

MINUTES OF THE JUDICIARY COMMITTEE
March 15, 1983

The meeting of the Judiciary Committee was called to order by Chariman Dave Brown at 8:35 a.m. in room 224A of the capitol building, Helena, Montana. All members were present except for Representative Seifert. Ms. Brenda Desmond, Staff Attorney for the Legislative Council was also present.

SENATE BILL 23

SENATOR HAGER, District 30, Billings, said that this bill was designed to make it clear that water judges and water masters could hold hearings on preliminary decrees. He stated that they have changed the language to read that hearings will be heard before the water division, which allows that the hearings will be heard either before a judge or a water master. He continued that also in subsection 4, that the water judge is not required to hold a hearing on the water master's report. He indicated that this rule was specifically added because rule 53 (e) provides that within ten days after a master holds a hearing and issues a report, the parties may have the matter reheard by a judge. He noted that this does not preclude the judge granting a hearing in those cases where a water master has used his discretion that the hearing was clearly erroneous. He informed the committee that these bills were all introduced at the request of the water board.

JUDGE W. W. LESSLEY, Chief Water Judge, stated that they suggested that this bill be introduced; and at the hearing before the Senate Judiciary, there was a question raised as to the fact that they were eliminating the right of a person to have their hearing before a judge. He noted that rule 53 (e) provides a procedure where you can hear motions if someone is dissatisfied with the hearing. He testified that they do not disagree with the right to be heard by a judge - as a matter of fact, they insist upon that right; but, in order to speed up the hearings, they use water masters; they have two water masters now and hope to put another one on. He commented that this only streamlines the water courts and he hopes they will give it consideration and pass it as the Senate did.

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STEVE MEYER, representing the Association of Conservation Districts, appeared in support of this bill and stated that they were for anything that would speed up the adjudication process.

KEN KELLY, representing the Montana Water Development Association, rose in support of this bill plus SB 37, SB 41, and SB 99.

There were no further proponents.

KARLA GRAY, representing the Montana Trial Lawyers' Association, testified that they opposed this bill. She said that a citizen who is claiming a water right has a right at some time, short of the Montana Supreme Court, to appear in front of a judge. She indicated that they understand the concerns about streamlining and about trying to move things along, but, at the same time, they believe in the areas of such vital concerns of Montanans, that it is just unwise to take away that opportunity to appear in front of a judge. She exclaimed that her other concern was that hearings shall be conducted for other civil actions; that that then contemplates the Montana Rules of Civil Procedures, including the rules that discusses and deals with masters, which is rule 53. She stated that the first provisions in rule 53 is that masters basically should be the exception and not the rule. She continued that the statute requires that the master, after holding the hearing, prepare a report; then a person has the right to make a motion and ask for a hearing, if that person is not satisfied with the master's report. She indicated that this should be a hearing before a judge and she felt that this bill would just do away with that portion of 53.

There were no further opponents.

SENATOR HAGER closed by saying that if you do not like the decision by one court, you can appeal it to another court. He stated that water masters are working for the judges and he has a lot of confidence in the judges. He informed the committee that they have 200,000 claims; they have got to be adjudicated and if they do not get them done, they will never be done. He felt that if things go very smoothly, they might be done in three to five years.

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REPRESENTATIVE SPAETH noted that they have used the word, "water court"; and he said that it was his understanding that when they put together the water courts, they were very careful to use the term, "water division" and he wondered if they should change that back to water division to coincide with the present law that talks about a water division.

JUDGE LESSLEY replied that since they are going to have a great deal of elbow room in moving judges from place to place, and not keeping one judge in one division and tying him down to one water master in one division, it would be more mobile if they used the language, "water court."

REPRESENTATIVE SPAETH commented that he does have some real doubts as to why they are going to water courts and he felt that they better look at the language and talk about what a water court is. He also noted that if they were to pass SB 23, they would take a decision of the water master to the supreme court as opposed to a decision of the water judge if there were reasons for an appellant review. JUDGE LESSLEY responded no, the procedure is the same; and he stated that in SB 37, they defined that the water courts are composed of water judges, water masters, and other personnel directed to adjudicate the waters of the state of Montana. He commented that they felt that that would take care of the question of division.

REPRESENTATIVE SPAETH indicated that he also had some problems with the reasons they were very careful four years ago when they wrote the legislation concerning water courts as opposed to water divisions. He wondered what has changed in that time to change their opinion why water courts are now allowable as opposed to water division. JUDGE LESSLEY replied that he did not think there has been a change; but that they felt that this was too solidified, and the water courts should move around. He continued that they have been working with it now for about two years and they have this difficulty.

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REPRESENTATIVE SPAETH questioned if a water master issues a decision, it does not have to have a hearing before the court, he wondered how do you have an appellant review of the judge's decision as opposed to the water master's decision, if you do not like it. JUDGE LESSLEY replied that the procedure is that the water master would be assigned to one of the 85 basins under the supervision of a judge; once the preliminary decree is handed down by the water master and the judge; the notice is sent out to the water rights claimants; they file their objections and he stated that is how it was done in the two Powder River Basins. He continued that those hearings were full hearings with many of them having counsel on both sides; after which they decided not to appeal the water master's decision to the water court; and the decisions had been made on those particular objections; they had been integrated into a preliminary decree and now, within the period of time allowed, if they are not appealed to the supreme court, they will go up on that particular preliminary decree.

