

CHAPTER NO. 697

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,
GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,
THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

IN THE SENATE

January 8, 1979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
January 9, 1979	Fiscal note requested.
January 17, 1979	Fiscal note returned.
January 30, 1979	Committee recommend bill do pass as amended. Report adopte
February 1, 1979	Printed and placed on members' desks.
February 2, 1979	Second reading, do pass.
February 3, 1979	Considered correctly engrossed.
February 5, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 6, 1979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
February 7, 1979	Rereferred to Select Committee on Water.
April 6, 1979	Committee recommend bill be concurrred in as amended. Report adopted.

April 7, 1979

Second reading, concurred in.

On motion rules suspended
and bill placed on third reading
this day.

Third reading, concurred in as
amended.

IN THE SENATE

April 9, 1979

Returned from second house.
Concurred in as amended.

On motion rules temporarily
suspended to accept House amendments
for consideration on second reading.
Motion adopted.

April 10, 1979

Second reading, amendments rejected.

On motion Free Joint Conference
Committee requested.

Free Joint Conference Committee
appointed.

April 18, 1979

Free Joint Conference Committee
reported.

April 19, 1979

Second reading, adopted.

On motion rules suspended.
Bill placed on Calendar for
third reading this day.

Third reading, adopted.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *76*
 2 INTRODUCED BY *Boyle, Tunney, Holtzman*
 3 BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS *Kissel*
 4 *Max Larson* *Manley*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF *Dove*
 6 EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-1-101, *Helson*
 7 3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404, 85-2-102, *E. Smith*
 8 85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405, AND *J. Brown*
 9 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210,
 10 MCA; AND PROVIDING AN EFFECTIVE DATE."

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

12 NEW SECTION. Section 1. Water courts established. (1)
 13 To adjudicate existing water rights, a system of water
 14 courts is established. A water court shall be presided over
 15 by a water judge.
 16

17 (2) There shall be one water judge for each water
 18 court district. A water judge may sit in any district.

19 (3) The governor shall designate one water judge to
 20 serve as chief water judge. The chief water judge may
 21 distribute caseloads among the several water judges on an
 22 equitable basis. The chief water judge shall be assigned to
 23 a district and shall hear cases in that district on an
 24 equitable basis with the other judges. The chief water
 25 judge in consultation with the other water judges shall

1 determine the sites of the offices of the water courts.

2 NEW SECTION. Section 2. Water court districts
 3 defined. (1) There are four water court districts whose
 4 boundaries are formed by the natural divides between
 5 drainages and the borders of the state of Montana and which
 6 are described as follows:

7 (a) The Yellowstone River Basin water court district
 8 consists of those areas drained by the Yellowstone and
 9 Little Missouri Rivers and any remaining areas in Carter
 10 County.

11 (b) The Lower Missouri River Basin water court
 12 district consists of those areas drained by the Missouri
 13 River from below the mouth of the Marias River and any
 14 remaining areas in Glacier and Sheridan Counties.

15 (c) The Upper Missouri River Basin water court
 16 district consists of those areas drained by the Missouri
 17 River to below the mouth of the Marias River.

18 (d) The Clark Fork River Basin water court district
 19 consists of the areas drained by the Clark Fork River, the
 20 Kootenai River and any remaining areas in Lincoln County.

21 (2) Whenever a question arises concerning which water
 22 court has jurisdiction over adjudication of an existing
 23 right, the question shall be settled through consultation
 24 with the water judges involved, subject to review by the
 25 chief water judge.

1 NEW SECTION. Section 3. Salary, expenses, and
2 retirement of water judges. (1) A water judge is entitled to
3 the salary and expenses authorized by law for district
4 judges.

5 (2) A water judge shall participate in the Montana
6 judges' retirement system established in Title 19, chapter
7 5, on the same basis as a district court judge.

8 NEW SECTION. Section 4. Jurisdiction of the water
9 court. (1) A water court has exclusive jurisdiction in
10 matters arising in relation to the determination and
11 interpretation of existing water rights under [this act].
12 It is the intent of the legislature that all such matters be
13 brought in or immediately transferred to a water court
14 unless witnesses have been sworn and testimony has been
15 taken by the district court.

16 (2) The jurisdiction of the water court includes
17 jurisdiction to appoint and supervise water commissioners in
18 the same manner as authorized for district judges.

19 (3) The district court shall assume jurisdiction over
20 enforcement of the provisions of a final decree issued as
21 provided in [section 24 of this act].

22 NEW SECTION. Section 5. Procedure. (1) The water
23 court shall make rules, including rules of evidence,
24 necessary to accomplish the purposes of [this act].

25 (2) Except as may be specifically provided in this

1 section, procedures established in Title 25 applicable to
2 civil procedure in the district court apply to the water
3 court.

4 (3) The use of discovery in cases before the water
5 court may be exercised only to the extent specifically
6 authorized by order of the water court.

7 NEW SECTION. Section 6. Disqualification of water
8 judge. (1) A water judge may disqualify himself in any
9 proceeding in which his impartiality might reasonably be
10 questioned.

11 (2) A water judge may also disqualify himself in the
12 following circumstances:

13 (a) if he has a personal bias or prejudice concerning
14 a party or personal knowledge of disputed evidentiary facts
15 concerning the proceeding;

16 (b) if in private practice he served as a lawyer in
17 the matter in controversy or a lawyer with whom he
18 previously practiced law served during such association as a
19 lawyer concerning the matter or the judge or the lawyer has
20 been a material witness concerning it;

21 (c) if he has served in governmental employment and in
22 such capacity participated as counsel, adviser, or material
23 witness concerning the proceeding or expressed an opinion
24 concerning the merits of the particular case in controversy;

25 (d) if he knows that he, individually or as a

1 fiduciary, or his spouse or minor child residing in his
2 household has a financial interest in the subject matter in
3 controversy or in a party to the proceeding or any other
4 interest that could be substantially affected by the outcome
5 of the proceeding; or

6 (e) if he or his spouse or a person within the third
7 degree of relationship to either of them (as calculated
8 according to 72-11-101 through 72-11-105) or the spouse of
9 such a person:

10 (i) is a party to the proceeding or an officer,
11 director, or trustee of a party;

12 (ii) is known by the judge to have an interest that
13 could be substantially affected by the outcome of the
14 proceeding;

15 (iii) is to the judge's knowledge likely to be a
16 material witness in the proceeding.

17 (3) A water judge should inform himself about his
18 personal and fiduciary financial interests and make a
19 reasonable effort to inform himself about the personal
20 financial interests of his spouse and minor children
21 residing in his household.

22 (4) For the purposes of this section the following
23 definitions apply:

24 (a) "Proceeding" includes prehearing, hearing,
25 appellate review, or other stages of adjudication.

1 (b) "Fiduciary" includes such relationships as
2 executor, administrator, trustee, or guardian.

3 (c) "Financial interest" means ownership of a legal or
4 equitable interest, however small, or a relationship as
5 director, adviser, or other active participant in the
6 affairs of a party, except that:

7 (i) ownership in a mutual or common investment fund
8 that holds securities is not a financial interest in such
9 securities unless the judge participates in the management
10 of the fund;

11 (ii) an office in an educational, religious,
12 charitable, fraternal, or civic organization is not a
13 financial interest in securities held by the organization;

14 (iii) the proprietary interest of a policyholder in a
15 mutual insurance company or a depositor in a mutual savings
16 association or a similar proprietary interest is a financial
17 interest in the organization only if the outcome of the
18 proceeding could substantially affect the value of the
19 interest; and

20 (iv) ownership of government securities is a financial
21 interest in the issuer only if the outcome of the proceeding
22 could substantially affect the value of the securities.

23 (5) A water judge may accept from the parties to the
24 proceeding a waiver of any ground for disqualification if it
25 is preceded by a full disclosure on the record of the basis

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1 for disqualification.

2 (6) The procedure for disqualification of a water
3 judge specified in this section is exclusive.

4 NEW SECTION. Section 7. Appeals from water court. The
5 supreme court has exclusive jurisdiction over appeals from a
6 water court. Appeal procedures shall be governed by the
7 Montana Rules of Appellate Civil Procedure.

8 NEW SECTION. Section 8. Qualifications of a water
9 judge. To be eligible to serve as a water judge, a person
10 must have the qualifications of a district court judge
11 required by Article VII, section 9, subsections (1) through
12 (3), of the constitution of Montana. A water judge shall
13 reside within the state.

14 NEW SECTION. Section 9. Creation, composition,
15 function, and termination of water judge nominating
16 commission. (1) A water judge nominating commission is
17 created. Its function is to provide the governor with
18 nominees for appointment as water judges. The commission
19 shall be composed of seven members appointed as follows:

20 (a) two members of the house of representatives
21 appointed by the speaker, not more than one of whom is from
22 the same political party;

23 (b) two members of the senate appointed by the
24 president, not more than one of whom is from the same
25 political party;

1 (c) one member appointed by the governor;

2 (d) one member appointed by the supreme court;

3 (e) one member appointed by the board of directors of
4 the state bar of Montana.

5 (2) Appointments shall be made [within 30 days of the
6 effective date of this section].

7 (3) In the event of a vacancy, the position shall be
8 filled as in the manner of the original appointment.

9 (4) The water judge nominating commission shall meet
10 as often as required to select the nominees. The
11 commission shall nominate three persons for the position of
12 chief water judge and five persons for positions as water
13 judges.

14 (5) The water judge nominating commission shall
15 organize itself and conduct its business under the
16 procedures provided for the nominating commission.

17 (6) Upon the acceptance of appointment by nominees as
18 water judges in each water court district, the water judge
19 nominating commission ceases to exist. Thereafter
20 nomination and appointment of water judges shall be as
21 provided for district court judge.

22 (7) Not later than July 1, 1979, the governor shall
23 appoint a chief water judge and three other water judges
24 from among lists of nominees presented by the water judge
25 nominating commission.

1 NEW SECTION. Section 10. Appointment of water judges
2 to fill vacancy. (1) If a vacancy occurs, the governor shall
3 appoint a person to complete the unexpired term in the same
4 manner as provided for the appointment of a district judge.

5 (2) Appointments to subsequent terms shall be made in
6 the same manner as filling a vacancy.

7 NEW SECTION. Section 11. Water judges -- term of
8 office. The term of office for water judges is from July 1,
9 1979, to June 30, 1985. After June 30, 1985, the term of
10 office of a water judge is 4 years, subject to continuation
11 of the water court system by the legislature.

12 NEW SECTION. Section 12. Claim of existing water
13 right -- filing statement of claim required -- exemptions.

14 (1) A person claiming an existing right, unless exempted
15 below, shall file with the water court for the water court
16 district wherein the diversion occurs no later than June 30,
17 1983, a statement of claim for each water right asserted on
18 a form provided by the department of natural resources and
19 conservation. If there is a claimed right with no division,
20 the filing shall be made in the district where the use
21 occurs.

22 (2) Claims for existing rights for livestock and
23 domestic uses based upon instream flow or groundwater
24 sources and claims for rights included in a declaration
25 filed pursuant to the order of a district court issued under

1 sections 8 and 9 of Chapter 452, Laws of 1973, as amended,
2 are exempt from the filing requirements of subsection (1) of
3 this section. Such claims may, however, be voluntarily
4 filed.

5 NEW SECTION. Section 13. Department of fish and game
6 to represent public recreational uses. The department of
7 fish and game shall exclusively represent the public for
8 purposes of establishing any prior and existing public
9 recreational use in existing right determinations under
10 [sections 12 through 26], provided that the foregoing shall
11 not be construed in any manner as a legislative
12 determination of whether or not a recreational use sought to
13 be established prior to July 1, 1973, is or was a beneficial
14 use.

15 NEW SECTION. Section 14. Statement of claim --
16 contents. (1) The statement of claim for each right shall
17 include substantially the following:

- 18 (a) the name and mailing address of the claimant;
- 19 (b) the name of the watercourse or water source from
20 which the right to divert or make use of water is claimed,
21 if available;
- 22 (c) the quantities of water and times of use claimed;
- 23 (d) the legal description, with reasonable certainty,
24 of the point or points of diversion and places of use of
25 waters;

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1 (e) the purpose of use, including, if for irrigation,
2 the number of acres irrigated;

3 (f) the approximate dates of first putting water to
4 beneficial use for the various amounts and times claimed in
5 subsection (c); and

6 (g) the sworn statement that the claim set forth is
7 true and correct to the best of claimant's knowledge and
8 belief.

9 (2) The claimant may submit maps, plats, aerial
10 photographs, decrees, or other evidence in support of his
11 claim.

12 NEW SECTION. Section 15. Abandonment by failure to
13 file claim. The failure to file a claim of an existing right
14 as required by [section 12] establishes a rebuttable
15 presumption of abandonment of that right.

16 NEW SECTION. Section 16. Claim to constitute prima
17 facie evidence. A claim of an existing right filed in
18 accordance with [section 12] constitutes prima facie proof
19 of its content until the issuance of a final decree.

20 NEW SECTION. Section 17. Notice of requirement to
21 file claim. The department shall provide notice of the
22 requirement to file a statement of a claim of an existing
23 water right in substantially the following form:

24 WATER RIGHTS NOTICE

25 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT

1 IN A REBUTTABLE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
2 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence
3 shall be printed in not less than 12-point boldface type.)
4 This is notice of commencement of procedures for the general
5 adjudication of existing rights to the use of water and of
6 the requirement to file a claim for certain rights. Every
7 person, including but not limited to an individual,
8 partnership, association, public or private corporation,
9 city or other municipality, county, state agency or the
10 state of Montana, and federal agency or the United States of
11 America, asserting a claim to an existing right to the use
12 of water which would be protected under the law as it
13 existed prior to July 1, 1973, is notified that a statement
14 of claim to that right is required to be filed with the
15 water court for the water court district wherein water is
16 diverted or used for the right claimed no later than June
17 30, 1983. Claims for stock and domestic uses based upon
18 instream flow or groundwater sources are exempt from this
19 requirement; however, claims for such uses may be
20 voluntarily filed. Claims filed with the department in a
21 declaration filed pursuant to the order of a district court
22 issued pursuant to sections 8 and 9 of Chapter 452, Laws of
23 1973, as amended, are also exempt.

24 For further information, contact the department of
25 natural resources and conservation, Helena, Montana, for a

1 copy of the law and an explanation of it.

2 NEW SECTION. Section 18. How notice to be given. To
3 assure that all persons who may claim an existing water
4 right are notified of the requirement to file a claim of
5 that right, the department of natural resources and
6 conservation shall give notice as follows:

7 (1) It shall cause a notice printed in not less than
8 10-point type to be placed in a prominent and conspicuous
9 place in all daily newspapers of the state and in at least
10 one newspaper published in each county of the state during
11 the month of July, 1979, and in April of 1980, 1981, 1982,
12 and 1983.

13 (2) It shall cause a notice in writing to be placed in
14 a prominent and conspicuous location in each county
15 courthouse in the state.

16 (3) It shall provide a sufficient number of copies of
17 the notice to the county treasurers before October 15, 1979,
18 1980, 1981, and 1982, and the county treasurers shall
19 enclose a copy of the notice with each statement of property
20 taxes mailed in 1979, 1980, 1981, and 1982. In the
21 implementation of this subsection, the department shall
22 provide reimbursement to each county treasurer for the
23 reasonable additional costs incurred by the treasurer
24 arising from the inclusion of the notice required by this
25 section.

1 (4) It shall provide copies of the notice in writing
2 to the press services with offices located in Helena during
3 July, 1979, and April of 1980, 1981, 1982, and 1983.

4 (5) The water court may also in its discretion give
5 notice in any other manner that will carry out the purposes
6 of this section.

7 NEW SECTION. Section 19. Filing fee -- special
8 account created. (1) Each claim filed under [section 12]
9 shall be accompanied by a fee in the amount of \$40, subject
10 to the following exceptions:

11 (a) the total fees for all claims filed by one person
12 in any one water court district may not exceed \$480; and

13 (b) no fee is required accompanying a claim of an
14 existing right that is included in a decree of a court in
15 the state of Montana and which is accompanied by a certified
16 copy of that decree or verified as otherwise ordered by the
17 court.

18 (2) There is established a water right adjudication
19 account in the earmarked revenue fund of the state treasury.
20 All fees collected under [sections 19 and 22] shall be
21 deposited in the account to pay the expenses incurred for
22 administering [this act].

23 NEW SECTION. Section 20. Adjudication of existing
24 rights. (1) The state of Montana upon relation of the
25 attorney general shall petition each water court to require

1 all persons claiming a right within the water court district
2 to file a claim of the right as provided in [section 12].

3 (2) The requirement by the water court to file a claim
4 for an existing right is the first step in proceedings for
5 the general adjudication of all existing rights to the use
6 of water which would be protected under the law as it
7 existed prior to July 1, 1973.

8 (3) The water court shall monitor the claim filing
9 procedure and make any orders necessary to assure timely and
10 accurate compliance with the claim filing procedure.

11 NEW SECTION. Section 21. Department assistance to
12 water court. The department, subject to the direction of the
13 water court, shall, without cost to the water court:

14 (1) provide such information and assistance as may be
15 required by the water court to adjudicate claims of existing
16 rights;

17 (2) establish information and assistance programs to
18 aid claimants in the filing of claims for existing rights
19 required by [section 12];

20 (3) conduct field investigations of randomly selected
21 claims or claims that the water court determines warrant
22 investigation; and

23 (4) provide the water courts with all information in
24 its possession bearing upon existing rights.

25 NEW SECTION. Section 22. Preliminary decree. (1)

1 Within a reasonable time after June 30, 1983, the water
2 court shall issue a preliminary decree. The preliminary
3 decree shall be based on the data submitted by the
4 department and on any additional data obtained by the court.

5 (2) The preliminary decree shall contain the
6 information and make the determinations, findings, and
7 conclusions required for the final decree under [section
8 24].

9 (3) The water court shall send a copy of the
10 preliminary decree to the department, and the court shall
11 serve by mail a notice of availability of the preliminary
12 decree to each person named in the preliminary decree. The
13 clerk or person designated by the court to mail the notice
14 shall make a general certificate of mailing certifying that
15 a copy of the notice has been placed in the United States
16 mail, postage prepaid, addressed to each party in the
17 preliminary decree. Such certificate shall be conclusive
18 evidence of due and legal notice of entry of decree.

19 (4) Any person may obtain a copy of the preliminary
20 decree upon payment of a fee of \$20 to the water court.

