

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 12, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, March 12, 1985 at the hour of 8:30 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 132: Senator Mike Halligan, Senate District #29, sponsor of SB 132, testified. The bill was introduced to allow for first and second degree aggravated assault. The bill simply separates aggravated assault into aggravated assault and felony assault. In some cases where there is a question of serious bodily injury, instead of charging the person with aggravated assault, they are charged with misdemeanor assault which may not be appropriate.

Mark Murphy, assistant attorney general, testified as a proponent to the bill. He said this bill was written by the Cascade County Attorney's office and presented to the Montana County Attorney's Association. He told the committee that there has been a problem over a period of time concerning the definitions of serious bodily injury and bodily injury. Serious bodily injury sets a very high standard and bodily injury sets a very low standard. This bill attempts to find that middle ground and work with it. This bill will allow the jury to have a little bit more flexibility in choosing the lesser included crime -- that is felony assault. He also feels this bill will be successful in covering those areas that they have had great difficulty with.

There being no further proponents or opponents, Senator Halligan closed.

The floor was opened to questioning.

In response to a question asked by Rep. Mercer, Mr. Murphy stated that this bill will still allow that the two-year mandatory penalty provision would be charged if the weapon caused serious bodily injury; however, if the injury is not quite serious bodily injury, that particular crime will be charged as a felony assault rather than the aggravated assault.

Rep. Montayne asked Mr. Murphy how a weapon is defined. Mr. Murphy said that it is still a gray area as to what a weapon is.

In response to a question asked by Rep. Addy, Mr. Murphy said this bill changes the actual penalty provision. It offers an intermediate penalty.

There being no further questions, hearing closed on SB 132.

CONSIDERATION OF SENATE BILL NO. 89: Senator Joe Mazurek, Senate District #23, sponsor of SB 89, testified. He introduced this bill at the request of a local attorney in Helena. This bill is designed to adopt a very simple procedure which would allow if a judgment debtor claims that his earnings are exempt from execution because he needs the money for the common necessities of life, that a judgment creditor would have the ability to at least call into question what is stated in that affidavit. Currently, there is no procedure to challenge an affidavit filed by a judgment debtor saying that he needs all his earnings for the common necessities of life. He said that the bill is just trying to inject a certain amount of due process into the debt collection process. Senator Mazurek informed the committee that a number of counties are already doing this even though there is no provision for it in the law. He said the bill is reasonable and does not change what is exempt or what is not exempt.

David Hull, a Helena attorney who requested the introduction of SB 89, testified as an proponent. He informed the committee that he does a fair amount of debt collection practices with business and professionals throughout the state of Montana. He said the old statute is approximately 80 years old and is unconstitutional on two grounds. First of all, it has been superseded by federal law. Secondly, it provides for no due process -- it provides no opportunity for a hearing for the other side. It does not, in any way, lessen the debtor's rights, but it merely provides the due process for all the parties involved.

There being no further proponents or opponents, Senator Mazurek closed.

The floor was opened to questions.

Rep. Rapp-Svrcek asked that in the hearing that may be held would the debtor be required to hire an attorney. Senator Mazurek stated that it would be at the option of the person. He said the person may already have an attorney.

In response to a question asked by Rep. Bergene, Mr. Hull stated that this bill is not in any way inhibiting the person's right to collect child support.

There being no further questions, hearing closed on SB 89.

CONSIDERATION OF SENATE BILL NO. 54: Senator Tom Towe, Senate District #46, chief sponsor of SB 54, stated that SB 54 deals with an area where there is a real genuine concern by senior citizens. It deals with whether or not the state is

going to protect our senior citizens from abuse as we are currently protecting children and other persons who are unable to physically, mentally or adequately able to protect themselves. Two years ago, a bill was passed which did, in fact, make it a crime not to report senior citizen abuse. But the legislature did not, at that time, make it a crime to abuse senior citizens. Senator Towe submitted a newspaper article clipped from the Billings Gazette dealing with this subject which was marked Exhibit A and attached hereto. Senator Towe went through some of the provisions of the bill and also pointed out some of the changes that were made. He also submitted a proposed amendment he asked the committee to adopt. (See Exhibit B.) He feels the language in this proposed amendment is better than the language adopted by the Senate Judiciary Committee.

