

VOTE NO on SB 356
To Ensure Water Rights Adjudication is Fair and Accurate:

Why Was This Bill Introduced? This bill was introduced after oral argument on the Montana Supreme Court case of which it seeks to pre-determine the outcome.

What's the case about? The Supreme Court is deciding whether the adjudication is an “insiders only” game, where only water right holders can participate, taking the public or other interested entities like Trout Unlimited (TU) are allowed in. TU objected to egregiously over-stated water right claims in the Big Hole River basin.

Why did TU object? TU cares about having an accurate, robust water rights adjudication. FWP also filed objections as we both understand that having a credible, complete and legally defensible adjudication is important for all of Montana's water users.

Are water right claims really that over-stated? One of the claims TU objected to was for 200 cfs to irrigate 1760 acres. The problem is that about 800 of the claimed acres have never been irrigated. The Big Hole River ran as low as 140 cfs in 1994 near Glen, where this claim's right to divert the claimed 200 cfs lies. If adjudicated as inappropriately claimed, this claim alone could literally dewater the Big Hole in dry years.

What's at stake? As citizens and a State, we ALL have a stake in a fair, accurate and speedy water rights adjudication, this bill threatens that. Individual water right holders, of course, want to get through the adjudication with as much water and as little pain as possible. Only when important and credible facts are ignored that threaten the process for everyone will TU object. The primary opposition to the bill was from the lawyers who argued against TU and FWP in the Montana Supreme Court case saying this will slow down the process

Proponents say that without this bill, the floodgates will be opened to objectors, and it will bog down the adjudication. Is this true? Not true for 2 reasons.

First, not just any fisherman or boater can object. Rather, a person has to show that their use of the water has been adversely affected by the decree. Mont. Code Ann. Section 85-2-233(1)(b) provides, “For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use **that has been affected** by the decree.” (emphasis added).

Second, participation in the adjudication is procedurally and substantively complex. This poses a high bar to filing and pursuing objections. It is expensive and time consuming. This limits those who might be willing or able to object. Indeed, only two recreational and conservation users of water have even attempted to object in the adjudication to date—Trout Unlimited and Western Watersheds Project (a group unrelated to TU).

I've heard this bill is unconstitutional. Why? In one of the few sections of the US Constitution that prohibits actions by the States, Article 1, Section 10, prohibits a State from passing an *ex post facto* law. Because TU has already exercised its right to object to water right claims in the Big Hole basin, and this bill would take away that already-exercised right, SB 356 falls into that category.

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