

JUDICIARY COMMITTEE

April 14, 1977

A final meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Thursday. All members were present except Representatives Colburn, Seifert, Kennerly, Dussault and McLane

Scheduled for hearing were House Joint Resolution 106 and Senate Joint Resolution 48.

HOUSE JOINT RESOLUTION 106:

REPRESENTATIVE MARKS, DISTRICT #80:

This bill is simply honoring our former governor J. Hugo Aronson. He lives at the Veterans Home in Columbia Falls, and is getting on in years.

REPRESENTATIVE CONROY moved "do pass". The motion carried with Representative Lory voting "no". Mr. Lory voted no because he said there are too many resolutions introduced and they should be limited in number.

SENATE JOINT RESOLUTION 48:

SENATOR GRAHAM, sponsor of the bill, did not attend the hearing.

This is a bill directing the Department of Natural Resources to speed up the initial compilation of existing water rights and to expedite the adjudication of water rights, particularly agricultural rights.

There was some discussion about this bill being similar in concept to House Bill 809 which was killed in the Senate.

REPRESENTATIVE KEYSER moved "do not pass". The motion carried with Representative Conroy voting "no".

SENATE JOINT RESOLUTION 19:

REPRESENTATIVE RAMIREZ moved to "take from the table". The motion carried. REPRESENTATIVE RAMIREZ moved "be concurred in". The motion carried with Representative Lory voting "no".

The meeting adjourned at 8:55 a.m.


JOHN P. SCULLY, CHAIRMAN

Mary Elyen Connelly
Mary Elyen Connelly, Secretary

JUDICIARY COMMITTEE
April 14, 1977

A special meeting was called by Chairman Scully at 11:45 a.m. on Thursday, April 14 in room 436 of the Capitol Building, Helena, Montana. Members attending were as follows:

Representative Holmes	Representative Courtney
Representative Hand	Representative Kennerly
Representative McLane	Representative Conroy
Representative Seifert	Representative Lory
Representative Ramirez	Chairman Scully

SENATE JOINT RESOLUTION #48:

SENATOR GRAHAM, DISTRICT #29:

We became concerned about this adjudication process that has been going on which as you know, the Department of Natural Resources has currently been doing in the Powder River area. We find that it has been approximately 3 years in the Powder River area that they have been working. At the current rate we don't know of any way of speeding up the process. This House Bill 809, we know the bill was not perfect but we appointed a sub-committee to work on the bill and we finally concluded that in the end we would have to do a study because there were too many things that needed changing. We studied House Bill 809 in the Agriculture Committee & worked on it. We called in Mr. Orth, then asked him about the direction the department should take. We feel that all of the water rights should be completed in one place before going on to another.

JOHN ORTH, DIRECTOR, DEPARTMENT OF NATURAL RESOURCES:

We did meet with the Senate Agriculture committee and we do support the bill. We are regretful that we don't have anything going forward for the next two years. This bill puts the department on notice that they are doing something. It provides us with a basis to tell the feds what we are doing.

SENATOR BOYLAN:

I support this resolution. I had a bill that was killed in this committee and I think it is imperative that this go through. It is giving some direction. We should be doing something during the interim. I think this bill will do it.

GORDON McGOWAN, RAILROAD LOBBY:

I am not representing the railroads here today, I am representing only myself, as an individual. I believe it to be imperative that you reconsider your action and pass this resolution. I think this is a handle that we are really looking for.

MR. SPEILDE:

It gives direction to what you should be doing. He went on in this same vein for some time and asked that the committee reconsider their action on the bill.

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There were no opponents and Senator Graham closed with the following comment. I don't think I have anything to say other than what I have already told you. I can understand why you did what you did. I would ask that you reconsider.

REPRESENTATIVE RAMIREZ:

What is the reason for having the statement that no verification of declared right is necessary. It seems to me that if you are going to require these to be filed you should require that they be verified. It seems to me that we ought to try to give these things the same status as in the adjudicated law.

TED DONEY, LEGAL COUNSEL, DNR:

In current law they have to be notarized but they don't have to be verified. These declarations will not have the same legal status. That would have to be changed in the law.

REPRESENTATIVE RAMIREZ:

This should be set forth precisely so that they are complied with so that we don't have to go back and do it over.

MR. DONEY:

I think it would be a good idea in the next session to do this so that we don't have to do it twice.

There was a quite heated discussion about the Senators comment that a hearing had been held that morning without proper notification of the sponsor.

Then followed discussion about declaration quality. The comment was made that people seem to think that all that they have to do is file a declaration.

MR. DONEY:

I think you should point out to these people in that statement that these declarations are not the final say.

SENATOR BOYLAN:

We think that something is better than nothing. At least we have something on record.

MR. SCULLY:

Do you think people are going to think that this gives them some time priority. Don't you think this will really foul people up.

MR. LORY:

Will these filings have any standing before the law. They are just a right, aren't they?

MR. DONEY:

I think they will. They will be some evidence as to what they are using, the amount of water, I mean.

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SENATOR GRAHAM:

Last week the secretary of the Interior is talking over the law and order code to the Indians. I think this is an attempt to put something together there until the Indian rights are allowed.

MR. SCULLY:

The Indian water law problem is very real. I think we all recognize that.

MR. ORTH:

This bill was drawn up prior to the Indian water right situation. We are talking about a lot of confusion. I feel that if we carefully explain to the public and with the understanding that it is a voluntary thing, we can work something out.

There was discussion about who would pay the cost of implementation, and who would pay for the cost of the mailings, and wouldn't there be a necessity to hire extra people for the extra paperwork, etc.

