

EXHIBIT # 2  
DATE 1/14/2009  
HB 39

**TESTIMONY IN SUPPORT OF HB 39**

**DEPARTMENT OF JUSTICE  
BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE  
JANUARY 14, 2009**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify in support of HB 39. The Department of Justice is pleased to cooperate with the Water Policy Interim Committee on this and does support the bill. Our testimony will focus on those aspects of the bill that most clearly involve our office, and leave more detailed testimony regarding current DNRC policies on water use act prosecutions to that agency.

HB 39 includes several provisions which we agree will provide additional enforcement options for the state in prosecuting water use violations. The bill currently is expected to have no fiscal impact. It will allow our office, using our existing resources, to bring enforcement actions without having to be asked to do so by the County Attorney or DNRC. It also allows water masters for the Water Court to assist with water right and water distribution complaints in District Court, allows us to deposit any fines we collect in a statutorily appropriated account to use for water right enforcement activity, and removes some problematic language providing that violations are misdemeanors.

As you know, Montana is a prior appropriation law state generally. After July 1, 1973, all new water rights must be obtained administratively through the DNRC. Water rights claimed before that date are currently being adjudicated by the Montana Water Court. For those streams that were under existing court decrees, those decrees are still valid but are subject to the McCarran Amendment adjudication that is now underway.

As water use disputes become more evident and serious, enforcement of the priority system on decreed streams and of the water use act through the DNRC take on greater importance. Timeliness of action is critical. For district courts unfamiliar with historic decree enforcement actions, the process appears strange and unfamiliar. This bill contains several provisions simply intended to give the state more flexibility in resources to address these concerns.

1. Section 1 - The Montana Water Court Chief Judge Loble expressed a willingness to allow a district court confronted with an enforcement or distribution case to appoint a water master as a special master. This section therefore allows that, and could result in providing district courts additional resources with valuable water right expertise on a case by case basis.

2. Sections 2-4 - These provide a statutory appropriation to the Department of Justice, Attorney General's Office to use fines collected for enforcement work.

3. Section 3- Subsection 1 frees the DNRC from the mandatory requirement of seeking voluntary compliance. Subsection 4 allows the Attorney General to bring enforcement actions on its own. Subsection 5 clarifies that a County Attorney may seek assistance from the Attorney General, and subsection 6 requires prosecutors to prioritize protecting the water rights of existing water right owners.

4. Section 4 - This section amends the current penalty provision to eliminate the language on misdemeanors, as it was thought to be misleading. Traditionally, water use violations are treated under civil procedural rules unless otherwise specified. Certain actions can still give rise to criminal actions, such as threatening a water commissioner, but those actions are covered under other specific provisions of law.

5. Section 5 - This section creates a water right enforcement account for deposit of fines collected.

6. Section 6 - This section recognizes that the Attorney General's office has as one of its functions water right enforcement actions.

Thank you for the opportunity to comment in support of this bill. I will be happy to answer any questions that I can.