

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 16, 1985

The seventh meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on January 16, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Daniels, who was excused.

CONSIDERATION OF SB 85: Senator Bob Brown, sponsor of SB 85, stated although criminal justice information is shared informally now, there is no centralized information bank on criminal activity and records, and consequently there is no record of someone's criminal activity in several cities around the state. Nationwide, there are several regional networks like Rocky Mountain Information Network. There is also the National Criminal Information Center which is headquartered in Washington, D.C., which is a repository for criminal information on stolen property and the like. This bill establishes an information section similar to Rocky Mountain Information Network and meets an important law enforcement need. In addition to creating this central location, Senator Brown stated the bill creates an information advisory council under the Attorney General's office. The information files compiled under the provisions of the bill will be reviewed once a year. No information gathered under the bill can be done illicitly. Senator Brown stated the fiscal impact of the bill depends on two additional FTEs the Attorney General has requested in his office. They have the equipment they would need now, but they would need the money to fund the two additional employees..

PROPOSERS: Larry Peterson, of the Montana Board of Crime Control, appeared in support of SB 85 (see written testimony attached as Exhibit 1). Dorothy McCarter, of the Attorney General's office, also appeared in support of the bill. She stated the Criminal Justice Information Act as it presently exists authorizes the Department of Justice to set up an intelligence information section. The purpose of this legislation is to ensure quality control in its collection, storage, and use. The creation of the intelligence information section would not jeopardize any individual's rights to privacy. The information in the intelligence information section is already in the hands of law enforcement agencies. Because the intelligence information section would be providing periodic reviews and audits, the information would be reliable. The Attorney General's office is suggesting the bill be amended (see Exhibit 2).

Chuck O'Reilly, President of the Sheriffs' and Peace Officers' Association and Sheriff of Lewis and Clark County, appeared in support of the bill. He stated the bill is not creating the gathering of information, but creating a system of using that information.

OPPONENTS: Butch Turk, from the Peace Legislative Coalition, testified regarding SB 85 and suggested that it be amended (see written testimony and proposed amendment attached as Exhibit 3). They believe it should not necessarily be a function of the criminal information system to maintain and disseminate non-criminal information.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked Mr. O'Reilly why two years ago a similar bill created a lot of adverse publicity. Mr. O'Reilly stated there were a lot of rumors that began with the introduction of that bill concerning Big Brother. He believes the reason the bill was killed was a failure to explain they were not changing the information gathering. He further stated this bill today is essentially the same bill as the one killed last legislative session. Senator Shaw stated an advisory committee was recommended in this bill, but no additional funds appeared to be contemplated if the Attorney General got the other FTEs. He wondered if the advisory committee would need funding. Mr. Peterson stated he had no figure at this point, although without SB 85, the intelligence unit can be established. He believed a fiscal note would be required with SB 85 if the budget modification is approved. They have recommended the council consist of four individuals traveling to Helena one and a half days quarterly. Senator Mazurek asked if this bill were approved, was the Attorney General willing to absorb the cost of the advisory council out of existing funds if the budget amendment is not approved. Mr. Peterson stated he would be required by the bill to have an advisory council. Gary Carrell, Chief of the Criminal Investigation Bureau of the Attorney General's office, stated he forgot to include moneys for the advisory council if it were approved. Senator Shaw as if they were prepared if this bill passes to be able to absorb this bill plus a cut. Mr. Carroll responded that he doubted it. Senator Towe stated to Senator Brown he was concerned about privacy and had difficulty with the language. He feels the phrases are hard to pin down and questioned what we were trying to do here. Senator Brown responded the Montana constitution applies to privacy considerations. Senator Towe stated this is a sticky issue--criminal intelligence information is right at the heart of privacy. Mr. Peterson stated the Criminal Justice Information Act defines criminal intelligence information and stated it must be labeled as confidential; if it is disseminated, it must be stamped confidential. Mr. Peterson believes one problem with law enforcement is information may or may not have been valid and has been hung on to and has not been verified. He wants a council to develop some safeguards. Senator Towe stated he doesn't understand what is really meant by subparagraph 2 on page 6, lines 4-7,

and 19-22. Mr. Peterson stated we are referring to the Criminal Justice Information Act of 1979. Senator Towe questioned whether they were proposing to add to or change the Criminal Justice Information Act. Fritz Behr, Administrator of the Law Enforcement Division of the Attorney General's office, stated as he understands this bill, there is no intention to change the Criminal Justice Information Act of 1979; the bill would only tighten up the standards of the former exchange of this information. Mr. O'Reilly suggested sections 10 and 11 be struck and proposed the following amendment:

1. Page 5, line 9.

Following: "rights"

Insert: "as provided in the Montana Criminal Justice Act
of 1979, Title 44, chapter 5"

CLOSING STATEMENT: Senator Brown stated he believes Mr. Turk's problem is a valid one that has been addressed in the existing law. He does not believe criminal activity includes political activity.

