

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON NATURAL RESOURCES

Call to Order: By VICE CHAIRMAN WILLIAM CRISMORE, on February 17, 1997, at 3:00 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. Thomas F. Keating (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Mike Taylor (R)  
Sen. Fred R. Van Valkenburg (D)

Members Excused: Sen. Dale Mahlum

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: SB342, SB337, SB334 Posted Feb.12, 1997; SB346 Posted Feb.13,1997.

Executive Action: None

#### HEARING ON SB 342

Sponsor: SENATOR VIVIAN BROOKE, SD 33, MISSOULA

Proponents: Holly Franz, Mt. Power Co.  
Jon Sesso, Planning Director, Butte/Silverbow Local Government  
Robert Benson, Member of Clark Fork Steering Committee, Missoula  
Audrey Asphom, Anaconda Local Government  
Jim Quigley, Little Black Foot River Ranch  
Jon Krutar, Rancher, Ovando

Bud Clinch, Director, Dept. Of Natural Resources

Opponents: None

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, MISSOULA, stated the Upper Clark Fork Steering Committee had been working together as a team since 1991. She said there are a wide range of interests and area concerns within the Upper Clark Fork River Basin. The Committee believed that more involvement of local government as committee members, would be beneficial. She said the individual committee members would describe the bill in more detail. She passed out Amendments to SB342, which is attached as (EXHIBIT 1).

Proponents' Testimony:

Holly Franz, Mt. Power Co. said she was represented the Upper Clark Fork River Basin Steering Committee. She gave an overview of the bill, and a brief background of the Committee. The Steering Committee originated as a response to a water reservation application by the Dept. of Fish, Wildlife & Parks. A number of conservation districts urged people to get together and discuss their differences and interests concerning the River. The Upper Clark Fork River Basin is defined as the Upper Clark Fork and its tributaries above Milltown Dam, which includes the Butte area, the Anaconda area, the Blackfoot River, Rock Creek River, the Little Blackfoot, and Flint Creek. The Basin was over-appropriated to surface water interests, so the Basin was then closed. It was required that the Steering Committee look at the Basin no less than every five years to see if the basin closure should be tightened or loosened, and to make recommendations to the legislature concerning it. Due to the fact that the Committee was a grass root organization, the problems that arose were looked at to decide if any exclusions should exist or if the closure should be tightened or loosened.

Section 1 of the bill addressed the basin closure. The amendment that Larry Mitchell provided allowed for ground water appropriation as long as the surface water was not effected, or the ground water was not substantially or directly connected to the surface water. This was a concern, since the surface water was over-appropriated. Ms. Franz cited an example of a proposed silicon plant in the Butte area that would utilize 80 percent of needed water by ground water, and 20 percent by surface water to operate their plant. The company had an augmentation plan, that is, a way to make up for that surface water taken. Section 1 would allow an appropriation like that to occur if the applicant had an augmentation plan for consideration of existing water users on the river.

**Ms. Franz** stated that the committee had an ongoing groundwater study and that this was a way to address the groundwater issue. Section 2 included that the Committee make recommendations to the Legislature concerning the representation terms and the methods of appointing members to the Steering Committee. Previously, she said the DNRC Director appointed members. The committee recommended that local government entities be part of this process.

**Ms. Franz** explained Section 3 which involved an in-stream flow program under the Upper Clark Fork Steering Committee. She said a statewide pilot program was put together at the same time, where specific language was put in that said both of these programs ended in 2005. In the statewide program, specific language was added that said if one entered into a lease before 2005, a ten year lease was still valid. The Committee thought they were doing the same thing, but had not put the specific language into their program. Consequently, DNRC interpreted the Upper Clark Fork Pilot Program as not allowing to have a full 10 year lease. Section 3 clarified the language in order to be consistent with the statewide program.

**Ms. Franz** stated that all the mentioned proposals had gone through the Upper Clark Fork Steering Committee, which represented various interests. The bill had wide support throughout the basin, and she asked the Legislators for their support.

**Jon Sesso, Planning Director, Butte/Silverbow Local Government, Upper Clark Fork Steering Committee Member**, said the closure of the Upper Clark Fork Basin had been beneficial and had resulted in more cooperation among the water users and a greater understanding of the water needs. His comments were directed at Section 1 concerning the augmentation plans and groundwater resources. He said in previous instances, a developer did not have the opportunity to develop groundwater even if they could prove they could make up the difference and achieve balance in the basin. The amendment that was proposed as Section 1, would grant the opportunity, not the automatic permit, to apply for a permit if the applicant can prove that there is no adverse effect on surface water and had an augmentation plan to balance out any impacts of their use of the water. **Mr. Sesso** said the augmentation plan must address the amount, time, and location information concerning the groundwater use. He asked that the committee consider the positive changes in the otherwise very successful legislation.

**Robert Benson, Upper Clark Fork Steering Committee Member, Missoula**, stated he represented the environmental interests and spoke in support of Section 2 of the bill. He said there was a lot of local interest in participating in the process and thought it would be worthwhile to change the bill as stated above. He also supported Section 1 and Section 3.

**Audry Asphom, Upper Clark Fork Steering Committee Member, Anaconda, Representing Local Government,** said that she was probably the most neutral person on the Committee, and thought the past legislation concerning the Upper Clark Fork Basin had been extremely successful and useful to the people in the area. She supported the bill and felt the issues that had been passed over was extremely important. Section 2 was a way to keep the committee balanced and therefore successful, she thought. **Ms. Asphom** wanted to clarify page 2, line 13, concerning the appointment of members. It did say 22 members, six from the Commission and six from the conservation districts, and ten from the director. However, in committee it was discussed that not every commissioner and not every conservation group may choose to participate, so they thought something should be put in the language concerning this, in order not to window any membership.

**Jim Quigley, Upper Clark Fork Steering Committee Member, Little Blackfoot River,** stated he was in support of the improvements made in the bill. As a rancher, irrigator, and as an owner of water rights, he believed that these changes will make things work better.

**Jon Kruter, Ovando rancher,** stated that he supported comments that were already said. He had a lot of faith in the people on the committee and urged the committee to support this legislation.

**Bud Clinch, Director, Dept. of Natural Resources,** commented that the other proponents had done a thorough job of explaining the ramifications of the bill, as well as the proposed amendments. He said that the Upper Clark Fork River Basin Steering Committee provided DNRC with a number of recommendations on basin water management, and SB342 is a part of that collaboration process. DNRC wished to go on record for supporting SB342.

**Opponents' Testimony: None**

**Questions From Committee Members and Responses.**

**SEN. BEA MCCARTHY** asked the Sponsor, **SEN. BROOKE**, what was the membership of the current steering committee, and are the six counties represented?

**SEN. BROOKE** said the current number was 21 and the six counties were represented.

**SEN. MACK COLE,** said he was confused about **Audrey Asphom's** amendment concerning the appointees when the six members from the conservation district or county commissioners were not filled. **Ms. Asphom** replied that the intent of the committee was that the Director would appoint someone who would represent those same interests as that group that did not make the appointment.

{Tape: 1; Side: A; Approx. Time Count: 4:00; Comments: None.}

Closing by Sponsor:

SEN. BROOKE closed in saying that the committee had done a lot of work to bring the various interests together and to speak about a resource that was very near and dear to all of their hearts. She hoped the committee passed the bill and the amendments. She noted that the funding for the Steering Committee was from a RIT grant which resulted from the 1995 legislative session. SEN. BROOKE added that most of the committee members came here without compensation and the only benefits they receive is the reward for a job well done.

HEARING ON SB337

VICE-CHAIRMAN WILLIAM CRISMORE opened the hearing on SB337.

