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THE WILD RIVER BILL: HOUSE BILL 133

Harrison Fagg

I. THE “WHY” AND ITS HISTORY

The question I’m often asked is “how” and “why” a Wild and Scenic River Bill was introduced into the Montana Legislature. It had a rather novel beginning . . .

In early 1967, Lloyd Casagrande of the Montana Fish and Game Department, in a speech to the Billings Jaycees, presented the need for stream protection. Specifically, he noted that the planned interstate highway between Helena and Great Falls was going to cause major disturbance to the Dearborn River, channeling much of its natural free flow and ripping significant stretches.

Casagrande, and his colleague Jim Pozewitz, had an answer, but it required legislative action. The Billings Jaycees took on the project and convinced the State Jaycees to support it under the leadership of Harry Mitchell, who later became a Montana State Senator. The bill was drafted, introduced, and subsequently became state law. Instead of destroying a great deal of the river’s natural flow, a number of bridges were built, minimal ripping occurred, and a beautiful Montana stream remained in pristine condition. The legislation is still a state law and has been very beneficial in guiding highway construction along waterways.

Even more important, a precedent was set. Preservation and development can co-exist. It also created an awareness that a broader approach was needed for protecting Montana’s streams and rivers—hence the opening of the door for the Wild River Bill.

II. THE INITIAL ACTION

The first question was what the bill should say. A survey revealed that other states had faced similar situations and had passed legislation protecting their wild and scenic rivers. We found a number of successful state approaches as well as federal legislation dealing with the same issue. Following these models, the bill-drafting commenced, leading to House Bill 133—the Wild and Scenic Rivers Bill.

House Bill 133: AN ACT TO ESTABLISH A STATEWIDE SYSTEM FOR DESIGNATION AND MANAGEMENT OF WILD, SCENIC, AND RECREATIONAL WATERWAYS.

In short, the bill was simply a shoreline protection bill for Montana. The general purpose of the legislation was “preserving, protecting and enhancing the wilderness qualities, scenic beauty and ecological regimen of certain state waterways.”

A. House Bill 133 Overview

The bill spoke to protection of Montana’s waterways by designating certain rivers or sections of them as part of a Wild and Scenic Waterway System that should be protected. It set boundaries on either side of certain rivers and set standards for development within these boundaries. It contained setbacks for construction and limited riprap and channelization and/or stream relocation without governmental approval. Specifically, it set aside three classifications of waterways: Wild Rivers, Scenic Rivers, and Recreational Waterways:

B. River Classification

1. Wild Rivers.

Definition:

Wild River waterways comprise those free-flowing rivers or sections of rivers with shorelines and scenic vistas unchanged or essentially unchanged, by man, with no existing paralleling roads closer than one mile (except in river gorges where there may be no extensive paralleling roads within the gorge or within ¼ mile back from the gorge rim), and with only a limited number of crossing roads or spur roads existing at the time of designation as a state wild river waterway.

Boundaries:

The boundary shall be the visual horizon, where practicable, not to exceed one mile and shall be a minimum of 1,000 feet.

2. Scenic Rivers.

Definition:

Scenic river waterways comprise those free-flowing rivers or sections of rivers and the land adjacent to which are

particularly or predominately used for agriculture and there dispersed human activities which do not substantially interfere with public use and enjoyment of the rivers and their flows.

Boundaries:

The boundary shall be the visual horizon, where practicable, not to exceed 500 feet and not less than 50 feet.

3. *Recreational River Waterway.*

Definition:

Recreational river waterways comprise those few flowing rivers or sections of rivers in areas affected by works of man including those in areas wherein there is a controlled high density of manmade structures and/or uses normally defined as the portion of the river of bounded by the corporate limits of a city municipality, but which still possess actual or potential scenic values. Included would be rivers with some housing or their building development near their shorelines, rivers with parallel roads or railways and rivers with some impoundments.

Boundaries:

The boundary shall extend 500 feet from the shoreline of the river. Additional scenic easements may be acquired from willing sellers.

C. General Conditions

Within each classification, development was limited; however, in the Scenic and Recreational classifications, exceptions were created to accommodate construction and roads. Mining and timber harvesting were not allowed, but agricultural usage was permitted within the boundaries.

The bill set aside certain rivers and/or streams or portions thereof to be included in the system, namely, a portion of the Yellowstone, the Missouri, the Flathead, the Smith, and Rock Creek in its entirety.

The act provided an outline for management and oversight. There was no mention of water rights in the bill, and it would have no effect on existing or future water rights. Further, it contained no reference to fencing and did not address the presence of undisturbed visual corridors along the waterways.

III. LEGISLATIVE ACTION

House Bill 133 had a beginning like all other pieces of legislation with a draft prepared by the Montana Legislative Council following the sponsor's suggestions. After drafting, it was widely circulated and received about 35 co-sponsors. It was non-partisan. Sponsorship was a split between Republicans and Democrats. For example, past Speaker of the House, Jim Lucas, a Republican, as well as Democrat Max Baucus, who went on to become a United States Senator, signed the bill as co-sponsors. The bill contained much of the language found in federal wild and scenic river legislation.

House Bill 133 was assigned to the Natural Resources Committee, and almost immediately the negative action reared its head. It began with a statewide radio chain that considered it a bad bill, and it was attacked strongly, repeatedly, and inaccurately. Unfortunately, the radio network had a huge statewide audience. Most of its so-called news was nothing more than editorials, but it was effective. The broadcasts focused on infringement of water rights and mandatory fencing of Montana's rivers and streams, neither of which was in the bill.

