

HOUSE BILL NO. 360

INTRODUCED BY HARPER, THOFT

IN THE HOUSE

JANUARY 22, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

JANUARY 23, 1991 FIRST READING.

FEBRUARY 14, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 15, 1991 PRINTING REPORT.

FEBRUARY 16, 1991 SECOND READING, DO PASS.

FEBRUARY 18, 1991 ENGROSSING REPORT.

FEBRUARY 19, 1991 THIRD READING, PASSED.
AYES, 96; NOES, 4.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 10, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

APRIL 15, 1991

REPORTED CORRECTLY ENROLLED.

APRIL 16, 1991

SIGNED BY PRESIDENT.

SIGNED BY SPEAKER.

DELIVERED TO GOVERNOR.

APRIL 19, 1991

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 20, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 22, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 23, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 24, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 24, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 360
2 INTRODUCED BY Flanagan

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TERMS FOR
5 MEMBERS OF THE RESERVED WATER RIGHTS COMPACT COMMISSION; AND
6 AMENDING SECTION 2-15-212, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 2-15-212, MCA, is amended to read:

10 "2-15-212. Reserved water rights compact commission.

11 (1) There is created a reserved water rights compact
12 commission.

13 (2) Commissioners are appointed within 30 days of May
14 11, 1979, as follows:

15 (a) two members of the house of representatives
16 appointed by the speaker, each from a different political
17 party;

18 (b) two members of the senate appointed by the
19 president, each from a different political party;

20 (c) four members designated by the governor; and

21 (d) one member designated by the attorney general.

22 (3) Legislative members of the commission are entitled
23 to receive compensation and expenses as provided in 5-2-301
24 for each day actually spent on commission business. Other
25 members are entitled to salary and expenses as state

1 employees.

2 (4) The commission is attached to the governor's office
3 for administrative purposes only. The costs of the
4 commission shall be paid from funds appropriated for that
5 purpose from the water right adjudication account
6 established in 85-2-241.

7 (5) ~~Members appointed to the commission shall serve~~
8 ~~until the work of the commission is completed or until they~~
9 ~~resign or are otherwise unable to serve. Members are~~
10 appointed for 4-year terms and may be reappointed. A
11 legislative member position is vacant if the person no
12 longer serves in the legislature. A vacancy must be filled
13 in the manner of the original appointment."

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 360
INTRODUCED BY HARPER, THOPT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TERMS FOR MEMBERS OF THE RESERVED WATER RIGHTS COMPACT COMMISSION; DELETING PROVISIONS THAT ESTABLISH A TERMINATION DATE FOR THE SUSPENSION OF ADJUDICATION REQUIREMENTS; AND AMENDING SECTION SECTIONS 2-15-212, 85-2-217, 85-2-231, AND 85-2-702, MCA."

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

Section 1. Section 2-15-212, MCA, is amended to read:

"2-15-212. Reserved water rights compact commission.

(1) There is created a reserved water rights compact commission.

(2) Commissioners are appointed within 30 days of May 11, 1979 1990, as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled

to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.

(5) ~~Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve.~~ Members are appointed for STAGGERED 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. A vacancy must be filled in the manner of the original appointment.

SECTION 2. SECTION 85-2-217, MCA, IS AMENDED TO READ:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are negotiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension shall be effective until July 1, 1993."

SECOND READING
HB 360



1 long--as--negotiations--are--continuing-or-ratification-of-a
 2 completed-compact-is-being-sought;-if-approval-by-the--state
 3 legislature--and--tribes--or--federal--agencies-has-not-been
 4 accomplished-by-July-17-1993;-the-suspension-shall-terminate
 5 on-that-date--Upon-termination-of--the--suspension--of--this
 6 party--the--tribes-and-the-federal-agencies-shall-be-subject
 7 to-the-special-filing-requirements-of--85-2-702(3)--and--all
 8 other--requirements--of--the-state-water-adjudication-system
 9 provided-for-in-Title-857-chapter--2 the negotiations are
 10 terminated pursuant to 85-2-704. Those tribes and federal
 11 agencies that choose not to negotiate their reserved water
 12 rights shall--be are subject to the full operation of the
 13 state adjudication system and may not benefit from the
 14 suspension provisions of this section."

15 **SECTION 3. SECTION 85-2-231, MCA, IS AMENDED TO READ:**

16 "85-2-231. Temporary preliminary and preliminary
 17 decree. (1) A water judge may issue a temporary preliminary
 18 decree prior to the issuance of a preliminary decree if the
 19 temporary preliminary decree is necessary for the orderly
 20 adjudication or administration of water rights.

