no. It is time to reevaluate the methodology by which we ask property owners to contribute to the cost of providing services. The recipient of the service should pay for the cost. I appeal to you seriously to consider the legislation before you in an effort to rectify the situation at hand. The worst thing that could happen is a class action lawsuit to bring about an equitable resolution. I feel that fair minded people should be able to resolve problems without pursuing confrontation.

{Tape: 1; Side: A; Approx. Time Count: 3:43 p.m.}

Opponents' Testimony:

Mike Murphy, MT Water Resources Association: Submitted and read written testimony. (EXHIBIT 4)

Jim Foster, Manager, Helena Valley Irrigation District: Submitted and read written testimony. (EXHIBIT 5)

Scott Boelman, Manager, Greenfields Irrigation District: We are the largest, single irrigation district in Montana. We irrigate 83,000 acres located west of Great Falls. We have quite a large infrastructure: three major storage reservoirs including Gibson, Willow Creek and Pishkun Reservoir, over 700 miles of waterways - canals, laterals, drains, siphons, tunnels. We are primarily a rural area at this time and this bill would not have a significant impact on our irrigation district. It would probably impact less than one percent of the lands and mean a loss of income to the district of about \$10,000 a year. As some of the proponents indicated, Montana is changing and growing. We have concerns of how this might affect our district in the future.

Our biggest concern is our infrastructure was designed to serve a set number of acres. Gibson, Pishkun and Willow Creek Reservoir and our canals were built the size they were to serve 83,000 acres. This bill has the potential of eroding the base or the acreage that our system was designed to serve. As the acreage is reduced in the future, the burden to the remaining agricultural users would increase and would have a negative impact to agriculture. We're not going to reduce the size of Gibson Dam if half the acres of the district petition to get out. We're not going to reduce the size of any of our other dams or canals. There may be small laterals in places we can close, but the majority of our costs for O & M will remain the same. If half petition to get out of the district, the O & M costs will double for the remaining users. Submitted written testimony. (EXHIBIT 6) (Touched upon it somewhat.)

{Tape: 1; Side: B; Approx. Time Count: 3:54 p.m.}

Ray Tipp, Secretary, Missoula Irrigation District & Attorney:

First I would like to respond to some of things you were told about the Irrigation District and then about the bill directly. It was mentioned that there was an irrigation district formed in 1922 and that's true. As a matter of fact, the ditch system was set up in 1877. (Refers to large map set up by Jim Carlson.) This was a consolidated ditch system and went all the way through here. Various people had water rights appropriated from the river and were enjoying those water rights. In 1905 they went to court and had those water rights decreed. In 1922, they got together and said we want to have an administrative arm for our ditch system. The irrigation district was formed as an administrative arm of the consolidated ditch system without taking any of the rights away from the consolidated ditch owners. When we talk about this specific district, we're talking about an administrative body and not an ownership body because the district does not own this system. However, the district was set up as a trustee of the water rights. The water rights were decreed in 1905 and 1922 as being appurtenant to the land and cannot be separated from the land. In addition, the ditch system is the same way.

The only thing happening here is an attempt to remove some people from the requirement of maintaining what they already own. A lot of people don't understand that. Let's look at this 1922 map. This is all subdivided land. There are small and large lots, 10 acres here and there. Those were orchard lots primarily. They were habitable. They had homes and families on them. We can say, "Well, yeah, they were agricultural." That's true. Perhaps 80 percent of all people in 1922 lived on farms or something. They didn't have city water and didn't have a good means of drilling wells. Right now, most of this land out here does not have city water. There are a great number of wells through here and a lot of them are very shallow. They are sucking off the irrigation system. All it takes is about two weeks or less for one of these laterals to be shut down and all of sudden these

shallow wells start to dry up. Not all of them, but enough of them so we drill deeper into the aquifer. That makes a lot of sense? The problem is not the irrigation district because since 1877 we haven't changed a thing. All we've done is maintained it. The problem is with the County Commissioners. They have the power and authority to require every subdivision to require access easements, for irrigation purposes. We have asked them for the last 25 years to do it. I've been on this thing for 35 years and was the one that asked them to do it. They have letters in their files saying to do that. They don't always do that. They just plow ahead and do it without requiring the easement. The district must put the water in the main canals and laterals and must maintain them. Each of these parcel owners, these people who are complaining about this thing are required to go to the ditch where the water is and take it.

