

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 12, 1983

The fifth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on January 12, 1983 at 10:00 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present except for Senator Brown who was excused. Senator Shaw was then excused to attend a meeting of the State Administration Committee.

INTRODUCTION OF SENATE BILLS 23, 37 and 41: Senator Hager, sponsor of these bills, explained that they were being introduced at the request of the Interim Water Adjudication Oversight Committee in order to help the water adjudication program.

Judge W. W. Lessley was then introduced to the committee as the Chief Water Judge for the Water Adjudication Program and as a proponent to these bills. Judge Lessley explained that SB23, SB37 and SB41 were basically "housekeeping bills." He then introduced Leanne Schraudner, Water Master, and advised the committee that she would be presenting these bills.

CONSIDERATION OF SENATE BILL NO. 23:

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.

Leanne Schraudner explained that this bill was designed to expedite the adjudication process by enabling Water Masters, as well as Water Judges, to hold hearings on preliminary decrees. She further explained that there was a need for an amendment to the bill as drafted. The amendment would change the language on page 1, line 15 to include that a hearing may be held before the water "division" rather than just "water judge." A proposed amendment along with an explanation of the bill was then distributed to the committee (see Exhibit "A").

There were no further proponents and no opponents.

Senator Galt moved to amend the bill as proposed. This motion passed unanimously and the hearing was closed.

CONSIDERATION OF SENATE BILL NO. 37:

AN ACT CLARIFYING THAT THE MONTANA WATER
COURTS HAVE JURISDICTION OF WATER RIGHTS
ARISING BOTH BEFORE AND AFTER 1973; CLARI-
FYING THE COMPOSITION OF WATER COURTS;
PROVIDING FOR JUDICIAL REVIEW OF ADMINI-
STRATIVE PROCEEDINGS BY THE APPROPRIATE

WATER DIVISION; AMENDING SECTIONS 3-7-101,
3-7-224, 3-7-501, 3-7-502, AND 85-2-121,
MCA.

Leanne Schraudner advised the committee that the purpose of this bill is to eliminate the word "existing" from the phrase "existing water rights" and the bill provides that the water courts would have jurisdiction and hear appeals from the DNRC. An explanation of the bill, along with a proposed amendment was distributed to the committee (see attached Exhibit "B").

James Moore, an attorney from Bozeman and ranch owner with water rights, testified as a proponent to this bill and said there is a need for judicial authority and that venue should be in the county where the appropriation permit is granted. This would distribute the workload rather than overloading the courts as it is now. Mr. Moore also submitted a proposed amendment to the committee (see Exhibit "C").

John Holter, representing the Montana Farm Bureau, also testified as a proponent to this bill. He stated SB37 would insure the protection of water rights, both before and after 1973.

Jo Brunner of the Montana Water Development Association spoke in support of SB37.

There being no further proponents and no opponents, the hearing on SB37 was closed.

Chairman Turnage informed the proponents of Senate Bills 23, 37 and 41 that the proposed amendments will be referred to the staff for researching. At this time he also requested that the letter from Judge Lessley dated January 7, 1983 should be included in the Minutes for reference (Exhibit "D").

CONSIDERATION OF SENATE BILL NO. 41:

AN ACT TO PROVIDE FOR THE ORDERLY PROCESSING
OF TRANSFER OF WATER RIGHTS CLAIMS AND TO
REVISE THE LAW RELATING TO THE ISSUANCE OF
WATER RIGHTS; AMENDING SECTIONS 85-2-221 AND
85-2-236, MCA.

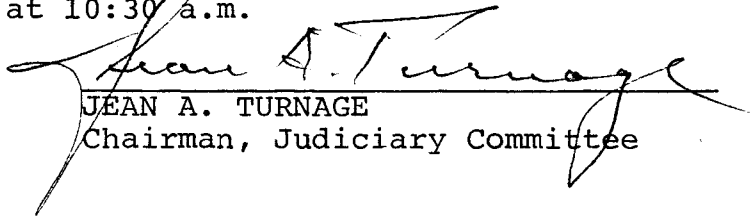
Senator Hager, sponsor of this bill, advised the committee that it would relieve the cost burdens on individual counties. Leanne Schraudner then explained that it was designed to eliminate the work for county clerk and recorders and relieve costs and burdens on the individual counties. An explanation of the bill and proposed amendment was then distributed (Exhibit "E").

