

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

January 19, 1979

A joint hearing of the Senate Agriculture Committee and the House Select Committee on Water was called to order by Chairman Galt in the House Chambers at 7:30 p.m. on the above date. The purpose of the meeting was a public hearing on Senate Bill 76. Chairman Galt and Chairman Day explained how the testimony would be handled.

Senator Boylan was the chief sponsor of the bill. He was the first signer of the bill but he said it was actually drafted from the interim committee on water. This committee consisted of Representatives Scully, Ramirez, Day and Roth. The Senators were Galt, Turnage, Boylan and ex-senator Bergren.

Representative Scully said this bill was introduced at the request of the interim committee. He felt this was one of the major problems in Montana - how to preserve our water. The bill was drafted with the help of the Department of Natural Resources. Also there were seven hearings held throughout the state in order to get public input. He then went through the bill and generally explained some of the provisions in it. He said 275,000 claims would be filed in the next four years at the rate of 40 dollars per claim. The fiscal note is attached. (see yellow copy) He said the committee realized that the bill had some parts that could be improved to make it more successful, but he felt the process had to be started some place.

Proponents:

Zack Stevens, representing the Farm Bureau, Farmers Union, NFO, Grange, WIFE, Agricultural Preservation Association, Montana Dairyman's Association, Montana Graingrowers Association testified in support of the bill. He said these organizations represent 80,000 Montanan's. His testimony is attached exhibit #1.

Representative Vicki Johnson, district #72 spoke in behalf of the Stillwater County Water Users Board. Their testimony is attached #2.

Gordon McGowan, a rancher from Highwood Montana and a lobbyist for the Montana Railroad Association rose in support of the bill. His testimony is attached per exhibit #3. He had been a Senator for 20 years and perhaps introduced more legislation in the field of water than anyone in the state's history. He introduced the bills that are now the current water law.

Senator Steve Brown, district #15, was one of the 14 co-sponsors of the bill. There is nothing more important in the state than the adjudication process to preserve the water for Montana and protect it from downstream users. He felt the disqualifications for water judges was a problem and should be made clearer. He felt the Montana Supreme Court should be allowed to create special rules for the water courts. The process had to be fully funded in order for it to succeed. He felt the retirement fund for judges should come from the filing fees rather than them being a member of the Montana judges' retirement system. He also felt the \$40 filing fee should be for every claim.

Mons Teigen, Montana Stockgrowers and Montana Woolgrowers said these two organizations were in support of Senate Bill 76. He stated that in the past we have had enough water but the time has come to get our water quantified because downstream users are looking at it.

Next to speak was Representative Burnett, district #71. He was representing not only himself, but the Red Lodge Creek Water Users, Cooney Dam Water Users, Rock Creek Water Users, Clarks Fork Water Users and the Wearst Ditch Co. In general they agreed with the bill. His testimony is attached #4. He submitted letters from the people he was representing for the record.

Willa Hall, representing the League of Women Voters testified next. She said it was vital that the adjudication process be completed as soon as possible. Her testimony is attached, see exhibit # 5.

Pete Jackson, representing WETA and himself as a rancher was strongly in support of the bill and commended the committee on the work they had done.

Pat Smith, Northern Plains Resource Council said they also had appreciated the committees work during the interim. They felt the bill would strengthen Montana's claim to water. He felt the filing fee discriminated against the small man because of the \$40 per claim and the limitation of \$480.

Kenneth Clark, representing the Railroad Brotherhood, arose in support of the bill.

John North from the Department of State Lands, said they recognize that is of the utmost importance to declare and adjudicate the water rights in the State. His testimony is attached # 6.

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Knute Hereim, representing himself, said he didn't feel the water judges in each district would be able to handle all of the filings. Their caseload would be too heavy. He also felt the filing deadline of four years should be shortened to approximately 1 1/2 years. He did feel the bill was needed.

Ron Waterman, attorney, and representing the Burlington Northern said that this was the second session that the bill has been before the Legislature. The two years had been well spend to bring about a good bill. The lack of adjudication prevent the state of Montana from protecting its water resources from raids from other states. He brought up an incident on the Big Horn River in Wyoming. This bill places it in a single court to adjudicate the claims and have a final decree instead of going to both the state and federal courts.

This concluded the proponents. The next group to testify were the non-committed people.

Judge Brownlee, judge of the district court, fourth judicial district from Missoula, said he was mainly in support of the bill but did have some suggestions to it. His testimony is attached. Exhibit # 7.

Ted Doney, Department of Natural Resources, said that two years ago he had reported to the legislature that the adjudication process was not working and it has not gotten any better. The present system is not working because it takes the staff too long to go out on the sites. The primary goal has to be that we try to achieve documentation of our water. We want to protect ourselves from downstream states. He said the bill was actually in two phases. They agreed with the first phase - filing, but they questioned the mandatory court adjudication process. All that is required in most cases is some type of legal documentation. He didn't think that water rights could ever be adjudicated statewide through the courts. No state has ever completed an adjudication process through that system. He felt the court process was too costly, especially to the claimant. They recommended that the claim system outlined in the bill be adopted without the court adjudication system, but with an optional court adjudication system when needed. Attached is a report from the DNR of the interim study they had composed. See exhibit # 8. Sen. Galt felt they should have been registered as an opponent to the bill.

W. G. Gilbert, Jr., attorney from Dillon, representing himself spoke next. He has tried many water suit in Beaverhead County. He said there were a few provisions in the bill that should be made clearer. After the Governor appointed the chief water judge it should be made clearer that the remaining appointees should include those that were selected for appointment of chief water judge not only those among the list of nominees presented by the water judge nominating committee.