21 NEW SECTION. Section 23. Hearing on preliminary
22 decree. (1) Upon objection to the preliminary decree by the
23 department, a person named in the preliminary decree, or any
24 other person, for good cause shown, The department or such
25 person is entitled to a hearing thereon before the water

1 court.

2 (2) If a hearing is requested, such request must be
3 filed with the water court within 90 days after notice of
4 entry of the preliminary decree. The water court shall, for
5 good cause shown, extend this time limit an additional 30
6 days if application for the extension is made within 90 days
7 after notice of entry of the preliminary decree.

8 (3) The request for a hearing shall contain a precise
9 statement of the findings and conclusions in the preliminary
10 decree with which the department or person requesting the
11 hearing disagrees. The request shall specify the paragraphs
12 and pages containing the findings and conclusions to which
13 objection is made. The request shall state the specific
14 grounds and evidence on which the objections are based.

15 (4) Upon expiration of the time for filing objections
16 and upon receipt of a request for a hearing, the court shall
17 notify each party named in the preliminary decree that a
18 hearing has been requested. The court shall fix a day when
19 all parties who wish to participate in future proceedings
20 must appear or file a statement. The court shall then set a
21 date for a hearing. The court may conduct individual or
22 consolidated hearings. A hearing shall be conducted as for
23 other civil actions.

24 NEW SECTION. Section 24. Final decree. (1) The water
25 court shall, on the basis of the preliminary decree and on

1 the basis of any hearing that may have been held, enter a
2 final decree affirming or modifying the preliminary decree.
3 If no request for a hearing is filed within the time
4 allowed, the preliminary decree automatically becomes final,
5 and the court shall enter it as the final decree.

6 (2) The final decree shall establish the existing
7 rights and priorities within the water court district of
8 persons required by [section 12] to file a claim for an
9 existing right and of persons who filed declarations
10 pursuant to an order of a district court issued under
11 sections 8 and 9 of Chapter 452, Laws of 1973.

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

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

18 (a) the name and post-office address of the owner of
19 the right;

20 (b) the amount of water, rate, and volume, included in
21 the right;

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

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

25 (e) the place of use and a description of the land, if

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1 any, to which the right is appurtenant;

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

3 (g) the place and means of diversion;

4 (h) the inclusive dates during which the water is used
5 each year;

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

8 NEW SECTION. Section 25. Appeals from final decree.

9 (1) A person whose existing rights and priorities are
10 determined in the final decree may appeal the determination
11 only if:

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

14 (b) his rights as determined in the preliminary decree
15 were altered as the result of a hearing requested by another
16 person.

17 (2) An appeal from the final decree shall be taken as
18 provided by the Montana Rules of Appellate Civil Procedure.

19 NEW SECTION. Section 26. Certificate of water right.
20 When a final decree is entered, the court shall send a copy
21 to the department. The department shall on the basis of the
22 final decree issue a certificate of water right to each
23 person decreed an existing right. The original of the
24 certificate shall be sent to the county clerk and recorder
25 of the county where the point of diversion or place of use

1 is located for recordation. The department shall keep a
2 copy of the certificate in its office in Helena. After
3 recordation, the clerk and recorder shall send the
4 certificate to the person to whom the right is decreed.

5 Section 27. Section 3-1-101, MCA, is amended to read:
6 "3-1-101. The several courts of this state. The
7 following are courts of justice of this state:

8 (1) the court of impeachment, which is the senate;

9 (2) the supreme court;

10 (3) the district courts;

11 ~~(4) the water courts;~~

12 ~~(4)(5) the justices' courts;~~

13 ~~(5)(6) the city courts and such other inferior courts~~
14 ~~as the legislature may establish in any incorporated city or~~
15 ~~town."~~

16 Section 28. Section 3-1-102, MCA, is amended to read:

17 "3-1-102. Courts of record. The court of impeachment,
18 the supreme court, the district courts, the water courts,
19 and the municipal courts are courts of record."

20 Section 29. Section 3-1-1001, MCA, is amended to read:

21 "3-1-1001. Creation, composition, and function of
22 commission. A judicial nomination commission for the state
23 of Montana is created. Its function is to provide the
24 governor with a list of candidates for nomination to fill
25 any vacancy on the supreme court, or any district courts, or

1 a water court of the state of Montana. The commission shall
2 be composed of seven members as follows:

3 (1) four lay members who are neither judges nor
4 attorneys, active or retired, who reside in different
5 geographical areas of the state, and each of whom is
6 representative of a different industry, business, or
7 profession, whether actively so engaged or retired, who
8 shall be appointed by the governor;

9 (2) two attorneys actively engaged in the practice of
10 law, one from each congressional district, who shall be
11 appointed by the supreme court;

12 (3) one district judge elected by the district judges
13 under an elective procedure initiated and conducted by the
14 supreme court and certified to such election by the chief
15 justice of the supreme court. The election shall be
16 considered an appointment for the purposes of this part."

17 Section 30. Section 3-1-1010, MCA, is amended to read:

18 "3-1-1010. List submitted to governor. The commission
19 shall meet forthwith after a vacancy occurs on the supreme
20 court, or a district court, or a water court and submit to
21 the governor within 30 days from the date of the vacancy a
22 list of not less than three or more than five persons."

23 Section 31. Section 19-5-301, MCA, is amended to read:

24 "19-5-301. Membership. (1) A judge or justice who was
25 a member of the PERS prior to March 2, 1967, may elect to

1 remain under that system by notifying the public employees'
2 retirement board in writing of the election on or before
3 October 1, 1967.

4 (2) Every other judge of a district court, water
5 court, or justice of the supreme court must be a member of
6 the Montana judges' retirement system."

7 Section 32. Section 19-5-404, MCA, is amended to read:

8 "19-5-404. Contributions by the state. The state of
9 Montana shall contribute monthly to the fund a sum equal to
10 6% of the salary of each member. In addition, the clerk of
11 each district court shall transmit 60% of the fees collected
12 under 25-1-201 to the state, which shall first deposit in
13 the fund an amount equal to 20% of the salaries paid to
14 district judges, water judges, and supreme court justices
15 who are covered by the judges' retirement system and then
16 deposit the balance in the state general fund. The clerk of
17 the supreme court shall pay one-fourth of the fees collected
18 under 3-2-403 to the public employees' retirement division
19 of the department of administration to be credited to the
20 fund."

21 Section 33. Section 85-2-102, MCA, is amended to read:

22 "85-2-102. Definitions. Unless the context requires
23 otherwise, in this chapter the following definitions apply:

24 (1) "Appropriate" means to divert, impound, or
25 withdraw (including by stock for stock water) a quantity of

1 water or, in the case of a public agency, to reserve water
2 in accordance with 85-2-316.

3 (2) "Beneficial use" means a use of water for the
4 benefit of the appropriator, other persons, or the public,
5 including but not limited to agricultural (including stock
6 water), domestic, fish and wildlife, industrial, irrigation,
7 mining, municipal, power, and recreational uses. A use of
8 water for slurry to export coal from Montana is not a
9 beneficial use. Slurry is a mixture of water and insoluble
10 matter.

11 (3) "Board" means the board of natural resources and
12 conservation provided for in 2-15-3302.

13 (4) "Certificate" means the a certificate of water
14 right issued by the department under ~~85-2-210, subsections~~
15 ~~(1) and (2) of 85-2-306, and 85-2-315.~~

16 (5) "Declaration" means the declaration of an existing
17 right filed with the department under ~~85-2-203~~ section 8,
18 Chapter 452, Laws of 1973.

19 (6) "Department" means the department of natural
20 resources and conservation provided for in Title 2, chapter
21 15, part 33.

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

25 (8) "Groundwater" means any water beneath the land

1 surface or beneath the bed of a stream, lake, reservoir, or
2 other body of surface water, and which is not a part of that
3 surface water.

4 (9) "Permit" means the permit to appropriate issued by
5 the department under 85-2-301 through 85-2-303 and 85-2-304
6 through 85-2-314.

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

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

16 (12) "Waste" means the unreasonable loss of water
17 through the design or negligent operation of an
18 appropriation or water distribution facility or the
19 application of water to anything but a beneficial use.

20 (13) "Water" means all water of the state, surface and
21 subsurface, regardless of its character or manner of
22 occurrence, including geothermal water and diffuse surface
23 water.

24 (14) "Well" means any artificial opening or excavation
25 in the ground, however made, by which groundwater is sought

1 or can be obtained or through which it flows under natural
2 pressures or is artificially withdrawn."

3 Section 34. Section 85-2-112, MCA, is amended to read:

4 "85-2-112. Department duties. The department shall:

5 (1) enforce and administer this chapter and rules
6 adopted by the board under 85-2-113;

7 (2) prescribe procedures, forms, and requirements for
8 applications, permits, certificates, declarations, and
9 proceedings under this chapter and prescribe the information
10 to be contained in any application, declaration, or other
11 document to be filed with the department under this chapter;

12 (3) establish and keep in its Helena office a
13 centralized record system of all existing rights and a
14 public record of permits, certificates, declarations, claims
15 of existing rights, applications, and other documents filed
16 in its office under this chapter;

17 (4) cooperate with, assist, advise, and coordinate
18 plans and activities with the federal, state, and local
19 agencies in matters relating to this chapter;

20 (5) upon request by any person, cooperate with,
21 assist, and advise that person in matters pertaining to
22 measuring water or filing declarations with the department
23 or claims of existing rights with a water court under this
24 chapter."

25 Section 35. Section 85-2-113, MCA, is amended to read:

1 "85-2-113. Board powers and duties. (1) The board may
2 prescribe fees or service charges for any public service
3 rendered by the department under this chapter, including
4 fees for the filing of applications or for the issuance of
5 permits and certificates. There shall be no fees for the
6 filing of declarations or for any action taken by the
7 department at the request of a water court or for the
8 issuance of certificates of existing rights.

9 (2) The board may adopt rules necessary to implement
10 and carry out the purposes and provisions of this chapter.
11 These rules may include but are not limited to rules to:

12 (a) govern the issuance and terms of interim permits
13 authorizing an applicant for a regular permit under this
14 chapter to begin appropriating water immediately, pending
15 final approval or denial by the department of the
16 application for a regular permit;

17 (b) require the owner or operator of appropriation
18 facilities to install and maintain suitable controlling and
19 measuring devices;

20 (c) require the owner or operator of appropriation
21 facilities to report to the department the readings of
22 measuring devices at reasonable intervals and to file
23 reports on appropriations; and

24 (d) regulate the construction, use, and sealing of
25 wells to prevent the waste, contamination, or pollution of

1 groundwater.

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

6 Section 36. Section 85-2-114, MCA, is amended to read:

7 "85-2-114. Prevention of waste. (1) If the department
8 ascertains, by a means reasonably considered sufficient by
9 it, that a person is wasting water, using water unlawfully,
10 or preventing water from moving to another person having a
11 prior right to use the same, it may petition the ~~district~~
12 court supervising the distribution of water among
13 appropriators from the source to:

14 (a) regulate the controlling works of an appropriation
15 as may be necessary to prevent the wasting or unlawful use
16 of water or to secure water to a person having a prior right
17 to its use; or

18 (b) order the person wasting, unlawfully using, or
19 interfering with another's rightful use of the water to
20 cease and desist from doing so and to take such steps as may
21 be necessary to remedy the waste, unlawful use, or
22 interference.

23 (2) The department may attach to the controlling works
24 a written notice, properly dated and signed, setting forth
25 the fact that the controlling works have been properly

1 regulated by it, which notice shall be legal notice to all
2 persons interested in the appropriation or distribution of
3 the water.

4 (3) The department may also direct its own attorney or
5 request the attorney general or county attorney to bring
6 suit to enjoin such waste, unlawful use, or interference."

7 Section 37. Section 85-2-401, MCA, is amended to read:

8 "85-2-401. Priority. (1) As between appropriators, the
9 first in time is the first in right. Priority of
10 appropriation does not include the right to prevent changes
11 by later appropriators in the condition of water occurrence,
12 such as the increase or decrease of streamflow or the
13 lowering of a water table, artesian pressure, or water
14 level, if the prior appropriator can reasonably exercise his
15 water right under the changed conditions.

16 (2) Priority of appropriation made under this chapter
17 dates from the filing of an application for a permit with
18 the department, except as otherwise provided in 85-2-301
19 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

20 (3) Priority of appropriation perfected before July 1,
21 1973, shall be determined as provided in ~~85-2-201 through~~
22 ~~85-2-210~~ part 2 of this chapter."

23 Section 38. Section 85-2-405, MCA, is amended to read:

24 "85-2-405. Procedure for declaring appropriation
25 rights abandoned. (1) When the department has reason to

1 believe that an appropriator may have abandoned his
 2 appropriation right under 85-2-404 or when another
 3 appropriator in the opinion of the department files a valid
 4 claim that he has been or will be injured by the resumption
 5 of use of an appropriation right alleged to have been
 6 abandoned, the department shall petition the district court
 7 ~~which determined the existing rights in the source for the~~
 8 ~~county wherein the diversion of place of use~~ of the
 9 appropriation in question is located to hold a hearing to
 10 determine whether the appropriation right has been
 11 abandoned. Proceedings under this section shall be conducted
 12 in accordance with the Montana Rules of Civil Procedure, and
 13 appeal shall be taken in accordance with the Montana Rules
 14 of Appellate Civil Procedure.

15 (2) At the hearing, the burden of proof shall be on
 16 the department which must establish by a preponderance of
 17 the evidence that the appropriation has been abandoned under
 18 85-2-404.

19 (3) The determination of the court shall be appended
 20 to the final decree. The department shall keep a copy of the
 21 determination in its office in Helena."

22 Section 39. Section 85-2-406, MCA, is amended to read:

23 "85-2-406. ~~District court--supervision~~ Supervisor of
 24 water distribution. (1) The district courts shall supervise
 25 the distribution of water among all appropriators. This

1 supervisory authority includes the supervision of all water
 2 commissioners appointed prior or subsequent to July 1, 1973.
 3 The supervision shall be governed by the principle that
 4 first in time is first in right. A district court shall
 5 relinquish supervision of water distribution when a water
 6 court assumes responsibility for such supervision.

7 (2) When a water distribution controversy arises upon
 8 a source of water in which existing rights have not been
 9 determined according to ~~85-2-201 through 85-2-210~~ part 2 of
 10 this chapter, any party to the controversy may petition the
 11 district ~~water~~ court for relief. ~~The department shall be~~
 12 ~~served with process in any proceeding under this subsection~~
 13 ~~and shall, within a reasonable time thereafter, notify the~~
 14 ~~court whether it intends in its discretion, within a~~
 15 ~~reasonable time, to begin proceedings to determine existing~~
 16 ~~rights in the source, in accordance with part 2 of this~~
 17 ~~chapter. The department may, if it declines to commence~~
 18 ~~proceedings to determine existing rights in the source,~~
 19 ~~intervene as a party in the proceedings. The district court~~
 20 ~~from which relief is sought may grant such injunctive or~~
 21 ~~other relief which is necessary and appropriate to preserve~~
 22 ~~property rights or the status quo pending the department's~~
 23 ~~decision whether to determine existing rights in the source~~
 24 ~~or the department's decision to intervene as a party, as the~~
 25 ~~case may be, if the department does not proceed to obtain a~~

1 ~~determination of existing rights, the district court shall~~
 2 ~~settle only the controversy between the parties issuance of~~
 3 ~~the final decree.~~

4 (3) A controversy between appropriators from a source
 5 which has been the subject of a general determination of
 6 existing rights under ~~85-2-201 through 85-2-210~~ part 2 of
 7 this chapter shall be settled by the district court ~~which~~
 8 ~~issued the final decree for a county in which a diversion or~~
 9 ~~place of use germane to the controversy is located.~~ The
 10 order of the district court settling the controversy may not
 11 alter the existing rights and priorities established in the
 12 final decree. In cases involving permits issued by the
 13 department, the court may not amend the respective rights
 14 established in the permits or alter any terms of the permits
 15 unless the permits are inconsistent or interfere with rights
 16 and priorities established in the final decree. The order
 17 settling the controversy shall be appended to the final
 18 decree, and a copy shall be filed with the department. The
 19 department shall be served with process in any proceeding
 20 under this subsection, and the department may, in its
 21 discretion, intervene in the proceeding."

22 Section 40. Codification. (1) Sections 1 through 9 and
 23 section 11 of this act are intended to be codified as an
 24 integral part of Title 3, and the provisions contained in
 25 Title 3 apply to this act.

1 (2) Sections 12 through 26 are intended to be codified
 2 as an integral part of Title 85, chapter 4, and the
 3 provisions contained in Title 85, chapter 7, apply to this
 4 act.

5 (3) If the provisions of this act are not codified as
 6 stated above, the code commissioner shall add to the MCA, if
 7 necessary, statutory language to convey the intent of this
 8 section.

9 Section 41. Repealer. Sections 85-2-201 through
 10 85-2-210, MCA, are repealed.

11 Section 42. Effective date. Sections 8, 9, and 10 of
 12 this act are effective upon passage and approval.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received Jan. 9, 19 79, there is hereby submitted a Fiscal Note for SB 76 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

An act to adjudicate claims of existing water rights in Montana.

ASSUMPTIONS

1. 275,000 claims will be filed over a four year period at the rate of \$40 per claim as follows:

1st year - 8,250	3rd year - 55,000
2nd year - 27,500	4th year - 184,250

2. The current adjudication program in the Powder River Basin will continue.
3. Ten percent of the claims will be checked. The Department of Natural Resources and Conservation (DNRC) will keypunch data and microfilm claims.
4. Personal services costs will increase 6% each year.
5. The program in DNRC established to assist with adjudication will employ FTE employees as follows:
- | | |
|-----------------|------------------|
| FY1980 - 29 FTE | FY1983 - 103 FTE |
| FY1981 - 38 FTE | FY1984 - 103 FTE |
| FY1982 - 50 FTE | |
6. The Water Court will employ FTE employees as follows:
- | | |
|---------------|---------------|
| FY80 - 24 FTE | FY83 - 32 FTE |
| FY81 - 28 FTE | FY84 - 32 FTE |
| FY82 - 32 FTE | |
7. Costs of DNRC in excess of revenues collected under the proposed legislation will be paid from the State General Fund.
8. Minimal costs will be incurred in FY1979 by the Water Judge Nominating Commission.
9. No water judge will vacate his/her position in the 1981 Biennium; therefore, the Judicial Nominations Commission will not be required to meet to nominate persons to replace a water judge.
10. The Department of Fish and Game will necessarily expand fisheries field and other operations to:
- document, determine, and make filing on waters traditionally used by the seven operating state fish hatcheries,
 - file claims for water for instream purposes on 12 streams previously filed for in 1970 and 1971,
 - undertake extensive studies to document and support the amount of instream water necessary to maintain the aquatic resources at the current level for the above-mentioned twelve streams,
 - file claims on other waters where water rights were previously acquired or filed for instream purposes.
11. The Department of Fish and Game will generate revenues from federal and private sources to fund this expanded requirement.
12. The Department of State Lands will be required to inventory records, contact lessees, etc. to gather the necessary data to file claims. One additional FTE position and related operating expenses will be required. The additional cost to the Department of State Lands will be funded from the State General Fund.