Regina Middleton, representing the American Association of Retired People, testified as a proponent to SB 54. She said there seems to be more and more cases that have come to her attention dealing with the abuse of elderly people. She described a few incidents relating to this subject that she has dealt with in working with older people. She also supports the amendment proposed by Senator Towe.

Tom Ryan, representing the Montana Senior Citizens' Association, wished to go on record as supporting this bill.

Don Sekora, program officer of the Department of Social and Rehabilitation Services, stated that the Department supports this legislation because it provides a penalty for those who abuse the elderly. He feels the penalty provision will do a great deal in deterring this serious growing problem. Mr. Sekora also stated that they support Senator Towe's amendment. Mr. Sekora informed the committee that they investigated approximately 175 complaints last year. Out of those 175 complaints, 106 were substantiated. Fifty elderly people out of the 106 substantiated cases were in life-threatening situations. The reporting process has been very valuable.

Doug Blakely, State Ombudsman, stated his support for the bill with its amendment. He feels the penalties as provided in the bill are important.

Charles Briggs, state agent coordinator in the Office of the Governor, spoke on behalf of the bill with the proposed amendment. He said that he is concerned about the change in the definition that would radically alter the elder abuse prevention act that was passed in 1983. The definition is critical because for people to be able to report, the cut-off date would be 60 years of age and older. If there were the instances of enough evidence that was substantiated for prosecution, that the prosecution would be pursued in those incidences where the individual is frail and particularly vulnerable. It is important

that the reporting law as passed in 1983 remain intact. He said that of all the cases reported, over 70% are reported by third-party individuals. The penalties as provided in this bill provide the deterrent especially where it deals in the area of exploitation.

There being no further proponents or opponents, Senator Towe closed. He again asked the committee to seriously consider this legislation. He said the bill addresses a lot of situations. Hopefully, if people know this is a crime and that there are penalties, it will reduce the number of substantiated offenses against the elderly.

The floor was opened up for questions.

Rep. Eudaily suggested that line 7 of the title of the bill be amended. He suggested striking "A PERSON" and insert in its place the words "CERTAIN PERSON". Senator Towe stated that he felt that was a good amendment.

In response to a question asked by Rep. Keyser, Senator Towe stated that his preference was to have a stiffer penalty than what the bill sets forth. However, he didn't want to jeopardize the bill's chances of passing; therefore, he went along with the amendment to reduce the charge to a misdemeanor.

Rep. Rapp-Svrcek asked Mr. Sekora to explain why, in 42% of the cases, the abusers were the alleged victims. Mr. Sekora said in these cases, they are the victims because they do not take care of themselves.

Rep. Mercer said he sees a potential loophole with the bill. He referred to the language on page 1, line 17, "without consent". He asked that if a person is unable, because of his physical or mental condition, to adequately protect himself, how could he possibly give his consent. What constitutes consent? Senator Towe said the reason for adding this language was not so much for physical abuse or mental injury, but the deprivation of food, shelter, clothing or other services to maintain their health. Someone may consider that they are mentally injured because they are required to do something that the doctor feels is in the best interest of their health, or perhaps they have agreed at an earlier time to go on a diet or something such as this. We didn't want to get situations brought into the definition here that would in any way indicate that it is not an abusive situation.

There being no further questions, hearing closed on SB 54.

CONSIDERATION OF SENATE BILL NO. 28: Senator Dorothy Eck, Senate District #40, sponsor of SB 28, testified in support of this legislation. She informed the committee that SB 28 was introduced at the request of the Select Committee on Indian Affairs. The bill provides for a two year extension of the Reserved Water Rights Compact Commission. She said that Commission has been recently quite successful in negotiating, and there is very little doubt that it is to all of our advantages to extend their work and make sure they continue to be able to negotiate. The bill also clarifies some of the questions and ambiguities in the process of determining reserved water rights. She said the Senate Judiciary worked through the bill and amended it very carefully. All interested parties agree that it is of utmost importance to the state to continue the negotiation process and to settle the matter of determining water rights through the negotiation process rather than through the judicial process. She urged the committee to consider the concept of the bill and to very carefully consider the amendments which were submitted. (See attached Exhibit C and D). She pointed out that there still isn't any agreement on whether due process has to be addressed in this bill.

