

SENATE BILL NO. 97

INTRODUCED BY HERTEL  
BY REQUEST OF THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION

IN THE SENATE

JANUARY 7, 1993                      INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

FIRST READING.

JANUARY 14, 1993                      COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

PRINTING REPORT.

JANUARY 15, 1993                      SECOND READING, DO PASS.

JANUARY 16, 1993                      ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 47; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 18, 1993                      INTRODUCED AND REFERRED TO COMMITTEE  
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.

FIRST READING.

FEBRUARY 4, 1993                      COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

FEBRUARY 6, 1993                      SECOND READING, CONCURRED IN.

FEBRUARY 9, 1993                      THIRD READING, CONCURRED IN.  
AYES, 96; NOES, 3.

FEBRUARY 10, 1993                      RETURNED TO SENATE.

IN THE SENATE

FEBRUARY 10, 1993                      RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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2    INTRODUCED BY Hestel  
3                    BY REQUEST OF THE DEPARTMENT  
4                    OF NATURAL RESOURCES AND CONSERVATION

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6    A BILL FOR AN ACT ENTITLED:    "AN ACT AMENDING THE CANAL  
7    PRIVATIZATION PROGRAM TO INCLUDE THE LEWISTOWN DITCH;  
8    AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE  
9    EFFECTIVE DATE."

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

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

13            "85-1-211. Management of property -- water contracts.

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

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

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

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

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

25            (5) Subject to the approval of the board under

1 85-1-202, the department may sell, transfer to water user  
 2 associations, abandon, or otherwise dispose of any  
 3 rights-of-way, easements, properties, or interests or lease  
 4 or rent the same or otherwise take and receive the income or  
 5 profit and revenue therefrom without regard to other laws  
 6 providing for the disposition of state property. Prior to  
 7 the department's sale, transfer, or other disposition, a  
 8 determination ~~shall~~ must be made by the department as to the  
 9 market value of the rights-of-way, easements, properties, or  
 10 interests to be sold, transferred, abandoned, or otherwise  
 11 disposed of. The department's determination of market value  
 12 ~~shall~~ must consider all liens, encumbrances, and other  
 13 limitations on the project properties or interests.

14 (6) (a) The department shall attempt to dispose of its  
 15 canal projects by June 30, 1995. The canal projects to be  
 16 disposed of include the:

- 17 (i) Columbus canal;
- 18 (ii) Delphia-Melstone canals;
- 19 (iii) Hysham pumping canals;
- 20 (iv) Lewistown ditch;
- 21 ~~(v)~~ (v) Livingston ditch;
- 22 ~~(vi)~~ (vi) Florence canal;
- 23 ~~(vii)~~ (vii) Paradise canal;
- 24 ~~(viii)~~ (viii) Park Branch canal;
- 25 ~~(ix)~~ (ix) Sidney pumping canals;

- 1 ~~(x)~~ (x) South Side canal;
- 2 ~~(xi)~~ (xi) Vigilante canal; and
- 3 ~~(xii)~~ (xii) West Bench canal.

4 (b) The department may dispose of a canal project by  
 5 sale, transfer to a water users' association, abandonment,  
 6 or other legal conveyance. If there is an existing water  
 7 users' association on the canal project, the provisions of  
 8 85-6-109(5) must be complied with in the disposal of the  
 9 canal project. The department shall give preference to  
 10 existing water users' associations operating and maintaining  
 11 the canal project.

12 (c) Upon the sale or transfer of a canal project, the  
 13 department shall either cancel or write off from the  
 14 accounts receivable carried on the books of the department a  
 15 sum not to exceed any previous 1-year cost of operating and  
 16 maintaining the canal project or make a payment not to  
 17 exceed any previous 1-year cost of operating and maintaining  
 18 the canal project. For a canal project not disposed of by  
 19 June 30, 1995, the water users of the canal project are  
 20 responsible for the department's administrative costs and  
 21 the actual costs of operation and maintenance of the canal  
 22 project.

23 (7) An employee or agent of the department authorized  
 24 by the director may enter upon any land to carry out the  
 25 purposes of this section, including but not limited to entry

1 to make an inspection the department considers necessary of  
2 the canal project, entry to salvage or remove project  
3 property, and entry to make physical alterations to canal  
4 project property. The department shall give reasonable  
5 notice to the landowner of its intention to enter upon the  
6 land. The department is responsible for actual damages done  
7 to property."

8 NEW SECTION. **Section 2.** Effective date. [This act] is  
9 effective on passage and approval.

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

1 Senate BILL NO. 97  
2 INTRODUCED BY Hestel  
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4 OF NATURAL RESOURCES AND CONSERVATION  
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8 AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE  
9 EFFECTIVE DATE."  
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

13 "85-1-211. Management of property -- water contracts.

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

23 (2) The department shall enter into the contracts and  
24 fix and establish the prices, rates, and charges so as to  
25 provide at all times funds ~~which~~ that will be sufficient to

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

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

11 (4) A contract made by the department for the sale of  
12 water, use of water, water storage, or other service or for  
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19 ceasing on default to furnish or deliver water, use of  
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23 ~~moneys~~ money due or ~~which that~~ that may become due under the  
24 contract.  
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(5) Subject to the approval of the board under

1 85-1-202, the department may sell, transfer to water user  
 2 associations, abandon, or otherwise dispose of any  
 3 rights-of-way, easements, properties, or interests or lease  
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 5 profit and revenue therefrom without regard to other laws  
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 12 ~~shall~~ must consider all liens, encumbrances, and other  
 13 limitations on the project properties or interests.

14 (6) (a) The department shall attempt to dispose of its  
 15 canal projects by June 30, 1995. The canal projects to be  
 16 disposed of include the:

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 5 sale, transfer to a water users' association, abandonment,  
 6 or other legal conveyance. If there is an existing water  
 7 users' association on the canal project, the provisions of  
 8 85-6-109(5) must be complied with in the disposal of the  
 9 canal project. The department shall give preference to  
 10 existing water users' associations operating and maintaining  
 11 the canal project.

12 (c) Upon the sale or transfer of a canal project, the  
 13 department shall either cancel or write off from the  
 14 accounts receivable carried on the books of the department a  
 15 sum not to exceed any previous 1-year cost of operating and  
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23 (7) An employee or agent of the department authorized  
 24 by the director may enter upon any land to carry out the  
 25 purposes of this section, including but not limited to entry

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