MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 20, 1997, at 1:00 P.M., in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: Informational Hearing on MT Water Law by Judge Bruce Loble.

{Tape: 1; Side: A; Approx. Time Count: 1:00; Comments: N/A.}

CHAIRMAN LORENTS GROSFIELD introduced **Bruce Loble, Chief Water Judge of the State of Montana; Don MacIntyre, Chief Legal Counsel for the Department of Natural Resources;** and **Susan Cottingham, Program Manager, Reserve Water Rights Compact Commission.**

Bruce Loble, Chief Water Judge for the Montana Courts, said the court dealt with water rights, which are very valuable property rights and over which many battles have been waged. He gave an overview of the adjudication of water rights in Montana.

The Montana Water Use Act of 1973 resulted from the new Montana Constitution which said that the legislature shall establish a centralized system of water rights. In accordance, the legislature created the Water Use Act of 1973, which in turn created the Department of Natural Resources and made the system of acquiring water rights a permit system by establishing certain statutory criteria. Prior to 1973, there were only three type of water rights in Montana:

1) Appropriation Water Rights - people simply diverted water to be used for beneficial purposes, of which 70% of the water rights in Montana qualify.
2) Filed Rights - people who wanted to appropriate water could file this type with the Clerk of Court.
3) Decreed Rights - the two rights are combined and a judge decided whether or not and to what extent they exist.

In addition, another type of right first recognized in Montana is called Reserved Water Rights, which **Susan Cottingham's** shop dealt with, he said, first recognized by the U.S. Supreme Court in 1908 or 1909, also called the Winter's Doctrine. It said that when the Federal Government, Congress or the President withdrew land from the public domain for a specific reservation, they also withdraw a certain quantity of water for the purposes of that reservation. It started with an Indian reservation and has now spread through national parks and all federal entities. There are quite a few in Montana, and the unusual thing about them is that they are unquantified: no one knows for sure how much water a reservation or a national park needs or for what the purpose. He further stated that you can't lose them by not using them.

In Montana law jargon, **Judge Loble** explained, there is a "use it or lose it concept of law. This says a person must continually use their water rights for beneficial purposes.
Another rule is, "first in time, first in right," meaning that prior use of water guarantees the first shot at the water coming from the stream. In a shortage, the people who used the water first historically get to use it for a longer time. Later appropriated water is not available to be used for as long a time period.

When they started the adjudication process, they estimated 500,000 claims for water. As the DNRC began its adjudicative and administrative duties in 1973 in the Powder River, the Arabs had jacked up the price of oil, and Montana looked like it may become the industrial energy complex of the world. A federal study was done which said it could find site locations for coal gasification plants that would satisfy the energy needs of the country. Each plant was estimated to use 15-20,000 acre feet of water. An acre foot of water is the water necessary to have a foot of water over an acre of land. Also at this time in 1975, the federal government started to file lawsuits on behalf of Indian tribes and themselves. U.S. Marshals were going all over

Montana in the eastern districts serving summons on farmers and ranchers who were using water.

This got the legislature's attention, he said. There was also another creation in the 1970's called the State Reservation of Water. The Yellowstone River was looked upon as a source of supply for energy development by coal companies. The legislature created a moratorium of water rights on the Yellowstone to stop the boom appropriation of water that was feared. In 1977, an interim committee of the legislature proposed a bill which passed the House and died in the Senate which tried to adjudicate water rights. A study commission formed and adopted what was later to become Senate Bill 76. At the same time, the federal government filed four more lawsuits over Indian and federal rights, bringing the suit number to seven, mostly on the Hi-line and on the Yellowstone.

This precipitated a great flurry of folks for the county courthouses, who were uncertain about jurisdiction of federal water rights. The legislature passed SB 76, the Water Court was created, and everyone had until 1982 to file statements of claim. In the meantime, the Montana State Supreme Court dismissed the federal court claims, but the Ninth Circuit Court reversed the decision in an appeal. The Montana Attorney General then took it up with the Supreme Court with a companion case from Arizona. The U.S. Supreme Court said there was concurrent jurisdiction to adjudicate federal water rights in state and federal courts, so Montana could adjudicate those rights under the doctrine of the McCarran amendment, passed by Congress in the 1950's.

As Montana started to adjudicate water rights, the lawsuits were stayed (still pending) until the federal government or the tribes want to re-enter the cases. Over 200,000 water rights were filed in 1982, 45 percent of which were filed in the last 30 days.

Judge Loble stated that the State of Montana breaks down into 85 hydrologic basins defined by the U.S. Geological Survey which are used today in Montana, but are no longer used by the federal government. All water rights have been keypunched into a computer and the DNRC knows every statement of claim filed. They use a manual to examine each claim, using point of diversion, point of use, flow rate, etc., to make an estimate of correctness based on information at hand. After the DNRC finishes with the claim, the Water Court produces a "temporary preliminary decree." He told the committee that there were 5,000 water rights claims in one (41-I) basin filed in an index. The index would provide the following information: owner, point of diversion, priority date and water rights identification number.

When the process started, they had intended to bring out one decree, and include in it state-based appropriation rights and federal and Indian reserve water rights. The federal government, however, did not want to get involved with this process. The Water Court and **Judge W.W. Lessley** started by choosing basins

without federal rights. They ran out of these basins and the Compact Commission had not yet come up with any compacts, so the judge created "temporary preliminary decrees", and that is what the remainder of the basins are classified under. These decrees expanded the adjudication by making a two-step process instead of the intended simpler form of taking care of state and federal rights. They now do the state rights, then get the federal rights and open them to an objection period. SB 108 would bring this back to one step, he stated.

When the decree is brought out, every statement of claim is put onto an abstract, which is recorded in the index book. A notice is sent to everyone in the basin to peruse. The DNRC has by then examined them and has issued remarks on them, pointing out potential problems. Water users are asked to review the documents and file any objections, along with their lawyers' name, priority dates, flow rates, place and acres of use, etc., on a one page check-off form. When the objection comes to **Judge Loble**, it lists the claim number, water rights number and the reasons for objection. They send notice of that objection to everyone concerned and they in turn can file a Notice of Intent to Appear. There are six watermasters at the Water Court who take the cases of similar factual situations - from the same source, belonging to the same person, with the same objectives, etc., consolidating them into a case to begin adjudication in district court. He said they were going through the state systematically hydrologic basin by hydrologic basin.

In reviewing the reasons for the present proceedings he told the committee that Montana in 1871 had 21,000 people. Now there are over 800,000. There are 670,000 taxable pieces of property today as well, and in a given year, 82,000 are transferred. As conflicts arose, the legislature, always fearing the state government bureaucracy, would amend statutes as they went along. From 1871 to 1972, the water rights were gained in the same fashion. Now there are 200,000 more water right claims. Sixty to seventy percent of these claims are use rights. The McCarran Amendment required that all adjudicated claims were to be combined into one general proceeding. One of the historic problems with water adjudication has been that one or two or more people in a basin will have a conflict with one another. They then go to district court for a lawsuit to have the water rights determined. The rights determined in that action are not binding on some of the upstream or downstream people not involved in the action, so the next dispute has to be done all over again. The goal of this adjudication is to get everyone in one lawsuit, which is the largest lawsuit in Montana's history, and to have that action be binding. There were 218,000 water right claims for rights that were created prior to 1973. The DNRC had water rights permits that were created after 1973 numbering approximately 100,000.

Questions and Answers

CHAIRMAN GROSFIELD asked about the pressure to do adjudications to protect Montana water interests, such as happened in the 1970's.
Judge Loble explained that throughout Montana's history there have been crises on water rights. He said they could wait until the next crisis to fix the water rights issue, or fix it now if they had a plan. Montana is a water-rich state. The adjudication is not only to protect waters against out-of-state interests, he said, such as Tenneco and Mobil. It is important to protect Montana rights from downstream state claims and to prevent the federal government from usurping jurisdiction. There is also the consideration that in a centralized administrative water rights system, the only way to know how to distribute water or how to get permits for new use is to find out how much is in the stream. He said there was quite a bit of tension about water in the state, and his department was also seeing many water quality issues. The tension was caused by the people who want to keep the water in the stream, and those who would choose to divert it for beneficial use.

