

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

January 26, 1979

The seventh meeting of the Agriculture, Livestock and Irrigation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Galt at 1:00 p.m.

ROLL CALL: All members were present with Senator Nelson present at 2:00.

The witnesses that were present to give testimony are attached on the Visitor's Register.

Senator Galt stated that this meeting would be just to consider proposed amendments to Senate Bill 76.

CONSIDERATION OF SENATE BILL 76: An amendment was presented by the Montana Association of Counties. Mr. Dean Zinnecker was not able to be present. This amendment is attached, see exhibit #1. The proposed amendment deals with the county expenses and they do not want to get burdened with extra expenses. Senator Boylan felt the amendment was not complete enough.

Senator Kolstad moved the amendment. Motion carried. Senator Boylan voting No. Senator Nelson absent.

Representative Sivertson asked if the committee had addressed the problem of forcing the people to refile that already have rights. Senator Galt said this was not in the form of an amendment so would not be considered at this time.

Mr. Philip Roy, Inter-Tribal Policy Board presented an amendment. See exhibit #2. After consulting with many people, including the Department of Interiors they came up with this amendment. He said there is no mention made in the bill of the reserved water rights for Indians. The amended language has ample legal justification. They feel the Indian water rights are private property rights, distinguishable from federal water rights. He felt this was imperative for a clear understanding of the bill.

Mr. Bob Jarvis, Blackfeet Tribal Council, believed that water rights was a concern for all Montana, but he felt this bill would hurt the small farmer considerably.

Ted Meridth, Inter-Tribal Policy Board, said there is a movement by the tribes to consider working with the states to solve some of these problems. The tribes would like to be exempt for now, so they could have some time to work on these problems.

Tom Witford, Montana Tribal Policy Board, said they had

met early in the day with several members of the House and felt progress had been made. They plan to meet with the House members again in a few weeks to see if they could develop some approach to the problem rather than go through litigation.

Caleb Shields, Fort Peck Tribes, stated that the Indians are as concerned about water leaving the state as anyone.

Bill Marshall, Flathead Tribes, said the Flathead Tribal Board has issued water permit for non-Indians.

Senator Graham said the complete exclusion that they were asking for disturbed him. He said at some time the Indians will have to be put into the law so the state will have some record of Indian rights. He asked if they felt strongly that they had to be excluded from coming under the act in any way.

Mr. Roy said for them to be included at this time would hurt them legally. When asked if the Indian people were recognized as having water rights would coming under the bill still hurt them his reply was yes.

Senator Galt suggested that the Senate Committee reject the amendment and let them be presented to the House Committee if the bill gets there.

Senator Kolstad asked Mr. Roy if excluding the Indians would affect the adjudication process. Mr. Roy said it would affect the adjudication process but having the Indians within the state's adjudication process and in the bill would be illegal. He said Montana is not ready for adjudication and he felt it would be a serious error to go ahead with the bill. When asked how the state could go ahead with any adjudication without knowing the Indians rights, Mr. Roy said there are plenty of other areas to start on. He wondered what the urgency was in having the Indian reservations in the bill. He said it was totally contrary to all federal laws.

Representative Burnett, #71 presented an amendment on behalf of the Rock Creek Waters Users Association, see attachment #3. Their proposed amendment would give the legislature 8 members instead of 4, do away with the Governor and the bar and give the Supreme Court the authority to select the judges. They felt the Legislature was more expressive of the peoples desires. The amendment would eliminate the permit system and you would not have to go through the DNR to file suit.

Dave Cogley, attorney from Legislative Council, said there could be a constitutional problem. The constitution indicates that the district court have complete jurisdiction. He said you could give both boards concurrent jurisdiction, but then there would probably be a problem with administration. He felt the best way to go would be toward a constitutional amendment.

Representative Burnett said the time limit for selecting the committee was taken out. He did not feel the 30 days was

long enough, but said he would not object to putting in a longer deadline.

