MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 20, 1993, at 1:30 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (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, Sen. Blaylock

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 418
	SB 345
	SB 371
	SB 391
	SB 344
	SB 351
	SB 425
	SB 392
Executive Action:	SB 418
	SB 345
	SB 371
	SB 391
	SB 344
	SB 351
	SB 392
	SB 246
	SB 310
	SB 400
	SB 425

HEARING ON SB 418

Opening Statement by Sponsor:
Senator Doherty, District 20, told the Committee that SB 418 was requested by the Senate Judiciary Committee to close a loophole which existed in a joint agreement between the State of Montana and the Confederated Salish-Kootenai Tribes for enforcement of hunting and fishing license and permits.

Proponents' Testimony:
George Ochenski, Confederated Salish-Kootenai Tribes, supported SB 418. Mr. Ochenski submitted testimony from Eileen Shore and Rod Johnson. (Exhibit #1 and Exhibit #2)

Al Elser, Department of Fish, Wildlife, and Parks, read from prepared testimony. (Exhibit #3)

Deanna Sandholm, representing the Attorney General and the Governor, said the Department of the Justice and the Governor's office strongly supports SB 418 in order that any misunderstanding, as to licensing requirements, may be clarified.

Stan Bradshaw, Trout Unlimited, supports SB 418. Mr. Bradshaw submitted testimony from Ric Smith. (Exhibit #4)

Craig Hoppe supports SB 418.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
NONE

Closing by Sponsor:
Senator Doherty told the Committee that SB 418 is a good bill and urged support for the passage of SB 418.

HEARING ON SB 351

Opening Statement by Sponsor:
Senator Weldon, District 27, told the Committee that SB 351 would adjust the hearing and final judgement part of Montana's summary dissolution statute. Specifically, SB 351 would strike the mandatory hearing from the summary divorce process.

Proponents' Testimony:

Diane Sands, Montana Women's Lobby, supported SB 351 because it would eliminate the mandatory hearing provision.

Patrick McCleary, President of the Associated Students at the University of Montana, submitted written testimony from Bruce Barrett. (Exhibit #5)

Opponents' Testimony:
Cort Harrington, Montana Association of Clerks of Courts, opposed SB 351. SB 351 requires the court to review a petition that has been filed. Mr. Harrington said the Clerks of District Court would have to review the files and then bring it to the attention of the court. Mr. Harrington said there is concern about clogging the court with unnecessary hearings, however it would be less complicated and time consuming to hold a hearing than it would be to review various files. Mr. Harrington said the clerks are also opposed to the requirement of mailing the final judgement to the parties if there is no hearing. The clerks are concerned about the cost of the mailings.

Questions From Committee Members and Responses:
Senator Crippen asked Senator Weldon to respond to Mr. Harrington's concerns with SB 351. Senator Weldon told the Committee that he only learned of the concerns of the clerks before the hearing. Senator Weldon said he spoke with Senator Halligan about the concerns of the clerks and Senator Halligan said he is confident SB 351 can be amended to take care of the concerns. Senator Weldon said he did not want to burden the clerks with having to review the files or overburden the courts with the cost of the postage.

Chair Yellowtail asked Senator Weldon to work on the amendments.

Senator Crippen asked Cort Harrington if he would agree to the amendments. Mr. Harrington said yes.

Closing by Sponsor:
Senator Weldon told the Committee that he would work on the amendments.

HEARING ON SB 344

Opening Statement by Sponsor:
Senator Waterman, District 22, told the Committee that SB 344 clears up vague language in the present law and addresses when evaluations are required in pre-sentence investigations. It is important that judges are clear on when they need to have evaluations and still leave flexibility to specify evaluations in those cases that they deem unnecessary, because there are times when investigations are unnecessary and inappropriate. Senator

Waterman submitted an amendment. (Exhibit #6) The language in the original bill, when rewritten, was not clear when the evaluation were required. Senator Waterman said the amendments would also correct a section that was in the wrong place in the existing codes.

Proponents' Testimony:
Mike Ferriter, Department of Corrections and Human Services, told the Committee that last year probation parole officers in Montana wrote 1,400 presentence investigations. As this statute now reads, anytime a presentence investigation is written an evaluation needs to be attached to that investigation. The original statute specified that only when a sex offender was being sentenced was an evaluation by a qualified therapist needed. Mr. Ferriter said some District Court Judges interpret the statute to mean that any kind of presentence investigation needs an evaluation attached. SB 344 goes back to some of the old language and specifies that if it is a sex offense, an evaluation by a qualified therapist needs to be attached, and clarifies who would pay for the evaluation. SB 344 would help address the confusion existing in the sentencing in District Court.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
NONE

Closing by Sponsor:
Senator Waterman closed.

HEARING ON SB 392

Opening Statement by Sponsor:
Senator Waterman, District 22, told the Committee that SB 392 would increase Montana's ability to enforce child support laws. Senator Waterman told the Committee that there are four provisions to SB 392. If a parent is purposely avoiding employment or is under employed purposefully, the Department of Social and Human Services has the opportunity to force the individual to seek work. SB 392 includes a lottery provision. The lottery provision would require the Montana Lottery to check on an individual to see if they owed back child support before making payments of over $600. SB 392 would enhance the existing procedure for collecting child support debts from criminal nonsupport from a misdemeanor to a felony. Senator Waterman told the Committee that there is an existing statute that defines aggravated child support. Under the provision, if the court

determines that obligor meets the criteria set forth in the criminal nonsupport language, and the obligor has failed to provide child support for the last six months, there can be a fine up to $5000 and/or imprisonment of up to two years. The courts can also use alternative sentencing for incarceration and the cost of incarceration would be assigned to the obligor. Another alternative would be for the court to establish a bond in lieu of a fine or incarceration.

Proponents' Testimony:
Mary Ann Wellbank, Administrator Child Support Enforcement Division, read from prepared testimony. (Exhibit #7)

Diane Sands, Montana Women's Lobby, strongly supported SB 392.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Crippen asked Senator Waterman about alternatives to incarceration. Senator Waterman said there are alternatives for incarceration laid out in SB 344. Senator Waterman pointed out that before incarceration, an individual would have to be six months behind in child support.

Amy Pfeifer, Staff Attorney for the Department of Social and Human Services, told the Committee that SB 344 would add additional enforcement tools. Currently, prosecution for nonsupport does not happen very often, therefore SB 344 would make the prosecution of nonsupport easier without shifting the burden of proof. Ms. Pfeifer told the Committee that there would be a number of steps before an individual would be incarcerated.

Closing by Sponsor:
Senator Waterman told the Committee that the Lottery Commission requested an amendment that would remove them from liability if they make a good faith effort to check on back support before dispersing winnings. Senator Waterman submitted an amendment. (Exhibit #8) Senator Waterman told the Committee that the Department of Social and Human Services supported the amendments. Senator Waterman urged the Committee to pass SB 392.

HEARING ON SB 371

Opening Statement by Sponsor:
Senator Rye, District 47, told the Committee that SB 371 was requested by the insurance industry. SB 371 attempts to put a stop to consumer fraud, by fixing a flaw in the existing code. Senator Rye told the Committee that the problem with the existing

code allowed for a practice called "stacking,"

Proponents' Testimony:
Ronald Waterman, Farmers Insurance, told the Committee that "stacking" occurs when a single insurer has multiple vehicles and stacks the uninsured motorist provision on each of their insurance coverages. Mr. Waterman said the current language in the law allows stacking to occur, which was not the intent of the original bill. SB 371 would prevent stacking from occurring.

Opponents' Testimony:
Russell Hill, Montana Trial Lawyers Association, opposed SB 371 because insurance companies issue policies in different manners. Some insurance companies charge an insurer a premium for each of the coverages and in those cases it does not seem to make sense to prevent stacking.

Questions From Committee Members and Responses:
Senator Crippen asked Mr. Waterman about premiums. Mr. Waterman said the reason for paying a premium on individual vehicles is so all the vehicles are covered. Another reason for paying uninsured motorist premiums is so there was no uninsured motorists in Montana. SB 371 would make sure that if a person wanted extra coverage on a vehicle, they would pay a higher amount of premiums for those vehicles .

Closing by Sponsor:
Senator Rye said it is not usual for an insurance company to take advantage of the consumer, but there are many cases in which consumers take advantage of insurance companies. Senator Rye told the Committee that insurance fraud is a multi-billion dollar industry and asked the Committee for a DO PASS recommendation for SB 371.

HEARING ON SB 391

Opening Statement by Sponsor:
Senator Jergeson presented SB 391 for Senator Fritz. Senator Jergeson told the Committee he felt a drinking age was irrelevant because teenagers consume alcohol even with a drinking age of 21. Senator Jergeson told the Committee that Senator Fritz offered SB 391 with serious purpose.

Proponents' Testimony:
Patrick McCleary, President of the Association of Students at the University of Montana, told the Committee they asked Senator Fritz to introduce SB 391 for several reasons. Mr. McCleary told the Committee that a drinking age of 21 years does not prevent

underage drinking. The pressure to drink in Montana is very strong because it is part of Montana's culture. Mr. McCleary told the Committee that from a civil liberties perspective an 18 year old individual is granted the rights and responsibilities of an adult in every instance, but drinking. 18 years olds are tried in adult courts, allowed the right to vote, incarcerated in prisons if convicted, and required to register with selective service. Mr. McCleary said the current drinking law is not enforceable. Mr. McCleary submitted an article from Mike Males who is working on a national drinking age reform movement. (Exhibit #9) In the article, Mr. Males picks apart the logic which was used in the 1986 Highway Fund Act which said states would lose 10% of their highway money if their drinking age was not 21 years of age.

Opponents' Testimony:
Jim Beck, Montana Department of Transportation, said federal law requires all states to have a drinking age of not less than 21 years of age for the purpose of purchasing or possessing alcoholic beverages. Mr. Beck said if Montana does not have a drinking age of 21 years, our funding would be decreased by 5% for the first year and 10% for each succeeding year. Mr. Beck said $6.4 million would be cut the first year and $12.9 million for each succeeding year. In order to make up for the loss, Montana would have to increase the gas tax at 1 1/4 cents the first year and 2 1/2 cents for each succeeding year, or reduce the size of the Federal Aid Highway Program. Mr. Beck told the Committee that Montana can not afford to reduce the drinking age and urges a DO NOT PASS recommendation for SB 391.

Sharon Hoff, Montana Catholic Conference, urged the Committee for a DO NOT PASS recommendation for SB 391.

Questions From Committee Members and Responses:
Senator Crippen asked Mr. McCleary about underage drinking. Mr. McCleary told the Committee that American culture is immature compared to European countries, regarding the consumption of alcohol. Conflicting messages are being sent concerning alcohol. On one hand it is restrictive in the ability to obtain, and on the other hand it glorifies use of alcohol, which industries are built upon.

Senator Crippen asked Senator Jergeson about the age limits in the constitution. Senator Jergeson said there are no age limits in the constitution other than with respect to the highest public offices in the land. In the State of Montana, the age of majority in the constitution is 18 years of age and that entitles a person to run for an elected public office.

Closing by Sponsor:
Senator Jergeson said most people recognize that there are

serious issues with respect to alcohol and its affect on the public, regardless of age. Senator Jergeson said there is evidence that consumption of alcoholic beverages in high school has decreased, however he does not feel it is because of the law, but rather from being educated about the effects of alcohol.

HEARING ON SB 345

Opening Statement by Sponsor:
Senator Bianchi, District 39, said SB 345 changes existing law so attorney fees can be awarded in property damage cases. After property damage has occurred and a settlement offered, then refused, the plaintiff could take the person responsible to court. If the settlement awarded was more than the settlement offered, the offender would pay the attorney fees. However, if the settlement awarded was less or equal to the original amount offered, the plaintiff would pay their own attorney fees.

Proponents' Testimony:
Michael Wheat, an attorney from Bozeman, MT, told the Committee that he asked Senator Bianchi to introduce SB 345 because it strikes a balance between the consuming public who buy insurance policies, the insurance industry, and the adjusting industry which has all the economic power. SB 345 amends the statute that already allows for the recovery of attorney fees in cases that involve damaged automobiles. SB 345 expands the statute to include all property damage claims, not just automobile damage claims.

Opponents' Testimony:
John Alke, Montana Defense Trial Lawyers Association, said the United States has an American rule on attorneys fees. The rule implies that not all prevailing parties receive attorney fees. In Montana, as in most states, courts are very selective in awarding attorney fees in addition to a settlement. SB 345 enormously broadens the rule of what kind of cause of action can be taken and who is entitled to attorney fees. Mr. Alke told the Committee that the definition of property damage is enormously broad. Mr. Alke said SB 345 is a very bad principle and a very bad policy. Mr. Alke asked for a DO NOT PASS recommendation.

Ronald Waterman, Farmers Insurance, told the Committee that SB 345 would change the law significantly to a one sided fashion. Mr. Waterman reiterated Mr. Alke testimony and urged for a DO NOT PASS recommendation for SB 345.

Greg Van Horrsen, State Farm Insurance Company, urged a DO NOT PASS recommendation for SB 345.

Questions From Committee Members and Responses:

Chair Yellowtail asked Mr. Wheat about attorney fees. Mr. Wheat said rule 68 deals with offers of judgement, which does not apply to attorney fees. SB 345 makes it fair for those consumers who are buying insurance and gives them a better opportunity to negotiate the situation. SB 345 recognizes the economic disparity between the consuming public and the insurance industry. SB 345 also affords the opportunity for those involved in disputes with insurance companies, to recover attorney fees if they had to take the dispute to court.

Senator Doherty said it is in the insurance companies' interest to pay out as little money as possible. Senator Doherty asked Mr. Alkey about providing protection to consumers. Mr. Alkey said SB 345 has nothing to do with insurance and is not limited to cases involving insurance companies.

Senator Doherty asked Mr. Alkey about limiting SB 345 to insurance. Mr. Alkey said that would improve SB 345. Mr. Alkey said to assume and to pass legislation on the assumption that everything an industry does is wrong, is very poorly informed legislation.

Mr. Waterman told the Committee the reason for the opposition of SB 345 is because when dealing with vehicle damage, adjusters have information to turn to in order to give an estimate as to the value of a piece of property. However, there would be no measure on the value of other types of property damage.

Senator Rye asked Mr. Waterman about changing the word "plaintiff" to the "prevailing party." Mr. Waterman did feel the wording should be changed. Mr. Waterman asked the Committee not to pass the bill because the legislation is working very well today in the motor vehicle field. Mr. Waterman said the passage of SB 345 would cause the court a lot of problems in the future.

Closing by Sponsor:
Senator Bianchi said SB 345 was a consumer bill. SB 345 would treat those people who were forced to go to court, because an insurance company was not willing to settle with them, in a reasonable way. SB 345 would allow plaintiffs to be awarded attorney fees if it is determined that the settlement was low.

HEARING ON SB 425

Opening Statement by Sponsor:
Senator Brown, District 2, told the Committee that SB 425 was requested by Mike Cooney, Secretary of State. SB 425 says that any time a justice resigns, retires, or dies in office and a vacancy occurs, the justice would be obligated to run in the election if the election occurred before the next legislative session. If the legislative session occurred before the election, the justice would be confirmed. If the election

occurred before the legislative session, the election would take precedence over the legislature and would take the place of confirmation.

Proponents' Testimony:
Doug Mitchell, Secretary of State's Office, supported SB 425.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Bartlett asked Mr. Mitchell about the language, "regardless of the time of the appointment in relation to the candidate filing deadlines for the office." Mr. Mitchell gave the Committee an example. "Lets use the case of Chief Justice Gene Turnage who was just reelected. Had he resigned his seat prior to his election, but after he had filed for the office, under current law the election would then have been voided and would not of taken place in November. Therefore, under this situation, even though that may happen after the close of filing, an election would still be held because it is the expiration of a term. So what the language is talking about is the specific activity of when a term is said to expire. There is really an absurd result here. So if Chief Justice Turnage felt he was going to lose, he could have resigned his seat and voided his candidacy. The election then would have been taken off the ballot by the current procedures. But this would allow them to fix that. To say when a term expires, it expires and an election will be held with the candidates that are available.

