

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 310

Call to Order: By Senator Steve Doherty, Chair, on April 19, 1993, at 11:00 a.m.

ROLL CALL

Members Present:

Sen. Steve Doherty (D), Chairman
Sen. "Doc" Rea (D)
Sen. Lorents Grosfield (R)
Rep. Shiell Anderson (R)
Rep. Bob Bachini (D)

Members Excused: Rep. Ray Brandewie

Members Absent: None.

Staff Present: Laura Turman, Committee Secretary
Bob Person, Legislative Council
Michael Kakuk, Environmental Quality Council

Discussion:

Sen. Doherty asked for a report from interested parties concerning consensus agreements and any amendments to SB 310.

Christ Tweeten, Chief Deputy Attorney General, said there had been a meeting Wednesday where the proposed amendments were discussed. They did reach a consensus on a number of technical issues. Those issues have been discussed with Bob Person of Legislative Council. There remains some disagreement with respect to the issues of subordination and the semi-relief clause. Mr. Tweeten said there did not seem to be the prospect of consensus on these issues.

Jan Rehberg, attorney, said there was a possibility for utilizing the default standard which complies with the rules of federal procedure. Ms. Rehberg said there may be a middle ground which would allow them to reach agreement without using subordination.

Rep. Anderson asked Ms. Rehberg if she had discussed the default standard with the Attorney General's office. Ms. Rehberg said she had not, but she would be willing to do that.

Rep. Anderson asked Ms. Rehberg if she had discussed with Judge Loble the amendments dated April 15 which concern the criteria used by the water judge and the evaluation of claims. Ms.

Rehberg said she had spoken with Judge Loble and he had said he wanted the Legislature to set some criteria upon which assessments could be made.

Rep. Anderson asked Ms. Rehberg if Judge Loble was aware of the criteria she had suggested. Ms. Rehberg said he was not. She said that criteria was drawn from the concerns of legislators as to protection from the filing of false claims.

Rep. Anderson asked Ms. Rehberg if she would be able to provide the Committee with some information concerning Judge Loble's opinion of the criteria if the Committee were to meet later in the day. Ms. Rehberg said she would try to reach Judge Loble today.

Sen. Doherty said he was "extremely uncomfortable" with a lobbyist talking to a jurist about the proposed legislation. Sen. Doherty said Judge Loble may be called upon to interpret the legislation in the future. If the Committee would like to speak with Judge Loble, they could discuss technical issues about how the water court works. Sen. Doherty said he would not have introduced into the record a lobbyist's conversation with a judge about proposed legislation which that judge may have to interpret.

Ms. Rehberg said she understood Sen. Doherty's concerns, and she did try to keep her discussions with Judge Loble technical, and that did not include criteria. She had asked him if the format was workable regarding the procedures of the court.

Sen. Doherty asked if there were a set of amendments to which all sides had agreed. He asked if someone would explain the consensus amendments. Mr. Tweeten said there was no single document with all the consensus amendments. He said Bob Person, Legislative Council was working on a set of amendments introduced by Sen. Grosfield, and those amendments include some consensus. The consensus amendments from the meeting on Wednesday (April 14) were numbers 1-18.

Sen. Doherty asked that those amendments be prepared so they could be adopted when the Committee meets later in the afternoon. Sen. Doherty asked that the amendments over which there is disagreement to be prepared separately. Sen. Doherty asked Mr. Tweeten if the consensus amendments included the postmark issue. Mr. Tweeten said they did not.

Sen. Grosfield said he had several sets of amendments, and he was not sure which were consensus amendments and which were not. He said he had asked for additional amendments, the most substantive of which involves a study.

Sen. Doherty said if there were any other amendments, they should be mentioned so Committee members are aware of them. Sen. Doherty asked Sen. Grosfield to go over his ideas.

Sen. Grosfield said he had some "clean up" ideas with regard to the bill, regarding the dates and the fees, for example. He said he had drafted an amendment in anticipation of the current bill not being accepted. He said it might make sense to work on the issue of remission and the postmark issue. However, he said he is convinced this cannot be done without some jeopardy, but it might make sense to work on the issue over the interim. It makes sense to allow the Senate version of SB 310 to take an upper position as a base for other bills which cover some of the same issues. Sen. Grosfield said Michael Kakuk had drafted a study proposal, but changes may need to be made.

Rep. Anderson said the Committee must decide what claims are going to be allowed regarding postmarked claims and late claims. Rep. Anderson asked Sen. Doherty what the water judge might feel regarding workability of late or postmarked claims or preliminary hearings to determine if those claims are valid.

Sen. Doherty said his conversation with Judge Loble centered around his availability to answer technical questions. It did not go beyond that, but Sen. Doherty said the concerns raised by Rep. Anderson may be technical in nature, and the Committee could talk with Judge Loble about them.

Rep. Anderson said he would call Judge Loble.

Rep. Bachini asked if it would be possible for the Committee to meet with Judge Loble to discuss some of the technical issues.

Sen. Grosfield said he was nervous about discussing issues with Judge Loble. He said the discussion could begin with technical matters, but it might lead to other subjects. He said the policy issues are up to the Legislature.

Sen. Rea said the conversation could be limited over the phone in a conference call. The conversation could be limited so as to not jeopardize Judge Loble's ability to rule on the matters at hand.

Rep. Bachini asked Sen. Grosfield if Committee members should not meet with the judge to discuss even technical matters. Sen. Grosfield said the judge has a responsibility to say what issues can or cannot be discussed. If the conversation involves the mechanics of the water court, and how they would deal with some of the issues raised by SB 315, that might be all right.

Rep. Bachini said he agreed with Sen. Grosfield, and a conference call was all right with him.

The Committee recessed while Sen. Doherty telephoned Judge Loble.

Sen. Doherty said the "game plan" was to collect all the amendments. He said the Committee would reconvene at 4:00 p.m. today to go over those amendments. At 3:30, the Committee

members will have a conference call with Judge Loble solely regarding the mechanics of the water court.

Adjournment: Sen. Doherty adjourned the meeting until 3:30.

Call to Order: By Senator Steve Doherty, Chair, on April 19, 1993, at 4:20 p.m.

ROLL CALL

Members Present:

Sen. Steve Doherty (D), Chairman
 Sen. "Doc" Rea (D)
 Sen. Lorents Grosfield (R)
 Rep. Shiell Anderson (R)
 Rep. Bob Bachini (D)
 Rep. Ray Brandewie (R)

Staff Present: Laura Turman, Committee Secretary
 Bob Person, Legislative Council
 Michael Kakuk, Environmental Quality Council

Discussion:

Sen. Doherty introduced the members of the Free Conference Committee on SB 310 to Judge Loble.

