

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 310

Call to Order: By Steve Doherty, Chair, on April 20, 1993, at 4:25 p.m.

ROLL CALL

Members Present:

Senator Steve Doherty, Chair (D)
Senator Lorents Grosfield (R)
Senator Jack "Doc" Rea (D)
Representative Shiell Anderson (R)
Representative Bob Bachini (D)
Representative Ray Brandewie (R)

Members Excused: None.

Members Absent: None.

Staff Present: Kristie Wolter, Committee Secretary
Robert Person, Legislative Council

Discussion:

Senator Doherty stated there were amendments distributed (Exhibit #1). He stated the Committee would review the amendments before them for any problems and then they would address any new amendments.

Representative Bachini asked Mr. Person to review the amendments before the Committee.

Mr. Person stated the amendments represented everything the Committee had adopted on April 19, 1993. He stated there was a change on amendment #36. He stated the amendments refer to the "subordination of claim" and he asked the language be changed to express the fact that it is a water right which is being represented in the claim. Mr. Person stated the use of the word "finally" in amendment #36 was going to be addressed by Chris Tweeten from the Attorney General's (AG) office.

Mr. Tweeten stated the change in amendment #36 was important for understanding of how subordination would work in the interim before the issuance of a final decree. He stated the current language reads "subordination to all timely filed claims finally adjudicated to be valid" and the AG's office requested the words "finally adjudicated to be valid" be deleted and the word "valid"

be inserted between "all" and "timely". He stated the new language would read "all valid, timely, claims". Mr. Tweeten stated if the claims appear in a temporary preliminary decree, the claims are prima facie evidence and a final decree must be presented before the subordination can be applied.

Senator Doherty asked Mr. Tweeten about amendment #36 and that the amendment was not addressing subordination to a claim, but subordination of a water right. Mr. Tweeten stated the AG agreed with the change and that the statement was accurate. He stated the language provided by Mr. Person was sufficient and thorough. Mr. Tweeten gave an example of how the amendment would effect the language in SB 310. He stated the change should be made consistent through SB 310.

Motion/Vote:

Representative Brandewie moved SB 310 BE AMENDED (Amendment #36, Exhibit #1). The motion carried UNANIMOUSLY.

Discussion:

Senator Doherty stated the next amendment to be addressed deals with the "finally adjudicated to be valid" (p. 4).

Janice Rehberg asked for clarification of the law that it would subordinate them to interim preliminary decrees. Mr. Tweeten stated the amendment would allow the subordination of late claims before the issuance of final decrees. He stated the subordination is for interim purposes if a dispute arises. He stated the subordination would only apply if the claim is valid. Mr. Tweeten stated the claims are treated as a claim with prima facie effect until such time as somebody proves otherwise.

Ms. Rehberg stated her concern was with subordination. She stated the determination made in the preliminary stages is not necessarily what is going to end up on the final decree. She stated the subordination may be to a water right which is inaccurate. She stated the temporary preliminary decree is often times different than the preliminary decree. She stated a lot of the timely filed claims are erroneous.

Senator Grosfield asked if (i) would read "all valid, timely filed claims and...". Mr. Tweeten stated that was correct. Senator Grosfield asked if a valid, timely filed claim could be held as prima facie evidence and if the changes on the claim throughout the process would be held as prima facie evidence. Don MacIntyre, Department of Natural Resources (DNR) stated the claim is prima facie evidence of the validity of the claim. He stated the water court has the authority to "pare down" the rights in a temporary preliminary decree. He stated the amendment before the Committee is intended to make the water right subordinate, but the subordination clause is unenforceable until the final decree is entered.

Motion:

Senator Grosfield moved SB 310 be AMENDED (Change (i) to say "all valid, timely filed claims; and").

Discussion:

Ms. Rehberg stated there was still a question as to whether a person would have to approach the court on the rights between two parties. She stated the law could be interpreted to say once the temporary preliminary decree is issued, then the rights are in that decree because they are prima facie evidence. Ms. Rehberg stated the rights of late claims are subordinated to erroneous claims in a decree. She stated there needs to be a way to handle interim disputes, but this was not the method which would do the best job.

Senator Grosfield asked Mr. MacIntyre if there had been past legislation which dealt with the enforceability of temporary, preliminary decrees. Mr. MacIntyre stated there had been legislation which enforced the preliminary decree after it had been through the objection process. Senator Grosfield asked Mr. MacIntyre if all valid, timely filed claims would not be enforceable until a temporary preliminary decree has gone through the objection phase. Mr. MacIntyre stated the rule is a general rule and there were exceptions. He stated the claim has to be a valid, timely filed claim.

Ms. Rehberg stated "validity" needed to be defined. She stated the process needed to be defined also.

Representative Brandewie stated if people were not subordinated to timely filed claims, then nothing would protect the people who have filed a timely filed claim. He stated (i) should read "all timely filed claims; and". He stated the term "valid" needed to be defined.

Senator Rea stated that until the final decrees are filed, there is no indication of what is valid.

Mr. Tweeten stated the deletion of the word "valid" would imply a person is subordinated to a claim whether it is valid or not.