Senate Judiciary Committee
January 12, 1983
Page 3

Senator Galt pointed out the fiscal note attached to SB41. Leanne Schraudner then explained that the proposed amendment would eliminate the costs to the state included in the fiscal note.

There being no further proponents and no opponents, the hearing on Senate Bill 41 was then closed.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 10:30 a.m.



JEAN A. TURNAGE
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 1-12-83

NAME	PRESENT	ABSENT	EXCUSED
	✓		
Berg, Harry K. (D)			
Brown, Bob (R)			✓
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)			✓
Turnage, Jean A. (R)	✓		

Each day attach to minutes

BILL NO. SB23, 37, 41

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
Charles Landman	MEIC		
John Holter	Montana Farm Bureau	✓	
DAVID C. MOON	Individual water users	✓	
Jim Nore	self	✓	
Will Brooke	MTWBA / NSGA		
D. MACINTYRE	DNRC		
Peter Stanley	DNRC / Best Water Right Compact Comm		
Gary Fite	DNRC		
George J. Juro	self.		
Mike Abley	Supreme Court		
Boyle Mandley	State Lands		
Jim J. Juro			
Ted J. Doney			
K Paul Stick			
Ann Eagle			
Robert Eagle	University of Montana		
Bill Hanson	URD		
Sam Conaway	Coordination of Indian Affairs Office		

(Please leave prepared statement with Secretary)

NAME: Senate - Tom Hays DATE: 1-12-83

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? SB - 30 + Water Court

APPEARING ON WHICH PROPOSAL: SB 23, 37, 41

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

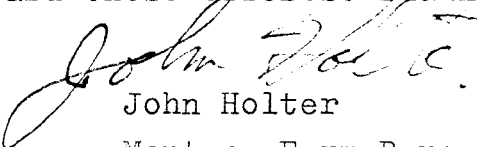
WITNESS STATEMENT

NAME John Holter BILL No. SB-37
ADDRESS Bozeman DATE 12 Jan 1983
WHOM DO YOU REPRESENT Montana Farm Bureau
SUPPORT XX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Chairman,
The Montana Farm Bureau has long been on record
in support of legislation to insure the protection
of water rights, both before and after 1973. We
feel that SB-37 is directed toward these efforts. Thank you.


John Holter
Montana Farm Bureau



MONTANA WATER COURTS

STATE OF MONTANA

WATER JUDGES

Upper Missouri River Basin
Chief Judge W. W. Lessley
P. O. Box ~~XXX~~ 1568
Bozeman, MT 59715

Lower Missouri River Basin
Judge Bernard W. Thomas
P. O. Box 938
Chinook, MT 59523

Clark Fork River Basin
Judge Robert M. Holter
Lincoln County Courthouse
Libby, MT 59923

Yellowstone River Basin
Judge Jack D. Shanstrom
P. O. Box 436
Livingston, MT 59047

EXHIBIT "A"
January 12, 1983

EXPLANATION OF SENATE BILL 23

Senate Bill 23 was designed to make it clear that not only Water Judges but also Water Masters could hold hearings on preliminary decrees. The Statute provides that if a party objects to the water rights as issued in the preliminary decree, he may have a hearing before the Water Judge. We have changed that language to read that hearings will be held before the water division. This allows a hearing to be held by either a Water Judge or a Water Master, as is provided in the law as written in Subsection 4. We have also added to Subsection 4 that the Water Judge is not required to hold a hearing on the Water Master's Report. This provision is 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 the Water Judge. To eliminate those parties who would use this merely as an opportunity to have two hearings as opposed to one, which would of course result in enormous amounts of time and money expended, we have provided that these hearings are not required. However, this does not preclude the Judge granting a hearing in those cases where a Water Master has abused his discretion or his ruling is clearly erroneous.

