

CHAPTER NO. 534

HOUSE BILL NO. 717

INTRODUCED BY BARDANOUE

IN THE HOUSE

February 10, 1979	Introduced and referred to Select Committee on Water.
February 17, 1979	Committee recommend bill do pass. Report adopted.
February 19, 1979	Motion pass consideration.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Natural Resources.
March 17, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 24, 1979	Returned from second house. Concurred in as amended.
March 26, 1979	On motion, consideration passed until the 71st Legislative Day.

March 30, 1979

Second reading, amendments
adopted.

March 31, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 717
2 INTRODUCED BY Barlanou

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE
5 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DISPOSE
6 OF THE DALY DITCH WATER PROJECT; TO CANCEL AND WRITE OFF
7 ACCOUNTS RECEIVABLE ON THE DALY DITCH WATER PROJECT; AND
8 PROVIDING AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Legislative finding. (1) The legislature
12 finds that the Daly ditch water project:

13 (a) would need extensive and costly repairs if
14 operation of the project were to continue;

15 (b) has been historically operating at a loss since
16 the state has owned and operated the project;

17 (c) would require increasing subsidization from the
18 general fund for future operation of the project; and

19 (d) is, therefore, financially unsound.

20 (2) The legislature finds further that:

21 (a) the useful life of the Daly ditch water project is
22 at an end; and

23 (b) the Daly ditch water project should be disposed of
24 by the state of Montana.

25 (3) Therefore, the legislature directs the department

1 to abandon the project and to cancel and write off accounts
2 receivable carried on the books of the department.

3 Section 2. Definitions. Unless the context requires
4 otherwise, in this act the following definitions apply:

5 (1) "Daly ditch water project" or "project" means the
6 irrigation water project located in Ravalli County, Montana,
7 and owned and operated by the state of Montana.

8 (2) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

11 (3) "Person" means any individual, group, firm,
12 partnership, corporation, cooperative, association,
13 government subdivision, government agency, local government,
14 or other organization or entity.

15 Section 3. Abandonment of project. (1) Prior to
16 December 31, 1980, the department shall abandon the Daly
17 ditch water project.

18 (2) The department shall publish notification of
19 intent to abandon the project once a week for 2 consecutive
20 weeks in a newspaper of general circulation in the Hamilton,
21 Montana, area.

22 (3) A person to whom project properties revert, if
23 any, may notify the department that he desires to take
24 possession of the abandoned property in its present
25 condition within 30 days after the last date of publication.

1 Upon abandonment but not until the 30-day period has
 2 expired, the department shall salvage and remove all
 3 property, other than real property; shall fill in the
 4 canals, dikes, and lateral ditches; breach all reservoirs
 5 and dams; and make other physical alterations considered
 6 necessary by the department.

7 Section 4. Entry on land. Any employee or agent of the
 8 department authorized by the director may enter upon any
 9 land to carry out the purposes of this act, including but
 10 not limited to entry to make inspections the department
 11 considers necessary of the project, entry to salvage or
 12 remove project property, and entry to make physical
 13 alterations to project property. The department shall give
 14 reasonable notice to the landowner of its intention to enter
 15 upon the land. The department is responsible for actual
 16 damages done to any property.

17 Section 5. Writeoff accounts receivable. Upon
 18 abandonment of the project, the department shall cancel and
 19 write off accounts receivable carried on the books of the
 20 department. The department shall establish procedures for
 21 canceling and writing off accounts receivable, and the
 22 procedures shall include the reporting of the canceling and
 23 writing off of the accounts receivable to the next session
 24 of the legislature.

25 Section 6. Other laws and rules superseded. This act

1 supersedes other laws and rules. If any provision of this
 2 act is in conflict with any other law of this state or any
 3 rule adopted thereunder, this act governs and controls and
 4 the other law or rule is superseded for the purpose of this
 5 act.

6 Section 7. Severability. If a part of this act is
 7 invalid, all valid parts that are severable from the invalid
 8 part remain in effect. If a part of this act is invalid in
 9 one or more of its applications, the part remains in effect
 10 in all valid applications that are severable from the
 11 invalid applications.

12 Section 8. Effective date. This act is effective on
 13 passage and approval.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received February 13, 1979, there is hereby submitted a Fiscal Note for House Bill 717 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 717 directs the DNRC to dispose of the Daly Ditch water project, to cancel and write off accounts receivable on the project, and provides an effective date.