21 (2) (a) The water judge shall issue a preliminary
 22 decree. The preliminary decree shall be based on:

- 23 (i) the statements of claim before the water judge;
- 24 (ii) the data submitted by the department;
- 25 (iii) the contents of compacts approved by the Montana

1 legislature and the tribe or federal agency or, lacking an
 2 approved compact, the filings for federal and Indian
 3 reserved rights; and

- 4 (iv) any additional data obtained by the water judge.
- 5 (b) The preliminary decree shall be issued within 90
 6 days after the close of the special filing period set out in
 7 85-2-702(3) 85-2-704 or as soon thereafter as is reasonably
 8 feasible.

9 (c) This section does not prevent the water judge from
 10 issuing an interlocutory decree or other temporary decree,
 11 pursuant to 85-2-321 or as provided in subsection (1) of
 12 this section, or if such a decree is otherwise necessary for
 13 the orderly administration of water rights prior to the
 14 issuance of a preliminary decree.

15 (3) A preliminary decree may be issued for any
 16 hydrologically interrelated portion of a water division,
 17 including but not limited to a basin, subbasin, drainage,
 18 subdrainage, stream, or single source of supply of water, at
 19 a time different from the issuance of other preliminary
 20 decrees or portions of the same decree.

21 (4) The preliminary decree shall contain the
 22 information and make the determinations, findings, and
 23 conclusions required for the final decree under 85-2-234.
 24 The water judge shall include in the preliminary decree the
 25 contents of a compact negotiated under the provisions of

1 part 7 that has been approved by the legislature and the
2 tribe or federal agency.

3 (5) If the water judge is satisfied that the report of
4 the water master meets the requirements for the preliminary
5 decree set forth in subsections (1) and (3) and is satisfied
6 with the conclusions contained in the report, the water
7 judge shall adopt the report as the preliminary decree. If
8 the water judge is not so satisfied, he may, at his option,
9 recommit the report to the master with instructions, or
10 modify the report and issue the preliminary decree.

11 (6) In issuing a subsequent preliminary decree, the
12 water judge shall incorporate the temporary preliminary
13 decree for the basin as modified by objections and hearings.
14 The temporary preliminary decree or preliminary decree, as
15 modified after objections and hearings, is enforceable and
16 administrable according to its terms among parties ordered
17 under 85-2-406. The preliminary decree, as modified after
18 objections and hearings, shall upon issuance supersede and
19 replace the temporary preliminary decree."

20 **SECTION 4. SECTION 85-2-702, MCA, IS AMENDED TO READ:**

21 **"85-2-702. Negotiation with Indian tribes.** (1) The
22 reserved water rights compact commission, created by
23 2-15-212, may negotiate with the Indian tribes or their
24 authorized representatives jointly or severally to conclude
25 compacts authorized under 85-2-701. Compact proceedings

1 shall be commenced by the commission. The commission shall
2 serve by certified mail directed to the governing body of
3 each tribe a written request for the initiation of
4 negotiations under this part and a request for the
5 designation of an authorized representative of the tribe to
6 conduct compact negotiations. Upon receipt of such written
7 designation from the governing body of a tribe, compact
8 negotiations shall be considered to have commenced.

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

18 (3) Upon its ratification by the Montana legislature
19 and the tribe, the terms of a compact must be included in
20 the preliminary decree as provided by 85-2-231, and unless
21 an objection to the compact is sustained under 85-2-233, the
22 terms of the compact must be included in the final decree
23 without alteration. ~~However, if approval of the state~~
24 ~~legislature and tribe has not been accomplished by July 1,~~
25 ~~1993, all Indian claims for reserved water rights that have~~

HB 0360/02

1 not-been-resolved-by-a--compact--must--be--filed--with--the
2 department--within-6-months--These-new-filings-shall-be-used
3 in-the-formation-of-the-preliminary-decree--and--shall--be
4 given-treatment-similar-to-that-given-to-all-other-filings."

-End-

1 HOUSE BILL NO. 360

2 INTRODUCED BY HARPER, THOPT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TERMS FOR
5 MEMBERS OF THE RESERVED WATER RIGHTS COMPACT COMMISSION;
6 DELETING PROVISIONS THAT ESTABLISH A TERMINATION DATE FOR
7 THE SUSPENSION OF ADJUDICATION REQUIREMENTS; AND AMENDING
8 SECTION SECTIONS 2-15-212, 85-2-217, 85-2-231, AND 85-2-702,
9 MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 2-15-212, MCA, is amended to read:

13 "2-15-212. Reserved water rights compact commission.

