

1 *House* BILL NO. *809*
 2 INTRODUCED BY *Judiciary Committee John Sully*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
 5 REVISION OF LAWS RELATING TO WATER RIGHTS ADJUDICATION;
 6 AMENDING SECTIONS 89-867, 89-869, 89-870, 89-871, 89-876,
 7 89-877, 89-878, 89-879, 89-891, 89-896, 89-8-102, AND
 8 89-8-102.1, R.C.M. 1947; AND REPEALING SECTIONS 89-872
 9 THROUGH 89-875, R.C.M. 1947."

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

12 Section 1. Section 89-867, R.C.M. 1947, is amended to
13 read as follows:

14 "89-867. Definitions. Unless the context requires
15 otherwise, in this chapter:

16 (1) "Water" means all water of the state, surface and
17 subsurface, regardless of its character or manner of
18 occurrence, including geothermal water.

19 (2) "Beneficial use" means a use of water for the
20 benefit of the appropriator, other persons, or the public,
21 including, but not limited to, agricultural (including stock
22 water), domestic, fish and wildlife, industrial, irrigation,
23 mining, municipal power, and recreational uses; provided,
24 however, that a use of water for slurry to export coal from
25 Montana is not a beneficial use. Slurry is a mixture of

1 water and insoluble matter.

2 (3) "Appropriate" means to divert, impound, or
3 withdraw (including by stock for stock water) a quantity of
4 water, or in the case of a public agency to reserve water in
5 accordance with section 89-890.

6 (4) "Existing right" means a right to the use of water
7 which would be protected under the law as it existed prior
8 to July 1, 1973.

9 (5) "Groundwater" means any water beneath the land
10 surface or beneath the bed of a stream, lake, reservoir, or
11 other body of surface water, and which is not a part of that
12 surface water.

13 (6) "Well" means any artificial opening or excavation
14 in the ground, however made, by which groundwater is sought
15 or through which it flows under natural pressures or is
16 artificially withdrawn.

17 (7) "Permit" means the permit to appropriate issued by
18 the department under sections 89-880 through 89-887.

19 (8) "Certificate" means the certificate of water right
20 issued by the department under sections 89-879, 89-880(5),
21 and 89-888.

22 (9) "Declaration" means the declaration of an existing
23 right filed with the department ~~court~~ under section 89-872.

24 (10) "Waste" means the unreasonable loss of water
25 through the design or negligent operation of an

1 appropriation or water distribution facility, or the
2 application of water to anything but a beneficial use.

3 (11) "Political" subdivision means any county,
4 incorporated city or town, public corporation or district
5 created pursuant to state law, or other public body of the
6 state empowered to appropriate water, but not a private
7 corporation, association, or group.

8 (12) "Person" means an individual, association,
9 partnership, corporation, state agency, political
10 subdivision, and the United States or any agency thereof.

11 (13) "Department" means the department of natural
12 resources and conservation provided for in Title 82A,
13 chapter 15.

14 (14) "Board" means the board of natural resources and
15 conservation provided for in section 82A-1509.

16 (15) "Act" means the Montana Water Use Act and any
17 subsequent amendments or additions thereto.

18 ~~(16) "Claimant" means a person filing a declaration~~
19 ~~under [section 8 of this act].~~

20 ~~(17) "Adjudicated right" means a water right~~
21 ~~established by a final decree.~~

22 ~~(18) "Major drainage basin" means the entire watershed~~
23 ~~within the state of a body of water flowing out of the~~
24 ~~state. For the purpose of adjudication jurisdiction, a~~
25 ~~groundwater appropriation shall be adjudicated in the major~~

1 ~~drainage basin in which the point of withdrawal lies, unless~~
2 ~~the groundwater appropriated would clearly flow into~~
3 ~~another major drainage basin if unappropriated.~~

4 ~~(19) "Court" means a special water judge."~~

5 Section 2. Section 89-869, R.C.M. 1947, is amended to
6 read as follows:

7 "89-869. Powers and duties of board. (1) The board may
8 prescribe fees or service charges for any public service
9 rendered by the department under this act or under Title 89,
10 chapter 29, including fees for the filing of declarations
11 and applications or for the issuance of permits and
12 certificates. There shall be no fees for the ~~filing of~~
13 ~~declarations or for the~~ issuance of certificates of ~~for~~
14 existing rights.

15 (2) The board may adopt rules necessary to implement
16 and carry out the purposes and provisions of this act. These
17 rules may include, but are not limited to, rules to:

18 (a) govern the issuance and terms of interim permits
19 authorizing an applicant for a regular permit under this act
20 to begin appropriating water immediately, pending final
21 approval or denial by the department of the application for
22 a regular permit;

23 (b) require the owner or operator of appropriation
24 facilities to install and maintain suitable controlling and
25 measuring devices;

1 (c) require the owner or operator of appropriation
2 facilities to report to the department the readings of
3 measuring devices at reasonable intervals, and to file
4 reports on appropriations; and

5 (d) regulate the construction, use and sealing of
6 wells to prevent the waste, contamination or pollution of
7 groundwater.

8 (3) The board shall adopt rules providing for and
9 governing temporary emergency appropriations, without prior
10 application for a permit, necessary to protect lives or
11 property."

