

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 5, 1997,  
at 3:00 PM, 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. Dale Mahlum (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Mike Taylor (R)  
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

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: HB31;HB506;HB507  
Posted Feb. 24, 1997  
Executive Action: None

#### HEARING ON HB506

Sponsor: REP. ROBERT STORY, HD 24, PARK CITY

Proponents: John Shontz, Water Rights Transfer Task Force  
Mike Murphy, Montana Water Resources Association  
William Gowen, Montana Land And Title Association  
Rita Gowen, Helena Abstract & Title  
Gary Fritz, Dept. of Natural Resources

Opponents: None

Opening Statement by Sponsor:

REP. ROBERT STORY, HD 24, Park City, stated that HB506 was the result of a current problem regarding the recording of water right transfers when property is sold. He said, by the Constitution, Montana is required to keep a list of who owns what water rights and who is responsible for them. This bill provides for a change in the Realtor Transfer Certificate so that it contains information on water right transfers which makes it more complete and expedient. He said that this bill would help keep the records up to date.

Proponents' Testimony:

John Shontz, Chairman, Water Rights Transfer Task Force said the bill was the result of a four year study. The emphasis here was on how they were recorded in the Clerk and Recorder function, which DNRC handles, not in the transfer of water rights per se. He handed out a copy of the instruction sheet of the old Realty Transfer Certificate. (EXHIBIT 1) On the back page, the instruction sheet asked the question, Does the sale include the transfer of water rights? Yes or no. If one checked yes on this part, it said that DNRC would contact you for updating the water right owner, however, that was not happening. The current Realty Transfer Certificate (EXHIBIT 2) now states contact the Dept. of Natural Resources, if one checked yes on question No. 5. He said it puts the onus where it belongs in the statute. The thrust of the bill is threefold:

1) Part 5 of the Certificate is changed to include more information; 2) Clarification of filing responsibility, which is the transferor; 3) Simplifies the format. He handed out (EXHIBIT 3), the current Water Right Transfer Certificate Form. He said the bill puts the issue of water rights and the documents closer to the actual transaction, and expedites the process. He stated that this is a process bill and the task force and the industries involved ask the committee for a do pass.

Mike Murphy, Montana Water Resources Association, supported this legislation and felt that the bill would improve and expedite the process.

William Gowen, Task Force Member, Montana Land Title Association, supported this legislation and hoped the committee would pass HB506.

Rita Gowen, Closing Agent, Helena Abstract and Title, said that the new language, section 3, would be a good tool for her to use in the work requirements of her job at Abstract and Title.

Gary Fritz, Task Force Member, Dept. of Natural Resources, said that the Dept. supported this legislation and believed the bill was an important step towards increasing the accuracy of water rights in the State of Montana. He handed out written testimony representing the Department of Natural Resources. (EXHIBIT 4).

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE asked John Shontz, Chairman of the Water Rights Transfer Task Force, if there was any required education involving water rights for realtors?

Mr. Shontz replied that the Board of Realtor regulations put into the menu of education credits, one hour of water rights. There is an ongoing effort to increase awareness of water right transfers by classroom instruction and lectures.

SEN. BROOKE asked if there was anything required for a license?

Mr. Shontz said 3 hrs. out of 12 hrs. are mandated by the Board, which water rights are not a part of and 9 hrs. are optional. No, there are not any classes required, for anyone.

Closing by Sponsor:

SEN. ROBERT STORY, HD 24, closed in saying that this bill is attempting to solve a problem that exists in Montana and encouraged a do pass.