Richard L. Drayton
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/17/79

FISCAL IMPACT

	<u>FY80</u>	<u>FY81</u>
Revenue from proposed filing fees	<u>\$ 330,000</u>	<u>\$1,100,000</u>
Expenditures		
Department of Natural Resources		
Personal services	429,740	598,773
Operating expenses	191,800	203,100
Equipment	112,000	29,000
	<u>733,540</u>	<u>830,873</u>
Water Court		
Personal services	464,088	543,079
Operating expenses	37,200	38,700
Equipment	15,000	5,000
	<u>516,288</u>	<u>586,779</u>
Department of Fish and Game		
Personal services	145,800	161,400
Operating expenses	60,750	67,250
Equipment	36,450	40,350
	<u>243,000</u>	<u>269,000</u>
Department of State Lands		
Personal services	13,019	13,800
Operating expenses	7,745	6,775
	<u>20,764</u>	<u>20,575</u>
 Total expenditures under proposed law	 <u>1,513,592</u>	 <u>1,707,227</u>
 Excess of expenditures over revenues under proposed law	 <u>1,183,592</u>	 <u>607,227</u>
 Less: Expenditures under current law		
Department of Natural Resources	190,800	202,200
Department of Fish and Game	40,000	44,000
Total expenditures under current law	<u>230,800</u>	<u>246,200</u>
 Net additional cost of proposed legislation in 1981 Biennium	 <u>\$ 952,792</u>	 <u>\$ 361,027</u>
 The net cost will be absorbed from monies from the following:		
State General Fund	\$ 749,792	\$ 136,027
Federal and Private Revenue Fund	203,000	225,000
	<u>\$ 952,792</u>	<u>\$ 361,027</u>

LONG TERM IMPACT

The following reflects in millions of dollars estimated receipts and expenditures under the proposed legislation for the six fiscal years ending June 30, 1985:

	<u>FY80</u>	<u>FY81</u>	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>TOTAL</u>
Revenue from filing fees	<u>\$0.33</u>	<u>\$1.10</u>	<u>\$2.20</u>	<u>\$7.37</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$11.00</u>
Expenditures							
Natural Resources	0.73	0.83	1.08	2.01	2.06	2.11	8.82
Water Court	0.52	0.59	0.68	0.71	0.75	0.80	4.05
Fish and Game	0.24	0.27	0.27	0.06	0	0	0.84
State Lands	<u>0.02</u>	<u>0.02</u>	<u>0.01</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.05</u>
	<u>1.51</u>	<u>1.71</u>	<u>2.04</u>	<u>2.78</u>	<u>2.81</u>	<u>2.91</u>	<u>13.76</u>
Less: Expenditures under current law							
Natural Resources	0.19	0.20	0	0	0	0	0.39
Fish and Game	<u>0.04</u>	<u>0.05</u>	<u>0.05</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.14</u>
	<u>0.23</u>	<u>0.25</u>	<u>0.05</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.53</u>
Total additional expenditures under proposed legislation	<u>1.28</u>	<u>1.46</u>	<u>1.99</u>	<u>2.78</u>	<u>2.81</u>	<u>2.91</u>	<u>13.23</u>
Net revenue (expenditure)	<u>\$(0.95)</u>	<u>\$(0.36)</u>	<u>\$0.21</u>	<u>\$4.59</u>	<u>\$(2.81)</u>	<u>\$(2.91)</u>	<u>\$(2.23)</u>

Funding for the six year net cost of the proposed legislation will be provided as follows:

General Fund	\$1.53 million
Federal and Private Revenue Fund	<u>0.70 million</u>
	<u>\$2.23 million</u>

LOCAL IMPACT

Local governments with applicable existing water rights would incur costs in research and filing claims. Also county clerk and recorder workloads will increase due to additional filing requirements, mailing costs, etc. Specific dollar amounts were not determined.

TECHNICAL NOTE

The Department of Natural Resources states that the proposed legislation contains various minor defects, and that the items of concern will be discussed at committee hearings.

STATE OF MONTANA

REQUEST NO. 7-79 (amended)

FISCAL NOTE

Form BD-15

In compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note for SB 76 (amended) 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:

An act to adjudicate claims of existing water rights in Montana.

ASSUMPTIONS:

1. 275,000 claims will be filed over a four year period at the rate of \$40 per claim as follows:

1st year - 8,250	3rd year - 55,000
2nd year - 27,500	4th year - 184,250

2. The current adjudication program in the Powder River Basin will continue to July 1, 1980.

3. Ten percent of the claims will be checked. The Department of Natural Resources and Conservation (DNRC) will keypunch data and microfilm claims; copies of claims will be submitted to each district court.

4. Personal services costs will increase 6% each year.

5. The program in DNRC established to assist with adjudication will employ FTE employees as follows:

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
Gross FTEs needed	35	59	123	131	131	131
Current Adjudication staff available	0	6	6	6	6	6
Net FTEs needed	<u>35</u>	<u>53</u>	<u>117</u>	<u>125</u>	<u>125</u>	<u>125</u>

6. The Water Court will employ FTE employees as follows:

FY80 - 0 FTE	FY83 - 8 FTE
FY81 - 2 FTE	FY84 - 8 FTE
FY82 - 8 FTE	

7. Costs of DNRC in excess of revenues collected under the proposed legislation will be paid from the State General Fund.

8. Minimal costs will be incurred in FY1979 to designate the water judges.

9. The Department of Fish and Game will necessarily expand fisheries field and other operations to:

- document, determine, and make filing on waters traditionally used by the seven operating state fish hatcheries,
- file claims for water for instream purposes on 12 streams previously filed for in 1970 and 1971,
- undertake extensive studies to document and support the amount of instream water necessary to maintain the aquatic resources at the current level for the above-mentioned twelve streams,
- file claims on other waters where water rights were previously acquired or filed for instream purposes.

0. The Department of Fish and Game will generate revenues from federal and private sources to fund this expanded requirement.

1. The Department of State Lands will be required to inventory records, contact lessees, etc. to gather the necessary data to file claims. One additional FTE position and related operating expenses will be required. The additional cost to the Department of State Lands will be funded from the State General Fund.

Richard L. Stanger
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4/12/79

STATE OF MONTANA

REQUEST NO. 7-79 (amended)

FISCAL NOTE

Form BD-15

In compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note for SB 76 (amended) 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.

FISCAL IMPACT:	FY80	FY81
Revenue from proposed filing fees	<u>\$ 330,000</u>	<u>\$1,100,000</u>
Expenditures		
Department of Natural Resources		
Personal services	502,441	912,861
Operating expenses	195,300	214,600
Equipment	<u>117,250</u>	<u>49,500</u>
	<u>814,991</u>	<u>1,176,961</u>
Water Court		
Personal services	0	57,753
Operating expenses	10,000	10,200
Equipment	<u>4,000</u>	<u>10,000</u>
	<u>14,000</u>	<u>77,953</u>
Department of Fish and Game		
Personal services	121,800	135,000
Operating expenses	50,750	56,250
Equipment	<u>30,450</u>	<u>33,750</u>
	<u>203,000</u>	<u>225,000</u>
Department of State Lands		
Personal services	13,019	13,800
Operating expenses	<u>7,745</u>	<u>6,775</u>
	<u>20,764</u>	<u>20,575</u>
Total expenditures under proposed law	<u>1,052,755</u>	<u>1,500,489</u>
Excess of expenditures over revenues under proposed law	<u>722,755</u>	<u>400,489</u>
Less: Expenditures under current law		
Department of Natural Resources	<u>0</u>	<u>180,000</u>
Net additional cost of proposed legislation in FY81	<u>\$ 722,755</u>	<u>\$ 220,489</u>

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

STATE OF MONTANA

REQUEST NO. 7-79 (amended)

FISCAL NOTE

Form BD-15

compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note
SB 76 (amended) 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.

FISCAL IMPACT (contd):

	<u>FY80</u>	<u>FY81</u>
The net cost will be absorbed from monies from the following:		
State General Fund	\$ 519,755	\$(4,511)
Other funds (Department of Fish and Game)	<u>203,000</u>	<u>225,000</u>
	<u>\$ 722,755</u>	<u>\$ 220,489</u>

LONG-TERM IMPACT:

The following reflects the estimated receipts and expenditures under the proposed legislation for the six fiscal years ending
 June 30, 1985:

	<u>FY80</u>	<u>FY81</u>	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>Total</u>
Revenue from filing fees	\$ 330,000	\$1,100,000	\$2,200,000	\$7,370,000	\$ 0	\$ 0	\$11,000,000
Expenditures							
DNRC	814,991	1,176,961	2,459,191	3,131,552	3,016,052	3,011,252	13,609,999
Water Court	14,000	77,953	287,112	279,087	294,882	310,747	1,263,781
Fish and Game	243,000	269,000	267,000	60,000	0	0	839,000
State Lands	20,764	20,575	9,450	0	0	0	50,789
	<u>1,092,755</u>	<u>1,544,489</u>	<u>3,022,753</u>	<u>3,470,639</u>	<u>3,310,934</u>	<u>3,321,999</u>	<u>15,763,569</u>
Less: Expenditures under current law							
DNRC	0	180,000	180,000	180,000	180,000	180,000	900,000
Fish and Game	40,000	44,000	48,000	0	0	0	132,000
Total	<u>40,000</u>	<u>224,000</u>	<u>228,000</u>	<u>180,000</u>	<u>180,000</u>	<u>180,000</u>	<u>1,032,000</u>
Total additional expenditures	<u>1,052,755</u>	<u>1,320,489</u>	<u>2,794,753</u>	<u>3,290,639</u>	<u>3,130,934</u>	<u>3,141,999</u>	<u>14,731,569</u>
Net revenue or (expenditure)	<u>\$(722,755)</u>	<u>\$(220,489)</u>	<u>\$(594,753)</u>	<u>\$4,079,361</u>	<u>\$(3,130,934)</u>	<u>\$(3,141,999)</u>	<u>\$(3,731,569)</u>

The estimated cost per claim for 6 year program only is $\$15,763,569 \div 275,000$ expected claims = \$57 per claim.

LONG-TERM FUNDING INFORMATION:

Funding for the six year net cost of the proposed legislation will be provided as follows:

General Fund	\$ 519,755	\$(4,511)	\$ 375,753	\$(4,139,361)	\$3,130,934	\$3,141,999	\$ 3,024,569
Other funds	<u>203,000</u>	<u>225,000</u>	<u>219,000</u>	<u>60,000</u>	<u>0</u>	<u>0</u>	<u>707,000</u>
	<u>\$ 722,755</u>	<u>\$ 220,489</u>	<u>\$ 594,753</u>	<u>\$(4,079,361)</u>	<u>\$3,130,934</u>	<u>\$3,141,999</u>	<u>\$ 3,731,569</u>

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

STATE OF MONTANA

REQUEST NO. 7-79 (amended)

FISCAL NOTE

Form BD-15

In compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note for SB 76 (amended) 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.

IMPACT BEYOND JUNE 30, 1985:

Program cost of \$3 million per year will continue at about the FY85 level of spending for the next 10 to 25 years for the courts and DNRC. Such spending would continue until all claims are adjudicated; then there will be yet some costs in administering the final decrees and keeping them updated.

The revenue collected through filing fees would be estimated to be spent by July 1985, and funds for the program would have to come from the general fund, additional fees, or other sources.

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

Approved by Committee
on Agriculture Livestock
& Irrigation

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,

GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,

THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF
EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-1-101,
3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404, 85-2-102,
85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405, AND
85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210,
MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Water courts established. (1)
To adjudicate existing water rights, a system of water
courts is established. A water court shall be presided over
by a water judge.

(2) There shall be one water judge for each water
court district. A water judge may sit in any district.

(3) The governor shall designate one water judge to
serve as chief water judge. The chief water judge may
distribute caseloads among the several water judges on an
equitable basis. The chief water judge shall be assigned to
a district and shall hear cases in that district on an

equitable basis with the other judges. The chief water
judge in consultation with the other water judges shall
determine the sites of the offices of the water courts.

NEW SECTION. Section 2. Water court districts
defined. (1) There are four water court districts whose
boundaries are formed by the natural divides between
drainages and the borders of the state of Montana and which
are described as follows:

(a) The Yellowstone River Basin water court district
consists of those areas drained by the Yellowstone and
Little Missouri Rivers and any remaining areas in Carter
County.

(b) The Lower Missouri River Basin water court
district consists of those areas drained by the Missouri
River from below the mouth of the Marias River and any
remaining areas in Glacier and Sheridan Counties.

(c) The Upper Missouri River Basin water court
district consists of those areas drained by the Missouri
River to below the mouth of the Marias River.

(d) The Clark Fork River Basin water court district
consists of the areas drained by the Clark Fork River, the
Kootenai River and any remaining areas in Lincoln County.

(2) Whenever a question arises concerning which water
court has jurisdiction over adjudication of an existing
right, the question shall be settled through consultation

*Please retain this copy. It will
not be run in blue unless necessary.*

1 with the water judges involved, subject to review by the
2 chief water judge.

3 NEW SECTION. Section 3. Salary, expenses, and
4 retirement of water judges. (1) A water judge is entitled to
5 the salary and expenses authorized by law for district
6 judges.

7 (2) A water judge shall participate in the Montana
8 judges' retirement system established in Title 19, chapter
9 5, on the same basis as a district court judge.

10 NEW SECTION. Section 4. Jurisdiction of the water
11 court. (1) A water court has exclusive jurisdiction in
12 matters arising in relation to the determination and
13 interpretation of existing water rights under [this act].
14 It is the intent of the legislature that all such matters be
15 brought in or immediately transferred to a water court
16 unless witnesses have been sworn and testimony has been
17 taken by the district court.

18 (2) The jurisdiction of the water court includes
19 jurisdiction to appoint and supervise water commissioners in
20 the same manner as authorized for district judges.

21 (3) The district court shall assume jurisdiction over
22 enforcement of the provisions of a final decree issued as
23 provided in [section 24 of this act].

24 NEW SECTION. Section 5. Procedure. (1) The water
25 court shall make rules, including rules of evidence,

1 necessary to accomplish the purposes of [this act].

2 (2) Except as may be specifically provided in this
3 section, procedures established in Title 25 applicable to
4 civil procedure in the district court apply to the water
5 court.

6 (3) The use of discovery in cases before the water
7 court may be exercised only to the extent specifically
8 authorized by order of the water court.

9 NEW SECTION. Section 6. Disqualification of water
10 judge. (1) A water judge may disqualify himself in any
11 proceeding in which his impartiality might reasonably be
12 questioned.

13 (2) A water judge may also disqualify himself in the
14 following circumstances:

15 (a) if he has a personal bias or prejudice concerning
16 a party or personal knowledge of disputed evidentiary facts
17 concerning the proceeding;

18 (b) if in private practice he served as a lawyer in
19 the matter in controversy or a lawyer with whom he
20 previously practiced law served during such association as a
21 lawyer concerning the matter or the judge or the lawyer has
22 been a material witness concerning it;

23 (c) if he has served in governmental employment and in
24 such capacity participated as counsel, adviser, or material
25 witness concerning the proceeding or expressed an opinion

1 concerning the merits of the particular case in controversy;

2 (d) if he knows that he, individually or as a
3 fiduciary, or his spouse or minor child residing in his
4 household has a financial interest in the subject matter in
5 controversy or in a party to the proceeding or any other
6 interest that could be substantially affected by the outcome
7 of the proceeding; or

8 (e) if he or his spouse or a person within the third
9 degree of relationship to either of them (as calculated
10 according to 72-11-101 through 72-11-105) or the spouse of
11 such a person:

12 (i) is a party to the proceeding or an officer,
13 director, or trustee of a party;

14 (ii) is known by the judge to have an interest that
15 could be substantially affected by the outcome of the
16 proceeding;

17 (iii) is to the judge's knowledge likely to be a
18 material witness in the proceeding.

19 (3) A water judge should inform himself about his
20 personal and fiduciary financial interests and make a
21 reasonable effort to inform himself about the personal
22 financial interests of his spouse and minor children
23 residing in his household.

24 (4) For the purposes of this section the following
25 definitions apply:

1 (a) "Proceeding" includes prehearing, hearing,
2 appellate review, or other stages of adjudication.

3 (b) "Fiduciary" includes such relationships as
4 executor, administrator, trustee, or guardian.

5 (c) "Financial interest" means ownership of a legal or
6 equitable interest, however small, or a relationship as
7 director, adviser, or other active participant in the
8 affairs of a party, except that:

9 (i) ownership in a mutual or common investment fund
10 that holds securities is not a financial interest in such
11 securities unless the judge participates in the management
12 of the fund;

13 (ii) an office in an educational, religious,
14 charitable, fraternal, or civic organization is not a
15 financial interest in securities held by the organization;

16 (iii) the proprietary interest of a policyholder in a
17 mutual insurance company or a depositor in a mutual savings
18 association or a similar proprietary interest is a financial
19 interest in the organization only if the outcome of the
20 proceeding could substantially affect the value of the
21 interest; and

22 (iv) ownership of government securities is a financial
23 interest in the issuer only if the outcome of the proceeding
24 could substantially affect the value of the securities.

25 (5) A water judge may accept from the parties to the

1 proceeding a waiver of any ground for disqualification if it
2 is preceded by a full disclosure on the record of the basis
3 for disqualification.

4 (6) The procedure for disqualification of a water
5 judge specified in this section is exclusive.

6 NEW SECTION. Section 7. Appeals from water court. The
7 supreme court has exclusive jurisdiction over appeals from a
8 water court. Appeal procedures shall be governed by the
9 Montana Rules of Appellate Civil Procedure.