Sen. Doherty asked Judge Loble what the current work-load of the water court was, and how he would feel about handling an additional 2000-3000 claims. Judge Loble said that would not be difficult. As he sees the bill, individuals will file their new claims, and there may have to be a hearing to determine whether they can file as one proposal, or whether the court will deal with the claims when it gets to that particular basin. Judge Loble said there are some basins which have late claims which the court is not engaged in adjudicating at this time. He said he did not see the additional number of claims as a problem.

Sen. Doherty said if he understood Judge Loble's answer, it would depend upon each basin's adjudication. Judge Loble said that was correct. For example, if all of the late claims came in on the Flathead, it would not have any impact on the adjudication until some period of time when the water court gets to that basin. Judge Loble said if claims came in concerning basins which the court has already gone through, such as the Powder River, the court would not get back to those areas until sometime in the future.

Sen. Rea asked Judge Loble what his feelings were regarding the costs associated with handling these claims. Sen. Rea asked if it would be best to set a flat fee, or to leave it up to the court. Judge Loble said if the Legislature gave the court some

criteria, a flat fee could be determined. It could be done on a sliding fee scale as well. He said there was a lot of different work involved with different claims. For example, a late domestic claim would not receive many objections so it would not cost very much to process it. On the other hand, an irrigation claim competing with another individual may incur significant costs. If the true cost of any claimant were assessed, it would be "fairly high".

Sen. Rea asked Judge Loble how he felt about a \$100.00 filing fee at the time the claimant makes the claim, and if an objection is raised, an additional \$200.00 would go to the water courts. Judge Loble said he did not think those figures were realistic in terms of total time of the water court. Judge Loble said each water master receives \$15.00 per hour and then there was the total cost of the adjudication. He said for the fiscal note, it was anticipated there would be 6000 claims which would extend the adjudication out by 4.8 years. The water court's budget is roughly \$529,000. The per-day cost spent by the water court comes to \$2116.00. Judge Loble said it was anticipated in the fiscal note that each claim would take one day to resolve. He said the minimum cost for any claim would be approximately \$423.00.

Rep. Anderson said there were amendments that would provide for predetermination of whether a late claim was in actually in existence prior to July 1, 1973. Rep. Anderson asked Judge Loble if there would be a conflict of interest making the primary predetermination. Judge Loble said he did not think so. He said that question was currently before the water court. If there is no objection to a claim the water court calls in those claims on its own motion. The court tries to determine if there was existing water use. He said that practice has been challenged, and the court is in the process of briefing that issue. If there are concerns, there are other water judges available to handle such cases.

Rep. Anderson asked Judge Loble if he saw significant costs involved with the late claimants. Judge Loble said there would be significant costs. The Supreme Court of the United States has required that if it is known who could potentially be injured by some governmental agency, those individuals must be given personal notice. Judge Loble said if every person on the Yellowstone River, for example, had to be given personal notice, it could be a lot of people.

Sen. Doherty thanked Judge Loble for his participation in the discussion.

Motion:

Rep. Brandewie moved the amendments prepared by Robert Person on April 19, 1993. (Exhibit #1)

Discussion:

Sen. Doherty asked Chris Tweeten to explain the amendments.

Chris Tweeten, Attorney General's Office, said the term "person" in SB 310 needed to be clarified. Therefore, the bill was put into the passive voice, and the first 12 amendments do that. Mr. Tweeten read the consensus amendments. (Exhibit #1)

Jan Rehberg said there were a variety of options regarding fees, and none was really objectionable. The term "person" refers to not only the person who filed the claim, but also the person currently asserting that right.

Holly Franz said an amendment had been left out of the list of consensus amendments.

Mr. Tweeten said "or is otherwise without merit" needed to be inserted after "water judge" on Line 15, Page 22.

Sen. Doherty said that would be accepted as a friendly amendment. He read the amendment.

Sen. Rea asked Mr. Tweeten about amendment 21, and if the late claimant was entirely responsible for all expenses regardless whether the judge rules that the claim was filed in a timely manner. Mr. Tweeten said that was the consensus. He said the intention was that the late claimant bear the costs even if the claim was determined to be included.

Ms. Rehberg said there was a discussion regarding the friendly amendment, and there was consensus regarding "or is otherwise without merit". This covered the claim in its totality.

Sen. Doherty said the record would show the entire claim is without merit.

Vote:

The motion to adopted the consensus amendments (Exhibit #1) with the addition of the friendly amendment passed UNANIMOUSLY.

Discussion:

Rep. Brandewie asked if the House amendments had been "stripped" from SB 310. Sen. Rea said the House amendments had been rejected.

Sen. Grosfield said the salmon copy of SB 310 included the House amendments.

Bob Person, Legislative Council, said unless it was the Conference Committee's wish to strip all the House amendments, there was no need to do it. The Committee should work with the

reference bill.

Sen. Doherty asked if those who had been working on SB 310 had assumed the House amendments had been adopted. Mr. Tweeten said all the amendments which Mr. Person had worked on refer to the reference bill, with the House amendments in place.

Sen. Doherty said all the House amendments did not need to be stricken, because there was consensus that some of them were all right.

Sen. Grosfield asked if all the consensus amendments were taken care of, or were there some still to be discussed.

Mr. Person provided Committee members with packets of amendments he had worked on. (Exhibit #2) The amendments are numbered SB031007.ARP through SB031017.ARP. The three first sets relate to postmark filings requested by Rep. Bachini. The eleventh amendment provides an alternative way for using evidence. The twelfth relates to late claim procedural matters including a new proposal from Ms. Rehberg. The fourteenth amendment is a language change. Number fifteen is a draft of the amendments requested by Sen. Grosfield. The last amendment, number seventeen, includes everything for which a consensus was not reached.

Sen. Grosfield provided Committee members with the amendment regarding a study. (Exhibit #3) His amendment presumes the Committee will do something with regard to postmarks. Sen. Grosfield said some of his other amendments are included with the consensus amendments, which means there exists some duplication.

Mr. Person said the first three groups of amendments (Exhibit #2) change SB 310 so the bill only relates to the issue of postmarks. The last amendment and Sen. Grosfield's amendments differentiate coordination of postmark filings and other late claims so the degree to which the claims would be subordinated would be considerably less.