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Gene Etchart, Montana Reserved Water Rights Compact  
Commission (MRWRCC)  
Paul Rosette Jr., Chippewa-Cree Tribe  
Joe Mazurek, Attorney General, Dept. of Justice  
Bud Clinch, Director, Dept. of Natural Resources  
Barb Cosens, Legal Counsel, MRWRCC  
Chris Tweeten, Chairman, MRWRCC  
SEN. GREG JERGESON, SD 46  
Tom Sheehy, Bear Paw Resource Alliance  
Doug Kaercher, Hill County Commissioner  
REP. TONI HAGENER, HD 90, Havre  
Wayne Turner, Big Sandy  
Max Maddox, Mt. Water Resources Assn.,  
Representative of Irrigation Districts  
Sen. Loren Jenkins, SD 45, Big Sandy  
Dan Keil, Co-Chairman, Rocky Boys/North Central Mt.  
Regional Water System Coordinating Committee

Opponents: None

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER, stated that SB337 was another water rights compact for settlement of the water rights of the Chippewa Cree Tribe of the Rocky Boys Indian Reservation. The purpose was to settle any and all existing water right claims of the Chippewa Cree Tribe and the State of Montana. He added that this bill was drafted the Compact negotiators versus the Legislative Service Division and he felt that the Tribe and the local water users were in support of this bill. He passed out Amendments to SB337 attached as (EXHIBIT 2).

**Proponents' Testimony:**

**Gene Etchart, Glasgow, Member of Montana Reserved Water Rights Compact Commission, (MRWRCC),** read his written testimony, attached as (EXHIBIT 3). He was a local rancher in the Glasgow area who utilized the Milk River for irrigation since 1923. He recommended a do pass for SB337 and believed that the Compact potentially solved a significant part of the adjudication puzzle in the Milk River Basin.

**Joe Mazurek, Attorney General, Dept. of Justice,** congratulated the negotiating team led by Gene Etchart on behalf of the State of Montana and Chairman Corcoran of the Tribal representatives. He stated that it was a major accomplishment when neighbors can get together and put forth the time and effort necessary to resolve differences. He emphasized that there was agreement and support from all sides of the water users involved, regarding this Compact. **Mr. Mazurek** thought it was important for the committee to understand that federal reserved water rights were discussed in the compact recently which involved federal agencies such as the Bureau of Land Management and the National Park Service. He added that the advantage of negotiations over litigation was the benefits of using the money to develop water projects that can be utilized by the current non-Indian users as well as for the future needs of the Tribe. He also assured the committee that the Attorney General's office had been involved from the very beginning in these negotiations.

*{Tape: 1; Side: B; Approx. Time Count: 4;15; Comments: None.}*

**Bud Clinch, Director, Dept. of Natural Resources and Conservation,** supported this bill both as the Director of DNRC and on behalf of the Administration. As authorized by the Water Use Act, the RWRCC negotiates compacts on behalf of the Governor. The Policy of the Governor is that the negotiations with Tribal Governments be on a government to government basis. The Compact Commission followed that policy and established a means to resolve disputes. The Compact also minimized the potential for future conflict over water use with the Rocky Boy Reservation. **Director Clinch** said that DNRC was involved in these negotiations at every step, and assured the Committee that the provisions of the Compact addressing implementation and dispute resolution were reasonable and appropriate for the area affected.

**Barbara Cosens, Legal Counsel for RWRCC,** handed out her written testimony which is attached to the minutes as (EXHIBIT 4). She stated that this Compact was a major setup toward resolving water rights in the Milk River Basin, a Basin prioritized by the Legislature for adjudication. She summarized the four basic elements of the Compact:

- \* Quantification of the Tribe's water right;
- \* Mitigation of the impact of development of the Tribe's water right on downstream water users;
- \* Administration and dispute resolution;

\* Funding

She also mentioned that a lot of practical solutions that were in the Compact were formulated by Bill Greiman, agricultural engineer, and Bob Levitan, hydrologist.

**Ms. Cosens** closed in saying that the Commission believed that the settlement costs are relatively low, (\$150,000 state request) to the state considering the lack of litigation cost, the added federal funding that will accompany the settlement, and the increased demands and costs of water allocation.

