

HOUSE JOINT RESOLUTION NO. 26

INTRODUCED BY P. CONNELL

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE INTERSECTING INTERESTS OF ESTATE OWNERS AND DITCH OWNERS AND PROVIDING A MEANS TO ACCOMMODATE BOTH ESTATES.

WHEREAS, Montana has a rich history of irrigated agriculture that must be protected, but residential development in irrigated river valleys and elsewhere is increasingly pitting the rights of homeowners against the rights of ditch easement owners;

WHEREAS, inflexible notions of dominant and servient estates hamper the common-sense approach that competing uses of property between two interested owners should be accommodated where possible; and

WHEREAS, the Colorado Supreme Court has recognized that ditch easements are a property right that the burdened estate owner may not alter without consent of the ditch owner, but there may be some circumstances in which an alteration would not harm the ditch owner but would greatly benefit the burdened estate owner; and

WHEREAS, in a ruling on secondary easements to maintain ditches, the Montana Supreme Court concluded that some permanent encroachments may not justify a finding of unreasonable interference; and

WHEREAS, House Bill No. 149 and proposed amendments attempted to provide a process to accommodate the needs of both the estate owner and the ditch owner, but testimony made clear that the issue needs further study.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate the water policy interim committee, established by section 5-5-231, MCA, or direct sufficient staff resources to examine the intersecting interests of estate owners and ditch owners and contemplate options to accommodate both estates.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2014.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,



1 comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

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