

SENATE BILL NO. 243
INTRODUCED BY GRAHAM
BY REQUEST OF THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION

IN THE SENATE

January 22, 1981	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
February 16, 1981	Committee recommend bill do pass as amended. Report adopted.
February 17, 1981	Bill printed and placed on members' desks.
February 18, 1981	Second reading, do pass.
February 19, 1981	Correctly engrossed.
February 20, 1981	Third reading, passed. Ayes, 46; Noes, 3. Transmitted to House.

IN THE HOUSE

February 21, 1981	Introduced and referred to Committee on Water.
March 25, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, not concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 81	On motion to request Senate to return Senate Bill 243 for further consideration. Motion adopted.

IN THE SENATE

March 31, 1981

On motion request of House granted for return of Senate Bill 243 for further consideration. Motion adopted.

IN THE HOUSE

March 31, 1981

Returned from Senate. Placed on second reading this day.

March 31, 1981

Second reading, concurred in as amended.

On motion rules suspended and bill placed on third reading this day.

Third reading, concurred in as amended. Ayes, 95; Noes, 1.

IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 3, 1981

Second reading, amendments not concurred in.

April 4, 1981

On motion Free Conference Committee requested.

April 7, 1981

Free Conference Committee appointed.

April 11, 1981

Free Conference Committee reported.

April 14, 1981

Free Conference Committee dissolved.

On motion New Free Conference Committee requested.

April 15, 1981

New Free Conference Committee appointed.

April 22, 1981

On motion taken from Committee on Bills and Journal and rereferred to new Free Conference Committee.

New Free Conference Committee reported.

Second reading, new Free Conference Committee report adopted.

Third reading, new Free Conference Committee report adopted. Ayes, 41; Noes, 8. Transmitted to House

IN THE HOUSE

April 23, 1981

New Free Conference Committee report adopted.

IN THE SENATE

April 23, 1981

Returned from House. Sent to enrolling.

Reported correctly enrolled.

Sen BILL NO. *243*

INTRODUCED BY *Shank*

BY REQUEST OF THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO DELEGATE AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO AUTHORIZE DIVERSIONS FROM THE YELLOWSTONE RIVER BASIN UNDER ARTICLE X OF THE YELLOWSTONE RIVER COMPACT, SECTION 85-20-101, MCA, ON BEHALF OF THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Definitions. Unless the context requires otherwise, in [this act] the following definitions apply:

- (1) "Basin" means the Yellowstone River basin.
- (2) "Compact" means the Yellowstone River Compact provided for in 85-20-101.

Section 2. Authority to approve diversions. The department [of natural resources and conservation] may consent on behalf of the state of Montana to diversions of water from the basin pursuant to Article X of the compact, including diversions of water allocated under the terms of the compact to the other signatory states of Wyoming and North Dakota.

Section 3. Application -- notice -- objections -- hearing. (1) Any appropriator proposing to divert water from the basin shall file an application with the department.

(2) The application must state the name and address of the applicant and facts tending to show that:

- (a) the diversion and ultimate use of the water is for a beneficial use of water under the laws of Montana;
 - (b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;
 - (c) the proposed means of diversion, construction, and operation are adequate;
 - (d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;
 - (e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;
 - (f) the diversion and ultimate use of the water is in the public interest of Montana; and
 - (g) the applicant intends to comply with the laws of the signatory states to the compact.
- (3) Notice of the proposed diversion must be given by the department in the same manner as provided in 85-2-307.
- (4) An objection to an application must be filed by

1 the date specified by the department in the notice.

2 (5) The objector shall state his name and address and
3 facts tending to show that:

4 (a) the diversion and ultimate use of the water are
5 not for a beneficial use of water under the laws of Montana;

6 (b) the property, rights, or interests of the objector
7 would be adversely affected by the proposed diversion or
8 ultimate use of the water;

9 (c) the proposed means of diversion, construction, and
10 operation are not adequate;

11 (d) the diversion and ultimate use will interfere
12 unreasonably with the objector's planned uses or development
13 for which the objector has a water right, a permit, or a
14 reserved water right;

15 (e) the diversion and ultimate use of the water will
16 exceed the allocated share under the compact of any
17 signatory state; or

18 (f) the diversion and ultimate use of the water are
19 not in the public interest of Montana regardless of whether
20 the water in question is allocated to Montana or one of the
21 other signatory states to the compact.

22 (6) If the department receives an objection to an
23 application, it shall hold a hearing on the application
24 within 60 days from the date set by the department for
25 filing objections. Service of notice of the hearing must be

1 made by certified mail upon the applicant and the objector.

2 (7) The hearing shall be conducted under the contested
3 case procedures of the Montana Administrative Procedure Act
4 in Title 2, chapter 4, part 6.

5 Section 4. Criteria for approval -- terms. (1) The
6 department may issue its approval of a diversion of water
7 allocated to Montana under the terms of the compact or
8 unallocated compact water diverted in Montana if:

9 (a) the diversion and the ultimate use of the water
10 are for a beneficial use under the laws of Montana;

11 (b) the diversion and ultimate use of water will not
12 adversely affect the water rights of other persons;

13 (c) the proposed means of diversion, construction, and
14 operation are adequate;

15 (d) the diversion and ultimate use will not interfere
16 unreasonably with other planned uses or developments for
17 which a water right has been established or a permit has
18 been issued or for which water has been reserved;

19 (e) the diversion and ultimate use of water will not
20 exceed the allocated share under the compact of any of the
21 signatory states;

22 (f) the diversion and ultimate use of the water are in
23 the public interest of Montana; and

24 (g) the applicant signs an agreement to comply with
25 the law of the signatory states to the compact in

1 constructing, operating, and maintaining all facilities
2 associated with the diversion and ultimate use of the water.

3 (2) In determining if the diversion is in the public
4 interest of Montana, the department shall consider:

5 (a) the benefits to the applicant and the state
6 resulting from the proposed diversion;

7 (b) the effects of economic activity in Montana
8 resulting from the proposed diversion; and

9 (c) the effects of the proposed diversion on the
10 public health, welfare, and safety.

11 (3) The department may approve a diversion of water
12 allocated to North Dakota or Wyoming or unallocated compact
13 water diverted in North Dakota or Wyoming if the diversion
14 will not adversely affect the property, rights, or interests
15 of an appropriator located in Montana.

16 (4) The department may approve a diversion subject to
17 such terms, conditions, restrictions, and limitations as it
18 considers necessary to meet the criteria listed in
19 subsection (1).