She then handed out: **(EXHIBIT 5)** A Fact Sheet on the Chippewa Cree Tribe-Montana Water Rights Compact

**(EXHIBIT 6)** Letters from Beaver Creek Water Users

**(EXHIBIT 7)** Letters from Big Sandy Water Users

**(EXHIBIT 8)** Milk River Resolutions

**(EXHIBIT 9)** Letter- Thomas Sheehy, Bear Paw Resources Alliance

**(EXHIBIT 10)** Letter- Hill County, verification of intent to sell the 800 acre feet of water out of the Beaver Creek Watershed to the State of Montana for the Compact Commission's agreement.

**(EXHIBIT 11)** Appendices

*{Tape: 1; Side: B; Approx. Time Count: 4:35; Comments: None.}*

**Chris Tweeten, Chairman, RWRCC**, stated that he wanted to address the objections that had been posed to the Compact by the federal government. He handed out a letter from **James Pipkin**, Counselor to the Secretary and the head of the Department of Interior's working group on Indian water right settlements. **(EXHIBIT 12)** He wanted to point out a few misleading statements in the letter. The first statement was regarding the revision and finalization of the Compact without seeking the input of the federal government. The second was the refusal of the State of Montana and the Tribe to consider the substantial changes that were proposed by the federal government. He said both statements were inaccurate. **Chairman Tweeten** gave a brief background on the federal involvement procedures with Indian water right settlements. He explained that there was an appointed Washington D.C. working team, made up of higher management federal employees, which then designated a local working group or negotiating team within the negotiating state. The federal working group is required to review all of the water right settlement proposals. A local federal team had been in place for the Rocky Boy's negotiation for a significant number of years, and their participation was helpful and very active in reaching this agreement. **Chairman Tweeten** said that the working team in Washington D. C. forced the local federal negotiating team away from the table into the sidelines during the last two years when the substantial agreements were being reached in the Compact between the State of Montana and the Tribe. When the federal working group finally authorized the federal team to come back to the table, near the end of the negotiations, they presented 35 proposed amendments and suggestions. Out of those 35, 26 were accepted by the parties in whole or in part. Therefore, **Chairman Tweeten** believed that the statement that the Compact rejected their comments is misleading. He handed out copies of the

correspondence between the State of Montana, the Tribe, and the federal working group in Washington D.C. (**EXHIBIT 13**). The Compact Commission in the correspondence asked the working group to allow the local federal team to return to the table. It was finally authorized to allow the federal team to return to the table along with 36 proposed changes. The changes that were not adopted basically fell into the category that required Congress approval anyway, therefore those matters were left neutral in the Compact. There were three issues of concern. The first issue was federal funding associated with outstanding cost share issues. The second issue raised was the relationship between the Compact and the drinking water supply. The Compact allowed the tribe to withdraw from this agreement if a drinking water supply was not provided within a set period of time. This issue was not settled as yet but was thought that Congress could determine the feasible alternatives for implementation of drinking water systems. The third issue concerned the approach taken by the State and the Tribe with respect to sovereign immunity for participation. Again, the Compact Commission felt it was best to leave it up to Congress.

**Chairman Tweeten** closed in saying that he believed that the parties were well satisfied with the agreement and urged the committee's support. He also noted that the Assiniboin and Gros Ventre Tribes from the Fort Belnap Reservation did not express their support for this agreement due to the fact that their water rights had not been quantified by a Compact. He also wanted to mention individuals that deserved additional credit for this agreement which included **Gene Etchart**, the Chair for the State Negotiating Team, and **Bob Larsen** from the DNRC field office in Havre, and **Barb Cosens**, the staff attorney.

**SEN. GREG JERGESON, SD 46**, said Rocky Boys Reservation was within his district and he had observed the progress of the negotiations and the hard work of all the parties. He tried to keep the local politics out of the negotiating efforts for the best interests of the Compact. He believed as a result of the Compact, good relationships and respect for one another was developed. He urges the committee to give this a favorable recommendation.