These are natural water courses. If a water system exists more than 50 years it becomes known as a natural water course and they can take out of there anytime they want. You will hear testimony from our ditch master that he not only encourages people to tap into the ditches wherever they want, but he also helps them and also makes sure that where they put in their pipes or whatever that they are maintained in a manner and form so they operate. The question is, can you get to the water? Is this land irrigable? In 1922 the court said every parcel of land was irrigable. Somebody will say I have to go through my neighbors lawn to get a pipe through there, another may say they have to go across the road and another might say I'm just too lazy to do anything. As a matter of fact, that happens with a lot of people. Nevertheless, most of this subdivided land came from a common grantor. When you have a common grantor and there's an appurtenance to the land like the water belongs to the land here, you have an easement of necessity which cannot be denied to you. Everyone of these people who say they cannot get to the water are wrong. They can go across the streets because the county must allow that privilege. It's in the statutes. They can take a pipe or anything they want to take the water from any one of these ditches. The district is doing what it should do. They aren't doing what they should do.

CHAIRMAN MESAROS: Sir, could you make remarks to the bill and summarize? We are not here to point fingers at any particular people.

Mr. Tipp: Yes, I understand. The bill itself requires there be litigation and a petition filed and that petition must say that someone cannot feasibly obtain water. That raises an item of fact. Can you feasibly get water or can you not? What is feasible? Is not having a pipe nonfeasible? Is not wanting to put in a pump make it nonfeasible? Is the fact that you are above the gravity flow make it nonfeasible? What makes something nonfeasible? It doesn't say. The statute you want here talks about whether or not the property can be successfully irrigated. In 1922 the District Court declared that all of the lands were

irrigable. If they are all irrigable, then they can all be successfully irrigated. What does successfully irrigated mean? How many square feet do you have to have to put water on before you can say you are or are not successfully irrigated? That's the big question we have built into this proposed bill. The question is also whether or not the petition is sufficient. What is sufficiency? Nobody can answer that. It's like trying to answer the question of what's reasonable.

Section 18-02 talks about the same land being burdensome upon the landowners of the district. So this bill and the petition is no good unless there is burden upon the landowners of the whole district. That's on line 25 and 26, page 2 of the proposed bill. There have been some cross-outs of the word "lands" into the word "land". Both words are plural or singular depending on what you're talking about. You haven't changed a thing. Page 3, lines 2-4 say "whenever a tract of record is located within an irrigation district as five acres or smaller in size and is not served by any district canals, system facility or other undertaking, the owner of a tract may petition to eliminate the tract from a district". The state says the district must put water in these laterals and main canals and maintain the same, sufficient for everybody who wants to tap onto it so every piece of land is served by the district.

CHAIRMAN MESAROS: Sir, in the fairness of time we have other people to testify and we do have time constraints.

Mr. Tipp: Can I have a couple more comments sir?

CHAIRMAN MESAROS: Briefly.

Mr. Tipp: This bill does not provide for any input by mortgage holders or anyone who has a vested interest in that property. Once somebody has had their lands deemed not irrigable, they cannot get back in. That means there is a property right taken away by the mortgage holders, if you will. In addition to that, the ditch system is owned by all of the parties including those who don't want to be taxed. I, as a lawyer, would not mind having the lawsuit for somebody who has a claim or a drowning in an irrigation district when you have an irrigation district as one of the parties who has immunity under the statute, but the landowners which have gotten out of the district do not have immunity so they retain strict liability for that drowning.

