

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on February 17, 1995,
at 12:10 p.m.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Gerry Devlin, Vice Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Don Hargrove (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council
Jennifer Gaasch, Committee Secretary

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

Committee Business Summary:

Hearing: SJR 17, SB 394, and SB 387
Executive Action: SB 394, SJR 17, and SB 389

{Tape: 1; Side: A}

HEARING ON SJR 17

Opening Statement by Sponsor:

SENATOR LOREN JENKINS. SD 45, Big Sandy, stated that outside of the Big Sandy there is an area called Lonesome Lake. In 1919 there was an irrigation project and Lonesome Lake would be the water source. Now the Bureau of Reclamation wants to return primacy to a different agency. The Resolution says that it has been studied by Duck's Unlimited and it is not a wetland area. There is only 30% chance of receiving any amount of water in the year. It has been filled only one time that he can remember. SJR asks to let the Bureau of Land Management (BLM) be the primary agency managing the complex to go ahead and be able to

graze it and farm it as it is now. He recommended a do pass from the committee.

Proponents' Testimony:

Lorna Frank, representing the Montana Farm Bureau, said they supported SJR 17. They were concerned that if the BLM was not allowed to go ahead and take primacy, there could be a large impact on the community. They feel it would take around \$.5 million out of the economy. She urged a do pass recommendation.

Opponents' Testimony:

Jim Richards, representing the Montana Wildlife Federation, said Lonesome Lake had potential important wildlife values. It is a spring staging area for tens of thousands of pintails. This is a spring time wildlife value and the lake has water in it virtually every spring. He said it was near 100% opportunity of having water when it is really important. There has been severe grazing on that land. The Wildlife Federation was not interested in removing the grazing, but there was going to be a need for some reduction. They think the BLM overstates the losses that the community will suffer.

Janet Ellis, representing the Montana Audubon Legislative Fund, stated they had also been working on the Lonesome Lake issue. They were interested in seeing if they could work out some common ground and SJR does not take that into consideration. She said not all of the statements are not true. They could not support some of those statements. On page 2, lines 10 and 11, it talks about spiking up the club moss stands and seeding with tall grass, and one of the beauties of Lonesome Lake is the short grass prairie. She said they recommended a do not pass recommendation.

Stan Fraiser, stated he looked at Lonesome Lake a few years ago. He stated it was already over grazed. It has been mismanaged by the BLM. They would like to see multiple use on this land. He urged a do not pass recommendation.

Informational Testimony:

None

Questions From Committee Members and Responses:

SENATOR GERRY DEVLIN asked **Stan Fraiser** why the Wildlife Federation had not brought a law suit in because of the severe overgrazing. **Stan Fraiser** replied they could not do them all at once.

CHAIRMAN SWYSGOOD said that **Mr. Richards** said there was water in the lake 100% of the time in the spring and your testimony said

it was 30%. He asked **SEN. JENKINS** where the other 70% was. **SEN. JENKINS** replied it was environmental assessment. Everything that was put into SJR was from a book from BLM, Fish, Wildlife and Parks, and Bureau of Reclamation which was put out in October 1993.

SENATOR GREG JERGESON, asked if this was a natural lake. **SEN. JENKINS** replied it was a low land area northwest of Big Sandy. **SEN. JERGESON** asked how it came to be that the BLM and the Bureau of Reclamation has the land? Who owns the land? **SEN. JENKINS** replied the Bureau of Reclamation has had primary jurisdiction over the land under the irrigation project which was started in 1919. They kept the land out of when homesteading since they had the project.

Closing by Sponsor:

SEN. JENKINS replied there had been a few hearings to that and public comment was taken and SJR was to put in the public comment. He urged a do pass recommendation.

HEARING ON SB 394

Opening Statement by Sponsor:

SENATOR GERRY DEVLIN, SD 2, Terry, stated he was bringing SB 394 to the committee which would put the gray wolf back in the codes as a predator. It was taken off in the 1970's. It would make the wolf classified in the codes wherever a predatory animal was mentioned in the codes the wolf would be included. If he comes out of the park and gets into an area where the federal government was to take the wolf off of the list then the wolf could be hunted.

Proponents' Testimony:

Bob Gilbert, representing the Montana Woolgrowers Association, stated they supported the bill. He submitted a newspaper article. **(EXHIBIT #1)** He stated the wolves will be a big problem as the numbers increase for both the sheep and the cattle. They feel they are not an endangered species. Their industry was already plagued by predators. Their loss to predator's was \$1.9 million, and \$1.3 million of that was from coyotes, and they also have problems with mountain lions, bears and other animals. If they gray wolf was to be taken off the list it would be taken off the list from Montana.

Joe Helle, a sheep rancher from Dillon, MT., stated he agreed with Bob Gilbert. He said they graze on land of the national forest and that is only about 40 miles from where the wolves were being released into Yellowstone National Park. SB 394 brings

back the wolf in its true state. It classifies the wolf as the predator it is.

Larry Brown, representing the Agriculture Preservation Association, stated they supported SB 394. They were concerned about the amount of money that was being spent on the wolf. The wolf is the predator that is at the top of the food chain. He stated he was appearing on behalf of **Dick Jones, from Cascade.** He was 95 years old and he said in 1939 he had 85 head of horses and he turned them loose and everyone of them were killed by a pack of wolves.

Lorna Frank, representing the Montana Farm Bureau, stated they believed the wolf should be listed as a predator. It is an excellent bill.

John Bloomquist, representing the Montana Stockgrowers Association, said they supported SB 394 for all of the reasons heard previously.

Opponents' Testimony:

Janet Ellis, representing the Montana Audubon Legislative Fund, stated she was an opponent of the bill because if SB 394 passes they will be guaranteeing the wolf never gets taken off the list. One of the criteria which is in the recovery plan after the wolf is not regulated as a predator. They can make it a game animal, an animal that is trapped, but if it was to be made a predator and open it up for season they will be guaranteeing it never comes off the endangered species list. She said she wanted the list to work and she wanted wolves recovered in the Yellowstone ecosystem and when that happens she wanted them to come off the list. If SB 394 does pass the wolf will never come off the endangered species list.

Stan Fraiser, said when he sees things like this it makes him angry and sad that people could be so selfish and short sighted. He said he could not understand why there was not enough room in Montana for all of us. He said he did not like the section on page 2, lines 18-20, whether the livestock was on the lands of private ownership, the ownership of the state, or the ownership of the United States including open ranges of all lands in or of the public domain. They were talking about something that might benefit a very narrow range of people. He stated there were a lot of other people in the country that the public lands belong to. If a person wants to go out and shoot wolves on their own land, fine, go do it, but leave the public lands alone.

Informational Testimony:

Bob Martinka, representing Montana Fish, Wildlife, and Parks, read his written testimony. (EXHIBIT #2)

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. DEVLIN said the reason for the bill was if the wolf was taken off the list by the United States government he would want people to be able to hunt the animal and keep them out of the livestock. Perhaps the hunters would like to keep the wolf out of the game. He said the North American continent has a lot of wolves. He said he wanted to be able to do the same in Montana as they do in Alaska if the wolf is taken off the list.

EXECUTIVE ACTION ON SB 394

Motion/Vote:

SENATOR BOB PIPINICH MOVED SB 394 DO PASS. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SJR 17

Motion/Vote:

SEN. PIPINICH MOVED SJR 17 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SB 387

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Counter:; Comments: The tape was not recording during the opening statement by the sponsor or the first part of Jan Rehberg's testimony..}

SENATOR TOM BECK, SD 28, Deer Lodge, stated there were three different sections to SB 387. He went through the bill and explained what each one said.

Proponents' Testimony:

(the tape began recording in the middle of the testimony by **Jan Rehberg**. the counter began on 52.1 when the recorder started working.)

Jan Rehberg said they had been working at this since 1982 and are only a fraction of the way through the process. She said they would like to get all of the ideas together and make suggestions to the legislature. They really need to do that to speed up the process and under control. She said that was the need for the advisory committee. (**EXHIBITS #3, #4, #5, and #6** were passed out during **Jan Rehberg's** testimony)

Patty Walker, from **Glenn, Mt.**, read her written testimony.
(**EXHIBIT #7**)

Holly Franz, representing the **Montana Power Company** and herself as a water attorney, stated she would like to address the Water Board Advisory Council. It is time to get something together to help the Water Board out to see if there is a more efficient way to go about the problem. The second provision of the bill having to do with excepting existing decreed rights as is. She said that was a good idea, but she proposed an amendment to the section. (**EXHIBIT #8**) She stated the concern was there was a situation where a very large entity was relying on a decree for thousands of acres of irrigation that did not begin until the 1980's. She said as drafted the laws provision could have very adverse impacts to the distort water users in the Sun River Valley. She said that was the purpose of her amendment.

Peter Wipf, secretary of the **Martinsdale Colony**, stated they lost 18 water claims 6 of which were for irrigation and the other 12 for stock water. The claims are a part of their historic rights. They lost their rights on the part of the DNRC. He said they strongly support the passage of SB 387 so they can reestablish their rights to the water they had for the last 38 years. They bought the land with the water rights and never intended to not file on them. Without the passage of SB 387 they will not have the legal right to the water they have been using.