**Tom Sheehy, President of Bear Paw Resources Alliance**, wanted to make a point in mentioning the extent of their membership and the extent of their involvement in the water rights compact negotiation process. He reiterated the fact that when the compact was first proposed, there was a great deal of concern and interest in the area, and as a result of that concern, people banded together and formed a local organization which was named Bear Paw Resource Alliance. The alliance represents almost 100% of the water users in the basin who would be affected by this particular compact. The members had spent many hours attending all the compact negotiation sessions, meeting with the representatives of the compact team, and the compact staff. Bear Paw Resources Alliance, he said, now feels the modifications are such that they can support the compact and believed that it was



in the best interest of the water users, the Tribe, and the State of Montana.

**Doug Kaercher, Hill County Commissioner**, stated that he was involved in the compact for four years and the commissioners were fully prepared to sell the 800 acre feet of water to the State of Montana for the benefit of the compact and all the water users involved. A letter was presented for the Record. See (EXHIBIT 10).

**REP. TONI HAGENER, HD 90**, stated she was a former county commissioner in the area and had been involved in the discussions regarding the compact. For all the reasons stated, she strongly supported SB337.

**Wayne Turner, Big Sandy**, said he was a landowner in the mid-reaches of Big Sandy Creek and was in full support of SB337.

**Max Maddox, Milk River Valley**, represented five irrigation districts between the Rocky Boys Reservation and Fort Belnap. He said the districts were in favor of this honorable compact and felt it was a good one. The districts hoped this could be a pattern for compacts to come with Fort Belnap. **Mr. Maddox** added that he was a member of the Board of Directors of the Montana Water Resources Association, and **Mike Murphy**, from the Association could not be at the hearing, but wanted to lend the support of the Montana Water Resources Association to the compact.

**SEN. LOREN JENKINS, SD 45**, said he was also speaking for **REP. RAY PECK**, who could not make it because of a bill he was presenting in another committee. **SEN. JENKINS** said he had watched this compact from the beginning to end and thought all the parties concerned should be commended for the job they have done. It was a true job of mediation between groups and hoped the committee recognized that and would give them a favorable consideration.

**Dan Keil, Co-Chairman, Rocky Boys/North Central Montana Regional Water System Coordinating Committee, and Tiber County Water District**, handed out a fact sheet on the Proposed Rocky Boys/North Central Montana Regional Drinking Water System (EXHIBIT 14). **Mr. Keil** was part of the committee that looked at the prospective public water supply system west of the Rocky Boys Reservation. He said the overall process was very much supported west of the Reservation.

Opponents' Testimony: None

Questions From Committee Members and Responses:

**SEN. MACK COLE** asked **Barbara Cosens** about the costs of the negotiations, and if any break down of costs had been done. **Ms. Cosens** said the budget for the Commission staff is about one-half million a year, but this also entailed other compacts

throughout the State of Montana. She said the compact had not been broken down or itemized but they could do that if requested.

**SEN. COLE** asked **Ms. Cosens** about if any estimates were done regarding litigation costs?

**Ms. Cosens** responded that the State of Montana has not had to litigate one of these so the costs are unknown. However, the litigation example in the Wind River of Wyoming had cost that state tens of millions of dollars with remaining complications.

**SEN. COLE** commented that it was a safe assumption that it costs less to negotiate than to litigate.

**Ms. Cosens** said it was far less expensive to negotiate.

**SEN. COLE** asked **Ms. Cosens** about if the 10,000 acre feet of water was available within the basin itself?

**Ms. Cosens** said that was correct. The water right from sources arising on the Reservation, both surface and ground water, was 10,000 acre feet.

**SEN. COLE** asked if it was correct that 10,000 acre feet of water would be imported from Tiber.

**Ms. Cosens** replied that the compact provided that the State and the Tribe would seek an allocation of 10,000 acre feet. of the Tiber in the Congressional legislation, but did not provide for importation of that water. She added that if a regional pipeline was put in, the Tiber would be the source for that water, then the Tribe's portion could go to supplying their drinking water. The estimate was that 2000 ac. ft. would supply drinking water needs. However, the compact did not provide for importation of that water.