10 NEW SECTION. Section 8. Qualifications of a water
11 judge. To be eligible to serve as a water judge, a person
12 must have the qualifications of a district court judge
13 required by Article VII, section 9, subsections (1) through
14 (3), of the constitution of Montana. A water judge shall
15 reside within the state.

16 NEW SECTION. Section 9. Creation, composition,
17 function, and termination of water judge nominating
18 commission. (1) A water judge nominating commission is
19 created. Its function is to provide the governor with
20 nominees for appointment as water judges. The commission
21 shall be composed of seven members appointed as follows:

22 (a) two members of the house of representatives
23 appointed by the speaker, not more than one of whom is from
24 the same political party;

25 (b) two members of the senate appointed by the

1 president, not more than one of whom is from the same
2 political party;

3 (c) one member appointed by the governor;

4 (d) one member appointed by the supreme court;

5 (e) one member appointed by the board of directors of
6 the state bar of Montana.

7 (2) Appointments shall be made [within 30 days of the
8 effective date of this section].

9 (3) In the event of a vacancy, the position shall be
10 filled as in the manner of the original appointment.

11 (4) The water judge nominating commission shall meet
12 as often as required to select the nominees. The
13 commission shall nominate three persons for the position of
14 chief water judge and five persons for positions as water
15 judges.

16 (5) The water judge nominating commission shall
17 organize itself and conduct its business under the
18 procedures provided for the nominating commission.

19 (6) Upon the acceptance of appointment by nominees as
20 water judges in each water court district, the water judge
21 nominating commission ceases to exist. Thereafter
22 nomination and appointment of water judges shall be as
23 provided for district court judge.

24 (7) Not later than July 1, 1979, the governor shall
25 appoint a chief water judge and three other water judges

1 from among lists of nominees presented by the water judge
2 nominating commission.

3 **NEW_SECTION.** Section 10. Appointment of water judges
4 to fill vacancy. (1) If a vacancy occurs, the governor shall
5 appoint a person to complete the unexpired term in the same
6 manner as provided for the appointment of a district judge.

7 (2) Appointments to subsequent terms shall be made in
8 the same manner as filling a vacancy.

9 **NEW_SECTION.** Section 11. Water judges -- term of
10 office. The term of office for water judges is from July 1,
11 1979, to June 30, 1985. After June 30, 1985, the term of
12 office of a water judge is 4 years, subject to continuation
13 of the water court system by the legislature.

14 **NEW_SECTION.** Section 12. Claim of existing water
15 right -- filing statement of claim required -- exemptions.

16 (1) A person claiming an existing right, unless exempted
17 below, shall file with the water court for the water court
18 district wherein the diversion occurs no later than June 30,
19 1983, a statement of claim for each water right asserted on
20 a form provided by the department of natural resources and
21 conservation. If there is a claimed right with no ~~division~~
22 **DIVERSION**, the filing shall be made in the district where
23 the use occurs.

24 (2) Claims for existing rights for livestock and
25 **INDIVIDUAL AS OPPOSED TO MUNICIPAL** domestic uses based upon

1 instream flow or groundwater sources and claims for rights
2 included in a declaration filed pursuant to the order of a
3 district court issued under sections 8 and 9 of Chapter 452,
4 Laws of 1973, as amended, are exempt from the filing
5 requirements of subsection (1) of this section. Such claims
6 may, however, be voluntarily filed.

7 **NEW_SECTION.** Section 13. Department of fish and game
8 to represent public recreational uses. The department of
9 fish and game shall exclusively represent the public for
10 purposes of establishing any prior and existing public
11 recreational use in existing right determinations under
12 [sections 12 through 26], provided that the foregoing shall
13 not be construed in any manner as a legislative
14 determination of whether or not a recreational use sought to
15 be established prior to July 1, 1973, is or was a beneficial
16 use.

17 **NEW_SECTION.** Section 14. Statement of claim --
18 contents. (1) The statement of claim for each right shall
19 include substantially the following:

- 20 (a) the name and mailing address of the claimant;
- 21 (b) the name of the watercourse or water source from
22 which the right to divert or make use of water is claimed,
23 if available;
- 24 (c) the quantities of water and times of use claimed;
- 25 (d) the legal description, with reasonable certainty,

1 of the point or points of diversion and places of use of
2 waters;

3 (e) the purpose of use, including, if for irrigation,
4 the number of acres irrigated;

5 (f) the approximate dates of first putting water to
6 beneficial use for the various amounts and times claimed in
7 subsection (c); and

8 (g) the sworn statement that the claim set forth is
9 true and correct to the best of claimant's knowledge and
10 belief.

11 (2) The claimant may submit maps, plats, aerial
12 photographs, decrees, or other evidence in support of his
13 claim.

14 NEW SECTION. Section 15. Abandonment by failure to
15 file claim. The failure to file a claim of an existing right
16 as required by [section 12] establishes a rebuttable
17 presumption of abandonment of that right.

18 NEW SECTION. Section 16. Claim to constitute prima
19 facie evidence. A claim of an existing right filed in
20 accordance with [section 12] constitutes prima facie proof
21 of its content until the issuance of a final decree.

22 NEW SECTION. Section 17. Notice of requirement to
23 file claim. The department shall provide notice of the
24 requirement to file a statement of a claim of an existing
25 water right in substantially the following form:

1 WATER RIGHTS NOTICE

2 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT
3 IN A REBUTTABLE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
4 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence
5 shall be printed in not less than 12-point boldface type.)
6 This is notice of commencement of procedures for the general
7 adjudication of existing rights to the use of water and of
8 the requirement to file a claim for certain rights. Every
9 person, including but not limited to an individual,
10 partnership, association, public or private corporation,
11 city or other municipality, county, state agency or the
12 state of Montana, and federal agency or the United States of
13 America, asserting a claim to an existing right to the use
14 of water which would be protected under the law as it
15 existed prior to July 1, 1973, is notified that a statement
16 of claim to that right is required to be filed with the
17 water court for the water court district wherein water is
18 diverted or used for the right claimed no later than June
19 30, 1983. Claims for stock and domestic uses based upon
20 instream flow or groundwater sources are exempt from this
21 requirement; however, claims for such uses may be
22 voluntarily filed. Claims filed with the department in a
23 declaration filed pursuant to the order of a district court
24 issued pursuant to sections 8 and 9 of Chapter 452, Laws of
25 1973, as amended, are also exempt.

1 For further information, contact the department of
2 natural resources and conservation, Helena, Montana, for a
3 copy of the law and an explanation of it.

4 NEW SECTION. Section 18. How notice to be given. To
5 assure that all persons who may claim an existing water
6 right are notified of the requirement to file a claim of
7 that right, the department of natural resources and
8 conservation shall give notice as follows:

9 (1) It shall cause a notice printed in not less than
10 10-point type to be placed in a prominent and conspicuous
11 place in all daily newspapers of the state and in at least
12 one newspaper published in each county of the state during
13 the month of July, 1979, and in April of 1980, 1981, 1982,
14 and 1983.

15 (2) It shall cause a notice in writing to be placed in
16 a prominent and conspicuous location in each county
17 courthouse in the state.

18 (3) It shall provide a sufficient number of copies of
19 the notice to the county treasurers before October 15, 1979,
20 1980, 1981, and 1982, and the county treasurers shall
21 enclose a copy of the notice with each statement of property
22 taxes mailed in 1979, 1980, 1981, and 1982. In the
23 implementation of this subsection, the department shall
24 provide reimbursement to each county treasurer for the
25 reasonable additional costs incurred by the treasurer

1 arising from the inclusion of the notice required by this
2 section.

3 (4) It shall provide copies of the notice in writing
4 to the press services with offices located in Helena during
5 July, 1979, and April of 1980, 1981, 1982, and 1983.

6 (5) The water court may also in its discretion give
7 notice in any other manner that will carry out the purposes
8 of this section.

9 NEW SECTION. Section 19. Filing fee -- special
10 account created. (1) Each claim filed under [section 12]
11 shall be accompanied by a fee in the amount of \$40, subject
12 to the following exceptions:

13 (a) the total fees for all claims filed by one person
14 in any one water court district may not exceed \$480; and

15 (b) no fee is required accompanying a claim of an
16 existing right that is included in a decree of a court in
17 the state of Montana and which is accompanied by a certified
18 copy of that decree or verified as otherwise ordered by the
19 court.

20 (2) There is established a water right adjudication
21 account in the earmarked revenue fund of the state treasury.
22 All fees collected under [sections 19 and 22] shall be
23 deposited in the account to pay the expenses incurred for
24 administering [this act].

25 SECTION 20. THERE IS A NEW MCA SECTION THAT READS:

1 Expenses to be borne by state. All expenses encountered
 2 as a result of this act are to be paid from the earmarked
 3 revenue fund of the state treasury. Expenses shall include
 4 but not be limited to the salaries and expenses of
 5 personnel, equipment, office space, and other necessities of
 6 the water courts. If sufficient revenue is not available
 7 from the earmarked revenue fund, said expense shall be paid
 8 from the state's general fund.

9 **NEW SECTION.** Section 21. Adjudication of existing
 10 rights. (1) The state of Montana upon relation of the
 11 attorney general shall petition each water court to require
 12 all persons claiming a right within the water court district
 13 to file a claim of the right as provided in [section 12].

14 (2) The requirement by the water court to file a claim
 15 for an existing right is the first step in proceedings for
 16 the general adjudication of all existing rights to the use
 17 of water which would be protected under the law as it
 18 existed prior to July 1, 1973.

19 (3) The water court shall monitor the claim filing
 20 procedure and make any orders necessary to assure timely and
 21 accurate compliance with the claim filing procedure.

22 **NEW SECTION.** Section 22. Department assistance to
 23 water court. The department, subject to the direction of the
 24 water court, shall, without cost to the water court:

25 (1) provide such information and assistance as may be

1 required by the water court to adjudicate claims of existing
 2 rights;

3 (2) establish information and assistance programs to
 4 aid claimants in the filing of claims for existing rights
 5 required by [section 12];

6 (3) conduct field investigations of randomly selected
 7 claims or claims that the water court determines warrant
 8 investigation; and

9 (4) provide the water courts with all information in
 10 its possession bearing upon existing rights.

11 **NEW SECTION.** Section 23. Preliminary decree. (1)
 12 Within a reasonable time after June 30, 1983, the water
 13 court shall issue a preliminary decree. The preliminary
 14 decree shall be based on the data submitted by the
 15 department and on any additional data obtained by the court.

16 (2) The preliminary decree shall contain the
 17 information and make the determinations, findings, and
 18 conclusions required for the final decree under [section
 19 24].

20 (3) The water court shall send a copy of the
 21 preliminary decree to the department, and the court shall
 22 serve by mail a notice of availability of the preliminary
 23 decree to each person named in the preliminary decree. The
 24 clerk or person designated by the court to mail the notice
 25 shall make a general certificate of mailing certifying that

1 a copy of the notice has been placed in the United States
2 mail, postage prepaid, addressed to each party in the
3 preliminary decree. Such certificate shall be conclusive
4 evidence of due and legal notice of entry of decree.

5 (4) Any person may obtain a copy of the preliminary
6 decree upon payment of a fee of \$20 to the water court.

7 NEW SECTION. Section 24. Hearing on preliminary
8 decree. (1) Upon objection to the preliminary decree by the
9 department, a person named in the preliminary decree, or any
10 other person, for good cause shown, the department or such
11 person is entitled to a hearing thereon before the water
12 court.

13 (2) If a hearing is requested, such request must be
14 filed with the water court within 90 days after notice of
15 entry of the preliminary decree. The water court shall, for
16 good cause shown, extend this time limit an additional 30
17 days if application for the extension is made within 90 days
18 after notice of entry of the preliminary decree.

19 (3) The request for a hearing shall contain a precise
20 statement of the findings and conclusions in the preliminary
21 decree with which the department or person requesting the
22 hearing disagrees. The request shall specify the paragraphs
23 and pages containing the findings and conclusions to which
24 objection is made. The request shall state the specific
25 grounds and evidence on which the objections are based.

1 (4) Upon expiration of the time for filing objections
2 and upon receipt of a request for a hearing, the court shall
3 notify each party named in the preliminary decree that a
4 hearing has been requested. The court shall fix a day when
5 all parties who wish to participate in future proceedings
6 must appear or file a statement. The court shall then set a
7 date for a hearing. The court may conduct individual or
8 consolidated hearings. A hearing shall be conducted as for
9 other civil actions.

10 NEW SECTION. Section 25. Final decree. (1) The water
11 court shall, on the basis of the preliminary decree and on
12 the basis of any hearing that may have been held, enter a
13 final decree affirming or modifying the preliminary decree.
14 If no request for a hearing is filed within the time
15 allowed, the preliminary decree automatically becomes final,
16 and the court shall enter it as the final decree.

17 (2) The final decree shall establish the existing
18 rights and priorities within the water court district of
19 persons required by [section 12] to file a claim for an
20 existing right and of persons who filed declarations
21 pursuant to an order of a district court issued under
22 sections 8 and 9 of Chapter 452, Laws of 1973.

23 (3) The final decree shall state the findings of fact,
24 along with any conclusions of law, upon which the existing
25 rights and priorities of each person named in the decree are

1 based.

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

4 (a) the name and post-office address of the owner of
5 the right;

6 (b) the amount of water, rate, and volume, included in
7 the right;

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

9 (d) the purpose for which the water included in the
10 right is used;

11 (e) the place of use and a description of the land, if
12 any, to which the right is appurtenant;

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

14 (g) the place and means of diversion;

15 (h) the inclusive dates during which the water is used
16 each year;

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

19 NEW SECTION. Section 26. Appeals from final decree.

20 (1) A person whose existing rights and priorities are
21 determined in the final decree may appeal the determination
22 only if:

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

25 (b) his rights as determined in the preliminary decree

1 were altered as the result of a hearing requested by another
2 person.

3 (2) An appeal from the final decree shall be taken as
4 provided by the Montana Rules of Appellate Civil Procedure.

5 NEW SECTION. Section 27. Certificate of water right.
6 When a final decree is entered, the court shall send a copy
7 to the department. The department shall on the basis of the
8 final decree issue a certificate of water right to each
9 person decreed an existing right. The original of the
10 certificate shall be sent to the county clerk and recorder
11 of the county where the point of diversion or place of use
12 is located for recordation. The department shall keep a
13 copy of the certificate in its office in Helena. After
14 recordation, the clerk and recorder shall send the
15 certificate to the person to whom the right is decreed.

16 Section 28. Section 3-1-101, MCA, is amended to read:

17 "3-1-101. The several courts of this state. The
18 following are courts of justice of this state:

19 (1) the court of impeachment, which is the senate;

20 (2) the supreme court;

21 (3) the district courts;

22 ~~(4) the water courts;~~

23 ~~(4)(5) the justices' courts;~~

24 ~~(5)(6) the city courts and such other inferior courts~~
25 as the legislature may establish in any incorporated city or

1 town."

2 Section 29. Section 3-1-102, MCA, is amended to read:

3 "3-1-102. Courts of record. The court of impeachment,
4 the supreme court, the district courts, ~~the water courts,~~
5 and the municipal courts are courts of record."

6 Section 30. Section 3-1-1001, MCA, is amended to read:

7 "3-1-1001. Creation, composition, and function of
8 commission. A judicial nomination commission for the state
9 of Montana is created. Its function is to provide the
10 governor with a list of candidates for nomination to fill
11 any vacancy on the supreme court, ~~or any district court,~~ or
12 a water court of the state of Montana. The commission shall
13 be composed of seven members as follows:

14 (1) four lay members who are neither judges nor
15 attorneys, active or retired, who reside in different
16 geographical areas of the state, and each of whom is
17 representative of a different industry, business, or
18 profession, whether actively so engaged or retired, who
19 shall be appointed by the governor;

20 (2) two attorneys actively engaged in the practice of
21 law, one from each congressional district, who shall be
22 appointed by the supreme court;

23 (3) one district judge elected by the district judges
24 under an elective procedure initiated and conducted by the
25 supreme court and certified to such election by the chief

1 justice of the supreme court. The election shall be
2 considered an appointment for the purposes of this part."

3 Section 31. Section 3-1-1010, MCA, is amended to read:

4 "3-1-1010. List submitted to governor. The commission
5 shall meet forthwith after a vacancy occurs on the supreme
6 court, ~~or a district court,~~ or a water court and submit to
7 the governor within 30 days from the date of the vacancy a
8 list of not less than three or more than five persons."

9 Section 32. Section 19-5-301, MCA, is amended to read:

10 "19-5-301. Membership. (1) A judge or justice who was
11 a member of the PERS prior to March 2, 1967, may elect to
12 remain under that system by notifying the public employees'
13 retirement board in writing of the election on or before
14 October 1, 1967.

15 (2) Every other judge of a district court, water
16 court, or justice of the supreme court must be a member of
17 the Montana judges' retirement system."

18 Section 33. Section 19-5-404, MCA, is amended to read:

19 "19-5-404. Contributions by the state. The state of
20 Montana shall contribute monthly to the fund a sum equal to
21 6% of the salary of each member. In addition, the clerk of
22 each district court shall transmit 60% of the fees collected
23 under 25-1-201 to the state, which shall first deposit in
24 the fund an amount equal to 20% of the salaries paid to
25 district judges, water judges, and supreme court justices

1 who are covered by the judges' retirement system and then
 2 deposit the balance in the state general fund. The clerk of
 3 the supreme court shall pay one-fourth of the fees collected
 4 under 3-2-403 to the public employees' retirement division
 5 of the department of administration to be credited to the
 6 fund."

7 Section 34. Section 85-2-102, MCA, is amended to read:

8 "85-2-102. Definitions. Unless the context requires
 9 otherwise, in this chapter the following definitions apply:

10 (1) "Appropriate" means to divert, impound, or
 11 withdraw (including by stock for stock water) a quantity of
 12 water or, in the case of a public agency, to reserve water
 13 in accordance with 85-2-316.

14 (2) "Beneficial use" means a use of water for the
 15 benefit of the appropriator, other persons, or the public,
 16 including but not limited to agricultural (including stock
 17 water), domestic, fish and wildlife, industrial, irrigation,
 18 mining, municipal, power, and recreational uses. A use of
 19 water for slurry to export coal from Montana is not a
 20 beneficial use. Slurry is a mixture of water and insoluble
 21 matter.

22 (3) "Board" means the board of natural resources and
 23 conservation provided for in 2-15-3302.

