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LEGISLATIVE ENVIRONMENTAL  
POLICY OFFICE

July 25, 2006

Governor Brian Schweitzer  
State Capitol  
P.O. Box 200801  
Helena, Montana 59620-0801

Dear Governor Schweitzer;

There have been several articles in the print media referring to the "water tax" now paid by water right owners which includes us as Montana ranch owners. From my perspective I would like to offer a few comments. Our ranch has paid the \$400.00 for the current cycle as we have more than 20 water rights. It was quoted in the paper that hard working farmers and ranchers that paid under \$400.00 deserve a break. I guess that leaves me out of that category.

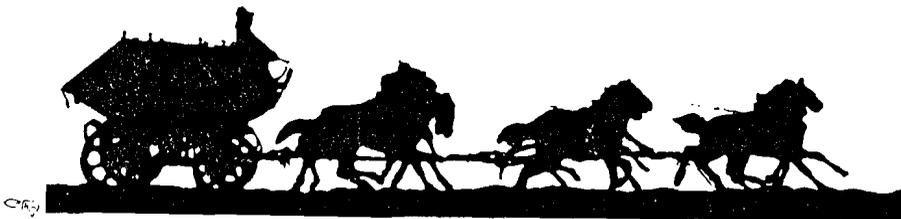
When the proposal came forward to assess the fee (I do not consider it a tax) to properly adjudicate Montana water rights - there was grumbling - why hadn't the state fulfilled its responsibility? Because historical water rights are important to Montana and their users the process was accepted, although somewhat reluctantly, and the fee was paid. At this time there was no discussion of any available budget surplus. It was quoted in the newspapers that people were not happy with the "water tax". Nobody is happy with new fees or taxes. What is important here is what was to be accomplished. This does not and should not turn into a partisan issue. Keep the fees - get the job done!

Sincerely,



John F. Baucus

cc: Rep. Christopher Harris, Co-Chair, EQC  
Rep. Debby Barrett, Co-Chair, EQC



**Evans, Krista Lee**

**From:** Bushnell, Dan  
**Sent:** Thursday, July 20, 2006 6:29 PM  
**To:** Evans, Krista Lee  
**Subject:** FW: Missoulian Don't sacrifice commitment with fee - Sunday, July 16, 2006

**From:** McLane, Mike  
**Sent:** Monday, July 17, 2006 11:47 AM  
**To:** McLaughlin, Terri; Gilman, Jim; Moy, Rich; Stults, Jack  
**Cc:** Bushnell, Dan; Bryggman, Tim  
**Subject:** Missoulian Don't sacrifice commitment with fee - Sunday, July 16, 2006

Monday, July 17 2006

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**Don't sacrifice commitment with fee - Sunday, July 16, 2006**

**SUMMARY:** Eliminating new water fee is false economy if the cost is clouded water rights.

It takes a pretty good idea to get Democrats and Republicans agreeing - or a really bad one.

When it comes to abolishing a modest fee the Legislature imposed to pay for clarifying water rights sounds good but could prove to be a big mistake.

Gov. Brian Schweitzer recently said he'll ask the Legislature to repeal the fee he signed into law year. He proposes to use some of the windfall taxes accumulating in the state's general fund to pay tax, which is intended to speed up the decades-long process of sorting out or "adjudicating" water statewide.

**SPORTS**

Populist Schweitzer would continue collecting the fee from people and corporations with the largest claims, those whose fees amount to more than \$400 every other year. He'd give the break to new people billed this year for the first installment of \$20-per-claim fees scheduled to be collected every year for the coming decade. The average claimant could look forward to a \$45 refund from Schweitzer.

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Republicans had previously called for complete repeal of the fees. They're grumbling, understanding the governor's political plagiarism.

While the politicians tussle over whose great idea this is, let us point out that the Legislature created for a reason - a good reason.

Water is essential to life and commerce but in limited supply in Montana. The use of water is a highly important property right, without which a lot of other property becomes next to worthless. The water also has a huge effect on fisheries and other public resources and opportunities. Clear and enforceable water rights are a necessity.

