

MINUTES

**MONTANA
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Bill Tash, Vice Chairman, on March 22, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: HJR 29, SB 387
Executive Action: SB 330 Be Concurred In As Amended
SB 387 Be Concurred In As Amended

Tape 1, Side A

HEARING ON HJR 29Opening Statement by Sponsor:

REP. KARL OHS, House District 33, Harrison, said HJR 29 was composed for the purpose of requesting the environmental quality council to appoint an ad hoc committee to study certain state lands management issues and requiring a report of the findings of the study to the 55th Legislature. The resolution was put together quickly and has some major problems. After the hearing, interested parties will meet and try to find solutions to those problems. If solutions can't be found, the resolution will be canceled.

Proponents' Testimony:

REP. EMILY SWANSON, House District 30, Bozeman, said she worked with REP. OHS on HJR 29 after hearing some the Department of State Lands bills. The resolution offers the option to have a committee study some of the state lands management issues and try to find some common ground in the state lands arena. Daniels County has some serious problems. There are a lot of people who don't want to see state lands sold under any circumstances. The school trust fund needs the benefit of the financial return that can be provided to it.

Maureen Cleary-Schwinden, Women Involved In Farm Economics, supported the concept of HJR 29.

Jim Richard, Montana Wildlife Federation, supported HJR 29.

Opponents' Testimony:

Bud Clinch, Commissioner, Department of State Lands (DSL), said he took exception to page 1, lines 22 and 23, which states that no detailed analysis of overall state lands management is available to provide the proper context needed for reasoned decisions regarding state land management. Mr. Clinch said he took great pride in the process that DSL uses in developing its land management decisions and implementations. The department has everything documented in plans and analysis. The statement on page 2, lines 26 and 27, which states that any legislation introduced as a result of these recommendations reflect the mutual interests of recreationalists, landowners, lessees, other Montanans and local governments, is in conflict with trust land management. The decisions that should be before the Legislature, should be between the trustees and the beneficiaries. The mandate granted by the Enabling Act, the Constitution and legislation, revolves around trustees and beneficiaries. To involve special interest groups would be to run the risk of being farther and farther away from the true legislative and constitutional mandate.

Cary Hegreberg, Montana Wood Products Association, opposed HJR 29, but would be willing to work with REP. OHS and the sponsors to help resolve some of the issues.

John Youngberg, Montana Farm Bureau, opposed HJR 29, but agreed with the concept.

Larry Brown, Agricultural Preservation Association, opposed HJR 29.

John Bloomquist, Montana Stockgrowers Association, opposed HJR 29.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. SWANSON told Mr. Clinch that the statement in HJR 29 regarding lands management was not intended to question the number of studies and detailed analysis that the department has on the management of lands and was misleading.

Tape 1, Side B

REP. OHS said one of the issues the interested parties talked about was the return on investments such as grazing fees, farm land leases and recreational fees. He asked Mr. Clinch to comment. Mr. Clinch said if the department needs any direction, it would be in terms of input from investment people.

Closing by Sponsor:

REP. OHS said a meeting would be held with interested parties to address the problems in HJR 29. If it is decided that HJR 29 is not worth pursuing it will be canceled.

HEARING ON SB 387

Opening Statement by Sponsor:

SEN. TOM BECK, Senate District 28, Deer Lodge, said SB 387 proposes an Act that would clarify application of common law rules of issue and claim preclusion to the adjudication of existing water rights; expand the water claim appeal process; clarify standing for objections to water claims; and establish a water adjudication advisory committee. SEN. BECK also provided the committee with amendments to the bill. EXHIBIT 1

Proponents' Testimony:

John Bloomquist, Montana Stockgrowers Association, said the association is very supportive of the adjudication process for

water rights but it needs to be speeded up. The association supports SB 387 and its amendments.

Larry Brown, Agricultural Preservation Association, said the association sees a need for timely conclusion of the adjudication process. There has been a lot of time and money spent on the process and at some point in time that has to cease.

Patty Walker, Glen. Written testimony. **EXHIBIT 2**

Tape 2, Side A

Jim Quigley, Rancher, said in 1993 water rights issues cost him \$26,000; in 1994 the cost was \$35,000. Through January 1995 his total costs for water rights issues were over \$60,000. **Mr. Quigley** supported SB 387.

Lorna Frank, Montana Farm Bureau, said SB 387 is needed to take care of some of the problems that bureau members and other people throughout the state are having with the water adjudication process.

Chris Tweeten, Reserve Water Rights Compact Commission, said the commission appeared as an opponent to SB 387 in the Senate because of the late claims provisions and the impact that the bill as introduced had on the water rights negotiation process. Amendments were adopted in the Senate and the commission no longer has objections to the bill.

Holly Franz, Montana Power Company, supported SB 387 and its amendments.

Mike Murphy, Montana Water Resources Association, said he supported SB 387 but had concerns about the conflict of interest associated with the Department of Natural Resources and Conservation's (DNRC) involvement with water rights.

Don MacIntyre, Attorney, Department of Natural Resources and Conservation, Representing the Executive Branch of the Governor's Office, supported SB 387.

Harley Harris, Assistant Attorney General, Department of Justice, On Behalf of Joe Mazurek, Attorney General, supported SB 387 as amended in the Senate and in particular, **Attorney General Mazurek** is supportive of the concept of an advisory committee to deal with some of the very complicated issues of the adjudication process that are presented by the ongoing water rights administration.

Tape 2, Side B

Lyle Richards, Self, supported SB 387.

Jan Rehberg, Attorney, Late Claimants and Teigen Land and Livestock, said about two-thirds of her water practice includes late claims. The original draft of SB 387 said the court could look at late claims and decide whether it was appropriate to allow those late claims under the traditional concept of equity, which all courts deal with on a daily basis. The concept of equity has been developed over hundreds of years and is a body of law that courts are familiar with handling. If people have substantial reasons for why they didn't file on time, the late claims should be allowed. The Senate didn't want to have anything to do with the late claims part of the bill so it was amended out. Sections 1 through 4 of the bill should be re-inserted. The controversy on late claims is not going to go away just because it is being ignored.

Richard Moe, Self, Two Dot. Written testimony. **EXHIBIT 3**

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

REP. KARL OHS asked **Ms. Rehberg** how ownership could be proven if a courthouse burned down, all records were lost and someone else claimed the owner's property. **Ms. Rehberg** said that has occurred with state lands. In 1982 the general feeling was that the lessee owned the water rights on state land. Subsequent to that time a judicial decision came out which said the state owned the water rights. As a consequence, the state did not file water rights claims on a lot of its state lands, the lessee did. The question is, if the state didn't file water rights claims, did it forfeit the right. On one hand, it could be argued that since the state didn't file, it forfeited its rights. On the other hand, it could be argued that if someone filed a claim, it can't be forfeited. Those are the kinds of issues that are going to come up if they aren't resolved. The adjudication process is there to resolve those problems.

REP. AUBYN CURTISS asked **Ms. Rehberg** what protection exists for late water right claims if SB 387 doesn't pass. **Ms. Rehberg** said if the bill doesn't pass, people who have late water right claims can go to federal court and claim that the Act is unconstitutional if there have been recent developments in the takings arena which provides some interesting legal arguments that could be pursued. There are also a number of issues that could be raised in state court.

Tape 3, Side A

REP. DOUG WAGNER asked **Ms. Rehberg** if DNRC would have records showing what water rights have been filed. **Ms. Rehberg** said DNRC would have the records on water rights claims that have been filed. There is probably a local office in Kalispell that would

also have those records. **REP. WAGNER** asked **Ms. Rehberg** if a new claimant, whose claim has been approved, could lose the right to use the water if a water basin has been closed and all the water rights have been adjudicated and a late claim is filed with the approval of the court. **Ms. Rehberg** said the right to use the water wouldn't be lost if the court has approved the claim. If a judgement is rendered by court and the basin has been closed, the judgement can be reopened under certain circumstances. Excusable neglect, fraud, or some sort of mistake would be some of the reasons.