This concluded the non-committed testimony. Next the opponents were heard from

OPPONENTS:

Carl Davis, attorney, representing the Clark Canyon West Co, which represents 190 water users and 50,000 acres of land spoke next. He said we don't have to act in haste as we appear to be doing in this bill. He agreed with the two phases that the DNR had brought out. He didn't feel that the rights that had already been decreed should have to go through the process of filing again. If you give the district court judge the power that is in this bill then he should have the power to decide what areas should be handled first. He felt the bill gave the judges too much power. There is nothing in the bill to disqualify a judge. The judge can only disqualify himself. The 30 days to get the appointments made after the bill is enacted is not long enough in his opinion. He also felt the filing date should be staggered or everyone would wait until the last few weeks to file their claim.

Mr. Roy, representing the Montana Inter-Tribal Policy Board rose in opposition. He felt they have full legal rational why the reservations should be amended out of the bill and unless they are it would mean litagation against the State. He said the Indian water rights should not be confused with the federal reserved rights. He felt this bill would be advertising that Montana has a surplus of water. His testimony is attached per exhibit #9.

Mike Watson, also from the Montana Inter-Tribal Policy Board rose in opposition. He also mentioned that Indian water rights are different than federal reserve rights. He did not feel that this bill would accomplish preserving the water for the state.

Caleb Shield, Fort Peck Tribes, said he had attended a meeting for the National Congress of American Indians and they had adopted a resolution. He submitted the resolution to the committee which is attached. # 10.

Rubie Sooktis, Northern Cheyenne Tribe, read the testimony that is attached, exhibit #11.

Frank Perez, Fort Belknap arose in support of the bill and presented written testiony to the committee. See exhibit #12.

Representative Scully then closed. He said the interim committee knew it would not be an easy task. He felt we had to give the bill the opportunity to work and by putting it off we would never know if the process would work, and if we don't try something the federal raid on Montana water will come through. The bill has the mechanics to make the adjudication process work. The bill would assist anyone in the transfer of water.

Discussion was then held by the committee.

Also attached to the minutes are two letters in support of the bill. One letter is from Mr. Joe Renders, a member of the Judicial Nominating Commission, see exhibit #13, and the other letter is from Vernon Westlake, Agricultural Preservation Association from Gallatin County. See exhibit #14.

Senator Galt said this would conclude the hearing, but that on January 26, the Senate Agriculture Committee would have a meeting on the bill for presentation of amendments. He felt the bill had had a good public hearing and thanked everyone for their participation.

A handwritten signature in cursive script, reading "Jack E. Galt". The signature is written in dark ink and is positioned above a horizontal line.

SENATOR JACK E. GALT, Chairman

SENATE Agriculture COMMITTEE

BILL SB 76

VISITORS' REGISTER

DATE 1-19

Please note bill no.

(check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPO
Zack Stevens	Mont. Farm Bureau	SB 76	<input checked="" type="checkbox"/>	
Vicki Johnson	Stillwater Co, Water ^{As Soc} Assn		<input checked="" type="checkbox"/>	
Kenneth Voldseth	SELF	SB 76		<input checked="" type="checkbox"/>
Knute Hereim	SELF	SB 76	<input checked="" type="checkbox"/>	
Gordon McHowan	MONT. R.R + S	SB 76	<input checked="" type="checkbox"/>	
R.C. Bowman	M.S.U.	SB 76		<input checked="" type="checkbox"/>
Villa Hell	League of Women Voter ?	SB 76	<input checked="" type="checkbox"/>	
Peter Jackson	Water - Must		<input checked="" type="checkbox"/>	
STEVE BROWN	Senate	SB 76	<input checked="" type="checkbox"/>	
W. J. Hibbert, Jr.	SELF	SB 76		<input checked="" type="checkbox"/>
E. S. Edens	Self			<input checked="" type="checkbox"/>
John S. Hall	State Land Dept.	SB 76	<input checked="" type="checkbox"/>	
George M. Walker	State Senator		<input checked="" type="checkbox"/>	
Ronald E. Waterman	BN Inc.	SB 76		<input checked="" type="checkbox"/>
Walter Anderson	Landracountyp and		<input checked="" type="checkbox"/>	
Barnett			<input checked="" type="checkbox"/>	
Smith	NRRC		<input checked="" type="checkbox"/>	
Smith Clark	Rail Road Bond		<input checked="" type="checkbox"/>	
Jim Bennett	myself and others	SB 76		<input checked="" type="checkbox"/>

FISCAL NOTE

Form BD-15

In compliance with a written request received Jan. 9, 19 79, there is hereby submitted a Fiscal Note for SB 76 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

An act to adjudicate claims of existing water rights in Montana.

ASSUMPTIONS

1. 275,000 claims will be filed over a four year period at the rate of \$40 per claim as follows:

1st year - 8,250	3rd year - 55,000
2nd year - 27,500	4th year - 184,250
2. The current adjudication program in the Powder River Basin will continue.
3. Ten percent of the claims will be checked. The Department of Natural Resources and Conservation (DNRC) will keypunch data and microfilm claims.
4. Personal services costs will increase 6% each year.
6. The program in DNRC established to assist with adjudication will employ FTE employees as follows:

FY1980 - 29 FTE	FY1983 - 103 FTE
FY1981 - 38 FTE	FY1984 - 103 FTE
FY1982 - 50 FTE	
6. The Water Court will employ FTE employees as follows:

