

HOUSE NATURAL RESOURCES COMMITTEE MINUTES  
February 14, 1983

The House Natural Resources Committee convened at 12:30 p.m. on February 14, 1983, in Room 224K of the State Capitol, with Vice-Chairman Bob Ream presiding and all members present except Reps. Brown and Iverson, excused, Fagg, Nordtvedt and Quillici, absent. Chairman Harper was before another committee testifying on one of his bills. Vice-Chairman Ream opened the meeting to a hearing on HB 711.

HOUSE BILL 711

REPRESENTATIVE DAN HARRINGTON, District 88, chief sponsor said the bill is at the request of the Department of Natural Resources and Conservation and requires the department to assess and collect fees from water use claimants to pay the expenses incurred by the state for administering certain water laws.

DAVID LEWIS, Office of Budget and Program Planning, had handouts for the committee. A copy is Exhibit 1 and 2 of the minutes. He discussed the handouts with the committee.

BOB ROBINSON, Assistant Administrator of the Department of Natural Resources, spoke as a proponent. He said the bill was an absolute necessity to let the DNRC complete the water rights adjudication. He said due to a number of exemptions given to people who hold a large number of claims, not all the revenue came in that was anticipated. If it had, he said they would be in asking for more money next biennium and not this one.

OPPONENTS

K.M. KELLY, Helena, Montana Water Developers Assoc., spoke in opposition and a copy of his testimony is Exhibit 3.

JO BRUNNER, Women Involved in Farm Economics, spoke next and a copy of her testimony is Exhibit 4.

MONS TEIGEN, Montana Stocktrowers, Woolgrowers, Cowbells and Montana Farm Bureau (for Pat Underwood), spoke in opposition. A copy of his testimony is Exhibit 5.

BILL ASHER, APA, PCLA, SCPA, said he was speaking as an individual for this testimony. He pointed out that other neighboring states had water statutes early: Idaho in 1903, North Dakota in 1905, South Dakota in 1907. But Montana didn't even start until 1973. When that legislation was passed and the Water Use Act mandated by the new constitution instructed the DNRC to do this, a member stood on the House floor and stated it would take 100 years and \$50 million to do this. And so the responsibility was transferred onto the water users themselves. The deadline has come and gone and the water users were led to believe they

would file their claims and pay their fees and any shortfall would be picked up by the general fund. He said he did not believe the water claimants would pay the extra fees and then the program will fall apart, and then we will be in a bigger mess than before HB 76. The Attorney General's opinion last summer indicates he has some problems with this approach. He felt passage of this bill could bring lawsuits and have the approach declared unconstitutional and then we would have lost more time and more ground in our attempt to adjudicate our water. State Lands and DNRC filed 8,000 claims according to the handout by Mr. Lewis and the extra payment for those will have to come from the general fund or out of their normal budget. Will the federal government pay willingly or will we need to take them to court. He said SB 76 was a people program and we are reminded every day that the water does not belong to us but to the state of Montana. Since it is for the best interest of the people of Montana, all the people should share in picking up the rest of the cost.

VERNON L. WESTLAKE, APA, PCLA and SGCPA, spoke in opposition and a copy of his testimony which includes a copy of Attorney General Greely's opinion is Exhibit 6.

STEVE R. MEYER, Exec. Vice President, Montana Association of Conservation Districts, spoke in opposition and a copy of his testimony is Exhibit 7.

ESTHER D. FUUD, Montana Cattlemen's Association, spoke in opposition and a copy of her testimony is Exhibit 8.

R. A. ELLIS, Montana Water Developers Association and self, said he felt cheated by this proposed legislation. He said he filed his water rights and paid his fees. He didn't feel it was right to come back and ask for additional fees after being told this wouldn't happen.

REPRESENTATIVE ASAY, District 50, said he would like to strongly register his protest to this. He said the state should maintain good faith with the people of Montana - what they said, they should do.

REPRESENTATIVE NEUMAN, District 33, said he rises in opposition to the bill but thanked Rep. Harrington for bringing it to the attention of the committee. He felt this measure could not be looked at in any way as solving the problem.

REPRESENTATIVE CURTISS, District 20, said she would also like to rise in opposition. She said it is unfair to place an extra assessment on the water users. She said go after the large divisions that are causing the problem and not those that comply.

REPRESENTATIVE HARRINGTON in closing said this last remark was a good point and the responsibility should lie in that area and not with the general populace of Montana.

Questions were asked by the committee.

Rep. Addy asked if any of the opponents represented an urban area. He said one of the arguments is the benefit to everybody. He asked what benefits his constituents would get from adjudication of water rights. Rep. Asay said the city of Billings has filed municipal water rights.

Vice-Chairman closed the hearing on this bill. Chairman Harper had returned and assumed the chair and he opened the hearing on SB 161.

#### SENATE BILL 161

SENATOR TURNAGE, District 13, chief sponsor, said this bill is an opportunity for us to send a valentine to the people of Montana and not a cold prickly. He said the bill established a Flathead Commission and is a very important piece of legislation for the entire state. The purpose of the Commission is to protect the existing high quality of Flathead Lake, the waters that flow into it and the natural resources of the Flathead Basin. He said there would be 14 members on the commission and he discussed the makeup of the commission from page 3 of the bill. He said the members will serve without compensation. The private members will be entitled to per diem compensation. He said the State Lands Department has offered them office space at no charge. He said the appropriations bill requests \$45,000 for the biennium. He said they might need a slight amount more than that. He said there are other opportunities for obtaining funding. The County Commissioners are authorized to provide at their discretion some of the coal tax allocations that the counties will receive. They will also be able to accept donations, gifts and grants as they are forthcoming. He said a study was done on the basin and this legislation would permit a continuity to deal with that technical data obtained from the study so it will not become fractionalized and fall through the cracks. He said he wanted to thank the Environmental Council for their assistance.

ELWIN BENNINGTON, Flathead River Basin Study, spoke next in support and a copy of his testimony is Exhibit 10.

RON COOPER, Flathead River Basin Study, said this was needed as a mechanism to continue the dialogue that has been begun. He said they have spent \$2.5 million gathering the data on the area. He said it is not one individual or group but everybody together that affects the lake. So a group like this is needed to tie the loose ends together. He said they do need the dialogue with

House Natural Resources Committee Minutes  
February 14, 1983  
Page 4

British Columbia, also. He said they have been exchanging data with them.

KEN KNUDSON, Montana Wildlife Association, said this is a very valuable lake. He said the largest danger to the lake is from poor land use practices. He said one of the main purposes of the Commission would be to prevent degradation to the water. He thanked Senator Turnage for sponsoring the bill.

SUSAN CUNNINGHAM, Environmental Information Center, said they strongly support the bill.

REPRESENTATIVE TED NEUMAN, District 33, said he rises in support of the bill.

DEBRA SCHMIDT, Environmental Quality Council, said they endorse the bill. She said Reps. Brown and Iverson, members of the Council, would be able to give more information on this.

REPRESENTATIVE AUBYN CURTISS, District 20, said she would like to rise in support. She said it was important to continue to monitor Cabin Creek and the impacts it will have. She had a suggested amendment as she said one of the interested parties to be on the commission had been omitted in the drafting of the bill. A copy of the amendment is Exhibit 11.

SENATOR TURNAGE closed. He said he wanted to thank the members of the steering committee for calling the need of this legislation to his attention last fall and he thanked the proponents for being there.

Questions were asked by the committee.

Rep. Asay asked about industrial concerns. Mr. Cooper said Cabin Creek is only six miles from the border and there are five additional coal deposits that have been identified. Senator Turnage said the Asarco aluminum mine has been there for a long time.

It was mentioned that all the challenges wouldn't be industrial as one of the most critical is phosphorous which comes from sewage disposal systems around the lake.

Rep. Neuman asked if they had applied for money from RRD for ground water study and work. Mr. Bennington said they did not have funds to set up the ground water study.

Rep. Jensen asked concerning the source of the phosphorous. Mr. Cooper said it comes from several areas including sewage treatment plants and detergents, one of the largest sources and one of the possible things to look at in the future.

Rep. Veleber asked if they planned to study the water quality. Senator Turnage said they are attempting to encompass the entire environmental area - all aspects and not just water. Rep. Veleber asked if more time was spent on the scientific than the social aspect. Senator Trunage said the scientific approach is important as it addresses what society's impact is on the environment. Rep. Veleber said what has happened to Lake Tahoe is what can happen to Flathead Lake. He said today the lake is clean enough so you can drink the water and he said we want to keep it that way.

Rep. Addy asked if the coal impact money received by Lake County make up any shortfall expected. Senator Turnage said the commission can get into operation and keep everything they now have gained with the appropriation that is requested. He said he had received a letter from the ORPP last December. The governor had put continuing monitoring of the Flathead in the budget directions. He said if the bill is approved, he thought they would be able to attract some other funds.

Rep. Ream asked about the amendment made in the Senate. Senator Turnage said after the bill was set for hearings he heard concerns from the Department of Forestry. He said recognizing that there is a large amount of state lands in the area, he felt they would enhance the commission and will not add any cost. The Division of Forestry is to make a member available for the hearing.

Rep. Bertelsen asked of the possibility of having a member from British Columbia on the commission. Mr. Cooper said they have been holding informational exchanges for the past few years and they seem interested, also in continuing this. As far as asking if they will be willing to serve on the commission, he said they haven't done that until they knew of the outcome of this legislation.

Chairman Harper closed the hearing on this bill and opened the meeting to executive session.

#### EXECUTIVE SESSION

HOUSE BILL 161 Rep. Asay moved BE CONCURRED IN. Rep. Ream said he had some questions about the members of the commission. He said he would like to talk to him a little more about it. He said of the fourteen members on the committsion, none of them have expertise in the area of aquatics.

Rep. Asay withdrew his motion.

House Natural Resources Committee Minutes  
February 14, 1983  
Page 6

Rep. Veleber said there should also be someone on the social aspects.

Rep. Asay said this is a bill that has to do with water information and the whole part of working in this area is to accumulate water information. The intention was for this to be an umbrella.

HOUSE BILL 711 Rep. Addy moved DO NOT PASS. Rep. Bertelsen said the whole process was started and then pressure was brought on the agricultural people who were happy with the water rights the way they were.

Rep. Jensen said it is for the general benefit of the people of Montana so it can't be separate from the general interest.

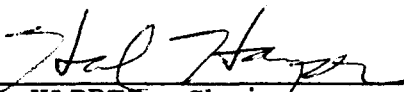
Rep. Asay said we were told that was all they would charge and it wouldn't be any more.

Chairman Harper reminded the committee there is legislation to market water so we need to get the water adjudicated and this is turning down one source of funding.

The question was called and the motion carried. Absent were Reps. Brown, Fagg, Iverson, Nordtvedt and Quilici.

The meeting adjourned at 2:05 p.m.

Respectfully submitted,

  
HAL HARPER, Chairman

Emelia A. Satre, Sec.

## VISITOR'S REGISTER

HOUSE            NATURAL RESOURCES            COMMITTEE

BILL HB 711

DATE 2/14

SPONSOR     HARRINGTON

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING' PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

86x.1

OFFICE OF THE GOVERNOR  
BUDGET AND PROGRAM PLANNING



TED SCHWINDEN, GOVERNOR

CAPITOL BUILDING

STATE OF MONTANA

(406) 449-3616

HELENA, MONTANA 59620

WATER ADJUDICATION PROGRAM FUNDING

1. Since the program began 201,165 claims have been filed. Total fees paid amount to only \$3,713,017. This is an average of \$18.46 per claim.
2. The fee income received will be exhausted this year. The appropriation committee was just asked to approve a General Fund Supplemental Appropriation of \$575,000 to finish out FY 83. 85-2-242 RCM states that if there is not enough fee income the expense shall be paid from the states general fund.
3. The costs anticipated for the coming biennium are as follows:

	<u>FY 84</u>	<u>FY 85</u>
D.N.R.C.	\$1,275,000	\$1,275,000
Water Courts	418,330	599,204
Total	<u>\$1,693,330</u>	<u>\$1,874,204</u>

4. The cost of completing the program will depend on how long it takes to finish the process. A conservative estimate would be at least \$15,000,000 since it will take at least 10 years to finish.
5. If the program were put on a fee basis the preferred method would be to set the fee based on actual cost of processing. An annual fee, if set at an average of \$10 a piece, would generate \$2,000,000 per year.
6. Who would pay the fee:

	<u>Number of Claims</u>
Federal Government	33,000
State Lands	8,000
Burlington Northern	1,700
Champion	850
Other Land Owners	157,615
Total Claims	<u>201,165</u>

7. Justification For a Fee:  
The landowner receives something of value from the state when they have a certificate of water right. The landowner should pay the cost of obtaining that certificate. It should be the same as the livestock brand recording system or the motor vehicle registration system. Both of these systems are maintained by fees assessed on those property owners whose property rights are being recorded.

DAVE3:Y/1



MEMORANDUM

TO: Dave Lewis, Budget Director

FROM: Leo Berry, Director  
Department of Natural Resources & Conservation

DATE: January 26, 1983

SUBJECT: Water Rights Adjudication Program Funding

Earmarked fund shortfalls for the Water Rights Adjudication Program created by insufficient fees must be addressed this legislative session. Section 85-2-242, MCA, indicates that if sufficient revenues are not available from the earmarked revenue fund, created with filing fees, expenses shall be paid from the state's general fund. Funding has become the next major hurdle for Montana's Adjudication program. At this time the Montana Water Court and DNRC are continuing their good faith efforts in an expeditious and efficient adjudication program while the Compact Commission continues similar efforts in the negotiation of Federal Reserved Water Rights.

The following table indicates the planned FY-83 expenditures for the adjudication program and includes expenses for the Reserved Water Rights Compact Commission that is staffed by this Department. A detailed breakdown can be found on the attached Operational Plan/Budget Amendment forms (B212).

	FY-83	
	<u>Authorized</u>	<u>Proposed</u>
	(\$)	(\$)
DNRC	1,977,072	1,416,588
Supreme Court	<u>395,000</u>	<u>276,000</u>
Totals	2,372,072	1,692,588
Earmarked Funds Available		1,117,332
General Fund Balance		575,256

As you can see, the Department's and the Water Court's proposed expenditures are considerably less than our authorized levels. Of course, the earmarked fund is not sufficient to cover FY-83 costs, indicating that the general fund would have to be tapped in accordance with Montana statutes to cover the deficit.

We request that you authorize the necessary steps so that the Water Court and the Department can expend \$575,256 from the general fund as mandated by 85-2-242 (MCA) thereby allowing the Department and Supreme Court to continue the adjudication and quantification of Montana's water rights.

A statewide adjudication is an expensive process even in its most streamlined form. The first fiscal note, prepared in April 1979, projected expenditures from FY-80 to FY-85 to be \$15,763,569. Current expenditure estimates for FY-80 to FY-85 are \$8,301,696. Table 1 identifies the budgeted and actual spending levels since the passage of Senate Bill 76 and indicates that the earmarked fund users have operated in a frugal manner. Approximately 23% of the legislative appropriations made since the inception of Senate Bill 76 programs have been saved. This is due primarily to concerted efforts in managing an efficient cost-effective program whose size coincides with the immediate goal to be met.

Filing fees were set in statute at \$40 per claimant per division. Claims on decreed rights were exempt from filing fees and two or more exempt uses from the same source could be filed for a single \$40 fee (individual domestic use and stockwater use of surface water without a diversion and groundwater were exempted from the adjudication process).

Monies resulting from this fee schedule were far less than anyone projected. For the 201,165 claims received only \$3,713,017 in fees were received for the earmarked revenue fund. This translates into an average of \$18.46 per claim submitted. The potential for revenue shortfall became apparent to DNRC in early 1982. During the last six months 56% of the claims were submitted and it was during this last rush period that the fee deficiencies became apparent. When the shortfall was projected steps were taken to reduce spending while still meeting our minimum mandated goals. Operating expenses were cut, positions were left vacant and within DNRC's adjudication staff some reduction in force actions were taken.

Again we request you authorize the spending of \$575,256 general fund monies for this fiscal year. Without this authorization neither the Court, Department nor Compact Commission can effectively continue pursuit of their mandated goals.

MM/pg

TABLE 1

Fiscal Year	Program	Earmarked Legislative Appropriation	Expenditures
1980*	DNRC-Adjudication Staff	430,000.00**	\$400,845.12
	-Reserved Water Rights		16,211.16
	Montana Water Courts		2,327.83
1981*	DNRC-Adjudication Staff	1,100,000.00	663,061.00
	-Reserved Water Rights		52,840.00
	Montana Water Courts		59,862.00
1982	DNRC-Adjudication Staff	1,380,888.00	1,084,327.00
	-Reserved Water Rights	214,964.00	138,506.00
	-Centralized Services	103,014.00	102,984.00
	Montana Water Courts	235,522.00	125,000.00
1983***	DNRC-Adjudication Staff	1,461,158.00	1,131,588.00
	-Reserved Water Rights	270,036.00	215,000.00
	-Centralized Services	101,841.00	101,841.00
	Montana Water Courts	395,023.00	288,000.00
	Totals	5,692,446.00	4,382,393.00

\*Appropriations in FY-80 and FY-81 were made to a general Adjudication account and all parties charged to that DNRC account. During the next biennium each entity was allocated its own appropriation.

\*\*The FY-80 appropriation of \$430,000.00 contains \$100,000.00 seed money.

\*\*\*Expenditures for FY-83 are projected figures. Year end totals will differ somewhat.

## WITNESS STATEMENT

Name K. M. Kelly Committee On Natural Resources  
 Address Helena Date Feb 14, 1983  
 Representing Mont. Water Develop. Assn Support \_\_\_\_\_  
 Bill No. HB 711 Oppose oppose  
 Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Comments:

1. We oppose HB 711 on the grounds and for the reasons
2. that all water rights filers were led to believe that when
3. they paid their \$40 or \$80 filing fee that it was final
4. and total payment for filing and adjudication and that
- any shortfalls would come from the general fund. DNR
- encouraged filers to file on wells, stock ponds along with
- other water uses. Since it has been declared that water
- rights adjudication was and is in the public interest
- it is our belief that all taxpayers should pay their
- share and it is therefore appropriate that any
- additional funds should come from the general fund.

K. M. Kelly  
 Exec Sec.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

# WIFE Women Involved In Farm Economics

NAME JO BRUNNER BILL NO. HB 711ADDRESS 563 3rd ST. HELENA DATE FEB. 14/83REPRESESENT WOMEN INVOLVED IN FARM ECONOMICSSUPPORT \_\_\_\_\_ AMEND \_\_\_\_\_ OPPOSE X

## COMMENTS:

MR. CHAIRMAN MEMBERS OF THE COMMITTEE, MY NAME IS JO BRUNNER, AND

I REPRESENT THE Women Involved in Farm Economics Organization.

We Rise in opposition To Any Additional Fees Imposed on Those Citizens who filed WATER claims for the adjudication of Montana WATER.

From the beginning of the ACTUAL adjudication PROCESS W.I.F.E. PARTICIPATED in ENCOURAGING Thier members To file claims. ~~One of~~ The questions most addressed WERE "is this all it will cost us? How can it be done for so little? Where will the REST of the cost be picked up?" And These questions WERE ALWAYS ANSWERED with "From the general fund." Opponents of the adjudication used the ARGUMENT that This would prove impossible and that we would be charged more. Again we were ASSURED by those who should know that This would not happen!

When we questioned the 12 claim - \$480.00 - as low - we WERE told that WAS feasible and would encourage more filings. When we questioned the very high estimate of those who would file we WERE given statistics that showed that feasibility. And we went out and encouraged filings on even those sources that WEREN'T mandated.

Now we are expected to not only pay for those filings, we ARE expected - the private citizen, who payed for Thier filings - to help pay for the STATE governments claims - ~~at~~ a GREAT CONTRIBUTOR To the great no. of claims above the \$480.

We would suggest that if additional fees ARE assessed, per claim it will be another 100 years before the citizens of Montana will participate was no fury like a woman scorned" in any water programs recommended by the STATE -

We do NOT concur with HB 711

Ex. 5

WITNESS STATEMENT

Name Mons Trigen House  
Committee On Nat. Res  
Address Helena Date 2/14/83  
Representing mt Stockgrowers, Woolgrowers, Cowbellers  
& Mont Farm Bureau Support \_\_\_\_\_  
Bill No. 711 Oppose X  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

- Comments: HB 711 ~~breaks~~ breaks faith with Montana's Agricultural  
1 Community. Claimants have paid their bills thus far and understood  
that future costs would be borne by the General Fund.  
2. The need for these filings is just as much a benefit to the public  
as the farmers.  
3. Agriculturists still have many expenses in connection with  
this process when they start with court cases and the attorney  
fees required.  
4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name BILL ASHER Committee On NAT. RES.  
Address P.O. Box 3285 Date FEB. 14, 1983  
Representing APA - PCIA - SCPA Support \_\_\_\_\_  
Bill No. HB 711 Oppose X  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name VERNON L. WESTLAKE Committee On H.B. 711  
Address 3186 LOVE LANE BOZEMAN Date \_\_\_\_\_  
Representing APA, PCA & SGCPA Support \_\_\_\_\_  
Bill No. H.B. 711 Oppose ✓  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. WATER ADJUDICATION STATUTORILY TO BE FUNDED FROM GENERAL FUND.
  2. REFERENCE - OPINION BY ATTY. GENERAL
  3. AGRICULTURE OBJECTS AS THE WATER ADJUDICATION PROCESS IS A STATE RESPONSIBILITY.
  4. REFERENCE - S.B. 76
- Also QUESTION THE FIGURES PRESENTED BY OFFICE OF BUDGET.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



February 14, 1983

Ex 6

HOUSE NATURAL RESOURCES COMMITTEE:

Mr. Chairman and Members of the Committee, I am Vernon Westlake and I am here representing the APA of Gallatin County, the PLCA of Park County, and the SGCPA of Sweetgrass County. For the record, the three groups oppose H.B. 711. We believe that H.B. 711 is not necessary and definitely not in the best interests of the people of Montana.

Mr. Dave Lewis, the Budget Director, requested an opinion from Mr. Mike Greely, Attorney-General, July 30, 1982, regarding the funding of appropriations enacted by the 1981 Legislature for Montana's Water Courts, for the Reserved Water Rights Compact Commission, and for a portion of the operations of the DNRC. I should like to have included, a copy of this opinion which, I believe, definitely states that the water adjudication process is statutorily to be funded from the General Fund and not by assessing an additional fee for each water use claim that has been filed by the people of Montana.

We believe the State has a responsibility to fund the water adjudication process since this will benefit all the people in Montana. The water belongs to the State and the people have a right to a beneficial use. The adjudication process also satisfies the Constitutional requirement that all existing water be recorded in a centralized system, again a responsibility of the State.

I should like to conclude by saying that we, as agricultural water-use claimants, feel that S.B. 76 guaranteed that a one-time fee would be all that would be necessary to administer and adjudicate the existing water rights in the State of Montana.

I thank you for this opportunity to address this Committee. I will be glad to try to answer any questions.

Vernon L. Westlake

PAGE 1

STATE  
OF  
MONTANA  
ATTORNEY GENERAL  
MIKE GREELY

STATE OF MONTANA, DISTRICT OF COLUMBIA, AND TERRITORIES

30 July 1982

Mr. David M. Lewis  
Budget Office  
Office of the Governor  
State Capitol  
Helena, Montana 59620

Dear Mr. Lewis:

You have requested my opinion regarding the funding of appropriations enacted by the 1981 Legislature for Montana's Water Courts, for the Reserved Water Rights Compact Commission, and for a portion of the operations of the Department of Natural Resources and Conservation. In HB 500 and HB 617, the Legislature appropriated funds for the operation of these agencies to be drawn from an earmarked revenue account generated by fees paid under the State's water claims registration program. It now appears that the amount generated by these fees will not be sufficient to fund the 1981 appropriations. You ask whether the shortfall may be covered by general fund monies.

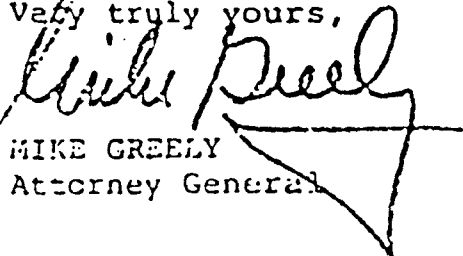
I agree with the reasoning of your memorandum. Section 85-2-242, MCA, explicitly states that the State will finance the activities of the water courts, the compact commission and DNRC in administering the water claims program, and that "[i]f sufficient revenue is not available from the earmarked revenue fund, the expense shall be paid from the State general fund." The quoted portion anticipated precisely the situation presented here, and it explicitly allows the expenditure of general fund monies in the manner you propose.

Certain language in HB 617 and HB 500, § 8, can be read to limit the appropriations in the bill to earmarked funds. However, such a result is directly contrary to the language specifically provided in section 85-2-242, MCA. A court would be reluctant to find the last sentence of section 85-2-242, MCA, repealed by such an inconsistency, since repeals by implication are not favored, particularly where the repealing language is found in an appropriations bill and is alleged to repeal prior substantive policy. See City of Helena v. Omholt, 155 Mont. 212, 222, 468 P.2d 764, 769 (1970). Moreover,

30 July 1982

the Montana Supreme Court has held that in resolving conflicts between a statute dealing with a specific topic and later general legislation, a court will reach the result which best effectuates the underlying policies of the legislation. Dolan v. School District No. 10, 38 St. Rptr. 1903, 1907-8, 636 P.2d 825, 828 (1981). Your memorandum discusses in some detail the policies underlying Montana's water claims procedures. These policies would obviously be frustrated if the program must cease to function because of a revenue shortfall. I therefore conclude under Dolan that section 85-2-242, MCA, controls over inconsistent language in HB 500 and HB 617.

Very truly yours,



MIKE GREELY  
Attorney General



# Montana Association Of Conservation Districts

6X.7

7 Edwards  
Helena, Montana 59601  
Ph. 406-443-5711

February 14, 1983

Mr. Chairman, Members of the Committee:

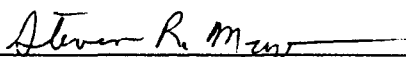
For the record I am Steve Meyer, representing the Montana Association of Conservation Districts.

We would like to go on record as opposing passage of HB 711.

When the legislature passed SB 76 in 1979 the water users of the state were told that the cost for filing a claim and getting their water right adjudicated would be \$40/claim up to a maximum cost of \$480 in each water division. If that did not generate enough money to complete this program, the State said it would pick up the tab. The water users of Montana said they'd go along with this plan for their own good and the general welfare of the State. We feel that it is a terrible injustice to change the rules in the middle of the game. The state should assume the responsibility it accepted in 1979 to fund completion of the adjudication of the state's water rights.

Again, we urge a "Do not Pass" on HB 711.

Thank you.

  
\_\_\_\_\_  
Steven R. Meyer  
Executive Vice President

SRM:dv

Ex. 8

WITNESS STATEMENT

Name Esther D. Ruel Committee On Taxation  
Address Colonial Inn Helena Date 2-14-83  
Representing Montana Cattlemen's Assn. Support \_\_\_\_\_  
Bill No. HB 711 Oppose X  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Strongly oppose HB 711.
2. Personally assumed people last time they would not have to file on their water rights again. But that it was necessary to file against last time so the State of Montana could have all of the water.
3. Rights filed in one "central" area. Please ensure there that would take care of it for good.
4. He oppose this bill for many of the same reasons the other Agricultural organizations have voiced here today.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

EX.9

# BILLINGS BENCH WATER ASSOCIATION

1111 MAIN

P. O. BOX 50150

BILLINGS, MONTANA 59105

February 11, 1983

House-Natural Resources Committee  
Helena, Montana 59601

Re: House Bill 711

Gentlemen:

This letter will serve as notice on the stand the Billings Bench Water Association takes regarding House Bill 711.

We are very much opposed to having the persons who filed water right claims pay for the costs for adjudicating the water rights above and beyond what they have already paid for.

The legislature passed the bill for adjudication process in 1973. Many of the people had already filed for water rights in prior years and should have established their right by use; however they had to file again in order to comply with the law. We are aware that there are many good points about the law; however, the costs will be too great for the claimants to continue paying on.

The Fish & Game Commission, The Cities, and even the State of Montana have filed claims on water. Everyone in Montana benefits from the water they filed on; therefore, the monies for funding to the NDRC should come from the general fund as we all have to pay for benefits through our State Taxes.

Please advise us if we can do anything to support this stand in order to prevent a law like this from passing.

Thank you.

Sincerely,



Gloria Lueck  
Secretary-Treas.

Ex. 90

Mr. Chairman and Members of the Natural Resources Committee:

I am Elwin Bennington, vice-chairman of the Flathead River Basin Study Steering Committee. The Steering Committee, representing local government, business and citizens, supervised a 5-year economic, environmental and social assessment of these conditions in the Flathead River basin, including Flathead Lake. The study was funded by the EPA because proposed mining and development activities threatened the economic well-being of the basin. The study report of scientifically reliable baseline conditions will be completed by July 1, 1983, and the steering committee will cease to exist.

The report contains accurate and credible information that those who manage land and water need to develop our resource without degrading it. However, those jurisdictions responsible for management of land and water include two countries, the State of Montana, two counties, two Federal agencies, a private corporation and an Indian reservation. Local and special interests preclude an effectively cooperative effort at managing so that one purpose of a Basin Commission is to help these diverse entities form a basinwide coordinated effort for the benefit of all concerned.

To maintain its integrity, the Flathead Lake-River system needs a continued assessment of such things as phosphorus, nitrogen and silt, and the cumulative effects of small chemical changes which might together make for dramatic change in the system. Such assessments should be carried out continuously (monitoring) because a bonus of the study is the ability to predict areas of critical importance for management.

(Cont.)

A Flathead Basin Commission would encourage cooperation; it would coordinate and seek funding for a sound monitoring program; it would eliminate duplication of effort; it would provide a focus for collection and dissemination of scientific data and information; and it would provide for continuing public awareness.

We urge you to vote favorably on Senate Bill 161 for the establishment of a Flathead River Basin Commission.

Thank you.



*in by 11*

Senate Bill 161

1. Page 3, line 6.  
Following: "be"  
Insert: "a representative of the holder of a  
license issued for the Flathead  
Project under the Federal Power Act  
and another one of whom must be"

# STANDING COMMITTEE REPORT

February 21,

19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE** Bill No. **711**

**First** reading copy (**White** **Color**)

**A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ASSESS AND COLLECT FEES FROM WATER USE CLAIMANTS TO PAY THE EXPENSES INCURRED BY THE STATE FOR ADMINISTERING CERTAIN WATER LAWS; AMENDING SECTION 85-2-241, MCA; AND PROVIDING AN EFFECTIVE DATE."**

Respectfully report as follows: That **HOUSE** Bill No. **711**  
**be amended as follows:**

1. Page 2, line 1.  
Following: line 25, on page 1  
Insert: "(1)"

2. Page 2, line 8.  
Following: "collection."  
Insert: "However, no additional fee may be assessed for claims primarily for the purpose of stockwater or human consumption or to claimants with fewer than fifty individual claims. As used herein actual adjudication costs include all costs incurred in the adjudication of existing rights since May 11, 1979 through completion of the adjudication process under this chapter."

**DO PASS** **AND AS AMENDED**  
**DO PASS**

**HAL HARPER,**

Chairman.

# STANDING COMMITTEE REPORT

March 7,

19 83

MR. **SPEAKER:**

We, your committee on **NATURAL RESOURCES**

having had under consideration **SENATE** Bill No. **161**

third reading copy (blue)

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A FLATHEAD BASIN COMMISSION TO COORDINATE MONITORING OF THE QUALITY AND CONDITIONS OF FLATHEAD LAKE AND THE NATURAL RESOURCES WITHIN THE FLATHEAD BASIN; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That **SENATE** Bill No. **161**

be amended as follows:

1. Page 1, line 7.

Strike: "14"

Insert: "13"

2. Page 4, line 2.

Strike: "four"

Insert: "five"

3. Page 4, line 6.

Strike: "and"

4. Page 4, line 8.

Following: "engineers"

Insert: ", and the holder of a license issued for the Flathead Project under the Federal Power Act"

**END AS AMENDED**

**DOES CONCUR IN**

**SEN. MAPPER**

Chairman.