**SEN. COLE** asked if it were correct that a lot of "ifs" still existed. **Ms. Cosens** replied that there were a number of issues as Chris Tweeten outlined, that had to be resolved in the Congressional Legislation.

**SEN. COLE** asked if there were any time limits or terms on these "ifs?"

**Ms. Cosen** said that the compact provides for periods of time within which a decree had to be entered after Congress ratified the compact and a period of time after that within which the Tribe has to be supplied with the drinking water. She said it did not have a set period of time between ratification by the Legislature and Ratification by Congress, which usually takes a few years.

**SEN. COLE** asked if the figures of \$150,000 plus \$250,000 were correct for the State's share of the compact.

**Ms. Cosens** stated that the \$250,000 were in-kind services, and would be covered by existing FTE's, mainly services provided by the Havre Regional Water Rights Office. Previously, she referred only to the \$150,000 grant. She added if that water system was put into place, local participating water districts might be coming to the Legislature down the road for grants and loans for their share. **Ms. Cosens** noted that these particular rural water

districts probably would be coming to the Legislature for money anyway for the necessary fixes for their systems.

**SEN. COLE** asked about the costs of the rural water districts.

**Ms. Cosens** said the feasibility study was not completed as yet, but the preliminary estimate would be anywhere from \$30 Million to \$90 Million.

**SEN. COLE** asked **Paul Rosette** about the Tribal federal sources of \$3 Million, and what are the splits between the Tribe and federal?

**Mr. Rosette** stated that for all practical purposes those will be all federal funds. He felt that the cost was a legitimate cost and in all probability it would be funded through the Congressional Legislation.

*{Tape: 2; Side: A; Approx. Time Count:5:00;}*

**SEN. COLE** asked **Mr. Rosette** about the East Fork irrigation renovation and if it included both Bonneau and Stone Man Farms. He also asked how many acres were presently irrigated?

**Mr. Rosette** replied that the irrigation renovation did include both sites. He said that approximately 500 acres were irrigated on the reservation at the present time and approximately 2000 acres once all the expansion and irrigation operations are in place.

**SEN. COLE** asked about the cost for this tribal development.

**Mr. Rosette** said that those negotiations have not been finalized between the federal government and the Tribe. The Tribal Water Rights Negotiating Team has just begun the strategic planning process for developing that economic development fund.

**SEN. COLE** asked if the final negotiation was still a long ways off and was a successful negotiation correlated with obtaining the desired funding.

**Mr. Rosette** said the obstacle they encountered concerning the process of the negotiations had been the **Chief Negotiator** for the federal government, **Mr. John Duffy, U.S. Department of Interior**.

**Mr. Duffy** was opposed to long term water sources for the Tribe concerning domestic purposes and was opposed to agricultural consumptive use of water on the Reservation. **Mr. Duffy** wanted to do away with agriculture on the Reservation and use that water for domestic purposes. **Mr. Rosette** said that since the compact settled the Tribe's water rights for all time, long term needs had to be looked at for drinking water, irrigation, agriculture and recreation. **Mr. Rosette** believed that the federal government did not want to look at satisfying long term use for the Reservation.

**SEN. MIKE TAYLOR** asked **Mr. Tweeten** about the \$310,000 requested for this biennium and about the federal dollars involved with the drinking water negotiations, and the other development projects.

**Mr. Tweeten** responded that the Dept. of Interior would probably sandbag the deal by not funding it. However, Congress would take a longer term view of these issues. He explained that there are programs that already exist in the federal government for funding tribal water right settlements. The Dept. of Interior's budget includes a revolving fund for funding projects such as the upgrading of the Bonneau Dam. The funding already exists, it would be a matter of getting a direction from Congress to the Dept of Interior to spend that money. **Mr. Tweeten** said with respect to the pipeline, the United States has a trust responsibility to the Tribes to provide for their drinking water needs and they are, he believed, willing to spend the money that is required to address the Tribe's drinking water needs in some fashion. The regional character of the pipeline system is where the government's objections have primarily arisen, he added. The municipalities within the state would be seeking loans and grants to acquire water from this system.