Closing by Sponsor:
Senator Brown closed.

EXECUTIVE ACTION ON SB 425

Motion/Vote:
Senator Halligan moved SB 425 DO PASS. The Do Pass motion for SB 425 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 418

Motion/Vote:
Senator Doherty moved SB 418 DO PASS. The Do Pass motion for SB 418 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 371

Motion:
Senator Crippen moved SB 371 DO PASS.

Discussion:
Senator Doherty asked Mr. Waterman if a person could stack policies if they had multiple policies on one car. Mr. Waterman said that situation would not be likely to happen. The language in SB 371 deals with the proposition of an insurer with multiple vehicles and not bringing over the uninsured coverage of those vehicles not involved in the accident and stacking the insurance.

Senator Crippen asked Mr. Waterman about paying the claim. Mr. Waterman said if a person had three different insurance polices, the companies would pay their underlined policies to the insurer. The insurance companies could then go after the third party on a subrogation claim.

Senator Doherty asked Mr. Hill about his opposition to SB 371. Mr. Hill said the Montana Trial Lawyers Association objects to SB 371 based on the fact that an insured would pay a separate premium for the various coverages that would be precluded from stacking under SB 371. Mr. Hill said there are situations where it would make sense to allow stacking since people pay separate premiums for those various policies. Mr. Hill referred to lines 17 and 18 of SB 371.

Vote:
The Do Pass motion for SB 371 CARRIED with Senators Doherty, Halligan, and Yellowtail voting NO.

EXECUTIVE ACTION ON SB 391

Motion:
Senator Rye moved SB 391 DO NOT PASS.

Discussion:
Senator Halligan read a paragraph prepared by Senator Fritz. "Maybe we should sell some other rights of federal pottage. How about speech and freedom of the press? It is simply wrong to ask legal adults to pay tax, fight wars, marry, and yet keep them from this basic privilege."

Vote:
The Do Not Pass motion for SB 391 PASSED with Chair Yellowtail voting NO.

EXECUTIVE ACTION ON SB 344

Motion/Vote:
Senator Halligan moved to amend SB 344. (sb034401.avl) The motion CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Crippen moved SB 344 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 351

Discussion:
Senator Halligan explained the amendments. (Exhibit #10)

Motion/Vote:
Senator Halligan moved to amend SB 351. The motion CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Halligan moved SB 351 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 392

Motion/Vote:
Senator Halligan moved to AMEND SB 392. (Exhibit #8) The motion CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Halligan moved SB 392 DO PASS AS AMENDED. The motion CARRIED with Chair Yellowtail voting NO.

EXECUTIVE ACTION ON SB 345

Discussion:
Senator Doherty told the Committee that SB 345 had problems because of the testimony regarding the question of property.

Motion:
Senator Doherty moved to TABLE SB 345.

Vote:
The motion to table SB 345 CARRIED with Chair Yellowtail voting NO.

EXECUTIVE ACTION ON SB 400

Motion/Vote:
Senator Grosfield moved to TABLE SB 400. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 310

Discussion:
Senator Halligan explained the amendments. (Exhibit #11)

Motion:
Senator Halligan moved to AMEND SB 310.

Discussion:
Senator Doherty told the Committee that the subcommittee was comfortable with SB 310, however the proponents were still working on language that may be included in SB 310 on the floor.

Senator Bartlett asked Senator Halligan if people could still file late claims until July 1, 1995. Senator Halligan said they could.

Senator Grosfield told the Committee that the subcommittee members felt that it was very important nothing is done to jeopardize the ongoing process is already in effect, which would include the relationship to the compacts, adjudication, and all the people who properly filed. Senator Grosfield said subordination would not hurt any of those.

Vote:
The motion to amend SB 310 CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Halligan moved SB 310 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 246

Discussion:

Senator Brown submitted an amendment proposed by Senator Harp. (Exhibit #12)

Motion:
Senator Brown moved to REMOVE SB 246 from the table.

Discussion:
Senator Brown explained the amendment.

Richard Kopel, Agency Council for the Building Codes Bureau, said that the Judiciary Committee members found subsection 1 of SB 246 objectionable, which was the main thrust of the bill that would have provided limited immunity to all building code enforcement jurisdictions. Mr. Kopel said the Building Codes Bureau also wanted to obtain the goal of allowing two or more jurisdictions to jointly hire a building code enforcement person and have liability remain only in that jurisdiction where the cause of action occurred. Mr. Kopel said there is still liability in the jurisdiction where an injury or damages occur, therefore we are only eliminating liability on a vicarious basis to other jurisdictions. Therefore, the injured person would still have a cause of action and would still be allowed to sue the jurisdiction where the injury occurred, but the joint employer would not be liable.

Chair Yellowtail asked Mr. Kopel if the liability could be narrowed to one jurisdiction, as opposed to suggesting an immunity from liability for other jurisdictions. Mr. Kopel said the law would still regard that as immunity and SB 246 would have to pass with a 2/3 vote in both houses in order for it to be constitutionally permissive.

Senator Crippen asked if there would be immunity in a joint employment situation. Mr. Kopel said no.

Senator Crippen asked Mr. Kopel about page 2, line 2. Mr. Kopel said the language says in effect that all jurisdictions, except the jurisdiction in which that cause of action occurred, would have immunity. From a legal perspective, there would be liability to the jurisdiction where the cause of action occurred.

Motion:
The motion to remove SB 246 from the table FAILED with Senators Bartlett, Doherty, Halligan, Franklin, and Yellowtail voting NO.

ADJOURNMENT

Adjournment: 3:40 p.m.

Wm Yellowtail

BILL YELLOWTAIL, Chair

Rebecca Court

REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-20-93

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

February 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 310 (first reading copy -- white), respectfully report that Senate Bill No. 310 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Title, lines 4 through 13.
Following: "AN ACT"
Strike: remainder of lines 4 through 13 in their entirety
Insert: "PROVIDING FOR THE REMISSION OF CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER FORFEITED PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING OF CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE CLAIMS; PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF SUCH CLAIMS; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE."

2. Page 1, line 15 through page 5, line 15.
Strike: page 1, line 15 through page 5, line 15 in their entirety
Insert: "WHEREAS, Article IX, section 3, of the Montana Constitution provides that all existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed; and

WHEREAS, Article IX, section 3, of the Montana Constitution requires the Legislature to provide for the administration, control, and regulation of water rights and to establish a system of centralized records for such rights; and

WHEREAS, the Legislature established a procedure for the general adjudication of existing rights to the use of water and provided in section 85-2-226, MCA, that the failure to file a claim of existing right on or before the deadline established under section 85-2-221, MCA, would establish a conclusive abandonment of the right; and

WHEREAS, the Montana Supreme Court, in In the Matter of the Adjudication of the Water Rights Within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), has determined that the failure to file a statement of claim to an existing right to the use of water on or before April 30, 1982, resulted in the forfeiture of that right; and

WHEREAS, it has come to the attention of the Legislature that the forfeiture of water rights for failure to timely file a claim has in some instances caused hardship, and the Legislature accordingly desires to provide water rights claimants with one more opportunity to assert a water rights claim in the general adjudication; and

WHEREAS, in so doing, the Legislature recognizes that the adjudication process will not be completed for many years but that a substantial amount of progress has already occurred in the adjudication, specifically in the area of water rights compacts with Indian tribes and the federal government and in decrees and stipulations involving individual claimants, and thus the Legislature believes that it is necessary to ensure that parties who filed claims on or before April 30, 1982, and holders of federal reserved water rights are not adversely affected by the inclusion of new parties in the adjudication by subjecting the right to file those claims in remission to certain terms and conditions; and

WHEREAS, the Legislature wishes to provide protection for timely filed claimants from incurring additional costs or from being adversely affected by justifiable reliance on the presumption of abandonment; and

WHEREAS, the Legislature wishes to provide a conclusive adjudication of existing water rights; and

WHEREAS, the Legislature recognizes that according a privilege to file additional statements of claim presents a potential for abuse by those who may attempt to refile previously adjudicated claims, and the Legislature thus believes that the courts should deal harshly with any abuses by such measures as, without limitation, the imposition of sanctions under Rule 11, Montana Rules of Civil Procedure; and

WHEREAS, the Legislature determines that the deadline for filing water right claims as provided in this bill appropriately balances the interests at stake in the adjudication.