20 Section 5. Combined proceeding. The department, in its
21 discretion, may consider and act upon any application for
22 diversion of water from the basin filed pursuant to the
23 provisions of [this act] in conjunction with any board
24 proceedings involving the siting of a facility or associated
25 facilities conducted under the provisions of Title 75,

1 chapter 20, part 4, as amended, or in conjunction with any
2 departmental proceeding involving the issuance of a permit
3 or approval of a change conducted under Title 85, chapter 2,
4 as amended, if in the opinion of the department
5 consideration of both applications in the same proceeding
6 will better enable the board and department to fulfill their
7 functions, duties, and responsibilities under the provisions
8 of Title 75, chapter 20, part 4, or Title 85, chapter 2, and
9 [this act]. However, the department may not consent to the
10 diversion of Montana water out of the basin for ultimate use
11 in a facility as defined in Title 75, chapter 20, prior to
12 the board's issuance of a certificate for the facility in
13 accordance with Title 75, chapter 20.

14 Section 6. Department authorized to appear in
15 administrative and legal proceedings. The department may
16 appear on behalf of the state of Montana in proceedings
17 before the legislatures and administrative agencies of the
18 other signatory states to the compact and in legal
19 proceedings commenced in federal or state court within the
20 other signatory states involving the consent of such
21 signatory states to diversions of water from the basin under
22 Article X of the compact and any other laws or rules of such
23 signatory states applicable to such diversions to the extent
24 necessary to protect the interests and the citizens of
25 Montana in those proceedings.

1 Section 7. Codification instruction. This act is
2 intended to be codified as a new part in Title 85, chapter
3 2, and the provisions of Title 85, chapter 2, apply to this
4 act.

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

11 Section 9. Effective date. This act is effective on
12 passage and approval.

-End-

Approved by Committee
on Agriculture Livestock
& Irrigation

SENATE BILL NO. 243

INTRODUCED BY GRAHAM

BY REQUEST OF THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO DELEGATE AUTHORITY
TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO
AUTHORIZE DIVERSIONS FROM THE YELLOWSTONE RIVER BASIN UNDER
ARTICLE X OF THE YELLOWSTONE RIVER COMPACT, SECTION
85-20-101, MCA, ON BEHALF OF THE STATE OF MONTANA;--AND
PROVIDING AN EFFECTIVE DATE."

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

Section 1. Definitions. Unless the context requires
otherwise, in [this act] the following definitions apply:

- (1) "Basin" means the Yellowstone River basin.
- (2) "Compact" means the Yellowstone River Compact
provided for in 85-20-101.

Section 2. Authority to approve diversions. The
department [of natural resources and conservation] may
consent on behalf of the state of Montana to diversions of
water from the basin pursuant to Article X of the compact,
including diversions of water allocated under the terms of
the compact to the other signatory states of Wyoming and
North Dakota.

Section 3. Application -- notice -- objections --
hearing. (1) Any appropriator proposing to divert water from
~~the basin~~ ALLOCATED TO MONTANA UNDER THE TERMS OF THE
COMPACT OR DIVERT UNALLOCATED COMPACT WATER WITHIN MONTANA
shall file an application with the department.

(2) The application must state the name and address of
the applicant and facts tending to show that:

(a) the diversion and ultimate use of the water IN
MONTANA is for a beneficial use of water ~~under the laws of~~
Montana;

(b) the diversion and ultimate use of water will not
adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and
operation are adequate;

(d) the diversion and ultimate use will not interfere
unreasonably with other planned uses or developments for
which a water right has been established or a permit has
been issued or for which water has been reserved;

(e) the diversion and ultimate use of the water will
not exceed the allocated share under the compact of any of
the signatory states;

(f) the diversion and ultimate use of the water ~~is~~ ARE
in the public interest of Montana; and

(g) the applicant intends to comply with the laws of
the signatory states to the compact.

1 (2) ANY APPROPRIATOR PROPOSING TO DIVERT WATER
 2 ALLOCATED TO NORTH DAKOTA OR WYOMING UNDER THE TERMS OF THE
 3 COMPACT OR DIVERT UNALLOCATED COMPACT WATER WITHIN NORTH
 4 DAKOTA OR WYOMING SHALL FILE AN APPLICATION WITH THE
 5 DEPARTMENT. THE APPLICATION MUST STATE THE NAME AND ADDRESS
 6 OF THE APPLICANT AND FACTS TENDING TO SHOW THAT:

7 (A) THE PROPOSED MEANS OF DIVERSION, CONSTRUCTION, AND
 8 OPERATION ARE ADEQUATE;

9 (B) THE DIVERSION AND ULTIMATE USE OF THE WATER WILL
 10 NOT EXCEED THE ALLOCATED SHARE UNDER THE COMPACT OF ANY OF
 11 THE SIGNATORY STATES; AND

12 (C) THE APPLICANT INTENDS TO COMPLY WITH THE COMPACT.

13 (3) Notice of the proposed diversion must be given by
 14 the department in the same manner as provided in 85-2-307.

15 (4) An objection to an application must be filed by
 16 the date specified by the department in the notice.

17 (5) The objector TO AN APPLICATION UNDER SUBSECTION
 18 (1) shall state his name and address and facts tending to
 19 show that:

20 (a) the diversion and ultimate use of the water IN
 21 MONTANA are not for a beneficial use of water under the laws
 22 of Montana;

23 (b) the property, rights, or interests of the objector
 24 would be adversely affected by the proposed diversion or
 25 ultimate use of the water;

1 (c) the proposed means of diversion, construction, and
 2 operation are not adequate;

3 (d) the diversion and ultimate use will interfere
 4 unreasonably with the objector's planned uses or development
 5 for which the objector has a water right, a permit, or a
 6 reserved water right;

7 (e) the diversion and ultimate use of the water will
 8 exceed the allocated share under the compact of any
 9 signatory state; or

10 (f) the diversion and ultimate use of the water are
 11 not in the public interest of Montana ~~regardless of whether~~
 12 ~~the water in question is allocated to Montana or one of the~~
 13 ~~other signatory states to the compact.~~

14 (6) THE OBJECTOR TO AN APPLICATION UNDER SUBSECTION
 15 (2) SHALL STATE HIS NAME AND ADDRESS AND FACTS TENDING TO
 16 SHOW THAT:

17 (A) THE PROPERTY, RIGHTS, OR INTERESTS OF THE OBJECTOR
 18 WOULD BE ADVERSELY AFFECTED BY THE PROPOSED DIVERSION OR
 19 ULTIMATE USE OF THE WATER;

20 (B) THE PROPOSED MEANS OF DIVERSION, CONSTRUCTION, AND
 21 OPERATION ARE NOT ADEQUATE; OR

22 (C) THE DIVERSION AND ULTIMATE USE OF THE WATER WILL
 23 EXCEED THE ALLOCATED SHARE UNDER THE COMPACT OF ANY
 24 SIGNATORY STATE.