Two important cases were before the water court now, he said. The Butte case involved a big industrial client who wanted to buy water from Butte Silverbow, and from the Silver Lake in the Georgetown area. No one knows how much those water rights are. They are a mess, he said, but when they finish, Butte Silverbow should know how much water they have and how much they can sell. Another case he listed was the Northern Cheyenne Reservation. One of the benefits to negotiating water rights, rather than litigating them, is that a person can deal with issues that a court can't deal with. The particular issue at hand was the Tongue River Reservoir, which needed rehabilitation. The state did not have the money, but by combining a compact over the Northern Cheyenne's Reserve Water Rights and going to the federal government, they got a $52 million project, which the state could not have done. The state, as a result, is ahead of the adjudication at this time. There are two reasons why the adjudication is necessary: 1) to protect Montana's water resources from out-of-state downstream interests, and 2) to maintain and manage the water rights that we now have.

SENATOR KEN MILLER asked if present regulations would preclude people from filing repeatedly, or at a late date. **Judge Loble** explained that it would be highly unlikely because statutory language in SB 76 required water rights to be filed by the date (April 30, 1982) set by the Supreme Court or the claim was presumed abandoned. The Court had subsequently held the ruling Constitutional, except for some exceptions such as domestic groundwater and instream that did not have to be filed. In 1993 the Legislature said the law was too harsh and allowed late claims in the form outlined in SB 310. There are 3,500 of those claims now, he said. The deadline was July 1, 1996.

SENATOR MACK COLE asked of the 200,000 claims prior to 1982 and the 100,000 permits after that date, how many were in the temporary preliminary decree stage. **Judge Loble** answered, saying there were six final basins, basically in the Powder River, that were still to be re-opened. There are 52 decrees that have come up, three of which are compacts of the National Parks, Northern Cheyenne and the Fort Peck Reservations. There are seven preliminary decrees, 37 temporary preliminary decrees and six final decrees. Of the 200,000, he estimated, over half were in some kind of decree.

SENATOR TOM KEATING asked for clarification. **Judge Loble** said that half of the 218,000 water right claims were in either a preliminary or temporary preliminary decree. This amounts to more than 100,000 of the claims filed in the Water Court Office, and they had completed at least 70 percent of them.

CHAIRMAN GROSFIELD asked if temporary preliminary decrees were not enforceable until after the objection process. **Judge Loble** said that about 22 were enforceable. There were 52 decrees in over 100,000 claims, six final decrees, seven preliminary decrees, 37 temporary preliminary decrees, 100 percent of the objections and 22 resolved. He said they were 90 percent or more complete in 12 more decrees. By the end of the year, he anticipated 34 decrees that were enforceable. Asked about the enforceability of the pre-1973 district court decrees, **Judge Loble** said that since the beginning, when conflicts arose, a person had to go to district court to file a complaint. The court would then issue a decree that could include two or more people, perhaps for example, even the entire Sun River decree. The Dempsey Creek dispute was adjudicated at least seventeen times. The decree of the district court only settles the immediate dispute between the people involved in the litigation. He looked at it in terms of the Olympic rings, linking people, water and lawsuits, in multiples, often overlapping. Consequently, the same water rights have been, in some cases, decreed two different ways. Evidence is lost as years go by, as well, he said. District Court decrees are piecemeal litigation that is only good for the people involved.

SENATOR MIKE TAYLOR asked who decided when, why, and which basin, in the adjudication process, and why Lake County had not been chosen as yet. **Judge Loble** said the ultimate decision to issue a decree is up to the water courts. They do so based on the recommendations of the DNRC and the Legislature, who instructed them back in 1989 through the intent of a bill (perhaps HB 54) which basins they were to work on. The DNRC examines claims scattered throughout the state, and the courts usually chose those basins. They stay away, however, from basins with Indian reservations. They were ready to decree on the Milk River, but the tribe **Susan Cottingham** is dealing with on reserved water rights does not want to be put into the position of having to object to water rights claimants when they were trying to negotiate with the state over the extent and the scope of their

own water rights. They chose areas instead, which have "hot spots," in which people are unhappy, such as the Bitterroot area.

SENATOR TAYLOR questioned the Judge about the headwaters issue, such as Flathead Lake and the Indian dispute which start in the headwaters above the lake. **Susan Cottingham** answered the question. In any one negotiated settlement they were working with the water rights in one particular basin. For instance, down in the Northern Cheyenne, they looked both up and downstream from the reservation and tried to determine who was using what water and what impact it would have. One of the reasons the Blackfeet did not want to negotiate and go to court is that they believed they should control the headwaters and should dictate what happens to water flowing off the reservation. The claims that the Salish-Kootenai Indians made for aboriginal water rights were based on treaty language that gave them the right to hunt and fish on occupied lands off the reservation, hence, they lay claims to all water basins on the western slopes. They will make their case in court or with the Compact Commission.