{Tape: 1; Side: A; Approx. Time Count: 3:20; Comments: None

HEARING ON HB507

Sponsor: REP. ROBERT STORY, HD 24, PARK CITY

Proponents: Will Clark, Yellowstone Conservation District  
Mike Volesky, Mt. Association of Conservation Dist.  
Gary Fritz, Mt. Dept. of Natural Resources

Opponents: None

Opening Statement by Sponsor:

REP. ROBERT STORY, HD 24, PARK CITY, said that the Montana water reservations on the Yellowstone River began in the mid-70s as a response from the possible development of a coal slurry pipeline. The State decided to save water from the Yellowstone for future use, whether it be municipalities, agricultural, or in-stream flows, etc. Those reservations are reviewed periodically on a 10 year cycle to see if needs are being used and they are set to expire at 2002-2007. As we approach that deadline, water uses, compliance and administrative laws were reviewed. It was thought something should be done about the expiration date. The bill just removed the termination date and left everything else the same.

Proponents' Testimony:

**Will Clark, Yellowstone Conservation District, Yellowstone Basin Water Reservation Council**, gave his credentials in the area of water reservations. He said that all 14 conservation districts requested the Council to ask the Legislature to grant them significant extensions on their perspective expiration dates. Their reservations expire in three years for two of the municipalities, and are experiencing severe expansions of their water service areas. He said they are potentially facing some problems. The Council supported HB507 as amended by **REP. STORY** and also supported the ten year review process of DNRC.

**Mike Voleski, Executive Director, Montana Association of Conservation Districts**, stated their support of this legislation as it had been amended so that there is no cap in the basin until the reservations are perfected or determined through public process.

**Gary Fritz, Administrator for Water Resources, Dept. of Natural Resources**, supported this bill and thought that the expiration date did not make any sense because these reservations really are water rights that are set aside for the state in the long term and years can pass very quickly with respect to developing 500,000 acres. It seemed to him to be wise to remove those dates and let the rest of the water reservations process dictate how these water reservations proceed.

**Opponents' Testimony:** None

**Questions From Committee Members and Responses:**

**SEN. MACK COLE** asked **Mr. Fritz** if there were any reserves for pipelines? He responded no, that they had all expired except for one with Montana Power Company.

**CHAIRMAN LORENTS GROSFIELD** asked **Mr. Fritz** about the approach taken by this legislation and if there was a problem concerning that. He summarized that these water reservations were adopted in 1978 after a long judicial rule making proceeding by Board of Natural Resources, which no longer exists. The Legislature has statutory authority to change rules that the Board may have adopted. He said this was not the approach taken.

**Mr. Fritz** responded that the Dept. did not see a problem with the approach taken. The Dept. believed that the present wording in the bill was a legitimate way for the Legislature to override an administrative decision.

**CHAIRMAN GROSFIELD** asked if the Dept. consciously discussed that aspect? We also have other entities, such as the Mt. Fish, Wildlife and Parks, DNRC, and maybe the BLM, involved with water reservations, besides the conservation districts and municipalities. He asked why those agencies were not considered for extensions.

**REP. ROBERT STORY** answered the question and replied that the reason why those reservations were not involved in the bill was because they were not involved in the Yellowstone River Council.

**CHAIRMAN GROSFIELD** requested **Will Clark** to add to that.

**Mr. Clark** said that the Dept. of Health Reservation, and the Fish, Wildlife, and Parks Reservation had no termination date.

**CHAIRMAN GROSFIELD** asked **REP. STORY** about the fact that other basins, besides the Yellowstone Basin, have deadlines also. Do we expect future legislation to develop for these other basins. Was there any thought about that concern?

**REP. STORY** said there was little discussion on that because the only other group they had dealt with was the Lower Missouri and they had just received their reservation and deadline. The Upper Missouri River Basin is a different situation because of the basin closures. He added that this termination date could be removed administratively by the Dept. anyway and it was thought by the Council that the Legislative route would be the preferred proceeding.

**CHAIRMAN GROSFIELD** commented to **Mr. Fritz** about the concern regarding the concept of "speculation." He thought part of the reason for putting a quantity and the date certain, was to do with the word, "speculation." He asked by doing this, are we posing a risk getting back in that argument of speculative water rights?