FY80 - 24 FTE	FY83 - 32 FTE
FY81 - 23 FTE	FY84 - 32 FTE
FY82 - 32 FTE	
7. Costs of DNRC in excess of revenues collected under the proposed legislation will be paid from the State General Fund.
8. Minimal costs will be incurred in FY1979 by the Water Judge Nominating Commission.
9. No water judge will vacate his/her position in the 1981 Biennium; therefore, the Judicial Nominations Commission will not be required to meet to nominate persons to replace a water judge.
10. The Department of Fish and Game will necessarily expand fisheries field and other operations to:
 - a. document, determine, and make filing on waters traditionally used by the seven operating state fish hatcheries,
 - b. file claims for water for instream purposes on 12 streams previously filed for in 1970 and 1971,
 - c. undertake extensive studies to document and support the amount of instream water necessary to maintain the aquatic resources at the current level for the above-mentioned twelve streams,
 - d. file claims on other waters where water rights were previously acquired or filed for instream purposes.
11. The Department of Fish and Game will generate revenues from federal and private sources to fund this expanded requirement.
12. The Department of State Lands will be required to inventory records, contact lessees, etc. to gather the necessary data to file claims. One additional FTE position and related operating expenses will be required. The additional cost to the Department of State Lands will be funded from the State General Fund.

Richard L. Drury
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 4/17/79

Mr Chmn — Members of the Senate & House Commi

MY NAME IS ZACK STEVENS ... WITH THE MONTANA FARM BUREAU. THIS EVENING I AM SPEAKING ON BEHALF OF OVER 80 THOUSAND MONTANANS REPRESENTED BY THE FARM BUREAU, MONTANA FARMER'S UNION, MONTANA'S NATIONAL FARM ORGANIZATION THE GRANGE OF MONTANA, WIFE OF MONTANA, THE MONTANA GRAIN GROWERS ASSOCIATION ~~AND~~ MONTANA DAIRYMEN'S ASSOCIATION, ^{the Agricultural Preservation Association} THE AGRICULTURAL COMMUNITY OF MONTANA SUPPORTS SENATE BILL 76 AND ITS CONCEPT OF A SPEEDY ADJUDICATION OF MONTANA WATER RIGHTS. WE ALSO WANT TO TAKE THIS OPPORTUNITY TO THANK AND PRAISE MEMBERS OF THE INTERIM SUBCOMMITTEE ON WATER RIGHTS FOR THE GREAT AMOUNT OF WORK THEY DID TO FASHION THIS BILL AFTER A SERIES OF MEETINGS THROUGHOUT MONTANA ... AT WHICH THEY ACCEPTED TESTIMONY AND RECOMMENDATIONS OF THE PUBLIC. WE ALSO HELD A SERIES OF PUBLIC MEETINGS ACROSS MONTANA ... SEVERAL OF THEM WITH REPRESENTATIVES OF THE DEPARTMENT OF NATURAL RESOURCES AND VARIOUS LEGISLATORS SERVING ON THE INTERIM COMMITTEE ADDRESSING THE PUBLIC MEETINGS.

STATEMENTS ELICITED BY THE PUBLIC AT ALL THESE MEETINGS HAD A COMMON THREAD ... THEY WANTED A SYSTEM OF ADJUDICATION THAT WAS SPEEDY TO PROTECT MONTANA WATER FROM DOWNSTREAM INTERESTS AND STATES ... AND THEY WANTED A GENERAL ADJUDICATION PROCESS WHICH WOULD PROVIDE FOR EXPEDITIOUS QUANTIFICATION OF FEDERALLY RESERVED WATER CLAIMS.

ANOTHER POINT AGREED UPON BY VIRTUALLY EVERYONE IN ATTENDANCE AT THESE MEETINGS IS THAT THEY WANT THE ADJUDICATION PROCESS TO BE HANDLED WITH THE JUDICIAL ^{SYSTEM} ~~PROCESS~~ AS PRESCRIBED BY THE BILL. VIRTUALLY NONE OF THOSE IN ATTENDANCE AT THESE PUBLIC MEETINGS WANTED THE PROCESS TO BE HANDLED ADMINISTRATIVELY ~~AS RECOMMENDED~~ BY THE DEPARTMENT OF NATURAL RESOURCES. IT SEEMS APPARENT THAT THE AGRICULTURAL COMMUNITY OF MONTANA WOULD FEEL MUCH MORE SECURE WITH THE JUDICIAL PROCESS THAN THEY WOULD IF THE BUREAUCRATS WERE TO HANDLE AN ADMINISTRATIVE SYSTEM.

AGAIN, I REITERATE ... MONTANA FARMERS AND RANCHERS SUPPORT S.B. 76.

TESTIMONY SUBMITTED TO THE JOINT HEARING OF THE SENATE AND HOUSE COMMITTEES ON AGRICULTURE FROM THE STILLWATER COUNTY WATER USERS BOARD REGARDING SB 76, AN ACT TO ADJUDICATE CLAIMS TO EXISTING WATER RIGHTS IN MONTANA

The Stillwater County Water Users Board wish to support the provisions of Senate Bill 76 as an effective way of adjudicating streams in Montana. This legislation provides for water courts with judges serving situations specific to agricultural water. The intent relies heavily on response of water users submitting claims to water rights held prior to 1973 as they proceed in fact finding to prove beneficial use and expedite the process of adjudications. There are important points we wish to express.

1. The water court system provides opportunity for undivided attention to formalizing agricultural claims to water. This system provides experience for judges and an approach that would not be hampered by other interests or problems.
2. The chief water judge designated by the governor according to findings of the nominating commission would be vital to operations. The volumes of claims on Montana would require efficiency, accountability and a high level of administrative skill.
3. The Stillwater County Water Users Board suggest amending Section 1, page 2, by adding, "the courts would be held at the county seat within the county where the stream is to be adjudicated."
4. The districts described in Section 2 are agreeable as they are specific to drainages which does provide for continuity within the adjudication process.
5. Section 3 establishes conditions equal to a district judge which may provide encouragement for judges to participate or become interested.

