

HOUSE JOINT RESOLUTION NO. 35
INTRODUCED BY N. BIXBY

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY REGARDING MONTANA'S SHARE OF WATER FROM THE INTERSTATE TRIBUTARIES PURSUANT TO THE YELLOWSTONE RIVER COMPACT.

WHEREAS, the Yellowstone River Compact defines the "interstate tributaries" to include the following rivers that contribute to the flow of the Yellowstone River in the State of Montana, along with tributaries of these rivers: the Clarks Fork of the Yellowstone River, the Big Horn River (except the Little Big Horn River), the Tongue River, and the Powder River; and

WHEREAS, the agricultural communities along the interstate tributaries of the Yellowstone River depend on a sufficient supply of high-quality water for their livelihood and survival; and

WHEREAS, these agricultural communities have not been receiving a sufficient supply of water to meet their needs; and

WHEREAS, the headwaters of the interstate tributaries are in Wyoming; and

WHEREAS, because of concern that the waters of the interstate tributaries would soon become fully appropriated by Wyoming, in 1932 the State of Montana began urging the state of Wyoming to negotiate a compact to divide the waters of the interstate tributaries between Montana and Wyoming; and

WHEREAS, after 18 years of negotiations, in 1951, Montana, Wyoming, and North Dakota agreed to the terms of the Yellowstone River Compact, which is codified in Title 85, chapter 20, part 1, MCA; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, provides that all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River existing in each signatory state as of January 1, 1950, are recognized and must continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, provides that all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in Article V of the Compact; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, is to enable the State of Montana and the Yellowstone River Compact Commission to comply with and to administer

the percentage allocations as provided in Article V of the Compact; and

WHEREAS, Montana has not documented the receipt of its lawful share of water under the Yellowstone River Compact since ratification of the Compact; and

WHEREAS, inflows from the Tongue River to the Tongue River Reservoir were measured at all-time lows in the summer of 2001; and

WHEREAS, the Tongue River Reservoir did not receive sufficient water to provide the agricultural producers in the Tongue River drainage with enough water for irrigation in 2000, 2001, and 2002; and

WHEREAS, the shortage of water in these years resulted in diminished crop yields; and

WHEREAS, the reasons for recent low water flows in the interstate tributaries must be documented before Montana can develop a sound strategy for receiving, storing, and distributing Montana's water; and

WHEREAS, Montana's acceptance of the Yellowstone River Compact was based in part on assurances that large federal water storage projects would be built on the interstate tributaries; and

WHEREAS, except for the Yellowtail Dam, the federal water projects have not been built; and

WHEREAS, the distribution of water between Montana and Wyoming, as provided in Article V of the Yellowstone River Compact, has not been implemented; and

WHEREAS, the distribution of water under the Compact cannot be implemented without federal water storage projects to store the water for distribution in Montana; and

WHEREAS, the State of Montana has entered into compacts with the Northern Cheyenne Tribe and the Crow Tribe that affect the allocation of water from the interstate tributaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) investigate whether Montana is receiving its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact; and

(2) if the investigation determines that Montana is not receiving its lawful share of water, make recommendations regarding how to ensure that Montana receives its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

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