Hearing on SB 85 was closed.

ACTION ON SB 56: Senator Towe moved SB 56 be recommended DO NOT PASS. Senator Shaw stated at the present time he will support this bill and requested action not be taken on it at the present time. Senator Crippen stated the committee needs to act to keep things moving, and if you are gone, you are gone. Senator Towe asked Senator Shaw if in fact he were the only one supporting the bill, and, if so, the committee need not defer action any longer. Senator Shaw stated this bill sets guidelines for assumption of risk and shoots down the chance for lawyers to run around and get big settlements on accident cases that are not warranted. He stated the committee heard more for this bill than against it. Senator Towe explained the reason he opposes the bill is whether there were negligence should be a jury question, and this bill says you cannot even take the case to the jury. He stated Mr. Emmons may be incorrect in the court's applying comparative negligence to assumption of risk. Senator Crippen agreed with Senator Towe. He stated, years ago, we had contributory negligence. If a plaintiff filed a lawsuit and the plaintiff were 5% negligent and the defendant 95% negligent, the plaintiff could not recover. The law provides comparative negligence to provide a means of weighing the wrong. Comparative negligence brings more equity in these lawsuits. Senator Pinsoneault spoke in support of the bill stating there is an element of fairness that comes into it. Senator Mazurek stated the law is working. The motion to recommend SB 56 DO NOT PASS carried unanimously.

FURTHER CONSIDERATION OF SB 27: Senator Crippen moved that SB 27 DO NOT PASS. Senator Yellowtail has talked with two clerks in his district and indirectly through them has received a report from the Yellowstone

County District Court Clerk, all of whom are in support of this bill. They stated their clerks' association would have been here but for internal problems. Senator Crippen stated he spoke with his clerk, and he is against it. Senator Mazurek was concerned with the forfeiture of office for failure to attend. Senator Yellowtail also declared that was objectionable and probably unconstitutional. Aside from that provision, his clerks were very much in favor of it. Senator Towe stated he was a member of the interim subcommittee that heard this bill. He was also under the impression the clerks' association supported the bill. Senator Crippen stated he believes some clerks will not go. The clerks of district court have meetings in regional areas around the state. Why get them together in Helena when they are getting together around the state. He thinks the idea is great, but the bill misses the mark. He also stated those clerks who have no deputies when they leave must close their doors. Senator Towe stated the justices of the peace have a similar training session, and if they don't attend, they may lose their offices. They also have a justice of the peace association, but the meetings do not cover the type of information needed. He questioned if it would work if you left it on a voluntary basis. Senator Crippen didn't believe we should leave it to the clerks' association to do it, but we should do it for them. Senator Mazurek questioned whether we should do it at all, since we don't do it for other county officials. Senator Towe reiterated that we do it for the justices of the peace. Senator Yellowtail moved that SB 27 be amended in section 1, subsection 3, to delete language in lines 13-15 (see Exhibit 4). The motion passed unanimously. Senator Towe moved that the bill be recommended DC PASS AS AMENDED unless the committee wished to discuss it when all members were present. It was the consensus of those present that action on SB 27 should be withheld until a later time and the motion was withdrawn.