ASSUMPTIONS:

1. Existing water purchase contracts are valid until the legislature passes HB 717.
2. Someone will take over the project; therefore the Department will not have to implement section 3, paragraph 3 (page 3, lines 1-6).
3. Present Daly Ditch employees will be needed to allow for a smooth transition from state to private ownership.
4. Governor's budget which assumes passage of the bill, will be adopted.

FISCAL IMPACT:

The expenditure impact for the 1981 Biennium will be the same whether the bill passes or not. Revenue for the biennium of \$124,000 will not be realized if the bill passes.

LONG-RANGE IMPACT:

The fiscal impact for the ten year period ending June 30, 1991 is as follows:

	Current Law	Proposed Law	Reduction in state costs under proposed law
Operating costs	\$1,566,946	\$217,956	\$1,348,990
Major repairs	<u>1,150,000</u>	<u>0</u>	<u>1,150,000</u>
Total expenditures	2,716,946	217,956	2,498,990
Less: Revenue	<u>620,000</u>	<u>0</u>	<u>620,000</u>
Net expenditures	2,096,946	217,956	1,878,990
Write-off of uncovered expenditures	<u>0</u>	<u>394,303</u>	<u>(394,303)</u>
Net expenditures	<u>\$2,096,946</u>	<u>\$612,259</u>	<u>\$1,484,687</u>

LOCAL IMPACT:

Costs of operating the project and the liability will still occur to whomever takes over after the state abandons the project.

TECHNICAL NOTES:

Section 3, paragraph 3 (Abandonment Process) needs clarification.

Richard L. January for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/16/79

HOUSE BILL NO. 717
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A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DISPOSE OF THE DALY DITCH WATER PROJECT; TO CANCEL AND WRITE OFF ACCOUNTS RECEIVABLE ON THE DALY DITCH WATER PROJECT; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Legislative finding. (1) The legislature finds that the Daly ditch water project:

(a) would need extensive and costly repairs if operation of the project were to continue;

(b) has been historically operating at a loss since the state has owned and operated the project;

(c) would require increasing subsidization from the general fund for future operation of the project; and

(d) is, therefore, financially unsound.

(2) The legislature finds further that:

(a) the useful life of the Daly ditch water project is at an end; and

(b) the Daly ditch water project should be disposed of by the state of Montana.

(3) Therefore, the legislature directs the department

to abandon ~~OR OTHERWISE DISPOSE OF~~ the project and to cancel and write off accounts receivable carried on the books of the department.

Section 2. Definitions. Unless the context requires otherwise, in this act the following definitions apply:

(1) "Daly ditch water project" or "project" means the irrigation water project located in Ravalli County, Montana, and owned and operated by the state of Montana.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

Section 3. ~~Abandonment~~ DISPOSITION of project. (1) ~~(A)~~ Prior to December-31-1988 JULY 1, 1981, the department shall abandon the Daly ditch water project.

~~(2)(B)~~ The department shall publish notification of intent to abandon the project once a week for 2 consecutive weeks in a newspaper of general circulation in the Hamilton, Montana, area.

~~(3)(C)~~ A person to whom project properties revert, if any, may notify the department that he desires to take possession of the abandoned property in its present

1 condition within 30 days after the last date of publication.
 2 Upon abandonment but not until the 30-day period has
 3 expired, the department shall salvage and remove all
 4 property, other than real property; shall fill in the
 5 canals, dikes, and lateral ditches; breach all reservoirs
 6 and dams; and make other physical alterations considered
 7 necessary by the department.

8 ~~(2) (A) PRIOR TO JANUARY 15, 1981, THE DEPARTMENT MAY~~
 9 ~~DISPOSE OF THE DALY DITCH WATER PROJECT BY TRANSFER, SALE,~~
 10 ~~OR OTHER LEGAL CONVEYANCE TO A PERSON LEGALLY QUALIFIED TO~~
 11 ~~ENTER INTO CONTRACTS AND OPERATE AND MAINTAIN THE PROJECT.~~
 12 ~~PREFERENCE SHALL BE GIVEN TO AN ORGANIZATION OF PROJECT~~
 13 ~~WATER USERS FORMED TO OPERATE THE PROJECT.~~

14 ~~(B) UPON CONVEYANCE OF THE PROJECT, THE DEPARTMENT~~
 15 ~~SHALL TRANSFER ALL WATER RIGHTS, REAL PROPERTY, PERSONAL~~
 16 ~~PROPERTY, EQUIPMENT, FIXTURES, HEADGATES, STRUCTURES,~~
 17 ~~CANALS, DIKES, LATERAL DITCHES, DAMS, AND RESERVOIRS RELATED~~
 18 ~~TO THE PROJECT.~~