24 (4) "Certificate" means the a certificate of water
 25 right issued by the department under ~~85-2-210~~ subsections

1 ~~(1) and (2) of 85-2-306 and 85-2-315.~~

2 (5) "Declaration" means the decaration of an existing
 3 right filed with the department under 85-2-203 section 8
 4 Chapter 452, Laws of 1973.

5 (6) "Department" means the department of natural
 6 resources and conservation provided for in Title 2, chapter
 7 15, part 33.

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

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

15 (9) "Permit" means the permit to appropriate issued by
 16 the department under 85-2-301 through 85-2-303 and 85-2-306
 17 through 85-2-314.

18 (10) "Person" means an individual, association,
 19 partnership, corporation, state agency, political
 20 subdivision, the United States or any agency thereof, or any
 21 other entity.

22 (11) "Political subdivision" means any county,
 23 incorporated city or town, public corporation, or district
 24 created pursuant to state law or other public body of the
 25 state empowered to appropriate water but not a private

1 corporation, association, or group.

2 (12) "Waste" means the unreasonable loss of water
3 through the design or negligent operation of an
4 appropriation or water distribution facility or the
5 application of water to anything but a beneficial use.

6 (13) "Water" means all water of the state, surface and
7 subsurface, regardless of its character or manner of
8 occurrence, including geothermal water and diffuse surface
9 water.

10 (14) "Well" means any artificial opening or excavation
11 in the ground, however made, by which groundwater is sought
12 or can be obtained or through which it flows under natural
13 pressures or is artificially withdrawn."

14 Section 35. Section 85-2-112, MCA, is amended to read:

15 "85-2-112. Department duties. The department shall:

16 (1) enforce and administer this chapter and rules
17 adopted by the board under 85-2-113;

18 (2) prescribe procedures, forms, and requirements for
19 applications, permits, certificates, declarations, and
20 proceedings under this chapter and prescribe the information
21 to be contained in any application, declaration, or other
22 document to be filed with the department under this chapter;

23 (3) ~~establish and~~ keep in its Helena office a
24 centralized ~~record system of all existing rights and a~~
25 public record of permits, certificates, declarations, ~~claims~~

1 ~~of existing rights,~~ applications, and other documents filed
2 in its office under this chapter;

3 (4) cooperate with, assist, advise, and coordinate
4 plans and activities with the federal, state, and local
5 agencies in matters relating to this chapter;

6 (5) upon request by any person, cooperate with,
7 assist, and advise that person in matters pertaining to
8 measuring water or filing declarations with the department
9 ~~or claims of existing rights with a water court~~ under this
10 chapter."

11 Section 36. Section 85-2-113, MCA, is amended to read:

12 "85-2-113. Board powers and duties. (1) The board may
13 prescribe fees or service charges for any public service
14 rendered by the department under this chapter, including
15 fees for the filing of applications or for the issuance of
16 permits and certificates. There shall be no fees for the
17 filing of declarations or for ~~any action taken by the~~
18 ~~department at the request of a water court or for~~ the
19 issuance of certificates of existing rights.

20 (2) The board may adopt rules necessary to implement
21 and carry out the purposes and provisions of this chapter.
22 These rules may include but are not limited to rules to:

23 (a) govern the issuance and terms of interim permits
24 authorizing an applicant for a regular permit under this
25 chapter to begin appropriating water immediately, pending

1 final approval or denial by the department of the
2 application for a regular permit;

3 (b) require the owner or operator of appropriation
4 facilities to install and maintain suitable controlling and
5 measuring devices;

6 (c) require the owner or operator of appropriation
7 facilities to report to the department the readings of
8 measuring devices at reasonable intervals and to file
9 reports on appropriations; and

10 (d) regulate the construction, use, and sealing of
11 wells to prevent the waste, contamination, or pollution of
12 groundwater.

13 (3) The board shall adopt rules providing for and
14 governing temporary emergency appropriations, without prior
15 application for a permit, necessary to protect lives or
16 property."

17 Section 37. Section 85-2-114, MCA, is amended to read:

18 "85-2-114. Prevention of waste. (1) If the department
19 ascertains, by a means reasonably considered sufficient by
20 it, that a person is wasting water, using water unlawfully,
21 or preventing water from moving to another person having a
22 prior right to use the same, it may petition the district
23 court supervising the distribution of water among
24 appropriators from the source to:

25 (a) regulate the controlling works of an appropriation

1 as may be necessary to prevent the wasting or unlawful use
2 of water or to secure water to a person having a prior right
3 to its use; or

4 (b) order the person wasting, unlawfully using, or
5 interfering with another's rightful use of the water to
6 cease and desist from doing so and to take such steps as may
7 be necessary to remedy the waste, unlawful use, or
8 interference.

9 (2) The department may attach to the controlling works
10 a written notice, properly dated and signed, setting forth
11 the fact that the controlling works have been properly
12 regulated by it, which notice shall be legal notice to all
13 persons interested in the appropriation or distribution of
14 the water.

15 (3) The department may also direct its own attorney or
16 request the attorney general or county attorney to bring
17 suit to enjoin such waste, unlawful use, or interference."

18 Section 38. Section 85-2-401, MCA, is amended to read:

19 "85-2-401. Priority. (1) As between appropriators, the
20 first in time is the first in right. Priority of
21 appropriation does not include the right to prevent changes
22 by later appropriators in the condition of water occurrence,
23 such as the increase or decrease of streamflow or the
24 lowering of a water table, artesian pressure, or water
25 level, if the prior appropriator can reasonably exercise his

1 water right under the changed conditions.

2 (2) Priority of appropriation made under this chapter
3 dates from the filing of an application for a permit with
4 the department, except as otherwise provided in 85-2-301
5 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

6 (3) Priority of appropriation perfected before July 1,
7 1973, shall be determined as provided in ~~85-2-201 through~~
8 ~~85-2-210 part 2 of this chapter.~~"

9 Section 39. Section 85-2-405, MCA, is amended to read:

10 "85-2-405. Procedure for declaring appropriation
11 rights abandoned. (1) When the department has reason to
12 believe that an appropriator may have abandoned his
13 appropriation right under 85-2-404 or when another
14 appropriator in the opinion of the department files a valid
15 claim that he has been or will be injured by the resumption
16 of use of an appropriation right alleged to have been
17 abandoned, the department shall petition the district court
18 ~~which--determined--the-existing-rights-in-the-source~~ for the
19 county wherein the diversion of place of use of the
20 appropriation in question is located to hold a hearing to
21 determine whether the appropriation right has been
22 abandoned. Proceedings under this section shall be conducted
23 in accordance with the Montana Rules of Civil Procedure, and
24 appeal shall be taken in accordance with the Montana Rules
25 of Appellate Civil Procedure.

1 (2) At the hearing, the burden of proof shall be on
2 the department which must establish by a preponderance of
3 the evidence that the appropriation has been abandoned under
4 85-2-404.

5 (3) The determination of the court shall be appended
6 to the final decree. The department shall keep a copy of the
7 determination in its office in Helena."

8 Section 40. Section 85-2-406, MCA, is amended to read:

9 "85-2-406. ~~District--court--supervision~~ Supervisor of
10 water distribution. (1) The district courts shall supervise
11 the distribution of water among all appropriators. This
12 supervisory authority includes the supervision of all water
13 commissioners appointed prior or subsequent to July 1, 1973.
14 The supervision shall be governed by the principle that
15 first in time is first in right. A district court shall
16 relinquish supervision of water distribution when a water
17 court assumes responsibility for such supervision.

18 (2) When a water distribution controversy arises upon
19 a source of water in which existing rights have not been
20 determined according to ~~85-2-201 through 85-2-210 part 2 of~~
21 this chapter, any party to the controversy may petition the
22 ~~district water~~ court for relief. ~~The--department--shall--be~~
23 ~~served--with-process-in-any-proceeding-under-this-subsection~~
24 ~~and--shall--within-a-reasonable-time-thereafter--notify--the~~
25 ~~court--whether--it--intends--in--its--discretion--within--a~~

~~1 reasonable time to begin proceedings to determine existing~~
~~2 rights in the source in accordance with part 2 of this~~
~~3 chapter. The department may, if it declines to commence~~
~~4 proceedings to determine existing rights in the source~~
~~5 intervene as a party in the proceeding. The district court~~
~~6 from which relief is sought may grant such injunctive or~~
~~7 other relief which is necessary and appropriate to preserve~~
~~8 property rights or the status quo pending the department's~~
~~9 decision whether to determine existing rights in the source~~
~~10 or the department's decision to intervene as a party as the~~
~~11 case may be if the department does not proceed to obtain a~~
~~12 determination of existing rights, the district court shall~~
~~13 settle only the controversy between the parties issuance of~~
~~14 the final decree.~~

15 (3) A controversy between appropriators from a source
 16 which has been the subject of a general determination of
 17 existing rights under 85-2-201 through 85-2-210 part 2 of
 18 this chapter shall be settled by the district court which
 19 issued the final decree for a county in which a diversion or
 20 place of use germane to the controversy is located. The
 21 order of the district court settling the controversy may not
 22 alter the existing rights and priorities established in the
 23 final decree. In cases involving permits issued by the
 24 department, the court may not amend the respective rights
 25 established in the permits or alter any terms of the permits

1 unless the permits are inconsistent or interfere with rights
 2 and priorities established in the final decree. The order
 3 settling the controversy shall be appended to the final
 4 decree, and a copy shall be filed with the department. The
 5 department shall be served with process in any proceeding
 6 under this subsection, and the department may, in its
 7 discretion, intervene in the proceeding.*

8 Section 41. Codification. (1) Sections 1 through 9 and
 9 section 11 of this act are intended to be codified as an
 10 integral part of Title 3, and the provisions contained in
 11 Title 3 apply to this act.

12 (2) Sections 12 through 26 are intended to be codified
 13 as an integral part of Title 85, chapter 2, and the
 14 provisions contained in Title 85, chapter 2, apply to this
 15 act.

16 (3) If the provisions of this act are not codified as
 17 stated above, the code commissioner shall add to the MCA, if
 18 necessary, statutory language to convey the intent of this
 19 section.

20 Section 42. Repealer. Sections 85-2-201 through
 21 85-2-210, MCA, are repealed.

22 Section 43. Effective date. Sections 8, 9, and 10 of
 23 this act are effective upon passage and approval.

-End-

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,

GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,

THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-1-101, 3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404, 85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405, AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Water courts established. (1) To adjudicate existing water rights, a system of water courts is established. A water court shall be presided over by a water judge.

(2) There shall be one water judge for each water court district. A water judge may sit in any district.

(3) The governor shall designate one water judge to serve as chief water judge. The chief water judge may distribute caseloads among the several water judges on an equitable basis. The chief water judge shall be assigned to a district and shall hear cases in that district on an

equitable basis with the other judges. The chief water judge in consultation with the other water judges shall determine the sites of the offices of the water courts.

NEW SECTION. Section 2. Water court districts defined. (1) There are four water court districts whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(a) The Yellowstone River Basin water court district consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(b) The Lower Missouri River Basin water court district consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(c) The Upper Missouri River Basin water court district consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(d) The Clark Fork River Basin water court district consists of the areas drained by the Clark Fork River, the Kootenai River and any remaining areas in Lincoln County.

(2) Whenever a question arises concerning which water court has jurisdiction over adjudication of an existing right, the question shall be settled through consultation

There are no changes in SB 76, and due to length will not be rerun. Please refer to yellow copy for complete text.

1 with the water judges involved, subject to review by the
2 chief water judge.

3 NEW SECTION. Section 3. Salary, expenses, and
4 retirement of water judges. (1) A water judge is entitled to
5 the salary and expenses authorized by law for district
6 judges.

7 (2) A water judge shall participate in the Montana
8 judges' retirement system established in Title 19, chapter
9 5, on the same basis as a district court judge.

10 NEW SECTION. Section 4. Jurisdiction of the water
11 court. (1) A water court has exclusive jurisdiction in
12 matters arising in relation to the determination and
13 interpretation of existing water rights under [this act].
14 It is the intent of the legislature that all such matters be
15 brought in or immediately transferred to a water court
16 unless witnesses have been sworn and testimony has been
17 taken by the district court.

18 (2) The jurisdiction of the water court includes
19 jurisdiction to appoint and supervise water commissioners in
20 the same manner as authorized for district judges.

21 (3) The district court shall assume jurisdiction over
22 enforcement of the provisions of a final decree issued as
23 provided in [section 24 of this act].

24 NEW SECTION. Section 5. Procedure. (1) The water
25 court shall make rules, including rules of evidence,

1 necessary to accomplish the purposes of [this act].

2 (2) Except as may be specifically provided in this
3 section, procedures established in Title 25 applicable to
4 civil procedure in the district court apply to the water
5 court.

6 (3) The use of discovery in cases before the water
7 court may be exercised only to the extent specifically
8 authorized by order of the water court.

9 NEW SECTION. Section 6. Disqualification of water
10 judge. (1) A water judge may disqualify himself in any
11 proceeding in which his impartiality might reasonably be
12 questioned.

13 (2) A water judge may also disqualify himself in the
14 following circumstances:

15 (a) if he has a personal bias or prejudice concerning
16 a party or personal knowledge of disputed evidentiary facts
17 concerning the proceeding;

18 (b) if in private practice he served as a lawyer in
19 the matter in controversy or a lawyer with whom he
20 previously practiced law served during such association as a
21 lawyer concerning the matter or the judge or the lawyer has
22 been a material witness concerning it;

23 (c) if he has served in governmental employment and in
24 such capacity participated as counsel, adviser, or material
25 witness concerning the proceeding or expressed an opinion

1 SENATE BILL NO. 76

2 INTRODUCED BY BOYLAN, TURNAGE, GALT,

3 GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,

4 THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

5 BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF
8 EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS ~~3-1-101~~
9 ~~3-1-102~~~~3-1-100~~~~3-1-1010~~~~19-5-301~~~~19-5-404~~ 2-5-111
10 85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, ~~85-2-405~~
11 AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH
12 85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Refer to Third Reading Bill

16 (Strike everything after the enacting clause and insert:)

17 NEW SECTION. Section 1. District court water
18 divisions -- water judges -- creation. (1) To adjudicate
19 existing water rights water divisions are established as
20 defined in [section 2]. A water division shall be presided
21 over by a water judge.

22 (2) A water judge shall be designated effective July
23 1, 1979, for each water division by a majority vote of a
24 committee composed of the senior judge in each judicial
25 district wholly or partly within the division. A water judge

1 must be a district judge of a judicial district wholly or
2 partly within the water division. A district judge may not
3 sit as a water judge in more than one division.

4 (3) No water judge may preside over matters concerning
5 the determination and interpretation of existing water
6 rights beyond the boundaries specified in [section 2] for
7 his division.

8 (4) A water judge, when presiding over a water
9 division, presides as district judge in and for each
10 judicial district wholly or partly within the water
11 division.

12 (5) The jurisdiction of each judicial district
13 concerning the determination and interpretation of existing
14 water rights is exercised exclusively by it through the
15 water division or water divisions that contain the judicial
16 district wholly or partly.

17 NEW SECTION. Section 2. Water divisions defined. (1)
18 There are four water divisions whose boundaries are formed
19 by the natural divides between drainages and the borders of
20 the state of Montana and which are described as follows:

21 (a) The Yellowstone River Basin water division
22 consists of those areas drained by the Yellowstone and
23 Little Missouri Rivers and any remaining areas in Carter
24 County.

25 (b) The Lower Missouri River Basin water division

1 consists of those areas drained by the Missouri River from
2 below the mouth of the Marias River and any remaining areas
3 in Glacier and Sheridan Counties.

4 (c) The Upper Missouri River Basin water division
5 consists of those areas drained by the Missouri River to
6 below the mouth of the Marias River.

7 (d) The Clark Fork River Basin water division consists
8 of the areas drained by the Clark Fork River, the Kootenai
9 River, and any remaining areas in Lincoln County.

10 (2) Whenever a question arises concerning which water
11 judge shall preside over adjudication of an existing right,
12 the question shall be settled by the water judges involved.

13 NEW SECTION. Section 3. Appointment of water masters
14 — qualifications — removal. (1) The water judge in each
15 water division shall appoint a water master.

16 (2) A water master may be appointed after July 1,
17 1980, and must be appointed on or before July 1, 1982.

18 (3) In appointing a water master, the water judge
19 shall consider a potential master's experience with water
20 law, water use, and water rights.

21 (4) A water master shall serve at the pleasure of the
22 water judge and may be removed by the water judge.

23 NEW SECTION. Section 4. Salary, expenses, and
24 retirement of water masters. (1) The water judges shall set
25 a uniform salary for water masters. Water masters shall

1 receive expenses as provided in 2-18-501 through 2-18-503.

2 (2) A water master shall participate in the Montana
3 Public Employees' Retirement System established in Title 19,
4 chapter 3.

5 (3) The salary and expenses of a water master shall be
6 paid from the water right adjudication account established
7 in [section 18].

8 NEW SECTION. Section 5. Duties of water masters. (1)
9 The water master has the general powers given to a master by
10 M.R.Civ.P., Rule 53(c).

11 (2) Within a reasonable time after June 30, 1983, the
12 water master shall issue a report to the water judge meeting
13 the requirements for the preliminary decree as specified in
14 [section 22].

15 (3) After a water judge issues a preliminary decree,
16 the water master shall assist the water judge in the
17 performance of the water division's further duties as
18 ordered by the water judge.

19 NEW SECTION. Section 6. Jurisdiction of the water
20 division. (1) When the department of natural resources and
21 conservation files a copy of each statement of claim with
22 the clerk of the district court as required by [section 11],
23 the claim shall be considered filed in the judicial district
24 of the county in which the diversion is made or, if there is
25 a claimed right with no diversion, in the judicial district

1 of the county in which the use occurs.

2 (2) The water judge for each division shall exercise
3 jurisdiction over all matters concerning the determination
4 and interpretation of existing water rights within his
5 division as specified in [section 2] that are filed in a
6 judicial district wholly or partly within the division.

7 (3) The water judge may consolidate all matters
8 concerning the determination and interpretation of existing
9 water rights within the water judge's division in any
10 combination or groups of claims or matters for joint
11 hearings or proceedings conducted by the water judge or
12 water master in any location within the division. The water
13 judge may make such consolidations as are necessary to
14 administer the requirements of [this act] in adjudicating
15 claims of existing water rights.

16 (4) All matters concerning the determination and
17 interpretation of existing water rights shall be brought
18 before or immediately transferred to the water judge in the
19 proper water division unless witnesses have been sworn and
20 testimony has been taken by a district court prior to
21 October 1, 1979.