John Bloomquist, representing the **Montana Stockgrowers Association** and representing himself, a water attorney from **Dillon and Helena, Mt.**, stated on section 5 as **Ms. Franz** pointed out **SEN. BECK** is making an effort to start to address some of the issues which may streamline and get the water adjudication process moving quicker. The Montana Stockgrowers Association supports a court driven adjudication process. He suggested to the present make-up of the advisory committee that there be a district judge who served as a water division judge, be appointed to that committee. A district judge might be a very good addition to that group when rewriting some proceeders. The second thing would be section 6. He said the present language "where the water court shall grant a motion for dismissal" might be a little too constrictive. They may want to change on line 15

the word "shall" to the word "may". He said with those two corrections they have a good bill.

{Tape: 1; Side: B; Approx. Counter: ; Comments: .}

Lyle Richards, said he thought there were a lot of people who were late claimers. They were not taking water from anyone, they already had the water.

Mons Teigen, Helena, Montana, said their law firm filed the stock water claims, but they did not file the irrigation claims. He urged the committee's support on SB 387.

SENATOR LINDA NELSON stated she would like to enter the name of **Echo Garber** as a proponent. She sent a copy of a letter. (EXHIBIT #9)

Opponents' Testimony:

Dan Andrews, President of the Greenfield Irrigation District, read his written testimony. (exhibit #10)

Don Rose, representing Fort Shaw Irrigation District, read his written testimony. (EXHIBIT # 11) He said he objected to the language on page 2.

Chris Tweeten, the Attorney General's appointed representative on the Reserve Water Rights Compact Commission, stated the commission was to negotiate settlements of federal reserve water rights claims for water in the State of Montana. The water rights are held by the United States government either on its own behalf or its own agencies or in trust for the Indian tribes that have reservations within the State of Montana. He said late claims effect their compact negotiations in two different ways. In respect to compacts that have been negotiated and have either been ratified by the legislature or are waiting ratification by the legislature, the negotiation process from the commissions perspective involves making sure all existing rights to water are protected. They do that is by looking at filed claims. He said if late claims were allowed to come into the process after those compacts a negotiated and settled it has the potential to upset the expectations of the part because that actual amount of water that is going to be subject to subordination by the federal government will change if late claims come in and then are not allowed in the adjudication process. He said SB 387 strikes the language from SB 310, which was passed in a previous legislation. The second way late claims cause problems for the compact negotiations, basically extends that problem into the future. As they open negotiations with Indian tribes in the future, they need to be able to know the amount of existing water use. Allowing late claims into that process establishes existing uses as a moving target and they will never be sure what the existing use is effected by late claims. He said they have some amendments to be handed out. (EXHIBIT #12) He said the

amendments were to reestablish the balance that was established in SB 310 in a previous legislature. He said that would be for the protection of existing compacts and the ability to reach compacts in the future. He said they would like to offer the amendments for the committee's consideration.

Lorna Frank, representing the Montana Farm Bureau, stated they have a problem with the first section they have members on both sides of the issue. One of their concerns was with the advisory council. With the advisory council taking a look at the rules, is that really going to speed up the adjudication process. They would like to see the adjudication process completed in an orderly manner and as soon as possible. She said she would be interested in hearing more about how the council was going to work with the judge and how the process was going to be sped up.

Informational Testimony:

None

Questions From Committee Members and Responses:

CHAIRMAN SWYSGOOD asked **Chris Tweeten** if he could make available to the committee the compacts they have completed and the streams and sub basins that are affected by those compacts?

Chris Tweeten replied the compacts themselves are modified in the code books in Title 85 and they could provide the committee with the stream basins that are involved in the compacts. The only one that will not appear in the code book was the one that was recently ratified by the Senate and is on its way over to the House.

SEN. DEVLIN asked to know which one's they were working on currently. **Chris Tweeten** replied the commission was currently well along with negotiations with the Chippewa Creek tribes at Rocky Boy, they expect they will have a compact with them to present to the legislature in 1997. They have been asked to resume negotiations with the Crow tribe and they have had some preliminary discussions with them. They have had some discussions with the BLM over their reserved water rights claims for the Wild and Scenic Missouri River and for the Bear Trap Canyon recreation area. He said there are discussions with the Forest Service as well and are not very well involved at that point. He said they would not have a compact with them any time soon. They have recently been contacted by the Flathead tribes with a request that they try to come up with some type of time table for the reconcondensing of discussions with them about their reserve rights. **SEN. DEVLIN** replied he would be interested in a time table and the projects. **Chris Tweeten** replied he did not know if he could give them a time table beyond what he just described.

CHAIRMAN SWYSGOOD replied for the information for this committee as it concerns raised by the Compact Commission as it relates to the late claim filings in upsetting the compacts that those discussions that are going on with others have not been completed and do not have a bearing on SB 387. They need to see those which have been completed and they need to see those.

SENATOR RIC HOLDEN said when **Mr. Tweeten** was giving his testimony he thought SB 310 had solved the problems, but the testimony heard today it seems as if there are a lot of problems. **Chris Tweeten** replied he was limiting his testimony to the issues as it relates to the Reserve Water Rights Compact Commission. He said Montana was an active participant in the development of SB 310 and they also participated in the interim study. He said all of that participation had been driven by the positions that had been adopted by the issues by the Governor's office. The Governor's office has considered SB 387 and decided not to take a position on it. He said he was only here to talk about the Compact Commission.

SENATOR DON HARGROVE asked **SEN. BECK** his position on the advisory committee. **SEN. BECK** replied the advisory committee was four attorneys and three irrigators. There was the suggestion made to put a district on the committee and he would do that by replacing one of the attorneys with the judge. He said they were going through too much paper work and the committee would maybe cut back on that process.

SEN. JERGESON asked **Jan Rehberg** if she got the list (**EXHIBIT #6**) from the Department of Natural Resources (DNRC)? He asked if there was a similar list at DNRC of those people who did file their claims on a timely basis? **Jan Rehberg** replied she suspected they could generate that if requested. **Bob Harrington, representing DNRC,** replied he would be happy to answer the question. **SEN. JERGESON** said the question related to the number of late claims that are indicated by the list (**EXHIBIT #6**) how many claims were filed by Montana water users and did not miss the deadline? He asked if they knew the total claims filed. **Bob Harrington** replied there were about 213,000 claims that were filed on time. He said so far to date there were roughly 3,500 late claims that have come in since the 1992 deadline. He said there would be an update to that list. He said they could generate a new list.

CHAIRMAN SWYSGOOD asked **Jan Rehberg** to make a comment relating to the Compact Commission. **Jan Rehberg** replied the Compact Commission tries to develop a contract with those who have reserve water rights. The Compact Commission has tried to negotiate those contacts prior to the time when a decree or preliminary decree is issued on those basis. She said the Cheyenne compact, the compact was negotiated and then they set out to see if the people would agree with it. They still have not adjudicated the state water rights in those basins. **Mr. Tweeten** said they look at the water rights that are on file,

however in meetings involving the Cheyenne compact it was disclosed that in looking at those water rights they did look at the late claims that had been filed as well. She said **Mr. Tweeten** said they look at the rights as filed because they are evidence of the claim, however those who have worked in the process recognize that when those claims were filed the DNRC in an effort to protect people said from now on every right they think they might have they should file on it, file on everything. As a result the claims are very extensive and to a certain degree they are overstated. If they are looking at the claims as they were filed there is a great potential that when the decree goes through the actual amount of water that is going to be decreed is going to be less than appears on the claim. It should be determined on a case by case basis is for those basins in which the actual water use comes out less than they anticipated then there would be no harm in allowing the late claims in. If there is a problem the federal government should look at that problem instead of the state Compact Commission.

CHAIRMAN SWYSGOOD asked **Chris Tweeten** to respond to the statements made by **Jan Rehberg**. **Chris Tweeten** said the statute is set up so they have to negotiate before the preliminary decrees come out. At the situation in Cheyenne they did look at all of the file claims and the department had looked at those that had been late claims. They agreed to subordinate their rights to the rights that had been decreed in the Tongue River. He said they were further decreed in SB 176. He said they did not agree to subordinate to any late claims. The problem created by Sb 387 goes beyond that because the compacts would not even have the information about the late claims that were filed at the time and the door would still be open to late claims coming in after the compact had been ratified by the legislature.

CHAIRMAN SWYSGOOD said as far as the Cheyenne are concerned are there any of those adjudicated claims that they agreed to subordinate? Are any of them late claims or could be late claims? **Chris Tweeten** replied no.

SENATOR REINY JABS asked when they adjudicate the compacts do they inform them that there might be some late claims or do they just take them as they are coming in? **Chris Tweeten** replied that everyone knows that there were late claims that had been filed when they were negotiated the Northern Cheyenne because DNRC had them listed. Because of a law in existence at that time the understanding was the late claims were abandoned and forfeited and they did not exist any more and on that basis they agreed to a compact.

CHAIRMAN SWYSGOOD asked as it relates to the uncertainty of what late claims filing decision would be, as related to the adjudication process which was not a completed and the concern expressed by the Compact Commission and other objectors to SB 387 as it relates to the adjudication process not being completed and

that uncertainty would be the same on either case. **Chris Tweeten** replied he did not think so. The agreement with Northern Cheyenne was they would subordinate to the Tongue River Basin to those rights that were decreed in 1911 on the Tongue River provided they were claimed in the adjudication and decreed by the water court. They excluded late claims from the protection of that subordination.

CHAIRMAN SWYSGOOD said he asked the President to put SB 387 on the list that would take more time than transmittal. He said he did not feel comfortable in making a rash decision and this bill will not have to meet the transmittal deadline.

