### HOUSE BILL NO. 361

## INTRODUCED BY HARPER, THOFT

#### IN THE HOUSE

	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, 97; NOES, 3.
	TRANSMITTED TO SENATE.
	IN THE SENATE
FEBRUARY 20, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 21, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 23, 1991	SECOND READING, CONCURRED IN.
MARCH 25, 1991	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.
	IN THE HOUSE
MARCH 25, 1991	· · · · · · · · · · · · · · · · · · ·
MARCH 25, 1991	RECEIVED FROM SENATE.

REPORTED CORRECTLY ENROLLED.

361

1	BILL NO.
2	INTRODUCED BY Jan That
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	$t^2$
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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18	con	cerning	
19	85-	2-702,	_
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shall file a copy of the statement of claim with the clerk strict court of the judicial district in which the on 2. Section 85-2-703, MCA, is amended to read: -703. Negotiation with federal government. (1) The mmission may also enter into separate negotiations ederal government for the conclusion of compacts the equitable division and apportionment of water the state and its people and the federal government on-Indian reserved waters within the state. The conditions of such negotiations shall be the same ed in this section for negotiations with Indian hese negotiations may include claims for reserved ts with priority dates of July 1, 1973, or later. If negotiations concerning a claim for a reserved tht with a priority date of July 1, 1973, or later nated as provided in 85-2-704 or if a compact the right is not approved in accordance with the federal government shall file a claim of that th the department for adjudication in the water provided in 85-2-217." ECTION. Section 3. Compacts and claims by federal government -- process and adjudication. Any claim by the 23 24 federal government for a reserved water right with a 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
- 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

1	HOUSE BILL NO. 361
2	INTRODUCED BY HARPER, THOFT
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	85-2-221AND85-2-7837MCA; AND PROVIDING AN IMMEDIATE
8	EFFECTIVE DATE."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section-1Section-85-2-221MCAis-amended-to-read:
12	#85-2-221Piling-of-claim-of-existing-water-right(1)
13	A-person-claiming-an-existing-right;-unlessexemptedunder
14	85-2-222orunlessanearlierfiling-date-is-ordered-as
15	prowided-in-85-2-212y-shallfilewiththedepartmentno
16	laterthanJune30;1983;a-statement-of-claim-for-each
17	water-right-asserted-on-a-form-provided-by-the-department-
18	{2}Thefederalgovernmentshallfilewiththe
19	department;ona-form-provided-by-the-department;-no-later
20	than-danuary-17-19947-a-statement-of-claim-for-each-reserved
21	water-right-with-a-priority-date-of-July-17-19737-or-later-
22	(2)(3)Thedepartmentshallfileacopyofeach
23	statementof-claim-with-the-clerk-of-the-district-court-for
24	the-judicial-district-in-which-the-diversion-is-made-of7if
2 =	Language and a second control of the second



1	shall-file-a-copy-of-the-statement-of-claim-withtheclerk
2	ofthe-district-court-of-the-judicial-district-in-which-the
3	tse-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-conclusionofcompacts
8	concerning-the-equitable-division-and-apportionment-of-water
9	betweenthe-state-and-its-people-and-the-federal-government
10	claiming-non-Indian-reserved-waters-withinthestateThe
11	termsand-conditions-of-such-negotiations-shall-be-the-same
12	as-provided-in-this-sectionfornegotiationswithIndian
13	tribes. Thesenegotiations-may-include-claims-for-reserved
14	water-rights-with-priority-dates-of-duly-17-19737-or-later-
15	(2)If-negotiations-concerning-a-claim-forareserved
16	waterrightwith-a-priority-date-of-July-17-19737-or-later
17	are-terminated-as-providedin85-2-784orifacompact
18	concerning-the-right-is-not-approved-in-accordance-with
19	85-2-7027-the-federal-government-shall-file-a-claim-ofthat
20	rightwiththedepartmentforadjudication-in-the-water
21	court-as-provided-in-85-2-217+
22	NEW-SECTIONSection-3Compacts-and-claims-by-federal
23	governmentprocess-and-adjudicationAnyclaimbythe
24	federalgovernmentforareservedwaterrightwitha

SECOND READING

HB 0361/02 HB 0361/02

	85-2-221-or-85-2-703-or-any-compact-with-theUnitedStates
:	concerning-the-right-negotiated-pursuant-to-85-2-702-must-be
i	processed-and-adjudicated-by-the-water-court-as-are-existing
	waterrightsinaccordancewith-Title-857-chapter-2:-The
i	water-courty-where-necessaryy-may-reopen-anydecreeissued
i	pursuantto-fitle-05;-chapter-2;-to-incorporate-the-claimed
,	or-negotiated-right.