25 ~~(6)(7)~~ If the department receives an objection to an

1 application, it shall hold a hearing on the application
2 within 60 days from the date set by the department for
3 filing objections. Service of notice of the hearing must be
4 made by certified mail upon the applicant and the objector.

5 ~~††(8)~~ The hearing shall be conducted under the
6 contested case procedures of the Montana Administrative
7 Procedure Act in Title 2, chapter 4, part 6.

8 Section 4. Criteria for approval -- terms. (1) The
9 department may issue its approval of a diversion of water
10 allocated to Montana under the terms of the compact or
11 unallocated compact water diverted in Montana if:

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13 MONTANA are for a beneficial use ~~under the laws of Montana~~
14 OF WATER;

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18 operation are adequate;

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2 the public interest of Montana; and

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4 the ~~law~~ LAWs of the signatory states to the compact in
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18 will not adversely affect the property, rights, or interests
19 of an appropriator located in Montana.

20 ~~††(3)~~ The department may approve a diversion subject
21 to such terms, conditions, restrictions, and limitations as
22 it considers necessary to meet the APPLICABLE criteria
23 listed in subsection (1) OR (2).

24 Section 5. Combined proceeding. The department, ~~in its~~
25 ~~discretion~~ UPON PETITION BY THE APPLICANT, may consider and

1 act upon any application for diversion of water from the
 2 basin filed pursuant to the provisions of [this act] in
 3 conjunction with any board proceedings involving the siting
 4 of a facility or associated facilities conducted under the
 5 provisions of Title 75, chapter 20, part 4, as amended, or
 6 in conjunction with any departmental proceeding involving
 7 the issuance of a permit or approval of a change conducted
 8 under Title 85, chapter 2, as amended, if in the opinion of
 9 the department consideration of both applications in the
 10 same proceeding will better enable the board and department
 11 to fulfill their functions, duties, and responsibilities
 12 under the provisions of Title 75, chapter 20, part 4, or
 13 Title 85, chapter 2, and [this act]. ~~However, the department~~
 14 ~~may not~~ THE DEPARTMENT'S consent to the diversion of Montana
 15 water out of the basin for ultimate use in a facility as
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 17 CONTINGENT UPON the board's issuance of a certificate for
 18 the facility in accordance with Title 75, chapter 20.

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16 ~~Section 9. --Effective date-- This act is effective on~~
 17 ~~passage and approval~~

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 8 2, and the provisions of Title 85, chapter 2, apply to this
 9 act.

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

16 ~~Section 9.--Effective date.--This act is--effective--on~~
 17 ~~passage-and-approval~~

-End-

1 SENATE BILL NO. 243
 2 INTRODUCED BY GRAHAM
 3 BY REQUEST OF THE DEPARTMENT OF
 4 NATURAL RESOURCES AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO DELEGATE AUTHORITY
 7 TO THE DEPARTMENT BOARD OF NATURAL RESOURCES AND
 8 CONSERVATION TO AUTHORIZE DIVERSIONS FROM THE YELLOWSTONE
 9 RIVER BASIN UNDER ARTICLE X OF THE YELLOWSTONE RIVER
 10 COMPACT, SECTION 85-20-101, MCA, UPON CONSENT OF THE
 11 LEGISLATURE AND ON BEHALF OF THE STATE OF MONTANA ~~AND~~
 12 ~~PROVIDING AN EFFECTIVE DATE."~~
 13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Definitions. Unless the context requires
 16 otherwise, in [this act] the following definitions apply:
 17 (1) "Basin" means the Yellowstone River basin.
 18 (2) "Compact" means the Yellowstone River Compact
 19 provided for in 85-20-101.
 20 Section 2. Authority to approve diversions. ~~The~~ UPON
 21 APPROVAL BY THE LEGISLATURE, THE department BOARD [of
 22 natural resources and conservation] may consent on behalf of
 23 the state of Montana to diversions of water from the basin
 24 pursuant to Article X of the compact, including diversions
 25 of water allocated under the terms of the compact to the

1 other signatory states of Wyoming and North Dakota. A
 2 DECISION BY THE BOARD TO DISAPPROVE DIVERSION OF WATER IS
 3 NOT SUBJECT TO LEGISLATIVE APPROVAL.
 4 Section 3. Application -- notice -- objections --
 5 hearing. (1) Any appropriator proposing to divert FROM THE
 6 BASIN water ~~from the basin~~ ALLOCATED TO MONTANA UNDER THE
 7 TERMS OF THE COMPACT OR DIVERT FROM THE BASIN UNALLOCATED
 8 COMPACT WATER WITHIN MONTANA shall file an application with
 9 the department BOARD.
 10 ~~(2)~~ The application must state the name and address of
 11 the applicant and facts tending to show that:
 12 (a) the diversion and ultimate use of the water IN
 13 MONTANA is for a beneficial use of water ~~under the laws of~~
 14 Montana;
 15 (b) the diversion and ultimate use of water will not
 16 adversely affect the water rights of other persons;
 17 (c) the proposed means of diversion, construction, and
 18 operation are adequate;
 19 (d) the diversion and ultimate use will not interfere
 20 unreasonably with other planned uses or developments for
 21 which a water right has been established or a permit has
 22 been issued or for which water has been reserved;
 23 (e) the diversion and ultimate use of the water will
 24 not exceed the allocated share under the compact of any of
 25 the signatory states;

1 (f) the diversion and ultimate use of the water is ARE
2 in the public interest of Montana; and

3 (g) the applicant intends to comply with the laws of
4 the signatory states to the compact.

5 (2) ANY APPROPRIATOR PROPOSING TO DIVERT FROM THE
6 BASIN WATER ALLOCATED TO NORTH DAKOTA OR WYOMING UNDER THE
7 TERMS OF THE COMPACT OR DIVERT FROM THE BASIN UNALLOCATED
8 COMPACT WATER WITHIN NORTH DAKOTA OR WYOMING SHALL FILE AN
9 APPLICATION WITH THE DEPARTMENT BOARD. THE APPLICATION MUST
10 STATE THE NAME AND ADDRESS OF THE APPLICANT AND FACTS
11 TENDING TO SHOW THAT:

12 (A) THE PROPOSED MEANS OF DIVERSION, CONSTRUCTION, AND
13 OPERATION ARE ADEQUATE;

14 (B) THE DIVERSION AND ULTIMATE USE OF THE WATER WILL
15 NOT EXCEED THE ALLOCATED SHARE UNDER THE COMPACT OF ANY OF
16 THE SIGNATORY STATES; AND

17 (C) THE APPLICANT INTENDS TO COMPLY WITH THE COMPACT.

18 (3) Notice of the proposed diversion must be given by
19 the department BOARD in the same manner as provided in
20 85-2-307(1) AND (2).

21 (4) An objection to an application must be filed by
22 the date specified by the department BOARD in the notice.