SENATE BILL NO. 23

INTRODUCED BY JACOB

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

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

Section 1. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on preliminary decree. (1) Upon
objection to the preliminary decree by the department, a
person named in the preliminary decree or any other persons
for good cause shown, the department or such person is
entitled to a hearing thereon before the ~~appeals~~ water
division.
(2) If a hearing is requested, such request must be
filed with the water judge within 90 days after notice of
entry of the preliminary decree. The water judge may, for
good cause shown, extend this time limit an additional 90
days if application for the extension is made within 90 days
after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise
statement of the findings and conclusions in the preliminary
decree with which the department or person requesting the
hearing disagrees. The request shall specify the paragraphs

1 and pages containing the findings and conclusions to which
2 objection is made. The request shall state the specific
3 grounds and evidence on which the objections are based.

4 (4) Upon expiration of the time for filing objections
5 and upon timely receipt of a request for a hearing, the
6 water judge shall notify each party named in the preliminary
7 decree that a hearing has been requested. The water judge
8 shall fix a day when all parties who wish to participate in
9 future proceedings must appear--or file a statement. The
10 water judge shall then set a date for a hearing. The water
11 judge may conduct individual or consolidated hearings. A
12 hearing shall be conducted as for other civil actions.
13 At the order of the water judge, a hearing may be
14 conducted by the water masters who shall prepare a report of
15 the hearing as provided in M.A.Civ.P. rule 53(e). The water
16 judge is not required to hold a hearing on the water
17 master's report."

-End-

INTRODUCED BILL

SR 23

EXHIBIT "A"

January 12, 1983



MONTANA WATER COURTS

STATE OF MONTANA

WATER JUDGES:

Upper Missouri River Basin
Chief Judge W. W. Lessley
P. O. Box 1050
Bozeman, MT 59715

Lower Missouri River Basin
Judge Bernard W. Thomas
P. O. Box 936
Chinook, MT 59523

Clark Fork River Basin
Judge Robert M. Hollar
Lincoln County Courthouse
Libby, MT 59923

Yellowstone River Basin
Judge Jack D. Shanstrom
P.O. Box 436
Livingston, MT 59047

EXHIBIT "B"
January 12, 1983

EXPLANATION OF SENATE BILL 37

Senate Bill 37 is entitled "An Act Clarifying That The Montana Water Courts Have Jurisdiction of Water Rights Arising Both Before and After 1973, and Providing for Judicial Review of Administrative Proceedings By The Appropriate Water Division." This strikes the word existing from the phrase existing water rights and provides judicial review of DNRC hearing decisions by the water division of the District Courts in which the permit is located. As the law stands now, all pre-July 1, 1973 water rights are dealt with exclusively by the water division of the District Court, however, any questions requiring judicial review concerning post-July 1, 1973 water issues are filed in the District Courts because the water division at present has no jurisdiction. This legislation will place all water decisions in the same court, the Water Court, thus providing for hearings on appeals from post-July 1, 1973 in a court that has water expertise. This results in consistent and more expeditious decisions. This is not intended to create a system of water courts for perpetuity, as such the amendment uses the language found in 3-7-221 MCA to state that the continue of the water divisions is subject to legislative approval.

1 SENATE BILL NO. 37

LC 0160/01

2 INTRODUCED BY HAGER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
5 ~~MONTANA/WATER~~ WATER DIVISIONS OF THE DISTRICT COURTS HAVE
6 JURISDICTION OF WATER RIGHTS ARISING BOTH BEFORE AND AFTER
7 1973; CLARIFYING THE COMPOSITION OF THE WATER COURTS DIVISIONS;
8 PROVIDING FOR JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS BY
9 THE APPROPRIATE WATER DIVISION: AMENDING SECTIONS 3-7-101, 3-7-
10 224, 3-7-501, 3-7-502 and 85-2-121, MCA."

11

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

13 Section 1. Section 3-7-101, MCA, is amended to read:

14 "3-7-101. Water divisions ~~and water courts~~. (1) To
15 adjudicate existing water rights water divisions are
16 established as defined in 3-7-102. A water division shall be
17 presided over by a water judge, subject to continuation of the
18 water division by the legislature.

19 (2) The water divisions are composed of water judges, water
20 masters, and other division personnel directed to adjudicate
21 the waters of the state of Montana."

22 Section 2. Section 3-7-224, MCA, is amended to read:

23 "3-7-224. Jurisdiction of chief water judge. (1) The
24 chief water judge may, at the discretion of the chief justice
25 of the Montana Supreme Court, also serve as water judge for

1 (2) The chief water judge has jurisdiction over all
2 matters relating to the determination of existing water
3 rights within the boundaries of the state of Montana.