Vote:

The motion CARRIED 5 to 1 with Senator Rea voting NO.

Discussion:

Senator Grosfield asked Mr. Person about amendment #42. Mr. Person stated the change in the amendment was from December 31, 1993 to July 1, 1999. He stated the reason for the change was because it related to another section of law which addressed the filing of rights. Mr. Person stated another amendment which had

been changed was amendment #15. He stated amendment #15 addressed the filing location of the Court House and the DNRC offices and had to be changed to coordinate with the filing period deadline.

Motion/Vote:

Senator Grosfield moved SB 310 be AMENDED (Amendment #15). The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Grosfield moved SB 310 be AMENDED (Amendment #42). The motion CARRIED UNANIMOUSLY.

Motion:

Representative Anderson moved SB 310 be AMENDED (SB031019.ARP, Exhibit #2).

Discussion:

Mr. MacIntyre stated the amendments require the notices be maintained in locations. He stated the amendment would not create affirmative duty for the Department to ensure the posting of the notices. He stated the notices will just be made available for posting and once it is posted it should remain posted throughout the period of time. He stated the removal of the posted notice is not regarded as failure of notice. He stated the purpose of the amendment was to provide insurance that the notice will be posted.

John Blomquist, Plaintiff's Attorney for water users in the Clark Fork drainage basin, stated the amendment is to protect his clients. He stated his clients are charging the defendant with the use of water without a valid water right. He stated the defendant does not have an existing water right claim. He stated the amendment would not allow the new law to affect current judicial proceedings on the action. He stated late water right claims are going to be allowed under SB 310. Mr. Blomquist stated if the defendants were allowed to file a late water right claim, the case would be delayed for an unnecessary amount of time. He stated he had discussed the amendment with the AG and various members of the Committee and had no opposition.

Mr. Shanahan, defendant's attorney in the above stated case stated he was uncertain if the amendment would fall under the severability clause. He stated his client had diverted water into a pond and there was a damages claim regarding water rights. He stated the new amendments would allow for adjudication of the validity of the water rights in the pending action. He stated the proposed amendment would create a special piece of legislation which would deny one person any benefits from the law.

Mr. Tweeten stated his Department had no position on the situation or the legislation. He stated the severability clause would allow for the legislation to completely fail if Mr. Blomquist were to win the legal battle and the legislation to be enforced if Mr. Shanahan were to win the legal battle. He stated the only thing which will be removed will be the severance clause. Mr. Tweeten stated the amendment addresses proceedings which were begun before the effective date of the act. He stated the language should be changed to "passage and approval" rather than the effective date. He stated the reason for the "passage and approval" language would be to avoid a rush of people filing suits before the effective date.

Mr. Blomquist stated "passage and approval" was included in his amendment.

Mr. Shanahan stated his clients were claiming water rights by "use claim" and they were not going to claim the water rights after the legislation passed.

Representative Brandewie stated he would like the Committee to know the amendment was to include "passage and approval".

Senator Doherty stated there should be a severability clause inserted with the amendment.

Mr. Person stated the severability clause already introduced would cover the amendment.

Senator Rea stated he had an amendment which would address the issue.

Senator Grosfield stated the severability language was plain and non-severability only covered Section 4. Senator Grosfield pointed out the amendment was numbered Section 1 and should be numbered Section 10.

Mr. Person stated the new section would be numbered section 11 because the new claim study was the new section 10.

Representative Anderson stated the amendment was good because the parties to the action were addressing the law as it stood at the commencement of the action.

Vote:

The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Rea provided an amendment (Exhibit #3) and reviewed it with the Committee.

Motion:

Senator Rea moved SB 310 be AMENDED (Exhibit #3).

Discussion:

Senator Grosfield stated the amendment should include the word "late" before the word "claims".

Ms. Rehberg stated the intention of the amendment was to protect the state land claims which have not been filed and allow the board to review late claims by the state and the claims' effects on the revenue.

Senator Grosfield stated there was a timing problem because the deadline is July 1, 1996 and the study has to be done by December 31, 1995. He stated the Board would not have the ability to review every claim in that time.

Ms. Rehberg stated the Board would not analyze each one specifically, but would make an overview of the state claims.

Senator Grosfield asked what trust responsibilities were being referred to in section (i). Ms. Rehberg stated the school trust would be the primary trust, but there may be other trust responsibilities which may be included.

Representative Brandewie stated the Board will not have the time to review all of the claims because they already have such a heavy work load. Representative Brandewie stated the Water Policy Committee (WPC) has to figure out if the late claim is fair before they determine all of the implications.

Representative Anderson stated the WPC will study the claims and the amendment would give them guidelines to apply to their studies.

Representative Brandewie stated the legislature was giving the WPC too much to do. He stated the people with the problems should have to make the studies and present the problems to the WPC.

Representative Bachini stated the municipalities and the counties would work with the WPC in their duties so the burden would not be that heavy.

Senator Rea stated the information is available and the amendment would provide for a comprehensive study and provide the information to a large group of people.

Senator Doherty asked Senator Rea if he would accept a friendly amendment of the word "late" before the word "claims". Ms. Rehberg stated the amendment would be better if it read "from the State's failure to file claims to existing water rights on or

before April 30, 1982." Senator Rea conceded.

Vote:

The motion CARRIED UNANIMOUSLY.

Discussion:

Senator Rea offered a substitute amendment to amendment #36 (Exhibit #4) and reviewed the amendment with the Committee.

Senator Grosfield asked Senator Rea if the amendment addressed existing compacts versus future compacts. Senator Rea stated that was correct.

Motion:

Senator Rea moved SB 310 be AMENDED (Exhibit #4).

Discussion:

Senator Grosfield stated he opposed the amendment because the Senate had passed the National Park Service Act and the compact would be effective on approval by three different departments. He stated the effective date is the date on which the last person signs the compact. He stated the effective date of the Act would probably fall after the effective date of SB 310. He stated the Act has specific language which states it will not be affected by late claims. Senator Grosfield stated there was also an issue of other compacts which would be affected by the amendment offered by Senator Rea. He stated there could be a problem with trying not to subordinate future claims with other federal agencies.

Representative Brandewie stated he agreed with Senator Grosfield. He stated it was critical to keep the adjudication process within Montana and not take the chance of losing the process to the Federal government. He stated he could not support the amendment raised by Senator Rea.

Senator Rea stated he was trying to represent the citizens of Montana.

Vote:

The motion FAILED 2 to 4 with Senator Rea and Representative Anderson voting YES and the remaining members of the Committee voting NO.

Discussion:

Senator Rea presented the Committee with amendments to section f of amendment #36 (Exhibit #5). He stated the amendment would extend the deadline to "a reasonable period of time following April 30, 1982." He stated there were cases where filings were

sent and not received by April 30, 1982. He stated a water judge should be able to decide if it is reasonable time and consider the circumstances why the filings were not in to the court.

Representative Brandewie stated the "reasonable length of time" would be one day from anywhere in Montana. He stated May 7 is seven days after the deadline of April 30. He stated 7 days is a definitive and reasonable time period.

Mr. Tweeten stated the intention of the section was to protect people whose filings were postmarked on or before April 30, 1982.

Mr. Person stated the proposal was to state the section positively.

Senator Grosfield stated May 7 is the exact date and should not be changed. He stated the seven day allowance was for out of state mailings.

Representative Bachini asked if the Committee was going to agree on a date or specified time.

Representative Brandewie proposed an amendment which would make the deadline May 7 if it was mailed within the state and May 14 if it was mailed from out of the state.

Mr. Tweeten stated the amendment would be an appropriate subject to be included in the study.

Senator Grosfield stated he felt the study was a good idea.

Motion/Vote:

Senator Rea moved SB 310 be AMENDED (Exhibit #5). The motion FAILED with Senator Rea voting YES and the remaining members of the Committee voting NO.

Discussion:

Senator Grosfield stated it was very important for the Board to address the issue raised in the final amendment proposed by Senator Rea. He stated the compact passed by the Committee protected existing and future rights.


Representative Anderson stated the final amendment would have retroacted SB 310 and put it back to where it had begun. He stated SB 310 allows for the protection of the people through the compact agreements.

Motion/Vote:

Representative Brandewie moved to ADOPT the AMENDMENTS and to PREPARE THE FREE CONFERENCE COMMITTEE REPORT. The motion CARRIED on Roll Call Vote.

ADJOURNMENT

Adjournment: 5:50 p.m.



SENATOR STEVE DOHERTY Chair



KRISTIE WOLTER, Secretary

SD/klw

(FREE) CONFERENCE COMMITTEE

SENATE BILL

#

SB 316:

DATE 4.20.93

PRESENT

ABSENT

EXCUSED

[illegible]

ROLL CALL VOTE

(FREE) CONFERENCE COMMITTEE > BILL NO. SB 310

DATE 4/20/93 TIME 4:00 A.M. P.M.

NAME

YES

NO

[illegible]

R. WOLTER
SECRETARY

Sen Dorchester
CHAIR

MOTION: Committee Report Be Adopted

Free Conference Committee
on Senate Bill No. 310
Report No. 1, April 21, 1993

Page 1 of 7

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 310, met and considered: Senate Bill No. 310 as amended. We recommend that Senate Bill No. 310 (reference copy - salmon) be amended as follows:

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"

Following: "CLAIMS;"

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

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"

ADOPT

REJECT

881414CC Sma

9. Page 8, line 18.

Strike: "RIGHTS"

10. Page 8.

Following: line 18.

Insert: "Additionally, the legislature directs 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."

11. Page 10, line 16.

Following: "A CLAIM"

Insert: "to an existing right"

12. Page 10, lines 24 and 25.

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

13. Page 13, line 17.

Following: "A CLAIM"

Insert: "to an existing right"

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

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

15. Page 18, line 2.

Following: "state"

Insert: "and to be maintained in that location through July 1, 1996"

16. Page 18, line 11.

Strike: "person who failed to file a"

17. Page 18, line 12.

Following: "right"

Insert: "not filed with the department"

18. Page 18, lines 12 and 13.

Strike: "file such claim"

Insert: "be filed"

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 through page 21, line 2.

Following: "1982" on line 25

Strike: the remainder of subsection (b) through "1982" on page 21, line 2

33. Page 21, line 5.

Strike: "ASSERTING"

Insert: "filing"

34. Page 22, lines 9 through 13.

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

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

35. Page 22, line 15.

Following: "BY THE WATER JUDGE"

Insert: "or is otherwise without merit"

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

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

Insert: "(e) a right represented in a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;

(f) unless a late claim either 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, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the claim is, in addition, subordinate to:

(i) rights represented in all valid, timely filed claims; and

(ii) rights represented in 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."

37. Page 24, line 18.

Strike: "\$100"

Insert: "\$150"

38. 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)"

39. Page 24, line 21.

Strike: "IF" through "THE"

Insert: "The"

40. 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"

41. Page 24, line 23.

Strike: "FEE"

Insert: "assessment"

42. Page 25, lines 4 through 6.

Strike: "the entry" on line 4 through "filed" on line 6

Insert: "a date to be established by the department by rule, but no later than July 1, 1999"

43. 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, shall 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;
- (g) the potential increased costs to the state and to late and timely claimants;
- (h) potential losses in revenue to the state resulting from the state's failure to file claims to existing water rights on or before April 30, 1982;

(i) implications involving the state's trust responsibilities;

(j) potential litigation against the state by private parties; and

(k) impacts on municipal and county governments resulting from late claims.

(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."

NEW SECTION. Section 11. Saving clause. [This act] does not affect proceedings that were begun before [passage and approval of this act] in which relief for damages have been sought based upon the diversion, impoundment, or withdrawal of water without a water right established under state law.

Renumber: subsequent sections

44. Page 39, line 8.

Following: "SEVERABILITY"

Insert: "-- partial nonseverability"

Following: "."

Insert: "(1)"

45. 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."

Page 7 of 7

46. Page 39, lines 14 through 20.
Strike: section 12 in its entirety
Renumber: subsequent section

And that this Free Conference Committee report be adopted.

For the Senate:

Steve Doherty
Senator Doherty, Chair

Lorent's Grosfield
Senator Grosfield

Senator Rea

For the House:

Shiell W. Anderson
Representative S. Anderson, Chair

Bob Bachini
Representative Bachini

Ray Brandewie
Representative Brandewie

Am. Coord.
Sec. of Senate

Amendments to Senate Bill No. 310
Reference Copy

Requested by Free Conference Committee
For the Committee

Prepared by Robert Person
April 20, 1993

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SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 4/20/93

BILL NO. SB 310

Insert: "Additionally, the legislature directs 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."

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there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the claim 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."

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Strike: "\$100"

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38. 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)"

39. Page 24, line 21.

Strike: "IF" through "THE"

Insert: "The"

40. 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"

41. Page 24, line 23.

Strike: "FEE"

Insert: "assessment"

42. Page 25, lines 4 through 6.

Strike: "the entry" on line 4 through "filed" on line 6

Insert: "a date to be established by the department by rule, but no later than July 1, 1999"

43. 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, shall 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

44. Page 39, line 8.

Following: "SEVERABILITY"

Insert: "-- partial nonseverability"

Following: "."

Insert: "(1)"

45. 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."

46. Page 39, lines 14 through 20.

Strike: section 12 in its entirety

Renumber: subsequent section

PAGES WITH CHANGES

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
 KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
 WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
 GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
 SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
 TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING--FOR--THE
 ACCEPTANCE--OF--STATEMENTS-OF-CLAIM-TO-EXISTING-WATER-RIGHTS
 FILED--AFTER--5--P.M.7--APRIL--307--19827---ESTABLISHING---A
 REBUTTABLE-PRESUMPTION-OF-ABANDONMENT-FOR-SUCH-WATER-RIGHTS7
 PROVIDING---FOR---THE---ESTABLISHMENT--OF--A--PROCEDURE--FOR
 ADJUDICATING--THOSE--RIGHTS7--PROVIDING---A---DEADLINE---FOR
 ACCEPTANCE---OF---STATEMENTS--OF--CLAIM7--AMENDING--SECTIONS
 85-2-2217-85-2-2267-AND--85-2-2317--MCA7--AND--PROVIDING--AN
 IMMEDIATE--EFFECTIVE--DATE--AND--A-RETROACTIVE-APPLICABILITY

DATE. PROVIDING FOR THE ^{(1) CONDITIONAL} REMISSION OF ^{(1) CERTAIN} THE FORFEITURE OF A
 CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER ^{(2) DETERMINED BY THE NEVADA SUPREME COURT TO HAVE BEEN FORFEITED} FORFEITED
 PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING

^{(3) LATE} OF A CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION;
 PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE ^{(4) LATE} CLAIMS;
 PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN
 REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF
^{(5) LATE} SUCH CLAIMS; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213,