**SEN. TAYLOR** asked **Barb Cosens** about the allocation of the \$15 Million and how much would the State of Montana have to appropriate to fund the pipeline?

**Ms. Cosens** clarified that the compact is seeking funds through Congressional authorization for the pipeline because of the scope of the system and the possibility to obtain the full funding. She said when we spoke of that program, we were thinking of the efforts of the individual water systems to renovate their systems in order to tie in. She did not have the costs broken down at this time, but she noted that we will not go to Congress with this bill until the feasibility study is completed and we have the full package with the drinking water system and the compact, which will be next summer sometime.

**SEN. TAYLOR** asked **Ms. Cosens** if she wanted the Legislature to pass it without having those final numbers?

**Ms. Cosens** replied that we have to take this step of getting legislative approval of the quantification in the compact before we can go to Congress. The Compact Commission did not discuss waiting and going to the Legislature later.

**SEN. FRED VAN VALKENBURG** questioned the lack of any representative of the federal government present. He brought up the past proposal of a trans-basin transfer, with a diversion point at Virgelle into Big Sandy Creek, and if this had any effect on this compact.

**Mr. Tweeten** replied that Virgelle is located on the Missouri River, south of the Reservation, and the idea presented by the Bureau of Reclamation was to divert water out of the Missouri and pipe the water to the Milk River, or as an alternative, dump the water into Big Sandy Creek and let it flow down to the Milk on its own accord. Discussions were made about that project with the BLM and the Bureau of Reclamation, he said, and there is little hope for that project to happen. The two points for transporting water from the Missouri River to the Milk River Basin that made this project very dubious were the high costs involved and the

significant water quality issue of natural occurring arsenic levels in the Missouri River.

Ms. Cosens added to Mr. Tweeten's comments that originally the Tribe had sought an additional allocation for 32,000 acre feet out of Tiber Reservoir that would then be part of that Virgelle diversion, if it ever happened. She noted that if sometime in the future, there is a project to import water to the Milk River, as with anybody else, they can participate in that project.

Closing by Sponsor:

SEN. LORENTS GROSFIELD, stated that these compacts were very complex and deserved careful inspection. He said he was on the State Negotiating Team and negotiated on this very compact during the very early stages. He recalled the first high tension meeting in Havre where 250 people, of various interests, came with their concerns. Since then, through the discussions of the negotiating process, an agreement was reached that represented the best interest of the tribes, the water users, and the State of Montana. SEN. GROSFIELD added that this compact, like many other compacts, had the unanimous agreement of the Compact Commission and the Negotiating Team. He hoped the committee would vote on this favorably.

{Tape: 2; Side: A; Approx. Time Count: 5:20; Comments: None.}

VICE-CHAIRMAN WILLIAM CRISMORE closed the hearing on SB337 and opened the hearing on SB334 and introduced SEN. LORENTS GROSFIELD.

HEARING ON SB334

Sponsor: SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Page Dringman, Pegasus Gold, Mt. Power Co.

Opponents: Richard Parks, Northern Plains Resource Council  
Jim Jenson, Montana Environmental Info. Center  
Debby Smith, Mt. Chapter, Sierra Club  
Sen. Steve Doherty, SD 24  
Wade Sikorski, Northern Plains Resource Council

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, distributed copies of ARTICLE IX regarding protection and improvement, Section 1, where three different terms were used. See (EXHIBIT 15). The new section 1 had three directives; through statutes and programs administering and enforcing the duty to maintain and improve a clean and healthful environment; through statutes and programs providing adequate remedies for the protection of the

environmental life support system; and through statutes and programs providing adequate remedies to prevent unreasonable depletion and degradation of natural resources. The bill, he said, tried to explain those ambiguous terms, and emphasized that the Legislature was the policy arm, not the court. (EXHIBIT 16) He added that it was not the intent of the delegates in the convention of 1972 regarding the environmental life support system, to be applied on a literal, site-specific basis, but rather as a general concept.