4 (3) With regard to the determination of existing water
5 rights the chief water judge has the same powers as a
6 district judge. He may issue such orders on the motion of
7 an interested party or on his own motion, as may reasonably
8 be required to allow him to fulfill his responsibilities."

9 Section 3. Section 3-7-501, MCA, is amended to read:
10 "3-7-501. Jurisdiction. (1) The jurisdiction of each
11 judicial district concerning the determination and
12 interpretation of existing water rights is exercised
13 exclusively by it through the water division or water
14 divisions that contain the judicial district wholly or
15 partly.

16 (2) The water judge may preside over matters concerning
17 the determination and interpretation of existing water
18 rights beyond the boundaries specified in 3-7-102 for his
19 division except as provided in 3-7-201 and 3-7-213.

20 (3) The water judge for each division shall exercise
21 jurisdiction over all matters concerning the determination
22 and interpretation of existing water rights within his
23 division as specified in 3-7-102 that are considered filed
24 in or transferred to a judicial district wholly or partly
25 within his division.

Section 3-1-302 MCA is amended to read:
 "3-1-302 Jurisdictional disputes whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning the determination and interpretation of existing water rights, the question shall be settled by the water judges involved."

Section 3-2-121 MCA is amended to read:
 "3-2-121 Administrative proceedings and judicial proceedings under the Montana Administrative Procedure Act govern administrative proceedings conducted under parts 1 through 4 of this chapter except that:

(1) the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a such administrative proceeding; and

(2) subject to continuation of the water divisions by the legislature, judicial review pursuant to the Montana Administrative Procedure Act shall be exercised exclusively by the district court through its water division

LC 0160/01

1 Section 4. Section 3-1-302, MCA, is amended to read:
2 "3-1-302. Jurisdictional disputes. Whenever a question
3 arises concerning which water judge shall preside over
4 adjudication of a matter concerning the determination and
5 interpretation of existing water rights, the question shall
6 be settled by the water judges involved."

7 Section 5. Section 85-2-121, MCA, is amended to read:
8 "85-2-121. Administrative proceedings and judicial
9 review. The Montana Administrative Procedure Act governs
10 administrative proceedings conducted under parts 1 through 4
11 of this chapter except that:
12

13 (LL) the common law and statutory rules of evidence
14 shall apply only upon stipulation of all parties to a such
15 administrative proceedings; and
16

17 (LJ) judicial review pursuant to the Montana
18 Administrative Procedure Act shall be exercised exclusively
19 by the appropriate water division of the Montana water
20 courts and

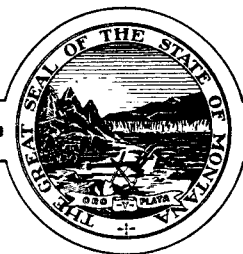
(3) Venue for the judicial review of such
administrative decisions shall lie in the water
division of the district court for the county
where the applicant's place of beneficial use would
occur." and be heard by the water division
of the district court.

John W. ...
2837

January 12, 1983

MONTANA WATER COURTS

STATE OF MONTANA



WATER JUDGES:

Upper Missouri River Basin
Chief Judge W. W. Lessley
P. O. Box 1050
Bozeman, MT 59715

Lower Missouri River Basin
Judge Bernard W. Thomas
P. O. Box 938
Chinook, MT 59523

Clark Fork River Basin
Judge Robert M. Holter
Lincoln County Courthouse
Libby, MT 59923

Yellowstone River Basin
Judge Jack D. Shanstrom
P.O. Box 436
Livingston, MT 59047

January 7, 1983

Senator Jean A. Turnage, Chairman
Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Senator Jean:

On Wednesday, January 12th, at 10:00 a.m. your Judiciary Committee is scheduled to hear Senate Bills 23, 37 and 41. Senator Hager sponsored and introduced those Bills for the Water Courts. We would like to take this opportunity to briefly explain to you what those bills are intended to do.

