



Clark Fork Coalition Testimony on SB 352 - Feb. 25, 2021

Members of the Senate Natural Resources Committee:

On behalf of the Clark Fork Coalition, I urge you to reject SB 352. The Clark Fork Coalition is a non-profit organization dedicated to protecting and restoring the Clark Fork Watershed in western Montana. The CFC also owns and leases numerous water rights, which are primarily used for instream flow purposes.

CFC opposes SB 352 because it drastically limits who has standing to object to another party's water rights during the adjudication process. With Montana's water rights adjudication winding down, this seems a little late in the game to be changing who can object during adjudication.

SB 352 proposed changes to standing also directly contradicts MT Supreme Court precedent holding that standing to participate under the Water Use Act must be interpreted broadly because all waters in Montana are the property of the State of Montana for the use of its people. In that decision, the Supreme Court cited at least seven separate provisions within the Water Use Act and elsewhere in the Montana Code that uphold this idea that the State holds its water resources in trust for all Montanans – not just those of any particular user group. SB 352, while ostensibly designed to head off potential litigation, would likely have the opposite effect.

Perhaps more concerning, SB 352 would prohibit anyone from objecting to a proposed new water permit or a change in use unless that person also has water right that could be impacted. This raises serious concerns about a number of water users and property owners who would no longer be able to defend their property rights or interests in Montana's waters. I will give you a few examples:

- First: Let's say an upstream reservoir operator wants to change their storage rights to release additional water into a river for hydropower purposes, and the resulting change would flood the hay fields of a downstream landowner. Under existing law, the landowner has the ability to object to defend their property, regardless of whether they have a water right. If SB 352 passes, they lose that ability to object.
- Second: let's say a new user seeks a permit to use water on a river, and the new permit would dry up or lower the stream flow of the river. An outfitter or recreation business owner would have no ability to object to that permit unless they have a water right. Meanwhile, a downstream business who has a discharge permit to pollute the same river **would** have the ability to object, if the new permit would impact their ability to meet the requirements of their pollution discharge permit.

The bill also raises serious concerns for individual water users who are part of an irrigation district but hold shares to water instead of "water rights." Again, this bill would gut their ability to object to a new permit or change to defend their interests.

In sum, SB 352 raises some serious property rights concerns and, whether intended or not, the bill conflicts with the intent and protection of the Constitution and the Water Use Act itself, which properly recognizes that no user group owns Montana's water resources, it belongs to all of us.

For these reasons, we respectfully request a "do not pass" on SB 352.