

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 17, 1993,
at 10:03 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)

Members Excused: Sen. Towe

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 310
SJR 15
SB 397
Executive Action: SJR 15

HEARING ON SJR 15

Opening Statement by Sponsor:

Senator Christiaens, District 18, said SJR 15 calls for a study of the Montana Human Rights laws in the State of Montana. The study would look at alternative methods for handling cases and facilitate quicker action and determination for the cases that come before the Commission. Senator Christiaens urged the passage of SJR 15.

Proponents' Testimony:

NONE

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Senator Christiaens closed.

EXECUTIVE ACTION ON SJR 15

Motion/Vote:

Senator Blaylock moved SJR 15 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON SB 310

Opening Statement by Sponsor:

Senator Rea, District 38, said SB 310 addresses late water right filings. Senator Rea said SB 310 would amend the 1979 Water Use Act.

Proponents' Testimony:

Mark Josephson, an attorney in Big Timber, told the Committee that the Water Use Act stated that if a person did not file their water right claim with the Department of Natural Resources and Conservation (DNRC) by 5 p.m. on April 30, 1982 the water rights were deemed conclusively abandoned. The Supreme Court has upheld the statute as a forfeiture statute. Mr. Josephson said if the State is trying to preserve its water rights, it makes no sense to allow forfeiture to stand. Allowing late claims would not cause a substantial harm to the system because the number of late claims are insignificant.

Bruce Toole, an attorney in Billings, said the Supreme Court declared the Water Use Act constitutional, therefore causing a lot of people to forfeit their water rights. People who operate ranches depend on water for irrigating, if their water rights were taken away, the ranch would be inoperable. Allowing late claims to be considered would not disrupt the process. Mr. Toole said SB 310 would not impact compacts made with Indian tribes. SB 310 takes those compacts into account.

Vernon Westlake, Agricultural Preservation Association, read from prepared testimony. (Exhibit #1) Mr. Westlake submitted

amendments. (Exhibit #2)

Janice Rehberg, Land and Livestock Company, told the Committee that she prepared the draft of SB 310 as printed. There is an additional cost, a \$300 fee, to offset the cost to the court system. Ms. Rehberg said there were concerns raised about possible effects of SB 310, therefore a substitute bill was prepared. Ms. Rehberg said the concept of the proposed substitution is as follows. The original bill established a rebuttable presumption. Everyone would have to prove and overcome the rebuttable presumption. The format was changed so it would require the judge to send out an order to show cause why the right should be abandoned. Therefore, people who had objections to the late claims, could make their objections and a hearing could be held. People could make objections on the parameters of the claim, which is the normal process. They could make objections, claiming that the right was abandoned and was not an existing right in 1973. People could make objections based upon detrimental reliance on the presumption of abandonment. Ms. Rehberg asked the Committee to take the substitute bill into consideration for passage.

W. G. Gilbert III, an attorney from Dillon, said passing the SB 310 would do a great service to the citizens of Montana. If SB 310 was denied it would convert ranches into unirrigated deserts. Mr. Gilbert said the fiscal note for SB 310 is much too high and expensive. Mr. Gilbert said SB 310 provides a high filing fee to discourage frivolous claims and also provides revenue to deal with the late claims.

Joe Brunner, Montana Water Resource Association, (MWRA), supported SB 310. Ms. Brunner said the MWRA believes there should be a time frame in which to file late claims.

Former Senator Anderson told the Committee the whereas in Section 3, of the Montana Constitution, provides that all existing rights for any use of water for any useful or beneficial purposes are recognized and confirmed. Senator Anderson said the intent was not to deprive anyone of rights for beneficial use of water or deprive them of any decreed or adjudicated rights. Senator Anderson said it is important for SB 310 to be passed.

Jeff Walker told the Committee that under the current water law, if a person makes one mistake, their water rights would be taken away. Mr. Walker strongly urged support for SB 310.

Victor Krugar read from prepared testimony. (Exhibit #3)

Jess Nuttall read from prepared testimony. (Exhibit #4)

Lyle Richards read from prepared testimony. (Exhibit #5)

Pattie Lesnik said the purpose of Government is to help people, not to legislate punishments. If SB 310 does not pass, people

will be punished. Land values decrease if they do not have water rights. Ms. Lesnik urged the Committee to support SB 310. Ms. Lesnik submitted a letter from John Lesnik (Exhibit #6) and petitions. (Exhibit #7)

Bruce Malcolm told the Committee that he is a rancher in Emmigrant, Mt and a Conservation District supervisor. Mr. Malcolm supported SB 310.

Allen Shumate supported SB 310. Mr. Shumate said it was a human error that started the whole process of SB 310. The people who made an honest mistake, by filing late, should not be denied their water.

Tim O'Neill supported SB 310.

Peter Wipf read from prepared testimony. (Exhibit #8) Mr. Wipf submitted testimony from Craig Dubois. (Exhibit #9)

Eugene Moulli read from prepared testimony. (Exhibit #10)

Lee Yelin, Land and Water Consultant, supported SB 310.

Dean Hall supported SB 310. Mr. Hall told the Committee a time frame needed to be included in which to file late claims.

Peter McNamee read from prepared testimony. (Exhibit #11)

Cameron Mackenzie submitted instructions for filing water claims. (Exhibit #12) Mr. Mackenzie said he filed under those instructions, but was still accused of abandoning his water rights. Mr. Mackenzie said SB 310 would be a life saving bill for his family.

Echo Garberg read from prepared testimony. (Exhibit #13)

Pat McNamee read from prepared testimony. (Exhibit #14)

Bill Wibberding said he bought 40 acres with the understanding that the water rights were included. However, there were no water rights, therefore the land was worthless without the water. Mr. Wibberding urged the Committee to support SB 310.

Todd Alice told the Committee Montanans need SB 310.

Opponents' Testimony:

Kathleen Fleury, Office of Indian Affairs, representing Caleb Sheilds for the Assiniboine Sioux Tribe, said that tribe opposed SB 310 in its present form, but would have no objections to the bill if certain modifications were made. The tribe recommended a clause be added to Section 5, of SB 310, stating, "provided that nothing in this amendment shall affect the validity of any water right settlements between the State of Montana and any Indian

tribe that has been approved by the State and the tribes prior to the passage of the amendment. Nor shall anything in the amendment enable any person filing a water claim under the provisions of the amendment impose any objection to such settlements and proceedings with the Montana Water Court or any other court."

Chris Tweeten, Chief Deputy for the Department of Justice, submitted written testimony from Richard Aldrich, the Department of Interior. Mr. Tweeten reiterated the statement. (Exhibit #15)

Karen Fagg, Governors Office, read from prepared testimony. (Exhibit #16)

Richard Moe read from prepared testimony. (Exhibit #17)

Questions From Committee Members and Responses:

Senator Doherty asked Mr. Toole what his defense would be in a personal injury action, if the action was filed three years and one day after the accident. Mr. Toole said his defense would be the statute of limitations. However, people involved in personal injury actions, are aware of the process. Mr. Toole said most of the individuals who filed late water claims were not aware of the process.