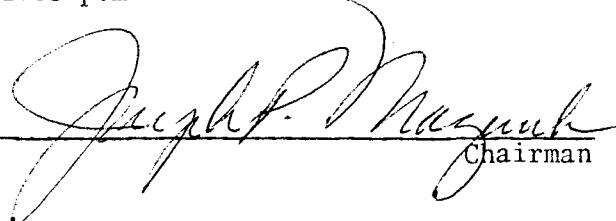
FURTHER CONSIDERATION OF SB 28 AND SB 69: Mr. Petesch presented a grey bill which merges SB 28 and SB 69, which grey bill includes all suggested amendments (see Exhibit 5). Mr. Petesch merged SB 28 into SB 69 because SB 28 contained more sections. He noted the title contains a list of all of the sections, but it does not reflect the content of the bill and will have to be changed. Mr. Petesch then explained the changes made in the bill. Clay Smith, Assistant Attorney General, stated the Attorney General's office has no objection to the overall purpose of either bill. Their only concern deals with the way SB 28 attempts to achieve what they think is a good purpose, which is to make whatever is negotiated and ratified by the legislature binding on the Water Court. He has concerns and has expressed them to Attorney General Greely (who has not yet made up his mind as to his position). The water judge is required to hear challenges and then arrive at a final degree. The water judge does have authority to modify the compacts. When a compact has been negotiated, others may have their rights affected adversely by the compact, and he thinks that is the reason why the

compact is open to challenge by the water court proceedings. Everyone in the office agrees that the possibility of the compact's being modified by the water judge is not a good state of affairs. He believes there are other ways to limit the Water Court's authority to modify compacts. He has proposed language to Mr. Greely that unless a compact is arbitrary and capricious, it cannot be modified. They have not formalized their position, but hope to do so by the end of the week. Senator Crippen asked Mr. Smith to give the committee an example of someone whose water rights would be adversely affected and did not have an opportunity to negotiate in the compact. Mr. Smith explained that in parts of the state where water is scarce, it is conceivable that the reserved rights for the tribes will be substantial and someone could contend that the quantification is too excessive and uses up all of the water for the year, although it is difficult to know the nature of what the challenges may be. Senator Crippen wanted to know if that person whose water rights could be affected would have an opportunity to be involved in the negotiation process or the legislative ratification process. Senator Towe stated that if the United States enters into a treaty with Canada and the treaty is entered into our records for informational purposes, a water judge cannot touch that treaty. He questioned why that doesn't apply to state compacts. Mr. Smith questioned whether the state want to take a chance of subjecting itself to those claims. Senator Towe asked if the legislature finds a compact binding, why would the water judge not be bound by that. Marcia Rundle stated we should be sure the goals of all of the parties are the same. The legislature has provided as an alternative to the water courts a process whereby we could negotiate rather than litigate. Another goal is to protect the integrity of the legislative process. The kinds of due process concerns are the same concerns that have been expressed by the commission. There is no clear answer because there are no cases in which tribes and states have negotiated compacts that have been ratified and subsequently challenged on constitutional grounds. It will be a judgment call by the legislature as to the best means by which we can address those concerns and meet those goals. She believes we should think of a compact as an alternative to the litigation process. Senator Crippen stated the legislature will be hard pressed to overturn a compact. That essentially takes them out of the water adjudication process. Chairman Gordon McOmber stated the legislature cannot on its own change the compact. All it can do is send it back to the commission for further negotiations. Senator Galt stated the commission works very hard to protect the interests of all water users. Chairman Mazurek announced the committee would not take any further action on SB 28 or SB 69 until it has heard from the Attorney General's office.

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Senator Galt stated he would be absent from committee meetings Thursday, Friday, and Saturday. He asked that any vote on SB 28 or SB 69 be withheld during his absence. In addition, he asked that he be recorded as having voted for SB 2, SB 3, SB 97, and SB 98 and against SB 27, SB 56, SB 85, and SB 30.

The meeting was then adjourned at 12:05 p.m.


Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 011685

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock			X
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels			X
Chairman Senator Joe Mazurek	X		

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Judiciary

JB 85

Oppose

X

X

X

X

X

X

X

1

X

100

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

NAME: A. Laurence Petersen DATE: 1/16/85

ADDRESS: Capitol Station

PHONE: 444 - 3604

REPRESENTING WHOM? Board of Crime Control

APPEARING ON WHICH PROPOSAL: SB 85

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

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 011685

BILL NO. SB 85



BOARD OF CRIME CONTROL

303 NORTH ROBERTS
SCOTT HART BUILDING
HELENA, MONTANA 59620
TELEPHONE NO. 444-3604

IN REPLY REFER TO:

SB 85

During the "1981 Criminal Justice Conference" a major law enforcement issue was identified:

*No means exist for the collection, analysis,
and exchange of criminal intelligence infor-
mation between law enforcement agencies.*

In 1982, the Board of Crime Control charged a task force to examine the criminal intelligence information issue. The task force found that most law enforcement agencies do maintain some sort of intelligence information, but the exchange of this information is an ad hoc, informal process. A need was identified for a formal structure to exchange intelligence information; which would also provide for the protection of the rights of citizens, ensure the validity of information collected, and provide safeguards for its dissemination.