Lyle Berg, Chairman, Missoula Irrigation District: This five-member Board is made up of volunteers who represent the people and the divisions. The district has five divisions and each division elects a board member to represent all of the irrigation users in that district. They have to stand for election for a three-year period. I would like to talk about benefits of the ditch to the system. This area is called Target Range and Orchard Homes. Part of its geography is why Missoula is called the Garden City. A lot of the people out here own little plots

of land: an acre, half acre, two acres, five acres and we do have a 90-acre farm at the end of one of our ditches. They are small land users, true. Most of them are not agricultural. They have a cow or two, a horse, a goat, some sheep, but they like the rural flavor of this area and it adds a great deal to Missoula. Missoula would be a drastically different place without our ditch. If you go through this area, you'll see where the water is available and used. It's green and pretty. I hope that's not what the University kids did when they did this study, just go through and look at what's green and what's brown because anyplace that's not using water is brown and full of knapweed and that's exactly what this place might look like if the water weren't there. There are other benefits, too. Land values were mentioned and I'm a firm believer in that. I know people who, if the water were not available, would sell their land in a flash. We could go on and on and talk about the aquifer and other things, but this is not the place.

One of my main concerns is if this bill threatens the very existence and survival of our district. There is no question about it. If the people who support this bill are right, 2,000 to 3,000 can elect to leave the district and we would have no choice but to raise the rates on the rest of them. We'd have to raise it in order to do what the law tells us to do and that is to operate the ditch. Districts have always been formed by people who have similar interests and similar means. They were put together to cause something to happen. If you will, we pay funds into a library and maybe never take out a book. Nevertheless, the American way is because a few people can't afford to have such a library is why a district is formed and why it's important to keep.

Jerry Supola, Ditch Rider, Missoula Irrigation District: It's been called an antiquated system because we clean about 30 miles of ditches with a pick and shovel and most of it with a wheelbarrow because we're in small subdivisions where we clean out backyards and haul it away wherever possible. I'm a geologist and know this valley well; 90 percent of that water does go into ground and into the aquifer. If you do away with that ditch system, a lot of the shallow wells will go dry. No doubt about it. I do represent the users and they're happy people. I never talk to the people that don't use the ditch, but I have lots of people that use it and couldn't get along without it. Many of them have been on the ditch for 50 and 60 years.

Jon Metropolis, Board Member of MWRA & Attorney: I represent irrigation districts throughout the state. What we have demonstrated here today is that there is certainly a local conflict that has grown up here in Missoula. I appreciate that something needs to be done and that **SEN. HALLIGAN**, as their elected representative, would want to do something. The bill affects irrigation districts statewide. It affects state districts that are served by federal irrigation works. I think that covers pretty much all the irrigation districts. I don't

know of any federal irrigation districts as opposed to projects in the state. The problem or difficulty in addressing this is that when districts are formed, the state district court looks at the land that has petitioned to be in there and says it can bear so much expense each year, over the course of 50 or 100 years to build the structures and to pay for the O & M and then to pay for the upgrades. If you start eroding that base without the consent of all the land that is supporting it, you're going put an unbearable burden on the small portion that's left. It may not even be a small portion. Many farmers and ranchers, as you know, are operating on a narrow margin. If you increase their O & M by 10 to 20 percent in a year or five years in succession, you're really going to eat into their economic capability. I respectfully oppose this bill. **SEN. HALLIGAN** has a tough job and is doing the best he can. This is a local problem which should be solved on a local level.

Written Testimony:

Mike Kadas, Mayor of Missoula (EXHIBIT 7)

Proponents' Letters 1-81 (EXHIBIT 8)

Opponents' Letters 1-6 (EXHIBIT 9)

{Tape: 1; Side: B; Approx. Time Count: 4:14 p.m.}

Questions From Committee Members and Responses:

SEN. REINY JABS: Are you a landowner or resident?

Mr. Garner: No. I have an apartment at 4001 Russell Court. I'm a landowner, but I don't live there.

SEN. JABS: Did you buy land in this district?

Mr. Garner: Yes.

SEN. JABS: When you bought this land, did you know these irrigation charges were there?

Mr. Garner: No, I didn't. I wasn't told that when I bought the land, but I did find out about it afterwards.