14 (1) There is created a reserved water rights compact
15 commission.16 (2) Commissioners are appointed within 30 days of May
17 11, ~~1979~~ 1990, as follows:18 (a) two members of the house of representatives
19 appointed by the speaker, each from a different political
20 party;21 (b) two members of the senate appointed by the
22 president, each from a different political party;

23 (c) four members designated by the governor; and

24 (d) one member designated by the attorney general.

25 (3) Legislative members of the commission are entitled

1 to receive compensation and expenses as provided in 5-2-301
2 for each day actually spent on commission business. Other
3 members are entitled to salary and expenses as state
4 employees.

5 (4) The commission is attached to the governor's office
6 for administrative purposes only. The costs of the
7 commission shall be paid from funds appropriated for that
8 purpose from the water right adjudication account
9 established in 85-2-241.

10 (5) ~~Members appointed to the commission shall serve~~
11 ~~until the work of the commission is completed or until they~~
12 ~~resign or are otherwise unable to serve. Members are~~
13 appointed for STAGGERED 4-year terms and may be reappointed.
14 A legislative member position is vacant if the person no
15 longer serves in the legislature. A vacancy must be filled
16 in the manner of the original appointment."

17 **SECTION 2. SECTION 85-2-217, MCA, IS AMENDED TO READ:**

18 "85-2-217. Suspension of adjudication. While
19 negotiations for the conclusion of a compact under part 7
20 are being pursued, all proceedings to generally adjudicate
21 reserved Indian water rights and federal reserved water
22 rights of those tribes and federal agencies which are
23 negotiating are suspended. The obligation to file water
24 rights claims for those reserved rights is also suspended.
25 This suspension shall be effective until ~~July 1, 1993,~~ as

THIRD READING

1 long--as--negotiations--are--continuing-or-ratification-of-a
 2 completed-compact-is-being-sought--if-approval-by-the--state
 3 legislature--and--tribes--or--federal--agencies-has-not-been
 4 accomplished-by-July-17-1993-the-suspension-shall-terminate
 5 on-that-date--Upon-termination-of--the--suspension--of--this
 6 part--the--tribes-and-the-federal-agencies-shall-be-subject
 7 to-the-special-filing-requirements-of--85-2-702(3)--and--all
 8 other--requirements--of--the-state-water-adjudication-system
 9 provided-for-in-Title-85--chapter--2 the negotiations are
 10 terminated pursuant to 85-2-704. Those tribes and federal
 11 agencies that choose not to negotiate their reserved water
 12 rights shall--be are subject to the full operation of the
 13 state adjudication system and may not benefit from the
 14 suspension provisions of this section."

15 **SECTION 3. SECTION 85-2-231, MCA, IS AMENDED TO READ:**

16 "85-2-231. Temporary preliminary and preliminary
 17 decree. (1) A water judge may issue a temporary preliminary
 18 decree prior to the issuance of a preliminary decree if the
 19 temporary preliminary decree is necessary for the orderly
 20 adjudication or administration of water rights.

21 (2) (a) The water judge shall issue a preliminary
 22 decree. The preliminary decree shall be based on:

- 23 (i) the statements of claim before the water judge;
- 24 (ii) the data submitted by the department;
- 25 (iii) the contents of compacts approved by the Montana

1 legislature and the tribe or federal agency or, lacking an
 2 approved compact, the filings for federal and Indian
 3 reserved rights; and

4 (iv) any additional data obtained by the water judge.

5 (b) The preliminary decree shall be issued within 90
 6 days after the close of the special filing period set out in
 7 85-2-702(3) 85-2-704 or as soon thereafter as is reasonably
 8 feasible.

9 (c) This section does not prevent the water judge from
 10 issuing an interlocutory decree or other temporary decree,
 11 pursuant to 85-2-321 or as provided in subsection (1) of
 12 this section, or if such a decree is otherwise necessary for
 13 the orderly administration of water rights prior to the
 14 issuance of a preliminary decree.

15 (3) A preliminary decree may be issued for any
 16 hydrologically interrelated portion of a water division,
 17 including but not limited to a basin, subbasin, drainage,
 18 subdrainage, stream, or single source of supply of water, at
 19 a time different from the issuance of other preliminary
 20 decrees or portions of the same decree.

21 (4) The preliminary decree shall contain the
 22 information and make the determinations, findings, and
 23 conclusions required for the final decree under 85-2-234.
 24 The water judge shall include in the preliminary decree the
 25 contents of a compact negotiated under the provisions of

1 part 7 that has been approved by the legislature and the
2 tribe or federal agency.