REPRESENTATIVE SPAETH questioned if the water masters have to be lawyers. JUDGE LESSLEY replied yes. He asked how long has it been since they graduated from law school. JUDGE LESSLEY answered that he did not know exactly; he thought John was out about three years. He explained that there is nothing in the statute that says that the water masters need to be a lawyer, but they felt, under the circumstances, that these water masters should be lawyers. He declared that the Supreme Court of the United States does not go out and try the case - they send a master out.

REPRESENTATIVE DAILY asked what is a water master and how do you get to be one. SENATOR HAGER replied that he is an attorney who is hired by the courts who has expertise in the law as it relates to water; and they are the right-hand man of the water courts.

LEANN SCHRAUDNER a water master, explained that in every hearing that they hold, their findings and facts are included in every memorandum that they write and they

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submit this to the judge and to the party whose water right was heard. She continued that if that party does not like their decision, he can ask the water judge to have another hearing in front of the water judge; then, if he does not like the outcome of the water judges's hearing, if the water judge grants the hearing, he can appeal to the supreme court.

REPRESENTATIVE SPAETH noted that she said that they could have another hearing before the judge and he wondered if this bill was not designed to eliminate that and make that hearing discretionary. MS.SCHRAUDNER replied that the bill is designed to provide that the water judge always has to hear the motion that the party requests a new hearing, but the water judge has the option to deny it. She indicated that they do not want to get in the bind where you have the master hold the hearing with counsel, witnesses and a lot of time and then the judge has to hear it over. She said that the judge will hear those matters over that he feels have merit and it will be much like a counsel's motion for a new trial, which is not always granted.

REPRESENTATIVE DAILY asked how many hearings had she held since she became the water master. MS. SCHRAUDNER responded about 25 to 30, but they have been on over 300 water rights and she has hearings on other civil matters. She explained that she consolidated cases - one party had 15 water rights and she could hear them all at one time at one hearing.

REPRESENTATIVE DAILY questioned as to how long she had been a water master. MS.SCHRAUDNER replied 2 1/2 years.

REPRESENTATIVE DAILY asked JUDGE LESSLEY how many cases he had heard. He responded that he has not heard any, but he supervises all of the questions that have come up with questions of law; he has been on top of these hearings; he will be taking on the Madison, which will be about 4,000 claims; he has taken on the Gallatin and will probably take on Rock Creek.

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REPRESENTATIVE DAILY asked if anyone has appealed any of these cases. MS. SCHRAUDNER replied that one has asked for a judge to review them and there have been several attorneys involved including counsel from the Department of Justice, but no one has requested that, but that option is open.

REPRESENTATIVE DAILY wondered if they were all happy, to her knowledge. MS. SCHRAUDNER responded that she does not know whether they are happy - she doesn't know what they feel after a decision. She indicated that she was sure they were not all happy - nobody is always happy.

REPRESENTATIVE HANNAH asked how many are being appealed across the state and if they have a problem with people wanting to come before the judges. JUDGE LESSLEY replied that they do not.

REPRESENTATIVE HANNAH asked if he perceives such problems. JUDGE LESSLEY answered that he thought there would be cases around Deer Lodge; they will have appeals; he thought in the Madison, they will have appeals. He exclaimed that this was the intent of the legislature that they use masters back in 1976, and with three part-time judges and one full-time judge, there was no way that they could try all these cases.

REPRESENTATIVE HANNAH indicated that the testimony showed that they have heard over 300 claims, but that none have been appealed and that he had not had to sit through a hearing on anything and he wondered where is the problem if that is an indication of what is going on around the state. JUDGE LESSLEY answered that he was apprehensive; knowing what can happen in water cases.

REPRESENTATIVE JENSEN asked what are the guidelines for appeal of the water master's decision. JUDGE LESSLEY responded that there are none. He explained that the water master has, with the supervision of the judge. the right to issue a preliminary decree and the claimant gets a notice along with an abstract that says this is your water right and this gives all the details. He

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continued that it says within a certain period of time, you may file a precise objection either to your water rights or water rights that affect your rights; this is then set down for hearing by the master; when they decide whether they are right or wrong they will issue an order and this becomes a preliminary decree which may be appealed from if there are objections to the additional preliminary decree to the supreme court.

REPRESENTATIVE JENSEN asked who makes the decision as to whether there will be an appeal heard - the water judge or the supreme court. JUDGE LESSLEY answered that the party who is not satisfied can go before the supreme court.

REPRESENTATIVE JENSEN wondered what rules govern that appeal when they make that appeal. JUDGE LESSLEY responded that the supreme court, except that the legislature in its wisdom said that you must have been there to object to the preliminary decree and you must object precisely - you can't use a shotgun.

REPRESENTATIVE JENSEN asked if the supreme court can deny to hear this. JUDGE LESSLEY answered that he did not know - all he knew was that they can do most anything. He commented that he can hardly wait for a couple of appeals so that they can settle some questions they have early.

REPRESENTATIVE ADDY asked if the facts are quite often in dispute on these adjudications. MS. SCHRIVER replied that she always tries to hold a pre-trial if only for a question of law, but for the most part, most of them are based on facts.

REPRESENTATIVE ADDY asked if the rules of evidence apply here and she answered yes, but she will bend over backwards to see that they have their day in court.

REPRESENTATIVE ADDY asked MS. GRAY if this was a particular complex area of law. She responded that she thought it was fairly complex if, for no other reason, there is 125 years of water right claims of every sort imaginable, some of which have have been adjudicated two or three

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times before this. She declared that this is not just straight forward, but it is a complex matter and of real vital concern.

