

EXHIBIT 11  
DATE 2.11.05  
HB 546

House Bill 546  
February 11, 2005  
Presented by Chris Smith  
House Natural Resources Committee

Mr. Chairman and committee members, for the record I am Chris Smith, Chief of Staff for Montana Department of Fish, Wildlife & Parks (FWP). I come before you today to oppose HB 546.

This bill states that FWP may not acquire land and water until the statewide adjudication of water rights is completed and funds authorized for acquisition may be expended only to adjudicate FWP rights. This prohibition includes acquisitions by fee title, easements, leasing, or land donations.

The "savings clause" in new Section 2 is unclear to FWP. As a result, FWP has made the following assumptions. FWP can still grant or dispose of land and proceed with acquisition of land or water for any project that has an executed purchase agreement and has received final approval from the FWP Commission and the Board of Land Commissioners. FWP cannot proceed with any other projects that may or may not have a purchase agreement and have not received approval of the FWP Commission or Land Board until the water adjudication process is completed.

The water adjudication process is anticipated to take forty to fifty years to complete. If HB 22 passes, the statewide adjudication process will be shortened to fifteen years. Funding from Habitat Montana, Fishing Access Acquisition, Migratory Bird, Upland Game Bird, Future Fisheries, Big Horn Sheep, State Park Acquisitions, and some general license dollars will not be spent, resulting in approximately an \$8 million impact each biennium. Since many of these funds are earmarked for acquisition by statute, the department would be in violation of 17-2-302 which states that state agencies that charge a fee in exchange for a license may not maintain a cash balance greater than twice the annual appropriation for that year or greater than the biennium appropriation for the account.

This bill will also prevent FWP from applying for and receiving federal assistance funds for leases, conservation easements and acquisitions. As an example, FWP recently received a \$1.1 million Landowner Incentive Program federal grant to enter into 30-year leases with landowners to protect sage grouse habitat. With the help of Senator Burns, the department has also received Forest Legacy funds for conservation easements in the Thompson/Fisher drainage, and an additional \$6 million in grants are currently pending final approval for easements in the Swan drainage.

FWP will not be able to continue with the Natural Resource Damage Program land projects as part of the Department of Justice Clark Fork Settlement. In addition, FWP will not be able to continue its partnership with AVISTA and PPL involving mitigation projects as part of the FERC re-licensing agreement.

FWP is ready to do its part to have its water rights adjudicated and is in support of the provisions of HB 22 which would result in approximately \$100,000 being spent annually by FWP on the adjudication process. This particular bill only commits funding for FWP to defend FWP's water rights. It will not provide funding to the water court or NCRC for the adjudication process. It is also important to note that FWP's water rights can only be adjudicated as part of the statewide adjudication. They cannot be adjudicated separately.

FWP does not agree that FWP should be prevented from continuing with very worthwhile programs that protect and maintain Montana's resources while the statewide adjudication is proceeding.