Senator Joe Mazurek, Senate District #23, stated that he is a member of the Reserve Water Rights Compact Commission, and this was a very sensitive issue which was considered in the Senate Judiciary Committee. He stated that the bill is very important. He also said that the Senate Judiciary Committee made a technical mistake which relates to the whole area around the amendments that were made. The existing statute is not entirely clear as there is a lot of room for interpretation as to what happens to a negotiated contract, whether or not a water user can come and object to that compact. And, if he can come in and object to the compact, on what basis he or she objects to it. What we are trying to do here is save the time and expense of litigating what the reserved water rights are.

There has to be due process afforded to all the members who participate in this adjudication. These amendments would provide a very limited basis upon which a non-Indian or non-federal water user could object to any compact. The only thing they could object to is essentially those things that are shown in subparagraph 5 on the bottom of those amendments -- they could only object to the authority of the state to determine Indian or other federal reserve water rights or the authority of the state to enter into a binding contract with a tribe or the process by which the compact was negotiated. The idea is that we want to at least give someone the opportunity to come forward so that the whole process cannot be thrown out because they have not had the opportunity to object to the right of the state to enter into this negotiation process. Senator Mazurek feels

that the tribes won't have any problems with the amendments proposed. He suggested that the amendments be sent to the tribes so they may state their opinion. He said that if there are objections, he feels the most appropriate thing to do is to restore the law to the state it was in before this session began.

Louis Clayborn, coordinator of Indian Affairs for the state of Montana, testified. He feels that it is very important that the tribes be given the opportunity to review the proposed amendments.

K.M. Kelly, representing the Montana Water Development Association and the Montana Irrigators, Inc., testified in support of SB 28. A copy of his written testimony was marked Exhibit E and attached hereto.

Jo Brunner, representing the Women Involved in Farm Economics, wished to go on record as supporting the extension of the Compact Commission.

Clay Smith, assistant attorney general, stated that he supports the bill as reported out of the Senate with the exception of those matters that Senator Mazurek addressed today in his remarks. Those deal with what essentially happens to negotiated compacts after it has been ratified by the respective governing bodies of the tribes and the governing body of this state being the legislature. He feels the amendments submitted this morning address the concern the of the Attorney General's Office has with respect to the bill as reported from the Senate. He believes the amendments should be adopted if the committee is not going to revert back to the language of present statute with respect to what happens to a contract after it has been negotiated and ratified by the legislature. He believes the amendments also address their due process concern. With the amendments, he fully supports the bill.

Marcia Beebe Rundle, attorney for the Montana Reserved Water Rights Compact Commission, urged the committee to adopt SB 28 with the inclusion of the amendments offered by Senator Eck. A copy of her written testimony was marked Exhibit F and attached hereto. She suggested some technical changes to the proposed amendments.

There being no further proponents or opponents, Senator Eck closed. She gave a brief summary of what the proposed amendments are supposed to do. It allows in court what matters may be questioned. The first question is whether the state has the authority to enter into a compact. The second one, does the state have the authority to enter into a binding compact where the decisions that are made in the compact are apt to be binding. The third question is whether the process has been prompt. She informed the committee that Reed Chambers, the attorney for the Fort Peck Reservation, has discussed the amendments with Senator Mazurek. Mr. Chambers feels these amendments will be acceptable.

The floor was opened for questions.

In response to a question asked by Rep. O'Hara, Senator Eck said that the first set of amendments (labelled I) was prepared by Clay Smith of the Attorney General's Office and the second set of amendments (labelled II) is a variation and refinement of the first set of amendments.

Rep. Eudaily wanted to know if this is all general fund money. Senator Eck said as far as she knows, that it is general fund money. Rep. Eudaily further asked her if there was any federal matching money involved. Senator Eck stated that she doesn't believe there is any federal fund money involved.

