

HOUSE BILL NO. 676

INTRODUCED BY B. LER, W. GALT, R. GREGG

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO STATE LANDS AND WATER RIGHTS; ELIMINATING THE WATER COURT DUTY TO ADJUDICATE WATER RIGHTS ON JULY 1, ~~2030~~ 2031; PROHIBITING THE BOARD OF LAND COMMISSIONERS FROM OBTAINING A PRIVATE WATER RIGHT USED ON STATE LANDS; REQUIRING THE SALE OF ISOLATED PARCELS WITH WATER RIGHTS TO LESSEES; REPEALING SECTIONS RELATED TO THE ADJUDICATION OF WATER RIGHTS; AMENDING SECTIONS 3-7-101, 3-7-211, 3-7-212, 3-7-223, 3-7-311, 3-7-401, 77-1-134, 77-6-301, 77-6-302, 85-2-102, 85-2-141, 85-2-234, 85-2-235, 85-2-236, 85-2-306, 85-2-406, 85-2-701, 85-2-702, AND 85-2-704, MCA; REPEALING SECTIONS 85-2-212, 85-2-213, 85-2-214, 85-2-215, 85-2-216, 85-2-217, 85-2-218, 85-2-221, 85-2-222, 85-2-223, 85-2-224, 85-2-225, 85-2-226, 85-2-227, 85-2-228, 85-2-231, 85-2-232, 85-2-233, 85-2-237, 85-2-243, 85-2-247, 85-2-248, 85-2-249, 85-2-250, 85-2-270, 85-2-271, 85-2-280, 85-2-281, AND 85-2-282, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 3-7-101, MCA, is amended to read:

"3-7-101. Water divisions. To ~~adjudicate existing water rights and to~~ conduct hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-102. A water division ~~shall~~ must be presided over by a water judge."

Section 2. Section 3-7-211, MCA, is amended to read:

"3-7-211. Appointment of water commissioners. Except as provided in 85-20-1902, the district court having jurisdiction over the hydrologically interrelated portion of a water division, ~~as described in 85-2-231(3),~~ in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

Section 3. Section 3-7-212, MCA, is amended to read:

"3-7-212. Enforcement of decrees. The district court having jurisdiction may enforce the provisions of a final decree. ~~In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings."~~

Section 4. Section 3-7-223, MCA, is amended to read:

"3-7-223. (Temporary) Duties of chief water judge. The chief water judge shall:

- (1) administer the adjudication of existing water rights by:
 - (a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to ensure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;
 - (b) ensuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree; and
 - (c) ensuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;
- (2) conduct hearings in cases certified to the district court under 85-2-309;
- (3) conduct proceedings for petitions for judicial review filed with the water court under 2-4-702;
- (4) assign court personnel to divisions and duties as needed;
- (5) assign the associate water judge to divisions and cases as needed; and
- (6) request and secure the transfer of water judges between divisions as needed. (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)

3-7-223. (Effective October 1, 2025) Duties of chief water judge. The chief water judge shall:

- (1) ~~administer the adjudication of existing water rights by:~~
 - (a) ~~coordinating~~ coordinate with the department of natural resources and conservation in compiling information ~~for final decrees; submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;~~
 - (b) ~~assuring that the water judge in each water division moves without unreasonable delay to enter~~

1 the required preliminary decree;

2 (c) ~~assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as~~
3 ~~possible;~~

4 (2) conduct hearings in cases certified to the district court under 85-2-309;

5 (3) assign court personnel to divisions and duties as needed;

6 (4) assign the associate water judge to divisions and cases as needed; and

7 (5) request and secure the transfer of water judges between divisions as needed."
8

9 **Section 5.** Section 3-7-311, MCA, is amended to read:

10 **"3-7-311. Duties of water masters.** (1) The water master has the general powers given to a master
11 by Rule 53(c), M.R.Civ.P.

12 (2) ~~Within a reasonable time after June 30, 1983, the water master shall issue a report to the water~~
13 ~~judge meeting the requirements for the preliminary decree as specified in 85-2-231.~~

14 (3) ~~After a water judge issues a preliminary decree, the water master shall assist the water judge in~~
15 ~~the performance of the water division's further duties as ordered by the water judge.~~

16 (4)(2) A water master may be appointed by a district court to serve as a special master to a district
17 court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief
18 water judge."
19

20 **Section 6.** Section 3-7-401, MCA, is amended to read:

21 **"3-7-401. Definitions.** For the purposes of this part, the following definitions apply:

22 (1) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

23 (2) "Financial interest" means ownership of a legal or equitable interest, however small, or a
24 relationship as director, advisor, or other active participant in the affairs of a party, except that:

25 (a) ownership in a mutual or common investment fund that holds securities is not a financial
26 interest in such securities unless the judge or water master participates in the management of the fund;

27 (b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial
28 interest in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(d) ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

~~(3) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master or water judge."~~

Section 7. Section 77-1-134, MCA, is amended to read:

"77-1-134. Irrigation structures, utility structures, and bridges of formerly taxable land -- water rights. (1) If an irrigation structure, a utility structure, or a bridge was placed on land that consists of the bed of a navigable river or stream, the irrigation structure, utility structure, or bridge remains the property of the original owner or the original owner's successors in interest or assignees. Subject to 77-1-1112(10), access to the irrigation structures, utility structures, and bridges described in this section for the purposes of operation, maintenance, repair, enhancement, or improvement may not be impeded by the state.

(2) Subject to 77-1-1112(10), the change of designation of the bed of a navigable river or stream from a taxable to a nontaxable status may not interfere with or impede the exercise of a water right, including a livestock watering right for which a claim was not required to be filed pursuant to ~~85-2-212 and 85-2-222.~~"

Section 8. Section 77-6-301, MCA, is amended to read:

"77-6-301. Improvements authorized. A lessee of state lands may place ~~upon~~on the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, improvement of the land itself, irrigation ditches, sheds, wells, reservoirs, water rights, and similar improvements."

Section 9. Section 77-6-302, MCA, is amended to read:

"77-6-302. Compensation for improvements -- actual costs. (1) Except for the improvements described in 77-1-134, ~~prior to renewal of a lease, the department shall request from the lessee a listing of~~

1 improvements on the land associated with the lease, including the reasonable value of the improvements. This
2 information must be provided to any party requesting to bid on the lease a lessee of state lands may register all
3 improvements that were made on state lands prior to October 1, 2025. Improvements registered under this
4 section may include improvements authorized in 77-6-301. Registrations must be made no later than
5 September 30, 2026.

6 (2) Owners of improvements registered under this section are entitled to compensation pursuant to
7 77-6-303. Except for the improvements described in 77-1-134, when another person becomes the lessee of the
8 land, the person shall pay to the former lessee the reasonable value of the registered improvements. The
9 reasonable value may not be less than the full market value of the improvements.

10 (2)(3) If the former lessee is unable to produce records establishing the reasonable value or if the
11 former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value
12 must be ascertained and fixed as provided in 77-6-306. The former lessee shall initiate this process within 60
13 days of notification from the department that there is a new lessee. The department notification must include an
14 explanation of the requirements of 77-6-306. Failure to initiate the process within this time period results in all
15 improvements, except those described in 77-1-134, becoming the property of the state.

16 (3)(4) ~~Upon~~On the termination of a lease, the department may grant a license to the former lessee to
17 remove the movable improvements from the land. ~~Upon~~On authorization, the movable improvements must be
18 removed within 60 days or they become the property of the state unless the department for good cause grants
19 additional time for the removal. The department shall charge the former lessee for the period of time that the
20 improvements remain on the land after the termination of the lease."

21
22 NEW SECTION. Section 10. State ownership of water rights. (1) The board may obtain an
23 ownership interest in a water right appurtenant to state lands only if that right has:

- 24 (a) a place of use on state lands; and
25 (b) a place of diversion on state lands.

26 (2) A lessee retains a water right not meeting the characteristics in subsection (1).
27

28 NEW SECTION. Section 11. Sale of isolated parcels -- water rights. Pursuant to 77-1-202, 77-1-

301, 77-2-301, or 77-2-308, and at the request of a lessee, the board shall sell an isolated parcel with an appurtenant water right to the lessee.

Section 12. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" or "appropriation" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Appropriation right" has the same meaning as "water right" as defined in this section.

(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from

the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(5) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(6) "Certificate" means a certificate of water right issued by the department.

(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) The term does not include a change in water use related to the method of irrigation.

(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(10) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(11) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(12) "Developed spring" means any point where ground water emerges naturally, that has

1 subsequently been physically altered, and from which ground water flows under natural pressures or is
2 artificially withdrawn.

3 (13) "Existing right" or "existing water right" means a right to the use of water that would be
4 protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian
5 reserved water rights created under federal law and water rights created under state law.

6 (14) "Ground water" means any water that is beneath the ground surface.

7 (15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption
8 of abandonment under ~~85-2-226~~.

9 (16) "Mitigation" means the reallocation of surface water or ground water through a change in
10 appropriation right or other means that does not result in surface water being introduced into an aquifer through
11 aquifer recharge to offset adverse effects resulting from net depletion of surface water.

12 (17) "Municipality" means an incorporated city or town organized and incorporated under Title 7,
13 chapter 2.

14 (18) (a) "National forest system lands" means all lands within Montana that are owned by the United
15 States and administered by the secretary of agriculture through the forest service.

16 (b) The term does not include any lands within the exterior boundaries of national forest system
17 units that are not owned by the United States and administered by the secretary of agriculture through the
18 forest service.

19 (19) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the
20 source of supply and in which substantially all of the water returns without delay to the source of supply,
21 causing little or no disruption in stream conditions.

22 (20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-
23 2-303 and 85-2-306 through 85-2-314.

24 (21) "Person" means an individual, association, partnership, corporation, state agency, political
25 subdivision, the United States or any agency of the United States, or any other entity.

26 (22) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or
27 district created pursuant to state law or other public body of the state empowered to appropriate water.

28 (b) The term does not mean a private corporation, association, or group.

(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(24) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(26) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(28) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(29) "Water division" means a drainage basin as defined in 3-7-102.

(30) "Water judge" means a judge as provided for in Title 3, chapter 7.

(31) "Water master" means a master as provided for in Title 3, chapter 7.

(32) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

(33) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(34) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 13. Section 85-2-141, MCA, is amended to read:

"85-2-141. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana.

(2) The department may acquire rights to water needed for leasing under this program:

(a) through appropriation of water in its own name;

(b) by agreement with or purchase from another holder of water rights; or

(c) by contract with the United States for water held in federal reservoirs as a means of protecting the state's interest in those waters.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which ~~a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234~~ has been entered;

(b) Fort Peck, Tiber, Canyon Ferry, Hungry Horse, Koocanusa, or Yellowtail reservoir if a contract between the department and the federal government concerning the acquisition of water is in effect; and

(c) any other existing or future federal reservoir:

(i) located in a basin concerning which ~~a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234~~ has been entered; and

(ii) for which and for so long as there is a contract between the department and the federal government concerning the acquisition of water.

(4) (a) Subject to subsections (4)(b) and (4)(c), the department may lease up to 1 million acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses in Montana.

(b) The department may lease up to 50,000 acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses outside Montana.

(c) The total amount of water leased under this subsection (4) may not exceed 1 million acre-feet.

(5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations in subsection (7). In making a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection (6).

(6) The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

(7) Upon application by a person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. The determination of desirability must be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

(8) The department shall for any lease agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by the user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9) The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor."

