

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

April 8, 1987

The fifty-seventh meeting of the Senate Judiciary Committee was called to order on April 8, 1987 at 10:00 a.m. in Room 325 of the state Capitol, by the chairman, Senator Joe Mazurek.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 754: Representative Dorothy Bradley, District 79, introduced HB 754, which provides an appointment process for water judges and establishes priority basins. She presented the committee with an amendment dealing with the selection of judges. (Exhibit 1)

PROPOSERS: Representative Gary Spaeth, House District 84, presented an amendment called the "Spaeth Amendment". (Exhibit 2) He also gave the committee an amendment that the House put into this bill. (Exhibit 3) He said the DNRC department has to notify the water courts if the courts overspend their budget.

Rep. Dennis Iverson, House District 12, supported the bill with the Spaeth amendment.

OPPOSERS: Lorna Frank, Montana Farm Bureau, opposed the Spaeth amendment because it will cause more conflicts in the water court with the DNRC.

Vernon Westlake, Gallatin County Agricultural Preservation Association, opposed the bill. (Exhibit 4)

Carol Mosher, Montana Cattlewomen and Montana Stockgrowers, opposed HB 754. (Exhibit 5)

Terry Murphy, Farmers Union, opposed the Spaeth amendment. He said there is a lot of anger among irrigators over how much power the department has over the water courts.

Ed Steinmetz, Montana Water Court, said the bill has been "watered down" so much that it doesn't even help anyone anymore. He felt the Spaeth amendment is not needed. He can't believe Mr. Spaeth would present such a bill that freely allows funds to be taken out of water court judges salaries. He said the amendment will cause constitutional problems. He said the water court will pay these DNRC employees wages. He didn't know if that was constitutional or not. He pointed out the funds for both these groups involve tax money now. He felt the legislature should fund both groups.

Mary Saunders, Montana Landowners Association, opposed the bill. (Exhibit 6)

Senator Story, District 41, said the subcommittee had several things in mind when doing this bill. He said they wanted his bill to pass, which it did. He stated the committee wanted everyone to file at the department the same time. He said that was passed so the funding for filing was not as large. Senator Story said the subcommittee left in the entire budget for new rights, but one has to remember, the subcommittee budgeted for a whole commission. He felt there is extra money floating around in the rest of the division. He said there are 665 new water right claims filed and an additional 312 requests for water rights were withdrawn. He said there were 6,000 water right transfers recorded and felt that shouldn't take too much money. He said there were 3,000 notices of completion and 161 requests for a change of appropriation. He felt there is quite a bit of spare change in the division and felt the Spaeth amendment was really not needed.

Senator Sam Hofman, Senate District 38, opposed the bill because the DNRC department is acting like a spoiled kid. He felt Judge Leslie, Water Court Judge, was doing a good job.

Joe Barrett, Augusta, Montana, was against the bill because it would hamper the water court adjudication procedure.

DISCUSSION OF HOUSE BILL 754: Representative Spaeth said what he wanted to do was detail what the department does, and since they are at the disposal of the water judge, if the DNRC runs out of money because of a task given to them by the water judges, then the water courts pay for it. Rep. Spaeth said it will make the court give the department only real important things to do since it involves their money. He said he wanted to redraft his amendment. (Exhibit 7)

Vernon WestLake didn't like the redraft of Spaeth's amendment.

Ed Steinmetz said this amendment will shut down the water court in a year.

Senator Mazurek said that is a matter that should be dealt with by the appropriation committee.

Senator Crippen asked if the court is going to direct the department on how to spend the money that is appropriated. Mr. Steinmetz said the department provides a variety of functions for the court. He said because there is not enough money in the fund, then the department will only perform certain functions. He said many of the functions of the water court are not that important. Senator Yellowtail said it sounds like Mr. Steinmetz wants to shut the water court down.

Senator Blaylock asked Lorna Frank what she thought about increasing taxes to fund the water court. She didn't think it was a good idea.

Senator Blaylock inquired if the DNRC can function with the funds that have been given. A gentlemen from the DNRC that was not identified, said Senator Story wanted to take a million dollars out of the DNRC account. He said that proposal would eliminate 20 FTE's.

Representative Iverson said he liked Spaeth's last draft of the bill much better than the other ones.

Senator Pineseault asked if anyone has thought of another judge taking Judge Leslie's position.

Senator Mazurek asked if the committee needed to look at the repealer. Rep. Spaeth said no.

Representative Bradley in closing, said she didn't know of any retired judges that might be interested if Judge Leslie retires. She also said one can't expect an agency to do anything without money.

ACTION ON HOUSE BILL 873: Senator Pineseault stated there is confusion in the felony murder rule of Montana. He said this law is an expansion of the felony murder rule.

Senator Blaylock asked if two guys decide to commit rape, and one does it while the other is the look-out man, and the girl dies, can the look-out man be convicted of murder. Senator Pinsoneault said it could happen.

Senator Pinsoneault moved House Bill 873 BE CONCURRED IN.  
The motion carried.

ACTION ON HOUSE BILL 861: Senator Pinsoneault asked what the railroad will do with all this information the bill lets them gather about the potential buyer of the line.

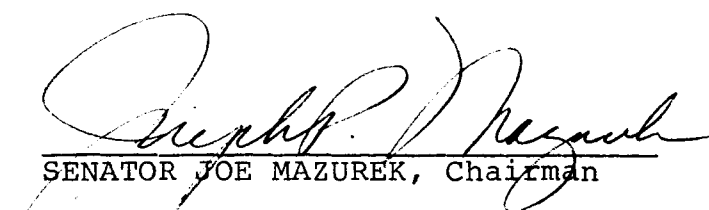
Jim Mular, Burlington Northern, replied the information can be used against the buyer if the buyer does something wrong. Ms. Kim Shultz, A.G., said if the buyers want the sale confidential, they can go to court and get a protection procedure.

Senator Crippen said people will not be quiet about this kind of thing.

Senator Blaylock asked if information about a sale has not been released to the public, can a railroad shipper take the buyer to court to find out information. Mr. Mular said the shipper has to go to the consumer council and find out what he needs to know rather than take the buyer to court. Senator Mazurek said the bill states one can't get that type of information. Mr. Mular replied you can't get it through the courts.

The committee decided to wait on action on HB 861.

ADJOURNMENT: The committee adjourned at 12:10 p.m.

  
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SENATOR JOE MAZUREK, Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date April 8th

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NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.



SENATE JUDICIARY

EXHIBIT NO. 1

DATE ~~1/1~~ April 8, 198

BILL NO. HB 754

Amendments to HB754  
Third Reading Copy

1. Page 4, line 10  
Strike: "offices"  
Insert: "the office"
  
2. Page 4, line 11  
Strike: "3-7-201 or"

HOUSE BILL 754

SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:

"85-2-243. Department assistance to water judges.

(1) The department, subject to the direction of the water judge, shall, without cost to the judicial districts wholly or partly within his water division,

(1) (a) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(2) (b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(3) (c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(4) (d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated by the legislature for the expenses of the chief water judge under 3-7-222 except to the extent a specific appropriation has been made to the department to carry out its functions under subsection

(1) -"



AMENDMENTS  
TO HOUSE BILL 754  
(THIRD READING COPY)

SENATE JUDICIARY

EXHIBIT NO. 3

DATE April 8, 196

BILL NO. HB 754

1. Page 7, lines 10 through 13

Following: "legislature" on line 10

Strike: remainder of line 10 through line 13

Insert: "to the department for the adjudication program.

If a water judge directs the department to perform a function under subsection (1) for which the department has not been funded or if the the department does not have sufficient funds remaining in its adjudication appropriation to carry out the function the expenses incurred must be paid from the appropriation of the water divisions for their activities under Title 3, chapter 7. The department shall notify the water judge when department assistance will result in costs to the water division."

Senate Judiciary Committee  
Chairman: Senator Joe Mazurek

SENATE JUDICIARY

EXHIBIT NO. 4

DATE April 8, 1987

BILL NO. HB 754

Mr. Chairman and Members of the Committee:

I am Vernon Westlake, representing the Gallatin County Agricultural Preservation Association. For the Record, our organization opposes H.B. 754 because it proposes legislation that is not needed and cannot be justified at this time.

I am asking this Committee today the same question that I asked the House Judiciary Committee: How many of the 204,000 water rights claimants have indicated dissatisfaction with the adjudication process under the jurisdiction of the Water Court? I can safely say that a very large percentage want the process completed as quickly as possible and support the Water Court to do so.

The Bill proposes a major change in the system for the appointment of Water Judges which could increase the cost of operation of the Water Court by many thousands of dollars. Judge Lessley, Chief Water Judge, receives his retirement pay as his salary, thus saving the State of Montana a substantial amount of money. I understand that a similar situation exists with the other Water Judges, they are either retired or are serving as a District Judge in conjunction with being a Water Court Judge. This is one good example of the fact that H.B. 754 is not needed now.

Another good reason that H.B. 754 is not needed regards Section 8 where Section 85-2-243 is amended. In Paragraph (1) there is a deletion of the following phrase, "without cost to the judicial districts wholly or partly within his water division." This amendment is referred to as the Spaeth Amendment and it could bring about additional problems for the Water Court. The DNRC could conceivably drain the Water Court's budget, thereby causing a real slow-down of the adjudication process.

I shall conclude by saying that H.B. 754 is not needed and should be allowed to die a natural death in this Committee. The Water Court has already demonstrated that it is better able to complete the adjudication process at a lower cost to the taxpayers and can do so in a shorter length of time.

Respectfully submitted,

Vernon L. Westlake  
Chairman, Water Committee  
Gallatin County A.P.A.

3186 Love Lane  
Bozeman, Mt. 59715

For the record, my name is Carol Mosher, and I am representing the Montana Cattlewomen AND THE MONTANA STOCKGROWERS

There are some parts of HB 754 that we can support. However, we would suggest that under Section 8, on page 7, subsection 2, lines 6 thru 13 be eliminated from the bill. This is the section saying that when Judge Lessley asks the DNRC to carry out some function and the DNRC has already used up their money for that purpose, then the cost of the DNRC doing that job will come out of money appropriated by the legislature for the expenses of the chief water judge. To us, this could make for further confrontation between the Court and DNRC. We believe that the DNRC and the Water Court should each have their own necessary appropriations, and not be put in the position of getting in each other's pockets. This paragraph could cause further halts in the adjudication process.

In a very recent Supreme Court decision that dealt with the issue of adoption of rules relating to the verification of water claims in the adjudication process, it was ruled that the Water Court and the DNRC meet to draft proposed rules which the Supreme Court will then adopt. It further stated in this Supreme Court ruling, Quote, "--we hasten to add that nothing in this determination shall be taken to demean or underestimate the crucial role to be played by the DNRC in the adjudication of water rights claims. A lack of departmental cooperation in the furnishing of such technical expertise, assistance or information could bring the judicial adjudication of water rights to a grinding halt. It was to insure ongoing, uninterrupted progress towards ultimate quantification of water rights that the legislature provided in Section 85-2-243, MCA, that the DEPARTMENT SHOULD BE SUBJECT TO THE DIRECTIONS OF THE WATER JUDGES IN MATTERS AFFECTING ADJUDICATION." Unquote.

Page 2  
HB 754  
Senate Judiciary Comm.

I do not know whether this bill meets your qualifications for rules on how a bill is written, but it was interesting to note that the only three attorneys on the House Rules Committee voted that it did not meet their rules qualifications. However, the remaining members of that committee held the majority, and they passed the bill on to the floor of the House.

Our organization supports Judge Lessley in the adjudication process and we sincerely hope that you will eliminate this part of the bill that could cause us problems in that process.

*Carol Mashek*

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 4-8-87

BILL NO. H.B. 754



MONTANA COUNTRY

# MONTANA LANDOWNERS ASSOCIATION, INC.

Senate Judiciary Committee  
State Capitol  
Capitol Station  
Helena, Montana 59724

4-7-87

SENATE JUDICIARY

EXHIBIT NO. E 6

DATE April 8, 1987

BILL NO. HB 754

Re; House Bill 754- Bradley


Dear Senator;

On behalf of the membership of the MONTANA LANDOWNERS ASSN., INC., MADISON CHAPTER, we unanimously oppose this bill and recommend that you reject it as written. If you can amend it to eliminate the sections where there will be any participation by the DNRC other than in a minimum of authority, we hope you will do so. Otherwise, please kill the bill in your committee.

There is so much control of everyday existence already in the hands of Government agencies that we need to recognize the need to curb this trend whenever possible.

The list of the over 140 members of MLA, INC., Madison Chapter, is shown on the attached paper. We unanimously object to this bill.

Thank you,



Mary Saunders, Secretary  
MLA, INC., Madison Chapter  
Box 612  
Ennis, Montana 59729

Enclosure.

MLA, INC., MADISON CHAPTER  
MEMBERSHIP ROSTER 3-1-87

2 Margaret W. Allen	Livingston, Mt.	4 Longhorn Ranch	Ennis, Montana
2 Norman & Gay Ashcraft	Twin Bridges, Mont.	1 Robert Lott	Twin Bridges, Montana
2 Norman Ashcraft, Jr.	Gallatin Gateway, Mt.	1 M.J. Lott	Twin Bridges, Montana
2 George & Grace Boehm	Ennis, Montana.	2 Richard & Ann Lower	Twin Bridges, Mont.
2 Mitch & Elaine Boken	Twin Bridges, Mont.	2 Wells & Lou Morris	Ennis, Montana
2 George & Marlys Boltz	Ennis, Montana	1 Ralph Moulton	Twin Bridges, Montana
2 Kevin & Kathy Boltz	Ennis, Montana	2 Triple Tree Ranch	Bozeman, Montana
1 Cynthia Boomhower	Cameron, Montana	2 Lynn & Donna Owens	McAllister, Montana
2 Lloyd & Billie Brewton	Cody, Wyoming	1 Ralph Paugh	Ennis, Montana
2 Sphinx Mt. Ranch	Cameron, Montana	2 W.M & June Perrault	Bozeman, Montana
1 Jess Burgeon	Ennis, Montana	1 Charles Reid	Twin Bridges, Montana
1 Clinton Cain	Norris, Montana	2 Jack Reints	Ennis, Montana
2 J & M Livestock	McAllister, Montana	2+ Royal Teton Ranch	Corwin Springs, Mt.
2+ The Channels Ranch	Ennis, Montana	2 John T. Salver	McAllister, Montana
1 Carleen Clark	Twin Bridges, Montana	2 J.H. & Mary Saunders	Ennis, Montana
2 D.E. & Delores Cox	Twin Bridges, Mont.	2 R.E. & Carol Saunders	Wh. S. Sp., Mont.
2 H.W. & Patricia Dahlberg	Woodland Hills, Calif.	2 Triple S Ranch	McAllister, Montana
2+ Diamond J. Ranch	Ennis, Montana	2 Henry Seitz Ranch	Broadview, Montana
2 Ken & Gin Doze	Ennis, Montana	2 David & Janeen Skank	McAllister, Mt.
2 Elford Ranches	Twin Bridges, Montana	2 Sid & Lenore Smith	Twin Bridges, Montana
2 Gil & Liz Evans	Virginia City, Mont.	2+ Sun Ranch	Cameron, Montana
1 Harleigh Farwell	Redmond, Wash.	1 John E. Taft	Lima, Montana
2 David & Dee Freeman	Augusta, Mont.	2 H.S. & Clara Tash	Polaris, Montana
2 Germann Ranch	McAllister, Mont.	2 Tom & Kathy Tash	Polaris, Montana
2 Goggins Herfords	Ennis, Montana	2 Richard & Polly Todd	Sheridan, Mont.
1 Robert L. Graham	Twin Bridges, Montana	1 Frank Valgenti	Ennis, Montana
2+ Granger Ranches	Cameron, Montana	2 Open ^ Ranch	Dillon, Montana
2 Lorents Grosfield	Big Timber, Montana	2 Gene & Lois Walsh	Cameron, Montana
2 Robert Hoffman	Sheridan, Montana	2 Fred & Tina Walsh	Cameron, Montana
2+ Huntsman Ranch Co.	Dell, Montana	2 Robt. & Coralene Walsh	Tw. Br., Montana
2 Ken & Viola Iverson	Dell, Montana	2 Richard & Pauline Webel	Ennis, Mont.
2 A & A Hereford Ranch	Dell, Montana	2 Michael & Eilene White	McAllister, Mont.
2 Kalsta Ranch	Glen, Montana	1 Jim Weiferich	Twin Bridges, Montana
2 Harlow Kneeland	Sheridan, Montana	2 Tom & Joan Williams	Ennis, Montana
2 Willard & Louise Keightly	Bozeman, Montana	2 Bud & Diana Wilson	McAllister, Montana
1 Ann Laszio	Cameron, Montana	2 H.K. & Bess Linger	Miles City, Mont.
2 Terry & Lee Leonhardy	Ennis, Montana	2+ Swan Ranch Co.	Twin Bridges, Mont.
2 Orson & Mary Leth	Norris, Montana	1 Richard Ladd	Twin Bridges, Mont.
2 Walter & Mary Linberger	Ennis, Montana		

HOUSE BILL 754

BILL NO

SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ: STATE JUDICIARY

"85-2-243. Department assistance to water judges. EXHIBIT NO. 7

(1) The department, subject to the direction of the water judge, shall, without cost to the judicial districts wholly or partly within his water division;

DATE April 8, 196  
BILL NO. HB 754

(1) (a) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(2) (b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(3) (c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(4) (d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated by the legislature for the expenses of the chief water judge under 3-7-222-except to the extent a specific appropriation has been made to the department to carry out its functions under subsection

*and when that appropriation is expended then the Department is no longer required to provide further assistance.*

(1)-"

NAME: VERNON L. WEST LAKE DATE: 4/8/87

ADDRESS: 3186 LOVE LANE

PHONE: 388-4380

REPRESENTING WHOM? A.P.A.

APPEARING ON WHICH PROPOSAL: H.B. 754

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



# STANDING COMMITTEE REPORT

APRIL 6 19 87

MR. PRESIDENT

We, your committee on **SENATE JUDICIARY**

having had under consideration..... **HOUSE BILL** No. **873**

**Third** reading copy ( **blue** )  
color

**Revise and clarify homicide law.  
Hannah (Pinsonneault)**

Respectfully report as follows: That..... **HOUSE BILL** No. **873**

~~XXXXXX~~  
DO PASS

~~XXXXXXXXXX~~  
DO NOT PASS

BE CONCURRED IN

.....  
Senator Mazurek

.....  
Chairman.