

2017

S.B. 28, 65th Leg., Reg. Sess. (Mont. 2017)

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Sydney Donovan, Legislative Report, S.B. 28, 65th Leg., Reg. Sess. (Mont. 2017), 21 U. Denv. Water L. Rev. 112 (2017).

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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

of the Water Court's jurisdiction as proposed in SB 28. The survey of district court judges found that a majority had no experience in water law, a super majority wanted the ability to refer cases to the Water Court, and another super majority favored the Water Court, rather than the district courts, hearing appeals of the DNRC. Water users, landowners, realtors, and attorneys specializing in water law widely supported SB 28. Most of the bill's proponents saw the option in venue as a means to faster and cheaper resolutions to grievances regarding the DNRC's permit decisions. However, some landowners and water users expressed concerns regarding the Water Court's prime directive, judicial appointment of Water Court judges, and the funding of the DNRC appeals cases in the Water Court.

The Montana Legislature created the Water Court in 1979 to deal with the immense backlog of un-adjudicated water rights claims. Because Montana did not require reporting of water rights until 1973, many water rights claims still have not been adjudicated; however, full adjudication is still not expected until 2028. Prior to the introduction of SB 28, the Water Court existed only to adjudicate pre-1973 state water rights and Indian and federal reserved water rights. Opponents argued that increasing the Water Court's jurisdiction would distract it from its ultimate goal of completely adjudicating water rights in Montana. The proponents countered that the likely case load would not exceed five to six additional cases per year. The proponents agreed that the Water Court should primarily focus on water right adjudication and administration of decrees. However, proponents also asserted that the additional option for aggrieved water users will not impair the Water Court from meeting its primary adjudication goal, especially considering that the current Water Court has increased efficiency in adjudicating water rights beyond that of previous courts.

Many opponents also expressed concerns that Water Court judges are appointed rather than elected. The opponents believed that the judges presiding over these cases should be elected, as are district court judges in Montana. Proponents asserted that the bill does not limit access to an elected judge, it merely provides a choice. Additionally, if a conflict on choice of venue arises, the elected judge makes the ultimate venue decision.

Opponents questioned the funding for the Water Court. Prior legislation that funded the Water Court specifically designated the funds for adjudication of claimed water rights. Proponents explained that the funding for the appeals cases will come from the general fund that already partially funds the Water Court. The bill, however, does not address this issue.

Moreover, proponents claimed that enforcement of water rights will soon become a major issue as Montana becomes a completely adjudicated state. This small-scale expansion of jurisdiction will allow for an assessment of the Water Court's ability to handle an increased caseload involving a variety of water law issues. Opponents stressed that a decision about the future of the water court should receive greater scrutiny, involve in depth studies, and require prolonged deliberation.

After much deliberation, Montana's House of Representatives also passed SB 28, with a vote of seventy-eight to twenty-two. The President of the Senate

and the Speaker of the House signed the bill on March 20th, and Governor Steve Bullock signed it into law on March 31, 2017. Aggrieved water users in Montana now have the option to petition either the Water Court or the presiding district court to hear appeals of final written decisions from the DNRC.

Sydney Donovan