For clarification, she talked of the seven federal lawsuits the judge had mentioned. Once they settle a compact with the tribes and the United State, the U.S. acts as trustee for the tribe. Those lawsuits are then dismissed as part of the Compact. Once the compact for the Northern Cheyenne, for instance, is ratified by the Legislature, it goes to the water court and the judge approves the compact. It says the parties have agreed to dismiss the federal lawsuits. Basically, they are settling those lawsuits and the parties will no longer have to appear individually. The purpose of the Compact Commission, then, is to settle those lawsuits. They are the only one of their kind in the U.S., she said. In other states, the Attorney General's office does settlements.

{Tape: 1; Side: B; Approx. Time Count: 1:50; Comments: N/A.}

It is not the Commission's legal right to make determination about individual water user's rights. They represent them as a whole as a party representing the state. The goal has been to protect the state water users in drainages, while at the same time trying to quantify tribal water rights and federal water rights. All the compacts of the federal entities have agreed to subordinate to existing water users. This has been a difficult technical position because they don't know how much they are asking the tribes to subordinate to. She said they dealt basically government to government with blocks of water. They used the DNRC information, in Rosebud Creek, for example, looking at photographs and information in determining 2,800 acres of existing irrigation. That is what the tribe had agreed to be junior to, in priority of first in time, first in right. They had never made a judgement of individual water users that comprise the block. That is left for the Water Court to do and once the decree is final, they will have protected every one of their final decrees.

SENATOR KEATING asked about the claims, in particular basins, and if they all will have a final decree. The answer was affirmative. The Senator further asked if the new water claims filed with the DNRC are necessarily adjudicated. **Judge Loble** said they were not, but they were added into the number of claims in a basin. They become permits. They cannot get a water right from the DNRC unless they comply with statutory criteria and they are made subject to existing rights.

SENATOR KEATING asked if there would be any additions to the 218,000 claims, excepting if the legislature accepted more latecomers. **Judge Loble** answered by saying there was one piece created by the legislature that was worrisome - exempted instream, stock rights and groundwater. He assured the **SEN. KEATING** that all claims would eventually be adjudicated.

SENATOR KEATING asked how many claims had been put into the temporary decree status. 110,000 was the answer. They agreed then that there were about 118,000 claims left. **Judge Loble** said the adjudication time would depend on resources put into the process. All claims have to be examined by the DNRC. At the start, he said, the original fiscal note called for 150 new FTEs. In 1982, when the claims were coming in, the DNRC had 40-50 people working on them. Now, he said they had 11 people working on them.

SENATOR KEATING asked **Ms. Cottingham** about the hypothetical review of 2,800 acres of irrigated property. If they asked the tribe to be junior to those claims, he wanted to know if the approach in the compact was to determine what would rightfully belong to the tribe or if they deduct the existing claims and retain the rest? **Susan Cottingham** replied that both were done. The staff has both attorneys and a hydrologist and they try to give the Compact Commission a bottom line. If something went wrong in state or federal courts, what the tribes would get would be questionable. If they got 10,000 acre feet of water, would they then displace all the existing water users because of their priority date or quantity? She said both sides would be juggling to make their strongest case. They try to protect existing users by using computer models of rivers. Asked if there would be any room for new permits, she said it would depend on the basin, but they generally found that in most cases there was not enough water for future use. Once they quantified the federal water right and protected the existing user, in a number of compacts they had put a moratorium on the permits in the basin or closed the basin by the compact. The exception was the National Park Service on streams that flow into the park, they agreed to protect existing users and also set aside a block of water for future use. In the Chippewa-Cree settlement, there were very small streams that were short of water which will necessitate basin closure. **SENATOR KEATING** stated that in spite of all the work, 90 percent of the water originating in the state is leaving the state.

SENATOR COLE questioned a non-reserved right entity to whom the tribe becomes junior. If the entity had a 1838 water right and the tribe had a 1910 claim, would that move the 1838 claim back? **Susan Cottingham** said that it would make them senior to the tribe. It was further asked of her how far back the water use could be traced, and if water was used a year ago, would it revert to, for instance, an 1888 water right? She said they try to protect every use up to the date the compact is signed. In the case of the Chippewa-Cree, they tried to protect everyone to 1997, not just to 1973. The state makes it clear that the permits are provisional and are based on existing water users. If it turns out that there is not enough water in the drainage, they could be shut off. The more permits issued, the more there is to protect. The political pressure will be on them and the tribes to not only protect the ones in the water adjudication, but the ones issued since.

