

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By CHAIRMAN VERN KELLER, on March 11, 1993, at
3:00 P.M.

ROLL CALL

Members Present:

Rep. Vern Keller, Chairman (R)
Rep. Joe Barnett, Vice Chairman (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)
Rep. Jody Bird (D)
Rep. Ervin Davis (D)
Rep. Bill Endy (D)
Rep. Harriet Hayne (R)
Rep. Don Larson (D)
Rep. Gary Mason (R)
Rep. Bill Rehbein (R)
Rep. Sam Rose (R)
Rep. Dore Schwinden (D)
Rep. Wilbur Spring (R)
Rep. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council
Jaelene Racicot, Committee Secretary

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

Committee Business Summary:

Hearing: SB 310
Executive Action: None

HEARING ON SB 310

Opening Statement by Sponsor:

SEN. JACK "DOC" REA, SD 38, Three Forks, stated that SB 310 deals
with water rights that were late claims and therefore forfeited.
He said that in 1970 the constitutional convention reviewed the

provisions addressing water rights. On July 1, 1973 the new Constitution said that all existing rights to the use of water are recognized and confirmed. In 1977, the legislature appointed an interim committee to study the issue of water rights. SEN. REA indicated that as a result of the study, the Montana Water Use Act was enacted in 1979. Under the provisions of the Act all existing water rights had to be filed by June 30, 1983. The Supreme Court wanted an earlier date and the parties settled on January 1, 1982. The final decision was that all existing water rights had to be filed by 5:00 P.M., April 30, 1982. All water rights that were not filed with the Department of Natural Resources on April 30, 1982, were then listed as conclusively abandoned rights. SEN. REA stated that SB 310 would address the problems that many individuals have incurred for not filing their water rights on time. EXHIBIT 1

Proponents' Testimony:

W.G. Gilbert III, self, stated that when Judge W.W. Leslie came to Dillon he said if a person could fill out a form and attach a map of their water rights, that was all that was required to be filed. If a person has a decreed right then all they have to do is attach a copy of the decree. Mr. Gilbert said he has had clients come to him in the last 10 years who have discovered water rights they did not know they had. He said the reasons vary why a person did not file, i.e., some people lost the papers; one man was in prison and did not file; and some people simply were not aware of what needed to be done. Mr. Gilbert stated that SB 310 was amended heavily in the Senate. He indicated that Jan Rehberg had some amendments which addressed the concerns many of the proponents had. Mr. Gilbert said that there were 2,000 people he was aware of who were adversely affected by the supreme court ruling. He said if this bill was not passed, approximately 190,000 acres of irrigated farm ground would dry up. Mr. Gilbert urged the committee to pass SB 310 with the Rehberg amendments.

Janice Rehberg, Teigen Land and Livestock, stated the bill as it reads today, provides that all of the late claims would be subordinated to all timely filed claims and to all compacts for federal reserve water rights. EXHIBITS 2, 3, 4, 5, 6, 7, 8, and 9 The subordination provision gives a windfall to the people who filed on time. Ms. Rehberg explained amendment 15, EXHIBIT 2. She said that the subordination language should be changed to read "if a timely filed claimant or a permit holder or a federal reserve right holder can come into court and show that they took action based upon a reliance on the late claim and that it might be abandoned and they have been damaged." Then the claim can be subordinated in order to protect the person who filed timely and took action if there was reliance on someone else who failed to file on time. Ms. Rehberg explained amendment 19, EXHIBIT 2, which would add a severability clause. The rest of the amendments in EXHIBIT 2 were offered to clean up the bill. She urged the committee to concur in SB 310 with the amendments.

Pete Wipf, Martinsdale Colony, presented written testimony.
EXHIBIT 10

Jess Nuttall, Pinesdale Water Department, presented written testimony. **EXHIBIT 11**

Gene Vuckovich, Anaconda and Deer Lodge County, stated that when ARCO and the Anaconda Company filed for water rights, they failed to file for the municipal water rights that were historically used in Anaconda and Deer Lodge County. **Mr. Vuckovich** stated that they have a late claim filed. He said that it is imperative to have some kind of water claim. These water claims that they have filed, have historically been used for municipal water for almost 100 years. Anaconda and Deer Lodge County supports SB 310 with the Rehberg amendments.

Lyle Richards, self, stated that he supports SB 310 with the exclusion of the subordination clause. He urged the committee to pass SB 310, with the Rehberg amendments.

Alan Shumate, self, stated that he supports SB 310 with the Rehberg amendments.

Jo Brunner, Montana Water Resource Association, stated that the Association supports SB 310 with the Rehberg amendments. She said that it has been a difficult decision for them because they have members on both sides on this issue.

Holly Franz, Montana Power Company, stated that Montana Power Company has a number of dams on Montana's rivers and they have substantial water rights which were filed on time. Montana Power Company supported the lawsuit because the adjudication was not established to take away peoples' water right; that was not the purpose of the law. Ms. Franz urged passage of SB 310 with the Rehberg amendments and not allow the water rights of many individuals to be forfeited, individuals who in fact were not abandoning the water rights.

Eugene Morelli, self, urged the committee to pass SB 310 with the Rehberg amendments. **EXHIBIT 12 and 13**

Dale Mahlum, self, stated he supports SB 310 without the subordination language. He urged the committee to pass SB 310 with the Rehberg amendments.

Marlene Chor, self, presented written testimony. **EXHIBITS 14, 15, and 16.**

Lorna Frank, Montana Farm Bureau, stated that the Bureau supports SB 310 with the Rehberg amendments. She said this decision was very difficult for them to make because they have members on both sides of the issue.

Lance Clark, Montana Realtors Association, stated the Association

would support SB 310 with the amendments.

Bruce Malcolm, self, stated that his ranch filed on several water rights but one water right was not filed. He said that his ranch will lose a water right to 40 acres of land. The difference in production value between dry land and irrigated land is \$600 an acre and the ranch will lose \$24,000 a year without this water right. He urged the committee to support SB 310 with the Rehberg amendments.

Pat McNamee, self, presented written testimony. EXHIBIT 17.

Cameron Mackenzie, self, stated that the DNRC had sent out a letter indicating that the water rights filings should be post-marked by April 30, 1982. Mr. Mackenzie said his ranch complied and when they went to sell a piece of land nine years later, there was no water right filed on this land. He stated that they had to renegotiate and he ended up losing \$40,000. He urged the committee to pass SB 310 as amended.

REP. BILL TASH, HD 73, Dillon, stated that he supports SB 310 with the Rehberg amendments.

Tom Peterson, self, stated that he supported the amendments presented by Ms. Rehberg to clean up the bill. He said that his main well which flows 700 gallons per minute and irrigates 70 acres will be put out of commission because the water rights were not filed on this well.

Mons Teigen, Teigen Land and Livestock Company, stated that he has called a number of people who had not filed their water rights as of April 30, 1982. He said he found on a 1989 list of late claimants (he held up an example for the committee to see) there were 3,200 water rights that were not filed and it could be as many as 6,000 late claimants. Mr. Teigen urged the committee to pass SB 310 as amended.

Jeff Walker, self, stated that he owns 160 acres in Montana. He discovered the previous land owner did not file for water rights on the springs and, according to Montana law, he does not have a right to irrigate from that spring. Mr. Walker urged the committee to pass SB 310 with the Rehberg amendments.

Echo Garberg, self, presented written testimony. EXHIBIT 18

Aileen Peterson, self, stated that she supports SB 310 with the Rehberg amendments.

Harold Shervin, self, stated that he and his family came to Boulder about 10 years ago and bought a ranch. He discovered that the previous owner did not file the water rights and said they stand to lose water that has been historically used since 1867.

Karen Barclay Fagg, representing Governor Marc Racicot, presented written testimony. EXHIBIT 19

Chris Tweeten, Chief Deputy Attorney General, Department of Justice, representing the Department of Justice, stated that a variety of the concerns and issues he will be addressing are those which have been identified and worked on by a number of attorneys in state government representing the Attorney General's Office, the Department of Natural Resources, the Governor's Office, and other agencies. He said that there are circumstances with respect to these late claimants which need to be addressed by the committee.

The effect of the supreme court decision: The supreme court heard an appeal from the water court stipulating that persons who failed to file their water right claim on or before April 30, 1982 had forfeited those rights. The Montana Supreme Court agreed with the water court determination and held that those rights were forfeited. The legal consequences are: for water rights that were not filed on or before April 30, 1982, as a matter of law, those rights cease to exist on that date. Legally speaking, those water rights when referred to by some of the other proponents as currently existing is not accurate--those rights were forfeited as of April 30, 1982; the rights do not exist. Many individuals who did not file their water rights in a timely fashion still use the water beneficially today.

How can we provide some relief to those late claimants? The Attorney General's Office researched that question and discovered that the legislature does have the power to grant remission of forfeitures. That means the legislature has the power to provide remedies for persons whose rights have been forfeited; provided that the remission of forfeiture can be done in a way that does not adversely impact intervening vested rights.

The amendments placed in SB 310 in the Senate were amendments prepared by the Department of Justice, the Department of Natural Resources, and the governor's office. They addressed a problem of how to design a remission of this forfeiture which will provide meaningful relief to the late claimants; while at the same time not impairing the vested rights or otherwise impair the interests that need to be protected from the State of Montana's perspective. When the remission language was designed, it was done in a way which protected the adjudication process; protected the negotiated water compacts; and provided protection for those intervening vested rights which occurred after April 30, 1982. This process was developed in favor of the persons who filed the claims on a timely basis.

The bill as introduced had serious implications for the water rights compacts which have been negotiated between the State of Montana and the Fort Peck and Northern Cheyenne Indian tribes. Mr. Tweeten stated that he served as chairman of the Reserve Water Rights Compact Commission and testified in the Senate

Judiciary hearing on SB 310. As originally introduced SB 310 had significant adverse impacts on those compacts. Mr. Tweeten said he thought the Senate amendments adequately addressed those impacts by requiring that late claimants be subordinated to the provisions of the negotiated compacts which were negotiated to provide protection for existing stated water rights.

What the state and tribes did in those compacts: The state and the respective tribes negotiated a settlement of the water right claims of the Fort Peck and Northern Cheyenne tribes. Those reserve water right claims would have been prior to a substantial majority of rights existing under state law on the reservations. As part of the settlement of those claims, agreements were negotiated with those tribes whereby they agreed to subordinate their tribal rights to the existing state water users. They would be junior to rights that are later in time than theirs. Mr. Tweeten said that it is important to make sure that those agreements are not upset by SB 310 and he thought the amendments that the Senate passed addressed those problems. With the Senate amendments, contained in the third reading copy of SB 310, the late claimants could not object to these compacts, and the late claimant would not be entitled to the benefit of those subordination agreements that the state and the tribes had negotiated.

The other issue which needs to be addressed is the jurisdictional status of the adjudication process. When SB 76 was passed in 1979, the specific intent of the legislature was that the adjudication process encompass federal reserve water rights as well as water rights existing under state law. In order to do this, they referred to a piece of federal legislation, the McCarran amendment, which waived the immunity of the United States from the general stream adjudications. Prior to the passage of the McCarran amendment, there was no way for a state court to get jurisdiction over federal reserve water rights. The way SB 310 was originally introduced, it had significant potential problems to upset that jurisdictional waiver of sovereign immunity. The Senate amendments, contained in the blue bill, address that problem. Mr. Tweeten asked the committee to not tamper with the Senate amendments, especially those dealing with the jurisdictional status of the adjudication.

Mr. Tweeten noted, as a point of interest, that the vast majority of claimants filed their claims in a timely fashion. Under the supreme court's decision, the timely filed claimants have rights that are superior to the rights of these late claimants. If the legislature puts the late claimants back in priority, it could open the door for litigation by those timely filed claimants claiming that their vested rights have been upset by SB 310 with the Rehberg amendments.

Opponents' Testimony:

REP. DON LARSON submitted written testimony on behalf of Larry

Fasbender. EXHIBIT 20

Arville Lammers, self, presented written testimony. EXHIBIT 21.

Questions From Committee Members and Responses:

REP. BACHINI asked Mr. Tweeten about the water still being used by late claimants and what will happen to the water. Mr. Tweeten stated that under the prior appropriation doctrine it becomes available for appropriation to other water users.

REP. BACHINI asked what if there were two different claims for the same water, junior water rights and senior water rights. Mr. Tweeten said if there are two or more claimants, as long as there is water, they are both able to use it. When water becomes short, then priority becomes an issue.

REP. BACHINI said he could not understand how a water right could be lost. If two people who had water rights, one dating back to the 1870's and the other to the 1900's, how could they lose their right? Mr. Tweeten replied that what they lose is the right to "serve" a priority date against another appropriator.

REP. BACHINI asked what would likely occur if this bill was not passed. Mr. Tweeten replied that, as he understands it, the adjudication will result in the issuance of a final decree on a stream listing, in order of priority, the water rights that have been decreed on that stream. Late claims will not be listed as existing water rights.

REP. BACHINI also asked if there was surface water in that stream, could the water be sold or leased. Mr. Tweeten replied that it would be available for appropriation by other water users including the late claimants who could come in and ask the DNRC for a permit to appropriate the water. If filed today, that permit would have a 1993 priority date.

REP. ROSE asked Ms. Rehberg about the windfall involved. "How do you think 206,000 filings are going to be a windfall?" Ms. Rehberg said that the windfall would go to a junior water right which would get an improved status. They would like to put people back into the proper priority. The windfall means that someone else would benefit if these people lose their water rights. The claimants who filed on time get more now than what they had in 1973.

REP. ROSE asked Ms. Rehberg if the people who legally filed by April 30, 1982 would really benefit from the windfall. Ms. Rehberg replied, "Yes, they would". She indicated many of her amendments do try to take into account the actual damages that may have occurred to claimants who filed timely.

REP. ANDERSON asked Mr. Tweeten if he had any idea how many claims were filed late by a week or were very close to the

deadline. Mr. Tweeten replied that the Department of Natural Resources may have that information.

REP. ANDERSON asked about possible implications if the committee was to allow claims that had been postmarked by the 5:00 p.m. deadline on April 30, 1982. What if the committee allows claims to come in over a six-month period after the April 30, 1982 deadline? Do you think that would jeopardize the compact agreements? Mr. Tweeten responded that a provision could be created to protect the compacts.

REP. ANDERSON asked if the provisions of the McCarran amendment would be jeopardized by allowing these late claims. Mr. Tweeten stated that it would probably be a claim the state could defend.

REP. ANDERSON asked what the ramifications would be if these late claimants are allowed to file legally. Mr. Tweeten replied there would be risks involved however, and they do not foresee all the arguments the federal government could make regarding the McCarran amendment. If you put in a date, like SB 310 does, by which all the claims would have to be filed and provide that any claim not be in that date would be extinguished, the McCarran amendment problem has been satisfied.

REP. ANDERSON asked if there is a possibility, by allowing people to open up these claims up and allow them to be filed, the federal government could participate in Montana's adjudication process. Mr. Tweeten stated that the federal government is participating in the adjudication of state water court now. The risks would be if a federal court would determine that Montana does not have a general stream adjudication which satisfies the McCarran amendment then the United States can pull its rights out of state court and have them adjudicated in the federal court.

REP. ANDERSON asked Ms. Rehberg how many of these late claimants filed within a short time after April 30, 1982. Ms. Rehberg said of the 3,500 filed late, 1,300 were filed by May 5, 1982. She said that only applies to the people who fell into the mailing issue, but it does not address the problem of attorneys not filing or losing the papers, or whose parents were ill, or the property was tied up in estates, or where property had been sold and the previous owner did not file.

REP. ANDERSON asked about possible ramifications if the committee was to extend the time to allow these late claimants to file and what time period would be necessary to address the problems discussed by the proponents today. Ms. Rehberg said that the original proposal in the first copy of the bill dealt with this issue on the adjudication process. If you want to get them all in you have go on the adjudication process itself. The Attorney General had some problems with this.

REP. SCHWINDEN asked Ted Doney, who specializes in water law, his opinion on the 200,000 acres of irrigated land and would the land

turn into a natural disaster situation. Mr. Doney said he had not had the opportunity to review the figures on the 200,000 acres, but if the number of acres is accurate, it certainly is a tragedy.

REP. ENDY asked Ms. Rehberg about the subordination language. Ms. Rehberg replied that amendment 15 says that the court can subordinate a late claim only if there was actual harm to a claimant filing timely. Those situations allow the court to subordinate, which means to take your water right and move it behind someone else's with regard to priority.

REP. ENDY asked if all of these water rights go back to the 1860's, why then in 1982 did these people have to file. Ms. Rehberg replied it was because the legislature told them to.

REP. STOVALL asked Ms. Barclay why she had a problem with the Rehberg amendments. Ms. Barclay replied that the concern is with amendment 15 talking about abandonment and not forfeiture. The courts have already said these rights have been forfeited. If the committee passes amendment 15, it would be giving the late claimants back their water rights. There is a penalty for not filing timely; that penalty is the loss of the priority date. According to western water law, when a right no longer exists everyone else moves up in time. All those junior people who filed timely, have already moved up in time. Under the third reading version of the bill, late claimants would be given back their rights, but not their priority. Ms. Barclay said that they are trying to be fair to the 98% of the individuals whose claims were filed timely.

REP. STOVALL asked Mr. Tweeten to explain amendment 19. Mr. Tweeten said he had not had a chance to review the amendment offered by Ms. Rehberg. He had, however, talked with her to narrow the severability clause down to make it focus on the provisions of the bill.

REP. LARSON asked how many late claims were they talking about. Don McIntyre, Department of Natural Resources, stated that the total number of claims filed was 206,000, and out of that amount, approximately 3,000 fell in the category of a late claim.

REP. LARSON asked if there was a possibility to classify late claims into two categories. One category as no fault by the claimants and the other category claiming negligence by late filing. Don McIntyre said that due to postmark filings a remedy could be fashioned. A late filing due to some reason other than postmark is a forfeiture.

REP. LARSON asked what happens when a person buys property in good faith and then later finds out there is no water right. Mr. Gilbert stated that in his law office they have a dozen late filed cases. There were various reasons why claims were not filed; buyers that were supposed to file did not; sellers that

were supposed to file and the buyers thought they filed and didn't; banks that did not file when they had the property in foreclosure; lawyers who lost papers and/or misunderstood instructions. If there are 3,000 late claims, it may be there are 9,000 lawsuits associated with them.

REP. BACHINI asked Ms. Rehberg if, when the supreme court came out with the decision that these people who filed late forfeited the water rights, the issue was addressed about filings that were not handled properly by DNRC, or lawyers, or were postmarked late? Ms. Rehberg said that those facts were not allowed in the proceeding. The testimony the committee heard today was not before the court. The court went strictly on the question of law.

REP. SPRING asked if, because these water rights were not filed in a timely fashioned, would thousands of acres be turned into a desert. Mr. Gilbert stated that because of the way the priority works, if he had an 1860 water right and did not file on April 30, 1982, he would lose that water right. He would get water only after every single person, who has a water right, gets water first. This issue depends on drought conditions and how much water is available in a given year.

REP. MASON asked about the people who filed their water rights on time but there were mistakes regarding the filing. What happens in these cases? Mr. McIntyre replied if the claim was filed on time, but as result of a stamping procedure it appeared the person filed late, then that person has the right to bring his case to court. The judge said he did have it filed but it was not stamped properly--that would not be considered a late claim.

REP. MASON asked Mr. McIntyre if a claim was filed on time and there were mistakes on the forms, would that not be considered a late filing. Mr. McIntyre replied that claims which were filed with the Department in a timely fashion but were not correct are still considered timely filed. He stated that the water court prepared and, through the Department of Natural Resources, sent out notices which said the postmark is the standard by which timely filing should be determined. However, a postmark may not be sufficient to determine if a claim was filed timely. This would be a question for the court to answer.


REP. STANFORD asked Mr. Tweeten if the purpose of the original legislation in the 1970's was to protect the water rights of Montana and its citizens. Mr. Tweeten replied that was the purpose of the adjudication process. Mr. Tweeten said there were several purposes of the adjudication. The constitution required that a system be set up to centralize records which existed on water rights in the state of Montana.

Closing by Sponsor:

SEN. REA thanked the committee and closed.

ADJOURNMENT

Adjournment: 5:27 P.M.



VERN KELLER, Chairman



JAELENE RACICOT, Secretary

VK/jr

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE

3/11/93

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE SHIELL ANDERSON	✓		
REPRESENTATIVE BOB BACHINI	✓		
REPRESENTATIVE JOE BARNETT V.C.	✓		
REPRESENTATIVE JODY BIRD	✓		
REPRESENTATIVE ERVIN DAVIS	✓		
REPRESENTATIVE BILL ENDY	✓		
REPRESENTATIVE HARRIET HAYNE	✓		
REPRESENTATIVE DON LARSON MIN. V.C.	✓		
REPRESENTATIVE GARY MASON	✓		
REPRESENTATIVE BILL REHBEIN	✓		
REPRESENTATIVE SAM ROSE	✓		
REPRESENTATIVE DORE SCHWINDEN	✓		
REPRESENTATIVE WILBUR SPRING	✓		
REPRESENTATIVE WAYNE STANFORD	✓		
REPRESENTATIVE JAY STOVALL	✓		
CHAIRMAN VERN KELLER	✓		

INFORMATION PROVIDED AT SENATOR REA'S REQUEST
February 22, 1993

Basic Assumption given by Senator Rea

D. O. R. figures

- 184,000 acres of land which is currently valued and taxed as tillable irrigated land would now become valued as non-irrigated cropland ¹

VALUATION AND ESTIMATED TAX COMPARISON - SB168 - TAX YEAR 1994

<u>Land Type</u>	<u>Acres</u> ¹	<u>Ave. Ass'd Value/Acre</u> <u>1st Yr. Phase-In</u> ²	<u>Total Est. Taxes</u> ³
<u>From:</u>			
Irrigated	184,000	\$263.72	\$543,100.00
<u>To:</u>			
Non-irrigated (summerfallow)	184,000	\$170.49	<u>\$351,100.00</u>
		Difference	\$192,000.00

Additional Assumptions Made For This Comparison:

- ² The Average Assessed Value/Acre represents the average value of the average grade of irrigated land and non-irrigated land as taken from the new Agricultural Land Valuation Advisory Committee Recommendation schedules, and also reflects a 25% valuation phase-in.
- ³ The Total Estimated Tax is computed through applying the calculations shown below. As required in SB 168, these calculations assume the taxable percentage 3.86%. A statewide average mill levy of 289.953 mills is also assumed.

Acres x Average 1st Year Phase-In Assessed Value Per Acre x 3.86% x .289953

NOTE: The Total Estimated Taxes figures have been rounded to the nearest 100 dollars.

Jack Doe Rea

PROPOSED AMENDMENTS TO SENATE BILL 310

1. Page 1, line 18 Title
Following: "of"
Insert: "the forfeiture of"
2. Page 1, line 19
Following: "water"
Strike: "forfeited"
3. Page 10
Following: line 15
Insert: "(11) "Late claim," for purposes of this part, means any claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

Renumber: subsequent subsections

4. Page 13
Following: line 14
Insert: "(10) "Late claim," for purposes of this part, means any claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

Renumber: subsequent subsections

5. Page 18, line 12
Following: "that"
Insert: "under 85-2-226 as interpreted by the Montana Supreme Court"

6. Page 20, lines 2 through 4
Strike: "any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, 1996, must have the claim"
Insert: "all late claims must be"

7. Page 20, line 5
Strike: "prior"
Following: "proceedings"
Strike: "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 by the water court after objection;"
Insert: "which have taken place prior to the inclusion of the late claim in a decree issued by the water judge, and a person asserting a late claim may request that a decree previously entered be reopened or object to matters previously determined on the merits by the water court after objection only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982."

8. Page 20, line 8
Following: "objection"
Insert: "unless such person has also filed a claim or claims on or before April 30, 1982"
9. Page 20, line 9
Strike: "and"
10. Page 20, lines 10 and 11
Strike: "any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995, 1996,"
Insert: "a person asserting a late claim"
11. Page 20, line 15
Following: "act]"
Strike: "or"
Insert: "except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982,"
12. Page 20, line 15
Following: "protection"
Insert: "for the right represented in the late claim"
13. Page 20, line 18
Strike: "and"
Insert: (c) If the water judge finds following objection by another claimant that a right represented in a late claim did not exist on July 1, 1973 or that the right represented in the late claim was the subject of a prior order or decree by the water judge, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;"
14. Page 20, line 19 through line 20
Strike: Subsection (c) in its entirety
Insert: "(d) A person who has a late claim may be found liable for any costs and damages incurred by another person who proves by a preponderance of the evidence that such costs and damages were incurred as a result of actions undertaken in reasonable reliance upon a late claim and the conclusive presumption of abandonment provided in 85-2-226, provided:
(i) any claim for damages and costs filed under this subsection shall be filed in a court of general jurisdiction on or before July 1, 1998, and
(ii) the court of general jurisdiction in which any action is commenced under this subsection may, upon motion, certify the case to the water court for subordination of the right asserted in the late claim, if subordination will cure the alleged damage.

15. Page 21, lines 1 through 12

Strike: subsection (d) in its entirety

Insert: "(e) The water judge may subordinate any existing right asserted in a late claim to any claim filed on or before April 30, 1982, or any reserved water right compact negotiated or any permit issued pursuant to this chapter if and to the extent that

(i) an objection is filed under this part by a person entitled to subordination by July 1, 1998; and

(ii) the objector proves by a preponderance of the evidence that the objector has reasonably relied to his detriment upon the failure to file the existing right on or before April 30, 1982 and the conclusive presumption of abandonment provided in 85-2-226.

16.. Page 21, line 15

Following: "1996"

Insert: ", and shall notify any person who files a claim after July 1, 1996, that the claim will not be accepted"

17. Page 22, line 12

Following: "of"

Strike: "\$300"

Insert: "\$100, which shall be deposited in the water right adjudication account."

18. Page 22, line 12

Following: line 12

Insert: "(b) If an objection is filed to a late claim, the water judge shall assess an additional fee of \$200 against the person asserting the late claim, which fee shall be deposited in the water right adjudication account."

ReNUMBER: subsequent subsections

19. Page 36, line 16

Following: "Section 10."

Strike: Remainder of Section 10 in its entirety

Insert: "Severability. It is the intent of the legislature that: (a) Except as provided in [subsection (b) of Section 10], if a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect, and if a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications;

(b) If any provision of this act is relied upon by a court of competent jurisdiction, in a final declaration after appeal, in declaring that the provisions of Title 85 do not create a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. § 666, or if any part of [85-2-221(3)(b) as enacted in section 3] is invalid, then all other parts are invalid."

✓1-2-110. All statutes subject to repeal. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

✓85-2-313. Provisional permit. A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the permit would have been denied or modified if the final decree had been available to the department.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(4).

Cross-References

Priority, 85-2-401.

BASIN #	BASIN NAME	COST	MASTER/CLERK	DATE ISSUED	DATE PRELIMINARY ISSUED	DATE FINAL ISSUED	OBJECTION DEADLINE	EXTENDED DEADLINE	OBJECTION LIST MAILED	DEADLINE NOTICE OF APPEARANCE	TOTAL CLAIMS	NONDECREED CLAIMS TO DATE	DECREED CLAIMS TO DATE
1 421	Little Powder River	\$65		07-May-81	07-May-81	31-May-83					2061	0	2061
2 42J	Poudre River	65		07-May-81	07-May-81	31-May-83					8241	0	8241
3 40P	Redwater River	35		06-Jan-84	06-Jan-84	22-May-85	09-Mar-84	23-Apr-84	21-May-84	26-Jul-84	1928	0	1928
4 38H	Belle Fourche R a/ Chey R	20		02-Nov-83	02-Nov-83	27-Mar-84	03-Feb-84				210	0	210
5 39H	Little Mo b/ Little Beav.	20		02-Nov-83	02-Nov-83	27-Mar-84	03-Feb-84				203	0	203
6 42L	O'Fallon Creek	55		07-Feb-84	07-Feb-84	17-Apr-85	10-May-84	25-Jun-84	25-Jul-84	28-Aug-84	2750	0	2750
7 41N	Willow Creek	25	KL/LB	06-Jul-84			09-Oct-84		31-Oct-84	05-Dec-84	1483	0	1483
8 40D	Big Dry Creek	55	KL/JL	28-Sep-84			04-Jan-85		14-Feb-85	29-Mar-85	2968	0	2968
9 39G	Beaver Creek	20	KL/JL	31-Jan-85			10-May-85		19-Jun-85	22-Jul-85	705	0	705
10 430J	Yell R from Brid to CFYel	20	MC/LB	23-Jul-85			21-Oct-85	03-Feb-86	21-Mar-86	21-Apr-86	1075	0	1075
11 40N	Rock Creek	30	/LB	13-Aug-85			18-Nov-85		27-Feb-86	31-Mar-86	1513	0	1513
12 42K	Yell R b/t Tongue & Powder	30	KL/LB	19-Sep-85			18-Dec-85	18-Mar-86	02-May-86	02-Jun-86	1469	0	1469
13 40G	Sage Creek	20	KL/LB	20-Dec-83			23-Mar-84	13-Apr-84	02-May-84	07-Jun-84	937	0	937
14 76N	Lower Clark Fork	25	KL/LB	28-Feb-84			04-Jun-84	03-Aug-84	30-Aug-84	05-Oct-84	1203	0	1203
15 76C	Fisher River	20	KL/LB	28-Feb-84			04-Jun-84	03-Aug-84	30-Aug-84	05-Oct-84	234	0	234
16 76D	Kootenai River	25	KL/LB	22-Mar-84			26-Jun-84	10-Aug-84	30-Aug-84	05-Oct-84	1405	0	1405
17 76B	Yaak River	20	KL/LB	22-Mar-84			26-Jun-84	10-Aug-84	30-Aug-84	05-Oct-84	94	0	94
18 766J	Flint Creek	20	KL/LB	29-Mar-84			03-Jul-84	03-Sep-84	21-Nov-84	31-Dec-84	1035	0	1035
19 76E	Rock Creek	20	KL/LB	29-Mar-84			03-Jul-84	03-Sep-84	21-Nov-84	31-Dec-84	712	0	712
20 41U	Dearborn River	20	KL/JF	10-May-84			09-Aug-84	24-Aug-84	27-Sep-84	02-Nov-84	872	0	872
21 41S	Judith River	90	KL/JF	17-May-84			21-Aug-84	04-Oct-84	13-Nov-84	19-Dec-84	5225	0	5225
22 41F	Madison River	55	KL/JF	25-Jul-84			29-Oct-84	29-Nov-84	14-Feb-85	29-Mar-85	2801	10	2791
23 76K	Swan River	20	KL/LB	09-Aug-84			13-Nov-84		28-Dec-84	01-Feb-85	563	0	563
24 76I	Middle Fork Flathead River	20	PR/LB	09-Aug-84			13-Nov-84		28-Dec-84	01-Feb-85	196	17	179
25 76J	South Fork Flathead River	20	PR/LB	09-Aug-84			13-Nov-84		28-Dec-84	01-Feb-85	124	0	124
26 76H	Middle Clark Fork River	50	KL/JF	29-Nov-84			05-Mar-85	03-Jun-85	03-Oct-85	07-Nov-85	2548	0	2548
27 43BV	Sweet Grass Creek	20	KL/JF	19-Dec-84			26-Mar-85	10-May-85	15-Jul-85	14-Aug-85	722	0	722
28 43B	Yellowst above & Bridger	80	KL/JF	16-Jan-85			23-Apr-85	22-Jul-85	03-Mar-86	04-Apr-86	4856	30	4826
29 40L	Frenchman Creek	20	KL/JF	16-Jan-85			23-Apr-85		12-Jul-85	16-Jul-85	417	0	417
30 39FJ	Little Beaver Creek	20	KL/JF	31-Jan-85			10-May-85		19-Jun-85	22-Jul-85	982	0	982
31 39F	Little Mo above Little Be	50	KL/JF	01-Feb-85			10-May-85		14-Aug-85	13-Sep-85	2969	0	2969
32 39E	Box Elder Creek	45	KL/JF	01-Feb-85			10-May-85		14-Aug-85	13-Sep-85	2455	0	2455
33 40E	Mo R. betwee Mussel & FPD	50	MC/LB	07-Mar-85			07-Jun-85	08-Jul-85	16-Oct-85	22-Nov-85	2991	0	2991
34 43BJ	Boulder River trib of Yel	20	KL/LB	03-Apr-85			07-Jun-85	08-Jul-85	16-Oct-85	22-Nov-85	823	0	823
35 40A	Musselshell River	100	ED/JF	07-May-85			06-Jul-85	03-Sep-85	06-Nov-85	11-Dec-85	5731	0	5731
36 41K	Sun River	50	PR/LB	14-May-85			06-Jul-85	03-Sep-85	06-Nov-85	11-Dec-85	2936	0	2936
37 76G	Clark Fork above Blackft	80	KL/JF	17-May-85			13-Aug-85	13-Jan-86	11-Nov-88	15-Dec-88	4849	0	4849
38 41E	Boulder River trib of Jef	25	MC/JF	20-Jun-85			17-Sep-85	17-Dec-85	23-Mar-88	22-Apr-88	1232	0	1232
39 43C	Stillwater River	35	KL/JF	07-Nov-85			05-Feb-86	06-May-86	13-Jun-86	14-Jul-86	1730	0	1730
40 41H	Gallatin River	105	PR/MC	26-Dec-85			26-Dec-85	24-Jan-86	06-Aug-87	08-Sep-87	5726	11	5715
41 43A	Shields River	125	PR/JF	03-Aug-88			01-Nov-88	30-Jan-89	06-Nov-89	07-Dec-89	3382	0	3382
42 41G	Jefferson River	135	MC/JF	17-Oct-89			16-Apr-91	16-Jul-90	16-Apr-91	17-May-91	2455	67	2388
43 40K	Whitewater Creek	160	MC/LB	21-Nov-89			21-May-90	20-Aug-90	19-Dec-90	18-Jan-91	3968	378	3590
44 40C	Lower Musselshell River	185	ED/JF	06-Feb-90			06-Aug-90	05-Dec-90	17-Oct-91	18-Nov-91	3830	2	3828
45 41C	Ruby River	130	BL/LB	14-Nov-90			14-May-91	12-Aug-91			2170	18	2152
46 76H	W. End Salmon River	135	BL/LB	16-Sep-92			15-Mar-93				1281	3	1278
SUBTOTAL											9800	536	9754
											72662		72662

BASIN STATUS

October 9, 1992

BASIN #	BASIN NAME	WATER MASTER/CLERK	COST	DATE TEMPORARY ISSUED	DATE PRELIMINARY ISSUED	DATE FINAL ISSUED	OBJECTION DEADLINE	EXTENDED DEADLINE	OBJECTION LIST MAILED	DEADLINE NOTICE OF APPEARANCE	TOTAL CLAIMS	UNEXAMINED CLAIMS	EXAMINED CLAIMS TO DATE
47	430	Clarks Fork Yellowstone R	0	Unknown							2588	0	2588 100%
48	411	Missouri R. a/b Holter	0	Unknown							5179	121	5058 98%
49	400	Milk River b/l Beaver Cr.	0	Unknown							3406	154	3252 95%
50	40J	Milk R. b/t Fresno & Wtr	0	Unknown							12783	1224	11559 90%
51	40F	Milk River above Fresno	0	Unknown							2320	571	1749 75%
52	43Q	Yell. R b/t CF Yel & BH R	0	Unknown							2425	709	1716 71%
53	41D	Big Hole River	0	Unknown							3798	2260	1538 40%
54	76H	Bitterroot River	0	Unknown							7833	4820	3013 38%
55	40B	Flatwillow Creek	0	Unknown							3633	2884	749 21%
56	40K	Beaver Creek trib of Milk	0	Unknown							2948	2440	499 17%
57	41B	Beaverhead River	0	Unknown							2106	1747	359 17%
SUBTOTAL											49019	16939	32080
58	76F	Blackfoot River	0	Unknown							3665	3665	0
59	76LJ	Flathead R. incl Flat. Lk	0	Unknown							5123	5123	0
60	76L	Flathead b/l Flathead L.	0	Unknown							3013	3013	0
61	41L	Cut Bank River	0	Unknown							658	658	0
62	41M	Two Medicine River	0	Unknown							1105	1105	0
63	41O	Teton River	0	Unknown							2335	2335	0
64	41P	Marias River	0	Unknown							3678	3678	0
65	41Q	Mo. R. from Sun to Marias	0	Unknown							4049	4049	0
66	41R	Arrow Creek	0	Unknown							2179	2179	0
67	41T	Mo. R. from Mar. inc Bul.	0	Unknown							3060	3060	0
68	40EJ	Mo. R. b/t Bullw. & Mussl	0	Unknown							2524	2524	0
69	41QJ	Mo. R. from Holter to Sun	0	Unknown							2522	2522	0
70	40H	Big Sandy Creek	0	Unknown							817	817	0
71	40I	Peoples Creek	0	Unknown							678	678	0
72	41A	Red Rock River	0	Unknown							2742	2742	0
73	40Q	Poplar River	0	Unknown							2069	2069	0
74	40R	Big Muddy Creek	0	Unknown							2015	2015	0
75	40S	Missouri R. b/l Ft. Peck	0	Unknown							2955	2955	0
76	40T	St. Mary River	0	Unknown							180	180	0
77	41J	Smith River	0	Unknown							2670	2670	0
78	43E	Pryor Creek	0	Unknown							625	625	0
79	43N	Shoshone River	0	Unknown							163	163	0
80	43O	Little Big Horn River	0	Unknown							1193	1193	0
81	43P	Big Horn b/l Greybull R	0	Unknown							2143	2143	0
82	42A	Rosebud Creek	0	Unknown							1200	1200	0
83	42B	Tongue R. inc Hanging Mm	0	Unknown							1335	1335	0
84	42C	Tongue R. b/l Hanging Mm	0	Unknown							4684	4684	0
85	42KJ	Yell. R. b/t BH & Tongue	0	Unknown							4719	4719	0
86	42H	Yell. R. b/l Powder River	0	Unknown							5265	5265	0
SUBTOTAL											69364	69364	0
TOTAL											216443	86839	129604

Late Claims filed and recorded as of April 30, 1992 = 3285

Water Masters		Clerk of Court		Deputy Clerks	
Kathryn Lambert	Patti Rowland	Lori M. Burnham		Janet Fulcher	
Ed Dobson	Hike Cusick			Judy Salvas	
Don Ritten				Melody Colwill	

NOTE: Highlighted areas are areas which have been changed or added.

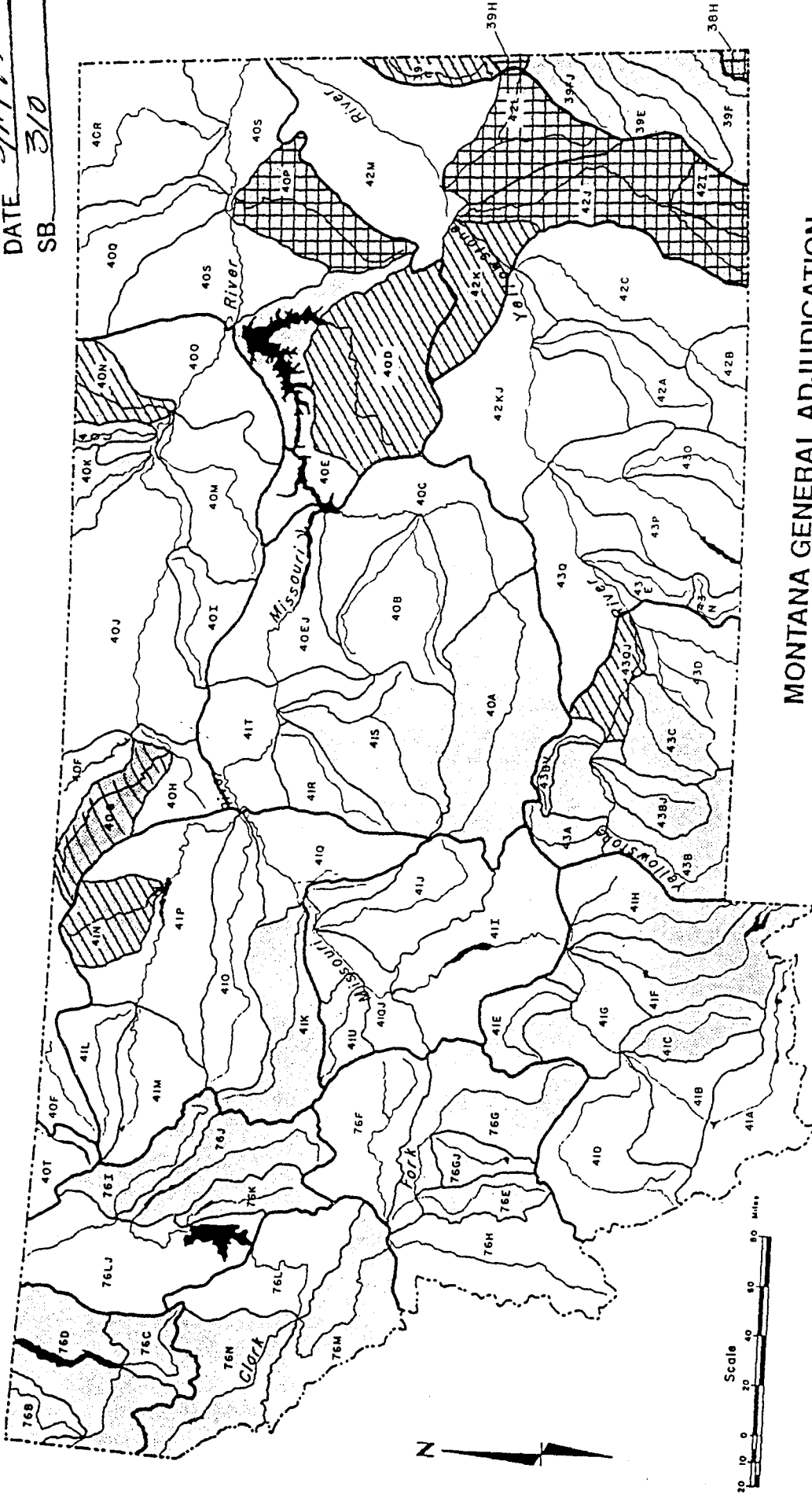
EXHIBIT

DATE

3/11/97

SB

310



MONTANA GENERAL ADJUDICATION

STATUS AS OF JANUARY, 1991




-  Temporary Preliminary Decree (33 basins)
-  Preliminary Decree (6 basins)
-  Final Decree (6 basins)

EXHIBIT 6
DATE 3/11/93
SB 310 1993

THE LAW FIRM

MOORE, O'CONNELL & REFLING

A PROFESSIONAL CORPORATION

PERRY J. MOORE
BARRY G. O'CONNELL
MARK D. REFLING
WM. RUSSELL McELYEA
CINDY E. YOUNKIN
WILLIAM M. BROOKE

SUITE 10 LIFE OF MONTANA BUILDING
601 HAGGERTY LANE

Reply To
POST OFFICE BOX 1288
BOZEMAN, MONTANA 59771-1288
TELEPHONE: (406) 587-5511
FAX: (406) 587-9079

March 10, 1993

Jan Rehberg
Capital One Plaza Center
208 North Montana, Suite 204
Helena, MT 59601

Re: Our File No. 66029-1993

Dear Jan:

The Moore Family has been ranching in the Musselshell Valley since the 1870s. My grandfather appropriated water from a tributary of the Musselshell in the year 1878. That water right has been the second oldest right in the entire Musselshell River Basin. The earliest water right was held by the Settle Family.

The Settle Ranch was purchased by the Martinsdale Colony. For some reason the Martinsdale Colony failed to file a claim for the earliest water right in the entire river basin.

Under our present Montana law, the Martinsdale Colony has lost that most valuable water right. That loss accrues to the benefit of the Moore Family, who now have the oldest water right in the Musselshell Basin. My son and other members of my family reap the apparent benefit of this situation.

Despite the fact that the current law appears to be beneficial to us, I feel that the law should be changed in the manner set forth in Senate Bill 310 in its original form. The penalty for failure to file a claim on time seems to me to be much too harsh. It is my hope that the Legislature will enact Senate Bill 310 into law in its original form, or in a form reflecting the amendments you have shared with me, even though the result will be to downgrade the position of the Moore Family water rights.

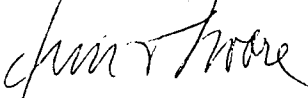
As an attorney who has an extensive water law practice, I am well aware of the concerns expressed about the affect the enactment of Senate Bill 310 will have upon the adjudication process. It is my opinion that the

Jan Rehberg
March 10, 1993
Page 2

enactment of the Bill into law will not fatally compromise the constitutionality of the process. It will unquestionably impose some additional burdens upon other claimants. In my view, the imposition of those burdens is acceptable - when it results in the protection of a constitutional property right that will otherwise be lost because of a failure to meet in arbitrary deadline for filing a claim.

Please feel free to tender copies of this letter to members of the Legislature if you choose to do so.

With warmest regards,

A handwritten signature in cursive script, appearing to read "Perry J. Moore".

PERRY J. MOORE

PJM:ket
6602993.L1F

March 10, 1993

1993 Montana Legislature
House Agriculture Committee
State Capitol
Helena, MT 59620

Dear Legislative Committee,

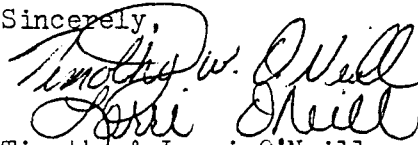
We are writing in regards to SB 310.

Attached please find a copy of the letter which was sent to the Senate Judiciary Committee explaining the circumstances of our water loss.

We would urge you to pass SB 310 but we feel the subordination clause in the bill is overwrought. We encourage you to accept the ammendments which are presented by the proponents.

Your support is vital for the water users of this state.

Sincerely,



Timothy & Lorri O'Neill
126 Cottonwood Lane
Arlee, MT 59821

February 13, 1993

Senator
State Capitol
Helena, MT 59620

Dear Senator

This letter is in regards to SB 310. I am writing to urge you to vote for this bill.

We recently bought our small farm in April of 1989 at which time the DNRC confirmed the water rights and said they were filed fine by the previous owner and could never be taken away. Now I am informed that I have no water due to the May 6, 1992 Montana Supreme Court ruling on appeal 91-140.

The DNRC should have informed me before my purchase in 1989 that the paperwork was filed 3 days late and that I could lose the rights.

The water rights were established as Secreterial water rights issued by the Federal Government and filed in Missoula County on February 11, 1908 to Henry and Marguerite Matt. This piece of land has been transferred to various owners and has been used every year since as irrigation and stock water. We as small farmers need your support and help to stay in business.

This is both unfair to the people and unconstitutional. We encourage you to put the people of the state first and help the water users by voting to support SB 310.

Sincerely,

Timothy O'Neill
126 Cottonwood Ln
Arlee, MT 59821

Please note: This complete document may be located at the Historical Society

RQIXLT

LATE CLAIM INDEX
INDEX BY OWNER

WATER RIGHT ID USE				POINT OF DIVERSION				LATE CLAIM INDEX INDEX BY OWNER		FLOW RATE		RECVD YEAR		SEC SEC TWP RGE CN TRIB		SOURCE NAME		OWNER NAME	
76M	-W-211569-00	IR		48.69	C	851108	1881	SENE14	15N	22W	MS	SENE14	15N	22W	MS	SIXMILE CREEK	MARTLYN	ABBOTT	A
76M	-W-211570-00	DM		7.41	G	851108	1885	SENE14	15N	22W	MS	SENE14	15N	22W	MS	SIXMILE CREEK	MARTLYN	ABBOTT	A
42M	-W-154282-00	ST		20.00	G	820503	1960	NESESE28	13N	52E	PI	NESESE28	13N	52E	PI	WELL	EUGENE	ABY	S
42M	-W-154282-00	ST		20.00	G	820503	1960	NESESE28	13N	52E	PI	NESESE28	13N	52E	PI	WELL	JARALEE	ABY	S
76H	-W-211759-00	IR		.75	C	860709	1920	MWSMWS34	02N	19W	RA	MWSMWS34	02N	19W	RA	UT CAMERON CREEK	ACUTUS INDUSTRIES INC	ABY	
76H	-W-211760-00	ST				860709	1920	MWSMWS34	02N	19W	RA	MWSMWS34	02N	19W	RA	UT CAMERON CREEK	ACUTUS INDUSTRIES INC	ABY	
40A	-W-210424-00	ST				820503	1951	MWSMWS34	02N	19W	RA	MWSMWS34	02N	19W	RA	UT CAMERON CREEK	ACUTUS INDUSTRIES INC	ABY	
40A	-W-210425-00	ST				820503	1950	MWSMWS34	02N	19W	RA	MWSMWS34	02N	19W	RA	UT CAMERON CREEK	ACUTUS INDUSTRIES INC	ABY	
41G	-W-212596-00	IR		918.00	G	880912	1947	SWSESW10	07N	15E	WH	SWSESW10	07N	15E	WH	UT LEBO CREEK	ADAMEC	ADAMEC	
43Q	-W-201134-00	DM		20.00	G	820503	0000	SW13	01S	05W	MA	SW13	01S	05W	MA	UT JEFFERSON RIVER	ADAMEC	ADAMEC	
43A	-W-212621-00	ST				881003	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
43A	-W-212622-00	ST				881003	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
43A	-W-212623-00	ST				881003	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
43A	-W-212635-00	ST				881006	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
41G	-W-212596-00	IR		918.00	G	880912	1947	SW13	01S	05W	MA	SW13	01S	05W	MA	UT JEFFERSON RIVER	ADAMS	ADAMS	
43A	-W-212621-00	ST				881003	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
43A	-W-212622-00	ST				881003	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
43A	-W-212622-00	ST				881003	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
43A	-W-212623-00	ST				881003	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
43A	-W-212635-00	ST				881006	1902	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
76G	-W-211477-00	IR		11.86	C	850830	1883	SESENM33	02N	09E	PA	SESENM33	02N	09E	PA	UT SHIELDS RIVER	ADAMS	ADAMS	
76F	-W-185985-00	DM		350.00	G	830126	1865	E2NE11	12N	08W	PM	E2NE11	12N	08W	PM	WASHINGTON CREEK	AGARD	AGARD	
76F	-W-185986-00	DM		350.00	G	830126	1865	E2NE11	12N	08W	PM	E2NE11	12N	08W	PM	WASHINGTON CREEK	AGARD	AGARD	
42C	-W-145395-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145396-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145397-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145398-00	ST		.15	G	820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145399-00	ST				820507	1917	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145400-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145401-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145402-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145403-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145404-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145405-00	ST		.03	G	820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145510-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145395-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145396-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145397-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145398-00	ST		.15	G	820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145399-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145400-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145401-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145402-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145403-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145404-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145405-00	ST		.03	G	820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145510-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145395-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145396-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145397-00	ST				820507	1916	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145398-00	ST		.15	G	820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145399-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145400-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145401-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145402-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145403-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145404-00	ST				820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
42C	-W-145405-00	ST		.03	G	820507	1920	SESENM34	01S	49E	PR	SESENM34	01S	49E	PR	UT SPRING CREEK	AHERN	AHERN	
76H	-W-211026-00	IR		75.17	G	831013	1889	SESESW21	06N	21W	RA	SESESW21	06N	21W	RA	CANYON CREEK	ALBERT	ALBERT	
76H	-W-211027-00	ST		10.00	G	831013	1889	SESESW21	06N	21W	RA	SESESW21	06N	21W	RA	CANYON CREEK	ALBERT	ALBERT	
41H	-W-211757-00	ST		85.00	G	860624	1904	SWSWSW 9	01S	06E	CA	SWSWSW 9	01S	06E	CA	WALTON CREEK	ALEXANDER	ALEXANDER	
41H	-W-211758-00	DM		20.00	G	860624	1904	SWSWSW 9	01S	06E	CA	SWSWSW 9	01S	06E	CA	WALTON CREEK	ALEXANDER	ALEXANDER	
41H	-W-211757-00	IR		85.00	G	860624	1904	SWSWSW 9	01S	06E	CA	SWSWSW 9	01S	06E	CA	WALTON CREEK	ALEXANDER	ALEXANDER	

EXHIBIT
DATE 3/11/93
SB 310



LESNIK ANGUS

John and Patti Lesnik
Fishtail, Montana 59028

(406) 328-6995



Representative Vern Keller
State Capitol
Helena, Montana 59620

March 11, 1993

Dear Vern,

Weather and calving prevent me from being at today's SB 310 hearing.

The bill as changed by the Senate accomplishes only one thing; it keeps the affected acres on the tax rolls. A right junior to all others, especially the in-stream flow reservations, is essentially no right at all.

It has been known since June 3, 1982 that there was a problem with claims being filed late.

Why were various agencies allowed to enter into agreements with the federal government prior to completion of the adjudication process? The process is not completed until all aspects of the adjudication are finalized, including settlement of the late filings.

Why have I not been given a hearing concerning my objections to the Water Court's determination that my claims were filed late?

Why were my objections to other claims handled and resolved as if my claims were timely filed?

Why have I been led to believe by the Water Courts personnel and by actions that my claims would be accepted as timely filed? ie, The review of my original filed claims with the Billings Field Office resulted in agreement as to acreage and flow rates and the creation of additional claims to better define place of use, for which I was charged additional filing fees.

The Water Courts expected perfection from water right holders and have shown no intention to correct deficiencies in the filing process. They, themselves, have been far less than perfect in their handling of the adjudication process. Individuals acting as judge and jury are not serving the citizens of Montana.

The Yellowstone Basin has not been issued a final decree. Recognizing my rights will not jeopardize the process of adjudication.

Failure of the late filed claims to be recognized on the basis of their historical claim date will adversely affect every citizen of Montana. Without irrigation most ranches will cease to be viable operations. Their loss will affect the economy. The sale of ranches with concerns based on the scenic rather than agricultural value will undoubtedly result in loss of access to Montanans.

Please do what is right for Montana. Please don't act to cover for interests who covet our water, our land, our rights.

John Lesnik

Mr. Chairman and Members of the Committee

My Name is Pete Wipf, Sec. of the Martinsdale Colony, which is approx 2 1/2 west of Hallow. We lost 18 water claims, 6 of which are for in. 12 were for Stock watering. These 18 claims are part of our historical rights. We lost our rights due to human error on part of the DNR Water rights specialist or technician. I realize this is a bold statement to make, but let me explain what happened.

Mike Kimmussen, who was the Sec. Treas. of Martinsdale Colony. until he became Sec. Treas. of Sp Water Colony. which is the Colony that split off of Martinsdale Colony. in 1981. Since Mike Kimmussen had been handling those water rights for both Martinsdale & Sp Water Colony. for many years, he filed for the water rights. on Mar. 8, 1982

All of these claims involved affidavits were notarized by the DNR water right specialist from the Legislation office, Craig Dubois on March 10, 1982

In working with these claims Mike Kim. and everybody involved were under the impression that everything was filed claimed & finished timely

However when we checked on the temporary preliminary decree we realized that these in. & Stock claims were not filed, according to the water court, even tho we all thought they were all done on Mar. 8, 1982

We strongly support the passage of SB 310 ^{without subcommittee} so we can reestablish our rights to the water we have used for the past 35 years. We bought the land with these water rights ~~and~~ and never intended not to file or claim for those water rights.

Without passage of SB 310 we have lost our legal right to the water which we have used for 35 years. Due to human error, never from our intent. We know there are many others who lost water rights the same way, not intending to ~~lose~~ them.

Thank You

MEMORANDUM

TO: File

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

DATE: December 13, 1989

SUBJECT: Martinsdale Colony late claims

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

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

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

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

DATE 3/11/93

CB 310

	No. DATE	Rec'd DATE	Type	Att
000989	2-29-1980 M C	2-2-1980	IRR	
000990	2-29-1980 M C	2-2-1980	IRR	
145777	3-8-1982 LWC	3-23-1982	IRR	3-10-1982
145778	3-8-1982	3-23-1982	ST	3-10-1982
145779	3-8-1982	3-23-1982	ST	3-10-1982
145780	3-8-1982	3-23-1982	ST	3-10-1982
145781	3-8-1982	3-23-1982	ST	3-10-1982
145782	3-8-1982	3-23-1982	ST	3-10-1982
145783	3-8-1982	3-23-1982	ST	3-10-1982
145784	3-8-1982	3-23-1982	ST	3-10-1982
145785	3-8-1982	3-23-1982	ST	3-10-1982
145786	3-8-1982	3-23-1982	ST	3-10-1982
145787	3-8-1982	3-23-1982	ST	3-10-1982
145788	3-8-1982	3-23-1982	ST	3-10-1982
145789	3-8-1982	3-23-1982	ST	3-10-1982
145790	3-8-1982	3-23-1982	ST	3-10-1982
145791	3-8-1982	3-23-1982	ST	3-10-1982
145792	3-8-1982	3-23-1982	ST	3-10-1982
145793	3-8-1982	3-23-1982	ST	3-10-1982
145794	3-8-1982	3-23-1982	ST	3-10-1982
145795	3-8-1982	3-23-1982	ST	3-10-1982
145796	3-8-1982	3-23-1982	ST	3-10-1982
177900	3-8-1982 LWC	4-20-1982	IRR	
111300	3-8-1982 M C	6-3-1985	IRR	
111301	3-8-1982 M C	6-3-1985	IRR	
111302	3-8-1982 M C	6-3-1985	IRR	
11303	3-8-1982 M C	6-3-1985	IRR	
11304	3-8-1982 M C	6-3-1985	IRR	

	NOT. DATE	Rec'd DATE	Type	
211311	6-11-1985	6-11-1985	ST	kn.
211312	6-11-1985	6-11-1985	ST	Sp.
211313	6-11-1985	6-11-1985	ST	Wall
11314	6-11-1985	6-11-1985	ST	kn.
11315	6-11-1985	6-11-1985	ST	Sp.
11316	6-11-1985	6-11-1985	ST	Sp.
11317	6-11-1985	6-11-1985	ST	Sp.
11318	6-11-1985	6-11-1985	ST	kn.
211319	6-11-1985	6-11-1985	ST	kn.
11320	6-11-1985	6-11-1985	ST	kn.
11321	6-11-1985	6-11-1985	ST	kn.
11322	6-11-1985	6-11-1985	ST	Sp.

PINESDALE WATER DEPT.
JESS NUTTALL
WATER RESOURCE MANAGER
P.O. BOX 73
PINESDALE, MONT. 59841
406-961-3700

March 11, 1993

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

Mr. Chairman

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

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

Our decreed rights and claims and the decreed rights and claims of all the other people are not abandoned.

We realize the state has a problem but, the bottom line and bare fact is that the STATE IS STEALING WATER FROM THE PEOPLE. And those who have taken advantage of the so called "ABANDONED" water rights are only parties to the crime.

The late filing date is only an excuse for their lack of responsibility to serve the people. which was the very purpose of the DNRC in the first place.

I have been in the water business for over five years and I would not have known about this late claim of our own except for the adjudication process. This is when all of the people come out of the woodwork with a one to one communication.

People have their businesses, farms and ranches to attend to not WATER LAW!

The loss of these claims will bring serious injury and detriment to the irrigation, municipal and E P A demands upon our community, as well as many other communities, farmers and ranchers. And if.. we haven't forgotten, they are the ones that keep the state running, not the DNRC, STATE OR FEDS.

The very purpose and responsibility of this body, elected by the PEOPLE, is to SERVE THE PEOPLE and their interests FIRST. Not the state or Federal Government. Our Attorney General also knows this.

We therefore appeal to this legislative body to do everything within its power to delete the subordination language from this bill, that we may have a remedy of fairness for the people, that know they have legitimate or even decreed water rights.

Think and remember the PEOPLE first... PLEASE!!

Considered by their merit

Eugene Morelli Mono Lake Co. DATE 3/11/83 ~~have a hearing~~
and water right that has been used on my land for
100 years that's in jeopardy because of a late filing.

We all understand the importance of water in MT.
Except for the people of this state, it may be the
most important resource we have. I think we
also understand the importance of the adjudication
process to help protect the resource.

Allowing late claims to be heard & judged according
to their merit, in no way jeopardizes the adjudication
process. In fact the only way the state can
truly evaluate the water use in this state,
is to examine every claim, and judge it
according to the facts.

For the state to take away legal, historic water
rights, or make them subordinate to all others,
is incredibly severe punishment for missing a
filing deadline! The punishment is permanent
its devastating and grossly unjust!

I attended the Senate hearing on this bill

and couldn't understand why ~~DATE~~ 3/11/83 ~~late~~
would want to do this to its own citizens.
I do understand the concerns of the Attorney
General's office, but I believe they can
addressed without destroying the intent of
this very important bill.

At the Senate hearing one of the concerns expressed
was losing jurisdiction from the Federal Government.
But we were also told that one of the conditions
to receive that jurisdiction in the first place,
was that all of the water users must be
represented in the adjudication process.

Please don't try to meet that condition
by pretending that we don't exist or won't
be severely impacted by the consequences.
Late claimants are only asking to be heard
by the water courts with fairness, and
that all claims be judged on their validity
and historic use.

I ask you to please remove the ~~substantive~~
amendment from ~~the~~ bill. And help restore
fairness to the adjudication process by supporting SB 310.

TELETYPE
3711

Please help restore fairness to the adjudication
process. Support Senate Bill 310 with
the amendments proposed today

Mr. Chairman & members of the committee
My name is Marlene Chow and I am the
owner of a ranch in Garfield CO. The ranch has
been in my family since 1912 and the
water right ~~was~~ that was passed on with the
ranch has a priority date of 1879. When
all the water rights were to be filed I had
a lawyer handle mine - he went through
and did all the necessary work to make sure
it would be done right. 11 years later I
found out that it was not done right - he
had forgotten to file one claim with the others.
The late claim was filed by the lawyer
3 years after the deadline but I had
no knowledge that it was filed late
or that it had never even been filed.

I never knew I had given up my water
right and I never gave up my water

right - someone else did it for me.

Now I ask you - please do not do it again.

My right to the water has not changed, it still appears in the Master Book, it still has a priority date of 1879 and the water still flows through on my land. The only thing that changed was that a copy of the original right never got where it was going until 5 years later.

I do not want to be subordinate to anyone else's claims - my neighbor already takes most of the water and we have been to court trying to persuade him to see the error of his ways. A ranch isn't much of a ranch without adequate water and

I think that's a pretty high price
to pay for a paper mistake.

Regardless of what other agencies
and interests claim think of the people
who by no fault of their own got
caught up in this mess - None of us
who testified before or now have
given up our water rights --

~~Human~~ Human error did it for us.

Please remember the old saying.
Right is Right. Once before we

~~that you~~

relied upon someone else to help us
comply with the law and now we
are relying on you to correct the
mistake that we undoubtedly made.
Thank you

EXHIBIT 17
DATE 3/11/93
SB 310

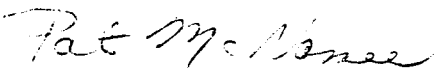
To: Montana Legislature Agriculture Committee
From: Pat McNamee
RE: Deletion of subordination language in Senate Bill 310
Date: March 11, 1993

My name is Pat McNamee from Helena. I'm here to request that you delete the subordination language from Senate Bill 310.

On my way back from Butte last week I saw a large billboard that said "Cattle Free by 93". I sincerely hope that is not your goal. But if you take away our water rights, you will be one step closer to that goal. Please delete the subordination language.

Don't let yourselves be known as the "Cattle Free Agriculture Committee".

Sincerely,



Pat McNamee

Exhibit 1
DATE 3/11/93
To members of the House Agriculture Committee: SB 310
Regarding SB 310

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

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

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

My mother died in 1987, and we became owners of the land, and of the water rights. Wanting to change the method of irrigation on the Whitetail Creek to a system using the diversion ditch and dikes, we checked with the Glasgow office and were told to go ahead, nothing more needed to be done unless we changed the point of diversion, which we did not do.

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

had to be done on the stream bank for the diversion ditch.

Although the project is not yet completed, it has cost thousands of dollars, part of which we received as cost share from the government, and which I presume will have to be repaid if our rights are forfeited.

The recorded dates of the appropriations for these three claims are from 1900 to 1907. Although not originally claimed by my family, these waters have been used since the early 1900's by my grandfather and other members of my family for flood irrigating hay meadows during the early spring run-off.

Because a re-filing deadline date chosen by the Legislature was somehow missed, these rights which were legally appropriated and filed ninety years ago must now be considered forfeited, and we stand to lose forever the use of this very important water. It seems to me that forfeiture of these rights and the loss of the use of all developments pertaining to them is an awfully harsh penalty for inadvertently missing a filing deadline - especially when the claims were filed, and the filing fees were paid - which does prove that the rights were not intended to be abandoned.

I can see the need to have a listing of all water rights before a basin can be adjudicated (which may be many years from now), because sources such as springs, wells & other stock water uses were not required to be filed upon in earlier years, and this gave everyone a chance to file claims on them. But it seems to me that the claims that had already been legally filed should have the same status as a patent or deed for that same land.

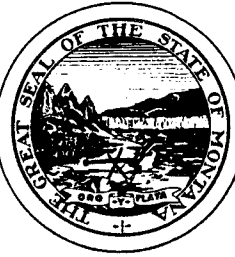
We had hoped that Senate Bill 310 would protect these original rights, but in its present form our rights would be the same as if we filed for new rights - which would be junior to all others filed before our new claims. Because of our location on the very upper ends of these creeks, we would never be able to take water early enough to make use of the high run-off.

If something cannot be done to allow us to retain these original legal appropriations, the results will be devastating to my family's ranching operations far into the future.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

GLASGOW WATER RESOURCES REGIONAL OFFICE

EXHIBIT 18
DATE 3/11/93
SB 310



MARC RACICOT, GOVERNOR

839 1ST AVENUE SOUTH
BOX 1269

STATE OF MONTANA

(406) 228-2561

GLASGOW, MONTANA 59230

TO: Echo Garberg
FROM: *Pat Riley* Pat Riley, Water Resources Specialist III, Glasgow
Regional Office
DATE: February 16, 1992

As you requested I have written down what I can remember of the meeting I had with Mildred Bantz in approximately Nov of 1982.

I have been an employee of the Department of Natural Resources and Conservation since August 24, 1981. I have worked in the Glasgow Regional Office in the Water Rights Adjudication Program since I was hired in 1981. One of my duties after the claims filing deadline of April 30, 1982 was to go around to the different county seats and assisted claimants who had either turned in incomplete claims or had to add information to their claims. At one of these meetings I met Mrs. Bantz in Plentywood. I cannot remember why we met but I do remember meeting Mrs. Bantz and assisting her in filing 3 late filed Irrigation claims.

From the discussions I had with Mrs. Bantz I can remember how upset and confused she was about her irrigation claims not being filed. Apparently she had gathered together all of her old water right filings from the county courthouse and taken them to a law firm. She had filed 26 Stock and Domestic claims and had somehow not filed her 3 Irrigation claims. What was even more disturbing was that several of the claims that were filed on time were for groundwater sources that were exempted from the filing process and did not have to be filed.

I do remember that I looked over the aerial photos Mrs. Bantz used to file her claims with and there were a lot of acres of water spreading irrigation that she filed the late claims on and you could easily see the value of them to her Ranch.

In closing, I would like to state that my recollections are somewhat clouded after 10 years but I do remember meeting with Mrs. Bantz and also her dismay over finding out her total hay base for her Ranch might be in jeopardy

TESTIMONY ON SENATE BILL NO. 310

My name is Karen Barclay Fagg. I appear on behalf of the Administration to support Senate Bill No. 310 as it is now written. Senate Bill No. 310 was amended in the Senate to provide a mechanism whereby water right claims that were not timely filed could be brought back to life and become a part of the state's on-going general adjudication. This bill, as amended, is a best effort to provide relief to those who did not file timely claims and still not have an adverse impact on the adjudication process or on those who did file timely claims.

As you are aware, the executive branch of state government is involved in the state water adjudication in many diverse roles. One role is that of a claimant of water rights. The State has some claims that fall into the category of "late claims", that is, claims that were submitted after April 30, 1982. If this bill is passed the Department of State Lands intends on filing claims that have previously not been filed. If this bill is not passed state agencies, such as the Department of State Lands, will review their legal avenues to determine how best to assert their claims in the on-going adjudication.

Although, as I indicated previously, Senate Bill No. 310 was amended with input from the executive branch, it is necessary that I present testimony to you to make you aware of the potential consequences of the legislation should it pass.

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

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

Senate Bill No. 310 is attempting to address the forfeiture of water rights that occurred as a result of water users failing to file statements of claims in the on-going adjudication. The testimony of the proponents and the bill itself is understandably

couched in terms of abandonment. The argument being that these affected water users are still using their water and have never really abandoned their water rights. Unfortunately, we are not dealing with the issue of whether the affected water rights are or have been abandoned. In 1992 the Montana Supreme Court declared, as a matter of law, that § 85-2-226 is not an abandonment statute, it is a forfeiture statute. The Montana Supreme Court held that "[a]ll claimants were treated equally, provided equal notice, and given equal opportunity to file by the given deadline." It further stated that water rights were forfeited as a result of owner negligence and not as a result of excessive and unreasonable state action. The forfeiture statute was held to be a proper exercise of the police power of the state, satisfying all of the guidelines necessary to enact a forfeiture statute and complying with all aspects of due process as required by the Montana Constitution and the Constitution of the United States.

As a result of Montana Supreme Court cases, including the one holding that water rights are forfeited by failing to make a timely filed claim, the State is reasonably certain that it has an adjudication that it can defend as a comprehensive adjudication with a final and binding effect on all water rights in Montana.

Let me briefly quote to you from the Montana Supreme Court concerning the importance of the claims filing to an adjudication process. "Before water rights can be adjudicated state wide, it is essential that existing rights first be firmly established. Section 85-2-226, MCA, is a reasonable means of compelling comprehensive participation, extinguishing duplicative and exaggerated rights, and ridding local records of stale, unused water claims. These are all necessary to meet the objective of adjudicating Montana's water."

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

The Administration's central concerns with this bill are that it not jeopardize the jurisdictional status of the Montana adjudication under the McCarran Amendment; that it not adversely affect any negotiated Compact, or Compacts under negotiation; that it not result in any governmental taking of any water right of a formerly junior water right holder to the forfeited water right within the scope of the Fifth Amendment or Article II, § 29 of the Montana Constitution; that it not result in an increase in the cost of the adjudication by requiring extensive reopening and re-noticing of existing and temporary decrees, extensive re-examination of claims, or extensive re-noticing of the opportunity to file or refile claims; that the due process and equal protection rights of the timely filed claims not be put at

risk; that it not establish a precedent whereby water rights, including instream flow rights, can be created by the legislature and interjected into the chain of priorities in a manner inconsistent with the prior appropriation doctrine; and, that those who have participated in a timely fashion not incur further excessive legal expense to have late claims reviewed for their impact on the timely filed water right claims.

In closing, I will point out to the Committee that Montana has spent over \$18 million in providing for an adjudication that federal law allowed us to conduct in the Montana court system, i.e., a McCarran Amendment adjudication. The federal courts, including the United States Supreme Court, have warned Montana that they will look on our adjudication process with exacting scrutiny. Consequently, any amendments we make to the adjudication must be made only after exacting scrutiny. We all sympathize with those whose water rights have been forfeited, but in our efforts to find them relief, we must not put at risk the 98% of the timely filed claims.

Finally, it is possible that regardless of whether Senate Bill No. 310 is passed the State of Montana may be sued. If the Bill is not passed indications are that some of the proponents will bring federal lawsuits. If the Bill is passed indications are that the federal government may bring action in federal court over the McCarran Amendment issue, and private parties, such as timely filed claimants and permit holders, may bring actions alleging the taking of property.

LARRY FASBENDER
ONE NORTH LAST CHANCE GULCH
P.O. BOX 367
HELENA, MONTANA 59624
(406) 442-2120
Fax (406) 449-2729

Larry Fasbender
Sen. Bill 310
do not
negotiate

TESTIMONY ON SENATE BILL 310

My name is Larry Fasbender. I am a farmer with irrigated lands north of Fort Shaw, Montana on the Greenfields Irrigation Project. The water rights that affect my operation were timely filed.

SB-310 deals with a very unfortunate situation in which holders of existing water rights did not file statements of claims to their water rights as required by law. But the law allowed sufficient time for every water user to file a claim. There was approximately 3 years of notice, including notice in our tax bills, and over 250 workshops conducted by the State. In that 3 years over 98% of the claims were filed. Now this legislature is being asked to let late claims back into the adjudication process....., but at who's expense?

I sat through the entire Senate hearing and listened to the testimony. The Attorney General's representative and the spokesperson for the Governor explained the potential risks and costs to the state. Basically, the State made the following points:

1) The certainty of having an adequate adjudication is diminished by any new legislation affecting the adjudication because it may jeopardize the jurisdictional status of the Montana adjudication under the McCarran Amendment;

2) there may be adverse affects to any negotiated Compact of Compacts under negotiation;

3) that there could be governmental taking of a water right within the scope of the Fifth Amendment of Article II, Section 29 of the Montana Constitution;

4) that it may result in an increase in the cost of the adjudication by requiring extensive reopening and re-noticing of existing and temporary decrees, extensive re-examination of claims, or extensive re-noticing of the opportunity to file or refile claims;

5) that it may establish a precedent whereby water rights, including instream flow rights, can be created by the legislature and interjected into the chain of priorities in a manner inconsistent with the prior appropriation doctrine;

6) that the due process and equal protection rights of the timely filed claims could be put at risk; and,

7) that those who have participated in a timely fashion will incur further excessive legal expense to have late claims reviewed for their impact on the timely filed water right claims.

Although SB-310 was amended in the Senate to address many of those concerns, the fact remains that if the late claims are allowed back into the adjudication, my legal rights and those of all timely claimants are compromised. I will be forced to defend against the objections of late claimants who want to diminish my claims in an effort to improve the late claimants position in the chain of priorities, even in the situation where the late claimant is subordinated to my timely filed rights. We, the timely filed claimants, are the ones who will bear the cost associated with such a defense...not the State of Montana.

As the law now stands, timely filed claimants have a legal right to defend our claims against the extinguished claims of untimely filed claimants. We bear little cost, if any, in protecting our rights against untimely filed claims. However, if SB-310 is passed, our costs will necessarily increase because a legal right we currently have has been stripped from us. Although a legislative subordination, as proposed in the Senate Amendments, is more acceptable than simply opening the door to late claims, the timely filed claimants are the ones who have to pick up the expense of adding these tardy claimants to the adjudication.

In closing, I too sympathize with those who have found their water rights forfeited through neglect, ignorance, or reliance on others services, but I am unwilling to sacrifice my good and timely filed water rights so that potential malpractice claims against lawyers can be dismissed. It is unfortunate that some claims were not timely filed, but please do not make the situation worse by transferring the cost to the timely filed claimants. Put the cost on those who caused the problem, the ones who failed to follow the law.

EXHIBIT

21

DATE

3/11/93

SB

310

03/11/93

Mt. House Ag. Comm.
Rep. Vernon Keller Chairman

Dear Rep. Keller,

My concern today is SB 310 and I would like to urge you to vote against the issue. In the event that SB 310 becomes law and late fillers are allowed into the adjudication process even with a 1973 date there will be court challenges and added financial burden placed on those people who filled there claims within the current law. If Montana's adjudication process is opened to allow late fillers in I fear other claimants will make court challenges to be allowed in also.

The adjudication process on our stream [musselshell River] is in the late stages of objections to fillings. We have to this point spent thousands of Dollars and have not reached the preliminary decree stage. I do not think that it is right nor fair that I be asked to spend additional dollars because some failed to meet the deadline of current law. A deadline ,I might add, that was extended one year then three months after that deadline already.

Please do not add financial burden or risk to our water rights process. Vote no on SB 310.

ARVILLE J. LAMMERS

Arville J. Lammers
CARELESS CREEK RANCH
SHAWMUT, MT. 59078

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture COMMITTEE BILL NO. SB 310
DATE 3-11-93 SPONSOR(S) SENATOR REA

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>Alvin A. ...</i>	<i>self</i> <i>with amendment</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Lyle Richards</i>	<i>self</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Bruce Malcolm</i>	<i>self</i> <i>with amendments</i>	<input checked="" type="checkbox"/>	
<i>Barbara Wilberding</i>	<i>self</i> <i>with amendment</i>	<input checked="" type="checkbox"/>	
<i>AMERON MACKENZIE</i>	<i>SELF</i>		
<i>ECHO GARBERG</i>	<i>SELF</i> <i>with amendment</i>	<input checked="" type="checkbox"/>	
<i>RAYMOND GARBERG</i>	<i>SELF</i> <i>with amendment</i>	<input checked="" type="checkbox"/>	
<i>Robert J. ...</i>	<i>SELF</i> <i>with amendments</i>	<input checked="" type="checkbox"/>	
<i>Elson Mac ...</i>	<i>SELF</i> <i>with amendments</i>	<input checked="" type="checkbox"/>	
<i>Bill Wilberding</i>	<i>self</i> <i>with amendments</i>	<input checked="" type="checkbox"/>	
<i>Eugene Morrell</i>	<i>self</i> <i>with amendments</i>	<input checked="" type="checkbox"/>	
<i>James E. ...</i>	<i>self</i>	<input checked="" type="checkbox"/>	
<i>DALE MAHLUM</i>	<i>Self</i>	<input checked="" type="checkbox"/>	
<i>Moss ...</i>	<i>Teegen L + L S CO</i>	<input checked="" type="checkbox"/>	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

Agriculture COMMITTEE BILL NO. SB 310
DATE 3-11-93 SPONSOR(S) SEN. RGA

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Lowell R Knowlton - Shepherd Mt	Self	<input checked="" type="checkbox"/> w/Amend	
THOMAS D PETERSON ^{WISALL} MT	Self	<input checked="" type="checkbox"/> w/Amend	
Pete Wipf	Martinsdale Colony	<input checked="" type="checkbox"/> w/Amend	
Don Nuttall ^{PO Box 73} Pinesdale MT	Pinesdale M.T.	<input checked="" type="checkbox"/>	
W G Gribert III Box 345 Dillon	Self	<input checked="" type="checkbox"/>	
Bob Hoffman A.P.A.	A.P.A. Cb. Pres. Assoc.	<input checked="" type="checkbox"/>	
Holly Franz	Montana Power Co.	<input checked="" type="checkbox"/>	
Heidi Nuttall	Pinesdale, MT	<input checked="" type="checkbox"/>	
Anne Clark	MT ASSA Renters	<input checked="" type="checkbox"/>	
Marion Johns	Self	<input checked="" type="checkbox"/> without sub. large	
Gillian Johns	Self	<input checked="" type="checkbox"/> without sub. large	
Bill Cornelius	Self	<input checked="" type="checkbox"/>	
Shirley Cornelius	Self	<input checked="" type="checkbox"/>	
Claudette Sherwin	Self	<input checked="" type="checkbox"/> without sub. large	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture

COMMITTEE

BILL NO. SB 310

DATE 3-11-93

SPONSOR(S) SEN. REA

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Harold Sherwin	Self	without sub.	
Chris Tweeten	Dept of Justice	✓	
Kan Fagg	Gov Racicot	✓	
Aileen O. Peterson	Self	with amendment	
Polly Walker	Alen	with amendment 310	
FAT McNamee	SELF	with amendment	
Ann Feigen	"	with amendment	
Annette Lammons	"		X
Richard Moe	"		X
Jeff Walker	"	with amendment	
Lynn Frank	Mt. Farm Bureau	X	
Larry Fashenda	Self		X
Melvin Loh	Self	X	
CENE Vuckovich	Associated Deer Lodge Co	X	

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**HOUSE OF REPRESENTATIVES
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Agriculture COMMITTEE BILL NO. SB 310
DATE 3-11-93 SPONSOR(S) SEN. RFA

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jane F. Hiley	Tecopa Ranch Livestock	<input checked="" type="checkbox"/>	
J. Brunner	Mud	<input checked="" type="checkbox"/>	
John E. Wipf	Martinsdale Colony	<input checked="" type="checkbox"/>	
Cliff Cox	Winston Ranch	<input checked="" type="checkbox"/>	

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.