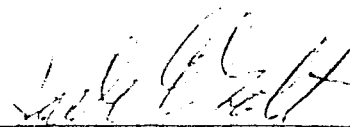
Ted Doney, presented the committee with three different sets of amendments. He said the Department of Natural Resources does not think that adjudication through the court process is mandatory. The attachment marked #4(1) would take the water judge out and has come clerical amendments. The set marked #4 (2) would leave the water judges in, but does have several other amendments. They also presented a copy of the bill the way it would appear if set #4(1) were adopted. See attachment #4(3).

Ron Watterman, Burlington Northern, presented an amendment to the bill, attachment #5. He said at present the bill calls for a \$40 filing fee. He said some concern had been expressed that everyone who has a water right might delay in filing their rights until the last few weeks. To encourage people to file early his amendment would reduce the fee in half for the first two years. This would encourage people to file between now and 1981. This would also spread out the filings. Senator Boylan mentioned that this could cut down on the revenue. Mr. Watterman said he would not object to the fees being more, the last two years to bring the revenue back up. When asked about the conflict between water judges and district judges, Mr. Watterman felt the better way to go would be toward a constitutional amendment to give the water judges single jurisdiction.

Mr. Pat Smith, Northern Plain Resource Council, submitted testimony which is attached #6, concerning the filing fee provision. They propose that on page 14, section 19, lines 11 and 12 be deleted. The language as it appears now favors the large water right holder. He felt the proposed amendment would be a more equitable fee schedule. He said this too could have an impact on the revenue generated. Senator Galt said this provision was put in to help the small irrigated farms. He said some small places even though the quantity of water isn't there, there may be many rights. During this discussion it was also brought out that stock water reservoirs would require a claim and a filing fee.

Senator Jegeson asked if a declining fee for the number of water rights was ever discussed. Representative Roth a member of the interim committee didn't think it had been. The \$40 filing fee was a recommendation from the DNR.

There being no further amendments the meeting was adjourned. Another meeting will be held on Monday, January 29 to further discuss the amendments.

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SENATOR JACK E. GALT, Chairman

Date 1-26

ROLL CALL

AGRICULTURE COMMITTEE

46th LEGISLATIVE SESSION - 1979

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NAME	PRESENT	ABSENT	EXCUSED
SEN. KOLSTAD	✓		
SEN. AKLESTAD	✓		
SEN. BOYLAN	✓		
SEN. CONOVER	✓		
SEN. GRAHAM	✓		
SEN. HAGER	✓		
SEN. NELSON	2:00 ✓		
SEN. GALT, Chairman	✓		

Each Day Attach to Minutes.

DATE January 26

COMMITTEE ON Agriculture

SB 76

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
John Wilson	Mt Council of Trout Unlimited			
Charlotte Easter	G. S. C.	SB76		
Brenda Bergquist	P.I.C.	SB76		
Don R. Edmann				
David Hoffman				
David Cox				
Bob Macdonald				
Michael Sell				
Robert F. Ellis	Holston Valley Irrig	SB76	<input checked="" type="checkbox"/>	
Edith Cox	Park County Leg. Ass	SB76	<input checked="" type="checkbox"/>	
KENE SPILDE	S. B. P. H.		<input checked="" type="checkbox"/>	
Willa Hill	League of Women Voters	SB76	<input checked="" type="checkbox"/>	
Hebin A. Hagleman, Jr	AT Peck Tribes - Poplar			
MALEB SHIELDS	TT. PECK TRIBES - DOPLAR	SB76		
Brad Okerlund		SB76	<input checked="" type="checkbox"/>	
Kim Ritter		SB76		
Stu F. Wikstrom	B.W. Inc		<input checked="" type="checkbox"/>	

Amend SB 76 on page 14, following Section 19, subsection (2) by inserting the following:

"NEW SECTION. Expenses to be borne by state. All expenses encountered as a result of this act are to be paid from the earmarked revenue fund of the state treasury. Expenses shall include, but not be limited to, the salaries and expenses of personnel; equipment; office space; and other necessities of the water courts. If sufficient revenue is not available from the earmarked revenue fund, said expense shall be paid from the state's general fund."

Remember following sections.

*Montana Assn of Counties  
Alan Zinnacker*



# Montana Inter-Tribal Policy Board

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

## OFFICERS

### CHAIRMAN

Tom Pabio

Flathead

### FIRST VICE CHAIRMAN

Bill Yellowtail

### SECOND VICE CHAIRMAN

Ivan Raining Bird

Rocky Boy

### SECRETARY-TREASURER

Don Bishop

Sheil

## MEMBER TRIBES

Blackfeet

Crow

Flathead

Nez Perce

Shoshone

Northern Cheyenne

Rocky Boy

Executive Director

Thomas C. Whitford

Blackfeet

## PROPOSED AMENDATORY LANGUAGE TO SENATE BILL NO. 76

NEW SECTION. Section 4. Jurisdiction of the water court. (1) A

water court has exclusive jurisdiction in matters arising in relation to the determination and interpretation of existing water rights under (this act). 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. It is the intent of the legislature that all such matters be brought in or immediately transferred to a water court unless witnesses have been sworn and testimony has been taken by the district court.

THIRTEENTH JUDICIAL DISTRICT

COUNTIES:

PIG HORN  
CARBON  
STILLWATER  
TREASURE  
YELLOWSTONE

Charles B. Sande  
District Judge  
Billings, Montana

January 25, 1979

Rep. James Burnett  
Box 16  
Capitol  
Helena, Montana 59601

Dear Jim:

In regard to your recent inquiry concerning matters relating to water rights adjudication, I would suggest for your consideration, the following:

Under the present rules of Civil Procedure, Rule 53(a) provides as follows:

"APPOINTMENT AND COMPENSATION. Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, and auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party."

I think it would be possible, with some supplementary amendments, to use this as a basis to support an appointment of water adjudicators. It could be provided that they have the same requirements of office as a district judge, and their salary could be set either at the same or perhaps somewhat less than the district judges.



AMENDMENTS TO SENATE BILL NO. 76--AMENDMENTS TO INTRODUCED BILL

- (1) Title, lines 5 through 10  
 Following: "to"  
 Strike: remainder of lines 7 through 10 in their entirety  
 Insert: "generally revise the laws relating to the determination of existing water rights in Montana; amending sections 85-2-112, 85-2-201, 85-2-202, 85-2-203, 85-2-204, 85-2-205, 85-2-206, 85-2-207, 85-2-208, 85-2-209, and 85-2-401, M.C.A."
- (2) Page 1, line 13 through line 1 on page 2.  
 Strike: Section 1 in its entirety  
 Renumber: all subsequent sections
- (3) Page 2, lines 2 through 25.  
 Strike: Section 2 in its entirety  
 Renumber: all subsequent sections
- (4) Page 3, lines 1 through 7.  
 Strike: Section 3 in its entirety  
 Renumber: all subsequent sections
- (5) Page 3, lines 8 through 21.  
 Strike: Section 4 in its entirety  
 Renumber: all subsequent sections
- (6) Page 3, line 22 through 6 on page 4.  
 Strike: Section 5 in its entirety  
 Renumber: all subsequent sections
- (7) Page 4, line 7 through line 3 on page 7.  
 Strike: Section 6 in its entirety  
 Renumber: all subsequent sections
- (8) Page 7, lines 4 through 7.  
 Strike: Section 7 in its entirety  
 Renumber: all subsequent sections
- (9) Page 7, lines 8 through 13.  
 Strike: Section 8 in its entirety  
 Renumber: all subsequent sections
- (10) Page 7, line 14 through line 25 on page 8  
 Strike: Section 9 in its entirety  
 Renumber: all subsequent sections
- (11) Page 9, line 1 through 6.  
 Strike: Section 10 in its entirety  
 Renumber: all subsequent sections

4#12

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PROPOSED  
AMENDMENTS TO SENATE BILL NO. 76  
AMENDMENTS TO INTRODUCED BILL

- (1) Page 3, line 9.  
Following: "has"  
Strike: "exclusive"
- (2) Page 3, line 23.  
Following: "make rules"  
Insert: "subject to ratification by the Montana Supreme Court"
- (3) Page 4, line 9.  
Following: "proceeding"  
Insert: "or pertinent portion thereof"
- (4) Page 7, line 2 through 3.  
Following: line 1  
Strike: subsection (6) in its entirety
- (6) Page 9, lines 18 through 19.  
Following: "department"  
Strike: "of natural resources and conservation"
- + (7) Page 9, line 19.  
Following: "no"  
Strike: "division"  
Insert: "diversion"
- + (8) Page 9, line 22.  
Following: "and"  
Insert: "individual as opposed to municipal"
- (9) Page 9, line 24.  
Following: "rights"  
Insert: "in the Powder River Basin"
- (10) Page 9, line 25.  
Following: "of"  
Insert: "the department or"

DATE

S. B. BILL NO. 76

INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE DETERMINATION OF EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 85-2-112, 85-2-201, 85-2-202, 85-2-203, 85-2-204, 85-2-205, 85-2-206, 85-2-207, 85-2-208, 85-2-209, AND 85-2-401, M.C.A."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Claim of existing water right--filing statement of claim required--exemptions. (1) A person claiming an existing right, unless exempted below, shall file with the department, no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) Claims for existing rights for livestock and domestic uses based upon instream flow or groundwater sources and claims for rights included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973 are exempt from the filing requirements of subsection (1) of this section. Such claims may, however, be voluntarily filed.

NEW SECTION. Section 2. Department of fish and game to represent public recreational uses. The department of fish and game shall represent the public for purposes of claiming and determining any prior and existing public recreational use in existing right determinations under part 2 of this chapter pro-

5  
NAME Ronald F. Waterman BILL NO. SB76  
ADDRESS P. O. Box 1686, Helena, MT 59601 DATE 012679  
WHOM DO YOU REPRESENT Burlington Northern Inc.  
SUPPORT XXX OPPOSE \_\_\_\_\_ AMEND XXX

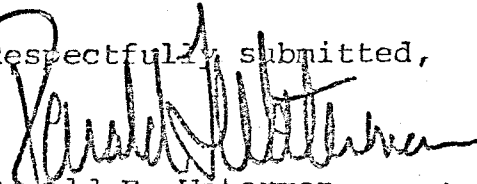
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We respectfully request that Senate Bill 76 be amended as follows:

Amend the introduced copy of the bill, page 14, line 18, by inserting a new subparagraph (c) to read as follows:

"(c) Each claim filed before July 1, 1981, shall be accompanied by a fee in the amount of \$20.00."

Respectfully submitted,  
  
Ronald F. Waterman  
Registered Lobbyist

# NORTHERN PLAINS RESOURCE COUNCIL

Main Office  
419 Stapleton Bldg  
Billings, Mt. 59101  
(406) 248-1154

Field Office  
PO Box 886  
Glendive, Mt. 59330  
(406) 365-2525

January 26, 1979

## SB 76 Water Adjudication

Mr. Chairman and members of the committee, my name is Pat Smith and I am testifying on behalf of the Northern Plains Resource Council. The NPRC is an organization of farmers, ranchers and other citizens primarily based in eastern Montana. In previous testimony before this committee, we expressed our support for SB 76, and today we again reiterate our support. We would, however, appreciate the committee's consideration of an amendment to the filing fee provision contained in Section 19 on page 14.

The filing fee, as proposed, favors the large water right holders in the state. For example, a landowner with 12 water rights in one of the water court districts would pay the same filing fee as as a landowner with 100 or 1200 water right claims. Thus a landowner with 120 or 1200 existing water rights in a water court district would pay only \$4 or 40¢, respectively, for each of their water rights. We feel a more equitable fee schedule is to charge everyone the same fee regardless of the number of water rights filed by one person.

A certificate of water right is an extremely valuable property right that will only increase in value in future years. It seems that the landowner with 100 water right filings values his water rights just as much as a landowner with 2 water right filings. It is only fair that both should be assessed the same filing fee per water right.

Again we appreciate the work the water sub-committee has done