

BILL NO. \_\_\_\_\_  
INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING DISTRICT COURT JURISDICTION OVER WATER RIGHTS AFTER COMPLETION OF THE MONTANA GENERAL STREAM ADJUDICATION AND PROVIDING AN EFFECTIVE

DATE."

BE IT ENACTED BY THE LEGISLATURE OF  
THE STATE OF MONTANA:

#### Judicial Enforcement

**85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court possessing jurisdiction to supervise the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation

The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under **85-2-122(1)** without being requested to do so by the department.

(4) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(5) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(6) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(7) Pursuant to **85-20-1902**, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

(8) The provisions of this section do not limit a water right owner from seeking relief, including injunctive relief, in district court under Title 27, chapter 19, or this chapter.

**History: En. Sec. 33, Ch. 452, L. 1973; R.C.M. 1947, 89-897; amd. Sec. 32, Ch. 697, L. 1979; amd. Sec. 1, Ch. 677, L. 1991; amd. Sec. 1, Ch. 457, L. 2001; amd. Sec. 3, Ch. 103, L. 2009; amd. Sec. 5, Ch. 294, L. 2015; amd. Sec. 1, Ch. 266, L. 2019.**

**85-2-214. Commencement and completion of action.** (1) The action for the adjudication of all existing water rights under Title 3, chapter 7, Title 85, chapter 2, part 7, and this part is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in **85-2-212**. For each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within the judge's water division and make orders necessary to ensure timely and accurate compliance with the claim filing procedure.

(3) When the water court enters a final decree for a basin, the department shall send a copy of the final decree to the judicial district or districts of each county where the claims contained in that decree were filed as provided in (1). After the water court enters a final decree for a basin and after all appeals and related post-decree motions and orders pertaining to that final decree are resolved, the water courts and water judges created by Title 3, chapter 7 and Title 85, chapter 2, no longer have authority over the final decree or matters arising under it.

When the water court has entered a final decree for every basin, the water courts, division and water judges created by Title 3, chapter 7, and Title 85, chapter 2, shall

cease operation entirely within 180 days of the resolution of all appeals and related post-decree motions and orders pertaining to all final decrees.

Any matters arising under a final decree, including enforcement actions pursuant to 85-2-406 and Title 85, chapter 5, must be filed in an appropriate judicial district court.

District Judges may utilize judges pro tempore and special masters as provided in 3-5-113, MCA, and standing masters as provide in Title 3, chapter 5, as appropriate and necessary.

(4) After a final decree in a basin is entered, when any judicial district renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or permit, the clerk of the court shall immediately transmit to the department a certified copy of the judgment, decree, or order.

**85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree and any supplemental preliminary decree, on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in **85-2-250**, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under **85-2-702** must be included in the final decree without alteration unless an objection is sustained pursuant to **85-2-233**. However, the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with **85-2-221** and **85-2-222**, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by **85-2-702** to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water included in the right, as follows:
  - (i) by flow rate for direct flow rights, such as irrigation rights;
  - (ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or
  - (iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;
- € the date of priority of the right;
- (d) the purpose for which the water included in the right is used; (e) the place of use and a description of the land, if any, to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

- (a) the name and mailing address of the holder of the right;
- (b) the source or sources of water included in the right;
- (c) the quantity of water included in the right;
- (d) the date of priority of the right;
- (e) the purpose for which the water included in the right is currently used, if at all;
- (f) the place of use and a description of the land, if any, to which the right is appurtenant;
- (g) the place and means of diversion, if any; and
- (h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under **85-2-702**.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the ~~water judge~~ a **District Court Judge** or on the petition of any person who possesses a water

right. The ~~water~~ District Court judge shall order the notice of a correction proceeding that the judge determines to be appropriate to advise all persons who may be affected by the correction. An order of the ~~water~~ District Court judge making or denying a clerical correction is subject to appellate review.

**85-2-236. Certificate of water right.** (1) When a final decree for a basin is entered, the water judge shall send a copy to the department and the department shall send a copy to the judicial district or districts referenced in 85-2-214. Except as provided in **85-2-306**, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

### **3-1-804. Substitution of district judges.**

#### SUBSTITUTION OF DISTRICT JUDGES

This section applies to judges presiding in district courts. It does not apply to any judge sitting as a water court judge or a workers' compensation court judge. ~~or to a judge supervising the distribution of water under 85-2-406, including supervising water commissioners under Title 85, chapter 5, part 1.~~

#### Disqualification For Cause

### **3-1-805. Disqualification for cause.**

#### DISQUALIFICATION FOR CAUSE

This section is limited in its application to judges presiding in district courts, including those judges supervising the distribution of water under 85-2-406, justice of the peace courts, municipal courts, small claims courts, and city courts.

1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, such judge shall proceed no further in the cause. If the affidavit is filed against a district judge, the matter shall be referred to the Montana Supreme Court. If the affidavit is in compliance with subsections (a), (b), and (c) below, the Chief Justice shall assign a district judge to hear the matter. If the affidavit is filed against a judge of a municipal court, justice court, or city court, any district judge presiding in the district of the court involved may appoint either a justice of the peace, a municipal judge or a city court judge, to hear any such proceeding.

(a) The affidavit for disqualification must be filed more than thirty (30) days before the date set for hearing or trial.

(b) The affidavit shall be accompanied by a certificate of counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case which can be addressed in

an appeal from the final judgment.

(c) Any affidavit which is not in proper form and which does not allege facts showing personal bias or prejudice may be set aside as void.

(d) The judge appointed to preside at a disqualification proceeding may assess attorneys fees, costs and damages against any party or his attorney who files such disqualification without reasonable cause and thereby hinders, delays or takes unconscionable advantage of any other party, or the court.

**History: En. Sup. Ct. Ord. dated June 17, 1987; amd. July 29, 1987; amd. Sup. Ct. Ord. Sept. 13, 1988, eff. Sept. 13, 1988; amd. Sup. Ct. Ord. dated January 6, 1994; amd. Sup. Ct. Ord. dated June 19, 2003, eff. June 19, 2003.**

#### Enforcement Of Decrees

**3-7-212. Enforcement of decrees.** The district court having jurisdiction shall enforce the provisions of a final decree or portion of a final decree if a petition is filed and granted pursuant to 85-5-101 et seq. In the absence of any final decree having been issued, the district court having jurisdiction shall enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under **85-2-231, or portions of such decrees if a petition is filed and granted pursuant to 85-5-101 et seq.,** as modified by a water judge after objections and hearings.

**History: En. Sec. 6, Ch. 697, L. 1979; amd. Sec. 3, Ch. 604, L. 1989; amd. Sec. 1, Ch. 338, L. 2017**

#### Venue

**25-2-115. Multiple proper counties.** If this part designates more than one county as a proper place of trial for any action, an action brought in any such county is brought in a proper county and no motion may be granted to change the place of trial upon the ground that the action is not brought in a proper county under **25-2-201(1)**. If an action is brought in a county not designated as a proper place of trial, a defendant may move for a change of place of trial to any of the designated counties.

**25-2-123. Real property.** (1) The proper place of trial for the following actions is the county in which the subject of the action or some part thereof is situated:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) The proper place of trial for all actions for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property is the county in which the real property, or any part thereof, affected by such action or actions is situated.

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