

1 **"85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-122 and 85-2-124, all fees and
2 penalties collected under this chapter must be deposited in the water right appropriation account established in
3 85-2-318. ~~Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any~~
4 ~~court other than a justice's court for a violation of this chapter must be deposited in the general fund of the~~
5 ~~county where the court presides and must be disposed of in the same manner as any other penalty or fine."~~
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7 **Section 30.** Section 85-2-125, MCA, is amended to read:

8 **"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the
9 department on an application for a permit or a change in appropriation right is appealed to ~~district court~~ the
10 water court, the ~~district-water~~ court may award the prevailing party reasonable costs and attorney fees.

11 (2) The party obtaining injunctive relief in an action to enforce a water right must be awarded
12 reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action
13 by a party with a water right to enjoin the use of water by a person that does not have a water right."
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15 **Section 31.** Section 85-2-236, MCA, is amended to read:

16 **"85-2-236. Certificate of water right.** When a final decree is entered, the water judge shall send a
17 copy to the department. Except as provided in 85-2-306 and subject to 85-2-315, the department shall on the
18 basis of the final decree issue a certificate of water right to each person decreed an existing right. The original
19 of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of
20 the certificate in its office in Helena."
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22 **Section 32.** Section 85-2-309, MCA, is amended to read:

23 **"85-2-309. Hearings on objections -- jurisdiction.** (1) If the department determines that an objection
24 to an application for a permit under 85-2-311 or change in appropriation right under 85-2-402 states a valid
25 objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90
26 days from the date set by the department for the filing of objections after serving notice of the hearing by first-
27 class mail upon the applicant and the objector, unless the department certifies an issue to the ~~district-water~~
28 court for determination by a water judge under subsection (2). The department may consolidate hearings if

1 more than one objection is filed to an application. The department may extend the 90-day deadline for good
2 cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of
3 the service by affidavit of the department.

4 (2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in
5 subsection (1), the department may in its discretion certify to the ~~district water~~ court all factual and legal issues
6 involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to
7 issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by
8 a water judge over all other adjudication matters.

9 (b) If the department fails to certify an issue as provided in this section after a timely request by a
10 party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

11 (c) Upon determination of the issues certified to it by the department, the court shall remand the
12 matter to the department for further processing of the application under this chapter.

13 (3) Subsection (2) does not apply in the case of a matter considered at a hearing under this
14 section pursuant to 85-2-316 or 85-2-322."
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16 **Section 33.** Section 85-2-313, MCA, is amended to read:

17 **"85-2-313. Provisional permit permits and change authorizations CHANGES IN APPROPRIATION**
18 **RIGHTS -- PETITIONS AFTER FINAL DECREE.** (1) A permit or change in appropriation right issued prior to a final
19 determination of existing water rights pursuant to 85-2-234 is provisional and is subject to that ~~final~~
20 ~~determination~~ final decree. ~~Upon~~ On a petition pursuant to 85-2-314(2) SUBSECTION (2), the amount of the
21 appropriation granted in a provisional permit or change in appropriation right must be reduced, modified, or
22 revoked by the department following a show cause hearing in which it is determined that reduction,
23 modification, or revocation is necessary to protect and guarantee existing water rights determined in the final
24 decree. Because a provisional permit is issued on a reasonable determination of legal availability under 85-2-
25 311(1)(b), in a show cause hearing under this section, legal availability must be determined on a consideration
26 of the final decree in the affected basin or subbasin. A person may not obtain any vested right to an
27 appropriation obtained under a provisional permit or change in appropriation right by virtue of construction of
28 diversion works, purchase of equipment to apply water, planting of crops, or other action by the person where

1 the permit or change in appropriation right would have been denied or modified if the final decree had been
2 available to the department.

3 (2) (A) A PERSON HAS STANDING TO FILE A PETITION UNDER THIS SECTION IF A WATER RIGHT OF THE
4 PETITIONER IS ADVERSELY AFFECTED BY THE PERMIT OR CHANGE IN APPROPRIATION RIGHT AUTHORIZED PRIOR TO THE
5 FINAL DECREE.

6 (B) ~~A~~ Except as provided in subsection (2)(c), a CORRECT AND COMPLETE PETITION MUST BE
7 SUBMITTED ON A FORM DESIGNATED BY THE DEPARTMENT WITHIN 120 DAYS AFTER THE ISSUANCE OF THE FINAL DECREE
8 FOR THE BASIN OR SUBBASIN IN WHICH THE PERMIT OR CHANGE IN APPROPRIATION RIGHT IS LOCATED.

9 (c) In basins for which a water judge has entered a final decree pursuant to 85-2-234 prior to [the
10 effective date of this act], a correct and complete petition must be submitted on a form designated by the
11 department within 120 days after [the effective date of this act].