23 (5) The objector TO AN APPLICATION UNDER SUBSECTION
24 (1) shall state his name and address and facts tending to
25 show that:

1 (a) the diversion and ultimate use of the water IN
2 MONTANA are not for a beneficial use of water ~~under the laws~~
3 ~~of Montana;~~

4 (b) the property, rights, or interests of the objector
5 would be adversely affected by the proposed diversion or
6 ultimate use of the water;

7 (c) the proposed means of diversion, construction, and
8 operation are not adequate;

9 (d) the diversion and ultimate use will interfere
10 unreasonably with the objector's planned uses or development
11 for which the objector has a water right, a permit, or a
12 reserved water right;

13 (e) the diversion and ultimate use of the water will
14 exceed the allocated share under the compact of any
15 signatory state; or

16 (f) the diversion and ultimate use of the water are
17 not in the public interest of Montana ~~regardless of whether~~
18 ~~the water in question is allocated to Montana or one of the~~
19 ~~other signatory states to the compact.~~

20 (5) THE OBJECTOR TO AN APPLICATION UNDER SUBSECTION
21 (2) SHALL STATE HIS NAME AND ADDRESS AND FACTS TENDING TO
22 SHOW THAT:

23 (A) THE PROPERTY, RIGHTS, OR INTERESTS OF THE OBJECTOR
24 WOULD BE ADVERSELY AFFECTED BY THE PROPOSED DIVERSION OR
25 ULTIMATE USE OF THE WATER;

1 (B) THE PROPOSED MEANS OF DIVERSION, CONSTRUCTION, AND
2 OPERATION ARE NOT ADEQUATE; OR

3 (C) THE DIVERSION AND ULTIMATE USE OF THE WATER WILL
4 EXCEED THE ALLOCATED SHARE UNDER THE COMPACT OF ANY
5 SIGNATORY STATE.

6 {6}(7) If the department BOARD receives an objection
7 to an application, it shall hold a hearing on the
8 application within 60 days from the date set by the
9 department BOARD for filing objections. Service of notice
10 of the hearing must be made by certified mail upon the
11 applicant and the objector.

12 {7}(8) The hearing shall be conducted under the
13 contested case procedures of the Montana Administrative
14 Procedure Act in Title 2, chapter 4, part 6.

15 Section 4. Criteria for approval -- terms. (1) The
16 CONTINGENT UPON APPROVAL BY THE LEGISLATURE, THE department
17 BOARD may issue its approval of a diversion of water
18 allocated to Montana under the terms of the compact or
19 unallocated compact water diverted in Montana if:

20 (a) the diversion and the ultimate use of the water IN
21 MONTANA are for a beneficial use ~~under the laws of Montana~~
22 OF WATER;

23 (b) the diversion and ultimate use of water will not
24 adversely affect the water rights of other persons;

25 (c) the proposed means of diversion, construction, and

1 operation are adequate;

2 (d) the diversion and ultimate use will not interfere
3 unreasonably with other planned uses or developments for
4 which a water right has been established or a permit has
5 been issued or for which water has been reserved;

6 (e) the diversion and ultimate use of water will not
7 exceed the allocated share under the compact of any of the
8 signatory states;

9 (f) the diversion and ultimate use of the water are in
10 the public interest of Montana; and

11 (g) the applicant signs an agreement to comply with
12 the law LAWS of the signatory states to the compact in
13 constructing, operating, and maintaining all facilities
14 associated with the diversion and ultimate use of the water.

15 ~~{2}--in-determining-if-the-diversion-is-in-the-public~~
16 ~~interest-of-Montana-the-department-shall-consider:~~

17 ~~{a}--the-benefits-to-the-applicant-and-the-state~~
18 ~~resulting-from-the-proposed-diversion;~~

19 ~~{b}--the-effects-of-economic-activity-in-Montana~~
20 ~~resulting-from-the-proposed-diversion;and~~

21 ~~{c}--the-effects-of-the-proposed-diversion-on-the~~
22 ~~public-health,welfare,and-safety;~~

23 {3}(2) The department BOARD may approve, CONTINGENT
24 UPON LEGISLATIVE APPROVAL, a diversion of water allocated to
25 North Dakota or Wyoming or unallocated compact water

1 diverted in North Dakota or Wyoming if the diversion will
 2 not adversely affect the property, rights, or interests of
 3 an appropriator located in Montana AND IF THE DIVERSION AND
 4 ULTIMATE USE OF WATER WILL NOT EXCEED THE ALLOCATED SHARE
 5 UNDER THE COMPACT OF ANY OF THE SIGNATORY STATES.

6 ~~(4)~~(3) The department BOARD may approve, CONTINGENT
 7 UPON LEGISLATIVE APPROVAL, a diversion subject to such
 8 terms, conditions, restrictions, and limitations as it
 9 considers necessary to meet the APPLICABLE criteria listed
 10 in subsection (1) OR (2).

11 Section 5. Combined proceeding. The department BOARD,
 12 ~~in its discretion~~ UPON PETITION BY THE APPLICANT, may
 13 consider and act upon any application for diversion of water
 14 from the basin filed pursuant to the provisions of [this
 15 act] in conjunction with any board proceedings involving the
 16 siting of a facility or associated facilities conducted
 17 under the provisions of Title 75, chapter 20, part 4, as
 18 amended, or in conjunction with any departmental proceeding
 19 involving the issuance of a permit or approval of a change
 20 conducted under Title 85, chapter 2, as amended, if in the
 21 opinion of the department BOARD consideration of both
 22 applications in the same proceeding will better enable the
 23 board and department to fulfill their functions, duties, and
 24 responsibilities under the provisions of Title 75, chapter
 25 20, part 4, or Title 85, chapter 2, and [this act]. However,

1 the--department--may-not THE DEPARTMENT'S BOARD'S consent to
 2 the diversion of Montana water out of the basin for ultimate
 3 use in a facility as defined in Title 75, chapter 20, prior
 4 to SHALL BE CONTINGENT UPON the board's issuance of a
 5 certificate for the facility in accordance with Title 75,
 6 chapter 20 AND UPON LEGISLATIVE APPROVAL. THE BOARD'S
 7 CONSENT SHALL TERMINATE 5 YEARS AFTER THE DATE OF ISSUANCE
 8 OF THE CONSENT UNLESS THE BOARD ISSUES THE CERTIFICATE FOR
 9 THE FACILITY IN ACCORDANCE WITH TITLE 75, CHAPTER 20, AND
 10 APPROVAL OF NORTH DAKOTA AND WYOMING IS SECURED IN
 11 ACCORDANCE WITH ARTICLE X OF THE COMPACT OR UNLESS CONSENT
 12 IS EXTENDED BY THE BOARD.

