

HOUSE SELECT COMMITTEE ON WATER

January 19, 1979

The joint hearing of the House Select Water Committee and the Senate Agriculture Committee 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 No. 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 stated it was actually drafted from the interim water committee. This committee consisted of Representatives Scully, Ramirez, Day, Roth, and Senators Galt, Turnage, Bergren, and Boylan.

Representative Scully stated that 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 and Conservation. There were seven hearings held throughout the state in order to get the public input. He then went through the bill and generally explained some of the provisions in it.

We estimate that 275,000 claims will be filed in the next four years at the rate of 40 dollars per claim. The fiscal note is attached.

The water bill, as it is now, has some parts that could be revised to make it a more successful bill.

PROPOSERS:

Zack Stevens, representing the Farm Bureau, Farmers Union, NFO, Grange, WIFE, Agricultural Preservation Association, Montana Dairyman's Association, and the Montana Graingrowers Association. This represents 80,000 Montana's. Testimony is attached, exhibit #1.

Representative Vicki Johnson, District No. 72, spoke in behalf of the Stillwater County Water Users Board. Testimony is attached, exhibit #2.

Gordon McGowan, a rancher from Highwood Montana and a lobbyist for the Montana Railroad Association. He had been a Senator for 20 years and perhaps introduced more legislation in the field of water than anyone in the states history. He introduced the bills that are now the current water laws of the state. Testimony attached, exhibit #3.

Senator Steve Brown, District No. 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 stated that the disqualifications for water judges was a problem. He felt the Montana Supreme Court should be allowed to create special rules for the water courts. He felt the process had to be fully funded in order for it to succeed.

The retirement fund for judges should come from the filing fees rather than them being members of the Montana judges' retirement system. He

felt the 40 dollar filing fee should be for every claim.

Mons Teigen, Montana Stockgrowers Association and Montana Woolgrowers Association. These two organizations support Senate Bill No. 76. He stated that in the past we have had enough water but the time has come to get our water bonafide because downstream users are looking at it.

Representative Burnett, District No. 71, was present 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 Company. In general they agreed with the bill. Testimony and letters from the people he was representing is attached, exhibit #4.

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, exhibit #5.

Pete Jackson, representing WETA and himself as a rancher. He is in strong support of the bill and commended the committee on the work they had done. His water had been adjudicated in 1914. After applying for a permit through the DNRC it was a long slow process. The process was just completed one month ago.

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

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

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

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

Ron Waterman, attorney for Burlington Norther, stated that this was the second session that the bill has been before the legislature. The two years have been well spent 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 and 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 court and federal court.

Judge Brownlee, Judge of the district court, fourth judicial district, Missoula, Montana. His testimony is attached, exhibit #7.

This concluded the proponents to the bill. Chairman Galt then called for the following people who were registered as non-committals.

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 down stream 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 the courts. 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 DNRC of the interim study, exhibit No. 8.

W. G. Gilbert, Jr., attorney from Dillon, representing himself, spoke next. He stated that he has tried many water suits in Beaverhead County. He said if you limit the Governor in his appointment to the three that are nominated, after the Governor appointed the chief water judge it should be made clearer that the remaining appointees should include those that were not selected for appointment of chief water judge not only those among the list of nominees presented by the water judge nominating committee.

Attached is testimony from Vernon L. Westlake, Agricultural Prservation Association and Joe A. Renders, Great Falls, exhibits No. 13 and 14.

OPPONENTS:

Carl Davis, attorney, representing the Clark Canyon West Company, which represents 190 water users and 50,000 acres of land. He stated that 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 DNRC had brought out. He didn't feel that the rights that had already been decreed should have to go through the process of filing. 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 a long enough period of time. He felt the filing date should be staggered so everyone would no be waiting until the last few weeks to file.

Philip E. Roy, Montana Inter-Tribal Policy Board, stated that they have full legal rational why the reservations should be amended out of the bill. The Indian water rights should not be confused with the federal reserved rights. He felt this bill would be advertising that

Montana has surplus water. His testimony is attached, exhibit No. 9.

Mike Watson, Montana Inter-Tribal Policy Board, also mentioned that Indian water rights are different than federal reserve rights.

Caleb Shield, Fort Peck Tribes, 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, exhibit #10.

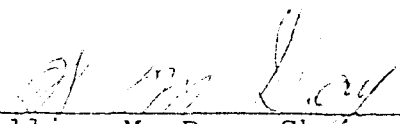
Frank Perez, Fort Belnap, Vice-President, arose in opposition to the bill and presented written testimony to the committee, exhibit #11.

Rubie Sooktis, Northern Cheyenne Indian, submitted written testimony which is attached, 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. 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 can assist anyone in the transfer of water.

Questions were asked by the committee and the hearing was closed.

The meeting was adjourned at 11:15 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary