

1 Senate BILL NO. 336  
 2 INTRODUCED BY Roberts Kolstad  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 ADMINISTRATIVE DETERMINATION OF EXISTING WATER RIGHT BEFORE  
 6 THE GENERAL DETERMINATION OF EXISTING RIGHTS PURSUANT TO THE  
 7 MONTANA WATER USE ACT; AND PROVIDING FOR AN IMMEDIATE  
 8 EFFECTIVE DATE."

*Dept of Natural Resources*

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

11 Section 1. There is a new R.C.M. section numbered  
 12 89-879.1 that reads as follows:

13 89-879.1. Administrative finding of priorities.

14 (1) The department may, in its discretion, upon petition  
 15 signed by at least twenty (20) or one fourth (1/4) of the  
 16 users of surface water in an area or source of water  
 17 (whichever is the lesser number) wherein there is alleged to  
 18 be significant disputes regarding the extent and priority of  
 19 surface water rights in the area or source, or upon its own  
 20 motion, at any time prior to the determination of existing  
 21 rights in an area or source under sections 89-870 through  
 22 89-879, initiate administrative proceedings for the  
 23 ascertainment of all existing rights to the use of surface  
 24 water in the area or source.

25 (2) If the department decides to administratively

1 ascertain the existing rights, it shall issue an order  
 2 requiring each person claiming an existing right within a  
 3 specified area or from a specified source to file a  
 4 declaration of each existing right within sixty (60) days  
 5 after the effective date of the order. The declarations  
 6 shall be made on forms prescribed and made available by the  
 7 department and shall conform to the requirements of section  
 8 89-872.

9 (3) The department shall publish its order at least  
 10 once each week for three (3) successive weeks prior to the  
 11 effective date of the order in a newspaper of general  
 12 circulation in the county or counties in which the area or  
 13 source is located. The department shall also serve a copy  
 14 of the order by mail at least ten (10) days prior to the  
 15 effective date of the order upon all persons who, according  
 16 to the records and information reasonably available to the  
 17 department, claim an existing right in the area or source  
 18 involved.

19 (4) The department shall, as soon as practicable after  
 20 the date for filing the declarations, prepare a listing of  
 21 the existing rights in the area or source involved. In  
 22 preparing the listing the department shall consider, but is  
 23 not limited to, the declarations filed and the data  
 24 described in section 89-871. The listing shall establish  
 25 the existing rights and priorities of the appropriators in

1 the area or source, and shall include, for each right, the  
2 information described in section 89-877 (4).

1 approval.

-End-

3 (5) The department shall mail a copy of the listing to  
4 each person who filed a declaration of existing right, and  
5 to every other person found to have or to claim an existing  
6 right in the area or source. Any aggrieved person who  
7 excepts to the listing of existing rights is entitled to a  
8 hearing before the department upon filing a written request  
9 for hearing within ten (10) days of receipt of the listing.  
10 The department may, in its discretion, hold a single hearing  
11 on all exceptions.

12 (6) The department shall rule separately upon each  
13 exception, and shall incorporate any changes into the final  
14 listing of existing rights. Each person named in the  
15 listing of existing rights shall be mailed a copy of any  
16 changes.

17 (7) The final listing is binding upon all  
18 appropriators named in it; however, the existing rights as  
19 determined in the listing are subject to further adjustment  
20 or modification as necessary when a determination of  
21 existing rights in the area or source is made under sections  
22 89-870 through 89-879.

23 (8) The department shall record the final listing in  
24 the county or counties in which the area or source lies.

25 Section 2. This act is effective upon its passage and

Approved by Committee  
on Agriculture Livestock  
& Irrigation

SENATE BILL NO. 336

INTRODUCED BY ROBERTS, KOLSTAD

(BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ADMINISTRATIVE DETERMINATION OF EXISTING WATER RIGHT BEFORE THE GENERAL DETERMINATION OF EXISTING RIGHTS PURSUANT TO THE MONTANA WATER USE ACT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. There is a new R.C.M. section numbered 89-879.1 that reads as follows:

89-879.1. Administrative finding of priorities.

(1) The department may, in its discretion, upon petition signed by at least twenty (20) or one fourth (1/4) of the users of surface water in an area or source of water (whichever is the lesser number) wherein there is alleged to be significant disputes regarding the extent and priority of surface water rights in the area or source, or upon its own motion, at any time prior to the determination of existing rights in an area or source under sections 89-870 through 89-879, initiate administrative proceedings for the ascertainment of all existing rights to the use of surface water in the area or source.

(2) If the department decides to administratively ascertain the existing rights, it shall issue an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of each existing right within sixty (60) days after the effective date of the order. The declarations shall be made on forms prescribed and made available by the department and shall conform to the requirements of section 89-872.

(3) The department shall publish its order at least once each week for three (3) successive weeks prior to the effective date of the order in a newspaper of general circulation in the county or counties in which the area or source is located. The department shall also serve a copy of the order by mail at least ten (10) days prior to the effective date of the order upon all persons who, according to the records and information reasonably available to the department, claim an existing right in the area or source involved.

(4) The department shall, as soon as practicable after the date for filing the declarations, prepare a listing of the existing rights in the area or source involved. In preparing the listing the department shall consider, but is not limited to, the declarations filed and the data described in section 89-871. The listing shall establish

1 the existing rights and priorities of the appropriators in  
2 the area or source, and shall include, for each right, the  
3 information described in section 89-877 (4).

4 (5) The department shall mail a copy of the listing to  
5 each person who filed a declaration of existing right, and  
6 to every other person found to have or to claim an existing  
7 right in the area or source. Any aggrieved person who  
8 excepts to the listing of existing rights is entitled to a  
9 hearing before the department upon filing a written request  
10 for hearing within ten (10) days of receipt of the listing.  
11 The department may, in its discretion, hold a single hearing  
12 on all exceptions.

13 (6) The department shall rule separately upon each  
14 exception, and shall incorporate any changes into the final  
15 listing of existing rights. Each person named in the  
16 listing of existing rights shall be mailed a copy of any  
17 changes.

18 (7) The final listing is binding upon all  
19 appropriators named in it; however, the existing rights as  
20 determined in the listing are subject to further adjustment  
21 or modification as necessary when a determination of  
22 existing rights in the area or source is made under sections  
23 39-870 through 39-879.

24 (8) The department shall record the final listing in  
25 the county or counties in which the area or source lies.

1 (9) THE FINAL LISTING MAY BE APPEALED DIRECTLY TO  
2 DISTRICT COURT IN ACCORDANCE WITH SECTION 82-4216, R.C.M.  
3 1947.

4 Section 2. This act is effective upon its passage and  
5 approval.

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