The proposed legislation is permissive in nature. It would allow the Department of Justice to establish a formal intelligence information exchange section, even though at present it does not appear to be prohibited from doing so.

Under the proposal, if the Department of Justice were to establish the intelligence information section, they would be required to have an "advisory council." The information would only be available to law enforcement agencies demonstrating a need for such information and meeting certain criteria to safeguard the information. Any agency violating the safeguards for the protection of this information could be removed from participating in the exchange process.

If an intelligence information section is established, the Board of Crime Control recommends a Legislative performance audit be conducted after two years of operation.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 01/16/85

BILL NO. SB 85

AMENDMENT TO
SENATE BILL 85

1. Page 1, line 16.

Strike: "directly responsible to the attorney general"

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 011685

BILL NO. SB 85

(This sheet to be used by those testifying on a bill.)

NAME: Butch Turk DATE: 1/16/84

ADDRESS: Box 5419 Helena 59604

PHONE: 443-5122

REPRESENTING WHOM? Peace Legislative Coalition

APPEARING ON WHICH PROPOSAL: SB 85

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

COMMENT: attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 01/16/85

BILL NO. SB 85

Peace Legislative Coalition

P.O. Box 5419 • Helena, Montana 59604

TESTIMONY ON SB 35

Senate Judiciary Committee--January 16, 1985

Batch Turk 443-5122

The coordination and dissemination of criminal intelligence information can serve a useful and necessary purpose in our society. However, such activities have frequently been abused. Groups such as ours and other political groups have been subject to intelligence gathering and harassment solely because of their political activity and not because of any alleged criminal behavior. Criminal law should not only protect individual privacy, but should also protect groups and individuals rights to free expression and dissent.

For these reasons the Peace Legislative Coalition suggests the following amendment to Senate Bill 35:

"The section shall not collect, maintain or disseminate information on the political activity of groups or individuals unless such information is clearly related to criminal actions."

GF. Tnd 1/14/85 ABA panel asks guard on FBI law

WASHINGTON (AP) — Reagan administration rules for FBI investigations of domestic terrorism need "additional safeguards" to protect lawful dissent, an American Bar Association committee said Sunday.

Although the panel commended the guidelines as reflecting "a healthy degree of balance" between First Amendment rights and public security, it said "additional safeguards are necessary" because the rules expand investigative techniques available to FBI agents.

"For instance, the FBI may now recruit new informants in circumstances where it could not do so under the old policy," said Eric Richard, chairman of the ABA's individual rights panel, which issued the re-

"That is why close monitoring of whether informants limit themselves to reporting evidence of crimes, rather than on the political beliefs or opinions of suspects, is so important," said Richard.

Among its recommendations, the ABA committee urged that FBI field offices be required to inform superiors at the Washington headquarters before opening preliminary investigations involving domestic security.

"The guidelines require no such reporting, which will make it difficult to ascertain whether field agents are observing the guidelines' requirements correctly," Richard said.

The report also suggested that procedures be established at the FBI to describe the scope of a domestic security investigation in writing at an early point so agents can decide what records or information are pertinent.

"This will permit the FBI to avoid developing retrievable information about persons who are not implicated in any unlawful activity," Richard said.

SENATE JUDICIARY COM

EXHIBIT NO. 3

DATE 011685

BILL NO. SB 35

SB 27

1. Page 2, lines 13 through 15.

Following: "(2)."