19 ~~(C) IF THE DEPARTMENT HAS ENTERED INTO AN AGREEMENT TO~~
 20 ~~TRANSFER THE PROJECT PRIOR TO JANUARY 15, 1981, BUT THE~~
 21 ~~ACTUAL TRANSFER HAS NOT BEEN EFFECTUATED PRIOR TO JULY 1,~~
 22 ~~1981, THE DEPARTMENT NEED NOT ABANDON THE PROJECT UNTIL~~
 23 ~~DECEMBER 31, 1981.~~

24 ~~(D) THE DEPARTMENT SHALL NOT PUBLISH NOTIFICATION OF~~
 25 ~~INTENT TO ABANDON UNTIL IT HAS ATTEMPTED TO DISPOSE OF THE~~

1 PROJECT BY TRANSFER, SALE, OR OTHER LEGAL CONVEYANCE.

2 ~~(3) THE DEPARTMENT SHALL OPERATE THE PROJECT UNTIL~~
 3 ~~JULY 1, 1981, OR UNTIL THE PROJECT IS DISPOSED OF IF EARLIER~~
 4 ~~THAN JULY 1, 1981.~~

5 Section 4. Entry on land. Any employee or agent of the
 6 department authorized by the director may enter upon any
 7 land to carry out the purposes of this act, including but
 8 not limited to entry to make inspections the department
 9 considers necessary of the project, entry to salvage or
 10 remove project property, and entry to make physical
 11 alterations to project property. The department shall give
 12 reasonable notice to the landowner of its intention to enter
 13 upon the land. The department is responsible for actual
 14 damages done to any property.

15 Section 5. Writeoff accounts receivable. Upon
 16 abandonment OR DISPOSITION of the project, the department
 17 shall cancel and write off accounts receivable carried on
 18 the books of the department. The department shall establish
 19 procedures for canceling and writing off accounts
 20 receivable, and the procedures shall include the reporting
 21 of the canceling and writing off of the accounts receivable
 22 to the next session of the legislature.

23 Section 6. Other laws and rules superseded. This act
 24 supersedes other laws and rules. If any provision of this
 25 act is in conflict with any other law of this state or any

1 rule adopted thereunder, this act governs and controls and
2 the other law or rule is superseded for the purpose of this
3 act.

4 Section 7. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 8. Effective date. This act is effective on
11 passage and approval.

-End-

HOUSE BILL NO. 717

INTRODUCED BY BARDANOUVE

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Legislative finding. (1) The legislature finds that the Daly ditch water project:

(a) would need extensive and costly repairs if operation of the project were to continue;

(b) has been historically operating at a loss since the state has owned and operated the project;

(c) would require increasing subsidization from the general fund for future operation of the project; and

(d) is, therefore, financially unsound.

(2) The legislature finds further that:

(a) the useful life of the Daly ditch water project ~~IN THE STATE OF MONTANA~~ is at an end; and

(b) the Daly ditch water project should be disposed of by the state of Montana.

(3) Therefore, the legislature directs the department

to abandon--~~OR OTHERWISE DISPOSE OF~~ the project AS PROVIDED IN [SECTION 3] and to cancel and write off accounts receivable carried on the books of the department. IF THE DEPARTMENT IS NOT ABLE TO DISPOSE OF THE PROJECT AS PROVIDED IN [SECTION 3], THEN THE PROJECT SHALL BE ABANDONED AS PROVIDED IN [SECTION 4].

Section 2. Definitions. Unless the context requires otherwise, in this act the following definitions apply:

(1) "Daly ditch water project" or "project" means the irrigation water project located in Ravalli County, Montana, and owned and operated by the state of Montana.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

SECTION 3. THERE IS A NEW MCA SECTION THAT READS:

Disposition of project. (1) Prior to July 1, 1982, the department may dispose of the Daly ditch water project by transfer, sale, or other legal conveyance to a person legally qualified to enter into contracts and operate and maintain the project. Preference shall be given to an organization of project water users formed to operate the

1 project.

2 (2) Upon conveyance of the project, the department
3 shall transfer all water rights, real property, personal
4 property, equipment, fixtures, headgates, structures,
5 canals, dikes, lateral ditches, dams, and reservoirs related
6 to the project.

7 (3) If the department has entered into an agreement to
8 transfer the project prior to July 1, 1982, but the actual
9 transfer has not been effectuated prior to July 1, 1982, the
10 department shall not abandon the project as provided in
11 [section 4] until December 31, 1982.

