



1  
2 INTRODUCED BY

HOUSE BILL NO. 361  
*Roger Stiff*

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
5 ADJUDICATION PROCESS FOR FEDERAL RESERVED WATER RIGHTS WITH  
6 A PRIORITY DATE OF JULY 1, 1973, OR LATER; AMENDING SECTIONS  
7 85-2-221 AND 85-2-703, MCA; AND PROVIDING AN IMMEDIATE  
8 EFFECTIVE DATE."  
9

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

11 **Section 1.** Section 85-2-221, MCA, is amended to read:

12 "85-2-221. Filing of claim of existing water right. (1)

13 A person claiming an existing right, unless exempted under  
14 85-2-222 or unless an earlier filing date is ordered as  
15 provided in 85-2-212, shall file with the department no  
16 later than June 30, 1983, a statement of claim for each  
17 water right asserted on a form provided by the department.

18 (2) The federal government shall file with the  
19 department, on a form provided by the department, no later  
20 than January 1, 1994, a statement of claim for each reserved  
21 water right with a priority date of July 1, 1973, or later.

22 (3) The department shall file a copy of each  
23 statement of claim with the clerk of the district court for  
24 the judicial district in which the diversion is made or, if  
25 there is a claimed right with no diversion, the department

1 shall file a copy of the statement of claim with the clerk  
2 of the district court of the judicial district in which the  
3 use occurs."

4 **Section 2.** Section 85-2-703, MCA, is amended to read:

5 "85-2-703. Negotiation with federal government. (1) The  
6 compact commission may also enter into separate negotiations  
7 with the federal government for the conclusion of compacts  
8 concerning the equitable division and apportionment of water  
9 between the state and its people and the federal government  
10 claiming non-Indian reserved waters within the state. The  
11 terms and conditions of such negotiations shall be the same  
12 as provided in this section for negotiations with Indian  
13 tribes. These negotiations may include claims for reserved  
14 water rights with priority dates of July 1, 1973, or later.

15 (2) If negotiations concerning a claim for a reserved  
16 water right with a priority date of July 1, 1973, or later  
17 are terminated as provided in 85-2-704 or if a compact  
18 concerning the right is not approved in accordance with  
19 85-2-702, the federal government shall file a claim of that  
20 right with the department for adjudication in the water  
21 court as provided in 85-2-217."

22 **NEW SECTION. Section 3.** Compacts and claims by federal  
23 government -- process and adjudication. Any claim by the  
24 federal government for a reserved water right with a  
25 priority date of July 1, 1973, or later filed pursuant to

LC 1067/01

1 85-2-221 or 85-2-703 or any compact with the United States  
2 concerning the right negotiated pursuant to 85-2-702 must be  
3 processed and adjudicated by the water court as are existing  
4 water rights in accordance with Title 85, chapter 2. The  
5 water court, where necessary, may reopen any decree issued  
6 pursuant to Title 85, chapter 2, to incorporate the claimed  
7 or negotiated right.

8 NEW SECTION. **Section 4.** Codification instruction.

9 [Section 3] is intended to be codified as an integral part  
10 of Title 85, chapter 2, part 2, and the provisions of Title  
11 85, chapter 2, part 2, apply to [section 3].

12 NEW SECTION. **Section 5.** Effective date. [This act] is  
13 effective on passage and approval.

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

HOUSE BILL NO. 361

INTRODUCED BY HARPER, THOFT

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
ADJUDICATION PROCESS FOR FEDERAL RESERVED WATER RIGHTS WITH  
A PRIORITY DATE OF JULY 1, 1973, OR LATER; AMENDING SECTIONS  
85-2-221 AND 85-2-703, MCA, AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE."

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

~~Section 1, Section 85-2-221, MCA, is amended to read:~~

~~"85-2-221. Filing of claim of existing water right: (1)  
A person claiming an existing right, unless exempted under  
85-2-222 or unless an earlier filing date is ordered as  
provided in 85-2-212, shall file with the department no  
later than June 30, 1983, a statement of claim for each  
water right asserted on a form provided by the department.~~

~~(2) The federal government shall file with the  
department, on a form provided by the department, no later  
than January 1, 1994, a statement of claim for each reserved  
water right with a priority date of July 1, 1973 or later.~~

~~(3) The department shall file a copy of each  
statement of claim with the clerk of the district court for  
the judicial district in which the diversion is made or, if  
there is a claimed right with no diversion, the department~~

~~shall file a copy of the statement of claim with the clerk  
of the district court of the judicial district in which the  
use occurs."~~

~~Section 2, Section 85-2-703, MCA, is amended to read:~~

~~"85-2-703. Negotiation with federal government: (1) The  
compact commission may also enter into separate negotiations  
with the federal government for the conclusion of compacts  
concerning the equitable division and apportionment of water  
between the state and its people and the federal government  
claiming non-Indian reserved waters within the state. The  
terms and conditions of such negotiations shall be the same  
as provided in this section for negotiations with Indian  
tribes. These negotiations may include claims for reserved  
water rights with priority dates of July 1, 1973, or later.~~

~~(2) If negotiations concerning a claim for a reserved  
water right with a priority date of July 1, 1973, or later  
are terminated as provided in 85-2-704 or if a compact  
concerning the right is not approved in accordance with  
85-2-702, the federal government shall file a claim of that  
right with the department for adjudication in the water  
court as provided in 85-2-217."~~

~~NEW SECTION. Section 3. Compacts and claims by federal  
government process and adjudication: Any claim by the  
federal government for a reserved water right with a  
priority date of July 1, 1973, or later filed pursuant to~~

SECOND READING



1 85-2-221-or-85-2-703-or-any-compact-with-the--United--States  
2 concerning-the-right-negotiated-pursuant-to-85-2-702-must-be  
3 processed-and-adjudicated-by-the-water-court-as-are-existing  
4 water--rights--in--accordance--with--Title-85--chapter-2--The  
5 water-court,where-necessary,7-may-reopen-any--decree--issued  
6 pursuant--to--Title-85--chapter-2--to-incorporate-the-claimed  
7 or-negotiated-right.

8 NEW SECTION. SECTION 1. PURPOSE. THE PURPOSE OF  
9 [SECTION 2] IS TO ENSURE THAT A FEDERAL RESERVED WATER RIGHT  
10 WITH A PRIORITY DATE OF JULY 1, 1973, OR LATER BE SUBJECT TO  
11 THE SAME PROCESS AND ADJUDICATION AS A FEDERAL RESERVED  
12 WATER RIGHT WITH A PRIORITY DATE BEFORE JULY 1, 1973.

13 NEW SECTION. SECTION 2. FEDERAL RESERVED WATER RIGHTS  
14 WITH PRIORITY DATE OF JULY 1, 1973, OR LATER -- PROCESS AND  
15 ADJUDICATION. (1) UNDER AUTHORITY GRANTED TO THE STATES BY  
16 43 U.S.C. 666, A FEDERAL RESERVED WATER RIGHT THAT HAS A  
17 PRIORITY DATE OF JULY 1, 1973, OR LATER AND THAT IS ASSERTED  
18 BY A FEDERAL AGENCY IS SUBJECT TO THE CLAIM FILING  
19 REQUIREMENTS AND ALL OTHER APPLICABLE REQUIREMENTS OF THE  
20 STATE WATER ADJUDICATION SYSTEM PROVIDED FOR IN TITLE 85,  
21 CHAPTER 2, PARTS 2 AND 7.

22 (2) AT THE REQUEST OF A FEDERAL AGENCY, THE RESERVED  
23 WATER RIGHTS COMPACT COMMISSION MAY NEGOTIATE TO CONCLUDE A  
24 COMPACT UNDER TITLE 85, CHAPTER 2, PART 7, FOR A FEDERAL  
25 RESERVED WATER RIGHT WITH A PRIORITY DATE OF JULY 1, 1973,

1 OR LATER.

2 (3) WHENEVER NECESSARY, A WATER JUDGE MAY REOPEN ANY  
3 DECREE ISSUED PURSUANT TO TITLE 85, CHAPTER 2, TO PROCESS  
4 THE ASSERTED OR NEGOTIATED RESERVED WATER RIGHT.

5 NEW SECTION. Section 3. Codification instruction.  
6 [Section--3 SECTIONS 1 AND 2] is ARE intended to be codified  
7 as an integral part of Title 85, chapter 2, part 2, and the  
8 provisions of Title 85, chapter 2, part 2, apply to [section  
9 3 SECTIONS 1 AND 2].

10 NEW SECTION. Section 4. Effective date. [This act] is  
11 effective on passage and approval.

-End-

1 HOUSE BILL NO. 361  
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 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE  
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 11 Section 1. Section 85-2-221, MCA, is amended to read:  
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 13 A person claiming an existing right, unless exempted under  
 14 85-2-222 or unless an earlier filing date is ordered as  
 15 provided in 85-2-212, shall file with the department no  
 16 later than June 30, 1983, a statement of claim for each  
 17 water right asserted on a form provided by the department.  
 18 (2) The federal government shall file with the  
 19 department, on a form provided by the department, no later  
 20 than January 1, 1994, a statement of claim for each reserved  
 21 water right with a priority date of July 1, 1973, or later.  
 22 (2)(3) The department shall file a copy of each  
 23 statement of claim with the clerk of the district court for  
 24 the judicial district in which the diversion is made or, if  
 25 there is a claimed right with no diversion, the department

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 2 of the district court of the judicial district in which the  
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 12 as provided in this section for negotiations with Indian  
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 15 (2) If negotiations concerning a claim for a reserved  
 16 water right with a priority date of July 1, 1973, or later  
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 18 concerning the right is not approved in accordance with  
 19 85-2-702, the federal government shall file a claim of that  
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 22 NEW SECTION. Section 3. Compacts and claims by federal  
 23 government process and adjudication. Any claim by the  
 24 federal government for a reserved water right with a  
 25 priority date of July 1, 1973, or later filed pursuant to

THIRD READING



1 ~~85-2-221-or-85-2-703-or-any-compact-with-the--United--States~~  
 2 ~~concerning-the-right-negotiated-pursuant-to-85-2-702-must-be~~  
 3 ~~processed-and-adjudicated-by-the-water-court-as-are-existing~~  
 4 ~~water--rights--in--accordance--with--Title-85,chapter-2,-The~~  
 5 ~~water-court,-where-necessary,-may-reopen-any--decree--issued~~  
 6 ~~pursuant--to--Title-85,-chapter-2,-to-incorporate-the-claimed~~  
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8 NEW SECTION. SECTION 1. PURPOSE. THE PURPOSE OF  
 9 [SECTION 2] IS TO ENSURE THAT A FEDERAL RESERVED WATER RIGHT  
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REFERENCE BILL



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