Strike: remainder of line 13 through line 15 in their entirety

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 14

DATE 011685

BILL NO. SB 27

SENATE BILL NO. 28

INTRODUCED BY

BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A 2-YEAR EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A COMPACT ONLY IF LEGALLY NECESSARY; REQUIRING THAT THE TERMS OF A COMPACT SET FORTH IN A PRELIMINARY DECREE BE REPRODUCED UNCHANGED IN THE FINAL DECREE; EXTENDING FROM 60 DAYS TO 6 MONTHS THE TIME PERIOD FOR FILING IN THE WATER COURT CLAIMS UNRESOLVED BY THE COMPACT COMMISSION; AMENDING SECTIONS 85-2-217, 85-2-224, 85-2-231, 85-2-234, AND 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, ~~1985~~ 1987,

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1 as long as negotiations are continuing or ratification of a
 2 completed compact is being sought. If approval by the state
 3 legislature and tribes or federal agencies has not been
 4 accomplished by July 1, ~~1985~~ 1987, the suspension shall
 5 terminate on that date. Upon termination of the suspension
 6 of this part, the tribes and the federal agencies shall be
 7 subject to the special filing requirements of 85-2-702(3)
 8 and all other requirements of the state water adjudication
 9 system provided for in Title 85, chapter 2. Those tribes and
 10 federal agencies that choose not to negotiate their reserved
 11 water rights shall be subject to the full operation of the
 12 state adjudication system and may not benefit from the
 13 suspension provisions of this section."

14 SECTION 2. SECTION 85-2-224, MCA, IS AMENDED TO READ:

15 "85-2-224. Statement of claim. (1) The statement of
 16 claim for each right arising under the laws of the state and
 17 for each right reserved under the laws of the United States
 18 which has been actually put to use shall include
 19 substantially the following:

20 (a) the name and mailing address of the claimant;

21 (b) the name of the watercourse or water source from
 22 which the right to divert or make use of water is claimed,
 23 if available;

24 (c) the quantities of water and times of use claimed;

25 (d) the legal description, with reasonable certainty,
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1 of the point or points of diversion and places of use of
2 waters;

3 (e) the purpose of use, including, if for irrigation,
4 the number of acres irrigated;

5 (f) the approximate dates of first putting water to
6 beneficial use for the various amounts and times claimed in
7 subsection (c); and

8 (g) the sworn statement that the claim set forth is
9 true and correct to the best of claimant's knowledge and
10 belief.

11 (2) The Any claimant filing a statement of claim under
12 subsection (1) shall submit maps, plats, aerial photographs,
13 decrees, or pertinent portions thereof, or other evidence in
14 support of his claim. All maps, plats, or aerial
15 photographs should show as nearly as possible to scale the
16 point of diversion, place of use, place of storage, and
17 other pertinent conveyance facilities.

18 (3) Any statement of claim for rights reserved under
19 the laws of the United States which have not yet been put to
20 use shall include substantially the following:

21 (a) the name and mailing address of the claimant;

22 (b) the name of the watercourse or water source from
23 which the right to divert or make use of water is claimed,
24 if available;

25 (c) the quantities of water claimed;

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50 28819

1 (d) the priority date claimed;

2 (e) the laws of the United States on which the claim
3 is based; and

4 (f) the sworn statement that the claim set forth is
5 true and correct to the best of claimant's knowledge and
6 belief."

7 Section 3. Section 85-2-231, MCA, is amended to read:

8 "85-2-231. Preliminary decree. (1) The water judge
9 shall issue a preliminary decree. The preliminary decree
10 shall be based on:

11 (a) the statements of claim before the water judge;

12 (b) the data submitted by the department;

13 (c) the contents of compacts approved by the Montana
14 legislature and the tribe or federal agency or, lacking an
15 approved compact, the filings for federal and Indian
16 reserved rights; and

17 (d) any additional data obtained by the water judge.
18 The preliminary decree shall be issued within 90 days after
19 the close of the special filing period set out in
20 85-2-702(3) or as soon thereafter as is reasonably feasible.
21 This section does not prevent the water judge from issuing
22 an interlocutory decree or other temporary decree if such a
23 decree is necessary for the orderly administration of water
24 rights prior to the issuance of a preliminary decree.

25 (2) A preliminary decree may be issued for any

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1 hydrologically interrelated portion of a water division,
 2 including but not limited to a basin, subbasin, drainage,
 3 subdrainage, stream, or single source of supply of water, at
 4 a time different from the issuance of other preliminary
 5 decrees or portions of the same decree.