Proponents' Testimony:

Page Dringman, Pegusus Gold, Mt. Power Company, stated that both companies supported SB334. She said there were a lot of conflict over Article IX in the past, and the companies supported the new Section 1 of the bill.

Opponents' Testimony:

Richard Parks, Northern Plains Resource Council, Gardiner, gave out copies of his written testimony, (EXHIBIT 17), against SB344.

Jim Jenson, Montana Environmental Information Center, opposed the legislation because he believed the bill attempted to have Legislatures sit and judge what the Constitution meant. Mr. Jenson said it was not the Legislatures duties to interpret the Constitution but the Supreme Court, and therefore urged to table the bill.

Debby Smith, Montana Chapter of the Sierra Club, opposed the bill and agreed with Mr. Jenson, that it should be the job of the Supreme Court to interpret those laws. She said that there were no legal significance and court would not approve line 26, page 1. She believed the job of the Legislature was to enact policy not to interpret the Constitution.

REP. STEVE DOHERTY, HD 24, believed everyone had their own opinion of the Constitution and that it was not in the Legislature's authority to make those decisions concerning the Constitution. He said the Supreme Court members were paid to have opinions that count and the separation of powers were important.

Wade Sikorski, Northern Plains Resource Council, Political Scientist, and rancher in southwest Montana, read his written testimony (EXHIBIT 18), and concluded that the right to a clean and healthful environment does not harm Montana's economy, it protects it. He did not agree with the claim that the convention did not intend the language to be applied on a literal, site-specific basis, but rather as a general concept.

Questions From Committee Members and Responses: None

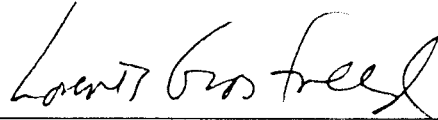
Closing by Sponsor:

**SEN. LORENTS GROSFIELD, SD 13, BIG TIMBER,** responded to the opponents claims and stated that the Constitution charges "that we should provide adequate remedies to prevent unreasonable depletion and degradation, of our natural resources." He said the Constitution says "to maintain a clean and healthful environment," and the Legislature has implemented that provision of the Constitution.

**SEN. GROSFIELD** said the Constitution states in subsection 2, the Legislature shall provide for that. Regarding Section 2, he said some people saw that as a attempt to weaken the environmental protection, but he said that each one had equal merit. In subsection 3 of the Constitution, he said, it didn't say the court shall provide adequate remedies, it said the Legislature shall provide adequate remedies. It is a self-executing provision of the Constitution that directed the Legislature to do some things. On page 4, sub 3 of this bill, it says that "amendments and new enactments of law must be consistent with and further implement the Constitution provisions of Article IX, Section 1." He said that was summarized in Section 1. He made a final point concerning the environmental life support system. He said there is no way environmental life support system can mean the same as natural resources. If it does, he continued, then we have an inconsistency in our Constitution. In one case, you can do reasonable degradation and in the other case you cannot do any degradation. They have to mean different things. We cannot pass laws to generally degrade that environmental life support system by this provision of the Constitution. But we can deal with reasonable depletion of natural resources and even with reasonable degradation of natural resources. It says "each agency of state government shall balance these things along with the criteria in Article 1." In other words, it says the agency shall consider the Constitution when balancing these things. The problem is some of the environmental laws don't cover every detail, and a question arises of how is an agency is supposed to deal with environmental circumstances not specifically covered in statute. One of the answers is right in the bill he stated, balance it against the other protections for all of us within the Constitution. He urged the Committee to look seriously at the bill.

ADJOURNMENT

Adjournment:



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH