

HOUSE BILL NO. 100

INTRODUCED BY BARDANOUE

BY REQUEST OF
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

IN THE HOUSE

January 7, 1981	Introduced and referred to Committee on Natural Resources.
January 17, 1981	Committee recommend bill do pass. Report adopted.
January 19, 1981	Bill printed and placed on members' desks.
	Motion pass consideration.
January 20, 1981	Second reading, pass consideration.
January 26, 1981	Second reading, do pass as amended.
January 27, 1981	Correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 28, 1981	Introduced and referred to Committee on Agriculture, Live- Stock and Irrigation.
March 7, 1981	Committee recommend bill be concurrred in as amended. Report adopted.
March 10, 1981	Second reading, concurrred in.
March 12, 1981	Third reading, concurrred in as amended. Ayes, 50; Noes, 0.

IN THE HOUSE

March 13, 1981

Returned from Senate with amendments.

March 18, 1981

Second reading, amendments concurred in.

March 20, 1981

Third reading, amendments concurred in. Ayes, 82; Noes, 10. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 100
2 INTRODUCED BY J. DeLoach

3 BY REQUEST OF
4 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT
7 OF NATURAL RESOURCES AND CONSERVATION TO SELL OR OTHERWISE
8 DISPOSE OF WATER PROJECTS AND ASSOCIATED WORKS AND PROPERTY
9 AFTER A DETERMINATION OF MARKET VALUE; AMENDING SECTIONS
10 85-1-210 AND 85-1-211, MCA; AND PROVIDING AN IMMEDIATE
11 EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 85-1-210, MCA, is amended to read:

15 "85-1-210. Disposal of property by department ~~to other~~
16 ~~public bodies.~~ In addition to the powers conferred upon the
17 department to sell, lease, or otherwise dispose of waters
18 for the purpose of irrigation, development of power,
19 watering of stock, or other purposes, the department, with
20 the approval of the board, may sell, lease, or otherwise
21 dispose of waters from its waterworks systems for public,
22 domestic, industrial, and other uses and for fire
23 protection. The department, with the approval of the board,
24 may sell or otherwise dispose of a ~~waterworks--system--which~~
25 ~~is not operated for the purpose of irrigation or development~~

1 ~~of--power water project,~~ after the discharge of all of the
2 bonds issued by the board to finance the construction or
3 acquisition thereof, ~~if any,~~ and of all interest thereon and
4 costs and expenses incurred in connection with any action or
5 proceeding by or on behalf of the holders of the bonds
6 ~~however, no such sale or other disposition may be made~~
7 ~~except to a municipality, political subdivision, authority,~~
8 ~~or other public body of the state. The department shall make~~
9 a determination of the market value of the water project
10 prior to its sale or other disposition."

11 Section 2. Section 85-1-211, MCA, is amended to read:

12 "85-1-211. Management of property -- water contracts.

13 (1) Subject to this chapter, the department may fix and
14 establish the prices, rates, and charges at which the
15 resources and facilities made available under this chapter
16 may be sold and disposed of and enter into contracts and
17 agreements and do those things which in its judgment are
18 necessary, convenient, or expedient for the accomplishment
19 of the purposes and objects of this chapter, under such
20 general rules and upon such terms, limitations, and
21 conditions as it prescribes.

22 (2) The department shall enter into the contracts and
23 fix and establish the prices, rates, and charges so as to
24 provide at all times funds which will be sufficient to pay
25 all costs of operation and maintenance of the works

1 authorized by this chapter, together with necessary repairs
 2 thereto, and which will provide at all times sufficient
 3 funds to meet and pay the principal and interest of all
 4 bonds or loans as they severally become due and payable.

5 (3) This chapter does not authorize any change,
 6 alteration, or revision of those rates, prices, or charges
 7 as established by any contract entered into under this
 8 chapter except as provided by the contract.