SEN. JABS: When you buy you have to take things into consideration. **SEN. HALLIGAN**, in our district we're not dealing with a subdivision, but if a person feels their land is nonirrigable we have a three-man committee that looks at the land and makes a recommendation to the Board of Directors. Would this circumvent that? If a person feels they can't be irrigated, can they go straight to the courts or do they have to go through a local process first?

SEN. HALLIGAN: The only time they can use this provision is if they have under five acres. Anybody with more acreage cannot use this provision at all. Again, the law was written in 1909 when

there were maybe 10, 20, 50 landowners. If one of them decided they wanted out, finding the other 26 or whatever landowners to get a majority is pretty easy. You know everybody. That's why the provision was put in the way it was. I can understand that. Now when you've got thousands of people in the subdivisions all over the cities, it just doesn't make sense anymore.

SEN. GERRY DEVLIN: I'm sure you've had a chance to look at some of the contracts for deed or whatever way they set it up in the Missoula Valley. Didn't anybody pick up on that? Nothing is said about the expenses for the irrigation district when they buy that land? Isn't there a notation on the title?

SEN. HALLIGAN: I'll have to go back and look at mine, but as far as I know, if I'm an owner of that irrigation district, it certainly isn't on my warranty deed. I was not aware of it and I went over that thing with a fine-tooth comb.

SEN. DEVLIN: Didn't you look at the tax from the previous year when you bought your parcel and note there was a charge for the irrigation district?

SEN. HALLIGAN: I'm not aware that the irrigation district fees are on the property tax form. I don't know if they are.

SEN. DEVLIN: They're not by themselves anyway, but are they included?

SEN. HALLIGAN: I don't know for sure.

SEN. DEVLIN: Does it show separate on the tax list?

Ms. Evans: I do not know. I'll bet **Mr. Tipp** does, but I do not.

Mr. Tipp: The tax bill is broken down on water districts, fire districts and irrigation districts.

SEN. DEVLIN: It shows specifically on the tax notice that this is for the irrigation district?

Mr. Tipp: Yes, it does. It says Missoula Irrigation District. Missoula Rural Fire District is in the same list of things on that tax bill.

SEN. DEVLIN: **Mr. Supola**, you're a geologist and have been there a long time evidently.

Mr. Supola: Actually, I graduated in 1958, but I just moved back to Missoula two years ago.

SEN. DEVLIN: Do you remember any of the wells in that area in those years a long time ago before it was settled? Were there wells out there or not?

Mr. Supola: The only thing I know about the wells is from visiting with current residents. I understand there are maps at the Water Resources Board in Missoula that actually tell the flow. They know which way that groundwater flows. It's pretty well mapped in that valley. I haven't seen that map, but I've been told about it.

SEN. DEVLIN: These water wells we're talking about and you mentioned might dry up, are they viable water? Is it drinkable?

Mr. Supola: Yes. By the way, I was told there is a state law that, when you file on water rights in a well, you can only file on 35 gallons per minute. So, you may have a 20-acre tract that all of a sudden can't get irrigable water and will have to rely on a well that is only allowed to take out 35 gallons per minute.

SEN. DEVLIN: I think you're right. I got into a jam with that.

{Tape: 1; Side: B; Approx. Time Count: 4:21 p.m.}

SEN. LINDA NELSON: Is this just a local problem? Are there other problems similar to this in other urban areas?

SEN. HALLIGAN: I've received letters from just a few other places in the state. To **Ray Tipp's** credit, he has been a great opponent over the years and has inflamed the locals as much as you possibly can which has made it more of a local issue particularly because we have grown so rapidly. The answer to your question is, I think it's probably more local. You're not supposed to bring a local bill to the legislature, but my intent was to try to deal with the fairness issue realizing we should have changed the subdivision laws years ago to deal with this issue. The horse is out of the barn so how do we deal with the fairness issue while we're here. I'll sign onto a subdivision bill that makes developers pay or tries to deal with it in a way that gives notice to everybody.

SEN. NELSON: I take it that you've reached an impasse.