12 Section 4. Abandonment ~~DISPOSITION~~ ABANDONMENT of
13 project. (1) ~~1) Prior to December 31, 1980 JULY 1, 1981~~
14 ~~the department shall abandon the duty-ditch-water-projects~~
15 ~~IF THE PROJECT IS NOT DISPOSED OF AS PROVIDED IN SECTION~~
16 ~~3), THE DEPARTMENT SHALL ABANDON THE PROJECT NO LATER THAN~~
17 ~~DECEMBER 31, 1982.~~

18 ~~(2) (2)~~ The department shall publish notification of
19 intent to abandon the project once a week for 2 consecutive
20 weeks in a newspaper of general circulation in the Hamilton,
21 Montana, area.

22 ~~(3) (3)~~ A person to whom project properties revert,
23 if any, may notify the department that he desires to take
24 possession of the abandoned property in its present
25 condition within 30 days after the last date of publication.

1 Upon abandonment but not until the 30-day period has
2 expired, the department shall salvage and remove all
3 property other than real property, shall fill in the
4 canals, dikes, and lateral ditches, breach all reservoirs
5 and dams, and make other physical alterations considered
6 necessary by the department.

7 (2) (A) PRIOR TO JANUARY 15, 1981, THE DEPARTMENT MAY
8 DISPOSE OF THE DUTY-DITCH-WATER-PROJECT BY TRANSFER, SALE,
9 OR OTHER LEGAL CONVEYANCE TO A PERSON LEGALLY QUALIFIED TO
10 ENTER INTO CONTRACTS AND OPERATE AND MAINTAIN THE PROJECT.
11 PREFERENCE SHALL BE GIVEN TO AN ORGANIZATION OF PROJECT
12 WATER-USERS FORMED TO OPERATE THE PROJECT.

13 (B) UPON CONVEYANCE OF THE PROJECT, THE DEPARTMENT
14 SHALL TRANSFER ALL WATER RIGHTS, REAL PROPERTY, PERSONAL
15 PROPERTY, EQUIPMENT, FIXTURES, HEADGATES, STRUCTURES,
16 CANALS, DIKES, LATERAL DITCHES, DAMS, AND RESERVOIRS RELATED
17 TO THE PROJECT.

18 (C) IF THE DEPARTMENT HAS ENTERED INTO AN AGREEMENT TO
19 TRANSFER THE PROJECT PRIOR TO JANUARY 15, 1981, BUT THE
20 ACTUAL TRANSFER HAS NOT BEEN EFFECTUATED PRIOR TO JULY 1,
21 1981, THE DEPARTMENT NEED NOT ABANDON THE PROJECT UNTIL
22 DECEMBER 31, 1981.

23 (D) THE DEPARTMENT SHALL NOT PUBLISH NOTIFICATION
24 OF INTENT TO ABANDON UNTIL IT HAS ATTEMPTED TO DISPOSE OF
25 THE PROJECT BY TRANSFER, SALE, OR OTHER LEGAL CONVEYANCE.

1 SECTION 5. OPERATION AND MAINTENANCE.

2 ~~3) THE DEPARTMENT SHALL OPERATE AND MAINTAIN THE~~
 3 ~~PROJECT UNTIL JULY 1, 1981 1982, OR UNTIL THE PROJECT IS~~
 4 ~~DISPOSED OF IF EARLIER THAN JULY 1, 1981 OR ABANDONED AS~~
 5 ~~PROVIDED IN THIS ACT.~~

6 Section 6. Entry on land. Any employee or agent of the
 7 department authorized by the director may enter upon any
 8 land to carry out the purposes of this act, including but
 9 not limited to entry to make inspections the department
 10 considers necessary of the project, entry to salvage or
 11 remove project property, and entry to make physical
 12 alterations to project property. The department shall give
 13 reasonable notice to the landowner of its intention to enter
 14 upon the land. The department is responsible for actual
 15 damages done to any property.

16 Section 7. Writeoff accounts receivable. Upon
 17 abandonment ~~OR DISPOSITION~~ of the project, the department
 18 shall cancel and write off accounts receivable carried on
 19 the books of the department. The department shall establish
 20 procedures for canceling and writing off accounts
 21 receivable, and the procedures shall include the reporting
 22 of the canceling and writing off of the accounts receivable
 23 to the next session of the legislature.

24 Section 8. Other laws and rules superseded. This act
 25 supersedes other laws and rules. If any provision of this

1 act is in conflict with any other law of this state or any
 2 rule adopted thereunder, this act governs and controls and
 3 the other law or rule is superseded for the purpose of this
 4 act.