3 (5) If the water judge is satisfied that the report of
4 the water master meets the requirements for the preliminary
5 decree set forth in subsections (1) and (3) and is satisfied
6 with the conclusions contained in the report, the water
7 judge shall adopt the report as the preliminary decree. If
8 the water judge is not so satisfied, he may, at his option,
9 recommit the report to the master with instructions, or
10 modify the report and issue the preliminary decree.

11 (6) In issuing a subsequent preliminary decree, the
12 water judge shall incorporate the temporary preliminary
13 decree for the basin as modified by objections and hearings.
14 The temporary preliminary decree or preliminary decree, as
15 modified after objections and hearings, is enforceable and
16 administrable according to its terms among parties ordered
17 under 85-2-406. The preliminary decree, as modified after
18 objections and hearings, shall upon issuance supersede and
19 replace the temporary preliminary decree."

20 **SECTION 4. SECTION 85-2-702, MCA, IS AMENDED TO READ:**

21 "85-2-702. Negotiation with Indian tribes. (1) The
22 reserved water rights compact commission, created by
23 2-15-212, may negotiate with the Indian tribes or their
24 authorized representatives jointly or severally to conclude
25 compacts authorized under 85-2-701. Compact proceedings

1 shall be commenced by the commission. The commission shall
2 serve by certified mail directed to the governing body of
3 each tribe a written request for the initiation of
4 negotiations under this part and a request for the
5 designation of an authorized representative of the tribe to
6 conduct compact negotiations. Upon receipt of such written
7 designation from the governing body of a tribe, compact
8 negotiations shall be considered to have commenced.

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

18 (3) Upon its ratification by the Montana legislature
19 and the tribe, the terms of a compact must be included in
20 the preliminary decree as provided by 85-2-231, and unless
21 an objection to the compact is sustained under 85-2-233, the
22 terms of the compact must be included in the final decree
23 without alteration. ~~However, if approval of the state~~
24 ~~legislature and tribe has not been accomplished by July 1,~~
25 ~~1993, all Indian claims for reserved water rights that have~~

HB 0360/02

1 not-been-resolved-by-a--compact--must--be--filed--with--the
2 department--within-6-months.-These-new-filings-shall-be-used
3 in-the-formulation-of-the-preliminary-decree--and--shall--be
4 given-treatment-similar-to-that-given-to-all-other-filings."

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 2
April 2, 1991

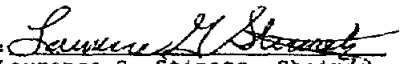
Page 1 of 2
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 360 (third reading copy -- blue), respectfully report that House Bill No. 360 be amended and as so amended be concurred in:

1. Title, line 6.
Following: line 5
Strike: "DELETING PROVISIONS THAT ESTABLISH A"
Insert: "EXTENDING THE"
2. Title, line 8.
Strike: "85-2-231."
3. Page 1, lines 16 and 17.
Following: "appointed" on line 16
Strike: the remainder of line 16 through "1990." on line 17
4. Page 2, line 13.
Following: "for"
Strike: "STAGGERED"
5. Page 2, line 15.
Following: "legislature."
Insert: "The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature."
6. Page 3, lines 9 and 10.
Following: "2" on line 9
Strike: the remainder of line 9 through "85-2-704" on line 10
Insert: "July 1, 1999, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1999, the suspension shall terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies shall be subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2"
7. Page 3, line 15 through page 5, line 19.
Strike: section 3 in its entirety
Renumber: subsequent section
8. Page 7, line 4
Following: "filings."

Insert: "However, if approval of the state legislature and tribe has not been accomplished by July 1, 1999, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings shall be used in the formulation of the preliminary decree and shall be given treatment similar to that given to all other filings."

Signed: 
Lawrence G. Stimatz, Chairman

LB 4/2/91
Amd. Coord.

SB 4-2-91 12:50
Sec. of Senate

1 HOUSE BILL NO. 360

2 INTRODUCED BY HARPER, THOFT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TERMS FOR
5 MEMBERS OF THE RESERVED WATER RIGHTS COMPACT COMMISSION;
6 ~~DELETING--PROVISIONS--THAT---ESTABLISH---A~~ EXTENDING THE
7 TERMINATION DATE FOR THE SUSPENSION OF ADJUDICATION
8 REQUIREMENTS; AND AMENDING SECTION SECTIONS 2-15-212,
9 85-2-217, 85-2-2317 AND 85-2-702, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 2-15-212, MCA, is amended to read:

13 "2-15-212. Reserved water rights compact commission.

