

Select Committee on Water  
March 29, 1979  
46th Legislative Session

A meeting of the House Select Committee on Water was held Thursday, March 29, at 9:00 a.m. in room 437. Chairman Day called the meeting to order and the secretary took roll. All members were present except Rep. Robbins who was absent.

The meeting was opened to executive discussion on SB 76. Chairman Day said that he would allow anyone to submit any amendments to the bill at this time. There were none. He also said that it would be permissible for the committee to ask questions from the witnesses present at the meeting.

Rep. Ramirez said that he and Rep. Scully had worked up some amendments that they would like to propose to the committee. He said that they had not had a chance to write them up so the committee could have copies but he would explain them to the committee at this time. Rep. Ramirez said that he had great concerns that we are creating situations with the water courts that might give us problems down the line. First, he said, we are getting involved in judicial disputes, adjudication of Indian claims, when we do not know the extent of the Indian rights. Also, he stated, there is a constitutional question as to whether we can vest this jurisdiction in water courts. He said there are many reasons why we should take another approach. The main change that would be made in the bill would be the postponing of the water courts. We would keep our four year filing period as in SB 76. Claims would be filed with the Dept. of Natural Resources. Everyone would be subject to this filing. He said this would mean a four year moratorium. About one or two years before the filing period was up we would create water districts using our present water courts. The senior judge would appoint a master to the district. The remainder of SB 76 would be adopted. He said this would eliminate water judges sitting around for 4 years. We won't need any appropriation or very little. He said this would enable us to negotiate with the tribes and get these issues resolved before the 4 year filing period and also the tribes would be treated fairly. The declarations would be filed with the DNR or the senior judges. All claims would be filed within the 4 year period but no hearing would be set. It would not be necessary to do anything until a master was appointed to work toward a preliminary decree.

Rep. Roth wanted to know if the DNR would do all of the preliminary work. Rep. Ramirez said yes, at the direction of the court.

Rep. Curtis said that the claims should be filed with the DNR and the courts also. Rep. Ramirez said that he had no strong objection to this idea but he would like to keep the cost at a minimum.

Rep. Roth asked if they would still pay the same filing fee as stated in SB 76. Rep. Ramirez said they would pay a filing fee but it could be adjusted if necessary.

Rep. Hand asked if the fiscal note for SB 76 would still be the same with the changes. Rep. Ramirez said that this proposal would cut the cost down substantially.

Ted Doney from the DNR was present. Rep. Ramirez asked him if he could give an estimate of the cost reduction and just what he figured it would cost the DNR to operate under this proposal. He said that the DNR estimated a 2.8 million dollar savings over the 4 year period. Chairman Day asked Mr. Doney how much his department would actually need to handle these claims. He said the DNR expenses would come to about 8.8 million dollars over the 4 year period. Mr. Doney explained the reduction to the committee and where the savings would come from.

Rep. Rameriz said that there would be no field investigation necessary. The DNR duties would be limited to receiving claims and outlining some rules of thumb to go by, also sorting and what have you, but there would be no field investigation until the masters are appointed.

It was brought up that the District Court would make the final decision with recommendations from the master judge.

Rep. Day asked who would get the filing fee, the DNR or the court or the general fund. Rep. Ramirez said that the fees would have to be allocated. The initial amount would probably go to the department. There would be an earmark fund.

Senator Galt commented that he thought this would be a workable amendment and would get around the constitutionality problem.

Rep. Hand asked Mr. Siroke what the individual fee would be. He answered approximately \$40 per claim. There would be about 27,000 claims which would be about 11 million dollars.

Rep. Kemmis said that failure to file a claim could lead to rebuttable presumption. He said the key is making sure notice provisions are adequate. Rep. Kemmis also said that there should be a severability clause in the bill and maybe they should write something in about qualifications for a master judge.

Chairman Day asked Rep. Ramariz if he and Rep. Scully could get these proposed amendments drafted so the committee could meet again and discuss them. Chairman Day said that he would appoint a sub-committee on SB 76 and they could get the bill straightened out before the whole committee would meet on it again. He appointed Rep. Scully as chairman of the sub-committee and Rep. Ramirez and Rep. Kemmis as the other members of the sub-committee. He said that the committee attorney, Bob Lane, members from the DNR and anyone else interested could sit in on the meeting if they wanted to. The meeting was scheduled for Friday, March 30th at 10:00 a.m. in room 437.

Rep. Curtiss asked Mr. McGowan if he had any comments on these new proposals. He said that he was disappointed in the delay, but the important thing is to get the bill through. He said that he thought the bill could be workable.

Rep. Nathe asked Ted Merridith if he or any members representing the tribes had any comments. He answered that they had some definite problems with the bill. He said that the tribes do not want to be included in adopting the system. To place the tribes under the judicature with a 4 year delay does not solve the problem. The Indians do not want the water rights under the jurisdiction of a judge who may be prejudice.

Evelyn Stevenson, attorney for the Flathead tribe, was present and stated that this is a complicated bill and will take alot of time to work out.

Chairman Day asked Mr. Merridith why he would rather settle in federal court than state. He felt they would be less prejudice. He said that they must start with a neutral system. There was discussion that followed on this.

Rep. Ramirez said that it seemed that nothing short of excluding the Indians from the bill would satisfy them and it looked like they were just going around in circles and not accomplishing anything.

Mr. Roy, representing the tribes, had just returned from Wyo. where this case was being argued. He read proposed amendments to the committee. A copy is exhibit "A" and is attached to the minutes. He said that 6 out of 7 tribes are willing to negotiate with the state on the water rights but they must not be included in the bill. Mr. McGowan said that he did not feel the bill was necessary at this time and could be disastrous to the state.

Rep. Rameriz said that we need a solution to a very difficult problem and that this bill as amended would be more fair to the tribes than the original bill.

Discussion followed between members representing the tribes and the committee. Nothing seemed to be resolved. Rep. Rameriz said that if they excluded the tribes from the bill it would not be fair to the rest of the state. The tribes argued that they were willing to negotiate a compact idea but refused to be included in the bill. They said that they had everything to lose and nothing to gain and the state had nothing to lose.

Rep. Hand proposed that the committee make an agreement with the tribes to let them out of the bill for 2 years or so and they can try their idea of negotiating. At the end of 2 years if their idea does not work they would automatically be put back in the bill and they would have 2 years to file.

Rep. Rameriz said that he had no problems with that idea but he thinks we are entitled to have a deadline and that deadline should be set now.

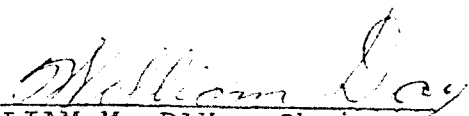
Rep. Scully asked members of the tribes what they thought about the good faith basis and if they would join without litigation 2 or 3 years down the road if negotiations did not work out. The answer was that they did not know at this time but probably not. Rep. Scully said that this committee was going to have to decide whether or not an adjudication would take place.

Chairman Day said that nothing seemed to be getting the committee anywhere with this discussion and he would leave it up to the sub-committee to work out the amendments and report back to the committee.

A motion was made and seconded to adjourn.

Meeting adjourned at 11:15 a.m.

Respectfully submitted,

  
WILLIAM M. DAY - Chairman

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