9 (4) A contract made by the department for the sale of
 10 water, use of water, water storage, or other service or for
 11 the sale of any property or facilities shall provide that,
 12 in the event of a failure or default in the payment of
 13 moneys specified in the contract to be paid to the
 14 department, the department may, upon notice as is prescribed
 15 in the contract, terminate the contract and all obligations
 16 thereunder. The act of the department in ceasing on default
 17 to furnish or deliver water, use of water, water storage, or
 18 other service under the contract does not deprive the
 19 department of or limit any remedy provided by the contract
 20 or by law for the recovery of moneys due or which may become
 21 due under the contract.

22 (5) Subject to the approval of the board under
 23 85-1-202, the department may sell, transfer to water user
 24 associations, abandon, or otherwise dispose of any
 25 rights-of-way, easements, or property ~~when-it-determines~~

1 ~~that-they-are-no-longer-needed--for--the--purposes--of--this~~
 2 ~~chapter~~ or lease or rent the same or otherwise take and
 3 receive the income or profit and revenue therefrom. A
 4 determination shall be made by the department as to the
 5 market value of rights-of-way, easements, or property to be
 6 sold, transferred, abandoned, or otherwise disposed of.*

7 Section 3. Effective date. This act is effective on
 8 passage and approval.

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 100

INTRODUCED BY

BY REQUEST OF

THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SELL OR OTHERWISE DISPOSE OF WATER PROJECTS AND ASSOCIATED WORKS AND PROPERTY AFTER A DETERMINATION OF MARKET VALUE; AMENDING SECTIONS 85-1-210 AND 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-1-210, MCA, is amended to read:

"85-1-210. Disposal of property by department ~~to other public bodies~~. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department, with the approval of the board, may sell or otherwise dispose of a ~~waterworks--system--which is not operated for the purpose of irrigation or development~~

~~of power water project, after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof, if any, and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds; however, no such sale or other disposition may be made except to a municipality, political subdivision, authority, or other public body of the state. The department shall make a determination of the market value of the water project prior to its sale or other disposition."~~

Section 2. Section 85-1-211, MCA, is amended to read:

"85-1-211. Management of property -- water contracts.

(1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works

1 authorized by this chapter, together with necessary repairs
 2 thereto, and which will provide at all times sufficient
 3 funds to meet and pay the principal and interest of all
 4 bonds or loans as they severally become due and payable.

5 (3) This chapter does not authorize any change,
 6 alteration, or revision of those rates, prices, or charges
 7 as established by any contract entered into under this
 8 chapter except as provided by the contract.

9 (4) A contract made by the department for the sale of
 10 water, use of water, water storage, or other service or for
 11 the sale of any property or facilities shall provide that,
 12 in the event of a failure or default in the payment of
 13 moneys specified in the contract to be paid to the
 14 department, the department may, upon notice as is prescribed
 15 in the contract, terminate the contract and all obligations
 16 thereunder. The act of the department in ceasing on default
 17 to furnish or deliver water, use of water, water storage, or
 18 other service under the contract does not deprive the
 19 department of or limit any remedy provided by the contract
 20 or by law for the recovery of moneys due or which may become
 21 due under the contract.

22 (5) Subject to the approval of the board under
 23 85-1-202, the department may sell, transfer to water user
 24 associations, abandon, or otherwise dispose of any
 25 rights-of-way, easements, or property when-it-determines

1 ~~that they are no longer needed for the purposes of this~~
 2 ~~chapter~~ or lease or rent the same or otherwise take and
 3 receive the income or profit and revenue therefrom. A
 4 determination shall be made by the department as to the
 5 market value of rights-of-way, easements, or property to be
 6 sold, transferred, abandoned, or otherwise disposed of.*

7 Section 3. Effective date. This act is effective on
 8 passage and approval.

-End-

HOUSE BILL NO. 100

INTRODUCED BY BARDANQUE

BY REQUEST OF

THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SELL OR OTHERWISE DISPOSE OF WATER PROJECTS AND ASSOCIATED WORKS AND PROPERTY AFTER A DETERMINATION OF MARKET VALUE; AMENDING SECTIONS 85-1-210, AND 85-1-211, AND 85-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-1-210, MCA, is amended to read:

"85-1-210. Disposal of property by department ~~to other public--bodies~~. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department, with the approval of the board, may sell or otherwise dispose of a ~~waterworks-system-which is-not-operated-for-the-purpose-of-irrigation-or-development~~

~~of-power water project~~, after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof, if any, and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds; ~~however--no--such--sale--or--other--disposition--may--be--made except--to--a--municipality, political subdivision, authority or other public body of the state. The department shall make a determination of the market value of the water project prior to its sale or other disposition."~~

Section 2. Section 85-1-211, MCA, is amended to read:

"85-1-211. Management of property -- water contracts.

(1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works

1 authorized by this chapter, together with necessary repairs
2 thereto, and which will provide at all times sufficient
3 funds to meet and pay the principal and interest of all
4 bonds or loans as they severally become due and payable.

5 (3) This chapter does not authorize any change,
6 alteration, or revision of those rates, prices, or charges
7 as established by any contract entered into under this
8 chapter except as provided by the contract.

9 (4) A contract made by the department for the sale of
10 water, use of water, water storage, or other service or for
11 the sale of any property or facilities shall provide that,
12 in the event of a failure or default in the payment of
13 moneys specified in the contract to be paid to the
14 department, the department may, upon notice as is prescribed
15 in the contract, terminate the contract and all obligations
16 thereunder. The act of the department in ceasing on default
17 to furnish or deliver water, use of water, water storage, or
18 other service under the contract does not deprive the
19 department of or limit any remedy provided by the contract
20 or by law for the recovery of moneys due or which may become
21 due under the contract.

22 (5) Subject to the approval of the board under
23 85-1-202, the department may sell, transfer to water user
24 associations, abandon, or otherwise dispose of any
25 rights-of-way, easements, or property when--it--determines

1 ~~that they are no longer needed for the purposes of this~~
2 ~~chapter or lease or rent the same or otherwise take and~~
3 ~~receive the income or profit and revenue therefrom. A~~
4 ~~determination shall be made by the department as to the~~
5 ~~market value of rights-of-way, easements, or property to be~~
6 ~~sold, transferred, abandoned, or otherwise disposed of."~~

7 SECTION 3. SECTION 85-6-109, MCA, IS AMENDED TO READ

8 "85-6-109. Operation of projects with water users'
9 association. (1) As used in this section, "department" means
10 the department of natural resources and conservation
11 provided for in Title 2, chapter 15, part 33, and
12 "association" means a water users' association.

13 (2) Whenever the department proposes a program of
14 maintenance, repair, operation, or alteration of a project
15 in excess of \$25,000, the cost of which will be borne by an
16 association pursuant to the terms of a water marketing
17 contract, the association shall be informed of the program
18 and given an opportunity to comment. The department shall
19 notify the association of its decision. If the association
20 believes the program to be unnecessary or excessive in cost,
21 it may appeal the department decision to the board of
22 natural resources and conservation as provided for in
23 35-1-212. The board shall notify the association of its
24 decision. If the board's decision is adverse to the
25 association, the association may file within 30 days of

1 receipt of notice of the board's decision a complaint to
 2 review the board's decision in the district court in any
 3 county where all or part of the project works is located or
 4 in Lewis and Clark County.

5 (3) If a complaint is filed under subsection (2), the
 6 court shall hold a trial de novo on the question of
 7 necessity of the department program and the question of
 8 excessive costs. If the association prevails, the court may
 9 award costs to the association. The court may specify an
 10 acceptable program of maintenance, repair, operation, or
 11 alteration or may order the department and the association
 12 to develop a program, subject to court approval.

13 (4) Whenever a program of maintenance, repair,
 14 operation, or alteration is proposed, the department shall
 15 assist the association in attempting to secure sources of
 16 financing, including federal funds.

17 (5) Whenever the department proposes to abandon, sell,
 18 or otherwise dispose of a project which involves an a water
 19 users' association, the department shall notify the
 20 association. If, within 30 days of receipt of the notice of
 21 abandonment, sale or other disposal, stockholders of the
 22 association representing 15% or more of the issued and
 23 outstanding stock of the association file a petition of
 24 protest with the department, the project may not be
 25 abandoned, sold, or otherwise disposed of without the

1 consent of the legislature."

2 Section 4. Effective date. This act is effective on
 3 passage and approval.

-End-

1 HOUSE BILL NO. 100
 2 INTRODUCED BY BARDANOUVE
 3 BY REQUEST OF
 4 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT
 7 OF NATURAL RESOURCES AND CONSERVATION TO SELL OR OTHERWISE
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 9 AFTER A DETERMINATION OF MARKET VALUE; AMENDING SECTIONS
 10 85-1-210, ANB 85-1-211, AND ~~85-6-109~~, MCA; AND PROVIDING AN
 11 IMMEDIATE EFFECTIVE DATE."

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 16 public bodies. In addition to the powers conferred upon the
 17 department to sell, lease, or otherwise dispose of waters
 18 for the purpose of irrigation, development of power,
 19 watering of stock, or other purposes, the department, with
 20 the approval of the board, may sell, lease, or otherwise
 21 dispose of waters from its waterworks systems for public,
 22 domestic, industrial, and other uses and for fire
 23 protection. The department, with the approval of the board,
 24 may sell or otherwise dispose of a waterworks system which
 25 is not operated for the purpose of irrigation or development

1 of power water project, after the discharge of all of the
 2 bonds issued by the board to finance the construction or
 3 acquisition thereof, if any, and of all interest thereon and
 4 costs and expenses incurred in connection with any action or
 5 proceeding by or on behalf of the holders of the bonds,
 6 however, no such sale or other disposition may be made
 7 except to a municipality, political subdivision, authority,
 8 or other public body of the state. The department shall make
 9 a determination of the market value of the water project
 10 prior to its sale or other disposition."

11 Section 2. Section 85-1-211, MCA, is amended to read:

12 "85-1-211. Management of property -- water contracts.
 13 (1) Subject to this chapter, the department may fix and
 14 establish the prices, rates, and charges at which the
 15 resources and facilities made available under this chapter
 16 may be sold and disposed of and enter into contracts and
 17 agreements and do those things which in its judgment are
 18 necessary, convenient, or expedient for the accomplishment
 19 of the purposes and objects of this chapter, under such
 20 general rules and upon such terms, limitations, and
 21 conditions as it prescribes.

22 (2) The department shall enter into the contracts and
 23 fix and establish the prices, rates, and charges so as to
 24 provide at all times funds which will be sufficient to pay
 25 all costs of operation and maintenance of the works

1 authorized by this chapter, together with necessary repairs
2 thereto, and which will provide at all times sufficient
3 funds to meet and pay the principal and interest of all
4 bonds or loans as they severally become due and payable.

5 (3) This chapter does not authorize any change,
6 alteration, or revision of those rates, prices, or charges
7 as established by any contract entered into under this
8 chapter except as provided by the contract.

9 (4) A contract made by the department for the sale of
10 water, use of water, water storage, or other service or for
11 the sale of any property or facilities shall provide that,
12 in the event of a failure or default in the payment of
13 moneys specified in the contract to be paid to the
14 department, the department may, upon notice as is prescribed
15 in the contract, terminate the contract and all obligations
16 thereunder. The act of the department in ceasing on default
17 to furnish or deliver water, use of water, water storage, or
18 other service under the contract does not deprive the
19 department of or limit any remedy provided by the contract
20 or by law for the recovery of moneys due or which may become
21 due under the contract.