Senate Bill 23 was designed to make it clear that not only Water Judges but also Water Masters could hold hearings on preliminary decrees. The Statute provides that if a party objects to the water right as issued in the preliminary decree, he may have a hearing before the Water Judge. We have changed that language to read hearings will be held before the water division. This allows a hearing to be held by either a Water Judge or a Water Master, as is provided in the law as written in Subsection 4. We have also added to Subsection 4 that the Water Judge is not required to hold a hearing on the Water Master's report. This provision is 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 the Water Judge. To eliminate those parties who would use this merely as an opportunity to have two hearings as opposed to one, which would of course result in enormous amounts of time and money expended, we have provided that these hearings are not required. However, this does not preclude the Judge granting a hearing in those cases where a Water Master has abused his discretion or his ruling is clearly erroneous.

Senate Bill 37 is entitled "An Act Clarifying That The Montana Water Courts Have Jurisdiction of Water Rights Arising Both

Before and After 1973, and Providing For Judicial Review of Administrative Proceedings By The Appropriate Water Division." This strikes the word existing from the phrase existing water rights and provides judicial review of DNRC hearing decisions by the water division of the District Courts in which the permit is located. As the law stands now all pre-July 1, 1973 water rights are dealt with exclusively by the water division of the District Court, however, any questions requiring judicial review concerning post-July 1, 1973 water issues are filed in the District Courts because the water division at present has no jurisdiction. This legislation will place all water decisions in the same court, the Water Court, thus providing for hearings on appeals from post-July 1, 1973 in a court that has water expertise. This results in consistent and more expeditious decisions. Since the drafting of Senate Bill 37 we have amended the language, to more specifically state the intent of the Bill. That changed language, which will be brought up at the Committee Hearing is also included and marked as Revision No. 1 of Senate Bill 37.

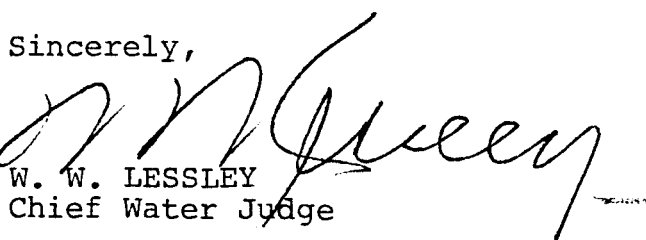
Senate Bill 41 is designed to have the DNRC send Water Rights Certificates directly to owners of water rights as opposed to routing them through individual County Clerks and Recorders. This relieves costs and burdens to the individual counties and provides for consistency and expeditious mailing out of such certificates. You will notice that the fee for recordation has been waived. Presently Clerks and Recorders charge \$2.00 per page to record documents. The report or record of owner certificates will be in a bound book sent by the department. If we were to have to pay recordation fees for each page of the decrees and subsequent reports, it is conceivable that the cost to the State would increase several thousand dollars. The language of this Bill has also changed since its original drafting and has been enclosed and marked as Revision No. 1 of Senate Bill 41.

We know these legislative changes will save the people of the State time and money. If you have any questions or need information, feel free to call me or my Water Master, Leanne Schraudner.

We do have a Helena number. It is 449-4621, or we can also be reached at our Bozeman number, 586-4364.

In any case we will see you at Committee Meeting on Wednesday, January 12th.

Sincerely,


W. W. LESSLEY
Chief Water Judge

WWL:CSW

EXHIBIT "D"
1-12-83

SENATE BILL NO. 23

INTRODUCED BY HAGER

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."

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

Section 1. Section 85-2-233, MCA, is amended to read:
"85-2-233. Hearing on preliminary decree. (1) Upon
objection to the preliminary decree by the department, a
person named in the preliminary decree, or any other person,
for good cause shown, the department or such person is
entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be
filed with the water judge within 90 days after notice of
entry of the preliminary decree. The water judge may, for
good cause shown, extend this time limit an additional 90
days if application for the extension is made within 90 days
after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise
statement of the findings and conclusions in the preliminary
decree with which the department or person requesting the
hearing disagrees. The request shall specify the paragraphs

1 and pages containing the findings and conclusions to which
2 objection is made. The request shall state the specific
3 grounds and evidence on which the objections are based.