12 Section 3. Section 89-870, R.C.M. 1947, is amended to
13 read as follows:

14 "89-870. Determination of ~~existing rights potential~~
15 ~~existing right holders. (1) The department shall~~ As a first
16 step in an attempt to fully adjudicate existing water rights
17 in the state and establish a centralized record system of
18 all existing rights, and the department shall, as soon as
19 practicable, begin proceedings under this act to determine
20 existing rights ~~by compiling as complete a list as possible~~
21 ~~for the purpose of providing mailed notice in accordance~~
22 ~~with [section 8(3) of this act] to all persons who might~~
23 ~~possess an existing right to appropriate water in the state.~~
24 To ~~accomplish this compile the list and obtain information~~
25 ~~to transmit to the court in accordance with [section 11(8)]~~

1 ~~of this act],~~ the department shall gather data essential to
2 the proper understanding and determination of ~~those~~ existing
3 rights.

4 ~~(2) The department may select and specify areas or~~
5 ~~sources where the need for a determination of existing~~
6 ~~rights is most urgent, and first begin proceedings under~~
7 ~~this act to determine the existing rights in those areas or~~
8 ~~sources."~~

9 Section 4. There is a new R.C.M. section that reads as
10 follows:

11 Sources for compiling list of potential existing right
12 holders. The sources searched by the department for the
13 compilation of the list of potential existing right holders
14 for the purpose of mailing notice to such persons shall
15 include:

16 (1) department of revenue records available to the
17 department of natural resources and conservation showing
18 persons filing Montana state income tax returns with the
19 department of revenue in 1977;

20 (2) department of revenue records available to the
21 department of natural resources and conservation showing
22 entities filing corporate license tax returns with the
23 department of revenue in 1977;

24 (3) the records of any county clerk and recorder
25 within the state of Montana showing current owners of record

1 of real property located in the state;

2 (4) lists available to the department showing state
3 agencies, subdivisions, and corporations;

4 (5) lists available to the department showing federal
5 agencies, subdivisions, or corporations owning, occupying,
6 or reserving land within the state.

7 Section 5. Section 89-871, R.C.M. 1947, is amended to
8 read as follows:

9 "89-871. Data for determination of existing rights.
10 The data gathered by the department for to transmit to the
11 court in accordance with [section 11(8) of this act] to aid
12 in the determination adjudication of existing rights shall
13 include, but are not limited to:

14 (1) court decrees adjudicating water rights in a
15 proceeding commenced prior to the effective date of this
16 act. Upon request of the department, the clerks of the
17 district courts shall furnish the department copies of all
18 decrees affecting water rights;

19 (2) declarations of existing rights filed with the
20 department under section ~~8~~ [89-872] or such other
21 declaration of existing rights which may be in the
22 possession of the department;

23 (3) records of rights acquired under the groundwater
24 code (sections 89-2911 through 89-2936);

25 (4) notices of appropriation filed under sections

1 89-801.2 and 89-810;

2 (5) records of declarations filed under sections
3 89-121 and 89-813;

4 (6) records of statements filed under section 89-907;

5 (7) the findings of water resource surveys conducted
6 by the department and its predecessor agencies;

7 (8) the findings of inspections, surveys,
8 reconnaissance, and investigations of the area or source
9 involved as the department makes."

10 Section 6. There is a new R.C.M. section that reads as
11 follows:

12 Position of adjudication administrator created. (1)
13 There is created the position of adjudication administrator.
14 The position is allocated to the department of natural
15 resources and conservation for administrative purposes only,
16 in accordance with 82A-108. However, the adjudication
17 administrator may hire his own technical, administrative,
18 and clerical personnel under the state classification and
19 pay plan or under contract and 82A-108(2)(d) does not apply.

20 (2) The governor shall appoint the adjudication
21 administrator. The adjudication administrator shall devote
22 full time to his duties and shall, for administrative
23 purposes only, be entitled to salary and benefits in
24 accordance with the state classification plan. A vacancy
25 shall be filled in the same manner as the original

1 appointment.

2 (3) The duties of adjudication administrator shall be
3 as follows:

4 (a) to serve as overall administrator and coordinator
5 of the adjudication process. However, he may not exercise
6 control over the independent judicial authority of a special
7 water judge or over the advocate role of the department.

8 (b) to prepare a division of the entire state into
9 major drainage basins for adjudication jurisdiction
10 purposes;

11 (c) to assist the governor in determining the number
12 of special water judge positions and the assignments of such
13 positions to the major drainage basins;

14 (d) to provide assistance to the court in general or
15 to the special water judges in particular in the performance
16 of their duties.

17 (4) The position of adjudication administrator expires
18 upon issuance of the last final decree. However, at the
19 discretion of the governor, the position may continue during
20 the pendency of appeal or for other good cause.

21 Section 7. There is a new R.C.M. section that reads as
22 follows:

23 Position of special water judge created. (1) There is
24 created the position of one or more special water judges.
25 The position is an independent judicial position.

1 (2) The governor shall appoint as many special water
2 judges as he considers necessary to accomplish the purposes
3 of this act as expeditiously as possible. An appointment
4 shall be for a term of 6 years in the manner provided by
5 93-705 through 93-717 for the appointment of supreme or
6 district court judges. An appointment shall include an
7 assignment to a specified major drainage basin. One special
8 water judge may be assigned to more than one major drainage
9 basin, and more than one special water judge may be assigned
10 to one major drainage basin. A vacancy shall be filled in
11 the same manner as the original appointment.

12 (3) To be eligible for the position of special water
13 judge, a person must have the qualifications that are
14 necessary for district court judges found in Article VII,
15 section 9 of the Montana constitution.

16 (4) A special water judge shall devote full time to
17 the duties of special water judge and not engage in the
18 private practice of law.

19 (5) A special water judge is entitled to an annual
20 salary of \$35,000 and to the other emoluments of a district
21 court judge.

22 (6) The duties of the special water judge are as
23 follows:

24 (a) to join with all other special water judges in
25 approving a form for declaration in accordance with [section

1 9 of this act];

2 (b) to issue the order required by [section 8 of this
3 act] when the department petitions the court for the order;

4 (c) to issue or join in issuing a preliminary decree
5 for each major drainage basin assigned to him and supervise
6 service of the preliminary decree upon all persons required
7 to be served. However, only one preliminary decree may be
8 issued per major drainage basin, and it must cover the
9 entire major drainage basin. All special water judges
10 assigned to the major drainage basin must concur in the
11 preliminary decree for that basin.

12 (d) to hold hearings on the preliminary decree in
13 accordance with 89-876;

14 (e) to issue or join in issuing a final decree for
15 each preliminary decree issued by him. However, only one
16 final decree may be issued per major drainage basin, and it
17 must cover the entire major drainage basin. All special
18 water judges assigned to the major drainage basin must
19 concur in the final decree for that basin.

20 (f) to transmit the necessary documents to the supreme
21 court of the state of Montana if appeal is taken in
22 accordance with 89-878;

23 (g) to join with all other special water judges in
24 providing for a uniformity of water rights adjudications
25 throughout the state;

1 (h) to perform other duties necessary to accomplish
2 the purposes of this act, not inconsistent with the
3 requirement that he be a fair and impartial arbiter.

4 (7) The position of special water judge expires upon
5 issuance of the last final decree assigned to him. However,
6 at the discretion of the governor, the position may continue
7 during the pendency of appeal or for other good cause.

8 (8) A special water judge may utilize the services of
9 technical, administrative, and clerical personnel hired by
10 the adjudication administrator in accordance with [section
11 6(1) of this act] to assist in the performance of his
12 duties.

13 Section 8. There is a new R.C.M. section that reads as
14 follows:

15 Order requiring filing of declarations and notice of
16 order. (1) Upon compilation of the list of potential
17 existing right holders in accordance with 89-670, the
18 department shall petition the special water judges to join
19 in issuing an order requiring each person claiming an
20 existing right, as defined by 89-867(4), to file a
21 declaration for each water right claimed. The order shall
22 specify but is not necessarily limited to specifying:

23 (a) that all declarations shall be filed with the
24 court within 4 years of the effective date of the order;

25 (b) that the timely filing of a completed declaration

1 is a prerequisite for inclusion of any alleged existing
 2 right in either the preliminary or final decree and that
 3 failure to file a completed declaration will result in loss
 4 of any alleged existing right;

5 (c) that there will be a 1-year period commencing upon
 6 the expiration of the filing period during which only
 7 previously submitted corrected applications will be accepted
 8 by the court;

9 (d) a description of the geographical delineation of
 10 each major drainage basin and the name, address, and
 11 assignment of each special water judge;

12 (e) that all completed declarations are to be mailed
 13 to the court by certified mail with a return receipt
 14 requested. The return receipt is conclusive evidence of the
 15 receipt of the declaration by the court, but is not evidence
 16 of any allegation made in the declaration.

17 (2) The department shall publish notice of the order
 18 once a week for 4 consecutive weeks prior to its effective
 19 date in at least one newspaper of general circulation in
 20 each county of the state.

21 (3) Before the last date of publication, the
 22 department shall also serve a copy of the order by certified
 23 mail upon each person who has requested mailed notice of the
 24 order and upon each appropriator of water of the state
 25 appearing on the list of potential appropriators compiled by

1 the department in accordance with 89-870.

2 (4) The department shall publish revised notice of the
 3 order at least once every 4 months in at least one newspaper
 4 of general circulation in each county of the state
 5 throughout the 4-year filing period.

6 (5) The department shall file in its records proof of
 7 service of the notice by affidavit of the publishers in the
 8 case of notice by publication and by its own affidavit in
 9 the case of service by mail.

10 Section 9. There is a new R.C.M. section that reads as
 11 follows:

12 Form and content of declaration. (1) The declaration
 13 shall be made on a form collectively approved by the special
 14 water judges. The department shall enclose a form with each
 15 order mailed in accordance with [section 8 of this act] and
 16 shall make the form available free of charge to any person
 17 upon request at its offices and at the offices of every
 18 county clerk and recorder.

19 (2) Declarations shall be made under oath by each
 20 person claiming a right to the use of water found within the
 21 state of Montana.

22 (3) A separate declaration shall be made for each
 23 right claimed.