14 (1) There is created a reserved water rights compact
15 commission.16 (2) Commissioners are appointed ~~within-30-days--of--May~~
17 ~~17-1979 1999~~ as follows:18 (a) two members of the house of representatives
19 appointed by the speaker, each from a different political
20 party;21 (b) two members of the senate appointed by the
22 president, each from a different political party;

23 (c) four members designated by the governor; and

24 (d) one member designated by the attorney general.

25 (3) Legislative members of the commission are entitled

1 to receive compensation and expenses as provided in 5-2-301
2 for each day actually spent on commission business. Other
3 members are entitled to salary and expenses as state
4 employees.

5 (4) The commission is attached to the governor's office
6 for administrative purposes only. The costs of the
7 commission shall be paid from funds appropriated for that
8 purpose from the water right adjudication account
9 established in 85-2-241.

10 (5) ~~Members appointed to the commission shall serve~~
11 ~~until the work of the commission is completed or until they~~
12 ~~resign or are otherwise unable to serve. Members are~~
13 ~~appointed for STAGGERED 4-year terms and may be reappointed.~~
14 A legislative member position is vacant if the person no
15 longer serves in the legislature. THE POSITION OF A MEMBER
16 APPOINTED BY THE GOVERNOR OR ATTORNEY GENERAL IS VACANT IF
17 THAT PERSON IS ELECTED TO THE LEGISLATURE. A vacancy must be
18 filled in the manner of the original appointment."

19 **SECTION 2.** SECTION 85-2-217, MCA, IS AMENDED TO READ:

20 "85-2-217. Suspension of adjudication. While
21 negotiations for the conclusion of a compact under part 7
22 are being pursued, all proceedings to generally adjudicate
23 reserved Indian water rights and federal reserved water
24 rights of those tribes and federal agencies which are
25 negotiating are suspended. The obligation to file water

1 rights claims for those reserved rights is also suspended.
 2 This suspension shall be effective until July 1, 1999, as
 3 long as negotiations are continuing or ratification of a
 4 completed compact is being sought, if approval by the state
 5 legislature and tribes or federal agencies has not been
 6 accomplished by July 1, 1999, the suspension shall terminate
 7 on that date. Upon termination of the suspension of this
 8 part, the tribes and the federal agencies shall be subject
 9 to the special filing requirements of 85-2-702(3) and all
 10 other requirements of the state water adjudication system
 11 provided for in Title 85, chapter 2. the negotiations are
 12 terminated pursuant to 85-2-704 JULY 1, 1999, AS LONG AS
 13 NEGOTIATIONS ARE CONTINUING OR RATIFICATION OF A COMPLETED
 14 COMPACT IS BEING SOUGHT. IF APPROVAL BY THE STATE
 15 LEGISLATURE AND TRIBES OR FEDERAL AGENCIES HAS NOT BEEN
 16 ACCOMPLISHED BY JULY 1, 1999, THE SUSPENSION SHALL TERMINATE
 17 ON THAT DATE. UPON TERMINATION OF THE SUSPENSION OF THIS
 18 PART, THE TRIBES AND THE FEDERAL AGENCIES SHALL BE SUBJECT
 19 TO THE SPECIAL FILING REQUIREMENTS OF 85-2-702(3) AND ALL
 20 OTHER REQUIREMENTS OF THE STATE WATER ADJUDICATION SYSTEM
 21 PROVIDED FOR IN TITLE 85, CHAPTER 2. Those tribes and
 22 federal agencies that choose not to negotiate their reserved
 23 water rights shall be are subject to the full operation of
 24 the state adjudication system and may not benefit from the
 25 suspension provisions of this section."

1 Section 37, Section 85-2-231, MCA, is amended to read:
 2 "85-2-231. Temporary preliminary and preliminary
 3 decree. (1) A water judge may issue a temporary preliminary
 4 decree prior to the issuance of a preliminary decree if the
 5 temporary preliminary decree is necessary for the orderly
 6 adjudication or administration of water rights.
 7 (2) (a) The water judge shall issue a preliminary
 8 decree. The preliminary decree shall be based on:
 9 (i) the statements of claim before the water judge;
 10 (ii) the data submitted by the department;
 11 (iii) the contents of compacts approved by the Montana
 12 legislature and the tribe or federal agency or, lacking an
 13 approved compact, the filings for federal and Indian
 14 reserved rights; and
 15 (iv) any additional data obtained by the water judge.
 16 (b) The preliminary decree shall be issued within 90
 17 days after the close of the special filing period set out in
 18 85-2-702(3) 85-2-704 or as soon thereafter as is reasonably
 19 feasible.
 20 (c) This section does not prevent the water judge from
 21 issuing an interlocutory decree or other temporary decree,
 22 pursuant to 85-2-321 or as provided in subsection (1) of
 23 this section, or if such a decree is otherwise necessary for
 24 the orderly administration of water rights prior to the
 25 issuance of a preliminary decree.