Water rights start out pretty simply. You establish a right to water by taking water from a stream

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ground and putting it to some beneficial use. Water rights follow a strict seniority system: first in line gets first dibs, second in line gets to draw next - and on down the line. At least, that's the way it goes until the water runs out, which it frequently does in the semiarid West. In that case, junior water rights claimants get little or nothing.

In many areas of Montana, the quantity of water claimed far exceeds the amount of water available.

Given the importance and value of these rights, you might think they are well documented, verified and sorted in some useful fashion. But you'd be surprised. There are many thousands of water claims that have been filed but never sorted out. That's why the Montana Constitution adopted in 1972 called for centralized water rights sorting and verification through a judicial process or adjudication.

It's a long, tedious and often complicated process that the Legislature has never fully funded. More than three decades on, the job's only partly done. Meanwhile, changing land use, subdivision and other transactions are changing and fragmenting water rights. Much of the historical record on which water rights are based exists in the heads of longtime users - some of whom die each passing day. Water rights adjudication is something that grows more difficult over time.

Persuaded by water users of the need to complete this work, the Legislature in 2005 passed a bill that levied a modest fee in order to pay for quicker completion of adjudication.

The fee has proved unpopular. That's partly because it applies to wells in addition to surface water and many well owners don't see the connection between their water and other people's. The fee undoubtedly has something to do, as well, with people not wanting to pay for something they already own (even if they can't prove it).

So, the governor and Republicans want to abolish or at least greatly reduce the fees. Then what the governor proposes to spend some \$20 million of the general fund surplus "backfilling" the fees repealed under the proposal. That's a lot, but far less than the

\$30 million it's expected to cost to finish the job. Schweitzer would get the other \$10 million from the state claimants, still subject to the fees. Republicans propose doing away with the fees and just coming up with the money from elsewhere in the budget.

This is all headed in the right direction if the Legislature can be trusted to maintain its commitment to finalizing water rights and keep the funding flowing over the coming decade for that purpose. It doesn't arise from the Legislature's track record. If lawmakers could be fully trusted to stick with it, the job would have been completed more than a decade ago. Instead, funding for adjudication has been sacrificed to other budget priorities - some less mundane but few more important.

What we seem to have today is political consensus to do away with the new water fee. We'll check to see as much agreement about

ensuring the job of clarifying water rights gets done.

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## **Guest Opinion: General funding of water adjudication not a new idea**

**By JOHN YOUNGBERG  
ERROL RICE**

Recently, Gov. Brian Schweitzer announced plans to repeal the water adjudication fee passed by the Legislature and signed into effect by Gov. Schweitzer in 2005. The biennial fee was the product of an examination of the adjudication process by the bipartisan Environmental Quality Council during the interim between the 2003 and 2005 legislative sessions.

The fee was imposed on all water right holders in Montana to help fund the completion of Montana's statewide adjudication of water rights within 15 years. The legislation (House Bill 22) was an EQC-sponsored bill and received support from both Republicans and Democrats in passing the Legislature nearly unanimously.

In his announcement to repeal the fee, Gov. Schweitzer was quoted as calling HB 22 a "Republican bill" that was pushed through by lobbyists "from the Montana Stockgrowers Association and the Montana Farm Bureau Federation." We believe it is important to set the record straight on HB 22.

### **Varied support**

HB 22 received full support in the 2005 Legislature from many of Montana's leading ag organizations. In addition, strong support came from many sportsmen's groups, numerous business trade organizations, hydropower producers and, most importantly, two state agencies -- Montana Department of Fish, Wildlife and Parks and the Montana Department of Natural Resources and Conservation. In fact, representatives of these agencies, including the director of DNRC, a member of Gov. Schweitzer's cabinet, expressed her agency's full support for the fee bill. Even Governor Schweitzer's chief policy adviser testified as a proponent to HB 22 before the House Committee on Appropriations.

The bill was not a "Republican bill" (the only votes against the measure were Republicans), nor was it only pushed through by MSGA and MFBF, but was in fact the product of substantial discussion by EQC, legislators from both parties and affected interests on what was the best approach at the time to complete Montana's water rights adjudication.

The idea to have general fund money pay for the adjudication is nothing new. In fact, MFBF, MSGA and many legislators suggested early on that it was more appropriate to fund the adjudication from the state's general checkbook, as a completed adjudication serves the

interests of all Montana, not just water users.

## **DNRC fee proposal**

However, entering the 2005 session, the state was faced with a daunting school funding issue. General fund money was obviously limited. As a result, DNRC itself proposed a water-user fee approach, which then received considerable discussion and debate before both the EQC and the Legislature. If the governor's office wished for HB 22 to have been funded from the general fund, such a proposal would have been met with open arms. However, no such proposal was presented by the governor at the time HB 22 was being debated and deliberated. Regardless, branding HB 22 in partisan terms is simply erroneous.

We, as Montana's leaders in agriculture, welcome the governor's proposal to fund the completion of the adjudication with general fund monies or other statewide funding sources which would remove the fee. Legislators, both Democrat and Republican, have proposed such an approach in the past, and we are pleased the governor is coming around to support the effort now that the state's budget appears capable of supporting such funding.

*John Youngberg is vice president of government affairs for the Montana Farm Bureau Federation. Errol Rice is executive vice president of the Montana Stockgrowers Association.*

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## **Gazette Opinion: Schweitzer, GOP should leave the water tax alone**

The governor and the Republicans should leave the water tax alone.

The 2005 Legislature enacted a law, complete with the necessary financing, to hasten the languishing water rights adjudication process begun in 1979.

Instead of vying with each other to spend an anticipated surplus of more than \$500 million in the state's checkbook at the end of June next year, they should allow the newly enacted law to move forward. The goal of quantifying our water rights should be reached rather than let it lapse into the vagaries of the biennial funding process, which has short-sheeted water rights adjudication for years.

A bit of history:

In 1979, the Legislature initiated the water rights adjudication process under the belief, correctly, that by not doing so downstream states could usurp valid, legal water rights.

The details of the program were given to the Department of Natural Resources and Conservation, which then passed the information on to the Water Court. The process got bottlenecked between the DNRC and the Water Court because the Legislature failed to provide the needed human resources to do the work. Dwindling staff was the result of parsimonious appropriations and personal political pique.

In midsummer two years ago, the Environmental Quality Council, made up of legislators and four public members, recommended that the Legislature enact a special tax on water rights holders that would raise enough money to complete the task within a decade. The estimated cost was pegged at about \$32 million.

The 2005 Legislature took the recommendation and worked it into a bill that passed overwhelmingly in both chambers - 96 to 2 in the House; 44 to 6 in the Senate.

The Legislature put \$6 million into the effort and levied a tax on water rights holders to raise \$2.6 a year for 10 years. The bill also established benchmarks for the DNRC and the Water Court to make sure the goals set by the law would be met. The DNRC has hired almost 40 staffers to do the work, and additional water masters are being provided for the court.

The tax was levied in a manner that everyone with an interest in water rights would pay either directly or indirectly. The solution also had broad, overwhelming support of various interest groups: farmers, ranchers, sportsmen, industrial users and municipalities.

Now come those looking for votes in the upcoming legislative elections.

The governor's proposal to give refunds to those who paid less than \$400 is pandering. The Republicans' desire to eliminate the tax entirely and pay for the program through the general fund is a retrograde move to placate their core constituents, who they fear will abandon them this fall.

If four years from now there is no surplus, will the program get chopped again?

The remedy is in place, and it covers all aspects. So leave it alone.

If the governor and the Republicans are inclined to spend some of the surplus, they can target neglected programs that can use a one-time shot in the budget. One-time spending also avoids creating future structural imbalances that have plagued the state budget when revenue was not so flush.

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