CHAIRMAN SWYSGOOD said because SB 310 was in place when starting negotiations with the Cheyenne and SB 76 was in effect when they started negotiations with the Cheyenne and under SB 76 whatever that law applied, that was what they used for the Cheyenne negotiations. So that was done. The ones that they were having discussions with, and let's say another piece of legislation passes and it has different rules that apply, then would those compacts be negotiated on the legislation that was in effect at that time. **Chris Tweeten** replied they would have no choice, but to do that. The question would be whether the parties they were negotiating with would be interested in negotiating a compact that subordinated their claim to rights on which they would have no notice.

SEN. DEVLIN asked why it took the bill so long to be heard in the Agriculture Committee. **SEN. BECK** said he just put the title in early, the bill was not completed at that time.

Closing by Sponsor:

SEN. BECK replied the fair thing to do for adjudicated water rights, it is unfair they cannot get them back into the process. He said he did not intend to interfere with any of the compacts. They committee could try to extradite the water system. He said he wanted to speed up the process of adjudication. The litigation was the third one. There is a letter there that denied someone the due process of law. He said he was not trying to deny anyone. He was trying to get rid of lawsuits. He said he hoped they could help some people.

EXECUTIVE ACTION ON SB 389

Discussion:

SEN. SWYSGOOD replied there was an amendment offered by **Paul Sihler**. (EXHIBIT #12)

SEN. DEVLIN asked if they had put that in the bill at the last meeting?

Doug Sternberg replied the amendment was never actually offered.

Motion:

SEN. DEVLIN MOVED the amendment (EXHIBIT #12).

Discussion:

Doug Sternberg replied on page 4, line 8, at the very end of that line "The Department of Livestock should require that." and the suggested language was "require that add by January 1 of each year or within 30 days of importation each game farm animal be marked with identification". The first amendment on that page was a clean-up amendment. Amendment number three on page 5, line 5, puts in a specific reference to individual identification numbers. At the beginning of the subsection it says "inspection must be conducted pursuant to the livestock identification procedures in Title 81 and must include the numbers, species, age, sex, and individual identification numbers of game farm animals transferred." On page 6, line 29, following "of" they would insert "game farm" so that it would be clarifying the sale of "game farm" animal parts.

CHAIRMAN SWYSGOOD asked whether the January 1 date was too constrictive?

SEN. NELSON said they would want to change the "prior to January 1" to "within 2 weeks of January 1" to conform with page 6.

SEN. HARGROVE said it seemed to him to be fine the way it was currently in the amendment. January 1 was the reporting period.

SEN. NELSON replied it was something that was suggested by Paul Sihler at the previous meeting.

Paul Sihler said their intent was to make sure that was done by the time the reports were supposed to be in, which is two weeks after January 1.

Dr. Siroky said if someone was to purchase an animal they have 30 days.

CHAIRMAN SWYSGOOD replied the way the amendment was written was fine.

Vote:

The MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. PIPINICH said he did not want to hurt the small game farmer with a large fee.

Doug Sternberg said they would include section 87-411 in the bill. This would say that for a game farm with up to 20 game

farm animals the new fee would be \$200 and the renewal fee would be \$50, from 21-60 game farm animals it would be a \$300 new license fee and \$100 annual renewal, and more than 60 animals would be \$400 for a new license and \$200 for annual renewal.

Motion:

SEN. PIPINICH MOVED the amendments.

Vote:

The MOTION CARRIED 8 to 1 with SENATOR NELSON voting no.

Discussion:

SEN. JERGESON said he had an amendment on page 6, line 16, he would strike "10 days of notification" and insert "a reasonable time". He would put in a new subsection saying "the department shall adopt rules describing and defining "a reasonable time" in that section" On the statement of intent he would add that their definition of " a reasonable time" should take into account seasonal issues. There may be some seasonal issues pertaining to breeding and disease.

CHAIRMAN SWYSGOOD said this section implies if the animal escapes and cannot be recaptured by the owner, this would be dealing with the time frame allowed for the killing of that animal be Fish, Wildlife and Parks (FWP).

Motion:

SEN. JERGESON MOVED the amendment.

Vote:

The MOTION CARRIED UNANIMOUSLY.

Motion:

SEN. DEVLIN MOVED an amendment which would make all fees collected under the new system be split evenly between FWP and the Department of Livestock to carry out the duties they have in implementing the program.

Discussion :

SEN. PIPINICH asked the Department of Livestock to explain their position.

Cork Mortensen replied the Department of Livestock gets a \$5 per capita fee on game farm animals.

SEN. DEVLIN asked how much that brought in per year.

Cork Mortensen replied that would be \$5 times the number of animals in the game farm industry.

CHAIRMAN SWYSGOOD replied it would be about \$15,000 if there were 3,000 animals.

Bob Bachini replied they felt the 50/50 split would be fair because the Department of Livestock would have some expenses beyond what they were charging for.

Paul Sihler replied he was told by **Cork Mortensen** that they had a \$5 per capita fee established by rule and the Board had the authority to raise that fee if their costs were not covered.

CHAIRMAN SWYSGOOD asked **Cork Mortensen** if their rule-making authority to raise that to compensate for the costs.

Cork Mortensen replied the Board of Livestock has the authority to raise the fees on any livestock they are involved in and they are reviewed once per year.

SEN. DEVLIN asked what the formula was by which they could raise the fees. **Cork Mortensen** replied they can raise the fee not over 110% of the previous 3 year average. They do not yet have a 3 year average.

SEN. NELSON replied the Department of Livestock would have some additional expenses with the added responsibilities and they should have a portion of the fees to do that.

SEN. PIPINICH replied he would share the license fee if the Department of Livestock was to share their per capita fee with FWP. He said if they license all 93 farmers at \$200 a piece that would be \$18,600 and the Department of Livestock has \$15,000 from the per capita fee. There would be \$3,000 difference there. If they shared their fees with the permits, they should share their per capita fee with the FWP.

SEN. HARGROVE said the costs would be covered for FWP, and the costs for the Department of Livestock will increase their fees if that will not cover their costs.

SEN. NELSON said when FWP has come out and inspected the game farms, they have brought far too many people and they could cut their expenses a little bit.

CHAIRMAN SWYSGOOD said there was about \$3,000 difference that would be between the two agencies.

Paul Sihler replied in **SEN. PIPINICH'S** analysis he assumed all of the 93 game farms would be receiving the \$200 which is for a new license, not the renewal fee which is \$50 and that would not be taking into account the gradations in the new fees that were established.

SEN. JABS asked which department was going to have the most expenses?

Cork Mortensen replied he would like to say that the way they have approached it was they have discussed a data processing system to enhance the record keeping and that would be the responsibility of the Department of Livestock. It would take another FTE in the Department of Livestock to work in their area. He said that would cost them a lot more if it moves forward. They have no problem with absorbing the expenses in relation to disease control.

{Tape: 2; Side: A.}

CHAIRMAN SWYSGOOD said if they were to implement the bill to its intent and do all of the sharing of the responsibilities of the two agencies, it is more enhanced and timely and it will take at least one more staff in the Department of Livestock.

Cork Mortensen replied they have submitted a fiscal note as related to SB 389.

Vote:

The MOTION CARRIED 5 to 4 with **SENATOR'S DEVLIN, HARGROVE, HOLDEN, JABS, and NELSON** voting yes and **SENATOR'S BECK, JERGESON, PIPINICH, and SWYSGOOD** voting no.

Motion:

SEN. NELSON MOVED SB 389 DO PASS AS AMENDED.

Discussion:

SEN. JERGESON said it is interesting about the distribution of the fees points out that the livestock industry, the cattle and sheep pay a per capita fee, even with them getting half of the fees will not cover their costs to deal with the game farms. He stated the livestock industry was providing a subsidy for the game farm industry in the State of Montana as are the hunters and fisherman of Montana because the cost of the FWP was not being compensated in the bill. He said the testimony that was offered that the cash flow opportunities from the game farm were at least 5 to 15 times that which is available to cattle producers and yet they are paying the same property taxes on their grazing land as are cattle producers.

SEN. DEVLIN said as far as the land values they could talk about sugar beets. He said if they were going to start talking about the taxation of land.

CHAIRMAN SWYSGOOD replied there were a lot of things they could bring up in this degree, but they were not going to discuss that.

Vote:

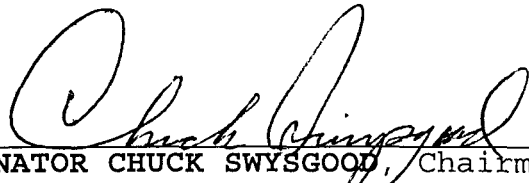
The MOTION CARRIED UNANIMOUSLY.

Discussion:

Doug Sternberg replied last meeting they passed another amendment they passed which was on page 3, line 12, they would strike the words "to the extent possible" and on lines 17, and 18 they strike the added words "at the expense of the department".

ADJOURNMENT

Adjournment: 2:40 p.m.


SENATOR CHUCK SWYSGOOD, Chairman


JENNIFER GAASCH, Secretary

CS/jg

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE

ROLL CALL

DATE _____

2-17-95

[illegible]

SEN:1995
wp.rollcall.man
CS-09

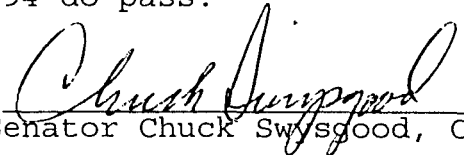
SENATE STANDING COMMITTEE REPORT


Page 1 of 1
February 17, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 394 (first reading copy -- white), respectfully report that SB 394 do pass.