22 (5) The water judge of each water division may appoint
23 and supervise a water commissioner as provided for in Title
24 85, chapter 5.

25 (6) The water judge of each water division may enforce

1 the provisions of a final decree issued in that water
2 division as provided in [section 24].

3 NEW SECTION. Section 7. Disqualification of water
4 judges or water master. (1) A water judge may disqualify
5 himself or the water master in any proceeding or pertinent
6 portion thereof in which his or the water master's
7 impartiality might reasonably be questioned.

8 (2) A water judge may also disqualify himself or the
9 water master in the following circumstances:

10 (a) if he or the water master has a personal bias or
11 prejudice concerning a party of personal knowledge or
12 disputed evidentiary facts concerning the proceeding;

13 (b) if in private practice he or the water master
14 served as a lawyer in the matter in controversy or a lawyer
15 with whom he or the water master previously practiced law
16 served during such association as a lawyer concerning the
17 matter or the judge or the lawyer has been a material
18 witness concerning it;

19 (c) if he or the water master has served in
20 governmental employment and in such capacity participated as
21 counsel, adviser, or material witness concerning the
22 proceeding or expressed an opinion concerning the merits of
23 the particular case in controversy;

24 (d) if he or the water master knows that he or the
25 water master individually or as a fiduciary, or his or the

1 water master's spouse or minor child residing in his or the
 2 water master's household has a financial interest in the
 3 subject matter in controversy or in a party to the
 4 proceeding or any other interest that could be substantially
 5 affected by the outcome of the proceeding; or

6 (e) if he or the water master or his or the water
 7 master's spouse or a person within the third degree of
 8 relationship to any of them (as calculated according to
 9 72-11-101 through 72-11-105) or the spouse of such a person:

10 (i) is a party to the proceeding or an officer,
 11 director, or trustee of a party;

12 (ii) is known by the judge or water master to have an
 13 interest that could be substantially affected by the outcome
 14 of the proceeding;

15 (iii) is to the judge's or water master's knowledge
 16 likely to be a material witness in the proceeding.

17 (3) A water judge should inform himself about his and
 18 the water master's personal and fiduciary financial
 19 interests and make a reasonable effort to inform himself
 20 about the personal financial interests of his and the water
 21 master's spouse and minor children residing in his or the
 22 water master's respective household.

23 (4) For the purposes of this section the following
 24 definitions apply:

25 (a) "Proceeding" includes prehearing, hearing,

1 appellate review, or other stages of adjudication conducted
 2 by the water master or water judge.

3 (b) "Fiduciary" includes such relationships as
 4 executor, administrator, trustee, or guardian.

5 (c) "Financial interest" means ownership of a legal or
 6 equitable interest, however small, or a relationship as
 7 director, advisor, or other active participant in the
 8 affairs of a party, except that:

9 (i) ownership in a mutual or common investment fund
 10 that holds securities is not a financial interest in such
 11 securities unless the judge or water master participates in
 12 the management of the fund;

13 (ii) an office in an educational, religious,
 14 charitable, fraternal, or civic organization is not a
 15 financial interest in securities held by the organization;

16 (iii) the proprietary interest of a policyholder in a
 17 mutual insurance company or a depositor in a mutual savings
 18 association or a similar proprietary interest is a financial
 19 interest in the organization only if the outcome of the
 20 proceeding could substantially affect the value of the
 21 interest; and

22 (iv) ownership of government securities is a financial
 23 interest in the issuer only if the outcome of the proceeding
 24 could substantially affect the value of the securities.

25 (5) A water judge may accept from the parties to the

1 proceeding a waiver of any ground for disqualification if it
2 is preceded by a full disclosure on the record of the basis
3 for disqualification.

4 (6) The procedure for disqualification of a water
5 judge or water master specified in this section is exclusive
6 unless otherwise specifically altered by the Montana supreme
7 court.

8 NEW SECTION. Section 8. Designation of water judge to
9 fill vacancy. If a vacancy occurs, it shall be filled in the
10 manner provided in [section 1] for the initial designation
11 of a water judge. A vacancy is created when a water judge
12 dies, retires, is not elected to a subsequent term, or is
13 otherwise unable to complete his term as a district judge.

14 NEW SECTION. Section 9. Water judges -- term of
15 office. The term of office for water judges is from July 1,
16 1979, to June 30, 1985. After June 30, 1985, the term of
17 office of a water judge is 4 years, subject to continuation
18 of the water divisions by the legislature.

19 NEW SECTION. Section 10. Promulgation of rules and
20 prescription of forms. The Montana supreme court may
21 promulgate special rules of practice and procedure and shall
22 prescribe forms for use in connection with [this act] in
23 consultation with the water judge and the department.

24 NEW SECTION. Section 11. Claim of existing water
25 right -- filing statement of claim required -- exemptions.

1 (1) A person claiming an existing right, unless exempted
2 below, shall file with the department no later than June 30,
3 1983, a statement of claim for each water right asserted on
4 a form provided by the department.

5 (2) The department shall file a copy of each statement
6 of claim with the clerk of the district court for the
7 judicial district in which the diversion is made or, if
8 there is a claimed right with no diversion, the department
9 shall file a copy of the statement of claim with the clerk
10 of the district court of the judicial district in which the
11 use occurs.

12 (3) Claims for existing rights for livestock and
13 individual as opposed to municipal domestic uses based upon
14 instream flow or groundwater sources and claims for rights
15 in the Powder River Basin included in a declaration filed
16 pursuant to the order of the department or a district court
17 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
18 are exempt from the filing requirements of subsection (1) of
19 this section. Such claims may, however, be voluntarily
20 filed.

21 NEW SECTION. Section 12. Department of fish and game
22 to represent public recreational uses. The department of
23 fish and game shall exclusively represent the public for
24 purposes of establishing any prior and existing public
25 recreational use in existing right determinations under

1 [sections 11 through 26], provided that the foregoing shall
 2 not exclude a federal governmental entity from representing
 3 the public for the purpose of establishing any prior and
 4 existing public recreational use in existing right
 5 determinations under [sections 11 through 26] and further
 6 provided that the foregoing shall not be construed in any
 7 manner as a legislative determination of whether or not a
 8 recreational use sought to be established prior to July 1,
 9 1973, is or was a beneficial use.

10 NEW SECTION. Section 13. Statement of claim --
 11 contents. (1) The statement of claim for each right shall
 12 include substantially the following:

13 (a) the name and mailing address of the claimant;

14 (b) the name of the watercourse or water source from
 15 which the right to divert or make use of water is claimed,
 16 if available;

17 (c) the quantities of water and times of use claimed;

18 (d) the legal description, with reasonable certainty,
 19 of the point or points of diversion and places of use of
 20 waters;

21 (e) the purpose of use, including, if for irrigation,
 22 the number of acres irrigated;

23 (f) the approximate dates of first putting water to
 24 beneficial use for the various amounts and times claimed in
 25 subsection (c); and

1 (g) the sworn statement that the claim set forth is
 2 true and correct to the best of claimant's knowledge and
 3 belief.

4 (2) The claimant shall submit maps, plats, aerial
 5 photographs, decrees, or pertinent portions thereof, or
 6 other evidence in support of his claim. All maps, plats, or
 7 aerial photographs should show as nearly as possible to
 8 scale the point of diversion, place of use, place of
 9 storage, and other pertinent conveyance facilities.

10 NEW SECTION. Section 14. Abandonment by failure to
 11 file claim. The failure to file a claim of an existing right
 12 as required by [section 11] establishes a conclusive
 13 presumption of abandonment of that right.

14 NEW SECTION. Section 15. Claim to constitute prima
 15 facie evidence. A claim of an existing right filed in
 16 accordance with [section 11] constitutes prima facie proof
 17 of its content until the issuance of a final decree.

18 NEW SECTION. Section 16. Order to file claim. (1) The
 19 Montana supreme court shall on or before October 1, 1979,
 20 issue an order to file a statement of a claim of an existing
 21 water right in substantially the following form:

22 *WATER RIGHTS ORDER

23 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT
 24 IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
 25 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence

1 shall be printed in not less than 12-point boldface type.)
 2 This order is notice of commencement of procedures for the
 3 general adjudication of existing rights to the use of water
 4 and of the requirement to file a claim for certain existing
 5 rights to the use of water. Every person, including but not
 6 limited to an individual, partnership, association, public
 7 or private corporation, city or other municipality, county,
 8 state agency or the state of Montana, and federal agency of
 9 the United States of America, asserting a claim to an
 10 existing right to the use of water arising prior to July 1,
 11 1973, is ordered to file a statement of claim to that right
 12 with the department no later than June 30, 1983. Claims for
 13 stock and domestic uses based upon instream flow or
 14 groundwater sources are exempt from this requirement;
 15 however, claims for such uses may be voluntarily filed.
 16 Claims filed with the department in the Powder River Basin
 17 in a declaration filed pursuant to the order of the
 18 department of natural resources and conservation or a
 19 district court issued pursuant to sections 8 and 9 of
 20 Chapter 452, Laws of 1973, are also exempt.

21 For further information, contact the department of
 22 natural resources and conservation, Helena, Montana, for a
 23 copy of the law and an explanation of it."

24 (2) Upon petition of the attorney general, the Montana
 25 supreme court may issue the order called for in subsection

1 (1) with a shorter claim filing period of not less than 1
 2 year in those basins or subbasins where state adjudication
 3 jurisdiction is being or is likely to be challenged.

4 NEW SECTION. Section 17. How notice of the order to
 5 be given. To assure that all persons who may claim an
 6 existing water right are notified of the requirement to file
 7 a claim of that right, the Montana supreme court shall give
 8 notice of the order as follows:

9 (1) It shall cause the order printed in not less than
 10 10-point type to be placed in a prominent and conspicuous
 11 place in all daily newspapers of the state and in at least
 12 one newspaper published in each county of the state during
 13 the month of October 1979, and in April of 1980, 1981, 1982,
 14 and 1983.

15 (2) It shall cause the order in writing to be placed
 16 in a prominent and conspicuous location in each county
 17 courthouse in the state.

18 (3) It shall provide a sufficient number of copies of
 19 the order to the county treasurers before October 15, 1979,
 20 1980, 1981, and 1982, and the county treasurers shall
 21 enclose a copy of the order with each statement of property
 22 taxes mailed in 1979, 1980, 1981, and 1982. In the
 23 implementation of this subsection, the department shall
 24 provide reimbursement to each county treasurer for the
 25 reasonable additional costs incurred by the treasurer

1 arising from the inclusion of the order required by this
2 section. The department shall be reimbursed for such costs
3 from the water right adjudication account created by
4 [section 18].

5 (4) It shall provide copies of the order in writing to
6 the press services with offices located in Helena during
7 July, 1979, and April of 1980, 1981, 1982, and 1983.

8 (5) It may also in its discretion give notice of the
9 order in any other manner that will carry out the purposes
10 of this section.

11 (6) It may also in its discretion order that the
12 department or the water judge assist the Montana supreme
13 court in the carrying out of this section.

14 NEW SECTION. Section 18. Fees special account
15 created. (1) Each claim filed under [section 11] shall be
16 accompanied by a filing fee in the amount of \$40, subject to
17 the following exceptions:

18 (a) the total filing fees for all claims filed by one
19 person in any one water court district may not exceed \$480;
20 and

21 (b) no filing fee is required accompanying a claim of
22 an existing right that is included in a decree of a court in
23 the state of Montana and which is accompanied by a certified
24 copy of that decree or pertinent portion thereof or verified
25 as otherwise ordered by the court.

1 (2) There is established a water right adjudication
2 account in the earmarked revenue fund of the state treasury.
3 All fees collected under this section and [section 22] shall
4 be deposited in the account to pay the expenses incurred by
5 the state for administering [this act].

6 NEW SECTION. Section 19. Expenses to be borne by
7 state. All expenses incurred by the state as a result of
8 [this act] are to be paid from the water right adjudication
9 account in the earmarked revenue fund established in
10 [section 18]. Expenses include but are not limited to the
11 salaries and expenses of personnel, equipment, office space,
12 and other necessities incurred in administering [this act].
13 If sufficient revenue is not available from the earmarked
14 revenue fund, the expense shall be paid from the state's
15 general fund.

16 NEW SECTION. Section 20. Adjudication of existing
17 rights. (1) The state of Montana upon relation of the
18 attorney general shall petition the Montana supreme court to
19 require all persons claiming a right within a water division
20 to file a claim of the right as provided in [section 11].

21 (2) The requirement to file a claim for an existing
22 right is the first step in proceedings for the general
23 adjudication of all existing rights to the use of water.

24 (3) The water judge shall monitor the claim filing
25 procedure for claims within his water division and make any

1 orders necessary to assure timely and accurate compliance
2 with the claim filing procedure.

3 NEW SECTION. Section 21. Department assistance to
4 water judges. The department, subject to the direction of
5 the water judge, shall, without cost to the judicial
6 districts wholly or partly within his water division:

7 (1) provide such information and assistance as may be
8 required by the water judge to adjudicate claims of existing
9 rights;

10 (2) establish information and assistance programs to
11 aid claimants in the filing of claims for existing rights
12 required by [section 11];

13 (3) conduct field investigations of randomly selected
14 claims or claims that the water judge in consultation with
15 the department determines warrant investigation; and

16 (4) provide the water judge with all information in
17 its possession bearing upon existing rights, including all
18 declarations filed with and all information gathered by the
19 department with respect to existing rights in the Powder
20 River Basin.

21 NEW SECTION. Section 22. Preliminary decree. (1)
22 Within a reasonable time after the close of the filing
23 period, the water judge shall issue a preliminary decree.
24 The preliminary decree shall be based on the statements of
25 claim before the water judge, the data submitted by the

1 department, and any additional data obtained by the water
2 judge.

3 (2) The preliminary decree shall contain the
4 information and make the determinations, findings, and
5 conclusions required for the final decree under [section
6 24].

7 (3) If the water judge is satisfied that the report of
8 the water master meets the requirements for the preliminary
9 decree set forth in subsections (1) and (2), and is
10 satisfied with the conclusions contained in the report, the
11 water judge shall adopt the report as the preliminary
12 decree. If the water judge is not so satisfied, he may, at
13 his option, recommit the report to the master with
14 instructions, or modify the report and issue the preliminary
15 decree.

16 (4) The water judge shall send a copy of the
17 preliminary decree to the department, and the water judge
18 shall serve by mail a notice of availability of the
19 preliminary decree to each person who has filed a claim of
20 existing right, or, in the Powder River Basin, to each
21 person who has filed a declaration of existing right. The
22 water judge shall enclose with the notice an abstract of the
23 disposition of such person's claimed or declared existing
24 right. The notice of availability shall also be served upon
25 those issued or having applied for and not having been

1 denied a beneficial water use permit pursuant to 85-2-301,
 2 those granted a reservation pursuant to 85-2-316, or other
 3 interested persons who request service of the notice from
 4 the water judge. The clerk or person designated by the
 5 water judge to mail the notice shall make a general
 6 certificate of mailing certifying that a copy of the notice
 7 has been placed in the United States mail, postage prepaid,
 8 addressed to each party required to be served notice of the
 9 preliminary decree. Such certificate shall be conclusive
 10 evidence of due and legal notice of entry of decree.

11 (5) Any person may obtain a copy of the preliminary
 12 decree upon payment of a fee of \$20 or the cost of printing,
 13 whichever is greater, to the water judge.

14 NEW SECTION. Section 23. Hearing on preliminary
 15 decree. (1) Upon objection to the preliminary decree by the
 16 department, a person named in the preliminary decree, or any
 17 other person, for good cause shown, the department or such
 18 person is entitled to a hearing thereon before the water
 19 judge.

20 (2) If a hearing is requested, such request must be
 21 filed with the water judge within 90 days after notice of
 22 entry of the preliminary decree. The water judge may, for
 23 good cause shown, extend this time limit an additional 30
 24 days if application for the extension is made within 90 days
 25 after notice of entry of the preliminary decree.

1 (3) The request for a hearing shall contain a precise
 2 statement of the findings and conclusions in the preliminary
 3 decree with which the department or person requesting the
 4 hearing disagrees. The request shall specify the paragraphs
 5 and pages containing the findings and conclusions to which
 6 objection is made. The request shall state the specific
 7 grounds and evidence on which the objections are based.

8 (4) Upon expiration of the time for filing objections
 9 and upon timely receipt of a request for a hearing, the
 10 water judge shall notify each party named in the preliminary
 11 decree that a hearing has been requested. The water judge
 12 shall fix a day when all parties who wish to participate in
 13 future proceedings must appear or file a statement. The
 14 water judge shall then set a date for a hearing. The water
 15 judge may conduct individual or consolidated hearings. A
 16 hearing shall be conducted as for other civil actions. At
 17 the order of the water judge a hearing may be conducted by
 18 the water master, who shall prepare a report of the hearing
 19 as provided in M.R.Civ.P., Rule 53(e).

20 NEW SECTION. Section 24. Final decree. (1) The water
 21 judge shall, on the basis of the preliminary decree and on
 22 the basis of any hearing that may have been held, enter a
 23 final decree affirming or modifying the preliminary decree.
 24 If no request for a hearing is filed within the time
 25 allowed, the preliminary decree automatically becomes final,

1 and the water judge shall enter it as the final decree.

2 (2) The final decree shall establish the existing
3 rights and priorities within the water judge's jurisdiction
4 of persons required by [section 11] to file a claim for an
5 existing right and of persons required to file a declaration
6 of existing rights in the Powder River Basin pursuant to an
7 order of the department or a district court issued under
8 sections 8 and 9 of Chapter 452, Laws of 1973.

9 (3) The final decree shall state the findings of fact,
10 along with any conclusions of law, upon which the existing
11 rights and priorities of each person named in the decree are
12 based.

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

15 (a) the name and post-office address of the owner of
16 the right;

17 (b) the amount of water, rate, and volume, included in
18 the right;

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

20 (d) the purpose for which the water included in the
21 right is used;

22 (e) the place of use and a description of the land, if
23 any, to which the right is appurtenant;

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

25 (g) the place and means of diversion;

1 (h) the inclusive dates during which the water is used
2 each year;

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

5 NEW SECTION. Section 25. Appeals from final decree.
6 A person whose existing rights and priorities are determined
7 in the final decree may appeal the determination only if:

8 (1) he requested a hearing and appeared and entered
9 objections to the preliminary decree; or

10 (2) his rights as determined in the preliminary decree
11 were altered as the result of a hearing requested by another
12 person.

