

House Bill 22
January 26, 2005
Presented by Robert N. Lane
House Natural Resource Committee

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Mr. Chairman and committee members, I am Bob Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP).

FWP supports HB 22 and the work of EQC under the leadership of Chairman and Sponsor McNutt.

Water is an extremely important resource in Montana and its fair allocation and administration is critical to protecting the rights of existing users and in determining whether and how new uses can fit in. The foundation for this is a timely and accurate adjudication.

This interim EQC examined the ongoing adjudication of water rights by the Water Court. The committee, supported by the clear majority of those who participated in the process, found that the adjudication needed to be done sooner, rather than later, and that significant issues raised by the examination of claims by DNRC needed to be resolved.

A budget for a timely and accurate adjudication was developed for the additional and accelerated work of the Water Court and DNRC. Part of this effort is to be funded by the ongoing and present base funding, part by new money proposed by the Governor and part is to be funded by water users. This is right because all Montanans benefit not just the water users.

It was a difficult task to allocate the funding burden among different types of users. It is like comparing apples and oranges. If the allocations were to be based on consumptive use and priority, for example, then senior irrigators would pay too much. If the allocation was based solely on volume, then instream flows for the fisheries and water quality would pay too much. The EQC worked for almost 1 year to develop an equitable allocation. Although FWP will be the largest single payer, FWP is willing to step up to the plate with the share assigned to it to get the adjudication done right and before it is too late.

HB 22 provides a critically important first step in righting a listing ship. To make this mid-course correction, there needs to be a commitment by the key players, the users- DNRC- the Attorney General- the Supreme Court and the Legislature to take the necessary steps to ensure a process that will produce timely and enforceable decrees. If this is not done, then existing users, especially senior irrigators, will see their water supply continually eroded by the development of new consumptive uses based on inflated and bogus claims that will have been erroneously given the stamp of approval by the Water Court.

FWP supports this first step.