Signed:


Senator Chuck Swysgood, Chair


84

Amd. Coord.
Sec. of Senate

411512SC.SPV

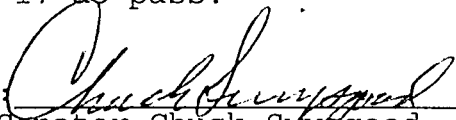
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 17, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SJR 17 (first reading copy -- white), respectfully report that SJR 17 do pass.

Signed:


Senator Chuck Swygood, Chair



Amd. Coord.

Sec. of Senate


411459SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 17, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration SB 389 (first reading copy -- white), respectfully report that SB 389 be amended as follows and as so amended do pass.

Signed: 
Senator Chuck Swysgood, Chair

That such amendments read:

1. Title, line 9.

Following: "LICENSURE,"

Insert: "FEES,"

2. Title, line 11.

Following: "87-4-410,"

Insert: "87-4-411,"

3. Page 1, line 24.

Strike: "and"

4. Page 1, line 25.

Following: "violations"

Insert: "; and

(f) the definition of "reasonable time" in the context of 87-4-419(2), which must reflect specific seasonal issues related to breeding and disease"

5. Page 2, line 30.

Strike: "farm"

6. Page 3, line 12.

Strike: "to the extent possible"

7. Page 3, lines 17 and 18.

Strike: ", at the expense of the department,"

8. Page 3, line 26.

Insert: "**Section 4.** Section 87-4-411, MCA, is amended to read:

"87-4-411. License and renewal fees -- deposit of fees. (1)
The department shall charge an initial game farm license fee of \$200 and shall charge an annual renewal fee of \$50 based on the following scale:

(a) a game farm with 1 to 20 game farm animals, an initial license fee of \$200 and an annual renewal fee of \$50;

(b) a game farm with 21 to 60 game farm animals, an initial



Amd. Coord.
Sec. of Senate

411915SC.SPV

license fee of \$300 and an annual renewal fee of \$100; and

(c) a game farm with more than 60 game farm animals, an initial license fee of \$400 and an annual renewal fee of \$200.

(2)(a) The One-half of the fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

(b) One-half of the fees must be deposited in the state special revenue fund for the use of the department of livestock in administering its game farm responsibilities."

Renummer: subsequent sections

9. Page 4, line 8.

Following: "that"

Insert: ", within 30 days of importation or prior to January 1 of each year,"

10. Page 5, line 5.

Strike: "and"

Insert: ", "

Following: "sex"

Insert: ", and individual identification numbers"

11. Page 6, line 14.

Following: "effect."

Insert: "(1)"

12. Page 6, lines 16 and 17.

Strike: "10 days of notification"

Insert: "a reasonable time"

13. Page 6, line 19.

Insert: "(2) The department shall by rule adopt a definition of "reasonable time", as used in this section, taking into consideration specific seasonal issues related to breeding and disease."

14. Page 9, lines 17 and 19.

Strike: "11"

Insert: "12"

-END-

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE
ROLL CALL VOTE

DATE 2-17-95 BILL NO. SB 389 NUMBER _____

MOTION: Senator Devlin moved that the F.W.F and the Department of livestock split the new fees in the amendment offered by senator Pipinich and pasteur committee.

[illegible]

SENATE AGRICULTURE

EXHIBIT NO. 1

DATE 2-17-95

RHJ NO SB 394

Stardust

Mule City Star Feb 11, 1995

25 YEARS AGO (1970)

Mr. and Mrs. Russell (Bud) Sage will be leaving Miles City to take over the management of Kuilman's Motel in Bismarck, N.D. The motel is owned by Hal Hilderman and Jake Hilderman of Miles City.

Paul Young returned from Bozeman where he attended the Montana Museum Association meeting.

50 YEARS AGO (1945)

Montana alfalfa producers are urged by Ralph D. Mercer, MSC extension agronomist, to be sure the seed they buy was grown in Montana. Mercer says large importations of unadapted alfalfa seed are moving into the U.S. from Argentina and is not satisfactory as yields are lower and it does not remain in production more than one or two

years. Seed from Argentina is stained an orange-red color for identification.

100 YEARS AGO (1895)

Judge Strevell took the train for New York where he will spend a few days and then join an excursion party which will said for Egypt in a few days. There will be about 300 in the company and it is expected that about two months will be

consumed in the trip.

The Muddy News says that "the gray wolves are numerous on Tongue River and doing much damage to stock." This is but a repetition of what comes from every nook and corner in Custer County and the legislature should do something at once to aid a lot of wolfers out upon the ranges to protect the spring crop of calves and colts.

Senate Bill No. 394

February 17, 1995

Testimony Presented by Robert Martinka
Montana Fish, Wildlife and Parks
Before the Senate Agriculture, Livestock
and Irrigation Committee

The Department does not take a position on this bill but wishes to provide some information relative to wolf recovery and the ESA in this state. Wolves began naturally recolonizing portions of northern Montana in the early 1980s. These wolves have dispersed to several areas in northwestern part of the state and presently number about 70 in 5 to 7 packs.

In 1994, the US Fish and Wildlife Service released the final Environmental impact statement on the reintroduction of wolves into the Yellowstone and central Idaho areas. The wolves were reintroduced into these areas under the non-essential experimental clause of the Endangered Species Act. This allows more management control than would otherwise be permitted under full protection of the act. The State of Montana opposed the reintroduction but recognizes that this designation was a step closer to allowing reasonable management actions to be taken.

The proposed legislation would not become effective until the wolf is removed from the list of threatened and endangered species. In order for a species to be removed from this list, the Endangered Species Act and Recovery Plan require that certain population criteria be met and that population monitoring and regulatory mechanisms be in place to protect the wolf. Some of the wording included in this legislation such as "systematic destruction" and "extermination" would likely provide a strong basis to prevent the wolf from being delisted because of the lack of appropriate regulatory language.

EXHIBIT NO. 3

DATE 2-17-95

BILL NO. SB 387

COPY

Grizzly Peak Realty

Paul Pilati, M.L.E., G.R.I.
Broker-Owner
Residence (406) 446-2874



904 N. Bonner
Post Office Box 1010
Red Lodge, MT 59068
(406) 446-3030 • Fax (406) 446-3045

February 17, 1995

ATTN: Senate Natural Committee FAX NO. 1 (406) 444-4604

Senators: Chuck Swygood, Chair

Gerry Devlin, Vice-Chair

Tom Bock

Rick Holden

Greg Jergeson

Bob Pipinich

Don Hargrove

Reiny Jabs

Linda Nelson

RE: New Late Claim Legislation

Dear Senators:

Please strongly support SB 387, New Late Claims Legislation.

It is economically very important to people on the land, whose livelihood depends on irrigated production. These land owners thought a ditch company was recording their water rights, while the ditch company thought the individual was filing, hence the filings after April 30, 1982.

Thank you for your time and your consideration.

Very sincerely,

Paul Pilati

Paul Pilati

PP/cp

Post-It™ brand fax transmittal memo 7671		# of pages 1
To	From Paul Pilati	
Co.	Co.	
Dept.	Phone #	
Fax # (406) 449-5149	Fax # (406) 446-3045	

CITY OF HAVRE

Phone (406)265-6719
P.O. Box 231
HAVRE, MONTANA 59501

SENATE AGRICULTURE
EXHIBIT NO. 4
DATE 2-17-95
BILL NO. SB 387

February 17, 1995

Chairman Senator Chuck Synsgood
Senate Agriculture Committee
State of Montana
Capitol Station
Helena, MT 59624

RE: Senate Bill 387

Dear Chairman Swynsgood and Committee Members:

I am special counsel for the City of Havre, representing the City on water rights matters. After the City filed its water rights claims in 1982, it entered negotiations with the Reserved Water Rights Commission concerning its rights. It also continued searching for other water rights. As a result several water rights in the name of the City but administered by the Hill County Airport Board and the local flood control districts were discovered.

The City filed upon these rights, and filed alternative claims on rights previously filed upon because of concern about the meaning of "municipal" as a water right use. However, these claims were filed in 1983, and thus were "Late Claims". We then quit negotiating with the compact commission. A statute seems to indicate any claims filed while we were negotiating are timely.

Under "In The Matter of Adjudication of the Water Rights Within the Yellowstone River, 253 MT 167, 832 P.2d 1210 (1992)", the water rights covered by these claims were subject to "forfeiture" without any notice to us or opportunity to argue our special factual situation.

The City of Havre was involved with the passage of Senate Bill 310 in the last session, and in particular Section 10, while authorized a "Late Claim Interim Study" by the Water Policy Committee, and particularly Sections (i) dealing with trust responsibilities and (k) dealing with "impacts on municipal in Government . . ." No hearing was held on these matters by the committee.

The City of Havre Senate this Legislation (SB 387) and asks favorable consideration by the Committee. Small Governmental Agencies have little or no staff, and have a variety of arguments to bring in favor of allowing the "Late" claims.

Thank you.


James W. Spangelo

CHAPTER 90.14
WATER RIGHTS—REGISTRATION—WAIVER
AND RELINQUISHMENT, ETC.