**Mr. Fritz** replied that the bill does contain the 10 year review process, which reviews whether the objectives of the reservation are being met. He believed that the 10 year review was the heart of the process to ensure that these were not speculative. He added that the development date or termination date did not mean a lot in itself, or make any sense.

**Mr. Fritz** commented on the other basin reservations **CHAIRMAN GROSFIELD** had mentioned, and thought there was not a development date provided on the Lower Missouri reservation. It seemed to him that the Dept. of Natural Resources needs to recognize what the Legislature has done, if passed, and that the Dept. needs to initiate an action, as a department, to see if we shouldn't do for the other reserves what the Legislature has done for these. If this bill passes, **Mr. Fritz** said he would plan to do that.

**CHAIRMAN GROSFIELD** asked the sponsor if he or the conservation districts was nervous about putting this in statute. There is not the protection of the citizen board anymore. What if we had a future director of the DNRC who might have different ideas concerning the water reservation process, and may just revoke them.

Closing by Sponsor:

REP. ROBERT STORY responded to CHAIRMAN GROSFIELD'S concern by saying that the termination date never protected us from that anyway. He said those reservations could be reduced or revoked at any time. The problem is not the law here but the lack of the Citizen Board sitting between us. He did not feel by removing this date anything would change. He hoped a favorable consideration from the committee and that if this passed it would extend the reservation without going through the complete process again.

{Tape: 1; Side: A; Approx. Time Count: 3:50; Comments: None.}

HEARING ON HB31

Sponsor: REP. GEORGE HEAVY RUNNER, HD 85, Browning

Proponents: Ray Beck, Administrator, Conservation and Resource Development Division, Dept. of Natural Resources

Opponents: None

Opening Statement by Sponsor:

REP. GEORGE HEAVY RUNNER, HD 85, BROWNING said this bill allowed tribal governments to participate in the Renewable Resource Grant and Loan Program. The other sister program- Reclamation and Development Program, the tribes are eligible in this program. Dept. of Natural Resources asked him to carry this bill so both programs would be consistent with eligibility. Three significant mechanisms to note were: 1) The first court of venue to resolve the dispute of claims would be held in the district courts; 2) an expressed waiver of sovereign immunity; 3) an expressed waiver of any right to exhaust tribal remedies. A final point he made was that the final determination of these grants, would be in the hands of the Legislature.

Proponents' Testimony:

Ray Beck, Administrator, Conservation and Resource Development Division of the Dept. of Natural Resources and Conservation, (DNRC) stated that this bill was requested by DNRC. He gave a brief background on the two programs: The Reclamation Development Grant Program, which was a \$3 Million; The Renewable Resource Grant Program, which was \$2 Million per biennium program. Under the Reclamation Development program, tribal governments are considered a public entity, therefore can participate or apply. Under the Renewable Resources Grant Program, tribal governments were not included in the original language as a public entity therefore could not participate. This bill was a result of this inconsistency. The loan portion would

also be amended so the tribal governments could apply for loans. Currently, there are a 100 public loans for about \$94 Million.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. MACK COLE asked Ray Beck, DNRC, to go back over the programs.

Mr. Beck said there were two grant programs. One is the Reclamation Development Grant Program, which the focus is on mine, oil and gas reclamation, and tribal governments can apply. The second program is the Renewable Resources Development Grant, in which there is a loan program attached. Here, the tribes were never included in the list of public entities that can apply. He said that we have two different programs and the language is inconsistent.

{Tape: 1; Side: B; Approx. Time Count: 4:00; Comments: Turned Tape Over..}

SEN. MIKE TAYLOR asked Ray Beck if there was any conflict with federal grant money? Mr. Beck replied the programs are not tied to federal loans and were separate entities.

SEN. TAYLOR asked Mr. Beck would this be setting a precedent in any other areas if this is approved? Are we opening that up that the tribes are not sovereign by the language that is being added in?