REPRESENTATIVE ADDY requested that JUDGE LESSLEY respond to that same question. JUDGE LESSLEY replied that he thought it is a specialized field of law; there are not too many that spend too much time in it; he felt it is very important because water is a very valuable personal right and property right and they are not like a permit and are very important.

REPRESENTATIVE ADDY said that on one hand we are setting up a streamline procedure and have provided for review before a judicial officer, but on the other hand, you are saying that the judge works so closely with the hearing, he wonders what would be the point of appealing the master's findings to the judge. JUDGE LESSLEY replied that he did not think that that would interfere; he did not think that they have made their minds up on that and if you do, they have four judges and they could call another one in.

REPRESENTATIVE ADDY said that if the decision of the master is, to a large degree, the decision of the judge, it would make the appellate process a little useless. JUDGE LESSLEY said that he was not sold on this and he liked the water masters because they are not quite so sure and not so set in their opinions and they fret and worry about these cases.

REPRESENTATIVE ADDY questioned KARLA GRAY if she could enlighten him on what the judges could do that the masters can't do in this area. She replied that under the rules they are operating under, that a judge can't do anything that a master can't do. She also indicated that she was not familiar with the qualifications of the masters and she did not know if there were official requirements.

REPRESENTATIVE ADDY said he felt that if a master had to handle a jury, that that is a very delicate matter and he wondered why someone with the experience of Ms. Schraudner would be less qualified than someone like Judge Lessley.

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MS. GRAY said that she did not know if anyone is less qualified, but her group's objection to this bill is a broader problem in the moving away from the judge and she said this is a basic philosophical argument.

REPRESENTATIVE CURTISS wondered if Ms. Gray's objections had been adequately addressed from Judge Lessley's standpoint. JUDGE LESSLEY replied that when he tries an accounting case, he always calls in an accountant - he does not understand accounting; he does not understand the language they use; when he gets a rate case, he can't even read that language in there; he reads it forward and it means one thing; he tries it backward - ass backwards or forwards, he said it is gobbley, gobbley gook. Now a master with expertise does a better job than he does, he asserted, and they do a good job and it is a challenge to them.

REPRESENTATIVE KEYSER asked about the new language on the bottom of page 2, and he wondered if somebody wants to have that hearing would he be willing to hold that hearing. JUDGE LESSLEY replied that he has a case in Missoula that was tried with a master; four days of hearings concerning real estate transactions; the party lost and wanted a hearing before him; he told him to submit the briefs and he said he wanted to be there, but he changed his mind and is now going to get it on briefs.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 37

SENATOR HAGER, District 30, Billings, said that this bill was an act clarifying that the Montana water courts have jurisdiction of water rights arising both before and after 1973; clarifying the composition of water courts; providing for judicial review of administrative proceedings by the water judge of the appropriate water division and providing for the location of hearings upon judicial review. He stated as the law now stands all pre-1973 water rights are dealt with exclusively by the water division of the district court; any questions requiring judicial review of post July 1, 1973 water issues are filed in the district courts because presently the water division has no jurisdiction.

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He continued that this legislation will put all water decisions in the same court - the water court; thus providing for hearings on post-July 1, 1973 in a court that has water expertise. He declared that this was not intended to create a system of water courts in perpetuity as this is subject to legislative approval.

He noted that the language on page 1, lines 14 through 20 does set up the water courts and he explained that the reason for putting all the water decisions in one system of courts is that you may have two conflicting claims of water rights and they may be in different courts.

R. E. ELLIS, representing the Montana Development Association, W.I.F.E. and the Farm Bureau, want to go on record as supporting this bill.

BILL ASHER, representing the Agriculture Preservation Association, Park County Legislative Association, and Sweetgrass Preservation Association, stated that they support the judge, the water masters and the water courts and they also support SB 23 and SB 41.

There were no further proponents and no opponents.

SENATOR HAGER closed.

REPRESENTATIVE SPAETH questioned if they were to pass SB 23 and SB 37, would that mean that there is the possibility of an appeal from an administrative hearing to a water master or a water judge. JUDGE LESSLEY replied that he thought the best way to answer this is to explain that the water master has nothing to do with the condition provided for under SB 37. He informed the committee that this deals with permits; these permits do affect existing water rights on particular streams at one time or another; the department agrees that all these matters be heard in the water courts; and in the last section where it states, "Any hearing held upon judicial review pursuant to this section shall be held in the county of the place of beneficial use of the water applied for." this was added to it. He explained that this means if you have a permit denied or objected to, your judicial review will not be heard in some court in Helena, but in the county of the place of use. He noted

that what this says is that the judicial review of the Montana Administrative Procedure Act shall be exercised exclusively by the water judge of the appropriate water division of the Montana water court. He explained that this meant if you have a permit problem in Sidney, it could be held there in the local area rather than going to Helena.

REPRESENTATIVE SPAETH said that it was his understanding that this was the place of residence of the person bringing the appeal or the First Judicial District. He said this provision has arisen when the Montana Power Company, instead of having it in Butte, has brought it to the First Judicial District. He also felt that it looked like the water masters can appeal from looking at the general duties of the water masters; he said they give the water masters broad powers. JUDGE LESSLEY responded that he did not think so - the judicial review under the Montana Administrative Procedure Act shall be exercised exclusively by the water judge of the appropriate water division. REPRESENTATIVE KEYSER noted that that sounded about as plain as you can get.