13 Section 6. Department authorized to appear in
 14 administrative and legal proceedings. The department may
 15 appear on behalf of the state of Montana in proceedings
 16 before the legislatures and administrative agencies of the
 17 other signatory states to the compact and in legal
 18 proceedings commenced in federal or state court within the
 19 other signatory states involving the consent of such
 20 signatory states to diversions of water from the basin under
 21 Article X of the compact and any other laws or rules of such
 22 signatory states applicable to such diversions to the extent
 23 necessary to protect the interests and the citizens of
 24 Montana in those proceedings.

25 Section 7. Codification instruction. This act is

1 intended to be codified as a new part in Title 85, chapter
2 2, and the provisions of Title 85, chapter 2, apply to this
3 act.

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

-End-

1 SENATE BILL NO. 243

2 INTRODUCED BY GRAHAM

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

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO DELEGATE AUTHORITY
7 TO THE DEPARTMENT ~~BOARD~~ DEPARTMENT OF NATURAL RESOURCES AND
8 CONSERVATION TO AUTHORIZE DIVERSIONS FROM THE YELLOWSTONE
9 RIVER BASIN UNDER ARTICLE X OF THE YELLOWSTONE RIVER
10 COMPACT, SECTION 85-20-101, MCA, ~~UPON CONSENT OF THE~~
11 ~~LEGISLATURE AND~~ ON BEHALF OF THE STATE OF MONTANA, ~~AND~~
12 ~~PROVIDING AN EFFECTIVE DATE; PROVIDING FOR LEGISLATIVE~~
13 ~~REVIEW; AND PROVIDING AN EFFECTIVE DATE."~~

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Definitions. Unless the context requires
17 otherwise, in [this act] the following definitions apply:

18 (1) "Basin" means the Yellowstone River basin.

19 (2) "Compact" means the Yellowstone River Compact
20 provided for in 85-20-101.

21 Section 2. Authority to approve diversions. ~~The~~ ~~UPON~~
22 ~~APPROVAL BY THE LEGISLATURE, THE~~ department ~~BOARD~~ ~~THE~~
23 ~~DEPARTMENT~~ [of natural resources and conservation] may
24 consent on behalf of the state of Montana to diversions of
25 water from the basin pursuant to Article X of the compact,

1 including diversions of water allocated under the terms of
2 the compact to the other signatory states of Wyoming and
3 North Dakota. ~~A DECISION BY THE BOARD TO DISAPPROVE~~

4 ~~DIVERSION OF WATER IS NOT SUBJECT TO LEGISLATIVE APPROVAL.~~

5 SECTION 3. LEGISLATIVE REVIEW. (1) A DIVERSION OF
6 WATER FROM THE BASIN PURSUANT TO ARTICLE X OF THE COMPACT
7 CONSENTED TO BY THE DEPARTMENT UNDER THE PROVISIONS OF [THIS
8 ACT] MAY NOT BE MADE UNTIL ONE OF THE FOLLOWING OCCURS,
9 WHICHEVER IS LATER:

10 (A) THE LEGISLATURE RATIFIES THE FIRST DETERMINATION
11 OF THE DEPARTMENT TO CONSENT TO A DIVERSION OF WATER FROM
12 THE BASIN PURSUANT TO ARTICLE X OF THE COMPACT; OR

13 (B) JULY 1, 1983.

14 (2) A DECISION BY THE DEPARTMENT TO DISAPPROVE A
15 DIVERSION OF WATER IS NOT SUBJECT TO LEGISLATIVE APPROVAL.

16 Section 4. Application -- notice -- objections --
17 hearing. (1) Any appropriator proposing to divert ~~FROM THE~~
18 ~~BASIN~~ water from ~~the basin~~ ALLOCATED TO MONTANA UNDER THE
19 TERMS OF THE COMPACT OR DIVERT FROM THE BASIN UNALLOCATED
20 COMPACT WATER WITHIN MONTANA shall file an application with
21 the department ~~BOARD~~ DEPARTMENT.

22 (2) The application must state the name and address of
23 the applicant and facts tending to show that:

24 (a) the diversion and ultimate use of the water IN
25 MONTANA is for a beneficial use of water ~~under the laws of~~

1 Montana;

2 (b) the diversion and ultimate use of water will not
3 adversely affect the water rights of other persons;

4 (c) the proposed means of diversion, construction, and
5 operation are adequate;

6 (d) the diversion and ultimate use will not interfere
7 unreasonably with other planned uses or developments for
8 which a water right has been established or a permit has
9 been issued or for which water has been reserved;

10 (e) the diversion and ultimate use of the water will
11 not exceed the allocated share under the compact of any of
12 the signatory states;

13 (f) the diversion and ultimate use of the water is ARE
14 in the public interest of Montana; and

15 (g) the applicant intends to comply with the laws of
16 the signatory states to the compact.

17 (2) ANY APPROPRIATOR PROPOSING TO DIVERT FROM THE
18 BASIN WATER ALLOCATED TO NORTH DAKOTA OR WYOMING UNDER THE
19 TERMS OF THE COMPACT OR DIVERT FROM THE BASIN UNALLOCATED
20 COMPACT WATER WITHIN NORTH DAKOTA OR WYOMING SHALL FILE AN
21 APPLICATION WITH THE DEPARTMENT BOARD DEPARTMENT. THE
22 APPLICATION MUST STATE THE NAME AND ADDRESS OF THE APPLICANT
23 AND FACTS TENDING TO SHOW THAT:

24 (A) THE PROPOSED MEANS OF DIVERSION, CONSTRUCTION, AND
25 OPERATION ARE ADEQUATE;

1 (B) THE DIVERSION AND ULTIMATE USE OF THE WATER WILL
2 NOT EXCEED THE ALLOCATED SHARE UNDER THE COMPACT OF ANY OF
3 THE SIGNATORY STATES; AND

4 (C) THE APPLICANT INTENDS TO COMPLY WITH THE COMPACT.

5 (3) Notice of the proposed diversion must be given by
6 the department BOARD DEPARTMENT in the same manner as
7 provided in 85-2-307(1) AND (2).

8 (4) An objection to an application must be filed by
9 the date specified by the department BOARD DEPARTMENT in the
10 notice.

11 (5) The objector TO AN APPLICATION UNDER SUBSECTION
12 (1) shall state his name and address and facts tending to
13 show that:

14 (a) the diversion and ultimate use of the water IN
15 MONTANA are not for a beneficial use of water under-the-laws
16 of-Montana;

17 (b) the property, rights, or interests of the objector
18 would be adversely affected by the proposed diversion or
19 ultimate use of the water;

20 (c) the proposed means of diversion, construction, and
21 operation are not adequate;

22 (d) the diversion and ultimate use will interfere
23 unreasonably with the objector's planned uses or development
24 for which the objector has a water right, a permit, or a
25 reserved water right;

1 (e) the diversion and ultimate use of the water will
2 exceed the allocated share under the compact of any
3 signatory state; or

4 (f) the diversion and ultimate use of the water are
5 not in the public interest of Montana regardless of whether
6 the water in question is allocated to Montana or one of the
7 other signatory states to the compact.