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

1 WHEREAS, IT HAS COME TO THE ATTENTION OF THE LEGISLATURE
 2 THAT THE FORFEITURE OF WATER RIGHTS FOR FAILURE TO TIMELY
 3 FILE A CLAIM HAS IN SOME INSTANCES CAUSED HARDSHIP, AND THE
 4 LEGISLATURE ACCORDINGLY DESIRES TO PROVIDE WATER RIGHTS
 5 CLAIMANTS WITH ONE MORE OPPORTUNITY TO ^{(C) FILE} ASSERT A WATER RIGHTS
 6 CLAIM IN THE GENERAL ADJUDICATION; AND

7 WHEREAS, IN SO DOING, THE LEGISLATURE RECOGNIZES THAT
 8 THE ADJUDICATION PROCESS WILL NOT BE COMPLETED FOR MANY
 9 YEARS BUT THAT A SUBSTANTIAL AMOUNT OF PROGRESS HAS ALREADY
 10 OCCURRED IN THE ADJUDICATION, SPECIFICALLY IN THE AREA OF
 11 WATER RIGHTS COMPACTS WITH INDIAN TRIBES AND THE FEDERAL
 12 GOVERNMENT AND IN DECREES AND STIPULATIONS INVOLVING
 13 INDIVIDUAL CLAIMANTS, AND THUS THE LEGISLATURE BELIEVES THAT
 14 IT IS NECESSARY TO ENSURE THAT PARTIES WHO ^{(7) HAVE BEEN RECOGNIZED AS HAVING} FILED CLAIMS ON
 15 OR BEFORE APRIL 30, 1982, AND HOLDERS OF FEDERAL RESERVED
 16 WATER RIGHTS ARE NOT ADVERSELY AFFECTED BY THE INCLUSION OF
 17 NEW PARTIES IN THE ADJUDICATION BY SUBJECTING THE RIGHT TO
 18 FILE THOSE CLAIMS IN REMISSION TO CERTAIN TERMS AND
 19 CONDITIONS; AND

20 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE PROTECTION
 21 FOR TIMELY FILED CLAIMANTS FROM INCURRING ADDITIONAL COSTS
 22 OR FROM BEING ADVERSELY AFFECTED BY JUSTIFIABLE RELIANCE ON
 23 THE PRESUMPTION OF ABANDONMENT; AND

24 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE A CONCLUSIVE
 25 ADJUDICATION OF EXISTING WATER RIGHTS; AND

Additionally, the legislature directs 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.

SB 0310/04

1 WHEREAS, THE LEGISLATURE RECOGNIZES THAT ACCORDING A
2 PRIVILEGE TO FILE ADDITIONAL STATEMENTS OF CLAIM PRESENTS A
3 POTENTIAL FOR ABUSE BY THOSE WHO MAY ATTEMPT TO REFILE
4 PREVIOUSLY ADJUDICATED CLAIMS, AND THE LEGISLATURE THUS
5 BELIEVES THAT THE COURTS SHOULD DEAL HARSHLY WITH ANY ABUSES
6 BY SUCH MEASURES AS, WITHOUT LIMITATION, THE IMPOSITION OF
7 SANCTIONS UNDER RULE 11, MONTANA RULES OF CIVIL PROCEDURE;
8 AND

9 WHEREAS, THE LEGISLATURE DETERMINES THAT THE DEADLINE
10 FOR FILING WATER RIGHT CLAIMS AS PROVIDED IN THIS BILL
11 APPROPRIATELY BALANCES THE INTERESTS AT STAKE IN THE
12 ADJUDICATION.

13 THEREFORE, THE LEGISLATURE FINDS IT IS APPROPRIATE TO
14 MAKE THE FOLLOWING AMENDMENTS TO SECTIONS 85-2-102,
15 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234,
16 85-2-237, AND 85-2-306, MCA, IN ORDER TO PROVIDE FOR THE
17 ACCEPTANCE OF ADDITIONAL STATEMENTS ^{(9) LATE CLAIMS} ^{(8) THE U} OF CLAIM TO EXISTING- A OF
18 WATER RIGHTS UNDER THE CONDITIONS SET FORTH IN THIS BILL.

19 ⁽¹⁰⁾
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 (Refer to Introduced Bill)

22 Strike everything after the enacting clause and insert:

23 **Section 1.** Section 85-2-102, MCA, is amended to read:

24 "85-2-102. (Temporary) Definitions. Unless the context
25 requires otherwise, in this chapter the following

1 the place of diversion, the place of use, the purpose of
2 use, or the place of storage.

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

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

8 (8) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

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

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

16 (11) "LATE CLAIM" MEANS A CLAIM ^{(10) to an existing right} ~~FORFEITED~~ PURSUANT TO
17 THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

18 ~~(11)~~ (12) "Permit" means the permit to appropriate issued
19 by the department under 85-2-301 through 85-2-303 and
20 85-2-306 through 85-2-314.

21 ~~(12)~~ (13) "Person" means an individual, association,
22 partnership, corporation, state agency, political
23 subdivision, the United States or any agency thereof, or any
24 other entity. ⁽¹²⁾ For purposes of 85-2-221(3), person includes
25 predecessors in interest.