NEW SECTION. SECTION 1. PURPOSE. THE PURPOSE

8

- 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. NEW SECTION. SECTION 2. FEDERAL RESERVED WATER RIGHTS 13 WITH PRIORITY DATE OF JULY 1, 1973, OR LATER -- PROCESS AND 14 15 ADJUDICATION. (1) UNDER AUTHORITY GRANTED TO THE STATES BY 43 U.S.C. 666, A FEDERAL RESERVED WATER RIGHT THAT HAS A 16 17 PRIORITY DATE OF JULY 1, 1973, OR LATER AND THAT IS ASSERTED BY A FEDERAL AGENCY IS SUBJECT TO THE CLAIM FILING 18 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. (2) AT THE REQUEST OF A FEDERAL AGENCY, THE RESERVED 22
- 23 WATER RIGHTS COMPACT COMMISSION MAY NEGOTIATE TO CONCLUDE A COMPACT UNDER TITLE 85, CHAPTER 2, PART 7, FOR A FEDERAL 24 25 RESERVED WATER RIGHT WITH A PRIORITY DATE OF JULY 1, 1973,

OR LATER. 1

- 2 (3) WHENEVER NECESSARY, A WATER JUDGE MAY REOPEN ANY DECREE ISSUED PURSUANT TO TITLE 85, CHAPTER 2, TO PROCESS 3 THE ASSERTED OR NEGOTIATED RESERVED WATER RIGHT.
- NEW SECTION. Section 3. Codification instruction. 5 [Section--3 SECTIONS 1 AND 2] is ARE intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [section 3 SECTIONS 1 AND 2].
- NEW SECTION. Section 4. Effective date. [This act] is 10 11 effective on passage and approval.

-End-

HB 361

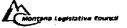
52nd Legislature HB 0361/02 RB 0361/02

1

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2	INTRODUCED BY HARPER, THOFT
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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	85-2-221AND85-2-7837MCA; 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	#85-2-221Piling-of-claim-of-existing-water-right(1)
13	A-person-claiming-an-existing-right;-unlessexemptedunder
14	85-2-222orunlessanearlierfiling-date-is-ordered-as
15	provided-in-85-2-212y-shallfilewiththedepartmentno
16	laterthanJune30,1983,a-statement-of-claim-for-each
17	water-right-asserted-on-a-form-provided-by-the-department-
18	†2}Thefederalgovernmentshallfilewiththe
19	department;ona-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-17-19737-or-later-
22	(2)(3)Thedepartmentshallfileacopyofeach
23	statementof-claim-with-the-clerk-of-the-district-court-for
24	the-judicial-district-in-which-the-diversion-is-made-or;if
25	thereisa-claimed-right-with-no-diversion;-the-department

of--the-district-court-of-the-judicial-district-in-which-the 3 use-occurs-" Section-2---Section-85-2-703y-MCAy-is-amended-to-read: #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 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-17-19737-or-later-15 (1)--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 85-2-7827-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 priority--date--of--July-17-19737-or-later-filed-pursuant-to THIRD READING

shall-file-a-copy-of-the-statement-of-claim-with--the--clerk



HB 0361/02

1	85-2-221-or-85-2-703-or-any-compact-with-theUnitedStates
2	concerning-the-rijht-negotiated-pursuant-to-85-2-782-must-be
3	processed-and-adjudicated-by-the-water-court-as-are-existing
4	waterrightsinaccordancewith-Title-857-chapter-2:-The
5	water-court;-where-necessary;-may-reopen-anydecreeissued
6	pursuantto-Title-857-chapter-27-to-incorporate-the-claimed
7	or-negotiated-right.

- 8 NEW SECTION. SECTION 1. PURPOSE. THE PURPOSE OF 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 REFORE JULY 1, 1973.
- 12 WATER RIGHT WITH A PRIORITY DATE BEFORE JULY 1, 1973. NEW SECTION. SECTION 2. FEDERAL RESERVED WATER RIGHTS 13 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 BY A FEDERAL AGENCY IS SUBJECT TO THE CLAIM FILING 18 19 REQUIREMENTS AND ALL OTHER APPLICABLE REQUIREMENTS OF THE STATE WATER ADJUDICATION SYSTEM PROVIDED FOR IN TITLE 85, 20 21 CHAPTER 2, PARTS 2 AND 7. 22
- 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.

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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 3 SECTIONS 1 AND 2].

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

-End-

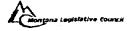
RB 361

HB 0361/02

52nd Legislature HB 0361/02 HB 0361/02

1	HOUSE BILL NO. 361
2	INTRODUCED BY HARPER, THOFT
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6	A PRIORITY DATE OF JULY 1, 1973, OR LATER; AMENDING-SECTIONS
7	85-2-221AND85-2-7037MCA; AND PROVIDING AN IMMEDIATE
8	EFFECTIVE DATE."
9	
.0	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1	Section-1:Section-85-2-221;-MCA;-is-amended-to-read:
. 2	#85-2-221Piling-of-claim-of-existing-water-right(1)
L <b>3</b>	A-person-claiming-an-existing-righty-unlessexemptedunder
L <b>4</b>	85-2-222orunlessanearlierfiling-date-is-ordered-as
1.5	provided-in-85-2-2127-shallfilewiththedepartmentno
۱6	laterthanJune30719837a-statement-of-claim-for-each
17	water-right-asserted-on-a-form-provided-by-the-department:
8	{2}Thefederalgovernmentshallfilewiththe
9	department,ona-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-
2 2	(2)(3)Thedepartmentshallfileacopyofeach
23	statementof-claim-with-the-clerk-of-the-district-court-for
24	the-judicial-district-in-which-the-diversion-is-made-or;if
25	thereisa-claimed-right-with-no-diversion;-the-department

1	shall-file-a-copy-of-the-statement-of-claim-withtheclerk
2	ofthe-district-court-of-the-judicial-district-in-which-the
3	use-occurs; u
4	Section-2:Section-85-2-703;-MCA;-is-amended-to-read:
5	$^{11}85-2-783$ Negotiation-with-federal-government- <u>(1)</u> The
6	compact-commission-may-also-enter-into-separate-negotiations
7	with-the-federal-government-for-the-conclusionofcompacts
8	concerning-the-equitable-division-and-apportionment-of-water
9	betweenthe-state-and-its-people-and-the-federal-government
0	claiming-non-Indian-reserved-waters-withinthestateThe
1	termsand-conditions-of-such-negotiations-shall-be-the-same
2	as-provided-in-this-sectionfornegotiationswithIndian
3	tribes: Thesenegotiations-may-include-claims-for-reserved
4	water-rights-with-priority-dates-of-duly-1,-1973,-or-later:
5	t2)If-negotiations-concerning-a-claim-forareserved
6	waterrightwith-a-priority-date-of-July-1,-1973,-or-later
7	are-terminated-as-providedin85-2-784orifacompact
8	concerningtherightisnotapproved-in-accordance-with
9	85-2-70?7-the-federal-government-shall-file-a-claim-ofthat
0	rightwiththedepartmentforadjudication-in-the-water
:1	court-as-provided-in-85-2-217-#
2	NEW-SECTION: Section-3Compacts-and-claims-by-federal
3	governmentprocess-and-addudicationAnvclaimbvthe



REFERENCE BILL

federal--government--for--a--reserved--water--right--with--a

priority--date--of--duly-17-1973;-or-+ster-filed-oursuant-to

PURPOSE

OF

- 85-2-221-or-85-2-703-or-any-compact-with-the--United--States
  concerning-the-right-negotiated-pursuant-to-85-2-702-must-be
  processed-and-ad: udicated-by-the-water-court-as-are-existing
  water--rights--in--accordance--with-Title-857-chapter-27-The
  water-court7-where-necessary7-may-reopen-any--decree--issued
  pursuant--to-Title-857-chapter-27-to-incorporate-the-claimed
  or-negotiated-right=
- 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

NEW SECTION. SECTION 1. PURPOSE. THE

- 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
- PRIORITY DATE OF JULY 1, 1973, OR LATER AND THAT IS ASSERTED

  18 BY A FEDERAL AGENCY IS SUBJECT TO THE CLAIM FILING
- 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.

8

- 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
- 3 SECTIONS 1 AND 2].
- 10 NEW SECTION. Section 4. Effective date. [This act] is
- 11 effective on passage and approval.

-End-

HB 361