REP. HAL HARPER asked **SEN. BECK** if the reasons the Senate took out the late claims portion of the bill was because of federal government interference and that it could extend the water adjudication process for years. **SEN. BECK** said that was correct. **REP. HARPER** asked **SEN. BECK** how the water adjudication study committee would be funded and what the cost would be. **SEN. BECK** said at present, there isn't a way to fund it. The committee would have to be voluntary, which is unfortunate.

REP. DAVID EWER asked **Mr. MacIntyre** if the thought it was constitutional that a legal process could be set up which would require people to revalidate property rights they already have and by that process ignore hundreds of years of an Anglo-American process that looks beyond the letter of the law for equity and common law. **Mr. MacIntyre** said those issues have been debated in the last legislative session and the water policy committee. The state, through the 1993 Legislature, has granted remission of forfeiture. Any late claimant who chooses, can until July 1, 1996, file a late claim which would revive the claimant's water right. **REP. EWER** asked **Mr. MacIntyre** if he understood correctly that a late claimant's water rights would be revived but he wouldn't necessarily have first priority on the water, even though the family had the water rights for generations and were first on the streambed. **Mr. MacIntyre** said if a person had an 1865 water right he would retain that priority date, but it would be subordinate to the claimant who filed a timely claim in 1943. The person with the 1865 water right could be required to deliver the water, but would still be in the system.

REP. JON ELLINGSON asked **Ms. Rehberg** what kind of notice was given to people initially about the date by which their water rights had to be filed. **Ms. Rehberg** said notices went out with the tax notices, there were postings in courthouses, meetings were held by DNRC and flyers were sent out. There was extensive notice given and people tried to comply but there were three different deadlines. Deadlines were changed on people, some which were due to human error. **REP. ELLINGSON** asked if notice was given when the dates were changed. **Ms. Rehberg** said she thought there would have been some kind of notice but she didn't know for sure. **REP. ELLINGSON** asked **Ms. Rehberg** if an entire water basin would have to be re-adjudicated, if late claims on that basin are allowed. **Ms. Rehberg** replied no.

Tape 3, Side B

REP. ELLINGSON asked **Mr. MacIntyre** if he agreed with **Ms. Rehberg's** statement that an entire basin wouldn't have to be re-adjudicated if late claims were allowed on that basin. **Mr. MacIntyre** said it would depend on the water basin. If the late claim was on a basin that historically had plenty of water, it probably wouldn't make a difference. If there is a water shortage and the first user files a late claim, it would have a significant impact on the adjudication that has taken place. There are no final decrees under the adjudication process. Most decrees are called "temporary preliminary" decrees. Notice of the late claim would have to be given to all parties concerned. Those parties would have to decide whether or not to object.

Closing by Sponsor:

SEN. BECK said he realized that the late claims issue was contentious. Establishing a water adjudication advisory committee has the highest priority at this time. Maybe over the next biennium, the committee could put a stop to some of the litigation.

EXECUTIVE ACTION ON SB 330 Cont'd.

During the first part of executive action held on SB 330 on March 21, 1995, a Be Concurred In motion was made by **REP. KARL OHS**. **REP. OHS** also moved an amendment to SB 330 but no vote was taken.

Motion: **REP. OHS MOVED A REVISED AMENDMENT TO SB 330.**

Discussion:

REP. OHS asked **Glenn Marx**, Policy Director, Governor Racicot's Office, to explain the amendments. **EXHIBIT 4** **Mr. Marx** said the revised amendment defines who an "interested person" is. The amendment seeks to clarify who can participate in a contested case when the Board of Health and Environmental Sciences (BHES) makes a decision. It also seeks to make sure that the challenge to a board decision is done by someone who has an economic interest in the decision, which means someone who has a motel, hotel, bar or restaurant and caters to anglers or floaters. It also means an outfitter who has a license and makes his or her livelihood from the water quality in that stream. The definition includes a municipality that needs the water supply. A person with a fishing license is not considered to have an economic interest.

REP. BOB RANEY said he didn't understand why ordinary people are not considered interested persons. The water belongs to everyone and they don't have to have an economic interest. Their interests can be social, environmental or fishing. **Mr. Marx** said anyone can participate in the public hearings and public

comments, but after the board makes a decision, anyone that challenges that decision should have an economic interest.