8 (6) THE OBJECTOR TO AN APPLICATION UNDER SUBSECTION
9 (2) SHALL STATE HIS NAME AND ADDRESS AND FACTS TENDING TO
10 SHOW THAT:

11 (A) THE PROPERTY, RIGHTS, OR INTERESTS OF THE OBJECTOR
12 WOULD BE ADVERSELY AFFECTED BY THE PROPOSED DIVERSION OR
13 ULTIMATE USE OF THE WATER;

14 (B) THE PROPOSED MEANS OF DIVERSION, CONSTRUCTION, AND
15 OPERATION ARE NOT ADEQUATE; OR

16 (C) THE DIVERSION AND ULTIMATE USE OF THE WATER WILL
17 EXCEED THE ALLOCATED SHARE UNDER THE COMPACT OF ANY
18 SIGNATORY STATE.

19 ~~(6)~~(7) If the department ~~BOARD~~ DEPARTMENT receives an
20 objection to an application, it shall hold a hearing on the
21 application within 60 days from the date set by the
22 department ~~BOARD~~ DEPARTMENT for filing objections. Service
23 of notice of the hearing must be made by certified mail upon
24 the applicant and the objector.

25 ~~(7)~~(8) The hearing shall be conducted under the

1 contested case procedures of the Montana Administrative
2 Procedure Act in Title 2, chapter 4, part 6.

3 Section 5. Criteria for approval -- terms. (1) ~~The~~
4 ~~CONTINGENT--UPON-APPROVAL-BY-THE-LEGISLATURE, THE~~ department
5 ~~BOARD THE DEPARTMENT~~ may issue its approval of a diversion
6 of water allocated to Montana under the terms of the compact
7 or unallocated compact water diverted in Montana if:

8 (a) the diversion and the ultimate use of the water IN
9 MONTANA are for a beneficial use ~~under the laws of Montana~~
10 OF WATER;

11 (b) the diversion and ultimate use of water will not
12 adversely affect the water rights of other persons;

13 (c) the proposed means of diversion, construction, and
14 operation are adequate;

15 (d) the diversion and ultimate use will not interfere
16 unreasonably with other planned uses or developments for
17 which a water right has been established or a permit has
18 been issued or for which water has been reserved;

19 (e) the diversion and ultimate use of water will not
20 exceed the allocated share under the compact of any of the
21 signatory states;

22 (f) the diversion and ultimate use of the water are in
23 the public interest of Montana; and

24 (g) the applicant signs an agreement to comply with
25 the ~~law~~ LAWS of the signatory states to the compact in

1 constructing, operating, and maintaining all facilities
2 associated with the diversion and ultimate use of the water.

3 ~~(2) in determining if the diversion is in the public
4 interest of Montana the department shall consider~~

5 ~~(a) the benefits to the applicant and the state
6 resulting from the proposed diversion;~~

7 ~~(b) the effects of economic activity in Montana
8 resulting from the proposed diversion; and~~

9 ~~(c) the effects of the proposed diversion on the
10 public health, welfare, and safety;~~

11 ~~(3)(2) The department BOARD DEPARTMENT may approve
12 CONTINGENT UPON LEGISLATIVE APPROVAL a diversion of water
13 allocated to North Dakota or Wyoming or unallocated compact
14 water diverted in North Dakota or Wyoming if the diversion
15 will not adversely affect the property, rights, or interests
16 of an appropriator located in Montana AND IF THE DIVERSION
17 AND ULTIMATE USE OF WATER WILL NOT EXCEED THE ALLOCATED
18 SHARE UNDER THE COMPACT OF ANY OF THE SIGNATORY STATES.~~

19 ~~(4)(3) The department BOARD DEPARTMENT may approve
20 CONTINGENT UPON LEGISLATIVE APPROVAL a diversion subject to
21 such terms, conditions, restrictions, and limitations as it
22 considers necessary to meet the APPLICABLE criteria listed
23 in subsection (1) OR (2).~~

24 Section 6. Combined proceeding. The department BOARD
25 DEPARTMENT, in its discretion UPON PETITION BY THE

1 APPLICANT, may consider and act upon any application for
2 diversion of water from the basin filed pursuant to the
3 provisions of [this act] in conjunction with any board
4 proceedings involving the siting of a facility or associated
5 facilities conducted under the provisions of Title 75,
6 chapter 20, part 4, as amended, or in conjunction with any
7 departmental proceeding involving the issuance of a permit
8 or approval of a change conducted under Title 85, chapter 2,
9 as amended, if in the opinion of the department BOARD
10 DEPARTMENT consideration of both applications in the same
11 proceeding will better enable the board and department to
12 fulfill their functions, duties, and responsibilities under
13 the provisions of Title 75, chapter 20, part 4, or Title 85,
14 chapter 2, and [this act]. ~~However, the department may not~~
15 THE BOARD'S DEPARTMENT'S consent to the
16 diversion of Montana water out of the basin for ultimate use
17 in a facility as defined in Title 75, chapter 20, prior to
18 SHALL BE CONTINGENT UPON the board's DEPARTMENT'S issuance
19 of a certificate for the facility in accordance with Title
20 75, chapter 20 ~~and upon legislative approval. The board's~~
21 CONSENT SHALL TERMINATE 5 YEARS AFTER THE DATE OF ISSUANCE
22 OF THE CONSENT UNLESS THE BOARD ISSUES THE CERTIFICATE FOR
23 THE FACILITY IN ACCORDANCE WITH TITLE 75, CHAPTER 20, AND
24 APPROVAL OF NORTH DAKOTA AND WYOMING IS SECURED IN
25 ACCORDANCE WITH ARTICLE X OF THE COMPACT OR UNLESS CONSENT

1 ~~IS EXTENDED BY THE BOARD.~~ THE DEPARTMENT'S CONSENT SHALL
 2 TERMINATE 10 YEARS AFTER THE DATE OF ISSUANCE OF THE CONSENT
 3 UNLESS THE BOARD ISSUES THE CERTIFICATE FOR THE FACILITY IN
 4 ACCORDANCE WITH TITLE 75, CHAPTER 20, AND APPROVAL OF NORTH
 5 DAKOTA AND WYOMING IS SECURED IN ACCORDANCE WITH ARTICLE X
 6 OF THE COMPACT OR UNLESS CONSENT IS EXTENDED BY THE
 7 DEPARTMENT.

