

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on February 10, 1989,  
at 1:00 p.m.

ROLL CALL

Members Present: Senators: Hubert Abrams, Gary Aklestad,  
Esther Bengtson, Gerry Devlin, Jack Galt, Greg  
Jergeson, Gene Thayer, Bob Williams, and Chairman Beck

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 160

Presentation and Opening Statement by Sponsor:  
Representative Stepler, House District 21. See  
exhibit 1.

List of Testifying Proponents and What Group They Represent:

Neil Peterson representing the Weed Control Association  
Madison County Weed Board

List of Testifying Opponents and What Group They Represent:

None

Testimony:  
Proponents:

Neil Peterson-"We would like to go on record as supporting  
HB 160." See exhibit 2.

Questions From Committee Members: Senator Devlin-"Do all  
counties set up that they pick up cost of the  
conservation districts?" Rep. Stepler-"Yes, they do."

Senator Devlin-"Without an additional fee to the county

attorney?" Rep. Stepler-"I don't believe any of them are eligible for advice from the county attorney without fee at this time. They were not included in the definition in the codes."

Closing by Sponsor: Representative Stepler-"I believe this was an oversight when they defined the duties of a county attorney and who he can provide legal advice to without fee. I would ask that you would look upon this legislation with a favorable do pass motion."

#### DISPOSITION OF HOUSE BILL 160

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Bengtson moved HB 160 BE CONCURRED IN. The motion carried unanimously. Senator Devlin moved to place HB 160 on the consent calendar; the motion was seconded by Senator Aklestad. The motion carried unanimously.

Senator Bengtson agreed to carry HB 160 on the floor.

#### HEARING ON HOUSE BILL 90

Presentation and Opening Statement by Sponsor:

Representative Eudaily, House District 16, stated "I introduced this bill at the request of several of my constituents. These constituents are members of Missoula Backcountry Horseman Association. They are a recreational group who maybe uses their saddles two or three times a year just to go on little trail trips. They presented the idea that saddles were being picked out as the type of recreational equipment for taxing. I went to the county assessor to find out what was happening. I wanted to know how they found out about the saddles. Presently 10 percent all saddles in the state of Montana are taxed in Missoula county and I just know we're not a cowboy county. I think we need a little change here. What the bill attempts to do is exempt from property taxation all harnesses, saddles, and other tacking equipment."

List of Testifying Proponents and What Group They Represent:

Kim Enderud representing the Montana Stockgrowers, the Montana Grazing Districts, and the Montana CattleWomen

List of Testifying Opponents and What Group They Represent:

None

Testimony:  
Proponents:

Kim Enderud-"We support this bill now as it has been amended."

Questions From Committee Members: Senator Devlin-"Did this go through the Ag Committee over there or did it go through Tax?" Rep. Eudaily-"It went through Tax."

Closing by Sponsor: Representative Eudaily closes.

DISPOSITION OF HOUSE BILL 90

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Bengtson moved HB 90 BE CONCURRED IN. The motion carried unanimously. Senator Devlin moved to place HB 90 on the consent calendar; Senator Aklestad seconded the motion. The motion carried unanimously.

Senator Devlin agreed to carry HB 90 on the floor.

HEARING ON HOUSE BILL 170

Presentation and Opening Statement by Sponsor:  
Representative Hayne, House District 10. See exhibit 3.

List of Testifying Proponents and What Group They Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Representative Hayne, See exhibit 4.

DISPOSITION OF HOUSE BILL 170

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Thayer moved HB 170 BE CONCURRED IN. The motion carried unanimously. Senator Aklestad moved that HB 170 be placed on the consent calendar; the motion was seconded by Senator Devlin. The motion carried unanimously.

Senator Thayer agreed to carry HB 170 on the floor.

DISPOSITION OF SENATE BILL 168


Discussion: Doug Sternberg discussed the amendments to SB 166, SB 167, SB 168, and SB 169. See exhibits 5, 6, 7, and 8.

Amendments and Votes: Senator Bengtson moved the amendments to SB 168; the motion was seconded by Senator Galt.

Recommendation and Vote: Senator Bengtson moved SB 168 DO PASS AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 2:32 p.m.

  
\_\_\_\_\_  
TOM BECK, Chairman

TB/jj

ROLL CALL

AGRICULTURE

COMMITTEE

DATE 2/10/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	✓		
SENATOR ESTHER BENGTSON	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

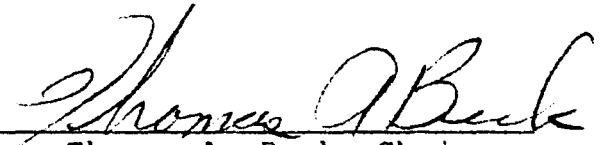
February 11, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 160 (third reading copy -- blue), respectfully report that HB 160 be concurred in.

Sponsor: Stepler (Bengtson)

BE CONCURRED IN

Signed: 

Thomas A. Beck, Chairman

To be placed on consent calendar.

SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 90 (third reading copy -- blue), respectfully report that HB 90 be concurred in.

Sponsor: Eudaily (Devlin)

BE CONCURRED IN

Signed:

  
Thomas A. Beck, Chairman

To be placed on consent calendar.

**SENATE STANDING COMMITTEE REPORT**

February 10, 1989

**MR. PRESIDENT:**

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 170 (third reading copy -- blue), respectfully report that HB 170 be concurred in.

Sponsor: Hayne (Thayer)

**BE CONCURRED IN**

Signed: 

**Thomas A. Beck, Chairman**

**To be placed on consent calendar.**



SENATE STANDING COMMITTEE REPORT

February 11, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration SB 168 (first reading copy -- white), respectfully report that SB 168 be amended and as so amended do pass:

1. Title, line 6.

Following: "JUDGE;"

Insert: "REQUIRING THAT THE FINAL DECREE ESTABLISH A TABULATION OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES;"

2. Title, line 7.

Strike: "AN EFFECTIVE DATE AND"

3. Page 2, line 10.

Following: "(4)"

Insert: "The final decree shall establish in a form determined to be appropriate by the water judge one or more tabulations or lists of all water rights and their relative priorities."

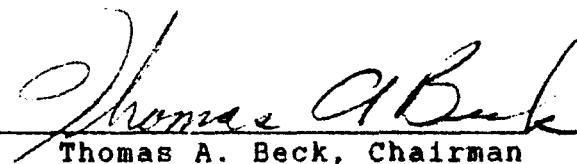
Renumber: subsequent subsections

4. Page 5, lines 2 through 10.

Strike: Section 4 in its entirety

AND AS AMENDED DO PASS

Signed:

  
Thomas A. Beck, Chairman

*Handwritten notes:*  
N.C.  
2/11/89  
10:53

Good Afternoon

For the record - my name is Don Stepples  
Rep. District 21 which is the Eastern half of Roosevelt County  
and all of Richland except of the Sidney <sup>area</sup> and a part  
of the surrounding area.

~~This bill is~~

The intent of this bill is to give the county weed  
board access to legal advice from the County Attorney  
without fee.

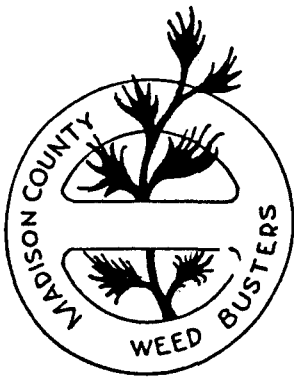
~~The~~

At this time the County Attorney acts as legal  
advisor, <sup>without fee</sup> for the board of County Commissioners and  
other County Officers such as the Treasurer, Clerk &  
Recorder, Clerk of Court, Sheriff & Other.

The County Attorney also acts counsel, without  
fee, for fire districts and conservation districts.

Since the County weed board is an appointed  
board, I feel it was an oversight ~~to~~ to not  
include this board when defining the County Attorney  
as legal advisor.

I thank you for your time and will answer  
any questions and I reserve the right to close.



# Madison County Weed Control

P.O. Box 278  
Virginia City, MT 59755

SENATE AGRICULTURE

EXHIBIT NO. #2

DATE 2/10/89

BILL NO. HB 160

February 9, 1989

RE: HB 160, REPRESENTATIVE STEPPLER, COUNTY ATTORNEY IS  
LEGAL ADVISOR TO COUNTY WEED DISTRICT.

TO THE RECORD

Dear Mr. Chairman & Members of Senate Agriculture Committee:

The Madison County Weed Control Board supports and recommends the passage of HB 160. In the view of the Madison County Weed Control Board weed control is a County Government responsibility and as such requires legal council from the County Attorney just as any other County Government Entity.

Respectfully,

*Neil O. Peterson*  
for *Neil O. Peterson*

Barry Rice, Chairperson  
Madison County Weed Control Board

BR/ks

Hayne

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

H.B. 170 amends the CROP INSECT DETECTION and Management Act by amending Section 80-7-503, MCA, by deleting the word "shall" and inserting the word "may" which makes the duties of the Dept. of Ag. permissive instead of mandatory.

This act has never been adequately funded enough to fully implement its provisions. Reductions in personnel and operations make it impossible to accomplish the requirements of this act.

The Ag. Dept. must prioritize the pests and provide control information and full surveillance for the critical insect pest problems in any given year.

Providing the chemical and the alternative control information, conducting insect pest surveys, providing assistance to counties, and providing technical bulletins and related information to producers for the control of insect pests, are some of the steps that must be accomplished before they can be in compliance.

The Ag. Dept. is also concerned about the State's liability, if the mandated provisions of this act cannot be accomplished due to shortage of funds or staff. They could be subject to suits.

Since funds are not and will not be available to take care of all significant insect problems, this bill will allow the Ag. Dept. means to accomplish what they can do under the circumstances.

This is a necessary bill and I ask your concurrence.

*Hayne*

In closing, I would like to emphasize, the Ag. Dept. is not trying to side step any of their duties or obligations in the Crop Insect and Pest area.

They will do their best, but the possibility of suits for liability are <sup>a</sup> threat.

Considering the State's fiscal situation, the limitations of personnel and the possible scope of the Act it would be realistic to support the ammendment.

I ask your favorable vote on this bill. Thank you.

Amendments to Senate Bill No. 168  
Introduced Reading Copy

For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff  
February 10, 1989

1. Title, line 6.

Following: "JUDGE;"

Insert: "REQUIRING THAT THE FINAL DECREE ESTABLISH A TABULATION  
OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES;"

2. Page 2, line 10.

Following: "(4)"

Insert: "The final decree shall establish in a form determined to  
be appropriate by the water judge one or more tabulations or  
lists of all water rights and their relative priorities."

Renumber: subsequent subsections

Amendments Submitted by \_\_\_\_\_  
Senate Agriculture Committee  
February 1989

The following "grey bill" is offered by technical persons attached to the Water Policy Committee, the Water Courts, the Department of Natural Resources and Conservation, and the Reserved Water Rights Compact Commission. In general, the amendments are acceptable to all involved persons. A policy decision that requires resolution and an area where a party abstained from policy discussion are highlighted in the bill.

"Grey Bill"

SENATE BILL NO. 166

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY DECREES BY THE DISTRICT COURTS; PROVIDING THAT FOR PURPOSES OF ADMINISTERING WATER RIGHTS, THE PRIMA FACIE STATUS OF A CLAIM IS SUPERSEDED BY THE ISSUANCE OF A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS; AMENDING SECTIONS 3-7-201, 3-7-211, 3-7-212, 3-7-501, 85-2-227, 85-2-406, AND 85-5-101, MCA; REPEALING SECTION 3-7-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE AND PROSPECTIVE APPLICABILITY."

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

Section I. Section 3-7-201, MCA, is amended to read:

"3-7-201. Designation of water judge. (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district,

wholly or partly within the division. Except as provided in subsection (2) ~~and 3-7-213~~, a water judge must be a district judge or retired district judge of a judicial district wholly or partly within the water division.

(2) A district judge or retired district judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which he is requested to sit.

(3) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division."

Section 2. Section 3-7-211, MCA, is amended to read:

"3-7-211. Appointment of water commissioners. The ~~water judge of each water division~~ district court having jurisdiction over the subbasin HYDROLOGICALLY INTERRELATED PORTION OF A WATER DIVISION AS DESCRIBED IN 85-2-231(2) in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

Section 3. Section 3-7-212, MCA, is amended to read:

"3-7-212. Enforcement of ~~final decree~~ decrees. The ~~water judge of each water division~~ district court having jurisdiction over the subbasin in which a controversy arises may enforce the provisions of a final decree ~~issued in for that water division as provided in 85-2-234 subbasin or, in.~~ IN the absence of any final decree having been issued, the DISTRICT COURT HAVING JURISDICTION MAY ENFORCE THE provisions of a temporary preliminary decree or preliminary decree entered under 85-2-231,



AS MODIFIED BY A WATER JUDGE AFTER OBJECTIONS AND HEARINGS."

POLICY DECISION: Under these amendments, the water courts do not have authority to enforce the provisions of a temporary preliminary or preliminary decree, as modified after objections and hearings; the authority is with the district court. Concurrent jurisdiction could be given to the water courts by adding to the beginning of 3-7-211 and 3-7-212 the following words: "THE JUDGE OF EACH WATER DIVISION OR THE".

Section 4. Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and ~~3-7-213~~.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred

to a judicial district wholly or partly within the division."

Section 5. Section 85-2-227, MCA, is amended to read:

"85-2-227. Claim to constitute prima facie evidence. A For purposes of adjudicating rights pursuant to this chapter PART, a claim of an existing right filed in accordance with 85-2-221 OR AN AMENDED CLAIM OF EXISTING RIGHT constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree OR A PRELIMINARY DECREE, as modified after objections and hearings, or a preliminary decree supersede a claim of existing right until a final decree is issued."

Section 6. Section 85-2-406, MCA, is amended to read:

"85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to part 2 of this chapter OR WHEN A BASIN IS THE SUBJECT OF A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS, any party to the controversy OR ANY PERSON WHOSE RIGHTS ARE OR MAY BE AFFECTED BY ENFORCEMENT OF THE DECREE may petition the district court for relief. The district court from which relief is sought may grant

~~such injunctive or other~~ OR OTHER relief which is necessary and appropriate to preserve property rights or the status quo pending ~~the issuance of the final decree~~ resolution of the controversy under subsection (3) THE ISSUANCE OF THE FINAL DECREE.

(3) ~~A controversy between appropriators from a source which has been the subject of a general determination of existing rights under part 2 of this chapter shall be settled by the district court which issued the final decree~~ having jurisdiction over the basin in which the controversy arises. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree, a temporary preliminary decree or preliminary decree entered under part 2 of this chapter but shall refer to the appropriate water court any portion of the controversy involving the nature of existing rights and priorities established in a temporary preliminary decree or preliminary decree. The water court shall resolve any controversy involving existing rights and priorities established in a temporary preliminary decree or preliminary decree. Upon rereferral from the water court, the district court shall enter an order that it determines to be consistent with the resolution of the issues referred by the water court. In resolving the controversy, the district court may alter rights and priorities contained in a final decree only if based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, neither the water court nor the district court may not amend the respective rights established in the permits or alter any terms of the

~~permits unless the permits are inconsistent or interfere with rights and priorities established in the a final decree entered under part 2 of this chapter. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.~~

A CONTROVERSY BETWEEN APPROPRIATORS FROM A SOURCE WHICH HAS BEEN THE SUBJECT OF A FINAL DECREE UNDER PART 2 OF THIS CHAPTER MUST BE SETTLED BY THE DISTRICT COURT WHICH ISSUED THE FINAL DECREE. THE ORDER OF THE DISTRICT COURT SETTLING THE CONTROVERSY MAY NOT ALTER THE EXISTING RIGHTS AND PRIORITIES ESTABLISHED IN THE FINAL DECREE EXCEPT TO THE EXTENT THE COURT ALTERS RIGHTS BASED UPON ABANDONMENT, WASTE, OR ILLEGAL ENLARGEMENT OR CHANGE OF RIGHT. IN CASES INVOLVING PERMITS ISSUED BY THE DEPARTMENT, THE COURT MAY NOT AMEND THE RESPECTIVE RIGHTS ESTABLISHED IN THE PERMITS OR ALTER ANY TERMS OF THE PERMITS UNLESS THE PERMITS ARE INCONSISTENT OR INTERFERE WITH RIGHTS AND PRIORITIES ESTABLISHED IN THE FINAL DECREE THE ORDER SETTLING THE CONTROVERSY MUST BE APPENDED TO THE FINAL DECREE, AND A COPY MUST BE FILED WITH THE DEPARTMENT THE DEPARTMENT SHALL BE SERVED WITH PROCESS IN ANY PROCEEDING UNDER THIS SUBSECTION, AND THE DEPARTMENT MAY, IN ITS DISCRETION, INTERVENE IN THE PROCEEDING.

(4) IF AN ACTION TO ENFORCE A TEMPORARY PRELIMINARY DECREE IS COMMENCED, THE WATER JUDGE SHALL UPON REFERRAL FROM THE DISTRICT COURT ESTABLISH, IN A FORM DETERMINED TO BE APPROPRIATE BY THE WATER JUDGE, ONE OR MORE TABULATIONS OR LISTS OF ALL

EXISTING RIGHTS AND THEIR RELATIVE PRIORITIES.

(5)(a) A PERSON WHOSE EXISTING RIGHTS AND PRIORITIES ARE DETERMINED IN A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE MAY APPEAL A DETERMINATION MADE PURSUANT TO SUBSECTION (2) IF HE REQUESTED A HEARING AND APPEARED AND ENTERED OBJECTIONS TO THE TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE.

(b) THE WATER JUDGE IS NOT BOUND BY A SUPREME COURT DETERMINATION ON AN APPEAL ENTERED UNDER THIS SUBSECTION IN ISSUING ANY SUBSEQUENT DECREE UNDER PART 2 OF THIS CHAPTER.

NOTE: Subsection 5 of this section is developed and offered without active participation of the Water Courts representative.

Section 7. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, INCLUDING TEMPORARY PRELIMINARY, PRELIMINARY, AND FINAL DECREES ISSUED BY A WATER JUDGE, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The commissioners shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are

entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) At the time of the appointment of such water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters,

including permittees and certificate holders, shall pay their proportionate share of such fees and compensation.

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to said irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of such stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection."

NEW SECTION. Section 8. Repealer. Section 3-7-213, MCA, is repealed.

NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from

the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Retroactive and prospective applicability. (1) [This act] applies retroactively, within the meaning of 1-2-109, to all temporary preliminary decrees and preliminary decrees that have been issued by the Montana water courts and prospectively to all decrees issued on or after [the effective date of this act].

(2) A PERSON WHOSE EXISTING RIGHTS ARE DETERMINED IN A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE ISSUED BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY PETITION THE WATER JUDGE FOR RELIEF CONCERNING ANY MATTER IN THE DECREE PRIOR TO ENFORCEMENT OF THE DECREE.

NEW SECTION. Section II. Effective date. [This act] becomes effective on the latest date on which any of the following occurs:

(1) passage and approval of [this act], \_\_ Bill No. \_\_ [LC 683], \_\_ Bill No. \_\_ [LC 685], or \_\_ Bill No. \_\_ [LC 686]; or

(2) a final determination of failure to receive passage and approval of \_\_ Bill No. \_\_ [LC 683], \_\_ Bill No. \_\_ [LC 685], or \_\_ Bill No. \_\_ [LC 686].

-End-



SENATE AGRICULTURE  
EXHIBIT NO. 7  
DATE 2/10/89  
BILL NO. SB 167

Amendments Submitted by \_\_\_\_\_  
Senate Agriculture Committee  
February 1989

The following "grey bill" is offered by technical persons attached to the Water Policy Committee, the Water Courts, the Department of Natural Resources and Conservation, and the Reserved Water Rights Compact Commission. In general, the amendments are supported by all involved persons.

"Grey" Bill

Senate BILL NO. 167

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER COURTS TO REOPEN AND REVIEW ALL ~~TEMPORARY PRELIMINARY DECREES,~~ PRELIMINARY DECREES, AND FINAL DECREES ACCORDING TO CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING A ~~RETROACTIVE AN~~ EFFECTIVE DATE AND RETROACTIVE APPLICABILITY."

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

NEW SECTION. Section 1. Reopening and review of decrees.

(1) ~~Within 180 days following [the effective date of this act],~~  
~~the~~ The water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all ~~temporary preliminary,~~ preliminary, or final decrees that have been issued by the water courts prior to [the effective date of this act].

POLICY DECISION: An option to the wording in subsection (1) is to apply this law to all decrees, existing and future, that "have not been noticed throughout the water division." This amendment would also require striking the last sentence in the applicability section.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the ~~subbasin~~ BASIN for which the decree was entered; or

(ii) in other ~~subbasins~~ BASINS that are hydrologically connected to sources within the ~~subbasin~~ BASIN for which the decree was entered.

~~(b) No objection seeking to reopen and review any matter previously litigated and resolved as the result of any previous objection process is allowed, unless the objection is by an Indian tribe or federal agency that commenced negotiations pursuant to 85-2-702 or 85-2-703 at the time the matter was litigated. A tribe or federal agency that commenced negotiations at the time the matter was litigated is entitled to the benefits of the suspension provided under 85-2-217. A PERSON MAY NOT RAISE AN OBJECTION TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED AS THE RESULT OF A PREVIOUS OBJECTION PROCESS.~~

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice BY MAIL of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled

to receive service of notice under ~~85-2-232~~ 85-2-232(1).

(4) Notice of the reopening and review of a ~~temporary preliminary~~, preliminary, or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which ~~in total~~ cover the water division or divisions ~~in the general stream basin~~ in which the decreed ~~subbasin~~ BASIN is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within 180 days after entry of the order under subsection (1).

(6) The water judge shall ~~notify~~ PROVIDE NOTICE TO the claimant of any timely objection to his claim and, after further reasonable notice to ~~both~~ the claimant ~~and~~, the objector or objectors, AND OTHER INTERESTED PERSONS, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. Upon order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before him, including dismissal of the objection or modification of the

portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued ~~temporary preliminary or~~ preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the ~~temporary preliminary or~~ preliminary decree has been made a final decree.

NEW SECTION. Section 2. Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [section 1].

NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-209, to all ~~temporary preliminary decrees,~~ preliminary decrees, and final decrees that have been issued by the Montana water courts prior to [the effective date of this act]. [This act] does not apply to a ~~temporary preliminary decree,~~ preliminary decree, or final decree issued on or after [the effective date of this act].

NEW SECTION. Section 5. Effective date. [This act] is effective on the latest date on which any of the following occur:

- (1) passage and approval of [this act], \_\_Bill No.\_\_ [LC 683], \_\_Bill No.\_\_ [LC 684], or \_\_Bill No.\_\_ [LC 685]; or
- (2) a final determination of failure to receive passage and approval of \_\_Bill No.\_\_ [LC 683], \_\_Bill No.\_\_ [LC 684], or \_\_Bill No.\_\_ [LC 685].

-End-

SENATE AGRICULTURE  
EXHIBIT NO. 8  
DATE 2/10  
BILL NO. SB 169

Amendments Submitted by the \_\_\_\_\_  
Senate Committee on Agriculture  
February 1989

The following "grey bill" is offered by technical persons attached to the Water Policy Committee, the Water Courts, the Department of Natural Resources and Conservation, and the Reserved Water Rights Compact Commission. In general, the amendments are acceptable to all involved persons. A policy decision that requires resolution is highlighted in the bill.

"Grey Bill"

SENATE BILL NO. 169

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN THOSE BASINS IN WHICH ADJUDICATION OF CLAIMS FOR FEDERAL OR INDIAN WATER RIGHTS IS PRECLUDED BY THE SUSPENSION OF ADJUDICATION UNDER 85-2-217; PROVIDING FOR OBJECTIONS AND HEARINGS ON TEMPORARY PRELIMINARY DECREES; INCREASING THE TIME LIMIT FOR REQUESTING A HEARING ON A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE; AMENDING SECTIONS 85-2-231 THROUGH 85-2-233, AND 85-2-235, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

"85-2-231. Preliminary Temporary preliminary and preliminary decree. (1) A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE PRIOR TO THE ISSUANCE OF A PRELIMINARY DECREE IF THE TEMPORARY PRELIMINARY DECREE IS NECESSARY FOR THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS.

(2) (a) The water judge shall issue a preliminary decree.

The preliminary decree shall be based on:

~~(a)~~ (i) the statements of claim before the water judge;

~~(b)~~ (ii) the data submitted by the department;

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

~~(d)~~ (iv) any additional data obtained by the water judge.

(b) The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible.

(c) This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (5) of this section, or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

~~(2)~~ (3) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

~~(3)~~ (4) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The

water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.

~~(4)~~ (5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (3), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

~~(5) In a basin in which adjudication of claims for federal or Indian water rights is precluded by the suspension of adjudication under 85-2-217, the water judge may issue a temporary preliminary decree in accordance with the requirements of this section. The temporary preliminary decree shall address all claims in the basin except those affected by the suspension required by 85-2-217.~~

(6) In issuing a subsequent preliminary decree, the water judge shall use the temporary preliminary decree issued under subsection (5) INCORPORATE THE TEMPORARY PRELIMINARY DECREE FOR THE BASIN AS MODIFIED BY OBJECTIONS AND HEARINGS. [THE TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS, IS CONCLUSIVE, ENFORCEABLE, AND ADMINISTRABLE ACCORDING TO ITS TERMS AMONG PARTIES ORDERED BY THE WATER JUDGE UNDER 85-2-406.] The preliminary decree, AS MODIFIED AFTER OBJECTIONS AND HEARINGS when issued, shall UPON ISSUANCE



supersede and replace the temporary preliminary decree."

Section 2. Section 85-2-232, MCA, is amended to read:

"85-2-232. Availability of temporary preliminary or preliminary decree. (1) The water judge shall send to the department a copy of ~~the~~ any temporary preliminary decree or preliminary decree ~~to the department~~ issued for a subbasin ~~BASIN~~, and the water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person who has filed a claim of existing right within the decreed subbasin ~~BASIN~~ and to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed subbasin ~~BASIN~~ or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a ~~beneficial water use permit~~ to beneficially use water within the decreed subbasin ~~BASIN~~ pursuant to Title 85, chapter 2, part 3, those granted a reservation within the decreed subbasin ~~BASIN~~ pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the temporary

preliminary decree or preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(2) Notice of the availability of a ~~temporary preliminary decree or~~ preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which ~~in total~~ cover the water division or divisions in the general stream basin in which the decreed subbasin BASIN is located. THIS NOTICE MUST BE PROVIDED BEFORE THE FINAL DECREE FOR THE BASIN IS ISSUED.

~~(2)(3)~~ (3) Any person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge."

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

"85-2-233. Hearing on temporary preliminary decree or preliminary decree. (1) (a) Upon objection to the For good cause shown, a hearing shall be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree; or

(iii) any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge, within the subbasin BASIN entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other ~~subbasins~~ BASINS that are hydrologically connected to the sources within the decreed ~~subbasin~~ BASIN and who would be entitled to receive notice under 85-2-232 if his claim or claims were from sources within the decreed ~~subbasin~~ BASIN.

(b) ~~No objection seeking to reopen and review any matter previously litigated and resolved as the result of any previous objection process is allowed.~~

POLICY DECISION: The following alternatives for subsection (b) are offered:

REGARDING OBJECTIONS TO A PRELIMINARY DECREE, NO PERSON WHO RECEIVED NOTICE OF ANY PREVIOUS OBJECTION PERIOD WITHIN THE BASIN UNDER 85-2-232(1) MAY FILE AN OBJECTION SEEKING TO REOPEN AND REVIEW ANY MATTER PREVIOUSLY LITIGATED AND RESOLVED, unless the objection is by an Indian tribe or federal agency that commenced negotiations pursuant to 85-2-702 or 85-2-703 at the time the matter was litigated. A tribe or federal agency that commenced negotiations at the time the matter was litigated is entitled to the benefits of the suspension provided under 85-2-217.

or

A PERSON DOES NOT WAIVE THE RIGHT TO OBJECT TO A PRELIMINARY DECREE BY FAILING TO OBJECT TO A TEMPORARY PRELIMINARY DECREE. HOWEVER, A PERSON MAY NOT RAISE AN OBJECTION TO A MATTER IN A PRELIMINARY DECREE IF HE WAS A PARTY TO THE MATTER PREVIOUSLY LITIGATED AND RESOLVED AS THE RESULT OF AN OBJECTION RAISED IN A

TEMPORARY PRELIMINARY DECREE.

[(c) A PERSON WHO HAS RECEIVED NOTICE OF THE AVAILABILITY OF A TEMPORARY PRELIMINARY DECREE WAIVES THE RIGHT TO OBJECT TO THE ENFORCEMENT OF THE TEMPORARY PRELIMINARY DECREE UNDER 85-2-406 IF HE FAILED TO OBJECT TO A TEMPORARY PRELIMINARY DECREE.]

(2) If a hearing is requested, ~~such~~ the request must be filed with the water judge within ~~90~~ 180 days after ~~notice of~~ entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit ~~an~~ up to two additional ~~90 days~~ 90-day periods if application for ~~the~~ an extension is made within ~~90~~ 180 days after notice of entry of the temporary preliminary decree or preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the temporary preliminary decree or 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 temporary preliminary decree or 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) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact, it may 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 accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance 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 under this subsection."

Section 4. Section 85-2-235, MCA, is amended to read:

"85-2-235. Appeals from final decree. A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to THE TEMPORARY PRELIMINARY DECREE or the preliminary

decree; or

(2) his rights OR PRIORITIES as determined in the TEMPORARY PRELIMINARY DECREE OR THE preliminary decree were altered affected as a result of a ~~hearing requested~~ AN OBJECTION FILED by another person."

NEW SECTION. Section 5. COORDINATION INSTRUCTION. IF SENATE BILL NO. 166 IS NOT PASSED AND APPROVED, THE BRACKETED LANGUAGE IN [SECTION 1 OF THIS ACT] IS VOID.

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Effective date. [This act] is effective on the latest date on which any of the following occur:

(1) passage and approval of [this act], \_\_Bill No.\_\_ [LC 684], \_\_Bill No.\_\_ [LC 685], or \_\_Bill No.\_\_ [LC 686]; or

(2) a final determination of failure to receive passage and approval of \_\_Bill No.\_\_ [LC 684], \_\_Bill No.\_\_ [LC 685], or \_\_Bill No.\_\_ [LC 686].

NEW SECTION. Section 8. Applicability. [This act] applies to any temporary preliminary decree or preliminary decree issued on or after [the effective date of this act].

-End-

DATE \_\_\_\_\_

2/10/89

# COMMITTEE ON AGRICULTURE, LIVESTOCK, AND IRRIGATION

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ed Steinmetz	Montana Water Court	SB 166, 167 168, 169		
Kim Entkerud	State Grazing Dist. MT Stockgrowers, MT Cattlemen	HB 90	<input checked="" type="checkbox"/>	
Neil O. Peterson	MT Weed Control Assoc Madison Co Weed Board	HB 160	<input checked="" type="checkbox"/>	
Wally Sloan	Diamond R Ranch	HB 160	<input checked="" type="checkbox"/>	
Ron de Young	MT. Farmers Union	HB 90	<input checked="" type="checkbox"/>	
Ralph Pick	MT Dept of Agriculture	HB 170	<input checked="" type="checkbox"/>	

(Please leave prepared statement with Secretary)