Sen. Grosfield asked Mr. Person if that meant the language in the last amendment was the same as his amendment. Mr. Person said that was correct.

Sen. Grosfield said he was not convinced all late claims can be "folded right in". However, he is convinced that postmarked claims can be addressed. If the Committee chooses to deal with postmarked claims, what should be done with the rest of the claims? Rep. Bachini's amendments do nothing with the rest. Sen. Grosfield said one option is to go back to the "essence" of SB 310 as it came out of the Senate, which means they are subordinate to all timely-filed claims. In terms of the study, those claimants should all be included for the time being, and the study would determine if their remission could be improved without jeopardizing anything else, or without significantly

affecting the timely-filed claimants' interests. Sen. Grosfield said that made sense because several basins have been closed this Legislative Session, and if those late-claimants are not dealt with, they will not have an opportunity to file within those (closed) basins. Another reason is that what is being addressed is forfeited claims, not existing rights. Sen. Grosfield said this bill and this issue have received a lot of publicity, and it seemed to him if Montana has a water-short year, there are going to be many people who will be "shut off" because they do not have a right. He said, as it stands now, the Supreme Court has ruled that there is no right, so they are all forfeited. Sen. Grosfield added at least including those people in a subordinate fashion keeps them included.

Rep. Brandewie said the eighth amendment by Rep. Bachini (Exhibit #2) was the one which let in postmarked claimants without subordination. He said they probably ought to be subordinated. He said he did not have much sympathy for studying the possibility of exposing all the timely-filed claims. If there is water available in the drainages of people who forfeited their claims, then they can take some of it. Rep. Brandewie said those claimants who filed in a timely manner should not be threatened by someone with an equal claim filed in an untimely manner. He said not making postmarked claims subordinate was fair, because those individuals have filled out the claim on time, and generally speaking, postmarked days are accepted.

Rep. Anderson asked Sen. Grosfield if his intention was not to subordinate the postmarked claims. Sen. Grosfield said the late claims should be subordinated to compacts already in existence, and that includes Rosebud Creek. He said there is an issue where some basins are further along in the adjudication process than others, and with this type of situation there should be "some sort of subordination." Sen. Grosfield said amendment on the last page (Exhibit #2) addresses the issue of detrimental reliance as well as the issues being discussed. If detrimental reliance can be shown on the forfeiture of a postmarked claim, then it could be subordinate. Sen. Grosfield said that would happen "rarely if at all."

Rep. Anderson said the interim study proposed by Sen. Grosfield makes sense. He asked if the late claims, not the postmarked claims, are allowed in, would there be problems if they were allowed a provisional priority date? He said maybe it would be better to wait on the issue for two years, and let the Water Policy Committee make recommendations. Rep. Anderson said that was his original idea.

Sen. Doherty said if those with the July 1, 1973 date were allowed in, and they were allowed to prove their cases, the Water Policy Committee would have to "figure it out." Sen. Doherty said Sen. Grosfield's suggestion did not give those claimants "a whole loaf" given the basin closures. Over the interim, they may be able to come up with something. He said there may also be the

possibility that there may be no relief for those people, and the best they can get is the 1973 date. Sen. Doherty said this was "uncharted territory", and the Legislature is attempting to provide relief for individuals who have forfeited claims. The Water Policy Committee may come up with a workable mechanism, or their recommendation may be that the Legislature has done its best for people with forfeited claims.

Rep. Brandewie said in western Montana, there are groups of real estate people transferring water rights where was no claim filed timely. Mistakes are being made, and it will take years to resolve. Rep. Brandewie said those with postmarked claims should be included, and be subordinated. He said the best they could do to those who have forfeited is the date of July 1, 1973. He said it is not fair to those who filed in a timely manner to have to come back in two years to fight again. Rep. Brandewie said the Legislature needed to make a definitive decision and move forward.

Sen. Rea asked Sen. Grosfield if the direction the Legislature wants to pursue was included in his amendments. He said it needed to be clear what the intention of the Committee was, if that included a study of the Water Policy Committee. Sen. Grosfield said the study was an option. If postmarked claimants were included and are subordinated to timely-filed claims, there are two options, the first of which is the study. In the absence of the study, it is not clear what will happen. Sen. Grosfield said it was likely that individuals who are not happy will try to put together a lawsuit. He said he was not completely "hung up" on having the study, but it was an attempt to further look at the issue.

Rep. Bachini said he did not believe full subordination would solve all the problems, and the legislation would come up again during the next session. Sen. Grosfield said it would, or there might be a lawsuit.

Rep. Bachini said neither approach would solve the problem. He said he liked the idea of the study, but some type of legislation would likely come up during the next session. Rep. Bachini said when he requested the amendments, he was thinking strictly of the postmark issue. He said he would support only that procedure at this time. He said nobody wants to take away rights that people have had for many years, but it is necessary to examine some of the ramifications.

Rep. Anderson said the time of 4.8 years to process 6000 late claims, as stated by Judge Loble, reflects the date by which the late claimants would have to file. As a practical matter, there would be costs associated with processing the late claims, but during those 4.8 years the court will still be in the process of adjudicating all the timely-filed claims in the closing basins. Rep. Anderson said the Committee faced some decisions regarding the late-filed claims. He said it made "good sense" to bring in

those postmarked claimants, but the Legislature should give the Water Policy Committee a mandate that the issue will be studied. The Committee could tell WPC to keep the water in the place for which it was first adjudicated, and that would give them a direction regarding the inclusion of the late claims and how that would bother the timely filers. Rep. Anderson asked if WPC would have a problem with changing the word "requesting" to "requiring" the study.

Sen. Grosfield asked Michael Kakuk if he knew whether the Water Policy Committee had a full schedule during the interim. Mr. Kakuk, Environmental Quality Council, said as of this moment, there was nothing signed by the Governor directing the Water Policy Committee to study anything during the interim. Mr. Kakuk said the Legislature has had no problems in the past with directing WPC to do a study.

Sen. Doherty said as far as the postmarked claims were concerned, it seemed there was a feeling among Committee members to let the postmarked claimants be included and subordinated only to compacts or adjudicated basins.

Sen. Grosfield read the last page of amendments from Bob Person. (Exhibit #2)

Mr. Person said he had spoken with Mr. Tweeten about making that language more clear. If the claim is not postmarked claim, then it is subordinate to (i) and (ii). Mr. Person said Mr. Tweeten had worked on language that was more clear.