SEN. HALLIGAN: We've tried to solve it locally by getting the signatures that are necessary, but again, the point is why would anybody else sign the petition if it's going to mean their fees are going to be raised if they're not going to be able to get out. Why would the irrigation district say anything? They want us in. Every time somebody subdivides a parcel, they get that extra \$22.00 a year and nobody's going to use the ditch. They're benefitting tremendously from this. Talk about overreaching.

SEN. DEVLIN: How many names are required on a petition to get off?

SEN. HALLIGAN: 1,550 or somewhere in there.

SEN. DEVLIN: How many people are in there?

SEN. HALLIGAN: I don't know. 3,000 plus.

SEN. DEVLIN: You have to have half.

SEN. HALLIGAN: Right and you have to go all over town to get them.

SEN. DEVLIN: All over town or just in that district?

SEN. HALLIGAN: It would be in the district.

SEN. DEVLIN: But you would have to get half the members in the district.

SEN. HALLIGAN: Which own more than a majority of the property.

SEN. DEVLIN: Then the signatures are weighted according to the amount of land they have. Is that right?

Mr. Tipp: Let me answer it obliquely. The district was formed with the majority of the landowners and 60 percent of the land area represented within the proposed district. It requires exactly the same thing in the reverse.

SEN. DEVLIN: So 60 percent of the owners of the land mass.

Mr. Tipp: Representing 50 percent of the people. Incidentally, if you go over the irrigation district laws, you're going to find that whenever there is to be any changes whatsoever it requires the very same thing. The only difference is when somebody wants to come in, then it can be done by petition to the District Court if there is sufficient water and the district agrees.

SEN. DEVLIN: You mentioned liability. Wouldn't the homeowners policy cover liability for this ditch? If I understand it right, the owners of the ditch are not liable from suit if something happens related to the water.

Mr. Tipp: If I could refer you back to 1987, the Legislature passed a law that essentially says an irrigation district has immunity from the death of a drowning unless the irrigation district or private person or entity was grossly negligent or engaged in willful or wanton misconduct. Our problem is this. If there are parties being left out of taxation, they nevertheless are still in the ditch system. If they do not participate in the taking care of those ditches, that is O & M of the district, then they are willfully omitting their job in making the ditches safe. If there is a drowning, there is a question of negligence that must lie upon those parties who so have immunity. Their homeowner policy insurer might be concerned.

SEN. DEVLIN: **SEN. HALLIGAN**, what do you think? You're under the gun. If you got out of that, would your homeowner policy cover it or do you think it's important that you have that protection?

SEN. HALLIGAN: I can't believe we have the kind of immunity in here for irrigation district personnel that we did adopt in 1987. I agree that, potentially, the homeowner policy may cover that particular thing, but I think it's a stretch to say that if the irrigation district is not liable then the individuals are liable. I would like to research that a lot more.

SEN. GREG JERGESON: I'm trying to understand what the fee structure is. One gentleman said he paid \$22.00 a year on a lot. How are the assessments calculated?

Mr. Tipp: The statute provides that all the irrigable lands be assessed alike. Any parcel that is under one acre is charged as one unit. Anything over one acre is a proportionate unit above that. If you have two acres, you have two units so that would be \$44.00 instead of \$22.00. If you have one acre or less it's \$22.00.

SEN. JERGESON: If you have a standard 60x120 lot inside the city, would you pay \$22.00?

Mr. Tipp: That's correct.

SEN. JERGESON: How many of those size of lots can you get on an acre of land?

Mr. Tipp: It depends on who's doing the subdividing. Some lots are bigger than others. I don't know.

SEN. JERGESON: A person with a 60x120 lot would pay \$22.00 and a person with an acre would pay \$22.00.

Mr. Tipp: That's correct.

SEN. JERGESON: Anticipating that this kind of conflict may occur as subdivisions are approved, has anybody from the irrigation district ever shown up in front of the County Planning Board to object to the develop of subdivisions within the irrigation district over the years?