SB 387

- Section
90.14.010. Purpose.
90.14.020. Legislative declaration.
90.14.030. Repealed.
90.14.031. Definitions.
90.14.040. Repealed.
90.14.041. Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.
90.14.043. Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions.
90.14.044. Existing water rights not impaired.
90.14.050. Repealed.
90.14.051. Statement of claim—Contents—Short form.
90.14.060. Repealed.
90.14.061. Statement of claim—Filing procedure—Processing of claim—Fee.
90.14.065. Statement of claim—Amendment—Review of department of ecology's determination.
90.14.070. Repealed.
90.14.071. Failure to file claim waives and relinquishes right.
90.14.080. Repealed.
90.14.081. Filing of claim not deemed adjudication of right—Prima facie evidence.
90.14.090. Repealed.
90.14.091. Definitions—Water rights notice—Form.
90.14.100. Repealed.
90.14.101. Notice of chapter provisions—How given—Requirements.
90.14.110. Repealed.
90.14.111. Water rights claims registry.
90.14.120. Repealed.
90.14.121. Penalty for overstating claim.
90.14.130. Reversion of rights to state due to nonuse—Notice by order—Relinquishment determinations—Appeal.
90.14.140. "Sufficient cause" for nonuse defined—Rights exempted.
90.14.150. Rights arising from permit to withdraw public waters not affected—Extensions.
90.14.160. Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Prior rights acquired through appropriation, custom or general adjudication.

REGISTRATION, RELINQUISHMENT, ETC.

- Section
90.14.170. Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.
90.14.180. Relinquishment of right for abandonment of failure to beneficially use without sufficient cause—Future rights acquired through appropriation.
90.14.190. Water resources decisions—Appeals—Attorneys' fees.
90.14.200. Implementation and enforcement of chapter—Proceedings under RCW 90.14.130 deemed adjudicative—Application of RCW sections to specific proceedings.
90.14.210. Chapter applies to all rights to withdraw ground waters.
90.14.215. Chapter not applicable to trust water rights under chapter 90.38 or 90.42 RCW.
90.14.220. No rights to be acquired by prescription or adverse use.
90.14.230. Rules and regulations.
90.14.900. Effective date—1967 c 233.
90.14.910. Severability—1967 c 233.

Law Review Commentaries

- Washington's new water rights law—Water rights of non-Indian landowners improvements needed. 44 Wash.L.Rev. 85 (1968).
W. Dufford. 15 Gonz.L.Rev. 95 (1979).

Library References

- Waters and Water Courses §127. Loss of a water right, see Wash.Prac. WESTLAW Topic No. 405. vol. 1B, Barker and Scharf, § 58.23
C.J.S. Waters § 157 et seq. et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

90.14.010. Purpose

The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use.
Enacted by Laws 1967, ch. 233, § 1, eff. July 1, 1967.

Law Review Commentaries

- Washington Water Resources Act as Code: transferring consumptive riparian solution to problems under 1917 Water rights. 9 Gonz.L.Rev. 761 (1971).

In general 1

Notes of Decisions

owned and maintained existing water supply system; water rights claims did not and could not involve property interest questions, as Department of Ecology had no authority to adjudicate private rights in land. *Crescent Harbor Water Co., Inc. v. Lyseng* (1988) 51 Wash.App. 337, 753 P.2d 555.

90.14.020. Legislative declaration

The legislature finds that:

(1) Extensive uncertainty exists regarding the volume of private claims to water in the state;

(2) Such uncertainty seriously retards the efficient utilization and administration of the state's water resources, and impedes the fullest beneficial use thereof;

(3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;

(4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;

(5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic uses must be subjected to the beneficial use requirement;

(6) The availability for appropriation of additional water as a result of the requirements of this chapter will accelerate growth, development, and diversification of the economy of the state;

(7) Water rights will gain sufficient certainty of ownership as a result of this chapter to become more freely transferable, thereby increasing the economic value of the uses to which they are put, and augmenting the alienability of titles to land.

Enacted by Laws 1967, ch. 233, § 2, eff. July 1, 1967.

90.14.030. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.030, which defined words and phrases in this chapter, was derived from Laws 1967, ch. 233, § 3.

90.14.031. Definitions

Unless a different meaning is plainly required by the context, the following words and phrases as used in RCW 90.14.031 through 90.14.121 shall have the following meanings:

(1) "Person" shall mean an individual, partnership, association, public or private corporation, city or other municipality, county, or state agency, and the United States of America when claiming water rights established under the laws of the state of Washington.

(2) "Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

Enacted by Laws 1969, Ex.Sess., ch. 284, § 12.

Historical and Statutory Notes

Severability—Laws 1969, Ex.Sess., Source: Laws 1967, ch. 233, § 3, ch. 284. See Historical and Statutory Notes following § 90.14.030.

Notes of Decisions

In general 1 *action, Barnes v. Belsaas* (1913) 73 Wash.205, 131 P. 817.

1. In general
Action may be maintained to quiet title to water rights acquired by appropriation.

90.14.040. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.040, which related to claims of right to withdraw, divert, or use ground or surface waters, was derived from Laws 1967, ch. 233, § 4.

90.14.041. Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions

All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as hereinafter provided in this section, shall file with the department of ecology not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. This section shall not apply to any water rights which are based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors.

Enacted by Laws 1969, Ex.Sess., ch. 284, § 13. Amended by Laws 1988, ch. 127, § 73.

90.14.041

WATER RIGHTS—ENVIRONMENT

Historical and Statutory Notes

Laws 1988, ch. 127, § 73, substituted "ecology" for "water resources".
Source: Laws 1967, ch. 233, § 4.
Severability—Laws 1969, Ex.Sess., ch. 284; See Historical and Statutory Notes following § 90.48.290.

Notes of Decisions

Form of claims 1

be filed and recorded with state, where ranch's attempt to comply with the law failed only because it used wrong form, and form used was submitted to proper agency and contained all the information required by the correct form. Matter of Chumstick Creek Drainage Basin in Chelan County (1985) 103 Wash.2d 698, 694 P.2d 1065.

1. Form of claims

Doctrine of substantial compliance could be used to meet requirements of Water Rights Act (§ 90.14.010 et seq.), which required all water rights claims to

90.14.043. Claim of right to withdraw, divert or use ground or surface waters—Claim upon certification by board—Procedure—Cut-off date for accepting petitions

(1) Notwithstanding any time restrictions imposed by the provisions of chapter 90.14 RCW, a person may file a claim pursuant to RCW 90.14.041 if such person obtains a certification from the pollution control hearings board as provided in this section.

(2) A certification shall be issued by the pollution control hearings board if, upon petition to the board, it is shown to the satisfaction of the board that:

(a) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) in the case of surface water beginning not later than June 7, 1917, and in the case of ground water beginning not later than June 7, 1945, or

(b) Waters of the state have been applied to beneficial use continuously (with no period of nonuse exceeding five consecutive years) from the date of entry of a court decree confirming a water right and any failure to register a claim resulted from a reasonable misinterpretation of the requirements as they related to such court decreed rights.

(3) The board shall have jurisdiction to accept petitions for certification from any person through September 1, 1985, and not thereafter.

(4) A petition for certification shall include complete information on the claim pursuant to RCW 90.14.051(1) through (8), and any such information as the board may require.

REGISTRATION, RELINQUISHMENT, ETC. 90.14.044

(5) The department of ecology is directed to accept for filing any claim certified by the board as provided in subsection (2) of this section. The department of ecology, upon request of the board, may provide assistance to the board pertinent to any certification petition.

(6) A certification by the pollution control hearings board or a filing with the department of ecology of a claim under this section shall not constitute a determination or confirmation that a water right exists.

(7) The provisions of RCW 90.14.071 shall have no applicability to certified claims filed pursuant to this section.

(8) This section shall have no applicability to ground waters resulting from the operations of reclamation projects.

Enacted by Laws 1979, Ex.Sess., ch. 216, § 4. Amended by Laws 1985, ch. 435, § 1.

Historical and Statutory Notes

Laws 1985, ch. 435 § 1, in subsec. (3). See Historical and Statutory Notes following "September 1, 1985" for "December 31, 1979".

Appropriations—Effective date—Severability—Laws 1979, Ex.Sess., ch. 216:

Library References

Health and Environment—§ 25.7. C.J.S. Health and Environment § 106 to 114, 125 to 140, 150 to 157.
WESTLAW Topic No. 199.

Notes of Decisions

Notice of extension 1

1. Notice of extension

In action over water rights, reference was not required to notify party of four-month extension for filing certain water rights claims since, as officer of superior court, it would have been improper for referee to advise one party in the proceeding how to improve its legal position to detriment of others. Matter of Chumstick Creek Drainage Basin in Chelan County (1985) 103 Wash.2d 698, 694 P.2d 1065.

State's actions in not notifying ranch of four-month extension for filing certain water rights claims did not estop it from rejecting ranch's claims. Matter of Chumstick Creek Drainage Basin in Chelan County (1985) 103 Wash.2d 698, 694 P.2d 1065.

90.14.044. Existing water rights not impaired

The provisions of this 1985 amendatory act authorizing the acceptance of a petition for certification filed during the period beginning on July 28, 1985, and ending on midnight, September 1,

1985, shall not affect or impair in any respect whatsoever any water right existing prior to July 28, 1985.
Enacted by Laws 1985, ch. 435, § 2.