REP. HAL HARPER said the state constitution guarantees every citizen the right to a clean and healthy environment and the bill, even with the amendment, seems to take away the right of an interested person who may feel that his constitutional right is being threatened. **REP. HARPER** asked **Mr. Marx** to comment. **Mr. Marx** said no one is being prevented from participating in the public process, except after the board makes its decision.

REP. RANEY told **Mr. Marx** that the right to challenge the board's decision is the most important part.

REP. HARPER said one of the themes espoused by the 1995 Legislature is one of empowering citizens versus agencies. The amendment seems to take that away. **REP. HARPER** asked if someone could justify that a job provided by a mining industry is more important than a citizen's right to a clean and healthful environment. **Mr. Marx** said that isn't the way the administration sees it. If a person can show an economic loss because of the board's decision, he has every right to appeal that decision.

REP. RANEY asked who would make the decision that a person who wants to challenge the board's decision truly had an economic interest. **Martha Colhoun, EQC**, said the board would make that decision.

REP. HARPER said in other words, the board that made the decision that the person would be appealing, would have the power to decide that the person didn't qualify as having an economic interest. **Mr. Marx** said that didn't sound right.

Tape 4, Side A

VICE CHAIRMAN TASH asked **John Bloomquist, Montana Stockgrowers Association** if he would comment on who would decide if a person had an economic interest. **Mr. Bloomquist** said if someone filed an objection on a board decision and the board decided that person didn't have an economic interest, it could be taken to court.

Vote: Voice vote was taken. Motion on the revised amendment carried 12 to 6.

Motion/Vote: **REP. PAUL SLITER** MOVED SB 330 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried 12 to 6.

EXECUTIVE ACTION ON SB 387

Motion: **REP. ROBERT STORY** MOVED SB 387 BE CONCURRED IN.

Motion/Vote: REP. STORY MOVED SEN. BECK'S AMENDMENTS TO SB 387. Voice vote was taken. Motion carried unanimously.

Motion: REP. AUBYN CURTISS MOVED JAN REHBERG'S AMENDMENTS TO SB 387.

Discussion:

REP. CURTISS said if claim filings have been lost people shouldn't be penalized.

REP. STORY said he was against the amendments.

REP. BILL TASH said although the amendments were presented as a fairness issue, they aren't fair to those that filed timely claims.

REP. JAY STOVALL said he was against the amendments.

REP. DOUG WAGNER said he was in favor of the amendments because a municipality could have filed its claim in a timely manner and because the attorney lost the filing or the courthouse burned down, it has lost its water rights.

REP. HARPER asked CHAIRMAN KNOX if the Rehberg amendments could be voted on even though they weren't in proper format. CHAIRMAN KNOX said yes, but the amendments would have to be put in proper format. REP. HARPER said if the committee didn't want to upset the state's system of water rights and the progress that has been made, didn't want to invite the federal government to take the state's system over and extend the adjudication process, which would be between five and six years, it shouldn't vote for the amendments.

REP. CURTISS said she respected what REP. HARPER said and it wasn't her intention to cause more problems. REP. CURTISS withdrew her motion on the Rehberg amendments.

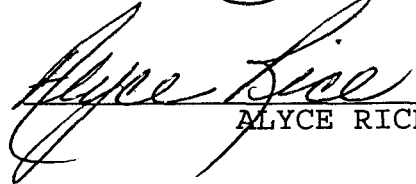
Motion/Vote: REP. PAUL SLITER MOVED SB 387 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion carried unanimously.

ADJOURNMENT

Adjournment: 6:20 pm



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 3-22-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓-		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 387 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Dick Knox
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Story

1. Title, line 9.

Strike: "AUTHORIZING" through "APPOINT"

Insert: "ESTABLISHING"

2. Title, line 10.

Following: "85-2-226,"

Insert: "3-7-103,"

Following: "85-2-233,"

Insert: ", "

3. Page 5, line 29 through page 6, line 16.

Strike: section 1 in its entirety

Insert: "Section 1. Section 3-7-103, MCA, is amended to read:

"3-7-103. Promulgation of rules and prescription of forms -- advisory committee. (1) As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department of natural resources and conservation.