4 (4) Upon expiration of the time for filing objections
5 and upon timely receipt of a request for a hearing, the
6 water judge shall notify each party named in the preliminary
7 decree that a hearing has been requested. The water judge
8 shall fix a day when all parties who wish to participate in
9 future proceedings must appear--or file a statement. The
10 water judge shall then set a date for a hearing. The water
11 judge may conduct individual or consolidated hearings. A
12 The hearing shall be conducted as for other civil actions.
13 At the order of the water judge, the hearing may be
14 conducted by the water master, who shall prepare a report of
15 the hearing as provided in M.R.Civ.P., Rule 53(e). The water
16 judge is not required to hold a hearing on the water
17 master's reports."

-End-

INTRODUCED BILL

SB 23

SENATE BILL NO. 23

INTRODUCED BY HAGER

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."

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

Section 1. Section 85-2-233, MCA, is amended to read:
 "85-2-233. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the approved water division."

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional 90 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs

1 and pages containing the findings and conclusions to which
 2 objection is made. The request shall state the specific
 3 grounds and evidence on which the objections are based.

4 (4) Upon expiration of the time for filing objections
 5 and upon timely receipt of a request for a hearing, the
 6 water judge shall notify each party named in the preliminary
 7 decree that a hearing has been requested. The water judge
 8 shall fix a day when all parties who wish to participate in
 9 future proceedings must appear--or file a statement. The
 10 water judge shall then set a date for a hearing. The water
 11 judge may conduct individual or consolidated hearings. A
 12 the hearing shall be conducted as for other civil actions.
 13 At the order of the water judge, the hearing may be
 14 conducted by the water master, who shall prepare a report of
 15 the hearing as provided in M.R.Civ.P., Rule 53(e). The water
 16 judge is not required to hold a hearing on the water
 17 master's report."

--End--

INTRODUCED BILL

SB 23

-2-

Revision 1 of Senate Bill 23

SENATE BILL NO. 37

INTRODUCED BY HAGER

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 APPROPRIATE WATER DIVISION; AMENDING SECTIONS 3-7-101, 3-7-224, 3-7-501, 3-7-502, AND 85-2-121, MCA."

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

Section 1. Section 3-7-101, MCA, is amended to read:

"3-7-101. Water divisions and water courts. (1) To adjudicate existing water rights water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

(2) The water courts are composed of water judges, water masters, and other personnel directed to adjudicate the waters of the state of Montana."

Section 2. Section 3-7-224, MCA, is amended to read:

"3-7-224. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the determination of existing water rights, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities."

Section 3. Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

INTRODUCED

1 Section 4. Section 3-1-502, MCA, is amended to read:
2 "3-1-502. Jurisdictional disputes. Whenever a question
3 arises concerning which water judge shall preside over
4 adjudication of a matter concerning the determination and
5 interpretation of existing water rights, the question shall
6 be settled by the water judges involved."

7 Section 5. Section 85-2-121, MCA, is amended to read:
8 "85-2-121. Administrative proceedings and judicial
9 review. The Montana Administrative Procedure Act governs
10 administrative proceedings conducted under parts 1 through 4
11 of this chapter, except that:

12 (1) the common law and statutory rules of evidence
13 shall apply only upon stipulation of all parties to a such
14 an administrative proceeding; and

15 (2) judicial review pursuant to the Montana
16 Administrative Procedure Act shall be exercised exclusively
17 by the appropriate water division of the Montana water
18 court."

-End-

Section 4. Section 3-7-502, MCA, is amended to read:
"3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning the determination and interpretation of existing water rights, the question shall be settled by the water judges involved."

Section 5. Section 05-2-121, MCA, is amended to read:
"05-2-121. Administrative proceedings and judicial proceedings. The Montana Administrative Procedure Act governs administrative proceedings conducted under parts 1 through 4 of this chapter, except that:

(1) the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a such administrative proceeding; and

(2) judicial review pursuant to the Montana Administrative Procedure Act shall be exercised exclusively by the district court through its Water Division.

- End -

SENATE BILL NO. 41

INTRODUCED BY HAGER

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."

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

Section 1. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right.

(1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) A person who, after filing a claim of existing

water right in accordance with subsection (1), transfers any portion of that claimed right shall file with the water court a notice of transfer. The filing shall be made in the manner and at the place directed by the water court."

Section 2. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The water court shall prescribe the content and form of the certificate. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall send a court-approved copy of the final decree to the county clerk and recorder of the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation the clerk and recorder shall send the certificate to the person to whom the right is decreed."