¹ Reviser's Note: "This 1985 amendatory act" consists of the enactment of RCW 90.14.044 and the 1985 c 435 amendment to RCW 90.14.043.

90.14.050. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.050, which related to the contents of a statement of claim of water rights, was derived from Laws 1967, ch. 233, § 5.

90.14.051. Statement of claim—Contents—Short form

The statement of claim for each right shall include substantially the following:

- (1) The name and mailing address of the claimant.
- (2) The name of the watercourse or water source from which the right to divert or make use of water is claimed, if available.
- (3) The quantities of water and times of use claimed.
- (4) The legal description, with reasonable certainty, of the point or points of diversion and places of use of waters.
- (5) The purpose of use, including, if for irrigation, the number of acres irrigated.
- (6) The approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (3).
- (7) The legal doctrine or doctrines upon which the right claimed is based, including if statutory, the specific statute.
- (8) The sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

Except, however, that any claim for diversion or withdrawal of surface or ground water for those uses described in the exemption from the permit requirements of RCW 90.44.050 may be filed on a short form to be provided by the department. Such short form shall only require inclusion of sufficient data to identify the claimant, source of water, purpose of use and legal description of the land upon which the water is used: *Provided*, That the provisions of RCW 90.14.081 pertaining to evidentiary value of filed claims shall not apply to claims submitted in short form: *And provided further*, That claimants for such minimal uses may, at their option, file

statements of claim on the standard form used by all other claimants.

Enacted by Laws 1969, Ex.Sess., ch. 284, § 14. Amended by Laws 1973, 1st Ex.Sess., ch. 113, § 1, eff. April 2, 1973.

Historical and Statutory Notes

Laws 1973, 1st Ex.Sess., ch. 113, § 1. Source: in the first sentence, inserted "substantially" and added the last paragraph.

Severability—Laws 1969, Ex.Sess., ch. 284: See Historical and Statutory Notes following § 90.48.290.

90.14.060. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.060, which established procedures for filing and processing claims of water rights, was derived from Laws 1967, ch. 233, § 6.

90.14.061. Statement of claim—Filing procedure—Processing of claim—Fee

Filing of a statement of a claim shall take place and be completed upon receipt by the department of ecology, at its office in Olympia, of an original statement signed by the claimant or his authorized agent, and two copies thereof. Any person required to file hereunder may file through a designated representative. A company, district, public or municipal corporation, or the United States when furnishing to persons water pertaining to water rights required to be filed under RCW 90.14.041, shall have the right to file one claim on behalf of said persons on a form prepared by the department for the total benefits of each person served; provided that a separate claim shall be filed by such company, district, public or private corporation, or the United States for each operating unit of the filing entity providing such water and for each water source. Within thirty days after receipt of a statement of claim the department shall acknowledge the same by a notation on one copy indicating receipt thereof and the date of receipt, together with the wording of the first sentence of RCW 90.14.081, and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim. No statement of claim shall be accepted for filing by the department of ecology unless accompanied by a two dollar filing fee.

Enacted by Laws 1969, Ex.Sess., ch. 284, § 15. Amended by Laws 1988, ch. 127, § 74.

90.14.061

WATER RIGHTS—ENVIRONMENT

REGISTRATION, RELINQUISHMENT, ETC.

90.14.081

Historical and Statutory Notes

Laws 1988, ch. 127, § 74, substituted "ecology" for "water resources".
Severability—Laws 1969, Ex.Sess., ch. 284; See Historical and Statutory Notes following § 90.48.290.

Source:

Laws 1967, ch. 233, § 6.
Former § 90.14.060.

90.14.065. Statement of claim—Amendment—Review of department of ecology's determination

Any person or entity, or successor to such person or entity, having a statement of claim on file with the water rights claims registry on April 20, 1987, may submit to the department of ecology for filing, an amendment to such a statement of claim if the submitted amendment is based on:

(1) An error in estimation of the quantity of the applicant's water claim prescribed in RCW 90.14.051 if the applicant provides reasons for the failure to claim such right in the original claim;

(2) A change in circumstances not foreseeable at the time the original claim was filed, if such change in circumstances relates only to the manner of transportation or diversion of the water and not to the use or quantity of such water; or

(3) The amendment is ministerial in nature.

The department shall accept any such submission and file the same in the registry unless the department by written determination concludes that the requirements of subsection (1), (2), or (3) of this section have not been satisfied. Any person aggrieved by a determination of the department may obtain a review thereof by filing a petition for review with the pollution control hearings board within thirty days of the date of the determination by the department. The provisions of RCW 90.14.081 shall apply to any amendment filed under this section.

Enacted by Laws 1987, ch. 93, § 1, eff. April 20, 1987.

90.14.070. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.070, which provided that failure to file a claim of water rights waived and relinquished those rights, was derived from Laws 1967, ch. 233, § 7.

Sec. now, § 90.14.071.

90.14.071. Failure to file claim waives and relinquishes right

Any person claiming the right to divert or withdraw waters of the state as set forth in RCW 90.14.041, who fails to file a statement of

claim as provided in RCW 90.14.041, 90.14.051 and 90.14.061, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right.

Enacted by Laws 1969, Ex.Sess., ch. 284, § 16.

Historical and Statutory Notes

Severability—Laws 1969, Ex.Sess., ch. 284; See Historical and Statutory Notes following § 90.48.290.

Source:

Laws 1967, ch. 233, § 7.
Former § 90.14.070.

Library References

Loss of a water right, water right claims registration, see Wash.Prac. vol. 1B, Barker and Scharf, § 58.26.

Notes of Decisions

1. Compensation
Provision of this section, which provides that any person who fails to file statement of water rights claim was conclusively deemed to have waived and

relinquished right, did not operate to effect a taking or damaging of property for public use, and thus no compensation was required for waiver and relinquishment of unclaimed water rights. Matter of Chumstick Creek Drainage Basin in Chelan County (1985) 103 Wash.2d 698, 694 P.2d 1065.

90.14.080. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.080, which stated that the filing of a claim of water rights was not deemed a final adjudication of those rights, was derived from Laws 1967, ch. 233, § 8.

Sec. now, § 90.14.081.

90.14.081. Filing of claim not deemed adjudication of right—

Prima facie evidence

The filing of a statement of claim does not constitute an adjudication of any claim to the right to use of waters as between the water use claimant and the state, or as between one or more water use claimants and another or others. A statement of claim filed pursuant to RCW 90.14.061 shall be admissible in a general adjudication of water rights as prima facie evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, if, but only if, the quantities of water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed in the statement of claim. A statement of claim shall not otherwise be evidence of the priority of the claimed water right.

Enacted by Laws 1969, Ex.Sess., ch. 284, § 17.

EXHIBIT

5

DATE

2-17-95

SB 387

90.14.081

WATER RIGHTS—ENVIRONMENT

REGISTRATION, RELINQUISHMENT, ETC.

90.14.101

Historical and Statutory Notes

Source:
Laws 1967, ch. 233, § 8.
Former § 90.14.081.

Severability—Laws 1969, Ex.Sess., ch. 284: See Historical and Statutory Notes following § 90.48.290.

90.14.090. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.090, which established definitions for and the form of a water rights notice, was derived from Laws 1967, ch. 233, § 9.

See, now, § 90.14.091.

90.14.091. Definitions—Water rights notice—Form

For the purpose of RCW 90.14.031 through 90.14.121 the following words and phrases shall have the following meanings:

(1) "Statement of taxes due" means the statement required under RCW 84.56.050.

(2) "Notice in writing" means a notice substantially in the following form:

WATER RIGHTS NOTICE

Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency and the state of Washington, and the United States of America, when claiming water rights established under the laws of the state of Washington, are hereby notified that all water rights or claimed water rights relating to the withdrawal or diversion of public surface or ground waters of the state, except those water rights based upon authority of a permit or certificate issued by the department of ecology or one of its predecessors, must be registered with the department of ecology, Olympia, Washington, not later than June 30, 1974. FAILURE TO REGISTER AS REQUIRED BY LAW WILL RESULT IN A WAIVER AND RELINQUISHMENT OF SAID WATER RIGHT OR CLAIMED WATER RIGHT. For further information contact the Department of Ecology, Olympia, Washington, for a copy of the act and an explanation thereof.

Enacted by Laws 1969, Ex.Sess., ch. 284, § 18. Amended by Laws 1988, ch. 127, § 75.

Historical and Statutory Notes

Laws 1988, ch. 127, § 75, substituted "ecology" for "water resources".

Severability—Laws 1969, Ex.Sess., ch. 284: See Historical and Statutory Notes following § 90.48.290.

Source:
Laws 1967, ch. 233, § 9.

Laws 1969, Ex.Sess., ch. 284: See Historical and Statutory Notes following § 90.48.290.

90.14.100. Repealed by Laws 1969, Ex.Sess., ch. 284, § 23

Historical and Statutory Notes

The repealed § 90.14.100, which related to requirements for giving notice of chapter provisions requiring filing of claim of water rights, was derived from Laws 1967, ch. 233, § 10.

See, now, § 90.14.101.

90.14.101. Notice of chapter provisions—How given—Requirements

To insure that all persons referred to in RCW 90.14.031 and 90.14.061 are notified of the registration provisions of this chapter, the department of ecology is directed to give notice of the registration provisions of this chapter as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than fifty thousand copies for each week day, and in at least one newspaper published in each county of the state, at least once each year for five consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state having such a station regularly at six month intervals for five consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county court house in the state.