Rep. Grady asked how much longer this commission will have to continue and will it have to go on until this entire communication is over? Senator Eck said that they would really like to see it finished within the next two-year period. However, she doesn't know if it will be finished in that period of time and they may have to ask for an extension.

There being no further questions, hearing closed on SB 28.

Chairman Hannah informed the committee that a letter with attached amendments will go out to the interested parties to request their opinions and input. He will request the parties to submit a response by the 20th of March. The committee will try to act on this bill by the 22nd of March.

EXECUTIVE SESSION:

An executive session was called at 10:55 to act on some of the bills in committee.

ACTION ON SENATE BILL NO. 132: Rep. Hammond moved that SB 132 BE CONCURRED IN. The motion was seconded by Rep. Eudaily and discussed.

Rep. Hannah spoke in favor of the bill by saying he believes there is a hole in the present laws as to what charges can be brought against a person. He feels this bill will remedy some of the present problems they have in this area.

Rep. Mercer pointed out that this bill takes out the mandatory minimum sentence which creates a hole in the areas of the law.

Rep. Addy said this bill gives the jury a third option of being able to convict a person with a second more serious offense. He said the bill is just trying to get some flexibility back into the system that the minimum mandatory sentence took out.

The question was called, and the motion carried on a voice vote with Rep. Gould dissenting. Rep. Addy agreed to carry the bill on the floor.

ACTION ON SENATE BILL NO. 54: Rep. Darko moved that SB 54 BE CONCURRED IN. The motion was seconded by Rep. Bergene.

Rep. Miles moved that the committee adopt the amendments submitted by Senator Towe at the hearing. The motion was seconded by Rep. Addy. There being no discussion, the question was called, and the motion carried unanimously.

Rep. Addy further moved that SB 54 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond and discussed further.

Rep. Eudaily moved the title of the bill be amended on line 7 following "EXPLOIT" strike "A PERSON" and insert "CERTAIN PERSONS". The motion was seconded by Rep. Keyser. The question was called, and the motion to amend carried unanimously.

Furthermore, Rep. Eudaily moved on page 1, line 17 following "without" strike "consent or". He feels this language is confusing. The motion was seconded by Rep. Mercer and discussed.

Rep. Addy feels this language should be left in the bill.

Rep. Mercer spoke in favor of the amendment. He said if you have the consent of a person, you are not abusing them.

Rep. Krueger also supports the amendment. He feels that by taking the consent language out, we are eliminating the confusion.

Rep. Addy made a substitute motion to strike on line 17 following "person" "without consent or lawful authority". The motion was seconded by Rep. Keyser.

The question was called, and the motion carried on a voice vote with Rep. Cobb dissenting.

Rep. Keyser moved that SB 54 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond.

Rep. Brown moved to table SB 54 so he could further study the bill. The motion was seconded by Rep. Montayne. The motion to table failed on a voice vote.

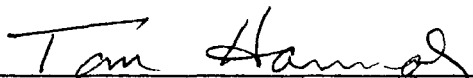
The question was called on the bill, and it carried with Reps. Brown and Montayne dissenting. Rep. Bergene volunteered to carry the bill.

ACTION ON SENATE BILL NO. 26: Rep. Krueger moved that SB 26 BE CONCURRED IN. The motion was seconded by Rep. Grady.

House Judiciary Committee
March 12, 1985
Page 9

Rep. Brown said he would like more time to look at this bill. Therefore, Rep. Brown moved TO TABLE SB 26. The motion was seconded by Rep. Keyser. The motion to table the bill carried on a voice vote.

ADJOURN: A motion having been made and seconded, the meeting was adjourned at 11:25 a.m.



REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/12/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

March 12 19 35

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 54

Third reading copy (Blue)
color

FELONY TO ABUSE, NEGLECT, OR EXPLOIT A PERSON 60 OR MORE
YEARS OLD

Respectfully report as follows: That Senate Bill No. 54

be amended as follows:

1. Title, line 7.

Strike: "A PERSON"

Insert: "CERTAIN PERSONS"

2. Page 1, line 17.

Strike: "without" through "authority"

3. Page 2, line 10.

Following: "age"

Strike: "AND" through "PROPERTY" on line 11.