Senator Crippen asked Ms. Rehberg about the McCarren amendment. Ms. Rehberg said the McCarren amendment provides that the federal government waive its sovereign immunity in situations in which there is state adjudication of water rights in which the state is a necessary party. Ms. Rehberg said allowing additional claimants does not affect the generalness of the adjudication. Adjudication, which requires filing by the irrigation, mining, and municipal claimants, does not make it any less general, and does not make the United States any less a necessary party.

Senator Crippen asked Ms. Rehberg about the 1979 statute. Ms. Rehberg said the 1979 statute provided that a person could not acquire water right by adverse possession, only through permitting.

Senator Crippen asked Mr. Rehberg about water wells. Ms. Rehberg said a lot of late claims for domestic water wells were filed. Ms. Rehberg said she was interested to see how the State planned to address that, because domestic water wells were exempt from filing. It is an injustice if someone forfeited their rights by filing late, because they did not need to be filed.

Senator Blaylock asked Senator Rea about the substitute bill. Mr. Rea told the Committee he wanted the substitute bill considered.

Senator Blaylock asked Ms. Fagg if she had reviewed the

substitute bill. Ms. Fagg said no.

Senator Blaylock asked Ms. Fagg if the Governors concerns were addressed in substitute bill. Ms. Fagg said she did not know, but would look at the bill.

Senator Halligan asked Ms. Rehberg about the substitute bill. Ms. Rehberg told the Committee that the intent of the substitute bill was if a person filed their water right claim, and it had been abandoned, they could object. The person would have to pay the \$300 fee, then the court would enter sanctions if the claim was entered improperly.

Senator Grosfield asked Tim Hall, Department of Natural Resources and Conservation, about late claims. Mr. Hall said the percentage of late claims filed within a month after the deadline was very small.

Chair Yellowtail asked Mr. Hall if the 1982 deadline was established so there was a three year notice. Mr. Hall said yes.

Senator Doherty asked Ms. Rehberg about the burden of proof. Ms. Rehberg said the burden was on the late claimant to show that the water right had not been abandoned.

Senator Doherty asked Ms. Rehberg about exempting any basins for areas where there had been compacts entered into. Ms. Rehberg said it would invite challenges because of equal protection questions.

Senator Crippen asked Bruce Loble, Water Court Judge, about a preliminary decree. Judge Loble said preliminary decrees issued by Water Courts, are a computerized run of all the statements of claims filed in 1982. Water courts only issue preliminary decrees in those particular basins in which there were no federal rights. In the water court, a temporary or preliminary decree is issued and that takes all the claims that were filed in that basin. They are listed in a computer booklet which states that they are the water rights that have been filed by ranchers, water users, and miners and that becomes the decree. The preliminary decree is one that we has been issued for basins in which there were no federal rights.

Senator Crippen asked Judge Loble about the difference between a final decree and a preliminary decree. Judge Loble said when the Water Court finishes with a preliminary decree, when all the objections have been made, and the preliminary decree has been modified based upon the evidence, then the Water Court can go right into the final decree.

Senator Crippen asked Judge Loble about filing claims. Judge Loble said the Supreme Court held that claims had to be filed by 5:00 on April 30, 1982 with the Water Court or the Department of Natural Resources. Judge Loble said postmarks do not have hours

on the postmarks, only dates.

Senator Grosfield asked Judge Loble about the basins without decrees. Judge Loble said the Water Court has not issued decrees in 40 basins.

Senator Grosfield asked Judge Loble if people know they are late claimants. Judge Loble said there are people who do not know they are late claimants.

Senator Grosfield asked Mr. Hall if the DNRC notifies people that they are late claimants. Mr. Hall said no.

Chair Yellowtail asked the opponents of SB 310 to review the gray bill and get back to the Committee on their comments.

Senator Halligan told the Committee he would serve on a subcommittee to discuss SB 310.

Closing by Sponsor:

Senator Rea said he would like Senator Halligan, himself, and other Senators interested, to get together with the Department of Justice address the questions that were raised. Senator Rea told the Committee research shows that 40% of the late claims filed, were filed right before or after the filing deadline. Senator Rea said one of the reasons the claims were filed late is because the Water Court and the DNRC are not accepting the claims even though they are postmarked on the deadline date. However, the DNRC stated the claims could be postmarked by the deadline date, and therefore people filed with that assumption. Senator Rea urged the Committee to support SB 310.

HEARING ON SB 397

Opening Statement by Sponsor:

Senator Doherty told the Committee that SB 397 was a Committee bill that would make it a felony to attack judges while they are conducting their duties. SB 397 would also make it a felon to attack a judge because of their duties. Senator Doherty said SB 397 is a good bill.

Proponents' Testimony:

John Connor, Montana County Attorney's Association, urged the Committee for a DO PASS recommendation.

Craig Hoppe, Montana Magistrates Association, urged the Committee for a DO PASS recommendation.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

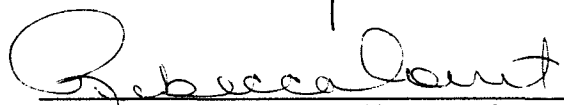
Closing by Sponsor:

Senator Doherty closed.

ADJOURNMENT

Adjournment: 12:27 p.m.


BILL YELLOWTAIL, Chair


REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-17-91

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Joint Resolution No. 15 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 15 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

AK
Amd. Coord.
Sec. of Senate

391344SC.San

February 17, 1993

SENATE JUDICIARY COMMITTEE

HEARING S.B. 310
SENATE JUDICIARY COMMITTEE
SENATOR BILL YELLOWTAIL, CHAIRMAN.

EXHIBIT NO. 1
DATE 2-17-93
BILL NO. SB310

Mr. Chairman and members of the Committee: I am Vernon Westlake, and I represent the Agricultural Preservation Association of the Gallatin, Madison, Jefferson, and Broadwater areas. I also represent myself as a water user with rights that were filed before April 30, 1982.

Mr. Chairman, for the Record, we support the Bill on the condition that it be amended to include a prescribed length of time for filing late claims, a closing date, and a reasonable fee for late-filed water right claims.

Also, we want included in the Bill, financial responsibility by the claimant of a late-filed claim for costs to an affected timely filed water right claimant, as well as responsibility to the water court for costs associated with a request for hearing by a claimant of a late-filed claim.

I sympathize with the people who, for numerous reasons, did not file their water right claims. I also respect the people who timely filed more than two-hundred thousand (200,000+) water right claims. The holders of these claims should not have to pay the costs to defend their claims against late filed claims. The claimant of late-filed claims is liable for all costs.

We recommend: Section 1 Section 85-2-221, MCA, starting with Line 25 (2) (a) page 5, and continuing through Lines 1, 2, 3, & 4, page 6, be amended to read: "The Department shall accept and the Water Court shall adjudicate all statements of (a late) claim filed (during a six month (6) month period) prior to the date certified by the Water Judge, pursuant to 85-2-231 (6), As the (~~completion~~) date starting the examination for completion of the preliminary decree for the basin in which the (late filed) claimed right is located." This amendment will establish a time period for filing, and date for completion of late-filed claims of water rights.