REPRESENTATIVE SPAETH indicated that these are primarily administrative proceedings that are held pursuant to the Administration Procedure Act and the water courts have no specialized jurisdiction or knowledge as far as administrative procedures are concerned. JUDGE LESSLEY exclaimed that that is right, but if a fellow asks for a permit from the department; he is granted that after a hearing before an examiner; then the other parties involved appeal; and that is where they come in. He stated that there are about 180 appeals pending at this time; they affect these prior 1973 rights because somebody has come in and filed a permit claim; and he felt that the water judges in the appropriate division should hear the matter.

REPRESENTATIVE SPAETH asked when he thought the whole water rights process will be done. He replied that they can get it done within five years, but the lawyers say that it has already taken them ten years in the Powder River River Basin. He emphasized that when they get it done, they are going to fold their tents and steal away.

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REPRESENTATIVE EUDAILY asked on page 1, line 20, who was the other personnel. JUDGE LESSLEY replied that they have the personnel, who are doing a fine job, that clarify and verify the adjudications so that all these claims will be in that computer by June; they have secretaries in their office, they have a gal that has been coding changes and that is all the personnel.

REPRESENTATIVE EUDAILY said that his problem with that is it says personnel to adjudicate the water of the state of Montana, and he felt that those people do not adjudicate. JUDGE LESSLEY answered that he thought this gal that does the coding is really part of the adjudication process. He commented that you should ask some of these barristers around the table what a law clerk does.

REPRESENTATIVE SPAETH wondered why they did not change water courts and expand the definition of water divisions to eliminate the water courts, because the problem is that when he sat in on these hearings exactly four years ago, there was a great deal of concern about calling them water courts. He explained that they do not allow specialized courts under the Montana Constitution and he wondered why open the door to water courts as opposed to water divisions, when you can do just about everything you want to do by expanding the water division. LEANN SCHRAUDNER a water master, replied that in the Senate Judiciary hearing, they had proposed an amendment to alleviate that problem, but they chose not to accept that proposal. JUDGE LESSLEY said that they do not disagree with them, but he thought that what they were concerned with is they wanted them to be part of the district.

REPRESENTATIVE SPAETH requested that they leave those amendments with the committee as he would like to take a look at them. See EXHIBIT A.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 41

SENATOR HAGER, District 30, Billings, stated that this bill was designed to have the Department of Natural Resources

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send all their certificates directly to the owners of the water rights as opposed to sending them to the county clerks and recorders. He informed the committee that this reduces costs and the burden to the counties. He explained that the department will send copies of their quarterly and annual reports to the clerk and recorder of each individual county. He testified that this will be much less costly and will work better all the way around.

R. A. ELLIS, representing the Montana Water Development Association, W.I.F.E., and the Farm Bureau, rose in support of this bill and urged the committee to pass it.

There were no further proponents and no opponents.

SENATOR HAGER closed.

REPRESENTATIVE JENSEN noted in the fiscal note that the long-range impact would be \$19,555.00 and he would assume that they are saying that the department has already budgeted for costs to cover this. MS. SCHRAUDNER replied that when this bill was originally drafted, it provided that the water right had to be recorded with the county clerks and recorders and that would have cost the state that much. She explained that this bill was redrafted to do away with this and this also did away with that cost.

REPRESENTATIVE JENSEN asked about the legal implications of filing and depositing. MS. SCHRAUDNER said there is a provision that says when you deposit a document in a storage vault and make it available to the public as opposed to recording it in the clerks and recorders' ledgers, that cost the money. She informed the committee that there is SB 370, which is a clean-up bill that the department drafted, but it deals with this specific provision and if they both pass, they will sort of overlap.

REPRESENTATIVE ADDY asked what SB 370 does. MS. SCHRAUDNER answered that SB 370 provides that the Department of Natural Resources send quarterly reports to the clerks and recorders, updating water rights and that they send a compilation of all those water rights to the clerks and recorders and the original water right itself will be sent directly to the individual.

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REPRESENTATIVE JENSEN asked who was the sponsor of that bill. MS. SCHRIVER responded Senator Etchart.

GARY FRITZ, Administrator of the Water Resources Division of the Department of Natural Resources, informed the committee that that was the bill that there was a long discussion on who to object to the water right application and the Fish and Wildlife Department was concerned that they would not have an opportunity to make their concerns known.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 99

SENATOR HAGER, District 30, Billings, stated that this bill would allow the water courts to move their staff anywhere they were needed so they would have more flexibility to get the job done. He explained that the state was divided into four basins, when this was first set up - there was the Yellowstone Basin, the lower Missouri Basin, the upper Missouri Basin and the basin west of the Continental Divide. He indicated that they also provided for a water master to be hired for each division and it has now been decided that they can work more expeditiously if they can be assigned to any division.

JUDGE W. W. LESSLEY said that if he could have his druthers, this is the bill he would druther have. He commented that he does not want any of them to go down the chute but please don't let this bill go by; if they were operating the way the statute says, they would have four divisions with one judge in each division with one water master in each division with one court reporter in each division, etc., etc., and never the twain shall meet. He insisted that that is not the way you adjudicate water in the great state of Montana; there are 200,000 claims; if they need to, the chief water judge should be able to send water masters to different parts of the state and then all these claims are going to go into the computer. He stated that different adjudication officers are working at different speeds because of different problems.

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There were no further proponents and no opponents.

SENATOR HAGER said that if anyone can get this job done, Judge Lessley can, and he felt he had the best judgment of where these people should be assigned.