{3}--A--preliminary--decree--may--be--issued--for--any hydrologically-interrelated-portion--of--a--water--division, including--but--not--limited-to-a-basin, subbasin, drainage, subdrainage, stream, or single-source-of-supply-of-water, at a-time-different-from--the--issuance--of--other--preliminary decrees-or-portions-of-the-same-decree;

{4}--The--preliminary--decree--shall--contain--the information--and--make--the--determinations, findings, and conclusions-required-for-the-final--decree--under--85-2-234. The--water-judge--shall--include-in-the-preliminary-decree-the contents-of-a-compact-negotiated--under--the--provisions--of part--7--that--has--been-approved-by-the-legislature-and-the tribe-or-federal-agency;

{5}--If-the-water-judge-is-satisfied-that-the-report--of the--water-master-meets-the-requirements-for-the-preliminary decree-set-forth-in-subsections--(1)--and--(3)--and-is-satisfied with-the-conclusions-contained--in--the--report, the--water judge--shall--adopt-the-report-as-the-preliminary-decree. If the-water-judge-is-not-so-satisfied, he-may, at-his--option, recommit--the--report--to--the--master-with-instructions, or modify-the-report-and-issue-the-preliminary-decree;

{6}--In-issuing-a-subsequent--preliminary--decree, the water--judge--shall--incorporate--the--temporary-preliminary decree-for-the-basin-as-modified-by-objections-and-hearings. The-temporary-preliminary-decree-or-preliminary--decree, as

modified--after--objections-and-hearings, is-enforceable-and administrable-according-to-its-terms-among--parties--ordered under--85-2-406. The--preliminary-decree, as-modified-after objections-and-hearings, shall-upon-issuance--supersede--and replace-the-temporary-preliminary-decree."

SECTION 3. 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 shall 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. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced.

(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

1 effective and binding upon all parties upon ratification by
2 the legislature of Montana and any affected tribal governing
3 body, and approval by the appropriate federal authority.

4 (3) Upon its ratification by the Montana legislature
5 and the tribe, the terms of a compact must be included in
6 the preliminary decree as provided by 85-2-231, and unless
7 an objection to the compact is sustained under 85-2-233, the
8 terms of the compact must be included in the final decree
9 without alteration. ~~However, if approval of the state~~
10 ~~legislature and tribe has not been accomplished by July 1,~~
11 ~~1993, all Indian claims for reserved water rights that have~~
12 ~~not been resolved by a compact must be filed with the~~
13 ~~department within 6 months. These new filings shall be used~~
14 ~~in the formulation of the preliminary decree and shall be~~
15 ~~given treatment similar to that given to all other filings."~~

16 HOWEVER, IF APPROVAL OF THE STATE LEGISLATURE AND THE TRIBE
17 HAS NOT BEEN ACCOMPLISHED BY JULY 1, 1999, ALL INDIAN CLAIMS
18 FOR RESERVED WATER RIGHTS THAT HAVE NOT BEEN RESOLVED BY A
19 COMPACT MUST BE FILED WITH THE DEPARTMENT WITHIN 6 MONTHS.
20 THESE NEW FILINGS SHALL BE USED IN THE FORMULATION OF THE
21 PRELIMINARY DECREE AND SHALL BE GIVEN TREATMENT SIMILAR TO
22 THAT GIVEN TO ALL OTHER FILINGS."

-End-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL 360
(REFERENCE COPY, AS AMENDED)
April 19, 1991

1. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 7, line 23.
Following: line 22
Insert: "NEW SECTION. Section 4. Effective date. This
act is effective on passage and approval."

Gov. Amend.
HB 360

HOUSE BILL NO. 360

INTRODUCED BY HARPER, THOFT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TERMS FOR MEMBERS OF THE RESERVED WATER RIGHTS COMPACT COMMISSION; ~~DELETING--PROVISIONS--THAT--ESTABLISH--A~~ EXTENDING THE TERMINATION DATE FOR THE SUSPENSION OF ADJUDICATION REQUIREMENTS; AND AMENDING SECTION SECTIONS 2-15-212, 85-2-217, ~~85-2-231~~ AND 85-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-15-212, MCA, is amended to read:

"2-15-212. Reserved water rights compact commission.