8 Section 7. Department authorized to appear in
 9 administrative and legal proceedings. The department may
 10 appear on behalf of the state of Montana in proceedings
 11 before the legislatures and administrative agencies of the
 12 other signatory states to the compact and in legal
 13 proceedings commenced in federal or state court within the
 14 other signatory states involving the consent of such
 15 signatory states to diversions of water from the basin under
 16 Article X of the compact and any other laws or rules of such
 17 signatory states applicable to such diversions to the extent
 18 necessary to protect the interests and the citizens of
 19 Montana in those proceedings.

20 Section 8. Codification instruction. This act is
 21 intended to be codified as a new part in Title 85, chapter
 22 2, and the provisions of Title 85, chapter 2, apply to this
 23 act.

24 Section 9. Severability. If a part of this act is
 25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
 2 one or more of its applications, the part remains in effect
 3 in all valid applications that are severable from the
 4 invalid applications.

5 ~~Section 9. Effective date. This act is effective on~~
 6 ~~passage and approval.~~

7 SECTION 10. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
 8 PASSAGE AND APPROVAL.

-End-

.....April 10..... 1981.....

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 243

(Report No. 1, April 10, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 243, met April 10, 1981, and considered:

House Select Water Committee Amendments to the third reading copy, dated March 24, 1981, and;

House Committee of the Whole Amendments to the third reading copy, dated March 31, 1981, and recommend as follows:

That the Senate accede to the Select Committee Amendment nos. 1 through 19, dated March 24, 1981;

That the House recede from the Select Committee Amendment no. 20;

That the House recede from the Committee of the Whole Amendment nos. 1 through 7;

That Senate Bill No. 243 be further amended as specified in CLERICAL INSTRUCTION no. 8;

That the reference copy of Senate Bill No. 243 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report to Senate Bill 243 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, lines 10 and 11.

Following: "MCA,"

Strike: "UPON CONSENT OF THE LEGISLATURE AND"

2. Page 1, lines 20 and 21.

Following: "The"

Strike: "UPON APPROVAL BY THE LEGISLATURE, THE"

Insert: "The"

(CONTINUED)

FREE CONFERENCE COMMITTEE REPORT NO. 1
Page 2

3. Page 2, lines 1 through 3.
Following: "Dakota."
Strike: the remainder of section 2.

4. Page 5, line 16.
Following: line 15.
Strike: "CONTINGENT UPON APPROVAL BY THE LEGISLATURE, THE"
Insert: "The"

5. Page 6, lines 23 and 24.
Following: "approve"
Strike: ", CONTINGENT UPON LEGISLATIVE APPROVAL,"


6. Page 7, lines 6 and 7.
Following: "approve"
Strike: ", CONTINGENT UPON LEGISLATIVE APPROVAL,"

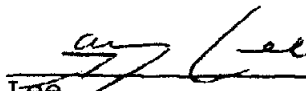
7. Page 8, line 6.
Following: "20"
Strike: the remainder of section 5.

8. Page 8, line 12.
Following: "BOARD."
Insert: "The board's consent shall terminate 10 years after the date of issuance of the consent unless the board issues the certificate for the facility in accordance with Title 75, chapter 20 and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the board."

FOR THE SENATE:

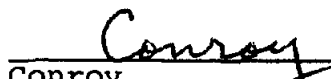

Dover, Chairman


Graham


Lee

FOR THE HOUSE:


Roth, Chairman


Conroy


Thoft

.....April 22..... 19 81.....

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 243

(Report No. 2, April 17, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 243, met April 17, 1981, and considered:

House Select Water Committee Amendments to the third reading copy, dated March 24, 1981, and;

House Committee of the Whole Amendments to the third reading copy, dated March 31, 1981, and recommend as follows:

That the Senate accede to Standing Committee amendment nos. 3,4,6,7,9, and 15, dated March 24, 1981;

That the House recede from Standing Committee amendment nos. 1,2,5,8,10 through 14, and 16 through 20;

That the House recede from Committee of the Whole amendment nos. 1 through 7;

That Senate Bill No. 243 be further amended as specified in CLERICAL INSTRUCTION nos. 2,4,6,17,18, and 19;

That the reference copy of Senate Bill No. 243 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report on Senate Bill No. 243 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 7.

Strike: "BOARD"

Insert: "DEPARTMENT"

2. Title, lines 10 and 11.

Following: "MCA,"

Strike: "UPON CONSENT OF THE LEGISLATURE AND"

Following: "MONTANA"

Insert: ";PROVIDING FOR LEGISLATIVE REVIEW; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, lines 20 and 21.

Following: "The"

Strike: "UPON APPROVAL BY THE LEGISLATURE, THE BOARD"

Insert: "The department"

(continued).....

XXXXXXXX

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4. Page 2, lines 1 through 3.

Following: "Dakota."

Strike: the remainder of section 2.

Insert: "Section 3. Legislative review. (1) A diversion of water from the basin pursuant to Article X of the compact consented to by the department under the provisions of [this act] may not be made until one of the following occurs, whichever is later:

(a) the legislature ratifies the first determination of the department to consent to a diversion of water from the basin pursuant to Article X of the compact; or

(b) July 1, 1983.

(2) A decision by the department to disapprove a diversion of water is not subject to legislative approval."

Renumber: subsequent sections.

5. Page 2, line 9.

Strike: "BOARD"

Insert: "department"

6. Page 3, line 9.

Strike: "BOARD"

Insert: "department"

7. Page 3, line 19.

Strike: "BOARD"

Insert: "department"

8. Page 3, line 22.

Strike: "BOARD"

Insert: "department"

9. Page 5, line 6.

Strike: "BOARD"

Insert: "department"

10. Page 5, line 9.

Strike: "BOARD"

Insert: "department"

11. Page 5, line 16.

Strike: "CONTINGENT UPON APPROVAL BY THE LEGISLATURE, THE BOARD"

Insert: "The department"

12. Page 6, lines 23 and 24.

Strike: "BOARD"

Insert: "department"

Following: "approve"

Strike: ", CONTINGENT UPON LEGISLATIVE APPROVAL,"

(continued)

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13. Page 7, lines 6 and 7.
Strike: "BOARD"
Insert: "department"
Following: "approve"
Strike: ", CONTINGENT UPON LEGISLATIVE APPROVAL,"

14. Page 7, line 11.
Strike: "BOARD"
Insert: "department"

15. Page 7, line 21.
Strike: "BOARD"
Insert: "department"

16. Page 8, line 1.
Strike: "BOARD'S"
Insert: "department's"

17. Page 8, line 4.
Following: "the"
Strike: "board's"
Insert: "department's"

18. Page 8, lines 6 through 12.
Following: "20"
Strike: the remainder of section 5.
Insert: The department's consent shall terminate on July 1, 1981, unless the department issues the certificate for the facility in accordance with Title 75, chapter 20 and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the department."