13 NEW SECTION. Section 26. Certificate of water right.
14 When a final decree is entered, the water judge shall send a
15 copy to the department. The department shall on the basis of
16 the final decree issue a certificate of water right to each
17 person decreed an existing right. The original of the
18 certificate shall be sent to the county clerk and recorder
19 of the county where the point of diversion or place of use
20 is located for recordation. The department shall keep a copy
21 of the certificate in its office in Helena. After
22 recordation, the clerk and recorder shall send the
23 certificate to the person to whom the right is decreed.

24 NEW SECTION. Section 27. Legislative intent regarding
25 federal and Indian water rights -- compacts -- negotiation

1 authorized -- procedure. (1) It is the intent of the
 2 legislature that the attorney general include all federal
 3 and Indian interests in the petition required in [section
 4 16] under authority granted the state by 43 U.S.C. 666.
 5 However, it is further intended that the state of Montana
 6 proceed under the provisions of this section to conclude
 7 compacts for the equitable division and apportionment of
 8 waters between the state and its people and the several
 9 federal interests and Indian tribes claiming reserved water
 10 rights within the state. During the 3-year period from the
 11 time of filing the petition required in [section 16], and
 12 while negotiations for the conclusion of a compact under
 13 this section are being pursued, all actions to adjudicate
 14 reserved federal and Indian water rights under [this act]
 15 are suspended.

16 (2) The compact commission may negotiate with the
 17 federal government and Indian tribes jointly or severally to
 18 conclude compacts authorized under subsection (1). When the
 19 compact commission and authorized representatives of the
 20 federal government or Indian tribes have agreed to a
 21 compact, they shall sign a copy and file an original copy
 22 with the department of state of the United States of America
 23 and copies with the secretary of state of Montana and if the
 24 compact is with an Indian tribe, with the tribal council for
 25 the tribe involved. The compact is effective and binding

1 upon all parties upon ratification by the legislature of
 2 Montana, any affected tribal council, and the congress of
 3 the United States. The water judge shall include in the
 4 preliminary decree the contents of a compact that has been
 5 agreed upon by the parties to the compact whether or not it
 6 has been ratified by congress.

7 (3) (a) There is created a reserved water rights
 8 compact commission. Commissioners are appointed as follows:

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

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

14 (iii) one member designated by the governor;

15 (iv) one member designated by the attorney general; and

16 (v) one member from the department of natural
 17 resources and conservation designated by the director.

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

23 (c) The commission is attached to the governor's
 24 office for administrative purposes only. The costs of the
 25 commission shall be paid from funds appropriated for that

1 purpose from the water right adjudication account
2 established in [section 19].

3 (d) Members appointed to the commission shall serve
4 until the work of the commission is completed or until they
5 resign or are otherwise unable to serve. A vacancy must be
6 filled in the manner of the original appointment.

7 Section 28. Section 3-5-111, MCA, is amended to read:

8 "3-5-111. District courts presided over by judges of
9 other districts. A judge of the district court of any
10 judicial district may hold the district court in any county
11 of another district than his own at the request of the judge
12 thereof or as otherwise provided by law. Upon the request
13 of the governor, it is his duty to do so. In either case
14 the judge holding the court has the same power either in
15 court or chambers as a judge thereof."

16 Section 29. Section 85-2-102, MCA, is amended to read:

17 "85-2-102. Definitions. Unless the context requires
18 otherwise, in this chapter the following definitions apply:

19 (1) "Appropriate" means to divert, impound, or
20 withdraw (including by stock for stock water) a quantity of
21 water or, in the case of a public agency, to reserve water
22 in accordance with 85-2-316.

23 (2) "Beneficial use" means a use of water for the
24 benefit of the appropriator, other persons, or the public,
25 including but not limited to agricultural (including stock

1 water), domestic, fish and wildlife, industrial, irrigation,
2 mining, municipal, power, and recreational uses. A use of
3 water for slurry to export coal from Montana is not a
4 beneficial use. Slurry is a mixture of water and insoluble
5 matter.

6 (3) "Board" means the board of natural resources and
7 conservation provided for in 2-15-3302.

8 (4) "Certificate" means the a certificate of water
9 right issued by the department ~~under 85-2-210, subsections~~
10 ~~(1) and (2) of 85-2-306, and 85-2-315.~~

11 (5) "Declaration" means the declaration of an existing
12 right filed with the department under 85-2-203 section 8,
13 Chapter 452, Laws of 1973.

14 (6) "Department" means the department of natural
15 resources and conservation provided for in Title 2, chapter
16 15, part 33.

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

20 (8) "Groundwater" means any water beneath the land
21 surface or beneath the bed of a stream, lake, reservoir, or
22 other body of surface water, and which is not a part of that
23 surface water.

24 (9) "Permit" means the permit to appropriate issued by
25 the department under 85-2-301 through 85-2-303 and 85-2-306

1 through 85-2-314.

2 (10) "Person" means an individual, association,
3 partnership, corporation, state agency, political
4 subdivision, the United States or any agency thereof, or any
5 other entity.

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

11 (12) "Senior judge in each judicial district" means
12 the judge in the district who has served, with or without
13 interruptions, for the longest period of time.

14 (12)(13) "Waste" means the unreasonable loss of water
15 through the design or negligent operation of an
16 appropriation or water distribution facility or the
17 application of water to anything but a beneficial use.

18 (13)(14) "Water" means all water of the state, surface
19 and subsurface, regardless of its character or manner of
20 occurrence, including geothermal water and diffuse surface
21 water.

22 (15) "Water division" means a drainage basin as defined
23 in [section 2].

24 (16) "Water judge" means a judge as provided for in
25 [sections 1 through 10].

1 (17) "Water master" means a master as provided for in
2 [sections 1 through 10].

3 (14)(18) "Well" means any artificial opening or
4 excavation in the ground, however made, by which groundwater
5 is sought or can be obtained or through which it flows under
6 natural pressures or is artificially withdrawn."

7 Section 30. Section 85-2-112, MCA, is amended to read:
8 "85-2-112. Department duties. The department shall:

9 (1) enforce and administer this chapter and rules
10 adopted by the board under 85-2-113;

11 (2) prescribe procedures, forms, and requirements for
12 applications, permits, certificates, declarations, claims of
13 existing rights and proceedings under this chapter and
14 prescribe the information to be contained in any
15 application, declaration, claim of existing right, or other
16 document to be filed with the department under this chapter
17 not inconsistent with the requirements of this chapter;

18 (3) establish and keep in its Helena office a
19 centralized record system of all existing rights and a
20 public record of permits, certificates, declarations, claims
21 of existing rights, applications, and other documents filed
22 in its office under this chapter;

23 (4) cooperate with, assist, advise, and coordinate
24 plans and activities with the federal, state, and local
25 agencies in matters relating to this chapter;

1 (5) upon request by any person, cooperate with,
 2 assist, and advise that person in matters pertaining to
 3 measuring water or filing declarations with the department
 4 or claims of existing rights with a district court under
 5 this chapter."

6 Section 31. Section 85-2-113, MCA, is amended to read:

7 "85-2-113. Board powers and duties. (1) The board may
 8 prescribe fees or service charges for any public service
 9 rendered by the department under this chapter, including
 10 fees for the filing of applications or for the issuance of
 11 permits and certificates. There shall be no fees for the
 12 filing of declarations or for any action taken by the
 13 department at the request of the water judge or for the
 14 issuance of certificates of existing rights.

15 (2) The board may adopt rules necessary to implement
 16 and carry out the purposes and provisions of this chapter.
 17 These 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
 20 chapter to begin appropriating water immediately, pending
 21 final approval or denial by the department of the
 22 application for 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 32. Section 85-2-114, MCA, is amended to read:

13 "85-2-114. Prevention of waste. (1) If the department
 14 ascertains, by a means reasonably considered sufficient by
 15 it, that a person is wasting water, using water unlawfully,
 16 or preventing water from moving to another person having a
 17 prior right to use the same, it may petition the district
 18 court supervising the distribution of water among
 19 appropriators from the source to:

20 (a) regulate the controlling works of an appropriation
 21 as may be necessary to prevent the wasting or unlawful use
 22 of water or to secure water to a person having a prior right
 23 to its use; or

24 (b) order the person wasting, unlawfully using, or
 25 interfering with another's rightful use of the water to

1 cease and desist from doing so and to take such steps as may
2 be necessary to remedy the waste, unlawful use, or
3 interference.

4 (2) The department may attach to the controlling works
5 a written notice, properly dated and signed, setting forth
6 the fact that the controlling works have been properly
7 regulated by it, which notice shall be legal notice to all
8 persons interested in the appropriation or distribution of
9 the water.

10 (3) The department may also direct its own attorney or
11 request the attorney general or county attorney to bring
12 suit to enjoin such waste, unlawful use, or interference."

13 Section 33. Section 85-2-401, MCA, is amended to read:

14 "85-2-401. 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
20 level, if the prior appropriator can reasonably exercise his
21 water right under the changed conditions.

22 (2) Priority of appropriation made under this chapter
23 dates from the filing of an application for a permit with
24 the department, except as otherwise provided in 85-2-301
25 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

1 (3) Priority of appropriation perfected before July 1,
2 1973, shall be determined as provided in ~~85-2-201 through~~
3 ~~85-2-210 part 2 of this chapter."~~

4 Section 34. Section 85-2-406, MCA, is amended to read:

5 "85-2-406. District court supervision of water
6 distribution. (1) The district courts shall supervise the
7 distribution of water among all appropriators. This
8 supervisory authority includes the supervision of all water
9 commissioners appointed prior or subsequent to July 1, 1973.
10 The supervision shall be governed by the principle that
11 first in time is first in right.

12 (2) When a water distribution controversy arises upon
13 a source of water in which existing rights have not been
14 determined according to ~~85-2-201 through 85-2-210 part 2 of~~
15 ~~this chapter~~, any party to the controversy may petition the
16 district court for relief. ~~The department shall be served~~
17 ~~with process in any proceeding under this subsection and~~
18 ~~shall, within a reasonable time thereafter, notify the court~~
19 ~~whether it intends in its discretion, within a reasonable~~
20 ~~time, to begin proceedings to determine existing rights in~~
21 ~~the source, in accordance with part 2 of this chapter. The~~
22 ~~department may, if it declines to commence proceedings to~~
23 ~~determine existing rights in the source, intervene as a~~
24 ~~party in the proceeding. The district court from which~~
25 relief is sought may grant such injunctive or other relief

1 which is necessary and appropriate to preserve property
 2 rights or the status quo pending the department's decision
 3 whether to determine existing rights in the source or the
 4 department's decision to intervene as a party, as the case
 5 may be, if the department does not proceed to obtain a
 6 determination of existing rights, the district court shall
 7 settle only the controversy between the parties issuance of
 8 the final decree.

9 (3) A controversy between appropriators from a source
 10 which has been the subject of a general determination of
 11 existing rights under ~~85-2-201 through 85-2-210~~ part 2 of
 12 this chapter shall be settled by the district court which
 13 issued the final decree. The order of the district court
 14 settling the controversy may not alter the existing rights
 15 and priorities established in the final decree. In cases
 16 involving permits issued by the department, the court may
 17 not amend the respective rights established in the permits
 18 or alter any terms of the permits unless the permits are
 19 inconsistent or interfere with rights and priorities
 20 established in the final decree. The order settling the
 21 controversy shall be appended to the final decree, and a
 22 copy shall be filed with the department. The department
 23 shall be served with process in any proceeding under this
 24 subsection, and the department may, in its discretion,
 25 intervene in the proceeding."

1 Section 35. Codification. (1) Sections 1 through 10 of
 2 this act are intended to be codified as an integral part of
 3 Title 3, and the provisions contained in Title 3 apply to
 4 this act.

5 (2) Sections 11 through 27 are intended to be codified
 6 as an integral part of Title 85, chapter 2, part 2, and the
 7 provisions contained in Title 85, chapter 2, apply to this
 8 act.

9 (3) If the provisions of this act are not codified as
 10 stated above, the code commissioner shall add to the MCA, if
 11 necessary, statutory language to convey the intent of this
 12 section.

13 Section 36. Severability. If a part of this act is
 14 invalid, all valid parts that are severable from the invalid
 15 part remain in effect. If a part of this act is invalid in
 16 one or more of its applications, the part remains in effect
 17 in all valid applications that are severable from the
 18 invalid applications.

19 Section 37. Repealer. Sections 85-2-201 through
 20 85-2-210, MCA, are repealed.

21 Section 38. Effective date. This act is effective on
 22 passage and approval.

-End-

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT, GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON, THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-1-101, 3-1-102, 3-1-103, 3-1-104, 3-5-111, 85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405, AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Refer to Third Reading Bill

(Strike everything after the enacting clause and insert:)

NEW SECTION. Section 1. District PURPOSE -- DISTRICT court water divisions -- water judges -- creation. (1) [THIS ACT] AMENDS THE MONTANA WATER USE ACT TO EXPEDITE AND FACILITATE THE ADJUDICATION OF EXISTING WATER RIGHTS.

(1)(2) To adjudicate existing water rights water divisions are established as defined in [section 2]. A water division shall be presided over by a water judge.

(2)(3) A water judge shall be designated effective July--1,--1979, WITHIN 30 DAYS AFTER [THE EFFECTIVE DATE OF

[THIS ACT] for each water division by a majority vote of a committee composed of the--senior--judge-in-each-judicial-district THE DISTRICT JUDGE FROM EACH SINGLE JUDGE JUDICIAL DISTRICT AND THE CHIEF DISTRICT JUDGE FROM EACH MULTIPLE JUDGE JUDICIAL DISTRICT. Wholly or partly within the division. A water judge must be a district judge of a judicial district wholly or partly within the water division. A district judge may not sit as a water judge in more than one division.

(3)(4) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in [section 2] for his division.

(4)(5) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division.

(5)(6) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

NEW SECTION. Section 2. Water divisions defined. (1) There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of

1 the state of Montana and which are described as follows:

2 (a) The Yellowstone River Basin water division
3 consists of those areas drained by the Yellowstone and
4 Little Missouri Rivers and any remaining areas in Carter
5 County.

6 (b) The lower Missouri River Basin water division
7 consists of those areas drained by the Missouri River from
8 below the mouth of the Marias River and any remaining areas
9 in Glacier and Sheridan Counties.

10 (c) The upper Missouri River Basin water division
11 consists of those areas drained by the Missouri River to
12 below the mouth of the Marias River.

13 (d) The Clark Fork River Basin water division consists
14 of the areas drained by the Clark Fork River, the Kootenai
15 River, and any remaining areas in Lincoln County.

16 (2) Whenever a question arises concerning which water
17 judge shall preside over adjudication of ~~an existing right~~ A
18 MATTER CONCERNING THE DETERMINATION AND INTERPRETATION OF
19 EXISTING WATER RIGHTS, the question shall be settled by the
20 water judges involved.

21 NEW SECTION. Section 3. Appointment of water masters
22 -- qualifications -- removal. (1) The water judge in each
23 water division shall appoint a water master.

24 (2) A water master may be appointed after July 1,
25 1980, and must be appointed on or before July 1, 1982.

1 (3) In appointing a water master, the water judge
2 shall consider a potential master's experience with water
3 law, water use, and water rights.

4 (4) A water master shall serve at the pleasure of the
5 water judge and may be removed by the water judge.

6 NEW SECTION. Section 4. Salary, expenses, and
7 retirement of water masters. (1) The water judges shall set
8 a uniform salary for water masters. Water masters shall
9 receive expenses as provided in 2-18-501 through 2-18-503.

10 (2) A water master shall participate in the Montana
11 Public Employees' Retirement System established in Title 19,
12 chapter 3.

13 (3) The salary and expenses of a water master shall be
14 paid from the water right adjudication account established
15 in [section 18].

16 NEW SECTION. Section 5. Duties of water masters. (1)
17 The water master has the general powers given to a master by
18 M.R.Civ.P., Rule 53(c).

19 (2) Within a reasonable time after June 30, 1983, the
20 water master shall issue a report to the water judge meeting
21 the requirements for the preliminary decree as specified in
22 [section 22].

23 (3) After a water judge issues a preliminary decree,
24 the water master shall assist the water judge in the
25 performance of the water division's further duties as

1 ordered by the water judge.

2 NEW SECTION. Section 6. Jurisdiction of the water
3 division. ~~(1) When the department of natural resources and~~
4 ~~conservation files a copy of each statement of claim with~~
5 ~~the clerk of the district court as required by [section 11]~~
6 ~~the claim shall be considered filed in the judicial district~~
7 ~~of the county in which the diversion is made or, if there is~~
8 ~~a claimed right with no diversion, in the judicial district~~
9 ~~of the county in which the use occurs.~~ (1) THE ACTION FOR
10 THE ADJUDICATION OF ALL EXISTING WATER RIGHTS UNDER [THIS
11 ACT] IS COMMENCED WITH THE ISSUING OF THE ORDER BY THE
12 MONTANA SUPREME COURT TO FILE A STATEMENT OF A CLAIM OF AN
13 EXISTING WATER RIGHT AS PROVIDED IN [SECTION 16]. AS TO EACH
14 CLAIM, THE ACTION IS CONSIDERED FILED IN THE JUDICIAL
15 DISTRICT OF THE COUNTY IN WHICH THE DIVERSION IS MADE OR, IF
16 THERE IS A CLAIMED RIGHT WITH NO DIVERSION, IN THE JUDICIAL
17 DISTRICT OF THE COUNTY IN WHICH THE USE OCCURS.

18 (2) The water judge for each division shall exercise
19 jurisdiction over all matters concerning the determination
20 and interpretation of existing water rights within his
21 division as specified in [section 2] that are CONSIDERED
22 filed in OR TRANSFERRED TO a judicial district wholly or
23 partly within the division.

24 (3) The water judge may consolidate all matters
25 concerning the determination and interpretation of existing

1 water rights within the water judge's division in any
2 combination or groups of claims or matters for joint
3 hearings or proceedings conducted by the water judge or
4 water master in any location within the division. The water
5 judge may make such consolidations as are necessary to
6 administer the requirements of [this act] in adjudicating
7 claims of existing water rights.

8 (4) All matters concerning the determination and
9 interpretation of existing water rights shall be brought
10 before or immediately transferred to the water judge in the
11 proper water division unless witnesses have been sworn and
12 testimony has been taken by a district court prior to
13 ~~October 1, 1979~~ THE DATE OF THE MONTANA SUPREME COURT ORDER
14 AS PROVIDED IN [SECTION 16].

