

TESTIMONY BEFORE THE HOUSE NATURAL
RESOURCES COMMITTEE

HOUSE BILL NO. 178

EXHIBIT 2
DATE 1.17.05
HB 178

Jack Stults, Administrator
Department of Natural Resources and Conservation
Water Resources Division

January 17, 2005

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO WATER USE; CHANGING THE NAME OF THE WATER RIGHT TRANSFER CERTIFICATE TO THE WATER RIGHT OWNERSHIP UPDATE FORM; CLARIFYING THAT THE DEFINITION OF "APPROPRIATE" MEANS THE USE OF WATER FOR A BENEFICIAL USE; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Introduction

Representative Taylor agreed to sponsor this bill at the request of DNRC. I thank her for doing so, and thank the committee for its consideration.

Background

This bill is a general clean up of various Montana water laws. In addition to a few clerical corrections, the bill changes a form name; clarifies two definitions; adds language to clarify actions that occur on applications to change a water right; and removes requirements that are no longer needed.

Form Name Change: Let's talk about the form name change first. Current statute requires water right owners to update water right records stored in the centralized water right system. By having updated names and addresses, the DNRC and the Montana Water Court is able to notify the proper individuals about information pertaining to their water right and about new water right applications that may impact their water right.

Current statute requires that the form name used to update these records be called a Water Right Transfer Certificate. The form name has caused confusion for the public because they think that by filling the form, their water right has been legally transferred when in fact the form simply updates the DNRC centralized records. The deed legally transfers a water right. This bill changes the name from Water Right Transfer Certificate to Water Right Ownership Update. The DNRC talked with various water users and the Water Court staff about changing the name and everyone hopes that the new form name will clarify that the form only updates the water rights centralized records.

Definition Change: The next change included in this clean up bill is to add to the definitions of "Appropriate" and "Beneficial use". Let's start with the definition of "Appropriate". First, 85- 2-301 states that, "A person may appropriate water only for a beneficial use." However, the definition of "appropriate" does not include the reference to beneficial use. Many folks looking through statute to find out requirements start by looking at the definitions. Because the definition of "appropriate" does not include the reference to beneficial use, some folks have been unsure about whether their project requires a water right. For example, a person who digs a drain ditch to remove water and doesn't use it for any other purpose does not need a water right. By adding to this definition there may be less confusion among the public about what types of projects should be protected by a water right.

The second item this bill clears up in the definitions pertains to temporary changes or leases to enhance instream flow. Both "appropriate" and "beneficial use" include a section about benefiting fishery resources in the Upper Clark Fork River basin as provided for in 85-2-439, however, the definitions do not make it known that temporary changes or leases to benefit fisheries throughout the