6 (3) The preliminary decree shall contain the
 7 information and make the determinations, findings, and
 8 conclusions required for the final decree under 85-2-234.
 9 The water judge shall include in the preliminary decree, for
 10 informational purposes, the contents of a compact negotiated
 11 under the provisions of part 7 that has been approved by the
 12 legislature and the tribe or federal agency ~~whether--or--not~~
 13 ~~it-has-been-ratified-by-congress.~~

14 (4) If the water judge is satisfied that the report of
 15 the water master meets the requirements for the preliminary
 16 decree set forth in subsections (1) and (3), and is
 17 satisfied with the conclusions contained in the report, the
 18 water judge shall adopt the report as the preliminary
 19 decree. If the water judge is not so satisfied, he may, at
 20 his option, recommit the report to the master with
 21 instructions, or modify the report and issue the preliminary
 22 decree."

23 Section 4. Section 85-2-234, MCA, is amended to read:

24 "85-2-234. Final decree. (1) The water judge shall, on
 25 the basis of the preliminary decree and on the basis of any

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1 hearing that may have been held, enter a final decree
 2 affirming or modifying the preliminary decree. If no
 3 request for a hearing is filed within the time allowed, the
 4 preliminary decree automatically becomes final, and the
 5 water judge shall enter it as the final decree.

6 (2) The terms of a compact negotiated and ratified
 7 under 85-2-702 must be included in the final decree without
 8 alteration.

9 (2)(3) The final decree shall establish the existing
 10 rights and priorities within the water judge's jurisdiction
 11 of persons required by 85-2-221 to file a claim for an
 12 existing right, and of persons required to file a
 13 declaration of existing rights in the Powder River Basin
 14 pursuant to an order of the department or a district court
 15 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
 16 AND OF ANY FEDERAL AGENCY OR INDIAN TRIBE POSSESSING WATER
 17 RIGHTS ARISING UNDER FEDERAL LAW, REQUIRED BY 85-2-702 TO
 18 FILE CLAIMS.

19 (3)(4) The final decree shall state the findings of
 20 fact, along with any conclusions of law, upon which the
 21 existing rights and priorities of each person, FEDERAL
 22 AGENCY, AND INDIAN TRIBE named in the decree are based.

23 (4)(5) For each person who is found to have an
 24 existing right ARISING UNDER THE LAWS OF THE STATE OF
 25 MONTANA, the final decree shall state:

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1 (a) the name and post-office address of the owner of
2 the right;

3 (b) the amount of water, rate, and volume, included in
4 the right;

5 (c) the date of priority of the right;

6 (d) the purpose for which the water included in the
7 right is used;

8 (e) the place of use and a description of the land, if
9 any, to which the right is appurtenant;

10 (f) the source of the water included in the right;

11 (g) the place and means of diversion;

12 (h) the inclusive dates during which the water is used
13 each year;

14 (i) any other information necessary to fully define
15 the nature and extent of the right.

16 (6) FOR EACH PERSON, TRIBE, OR FEDERAL AGENCY
17 POSSESSING WATER RIGHTS ARISING UNDER THE LAWS OF THE UNITED
18 STATES, THE FINAL DECREE SHALL STATE:

19 (A) THE NAME AND MAILING ADDRESS OF THE HOLDER OF THE
20 RIGHT;

21 (B) THE SOURCE OR SOURCES OF WATER INCLUDED IN THE
22 RIGHT;

23 (C) THE QUANTITY OF WATER INCLUDED IN THE RIGHT;

24 (D) THE DATE OF PRIORITY OF THE RIGHT;

25 (E) THE PURPOSE FOR WHICH THE WATER INCLUDED IN THE

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EXHIBIT NO. 5

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FILE

BILL NO.

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1 RIGHT IS CURRENTLY USED, IF AT ALL;

2 (F) THE PLACE OF USE AND A DESCRIPTION OF THE LAND, IF
3 ANY, TO WHICH THE RIGHT IS APPURTENANT;

4 (G) THE PLACE AND MEANS OF DIVERSION, IF ANY;

5 (H) ANY OTHER INFORMATION NECESSARY TO FULLY DEFINE
6 THE NATURE AND EXTENT OF THE RIGHT, INCLUDING THE TERMS OF
7 ANY COMPACTS NEGOTIATED AND RATIFIED UNDER 85-2-702."