SENATOR COLE further asked how fair it would be to someone who just put in a new sprinkler system last week. She replied that the people would be subject to the provisional nature of the permits and would have to make decisions accordingly, or perhaps seasonally. She told the committee that the legislature has begun to close water basins. The entire Missouri Basin upstream from Morony Dam is temporarily closed pending adjudication. Three of the basins of the Missouri are permanently closed: the Teton, Jefferson and the Madison.

Donald MacIntyre, Chief Legal Counsel, Department of Natural Resources and Conservation addressed the committee. He said everything east of the 100th Meridian is fairly wet. As a result there is a riparian system. West of that, everything is arid. There arose a need to develop water laws or a doctrine in which economic development could take place when the miners stole the water.
Today, Congress could pass a uniform water law, but it has always deferred to the state on water rights.

In Montana, then, development started as early as 1865. A person would simply get a water right. A water right is a different kind of property right. A car or a TV does not have to be used to continue ownership, but water must be put to beneficial use. Because a person was first in time, they would be the senior user. You can call any junior user to deliver water to you in a water-short period. You can call on the next most senior water member of the stream and they would also be responsible to give you the water rights, and on down the line. Through the years, they have tried different systems of water rights to control the right. A file system was started, but it was never considered by the Supreme Court to be an exclusive mechanism for getting rights. As history developed, use continued to be the prevalent practice. The test was just physically removing the water from the stream. In the 1940's or 50's, a permit system was started, and in 1973, Montana was the last western state to adopt the system. The Constitution required Montana to start an

adjudication process and also required Montana to develop a new way of acquiring waters that would be exclusive.

Montana dumps a lot of water out both the Missouri and Columbia sides because water flows in Montana in many places where it is unneeded. If not plentiful, people who wanted to use it may have conflicts. That's why the Prior Appropriation Doctrine came into use. People wanted to move water from where it was, to where it wasn't. He reminded the committee that Montanans don't have riparian rights. In California, he said, people do not own water rights unless they specifically buy the rights.

Mr. MacIntyre spoke of use ownership. He said a person who has a water right has a right to use it to its historical maximum beneficial use, also the right to use it in its priority, and the right to change it to another use as long as it does not adversely change other water rights, either junior or senior. In the Fort Peck Dam, the federal government claims the maximum amount of water, which flows to the rest of the state with virtually little use. On the Columbia side, there is a dam at the border for hydroelectric use. The Montana Power Company has the valid right to store water and use their head to develop electricity. They also have the right to call on any user upstream. The reason there was water leaving the state, then, is because they are not all consumptive users.

Another change in the law he talked about occurred in 1975 called the Sporhase case, which was a fight between Nebraska and Oklahoma over groundwater use. The U.S. Supreme Court said at that time that groundwater was an article of commerce. At the time, Montana had restrictions on any out-of-state use and restrictions on coal slurry development. In 1985 the law was restructured then so they did not have those bans. The way the legislature goes about protecting and conserving its water resources is to develop structures, which are permit criteria. In 1973, when the Water Use Act was passed, it contained two things:
1) an adjudication component
2) a permitting component

The purpose of the permitting component was to advise people from that point they would not allow the development of water in Montana except through some conscious decision making, rather than have those developers simply take it from the streams and make the senior users press their remedies in court. The permit requires beneficial use. The priority date is the day of the application, rather than use, as had been the practice before, and a person had the right to change the rights. The difference between the permit and the existing water right is that the existing rights were those in existence before 1973, the ones being adjudicated. Permits are provisional in nature, whereas water rights are vested, or perfected water rights. They are the higher value because the Constitution protects them. The water rights that are being issued under state permit since 1973 are