REPRESENTATIVE SPAETH asked in connection with the language on page 2, lines 5 through 7, that in order to appoint a water master, you would have to get budget approval before that appointment could be made. JUDGE LESSLEY responded that each judge can appoint one water master.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 41

REPRESENTATIVE JENSEN asked GARY FRITZ how they were going to handle the final disposition of their claims - they are going to mail two pieces to the courthouse instead of one, and it shows no fiscal impact and he wondered about sending one document to the courthouse and he asked if they were doubling their mailing expense. MR. FRITZ responded that he did not know what the mailing budget would be but he said what goes to the county is a summary of the computer listing and they do not have to pay the expense of having each individual certificate but only the computerized summary.

REPRESENTATIVE JENSEN asked JUDGE LESSLEY if he was a cynic or an optimist. He replied that he was a 33-year-old judge and an very Scotchman.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 381

SENATOR HAGER, District 30, Billings, explained that a friend of his came to them, and they were very upset as about five years previously their daughter had a child, she did not want to take care of the child, she didn't have a husband so the grandparents raised the child like their own for five years. He continued that then the daughter came back, she had gotten married and she decided that she wanted the child back. He stated that they were told that they could

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not get visitation rights because under Montana law, grandparents' rights are only applicable in the case where the parents are divorced, does not have control of the child or the parents have died. He said that if the parent is alive and has control of the child, the grandparents have no legal standing for visitation rights. He exclaimed that was why he had this bill drawn and this would extend the visitation rights to any grandparent provided that the child has not been adopted by someone else other than a parent or a step-parent.

There were no proponents and no opponents.

SENATOR HAGER said that he did not ask the people to come here to testify as they are not people of means and it would be a difficulty for them to come.

REPRESENTATIVE BERGENE asked if he had had a chance to talk to REPRESENTATIVE MCBRIDE as her bill is so much like this. SENATOR HAGER replied that he did talk to her and after talking to her, he decided to go ahead on this bill for two reasons - (1) her bill was written as a general revision of grandparents' rights and this does terminate the grandparents' rights in case the child has been adopted out; (2) he did not want to take any chances with the termination of those rights.

CHAIRMAN BROWN pointed out that the Senate Judiciary tabled Representative McBride's bill.

There were no further questions and the hearing on this bill was closed.

SENATOR HAGER informed the chairman that Representative McBride will carry the bill on the floor of the House; and Representative Neuman will carry all the water court bills on the floor of the House.

EXECUTIVE SESSION

SENATE BILL 381

REPRESENTATIVE JAN BROWN moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE CURTISS.

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REPRESENTATIVE CURTISS felt that there was a real need for this bill because she had four instances in the last couple of years where grandparents have appealed to her for help and they were not given any consideration at all. She stated that some have applied for custody and have been denied it for what seemed very frivolous reasons and on the recommendations of very young social workers.

The motion carried unanimously.

SENATE BILL 99

REPRESENTATIVE KEYSER moved that the bill be concurred in. The motion was seconded by REPRESENTATIVE JAN BROWN.

There was no discussion and the motion carried unanimously.

SENATE BILL 41

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JENSEN.

CHAIRMAN BROWN commented this is the one similar to SB 370 and he thought that was going to die in Natural Resources.

REPRESENTATIVE CURTISS noted that this was just a straightforward direction that they go to the person who should be receiving them.

REPRESENTATIVE JENSEN said they are talking about 200,000 claims and this would cut down about 40 to 50 per cent of the mailings.

REPRESENTATIVE KEYSER stated that you are also cutting out having to file that in the clerk and recorder's office, which is a heck of a saving.

The motion carried unanimously.

SENATE BILL 37

REPRESENTATIVE BERGENE said that she thought Judge Lessley said something about we have fit in the system so well, that he is real worried that they could be unconstitutional.

REPRESENTATIVE JENSEN commented that that is what he said and he was supporting the contention that division was better than courts.

REPRESENTATIVE SPAETH said that he had some definite views on this bill that, if the committee adopts his views, they might not need amendments; the water courts are going to be in existence for five years or a little longer but not for very long; they are very busy; water adjudication should be their only priority at this time; and what we are trying to do is transfer approximately 180 administrative appeals over into the water division. He continued that if in the appeals, they want to have the water courts do it, they can stipulate that; there are four cases now of administrative appeals that are very much involved in water rights; and that is what happens if there is a serious water rights question dealing generally with pre-1973 water rights. He advised that the vast majority of these appeals are from the hearing examiners that handle water administrative questions; we are adding more judges in the First Judicial District, which has administrative law experience and background; adding other judges in other areas to help with caseloads there; and he would just as soon not add more work for the water judges. As a result, he made a motion that this bill BE NOT CONCURRED IN. REPRESENTATIVE VELEBER seconded the motion.

REPRESENTATIVE CURTISS opposed the motion and stated that she thought it was just common sense that all these issues be brought into one court system because what is done in permitting is going to have an impact on water rights and the other way around. She felt that if we are going to protect the existing rights, everything should be in proportion.

REPRESENTATIVE KEYSER made a substitute motion that this bill BE CONCURRED IN. REPRESENTATIVE IVERSON seconded the motion.

REPRESENTATIVE SPAETH said that he thought the problem is that in a water rights hearing, you think you are going to be involved in a prior-1973 water rights; generally, they are not that much involved; the majority of those cases are appealed on the basis of administrative criteria; in fact, 80 to 90 per cent of the questions raised are administrative criteria as opposed to water rights criteria. He said that if water rights becomes the major criteria, it sees its way into the water courts. He did not feel that

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they wanted to be burdening the water courts with any more material because they are going to be taking from their time; they have four judges and four water masters, who are eventually going to be handling 200,000 water rights applications; and he did not want to have anything messing around with that for the next five to seven years.