Mr. Beck replied that the tribal governments would have some concern with that language. If it was a grant situation, there probably wouldn't be an issue where this would apply because the grant funds are not distributed until the work is actually completed. With a loan, there is a possibility for a dispute that might trigger this part to take effect. He did not think it was really setting a precedent. If anything, Mr. Beck said, we are setting a precedent with this language that the tribes would be concerned about.

SEN. TAYLOR said what if Montana was in a lawsuit with a tribal government on another issue, would that affect the ability to apply for these grants?

Mr. Beck said that would be a separate issue, and would have no effect.

SEN. THOMAS KEATING asked Mr. Beck under the Renewable Resource Grant and Loan Program, if grants composed the majority of the program?

Mr. Beck said the grant portion is the interest off the RITs, \$2 Million per biennium. There is also loan authority in this program, where there are 100 loans out totaling \$94 Million.

**SEN. KEATING** asked if there has been much judicial action with these programs or have you gone to court on any dispute?

**Mr. Beck** said they did not have any with the public entities and no defaults have occurred which would create this action.

**SEN. KEATING** commented that we have a clean record of no disputes under the grant or loan program. He asked **REP. HEAVY RUNNER** what type of grant or loan would he apply for under the Renewable Resource Program?

**REP. HEAVY RUNNER** replied that it could be any potential project on the Reservation that might benefit the tribal members, such as a waste water treatment plan, or implementation of reservoirs, irrigation projects, etc.

**SEN. KEATING** asked **REP. HEAVY RUNNER** if he was aware that the account is about \$1.5 Million over appropriated. He said he was aware of it now.

**CHAIRMAN GROSFIELD** asked **REP. HEAVY RUNNER** about the second amendment on page 6, line 17 (a) "that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought to the district court." Concerning the wording about state law interpretation and performance, he asked if that language was broad enough to cover breeches in the agreement?

**REP. HEAVY RUNNER** said he could not say, but noted that this language was not required for public entities, such as municipalities or counties, and appeared to refer to just tribal requirements. He viewed this particular language almost as having to put up their land in hock in lieu of a \$200,000 grant.

In reference to the State Tribal Cooperative Agreement process, he favored that process because it worked out details in negotiations, allowed for public hearings, was reviewed for legalities, and allowed each side a 30 day notice to withdraw. He would prefer to see that process as a potential process for state and tribal relations.

He said the DNRC would ensure that all mechanisms were going to be in place as safeguards in the decision making process. He added that if there was a question that the tribe did not have the financial capability, the DNRC would be reluctant to prioritize it as a top ten choice. He said a further safeguard existed by the fact that the Legislature had the final decision authority.

**REP. HEAVY RUNNER** wanted to add that if we are going to truly turn around the Tribes in terms of potential economic development on the Reservation in the future, private enterprise was an important aspect. Presently, private enterprise is very reluctant

to become involved on the reservation because of the issues of the Tribe's jurisdiction, and the Tribe's ability to hide behind sovereign immunity. He explained that in tribal governments, there are tribal government bodies that are allowed to develop as a corporation and it is very grey in terms of when they are a business corporation and when they are a government entity. Historically, there had been situations when business deals got bad they would switch from a corporation to a government entity .

**REP. HEAVY RUNNER** said in a way, he was trying to do a two-fold purpose in a long route approach. He was hoping this legislation would trigger discussion concerning waiving sovereign immunity for the future regarding the private sector. By doing this the private sector might be willing to take a risk and have the ability to recoup their costs.

**CHAIRMAN GROSFIELD** said that waiving sovereign immunity was a serious thing and jurisdiction issues were jealousy guarded by the Tribes and by the State as well. He asked **REP. HEAVY RUNNER** if he had talked with any of the tribal councils about this. The intent of lines 26 and 27 were black and white.