8 Section 5. Section 85-2-702, MCA, is amended to read:

9 "85-2-702. Negotiation with Indian tribes. (1) The
10 reserved water rights compact commission, created by
11 2-15-212, may negotiate with the Indian tribes or their
12 authorized representatives jointly or severally to conclude
13 compacts authorized under 85-2-701. Compact proceedings
14 shall be commenced by the commission. The commission shall
15 serve by certified mail directed to the governing body of
16 each tribe a written request for the initiation of
17 negotiations under this part and a request for the
18 designation of an authorized representative of the tribe to
19 conduct compact negotiations. Upon receipt of such written
20 designation from the governing body of a tribe, compact
21 negotiations shall be considered to have commenced, EXCEPT
22 THAT NO COMPACT PROCEEDINGS MAY COMMENCE AFTER JULY 1, 1985.

23 (2) When the compact commission and the Indian tribes
24 or their authorized representatives have agreed to a
25 compact, they shall sign a copy and file an original copy

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1 with the department of state of the United States of America
 2 and copies with the secretary of state of Montana and with
 3 the governing body for the tribe involved. The compact is
 4 effective and binding upon all parties upon ratification by
 5 the legislature of Montana, AND any affected tribal
 6 governing body, ~~and, if legally necessary,~~ the congress of
 7 the United States or other appropriate federal authority.

8 (3) Upon its ~~approval~~ RATIFICATION by the Montana
 9 legislature and the tribe ~~or federal agency~~, the terms of a
 10 compact must be included in the preliminary decree for
 11 informational purposes as provided by 85-2-231, and unless
 12 renegotiated, the terms of the compact must be included in
 13 the final decree without alteration. However, if approval of
 14 the state legislature and tribe ~~or federal agency~~ has not
 15 been accomplished by July 1, ~~1985~~ 1987, all ~~federal~~ ~~and~~
 16 Indian claims for reserved water rights that have not been
 17 resolved by a compact must be filed with the department
 18 within ~~60 days~~ 6 months. These new filings shall be used in
 19 the formulation of the preliminary decree and shall be given
 20 treatment similar to that given to all other filings."

21 SECTION 6. SECTION 85-2-704, MCA, IS AMENDED TO READ:

22 "85-2-704. Termination of negotiations. (1) The
 23 commission or any ~~other party to the negotiations~~
 24 negotiating tribe or federal agency may terminate
 25 negotiations by providing notice to all parties 30 days in

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1 advance of the termination date. On the termination date,
 2 the suspension of the application of part 2 provided for in
 3 85-2-217 shall also terminate. The tribe or federal agency
 4 shall file all of its claims for reserved rights within 60
 5 days of the termination of negotiations.

6 (2) (a) However, if a notice of termination is
 7 submitted by either party and the submitting party elects to
 8 retract the notice before the termination date, the notice
 9 of termination must be disregarded and negotiations are not
 10 terminated. The retraction of a notice of termination must
 11 be made by certified mail addressed to:

12 (i) the chairman of the governing body of the affected
 13 tribe;

14 (ii) the officially designated representative of the
 15 affected federal agency; or

16 (iii) the chairman of the reserved water rights compact
 17 commission.

18 (b) The retraction of a notice of termination must be
 19 received before the termination date."

20 THERE IS A NEW MCA SECTION THAT READS:

21 NEW SECTION. Section 7. Status reports to chief water
 22 judge. (1) The Montana reserved water rights compact
 23 commission must submit to the chief water judge, appointed
 24 pursuant to 3-7-221, a report on the status of its
 25 negotiations on July 1, 1985, and every 6 months thereafter.

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1 (2) Each report must state which Indian tribes and
2 federal agencies are engaged in negotiations, whether any
3 negotiations with Indian tribes or federal agencies have
4 been terminated, and the progress of negotiations on a
5 tribe-by-tribe and agency-by-agency basis. The report must
6 be made available to the public.

7 NEW SECTION. Section 8. Effective date. This act is
8 effective ~~on-passage-and-approval~~ JULY 1, 1985.

-End-

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STANDING COMMITTEE REPORT

January 16

19 35

MR. PRESIDENT

We, your committee on.....**JUDICIARY**.....

having had under consideration.....**SENATE BILL**..... No. **56**.....

first reading copy (**white**)
color

ESTABLISH ASSUMPTION OF THE RISK AS ABSOLUTE DEFENSE IN CIVIL ACTIONS

Respectfully report as follows: That.....**SENATE BILL**..... No. **56**.....

YUDEASH

DO NOT PASS

Chairman.