24 (4) The information required to be given on a
 25 declaration may include but is not limited to:

1 (a) the name and address of the claimant;
 2 (b) the name of the original appropriator;
 3 (c) the date of first appropriation;
 4 (d) the date water was first applied to a beneficial
 5 use;
 6 (e) the amount of water first appropriated;
 7 (f) the amount of water subsequently appropriated, if
 8 different from the amount of water first appropriated, and
 9 the dates of such changes;
 10 (g) the purpose of the appropriation;
 11 (h) the place and means of diversion;
 12 (i) the place of use;
 13 (j) the time during which water is appropriated each
 14 year;
 15 (k) the time during which water is used each year;
 16 (l) the last year water was appropriated;
 17 (m) the last year water was put to beneficial use;
 18 (n) any other information including affidavits which
 19 may be required to show the nature, extent, and use of the
 20 claimed right;
 21 (o) the docket number of any judicial decree, filed
 22 notice, or other filed claim or evidence upon which the
 23 claimed right is based, together with a certified copy of
 24 the decree, notice, or other claim or evidence attached to
 25 and made a part of the declaration.

1 (5) The declaration shall be accompanied by one or
 2 more maps or diagrams made a part of the declaration showing
 3 to scale and to the maximum degree of detail possible, if
 4 pertinent, at least the following:
 5 (a) all points of diversion;
 6 (b) all places of storage;
 7 (c) all places of use;
 8 (d) all storage, conveyance, and application
 9 facilities;
 10 (e) any other information required to appear.
 11 (6) A declaration may not be determined to be
 12 complete, be processed, or be considered by a special water
 13 judge for inclusion in a preliminary or final decree unless
 14 it is accompanied by the map or diagram required by this
 15 section and unless the accuracy of the items shown on the
 16 map or diagram is certified to by an engineer or land
 17 surveyor licensed to practice in the state or by a person
 18 authorized to so certify by the department.
 19 (7) The department of fish and game may represent the
 20 public for purposes of establishing any prior existing
 21 public recreational use in adjudication under this act,
 22 provided that the foregoing may not be construed in any
 23 manner as a legislative determination of whether or not a
 24 recreational use sought to be established prior to July 1,
 25 1973, is or was a beneficial use.

1 Section 10. There is a new R.C.M. section that reads
2 as follows:

3 Filing fee. (1) Each declaration filed with the court
4 shall be accompanied by payment of a filing and processing
5 fee in the amount of \$25 per declaration.

6 (2) A water right adjudication account shall be
7 created in the earmarked revenue fund. Fees collected shall
8 be deposited in the account for the expenses of
9 administering this act.

10 (3) All penalties and fines imposed as a result of
11 activities involving adjudication procedures shall be
12 deposited in the account and used for the expenses of
13 administering this act.

14 (4) If fees, penalties, and fines so deposited exceed
15 the expenses of administering this act, the excess shall be
16 distributed to the claimants on a pro rata basis.

17 Section 11. There is a new R.C.M. section that reads
18 as follows:

19 Processing of declaration. (1) A special water judge
20 may, at his discretion, select and specify major drainage
21 basins or areas or sources therein where the need for a
22 determination of existing rights is most urgent or where the
23 issues involved are most complex. The court may process
24 declarations received in such major drainage basins or areas
25 or sources therein on a priority basis to enable the

1 commencement of work on the preliminary decree in such major
2 drainage basin as soon as possible following the close of
3 the filing period.

4 (2) The court shall review all declarations received
5 for completeness. Except for good cause, declarations shall
6 be reviewed in the order received.

7 (3) The court shall return an incomplete, inaccurate,
8 or otherwise defective declaration to the claimant for
9 completion or correction, together with the reason for
10 returning it.

11 (4) A declaration returned to a claimant shall be
12 corrected by the claimant and returned to the court as
13 quickly as possible. Corrected declarations shall be
14 accepted by the court for 1 year following the expiration of
15 the filing period. Corrected applications returned to the
16 court prior to the expiration of the filing period need not
17 be accompanied by an additional filing fee.

18 (5) The special water judges may join in issuing an
19 order extending either the filing or correction periods for
20 good cause. However, all special water judges must concur in
21 such an order.

22 (6) The department shall have access to all
23 declarations filed and may inspect and copy them.

24 (7) The department may conduct field investigations of
25 randomly selected declarations and of declarations which the

1 department determines warrant a field investigation.

2 (8) The department shall transmit to the special water
3 judge all information in its possession regarding the
4 claimed right which it may possess, including field
5 investigation results and information obtained in accordance
6 with 89-871.

7 (9) Upon completing review of a declaration and
8 determining it to be complete, the court shall accept it and
9 so notify the claimant and department.

10 (10) Upon notification to the claimant of the
11 acceptance of the declaration by the court, the declaration
12 constitutes prima facie proof of its content.

13 (11) An accepted declaration constitutes only prima
14 facie proof of its content until the issuance of the final
15 decree.

16 Section 12. There is a new R.C.M. section that reads
17 as follows:

18 Preliminary decree. (1) If prior to issuing the
19 preliminary decree the special water judge determines that
20 additional data is necessary in order to determine the
21 extent of a claimed right, he may direct the department or
22 the claimant to obtain and submit the necessary data in the
23 form in which the special water judge may require.

24 (2) Within a reasonable time after the expiration of
25 the filing and correction periods, the court shall issue a

1 preliminary decree for each major drainage basin. In light
2 of the magnitude of the task, "reasonable time" shall be
3 liberally construed in favor of the court. A preliminary
4 decree shall be based on the declarations, on the data
5 submitted by the department, and on any additional data
6 obtained by the court.