(4) The county treasurer of each county shall enclose with each mailing of one or more statements of taxes due issued in 1972 a copy of a notice in writing and a declaration that it shall be the duty of the recipient of the statement of taxes due to forward the notice to the beneficial owner of the property. A sufficient number of copies of the notice and declaration shall be supplied to each county treasurer by the director of ecology before the fifteenth day of January, 1972. In the implementation of this subsection the department of ecology shall provide reimbursement to the county treasurer for the reasonable additional costs, if any there may be, incurred by said treasurer arising from the inclusion of a notice in writing as required herein.

SENATE AGRICULTURE

EXHIBIT NO. 6

LATE CLAIM INDEX
INDEX BY DATE RECEIVED

02/09/93
PAGE 1

DATE 2-17-95
BILL NO. SB 387

WATER RIGHT ID	USE	FLOW RATE	RECVD	YEAR	POINT OF DIVERSION SEC SEC TWP RGE CN TRIB	SOURCE NAME	OWNER NAME
39FJ-W-173309-00 DM		25.00 G	811023	1950	W2NENW30 03N 60E FA	WELL	WOLENETZ, MELVIN & SONS INC
76H -W-214050-00 IR		.40 C	820216	1885	W2NENW30 03N 20W RA	LOWMAN CREEK	RECHT ROBERT
43Q -W-208800-00 ST					N2 1 01S 23E YE	CANYON CREEK	RECHT SHARON
400 -W-170756-00 ST			820404	1964	MMNWSE28 26N 35E VA	UT LONE TREE CREEK, MIDDLE FORK	WALLACE LEONARD
41U -W-096814-00 IR		30.00 G	820430	1973	SWSMNW 2 16N 04W LC	WELL	WALLACE PAMELA
76H -W-152026-00 DM			820430	1959	SMSENE 3 01N 20W RA	LAIRD CREEK	BEZVACK KEVIN
76F -W-092139-00 DM			820501	1964	MMSWSW35 15N 09W LC	GLADYS TILTON	BEZVACK GALE
76F -W-092140-00 DM		5.00 G	820501	0000	MMSWSW35 15N 09W LC	WELL	DUKE MARY
41P -W-134164-00 ST		2.00 C	820501	1911	SESWSW34 35N 06E LI	COTTONWOOD COULEE, BRANCH OF	ETCHART MITCHEL
40G -W-141848-00 ST		5.00 G	820501	1951	MMSWMW22 37N 06E LI	UT LAIRD CREEK	CURRAN D MICHAEL
76LJ-W-152165-00 DM		.17 G	820501	1890	WENENE 2 23N 06E CH	WELL	NEELY JOAN
41Q -W-152658-00 ST			820501	1925	MMSWMW27 24N 07E CH	EIGHTMILE COULEE	NEELY KAREN
41M -W-155360-00 IR		3.50 C	820501	1910	SESWSW23 31N 10W GL	TWO MEDICINE RIVER	ANDERSON TIM
41R -W-155719-00 ST		1.00 G	820501	1909	SWSMNW12 22N 10E CH	WELL	ANDERSON KAREN
41P -W-156286-00 ST		7.50 C	820501	1930	MMNE31 31N 02E TO	UT CLOSED BASIN	FRANK TIM
41Q -W-156440-00 ST		2.790.00 G	820501	1915	SWSW33 20N 08E CH	LITTLE WILLOW CREEK	SAGE CREEK COLONY
41P -W-157417-00 ST		1.20 C	820501	1928	SWSNENE22 32N 03W TO	UT MEDICINE ROCK COULEE	NICHOLS ETHAL
41P -W-157418-00 ST		.02 C	820501	1932	NESEMNW13 32N 03W TO	UT MEDICINE ROCK COULEE	ARGANBRIGHT FARMS
41P -W-157419-00 ST		1.10 C	820501	1929	SWSNENE15 32N 03W TO	UT MEDICINE ROCK COULEE	ARGANBRIGHT FARMS

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Feb. 16, 1995 DATE 2-17-95BILL NO. SB 387

Patty Walker
Atlasta Ranch
Box 320081
Glen, Montana 59732

To whom it may concern,

I come here today because I have a late claim and I want you to know what has happened to my family because of it. My husband and I bought our place in 1987, it is an old homestead and mostly rock and sagebrush. We did not get up one morning and decide that today we were going to file a water claim late. No the homesteader in 1910 got up one morning and went out with his shovel and dug out the spring and started to use the water on what is our place today. Our predecessor for whatever reason missed filing on this spring, and we have filed a late claim. This water has been in continuous use since 1910. Because of our late claim the Bureau of Land Management has decided that it wants our water, not because it needs water but because it felt that we no longer had any right to it. We have been taken in front of a water hearing and had to defend our historic water rights. The BLM lost but the hearing examiner left the door wide open for them to try again to take our water away. This was before Sen. bill 310 was passed. Then in 1992 we were cleaning out our spring when an armed BLM ranger came and tried to stop us from maintaining our spring. I have to say that every time we have tried to do any work on our spring the BLM has interfered with threats and intimidation. The last threat was our invitation to federal court in 1992. Judge Hatfield last month ruled that we as the defendants were guilty and had to prove ourselves innocent. That we after three owners and forty years, that we as the defendants had the burden of proof. And with that after he had the case for two years instead of giving the BLM what it had asked for, he gave the BLM our entire ranch. The BLM will stop at nothing to take our water away from us because of this late claim and because we will not sign our water rights over to them. We are awaiting our third invitation to defend ourselves and our water in court. Our BLM file says that the BLM intends to protest every single water right that originates on public land. That will be our forth invitation to court brought by the BLM.

All of this has happened in the eight years that we have had this place. All we want is to be left alone and live in peace and enjoy this place as our predecessors did. This has destroyed my life, my husbands life and my two sons lives. My husband has had to be put on medication because of the depression all of this has caused and I can't begin to tell you what it does to me when my 11 year old son for christmas the first thing on his list is for the government to leave us alone. Maybe there is nothing you can do to stop what is happening to us but PLEASE, please do something

so that no other family has to go through what mine has.

Several years ago the legislature passed a law saying that for something as minor as a filing mistake historic rights would vaporize without even a chance to explain. I am asking you to make it right.

Sincerely,

Patty Walker
Patty Walker

SENATE AGRICULTURE

EXHIBIT NO. 8

DATE 2-17-95

BILL NO. SB 387

Amendment to Senate Bill 387
First Reading Copy

Prepared by Holly Franz
February 17, 1995

1. Page 7.

Following: line 23

Insert: "(8) The provisions of subsection (7) do not apply to issues arising after entry of the previous decree, including but not limited to abandonment, expansion of the water right, and reasonable diligence.

Chairman & Committee Members

Senate Agriculture Committee

SB 387 Hearing

SENATE AGRICULTURE

EXHIBIT NO. 9

DATE 2-17-95

BILL NO. SB 387

I am Echo Garberg of Whitetail and I would like to explain the situation our family is now facing because of the Supreme Court's decision regarding "late filed" water rights. We now face the prospect of having a water right which may be worthless because of the priority date we will now receive. Our original claims were filed in the early 1900's, among the very first in Northeastern Montana. The law firm that prepared nearly thirty first time claims for my mother in 1982, did not file the claims for flood irrigation purposes because they had already been filed. When my mother discovered that they had not been filed, she had an employee at the Glasgow office assist her with the claims - but this was in November, 1982 - six months after the designated deadline.

My mother died in 1987 and we became owners of the land and the water rights, and have since changed the method of irrigation to a system of diked. This project covered many acres and has cost a lot of money. Even if our water rights are not considered forfeited, a priority date which would be later than all other "timely" filed rights in our basin would make our rights junior to all the other rights and probably worthless.

Because a re-filing deadline date chosen by the Legislature was missed, these rights, which were legally appropriated, filed and used starting over ninety years ago, must now be considered junior to many others filed just a few years ago.

Our family would appreciate any consideration you can give us as "late filed".

Thank you,
Echo Garberg

SB 387

Mr Chairman, Members of the Committee:

For the record, I am Dan Andrews, President of the Greenfield Irrigation District. G.I.D. would like to go on record as opposing SB 387.

The first concern is on page 6, item marked (b). G.I.D. feels this should be more defined, or is it the intent to exclude the United States Government as a objector to certain water rights.

The second concern is on page 7, sub-section 7. The Montana State Legislator enacted a law that said all water rights will be adjudicated. A procedure was set up to provide an objector a right be heard. It seems this section's intent is to limit who can object, and what they can object to. The adjudication process is well under way. Why change the rules after the game has started?

Greenfield Irrigation District will submit, at a later date, more testimony on SB 387.



United States Department of the Interior

OFFICE OF THE SOLICITOR

P.O. Box 31894

Billings, Montana 59107-1894

February 17, 1995

Harley Harris
Montana Attorney Generals Office
Justice Building
Helena, MT 59620

Dear Mr. Harris:

Re: Senate Bill 387

Senate Bill 387, a bill concerning late claims, objections and an advisory committee was introduced on Monday and we understand that a hearing on the Bill is scheduled for Friday, February 17, 1995 before the Senate Agriculture and Livestock Committee.

The United States Department of Interior has several concerns with the various sections of SB 387.