Insert: ". For purposes of prosecution under this act, the person
60 years of age or older must be unable to protect himself
from abuse, neglect, or exploitation because of a mental
or physical impairment or because of frailties or dependencies
brought about by advanced age"

~~DO-PASS~~
AND AS AMENDED,
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 12 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 132

Third reading copy (Blue color)

DIVIDE AGGRAVATED ASSAULT INTO FIRST AND SECOND DEGREE OFFENSES

Respectfully report as follows: That Senate Bill No. 132

BE CONCURRED IN

EDG RASS

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

SENATE BILL NO. SB 28 (Sen. Eck)
SB 54 (Sen. Towe)

DATE March 12, 1985

SPONSOR SB 89 (Sen. Mazurek)
SB 132 (Sen. Halligan)

NAME (please print)	RESIDENCE REPRESENTING	SUPPORT	OPPOSE
REGINA MIDDLETON	AARP	✓	
Dennis SHOBEN	State Revenue	✓	
Don SeKora	GRS	28 ✓	
K.M. Kelly	MT. WATER DEVELOP. ASSN SB 28	✓	
Jack Galt	MT. IRRIGATORS, INC. SB 28	✓	
John Dranner	UN. I.F.E.	28 ✓	
Mark J. Murphy	A.G.'s office	28 ✓	
Roberta Nutting	League of Legislators	54 ✓	
Doug Blackley	Q. Gu. Budzman	54 ✓	
Joe Upshaw	AARP / League of Legislators	54 ✓	
DL Clayborn	Indian Affairs	28	
Margia Beebe Rundle	Reserved Water Rights	28	
G. Kline	Compact Commission		
Edward Azure	INDIAN AFFAIRS		
Suzanne Foster	FT. BELKNAP INDIAN COMMUNITY STAFF	28	
Diana Copeland	MT. citizen	54	
Tom Bryan	myself		
	MSOA	3B 34 +	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



Associated Press

Reade and Edith Earl sit near their empty refrigerator and tell how they've had their home sold out from under them.

Grandson's promise gives way to money

WESTVILLE, N.J. (AP) — A 96-year-old man and his 88-year-old wife, who say they signed their house over to their grandson with the promise that they could remain until they died, will live to see that promise broken.

"They will have to move soon," real estate agent Anthony Malave said Tuesday, confirming that the house was put on the market and sold by Richard Gray, the grandson of Reade and Edith Earl.

"When we took him in as a little boy and raised him, we never thought it would ever come to this over 30 years later," said Earl, who with his wife has lived in the house for more than 40 years.

Several years ago, the couple signed the deed to their home over to Gray, Earl said. They received no money, agreeing to pay for the utilities while Gray paid the taxes, sewer and water bills and other expenses, he said.

"We don't want to move," Mrs. Earl said. "When we moved here, I said it would be our last move until we went to the cemetery, as morbid as that may sound."

The Earls celebrated their 68th wedding anniversary last June.

Gray had listed the house for sale, but a Deptford real estate agent took the property off the market when he learned that the couple preferred to stay.

Gray then took the property to another real estate agency, and it has since been sold.

Malave and Mrs. Earl say they don't know where to reach Gray for comment.

Mrs. Earl said they would probably have to stay with their daughter, Nancy Doughty, in Southhampton Township.

Mrs. Doughty, Gray's mother, said she asked her parents a year ago to live with her.

"There is no reason they have to live like that when nothing under the sun is keeping them there," she said.

A neighbor who spoke only on condition that his name not be used said he has known the Earls for 25 years and that the couple was without water and electricity for a few weeks in September. He said he and another man "ran an extension cord from two houses away so they'd have some light and have their heater on."

Earl said he was surprised when the lights went out.

"We had been paying Rick," he

How would this bill affect this?

