

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2182

2001 SENATE NATURAL RESOURCES
SB 2182

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2182

Senate Natural Resources Committee

Conference Committee

Hearing Date 1-26-01

Tape Number	Side A	Side B	Meter #
1	X		23.4 - 58.9
		X	Start - 51.5
2	X		Start - 4.1
2-8-01 2	X		14.4 - 18.3
Committee Clerk Signature <i>Jana Yarnes</i>			

Minutes:

SENATOR KENNETH SOLBERG of District 7, cosponsor of SB 2182 presented a short history of the flooding project of lowlands that helps produce hay crops along the Mouse River. This project was started in the mid 1930's, but water rights were never secured. There was a window of opportunity in 1965, but was again missed. This bill will open up a window again and allow the Eaton Irrigation Project to apply for a water permit to secure the water rights once and for all. He acknowledged there is some local problems but they could be handled.

REPRESENTATIVE JON NELSON of District 7, cosponsor of Bill 2182 expressed the need of the flood irrigation project for maximum foliage production. The local problems of this bill can be handled locally by the bill sponsors and the State Water Commission.

SENATOR DAVID O'CONNELL added his support of Bill 2182.

MILTON LINDVIG, Director of the Water Appropriations Division of the State Water Commission testified in support of Bill 2182. (See attached testimony).

He answered several of SENATOR TRAYNOR's questions that there was other intervening users of the river and when water appropriations were made the Eaton Project was always considered. If this bill is passed there will not be a public publication of the application.

SENATOR TRAYNOR: asked if a 20 year user of the Mouse River waters, who would have a right of prescription to the water, would those people be cut out. Would this bill cut off their rights?

JULIE KRENZ, of the Attorney General's Office, stated that the bill has a provision that was in the original law, that provides that if a prescriptive user fails to file within the time period, his rights are deemed abandoned and forfeited. There is hearing process although not specially stated in the bill and may be applied here.

ORLIN OIUM, land owner in the Eaton Irrigation Project and history buff, gave a history on the Eaton Irrigation Project.

CLIFF HANRETTY, Chairman of the Eaton Flood Irrigation Board, testified that without the project it could put 45 land owners out of business which would be a large economic lose to the Towner community. The flooded meadows is a great resting area for wildlife, migratory birds, and also a great nesting area for waterfowl and upland game.

JOCK EATON, owner of the Eaton Ranch, testified that the bill was not to defeat anyone's rights, not an attempt to gain priority over previously permitted or holders of water rights based on prescription but rather to get on record as a formal perfected water right holder. He felt all the members that have served on the board and the members of the State Water Commission believe that the Eaton Ranch was a formally permitted water user, and only when the Water Commission set about in examining into water rights holders on the Mouse River, did the present situation come to light. He wanted to make aware the anticipated testimony, of the up stream neighbors

who claim the damn has caused flooding of their land and he acknowledged this might have happens and probably has for 63 years. He pointed out to the committee that granting a permit under regular statutory procedure does not give the water user the right to flood someone else's land. In other words their rights under the law would not be prejudiced in the slightest by the passage of this bill but would only give a perfected water right should the project meet the requirements of the Water Commission.

VERN KONGSLIE, representing the Kongslic family presented testimony opposing Bill 2182.
(See attached testimony).

SENATOR CHRISTMANN asked if the damn was operated properly at a level of 1461 would his family be happy.

VERN KONGSLIE stated that even at the 1461 level the water is held too long killing quality feed grasses.

SENATOR KELSH: asked to who operates the damn gates and makes decisions.

VERN KONGSLIE stated the board made up of only the flood project benefactors make the decisions but do not follow the operating plan.

SENATOR TRAYNOR : asked since Eaton's did not file a claim by July 1, 1965, their claim was declared abandoned and forfeited by whom.

JOE CICHY, legal representee of the Kongslic family, explained the statute declared that if the application was not submitted by that date the claim was abandoned and forfeited.

VERN KONGSLIE clarified that they have not taken legal action for claim of damages, are not against the project or water right appropriations, they just would like the project to be run correctly so there is not damage to their property.

JOF CICHY wanted to explain the constitution issue, that under present law the Eatons can get their permit listed so they would be under legal protection. He felt the real issue is the priority date and if you give them a priority date earlier than other appropriators that could sponse litigation with regard to taking someone's water rights. There is also the issue of applications that established their rights and then requested an earlier priority date because of beneficial use clause which may put them in front of someone else.

SENATOR FISCHER closed the hearing on SB 2182.

Discussion was held.

Milton Lindvig was asked to clarify some issues for the committee.

MILTON LINDVIG said that the operating elevation level of the damn at 1461 had been set in 1933 and 1934 and feels this a well engineered level. He said the State Water Commission has been working with the Kongslies and District and the Flood Irrigation Board and will provide copies of the letters of correspondence with the Kongslies. They will be asking for operating plans from the McHenry County Board of Flood Irrigation for each season and will provide a schedule for flooding. He stated it was the State Water Commission's authority and intent to enforce the operating damn level of 1461. He felt there might be another issue in that the flooding has been going on for an excess of 20 years so has there been a prescriptive right obtained by the board or the project to flood the Kongslie land? With all of the circumstances that occurred beginning in 1937, that issue has not been cleared up at ail, so there might have been a prescriptive right but it has not been documented.

JULIE KRENZ confirmed that there was a operating plan of the damn submitted and that there is an issue of prescriptive right because long nature of the flooding. They have informed the board

and Kongslies that if the board operates the level of the damn that impacts the Kongslies, they have to go to court and show us before they can operate at that level.

Discussion was held to understand the different levels of the damn in testimony. The damn levels of 1461, 1461.5 and 1462 were all used and there seems to be some confusion to the actual level.

Additional testimony including copies of correspondence and requested material was presented to the Committee clerk at a later date and was distributed to the Committee Members (See attached).

FEBRUARY 8, 2001

SENATOR FISCHER reopened discussion on SB 2182.

SENATOR EVERY: made a motion for a "DO PASS" of SB 2182.

SENATOR TRAYNOR second the motion.

Discussion was held that there seems to be two issues about this bill. The bill itself as to prescriptive water rights and the issue of the incorrect way the damn has been operated. It was agreed that SENATOR FISCHER as chairman of the Senate Natural Resources Committee would write a letter to the State Water Commission expressing that this issue should be corrected and that the damn would be operated correctly.

SENATOR FISCHER called for a roll vote of SB 2182. The vote indicated 6 YAYS, 0 NAYS, AND 1 ABSENT.

SENATOR TOLLEFSON will carry SB 2182.

FISCAL NOTE
 Requested by Legislative Council
 01/15/2001

Bill/Resolution No.: SB 2182

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

It is anticipated that a very limited number of applicants would be able to take advantage of this bill. The additional water permit applications would be processed by the State Water Commission using budgeted appropriation authority. This bill has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Dale Frink	Agency:	Water Commission
Phone Number:	328-4941	Date Prepared:	01/18/2001

REPORT OF STANDING COMMITTEE (410)
February 8, 2001 4:26 p.m.

Module No: SR-23-2803
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2182: Natural Resources Committee (Sen. Fischer, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2182 was placed on the
Eleventh order on the calendar.

2001 HOUSE NATURAL RESOURCES

SB 2182

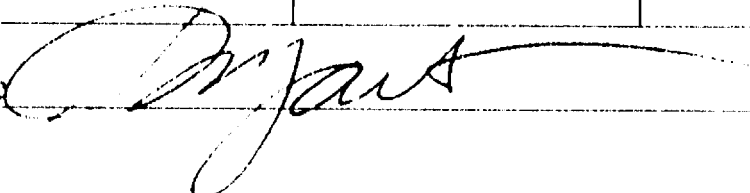
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2182

House Natural Resources Committee

Conference Committee

Hearing Date March 16, 2001

Tape Number	Side A	Side B	Meter #
1		x	1117 to end
2	x		1 to 1267
Committee Clerk Signature 			

Minutes:

Chairman Earl Rennerfeldt, Vice Chair Jon O. Nelson, Rep. Brekke, Rep. DeKrey, Rep. Droydal, Rep. Galvin, Rep. Keiser, Rep. Klein, Rep. Nottestad, Rep. Porter, Rep. Weiler, Rep. Hanson, Rep. Kelsh, Rep. Solberg, Rep. Winrich.

Chairman Rennerfeldt: I will open the hearing on SB 2182.

Sen. Solberg - District 7: SB 2182 deals with the Eaton irrigation project, and through the research of records and so forth they found out they did not have water rights. What this bill does is moves (in line 10) the date from July 1, 1965 to December 31, 2001. It allows the window to be reopened for them to apply for the water rights. It does not give them water rights, it just allows them to apply. The chairman of the Senate Natural Resources committee wanted to relay to you that he would by direction of the committee be writing a letter to the State Water Commission asking that the problems be addressed with the issuing of the permit.

Written testimony also submitted by Rep. Merle Boucher in support of this bill.

Milton Lindvig - Director, Water Appropriation Division State Water Commission: (See written testimony). I am here in support of SB 2182.

Vice Chair Nelson: In the other cases on the upper Souris River, did the state engineer try and persuade those people not to apply for a water permit as well. Is that the reason the permit was not perfected?

Lindvig: Those three projects now have storage. They did have water rights associated with them through the Burlington Project. That is what they are all a part of. Those rights where the lands are now under private ownership, those rights were assigned to those lands. The dams are no longer used for those irrigation rights by those individuals, as a result the dams are under local jurisdiction. There is no storage rights for those dams, so there is a requirement for storage rights.

Orlin Oium: I want to bring out what happened before the Eaton Irrigation Project. Early in the homesteading days the floods that came naturally every four years weren't enough to keep the production of hay where the ranchers would like to have it. They determined they wanted to stabilize the hay crop and their herds, they would have to have some control of the spring runoff, or they would have to pump. In 1903 the county superintendent of schools, who was also the surveyor was hired by the county to enhance the drain on the northern end of the present project. In 1911, the first water rights were asked for and they started using pumps and before W.W.II (gives history). In December 1918 after working towards it for many years, a formal request was made by JB Eaton, he asked for assistance in an overflow irrigation project south of Towner. The project went ahead in the 1930's with water rights of the local ranchers included in this project. Since 1937 when the gates were first closed, our pumps haven't been used. In 1938 the water