Mr. Tipp: The district is informed of some of the subdivisions now that are proposed and maybe all of them. I don't know because there is nothing in the public record that will tell us when something is happening in that regard. Each time a plat is sent to us asking us to approve it, it is given to the five Commissioners and it's approved, as far as the irrigation district is concerned, if it shows easements for irrigation works. Only **Ms. Evans** can tell us whether or not that concerns all of the platting that is taking place in the Orchard Homes and Target Range area. I don't know, but whenever we get a change,

we make sure that they can put pipes, ditches, whatever they want. I was going to mention there is a particular statute that says even if you withdraw lands from the district, you are still responsible and chargeable if the district might become liable or chargeable, as if the change of the boundaries had not been made.

SEN. JERGESON: My question has been answered although I would like to have **Ms. Evans** respond to what your knowledge is as to whether the irrigation district has ever objected or offered changes in subdivision approval on any of these lands.

Ms. Evans: I have been a Commissioner for 18 years and have found, in working with the ditch district, that they are virtually impossible to work with. I would have to go back and look at all the records that we have, but I have looked at plenty of subdivisions in the years that I have been there and have never yet seen a letter from the irrigation district saying you are not providing access for the ditches. There have been some subdivisions that have ordered the ditches. We have made sure that if there was a question on the ditch we asked and I can't tell you whether we received an answer, but if it required access to the ditch, we were concerned about fencing it or providing access to it or putting culverts in it. That's the only thing I can tell you. I do not have, to my recollection, a letter in any of our materials asking us to change a subdivision law, procedure or to provide anything for the ditch company.

SEN. JABS: Before, when this was farmed, you paid \$22.00 an acre for cost. Suppose they subdivide that in half and put two houses there. Do they split that \$22.00 or do they each pay \$22.00?

Mr. Tipp: They each pay \$22.00.. It doesn't reduce the cost of overhead maintenance. Remember, this is only for O & M. It doesn't allow for any surplus. O & M is the only thing paid out of these monies and every time somebody else gets in the district or you subdivide a piece of property it increases the expense of operating the district system. As **Mr. Supola** mentioned, a lot of it's done with wheelbarrows and picks and shovels now because you can't get equipment in where before you could. We use our entire budget and we only have one paid employee on a full-time basis and then there are entry level people with picks and shovels that work for the district. That's what the money is used for.

SEN. JABS: How about the construction money or paying off the old debt?

Mr. Tipp: We don't have old debts.

SEN. DEVLIN: Say there's five houses on one acre and those five formed themselves into kind of a cooperative where they would be charged one time rather than five times.

Mr. Tipp: I don't know of any procedure where people within the district can form a subdistrict which will take it as a one unit in the major district itself.

SEN. DEVLIN: They would be more or less of a corporation holding the interest in the district water irrigation system.

Mr. Tipp: People don't have an interest in the district. A lot of people don't understand that. The district holds the water and ditch rights in trust for the landowners. They do not have water rights, they do not have ditch rights as such because it's being held in trust by the district. They have the right to use water. One person can't say I'll take this five units of water and then I'll let 15 other people use it. It can't be done.

SEN. DEVLIN: **SEN. HALLIGAN,** I would hope you would look into that.

{Tape: 2; Side: A; Approx. Time Count: 4:36 p.m.}

Closing by Sponsor:

SEN. HALLIGAN: I'm used to having bills that are controversial. What's interesting though, is the professionals that have testified. I have talked to **Mr. Foster, Mr. Murphy, Mr. Metropolis** and others who have expressed their concerns. The only people who never called me are the Missoula people. The problem with the Missoula issue all along has been the communication problems and the failure to work together. People have been trying to deal with this issue for 40 years. They have got nothing but what we've talked about. I may be bringing you a local problem, but we want to do deal with this. It's kind of like the early range wars where there is an urban/rural clash. Missoula was rural and is now very much urban. We don't like it that much, but those are the facts. We will work on the bill so it doesn't affect other irrigation districts, federal or otherwise.

Maybe I am the sophisticated buyer and should have seen, on my deed or on the property taxes, that I have an irrigation district fee. I would have bought the house anyway because of needing space for the kids. That doesn't make the irrigation fee any more fair if we don't have access to it. Come to Missoula sometime and try the suggestion of throwing a hose over a couple of streets. It wouldn't last very long. I'm trying to find a solution. I will look at the subdivision laws and we'll look at making developers pay and try to deal with those issues.