Mr. Tweeten said the postmarked claims would be treated as late claims, meaning they are subordinated to compacts and they lack standing to challenge existing compacts. Postmarked claims are not protected by the subordination language in existing compacts. To separate them from existing late claims, he proposed the following language. (Exhibit #4)

Sen. Grosfield asked Mr. Tweeten if that amendment took care of the postmark issue and "subordinated everything else." Mr. Tweeten said it did.

Jan Rehberg said when Sen. Grosfield said "subordinating to existing compacts" the language in that amendment subordinates all compacts.

Sen. Grosfield said that was a question of policy, to go with existing compacts or all compacts. He said the federal government may claim detrimental reliance.

Sen. Doherty asked Sen. Grosfield what his preference was. Sen. Grosfield said he preferred to go with all compacts, but there was an issue there of time. He said that could take a long time.

Sen. Rea said he would feel more comfortable going with existing

compacts. He said individuals with existing compacts should not have to be subordinated to something that is not even in the works yet.

Sen. Grosfield said there were two or three different entities the Water Commission has been negotiating. He said it has become a budget issue.

Mr. Tweeten said the reason they proposed subordinating to all federal rights was to eliminate the possibility of the federal government claiming prejudice with the admission of the late claims. If the claims are subordinate to all federal rights, then the federal government cannot say it has been injured. Another reason is there are a number of tribal entities and federal agencies with whom they have open negotiations. He said those negotiations are not completed because staff time has been prioritized to focus on compacts which could be completed. They have been told by tribal representatives it is not fair one tribe should receive attention simply for "getting in line first."

Rep. Anderson asked Mr. Tweeten if it would be possible to single out the postmarked claims involved with ongoing negotiations. Mr. Tweeten said he would have to ask DNRC to cross match the postmarked claims on a computer against those basins where there are negotiations. He said the water court has a reopener provision for basins to be reopened.

Rep. Anderson said it seemed like there would be problems with some of the postmarked claims. He said there could be questions with claims not being filed timely but are part of compact agreements.

Mr. Tweeten said he did not think that was the case because the postmarked claims were claims arising out of state law. The only rights being compacted were federal rights.

Rep. Brandewie said the issue seemed too complex to try and separate.

Motion:

Rep. Brandewie moved the adoption of the first amendment from SB031017.ARP (Exhibit #2) including the language proposed by Mr. Tweeten. (Exhibit #4)

Vote:

The motion carried 5-1, with Sen. Rea voting "no".

Discussion:

Mr. Tweeten said amendments 2 and 3 of SB031017.ARP dealt with severability by stating that all parts of the bill are separable with the exception of one subsection, Pages 19-23 of the

reference bill. The House Bill also has contingent avoidance language, which they are comfortable with. Mr. Tweeten said if their amendments are adopted, this language is not necessary. Mr. Tweeten proposed deleting Section 11 of the bill in its entirety, and rewriting the severability clause. The intention is to write a severability clause in which the finding of invalidity with respect to any of the conditions in place on a remission of forfeiture would result in the invalidity of the entire act. Therefore, if any of the conditions found in Subsection C on Pages 19-24, including the adopted subordination language, were to be held by a court as invalid, then those protections would be invalid as well.

Motion/Vote:

Rep. Brandewie moved amendments 2 and 3 of SB031017.ARP as described by Mr. Tweeten. The motion carried 5-1, with Sen. Rea voting "no".

Discussion:

Sen. Grosfield said some of his proposed amendments had already been adopted with the consensus amendments. Sen. Grosfield went over his proposed amendments, SB031015.ARP (Exhibit #2). He said the 18th amendment needed to be stricken because it was mistakenly included. He said the 36th amendment is significant because it removes the limitation of collecting damages for only two years after the filing date.

Rep. Brandewie asked Sen. Grosfield if that amendment extended the statute of limitations for the new filings or all of the claims filed in the past. Sen. Grosfield said it protects those who filed in the past by extending their statute of limitations until damages are sought. It states that an individual with a late claim may be found liable for costs and damages incurred by another person.

Sen. Grosfield continued going over his proposed amendments. He said amendment number 40 should be discussed because it concerns fees. It strikes \$100.00 and inserts \$1,000.00. But, he said the consensus amendments already adopted set the fee at \$150.00. Sen. Grosfield said it was his understanding that an individual had to pay \$40.00 to submit an application as well. He said \$1,000.00 was "a bit steep", but \$150.00 was not enough.

Rep. Brandewie asked Sen. Grosfield if the \$150.00 was for the Department of Natural Resources only, and the actual cost of the water court would be added to it. Sen. Grosfield said that was correct.

Rep. Brandewie said Judge Loble had stated the average cost was around \$400.00 per claim, and more than that if the claim was complicated. He understood that to be the water court part of the expenses, not the Natural Resources part.

Sen. Grosfield said additional fees can be assessed by a water court judge. He said it was his understanding that the water court did not receive anything unless an objection was raised. He said the claim would only go to the water court if an objection were filed. He asked Don MacIntyre to verify this.

Don MacIntyre, Department of Natural Resources, said the water court still deals with all claims, regardless if an objection is raised.

Sen. Doherty said the consensus amendments gave the water court the ability to charge additional fees. Sen. Grosfield said that was only if an objection was filed.

Sen. Rea asked Sen. Grosfield from where the figure of \$1,000.00 came. Sen. Grosfield said it was "picked out of the sky", but the original amount of \$300.00 was too low. He said part of the discussion regarding fees addressed the issue of superfluous claims. He said, at the very least, costs should be covered.

Rep. Anderson asked Sen. Grosfield if there were a way to tie administrative fees with other fees. Sen. Grosfield said, the language on Line 21 of Page 24, "if an objection is filed to a late claim," could be stricken to take care of it.

Sen. Doherty said that would be accepted as a friendly amendment.

Sen. Grosfield said that still did not address the issue of the amount of the initial application. Right now, the amount is set at \$150.00. His amendment would change that to \$1000.00.

Rep. Brandewie suggested the amount be changed to \$500.00 because that was close to the cost of the average claim.

Sen. Rea asked Mr. MacIntyre what the cost was to DNRC. Mr. MacIntyre said \$40.00 was the filing fee, which was "greatly exceeded" years ago. He said it would cost over \$100.00 to verify a claim, and more money to cover the posting of notices. The figure of \$150.00 would be used by the Department for providing adequate notice and verifying claims.

Sen. Rea asked Mr. MacIntyre what happened if a claim was found to be invalid. Mr. MacIntyre said it could be "flagged". On an average, it costs just over \$100.00 to examine a claim.

Sen. Rea asked Mr. MacIntyre what additional costs would be. Mr. MacIntyre said that figure was unknown, and that was what Judge Loble had tried to address during his comments. Judge Loble had said there was no set figure, and he had tried to estimate an average cost. Mr. MacIntyre said that figure did not include the \$150.00.

Sen. Grosfield asked Mr. MacIntyre who received the original \$40.00. Mr. MacIntyre said it went into an account.

Rep. Brandewie said it seemed the figure provided by Judge Loble was the cost of the claim. It also seemed that all those affected, even those subordinate claimants, would have to be notified, which could cost a lot.

Sen. Rea asked Holly Franz to address the issue of fees. Ms. Franz said the fee is split into two parts, and the \$150.00 covers the cost of DNRC. Additional costs are generally costs to the water court which can be assessed on an individual basis. Rep. Brandewie said if \$150.00 is enough, it should be left at that amount.

Sen. Grosfield said, with that in mind, amendment number 40 should be stricken.

Motion/Vote:

Sen. Grosfield moved the adoption of amendments, SB031015.ARP, excluding those amendments which have already been adopted, or reference deleted sections of SB 310. The motion carried 5-1, with Sen. Rea voting "no".

Discussion:

Sen. Grosfield said he did not see how the language on the bottom of Page 24 and the top of Page 25 would work. He said this language addresses when the payments would be made. Sen. Grosfield read the language. He said it does not say what would happen if no payments were made.

Ms. Rehberg suggested adding "upon order of the court" to specify when payments should be made.

Sen. Doherty said "must be paid on or before the entry..." would be stricken, and "upon order of the court" would be added. Ms. Rehberg said that was correct.

Sen. Grosfield said the language came from the Senate Subcommittee that worked on SB 310. He said the way that section is currently worded, it does not seem to work.

Mark Simonich, Department of State Lands, said the Department is anticipating several hundred claims, and they were trying to keep from "wiping out" their budget with processing fees. Late claims that have already been filed have been processed, and they didn't want the Department to incur additional costs for those.

Sen. Doherty asked Mr. Simonich if the Department liked the original language. Mr. Simonich said he did not have a feel for that particular wording, but said there may be a better way to word that section.

Harley Harris, Attorney General's office, said the language in Subsection C at the bottom of Page 24, addressed fees being paid

for decrees and should reference section 3(a) above. He suggested reorganizing the paragraphs.

Motion/Vote:

Rep. Brandewie moved the conceptual amendment to clarify the language in Subsection C, Page 24. The motion carried unanimously.

Motion:

Sen. Grosfield moved the amendment concerning the study, (Exhibit #3)

Discussion:

Sen. Rea suggested the term "request" be changed to "require". Sen. Doherty accepted that as a friendly amendment.

Rep. Anderson said he would like to see language directing the Water Policy Committee to try to find a way individuals can restore their original priority date, rather than having WPC do a study that "leads nowhere". He said there should be an effort allowing the late claimants to keep their original priority date.

Sen. Doherty said there was language in the bill that addressed Rep. Anderson's concerns.

Mr. MacIntyre said the way subordination is currently set up with Sen. Grosfield's amendments, priority dates are kept. They become subordinated to the 1973 date, but the study addresses ways to reduce the subordination.

Rep. Brandewie said he really wanted to help people trying to irrigate their land. He said the study should target "true agricultural" parcels of land. Rep. Anderson that would be difficult to state.

Rep. Brandewie said he wanted to avoid lawsuits and problems. He said he wanted to narrow it down to individuals legitimately being hurt, and not someone who "imagines" they are being hurt.

Sen. Doherty said the direction of the Water Policy Committee was fairly straightforward, and the study has been focused regarding elements to be considered when determining what can be done for those forfeited claimants.

Vote:

The motion to adopt the amendment (Exhibit #3) carried unanimously.

Discussion:

Sen. Doherty said all the adopted amendments would be prepared for the Committee so mistakes could be checked. He said he did not anticipate any substantive changes or policy changes with the adopted amendments, but he would like the Committee to meet again to approve the adopted amendments.

ADJOURNMENT

Adjournment: Sen. Doherty adjourned the meeting at 6:30 p.m.



SEN. STEVE DOHERTY, Chair



LAURA TURMAN, Secretary

SD/LT

(FREE) CONFERENCE COMMITTEE

DATE 4.19.93 11:00 a.m.

[illegible]

(FREE) CONFERENCE COMMITTEE

DATE 4.19.93 4:20 p.m.

[illegible]

Amendments to Senate Bill No. 310
Reference Copy

Requested by Free Conference Committee
For the Committee

Prepared by Robert Person
April 19, 1993

1. Page 10, lines 24 and 25.
Strike: "For" on line 24 through "interest." on line 25
2. Page 13, line 25 through page 14, line 1.
Strike: "For" on page 13, line 25 through "interest." on page 14
line 1
3. Page 18, line 11.
Strike: "person who failed to file a"
4. Page 18, line 12.
Following: "right"
Insert: "not filed with the department"
5. Page 18, lines 12 and 13.
Strike: "file such claim"
Insert: "be filed"
6. Page 18, line 17.
Strike: "AS" through "COURT."
7. Page 19, line 17.
Strike: "person who failed to file a"
8. Page 19, line 18.
Following: "right"
Insert: "not filed with the department"
9. Page 19, line 19.
Strike: "file"
Insert: "be filed"
10. Page 19, lines 19 and 20.
Strike: "a claim of an existing water right"
11. Page 19, line 22.
Strike: "a person who may have filed"
Insert: "the filing of a late claim in addition to"
12. Page 19, line 23.
Following: "right"
Insert: "filed"
13. Page 19, lines 23 and 24.
Strike: "from filing an additional claim under this section"

14. Page 20, lines 4 through 7.

Strike: "Within" on line 4 through "those" on line 7

Insert: "The"

15. Page 20, line 19.

Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"

Insert: "date of filing"

16. Page 20, line 20.

Page 21, lines 1 and 5.

Strike: "ASSERTING"

Insert: "filing"

17. Page 20, line 25.

Following: "1982"

Strike: the remainder of subsection (b) in its entirety

18. Page 22, lines 9 through 13.

Following: "OBJECTION"

Insert: "under 85-2-233, finds"

Strike: "BY" on line 9 through "OR" on line 13

19. Page 24, line 18.

Strike: "\$100"

Insert: "\$150"

20. Page 24, line 20.

Following: "ACCOUNT"

Insert: "for the examination of late claims by the department and
for the publication of notices by the department as required
under 85-2-213(2)"

21. Page 24, lines 22 and 23.

Strike: "AN" on line 22 through "CLAIM" on line 23

Insert: "against the late claimant all reasonable administrative
costs and expenses that may be incurred by the court due to
the filing of the late claim and the consideration of the
objection"

22. Page 24, line 23.

Strike: "FEE"

Insert: "assessment"

Exhibit #2
4-19-93
SB 310

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. Bachini
For the Free Conference Committee

Prepared by Robert Person
April 2, 1993

"Postmark" Filings Only -- Subordinated

1. Title, line 18.
Following: "FORFEITURE OF"
Insert: "CERTAIN"
2. Title, lines 20 through 24.
Strike: "PROVIDING" on line 20 through "REMISSION;" on line 24
3. Title, page 2, line 1.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "AND"
Following: "85-2-237,"
Strike: "AND"
4. Title, page 2, line 2.
Strike: "85-2-306,"
5. Page 7, line 4.
Following: "PROVIDE"
Insert: "certain"
6. Page 7, line 14.
Following: "WHO"
Insert: "have been recognized as having"
7. Page 7, line 25.
Strike: "; AND"
Insert: "."
8. Page 8, lines 1 through 12.
Strike: lines 1 through 12 in their entirety
9. Page 8, line 15.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "and"
10. Page 8, line 16.
Strike: "AND 85-2-306,"
11. Page 8, line 17.
Strike: "ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM"
Insert: "adjudication of certain additional claims"
12. Page 10, line 16.
Following: "A CLAIM"

Insert: "that was 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, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

13. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

14. Page 13, line 17.

Following: "A CLAIM"

Insert: "that was 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, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

15. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

16. Page 18, lines 11 through 20.

Strike: "any" on line 11 through "85-2-221" on line 20

Insert: "late claims have been reinstated in the general adjudication process"

17. Page 19, lines 12 and 13.

Strike: "caused" on line 12 through "(1)" on line 13

Insert: "for which a late claim was filed"

18. Page 19, line 17 through page 20, line 7.

Strike: "a person" on page 19, line 17 through "those" on page 20, line 7

Insert: "late"

Strike: "then"

19. Page 20, line 9.

Strike: "then"

20. Page 20, line 25.

Following: "RIGHT"

Insert: "physically"

21. Page 21, line 10.

Following: "RIGHT"

Insert: "physically"

22. Page 22, line 9 through page 23, line 5.

Strike: subsections (D) and (E) in their entirety
Renumber: subsequent subsection

23. Page 23, line 6.
Strike: "MAY"
Insert: "shall"

24. Page 23, line 7.
Following: "A CLAIM"
Insert: "physically"

25. Page 23, lines 9 through 16.
Strike: "IF" on line 9 through "85-2-226" on line 16

26. Page 23, lines 17 through 21.
Strike: subsection (4) in its entirety

27. Page 23, line 22 through page 28, line 19.
Strike: sections 5, 6, and 7 in their entirety
Renumber: subsequent sections

28. Page 29, line 3.
Following: "basins"
Strike: "for"
Insert: "in"
Following: "which"
Insert: "late"
Strike: "have been filed"
Insert: "must be incorporated"

29. Page 31, line 22 through page 39, line 2.
Strike: section 9 in its entirety
Renumber: subsequent sections

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. Bob Bachini
For the Free Conference Committee

Prepared by Robert Person
April 5, 1993

"Postmark" Filings Only -- Not Subordinated

1. Title, line 18.
Following: "FORFEITURE OF"
Insert: "CERTAIN"
2. Title, lines 20 through 24.
Strike: "PROVIDING" on line 20 through "REMISSION;" on line 24
3. Title, page 2, line 1.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "AND"
Following: "85-2-237,"
Strike: "AND"
4. Title, page 2, line 2.
Strike: "85-2-306,"
5. Page 7, line 4.
Following: "PROVIDE"
Insert: "certain"
6. Page 7, line 14.
Following: "WHO"
Insert: "have been recognized as having"
7. Page 7, line 25.
Strike: "; AND"
Insert: "."
8. Page 8, lines 1 through 12.
Strike: lines 1 through 12 in their entirety
9. Page 8, line 15.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "and"
10. Page 8, line 16.
Strike: "AND 85-2-306,"
11. Page 8, line 17.
Strike: "ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM"
Insert: "adjudication of certain additional claims"
12. Page 10, line 16.

Following: "A CLAIM"

Insert: "that was 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, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

13. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

14. Page 13, line 17.

Following: "A CLAIM"

Insert: "that was 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, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

15. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

16. Page 18, lines 11 through 20.

Strike: "any" on line 11 through "85-2-221" on line 20

Insert: "late claims have been reinstated in the general adjudication process"

17. Page 19, lines 12 and 13.

Strike: "caused" on line 12 through "(1)" on line 13

Insert: "for which a late claim was filed"

18. Page 19, line 17 through page 20, line 7.

Strike: "a person" on page 19, line 17 through "those" on page 20, line 7

Insert: "late"

Strike: "then"

19. Page 20, line 9.

Strike: "then"

20. Page 20, line 25.

Following: "RIGHT"

Insert: "physically"

21. Page 21, line 10.

Following: "RIGHT"

Insert: "physically"

22. Page 22, line 9 through page 23, line 16.
Strike: subsections (D) through (F) in their entirety

23. Page 23, lines 17 through 21.
Strike: subsection (4) in its entirety

24. Page 23, line 22 through page 28, line 19.
Strike: sections 5, 6, and 7 in their entirety
Re-number: subsequent sections

25. Page 29, line 3.
Following: "basins"
Strike: "for"
Insert: "in"
Following: "which"
Insert: "late"
Strike: "have been filed"
Insert: "must be incorporated"

26. Page 31, line 22 through page 39, line 2.
Strike: section 9 in its entirety
Re-number: subsequent sections

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. Bob Bachini
For the Free Conference Committee

Prepared by Robert Person
April 5, 1993

"Postmark" Filings Only -- Subordination Conditional

1. Title, line 18.
Following: "FORFEITURE OF"
Insert: "CERTAIN"
2. Title, lines 20 through 24.
Strike: "PROVIDING" on line 20 through "REMISSION;" on line 24
3. Title, page 2, line 1.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "AND"
Following: "85-2-237,"
Strike: "AND"
4. Title, page 2, line 2.
Strike: "85-2-306,"
5. Page 7, line 4.
Following: "PROVIDE"
Insert: "certain"
6. Page 7, line 14.
Following: "WHO"
Insert: "have been recognized as having"
7. Page 7, line 25.
Strike: ": AND"
Insert: "."
8. Page 8, lines 1 through 12.
Strike: lines 1 through 12 in their entirety
9. Page 8, line 15.
Strike: "85-2-225, 85-2-226, 85-2-234,"
Insert: "and"
10. Page 8, line 16.
Strike: "AND 85-2-306,"
11. Page 8, line 17.
Strike: "ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM"
Insert: "adjudication of certain additional claims"
12. Page 10, line 16.

Following: "A CLAIM"

Insert: "that was 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, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

13. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

14. Page 13, line 17.

Following: "A CLAIM"

Insert: "that was 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, but that was not in the physical possession of the department on or before April 30, 1982, and for that reason is in jeopardy of or has been ruled"

15. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

16. Page 18, lines 11 through 20.

Strike: "any" on line 11 through "85-2-221" on line 20

Insert: "late claims have been reinstated in the general adjudication process"

17. Page 19, lines 12 and 13.

Strike: "caused" on line 12 through "(1)" on line 13

Insert: "for which a late claim was filed"

18. Page 19, line 17 through page 20, line 7.

Strike: "a person" on page 19, line 17 through "those" on page 20, line 7

Insert: "late"

Strike: "then"

19. Page 20, line 9.

Strike: "then"

20. Page 20, line 25.

Following: "RIGHT"

Insert: "physically"

21. Page 21, line 10.

Following: "RIGHT"

Insert: "physically"

22. Page 22, line 9 through page 23, line 5.
Strike: subsections (D) and (E) in their entirety
Renumber: subsequent subsection

23. Page 23, line 7.
Following: "A CLAIM"
Insert: "physically"

24. Page 23, lines 9 through 16.
Strike: "IF" on line 9 through "85-2-226" on line 16

25. Page 23, lines 17 through 21.
Strike: subsection (4) in its entirety

26. Page 23, line 22 through page 28, line 19.
Strike: sections 5, 6, and 7 in their entirety
Renumber: subsequent sections

27. Page 29, line 3.
Following: "basins"
Strike: "for"
Insert: "in"
Following: "which"
Insert: "late"
Strike: "have been filed"
Insert: "must be incorporated"

28. Page 31, line 22 through page 39, line 2.
Strike: section 9 in its entirety
Renumber: subsequent sections

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rae
For the Free Conference Committee

Prepared by Robert Person
April 14, 1993

1. Page 21.

Following: line 14

Insert: "(d) If an objection is filed to a late claim, the
person filing the late claim or that person's successor in
interest must prove the existence of the late claim by clear
and convincing evidence."

Renumber: subsequent subsections

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. S. Anderson
For the Free Conference Committee

Prepared by Robert Person
April 15, 1993

Adding to and consolidating late claims procedural matters

1. Page 20, line 4 through page 23, line 16.

Strike: "Within" on page 20, line 4 through "that," on page 20, line 10 and subsections (a) through (f) in their entirety

2. Page 25.

Following: line 11

Insert: "NEW SECTION. Section 7. Procedure relating to late claims. (1) Within 30 days of receipt, the department shall forward each late claim to the water judge who shall make an initial determination whether good cause exists to allow remission of forfeiture. The finding of good cause must be based on the following criteria:

(a) sufficient evidence tending to show that the claimed right existed on July 1, 1973;

(b) evidence, by affidavit or otherwise that the claim was filed within a reasonable time after discovery of the non-filing;

(c) evidence, by affidavit or otherwise, that remission of forfeiture will not delay or otherwise impact litigation pending in courts other than the water court or that the parties to the litigation consent to the remission of forfeiture; and

(d) such other evidence as the court considers relevant.

(2) In making the determination of good cause, the court may request additional information from the late claimant and may, if necessary, issue notice to other interested parties and hold a show cause hearing on the issue of good cause. The water judge may award reasonable attorney fees and costs to the prevailing party in any show cause hearing.

(3) If the judge finds good cause to allow remission of forfeiture, the late claim is then subject to adjudication as any other claim of existing right. The claimant or the claimant's successor in interest is subject to all rights and obligations of any other party, except that:

(a) a late claim must be incorporated into the adjudication, subject to all proceedings 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;

(c) a person asserting a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to [the effective date of this act] 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, or to claim protection for the right represented in the late claim under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law;

(d) if the water judge, following objection by another person asserting a claim, finds that a right represented in a late claim did not exist on July 1, 1973, or that the right represented by the late claim should be subordinated to another right under subsection (3)(f) 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;

(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."

Renumber: subsequent sections

3. Page 39.

Following: line 7

Insert: "NEW SECTION. Section 10. {standard} Codification

instruction. [Section 7] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 7]."

4. Page 39, line 19.

Strike: "85-2-221(3)(C), AS AMENDED BY [THIS ACT]"

Insert: "[section 7(3)(c)]"

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rae
For the Free Conference Committee

Prepared by Robert Person
April 16, 1993

1. Page 23, lines 9 and 10.

Following: "IF"

Strike: "AND TO THE EXTENT THAT"

2. Page 23, line 11.

Following: "SUBORDINATION"

Strike: "BY"

Insert: "on or before"

3. Page 23, line 12.

Strike: "the objector proves by a preponderance of evidence"

Insert: "judge finds"

4. Page 23, line 16.

Following: "85-2-226"

Insert: ", or that the right filed in the late claim was not put
to beneficial use during the years between 1982 and the date
of filing when water was available for use and no reasonable
grounds for non-use exist"

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Grosfield
For the Free Conference Committee

Prepared by Robert Person
April 19, 1993

1. Title, line 18.
Following: "FOR THE"
Insert: "CONDITIONAL"
Strike: "THE FORFEITURE OF"
Insert: "CERTAIN"
2. Title, line 19.
Following: "WATER"
Insert: "DETERMINED BY THE MONTANA SUPREME COURT TO HAVE BEEN
FORFEITED"
3. Title, line 21.
Following: "OF"
Insert: "LATE"
4. Title, line 22.
Following: "FILE"
Insert: "LATE"
5. Title, line 25.
Following: "SUCH"
Insert: "LATE"
6. Page 7, line 5.
Strike: "ASSERT"
Insert: "file"
7. Page 7, line 14.
Following: "WHO"
Insert: "have been recognized as having"
8. Page 8, line 17.
Strike: "ADDITIONAL STATEMENTS OF CLAIM"
Insert: "late claims"
Strike: "EXISTING"
Insert: "the use of"
9. Page 8, line 18.
Strike: "RIGHTS"
10. Page 10, line 16.
Following: "A CLAIM"
Insert: "to an existing right"

11. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

12. Page 13, line 17.

Following: "A CLAIM"

Insert: "to an existing right"

13. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

14. Page 18, line 2.

Following: "state"

Insert: "and to be maintained in that location through December 31, 1993"

15. Page 18, line 11.

Strike: "person who failed to file a"

16. Page 18, line 12.

Following: "right"

Insert: "not filed with the department"

17. Page 18, lines 12 and 13.

Strike: "file such claim"

Insert: "be filed"

~~18. Page 18, line 15.~~

~~Strike: "July 1,"~~

~~Insert: "December 31, 1993,"~~

~~Strike: "1996"~~

19. Page 18, line 17.

Strike: "AS" through "COURT,"

20. Page 18, line 22.

Following: "right"

Insert: "-- filing late claim"

21. Page 19, line 17.

Strike: "person who failed to file a"

22. Page 19, line 18.

Following: "right"

Insert: "not filed with the department"

23. Page 19, line 19.

Strike: "file"

Insert: "be filed"

24. Page 19, lines 19 and 20.

Strike: "a claim of an existing water right"

25. Page 19, line 22.
Strike: "a person who may have filed"
Insert: "the filing of a late claim in addition to"
26. Page 19, line 23.
Following: "right"
Insert: "filed"
27. Page 19, lines 23 and 24.
Strike: "from filing an additional claim under this section"
28. Page 20, line 1.
Following: "claim"
Insert: "and is not an abandoned right"
29. Page 20, lines 4 through 7.
Strike: "Within" on line 4 through "those" on line 7
Insert: "The"
30. Page 20, line 19.
Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"
Insert: "date of filing"
31. Page 20, line 20.
Strike: "ASSERTING"
Insert: "filing"
32. Page 20, line 25.
Following: "1982"
Strike: the remainder of subsection (b) in its entirety
33. Page 21, line 5.
Strike: "ASSERTING"
Insert: "filing"
34. Page 22, lines 9 through 13.
Following: "OBJECTION"
Insert: "under 85-2-233, finds"
Strike: "BY" on line 9 through "OR" on line 13
35. Page 22, line 22.
Strike: "A LATE CLAIM AND"
36. Page 22, line 25 through page 23, line 1.
Strike: "ON OR BEFORE JULY 1, 1998"
37. Page 23, line 2.
Following: "MOTION,"
Insert: "in addition to awarding costs and damages,"
38. Page 23, line 4.
Following: "cure"
Insert: "or partially cure"

39. Page 23, lines 6 through 16.

Strike: subsection (f) in its entirety

Insert: "(f) A late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter.

(g) A late claim that was either 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 ~~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:

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

(ii) 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."

40. Page 24, line 18.

Strike: "\$100"

Insert: "\$1,000"

41. Page 24, line 20.

Following: "ACCOUNT"

Insert: "for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2)"

42. Page 24, lines 22 and 23.

Strike: "AN" on line 22 through "CLAIM" on line 23

Insert: "against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection"

43. Page 24, line 23.

Strike: "FEE"

Insert: "assessment"

44. Page 25, line 5.

Following: "decree"

Insert: ", if applicable,"

Amendments to Senate Bill No. 310
Reference Copy

For the Free Conference Committee

Prepared by Robert Person
April 19, 1993

1. Page 22, line 18 through page 23, line 16.

Strike: subsections (e) and (f) in their entirety

Insert: "(e) A late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter.

(f) A late claim that was either 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:

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

(ii) 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."

2. Page 39.

Following: line 13

Insert: "(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid."

3. Page 39, lines 14 through 20.

Strike: section 11 in its entirety

Renumber: subsequent section

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Grosfield

Prepared by Michael S. Kakuk
April 19, 1993

"Late claim" Interim Study - Water Policy Committee

1. Title, line 25.

Following: "CLAIMS;"

Insert: "REQUESTING THE WATER POLICY COMMITTEE, IN COORDINATION
WITH CERTAIN STATE AGENCIES, TO CONDUCT AN INTERIM STUDY
REGARDING LATE CLAIM ISSUES;"

2. Page 8.

Following: line 18.

Insert: "Additionally, the legislature requests the water policy
committee, in coordination with the department of justice,
the department of natural resources and conservation, and
the reserved water rights compact commission, to conduct an
interim study regarding certain late claim issues."

3. Page 39.

Following: line 7

Insert: " NEW SECTION. Section 10. Late claim interim study --
water policy committee. (1) The water policy committee,
in coordination with the department of justice, the
department of natural resources and conservation, and the
reserved water rights compact commission, is requested to
conduct an interim study analyzing the need for and
desirability and impacts of allowing the remission of
forfeited water rights in addition to the remissions
authorized under the provisions of [this act]. The study
must analyze the impacts of additional forfeiture remission
on:

(a) the general stream adjudication process,
including but not limited to the issues of adequacy and
Montana's and the federal government's concurrent water
rights adjudication jurisdiction;

(b) the federal government and Indian tribes
regarding existing and future negotiated water rights
compacts, including but not limited to the issues of
equal protection;

(c) timely claimants' water use;

(d) timely claimants' legal rights, including but
not limited to constitutional requirements regarding
the taking of property;

(e) the potential reduction in agricultural
production resulting from not granting additional
forfeiture remissions and the associated social and
economic impacts;

(f) the issue of fairness to both late and timely
claimants; and

(g) the potential increased costs to the state and to late and timely claimants.

(2) The study must include an analysis of the potential for identifying individuals or classes of individuals whose additional forfeiture remission could be authorized in a manner that would have an acceptable impact on those issues identified under subsection (1). The classes of late claimants include but are not limited to previously decreed water rights holders and classes established according to filing date.

(3) The study must be completed in consultation with other relevant state and federal agencies, relevant groups and organizations, and other interested and affected citizens.

(4) The water policy committee shall report the results of the study to the 54th legislature by October 1, 1994. The report must include any legislative or other policy options recommended by the water policy committee."

Renumber: subsequent sections

(D) A late claim that was ~~either~~ not placed in the US Mail and postmarked on or before April 30, 1982

(F) Unless a late claim ~~was~~ ^{was} either placed in the US mail postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, was executed on or before April 30, 1982 and was actually received by the department on or before May 7, 1982, the late claim is also subordinate to

(i)

(ii)