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

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

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

9 (7) "Department" means the department of natural
10 resources and conservation provided for in Title 2, chapter
11 15, part 33.

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

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

17 (10) "LATE CLAIM" MEANS A CLAIM ^{(12) to an existing right} FORFEITED PURSUANT TO
18 THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

19 ~~(10)~~ (11) "Permit" means the permit to appropriate issued
20 by the department under 85-2-301 through 85-2-303 and
21 85-2-306 through 85-2-314.

22 ~~(11)~~ (12) "Person" means an individual, association,
23 partnership, corporation, state agency, political
24 subdivision, the United States or any agency thereof, or any
25 other entity. ⁽¹⁴⁾ For purposes of 85-2-221(3), person includes-

1 predecessors in interest. -

2 ~~(12)~~(13) "Political subdivision" means any county,
3 incorporated city or town, public corporation, or district
4 created pursuant to state law or other public body of the
5 state empowered to appropriate water but not a private
6 corporation, association, or group.

7 ~~(13)~~(14) "Salvage" means to make water available for
8 beneficial use from an existing valid appropriation through
9 application of water-saving methods.

10 ~~(14)~~(15) "Waste" means the unreasonable loss of water
11 through the design or negligent operation of an
12 appropriation or water distribution facility or the
13 application of water to anything but a beneficial use.

14 ~~(15)~~(16) "Water" means all water of the state, surface
15 and subsurface, regardless of its character or manner of
16 occurrence, including but not limited to geothermal water,
17 diffuse surface water, and sewage effluent.

18 ~~(16)~~(17) "Watercourse" means any naturally occurring
19 stream or river from which water is diverted for beneficial
20 uses. It does not include ditches, culverts, or other
21 manmade waterways.

22 ~~(17)~~(18) "Water division" means a drainage basin as
23 defined in 3-7-102.

24 ~~(18)~~(19) "Water judge" means a judge as provided for in
25 Title 3, chapter 7.

1 a conspicuous location in each county courthouse and
 2 department field office in the state. ⁽¹⁵⁾ and to be maintained in that location through July 1, 1996

3 (v) It may also, in its discretion, provide notice in
 4 any other manner that will effectuate the purposes of
 5 85-2-221(3).

6 (b) The water court shall include notice of 85-2-221(3)
 7 in all notices, decrees, or orders issued pursuant to
 8 85-2-231 or 85-2-232 after [the effective date of this act]
 9 until July 1, 1995 1996.

10 (3) Notice given in accordance with subsection (2) must
 11 at a minimum indicate that any person who failed to file ⁽¹⁶⁾ a
 12 claim of existing right ^{(17) not filed with the department} before April 30, 1982, may file such
 13 ^{(18) be filed} claim by physically filing it with the department on or
 14 before July 1, 1995 1996, or sending it by United States
 15 mail, postmarked on or before July 1, 1995 1996.
 16 Additionally, the notice must indicate that UNDER 85-2-226,
 17 ⁽¹⁹⁾ AS—INTERPRETED BY THE MONTANA SUPREME COURT, a failure to
 18 file or mail the claim results in the forfeiture for all
 19 time of any existing rights to the use of water that are not
 20 claimed in accordance with the provisions of 85-2-221."

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

22 "85-2-221. Filing of claim of existing water right ⁽²⁰⁾ ⁽²¹⁾ - filing late claim (1)

23 A person claiming an existing right, unless exempted under
 24 85-2-222 or unless an earlier filing date is ordered as
 25 provided in 85-2-212, shall file with the department no

1 later than June 30, 1983, a statement of claim for each
2 water right asserted on a form provided by the department.

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

10 (3) Subject to certain terms and conditions, the
11 legislature intends to provide for the remission of the
12 forfeiture of existing rights to the use of water caused by
13 the failure to comply with subsection (1). Accordingly, WITH
14 RESPECT ONLY TO A BASIN THAT HAS NOT BEEN CLOSED TO FURTHER
15 APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE
16 LEGISLATURE UNDER PART 7 OF THIS CHAPTER PRIOR TO [THE
17 EFFECTIVE DATE OF THIS ACT], ⁽²¹⁾ a person who failed to file a
18 ⁽²²⁾ claim of an existing water right ⁽²²⁾ not filed with the department on or before April 30,
19 1982, may ⁽²³⁾ file ⁽²⁴⁾ with the department ⁽²⁴⁾ a claim of an existing
20 water right on or before July 1, 1995 1996, on forms
21 provided by the department. This section is not intended to
22 prevent ⁽²⁵⁾ the filing of a late claim in addition to a person who may have filed a claim of an existing
23 water right ⁽²⁶⁾ filed on or before April 30, 1982, ⁽²⁷⁾ from filing an
24 additional claim under this section if and to the extent
25 that the additional right claimed is not the same as the

(28) and is not an abandoned right

1 right that was the subject of a previous claim. Claims must
 2 be physically submitted to the department or sent by United
 3 States mail, postmarked on or before the deadline set forth
 4 in this subsection, in order to be considered timely. (29) Within
 5 30--days of receipt, the department shall file copies of
 6 timely filed claims with the appropriate clerk of court as
 7 provided in subsection (2), and these ^{The} claims are then
 8 subject to adjudication by the district courts as any other
 9 claim of existing right. The claimant is then subject to all
 10 rights and obligations of any other party, except that:

11 (a) any--claimant--who--has--filed--a--claim--after--April--30,
 12 1982,--but--on--or--before--July--1, 1995 1996,--must--have--the
 13 claim A LATE CLAIM MUST BE incorporated into the
 14 adjudication, subject to all prior proceedings,--and--does
 15 not,--except--as--otherwise--provided--in--85-2-237,--have--the
 16 right--to--reopen--decrees--previously--entered--or--to--object--to
 17 matters--previously--determined--on--the--merits--by--the--water
 18 court--after--objection,--and THAT HAVE TAKEN PLACE PRIOR TO
 19 THE INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION. ^{date of filing}

20 (B) THE PERSON ASSERTING ^{(31) filing} A LATE CLAIM MAY REQUEST THAT
 21 A DECREE PREVIOUSLY ENTERED BE REOPENED OR MAY OBJECT TO
 22 MATTERS PREVIOUSLY DETERMINED ON THE MERITS BY THE WATER
 23 COURT ONLY TO THE EXTENT THAT THE REQUEST OR OBJECTION IS
 24 OTHERWISE AUTHORIZED BY LAW AND IS BASED ON A CLAIM OF WATER
 25 RIGHT FILED ON OR BEFORE APRIL 30, 1982, ⁽³²⁾ UNLESS THE PERSON--

1 ASSERTING A LATE CLAIM ALSO HAS FILED A CLAIM ON OR BEFORE
 2 APRIL 30, 1982;

3 (b)(C) any claimant who has filed a claim after April
 4 30, 1982, but on or before July 1, 1995 1996, A PERSON
 5 ASSERTING^{(33) filing} A LATE CLAIM does not have the right or standing
 6 to object to any water rights compact reached in accordance
 7 with part 7 of this chapter that is ratified by the
 8 legislature prior to [the effective date of this act] EXCEPT
 9 TO THE EXTENT THAT RIGHT OR STANDING TO OBJECT EXISTS BASED
 10 ON A CLAIM OF WATER RIGHT FILED ON OR BEFORE APRIL 30, 1982,
 11 or to claim protection FOR THE RIGHT REPRESENTED IN THE LATE
 12 CLAIM under any provision of such a compact that
 13 subordinates the use of a water right recognized in the
 14 compact to a right recognized under state law; and

15 (c) any claimant who has filed a claim after April 30,
 16 1982, but on or before July 1, 1995 1996, is liable for any
 17 costs and damages to any other claimant caused by the
 18 latter's actions in reasonable reliance upon the former's
 19 failure to file a claim on or before April 30, 1982, and
 20 upon the conclusive presumption of abandonment provided in
 21 85-2-226, and

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

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

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

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

(34) under 85-2-233, finds
(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
(35) or is otherwise without merit
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;

(36) (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

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

(f) Unless a late claim either 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

1, ---1998..

2 ACTION I: there is evidence of execution on or before April 30, 1982,
3 THE WAT: and actual receipt by the department on or before May 7,
4 THE LATE: 1982, the claim is, in addition, subordinate to:
5 DAMAGE. (i) all timely filed claims finally adjudicated to
6 (F) valid; and
7 ASSERTED (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."

8 30, 1982, TO A RESERVED WATER RIGHT COMPACT NEGOTIATED OR TO
9 A PERMIT ISSUED PURSUANT TO THIS CHAPTER IF AND TO THE
10 EXTENT THAT AN OBJECTION IS FILED UNDER THIS PART BY A
11 PERSON ENTITLED TO SUBORDINATION BY JULY 1, 1998, AND THE
12 OBJECTOR PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE
13 OBJECTOR HAS REASONABLY RELIED TO THE OBJECTOR'S DETRIMENT
14 UPON THE FAILURE TO FILE THE EXISTING RIGHT ON OR BEFORE
15 APRIL 30, 1982, AND THE CONCLUSIVE PRESUMPTION OF
16 ABANDONMENT PROVIDED IN 85-2-226.

17 (4) The department and the district courts may not
18 accept any statements of claim physically submitted or
19 postmarked after July 1, 1995 1996, AND SHALL NOTIFY A
20 PERSON WHO FILES A CLAIM AFTER JULY 1, 1996, THAT THE CLAIM
21 WILL NOT BE ACCEPTED."

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

23 "85-2-225. Filing fee -- processing fee for remitted
24 claims. (1) Each claim filed under 85-2-221 or 85-2-222 must
25 be accompanied by a filing fee in the amount of \$40, subject

1 to the following exceptions:

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

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

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

15 (3) (a) Except as provided in subsection ~~(3)(b)~~ (3)(C),
16 in addition to the filing fee set forth in subsection (1),
17 each statement of claim filed under 85-2-221(3) must be
18 accompanied by a processing fee in the amount of \$300 ⁽³⁷⁾ \$150
19 WHICH MUST BE DEPOSITED IN THE WATER RIGHTS ADJUDICATION
20 ACCOUNT. ⁽³⁸⁾

21 (B) IF AN OBJECTION IS FILED TO A LATE CLAIM, ⁽³⁹⁾ THE
22 JUDGE SHALL ASSESS AN ADDITIONAL FEE OF \$200 ⁽⁴⁰⁾ AGAINST THE
23 PERSON ASSERTING THE LATE CLAIM, ^{n.c. (41) assessment} WHICH FEE MUST BE DEPOSITED ^{n.c.}
24 IN THE WATER RIGHTS ADJUDICATION ACCOUNT. (no change in brackets)

25 ~~(b)(C)~~ For a statement of claim that was filed after

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)

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

1 April 30, 1982, but prior to [the effective date of this
2 act] or for a statement of claim filed by a state agency,
3 the processing fee provided for in subsection (3)(a) must be
4 paid on or before the⁽⁴⁷⁾ entry of the temporary preliminary
5 decree or the preliminary decree for the basin for which the
6 claim is filed."

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

8 "85-2-226. Abandonment by failure to file claim. The
9 failure to file a claim of an existing right as required by
10 85-2-221(1) establishes a conclusive presumption of
11 abandonment of that right."

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

13 "85-2-234. Final decree. (1) The water judge shall, on
14 the basis of the preliminary decree and on the basis of any
15 hearing that may have been held, enter a final decree
16 affirming or modifying the preliminary decree. If no request
17 for a hearing is filed within the time allowed, the
18 preliminary decree automatically becomes final, and the
19 water judge shall enter it as the final decree.

20 (2) The terms of a compact negotiated and ratified
21 under 85-2-702 must be included in the final decree without
22 alteration unless an objection is sustained pursuant to
23 85-2-233; provided that the court may not alter or amend any
24 of the terms of a compact except with the prior written
25 consent of the parties in accordance with applicable law.

1 applying for or prior to receiving a permit under rules
2 adopted by the board under 85-2-113."

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

7 ~~invalid.~~

8 ~~NEW SECTION. SECTION 10. SEVERABILITY.~~ ⁽⁴³⁾ *See NEW SECTION 10 next page* ⁽⁴⁴⁾ *partial nonseverability* ⁽¹⁾ IF A PART OF

9 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
10 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
11 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
12 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
13 SEVERABLE FROM THE INVALID APPLICATIONS.

14 ⁽⁴⁵⁾ ~~NEW-SECTION. SECTION 11. CONTINGENT VOIDNESS. IF A~~ ⁽⁴⁶⁾
15 PART OF [THIS ACT] IS FOUND TO ESTABLISH A CONDITION UNDER
16 WHICH THE PROVISIONS OF TITLE 85 DO NOT PROVIDE FOR A
17 GENERAL STREAM ADJUDICATION FOR WHICH THE UNITED STATES HAS
18 WAIVED ITS IMMUNITY FROM SUIT UNDER 43 U.S.C. 666 OR IF A
19 PART OF 85-2-221(3)(C), AS AMENDED BY [THIS ACT], IS
20 INVALID, THEN [THIS ACT] IS VOID.

21 ¹³ ~~NEW SECTION. Section 12. Effective date. [This act] is~~
22 effective July 1, 1993.

-End-

(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.

"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, shall 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."

Amendments to Senate Bill No. 310
Reference Copy

Requested by Rep. Anderson
For the Free Conference Committee

Prepared by Robert Person
April 20, 1993

1. Page 39.

Following: line 7

Insert: "NEW SECTION. Section 1. Saving clause. [This act] does not affect proceedings that were begun before [the effective date of this act] in which relief for damages have been sought based upon the diversion, impoundment, or withdrawal of water without a water right established under state law."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 4/20/93

BILL NO. SB 310

AMENDMENTS TO
CONFERENCE COMMITTEE AMENDMENTS TO SB 310

April 20, 1993

Accepted

Amend: Amendment No. 38

Following: Subsection "9"

Insert: "(h) potential losses in revenue to the state of Montana resulting from the state's failure to file claims to existing water rights; *on or before Nov 30 1982*

- (i) implications involving the state's trust responsibilities;"
- (j) potential litigation against the state by private parties;"
- (k) impacts on municipal and county governments resulting from late claims."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 4/20/93

SB 310

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rea

Prepared by Michael S. Kakuk
April 20, 1993

Substitute Amendment No. 36

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 and ratified prior to [the effective date of this act];

(f) unless a late claim either 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, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the claim 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."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 4/20/93

BILL NO. SB 310

Amendments to Senate Bill No. 310
Reference Copy

Requested by Sen. Rea

Prepared by Michael S. Kakuk
April 20, 1993

Institute Amendment No. 36

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

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

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

(f) unless a late claim either was placed in the
United States mail and postmarked on or before April
30, 1982, or, if there is evidence of execution on or
before April 30, 1982, and actual receipt by the
department within a reasonable period of time following
April 30, 1982, or within a reasonable period of time
following the date of discovery that the claim had not
been received by the department on or before April 30,
1982, the claim 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."

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 4/20/93

BILL NO. SB 310