22 (5) Subject to the approval of the board under
23 85-1-202, the department may sell, transfer to water user
24 associations, abandon, or otherwise dispose of any
25 rights-of-way, easements, or property when--it--determines

1 ~~that--they--are--no--longer--needed--for--the--purposes--of--this~~
2 ~~chapter~~ or lease or rent the same or otherwise take and
3 receive the income or profit and revenue therefrom. A
4 determination shall be made by the department as to the
5 market value of rights-of-way, easements, or property to be
6 sold, transferred, abandoned, or otherwise disposed of."

7 SECTION 3. SECTION 85-6-109, MCA, IS AMENDED TO READ:

8 "85-6-109. Operation of projects with water users'
9 association. (1) As used in this section, "department" means
10 the department of natural resources and conservation
11 provided for in Title 2, chapter 15, part 33, and
12 "association" means a water users' association.

13 (2) Whenever the department proposes a program of
14 maintenance, repair, operation, or alteration of a project
15 in excess of \$25,000, the cost of which will be borne by an
16 association pursuant to the terms of a water marketing
17 contract, the association shall be informed of the program
18 and given an opportunity to comment. The department shall
19 notify the association of its decision. If the association
20 believes the program to be unnecessary or excessive in cost,
21 it may appeal the department decision to the board of
22 natural resources and conservation as provided for in
23 85-1-212. The board shall notify the association of its
24 decision. If the board's decision is adverse to the
25 association, the association may file within 30 days of

1 receipt of notice of the board's decision a complaint to
 2 review the board's decision in the district court in any
 3 county where all or part of the project works is located or
 4 in Lewis and Clark County.

5 (3) If a complaint is filed under subsection (2), the
 6 court shall hold a trial de novo on the question of
 7 necessity of the department program and the question of
 8 excessive costs. If the association prevails, the court may
 9 award costs to the association. The court may specify an
 10 acceptable program of maintenance, repair, operation, or
 11 alteration or may order the department and the association
 12 to develop a program, subject to court approval.

13 (4) Whenever a program of maintenance, repair,
 14 operation, or alteration is proposed, the department shall
 15 assist the association in attempting to secure sources of
 16 financing, including federal funds.

17 (5) Whenever the department proposes to abandon, sell,
 18 or otherwise dispose of a project which involves an a water
 19 users' association, the department shall notify the
 20 association. BEFORE THE DEPARTMENT MAY TAKE FURTHER ACTION
 21 TO ABANDON, SELL, OR OTHERWISE DISPOSE OF A PROJECT WHICH
 22 INVOLVES A WATER USERS' ASSOCIATION, THE DEPARTMENT MUST
 23 RECEIVE A PETITION APPROVING THE ABANDONMENT, SALE, OR
 24 DISPOSITION WHICH IS SIGNED BY STOCKHOLDERS OF THE
 25 ASSOCIATION REPRESENTING 66 2/3% OR MORE OF THE ISSUED AND

1 OUTSTANDING STOCK OF THE ASSOCIATION. If, within 30 days of
 2 receipt of the notice FINAL PROPOSAL of abandonment, sale or
 3 other disposal, stockholders of the association representing
 4 15% or more of the issued and outstanding stock of the
 5 association file a petition of protest with the department,
 6 the project may not be abandoned, sold, or otherwise
 7 disposed of without the consent of the legislature.*

8 Section 4. Effective date. This act is effective on
 9 passage and approval.

-End-

March 7, 1981

SENATE STANDING COMMITTEE REPORT
(Agriculture, Livestock & Irrigation)

That House Bill No. 100 be amended:

1. page 5, line 20.

Following: "association."

Insert: "Before the department may take further action to abandon, sell, or otherwise dispose of a project which involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition which is signed by stockholders of the association representing 66 2/3% or more of the issued and outstanding stock of the association."

2. page 5, line 20.

Following: "of the"

Strike: "notice"

Insert: "final proposal"