(1) There is created a reserved water rights compact commission.

(2) Commissioners are appointed ~~within-30-days-of-May~~ ~~11-1979~~ ~~1998~~ as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.

(5) ~~Members--appointed--to--the--commission--shall--serve--until--the--work--of--the--commission--is--completed--or--until--they--resign--or--are--otherwise--unable--to--serve.~~ Members are appointed for STAGGERED 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. THE POSITION OF A MEMBER APPOINTED BY THE GOVERNOR OR ATTORNEY GENERAL IS VACANT IF THAT PERSON IS ELECTED TO THE LEGISLATURE. A vacancy must be filled in the manner of the original appointment."

SECTION 2. SECTION 85-2-217, MCA, IS AMENDED TO READ:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies which are



1 negotiating are suspended. The obligation to file water
 2 rights claims for those reserved rights is also suspended.
 3 This suspension shall be effective until July 1, 1993, as
 4 long as negotiations are continuing or ratification of a
 5 completed compact is being sought. If approval by the state
 6 legislature and tribes or federal agencies has not been
 7 accomplished by July 1, 1993, the suspension shall terminate
 8 on that date. Upon termination of the suspension of this
 9 part, the tribes and the federal agencies shall be subject
 10 to the special filing requirements of 85-2-702(3) and all
 11 other requirements of the state water adjudication system
 12 provided for in Title 85, chapter 2 the negotiations are
 13 terminated pursuant to 85-2-704 JULY 1, 1999, AS LONG AS
 14 NEGOTIATIONS ARE CONTINUING OR RATIFICATION OF A COMPLETED
 15 COMPACT IS BEING SOUGHT. IF APPROVAL BY THE STATE
 16 LEGISLATURE AND TRIBES OR FEDERAL AGENCIES HAS NOT BEEN
 17 ACCOMPLISHED BY JULY 1, 1999, THE SUSPENSION SHALL TERMINATE
 18 ON THAT DATE. UPON TERMINATION OF THE SUSPENSION OF THIS
 19 PART, THE TRIBES AND THE FEDERAL AGENCIES SHALL BE SUBJECT
 20 TO THE SPECIAL FILING REQUIREMENTS OF 85-2-702(3) AND ALL
 21 OTHER REQUIREMENTS OF THE STATE WATER ADJUDICATION SYSTEM
 22 PROVIDED FOR IN TITLE 85, CHAPTER 2. Those tribes and
 23 federal agencies that choose not to negotiate their reserved
 24 water rights shall be are subject to the full operation of
 25 the state adjudication system and may not benefit from the

1 suspension provisions of this section."
 2 ~~Section 3, Section 85-2-231, MCA, is amended to read:~~
 3 ~~"85-2-231. Temporary preliminary and preliminary~~
 4 ~~decree: (1) A water judge may issue a temporary preliminary~~
 5 ~~decree prior to the issuance of a preliminary decree if the~~
 6 ~~temporary preliminary decree is necessary for the orderly~~
 7 ~~adjudication or administration of water rights;~~
 8 ~~(2) (a) The water judge shall issue a preliminary~~
 9 ~~decree. The preliminary decree shall be based on:~~
 10 ~~(i) the statements of claim before the water judge;~~
 11 ~~(ii) the data submitted by the department;~~
 12 ~~(iii) the contents of compacts approved by the Montana~~
 13 ~~legislature and the tribe or federal agency or, lacking an~~
 14 ~~approved compact, the filings for federal and Indian~~
 15 ~~reserved rights; and~~
 16 ~~(iv) any additional data obtained by the water judge;~~
 17 ~~(b) The preliminary decree shall be issued within 90~~
 18 ~~days after the close of the special filing period set out in~~
 19 ~~85-2-702(3) 85-2-704 or as soon thereafter as is reasonably~~
 20 ~~feasible.~~
 21 ~~(c) This section does not prevent the water judge from~~
 22 ~~issuing an interlocutory decree or other temporary decree,~~
 23 ~~pursuant to 85-2-321 or as provided in subsection (1) of~~
 24 ~~this section, or if such a decree is otherwise necessary for~~
 25 ~~the orderly administration of water rights prior to the~~

1 issuance-of-a-preliminary-decree.
 2 {3}--A-preliminary-decree-may-be-issued-for-any
 3 hydrologically-interrelated-portion-of-a-water-division,
 4 including-but-not-limited-to-a-basin,-subbasin,-drainage,
 5 subdrainage,-stream,-or-single-source-of-supply-of-water,-at
 6 a-time-different-from-the-issuance-of-other-preliminary
 7 decrees-or-portions-of-the-same-decree.
 8 {4}--The-preliminary-decree-shall-contain-the
 9 information-and-make-the-determinations,-findings,-and
 10 conclusions-required-for-the-final-decree-under-85-2-234.
 11 The-water-judge-shall-include-in-the-preliminary-decree-the
 12 contents-of-a-compact-negotiated-under-the-provisions-of
 13 part-7-that-has-been-approved-by-the-legislature-and-the
 14 tribe-or-federal-agency.
 15 {5}--If-the-water-judge-is-satisfied-that-the-report-of
 16 the-water-master-meets-the-requirements-for-the-preliminary
 17 decree-set-forth-in-subsections-(1)-and-(3)-and-is-satisfied
 18 with-the-conclusions-contained-in-the-report,-the-water
 19 judge-shall-adopt-the-report-as-the-preliminary-decree.-if
 20 the-water-judge-is-not-so-satisfied,-he-may,-at-his-option,
 21 recommit-the-report-to-the-master-with-instructions,-or
 22 modify-the-report-and-issue-the-preliminary-decree.
 23 {6}--In-issuing-a-subsequent-preliminary-decree,-the
 24 water-judge-shall-incorporate-the-temporary-preliminary
 25 decree-for-the-basin-as-modified-by-objections-and-hearings.

1 The-temporary-preliminary-decree-or-preliminary-decree-as
 2 modified-after-objections-and-hearings,-is-enforceable-and
 3 administrable-according-to-its-terms-among-parties-ordered
 4 under-85-2-406.-The-preliminary-decree,-as-modified-after
 5 objections-and-hearings,-shall-upon-issuance-supersede-and
 6 replace-the-temporary-preliminary-decree."
 7 **SECTION 3. SECTION 85-2-702, MCA, IS AMENDED TO READ:**
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 9 reserved water rights compact commission, created by
 10 2-15-212, may negotiate with the Indian tribes or their
 11 authorized representatives jointly or severally to conclude
 12 compacts authorized under 85-2-701. Compact proceedings
 13 shall be commenced by the commission. The commission shall
 14 serve by certified mail directed to the governing body of
 15 each tribe a written request for the initiation of
 16 negotiations under this part and a request for the
 17 designation of an authorized representative of the tribe to
 18 conduct compact negotiations. Upon receipt of such written
 19 designation from the governing body of a tribe, compact
 20 negotiations shall be considered to have commenced.
 21 (2) When the compact commission and the Indian tribes
 22 or their authorized representatives have agreed to a
 23 compact, they shall sign a copy and file an original copy
 24 with the department of state of the United States of America
 25 and copies with the secretary of state of Montana and with

1 the governing body for the tribe involved. The compact is
2 effective and binding upon all parties upon ratification by
3 the legislature of Montana and any affected tribal governing
4 body, and approval by the appropriate federal authority.

5 (3) Upon its ratification by the Montana legislature
6 and the tribe, the terms of a compact must be included in
7 the preliminary decree as provided by 85-2-231, and unless
8 an objection to the compact is sustained under 85-2-233, the
9 terms of the compact must be included in the final decree
10 without alteration. ~~However, if approval of the state
11 legislature and tribe has not been accomplished by July 1,
12 1999, all Indian claims for reserved water rights that have
13 not been resolved by a compact must be filed with the
14 department within 6 months. These new filings shall be used
15 in the formulation of the preliminary decree and shall be
16 given treatment similar to that given to all other filings."~~

17 HOWEVER, IF APPROVAL OF THE STATE LEGISLATURE AND THE TRIBE
18 HAS NOT BEEN ACCOMPLISHED BY JULY 1, 1999, ALL INDIAN CLAIMS
19 FOR RESERVED WATER RIGHTS THAT HAVE NOT BEEN RESOLVED BY A
20 COMPACT MUST BE FILED WITH THE DEPARTMENT WITHIN 6 MONTHS.
21 THESE NEW FILINGS SHALL BE USED IN THE FORMULATION OF THE
22 PRELIMINARY DECREE AND SHALL BE GIVEN TREATMENT SIMILAR TO
23 THAT GIVEN TO ALL OTHER FILINGS."

24 NEW SECTION. SECTION 4. EFFECTIVE DATE. (THIS ACT) IS
25 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

-7-