12 (c)(d) THE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE OF ITS DETERMINATION CONCERNING THE
13 PETITION TO THE PETITIONER AND THE PERMITTEE OR HOLDER OF THE CHANGE IN APPROPRIATION RIGHT SUBJECT TO
14 THE PETITION. WITHIN 30 DAYS OF THE NOTICE, THE PETITIONER OR THE PERMITTEE OR HOLDER OF THE CHANGE IN
15 APPROPRIATION RIGHT MAY REQUEST A HEARING TO SHOW CAUSE BY A PREPONDERANCE OF EVIDENCE AS TO WHY THE
16 PROPOSED ACTION SHOULD NOT BE TAKEN. IF A REQUEST FOR A SHOW CAUSE HEARING IS NOT REQUESTED, THE
17 DETERMINATION BECOMES FINAL."

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19 **Section 34.** Section 85-2-314, MCA, is amended to read:

20 **"85-2-314. Revocation or modification of permit or change in appropriation right.** (1) (a) If the
21 work on an appropriation or change in appropriation right is not commenced, prosecuted, or completed within
22 the time stated in the permit or an extension of the time stated in the permit, if the water is not being applied to
23 the beneficial use contemplated in the permit or change in appropriation right, if the permit or change in
24 appropriation right would have been denied or modified had the final decree been available to the department,
25 or if the permit or change in appropriation right is otherwise not being followed, the department may, after
26 notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or
27 change in appropriation right should not be modified or revoked.

28 (b) If the permittee or holder of the change in appropriation right fails to show sufficient cause, the

1 department may modify or revoke the permit or change in appropriation right.

2 (2) (a) ~~A permittee, or holder of a change in appropriation right, or holder of a water right may~~
3 ~~petition the department to enforce subsection (1) or 85-2-313 to: modify or remove a condition of approval or~~
4 ~~reduce the amount of the permit or change authorization~~

5 ~~(i) revoke;~~

6 ~~(ii) modify;~~

7 ~~(iii) modify a condition of approval; or~~

8 ~~(iv) reduce the amount of the permit or change authorization.~~

9 ~~(b) A petition brought to enforce 85-2-313 must be filed within 120 days after the issuance of the~~
10 ~~final decree for the basin in which the permit or change in appropriation right is located. A PERMITTEE OR HOLDER~~
11 ~~OF A CHANGE IN APPROPRIATION RIGHT MAY PETITION THE DEPARTMENT TO MODIFY OR REMOVE A CONDITION OF~~
12 ~~APPROVAL OR TO REDUCE THE AMOUNT OF THE PERSON'S OWN PERMIT OR CHANGE AUTHORIZATION.~~

13 ~~(b)(c)(B)The~~ A correct and complete petition must be submitted on a form designated by the
14 department, is subject to the criteria of 85-2-311 and 85-2-402, and must be processed in the same manner as
15 an application made pursuant to 85-2-302, 85-2-307 through 85-2-309, and 85-2-310(1) through (5) except that:

16 (i) the department may waive the public notice of a preliminary determination to grant the petition
17 if the department finds, on the basis of information reasonably available to it, that the petition as proposed in the
18 application will not adversely affect the rights of other appropriators;

19 (ii) if the department issues a preliminary determination to grant the petition and waives public
20 notice, the determination becomes final;

21 (iii) the department may condition a preliminary determination to grant the petition in order to meet
22 the criteria under 85-2-311 and 85-2-402; and

23 (iv) a preliminary determination to deny a petition is final. Denial of a petition does not affect the
24 permit or change authorization.

25 ~~(3) The department shall provide written notice of its determination concerning the petition. Within~~
26 ~~30 days of the notice, the petitioner, permittee, or holder of the change in appropriation right may request a~~
27 ~~hearing to show cause by a preponderance of the evidence why the proposed action should not be taken. If a~~
28 ~~request for a show cause hearing is not made, the determination becomes final."~~

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Section 35. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. ~~Upon~~On actual application of water to the proposed beneficial use within the time allowed, ~~the permittee~~a person holding an issued permit or a change in appropriation right shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed. ~~The~~After the resolution of any petition filed under 85-2-314 85-2-313, the department shall review the certified statement and may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit or change authorization in addition to any final determination made pursuant to 85-2-313 OR 85-2-314, it shall issue the ~~permittee person~~ a certificate of water right. The original of the certificate ~~shall~~must be sent to the ~~permittee person holding an issued permit or a change in appropriation right~~, and a duplicate COPY shall ~~must~~ be kept in ~~the office of the department in Helena~~ and maintained in a centralized database."

Section 36. Section 85-2-405, MCA, is amended to read:

"85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned an appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that the appropriator has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the ~~district water~~ court that determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure, and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof is on the department, which shall establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) ~~The determination of the court must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena~~ that the water right is abandoned must include an order to the department to update the centralized records system."