(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide recommendations to the water court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental

Committee Vote:
Yes 18, No 0.

670933SC.Hdh

March 23, 1995

Page 2 of 2

attorneys who practice before the water court, one district court judge, and three water users who have filed statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief water judge or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the water court and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as often as determined by the Montana supreme court."

Renumber: subsequent sections

4. Page 9, lines 1 through 3.

Strike: section 4 in its entirety

Renumber: subsequent section

-END-



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 330 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Dick Knox
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Ohs

1. Page 3, line 1.

Strike: "property" through "directly"

Insert: "real property interest, a water right, or an economic interest that is or may be directly and adversely"

-END-

Committee Vote:
Yes 12, No 6.

670930SC.Hdh

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

3-22-95

I request to be excused from
Committee meeting
to leave my proxy vote

Indicate Bill Number
amendments, list
indicate a separate

HOUSE BILL/AMENDMENT

HJ 29
Hope table

Amendments to Senate Bill No. 387
Third Reading Copy

Requested by Sen. Beck
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 22, 1995

1. Title, line 9.

Strike: "AUTHORIZING" through "APPOINT"

Insert: "ESTABLISHING"

2. Title, line 10.

Following: "85-2-226,"

Insert: "3-7-103,"

Following: "85-2-233,"

Insert: ","

3. Page 5, line 29 through page 6, line 16.

Strike: section 1 in its entirety

Insert: "Section 1. Section 3-7-103, MCA, is amended to read:

"3-7-103. Promulgation of rules and prescription of forms
-- advisory committee. (1) As soon as practicable the Montana
supreme court may promulgate special rules of practice and
procedure and shall prescribe forms for use in connection with
this chapter and Title 85, chapter 2, parts 2 and 7, in
consultation with the water judge and the department of natural
resources and conservation.

(2) (a) The chief water judge shall appoint a water
adjudication advisory committee to provide recommendations to the
water court, the Montana supreme court, the department of natural
resources and conservation, and the legislature on methods to
improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental
attorneys who practice before the water court, one district court
judge, and three water users who have filed statements of claim
with the department of natural resources and conservation under
this chapter.

(c) The chief water judge or the judge's designee shall
serve as an ex officio member of the committee. The Montana
supreme court may appoint the attorney general or the attorney
general's designee, a representative from the department of
natural resources and conservation, and a representative of the
United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of
the water court and shall serve without compensation.

(e) The committee shall file a report with the Montana
supreme court by October 1, 1996, and as often as determined by
the Montana supreme court."

Renumber: subsequent sections

4. Page 9, lines 1 through 3.

Strike: section 4 in its entirety

Renumber: subsequent section

Patty Walker
Atlasta Ranch
Box 320081
Glen Montana 59732

March 22, 1995

Dear committee members,

The Montana constitution states that all beneficial water use is hereby recognized and confirmed. I guess this does not apply if you have a late claim. History is a very important thing to preserve and to only preserve a part of historic rights because of a paper mistake is wrong. I have a water source that was claimed by the homesteader in 1910 and has been in continuous use since that date. Our ranch has been the only user of this water since that time. We supposedly have exempt domestic and stock water rights and since Sen. bill 310 our irrigation rights have supposedly been reinstated. Our problem is that we have a late claim and the Department of the Interior (BLM) is doing everything in their power to eliminate our rights. We bought this place in 1987 we call it Atlasta Ranch it was our dream and we didn't mind that it was mostly sagebrush and rock it was a place to build our lives together. For three years the BLM told us we had to sign over our water rights to them because we no longer had any because of the late claim. They told us if we did not they would wait till adjudication and file a water right. That changed when the first congressional inquiry came. After they received the inquiry they initiated a water filing and we had to defend ourselves at a water hearing. The hearing examiner (who was an ex federal employee) after we presented historic testimony from the homesteaders son and our predecessors and numerous letters documenting historic use, said that it was speculation. The BLM presented only opinion and that was called fact. We asked for an on site inspection, he came out to our place and could see the flow for himself, he told my husband that he didn't know all the laws and that he was going to school to learn about them. There is no record that he was ever at our house and in his decision he said that water was flowing where it wasn't. Maybe it is coincidence that his decision was the exact BLM opinion. The BLM didn't get their water permit but the hearing examiner left the door wide open to come back at a later date. The decision was so out of line that we objected only to be told that because the decision was in our favor our objections would not be heard and the decision stood as written.