not vested, and will only become vested after the adjudication process. The legislation **SENATOR GROSFIELD** is carrying, he said, is basically saying that once the adjudication is complete, a person could go back and look at the permitted rights, based on the information on which the decrees are issued, and alter or revoke a permit to provide further protection to existing water users. Once done, a certificate of water right would be issued and they would become vested, in the same nature as existing water rights prior to 1973, only created through a different mechanism. Most states have permitting systems, he said. Over the years as water has become more scarce and more water was leaving the state, the legislature has developed basin closures, leasing mechanisms and temporary changes to allow for development. Permitting will move more to a market system, he explained, so people will buy existing rights for their use. Historically, water rights have always been subject to change such as a change in point of diversion, points of use, purpose of use, or points of storage. However, the criteria was always as such not to create an "adverse effect." A person cannot adversely affect another user, he said, by using the priority date, (for example, on a 1988 water right), and move it somewhere on the stream. If it was moved below someone with, say, a 1910 priority date, he must allow that water to flow by, whereas before he did not. With the changes, the legislature would require there would be some prospective thought given and a judgmental call to whether or not there would be adverse effects. He summed up by saying today there was a permitting process where the only way to get water is through a use permit process and the only way to change even existing rights are through the DNRC process. Once the adjudication is complete, those permits are put in a document from the decrees and may be modified through due process.

SENATOR TAYLOR asked about miner's rights vs. agricultural rights. **Mr. MacIntyre** replied that there was no difference, only in time.

SENATOR VIVIAN BROOKE asked if **Mr. MacIntyre** thought they should strengthen requirements for people dealing with rural real estate and demand stricter qualifications and education on water rights. **Mr. MacIntyre** said it was becoming more of a problem as some ranches were broken down into subdivisions. Most of the agricultural land being developed will have water rights, he said, with irrigation, but the question is how they are then broken up. On a scale of 1 to 10, she asked how many people might misunderstand the water rights problems. He answered that the problem was more in practical application of what they want to know and guessed the number at seven. Asked if more education would be desirable, he agreed, saying the Conservation District started a program in which they provided speakers to talk on those issues to realtors, sometimes for credit.

Asked if the six watermasters were certified attorneys, he answered in the affirmative. They were all located in Bozeman.

He said the watermasters traveled to the basins and did quite a bit of teleconferencing, so that the permittees did not have to drive to Bozeman.

In another question, he was asked if a person would be required to file a separate objection for each, if they should have several in the same claim. He said they would have to file on each claim, checking off as many boxes as they wished.

SENATOR WILLIAN CRISMORE asked if the Forest Service Land was treated like the reservations and parks. **Susan Cottingham** answered the question, saying forest lands do have reserved water rights. She said it was complicated and they had entered into an agreement with them on the proceedings. Basically, they would begin with larger issues, such as to what purpose they would claim water - fishing, flows, etc. The forest lands are also multiple use systems and there are special use permits for mining, timber, etc., so it further complicated the use. They would test the results in some of the larger basins before deciding on policy. The Forest Service doesn't have qualms about the temporary preliminary decrees that the reservations did. She hoped the Water Adjudication Water Advisory Committee would be helpful.

SENATOR CRISMORE asked if he could go to the Forest Service if he wanted a permit to have water to his land from the Kootenai? **Mr. MacIntyre** answered that he would have to go to the DNRC.

CHAIRMAN GROSFIELD said he had served on the Compact Commission for several years, and as **Judge Loble** explained about reserved water rights, it depends on the reservation and how it was made, if in an Act of Congress, and what the language said. He reiterated the importance of the origin. **Ms. Cottingham** said millions could be spent in court, as in Colorado where litigation of forest service reserved water rights had gone on for over a decade. They had spent $10 million between the parties (the state had spend $2 million) settling water rights for two national forests. Montana has ten forests, she said. She said they fought over the terms of the Organic Act - the favorable conditions of water flow, and how much water would be needed to protect against fires. They've now decided to negotiate. She felt Montana could be more creative, even though the issues here would be no simpler. She posed the questions: what do the forests need? What do the inholders need?

CHAIRMAN GROSFIELD thanked **Judge Loble, Don MacIntyre, and Susan Cottingham** for the presentation.

{Tape: 2; Side: A; Approx. Time Count: 2:35; Comments: N/A.}

A discussion then followed about committee amendment policies. **CHAIRMAN GROSFIELD** explained that legislative staff would draw up amendments only at the request of any legislator and that committee members are the only legislators who can move amendments. Therefore, legislators who are not on the committee may request their amendments be drafted, but they must have a member of the committee to move them. On the floor, any legislator could request amendments.

CHAIRMAN GROSFIELD adjourned the meeting at 2:45 p.m.

ADJOURNMENT

Adjournment: 2:45 PM

SEN. LORENTS GROSFIELD, Chairman

GAYLE HAYLEY, Secretary

LG/GH