Section 14. Section 85-2-234, MCA, is amended to read:

"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 has been sustained pursuant to 85-2-233. However, the court~~

1 may not alter or amend any of the terms of a compact except with the prior written consent of the parties in
2 accordance with applicable law.

3 ~~(3)(1)~~ The A final decree must establish the existing rights and priorities within the water judge's
4 jurisdiction of persons who have filed a claim in accordance with ~~85-2-221 and 85-2-222~~, of persons required to
5 file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district
6 court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe
7 possessing water rights arising under federal law, required by 85-2-702 to file claims.

8 ~~(4)(2)~~ The final decree must establish, ~~in a form determined to be appropriate by the water judge~~, one
9 or more tabulations or lists of all water rights and their relative priorities.

10 ~~(5)(3)~~ The final decree must state the findings of fact, along with any conclusions of law, upon which
11 the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are
12 based.

13 ~~(6)(4)~~ For each person who is found to have an existing right arising under the laws of the state of
14 Montana, the final decree must state:

15 (a) the name and post-office address of the owner of the right;

16 (b) the amount of water included in the right, as follows:

17 (i) by flow rate for direct flow rights, such as irrigation rights;

18 (ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not
19 susceptible to measurement by flow rate; or

20 (iii) by flow rate and volume for rights that a water judge determines require both volume and flow
21 rate to adequately administer the right;

22 (c) the date of priority of the right;

23 (d) the purpose for which the water included in the right is used;

24 (e) the place of use and a description of the land, if any, to which the right is appurtenant;

25 (f) the source of the water included in the right;

26 (g) the place and means of diversion;

27 (h) the inclusive dates during which the water is used each year;

28 (i) any other information necessary to fully define the nature and extent of the right.

(7)(5) 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)(6)~~ Clerical mistakes in a final decree may be corrected at any time on the initiative of ~~the water~~ a district court judge or on the petition of any person who possesses a water right. The ~~water judge court~~ 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~~ The order of the ~~water judge~~ making or denying a clerical correction is subject to appellate review."

Section 15. Section 85-2-235, MCA, is amended to read:

"85-2-235. Appeals. ~~(1)~~ A person whose existing rights and priorities are determined in a final decree may appeal the determination in district court ~~only if~~:

- ~~(a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree;~~
- ~~(b) the person's rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person;~~
- ~~(c) the person requested a hearing and appeared before the water court to finally resolve an issue~~ remark, as defined in 85-2-250; or
- ~~(d) the person is a claimant appealing an adverse decision when the water court issued the decision as the result of an evidentiary hearing or as the result of calling the claim in on the court's own motion.~~

(2) — The attorney general may appeal a determination made in a final decree if the attorney general participated as an intervenor as provided in 85-2-248.

(3) — An interlocutory ruling by the water judge upon a question of law may be appealed by any party who is affected by the decision and who participated in the matter in which the ruling was issued."

Section 16. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. When a final decree is entered, the water judge shall send a copy to the department. 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 must 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."

Section 17. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

- 1 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated
2 only:
- 3 (a) according to a permit received pursuant to 85-2-508; or
4 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.
- 5 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before
6 appropriating ground water by means of a well or developed spring:
- 7 (i) when the appropriation is made by a local governmental fire agency organized under Title 7,
8 chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and
9 emergency fire-related operations, which may include enclosed storage;
- 10 (ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive
11 geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the
12 same source aquifer, and the distance between the extraction well and both the nearest existing well and the
13 hydraulically connected surface waters is more than twice the distance between the extraction well and the
14 injection well;
- 15 (iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and
16 does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or
17 more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or
- 18 (iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and
19 does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more
20 wells or developed springs exceeding this limitation requires a permit.
- 21 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground
22 water for beneficial use, the appropriator shall file a notice of completion with the department on a form
23 provided by the department through its offices.
- 24 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a
25 certificate of water right, return a defective notice for correction or completion, together with the reasons for
26 returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and
27 refiled with the department within 30 days of notification of defects or within a further time as the department
28 may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refileing a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(d) (i) Construction of a water supply system subject to Title 75, chapter 6, part 1, and use of a permit exception for the appropriation of water pursuant to this section is proof of beneficial use.

(ii) The department shall allocate a volume of 10 acre-feet a year to the system and issue a certificate of water right after the conditions in subsection (3)(d)(i) are met.

(iii) The department shall consider a water right as perfected after the conditions in subsection (3)(d)(i) are met.

(iv) When the appropriation is for a water supply system that is subject to Title 75, chapter 6, part 1, and is located outside of a stream depletion zone and does not exceed 10 acre-feet a year:

(A) For the purposes of subsection (3)(b)(i), the appropriation will be considered perfected upon completion of construction of the water supply system.

(B) A copy of the department of environmental quality approval for the water supply system must be submitted with the notice of completion. This section does not preclude the public water supply developer or any subsequent owners from expanding the water system or from revising the water use restrictions within the subdivision, provided that the total amount does not exceed 10 acre-feet per year.

(C) Water appropriated under this exception must be measured and reported annually to the department.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-224 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the

filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required.

However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior

boundaries of the Flathead Indian reservation."

Section 18. Section 85-2-406, MCA, is amended to read:

"85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the district court to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under ~~85-2-217~~ and part 7 of this chapter may appeal a determination made pursuant to subsection (2)."

Section 19. Section 85-2-701, MCA, is amended to read:

"85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. It is the intent of the legislature that the unified proceedings include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes ~~in or affecting the basins identified by 85-2-218~~ its highest priority. In negotiations, the commission is acting on behalf of the governor."

Section 20. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written

request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not been accomplished by July 1, 2013, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 24 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings."

Section 21. Section 85-2-704, MCA, is amended to read:

"85-2-704. Termination of negotiations. (1) The commission or any negotiating tribe or federal agency may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 also terminates. The tribe or federal agency shall file all of its claims for reserved rights within 24 months of the termination of negotiations.

(2) ~~Once~~When negotiations have been terminated pursuant to subsection (1), they may be reopened only by mutual agreement of the parties."

NEW SECTION. **Section 22. Repealer.** The following sections of the Montana Code Annotated are repealed:

85-2-212. Order by supreme court.

- 1 85-2-213. Notice of order.
- 2 85-2-214. Commencement of action.
- 3 85-2-215. Consolidation of matters.
- 4 85-2-216. Venue for water rights determinations.
- 5 85-2-217. Suspension of adjudication.
- 6 85-2-218. Process and criteria for designating priority basins or subbasins.
- 7 85-2-221. Filing of claim of existing water right -- filing late claim.
- 8 85-2-222. Definition -- filing process -- notice.
- 9 85-2-223. Public recreational uses.
- 10 85-2-224. Statement of claim.
- 11 85-2-225. Filing fee -- processing fee for remitted claims.
- 12 85-2-226. Abandonment by failure to file claim.
- 13 85-2-227. Claim to constitute prima facie evidence -- relevant evidence -- abandonment -- criteria for
- 14 presumption of municipal nonabandonment.
- 15 85-2-228. Federal reserved water rights with priority date of July 1, 1973, or later -- process and
- 16 adjudication -- purpose.
- 17 85-2-231. Temporary preliminary decree, preliminary decree, and supplemental preliminary decree.
- 18 85-2-232. Availability of temporary preliminary decree, preliminary decree, or supplemental preliminary
- 19 decree.
- 20 85-2-233. Hearing on decrees or petition -- procedure.
- 21 85-2-237. (Temporary) Reopening and review of decrees.
- 22 85-2-243. Department assistance to water judges.
- 23 85-2-247. Purpose.
- 24 85-2-248. Resolution of issue remarks other than by objection.
- 25 85-2-249. Prioritization of workload.
- 26 85-2-250. Definition.
- 27 85-2-270. (Temporary) Findings -- purpose.
- 28 85-2-271. (Temporary) Benchmarks -- action taken if not met -- claims examination priority.

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