There was a lot of miscommunication over the years. We may be setting a precedent to establish something for other communities. Perhaps we do need to change some other laws. I hope we can find a way to deal with the Missoula urban situation and not affect the rural communities. Most irrigation districts are functioning well, like they're supposed to. This is notice to them to make

sure that when County Commissioners are approving subdivisions they are dealing with that access issue and have that somewhere in the law. The unfairness is there. I've heard that the Missoula Irrigation District has \$60,000 or \$70,000 in reserve. That's because of all the people paying that aren't using the ditches. In subdivisions, most people are not going to be using the ditches so there is no increased operation and maintenance. They take the money and smile all the way to the bank. I'm hoping to work with you. Please give me the opportunity to do that.

CHAIRMAN MESAROS: As I stated earlier, I did receive a lot of correspondence on this bill. I've entered all that in record and all the members have access to that. We will close the hearing on SB 284 and will not take Executive Action today.

EXECUTIVE ACTION ON SB 281

Discussion:

VICE CHAIRMAN HOLDEN: At the end of that meeting, they were going to look into possibly making some sort of graduated scale. We really couldn't figure out how you would use commodity dealers and public warehouses and how you could make this graduated scale. We want to do everything we can to support agriculture and keep these grain elevators operational because it's tough for these little guys. The minimum fee is \$232 and if you can't pay this, you have a lot of big problems. I'm going to make a motion that we TABLE the bill.

CHAIRMAN MESAROS: Before I recognize that motion, I would like a little more discussion on it.

SEN. DEVLIN: Was there anyone who came to you with amendments for this?

Doug Sternberg: No.

SEN. DEVLIN: I really thought that someone would come forth with some amendments if they are interested in saving the bill. Maybe nothing can be done with it.

CHAIRMAN MESAROS: No one approached me as far as any changes and I haven't received any additional correspondence.

VICE CHAIRMAN HOLDEN: I would add to that. I looked at the possibility of coming in with an amendment on a graduated scale basis and that's why, when you're ready, I would be prepared to offer the motion to TABLE the bill.

SEN. NELSON: I think when he started with this he was talking about the warehouse people and then he added the commodity dealers because we talked about what happened in my Subcommittee

on Appropriations, that the commodity people should be coming up with something and doing some sort of index. We felt like that was really important and we instructed that we do that. We felt if he added the commodity dealers to his bill, that would give them some leverage to do it because we really didn't feel like they were going to go out and do it.

CHAIRMAN MESAROS: Is it my understanding that this will be addressed next Session as far as graduated scale?

SEN. NELSON: If there was no bill that came forward in this Session, yes, they were to do something. We just didn't have great faith that they were going to do something.

SEN. JABS: At present time, everybody will stay the same. They pay \$232 no matter what size they are. Is that right? So, if a commodity dealer has one of each, he pays \$464.

SEN. DEVLIN: If he's a commodity dealer and a warehouse, he would pay that twice.

SEN. NELSON: If we took out number 2 under the statement of intent that dealt with commodity dealers, would that make the bill more palatable? **SEN. STANG** could have his bill the way he started with it.

VICE CHAIRMAN HOLDEN: No, I guess not. I was looking at the warehouse. He was talking about the small grain elevator and I guess my thoughts are the same. The flat rate of \$232, at this point, is low and probably as fair as it can be until they really come in with some sort of graduated scale.

CHAIRMAN MESAROS: They wanted to exempt a Licensed Accountant and include a comparable professional. I didn't quite agree with that portion.

SEN. NELSON: That's true.


Motion/Vote:

VICE CHAIRMAN HOLDEN: MOTION TO TABLE SB 281. MOTION CARRIES.
SEN. JERGSON AND SEN. NELSON VOTE NO.

ADJOURNMENT

Adjournment: 4:48 p.m.


SEN. KEN MESAROS, Chairman


ANGIE KOEHLER, Secretary

KM/AK