The number of late claims is projected to be 6000 or more, and the additional cost to the adjudication process is estimated at 1.8 million dollars. Apply a little arithmetic and the cost per claim is \$300 per late-filed claim.

We recommend inserting 85-2-225 MCA titled Filing Fee, as Section 2 in the Bill. Paragraphs (1) & (2) would require no change. We suggest a new paragraph (3). A late-filed claim complying with the requirements of 85-2-221 MCA as amended must be accompanied by a filing fee in the amount of \$300 per claim, and no consolidating claims for a single fee.

I am providing Senator Rea with the amendments that I have outlined in my testimony this morning. I hope that the amendments will include the changes I have recommended, thereby providing an opportunity for legitimate unfiled water rights to be adjudicated, but not creating major problems in the existing adjudication process.

Thank you for the opportunity to express my concerns with S.B. 310, and to provide amendments addressing these concerns.

Vernon L. Westlake
3186 Love Lane
Bozeman, MT 59715

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 2-17-93

BILL NO. SB310

AMENDMENTS - - S.B. 310 -- SUBMITTED BY VERNON L. WESTLAKE
3186 Love Lane
Bozeman, MT 59715

Amendment I: Length of filing period and closing date for late claims of water rights. Section 1 85-2-221 MCA starts on Line 18 and continues as printed through Line 24, page 5. Starting with Line 25, page 5, paragraph (2) through Lines 1, 2, 3, 4:

The Department shall accept and the Water Court shall adjudicate all statements of (a late) claim filed (in a six (6) month period) prior to the date certified by the Water Judge pursuant to 85-2-231(6) as the ~~completion~~ date (starting the examination for completion) of the preliminary decree for the basin in which the (late) claimed right is located. Lines 5 through 22 page 6 remain as printed.

Amendment II: Filing fees not included in the printed bill: move existing Section 2 to Section 3. Section 2 85-2-225 Filing fee: Paragraphs (1) & (2) no change in language as printed in the statutes. Add new paragraph (3):

A late filed claim complying with the requirements of 85-2-221 MCA as amended must be accompanied by a filing fee in the amount of \$300 per claim.

Amendment III: Section 2 in the printed bill will become Section 3. Paragraphs (1), (2), (3), (4) remain the same as printed in the bill.

Paragraph 5: The Water Court may assess a fee not to exceed \$300 for the filing of (each) request (filed by a late claimant) for hearing, and if it is determined that other claimants require notification by means other than through publication of the temporary preliminary or preliminary decree or through other documents served upon claimants in the natural course of the adjudication, then the (late) claimant filing the request for hearing shall reimburse any claimant of a timely filed claim for costs. Also, the late claimant shall reimburse the Water Court for costs associated with providing the required notice.

Section 3 in the printed bill will become Section 4, language unchanged.

Section 4 in the printed bill will become Section 5, language unchanged.

Section 5 in the printed bill will become Section 6, language unchanged.

Section 6 in the printed bill will become Section 7, language unchanged.

EXHIBIT NO. 2
DATE 2-17-93
FILE NO. BB310

Article IX, Section 3, of the 1972 Constitution of Montana States,

(1) All exisiting rights to the use of any waters for useful or beneficial purpose are hereby recognized and confirmed.

Amendment 5, of the Constitution of the United States says in part, nor be deprived of life, liberty, or property without process of law; nor shall private property be taken for public use without just compensation.

Amendment 14, of the Constitution of the United Sates says in part in paragraph (1), No state shall make or enforce and law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of, life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of laws.

Article II, ~~Section~~ of the Montana Constitution also states, No person shall be deprived of life, liberty or property without due process of law. The Sun River basin 41K and more particularly the South Fork of Sun River (sometimes now called Elk Creek) and its tributaries is an adjudicated stream according to Case No. 4742, K.B. McIver vs C. H. Campbell, et al June 13, 1911. As such the water rights were decreed to the then owners of the lands and it follows to their successors. The question might be asked why is it necessary to ^{do} this all over again when it was done legally back in 1911.

It came to my attention from legal counsel that I had failed to file for an established water right in June of 1988. This was then done and it was considered as a late filing. Judge Lessley held a hearing on late filing for basin 43B and ruled that late filings would not be considered. A later Supreme Court decission upheld this ruling.

I believe in the three part system of government, namely, Executive, Legislative and Judicial and further believe that the Judicial is supposed interpret the law.

Since the Constitution provides that my water rights are recognized and confirmed I can not see how they can be taken away. To my knowledge there has been no amendment to the Constitution changing this.

I therefor ask and encourage that SB 310 be approved in order that justice may prevail

Victor W. Knueger
Victor W. Knueger
Box 305
Augusta, MT 59410

February 16, 1993

Jess Nuttall

P.O. Box 73

Pinesdale, MT. 59841

961-3700

Pinesdale Water Resource Manager

SENATE BILL 310: Effect on Pinesdale Water right claims;
S76H W 151721 Sheafman
S76H W 151722 Cow

Mr. Chairman

My name is Jess Nuttall. I am the Water Resource Manager for the Town of Pinesdale in Ravalli County.

Pinesdale has a population of over 700 people that will be seriously injured if our irrigation claims are lost.

We bought this \$200,000 property in 1986 with portions of 1st and 2nd rights on Sheafman and Cowin Creeks for the soul purpose of helping to meet our municipal water needs and E P A demands -- only to find out that our predecessor filed the claims two days before the deadline, and the department stamped them late.

How this happened is not known.... We now feel a big bite out of a valuable investment.

These claims are not abandoned. The late filing date is not our fault and the loss of these claims will bring serious injury and detriment to the irrigation, municipal and E P A demands upon our community.

The very purpose and responsibility of this body, elected by the PEOPLE, is to SERVE THE PEOPLE and their interests FIRST and not the state or Federal Government.

We therefore appeal to this legislative body to do everything within its power to accept this bill, or something like it so that we may have a remedy to this situation and with so many others with late claims be treated fairly and equitably....

Remember the PEOPLE first...

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

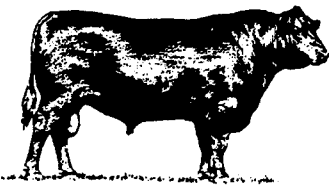
DATE 2-17-93

BILL NO. SB310

2-16-93

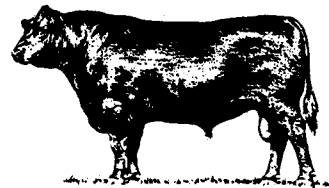
I would like to see SB 310
Passed. I believe people have
been short changed out of their
water rights, and should have
a way to get the water rights that
were taken from them by a
technaality! These rights were
garenteetud by the 1889 Constitution
and supposedly by the 1972 Constitution.

Tyler Richards



LESNIK ANGUS

John and Patti Lesnik
Fishtail, Montana 59028



(406) 328-6995

February 15, 1993

Senator *Yellowtail*,
State Capitol
Helena, Montana 59620

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. *10*

DATE *2-17-93*

BILL NO. *SB310*

Your support is requested for SB 310. Failure of these rights to be recognized will adversely effect every citizen of Montana.

My own excuse is that I did not have information stating that a postmark was not acceptable proof of filing on time as it is for other instances when dealing with the State of Montana, such as submitting your income tax forms or application for special big game permits.

The information I did have made it clear that the services of a lawyer were not necessary to submit the proper claim forms and that the published literature contained all the information required to file these claims. I took that as accurate information and did not consult a lawyer or attend any meetings.

I have a small ranch which usually requires about 125% of my time to keep up with the work load (150% to keep up with the payments). I can not afford to spend time in Helena lobbying for passage of SB 310, but I can also not afford to take that time. Loss of water rights will mean that my ranch will cease to be a viable operation. That loss will affect not only my family but also the grocery, clothing, ranch supply and all the other stores where we spend our money. The tax base of the State of Montana also loses the valuation of the irrigated acres.

My family will survive, although probably not in Montana. I am lucky enough to have been trained in the Marine Corps as a pilot. I have used that knowledge to supplement the ranching income, most recently as a pilot for the Bureau of Land Management/Alaska Fire Service during the 1992 fire season. Almost all of those wages were spent in Montana.

Being located at the foot of the Beartooth Mountains, adjoining the Custer National Forest, between Red Lodge and Livingston, this ranch has far more "scenic value" than agricultural value. Its sale to out of state interests would undoubtedly erode the quality of life as we know it in Montana. Scenarios are numerous but many revolve around the theme of buffalo ranches and the loss of access to Montanans.

Thank You,

John Lesnik
John Lesnik

We the undersigned support passage of SB 310.

NAME	check columns which apply				Water source
	BUISINESS OWNER	PROPERTY OWNER	SPORTSMAN	IRRIGATOR	
John Lesnik	✓	✓	✓	✓	Fishtail Creek
Vagel Byrnestal	✓	✓			
William Kauer	✓	✓		✓	Stillwater River
Paul E. Beck	✓	✓		✓	
Mary Don Rickman		✓		✓	Mendota Creek
Dean A. Rickman	✓	✓	✓	✓	Fishtail Creek
Arute Rickman	✓	✓	✓	✓	Fishtail Creek
Rudolph P. Jauriqui	✓	✓	✓	✓	Fishtail Creek
Thomas P. Jauriqui		✓	✓	✓	Fishtail Creek
Robert W. Strum	✓	✓	✓	✓	Fishtail Creek
Paul K. Strum	✓	✓	✓	✓	Fishtail Creek
Arden R. Strum		✓	✓	✓	Fishtail Creek
Arvin Larson		✓		✓	Fishtail Creek
Scott L. Lehner	✓	✓	✓		Rosebud Creek

These signatures were gathered by John Lesnik, Fishtail MT (within an hour & a half) With more time allowance, more signatures I'm sure would be available & the issue of SB 310 would be addressed by more voters & water users in our area.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 2-17-93

FILE NO. SB 310

We the undersigned support passage of SB 310.

check columns which apply

[illegible]

D N R C

June 11, 1985

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 2-17-93

FILE NO. SB310

Martinsdale Colony had all intentions on filing for their existing water rights, however, due to ~~an~~ oversight 5 forms & claims were overlooked and were not filed until, June 3 of 1985. We have two pieces of evidence to substantiate that we had all intentions to file these claims, they are:

1. the filing fee was paid to its' maximum
2. the claims were completed & notarized on March 8, 1982, by Craig Dubois, a water rights bureau employee

Beto Wipf Sec. Treas.
Mike M. Klemminger Sec. Treas.
Paul J. Wipf Pres.

535-7459 D N R C

Make Motion to expedite consideration of let. claims (H²O Natural Gas.)

(^{from D. ...}
Stock water claims don't need to be claimed at any time...?)
not sure.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9
DATE 2-17-93
FILE NO. SB310

MEMORANDUM

TO: File

FROM: Craig Dubois, Water Rights Specialist
Lewistown Water Rights Field Office

DATE: December 13, 1989

SUBJECT: Martinsdale Colony late claims

Because I have had to research this problem several times in the past 4 years or more, and it appears that more discussion will be held in the future, I have decided to jot down recollections and research findings.

Two irrigation claims, 40A-W000989 and 40A-W000990, were filed on February 29, 1980, by Martinsdale Colony at the request of the Federal Land Bank because a loan was involved. Both claims were formerly decreed rights.

Mike Kleinsasser of Martinsdale Colony was in our office on the 8th of March, 1982, and worked with Sharon Gregory, technician, on completing claims. I notarized claims for them. Apparently a number of these claims involved use rights which they were going to support with affidavits or filed rights which they were going to obtain copies of. Our records indicate that 1 irrigation claim and 19 stock claims were received by our office on March 23rd, 1982, along with the maximum filing fee of \$480 paid by check #2832 and signed by Mike M. Kleinsasser. All of these 20 claims involved affidavits which were signed and notarized on March 10, 1982.

On April 20, 1982, we received irrigation claim 40A-W197900 which had been notarized by me on March 8, 1982. On June 3rd, 1985, 5 irrigation claims were received (211300-211304). These late claims had been notarized on March 8, 1982, by me. I believe these claims came in as a result of the Colony checking the Temporary Preliminary Decree and realizing that they had overlooked these 5 claims. Twelve late stock claims (211311-211322) were received and notarized on June 11, 1985.

Intro

Name Eugene Moulli

Montana

SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

10

DATE

Co 2-17-93

FILE NO.

SB310

This is an extremely important issue that has serious consequences for many Montanans & the land that they live on.

I have a late claim because my predecessor failed to file on the springs that have historically been used to irrigate my land for over 100 years.

These springs arise on my land and even in early spring when they're not being used for irrigation, the water returns to the ground without flowing off my property. The water supports a variety of habitat for birds & wildlife year round, as well as several acres of pasture, orchards, gardens, a tree nursery and shelter belt.

The water from these springs ~~are~~^{is} used only on my land, yet without this bill the water court could conceivably give the right to use this water to claimants with false yet timely claims & may not even look at my claim just because it was late.

The loss of the use of this water would be a terrible hardship and financial burden to me & my family. It could also lead to a loss of privacy and degradation of our land both for our use as well as a lot of wildlife.

I'm sure the 1979 legislature never intended to deprive Montanans of their rights, yet this is exactly what could happen to a lot of hard working honest citizens if SB 310 is not passed.

This issue is far too important to too many people, for it to be decided solely on what date your claim was filed on.

For just one rancher or one family to suffer the devastating consequences of the loss of their legal water rights because of this, is inconceivable to me, and I'm sure was never intended to happen.

I urge you to pass SB 310 and allow Montanans with late water rights claims to at least have the chance to prove the validity of their claims.
Thank you

Diocese of Helena
Business Administration Office



515 North Ewing • P.O. Box 1729
Helena, Montana 59624 • (406) 442-5820

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2-17-93
FILE NO. SB310

February 17, 1993

Senator Bill Yellowtail, Chairman
Senate Judiciary Committee
State Capitol
Helena, MT 59620

Re: Water Right in Basin 41 M 2 31N 09W GL

Dear Senator Yellowtail:

This concerns a Water Right for a well at Holy Family Mission on the Blackfeet Indian Reservation. This well is for domestic use only. It produces 30 gallons per minute, 1 acre foot per year. It was first used on May 1, 1890.

Holy Family Mission is a farm of 467.02 acres southeast of Browning. Since April 1, 1986, this land has been leased to Holy Family Mission, Inc., for \$10.00 per year as a farm. Our goal is to have a productive farm and, perhaps, develop related agricultural industries to employ members of the Blackfeet Tribe.

During 1981, we researched water rights through various water right, county, and state offices, as well as with the Tribe. We pay a fee to the United States of America to use water rights from the Two Medicine River for agricultural purposes. The domestic well appeared as the only water right we had to file for. Our 1981 research caused a delay.

Despite the delays, on April 29, 1982, we issued a check to pay for filing. On April 30, 1982, we mailed the check and water rights form to the Department of Natural Resource and Conservation (DNRC). The DNRC date stamped the form on May 3, 1982 at 11:24 am and the check cleared our bank on May 5, 1982.

Our April 30, 1982 letter that accompanied the form, and a phone call to DNRC, said we lacked two affidavit forms that would follow as soon as possible. We were assured this would cause no difficulty. Follow up documents were gratefully acknowledged by the DNRC, Havre Water Rights Field Office, on September 3, 1982.

Our first indication that there was a problem with the water right was on January 28, 1993, when we received notice of this proposed legislation.

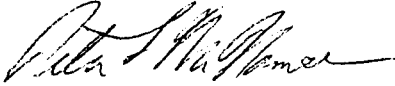
Loss of the domestic well will hurt the Blackfeet Indian Reservation project and possibly adversely affect the future of the Tribe.

There are over 65,000 Roman Catholics in Western Montana, who through the Roman Catholic Bishop Corporation support the Holy Family

Mission, Inc. project. On behalf of the Catholics of Western Montana, the Blackfeet Tribe, and the Holy Family Mission, I urge you to support Senate Bill 310.

Thank you for your attention to this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter L. McNamee".

Peter L. McNamee
Diocesan Finance Officer

cc: Most Reverend Elden F. Curtiss, Bishop of Helena
Members of the Senate Judiciary Committee

HOW TO FILL OUT YOUR STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS

EXHIBIT NO. 12

DATE 2-17-92

I. BACKGROUND

NO. SB310

In 1979, the Montana Legislature passed Senate Bill 76, a law authorizing a process to adjudicate claims of existing water rights. "Existing water rights" originated before July 1, 1973, and were generally established by putting water to beneficial use. As used here, a water right is:

- 1) a specific quantity of water;
- 2) taken from a single water source;
- 3) first used or appropriated on a specific date (commonly referred to as priority date).

Water judges have been appointed to review and confirm valid water right claims in Montana courts. Making complete and accurate claims to your existing water rights is the first step of the adjudication process.

FAILURE TO CLAIM AN EXISTING WATER RIGHT AS REQUIRED BY LAW, WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT YOU HAVE ABANDONED THAT WATER RIGHT.

II. WHO MUST CLAIM THEIR WATER RIGHTS?

Only water rights that originated before July 1, 1973, are to be claimed under Senate Bill 76. If your water rights originated after July 1, 1973, do not file a claim under this program. Water uses that first began after July 1, 1973, should have received either a "Permit to Appropriate Water" or a "Certificate of Water Right" from the Montana Department of Natural Resources and Conservation (DNRC). If you plan a new water development, or expansion of an existing development, contact your nearest DNRC field office to make application for a permit. The field offices are listed on the last page of this booklet.

Also, water users are not required to file claims on some pre-1973 uses, but may file claims voluntarily. These exempt water uses are stockwater and domestic (household) uses of:

- 1) groundwater (wells or developed springs), and;
- 2) instream flow (direct use from a stream without using a ditch, pipe, dam, bucket, pump or other diversion method).

All stockwater uses from surface water diversions, such as reservoirs and ditches, must be claimed.

Water rights in the Powder River Basin for which declarations have already been filed with DNRC are exempt from filing claims.

SPECIAL NOTE ABOUT GROUNDWATER USE

Groundwater Codes passed into law in 1961 required that all groundwater uses beginning after January 1, 1962, be recorded in the County Clerk and Recorder's office on a "Notice of Completion" form. If your groundwater use began between January 1, 1962, and July 1, 1973, and no Notice of Completion was recorded in that time period, follow these instructions:

- 1) obtain Form 602, "Notice of Completion of Groundwater Development", from the County Clerk and Recorder's office or from any DNRC field office;
- 2) complete the form and return it, along with a \$5.00 filing fee, to the DNRC field office nearest you.

If the groundwater use has a flow rate of under 100 gallons per minute, the form will be processed and a "Certificate of Water Right" will be recorded in the county courthouse and sent to the owner. The priority date assigned to the water right will be the date DNRC receives the completed Form 602. A water right claim under Senate Bill 76 can be made.

If the flow rate is over 100 gallons per minute, and the use is for a purpose other than domestic or stockwater, a water right statement of claim under Senate Bill 76 must also be completed and sent to the DNRC field office. Domestic and stockwater uses may be claimed voluntarily.

III. MAKING YOUR WATER RIGHT CLAIM

Claims must be made on forms available at the County Clerk and Recorder's office or any of the DNRC field offices listed on the back of this booklet. The forms are:

IRRIGATION FORM - for water uses for irrigation of field crops, animal pasture, hayland, truck garden, tree farm, etc. This form should also be used to claim the irrigation of a lawn or garden over 2 acres in size and shelterbelts over 5 acres in size.

STOCKWATER FORM - for water uses for livestock. These include poultry, sheep, goats and hogs as well as larger livestock. Fish and wildlife uses of water should not be claimed on this form, but on the OTHER USES form.

DOMESTIC FORM - for water uses for individual household purposes such as cooking, washing and laundry. Domestic water uses also include the irrigation of a household lawn, garden and windbreak.

OTHER USES FORM - for water uses including;

Fish Raceways	Geothermal	Mining
Fish & Wildlife	Navigation	Power Generation
Commercial	Fire Protection	Recreation
Industrial	Agricultural	Oil Well
Municipal	Spraying	Flooding

Water uses other than domestic, stockwater, irrigation and those listed above, should also be claimed on this form and briefly explained.

Each water right must be claimed on the form that describes the water's use. If a single water right has more than one use, a separate claim must be filed for each use of the water.

Each completed water right claim should consist of:

- 1) a complete notarized claim form;
- 2) a properly labeled map;
- 3) documentation supporting your claim;
- 4) the filing fee.

As a suggestion, gather all the information you can find about your water right before filling out the claim form. This would include any documentation as well as a map. It may be helpful to complete the map before you fill out the claim form. Suggestions for properly completing a map can be found on pages 5, 7, 9 and 12 of these instructions.

Completed claims must be filed with a field office of the Department of Natural Resources and Conservation. Claims must be filed or postmarked before MIDNIGHT, JANUARY 1, 1982.

A water conversion table, land description guide and list of water measurement data are also on the last page of these instructions. An additional booklet, "A Guidesheet to Water Right Documentation, Water Measurement Calculations, Legal Land Descriptions for Existing Water Right Claims", is available at the field offices or any County Clerk and Recorder's office, and may be helpful. Remember, these are only guides; individual on-site measurement of flows and volumes is the most accurate method of determining water use.

IV. CLAIM FILING FEES

A filing fee of \$40 is required for each water right claim, with these EXCEPTIONS:

- 1) the total fee shall not exceed \$480 per landowner per water division;
- 2) no filing fee is required for claims to water rights contained in a water decree.
- 3) exempt water uses from the same source, claimed voluntarily, can be made for a single \$40 fee. These claims must be filed at the same time. Make checks payable to: Department of Natural Resources and Conservation, or DNRC.

V. HOW TO FILL OUT YOUR CLAIM FORM

After selecting the proper claim form, follow the appropriate step-by-step instructions for completing your claim form. The claim should reflect water use as it existed before July 1, 1973.

The claim form is a court document. *Each form must be filled out completely. Leave no questions unanswered.* When the claim is complete, it must be signed by at least one owner and witnessed by a licensed notary of any state. Fill in your claim with a typewriter or print in ink.

To members of the Senate Judiciary Committee:

I am Echo Garberg of Whitetail and I would like to explain the situation my son Brian and I find ourselves in because of the Court's decision regarding "late filed" water rights.

We live in the northeastern part of Montana, and through our ranch meadows flow the Whitetail, Beaver and Muddy Creeks, all in the drainage area of the lower Missouri Valley.

We are the owners of quite a few water rights filed with the Department of Natural Resources and Conservation. Most of these claims are for stock water use (dams & wells) and some are for irrigation purposes. They were all timely filed - before April 30, 1982 except three. These three are all for flood irrigation covering many acres and they were included in ~~about~~ ^{nearly} thirty claims that my mother (who owned the land at that time) filed. I prepared the applications for the claims that my husband and I filed, and offered to do the same for my mother, but she declined, preferring to have them done by a local law firm. When she checked some time later with the water rights office at Glasgow, she discovered that the most important claims (for irrigation) - one on the Whitetail, one on the Beaver and one on the Muddy had not been filed. She was then assisted by one of the employees from the office who helped her prepare the claims - but this was in November, 1982 - later than the designated re-filing date of April 30, 1982.

My mother died in 1987, and we became owners of the land, and the water rights. Wanting to change the method

of irrigation from a diversion ditch and smaller ditches to a system using the diversion ditch and dikes, we checked with the Glasgow office and were told to go ahead - nothing more needed to be done by us unless we changed the point of diversion - which we did not.

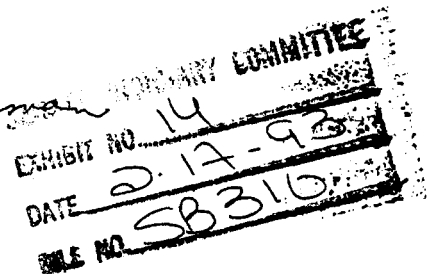
On February 16, 1988 we started working with our ASCS and SCS offices to get the necessary technical assistance and also applied for cost share on the project through a five year long term agreement. Our application was approved, and the Department of Fish, Wildlife and Parks gave their approval for the extra work that had to be done on the stream bank for the diversion ditch.

Although this project is not yet completed (we are doing our own work on it), it has cost thousands of dollars, part of which we received as cost share from the government, and which I presume will have to be repaid if our water right is declared abandoned.

The posted dates of five appropriations included in these three late filed claims are May, 1900, April 1901, January 1903, January 1903 and June 1907. Although not originally claimed by my family, this water has been used since the early 1900's by my grandfather and other members of my family for irrigating hay meadows during the early spring run-off. This is basically the only time we take water from the creek, and then only if we've had enough snow to have any high creek flow.

Because of a re-filing deadline date chosen by the legislature ~~being~~ somehow missed, we stand to lose forever the use of these very important water rights. If something is not done to allow us to retain these legal appropriations, the results will be devastating to our ranching operations far into the future.

To: The Senate Judiciary Committee
Senator Bill Yellowtail, Chairman
Re: Support of Senate Bill 310



My name is Pat McNamee. My grandfather homesteaded in central Montana over 100 years ago. He established water rights which were passed on to his family and used continuously ever since. We have not abandoned them in any way.

In 1982 we thought that it was so important to protect our water rights that we hired a lawyer to file them to ensure that everything would be done properly. Unfortunately, the lawyer did not do his duty and the claims were not filed by the deadline.

And now because of the harsh wording of the bill passed by the 1979 legislature, we are told that we have abandoned our water rights. We did not abandon our water rights. We have continuously used these rights to irrigate and raise hay.

A successful ranch benefits the local and state economy.

For example, we harvested the hay with machinery purchased from equipment dealers. We paid wages to the ranch workers. We fed the hay to the livestock and then sold the livestock. We paid truckers to take them to market. We paid income tax on our proceeds. Any money that was left over was put into the local banks. The banks were able to use the money to make loans for people who wanted to buy houses.

Without our water rights this will not be the case. Oh, maybe if we got lucky we could sell to someone who wants to get away from

it all. Someone who might not even be a Montana resident. Someone who doesn't pay Montana income tax. Someone who doesn't need a working ranch. Someone who doesn't need to buy farm equipment. Someone who keeps their money in out of state banks.

We believe producing food is an honorable activity and we would like to continue. In order to do so, we need your support of Senate bill 310.

Please vote for Senate Bill 310.

*Thank you,
Patricia A. McNamer*



United States Department of the Interior

OFFICE OF THE SOLICITOR

P.O. Box 31394

Billings, Montana 59107-1394

Honorable Joseph Mazurek
Attorney General
Department of Justice
State Capital
215 North Sanders
Helena, MT 59620

February 10, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 2-17-93

BILL NO. SB310

Donald MacIntyre
Chief Legal Counsel
Department of Natural Resources and Conservation
Lee Metcalf Building
1520 East 6th Avenue
Helena, MT 59602

Dear Gentlemen:

Re: S.B. 310--Late Claims--Montana General Stream
Adjudication

We have been advised that the Montana Legislature is considering S.B. 310, a bill which would revive claims filed in the Montana General Stream Adjudication after the filing date, April 30, 1982. The Montana Supreme Court has upheld the constitutionality of the filing deadline and the resulting hardship due to filing water claims after the deadline. In Re Adjudication of Yellowstone River Water Rights, 49 St. Rep. 413, ___ P2d ___, (1992)

Members of your staffs have requested that the United States advise you of our position on S.B. 310. We are also advised that the Senate Judiciary Committee has set a hearing on the bill on Wednesday, February 17, 1993 at 10:00 a.m.

We note that due to the shortness of time and the ongoing transition of the Clinton administration, we are unable to advise you of a "formal" United States' position. However, the following comments are intended to provide assistance to you in your deliberations, but are the comments of the undersigned and are not to be construed as a "formal" position of the United States. In addition, we are endeavoring to obtain a "formal" position and will advise you when that "formal" position is developed.

We have grave concerns regarding S.B. 310. Combined with other exemptions from the adjudication (small domestic wells and small stockwater rights), we believe that serious jurisdictional challenges may be required by the United States. The McCarran Amendment, 43 U.S.C. Section 666 allows joinder of the United States in a general adjudication of all rights to use water in a river basin. We are concerned that in light of the existing exemptions, allowing late claims will seriously prejudice the United States and create serious questions regarding finality.

In addition, on a more practical note, the Northern Cheyenne and Fort Peck Compacts were negotiated in reliance on the adjudication statute as it existed in 1991 and 1985 respectively. The agreement of the United States and the Tribes to protect existing non-Indian water-users was founded upon estimates of existing water use which presumed the invalidity of the late claims. We are advised that there are at least 87 late claims in the Rosebud drainage on the Northern Cheyenne Reservation alone. Enactment of S.B. 310 may be a material change in the fundamental fabric of the negotiations which will require additional negotiation or significant delays in claims processing in the Water Court, jeopardizing the availability of Federal funding for the Northern Cheyenne settlement. Although, we do not have the same Federal funding issues at Fort Peck, the existence of late claims and their validity may prove to undo the hard work of the negotiations.

Montana and the United States are very close to completion of a settlement of the reserved water rights of the United States for three National Park Units in Montana - Yellowstone, Glacier, and Big Hole Battlefield. The issue of revived late claims and their impact on the negotiations has not been assessed and will lead to delays in our ability to complete negotiations. We believe that there is a serious likelihood that we will be unable to complete negotiations in time for this legislative session.

Finally, we are concerned that if S.B. 310 is enacted, the resources which the State, the United States and private water claimants have invested thus far in the adjudication may be wasted. If the United States is compelled to lodge jurisdictional challenges at this late date (which any party may do at any stage of litigation) and if those jurisdictional challenges are successful, the massive investments of money and time by the State, the United States and private parties may be lost and the adjudication not completed.

If you have any questions, please feel free to call me at (406) 657-6331.



Richard K. Aldrich
Field Solicitor
Pacific Northwest Region,
Billings
Department of the Interior

SENATE INDIAN COMMITTEE

EXHIBIT NO. 16

DATE 2-17-93

TESTIMONY ON SENATE BILL NO. 310

My name is Karen Barclay Fagg. I appear on behalf of the Administration. The executive branch of state government is involved in the state water adjudication in many diverse roles. One role is that of a claimant of water rights. The State has some claims that fall into the category of "late claims", that is, claims that were submitted after April 30, 1982. If this bill is passed the Department of State Lands intends on filing claims that have previously not been filed. If this bill is not passed state agencies, such as the Department of State Lands, will review their legal avenues to determine how best to assert their claims in the on-going adjudication. However, because of the potential risks to the adjudication process raised by this Bill the Administration can not stand as a proponent. Rather, I present testimony to you to make you aware of the potential consequences of the legislation should it pass.

Senate Bill No. 310 deals with an unfortunate circumstance in which holders of existing water rights did not file statements of claims to their water rights as required by law. As originally written, the Legislature required that all claims be filed by April 30, 1983. By order of the Montana Supreme Court, on petition by the Attorney General, the date was shortened to April 30, 1982, giving claimants three years in which to file their claims. Following three years of notice and over 250 workshops conducted by the State, the result of the claims filing process was that approximately 206,000 water right claims were filed. Approximately 2% of all the claims filed are so-called late claims. Only about 1/2% of all the claims filed involve irrigated agriculture, i.e., irrigated lands in excess of 40 acres.

The policy question facing this Legislature is whether the risk in reopening the door to litigation challenging the adequacy of the adjudication by passing Senate Bill No. 310 is off-set by the protection attempted to be offered to the affected water users who hold less than 2% of the claims filed in the adjudication.

Senate Bill No. 310 is attempting to undo the forfeiture of water rights that occurred as a result of water users failing to file statements of claims in the on-going adjudication. The testimony of the proponents and the bill itself is understandably couched in terms of abandonment. The argument being that these affected water users are still using their water and have never really abandoned their water rights. Unfortunately, we are not dealing with the issue of whether the affected water rights are or have been abandoned. In 1992 the Montana Supreme Court declared, as a matter of law, that § 85-2-226 is not an abandonment statute, it is a forfeiture statute. The Montana Supreme Court held that "[a]ll claimants were treated equally, provided equal notice, and given equal opportunity to file by the given deadline." It further stated that water rights were

forfeited as a result of owner negligence and not as a result of excessive and unreasonable state action. The forfeiture statute was held to be a proper exercise of the police power of the state, satisfying all of the guidelines necessary to enact a forfeiture statute and complying with all aspects of due process as required by the Montana Constitution and the Constitution of the United States.

As a result of Montana Supreme Court cases, including the one holding that water rights are forfeited by failing to make a timely filed claim, the State is reasonably certain that it has an adjudication that it can defend as a comprehensive adjudication with a final and binding effect on all water rights in Montana. That certainty is diminished by the passage of any legislation affecting the adjudication. Because this bill deals with an essential element of the adjudication process, i.e., the claims filing element, the Legislature must be fully aware of the consequences that result from any legislative amendments. Let me briefly quote to you from the Montana Supreme Court concerning the importance of the claims filing to an adjudication process. "Before water rights can be adjudicated state wide, it is essential that existing rights first be firmly established. Section 85-2-226, MCA, is a reasonable means of compelling comprehensive participation, extinguishing duplicative and exaggerated rights, and ridding local records of stale, unused water claims. These are all necessary to meet the objective of adjudicating Montana's water.

Because the law we deal with in this bill involves a forfeiture statute and because the time for the forfeiture has passed, complex legal issues result in any attempt to undo the forfeiture. The Attorney General has discussed these issues previously.

The Administration's central concerns with this bill are that it not jeopardize the jurisdictional status of the Montana adjudication under the McCarran Amendment; that it not adversely affect any negotiated Compact, or Compacts under negotiation; that it not result in any governmental taking of any water right of a formerly junior water right holder to the forfeited water right within the scope of the Fifth Amendment or Article II, § 29 of the Montana Constitution; that it not result in an increase in the cost of the adjudication by requiring extensive reopening and re-noticing of existing and temporary decrees, extensive re-examination of claims, or extensive re-noticing of the opportunity to file or refile claims; that the due process and equal protection rights of the timely filed claims not be put at risk; that it not establish a precedent whereby water rights, including instream flow rights, can be created by the legislature and interjected into the chain of priorities in a manner inconsistent with the prior appropriation doctrine; and, that those who have participated in a timely fashion not incur further excessive legal expense to have late claims reviewed for their impact on the timely filed water right claims.

In closing, I will point out to the Committee that Montana has spent over \$18 million in providing for an adjudication that federal law allowed us to conduct in the Montana court system, i.e., a McCarran Amendment adjudication. The federal courts, including the United States Supreme Court, have warned Montana that they will look on our adjudication process with exacting scrutiny. Consequently, any amendments we make to the adjudication must be made only after exacting scrutiny. We all sympathize with those who have allowed their water rights to have been forfeited, but in our efforts to find them relief, we must not put at risk the 98% of the timely filed claims. It is unfortunate, but if we err to the detriment of one class of water users in either passing or not passing Senate Bill No. 310, then is it better public policy to do so in favor of the vast majority who have complied with existing law or the minority who have not.

Finally, it is probable that regardless of whether Senate Bill No. 310 is passed the State of Montana will be sued. This Committee, and the Legislature, should weigh the probable outcomes of such litigation and the impacts such suits may have on the State and the adjudication process. If the Bill is not passed indications are that some of the proponents will bring federal lawsuits. Given the 1992 Montana Supreme Court case upholding the constitutionality of the claims registration statute the State generally believes it can defend such actions. If the Bill is passed indications are that the federal government may bring action in federal court over the McCarran Amendment issue, and private parties, such as timely filed claimants and permit holders, may bring actions alleging the taking of property. We do not know what the probability of defending these types of actions are at this time, but our confidence level is less certain than it is in the situation should the Bill not pass.

16
2-17-93
SB 310

Date: February 17, 1993
To : Senate Judiciary Committee
From : Richard Moe
Two Dot, Montana
RE : Proposed Legislation (SB 310)

Let IT BE STATED THAT:

1. 98% of the claims were filed properly and in compliance with the requirements of the Montana Legislature.
2. There was Sufficient notice provided to claimants for all people Equally to comply with the required regulations on or before April 30, 1982.
3. The State Supreme Court has ruled that the original procedure and dates were approved and acceptable.

Thus:

The Proces Should Do Forward Without More Unnecessary Delays.

This Would AVOID:

1. Jepordizing the ten years of Progress that has been already achieved by claimants who have in good faith complied with the process of wated rights adjudication.

Avoid

(2) Cost related to reopening of claims that have been through NO FAULT OF The State not filed.

Avoid

(3) Possible intervention by the Federal Government in Our STATES water adjudication process.

IN Conclusion.

Let the water rights adjudication process go forward as it stands today.

Sincerely,
Richard Moe
Two Dot Mt.

NAME Moran & Leland Chene

ADDRESS Rt # 2

HOME PHONE 287-5574 WORK PHONE _____

REPRESENTING Moran & Leland Chene

APPEARING ON WHICH PROPOSAL? SB 310

DO YOU: SUPPORT ☒ OPPOSE _____ AMEND _____

COMMENTS:

We feel you as senators do not
want to hurt mountians. We sold our water
rights and mailed April 30, but they did not get
to the courts until May 2. We feel this is very
unfair and it would hurt our ranching operation
if we were deprived of these. We have worked all our
lives to get our small ranch and would hate
to lose it. We would appreciate your support
of this bill. Thank you.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 310

SR 15

Name	Representing	Bill No.	Check One Support Oppose
Marvin M Jessop	self	SB 310	✓
Jess Nuttall	Pinesdale, MT	SB 310	✓
Heidi A. Nuttall	" "	SB 310	✓
Victor W. Krueger	Augusta, MT	SB 310	✓
Mike M. Kleinsasser	Harlowton, MT	SB 310	✓
Paul P Waldner	Chester, MT	SB 310	
John H. Anderson	Self	SB-310	✓
Steve Eller	Boulder River Park	SB-310	✓
Allen Shumate	Self Self	SB 310	✓
Tim O'Neill	Arlee MT	SB 310	✓
Loni O'Neill	Arlee MT	SB 310	✓
Bruce Toole	Bullington	SB 310	✓
John Connor			
Mark Josephson	Big Timber	SB 310	✓
W & Gilbert III	Drillham MT	SB 310	✓
Bill/Barb Wibberding	Drummond MT	SB 310	✓

Marlene Clark

VISITOR REGISTER

Philipsburg 310 ✓

P. Earl Thompson

Whiteland, MT ✓

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON

SB 310

BILLS BEING HEARD TODAY:

SB 310STR 15

Name	Representing	Bill No.	Check One	
			Support	Oppose
G. T. Allison	SELF	SB 310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JAMES ZIEGLER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NAROLD COCHRAN	-			
Patty Walker	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jeff Walker	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lee Yelin	Land & Water Consulting Several clients	SB-310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rob Wipf	Martindale, Celny	SB-310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bruce Malcolm	sells - Ranches	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SHIRLEE WIRTH	Self	SB 310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
GEO Schuk	Atty Gen			
Mous Teigen	Teigen Land & Ls Co	SB 310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pete McNamee	Roman Catholic Bishop	SB 310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pat McNamee	Teigen Land & Livestock	SB 310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ann Teigen	Teigen Land & Livestock	SB 310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
RON Auldahl	Self	310	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KATHLEEN FLEURY - PRESENTING WRITTEN AMENDMENT FOR	CALEB SHIELDS NASHVILLIANS - SIGN & WRITE	310	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 310 Res.

S.J.R. 15 Christians

Name	Representing	Bill No.	Check One Support Oppose	
Lyle B Richards	Myself	SB310	✓	
Richard Moe	Myself			
Patti Lesnik Fishai/mt	self	SB310	✓	
Marion Johns	Self	SB310	✓	
Eugene Morelli	self	SB310	✓	
Darcy DeLong	self	SB310	✓	
VERNON WESTLAKE	A.P.A + SELF	SB310	✓	
James E Bueckert	My self	SB310	✓	
Thay M. Brown	myself	SB310	✓	
ECHO GARBERG	MYSELF	SB310	✓	
Raymond Garberg	Self	SB310	✓	
CAMERON MACKENZIE	SELF.	SB310	✓	
Shirley Cornelius	self	SB310	✓	
Bill Cornelius	self	SB310	✓	
Ann Teigen	Teigen Land + Livestock			
Patricia McNamee	"			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-17-93

SENATE COMMITTEE ON Water Bill (JUDICIARY)

BILLS BEING HEARD TODAY: SB 310

STR 15

Name	Representing	Bill No.	Check One	
			Support	Oppose
Ellen Hargrave	Rancher	SB 310	X	
Chris Tweeten	Dept of Justice	SB 310		
JOHN VANDENACKRE	SELF	SB 310	X	
Karen Fagg	Rancher Admin	SB 310		
Byron Dett	self			
Marcia Stargisler	Rancher	SB 310	X	
Ceff Cox	Rancher	SB 310	X	
J. Brunner	MURA	SB 310	X	
Randall	MURA BBUA	SB 310	X	
Bernie J. Stee	Self Farmer	SB 310	X	
John North	DSL	"		

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