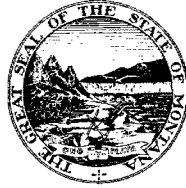


OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

May 13, 2011

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 356 (SB 356), **"AN ACT CLARIFYING THE DEFINITION OF "GOOD CAUSE SHOWN" FOR A HEARING ON A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE; AND AMENDING SECTION 85-2-233, MCA."**

Senate Bill 356 amends the statute defining who has standing to object to a water right claim in the Montana Water Court and who is entitled to a hearing. The bill, as written, would grant standing only to a person with an ownership interest in an existing water right, permit, certificate, or state reservation. I believe the standing threshold in the bill, based on ownership status, alone, is insufficient and likely would not survive a constitutional challenge. For example, others with property or constitutional interests at stake that did not constitute "ownership" interests, such as those with leasehold interests or interests under Article IX, section 3(3) of the Montana Constitution. Denying a person the right to object to a water right claim when the person has a substantial interest in the matter raises serious constitutional due process issues that the bill does not address.

I proposed a simple amendment that would have defined those with standing to object as persons not only with an "ownership interest" but with a "leasehold, economic, or other substantial interest." Under my amendment, in order to have standing, an individual would have been required to demonstrate a real interest in the water right, and not simply a general interest as a member of the public. The difference is subtle but important. It would have comported with well-established standing law in Montana and eliminated the constitutional issues raised by SB 356 in its current form.

Since this sensible amendment was rejected, I am left with no choice but to veto the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Schweitzer".

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division