5 SECTION 9. ADVISORY COUNCIL. (1) THE DEPARTMENT SHALL
 6 APPOINT AN ADVISORY COUNCIL COMPRISED OF THREE LEGISLATORS
 7 FROM BAYALLI COUNTY AND THREE REPRESENTATIVES OF THE DALY
 8 DITCH WATER USERS. IN ADDITION, THE DEPARTMENT MAY APPOINT
 9 ONE ADDITIONAL LEGISLATOR TO SERVE ON THE ADVISORY COUNCIL.

10 (2) THE ADVISORY COUNCIL SHALL MAKE RECOMMENDATIONS
 11 CONCERNING THE DISPOSITION OF THE PROJECT PURSUANT TO THE
 12 PROVISIONS OF THIS ACT, REPAIR OF THE PROJECT, AND ALL
 13 QUESTIONS OF OPERATION AND MAINTENANCE.

14 (3) THE ADVISORY COUNCIL SHALL BE CREATED AS PROVIDED
 15 IN 2-15-122.

16 (4) THE ADVISORY COUNCIL TERMINATES NO LATER THAN
 17 DECEMBER 31, 1982.

18 Section 10. Severability. If a part of this act is
 19 invalid, all valid parts that are severable from the invalid
 20 part remain in effect. If a part of this act is invalid in
 21 one or more of its applications, the part remains in effect
 22 in all valid applications that are severable from the
 23 invalid applications.

24 Section 11. Effective date. This act is effective on
 25 passage and approval.

SENATE STANDING COMMITTEE REPORT
(Natural Resources)

That House Bill No. 717, third reading bill, be amended as follows:

1. Page 1, line 21.

Following: "project"

Insert: "to the state of Montana"

2. Page 2, line 1.

Strike: "abandon OR OTHERWISE"

Following: "project"

Insert: "as provided in [section 3]"

3. Page 2, line 3.

Following: "department."

Insert: "If the department is not able to dispose of the project as provided in [section 3], then the project shall be abandoned as provided in [section 4]."

4. Page 2.

Following: line 15.

Insert: "Section 3. Disposition of project. (1) Prior to July 1, 1982, the department may dispose of the Daly ditch water project by transfer, sale, or other legal conveyance to a person legally qualified to enter into contracts and operate and maintain the project. Preference shall be given to an organization of project water users formed to operate the project.

(2) Upon conveyance of the project, the department shall transfer all water rights, real property, personal property, equipment, fixtures, headgates, structures, canals, dikes, lateral ditches, dams, and reservoirs related to the project.

(3) If the department has entered into an agreement to transfer the project prior to July 1, 1982, but the actual transfer has not been effectuated prior to July 1, 1982, the department shall not abandon the project as provided in [section 4] until December 31, 1982."

5. Page 2, line 16.

Following: "Section"

Strike: "3"

Insert: "4"

6. Page 2, line 16.

Strike: "DISPOSITION"

Insert: "Abandonment"

Following: "(1)"

Strike: "(A)"

7. Page 2, lines 17 and 18.

Strike: lines 17 and 18 in their entirety

Insert: "If the project is not disposed of as provided in [section 3], the department shall abandon the project no later than December 31, 1982."

8. Page 2, line 19.

Strike: "(B)"

Insert: "(2)"

9. Page 2, line 23.

Strike: "(C)"

Insert: "(3)"

10. Page 3, lines 2 through 23.

Strike: lines 2 through 23 in their entirety

11. Page 3, line 24.

Strike: "(D)"

Insert: "(4)"

12. Page 4.

Following: line 1.

Insert: "Section 5. Operation and maintenance."

Re-number subsequent sections

13. Page 4, line 2.

Strike: "(3)"

Following: "OPERATE"

Insert: "and maintain"

14. Page 4, line 3.

Strike: "1981"

Insert: "1982"

15. Page 4, lines 3 and 4.

Strike: "IF EARLIER THAN JULY 1, 1981"

Insert: "or abandoned as provided in this act"

16. Page 5, after line 3.

Insert: "Section 9. Advisory council. (1) The department shall appoint an advisory council comprised of 3 legislators from Ravalli County and 3 representatives of the Daly ditch water users. In addition, the department may appoint one additional legislator to serve on the advisory council.

(2) The advisory council shall make recommendations concerning the disposition of the project pursuant to the provisions of this act, repair of the project and all questions of operation and maintenance.

(3) The advisory council shall be created as provided in 2-15-122, MCA.

(4) The advisory council terminates no later than December 31, 1982."

Re-number subsequent sections