19. Page 9, lines 10 and 11.
Insert: all stricken language.

FOR THE SENATE:

Harold Dover
Dover, Chairman

Graham
Graham

Larry Tveit
Tveit

FOR THE HOUSE:

Richard Curtiss
Curtiss, Chairman

Tom Asay
Asay

~~Shontz~~
Shontz

April 22 19 81

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 243

(Report No. 3, April 22, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 243, met April 22, 1981, and considered:

House Select Water Committee Amendment to the third reading copy, dated March 24, 1981, and;

House Committee of the Whole Amendments to the third reading copy, dated March 31, 1981, and recommend as follows:

That the Senate accede to Standing Committee amendment nos. 3, 4, 6, 7, 9 and 15, dated March 24, 1981;

That the House recede from Standing Committee amendment nos. 1, 2, 5, 8, 10 through 14, and 16 through 20;

That the House recede from Committee of the Whole amendment nos. 1 through 7;

That Senate Bill No. 243 be further amended as specified in CLERICAL INSTRUCTIONS nos. 2, 4, 6, 17, 18 and 19;

That the reference copy of Senate Bill No. 243 read as specified in the CLERICAL INSTRUCTIONS;

And, that the Free Conference Committee Report on Senate Bill No. 243 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 7.

Strike: "BOARD"

Insert: "DEPARTMENT"

2. Title, lines 10 and 11.

Following: "MCA,"

Strike: "UPON CONSENT OF THE LEGISLATURE AND"

Following: "MONTANA"

Insert: "; PROVIDING FOR LEGISLATIVE REVIEW; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, lines 20 and 21.

Following: "~~The~~"

Strike: "UPON APPROVAL BY THE LEGISLATURE, THE BOARD"

Insert: "The department"

4. Page 2, lines 1 through 3.

Following: "Dakota."

Strike: the remainder of section 2.

Insert: "Section 3. Legislative review. (1) A diversion of water from the basin pursuant to Article X of the compact consented to by the department under the provisions of [this act] may not be made until one of the following occurs, whichever is later:

(a) the legislature ratifies the first determination of the department to consent to a diversion of water from the basin pursuant to Article X of the compact; or

(b) July 1, 1983.

(2) A decision by the department to disapprove a diversion of water is not subject to legislative approval."

Renumber: subsequent sections.

5. Page 2, line 9.

Strike: "BOARD"

Insert: "department"

6. Page 3, line 9.

Strike: "BOARD"

Insert: "department"

7. Page 3, line 19.

Strike: "BOARD"

Insert: "department"

8. Page 3, line 22.

Strike: "BOARD"

Insert: "department"

9. Page 5, line 6.

Strike: "BOARD"

Insert: "department"

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10. Page 5, line 9.
Strike: "BOARD"
Insert: "department"

11. Page 5, line 16.
Strike: "CONTINGENT UPON APPROVAL BY THE LEGISLATURE, THE BOARD"
Insert: "The department"

12. Page 6, lines 23 and 24.
Strike: "BOARD"
Insert: "department"
Following: "approve"
Strike: ", CONTINGENT UPON LEGISLATIVE APPROVAL,"

13. Page 7, lines 6 and 7.
Strike: "BOARD"
Insert: "department"
Following: "approve"
Strike: ", CONTINGENT UPON LEGISLATIVE APPROVAL,"

14. Page 7, line 11.
Strike: "BOARD"
Insert: "department"

15. Page 7, line 21.
Strike: "BOARD"
Insert: "department"

16. Page 8, line 1.
Strike: "BOARD'S"
Insert: "department's"

17. Page 8, line 4.
Following: "the"
Strike: "board's"
Insert: "department's"

18. Page 8, lines 6 through 12.
Following: "20"
Strike: the remainder of section 5.
Insert: "The department's consent shall terminate 10 years after the date of issuance of the consent unless the board issues the certificate for the facility in accordance with Title 75, chapter 20 and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the department."

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19. Page 9, lines 10 and 11.
Insert: all stricken language.

FOR THE SENATE:

FOR THE HOUSE:

Herold Dover
Dover, Chairman

G. Curtiss
Curtiss, Chairman

Graham
Graham

Tom Asay
Asay

Larry Tveit
Tveit

Shontz
Shontz

HUMAN SERVICES COMMITTEE OF THE HOUSE
HOUSE AMENDMENTS TO SB 243
March 24, 1981

1. Title, line 7.
Strike: "DEPARTMENT"
Insert: "BOARD"
2. Page 1, line 20.
Strike: "department"
Insert: "board"
3. Page 2, line 2.
Following: "divert"
Insert: "from the basin"
4. Page 2, line 4.
Following: "DIVERT"
Insert: "from the basin"
5. Page 2, line 5.
Strike: "department"
Insert: "board"
6. Page 3, line 1.
Following: "DIVERT"
Insert: "from the basin"
7. Page 3, line 3.
Following: "DIVERT"
Insert: "from the basin"
8. Page 3, line 14.
Strike: "department"
Insert: "board"
9. Page 3, line 14.
Following: "85-2-307"
Insert: "(1) and (2)."
10. Page 3, line 16.
Strike: "department"
Insert: "board"
11. Page 4, line 25.
Strike: "department"
Insert: "board"
12. Page 5, line 2.
Strike: "department"
Insert: "board"

13. Page 5, line 9.

Strike: "department"

Insert: "board"

14. Page 6, line 15.

Strike: "department"

Insert: "board"

15. Page 6, line 19.

Following: "Montana"

Insert: "and if the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states."

16. Page 6, line 20.

Strike: "department"

Insert: "board"

17. Page 6, line 24.

Strike: "department"

Insert: "board"

18. Page 7, line 9.

Strike: "department"

Insert: "board"

19. Page 7, line 14.

Strike: "DEPARTMENT'S"

Insert: "BOARD'S"

20. Page 7, line 18.

Following: "chapter 20."

Insert: The board's consent shall terminate 5 years after the date of issuance of the consent unless the board issues the certificate for the facility in accordance with Title 75, Chapter 20 and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the board.

House amendments to Senate Bill 243:

1. Title, line 10.

Following: "MCA,"

Insert: "UPON CONSENT OF THE LEGISLATURE AND"

2. Page 1, line 19.

Following: "diversions."

Strike: "The"

Insert: "Upon approval by the legislature, the"

3. Page 1, line 25.

Following: "Dakota."

Insert: "A decision by the board to disapprove diversion of water is not subject to legislative approval."

4. Page 5, line 8.

Following: "(1)"

Strike: "The"

Insert: "Contingent upon approval by the legislature, the"

5. Page 6, line 15.

Following: "approve"

Insert: ", contingent upon legislative approval,"

6. Page 6, line 20.

Following: "approve"

Insert: ", contingent upon legislative approval,"

7. Page 7, line 18.

Following: "20"

Insert: "and upon legislative approval"