Section 1 - Commencement of action - Subsection (3) creates a situation where the parties to the Montana Adjudication never will know, until possibly a final decree, who are the parties to the adjudication and what are the extent of their water rights. The Montana Adjudication already is 13 years old and the vague estimates of completion go well into the next century. The bastions of judicial decrees, finality and predictability, are set aside by this amendment to afford a cafeteria style approach to participation. Such an amendment to the Adjudication statute may seriously compromise the status of Montana's comprehensive adjudication under the McCarran Amendment, 43 USC § 666.

Section 2 - Amending 85-2-221 - Subsection (3)(b) effectively removes finality from the adjudication process. Subpart (c) ignores the reliance of negotiating parties to compact settlements dated later than July 1, 1993. The Department of the Interior believes that the amendment renders its expectations and reliance on the provisions of the just completed National Park Service Compact illusory with respect to basin closure and subordination to the existing level of water use. In addition, Interior still has the same concerns voiced in the last legislative session on SB 310 and to the interim legislative committee studying late claims. Subpart (e) merely creates an additional burden upon parties to argue more issues before the Water Courts.

Section 5 - Advisory Committee - We are concerned with the limitations on committee size provided in subsection (2)(b). Such limitations in size can only create an appearance of bias or discrimination to those not represented. Further, the attendance

of "ex officio" members from the Attorney General's office and the Department of Natural Resources and Conservation create the possibility that the interests of the United States and Indian Tribes will not be seriously considered.

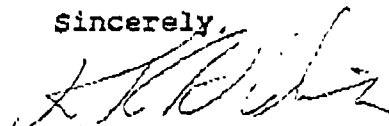
Section 6 - Hearing on Temporary Preliminary or Preliminary Decree - Subsection (1)(b) is a rather blatant attempt to limit objections. The result of this amendment will be additional pre-hearings to determine if "good cause" has been shown. Subsection (3) will have the result of eliminating most persons who want to object, but do not want to hire an attorney or a consultant. Additional time will be needed to review statements and then to challenge them. Again the result will be that fewer objections will be filed. Subsection (7) is a well disguised attempt to prevent objections to claims that purport to represent previous water decrees. Since the McCarran amendment is the first vehicle for including the United States in a decree, the United States will be adversely affected by this amendment. We believe such an amendment compromises the Montana Adjudication and creates the possibility of a challenge to the Adjudication on jurisdictional grounds.

Section 7 - Appeals - Subsection (2) appears to negate the traditional authority of judges to determine whether an issue should be certified as final so that an appeal to the Supreme Court can be made. We find no basis for this departure from the Rules of Civil Procedure.

The Department of Interior believes that the major portions of this bill are unwise or not needed. Last session, the late claim issues were raised and addressed by the Legislature. A legislative oversight committee held hearings and concluded that changes in the 1993 legislation were not needed. We agree with the committee.

Please contact our office if you have any questions.

Sincerely,



Richard K. Aldrich
Field Solicitor

cc: Joe Mazurek, Attorney General
Don McIntyre, DNRC
Susan Cottingham, Compact Commission
Matthew Williams, Esq.

SB 387

PROPOSED AMENDMENTS

RESERVED WATER RIGHTS COMPACT COMMISSION

February 17, 1995

Page 2, line 22:²³

Strike: "prior to July 1, 1993"

Page 3, line 9:¹⁰⁻¹¹

Strike: "that is ratified by the legislature prior to July 1, 1993"

Insert: "after the date specified in a compact"

Page 3, line 12:¹⁴

Add after "law": "; or be decreed as senior to a water right recognized in the compact"

Text with proposed amendments:

Page 2, lines 21-24:

"Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter, a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department on forms provided by the department."

Page 3, lines 8-12:

"(c) a person filing 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 **after the date specified in a compact**, 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 a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; **or be decreed as senior to a water right recognized in the compact**"

SB 387

TESTIMONY OF -- ON BEHALF OF
THE RESERVED WATER RIGHTS COMPACT COMMISSION

February 17, 1995

The following testimony addresses only the impact of SB 387 on compacts between the State and federal and Tribal governments settling water rights. It does not address the broader implications of the impact of SB 387 on the adjudication or the exposure of the State to takings claims.

SB 387 adversely impacts compacts in two ways:

- (1) language in SB 387 is in direct conflict with SB 203, the compact between the State and the National Park Service settling water rights for the Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Area which was passed by the Senate on a 50-0 vote and now awaits executive action in the House Natural Resources Committee; and
- (2) open ended late claim filing will jeopardize negotiation of future compacts by creating uncertainty in the status of water allocation in the affected basin.

#1 Conflict with SB 203:

SB 387 states on page 2, lines 21-24:

Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter **prior to July 1, 1993**, a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department on forms provided by the department.

SB 203 requires closure of drainages flowing into Bighorn Canyon National Recreation Area. Agreement concerning level of development allowed prior to closure was based on evaluation of existing claims. The 1993 date in SB 387 is in direct conflict with SB 203.

Remedy: remove "prior to July 1, 1993" from line 22

SB 387 states on page 3, lines 8-9:

a person filing 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 July 1, 1993 . . .**

SB 203 (Article II, Section C.2), page 10, lines 9-15 states:

The reserved water rights described in the Compact shall not be subordinate to water rights which were forfeited by 85-2-212 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact . . .

This language is in direct conflict. It is likely that in statutory interpretation the more specific law, SB 203, would control. However, by not amending the language in SB 387, that decision is left to the discretion of a court. By amending SB 387 the legislature retains control of interpretation of its intent and prevents the risk of forcing re-negotiation of SB 203.

Remedy: replace "that is ratified by the legislature prior to July 1, 1993" on page 3 line 9, with: "after the date specified in a Compact"

#2 Future Compacts:

Negotiation of compacts focuses on allocation of water between federal and Indian rights and State-based rights. The DNRC database on filed and decreed rights and permits forms the basis for identification of State uses that require protection. SB 387 allows late claims to be filed at any time. State negotiators will lack certainty in the level of water use which must be protected, and federal and Tribal negotiators will be unlikely to agree to subordinate to existing use when that level of use is uncertain. For this reason, it is insufficient to replace the July 1, 1993 date discussed above with July 1, 1995. The more general remedies set forth above are necessary. In addition, the following amendment will assure negotiators that new claims will not be granted seniority after a compact is ratified:

Remedy: Page 3, line 12:

Add after "law": "; or be decreed as senior to a water right recognized in the compact"

Amendments to Senate Bill No. 389
First Reading Copy

Requested by Fish, Wildlife and Parks
For the Committee on Agriculture

Prepared by Paul Sihler
February 15, 1995

1. Page 2, line 30.
Strike: "farm"

2. Page 4, line 8.
Following: "that"
Insert: "within 30 days of importation or prior to January 1 of
each year

3. Page 5, line 5.
Strike: "and"
Insert: ", "
Following: "sex"
Insert: ", and individual identification numbers"

~~4.~~
5. Page 6, line 20.
Following: "of"
Insert: "game farm"

NAME Mons Teigen

ADDRESS 19 Cloverview Helena

HOME PHONE 442-4835 WORK PHONE _____

REPRESENTING Teigen Land & L.S. Co

APPEARING ON WHICH PROPOSAL? SB 381

DO YOU: SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS:

Supports Jan Rehberg's statement

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 17, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SJR 17, SB 387, SB 394

Executive Action SJR 17, SB 387, SB 394, SB 389

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dan Andrews	Greenfield Irrigation	387		✓
James Krause	Greenfield Irrigation	387		✓
George L. Mellinger	Greenfield Irrigation	387		✓
Victor W. Krueger	Self	387	Yes	Oppose
Eugene Morley	Hart Creek Basin	387	✓	
Mons Teiger	Teiger L & L Co	387	✓	
Stan Frosier	Self	394	X	X
Stan Frosier	Self	SJ17		X
Chris Tweeten	AG & ^{Per. Water Rights} Conserv Comm'n	387		✓ unless amended
Bob Helbert	MT woodgrowers assn	SB 394	Support	Oppose
Russ BARRETT	FT. SHAW IRR. DIST	387		✓
DON ROSE	FT. SHAW IRR. DIST.	387		✓
Jim Perkins	MWF	SJ17		✓
Janet Ellis	MT Audubon	SB 387 SJ17		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 17, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SJR 17, SB 387, SB 394 &
Executive Action SJR 17, SB 387, SB 394, SB 389

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Patty Walker	Self	387	X	
Joe J. Kleinsasser	Martinsdale Colony	387	X	
Paul Wipf	Martinsdale Colony	387	✓	
Lorna FRANK	Mt. Farm Bureau	SJR-17 SB 394	✓	
Zyle Richards	Self self	387	✓	
Joe T. Helle	Self	394	✓	
John Stromquist	Mt. Stockgrowers	394	✓	
LARRY BROWN	Ag Pres. Assoc.	394	✓	
Jay Chamberlin	Self	394	✓	
Jay Chamberlin	Self	387		✓
Paul J. Wipf	Self	387	✓	
John Stromquist	Mt. Stockgrowers	387	✓ Sects 5-8.	
Cliff Cox	Self	387	✓	
Harley Harris	AG	387		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb. 17, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: SJR 17, SB 387, SB 394, &
Executive Action SJR 17, SB 387, SB 394, & SB 389

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Lorna Frank	Mt. Farm Bureau	SB 387		✓
Isabel D. Cox	Self	SB 387	✓	
Holly Franz	Mt. Power Co	SB 387	✓ Advisory Council	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY