

Before the Senate Natural Resources Committee
Comments of the Tongue River Water Users' Association

On House Bill 37

March 11, 2013

Members of the Senate Natural Resources Committee:

My name is Art Hayes Jr. I live on Hanging Woman Creek in Birney MT. I am a rancher and irrigator with water rights in both the Tongue River and Hanging Woman creek. Some of my water rights date back to the 1880s. For the past 22 years, I have been President of the Tongue River Water Users' Association. I am responsible for ensuring our members get their water according to their water rights and contracts, and according to our contract with the Department of Natural Resources and Conservation (DNRC).

I must oppose this bill. It changes time-tested water law that has worked to protect senior water rights, as well as people with junior water rights for well over a hundred years.

- ❖ Based on my years working as a rancher and irrigator, and as President of the Tongue River Water Users' Association, I understand how river systems and water rights work.
- ❖ This bill allows water to be taken out of the river system forever, denying downstream water users any return flow from land taken out of production
- ❖ Every time a new boom and bust industry requests an exemption from water law, there are attempts to change water law to accommodate them.
- ❖ We have been told that this bill will benefit people with senior water rights because it gives them a way to object to a lease.
- ❖ We have also been told that DNRC cannot enforce the illegal sale or lease of water that is already occurring.
- ❖ But making illegal actions legal is like saying we can't enforce drunk driving laws, so we'll just make it legal.

Department of the Interior
Bureau of Reclamation

Water Right

Form 1 (1983)

1. Name of the water right holder:
2. Name of the project:
3. Name of the water user:
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57. Name of the water right holder:
58. Name of the project:
59. Name of the water user:
60. Name of the water right:

❖ While I understand that times change and the oil and gas industry needs water, there are ways to accommodate this without changing water law.

❖ For instance, the oil companies that need water for fracking could treat the water they pump out of the ground in producing oil and gas and use that for fracking, just like the CBM companies are required to do before discharging into the Tongue River. This would help protect Montana's fresh water resources, and the oil and gas companies may spend *less* on water treatment than they spend hauling water. The savings from not hauling and reinjection may cover the cost of treatment.

❖ Montana's water rights system follows the "First In Time, First In Right" doctrine. An irrigation water right is tied to a specific piece of land. Taking the land out of production does not mean that the water tied to that land is available to haul away. Other downstream water rights are entitled to use that water.

❖ I have two water rights in the Tongue River with very early priority dates, yet I have seen years when I could not use those water rights because of drought. There just wasn't enough water.

❖ And we are currently in a drought that may last a long time. It may not last, but gambling with our precious water resources is a bad idea any time.

❖ As a rancher, irrigator, and as President of the Tongue River Water Users' Association, I have seen many water short years when we have needed a water commissioner on the river to ensure people are properly using their water, and not taking water out of priority.

❖ It takes a water commissioner with nerves of steel to ensure people are not using more than their share of water during times of drought.

❖ If this bill goes through, it will take a water commissioner with nerves of high carbon steel to stand in front of a line of water trucks and tell them the water they leased for big bucks for is not available because they are out of priority.

❖ But this bill has no provisions for water commissioners, it does not require water measuring devices, and if people with senior water rights ask

for a commissioner, who will have to pay? The people on the river who need the commissioner, not the fracking companies hauling the water away.

❖ Once this water is taken out of the river system, it will never return. You put water on the land for irrigation, or use it for domestic use, and the water eventually goes back into the river and is available for use again. Under this bill, the water will be taken out of the system forever.

❖ Small streams in Montana stand to suffer the most harm. For instance, Hanging Woman Creek, with 1200 irrigated acres on it, does not have high flows year-round. All irrigation on Hanging Woman Creek takes place when the creek is running due to snowmelt or rainfall. My water right on Hanging Woman is from January 1 to December 31—year-round. This is because you have to use that water for irrigation when it rains or snows-when it is available.

❖ Allowing leases on small streams like Hanging Woman Creek could potentially deplete all surface flows, and could pull large amounts of water from the alluvial aquifer that may affect down stream flows long after the lease is over.

❖ I ask that you table this bill for two reasons: First, it is going to be impossible to enforce without provisions for a water commissioner (and probably even with a commissioner). Second, fresh, clean water is one of the most important natural resources in the world, and this bill would take precious water out of the water system forever.

❖ The oil and gas industry has the resources and technology available to treat the ground water they pump out and then reuse it. This would create jobs, while protecting Montana's precious agricultural water to feed the people of Montana. Fresh water resources are becoming more critical every year.

❖ Montana water law has worked for its citizens since before statehood. Let's enforce our existing law.