

2017

H.B. 360, 65th Leg., Reg. Sess. (Mont. 2017)

Christopher McMichael

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Christopher McMichael, Legislative Report, H.B. 360, 65th Leg., Reg. Sess. (Mont. 2017), 21 U. Denv. Water L. Rev. 111 (2017).

This Legislative Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

MONTANA

H.B. 360, 65th Leg., Reg. Sess. (Mont. 2017) (establishing: (i) a surface water assessment and monitoring program aimed to collect and compile information regarding surface water availability and use; and (ii) a steering committee composed of members from various state and federal agencies, local governments, and other groups with interests in surface water use in Montana).

Montana House Bill 360 (“HB 360”) establishes a surface water assessment and monitoring program. The program, which will be a part of the Montana Bureau of Mines and Geology, will collect and compile surface water information at the direction of a steering committee. HB 360 provides that the steering committee should comprise members from various state and federal agencies, local governments, and other interested parties and organizations. For example, the bill requires the steering committee to include members from Montana’s Department of Natural Resources, Department of Environmental Quality, Department of Agriculture, the Montana State Library’s Natural Resource Information System, and a representative of tribal governments in Montana. Furthermore, the bill suggests that the steering committee should also include members from organizations such as Montana’s Board of Oil and Gas Conservation, a soil and water conservation district, and representatives from the agricultural, ecological protection, and development communities.

Like many areas in the mountain west, Montana is experiencing increased growth and development; thus, the Montana legislature developed this surface water assessment program in order to collect data and information regarding the availability and usage of its surface water. The State implemented a groundwater assessment program, which has provided relevant information regarding the availability and use of groundwater in the state. Proponents of HB 360 contend that implementing the surface water assessment program will produce data similar to the information gathered by the groundwater assessment program and lead to more informed policies regarding the use of surface water in the state.

HB 360 is a relatively short, straightforward bill. The bill does not attempt to pass broad, sweeping legislation. Instead, HB 360 merely establishes a surface water monitoring program. By incorporating the monitoring program into the Bureau of Mines and Geology, the bill does not require a fiscal note to establish funding sources. As such, there were not many changes or challenges to the bill throughout the legislative process.

At the committee hearings, there were no opponents to the bill. Many of the questions brought up in the House and Senate committee hearings concerned how Montana would pay for the program. While HB 360 neither allocates specific funding, nor establishes a concrete plan for securing future funding, sponsors and proponents of the bill did not seem concerned about the cost of implementing the program. Housing the program within the Bureau of Mines and Geology allows the bureau to use its funds to get the program off the ground while the committee works to secure federal grants and donations to continue the monitoring program while looking for future state funding. The only proposed changes to HB 360 came from the Governor’s desk and required appointing a member of the tribal government as part of the steering committee. Unsurprisingly, the House and Senate passed HB 360 with minimal

opposition and Governor Steve Bullock signed the bill into law on May 8, 2017.

Supporters of the bill were reluctant to commit to any future policy or implications associated with HB 360. At this point, the bill's program remains limited to gathering and compiling information on the availability and use of surface water in Montana. HB 360 is supported by numerous organizations and industries within Montana that rely on surface water, such as the cattle and ranching industry, the agriculture and farming industry, conservation organizations, fishing and recreational organizations, and even a realtor and development organization. These organizations understand the importance of having thorough and accurate information regarding the availability and supply of surface water. In the future, the program could help these industries employ more efficient water uses and shape policies regarding surface water in Montana.

HB 360 could be Montana's first step in establishing sensible surface water policies. The legislation sets up a monitoring program charged with gathering and compiling accurate information regarding surface water systems. This information will provide more accurate and thorough information to the people and industries in Montana that rely on the use and availability of surface water. In turn, this program could lead to more sustainable water policies and practices in the state.

Christopher McMichael

S.B. 28, 65th Leg., Reg. Sess. (Mont. 2017) (allowing parties aggrieved by Department of Natural Resources and Conversation decisions about new water right permits and changes to water right permits the option to have the decision reviewed by either the Water Court or the appropriate district court).

Montana Senate Bill 28 ("SB 28") expanded the jurisdiction of Montana's Water Court. This bill allows water users aggrieved by the final written decision of the Department of Natural Resources and Conservation ("DNRC") regarding new water right permits or changes to water right permits a choice of the venue in which to bring their appeal. Before the passing of SB 28, aggrieved water users could only bring their complaints before the district court presiding over the location of the water right. SB 28 allows the plaintiff to choose between either the Water Court or the appropriate district court. The sponsors of the bill aimed to provide an option for aggrieved parties to have a court with more experience in the subject matter hear their cases.

The first iteration of SB 28 only provided this choice without further instruction. An opponent speaking in the Senate hearing noted that many of these cases involve multiple aggrieved parties who believe the DNRC has harmed their water rights by extending rights to others. Following this, the Senate amended the bill to allow the district court presiding over the location of the water right to choose the ultimate venue when multiple aggrieved parties choose conflicting venues. This amended version of the bill passed in the Senate thirty-five to eleven and went to the House for consideration.

Chas Vincent, a Republican representing the Water Policy Interim Committee, served as the primary sponsor for SB 28. While drafting the bill, the committee considered a University of Montana study that reviewed the water policies of several neighboring states and a Supreme Court of Montana survey of district judges regarding water rights issues. The study advised the expansion