--End--

INTRODUCED BILL

SENATE BILL NO. 37

LC 0160/01

INTRODUCED BY HAGER

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 APPROPRIATE WATER DIVISION; AMENDING SECTIONS 3-7-101, 3-7-224, 3-7-501, 3-7-502 and 85-2-121, MCA."

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

Section 1. Section 3-7-101, MCA, is amended to read:

"3-7-101. Water divisions ~~and water rights~~. (1) To adjudicate ~~existing~~ water rights water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

(2) The water divisions are composed of water judges. water masters, and other division personnel directed to adjudicate the waters of the state of Montana."

Section 2. Section 3-7-225, MCA, is amended to read:

"3-7-224. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana Supreme Court, also serve as water judge for one of the water division."

(2) The chief water judge has jurisdiction over all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the determination of existing water rights, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities."

Section 3. Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

INTRODUCED BILL

MONTANA WATER COURTS

STATE OF MONTANA

EXHIBIT "E"
January 12, 1983

WATER JUDGES

Upper Missouri River Basin
Chief Judge: V. W. Lesslie
P.O. Box 16
Bozeman, MT 59711

Lower Missouri River Basin
Judge: Bernard W. Thomas
P.O. Box 90
Chinook, MT 59522

Clark Fork River Basin
Judge: Robert M. Holter
Lincoln County Courthouse
Libby, MT 59901

Yellowstone River Basin
Judge: Jack D. Shanstrom
P.O. Box 4
Livingston, MT 59047

EXPLANATION OF SENATE BILL 41

Senate Bill 41 is designed to have the DNRC send Water Rights certificates directly to owners of water rights as opposed to routing them through individual County Clerks and Recorders. This relieves costs and burdens to the individual counties and provides for consistency and expeditious mailing out of such certificates. The Department will send each Clerk and Recorder a copy of the decree and subsequent updates. These will only be deposited with the Clerk and Recorder and thus there will be no fee. The language of this bill has also changed since its original drafting and has been enclosed and marked as Revision 1 of Senate Bill 41.

48th Legislature

LC 0151/01

LC 0151/

SENATE BILL NO. 41

INTRODUCED BY HAGER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
UNOBLY PROCESSING OF TRANSFER OF WATER RIGHTS CLAIMS AND TO
ADVISE 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."

ALL LIMITED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-221, MCA, is amended to read:
"85-2-221. Filing of claim of existing water right.

(1) A person claiming an existing right unless exempted

under 85-2-222 or unless an earlier filing date is ordered

as provided in 85-2-212, shall file with the department no

later than June 30, 1983, a statement of claim for each

water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement

of claim with the clerk of the district court for the

judicial district in which the diversion is made or, if

there is a claimed right with no diversion, the department

shall file a copy of the statement of claim with the clerk

of the district court of the judicial district in which the

use occurs.

~~ALL RIGHTS AND INTERESTS IN WATER RIGHTS ARE RESERVED.~~

~~water rights and interests in water rights are reserved.~~
~~department of water rights shall file with the clerk of the~~
~~district court of the judicial district in which the diversion is~~
~~made or, if there is a claimed right with no diversion, the~~
~~department shall file a copy of the statement of claim with the~~
~~clerk of the district court of the judicial district in which the~~
~~use occurs.~~
~~Section 2. Section 85-2-236, MCA, is amended to read:~~
~~"85-2-236. Certificate of water right. When a~~
~~decree is entered, the water judge shall send a copy to the~~
~~department. The department shall on the basis of the~~
~~decree issue a certificate of water right to each person~~
~~decreed an existing right. The original of~~
~~the certificate shall be sent to the person to whom the right~~
~~decreed. The department shall send the final~~
~~and subsequent quarterly reports and annual~~
~~reports of all certificates of water right issued~~
~~by the Department to the county clerk and recorder~~
~~of the county where the point of diversion or~~
~~of use is for deposit in a vault for storage~~
~~public access. The department shall keep a~~
~~the certificate in its office in Helena. After~~
~~recording, the clerk and recorder shall send~~
~~certificate to the person to whom the right~~
~~decreed."~~

Revision 1 of Senate Bill 41