

**Exhibit Number:** 4

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**The following exhibit is a booklet that exceeds the 5-page limit therefore it cannot be scanned. The booklets' cover has been scanned to help you when requesting information. The exhibit is on file at the Montana Historical Society and can be viewed there.**

EXHIBIT 4  
DATE 1.26.05  
HB 22

NATURAL RESOURCES COMMITTEE

HOUSE BILL 22

JANUARY 26, 2005

I AM JOHN SHONTZ. I AM SPECIAL WATER COUNSEL FOR THE NORTHWEST MONTANA ASSOCIATION OF REALTORS. THE ASSOCIATION HAS 900 MEMBERS.

The adjudication of water rights in Montana is a simple concept. The idea is sort out and affirm the description of each water right in the state. Like the legal description of a parcel of land, the idea is to give a legal description to each water right or use.

We in Montana have been at it for thirty years. We have indeed been wandering, pointlessly and aimlessly, in the opinion of some, for most of that time without focus on finishing the job (which was originally intended to take ten years).

Defining real property interests is, in the United States, the responsibility of state government. It is time to finish this task so that people know what they own. We urge you to clear away all of the clutter and focus on the goal; defining each property parcel (even though we are talking about water instead of land).

Let us not fritter resources away; let us absolutely target our resources. The job is defining the water rights or water parcels that exist across Montana. The steps involved in defining the rights are, under our current system (and in order):

- 1) ADMINISTRATIVE CLAIMS REVIEW by DNRC
- 2) TEMPORARY PRELIMINARY DECREES by the WATER COURT,
- 3) PRELIMINARY DECRESS by the WATER COURT, and
- 4) FINAL DECREES by the WATER COURT.

The first step in the adjudication process is the administrative claims review of the water right claims in a basin. **This must be "job one" statewide.** Please reference page 11 of the attached booklet. Completing the administrative claims review across the state will drive 85 percent of the unknowns out of most water rights in Montana. Every available resource should be dedicated to finishing the administrative claims review (by DNRC) of all basins in Montana during the next 36 months. Period.

After all claims in the state have been reviewed by DNRC, then resources can be expended to develop the necessary data bases and computer systems.

The water court should then be given the necessary resources to complete steps 2, 3 and 4 in a timely manner and thereby eliminating the remaining 15 percent of the unknowns. This entire process should NOT require ten years to complete; it should take no more than seven years from today to get us to final decrees in every basin in Montana.

The fee proposed in this bill is one mechanism which can fund this process. The idea, however, that if the targets cannot be met in the bill, then the fee disappears does NOT address the underlying issue. That being that the state's absolute obligation to define these property rights and the state's responsibility to do so regardless of the funding source.

Further, we note that the administrative claims review statewide ( as a part of the adjudication process) is not and should not be dependent in any way on the quantification of water in any basin or from any water source.

People confuse the purposes of quantification and adjudication.

The issue is NOT to determine how much water is available (quantification) and then decide who gets the available water (adjudication). The issue is who has the right to however much water is available at any given time (adjudication) and, understanding that the amount of water available at any one time from any source is NEVER CONSTANT: IT IS, it in fact, ALWAYS CHANGING.

The constant or the certainty is in the adjudication process, not in the water quantification process. We attach a short further discussion of this principle under a separate cover for your consideration.

As noted above, the state has the obligation to assure that people know what real property (including access to water) they own. The quickest way for the state to assure that occurs is for the Legislature to put every possible dime into the administrative claims review of outstanding water right claims AND complete that task in 36 months then move on to further work.

As noted above, the time frame for claims review proposed by this bill in Section 2 is not acceptable. Ten years is simply too long; this process is not nor should it be a retirement process. As we note above, the administrative claims review should be completed in 36 months. To extend this work beyond three years will render the status quo acceptable and it certainly is NOT acceptable.

For example, while the bill's fiscal note contemplates that each claims reviewer will review 228 claims per year (page 2 – item 8.), the DNRC's projections in 2002 were 1.38 claims could be reviewed by each reviewer daily over a 250 day work year. The number of claims reviewed increases to 345 annually rather than 228 annually. 328 should be the minimum annual bench mark per reviewer in HB 22. In addition, the DNRC projected in 2002 that substantially more claims could be reviewed in a basin depending on the

number of "domestic" claims which existed. In fact the number of claims reviewed could double depending on the number of domestic water rights remaining to be reviewed. See attached. Again, how many of the 57,000 outstanding claims are domestic rights that will require little time to review? The number of claims reviewed in House Bill 22 should be adjusted to make sure the claims number reviewed is accurate rather than conservative.

The point is not to decrease the resources dedicated to this effort. The idea to effectively use the resources committed AND to increase the resources if necessary understanding that the job can actually be accomplished in a short period of time.

Finally, we note that Montana's Constitution places responsibility for water management firmly in the hands of the Legislature. This bill proposes to place responsibility for deciding which basins are addressed first in the hands of the water court. Frankly, we object. Those decisions have historically rested with the Legislature via legislative instruction to DNRC. The Legislature should NOT surrender its Constitutional authority in this arena to the water court. Sub 3 of Section 2 in this bill should be stricken.

We would be happy to answer any questions you may have.

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HB 23

# Water Rights in Montana

April 2004



# Montana General Adjudication Status As Of December, 2003