6. The selection of judges in Section 9 is vital to obtaining qualified judges. The nominating commission serves as a screening committee to insure that consideration be given to qualities each of the five nominating judges. Understanding of water law and some idea of the history of agricultural water in Montana would be crucial. The chief water judge named from the three nominations of the nominating commission would be chosen fairly and according to criteria established by the commission. The dates suggested by SB 76 insure rapid action by the nominating commission which is an advantage in offering time for judges to become acquainted with problems in the district and establish ground rules for operation.
7. Section 12, page 9, provides a method of filing a statement of claim by June 30, 1983. Claims submitted on a standard form provided by the Department of Natural Resources insure continuity and completeness. Decreed rights, use rights, filed rights, would be included without exception to eliminate possibly loss of oversight. Exemption of domestic, stock watering and the permits after 1973 would not effect the existing water rights established for beneficial use. Earlier filed claims sometimes do not contain clear descriptions of ditch location, and serve as an integral part in providing date of establishment, but not necessarily location.
8. Section 14, page 10, offers details of each claim submitted. The Stillwater Water Users Board had developed a similiar system that allows water users to gather data about water rights in an organized way. This provides proof of use and aids establishment of time and quantity needs.
9. Section 15--The assumption of abandonment is rebuttable in the event one fails to file a claim. This is acceptable as it is conceivable some important claims may be overlooked.
10. Section 18, page 13, provides that notices be given all persons who claim an existing water right. The Department of Natural Resources can insure continuity of notice across Montana throughout the notification process during the four year period. The county handling of notice could cause confusion and may lead to over-

looking someone. This would also add heavily to work load responsibility, however, not appreciably if they only assist with including notices with tax statements.

11. Section 19, page 14, establishes a filing fee of \$40 not to exceed \$480, with no fee for decreed rights. This would help defray expenses and does not seem exhorbitant if water users were assured of some action being taken to protect water for agricultural porposes.

12. Section 21, page 15, offers guidance for the Department of Natural Resources. The Department has expertise in water right adjudication and it is logical that they would provide the best possible hlep for courts and claimants. Considerable information has been gathered by DNRC and this would also be useful.

13. The preliminary decree (Sec. 22 & 23) and the final decree (Sec. 24) provide opportunity for review and hearings if desired. Should a user not be satisfied they can show cause and proceed through the provisions of the hearing. The final decree establishes the water rights in detail and offers official documentation of water rights so Montana water can be accountable.

The information gathered by claimants, the process of adjudication, and the final certificate and registration of water rights will insure the use of water for agricultural porposes in the future. The courts are legally recognized and serve a useful role in establishing proof of use of Montana water which is vital to the Montana economy.

The Stillwater County Water Users Board wish to thank the Senate and House committees on agriculture for offering the opportunity to support SB 76. This board is elected by water users in seven communities in Stillwater County and is concerned about water rights and the future of Montana water.

Respectfully submitted,
Chester Peterson, President
Stillwater County Water Users Board

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#3

MR. CHAIRMAN: MEMBERS OF THE HOUSE AND SENATE JOINT SELECT WATER COMMITTEE. MY NAME IS GORDON MCGOWAN, A RANCHER FROM HIGHWOOD, MONTANA. I AM A REGISTERED LOBBYIST IN THIS FORTY-SIXTH LEGISLATIVE SESSION FOR THE MONTANA RAILROAD ASSOCIATION. MY INTEREST IN MONTANA GOES BEYOND THE ASSOCIATION, HOWEVER. I HAVE SERVED IN THE MONTANA SENATE FOR TWENTY YEARS AND PERHAPS INTRODUCED MORE LEGISLATION IN THE AREA OF WATER THAN ANY OTHER PERSON IN OUR STATE HISTORY. I HAVE ONLY ONE DESIRE--TO MOVE OUR STATE INTO THE TWENTIETH CENTURY IN THIS FIELD. FOR THIS REASON, I AM A CONCERNED CITIZEN. I BECAME CONCERNED LONG BEFORE THE VAST MAJORITY OF OUR PEOPLE WERE GIVING THIS AREA A PASSING THOUGHT. I HAVE NEVER LOST MY CONCERN! A LOT OF WATER HAS GONE UNDER THE BRIDGE!!! EACH DAY THAT PASSES AND THE LONGER DECISIONS ARE DELAYED, THE MORE WE STAND TO LOSE. HOW MUCH LONGER DOES ANY REASONABLE THINKING PERSON BELIEVE THIS CAN GO ON? SHORT SIGHTEDNESS, SELFISHNESS, FAILURE TO UNDERSTAND THE PROGRAMS OF OTHER STATES AND MOST IMPORTANT OF ALL, THE POLITICAL CLOUD OF THE NUMBERS IN CONGRESS FROM CALIFORNIA, TEXAS, ARIZONA, COLORADO, NEW MEXICO AND THE CONFINES OF THE MISSISSIPPI RIVER BELOW WHERE THE MISSOURI RIVER FLOWS IN.

THE HOUR IS LATE LADIES AND GENTLEMEN. THE DECISION LIES IN THESE LEGISLATIVE HALLS!

I WISH TO THANK THIS COMMITTEE FOR ALLOWING ME TO APPEAR HERE. I WISH TO COMPLEMENT YOU ON YOUR WORK, WITH THE FIRM BELIEF THAT YOU HAVE A VEHICLE FROM WHICH TO MOVE

THIS STATE OF MONTANA FORWARD. I AM IN FULL SUPPORT OF YOUR BILL.

I KNOW MANY GOOD PEOPLE WILL OFFER CHANGES AND AMENDMENTS. SOME WILL BE GOOD AND SOME WILL NOT WORK. SOME MAY EVEN BE OFFERED TO MUDDY THE WATERS, BUT IN YOUR HANDS REMAIN THE RESPONSIBILITY TO ACCEPT OR REJECT.

I HAVE ONE SUGGESTION TO MAKE IF THE COURT PLEASES, AND YOU ARE THE COURT. MY SUGGESTION WOULD BE THAT IN THIS BILL, WHEREVER IT FITS, TO STATE THAT THE CHIEF JUDGE BE REQUESTED TO SEND A REPORT OF THEIR RESULTS TO BOTH HOUSE AND SENATE COMMITTEES THAT ARE HANDLING WATER LEGISLATION, REPORTING PROGRESS WHEN EACH NEW LEGISLATURE MEETS. IN THIS MANNER, YOU WILL BE ABLE TO CORRECT ANY SHORT-COMINGS AND HAVE FIRST-HAND INPUT IF YOU NEED TO AMEND YOUR ACT TO HELP THE JUDGES SPEED UP THEIR PROGRAM.

IF MY MEMORY SERVES ME CORRECTLY, I SPENT EIGHTEEN YEARS GETTING MONTANA TO PASS THE WATER CODE THAT IS NOW ON OUR BOOKS. HAD IT NOT BEEN FOR THIS CONTINUOUS EFFORT WE WOULD HAVE SLIPPED ANOTHER TWENTY-FIVE YEARS BEHIND.

I WILL CLOSE WITH THE FOLLOWING QUOTE OF JOHN F. KENNEDY'S:

IN NO OTHER OCCUPATION BUT POLITICS IS IT EXPECTED THAT A MAN WILL SACRIFICE HONORS, PRESTIGE AND HIS CHOSEN CAREER ON A SINGLE ISSUE. LAWYERS, BUSINESSMEN, DOCTORS, ALL FACE DIFFICULT PERSONAL DECISIONS INVOLVING THEIR INTEGRITY--BUT FEW, IF ANY, FACE THEM IN THE GLARE OF THE SPOTLIGHT AS DO THOSE IN PUBLIC OFFICE. FEW, IF ANY, FACE THE SAME DREAD FINALITY OF DECISION THAT CONFRONTS A LEGISLATOR FACING AN

IMPORTANT CALL OF THE ROLL. HE MAY WANT MORE TIME FOR HIS
DECISION--HE MAY BELIEVE THERE IS SOMETHING TO BE SAID FOR
BOTH SIDES--HE MAY FEEL THAT A SLIGHT AMENDMENT COULD REMOVE
ALL DIFFICULTIES--BUT WHEN THAT ROLL IS CALLED HE CANNOT
HIDE, HE CANNOT EQUIVOCATE, HE CANNOT DELAY--AND HE SENSES
THAT HIS CONSTITUENCY, LIKE THE RAVEN IN POE'S POEM, IS
PERCHED THERE ON HIS LEGISLATIVE DESK, CROAKING "NEVERMORE"
AS HE CASTS THE VOTE^{MP} THAT STAKES HIS POLITICAL FUTURE.

January 19, 1979

For the record I'm Jim Burnett, Representative from District 71 Carbon County.

I represent not only myself as a water user but also about 2000 water users in Carbon County.

The Red Lodge Creek water usersRalph Heare, President
Cooney Dam water usersPat Billingsley, President
Rock Creek water users *Rocky Fork*Dick Nutting, President
Clarks Fork water usersLeo Bratsky, President
Wearst Ditch Co. Inc. water usersWilliam Niemi, Secretary

In general we agree with the concept of SB76 in that the use of water in Montana needs to be identified.

We also feel we do not want a new bureaucracy, but to act within an existing agency.

We fully support the first stages of this bill in the collection of information and allowing the water user to submit documentation.

We would like to have this legislation direct the district courts to open the already adjudicated streams for water users that are experiencing problems. This could be determined by petitions by water users. For the most part and with economics in mind we could save many millions of dollars by requiring the registration of use rights and allowing water users of that stream to petition the courts should an adjudication be desired.

We suggest:

(1) That the administration of the act will be held as close to the problem as possible, preferably at the county level.

(2) We feel that the method of selecting District Judges, if this is the course that is to be taken, that members of the legislature are most responsive of members in a nominating committee and perhaps that the area of the nominating committee to be

strengthened or to allow a Judge to be elected at large in each of the suggested water districts.

(3) The law is rather ambiguous in the area of how previously adjudicated streams will be handled. Numerous problems have come up in this area over the past years and could be reviewed and corrected at this time.

(4) The permit system has not worked well and should be abandoned. The filing should be at the local level and a copy sent to a central filing system in Helena.

(5) Hearings should be as close to the problem as possible, in most cases the county courthouses in the county in which the stream flows.

(6) Consideration should be given if this bill is enacted to selecting the most competent person experienced in water that are available.

Amendments will be offered to the committee before their Senate and House Committee deliberations.

January 19, 1979

TO: Rep. James Burnett
William Day
Sen. Paul Boylan
Max Conover
Jack Galt

Gentlemen:

We would like to express support for the concept of SB 76, however, we feel it should be amended to allow the first part in the process of collecting information and have an oversight committee give guidance for the next two years with the 47th assembly authorizing the activation of the water judge court process of that time if it becomes feasible.

Sincerely,

William A. Niemi, Secretary
Wearst Ditch Co., Inc.
Luther, Montana 59051

January 18, 1979

Representative James Burnett
Representative William Day
Senator Paul Boylan
Senator Max Conover
Senator Jack Galt

Gentlemen:

We would like to express our support for Senate Bill No. 76 which will facilitate the adjudication of all water in the State of Montana.

Our group represents about 180 holders of water purchase contracts in Cooney Reservoir. We have 40 years experience working with both decreed water and with stored water.