**REP. HEAVY RUNNER** replied that this might be compared to a fishing expedition whereby there are variable responses and he would say that it was an individual choice. The sovereignty that the tribe holds in some reservations are a lot stronger than others. He thought discussions concerning this issue would be brought out to some degree. There is little communication going on between the State and the Tribe, and what has been talked about was by the lawmakers on the tribal side and the administrative people on the State side. He believed there were no venues for legislative leadership and tribal leadership to get together and talk about these issues. He added that since there had been no communication between those groups, this simple piece of legislation will be looked at strongly and all sorts of conclusions about that will be drawn. He proposed a tribal state summit meeting between legislature leadership and tribal leadership for discussion of these matters versus the court to be the referee where both sides would ultimately lose.

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

**CHAIRMAN GROSFIELD** handed over the gavel to **VICE-CHAIRMAN WILLIAM CRISMORE** at this point in order to present a bill in a different committee.

**SEN. KEATING** commented with regards to the Renewable Resource Grant and Loan Program. He said the funding for the grant portion of the program, (\$2 Million per biennium) came from the interest income from the Resource Indemnity Trust fund (RIT), which is presently \$97 Million of tax money, 65 percent of which was paid for by oil and gas and 22 percent by coal. He said the Fort Peck Reservation and the Blackfeet Reservation have a lot of gas and oil production on those reservations and the Tribes and the allottees had never made a contribution, in the way of taxes, to

the RIT fund. All the other people in the State who are royalty owners, or operators of oil, gas, and coal, had made a contribution through taxes on their property to that RIT fund. He wanted **REP. HEAVY RUNNER** to know the source of those funds.

**REP. HEAVY RUNNER** responded to **SEN. KEATING'S** statement by first saying he was aware of that but he thought that he also should remember that in the early 1920's with respect to the allottees, the amount of money that they received in lieu of the oil and gas taken from those reservations had always been historically low. He believed the corporations of oil and gas had made a tremendous amount of dollars off those reserves. If the Tribes had the opportunity to receive beneficial amounts, the Tribes probably would not be in their present situation. He added that the Tribes have dutifully given our service in respect to our natural resources, whether it be coal, oil or gas, or water. In some respects, the Tribe has not paid the taxes pertaining to the grant fund but felt the federal laws involved may have some good reasoning behind that. He also stated that the Tribal members contributed to the economy through taxes and other means like everyone else. He noted that \$400 Million comes into the Reservations through federal funds and about 80 percent of every dollar rapidly leaves those reservations into the various towns of Montana, which benefit tremendously.

**SEN. TAYLOR** wanted to complement **REP. HEAVY RUNNER** for his thoughts on the legislative process where people need to work together.

Closing by Sponsor:

**REP. GEORGE HEAVY RUNNER**, said he hoped to utilize HB 31, although it was a simple clean-up bill, to try to better our state tribal relations. He said he was not a proponent of adversary roles and hoped there would be further discussions among the State and the Tribe where everyone can work together and not against each other. He stated that the water rights issue down the road may be a substantial issue to consider regarding the Reservation's water resources. He noted that certain reservations were at the "faucet" of the watershed and the State of Montana might need the Reservation's help down the road in terms of being able to fight the downstream states, in respect to holding on to the water that Montana needs, and not be overridden by the larger populations. The same scenario could appear in the State of Montana with respect to small rural counties dealing with the demands of the larger cities. We all need to work together in those areas to hold on to the water for the benefit of all Montana. He thanked the Committee for a good hearing.

**VICE-CHAIRMAN CRISMORE** closed the hearing on HB31.

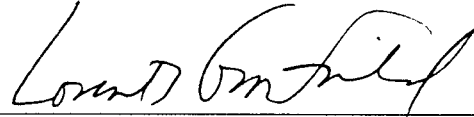
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SENATE NATURAL RESOURCES COMMITTEE

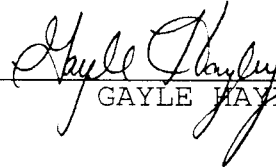
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Adjournment: 4:25 PM



SEN. LORENTS GROSFIELD, Chairman



GAYLE HAYLEY, Secretary

LG/GH