THEREFORE, the Legislature finds it is appropriate to make the following amendments to sections 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, and 85-2-306, MCA, in order to provide for the acceptance of additional statements of claim to existing water rights under the conditions set forth in this bill."

3. Page 5, line 18 through page 11, line 5.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 85-2-102, MCA, is amended to read:

"**85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

THEREFORE, the Legislature finds it is appropriate to make the following amendments to sections 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, and 85-2-306, MCA, in order to provide for the acceptance of additional statements of claim to existing water rights under the conditions set forth in this bill."

3. Page 5, line 18 through page 11, line 5.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 85-2-102, MCA, is amended to read:

"**85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors in interest.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(18) "Water division" means a drainage basin as defined in 3-7-102.

(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

(20) "Water master" means a master as provided for in Title 3, chapter 7.

(21) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors in interest.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(14) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(15) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(16) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(17) "Water division" means a drainage basin as defined in 3-7-102.

(18) "Water judge" means a judge as provided for in Title 3, chapter 7.

(19) "Water master" means a master as provided for in Title 3, chapter 7.

(20) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-211, MCA, is amended to read:

"**85-2-211. Petition by attorney general.** Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221(1)."

Section 3. Section 85-2-213, MCA, is amended to read:

"**85-2-213. Notice of order -- additional filing period.** (1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

~~(1)~~(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

~~(2)~~(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

~~(3)~~(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

~~(4)~~(d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

~~(5)~~(e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

~~(6)~~(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

~~(7)~~(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2)(a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, and April 1995, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April 1995, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person who failed to file a claim of existing right before April 30, 1982, may file such claim by physically filing it with the department on or before July 1, 1995, or sending it by United States mail, postmarked on or before July 1, 1995. Additionally, the notice must indicate that a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

Section 4. Section 85-2-221, MCA, is amended to read:

"**85-2-221. Filing of claim of existing water right.** (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1). Accordingly, a person who failed to file a claim of an existing water right on or before April 30, 1982, may file with the department a claim of an existing water right on or before July 1, 1995, on forms provided by the department. This section is not intended to prevent a person who may have filed a claim of an existing water right on or before April 30, 1982, from filing an additional claim under this section if and to the extent that the additional right claimed is not the same as the right that was the subject of a previous claim. Claims must be physically submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. Within 30 days of receipt, the department shall file copies of timely filed claims with the appropriate clerk of court as provided in subsection (2), and those claims are then subject to adjudication by the district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, must have the claim incorporated into the adjudication, subject to all prior proceedings, and does not, except as otherwise provided in 85-2-237, have the right to reopen decrees previously entered or to object to matters previously determined on the merits by the water court after objection; and

(b) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to [the effective date of this act] or to claim

protection under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; and

(c) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, is liable for any costs and damages to any other claimant caused by the latter's actions in reasonable reliance upon the former's failure to file a claim on or before April 30, 1982, and upon the conclusive presumption of abandonment provided in 85-2-226; and

(d) any existing right to the use of water that is the subject of a claim filed after April 30, 1982, is subordinate to:

(i) all filed claims finally adjudicated to be valid;

(ii) all reserved water right compacts negotiated pursuant to this chapter;

(iii) all permits and reservations of water issued pursuant to this chapter if and to the extent that the permitholder or reservation holder files an objection under this part and proves that the permitholder or reservation holder reasonably relied upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1995."

Section 5. Section 85-2-225, MCA, is amended to read:

"**85-2-225. Filing fee -- processing fee for remitted claims.** (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and ~~which~~ that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) Except as provided in subsection (3)(b), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of $300.

(b) For a statement of claim that was filed after April 30, 1982, but prior to [the effective date of this act] or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before the

entry of the temporary preliminary decree or the preliminary decree for the basin for which the claim is filed."

Section 6. Section 85-2-226, MCA, is amended to read:

"**85-2-226. Abandonment by failure to file claim.** The failure to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right."

Section 7. Section 85-2-234, MCA, is amended to read:

"**85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree ~~shall~~ must establish the existing rights and priorities within the water judge's jurisdiction of persons ~~required by~~ who have filed a claim in accordance with 85-2-221 ~~to file a claim for an existing right~~, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree ~~shall~~ must 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.

(5) The final decree ~~shall~~ must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree ~~shall~~ must state:

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

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

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

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

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

(g) the place and means of diversion;

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

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

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree ~~shall~~ must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

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

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Section 8. Section 85-2-237, MCA, is amended to read:

"**85-2-237. Reopening and review of decrees.** (1) ~~The~~ After July 1, 1995, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued ~~by the water courts~~ but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(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 basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if ~~he~~ the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(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(1).

(4) Notice of the reopening and review of a 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~~ that cover the water division or divisions in which the decreed 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 the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to ~~his~~ the claim and, after further reasonable notice to the claimant, 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. On an 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 preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree."

Section 9. Section 85-2-306, MCA, is amended to read:

"**85-2-306. (Temporary) Exceptions to permit requirements -- fee.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders and pay a filing fee. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the

appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ that historically has flowed continuously ~~at~~ during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a $10 fee, and the department shall deposit $10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in 85-2-905, within the state special revenue fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

85-2-306. (Effective July 1, 1993) Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing~~

~~water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ that historically has flowed continuously ~~at~~ during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

NEW SECTION. **Section 10. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 1993."

-END-

SENATE STANDING COMMITTEE REPORT

February 21, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 344 (first reading copy -- white), respectfully report that Senate Bill No. 344 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Page 1, lines 15 through 18.
Following: "~~offenses~~" on line 15
Strike: remainder of line 15 through "committed" on line 18
Insert: "one or more felony offenses"

2. Page 1, line 23.
Following: "~~The~~"
Strike: "Unless ordered otherwise, the"
Insert: "If the defendant was convicted of an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the"

-END-

m-Amd. Coord.
Sec. of Senate

421449SC.SMA

SENATE STANDING COMMITTEE REPORT

February 22, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 351 (first reading copy -- white), respectfully report that Senate Bill No. 351 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Title, line 5.
Following: "COURT"
Insert: "JUDGE"

2. Title, line 8.
Following: "PARTIES"
Insert: "IF SUFFICIENT POSTAGE PREPAID ENVELOPES ARE PROVIDED"

3. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS 40-4-131 AND"

4. Page 1.
Following: line 12
Insert: "**Section 1.** Section 40-4-131, MCA, is amended to read:
"40-4-131. Joint petition -- filing -- form -- contents.
(1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.
(2) The petition must:
(a) be signed under oath by both parties;
(b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been met;
(c) state the mailing address of both parties; ~~and~~
(d) state whether or not the wife elects to have her maiden or former name restored and, if so, state the name to be restored; and
(e) be accompanied by preaddressed, stamped envelopes with sufficient postage to cover the mailing of the final judgment to the parties.""
Renumber: subsequent sections

5. Page 1, line 16.
Strike: "court"
Insert: "judge"

Amd. Coord.
Sec. of Senate

6. Page 1, line 20.
Strike: "court"
Insert: "judge"

7. Page 1, line 21.
Strike: "court"
Insert: "judge"

8. Page 1, line 25.
Following: "shall"
Insert: ", if sufficient envelopes and postage have been provided under 40-4-131,"

-END-

SENATE STANDING COMMITTEE REPORT

February 21, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 371 (first reading copy -- white), respectfully report that Senate Bill No. 371 do pass.

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

___ Amd. Coord.
___ Sec. of Senate

421440SC.Sma

ADVERSE

SENATE STANDING COMMITTEE REPORT

February 21, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 391 (first reading copy -- white), respectfully report that Senate Bill No. 391 do not pass.

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

m— Amd. Coord.
___ Sec. of Senate

421442SC.Sma

SENATE STANDING COMMITTEE REPORT

February 21, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 392 (first reading copy -- white), respectfully report that Senate Bill No. 392 be amended as follows and as so amended do pass.

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

That such amendments read:

1. Page 2, line 16.
Following: "shall"
Insert: "make a good faith attempt to"

2. Page 2, line 18.
Following: "agency."
Insert: "The state lottery has no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt if, after a good faith effort to do so, the state lottery fails to match a winner's name to a name on the list or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery with written notice of a support lien promptly upon the state lottery's notification of a match."

3. Page 3.
Following: line 6
Insert: "(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery.

(e) A support lien under this section is in addition to any other lien created by law."

-END-

SENATE STANDING COMMITTEE REPORT

February 21, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 418 (first reading copy -- white), respectfully report that Senate Bill No. 418 do pass.

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

MM Amd. Coord.
___ Sec. of Senate

421441SC.Sma

SENATE STANDING COMMITTEE REPORT

February 21, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 425 (first reading copy -- white), respectfully report that Senate Bill No. 425 do pass.

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

YM Amd. Coord.
___ Sec. of Senate

421439SC.Sma

TESTIMONY IN SUPPORT OF SENATE BILL 418
BEFORE THE SENATE JUDICIARY COMMITTEE
February 20, 1993

My name is Eileen Shore, and I am a former staff attorney for the Montana Department of Fish, Wildlife and Parks. I present this statement on my own behalf. I was the department's legal representative in negotiations with the Confederated Salish and Kootenai Tribes and helped draft the legislation that resulted in the statute that this bill would amend.

An important reason for the department entering into negotiations with the Tribes was complaints from sportsmen and women about the confusion caused by conflicting licensing requirements. Prior to the agreement that was implemented by Section 87-1-228, MCA, both the state and the Tribes required licenses within the exterior boundaries of the Flathead Reservation. The single licensing system instituted by the agreement solved the problem raised by those wanting to hunt and fish on the Flathead Reservation.

This bill assures that the provisions for a single licensing system will be remain in effect and will be consistently enforced by the courts.

Therefore, I urge your support for Senate Bill 418.

Montana Department of Fish, Wildlife & Parks
1420 E. Sixth
Helena, MT 59620
Ph. 406-444-2449 FAX 444-4952
P.O. Box 67 Kalispell, MT 59903
Phone (406) 752-5501
FAX (406) 257-0349

Confederated Salish & Kootenai Tribes
P.O. Box 278
Pablo, MT 59855
Phone (406) 675-2700
FAX (406) 675-2806

Flathead Reservation Fish & Wildlife Board
Rod Johnson, Chairman
P.O. Box 1122
Polson, MT 59860

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 2-20-93
BILL NO. SB418

February 19, 1993

Senate Judiciary Committee for SB418
Capitol Station
Helena, MT 59620

Dear Judiciary Committee:

I have served on the Flathead Reservation Fish & Wildlife Board since its inception and currently act as chairman. The board exists pursuant to agreement between the State of Montana and The Confederated Salish and Kootenai Tribes. Prior to the agreement there was alot of confusion among the hunting and fishing public, primarily due to duel and inconsistent licensing, regulations, limits, seasons etc. As an outfitter licensed by the State of Montana (to conduct operations off reservation) I recognize the importance of a clarified system to help avoid as much confusion as possible. I believe that SB418 will help in eliminating confusion and provide better clarity, which is needed in light of the recent acquittal in the Del Palmer case. A great deal of progress has been made by this board and it would be unfortunate to see that progress go to waste and even more unfortunate to see a return to the old system of confusion. Therefore, I do strongly support the passage of SB418. Thank you for the opportunity to comment on this issue.

Sincerely,

Rod Johnson

SB 418
February 20, 1993

Testimony presented by Al Elser, Dept. of Fish, Wildlife & Parks before the Senate Judiciary Committee

The State of Montana, through the Department of Fish, Wildlife & Parks, and the Confederated Salish and Kootenai Tribes have a historic and working agreement for the joint regulation and management of fish and bird resources on the Flathead Reservation. This agreement was not easily negotiated and approved. The effort required the development of mutual respect and trust forged by government-to-government interaction.

The road to this agreement was at times rough; however, the extra effort during the difficult times strengthened the final product. The joint agreement is the result of two years of initial negotiations and two years of further negotiations and final approval that resolved difficult and complex litigation contesting jurisdiction over hunting and fishing on the reservation.

Throughout the negotiations, the department and tribes concentrated on two mutual objectives -- to protect the resource and to simplify regulations for sportsmen and women. The joint agreement continues that tradition. We now have two successful license years under the joint agreement. Sportsmen and women no longer have to deal with the confusion of two licenses and two sets of regulations by two different governments, both claiming jurisdiction. There is now one joint license and one set of commonly adopted regulations, along with uniform enforcement. And, the resource itself is the

primary focus, not dissipating contests over jurisdictional claims.

Now, a problem has come up that the state would be wise to address. There have been difficulties in prosecuting an individual who has not bought a joint license. The Lake County attorney, in his judgment, has felt there are inconsistencies between the statute authorizing joint agreements, Section 87-1-228, MCA, and the generally applicable licensing statutes found elsewhere in Title 87. The county attorney has been reluctant to prosecute under the present statutes. A recent prosecution through the Attorney General's Office for a misdemeanor failure to have a joint license ended in a jury acquittal. The jury may have been influenced by the claims of defense counsel that the statutes were too confusing as to what license is required, a joint license or a state license, for a nontribal member.

SB 418 would make it clear that joint license and permit requirements for hunting and fishing supersede the general licensing requirements. This amendment is both symbolic and practical. It will enhance and strengthen the joint agreement and our working relationship with the Confederated ~~Kootena~~Salish Kootenai and ~~Salish~~ Tribes. It will also strengthen enforcement and the state's capability to prosecute for violations of the joint agreement.

The department supports SB 418.

MONTANA COUNCIL

Ric Smith
Box 1638
Polson, Mt. 59860

February 19, 1993

Senator Steve Doherty
Senate Judiciary Committee
State Legislature
Helena, Mt. 59601

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 2-20-93
BILL NO. SB418

Re: Support of SB 418

Senator Steve Doherty:

Trout Unlimited worked hard for the passage of HB 446. We strongly believed that fishery resources were suffering due to jurisdictional questions. Management decissions and enforcement were non-existent or lax at best.

Since the passage of HB 446, management agencies have worked together in the interest of the Fish and Wildlife resources on the reservation.

Trout Unlimited strongly supports SB418 because it will resolve some apparent "loopholes" which allowed a recent game violation to be dismissed.

SB 418 will allow co-operation to continue to the betterment of the resource and the people who enjoy these resources.

Please support SB 418.

Sincerely,

Ric Smith
Vic-Chair
Montana Council

RS/rec

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-20-93
BILL NO. SB351

WRITTEN TESTIMONY IN SUPPORT OF SB-351
SUMMARY DISSOLUTION BILL

Last session the legislature passed the Summary Dissolution Law. This bill provided for a simple procedure to obtain a divorce when couples have no children and little debts or property. Montana joined a growing number of states that allow couples in this situation to obtain a divorce without the help of an attorney. Although I drafted much of the bill, it was not original. I used both the California and Oregon versions as a model. We made the Montana law stricter in terms of the property and debt provisions, so that Summary divorce would be available in only the marriages that are least financially complicated.

Why do we need this law? The Courts are crowded with critical cases that often wait a year or more for trial. There are not enough Judges. The cost of maintaining our judicial system goes up every year. On days when Courts hear non-contested matters, simple divorces line the hallways waiting for their hearing while cases involving property, wills and estates, business defaults, and complicated divorces have to compete for time. The Court hearing for simple divorce cases engages lawyers, clerks and judges when the result is pre-determined and the hearing basically rubber-stamps the documents prepared by the parties.

The Summary Divorce law only applies to fiscally uncomplicated marriages with no children, and only applies if both parties voluntarily settle all matters before the court hearing. Other states have found this to be a safe and effective way to unclog the courts and allow people access to the legal system without having to use an attorney.

But there was a problem with the law as it was passed last session. At the last minute the legislature made a fundamental change in the law. One of the main benefits of the original draft was that it allowed a divorce without a court hearing. In these uncomplicated cases the parties filled out an agreement and several forms prepared by the Attorney General. They then filed the forms and there was a waiting period. Then the divorce was to be signed by the Court and sent to the parties and the divorce was complete. The legislature last session left the rest of the law complete but added a requirement that the parties go to court for a hearing at the end of the waiting period.

This hearing requirement destroyed one of the main purposes of the law, and took away its simplicity and ease of use. If a court hearing is required the benefit to the court system and

other parties with pending lawsuits is greatly diminished. What is worse, by requiring an in-court hearing it is now more difficult to get a divorce under the Summary Divorce Law than it is under the old divorce law, which is still intact. Under the old law, if both parties file jointly, they can obtain a divorce in as little as 1 day. The summary divorce law has a 20 day waiting period. This was meant to be an extra protection since there was no court hearing. But as it is now, a summary divorce has the same in court hearing as a regular divorce, except it can take 20 days longer. This takes away the incentive for most people to use the law.

Two parties urged the legislature to adopt the hearing requirement; attorneys and the Clerks' of Court. I was disappointed to see some attorneys complicat this simple procedure with a court hearing. Although it is certainly to their benefit, it is not to the benefit of the public at large. These simple situations should not require a hearing, and it is very difficult for an average person to prepare for a court appearance and make that court appearance on their own.

The Clerks' of Court argued that the summary divorce law complicated their record keeping, and that the judges would refuse to grant divorces without a hearing. The complication they are referring to is that once a summary divorce is filed, Clerks would have to mark a date to pull the file and have the divorce decree signed by the judge. Our Clerks certainly work hard, and unduly complicating their lives is not something we want to do lightly. However, I contacted the Clerks offices in states where no-court divorces now exist. They said the burden is minimal, in fact it is much less work than cases where there is a hearing. Yes, the Clerk must "tickle" a date on a calendar to pull the file. But this is done by Clerks continuously. There are hundreds of reasons Clerks use a calendar to pull a file. This calendar system is already in place in every Clerk's office in the nation. Pulling a file after 20 days is not a burden disproportionate to the benefit to the public. In addition, we started out wanting no-court divorces to cost only $35.00 because they would engage less of the system's time. At the request of the Clerks, the law was changed to make summary dissolutions cost the same fees as regular divorces. This fee is already quite high. It more than pays for the effort involved in the Clerk calendaring a date then pulling a file for the Court. The pre-printed forms are prepared by the parties themselves, there is no drafting by the Clerk's or Judge.

The second criticism was that Judges would refuse to grant divorces without a personal hearing. I do not know what basis

the Clerks had for making this assertion, aside from several informal conversations they had with judges. First, I would assume Judges will carry out their office and if the legislature authorizes no-court divorces the Judges will carry out their mandate. Secondly, the new amendment before you allows a Judge to call a hearing if he/she really feels one is necessary in a particular case, while still allowing no-court divorces in most situations.

This amendment is pro-people. It leaves attorneys to work on complicated cases where they are really needed. It frees up valuable courtroom time and will reduce the hours attorneys and clients spend in the hallways of the courtrooms waiting for simple divorces to be heard. Unless we make summary divorces available without a court hearing, they are more complicated than regular divorces. People will use the procedure very little, as they have the last 2 years. Frankly, it may be better to not have the law than to have it with a hearing requirement. But we have a chance here to make our system work better for everyone. I urge you to support the proposed amendment as set out in SB-351.

2/19/93

Bruce Barrett date
Attorney
Director of ASUM Legal Svcs.
243-6213/542-2563, Missoula

EXHIBIT 5
DATE 2-20-93
SB 351

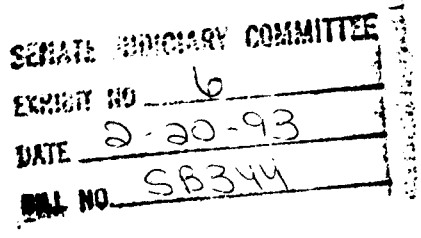
Amendments to Senate Bill No. 344
First Reading Copy

Requested by Senator Waterman
For the Committee on Judiciary

Prepared by Valencia Lane
February 19, 1993

1. Page 1, lines 15 through 18.
Following: "~~offenses~~" on line 15
Strike: remainder of line 15 through "committed" on line 18
Insert: "one or more felony offenses"

2. Page 1, line 23.
Following: "~~The~~"
Strike: "Unless ordered otherwise, the"
Insert: "If the defendant was convicted of an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the"



Senate Bill 392
An Act Increasing the Ability to Enforce Child Support

Testimony
Submitted by Mary Ann Wellbank, Administrator
Child Support Enforcement Division
Department of Social and Rehabilitation Services

Two weeks ago I spoke to the Senate Judiciary Committee about the startling facts that many people, who are financially able to do so, just plain do not support their children. I won't reiterate those facts.

In my position, I speak to many people every day who are extremely frustrated by the current system. They are primarily single parents trying to make ends meet, struggling to hold jobs, raise families and stay off welfare. Or they are remarried parents whose spouses are faithfully and regularly providing support to <u>their</u> children of a previous marriage. These parents are legally entitled to child support. They have a court or administrative order to prove it. The custodial parent often knows where the person owing the support resides, yet neither the division nor the courts can do nothing to help them. The federal Department of Human Services in a recent report stated, " Almost 2/3 of America's poor families are headed by single parents. In 1989 of the 10 million women raising 16 million children in homes where the father was absent, only 58% were awarded child support rights. Only half that group received their full payments, while a quarter received nothing at all. Receipt of child support can clearly mean the difference between economic dependence and independence. "

Both former President Bush and President Bill Clinton have recognized child support as the key to getting Americans out of poverty and echo the need for strengthening the nation's child support system.

Senate Bill 392 is a crucial piece of child support legislation which will help many Montanans. It does not grant broad enforcement powers to the Child Support Enforcement Division, but offers further necessary refinements of the existing system and most importantly, improves access and alternatives for parents to independently pursue -through the Montana Judicial System - the support to which they are legally entitled. It is mostly a bill to address the needs of the thousands of Montana children who are not being supported by their parents and who have no other course of action.

First of all, I'd like to point out that all sections of SB 392 are strongly recommended by the U.S. Commission on Interstate Child Support in its Report to Congress, resulting from several years of study. (HAND OUT)

Pg 2 SB 392
@SED- Willbank

The first part of the bill relates to "Seek Work" orders. This is a small, but logical, addition to the administrative powers of the division hearing function. Obviously, absent parents who have the responsibility to support their children also have the responsibility to finding appropriate work to assure that support. This section of the bill allows the CSED hearing officer to order an individual to actively seek employment or to improve job skills to find suitable employment. This is a natural and logical extension of the current hearings process. Its intent is to reinforce parental responsibility and accountability, but it works both ways. It can also help resolve disputes between the custodial parent and the absent parent when the absent parent has made a good faith, documented effort to find employment.

The second part of the bill relates to liens on lottery winnings. This, again, is a very small and inexpensive way to fill in some of the gaps in the system - to ensure that windfalls are used first to support children. The CSED would provide a listing of people who are delinquent in support, and the lottery would make a good faith effort to notify the CSED of delinquent parents who are winners. In 1992, approximately 250 people won over $600 in the Montana lottery. One $5,000 winner currently owes over $19,000 in support for his children. This case opened in 1984 and the children have not received one penny in support. One winner of $50,000 owes less than $2,000 in support, yet hasn't paid it. Why not? Probably because child support is not a top priority.

The third, and major part of this bill relates to enhancing criminal non-support and making it easier to pursue in the Montana court system. I can assure you there is an urgent public outcry for this legislation. Current law just isn't useful. It is vague and easy to circumvent, and doesn't set any standards for findings or punishment. SB 392 does. It is very important legislation.

I am sure you will hear testimony much better than anything I could give about how absent parents who desert their children in favor of a responsibility-free and penalty free existence, and leave the custodial parent totally in charge of providing for food, clothing, shelter, schooling and other basic needs. When absent parents do not take reasonable steps to insure the safety and welfare of their own children, is it not child abuse?

In your deliberations you need to be aware that there are several other child support bills under consideration by the Legislature this session. You have already seen some. Please give each bill very thoughtful, independent and objective consideration. All are integral pieces which fill the gaps in essential services in Montana, which Montana taxpayers, citizens and innocent children depend upon. Child support enforcement is a very complex and multi-faceted issue. A variety of legislative tools are necessary to customize services to the individual requirements of a particular case. All cases are different. What works effectively for one case will not necessarily work for another.

pg 3 SB 392
CSED - Wellbank

Thank you for the opportunity to provide testimony on SB 392. **SB 392 is presented to empower people, not government.** I urge your very strong support of this bill. CSED staff attorney, Amy Pfeifer and I are available to answer questions about this legislation.

Exhibit 7
2-20-93
SB 392

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

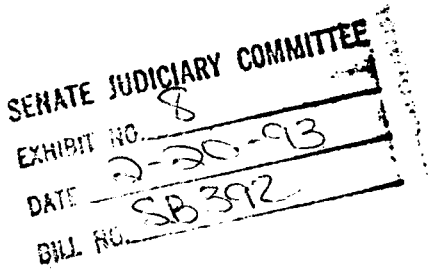
PO BOX 5955
HELENA, MONTANA 59604-5955

Amendments to SB 392 Proposed by Child Support Enforcement Division

1. Page 2, line 16.
Following: "shall"
Insert: "make a good faith attempt to"

2. Page 2.
Following: line 18
Insert: "The state lottery shall have no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt when, after a good faith effort to do so, the state lottery fails to make a match or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery a written notice of support lien promptly upon the state lottery's notification of a match."

3. Page 3.
Following: line 6
Insert: "(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery. (e) A support lien under this section is in addition to any other lien created by law."



THE MINIMUM PURCHASE AGE FOR ALCOHOL AND YOUNG-DRIVER FATAL CRASHES: A LONG-TERM VIEW

EXHIBIT 9
DATE 2-20-93
SB 391

*MIKE A. MALES**

THE relationship between drunken driving and legal controls on alcoholic beverages has long been a subject of widespread public concern. The political and social debate has had its influence on legislation both at the state and the federal level. In this essay I shall examine the merits and probable effects of one such legislative act, the 1984 federal law that requires each state to establish a minimum age of twenty-one for "the purchase or public possession . . . of any alcoholic beverage." The enforcement mechanism for this mandate is a cutoff of federal funds: if a state fails to comply, it risks the loss of 10 percent of its federal highway fund allocation after 1986.[1]

In the Senate debate on this "national-21" legislation contained in H.R. 4616, a large number of prestigious organizations, including the Presidential Commission on Drunk Driving, the National Safety Council, and the American Medical Association, supported efforts to raise the national minimum legal purchase age (MLPA) for alcohol to twenty-one. They rested their arguments on studies that claimed that higher MLPAs resulted in fewer traffic accidents involving young drivers.[2] Senator Frank Lautenberg, speaking in support of the measure, declared that a national MLPA of twenty-one "will save lives. The facts could not be clearer." Supporters of the legislation estimated that it would save between 730 and 2,500 lives per year.[3] These assertions rested in large measure on a single,

* Independent researcher and consultant, Livingston, Montana.

[1] Frank Lautenberg, Amendment 3334, H.R. 4616, Cong. Rec., 98th Cong., 2d Sess., vol. 130, no. 89, at S8208 (June 26, 1984).

[2] Note 1 *supra*, at S8210–11; John Volpe, Presidential Commission on Drunk Driving, Final Report (1983), at 10–11.

[3] Note 1 *supra*, at S8209.

[*Journal of Legal Studies*, vol. XV (January 1986)]

Amendments to Senate Bill No. 351
First Reading Copy

For the Committee on Judiciary

Prepared by Lee Heiman (and Valencia)
February 22, 1993

1. Title, line 5.
Following: "COURT"
Insert: "JUDGE"

2. Title, line 8.
Following: "PARTIES"
Insert: "IF SUFFICIENT POSTAGE PREPAID ENVELOPES ARE PROVIDED"

3. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS 40-4-131 AND"

4. Page 1.
Following: line 12
Insert: "**Section 1.** Section 40-4-131, MCA, is amended to read:
"40-4-131. Joint petition -- filing -- form -- contents.
(1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.
(2) The petition must:
(a) be signed under oath by both parties;
(b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been met;
(c) state the mailing address of both parties; ~~and~~
(d) state whether or not the wife elects to have her maiden or former name restored and, if so, state the name to be restored; and
(e) be accompanied by preaddressed, stamped envelopes with sufficient postage to cover the mailing of the final judgment to the parties.""

5. Page 1, line 16.
Strike: "court"
Insert: "judge"

6. Page 1, line 20.
Strike: "court"
Insert: "judge"

7. Page 1, line 21.
Strike: "court"
Insert: "judge"

8. Page 1, line 25.
Following: "shall"
Insert: ", if sufficient envelopes and postage have been provided under 40-4-131,"

Amendments to Senate Bill No. 310
First Reading Copy

Requested by Senator Halligan for the SB 310 Subcommittee
For the Committee on Judiciary

Prepared by Valencia Lane
February 22, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2-20-93
BILL NO. SB310

1. Title, lines 4 through 13.
Following: "AN ACT"
Strike: remainder of lines 4 through 13 in their entirety
Insert: "PROVIDING FOR THE REMISSION OF CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER FORFEITED PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING OF CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE CLAIMS; PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF SUCH CLAIMS; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE."

2. Page 1, line 15 through page 5, line 15.
Strike: page 1, line 15 through page 5, line 15 in their entirety
Insert: "WHEREAS, Article IX, section 3, of the Montana Constitution provides that all existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed; and

WHEREAS, Article IX, section 3, of the Montana Constitution requires the Legislature to provide for the administration, control, and regulation of water rights and to establish a system of centralized records for such rights; and

WHEREAS, the Legislature established a procedure for the general adjudication of existing rights to the use of water and provided in section 85-2-226, MCA, that the failure to file a claim of existing right on or before the deadline established under section 85-2-221, MCA, would establish a conclusive abandonment of the right; and

WHEREAS, the Montana Supreme Court, in In the Matter of the Adjudication of the Water Rights Within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), has determined that the failure to file a statement of claim to an existing right to the use of water on or before April 30, 1982, resulted in the forfeiture of that right; and

WHEREAS, it has come to the attention of the Legislature that the forfeiture of water rights for failure to timely file a claim has in some instances caused hardship, and the Legislature accordingly desires to provide water rights claimants with one more opportunity to assert a water rights claim in the general adjudication; and

WHEREAS, in so doing, the Legislature recognizes that the adjudication process will not be completed for many

years but that a substantial amount of progress has already occurred in the adjudication, specifically in the area of water rights compacts with Indian tribes and the federal government and in decrees and stipulations involving individual claimants, and thus the Legislature believes that it is necessary to ensure that parties who filed claims on or before April 30, 1982, and holders of federal reserved water rights are not adversely affected by the inclusion of new parties in the adjudication by subjecting the right to file those claims in remission to certain terms and conditions; and

WHEREAS, the Legislature wishes to provide protection for timely filed claimants from incurring additional costs or from being adversely affected by justifiable reliance on the presumption of abandonment; and

WHEREAS, the Legislature wishes to provide a conclusive adjudication of existing water rights; and

WHEREAS, the Legislature recognizes that according a privilege to file additional statements of claim presents a potential for abuse by those who may attempt to refile previously adjudicated claims, and the Legislature thus believes that the courts should deal harshly with any abuses by such measures as, without limitation, the imposition of sanctions under Rule 11, Montana Rules of Civil Procedure; and

WHEREAS, the Legislature determines that the deadline for filing water right claims as provided in this bill appropriately balances the interests at stake in the adjudication.

THEREFORE, the Legislature finds it is appropriate to make the following amendments to sections 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, and 85-2-306, MCA, in order to provide for the acceptance of additional statements of claim to existing water rights under the conditions set forth in this bill."

3. Page 5, line 18 through page 11, line 5.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 85-2-102, MCA, is amended to read:

"**85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and

recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. <u>For purposes of 85-2-221(3), person includes predecessors in interest.</u>

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(18) "Water division" means a drainage basin as defined in 3-7-102.

(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

(20) "Water master" means a master as provided for in Title 3, chapter 7.

(21) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. <u>For purposes of 85-2-221(3), person includes predecessors in interest.</u>

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(13) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(14) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(15) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(16) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(17) "Water division" means a drainage basin as defined in 3-7-102.

(18) "Water judge" means a judge as provided for in Title 3, chapter 7.

(19) "Water master" means a master as provided for in Title 3, chapter 7.

(20) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{*Internal References to 85-2-102:*
x82-4-355 *x85-2-141* *x85-2-419*}

Section 2. Section 85-2-211, MCA, is amended to read:

"**85-2-211. Petition by attorney general.** Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221(1)."

{*Internal References to 85-2-211:*
x85-2-701}

Section 3. Section 85-2-213, MCA, is amended to read:

"**85-2-213. Notice of order -- additional filing period.** (1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

~~(1)~~(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

~~(2)~~(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

~~(3)~~(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county

treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

~~(4)~~ (d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

~~(5)~~ (e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

~~(6)~~ (f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

~~(7)~~ (g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2) (a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, and April 1995, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April 1995, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person who failed to file a claim of existing right before April 30, 1982, may file such claim by physically filing it with the department on or before July 1, 1995, or sending it by United States mail, postmarked on or before July 1, 1995. Additionally, the notice must indicate that a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

{*Internal References to 85-2-213: None.*}

Section 4. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1). Accordingly, a person who failed to file a claim of an existing water right on or before April 30, 1982, may file with the department a claim of an existing water right on or before July 1, 1995, on forms provided by the department. This section is not intended to prevent a person who may have filed a claim of an existing water right on or before April 30, 1982, from filing an additional claim under this section if and to the extent that the additional right claimed is not the same as the right that was the subject of a previous claim. Claims must be physically submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. Within 30 days of receipt, the department shall file copies of timely filed claims with the appropriate clerk of court as provided in subsection (2), and those claims are then subject to adjudication by the district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, must have the claim incorporated into the adjudication, subject to all prior proceedings, and does not, except as otherwise provided in 85-2-237, have the right to reopen decrees previously entered or to object to matters previously determined on the merits by the water court after objection; and

(b) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to [the effective date of this act] or to claim protection under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; and

(c) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, is liable for any costs and damages to any other claimant caused by the latter's actions in reasonable reliance upon the former's failure to file a claim on or before April 30, 1982, and upon the conclusive presumption of abandonment provided in 85-2-226; and

(d) any existing right to the use of water that is the

subject of a claim filed after April 30, 1982, is subordinate to:

(i) all filed claims finally adjudicated to be valid;

(ii) all reserved water right compacts negotiated pursuant to this chapter;

(iii) all permits and reservations of water issued pursuant to this chapter if and to the extent that the permitholder or reservation holder files an objection under this part and proves that the permitholder or reservation holder reasonably relied upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1995."

{*Internal References to 85-2-221:*
A85-2-211 *x85-2-222* *x85-2-225* *x(2)* *A85-2-226*
x85-2-227 *A85-2-234* *x85-2-243* *A85-2-306* *(2)*}

Section 5. Section 85-2-225, MCA, is amended to read:

"**85-2-225. Filing fee -- processing fee for remitted claims.** (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and ~~which~~ that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) Except as provided in subsection (3)(b), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of $300.

(b) For a statement of claim that was filed after April 30, 1982, but prior to [the effective date of this act] or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before the entry of the temporary preliminary decree or the preliminary decree for the basin for which the claim is filed."

{*Internal References to 85-2-225: None.*}

Section 6. Section 85-2-226, MCA, is amended to read:

"**85-2-226. Abandonment by failure to file claim.** The failure to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right."

{*Internal References to 85-2-226: None.*}

Section 7. Section 85-2-234, MCA, is amended to read:

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

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

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree ~~shall~~ must establish the existing rights and priorities within the water judge's jurisdiction of persons ~~required by~~ who have filed a claim in accordance with 85-2-221 ~~to file a claim for an existing right~~, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree ~~shall~~ must 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.

(5) The final decree ~~shall~~ must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree ~~shall~~ must state:

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

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

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

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

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

(g) the place and means of diversion;

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

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

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the

final decree ~~shall~~ must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

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

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

{*Internal References to 85-2-234:*
xx85-2-141 (2) x85-2-231}

Section 8. Section 85-2-237, MCA, is amended to read:

"**85-2-237. Reopening and review of decrees.** (1) ~~The~~ After July 1, 1995, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued ~~by the water courts~~ but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(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 basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if ~~he~~ the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(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(1).

(4) Notice of the reopening and review of a 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~~ that cover the water division or divisions in which the decreed 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 the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to ~~his~~ the claim and, after further reasonable notice to the claimant, 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. On an 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 preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree."

{*Internal References to 85-2-237: None.*}

Section 9. Section 85-2-306, MCA, is amended to read:

"**85-2-306. (Temporary) Exceptions to permit requirements -- fee.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or

developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders and pay a filing fee. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ that historically has flowed continuously ~~at~~ during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a

correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a $10 fee, and the department shall deposit $10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in 85-2-905, within the state special revenue fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

85-2-306. (Effective July 1, 1993) Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1,

1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ that historically has flowed continuously ~~at~~ during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

{*Internal References to 85-2-306:*
xx85-2-102 (2) *x85-2-113* *x85-2-236* *xx85-2-302 (2)*
x85-2-322 *x85-2-401* *x85-2-905*}

NEW SECTION. **Section 10. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

NEW SECTION. **Section 11. {standard} Effective date.** [This act] is effective July 1, 1993."

Amendments to Senate Bill No. 246
First Reading Copy

Requested by Senator Harp
For the Committee on Judiciary

Prepared by Valencia Lane
February 20, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 2-20-93
BILL NO. SB246

1. Title, lines 4 through 7.
Following: "AN ACT" on line 4
Strike: remainder of line 4 through "AND" on line 7

2. Title, line 7.
Strike: "LIMITED"

3. Title, line 9.
Following: "EMPLOYEE"
Strike: "IN"
Insert: "EXCEPT"

4. Title, line 10.
Strike: "ARISES"
Insert: "ACCRUES"

5. Page 1, lines 13 through 22.
Following: "Immunity."
Strike: subsection (1) in its entirety

6. Page 1, line 23.
Strike: "(2)"

7. Page 2, line 1.
Strike: "other than"
Insert: "except"

DATE 2/20/93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 344, 345, 351, 371, 391, 392, 418, 425

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
LAURENCE KONMILLE	CSKT Tribes	418	✓	
John Carter	" " "	418	✓	
GEORGE OCHENSKI	CONF. SALISH/KOOTENAI	418	✓	
CRAIG L. HOOPE	SELF	418	X	
MICHAEL WHEAT	SELF	345	✓	
Carol Harrington	Clerks of Dist Court	351		✓
Deanne L. Sandholm	Gov. & Att. Gen.	418	✓	
MA Willard	CSED	~~HB 392~~ 392	✓	
RICHARD L. KOPEL	BLDG CODES BUREAU	246	✓	
Mike Ferrito	D.C.H.S	344	✓	
AL ELSER	FISH, WILDLIFE & PARKS	418	✓	
Stan Bradshaw	MT Trout Unlimited	418	✓	
Jacqueline Kennark	AIA	345		✓
Jacqueline Kennark	AIA	371	✓	
B. Tobin	State Farm Ins	345 371	✓	✓
Ron Waterman	Farmers Insurance	345 371	✓	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 2/20/93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 344, 345, 351, 371, 391, 392, 418, 425

Name	Representing	Bill No.	Check One Support	Oppose
Diana Sands	MT Women Lobby	SB 351	✓	
"	MT Women Lobby	392	✓	
SHARON HOFF	MT Catholic Conf.	391		X
Patrick M. Cleary	Associated Students, U of Montana	391	✓	
Beck	MDT	391		X
John McCarthy	ASUM	391	✓	
Dave Brown	Bike Representative	391	✓	
John Alk	MT. Defense Trial Lawyers	345		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

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