At a meeting held in Red Lodge to discuss Senate Bill No. 76 with the Decreed Users Association, the following suggestions were approved by the Board of Directors:

1. Insure that the administration of the act will be held as close to the problem as possible, preferably at the county level. We feel it would be more effective and make better relations with the public.
2. We feel that the method of selecting judges does not insure that judges will be appointed who are well versed in water law. The members of the legislature are the most responsive members of the nominating committee and, perhaps, that area of the nominating committee to be strengthened.
3. The law is rather ambiguous in the area of how previously decreed streams will be handled. Numerous problems have come up in this area over the past years and could be reviewed and corrected at this time.
4. The permit system has not worked well and should be abandoned. The filing should be at the local level with a copy sent to a central filing system in Helena.

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5. All hearings should be as close to the problem as possible. In most cases, county courthouses in the county in which the stream flows should be utilized. The water judge and his staff can travel with much less trouble than asking all of the water users to travel many miles.
6. Consideration should be given to retaining the most competent water judges in the system as traveling judges to hold court on water matters only. This is a specialized field and we find that the average district court judge is not well versed in the field.

Sincerely,

Leo C. Bratsky
President
Clarks Fork Water
Users Association

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Sincerely,

Pat Billingsley
President
Rocky Fork Decreed
Users, Incorporated

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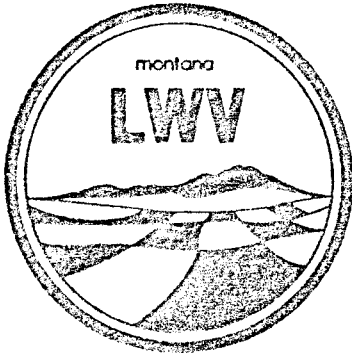
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Sincerely,

Onnie Hyvonen
President
Rock Creek Water
Users Association

1b



LEAGUE OF WOMEN VOTERS OF MONTANA

Testimony in support of Senate bill 76

January 19, 1979

I am Willa Hall, representing the League of Women Voters of Montana. I have followed the Interim Committee this past year, attending nearly all their meetings and I would like to commend this committee for their thorough study of the water issues relating to the adjudication process.

It is vital that the adjudication of Montana waters be completed as rapidly and efficiently as possible. Therefore, the League of Women Voters endorses Senate bill 76. We realize special water courts and judges will add to the immediate cost of the process, but after listening to all the information presented to the interim committee, we feel this bill presents the most expedient method of adjudication.

Appropriating sufficient funds to expedite adjudication is extremely important. We urge a do pass for Senate Bill 76.

6
January 19, 1979

S.B. 76
TESTIMONY - DEPARTMENT OF STATE LANDS

Recognizing that it is of the utmost importance to declare and adjudicate the water rights for all water used within the State of Montana, the Department of State Lands generally supports S.B. 76 as proposed.

However, the Department of State Lands requests that the language of this legislation be expanded to address and clarify the following points:

1. Page 9, Lines 22-25 and Page 10, Lines 1-4.

As outlined in this Section, claims for existing rights for livestock and domestic uses based upon instream flow or groundwater sources are exempt. The declaration of existing rights for livestock and domestic uses from stored surface water in reservoirs has not been specifically addressed. The Department has many reservoirs which collect and store runoff surface water for livestock purposes. If these were also exempt, the Department's declarations would be considerably reduced. In fact, if surface water storage were exempt, the additional full-time employee would be needed for fewer than the 2½ years indicated.

2. Page 9, Section 12.

Domestic use of water by municipalities should be addressed. Municipal water rights for domestic use could prove to be a significant right on individual water sources. These should probably not be exempt.

3. Page 10, Lines 3 and 4.

The processing of the claims that are voluntarily filed have not been addressed. Will they be included in the preliminary decree or will they be filed by the Department for future reference and adjudication? This should be made clear so that the advantages and disadvantages of voluntary filing are known.

It is estimated that the Department of State Lands would have approximately 500 existing water rights to declare. To declare this number of existing rights within the time frame specified in this act, one additional full-time employee would be employed. The annual budget for this program would be:

TESTIMONY - DEPARTMENT OF STATE LANDS

S.B. 76

Page Two

	FY 79-80	FY 80-81	FY 81-82
1 FTE - Grade 10	12 months	12 months	6 months
Salary	\$10,774	\$11,026	\$5,638
Benefits	1,508	1,544	789
Per Diem	3,500	3,500	1,750
Travel	2,545	2,545	1,273
Supplies & Postage	1,500	50	
Telephone	<u>200</u>	<u>200</u>	<u> </u>
	\$20,027	\$18,865	\$9,450

TOTAL: \$48,342

Thank you for the opportunity to present our comments.

COMMITTEE MEETING ON WATER LAW PROBLEMS

Friday, January 19, 1979 - 7:30 P.M.

* * * * *

I am E. Gardner Brownlee, Judge of the District Court,
Fourth Judicial District, Missoula, Montana.

My presentation here tonight will be to make a few
suggestions toward the implementation of the provisions of
the 1972 Montana Constitution regarding water use.

I have a few suggestions regarding the procedure to be
followed in getting the right to the use of water documented
by proper Court Decrees and a few suggested changes in our
present laws.