*Ryan - Paul sold
would this bill prevent that*

3/12/85

SB 54

February 23, 1985

TO: SEN. TOM TOWE
FROM: CHARLIE BRIGGS
STATE AGING COORDINATOR
RE: AMENDMENT TO S.B. 54

As you recall, we discussed the problems posed to the Elder Abuse Prevention Act in terms of the accountability for reporting resulting from the amended definition of "older person." What follows is a suggested amendment to be introduced in the house:

(Beginning pg. 2, line 9) "Older person" means a person who is at least 60 years of age ~~AND UNABLE BECAUSE OF PHYSICAL OR MENTAL CONDITION TO ADEQUATELY PROTECT HIMSELF OR HIS PROPERTY~~ FOR PURPOSES OF PROSECUTION UNDER THIS ACT, THE PERSON 60 YEARS OF AGE OR OLDER ~~MUST BE UNABLE TO PROTECT HIMSELF FROM ABUSE, NEGLECT, OR EXPLOITATION, OR ENDANGERMENT BECAUSE OF A MENTAL OR PHYSICAL IMPAIRMENT OR BECAUSE OF FRAILTIES OR DEPENDENCIES BROUGHT ABOUT BECAUSE OF ADVANCED AGE.~~ MUST BE UNABLE TO PROTECT HIMSELF FROM ABUSE, NEGLECT, OR

Please let me know if this alternative would meet with your satisfaction. Thank you for your conscientious attention to this matter.

cc. Doug Olson
Don Sekora

Amendments to Senate Bill 28

1. Title, line 8.

Following: "NECESSARY;"

Insert: "LIMITING THE OBJECTIONS THAT MAY BE MADE TO A COMPACT
IN THE WATER COURTS;"

2. Title, line 12.

Following: "INCLUDED"

Strike: ";;"

3. Title, line 13.

Following: "DECREE"

Insert: ";;"

4. Page 6, following line 1.

Insert: "Section 4. 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 and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Objections to a compact negotiated and ratified under 85-2-702 or 85-2-703 shall be limited to:

(a) the authority of the state:

(i) to determine Indian or other federally reserved water rights through the procedure set forth in 85-2-702 and 85-2-703; and

(ii) to bind through such determination, for purposes of a final decree under 85-2-234, all persons whose existing rights are or may be affected by the compact; or

(b) the process by which the compact was negotiated or ratified.

(6) Failure to object under subsection (2) to a compact bars any subsequent cause of action based in whole or in part on those grounds for objection stated above.

(7) If the court sustains an objection under section (5) above, it shall declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accord with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accord with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required hereunder."

Renumber: subsequent sections

5. Page 6, line 10.

Following: "of"

Strike: "a"

Insert: "any"

Following: "compact"

Strike: "negotiated" through "85-2-702" on line 11

Insert: "to which no objection was sustained under 85-2-233"

6. Page 6, line 11.

Following: "decree"

Insert: "without alteration"

7. Page 8, line 10.

Following: "RIGHT"

Strike: "INCLUDING" through "85-2-702"

8. Page 9, line 4.

Following: "85-2-231"

Strike: ", and" through "decree" on line 16

AMEN/hm/SB 28a Brenda

Amendments to Senate Bill 28

1. Title, line 8.

Following: "NECESSARY;"

Insert: "LIMITING THE OBJECTIONS THAT MAY BE MADE TO A COMPACT
IN THE WATER COURTS;"

2. Title, line 12.

Following: "INCLUDED"

Strike: ";

3. Title, line 13.

Following: "DECREE"

Insert: ";

4. Page 6, following line 1.

Insert: "Section 4. 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 and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Objections to a compact negotiated and ratified under 85-2-702 or 85-2-703 shall be limited to:

(a) the authority of the state:

(i) to determine Indian or other federally reserved water rights through the procedure set forth in 85-2-702 and 85-2-703; and

(ii) to bind through such determination, for purposes of a final decree under 85-2-234, all persons whose existing rights are or may be affected by the compact; or

(b) the process by which the compact was negotiated or ratified.

(6) Failure to object under subsection (2) to a compact bars any subsequent cause of action based in whole or in part on those grounds for objection stated above.

(7) If the court sustains an objection under section (5) above, it shall declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accord with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accord with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required hereunder."