REPRESENTATIVE KEYSER said that, for exactly the reasons that Representative Spaeth has submitted, he felt that this should be passed. He explained that if we say 80 per cent of these are administrative, there are 20 per cent that is not; those cases could have quite an impact on part of this total process of getting this water adjudication correct and right; and he felt that those hearings could actually have a tremendous kickback on what the judges are doing, what they are planning on doing and what the water masters are doing; and he thought that they should have it.

CHAIRMAN BROWN commented that he thought there was a valid concern about water courts vs. water divisions.

REPRESENTATIVE SPAETH responded, saying that when he said 20 per cent involved water issues, the water issues are not critical water issues; it generally is a question of how a prior water right is going to be affected by the new water rights application; what we are dealing with primarily are the existence and validity of that water right; the hearing examiner, in almost all instances, acknowledges that the water right has some validity; the question that comes up is whether the headgate is going to be properly constructed; and he thought that 20 per cent was a little high. He said that four out of 180 have made their way into the water courts and he did not know why they should send the other 176 in there and he did not think they need to add another three years in there.

CHAIRMAN BROWN wondered about changing the language from water courts to water divisions.

REPRESENTATIVE KEYSER said that it should be division because in the books and in the statutes and all through, they talk about water division; even Judge Lessley indicated that they would rather have that division language in there.

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Page Twenty

REPRESENTATIVE IVERSON commented that the big question is that it may be considered unconstitutional.

REPRESENTATIVE SPAETH explained that under the Montana Constitution, it is fairly specific as to courts; while it is not totally clear, it seems to be a little uncertain as to whether expert subject-type courts could be created under the Montana Constitution; they felt water courts would be an extra subject matter or specialized court under the constitution; and the legislature, in the 1979 session, decided the best way to approach it would be to not set up a specialized water court, but to set up water divisions under the present existing district court system and avoid the conflict. He stated that they may be constitutional but why raise the question. He indicated that the Indian tribe do not want to come to the state courts and have their water rights adjudicated, for many reasons; they will raise every question they can raise so why give them another question to raise unless you want to see additional litigation here. He stated that, while Judge Lessley did not recommend this, he was not adverse to this.

REPRESENTATIVE KEYSER moved the adoption of the amendments. REPRESENTATIVE IVERSON seconded the motion. See EXHIBIT A.

REPRESENTATIVE EUDAILY stated that he noted that in the title they had left out the language providing for the location of the hearing on judicial review. CHAIRMAN BROWN replied that this was probably the language that was amended in the Senate Judiciary.

REPRESENTATIVE EUDAILY indicated that he did not see where they deleted that section in the bill. CHAIRMAN BROWN said that the amendments would be on line 15; and should be amended by striking "and water courts" and on lines 19, strike "courts" and insert "divisions".

REPRESENTATIVE EUDAILY said that on page 20 of the amendments they handed out, they have added the word "division" in front of "personnel". REPRESENTATIVE KEYSER commented that he thought that would be a good idea, too.

REPRESENTATIVE EUDAILY said that he was still hung up on this particular point where it says, "and other personnel directed to adjudicate the waters of the state of Montana", because he does not think that clerks are directed to adjudicate water. He felt that only water masters and water judges can do this. He contended if that is left in there, it would seem as though someone else could make these decisions.

REPRESENTATIVE RAMIREZ replied that it was a little confusing and he thought that it meant that they, all together, are directed to adjudicate the water in the state of Montana.

REPRESENTATIVE EUDAILY moved to strike "directed to adjudicate the water of the state of Montana."

REPRESENTATIVE SPAETH said there was one other place on page 3, line 19, that he found and he moved to strike "of" through "court". The motion was seconded by REPRESENTATIVE SPAETH. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE IVERSON seconded the motion. REPRESENTATIVE SPAETH pointed out, while he is still opposed to the bill, that on lines 20, 21 and 22, this language changes the venue provision he noted that generally the place of review is the place of residence of the person bringing the lawsuit or the First Judicial District; the Montana Power Company brought their litigation to the First Judicial District; other than this, there has not been a problem; and he was inclined to amend it out, but he was not sure if the committee is so inclined. He continued that he would still urge the committee to reject this bill because they are adding one burden that is presently taken care of sufficiently by the present judicial system; they are adding judges to the present judicial system to help take care of that problem; and they are concerned about 180 cases. He said, "Let's let those go forward where they are at and let's let those go before the water judges where stipulated; and let's not mess around with the water courts and let them get on with their business."

The motion carried with 10 voting aye and 7 voting no. See ROLL CALL VOTE.

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March 15, 1983
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SENATE BILL 23

REPRESENTATIVE JENSEN moved that this bill BE NOT CONCURRED IN. The motion was seconded by REPRESENTATIVE HANNAH. REPRESENTATIVE JENSEN said that he had a problem and he wondered if these people will be allowed to have their day in court. He commented that there is no guarantee that the supreme court is going to give them that day; if they don't have any access to the judge prior to this they won't see a judge; he did not think this resolves any problem and even the judge said that there was not a problem.

REPRESENTATIVE HANNAH stated that he agreed; they have not demonstrated that there is a problem now; but even more than that, he questioned how many times a judge who works that closely with his assistants, is going to agree to have a hearing to overturn that assistant's work. He noted that, in a court system, the adversary relationship in the appeal process goes to a completely different set of judges; in district court, those appeals are taken to the Montana Supreme Court; and it is not as though they are in the same office working very closely together on the same case. He felt that this was too close a situation.

The motion carried with 10 voting aye and 7 voting no. See ROLL CALL VOTE.

SENATE BILL 114

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE FARRIS seconded the motion.

Proposed amendments to this bill were passed out. See EXHIBIT B. CHAIRMAN DAVE BROWN suggested that the bill be amended on the third amendment where it says "any local investigations" by striking "local" and "investigations" and inserting "investigating agencies"; and insert a new subsection 2, which would be identical to the blue bill subsection 3, page 2, line 15, where it says, "For the purpose of this section, etc." and subsection 2 of the amendment will become subsection 3, but on the next-to-the-last line, strike "coroner" and insert "county attorney".

Judiciary Committee
March 15, 1983
Page Twenty-three

REPRESENTATIVE JENSEN moved that the amendments be adopted.
The motion was seconded by REPRESENTATIVE FARRIS.

CHAIRMAN BROWN noted that the subcommittee did a good job on these amendments; and he felt this made this a good bill by letting the property or the note go to the personal representative; or, if there is none, to the family; or if there is none, to someone designated by the county attorney.


The motion to amend carried unanimously.

REPRESENTATIVE DAILY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

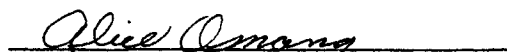
REPRESENTATIVE HANNAH suggested that they put in language repealing section 44-3-402. The motion was seconded by REPRESENTATIVE FARRIS. The motion carried unanimously.

REPRESENTATIVE DAILY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

At 10:56 a.m. REPRESENTATIVE KEYSER moved that the meeting be adjourned.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

.....March 13,..... 19 81.....

SPEAKER :
MR.

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **881**

third reading copy (blue)
color

**"AN ACT TO ALLOW ALL GRANDPARENTS THE OPPORTUNITY TO SEEK VISITATION
RIGHTS WITH THEIR GRANDCHILDREN; AMENDING SECTION 40-9-102, MCA."**

Respectfully report as follows: That..... **SENATE** Bill No. **381**

BE CONCURRED IN

~~DO NOT~~

STANDING COMMITTEE REPORT

March 15,

1983

SPEAKER :

MR.

JUDICIARY

We, your committee on

SENATE

99

having had under consideration

Bill No.

third

reading copy (blue)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ASSIGNMENT
AND TRANSFER OF JUDGES, WATER MASTERS, AND OTHER COURT PERSONNEL
IN THE GENERAL ADJUDICATION OF WATER RIGHTS; AMENDING SECTIONS
3-7-223, 3-7-301, AND 19-5-103, MCA."**

SENATE

99

Respectfully report as follows: That

Bill No.

BE CONCURRED IN

~~XXXXXX~~
DO PASS

DAVE BROWN,

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

March 15, 19 83

MR. **SPEAKER,**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **41**

THIRD reading copy (**BLUE**)
color

~~A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE ORDERLY PROCESSING OF TRANSFER OF WATER RIGHTS CLAIMS AND TO REVISE THE LAW RELATING TO THE ISSUANCE OF CERTIFICATES OF WATER RIGHTS IN THE GENERAL ADJUDICATION OF WATER RIGHTS, AMENDING SECTIONS 85-2-221 AND 85-2-236, MCA."~~ **REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMPILE REPORTS OF ALL CERTIFICATES OF WATER RIGHTS ISSUED BY THE DEPARTMENT; REQUIRING THAT COPIES OF FINAL WATER RIGHTS DECREES AND COPIES OF THE REPORTS BE SENT TO THE COUNTY CLERK AND RECORDER OF ALL COUNTIES; AMENDING SECTION 85-2-236, MCA."**

Respectfully report as follows: That **SENATE** Bill No. **41**

BE CONCURRED IN

~~XXXX~~
~~DO PASS~~

STANDING COMMITTEE REPORT

March 15, 1963

1963

MR. SPEAKER:

Water Committee on

JUDICIARY

Having had under consideration

SENATE

Bill No.

reading copy ()
Color

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE MONTANA WATER COURTS HAVE JURISDICTION OF WATER RIGHTS ARISING BOTH BEFORE AND AFTER 1973; CLARIFYING THE COMPOSITION OF WATER COURTS; PROVIDING FOR JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS BY THE WATER JUDGE OF THE APPROPRIATE WATER DIVISION; PROVIDING FOR THE LOCATION OF HEARINGS UPON JUDICIAL REVIEW; AMENDING SECTIONS 3-7-101, 3-7-224, 3-7-501, 3-7-502, AND 85-2-121, MCA."

Respectfully report as follows: That.....SENATE.....Bill No. 37

BE AMENDED AS FOLLOWS:

1. Title, line 7.
Following: "WATER"
Strike: "COURTS"
Insert: "DIVISIONS"
2. Page 1, line 15.
Following: "divisions"
Strike: "and water courts"
3. Page 1, line 19.
Following: "The water"
Strike: "courts"
Insert: "divisions"

DEP. CLERK

March 15,

1903

4. Page 1, line 20.

Following: "other"

Insert: "division"

Following: "personnel"

Strike: "directed" through "Montana" on line 21.

5. Page 3, line 18.

Following: "division"

Strike: "off" through "court" on line 19.

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 15, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **23**

third reading copy (blue)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
STREAMLINING OF HEARINGS AFTER THE ISSUANCE OF A PRELIMINARY
DECREE IN THE GENERAL ADJUDICATION OF WATER RIGHTS; AMENDING
SECTION 85-2-233, MCA."**

Respectfully report as follows: That **SENATE** Bill No. **23**

BE NOT CONCURRED IN

XXXXXX
DO PASS

STANDING COMMITTEE REPORT

11 of 2

March 15,

83

19.....