7 (3) The preliminary decree shall contain the
8 information and make the determinations, findings, and
9 conclusions required for the final decree in accordance with
10 89-877. All special water judges assigned to a major
11 drainage basin shall concur in the preliminary decree.

12 (4) The court shall send a copy of the preliminary
13 decree by certified mail, with return receipt to the
14 department requested, to each person named in the
15 preliminary decree and to the office of each county clerk
16 and recorder in the state to be conspicuously posted in a
17 public place. Each claimant in a major drainage basin must
18 be named in the decree for that basin; even if the claim is
19 disallowed. The return receipt shall be appended to the
20 preliminary decree. The cost of mailing the copy shall be
21 paid by the claimant.

22 (5) A person named in the preliminary decree may
23 inspect all data upon which the decree is based at any time,
24 and he may purchase copies of the data.

25 Section 13. Section 89-876, R.C.M. 1947, is amended to

1 read as follows:

2 "89-876. Hearing on preliminary decree. (1) The
3 department, ~~or a person named in the material filed under~~
4 ~~section 89-874 or named in the preliminary decree a holder~~
5 ~~of a permit or certificate in the major drainage basin under~~
6 ~~consideration,~~ or any other person for good cause shown, who
7 objects to the preliminary decree is entitled to a hearing
8 thereon before ~~the district court a special water judge~~
9 ~~assigned to the major drainage basin.~~

10 (2) A request for a hearing shall be filed with the
11 district court, and a copy served on the department by
12 certified mail, within ninety (90) days after receipt of the
13 preliminary decree. The district court shall, for good cause
14 shown, reasonably extend this time limit if application for
15 the extension is made within ninety (90) days after receipt
16 of the preliminary decree. * ~~If a person requesting requests~~
17 ~~a hearing on his objections to the preliminary decree, the~~
18 ~~court shall also serve, by certified mail with return~~
19 ~~receipt requested, a copy of his the request on any person~~
20 ~~whose rights or priorities will would be affected if the~~
21 ~~objections are sustained in the hearing. The court shall, by~~
22 ~~its own affidavit, file in its records proof of service of a~~
23 ~~hearing request. Such affidavit and return receipt shall~~
24 ~~constitute conclusive proof of service. The court may~~
25 ~~consolidate mailings of hearing requests.~~ The rights and

1 priorities of a person who is not served shall not be
2 affected by the result of the hearing.

3 (3) The request for a hearing shall contain a precise
4 statement of the findings and conclusions, in the
5 preliminary decree, with which the person requesting the
6 hearing disagrees. The request shall specify the paragraphs
7 and pages containing the findings and conclusions to which
8 objection is made. The request shall state the specific
9 grounds and evidence on which the objections are based. The
10 request shall also state the names of all other persons on
11 whom it is served.

12 (4) If more than one person requests a hearing on
13 objections to the preliminary decree, the court may in its
14 discretion hold a single hearing. Each hearing shall be
15 conducted as are other civil actions in accordance with the
16 Montana rules of civil procedure, but the parties to the
17 hearing may by agreement and with the court's permission
18 waive any of the procedural or evidentiary rules, or may
19 submit only written evidence. Only evidence which is
20 referred to in a request may be introduced in a hearing.

21 (5) In each hearing, the department shall be a party
22 and is entitled to be heard on objections made by any
23 person. The department shall be granted adequate time, prior
24 to a hearing, to gather evidence pertinent to any objection
25 to be heard in the hearing."

1 Section 14. Section 89-877, R.C.M. 1947, is amended to
2 read as follows:

3 "89-877. Final decree. (1) The court shall, on the
4 basis of the preliminary decree and on the basis of any
5 hearing that may have been held, enter a final decree
6 affirming or modifying the preliminary decree. If no request
7 for a hearing is filed within the time allowed, the
8 preliminary decree automatically becomes final, and the
9 court shall enter it as the final decree.

10 (2) The final decree shall establish the existing
11 rights and priorities, of the persons named in the petition,
12 for the ~~source or area~~ major drainage basin under
13 consideration.

14 (3) The final decree shall state the findings of fact,
15 along with any conclusions of law, upon which the existing
16 rights and priorities of each person named in the decree are
17 based.

18 (4) For each person who is found to have an existing
19 right, the decree shall state:

20 (a) the name and post office address of the owner of
21 the right;

22 (b) the amount of water included in the right;

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

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

1 (e) the place of use and a description of the land to
2 which the right is appurtenant;

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

4 (g) the place and means of diversion;

5 (h) the approximate time during which the water is
6 used each year;

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

9 (5) The final decree in each existing right
10 determination is final and conclusive and is binding as to
11 all existing water rights in the ~~source or area~~ major
12 drainage basin under consideration. After the final decree
13 there shall be no existing rights to water in the ~~area or~~
14 ~~source~~ major drainage basin under consideration except as
15 stated in the decree."

16 Section 15. Section 89-878, R.C.M. 1947, is amended to
17 read as follows:

18 "89-878. Appeals from final decree. (1) A person whose
19 existing claimed rights and priorities are determined in the
20 final decree may appeal the determination only if:

21 (a) he requested a hearing and appeared and entered
22 objections to the preliminary decree; or

23 (b) his rights as determined in the preliminary decree
24 were altered as the result of a hearing, at which he
25 appeared, requested by another person.

1 (2) ~~An in the interest of uniformity, an~~ appeal from
2 the final decree ~~shall be is of original jurisdiction in the~~
3 ~~supreme court of the state and is~~ taken as provided by the
4 Montana Rules of Appellate Civil Procedure.

5 ~~(3) In order to expedite the appeal process, the~~
6 ~~supreme court may utilize the services of one or more~~
7 ~~special masters as provided by Rule 53 of the Montana rules~~
8 ~~of civil procedure."~~

9 Section 16. Section 89-879, R.C.M. 1947, is amended to
10 read as follows:

11 "89-879. Certificate of water right. When a final
12 decree is entered, the court shall send a copy to the
13 department. ~~The After the expiration of the appeal period or~~
14 ~~after conclusion of the appeal process, the~~ department
15 shall, on the basis of the final decree, issue to each
16 person decreed an ~~existing adjudicated~~ right a certificate
17 of water right. The original of the certificate shall be
18 sent to the county clerk and recorder, in the county where
19 the point of diversion or place of use is located, for
20 recordation. The department shall keep a copy of the
21 certificate in its office in Helena. After recordation, the
22 clerk and recorder shall send the certificate to the person
23 to whom the right is decreed."

24 Section 17. There is a new R.C.M. section that reads
25 as follows:

1 Saving clause. Nothing in this act abates or otherwise
2 adversely affects the validity of any preliminary or final
3 decree issued by a district court in accordance with former
4 89-875 or 89-876 or 89-877 if the department has filed a
5 petition in accordance with 89-873 prior to the effective
6 date of this act. Any such final decree not overturned in
7 accordance with 89-878 is binding upon the court with
8 respect to the individual rights adjudicated therein but not
9 with respect to the relative priorities among such rights
10 taken as a whole and rights in the remainder of the major
11 drainage basin.

12 Section 18. Section 89-891, R.C.M. 1947, is amended to
13 read as follows:

14 "89-891. Priority. (1) As between appropriators, the
15 first in time is the first in right. Priority of
16 appropriation does not include the right to prevent changes
17 by later appropriators in the condition of water occurrence,
18 such as the increase or decrease of streamflow, or the
19 lowering of a water table, artesian pressure or water level,
20 if the prior appropriator can reasonably exercise his water
21 right under the changed conditions.

22 (2) Priority of appropriation made under this act
23 dates from the filing of an application for a permit with
24 the department, except as otherwise provided in ~~section 16~~
25 ~~{89-880}~~ of this act.

1 (3) Priority of appropriation perfected before the
2 effective date of this act shall be determined as provided
3 in ~~sections 6 through 15 [89-878 through 89-879]~~ of ~~the~~
4 ~~adjudication procedure established by this act.~~"

5 Section 19. Section 89-896, R.C.M. 1947, is amended to
6 read as follows:

7 "89-896. Supervision of water distribution. (1) The
8 district courts shall supervise the distribution of water
9 among all appropriators. This supervisory authority includes
10 the supervision of all water commissioners appointed prior
11 or subsequent to the effective date of this act. The
12 supervision shall be governed by the principle that first in
13 time is first in right.

14 (2) When a water distribution controversy arises upon
15 a source of water in which existing rights have not been
16 determined according to ~~sections 89-878 through 89-879 the~~
17 ~~adjudication procedure established by this act~~, any party to
18 the controversy may petition the district court for relief.
19 The department shall be served with process in any
20 proceeding under this subsection ~~and shall, within a~~
21 ~~reasonable time thereafter, notify the court whether it~~
22 ~~intends in its discretion, within a reasonable time, to~~
23 ~~begin proceedings to determine existing rights in the~~
24 ~~source, in accordance with this act.~~ The department may, if
25 ~~it declines to commence proceedings to determine existing~~

1 ~~rights in the source,~~ intervene as a party in the
2 proceeding. The district court from which relief is sought
3 may grant such injunctive or other relief which is necessary
4 and appropriate to preserve property rights or the status
5 ~~quo pending the department's decision whether to determine~~
6 ~~existing rights in the source, or the department's decision~~
7 ~~to intervene as a party, as the case may be. If the~~
8 ~~department does not proceed to obtain a determination of~~
9 ~~existing rights, the~~ The district court shall settle only
10 the controversy between the parties.

11 (3) A controversy between appropriators from a source
12 which has been the subject of a general determination of
13 existing rights ~~under sections 89-878 through 89-879 in~~
14 ~~accordance with the adjudication procedure established by~~
15 ~~this act~~ shall be settled by the district court ~~which issued~~
16 ~~the final decree.~~ The order of the district court settling
17 the controversy may not alter the existing rights and
18 priorities established in the final decree. In cases
19 involving permits issued by the department, the court may
20 not amend the respective rights established in the permits
21 or alter any terms of the permits unless the permits are
22 inconsistent or interfere with rights and priorities
23 established in the final decree. The order settling the
24 controversy shall be appended to the final decree, and a
25 copy shall be filed with the department. The department

1 shall be served with process in any proceeding under this
2 subsection, and the department may, in its discretion,
3 intervene in the proceeding."