Renumber: subsequent sections

5. Page 6, line 10.

Following: "of"

Strike: "a"

Insert: "any"

Following: "compact"

Strike: "negotiated" through "85-2-702" on line 11

Insert: "to which no objection was sustained under 85-2-233"

6. Page 6, line 11.

Following: "decree"

Insert: "without alteration"

7. Page 8, line 11.

Following: "85-2-702"

Insert: "to which no objection was sustained under 85-2-233"

8. Page 9, line 14.

Following: "and"

Insert: "unless an objection to the compact is sustained under 85-2-233,"

9. Page 9, line 16.

Following: "decree"

Insert: "without alteration"

AMEN/hm/SB 28 Brenda

3/12/85

WITNESS STATEMENT

NAME K.M. Kelly BILL NO. 28
ADDRESS Helena DATE 3/12/85
WHOM DO YOU REPRESENT? MT. WATER DEVELOP. ASSN
MT. IRRIGATORS INC
SUPPORT Support OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: The Montana Water Development Assn. and the Montana
Irrigators support SB 28 Extending the Water Right Compact
Commission.

We think the Commission has performed well and
that much can be accomplished by allowing them
more time for negotiations with the tribes.



Ted Schwinden
Governor

State of Montana

EXHIBIT F
3/12/85
SB 26

Reserved Water Rights Compact Commission

Jack E. Galt, Vice Chairman
William M. Day
Everett C. Elliott
Larry Fasbender

W. Gordon McOmber, Chairman

Daniel Kemmis
A. B. Linford
Joseph P. Mazurek
Audrey G. Roth

Urban L. Roth, Special Counsel

March 12, 1985

House Judiciary Committee
Montana State Capitol
Helena, Montana 59620

Dear Committee Members:

The Montana Reserved Water Rights Compact Commission and the negotiations process were created by Senate Bill 76 as an alternative to litigation of federal reserved rights in the state water court. This compromise was perceived to be in the best interests of the state, the federal agencies, and the Indian Tribes of Montana. The Compact Commission is concerned about the potential effect of amendments to the negotiations process. In our opinion, opening the compacts to objection in the water court as to the substantive provisions agreed upon in negotiations between the parties would substantially diminish the value of the process as an alternative to litigation. We opposed amending the statute in that manner in the Senate Judiciary Committee.

The Compact Commission supports the amendment which Senator Eck has submitted for your consideration. In the opinion of the Compact Commission, this new amendment explicitly recognizes those issues which could appropriately be raised by state water right holders in the water court during hearings on preliminary decrees.

In the context of interstate compacts, the United States Supreme Court has affirmed that sovereigns can bind their citizens to the terms of compacts apportioning water. In our opinion, the same principle applies to compacts negotiated between the State and the federal agencies, or between the State and the Indian Tribes of the State. It is appropriate, however, that a water user be able to challenge the compact on that basis and receive a judicial determination of the issue. It is also appropriate that the compact be open to challenge as to whether the statutory processes for negotiation and ratification were followed.

With the exception of these grounds for objection, the Compact Commission believes that the compacts are immune from challenge in the state water court adjudication process. Citizens will, of course,

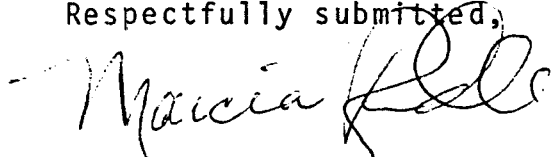
D. Scott Brown, Program Manager
Marcia Beebe Rundle, Legal Counsel

32 South Ewing
Helena, Montana 59620
(406) 444-6601

have opportunities for input to the Compact Commission, and will be provided notice and opportunities for comments during the process of legislative ratification.

We urge adoption of Senate Bill 28 as passed by the Senate, and the inclusion of the amendments offered by Senator Eck today. Thank you for the opportunity to testify to your committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marcia Beebe Rundle", with a stylized flourish at the end.

Marcia Beebe Rundle
Attorney
Montana Reserved Water
Rights Compact Commission

MBR/mfs