

**MONTANA SENATE  
2007 LEGISLATURE**

**ROLL CALL**

**JUDICIARY**

DATE 2-13-07

NAMES	PRESENT	ABSENT	EXCUSED
SEN. LYNDA MOSS (D)	✓		
SEN. DAN McGEE (R)	✓		
SEN. CAROL WILLIAMS (D)			✓
SEN. CAROL JUNEAU (D)	✓		
SEN. GERALD PEASE (D)	✓		
SEN. JIM SHOCKLEY (R)	✓		
SEN. AUBYN CURTISS (R)	✓		
SEN. JERRY O'NEIL (R)	✓		
SEN. LARRY JENT (D)	✓		
SEN. GARY PERRY (R)	✓		
SEN. DAVID WANZENRIED (D)	✓		
SEN. JESSE LASLOVICH (D) CHAIRMAN	✓		
VALENCIA LANE, LSD	✓		
CAROL ANDERSEN, COMMITTEE SECRETARY	✓		

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**COMMITTEE FILE COPY**

**TABLED BILL**

The **SENATE JUDICIARY COMMITTEE** TABLED **SB 109**, by motion, on **Tuesday, January 16, 2007**.

*Carol Andersen*  
(For the Committee)

*KJ*  
(Secretary of the Senate)

           / *1-16*  
(Time)                      (Date)

January 16, 2007

Carol R. Andersen, Secretary

Phone: 444-4697

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MONTANA STATE SENATE  
2007 LEGISLATURE

JUDICIARY

ROLL CALL VOTE

DATE 2-13 BILL NO. 109 NUMBER \_\_\_\_\_

MOTION: Fails - by 3

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN MCGEE (R)		✓
SEN. CAROL WILLIAMS (D)		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)		✓
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	3	8
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

**MONTANA STATE SENATE  
2007 LEGISLATURE**

**VISITOR REGISTER**

**JUDICIARY**

DATE 2-13-07

BILLS BEING HEARD TODAY SB 347, SB 357, SB 363

SB 377, SB 383

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Megan E. Brower	(417) 766-3414	Montana Farm Bureau	363	X	<input checked="" type="checkbox"/>
Megan E. Brower	(417) 766-3414	Montana Farm Bureau	377	X	<input checked="" type="checkbox"/>
Tim DAVIS	449 6086	NSGC	363	X	
Riley Johnson	443-3797	NFIB	363	X	
Mike Murphy	235-4555	MWRA	377		X
Blair Strong	509-455-6000	Avista Corp	377		X
Tom Ebzery	406-441-7531	Avista Corp	377		X
Holly Kinn	442-0005	PPL Montana	377		X
Al Smith	439-3124	MTLA	363	X	
Tom RAVNOLI	439-5860	MMVA	377	X	
Tom Blomquist		MA. Stulgen	377	X	
Glen Eppel	443-4032	MT Doctors	363	X	
M.S. KAKUK	594-0515	MT Assoc. REALTORS	363	✓	
Tom RAVNOLI	439-5860	MMVA	363	✓	
Anne Hedger	443-2500	MEIL	363	X	
Sarah Cobler	581-2254	MCV	363	X	
Janet Ellis	443-8949	MT Audubon	363	X	
Glen Marx	440-1659	MT Land Trust Assn.	347	X	
Mike HARRIS	581-7357	Gall County	347		
JAY ERICHSON	459-3750	Montana Land Reliance	347	X	
Don Oller	443-5541	WETA	363	X	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



*Late*

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R. Blair Strong  
*Partner*  
*r.blair.strong@painehamblen.com*

February 16, 2007

Senator Jesse Laslovich  
Chairman, Judiciary Committee  
Montana Senate  
Helena, Montana

Re: Senate Bill 377

Dear Senator Laslovich:

On February 13, 2007, I testified on behalf of Avista Corporation in opposition to SB 377. I appreciate the opportunity to appear before your committee, however I would like to clarify my testimony in one respect. I stated that Avista had never made a call on existing water rights. and had objected due to special circumstances to only one application for a new water right permit. I would like to describe those special circumstances that led Avista to file and pursue an objection to the water right application of Thompson River Lumber Company (TRL).

In 2004, TRL applied for a surface water right to divert water from the Clark Fork River for a cogeneration power plant to be operated near Thompson Falls, Montana.

Attorney John Bloomquist represented TRL, and I represented Avista in a day-long contested evidentiary hearing before DNRC Hearing Examiner Charles F. Brasen of the DNRC. Hearing Examiner Brasen issued a recommended order denying the permit. In August, 2006, Mr. Bloomquist and I appeared before DNRC Hearing Examiner David A. Vogler to argue TRL's exceptions to the proposed order. Hearing Examiner Vogler denied TRL's exceptions and issued a final order denying TRL's application. TRL has not appealed the final order.

Several unique circumstances prompted Avista to pursue this objection:

1. Thompson River Lumber proposed to divert water from the Clark Fork River at Thompson Falls, directly upstream of Avista's Noxon Dam Reservoir. Unlike permits issued farther upstream and on tributaries, there was no issue that Avista's right would be immediately and directly impacted.

2. Thompson River Lumber had alternative sources of water available to it for its generation purposes. TRL's primary purpose in obtaining surface water was to diminish the expense associated with pumping and treating well water. However, it was never shown that costs associated with these alternative sources of water would prevent the Thompson River Co-Gen project from operating at a profit. In fact, TRL has recently applied to change one of its existing water rights for use at the cogeneration project. Avista has not objected to this change application.

3. Thompson River Lumber stated in its original water rights application that water was available for its use, because downstream hydroelectric projects had never made a call on junior water right users. Furthermore, Thompson River Lumber stated in its application that it would cease using river water if downstream hydroelectric projects made a "non-selective" call. Therefore, TRL's application sought to limit downstream water rights that had priority in a manner not allowed or required by statute.

4. Additionally, it was evident from the evidentiary hearing that Thompson River Lumber witnesses fundamentally misunderstood the nature of Avista's Noxon Rapids Dam, when they described it as a "run-of-the-river" dam. Therefore, issuance of a permit would have had the effect of perpetuating a misunderstanding or mischaracterization of Avista's project.

These exceptional circumstances, in total, resulted in Avista's objection in this unique application. However, this objection should not be viewed as an indication of how Avista necessarily intends to deal with other permit applications. The vast majority of these applications concern tributary water at a considerable distance from Avista's projects, and involve domestic or in-stream uses of water. They are vastly different from the unique circumstances associated with Thompson River Lumber Company's application.

Thank-you for consideration of this letter, as well as my testimony in the public hearing on SB 377.

Best regards,

A handwritten signature in cursive script that reads "R. Blair Strong". The signature is written in black ink and is positioned above the printed name.

R. Blair Strong