

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

January 29, 1979

The eighth 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 12:30 p.m.

ROLL CALL: All members were present. Senator Hager arrived at 1:00. He had been testifying on another bill.

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

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

Senator Steve Brown presented proposed amendments to the committee, which are attached per exhibit #1. He said there is a constitutional problem with the district judges and the water judges. He felt someone would challenge the law in the constitution about the jurisdictional problem. He felt a constitutional amendment would be the way to solve the problem. It could be placed on the ballot in the primary election in 1980. He felt the Supreme Court could issue the rules until the constitutional amendment was passed. He said another problem in the bill was the disqualification of judges. The language in the bill conflicts with the Supreme Court ruling. He said an alternative to this would be to draft a joint resolution from the committee asking the Supreme Court to set up special rules of evidence and deal with disqualification provision. The Legislature could disapprove any rule they did not like in the next session. He also proposed the elimination of the special nominating commission and replace it with the existing nomination commission. He also expressed concern about the \$480 filing fee limitation. He felt it would do delay the filing process. The DNR could catalogue the claims and as soon as the amendment to the constitution was passed they would pass the information on to the water judges.

Ted Doney, Department of Natural Resources, stated that he would explain their proposed amendments on Set #2 (attached to the previous meeting) since the committee wanted to keep the water judges. He said he also felt there was a constitutional problem of whether we could set up water courts with exclusive jurisdiction. Their amendment would strike "exclusive". They also felt that the simple filing of the form for a water right would not be sufficient and wanted more information filed. They did not feel this would put additional burdens on the claimants. Another concern they had was on the failure to file. They felt if a person did not fail his claim should be forfeited. He said water rights are property rights and property rights can be taken away with due process of the law. They also would propose to delay the effective date because the department

would not have enough time to inform the public that they have to file. They also felt that everyone who files a claim even though they are not in the final decree should be notified. He said they were not in favor of a court adjudication process, because (1) they felt it would be impossible to do it through the courts, since no state has ever done it yet; (2) it would be too costly, especially to the claimants; (3) and that it was not necessary to have a court decree in most cases. Mr. Doney did not feel the Indians should be exempted.

Senator Boylan said that during the interim the committee had discussed the court system and felt it would be better because if it was done administratively decisions might be put off but a court would make a decision.

Rick Gordon, DNR, said the way the bill reads now, a municipality could take all the water they wanted and be exempt.

At this point Senator Aklestad moved the DNR's proposed amendments numbers 7 and 8 of their set-or numbers 1 and 2 on attached committee report. Motion carried.

Gordon McGowan, Montana Railroads, said that his proposed amendment would be that the chief judge report back to the Legislature every two years.

Senator Conover presented a proposed amendment to the committee. See attachment #3. This amendment would be a declining fee schedule for the number of claims a person had. He thought the entire state should be under this. Senator Jergeson said he had helped draw up this amendment because of the numerous mining claims in the western part of the state. Senator Conover moved the amendment. Motion failed on a roll call of 4 to 4.

Senator Boylan said that the House Select Committee on Water has several attorneys on it and could address itself to some of the amendments that this committee does not accept. The committee felt it would be better to get the bill over to the House so they could have time to further study it.

Senator Aklestad brought out that stock water dams and dead water are included in this bill.

Senator Kolstad mentioned that all of the water judges would not have to be appointed right away.

DISPOSITION OF SENATE BILL 76: Senator Kolstad moved that Senate Bill 76 DO PASS AS AMENDED. Motion carried unanimously.

The meeting was then adjourned.


SENATOR JACK E. GALT, Chairman

Date 1-29

ROLL CALL

AGRICULTURE COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

SENATE COMMITTEE AGRICULTURE

Date 1-29 Senate Bill No. 76 Time 1:30

Sally Watson
Secretary

JACK E. GALT
Chairman

Motion: Sen. Conover moved his
amendments attached -

Motion Failed

(include enough information on motion--put with yellow copy of committee report.)

DATE 1-29

1-29

COMMITTEE ON

VISITORS' REGISTER

S.B. 76

S. Brown

AMENDMENT TO REMOVE SPECIAL NOMINATING COMMISSION
AND TO REPLACE IT WITH EXISTING NOMINATION COMMISSION.

1. Page 7, line 14 through line 25 on page 8.
Strike: section 9 in its entirety
Renumber: all subsequent sections

2. Page 9, lines 2 through 6
Strike: all of lines 2 through 6
Insert: ". (1) The governor shall appoint persons to serve as water judges from nominees submitted by the judicial nomination commission as provided for in Title 3, chapter 1, part 10. For the purpose of nominating persons to serve as a water judge, a vacancy exists whenever a new water judge position is created, ~~or a water judge's term will expire within 60 days, or a water judge has resigned or is otherwise unable to complete his term.~~
(2) Whenever the position of chief water judge is vacant, the nomination commission shall recommend one nominee or water judge to be assigned as chief water judge."

S. Brown

PROCEDURAL CLARIFICATION

Proposal is to amend the bill to remove instructions concerning rules of procedure, evidence, and disqualification and instead submit a resolution addressed to the Supreme Court to consider these questions. The resolution would be a committee bill.

1. Page 3, line 22 through line 6 on page 4.

Strike: Section 5 in its entirety

Renumber: all subsequent sections

2. Page 4, line 7 through line 3 on page 7

Strike: Section 6 in its entirety

Renumber: all subsequent sections

SENATE BILL 76

New Section Section 19. Filing Fee -- Fee schedule -- special account created. (1) Each claim filed under [section 12] shall be accompanied by a fee except that no fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or verified as otherwise ordered by the court.

(2) Each claim filed under [section 12] shall be accompanied by a fee according to the following schedule:

- (a) for 1 to 12 claims, a fee of \$40 per claim,
- (b) for 13 to 24 claims, a fee of \$20 per claim in excess of 12,
- (c) for 25 to 36 claims, a fee of \$10 per claim in excess of 24,
- (d) for 37 or more claims, a fee of \$5 per claim in excess of 36.

(3) There is established a water right adjudication account in the earmarked revenue fund of the state treasury. All fees collected under [sections 19 and 22] shall be deposited in the account to pay the expenses incurred for administering [this act].

Illustration

Farmer A	12 claims	\$480
Farmer B	24 claims	\$720
Farmer C	36 claims	\$840
Farmer D	48 claims	\$900
Farmer E	100 claims	\$1,160

STANDING COMMITTEE REPORT

.....January 29.....1979.....

MR. President.....

We, your committee on.....Agriculture, Livestock & Irrigation.....

having had under consideration.....Senate.....Bill No. 76.....

Respectfully report as follows: That.....Senate.....Bill No. 76,.....
introduced bill, be amended as follows:

1. Page 9, line 19.

Following: "no"

Strike: "division"

Insert: "diversion"

2. Page 9, line 22.

Following: "and"

Insert: "individual as opposed to municipal"

3. Page 14.

Following: line 22

Insert: "Section 20. 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."

DO PASS

STATE PUS. CO.
Helena, Mont.

Renumber: all subsequent sections

And, as so amended,

DO PASS

SENATOR JACK E. GALT,

Chairman.