MR. **SPEAKER** ;

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **114**

third reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENSURE THAT PROPERTY FOUND WITH OR UPON A DECEDENT AND ANY SUICIDE NOTE WILL BE GIVEN TO DECEDENT'S FAMILY OR OTHER PERSON ENTITLED THERETO PERSONAL REPRESENTATIVE OR TO THE PUBLIC ADMINISTRATOR, EXCEPT WHEN THE PROPERTY OR NOTE IS CONSIDERED BY THE COUNTY ATTORNEY TO BE EVIDENCE OF A CRIME; PROVIDING A RETROACTIVE PROVISION; AMENDING SECTION 44-3-402, MCA."

Respectfully report as follows: That..... **SENATE** Bill No. **114**

BE AMENDED AS FOLLOWS:

(See Page 2)

DOCKX36

1. Title, line 7.

Following: "REPRESENTATIVE"

Strike: "OR TO THE PUBLIC ADMINISTRATOR"

Insert: "FAMILY OR OTHER PERSON ENTITLED THERETO"

2. Title, line 9.

Following: "CRIME;"

Strike: "PROVIDING" through "AMENDING" on line 10.

Insert: "REPEALING"

3. Page 1, following the enacting clause.

Strike: Sections 1 and 2 in their entirety.

Insert:

"Section 1. Disposition of property of deceased --- suicide note. (1) Any property of a decedent, or any suicide note composed or purportedly composed by a decedent in the custody of the county coroner shall be held until such time as the county attorney establishes that it is not necessary to hold such property or note to determine the true cause of death, to assist any investigating agency or to be used as evidence in any related criminal court action.

(2) For the purposes of this section, "investigating agency" means any county attorney, the state medical examiner, and any law enforcement agency of this state and any political subdivision of this state having jurisdiction of the death.

(3) When such property or note is no longer needed for evidentiary purposes, it shall be given, upon written request, to the personal representative of the decedent appointed under Title 72 or, if no personal representative is appointed, to the decedent's family or whoever, in the discretion of the county attorney, should receive the property or the note.

Section 2. Repealer. Section 44-3-402, MCA, is repealed."

AND AS AMENDED
BE CONCURRED IN

	Date: 3/15 No: SB 37 Be Con- curred In	Date: 3/15 No: SB 23 Be Not Con- curred In	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	no	yes				
ADDY, Kelly	—	—				
BERGENE, Toni	yes	no				
BROWN, Jan	yes	yes				
CURTISS, Aubyn	yes	no				
DAILY, Fritz	yes	no				
DARKO, Paula	yes	yes				
EUDAILY, Ralph	no	yes				
FARRIS, Carol	no	yes				
HANNAH, Tom	yes	yes				
IVERSON, Dennis	yes	no				
JENSEN, James	no	yes				
KENNERLY, Roland	no	yes				
KEYSER, Kerry	yes	no				
RAMIREZ, Jack	yes	no				
SCHYE, Ted	yes	no				
SEIFERT, Carl	—	—				
SPAETH, Gary	no	yes				
VELEBER, Dennis	no	yes				

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL Senate Bill 23

DATE March 15, 1983

SPONSOR Senator Hager

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 37

DATE March 15, 1983

SPONSOR Senator Hager

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name K.M. Kelly Committee On Judiciary
Address Helena Date 3/15/83
Representing Mont. Water Development Assn. Support X
Bill No. SB 23, 37, 41 and 99 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: 1. *we support these bills as amended to enable the water
boards to more efficiently adjudicate water rights*

K.M. Kelly

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

WITNESS STATEMENT

Name Robert A Ellis Committee On Judiciary
Address 1735 Sierra rd Helena Mt Date 3/15/83
Representing Mont. Water Devel Ass'n Support X
Bill No. SB 23, SB 37, SB 41 SB 99 Oppose _____
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.

VISITOR'S REGISTER

HOUSE

JUDICIARY

COMMITTEE

BILL SENATE BILL 41

DATE March 15, 1983

SPONSOR Senator Hager

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 99

DATE March 15, 1983

SPONSOR Senator Hager

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Proposed Amendments to SB 114

1. Title, line 7.

Following: "REPRESENTATIVE"

Strike: "OR TO THE PUBLIC ADMINISTRATOR"

Insert: "A FAMILY, OR OTHER PERSON ENTITLED THERETO"

2. Title, line 9.

Following: "CRIME;"

Strike: "PROVIDING" through "MCA." on line 10.

3. Page 1, following the enacting clause.

Strike: Sections 1 and 2 in their entirety.

Insert: "~~There is a new MCA section that reads:~~

Section 1. Disposition of property of deceased --- suicide note. (1) Any property of a decedent, or any suicide note composed or purportedly composed by a decedent in the custody of the county coroner shall be held until such time as the county attorney establishes that it is not necessary to hold such property or note to determine the true cause of death, to assist any local investigations or to be used as evidence in any related criminal court action.

(2) When such property or note is no longer needed for evidentiary purposes, it shall be given, upon written request, to the personal representative of the decedent appointed under Title 72 or, if no personal representative is appointed, to the decedent's family or whoever, in the discretion of the coroner, should receive the property or the note.

Amendments to HB 502

1. page 2, line 4
Following: "within"
Strike: "7"
Insert: "14"

2 Page 2, line 9
Following: "such"
Strike: "7"
Insert: "14"