* * * * *

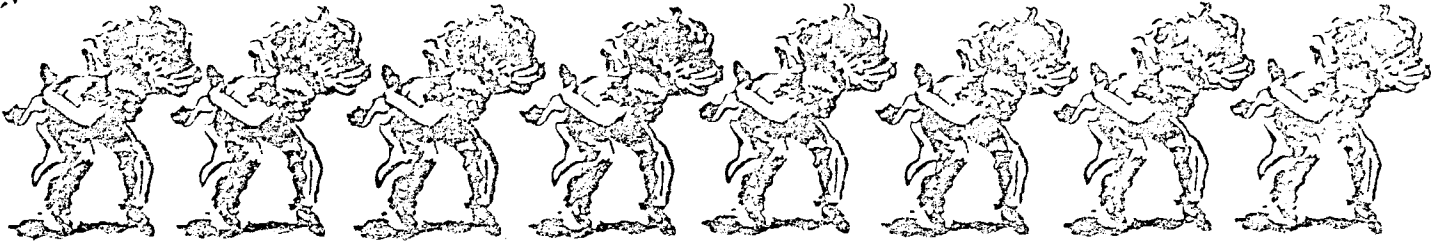
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Report
to
Montana Legislature Interim
Subcommittee on Water Rights
Representative John P. Scully, Chairman

by
Laurence J. Siroky
Chief, Water Rights Bureau
Department of Natural Resources and Conservation

Approved by
Ted J. Doney, Director

April 14, 1978



Montana Inter-Tribal Policy Board

300 North 25th St., Suite 103 • Billings, MT 59101 • (406) 245-2228

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MEMBERS OF THE SENATE COMMITTEE

We, members of the Montana Inter-Tribal Policy Board, representing the seven Indian Reservations in Montana respectfully submit an amendment to Senate Bill 76. The amended language we suggest would be included in New Section 4 beginning immediately after line 11. The language reads:

With the exclusion, nevertheless, of the Indian right to the use of water which is a separate private property right of Tribes and Indian people, and therefore specifically excepted from all provisions of this act. This act shall not apply to any water rights owned by any Indian or Indian Tribe or reserved for the benefit of any Indian or Indian Tribe.

LEGAL RATIONALE FOR AMENDATORY LANGUAGE.

Indian reserved water rights are not to be confused with or encompassed with federal reserved rights, such as parks, national forests, federal enclaves, to use of water, and have a priority date which is time immemorial and is superior to any other rights to that water.

The water rights set aside for the Indians are different from the other reserved water rights for federal enclaves, in that the Indian water is held in trust for the Indians. The nature and extent of the water rights which vested in the Indians at the time the reservation was created would appear to be a judicial question. A statute endeavoring to define and limit these rights would be only a legislative guess on a judicial issue.

In addition to this, we submit that state and federal governments by their actions and legislation have recognized this legal proposition of prior

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NATIONAL CONGRESS OF AMERICAN INDIANS
35TH ANNUAL CONVENTION
September 20, 1978
Rapid City, South Dakota

RESOLUTION NO. 52

WHEREAS, the Native Americans have been subjected, over the years to a constant barrage of efforts on the part of non-Indians to take their lands, water, minerals and other valuable resources. Never before, however, have those efforts been so intensified as they are now. The federal government, which has established itself as the trustee over Indian property rights, is now facing serious conflicts of interest between its duty to protect, preserve and enhance Indian property rights, and its role to respond to its non-Indian citizens, and

WHEREAS, the result is a climate of anti-Indianism, the likes of which have not been seen in this country since the early days of this nation, and

WHEREAS, the National Congress of American Indians hereby adopts as a policy a commitment to fight to protect all Indian rights that are now, or might in the future, be endangered by this wave of anti-Indianism, and

WHEREAS, the water, which is essential to life, and to which the American Indians have substantial legal rights which are prior and paramount to the rights of non-Indians, has become a focal point in this fight to limit or destroy Indian rights, and

WHEREAS, it has always been, and shall continue to be, the policy of the NCAI to resist wherever possible, and with all legal means available to us, all efforts, from any quarter, to limit or destroy the rights that have been reserved to us in solemn legal treaties

NOW THEREFORE BE IT RESOLVED, that NCAI adopts as its policy

Name

Address

The State of Montana has no constitutional authority to regulate water owned by Indian reservations. Both the enabling legislation and the Montana constitution disclaim all rights and title to all lands owned or held by any Indian tribe. Court cases have held that lands reserved for Indians include water since it is recognized that land is worthless without water.

This bill is a taking of Indian water. According to a prominent special counsel for the state of Wyoming proposed takings of Indian water are even worse than the land takings of the 19th century. Even though a state court system is set up to meet the requirements of the McCazren Amendment as interpreted by the courts in the Aiken case, this court system is for one and only one purpose--- to quantify existing uses of water and establish a priority system based on existing uses at the time of diversion.

It is ridiculous to assume that Indians have to develop and use their own water at the same rate and in the same manner as the rest of the State of Montana. Legal precedent such as in Arizona vs. California clearly has stated that Indian rights can be reserved for future uses.

As this legislation stands, Indians will lose all rights to their water because they might not be using or exercising water. In the same way that the rest of Montana is exercising water. This is punishment of Indians for not using and in many cases destroying water as fast as whites.

Furthermore, the proposed court system established state control of Indians on reservations which from my interpretation of the law is clearly illegal. Only the duly elected tribal governments can regulate the activities of Indians on reservations.

The definition "beneficial use" of water does not recognize cultural, religious and spiritual water uses. The ~~XXXX~~ Northern Cheyenne, as do many other tribes, have many religious, spiritual and cultural uses of water. There is no provision in the act that recognizes these uses as beneficial. In addition, Indians have received very little financial assistance in developing their own water resources. This bill penalizes them for

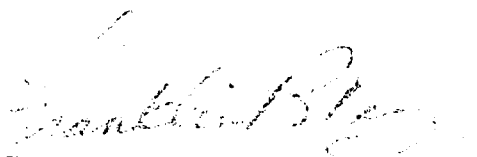
the lack of concern of the fed. gov. and the state of Montana have shown in helping
This bill should be amended to clearly exclude Indian Reservation from jurisdiction under the bill. It is our interpretation that to not do so is both clearly illegal and immoral. To ~~do~~ not do so will result in costly litigation for the state of Montana, and will be a blemish forever on the integrity of the people of the state of Montana.