4 Section 20. Section 89-8-102, R.C.M. 1947, is amended
5 to read as follows:

6 "89-8-102. Deposit of fees and penalties. All fees and
7 penalties collected under this act shall be deposited in the
8 state general fund. All penalties or fines imposed by any
9 court for a violation of this act shall be deposited in the
10 general fund of the county where the court presides and
11 shall be disposed of in the same manner as any other penalty
12 or fine. ~~This section does not apply to fees, penalties, or~~
13 ~~finer arising in connection with the adjudication of~~
14 ~~existing rights."~~

15 Section 21. Section 89-8-102.1, R.C.M. 1947, is
16 amended to read as follows:

17 "89-8-102.1. Saving clause. Nothing in this act abates
18 or otherwise adversely affects the original validity of any
19 filing, notice, or judicial proceeding commenced under the
20 law as it existed before July 1, 1973."

21 Section 22. Repealer. Sections 89-872, 89-873, 89-874,
22 and 89-875, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 592-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 24, 19 77, there is hereby submitted a Fiscal Note for House Bill 809 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 809 provides for the general revision of laws relating to water rights adjudication. The bill increases duties of the Department of Natural Resources relative to water rights and establishes an Adjudicator Administrator's Office, and authorizes the Governor to appoint as many water judges as necessary.

ASSUMPTIONS:

1. The Department will need 15.00 additional FTE employees in FY 78 and 59.50 additional FTE employees in FY 79.
2. The Adjudicator Administrator's Office will need 1.00 additional FTE employee in FY 78 and 24.00 additional FTE employees in FY 79.
3. The Governor will appoint five (5) water judges during FY 79. The judges will receive the same pay and benefits as District Court Judges.
4. No order calling for declaration of existing rights will be issued until FY 79; therefore, no Earmarked Revenue will be made available until the latter part of FY 79.
5. The number of water rights is estimated to be 500,000.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Revenue		
Filing fee collections — proposed law	\$ 0	\$1,875,000
Filing fee collections — current law	<u>0</u>	<u>0</u>
Additional filing fee collections under proposed law	<u>\$ 0</u>	<u>\$1,875,000</u>
Expenditures		
Under proposed law	\$1,079,299	\$2,869,645
Under current law	<u>690,906</u>	<u>705,884</u>
Additional expenditures under proposed law	<u>\$ 388,393</u>	<u>\$2,163,761</u>

LONG-RANGE EFFECTS:

The Department estimates that it will take ten to twelve years to complete the adjudication process.

Richard L. Drayton
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-25-77

STATE OF MONTANA

REQUEST NO. 592-77

FISCAL NOTE

(Revised)

Form BD-15

In compliance with a written request received March 8, 19 77, there is hereby submitted a Fiscal Note for House Bill 809 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

THIS FISCAL NOTE REVISES THE ORIGINAL FISCAL NOTE ON HOUSE BILL 809.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 809 provides for the general revision of laws relating to water rights adjudication. The bill increases duties of the Department of Natural Resources relative to water rights and establishes an Adjudicator Administrator's Office, and authorizes the Governor to appoint as many water judges as necessary.

ASSUMPTIONS:

1. The Department of Natural Resources will need 15.00 additional FTE employees in FY 78 and 59.50 additional FTE employees in FY 79.
2. The Adjudicator Administrator's Office will need 1.00 additional FTE employee in FY 78 and 24.00 additional FTE employees in FY 79.
3. The Governor will appoint five (5) water judges during FY 79. The judges will receive the same pay and benefits as District Court Judges.
4. No order calling for declaration of existing rights will be issued until FY 79; therefore, no Earmarked Revenue will be made available until the latter part of FY 79.
5. The number of water rights is estimated to be 500,000.
6. The Department of State Lands will have to file between 2,000 and 6,000 declarations of existing rights within a four to five year period after orders calling for the declarations are issued. This estimate is based on the fact that the Department administers more than 5 million acres of land contained in approximately 8,500 leases.
7. The Department of State Lands will require 4.00 additional FTE employees in FY 78, plus an additional 4.00 FTE employees in FY 79.
8. No declarations will be filed on state lands in FY 78 although preparation of declarations will begin. Approximately 500 declarations will be filed in FY 79.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Revenue — Department of Natural Resources		
Filing fee collections — proposed law	\$ 0	\$1,875,000
Filing fee collections — current law	<u>0</u>	<u>0</u>
Additional revenue collections under proposed law	<u>\$ 0</u>	<u>\$1,875,000</u>
Expenditures — Department of Natural Resources		
Under proposed law	\$1,079,299	\$2,869,645
Under current law	<u>690,906</u>	<u>705,884</u>
Additional expenditures under proposed law	<u>388,393</u>	<u>2,163,761</u>
Expenditures — Department of State Lands		
Under proposed law	64,000	140,500
Under current law	<u>0</u>	<u>0</u>
Additional expenditures under proposed law	<u>64,000</u>	<u>140,500</u>
Total additional expenditures under proposed law	<u>\$ 452,393</u>	<u>\$2,304,261</u>

(continued on page 2)

FISCAL NOTE

Form BD-15

In compliance with a written request received March 8, 1977, there is hereby submitted a Fiscal Note for House Bill 809 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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THIS FISCAL NOTE REVISES THE ORIGINAL FISCAL NOTE ON HOUSE BILL 809.

Continued:

LONG-RANGE EFFECTS:

The Department of Natural Resources estimates that it will take ten to twelve years to complete the adjudication process. The Department of State Lands estimates that the process of filing water rights on state lands will take four to five years.

Richard L. Drang
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-8-77

Approved by Committee on Judiciary

1 *House* BILL NO. *809*
 2 INTRODUCED BY *Judiciary Comm. John Sully*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
 5 REVISION OF LAWS RELATING TO WATER RIGHTS ADJUDICATION;
 6 AMENDING SECTIONS 89-867, 89-869, 89-870, 89-871, 89-876,
 7 89-877, 89-878, 89-879, 89-891, 89-896, 89-8-102, AND
 8 89-8-102.1, R.C.M. 1947; AND REPEALING SECTIONS 89-872
 9 THROUGH 89-875, R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 89-867, R.C.M. 1947, is amended to
 13 read as follows:
 14 "89-867. Definitions. Unless the context requires
 15 otherwise, in this chapter:
 16 (1) "Water" means all water of the state, surface and
 17 subsurface, regardless of its character or manner of
 18 occurrence, including geothermal water.
 19 (2) "Beneficial use" means a use of water for the
 20 benefit of the appropriator, other persons, or the public,
 21 including, but not limited to, agricultural (including stock
 22 water), domestic, fish and wildlife, industrial, irrigation,
 23 mining, municipal power, and recreational uses; provided,
 24 however, that a use of water for slurry to export coal from
 25 Montana is not a beneficial use. Slurry is a mixture of

1 water and insoluble matter.
 2 (3) "Appropriate" means to divert, impound, or
 3 withdraw (including by stock for stock water) a quantity of
 4 water, or in the case of a public agency to reserve water in
 5 accordance with section 89-890.
 6 (4) "Existing right" means a right to the use of water
 7 which would be protected under the law as it existed prior
 8 to July 1, 1973.
 9 (5) "Groundwater" means any water beneath the land
 10 surface or beneath the bed of a stream, lake, reservoir, or
 11 other body of surface water, and which is not a part of that
 12 surface water.
 13 (6) "Well" means any artificial opening or excavation
 14 in the ground, however made, by which groundwater is sought
 15 or through which it flows under natural pressures or is
 16 artificially withdrawn.
 17 (7) "Permit" means the permit to appropriate issued by
 18 the department under sections 89-880 through 89-887.
 19 (8) "Certificate" means the certificate of water right
 20 issued by the department under sections 89-879, 89-880(5),
 21 and 89-888.
 22 (9) "Declaration" means the declaration of an existing
 23 right filed with the ~~department court~~ under section 89-872.
 24 (10) "Waste" means the unreasonable loss of water
 25 through the design or negligent operation of an

There are no changes in *HB 809*; & will not be re-run.

Please refer to white copy for complete text. SECOND READING

HB 809

1 appropriation or water distribution facility, or the
2 application of water to anything but a beneficial use.

3 (11) "Political" subdivision means any county,
4 incorporated city or town, public corporation or district
5 created pursuant to state law, or other public body of the
6 state empowered to appropriate water, but not a private
7 corporation, association, or group.

8 (12) "Person" means an individual, association,
9 partnership, corporation, state agency, political
10 subdivision, and the United States or any agency thereof.

11 (13) "Department" means the department of natural
12 resources and conservation provided for in Title 82A,
13 chapter 15.

14 (14) "Board" means the board of natural resources and
15 conservation provided for in section 82A-1509.

16 (15) "Act" means the Montana Water Use Act and any
17 subsequent amendments or additions thereto.

18 (16) "Claimant" means a person filing a declaration
19 under [section 8 of this act].

20 (17) "Adjudicated right" means a water right
21 established by a final decree.

22 (18) "Major drainage basin" means the entire watershed
23 within the state of a body of water flowing out of the
24 state. For the purpose of adjudication jurisdiction, a
25 groundwater appropriation shall be adjudicated in the major

1 drainage basin in which the point of withdrawal lies, unless
2 the groundwater appropriated would clearly flow into
3 another major drainage basin if unappropriated.

4 (19) "Court" means a special water judge."

5 Section 2. Section 89-869, R.C.M. 1947, is amended to
6 read as follows:

7 "89-869. Powers and duties of board. (1) The board may
8 prescribe fees or service charges for any public service
9 rendered by the department under this act or under Title 89,
10 chapter 29, including fees for the filing of declarations
11 and applications or for the issuance of permits and
12 certificates. There shall be no fees for the filing of
13 declarations or for the issuance of certificates of for
14 existing rights.

15 (2) The board may adopt rules necessary to implement
16 and carry out the purposes and provisions of this act. These
17 rules may include, but are not limited to, rules to:

18 (a) govern the issuance and terms of interim permits
19 authorizing an applicant for a regular permit under this act
20 to begin appropriating water immediately, pending final
21 approval or denial by the department of the application for
22 a regular permit;

23 (b) require the owner or operator of appropriation
24 facilities to install and maintain suitable controlling and
25 measuring devices;

1 *House* BILL NO. *809*
 2 INTRODUCED BY *Judith Ann John Sully*
 3

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THIRD READING

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HB 809

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