In 1993 we were maintaining our spring when an armed BLM ranger came out and told us we should stop. He could not tell us that we were breaking any laws the BLM just didn't want us to continue. Soon after that we received a summons to federal court. We endured two years then in Jan. the decision came against us. The BLM in the court case told the court that they acknowledged our water rights and in the first order the judge said that it was subject to our water rights. The BLM submitted a motion to amend the decision to say that it was subject to whatever rights we are

March 22
Pg 2

adjudged to have. The judge signed it. (we never saw this motion and it was submitted and signed in record time.)

We are supposed to be able to use our water without interference, we have gotten nothing but interference from the BLM. It is not like they don't have any other water to take care of, they do not 200 yards from our spring. They refuse to even invest \$10.00 in a pipe to get it to the stocktank. Instead they sue us to take ours away and they withhold important information from the court to achieve their goal. Their goal is to eliminate all water rights that come up on public land. ~~(find attached document)~~

I want to know when my rights are going to be upheld. We have written to the governor asking for help after all he can pardon murders and he tells us how it is to bad and he will do nothing to help. Our attorney generals office doesn't answer our letters because they are too busy defending the federal government instead of Montanans. In all the years that I have come up here the atty. generals office has never stood up for us with late claims. They whine about these compacts and it seems to me that they made their bed by totally ignoring historic water rights whether they were late or not. Surely they have always known that someday we would be let back in.

The system has failed for us over and over again and when you have a problem with the federal government no one will help you. I understand now why people resort to violence. They talk and talk and sometimes scream and no one hears their pleas for help, then they resort to violence and all the sudden everyone is listening. It shouldn't be that way. I am here as living proof of what a bad law does, I have lived it for eight years now. It has destroyed my life, my husbands life and my two sons lives. My husband has been put on medication because of the depression and violent behavior this has caused. My heart breaks when my boys cry and want to know why this is happening to them and when is it going to stop. My youngest son for Christmas the first thing on his list was for the government to leave us alone. All we want is to be left alone and live in peace. All we want is our day in court to defend our historic water rights. I ask that you not give the federal government any more power to destroy any more lives. I ask this for the thousands that will come behind us please, please let the water judge decide who gets what water rights.

I would like to know if any of you have talked to your constituents who have late claims. If not I ask you to do so after all this bill affects their lives. I believe you have a responsibility to do so. Please do what is right for the late claims and protect Montanas water history. Don't let any more families be destroyed.

Sincerely,



Patty Walker

Patty Walker
Atlasta Ranch
Box 320081
Glen, Montana 59732

Feb. 16, 1995

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 ruled last month 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 they 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.

Oct. 6, 1994

Patty Walker
Atlasta Ranch
Box 320081
Glen, Montana
59732

Dear Water Policy Committee,

I come before you today like I have so many times before that I have lost count. I have attended almost every hearing since the beginning of Senate Bill 310 and have tried to tell you why some of us non perfect Montanans need some help from you our elected representatives. I am not here to air my laundry to you, I am here because of a bad law that has enabled the Federal Government to destroy my life, my husbands life and my two sons lives. I did not make this filing mistake but my family is paying for it.

Throughout all of these hearings you have commented that the timely filers are upset about further remissions. I just have one question and that is where are all these people? In all the hearings there was only one person who spoke in opposition of Sen. 310 and he was upset because if the late filers were let in he would lose his windfall. Our own Attorney Generals office, who is supposed to work for Montanans gets a threatening letter from the Federal Government and has turned its back on us and is doing back flips for the Feds. I have to wonder if some behind the door deal has been made between the Federal Government and the State of Montana in regard to late claims. I have to wonder who is looking out for Montanas interests.

