

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION

Call to Order: By **CHAIRMAN VERN KELLER**, on March 25, 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. Wayne Stanford (D)
Rep. Jay Stovall (R)

Members Excused: Rep. Spring

Members Absent: None

Staff Present: Bob Person, Legislative Council
Jaelene Racicot, Committee Secretary

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

Committee Business Summary:

Hearing: None
Executive Action: SB 310

EXECUTIVE ACTION ON SB 310

Motion: REP. BACHINI MOVED SB 310 BE CONCURRED IN for the
purpose of discussion.

Discussion: REP. BACHINI asked Bob Person to explain the
amendments presented by Jan Rehberg. EXHIBITS 1B, 1C, 1D, 1E &
1F.

Bob Person said that **EXHIBIT 1A** was a series of options that the committee could consider. **Mr. Person** requested **Ms. Rehberg** to explain to the committee the content of her amendments. **Mr. Person** said that basically the general purpose of the **Rehberg** amendments was to allow late claims to be inserted to their original priority.

REP. BACHINI asked if the **Rehberg** amendments would include late claims other than the postmark date claims and those late claims that were not properly handled by the Department of Natural Resources. **Mr. Person** said that the **Rehberg** amendments allow for a broader interpretation of late claims than those just mentioned by **REP. BACHINI**.

Mr. Person said that there was not a clear definition what was determined mishandled and perhaps the committee would like to explore the possibility of an amendment containing a definition.

REP. BACHINI asked if the committee amended the bill to include postmark claims and late claims mishandled by the Department of Natural Resources, then how could the committee determine those that were improperly handled. **Don McIntyre, Department of Natural Resources**, explained a range of mishandled claims.

Mr. Person explained that when a letter is mailed, the post mark may not be readable or not accurate. It is not always possible to determine when the letter was sent or mailed on time. At the deadline time, there is a variation of factors leading to the claims that were filed late.

REP. BIRD asked how many claims would be affected by the post mark issue. **REP. LARSON** said approximately 1,200.

Mark Simonich, Director of the Department of Natural Resources, said that they had people in the Department of Natural Resources physically counted the late claims that had arrived at the department. They found claims that were received by April 30, or claims that were received about a week after the thirtieth of April but the postmark was illegible, or claims that had been notarized on or before April 30 and were received during the end of April but did not have an envelope or the postmark was illegible. There were just under 1,200 late claims that fit the description. There are a total of 3,200 late claims that have been received as of today.

REP. ROSE asked **Mr. Simonich** if the department stamped the mail the day it arrived at the Department of Natural Resources. **Mr. Simonich** said that to the best of his knowledge, the mail was stamped when it first reached the department.

REP. BACHINI asked **Mr. Simonich** that if the committee was to adopt an amendment to address the 1,200 postmark late claims,

what effect would that amendment have on the lawsuits that are pending. **Mr. Simonich** said that he was not certain which lawsuits were pending. **Don McIntyre, Department of Natural Resources**, stated that it depended on which type of lawsuit **REP. BACHINI** was talking about--there are many types of lawsuits pending and the reasons for these lawsuits vary.

REP. BIRD asked how many of the 1,200 late claims (if an amendment was drafted to address the issue) would affect someone else's water rights. **Mr. Simonich** said that he did not know.

REP. STOVALL asked **W.G. Gilbert** about what happens to an existing water right if someone else files on that same water right. **Mr. Gilbert** said that the only way there could be two filings on the same water right, is if there was a direct contest as to who owned that water right because of some factor in the past. Otherwise, you cannot file on someone else's water right.

REP. LARSON asked if **Harley Harris, Department of Justice**, could explain the legal problem if the committee allowed a certain class of late filers back in the adjudication process. **Mr. Harris** said at this point in time the question is difficult to conclusively state an opinion on. The primary potential problem that could arise, would fall into the area of equal protection of the law. It would depend if the legislature would have a rational basis for making a distinction between postmark claims and the others. He said that the Department of Justice was fairly confident the rationale of the postmark distinction probably would pass muster.

REP. LARSON asked **Mr. Harris** to explain the risks Montana would assume if it reopens the adjudication process to the 2% late claim filers. **Mr. Harris** said as the Department of Justice sees it, the risks fall into two general areas with some serious downsides. The first area involves the McCarran amendment. Montana has fought for a period of time to maintain jurisdiction over water rights asserted by the United States and the Indian Tribes of the state of Montana in order to be able to adjudicate and determine those rights in state court rather than federal court. This action would most likely create a challenge by the federal government as to the validity of Montana's adjudication. The second area of concern is what happens to the rights that may have been acquired by those individuals who did file claims on time.

REP. ANDERSON asked about the concerns **Mr. Harris** might have with the two areas he had just mentioned. **Mr. Harris** said that he has had discussions with two attorneys from the United States Department of Justice. They indicated that in order to put late claimants back in with original priority would be seen by the United States as a violation of the McCarran Amendment. Therefore, the attorney's course of action would be to challenge this violation.

REP. ANDERSON asked if the attorneys for the United States Department of Justice decided there was a violation and to take action, would there be a substantial cost incurred. Mr. Harris said that federal water rights are viewed with such sensitivity by the Federal Government, that the government would view the cost of getting involved a deterrent.

REP. ANDERSON asked Harley Harris if he had anything other than speculation of violating the McCarran Amendment for allowing these late filers back into the adjudication process. Mr. Harris said that he could not give the committee factual evidence to predict any future litigation. The general consensus is that there would be a significantly heightened degree of risk that the state would lose control over its water rights.

REP. ANDERSON asked Karen Fagg, Governor's Office, if she had anything to comment about the McCarran Amendment and the language in the Rehberg Amendment regarding the compact agreements. Ms. Fagg stated that Mr. Harris did an excellent job presenting their concerns regarding the McCarran Amendment. The risks to Montana are substantial to open up the adjudication process, that means anyone who has claims near federal or Tribal rights would have to go to federal court. She said that they agree with the Northern Cheyenne Tribe. The tribe sent a letter stating that they did not think it was right to break promises to the Cheyenne Tribe before the ink was dry on the Compact. EXHIBIT 1H

REP. ANDERSON asked Karen Fagg if there was some language in the amendments to allow for subordination on future compacts as well as present compacts to alleviate the fears the tribes may have. Ms. Fagg stated that concern was amended in the Senate. It subordinates these late claims to existing and future compacts.

REP. LARSON asked Ms. Rehberg how she sees the amendments that she proposed will affect the tribal negotiations. Ms. Rehberg said that they are willing to waive their sovereign immunity if all the rights are going to be adjudicated in one process; that is the rationale behind the McCarran amendment. She said that amending the adjudication process does not jeopardize the McCarran amendment; if she is wrong that is why the severability clause was written in the bill--the act falls if there are any problems.

REP. BACHINI asked if a postmarked date is recognized as being legal under any circumstances. Harley Harris stated that under a general rule postmarking is deemed as sufficient as of that date.

REP. BACHINI asked if these late postmark claimants would be considered privileged. Mr. Harris said that a particular Montana Supreme Court case left open a challenge on a factual basis for people who had posted on time. However, Judge Leslie did rule that claims had to be actually filed by April 30, 1982.

Chris Tweeten, Department of Justice, added that there is not a universal rule about whether something is considered to be in the

custody of the clerk at the time it is mailed. An example is if you are filing a complaint by mail with the clerk and you send it to the clerk by mail, it's postmarked before the date, but the clerk received it after the date, then that claim is barred by the statute of limitations. He added that there are certain situations when filing a brief. If you place your brief in the U.S. mail on the due date then it is considered timely filed. Different courts have different rules with respect to that question.

REP. BACHINI asked what were the instructions by the Department of Natural Resources when these notices were sent out and did these notices say that the filed claims had to be physically delivered by April 30, 1982. **Mark Simonich, Department of Natural Resources**, stated that the department distributed various instructional brochures dealing with the filing of water rights. Those instructional brochures differed. The court orders specifying dates for filing differed as well. **Mr. Simonich** referred to **EXHIBITS 2, 3, 4, 5, 6, and 7.**

REP. DAVIS asked **Mr. Harris** to give the committee some direction as to how they should deal with the problems. **Mr. Harris** stated that there are basically three options that the committee can consider and all of these options contain risks. **Mr. Harris** stated that his main concern was to not violate the McCarran Amendment.

REP. KELLER suggested that if the committee cannot come to a decision today, then he would suggest that SB 310 be sent to a subcommittee.

REP. ENDY asked to have some history on why the legislature wanted all water rights to be filed by April 30, 1982. **Don McIntyre, Department of Natural Resources**, stated in 1972 the constitution changed in Montana and because of this it directed that the Department of Natural Resources have a centralized system of record keeping and to create a comprehensive system of allocating water. As part of the whole system, the Department of Natural Resources instituted both the permit system for requiring water rights, for changing water rights, and it created a system for determining what were the existing rights in the state of Montana. **Mr. McIntyre** said that the propose of this system was not to take a water right from any person. What happens when you get into adjudication or when you invite the federal government-- you can only invite them through the McCarran Amendment, is to have a claims registration program. Montana adopted a system to have people file by a certain date. This is the issue that is now before the committee. As a result of this system, there is now litigation before the courts of Montana.

REP. SCHWINDEN stated that the committee could amend SB 310 and then it would go back to the Senate and they can establish a conference committee to assess what kind of risks should be taken.

Motion: REP. SCHWINDEN moved to adopt the amendment to protect the integrity of ratified compacts. EXHIBIT 1I

Discussion:

REP. BACHINI stated that he agreed with REP. SCHWINDEN.

Motion/Vote: TO ADOPT THE AMENDMENTS CONTAINED IN EXHIBIT 1I.

Vote: A roll call vote was called. The motion carried unanimously. REP. BIRD AND REP. SPRING voted by proxy.

Motion: REP. ANDERSON moved to adopt the Rehberg Amendments. EXHIBITS 1B, 1C, 1D, 1E, & 1F.

Discussion: REP. STOVALL agreed with REP. ANDERSON'S motion.

REP. LARSON said that he visited with the three members of the Senate subcommittee that studied the bill. They said if this bill comes back with the Rehberg amendments on it, they will kill the bill.

REP. ROSE said that if he bought land with water rights and it turned out the land did not have water rights, the land would be classified as dry land.

REP. REHBEIN stated that with the Rehberg amendments amended into the bill, it would make the bill complicated and therefore they would request that it be sent to a conference committee.

Motion/Vote: TO ADOPT THE REHBERG AMENDMENTS IN EXHIBITS 1B, 1C, 1D, 1E, & 1F.

Vote: A roll call vote was called. The motion carried.

Motion: REP. BACHINI MOVED SB 310 TO BE CONCURRED IN AS AMENDED.

Discussion: None

Vote: A roll call vote was called. The motion carried.

REP. ANDERSON was asked to carry SB 310 as amended on the House floor.

REP. BACHINI suggested that the committee determine which members will be appointed to the conference committee. REP. ANDERSON, REP. HAYNE, REP. STOVALL, and REP. ENDY submitted their names to Chairman Keller.

ADJOURNMENT

Adjournment: 4:44 P.M.



VERN KELLER, Chairman



JAELENE RACICOT, Secretary

VK/jr

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL

DATE 3/25/93

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	✓		

HOUSE STANDING COMMITTEE REPORT

March 27, 1993

Page 1 of 4

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 310 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Vern Keller, Chair

And, that such amendments read: Carried by: Rep. Anderson

1. Title, page 1, line 18.

Following: "OF"

Insert: "THE FORFEITURE OF"

2. Title, page 1, line 19.

Strike: "FORFEITED"

3. Page 10.

Following: line 15

Insert: "(11) "Late claim" means a 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" means a 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 19, line 8.

Following: "Accordingly,"

Insert: "with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to [the effective date of this act],"

Committee Vote:

Yes 15, No 1.

ROSE 16

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*3/27/93
11:00*

7. Page 20, lines 2 through 4.

Following: "(a)"

Strike: remainder of line 2 through "claim" on line 4

Insert: "a late claim must be"

8. Page 20, line 5.

Strike: "prior"

9. Page 20, lines 5 through 8.

Strike: ", and" on line 5 through "and" on line 9

Insert: "that have taken place prior to the inclusion of the late claim in the adjudication;

(b) the person asserting a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court 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, unless the person asserting a late claim also has filed a claim on or before April 30, 1982;"

Renumber: subsequent subsections

10. Page 20, lines 10 and 11.

Following: "(b)" on line 10

Strike: remainder of line 10 through "1996," on line 11

Insert: "a person asserting a late claim"

11. Page 20, line 15.

Following: "l"

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,"

Following: "protection"

Insert: "for the right represented in the late claim"

12. Page 20, line 18.

Strike: "and"

13. Page 20, line 19 through page 21, line 12.

Strike: subsections (c) and (d) in their entirety

Insert: "(d) if the water judge, following objection by another person asserting a claim, finds that a right represented in a 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;

(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the 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. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998. The court of general jurisdiction in which the action is commenced 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.

(f) the water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's 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."

14. Page 21, line 15.

Following: "1996"

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

15. Page 22, line 9.

Strike: "(3) (b)"

Insert: "(3) (c)"

16. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$100, which must be deposited in the water rights adjudication account"

17. Page 22.

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 must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

18. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

-END-

Handwritten: 3/27/93
1:10:00

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/25/93 BILL NO. SB 310 NUMBER _____

MOTION:

SB 310 TO BE CONCURRED IN
AS AMENDED

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.	✓	
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE		✓
REPRESENTATIVE DORE SCHWINDEN	✓	
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

HOUSE OF REPRESENTATIVES
AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/25/93 BILL NO. SB 310 NUMBER _____

MOTION: _____
TO ACCEPT THE ~~FENTREB~~
AMENDMENTS:

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.		✓
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE		✓
REPRESENTATIVE DORE SCHWINDEN		✓
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

HOUSE OF REPRESENTATIVES

AGRICULTURE, LIVESTOCK, & IRRIGATION COMMITTEE

ROLL CALL VOTE

DATE 3/25/93 BILL NO. SB 310 NUMBER _____

MOTION: _____

PROTECT THE INTEGRITY OF RATIFIED
COMPACTS

NAME	AYE	NO
REPRESENTATIVE SHIELL ANDERSON	✓	
REPRESENTATIVE BOB BACHINI	✓	
REPRESENTATIVE JOE BARNETT VICE CHAIRMAN	✓	
REPRESENTATIVE JODY BIRD	✓	
REPRESENTATIVE ERVIN DAVIS	✓	
REPRESENTATIVE BILL ENDY	✓	
REPRESENTATIVE HARRIET HAYNE	✓	
REPRESENTATIVE DON LARSON, MINORITY VICE CHAIR.	✓	
REPRESENTATIVE GARY MASON	✓	
REPRESENTATIVE BILL REHBEIN	✓	
REPRESENTATIVE SAM ROSE	✓	
REPRESENTATIVE DORE SCHWINDEN	✓	
REPRESENTATIVE WILBUR SPRING	✓	
REPRESENTATIVE WAYNE STANFORD	✓	
REPRESENTATIVE JAY STOVALL	✓	
CHAIRMAN VERN KELLER	✓	

Amendments to Senate Bill No. 310
Third Reading Copy

For the Committee on Agriculture

Prepared by Robert Person
March 26, 1993

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Following: "OF"

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Renumber: subsequent subsections

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Insert: "under 85-2-226, as interpreted by the Montana supreme
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6. Page 19, line 8.

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Insert: "with respect only to a basin that has not been closed to
further appropriation pursuant to a compact ratified by the
legislature under part 7 of this chapter prior to [the
effective date of this act],"

7. Page 20, lines 2 through 4.

Following: "(a)"

Strike: remainder of line 2 through "claim" on line 4

Insert: "a late claim must be"

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(b) the person asserting a late claim may request that
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matters previously determined on the merits by the water
court 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, unless the person asserting a late claim also has filed a claim on or before April 30, 1982;"

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Strike: subsections (c) and (d) in their entirety

Insert: "(d) if the water judge, following objection by another person asserting a claim, finds that a right represented in a 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;

(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the 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. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998. The court of general jurisdiction in which the action is commenced 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.

(f) the water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's 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."

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Renumber: subsequent subsection

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Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

EXHIBIT 1 A
DATE 3/25/93
SB 310



Senate Members
GARY C. AKLESTAD
VICE CHAIRMAN
DELWYN GAGE
MIKE HALLIGAN
J.D. LYNCH

House Members
RED MENAHAN
CHAIRMAN
JAN BROWN
MARY LOU PETERSON
JIM RICE

Montana Legislative Council

Office of the Executive Director

Room 138 • State Capitol
Helena, Montana 59620-1706
(406) 444-3064
FAX (406) 444-3036

Executive Director
ROBERT B. PERSON

March 25, 1993

TO: House Agriculture Committee
FROM: Bob Person *Bob*
RE: Senate Bill 310 amendment options

I have enjoyed working with several members of the Agriculture Committee to review and edit potential amendments for SB 310. These amendments have been either proposed before the committee or discussed with a member of the committee.

I have outlined below the major options available to the committee. Of course, other amendments of which I am not aware may also exist. Should the committee choose to follow one or more options that require amendment, it would be easier for a subcommittee to formulate a final recommendation based on the overall committee direction than to try to finalize amendments in full committee today.

Major Options for SB 310

1. Concur in the bill
2. Do not concur
3. Concur as amended
 - a. Janice Rehberg's amendments (attached as SB031001.arp)
 - b. Technical amendments included in Janice Rehberg's proposal -- leaves late claims subordinated to all others (attached as SB031002.arp)
 - c. Discriminate between late claims evidencing filing by mail or execution before April 30, 1982 and other late claims (attached as SB031003.arp)
 - d. Protect integrity of ratified compacts as proposed by the Northern Cheyenne (attached as SB031004.arp)
 - e. Alternative to Rehberg amendment #14 to reduce the filing fee to \$150 instead of \$100 and state a purpose for its use (attached as SB031005.arp).

\SB0310ex.amd

Amendments to Senate Bill No. 310
Third Reading Copy

Based on Janice Rehberg's Proposals

For the Committee on Agriculture

Prepared by Robert Person
March 24, 1993

1. Title, line 18.
Following: "OF"
Insert: "THE FORFEITURE OF"
2. Title, line 19.
Strike: "FORFEITED"
3. Page 10.
Following: line 15
Insert: "(11) "Late claim" means a 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" means a 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.
Following: "(a)"
Strike: remainder of line 2 through "claim" on line 4
Insert: "a late claim must be"
7. Page 20, line 5.
Strike: "prior"
8. Page 20, lines 5 through 8.
Strike: ", and" on line 5 through "and" on line 9
Insert: "that have taken place prior to the inclusion of the late claim in the adjudication;
(b) the claimant may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court 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, unless the claimant also has filed a claim on or before April 30, 1982;"
Renumber: subsequent subsections

9. Page 20, lines 10 and 11.

Following: "(b)" on line 10

Strike: remainder of line 10 through "1996," on line 11

Insert: "a person asserting a late claim"

10. Page 20, line 15.

Following: "l"

Strike: "or"

Insert: ", unless the right or standing to object is based on a claim of water right filed on or before April 30, 1982, and is filed"

Following: "protection"

Insert: "for the right represented in the late claim"

11. Page 20, line 18.

Strike: "and"

12. Page 20, line 19 through page 21, line 12.

Strike: subsections (c) and (d) in their entirety

Insert: "(d) if the water judge, following objection by another claimant, finds that a right represented in a 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; and

(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the 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. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998.

(4)(a) The court of general jurisdiction in which an action is commenced under subsection (3) 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.

(b) The water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's 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."