MR. ORTH:

The biggest stumbling block has been who is going to pay for the filing of these various claims and to be verified. The department is going to go ahead to try and strengthen this and the resolution will help.

REPRESENTATIVE DAY:

One thing that I can say is that the water committee comes up with a reasonable attempt to take care of this problem and the Senate killed it. I think this will interfere with the interim study and may harm it. There was a lot of misinformation that was put out on the other water bills, and especially on HB 809. I am wondering if we are not defeating the water study committee before we ever get it started.

SENATOR BOYLAN:

We felt that it was too late, after we worked on 809 and couldn't make it workable. We ran out of time.

REPRESENTATIVE RAMIREZ:

What about putting something in here that would give people the alternative to either file something that is not officially verified or going ahead to permit them to prove at a later point more definitely. Of course, you get into the problem of not getting anything. You might as well do it right the first time.

REPRESENTATIVE SCULLY:

When the word gets out about the Indian water problem. He gave an example of how things could get fouled up worse than they are now.

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What if we pass that thing right now and the people get the word on the Indian water problem. I think Representative Kimble was right to meet with the Indian people and find out what they want. What are we doing to people out there? They will get something in there as quick as they can, thinking the filing is a legal right. What are you going to do for people? What will you tell them when you are up to your ears in water problems?

MR. ORTH:

All we will be able to do is file them. The declarations will at least be on record.

SENATOR GRAHAM:

I think it is more imperative than ever. Concerning the Indian water problem. The Indians are entitled to part of it but not all of it. It is going to go to a big law suit. This bill is an attempt to put some of it together even if some of it is not legitimate.

REPRESENTATIVE KENNERLY:

I just can't agree with you that this Indian water problem is new. They have been working very strong on it for the last 10 years. If it finally broke that is because they are getting tired of waiting. He went on to explain the position of the Indians concerning water rights and uses.

REPRESENTATIVE LORY:

I think we should go back and reopen HB 809. I think that is the best approach.

SENATOR GRAHAM:

We gave it everything we had but we felt there was just no way that it could be done. Mr. Scully came to the committee and worked with us.

MR. SCULLY:

At that stage in the game I thought it was dead anyway. I think somebody put out a lot of wrong information. Sooner or later everybody will be in court. The committee did not do all they could.

REPRESENTATIVE COURTNEY:

Is this an advertising campaign?

MR. ORTH:

Yes, but it is a lot more than an advertising campaign. I think this resolution is telling me, go out and do something.

REPRESENTATIVE CONROY:

What is the time sequence, is it yearly?

MR. ORTH:

It is continuous. It is strictly voluntary, they don't have to do

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this, you can send it in anytime. You will probably not receive anything back from us except that we received it, just the fact that we received it will be acknowledged.

MR. SCULLY:

Has the Senate put in any money for this resolution and/or the study? I can't find any money anywhere. Nobody has put in any money as far as I can see.

MR. ORTH:

If I utilize the conservation districts division then I feel I can do this.

SENATOR GRAHAM:

This study will be one of the priority studies and the expense will be borne in the council. There is money in the council to do 12 studies so if this is one of the studies the money is there.

REPRESENTATIVE RAMIREZ:

If you are encouraging these voluntary filings then what of the adjudication process.

MR. DONEY:

We will have some record of what people think their water rights are.

MR. RAMIREZ:

You don't think it is necessary to add that voluntary filings will be accepted and verified, verifying before the preliminary decree.

REPRESENTATIVE LORY:

What effect will it have on the person who does file?

REPRESENTATIVE RAMIREZ:

The real issue is, who is going to pay for the actual field work to verify. Aren't we getting the department into the situation where the department has to verify.

MR. ORTH:

That is true. Who is going to pay for it? Do you do a disservice to the people who might rely on some old-timer to verify.

MR. SCULLY:

Don't we have a quantity inventory right now?

MR. DONELY:

Yes, we do.

REPRESENTATIVE COURTNEY:

What status does this voluntary filing have if they go to court.

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There was discussion about the court action that might come up and whether the filings would be valid evidence, etc.

REPRESENTATIVE DAY:

There is nothing right now that this bill will do that the department can't do right now. He went on to tell the committee that when HB 809 was in the Senate committee, there was a statewide onslaught of false information put out to defeat the bill.

The hearing ended and the committee went into executive session to consider Senate Joint Resolution #48.

EXECUTIVE SESSION

REPRESENTATIVE CONROY moved to reconsider action taken on Senate Joint Resolution 48. REPRESENTATIVE LORY moved a substitute motion "do not pass". The substitute motion to leave the bill as "do not pass" failed. The motion to reconsider carried.

REPRESENTATIVE RAMIREZ said he wanted to amend, the requirements of the department - 89-872.

REPRESENTATIVE KENNERLY:

It will still have to be adjudicated in the courts.

REPRESENTATIVE LORY:

I am seriously concerned. The people will think they filed their right.

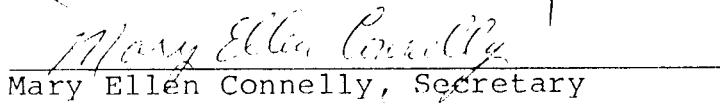
REPRESENTATIVE SCULLY:

We could strike subsection (2). What I am afraid of, its common knowledge, those five people that sat here today have changed every vote on every bill. They were responsible for killing HB 809.

REPRESENTATIVE RAMIREZ moved his amendment. The motion carried with the vote unanimous. (wording will be worked out)

A discussion followed on how to get the bill back into committee, what procedure they could use, etc.

The meeting adjourned at 1:35 p.m.


JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly, Secretary