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As evidence in the proposed Senate Joint Resolution No. 1, and a recent meeting between tribal and state leaders on Indian Legal Jurisdiction, an attempt by state and tribal governments to establish working cooperative relations is currently in progress.

To seriously consider Senate Bill 76, is to jeopardize fragile and controversial negotiations between tribal and state governments. Further the subcommittee on water rights is assuming that the state has existing water jurisdiction on federal Indian trust lands, which certainly is not the case; as assumed in Senate Bill 76.

The economics of this piece of legislation alone is prohibitive.



FRANKLIN R. PEREZ
VICE PRESIDENT
FORT BELKNAP INDIAN COMMUNITY

19 January, 1979

Sen. Jack Galt, Chairman
Agriculture, Livestock & Irrigation
MONTANA STATE SENATE
Capitol
Helena, MT 59601

Dear Senator Galt. . . .

First, I am strongly in support of Senate Bill 76 to create districts and establish courts to adjudicate claims of existing water rights in Montana.

Second, I have a self-interest, which I hope is not a conflict of interest, in that I am a member of the Judicial Nominating Commission of the State of Montana.

Originally this legislation, when proposed in the 1977 legislative session, provided that water district court judges would be selected through the Judicial Nominating Commission nomination/gubernatorial appointment process established by statute in response to the 1972 Constitution.

Now, SB76 has been changed in this regard to establish a new and separate water judge nominating commission (Sec. 9).

I disagree with this procedure and will detail my reasons.

- 1) The Judicial Nominating Commission already exists and has the necessary organization, printed rules and regulations, carefully developed application forms and questionnaire, and extensive experience. The Commission, since its creation in 1973, has participated in the nomination of the state's chief justice, one associate justice, the worker's compensation court judge, and five district judges. By the criteria of public acceptance, elective confirmation, and legal fraternity approval, all have been successful. The Commission has been lauded editorially by the major daily newspapers in the state for its procedures, nominations and results.
- 2) The Commission has agreed to prepare a special water judge questionnaire and consult with legislators, agriculturalists, and others interested in water rights adjudication in doing so. Also, District Judge W. W. Lessley of Bozeman is chairman of the Judicial Nominating Commission and widely acknowledged as a top state authority on water law, making him (and the Commission) specially qualified for this task. In fact, Judge Lessley was called in as one of an extremely few expert witnesses to testify when this legislation was being developed in 1977.
- 3) There are several confusing and possibly contradictory provisions in SB76 in regard to the water judges and the proposed water judge nominating commission. Sec. 1 (3) says the governor shall designate one water judge to serve as chief water judge, but Sec. 9 (4) says

the water judge nominating commission shall nominate three persons for the position of chief water judge. It would appear that this nominating action would serve only to eliminate one of four water judges from consideration as chief, a rather extensive procedure for a solitary negative effect. Sec. 9 (4) also calls for five nominations (and no less) for each water judge, which presumes a total of 20 qualified people in the four districts, which might or might not be true, with these particular qualifications. A lesser maximum or the provision of a minimum would be more apt to make possible the submission of only fully qualified persons to the governor for possible appointment. Sec. 9 (5) in its ultimate reference to "nominating commission" is not clear as to whether the Judicial Nominating Commission or the water judge nominating commission is meant. Sec. 9 (6) appears to put the water judge nominating commission out of existence before nominations are made for a chief water judge.

- 4) Sec. 9 (6) and Sec. 10 (1) of SB76 both apparently call for utilizing the Judicial Nominating Commission. If the Commission is considered competent to select water judge replacements, it must be competent to select water judges period.

Those are my concerns, Senator Galt, and all could be resolved with a simple provision utilizing the existing Judicial Nominating Commission in SB76.

Legislative control would remain in that the statutory provision for senate confirmation of any appointments would apply.

I hope you will consider my remarks pertinent and convey a copy of this letter to each of your committee members.

I believe it is significant that the members of the Judicial Nominating Commission consider SB76 to be needed for its general provisions despite disagreement with the judicial selection procedures.

Thank you, Senator Galt, for your consideration.

Cordially yours. . . .



Joe A. Renders
P. O. Box 6636
Great Falls, MT 59406

January 19, 1979

Senate Agriculture Committee and House Select Committee on Water:
Chairmen: Senator Jack Galt and Representative Willie Day:

Chairmen and Members of the Committees, my name is Vernon L. Westlake and I am here this evening representing the Agricultural Preservation Association from Gallatin County. For the record, the A.P.A. supports Senate Bill 76 as it was introduced and recommends to the Committees that the Bill be passed without amendments.

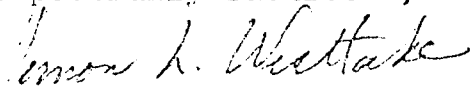
We want to take this opportunity to commend the Interim Water Rights Committee and the Chairman, Representative John Scully, for all the time spent and efforts made in the preparation of this piece of legislation.

Montana needs a Water Use Inventory to guarantee Montana water users the future use of Montana water. Senate Bill 76 will implement the system that is necessary to prepare just such a Water Use Inventory.

We strongly urge your support of Senate Bill 76, as we feel it will satisfy the immediate need regarding Montana water. We feel also, that it is only fair to say that A.P.A. will withdraw its support of the Bill if the Bill is amended in any manner so that the Water Use Inventory would not be the primary objective of the legislation.

A.P.A. believes that Senate Bill 76 is an excellent bill and deserves your strong support. Thank you for this opportunity to speak in behalf of this bill.

Respectfully submitted,



Vernon L. Westlake, Director
Agricultural Preservation Assn.
Gallatin County