Renumber: subsequent subsection

13. Page 21, line 15.

Following: "1996"

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

14. Page 22, line 9.

Strike: "(3)(b)"

Insert: "(3)(c)"

15. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$100, which must be deposited in the water rights adjudication account"

16. Page 22.

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 must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

17. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

Amendments to Senate Bill No. 310
Third Reading Copy

Technical Amendments only from Janice Rehberg's Proposals

For the Committee on Agriculture

Prepared by Robert Person
March 24, 1993

1. Title, line 18.
Following: "OF"
Insert: "THE FORFEITURE OF"
2. Title, line 19.
Strike: "FORFEITED"
3. Page 10.
Following: line 15
Insert: "(11) "Late claim" means a 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" means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."
Renumber: subsequent subsections
5. Page 20, lines 2 through 4.
Following: "(a)"
Strike: remainder of line 2 through "claim" on line 4
Insert: "a late claim must be"
6. Page 20, lines 10 and 11.
Following: "(b)" on line 10
Strike: remainder of line 10 through "1996," on line 11
Insert: "a person asserting a late claim"
7. Page 21, line 15.
Following: "1996"
Insert: "; and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted"
8. Page 22, line 9.
Strike: "(3)(b)"
Insert: "(3)(c)"
9. Page 22, line 12.
Following: "of"
Strike: "\$300"
Insert: "\$100, which must be deposited in the water rights adjudication account"

10. Page 22.

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 must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

11. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3)(c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

EXHIBIT 16
DATE 3/25/93
SB 310

Amendments to Senate Bill No. 310
Third Reading Copy

Differentiating the Subordination of "Postmark" Filings

For the Committee on Agriculture

Prepared by Robert Person
March 25, 1993

- 1. Page 10.
Following: line 15
Insert: "(11) "Late claim" means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."
Renumber: subsequent subsections

- 2. Page 13.
Following: line 14
Insert: "(10) "Late claim" means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."
Renumber: subsequent subsections

- 3. Page 20, line 25.
Strike: "; and"
Insert: "."

- 4. Page 21, lines 1 through 12.
Strike: lines 1 through 12 in their entirety
Insert: "(4) A late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter.
(5) A late claim that was not placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, for which there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, is, in addition, subordinate to:
(a) all timely filed claims finally adjudicated to be valid; and
(b) a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."
Renumber: subsequent subsection



WCHBYV
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 122

LAME DEER, MONTANA 59042

EXHIBIT 14
DATE 3/25/93
SB 310 The Morning Star

March 22, 1993

Joseph P. Mazurak, Montana Attorney General
Chris D. Tweeten, Chief Deputy, Montana Attorney General
Harley Harris, Deputy, Montana Attorney General
Department of Justice
215 N. Sanders
Helena, Mt. 59620-1401

RE: SENATE BILL 310

Dear Joseph, Chris and Harley,

Senate Bill 310, as now amended, and as we understand it, would still give late water filings a priority on the stream which would be a priority date junior to the Tribe's who negotiate compacts with the State. In stream where excess water exists this is probably fine. In our case however, the State of Montana, through legislation enacted by the Senate and House is signed by the Governor, two short years ago, promised us that the Rosebud Creek, as part of our settlements and assistance in receiving over 30 million dollars for the State of Montana to repair the State owned Tongue River Reservoir, would place a moratorium on any further non-Cheyenne water rights filings on the Rosebud. If Senate Bill 310, or any legislation ever enacted by Montana, allows more water rights filings on the Rosebud than the State of Montana has breached the Northern Cheyenne - Montana Water Rights Settlement Compact. We would strongly suggest that the State of Montana amend the Senate Bill 310 to exclude it's application to any watershed that has been closed. If the State of Montana can break promises to the Cheyenne Tribe before the ink is dry on our Compact, it would seem to us that the new working arrangements we have tried so hard to develop and maintain the last four years need to also be breached. We await your speedy response and hope you three, as the top three attorney's for the State, can get the Senators and Representatives to understand that Senate Bill 310, as now written, breaks the water treaty you solemnly accepted twenty three (23) months ago.

Most Sincerely Yours,

Llevando Fisher
Llevando Fisher, President
Northern Cheyenne Tribe

cc: file

LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back to Montana and won our Cheyenne homeland that we will keep forever.

Amendments to Senate Bill No. 310
Third Reading Copy

EXHIBIT 1 I
DATE 3/25/93
SB 310

Protecting the Integrity of Ratified Compacts

For the Committee on Agriculture

Prepared by Robert Person
March 25, 1993

1. Page 19, line 8.

Following: "Accordingly,"

Insert: "with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to [the effective date of this act],"

EXHIBIT 1. J
DATE 3/25/93
SB 310

Amendments to Senate Bill No. 310
Third Reading Copy

Late Claim Filing Fee Alternative

For the Committee on Agriculture

Prepared by Robert Person
March 25, 1993

1. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$150, which must be deposited in the water rights
adjudication account for the examination of late claims by
the department and for the publication of notices required
under 85-2-213(2)"

EXHIBIT 2
DATE 3/25/93
SB 310

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 14833

IN THE MATTER OF THE PETITION
OF THE STATE OF MONTANA FOR
AN ORDER REQUIRING THE FILING
OF STATEMENTS OF CLAIM TO THE
USE OF WATER IN MONTANA.

WATER RIGHTS ORDER

PER CURIAM:

A petition having been filed by the Attorney General of the State of Montana pursuant to Chapter 697, Laws of 1979, requesting, among other things, that this Court issue an order as provided therein within 10 days of the filing of his petition.

IT IS NOW ORDERED as follows pursuant to Section 16, Chapter 697, Laws of 1979:

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. This order is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the State of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the Department of Natural Resources and Conservation of the State of Montana no later than January 1, 1982. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River Basin in a declaration filed pursuant to the order of the Department of Natural Resources and Conservation or a district court issued pursuant to Sections 8 and 9 of Chapter 452, Laws of 1973, or under Sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the Department of Natural Resources and Conservation, Helena, Montana, for a copy of the law and an explanation of it.

DATED this 8th day of June, 1979.

/s/ Frank I. Haswell
CHIEF JUSTICE

(/s/ John C. Sheehy

(

(/s/ John Conway Harrison

(

(/s/ Daniel J. Shea

(

(/s/ Gene B. Daly

(

(

JUSTICES

STATEWIDE ADJUDICATION

Early in 1979, the Forty-sixth Montana Legislature passed Senate Bill 76, a law requiring the court adjudication of water rights in Montana. A copy of the Montana Supreme Court Order No. 14833 initiating this action appears on the reverse side. The first step towards general adjudication of existing water rights in Montana is filing claims for those rights.

FILING CLAIMS

Most persons who claim a Montana water right which originated before July 1, 1973 must file a claim to that right with the Department of Natural Resources and Conservation at one of the below listed offices no later than January 1, 1982. Review the exemptions in the Order to determine whether you need to file a Water Rights Statement of Claim. The proper forms and instructions for filing your Water Rights Statement of Claim will be available in November 1979 at your County Clerk and Recorder's Office or any of the Water Rights Field Offices listed below.

SPECIAL NOTE TO LENDING INSTITUTIONS

Lending institutions holding property titles should forward this notice to the individual purchasing the land so that he may start compiling the information needed for the Water Rights Statement of Claim.

SPECIAL NOTE TO CITY DWELLERS

If you are served by a centralized water system, it is the responsibility of the system owner to file a claim on the water rights. If you have an individual well, or pump from a stream or spring, please examine the exemptions in the Order to determine whether you need to file a Water Rights Statement of Claim.

WATER RIGHTS FIELD OFFICES

1245 North 29th Street
Billings, MT 59101
(Phone 248-6540)

Highway 93 North
P.O. Box 224
Kalispell, MT 59901
(Phone 755-9288)

613 Northeast Main St.
P.O. Box 438
Lewistown, MT 59457
(Phone 538-7459)

32 South Ewing
Helena, MT 59601
(Phone 449-3634)

720 First Street
P.O. Box 1828
Havre, MT 59501
(Phone 265-5516)

110 Fifth Street So.
Room 118
P.O. Box 894
Glasgow, MT 59230
(Phone 228-2561)

818 Burlington Ave.
Missoula, MT 59801
(Phone 721-4284)

Corner Main & North Prairie
P.O. Box 276
Miles City, MT 59301
(Phone 232-6359)

114 North Lincoln Avenue
P.O. Box 598
Broadus, MT 59317
(Phone 436-2241)

WATER JUDGES

To carry out the court adjudication of existing water rights, the State has been divided into four water divisions. Each division is presided over by a Water Judge. The divisions and judges are:

THE YELLOWSTONE DIVISION, consisting of areas drained by the Yellowstone and Little Missouri rivers and any remaining areas in Carter County.

THE LOWER MISSOURI DIVISION, consisting of areas drained by the Missouri River from below the mouth of the Marias River and any areas in Glacier and Sheridan counties.

THE UPPER MISSOURI DIVISION, consisting of areas drained by the Missouri River to below the mouth of the Marias River.

THE CLARK FORK DIVISION, consisting of areas drained by the Clark Fork River, the Kootenai River, and remaining areas in Lincoln County.

HON. DIANE G. BARZ, Water Judge
Yellowstone Division
Yellowstone County Courthouse
Billings, Montana 59101

HON. BERNARD W. THOMAS, Water Judge
Lower Missouri Division
Blaine County Courthouse
Chinook, Montana 59523

HON. W. W. LESSLEY, Chief Water Judge
Upper Missouri Division
Gallatin County Courthouse
P.O. Box 1050
Bozeman, Montana 59715

HON. ROBERT M. HOLTER, Water Judge
Clark Fork Division
Lincoln County Courthouse

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

EXHIBIT 300
DATE 3/25
RSB 310
SB

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



Before you say "another blankety-blank form to fill out," let's talk.

Early in 1979, the forty-sixth Montana Legislature passed Senate Bill 76, a law requiring the court adjudication of Water Rights in Montana. The first step, towards state-wide adjudication of existing water rights in Montana, is filing claims for those rights.

It is most important that you make a statement of your claim and do it right. Failure to file a claim results in a conclusive presumption that you have abandoned your water right, and that's disastrous!!!

These are simple, easily read claim forms; scan them, then read them, then fill them out and you'll agree.

We are talking about four (4) claims, **Irrigation, Stock Water, Domestic, and Other Uses**. You, of course, will use only the one or ones you need, but you will use a specific claim for each right claimed. For example, if you have irrigation and domestic uses, you will use separate claims.

For your convenience, you will find at the back of these instructions: a water conversion table, a land description guide, and directions on how to get maps you will need to file for water rights.

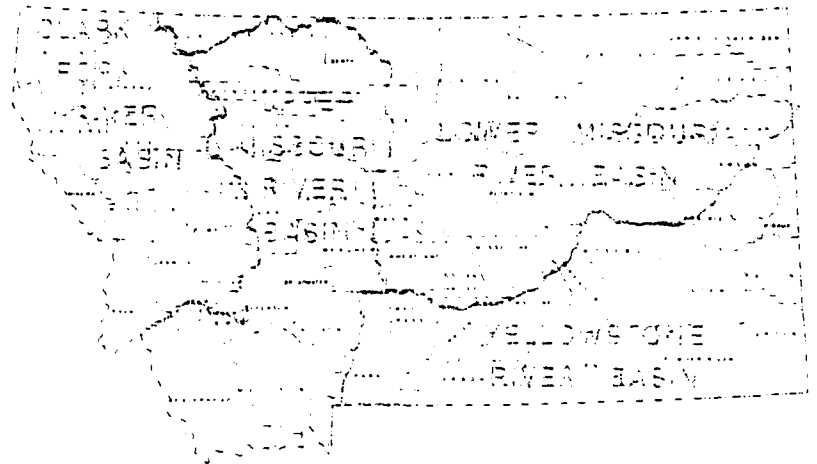
Prepared by:

Hon. Diane G. Barz, Water Judge
Yellowstone River Basin Division

Hon. Bernard W. Thomas, Water Judge
Lower Missouri River Basin Division

Hon. Robert M. Holter, Water Judge
Clark Fork River Basin Division

Hon. W. W. Lessley, Chief Water Judge
Upper Missouri River Basin Division



WATER RIGHTS FIELD OFFICES

1245 North 29th Street
Billings, MT 59101
(Phone 248-6540)

32 South Ewing
Helena, MT 59601
(Phone 449-3634)

818 Burlington Ave.
Missoula, MT 59801
(Phone 721-4284)

Highway 93 North
P.O. Box 224
Kalispell, MT 59901
(Phone 755-9288)

720 First Street
P.O. Box 1828
Havre, MT 59501
(Phone 265-5516)

Corner Main & North Prairie
P.O. Box 276
Miles City, MT 59301
(Phone 232-6359)

613 Northeast Main St.
P.O. Box 438
Lewistown, MT 59457
(Phone 538-7459)

110 Fifth Street So.
Room 118
P.O. Box 894
Glasgow, MT 59230
(Phone 228-2561)

114 North Lincoln Avenue
P.O. Box 598
Broadus, MT 59317
(Phone 436-2241)

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

EXHIBIT 4
DATE MAY 1980 3/25
SB 310

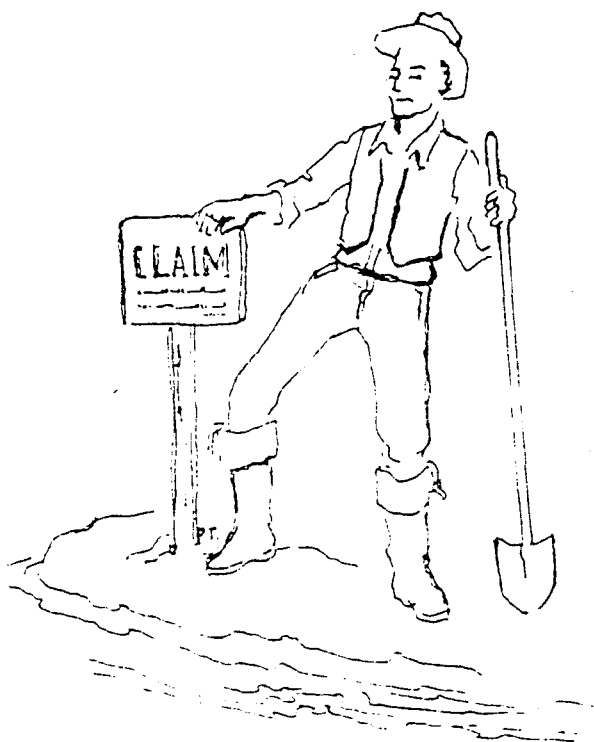
A GUIDESHEET TO

WATER RIGHT DOCUMENTATION

WATER MEASUREMENT CALCULATIONS

LEGAL LAND DESCRIPTIONS

FOR EXISTING WATER RIGHT CLAIMS



Senate Bill 76, a law passed by the Forty-sixth Montana Legislature, calls for a court determination of existing water rights. The law requires most persons who claim a Montana water right that originated before July 1, 1973, to claim that water right before January 1, 1982.

This guidesheet is designed to assist you in three potential problem areas in completing your claim to existing water rights: finding information to prove your claim to water use, determining the amount of water you use, and legally describing the location of your land.

WATER RIGHTS FIELD OFFICES

1537 Avenue D
Suite 121
Billings, MT 59102
(Phone 248-6540)

32 South Ewing
Helena, MT 59601
(Phone 449-3634)

818 Burlington Ave.
P.O. Box 5004
Missoula, MT 59801
(Phone 721-4284)

3220 Highway 93 South
P.O. Box 860
Kalispell, MT 59901
(Phone 755-9288)

720 First Street
P.O. Box 1828
Havre, MT 59501
(Phone 265-5516)

Corner Main & North Prairie
P.O. Box 276
Miles City, MT 59301
(Phone 232-6359)

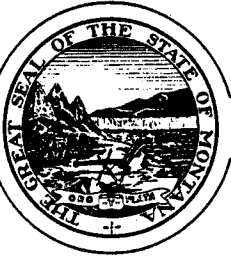
613 Northeast Main St.
P.O. Box 438
Lewistown, MT 59457
(Phone 538-7459)

110 Fifth Street So.
Room 118
P.O. Box 894
Glasgow, MT 59230
(Phone 228-2561)

117 South Idaho
P.O. Box 1047
Dillon, MT 59725
(Phone 683-6113)

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

EXHIBIT 5
DATE 3/25/93
SB 310



MARC RACICOT, GOVERNOR

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699
TELEFAX NUMBER (406) 444-6721

PO BOX 202301
HELENA, MONTANA 59620-2301

March 16, 1993

The Honorable Vernon Keller, Chairman
House Agriculture, Livestock and Irrigation Committee
State Capitol
Helena, Montana 59620

Dear Representative Keller:

During last weeks hearing on S.B.310, the "Late Claims" bill, there was some discussion about whether water rights claims should have been received in hand or postmarked by April 30, 1982. Following the hearing Representative Bachini requested the DNRC to provide copies of instructions for filing water rights claims produced by the Department to the Committee.

Attached you will find four separate sets of instructions produced by the DNRC. Also attached are copies of the court orders whereby the Montana Supreme Court changed the deadline for filing water rights claims, first from June 30, 1982 to January 1, 1982, then later extending the deadline until April 30, 1982. As you can see one simply said claims had to be filed by January 1, 1982. The second was more specific saying that claims had to be received by 5:00 pm on April 30, 1982. Although the instructions may have created some confusion, the final notice from the Supreme Court was very specific.

Also during the hearing, the DNRC was asked how many of the late claims may have fallen into that postmarking category. While it is difficult to precisely identify those claims postmarked by 5:00 p.m. on April 30, 1982 because not all postoffices include a time on the postmark and because some postmarks are unreadable, a preliminary count reveals that up to 1200 claims may have been postmarked by April 30, 1982.

I hope this information is helpful to the Committee. My staff and I will be available during Executive Action in the Committee should you or members of the Committee have any questions.

Please do not hesitate to contact me if I can be of any further assistance.

Respectfully,

Handwritten signature of Mark A. Simonich in cursive.

MARK A. SIMONICH
DIRECTOR

MAS/nj
Attachments

EXHIBIT 6
DATE 3/25/93
SB 310

WATER RIGHT CLAIM PERIOD EXTENDED!

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 14833

IN THE MATTER OF THE PETITION OF THE
ATTORNEY GENERAL FOR AN ORDER RE-
QUIRING THE FILING OF STATEMENTS
OF CLAIMS TO THE USE OF WATER IN
MONTANA.

ORDER

PER CURIAM:

Pursuant to the authority invested in us by Chapter 485, Session Laws of 1975, and follow-
ing a hearing in the above-entitled matter,

IT IS ORDERED:

- (1) The final date for filing statements of claims to existing rights to the use of water in
this State arising prior to July 1, 1973, is hereby extended to Friday, April 30, 1982, at 5:00
p.m.
- (2) No further extensions for filing statements of claims to such existing water rights
will be granted.

(3) This order shall not apply to statements of claims to existing rights to the use of water in this State arising prior to July 1, 1973, which were filed on or before July 1, 1979.

(5) The Clerk is directed to mail a true copy of this order to all persons who have filed written statements herein in connection with the petition of the Attorney General for extension of time or who have appeared at the hearing thereon.

(6) The Department of Natural Resources and Conservation shall cause a copy of this order, printed in not less than 10 point type, to be placed in a prominent and conspicuous place once each week for three successive weeks in all daily newspapers in the State of Montana, and in one weekly newspaper published in each county of the State within 30 days of the date hereof.

(7) The Department of Natural Resources and Conservation shall cause a copy of this order to be placed in a prominent and conspicuous place in each county courthouse in this State within 30 days of the date hereof.

(8) The Department of Natural Resources and Conservation shall provide copies of this order to the press services with offices located in Helena, Montana, within 30 days of the date hereof.

(9) The Attorney General shall, under the authority granted by 43 U.S.C. 666, provide for service of the order upon the United States Attorney General or his designated representative.

DATED this 7th day of December, 1981.

/s/ Frank I. Haswell
Chief Justice

/s/ Gene B. Daly

/s/ John Conway Harrison

/s/ Daniel J. Shea

/s/ John C. Sheehy

/s/ Frank B. Morrison, Jr.

/s/ Fred J. Weber
Justices

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

EXHIBIT 7
DATE 3/25/93
SB 310

I. BACKGROUND

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

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

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

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

II. WHO MUST CLAIM THEIR WATER RIGHTS?

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

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

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

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

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

SPECIAL NOTE ABOUT GROUNDWATER USE

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

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

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

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Agriculture

COMMITTEE

BILL NO. SB 310

DATE 3/25/93 SPONSOR(S) _____

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Harold Shervin Harold Shervin Boulder	Self	with amendments	
Mark Josephson	Self	w. 2 amendments	
L. Gilbert III	Self	w/ amendments	
Jeff Walker	"	w/ amendments	
Patty Walker	"	w/ amendments	
Jan Reber	Terra Land Services	with Reber amend	
Alvin Ferguson	"	"	

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