A late claim does not guarantee a water right, yes we are let in to be heard but a water right is nothing without a piority date. What is the harm in further remissions? We have to pay \$300.00 to be heard and all court costs if it is protested. It won,t cost the state anything because the late filers are paying the bill. What is so wrong with letting the Water Judge decide on a case by case basis who gets what water rights.

It would be nice if we lived in a world that was perfect and nobody ever made a mistake, but the fact is that we are human and we are not always perfect. I hope that when the next supposed inventory is taken perhaps this time the State will want you to file on all the property you own, I hope that you continue to be perfect and get all your papers filed on time because if you don,t you will lose everything you have worked hard for with no chance of ever getting it back.

I do not enjoy coming to these hearings and having to tell you what has happened to me. Everytime I leave my house and drive two hours to get here I am always hoping and praying that today is the day that someone will do something to help. Then on the way home I realize that all the time and effort has fallen on deaf ears. It takes courage to change a bad law and courage to go the distance to help those of us that are not perfect. I applaud you Senators Swift and Mesaros for listening and understanding and standing up for Montana, your constituents are well served by you. I will always have the upmost respect for both of you. Thankyou for trying.

Patty Walker

Feb 16
pg 2

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

EXHIBIT 3
DATE 3-22-95
SB 387

To: House Natural Resources Committee
From Richard Moe
Re: SB 387 Hearing Date: March 22, 1995
3 PM. Room 437

In 1982 water right holders were asked to identify and list all water rights with a state wide adjudication process. They were notified by letters, through local papers, notices at county court houses, and other means. The original deadline was twice postponed. Over 98% of water right holders filed their water rights by the April 30, 1982 deadline.

The Montana Supreme Court ruled against late claimants and that the filing process and the April 30, 1982 deadline were legal. The 1993 Legislature passed a bill allowing "postmark late claims" and a provision allowing other late claims junior water rights. Now, again in 1995 the Legislature is discussing the late claims issue.

When is it going to end? How much longer are a few individuals who missed filing ~~water~~ water rights by the

correct procedure going to drag this process out?

I ask the House Natural Resources Committee to not reinsert late claims provisions, allowing the court to decide if and to what extent late claims should be allowed ~~in~~ SB 387.

It's time to move on with the water right adjudication process and allow the 98% of us who filed our claims by the April 30, 1982 deadline have this process completed.

Thank You

Richard Moe

Box 238

Two Dot Mt 59085

Amendments to Senate Bill No. 330
Third Reading Copy

Requested by Sen. Swysgood
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 22, 1995

1. Page 3, line 1.

Strike: "property" through "directly"

Insert: "real property interest, a water right, or an economic
interest that is or may be directly and adversely"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. HJR 29
DATE 3-22-95 SPONSOR(S) Rep. Oke
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Cary Hegreberg	MT Wood Prod. Assoc.		X
Maureen Cleary-Schwinder	WIFE	X	X
John Youngberg	MT Farm Bureau		X
Larry Brown	Ag Pros. Assoc.		X
MIKE MURPHY	MT. WATER RES. ASSN.		X
Jim Richard	MT Wildlife Fed	X	

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

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Natural Resources COMMITTEE

BILL NO.

SB 387

DATE

3-22-95

SPONSOR(S)

Senator Deck

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
JIM C. QUIGLEY AVON. MT. 59713 Jim C. Quigley Avon, Mt.	SELF Self	SB 387		✓
Patty Walker	self	387		X
Spencer Walker	Self	387		X
RD Amdahl	SA Lee	383	X	
Eugene Marday	Self			U
Jan Reiberg	Teigen Land & Livestock	387		✓
Lyle Richards	Self			✓
Moss Teigen	Teigen Land & Livestock Co	387		✓
Richard Moe	Self	387	✓	
John Bloomquist	Mt. Stockgrowers	387		✓
Larry Brown	Ag Pres. Assoc.	387		✓ with Amend
Lorna Frank	Mt. Farm Bureau	387		✓
MIKE MURPHY	MT WATER RES. ASSN	387		X

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