Years before I had been told by a well-known Montana attorney that the two things that you never mess with are "fences" and "water"—and that these two issues are even more important to Montanans than marriage. A red flag had been raised. "Fagg's damn bill," as it was called, infuriated much of the agricultural community. The group in the Legislature known as "the Cowboy Caucus" came to life. What had started as a gross misrepresentation quickly grew into a beast. Citizens became certain that both their water rights and fences were being attacked.

Rural Montana was on high alert. And it was winter—a period of relative quiet. Time to visit on the phone. Time to talk about Fagg's bad water bill over coffee. The facts regarding the bill were totally overlooked. As far as much of Montana's extreme right wing was concerned, it was an unneeded and damaging piece of legislation.

Of course, if what they believed was true, I would be aligned with them to kill the bill. But the misrepresentations were nonsense. For example, Section 14 stated: "This act shall in no way interfere with existing water rights, diversions or the maintenance of these diversions." No section mentioned fencing. The words fence and fencing were nonexistent. But facts didn't slow down the wrath, and it was claimed that the bill would fence rivers, prevent cattle from getting to waterways to drink, and impair water rights.

In spite of all the bad press, the House Natural Resources Committee acted favorably and sent House Bill 133 to the House floor for action on second reading.

Simultaneously, a lot of negative activity was going on outside the Legislature. The radical right had a cause—to kill the bill at any cost. My family and I received numerous death threats. Later, I was awakened by a phone call at three o'clock in the morning from the Nye volunteer fire department, telling me my cabin in the Beartooth Mountains was burning and they could do nothing to save it. In fact, they were concerned about the fire spreading. The wind was strong, and embers were flying. A nearby home had been hit by an ember starting a ground fire. A barking dog woke up the residents. The fire had already spread to three sides of the structure. Lives could have been lost. Fortunately, this did not happen.

The distortions about the bill continued to grow and it seemed to be the number one topic in rural Montana. In one small community, following a presentation of the bill, the first response was: “What you just told us is not in the bill!” So, I read portions of the exact words. The response: “You are not reading from the bill—the language you just read is not correct.” It is tough to counter that kind of logic.

When the bill came up for second reading vote, the House was split about 45–45, with ten undecideds. Normally, a bill receives one vote on second reading—occasionally two or three. This bill had 11 recorded votes on second reading, and a number on third reading as well.

Fortunately or unfortunately, depending on your interest, a bill in the legislature can be hard to kill and can be returned to life in many ways if you are a master of the rules. Our side knew the rules and revived that bill many, many times. Each time a new false charge came up—and became the foundation of killing the bill—the truth then resurrected it.

The bill finally passed second reading, squeaked through third reading, and moved on to the Senate.

The bill continued to be a hot potato. Interestingly, it was not a partisan issue. Members of both parties were either for or against it. It really came down to a rural/urban split. The final Senate action was sending the bill to an interim committee—generally a graveyard for hot potatoes.

The upshot of the interim meetings held across the state was that there had been so much negative press and hostile discussion that we were advised to not bring it back to the Legislature. After a two-year battle, the bill was dead. And Montana lost a good idea in the fight to protect our rivers and streams.

IV. CONCLUSIONS

While the bill died, the need for river and stream protection is ever present. The bill did prove a point—our rivers and streams need help if they are to remain unspoiled. House Bill 133 put a spotlight on the problem, and the challenges have only increased.

This need for protections recently surfaced when a portion of the drainage from Mystic Dam, the West Rosebud, was threatened by some unfavorable development. To stop this action, a portion of the West Rosebud was classified by the federal government as a National Wild and Scenic River. Feelings changed. The same rural voices that had so vigorously opposed the Montana Wild Rivers Bill were now demanding this classification.

Various conservation provisions for stream protection have passed the Legislature since the Wild River Bill. To paraphrase an old saying: “While the battle was lost, the war is still going on.” The discussion surrounding that hard-fought measure led to making Montana a better place. Since the demise of the original bill, a number of other beneficial waterway protection measures have been created—but none as comprehensive as the original bill. Hopefully some future legislative session will revive and pass this needed legislation.

V. THE REST OF THE STORY

An interesting fact about the fire: following the investigation, the State Fire Marshall concluded that the fire was probably started by a woman. He said a man would most probably use gasoline to start the fire, but here no chemicals were used. A woman, on the other hand, would tend to be more patient, and probably kindled a small fire and fed it until the structure was blazing.

Shortly after the fire, I sponsored a statewide land use conference. At this meeting, a woman from South-central Montana who had been a strong opponent to the bill approached me and asked: “Harrison, did you ever find out who set your cabin on fire?” I replied: “No, Mary, I haven’t.” Her reply: “Well maybe I did. I was up there in the valley the night of the fire and gave a talk about that damn bill of yours!” Jokingly, I replied: “Mary, you are bad but not that bad.” Her reply: “Don’t be too sure!” And she repeated that she had been up there that night.

Besides her suggestion, other things seemed to point to Mary. First, she fit the pattern of a woman arsonist. The fire was set without chemicals. And her husband, who was a very reasonable man, took Dorothy Bradley (a co-sponsor of the bill) and me out for a steak dinner about

a month after the fire. Could he have been saying I'm sorry? We will never know.

The situation surrounding the bill illustrates a continuing and growing problem in our society. People too often create a false negative, while overlooking the positive and the truth. We are inclined to believe what we want, unfortunately shutting our minds to the facts.