15 (5) The water judge of each water division may appoint
16 and supervise a water commissioner as provided for in Title
17 85, chapter 5.

18 (6) The water judge of each water division may enforce
19 the provisions of a final decree issued in that water
20 division as provided in [section 24].

21 (7) THE WATER JUDGE MAY DESIGNATE ANY OTHER DISTRICT
22 JUDGE WITHIN THE WATER DIVISION TO PRESIDE IN HIS ABSENCE ON
23 HIS BEHALF AS WATER JUDGE FOR THE IMMEDIATE ENFORCEMENT OF
24 AN EXISTING DECREE OR THE IMMEDIATE GRANTING OF
25 EXTRAORDINARY RELIEF AS MAY BE PROVIDED FOR BY LAW UPON AN

1 ALLEGATION OF IRREPARABLE HARM.

2 NEW SECTION. Section 7. Disqualification of water
3 judges or water master. (1) A water judge may disqualify
4 himself or the water master in any proceeding or pertinent
5 portion thereof in which his or the water master's
6 impartiality might reasonably be questioned.

7 (2) A water judge may also disqualify himself or the
8 water master in the following circumstances:

9 (a) if he or the water master has a personal bias or
10 prejudice concerning a party of personal knowledge or
11 disputed evidentiary facts concerning the proceeding;

12 (b) if in private practice he or the water master
13 served as a lawyer in the matter in controversy or a lawyer
14 with whom he or the water master previously practiced law
15 served during such association as a lawyer concerning the
16 matter or the judge or the lawyer has been a material
17 witness concerning it;

18 (c) if he or the water master has served in
19 governmental employment and in such capacity participated as
20 counsel, adviser, or material witness concerning the
21 proceeding or expressed an opinion concerning the merits of
22 the particular case in controversy;

23 (d) if he or the water master knows that he or the
24 water master individually or as a fiduciary, or his or the
25 water master's spouse or minor child residing in his or the

1 water master's household has a financial interest in the
2 subject matter in controversy or in a party to the
3 proceeding or any other interest that could be substantially
4 affected by the outcome of the proceeding; or

5 (e) if he or the water master or his or the water
6 master's spouse or a person within the third degree of
7 relationship to any of them (as calculated according to
8 72-11-101 through 72-11-105) or the spouse of such a person:

9 (i) is a party to the proceeding or an officer,
10 director, or trustee of a party;

11 (ii) is known by the judge or water master to have an
12 interest that could be substantially affected by the outcome
13 of the proceeding;

14 (iii) is to the judge's or water master's knowledge
15 likely to be a material witness in the proceeding.

16 (3) A water judge should inform himself about his and
17 the water master's personal and fiduciary financial
18 interests and make a reasonable effort to inform himself
19 about the personal financial interests of his and the water
20 master's spouse and minor children residing in his or the
21 water master's respective household.

22 (4) For the purposes of this section, the following
23 definitions apply:

24 (a) "Proceeding" includes prehearing, hearing,
25 appellate review, or other stages of adjudication conducted

1 by the water master or water judge.

2 (b) "Fiduciary" includes such relationships as
3 executor, administrator, trustee, or guardian.

4 (c) "Financial interest" means ownership of a legal or
5 equitable interest, however small, or a relationship as
6 director, advisor, or other active participant in the
7 affairs of a party, except that:

8 (i) ownership in a mutual or common investment fund
9 that holds securities is not a financial interest in such
10 securities unless the judge or water master participates in
11 the management of the fund;

12 (ii) an office in an educational, religious,
13 charitable, fraternal, or civic organization is not a
14 financial interest in securities held by the organization;

15 (iii) the proprietary interest of a policyholder in a
16 mutual insurance company or a depositor in a mutual savings
17 association or a similar proprietary interest is a financial
18 interest in the organization only if the outcome of the
19 proceeding could substantially affect the value of the
20 interest; and

21 (iv) ownership of government securities is a financial
22 interest in the issuer only if the outcome of the proceeding
23 could substantially affect the value of the securities.

24 (5) A water judge may accept from the parties to the
25 proceeding a waiver of any ground for disqualification if it

1 is preceded by a full disclosure on the record of the basis
2 for disqualification.

3 (6) The procedure for disqualification of a water
4 judge or water master specified in this section is exclusive
5 unless otherwise specifically altered by the Montana supreme
6 court.

7 NEW SECTION. Section 8. Designation of water judge to
8 fill vacancy. If a vacancy occurs, it shall be filled in the
9 manner provided in [section 1] for the initial designation
10 of a water judge. A vacancy is created when a water judge
11 dies, retires, is not elected to a subsequent term, FORFEITS
12 HIS JUDICIAL POSITION, IS REMOVED, or is otherwise unable to
13 complete his term as a district judge.

14 NEW SECTION. Section 9. Water judges -- term of
15 office. The term of office for water judges is from ~~duty--17~~
16 ~~1979,~~ THE DATE OF INITIAL APPOINTMENT AS PROVIDED IN
17 [SECTION 1] to June 30, 1985. After June 30, 1985, the term
18 of office of a water judge is 4 years, subject to
19 continuation of the water divisions by the legislature.

20 NEW SECTION. Section 10. Promulgation of rules and
21 prescription of forms. The AS SOON AS PRACTICABLE THE
22 Montana supreme court may promulgate special rules of
23 practice and procedure and shall prescribe forms for use in
24 connection with [this act] in consultation with the water
25 judge and the department.

1 NEW SECTION. Section 11. Claim of existing water
 2 right -- filing statement of claim required -- exemptions.
 3 (1) A person claiming an existing right, unless exempted
 4 below OR UNLESS AN EARLIER FILING DATE IS ORDERED AS
 5 PROVIDED IN [SECTION 16], shall file with the department no
 6 later than June 30, 1983, a statement of claim for each
 7 water right asserted on a form provided by the department.

8 (2) The department shall file a copy of each statement
 9 of claim with the clerk of the district court for the
 10 judicial district in which the diversion is made or, if
 11 there is a claimed right with no diversion, the department
 12 shall file a copy of the statement of claim with the clerk
 13 of the district court of the judicial district in which the
 14 use occurs.

15 (3) Claims for existing rights for livestock and
 16 individual as opposed to municipal domestic uses based upon
 17 instream flow or groundwater sources and claims for rights
 18 in the Powder River Basin included in a declaration filed
 19 pursuant to the order of the department or a district court
 20 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
 21 OR UNDER SECTIONS 3 AND 4 OF CHAPTER 485, LAWS OF 1975, are
 22 exempt from the filing requirements of subsection (1) of
 23 this section. Such claims may, however, be voluntarily
 24 filed.

25 NEW SECTION. Section 12. Department of fish and game

1 to represent public recreational uses. The department of
 2 fish and game shall exclusively represent the public for
 3 purposes of establishing any prior and existing public
 4 recreational use in existing right determinations under
 5 [sections 11 through 26], provided that the foregoing shall
 6 not exclude a federal governmental entity from representing
 7 the public for the purpose of establishing any prior and
 8 existing public recreational use in existing right
 9 determinations under [sections 11 through 26] and further
 10 provided that the foregoing shall not be construed in any
 11 manner as a legislative determination of whether or not a
 12 recreational use sought to be established prior to July 1,
 13 1973, is or was a beneficial use.

14 NEW SECTION. Section 13. Statement of claim --
 15 contents. (1) The statement of claim for each right shall
 16 include substantially the following:

- 17 (a) the name and mailing address of the claimant;
 18 (b) the name of the watercourse or water source from
 19 which the right to divert or make use of water is claimed,
 20 if available;
 21 (c) the quantities of water and times of use claimed;
 22 (d) the legal description, with reasonable certainty,
 23 of the point or points of diversion and places of use of
 24 waters;
 25 (e) the purpose of use, including, if for irrigation,

1 the number of acres irrigated;

2 (f) the approximate dates of first putting water to
3 beneficial use for the various amounts and times claimed in
4 subsection (c); and

5 (g) the sworn statement that the claim set forth is
6 true and correct to the best of claimant's knowledge and
7 belief.

8 (2) The claimant shall submit maps, plats, aerial
9 photographs, decrees, or pertinent portions thereof, or
10 other evidence in support of his claim. All maps, plats, or
11 aerial photographs should show as nearly as possible to
12 scale the point of diversion, place of use, place of
13 storage, and other pertinent conveyance facilities.

14 NEW SECTION. Section 14. Abandonment by failure to
15 file claim. The failure to file a claim of an existing right
16 as required by [section 11] establishes a conclusive
17 presumption of abandonment of that right.

18 NEW SECTION. Section 15. Claim to constitute prima
19 facie evidence. A claim of an existing right filed in
20 accordance with [section 11] constitutes prima facie proof
21 of its content until the issuance of a final decree.

22 NEW SECTION. Section 16. Order to file claim. (1) The
23 Montana supreme court shall ~~on or before October 1, 1979~~
24 WITHIN 10 DAYS OF THE FILING OF THE PETITION BY THE ATTORNEY
25 GENERAL issue an order to file a statement of a claim of an

1 existing water right in substantially the following form:

2 "WATER RIGHTS ORDER

3 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT
4 IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
5 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence
6 shall be printed in not less than 12-point boldface type.)
7 This order is notice of commencement of procedures for the
8 general adjudication of existing rights to the use of water
9 and of the requirement to file a claim for certain existing
10 rights to the use of water. Every person, including but not
11 limited to an individual, partnership, association, public
12 or private corporation, city or other municipality, county,
13 state agency or the state of Montana, and federal agency of
14 the United States of America ON ITS OWN BEHALF OR AS TRUSTEE
15 FOR ANY INDIAN OR INDIAN TRIBE, asserting a claim to an
16 existing right to the use of water arising prior to July 1,
17 1973, is ordered to file a statement of claim to that right
18 with the department no later than June 30, 1983. Claims for
19 stock and INDIVIDUAL AS OPPOSED TO MUNICIPAL domestic uses
20 based upon instream flow or groundwater sources are exempt
21 from this requirement; however, claims for such uses may be
22 voluntarily filed. Claims filed with the department in the
23 Powder River Basin in a declaration filed pursuant to the
24 order of the department of natural resources and
25 conservation or a district court issued pursuant to sections

1 8 and 9 of Chapter 452, Laws of 1973, OR UNDER SECTIONS 3
 2 AND 4 OF CHAPTER 485, LAWS OF 1975, are also exempt.

3 For further information, contact the department of
 4 natural resources and conservation, Helena, Montana, for a
 5 copy of the law and an explanation of it.*

6 (2) Upon petition of the attorney general, the Montana
 7 supreme court may SHALL issue the order called for in
 8 subsection (1) with a shorter claim filing period of not
 9 less than 1 year, SUBJECT TO EXTENSION NOT BEYOND JUNE 30,
 10 1983, BY THE MONTANA SUPREME COURT UPON PETITION OF THE
 11 ATTORNEY GENERAL, in those basins or subbasins where state
 12 adjudication jurisdiction is being or is likely to be
 13 challenged.

14 NEW SECTION. Section 17. How notice of the order to
 15 be given. To assure that all persons who may claim an
 16 existing water right are notified of the requirement to file
 17 a claim of that right, the Montana supreme court shall give
 18 notice of the order as follows:

19 (1) It shall cause the order printed in not less than
 20 10-point type to be placed in a prominent and conspicuous
 21 place in all daily newspapers of the state and in at least
 22 one newspaper published in each county of the state during
 23 the month of October 1979, WITHIN 30 DAYS AFTER THE MONTANA
 24 SUPREME COURT ORDER AS PROVIDED IN [SECTION 16] and in April
 25 of 1980, 1981, 1982, and 1983.

1 (2) It shall cause the order in writing to be placed
 2 in a prominent and conspicuous location in each county
 3 courthouse in the state WITHIN 30 DAYS AFTER THE MONTANA
 4 SUPREME COURT ORDER AS PROVIDED IN [SECTION 16].

5 (3) It shall provide a sufficient number of copies of
 6 the order to the county treasurers before October 15, 1979,
 7 1980, 1981, and 1982, and the county treasurers shall
 8 enclose a copy of the order with each statement of property
 9 taxes mailed in 1979, 1980, 1981, and 1982. In the
 10 implementation of this subsection, the department shall
 11 provide reimbursement to each county treasurer for the
 12 reasonable additional costs incurred by the treasurer
 13 arising from the inclusion of the order required by this
 14 section. The department shall be reimbursed for such costs
 15 from the water right adjudication account created by
 16 [section 18].

17 (4) It shall provide copies of the order in writing to
 18 the press services with offices located in Helena during
 19 July 1979 WITHIN 30 DAYS AFTER THE MONTANA SUPREME COURT
 20 ORDER AS PROVIDED IN [SECTION 16], and IN April of 1980,
 21 1981, 1982, and 1983.

22 (5) IT SHALL, UNDER AUTHORITY GRANTED TO THE STATES BY
 23 43 U.S.C. 666, PROVIDE FOR SERVICE OF THE PETITION AND ORDER
 24 UPON THE UNITED STATES ATTORNEY GENERAL OR HIS DESIGNATED
 25 REPRESENTATIVE.

1 ~~5~~(6) It may also in its discretion give notice of
2 the order in any other manner that will carry out the
3 purposes of this section.

4 ~~6~~(7) It may also in its discretion order that the
5 department or the water judge assist the Montana supreme
6 court in the carrying out of this section.

7 NEW SECTION. Section 18. Fees ~~---~~ special account
8 created. (1) Each claim filed under [section 11] shall be
9 accompanied by a filing fee in the amount of \$40, subject to
10 the following exceptions:

11 (a) the total filing fees for all claims filed by one
12 person in any one water court district DIVISION may not
13 exceed \$480; and

14 (b) no filing fee is required accompanying a claim of
15 an existing right that is included in a decree of a court in
16 the state of Montana and which is accompanied by a certified
17 copy of that decree or pertinent portion thereof or verified
18 as otherwise ordered by the court.

19 (2) There is established a water right adjudication
20 account in the earmarked revenue fund of the state treasury.
21 All fees collected under this section and [section 22] shall
22 be deposited in the account to pay the expenses incurred by
23 the state for administering [this act].

24 NEW SECTION. Section 19. Expenses to be borne by
25 state. All expenses incurred by the state as a result of

1 [this act] are to be paid from the water right adjudication
2 account in the earmarked revenue fund established in
3 [section 18]. Expenses include but are not limited to the
4 salaries and expenses of personnel, equipment, office space,
5 and other necessities incurred in administering [this act].
6 If sufficient revenue is not available from the earmarked
7 revenue fund, the expense shall be paid from the state's
8 general fund.

9 NEW SECTION. Section 20. Adjudication of existing
10 rights. (1) ~~THE~~ WITHIN 20 DAYS AFTER [THE EFFECTIVE DATE OF
11 THIS ACT]. ~~THE~~ state of Montana upon relation of the
12 attorney general shall petition the Montana supreme court to
13 require all persons claiming a right within a water division
14 to file a claim of the right as provided in [section 11].

15 ~~(2) The requirement to file a claim for an existing~~
16 ~~right is the first step in proceedings for the general~~
17 ~~adjudication of all existing rights to the use of water.~~

18 ~~3~~(2) The water judge shall monitor the claim filing
19 procedure for claims within his water division and make any
20 orders necessary to assure timely and accurate compliance
21 with the claim filing procedure.

22 NEW SECTION. Section 21. Department assistance to
23 water judges. The department, subject to the direction of
24 the water judge, shall, without cost to the judicial
25 districts wholly or partly within his water division:

1 (1) provide such information and assistance as may be
2 required by the water judge to adjudicate claims of existing
3 rights;

4 (2) establish information and assistance programs to
5 aid claimants in the filing of claims for existing rights
6 required by [section 11];

7 (3) conduct field investigations of ~~randomly--selected~~
8 ~~claims--or~~ claims that the water judge in consultation with
9 the department determines warrant investigation; and

10 (4) provide the water judge with all information in
11 its possession bearing upon existing rights, including all
12 declarations filed with and all information gathered by the
13 department with respect to existing rights in the Powder
14 River Basin.

15 NEW SECTION. Section 22. Preliminary decree. (1)
16 Within a reasonable time after the close of the filing
17 period, the water judge shall issue a preliminary decree.
18 The preliminary decree shall be based on the statements of
19 claim before the water judge, the data submitted by the
20 department, and any additional data obtained by the water
21 judge.

22 (2) The preliminary decree shall contain the
23 information and make the determinations, findings, and
24 conclusions required for the final decree under [section
25 24].

1 (3) If the water judge is satisfied that the report of
2 the water master meets the requirements for the preliminary
3 decree set forth in subsections (1) and (2), and is
4 satisfied with the conclusions contained in the report, the
5 water judge shall adopt the report as the preliminary
6 decree. If the water judge is not so satisfied, he may, at
7 his option, recommit the report to the master with
8 instructions, or modify the report and issue the preliminary
9 decree.

10 (4) The water judge shall send a copy of the
11 preliminary decree to the department, and the water judge
12 shall serve by mail a notice of availability of the
13 preliminary decree to each person who has filed a claim of
14 existing right, or, in the Powder River Basin, to each
15 person who has filed a declaration of AN existing right. The
16 water judge shall enclose with the notice an abstract of the
17 disposition of such person's claimed or declared existing
18 right. The notice of availability shall also be served upon
19 those issued or having applied for and not having been
20 denied a beneficial water use permit pursuant to 85-2-301
21 TITLE 85, CHAPTER 2, PART 3, those granted a reservation
22 pursuant to 85-2-316, or other interested persons who
23 request service of the notice from the water judge. The
24 clerk or person designated by the water judge to mail the
25 notice shall make a general certificate of mailing

1 certifying that a copy of the notice has been placed in the
 2 United States mail, postage prepaid, addressed to each party
 3 required to be served notice of the preliminary decree. Such
 4 certificate shall be conclusive evidence of due and legal
 5 notice of entry of decree.

6 (5) Any person may obtain a copy of the preliminary
 7 decree upon payment of a fee of \$20 or the cost of printing,
 8 whichever is greater, to the water judge.

9 NEW SECTION. Section 23. Hearing on preliminary
 10 decree. (1) Upon objection to the preliminary decree by the
 11 department, a person named in the preliminary decree, or any
 12 other person, for good cause shown, the department or such
 13 person is entitled to a hearing thereon before the water
 14 judge.

15 (2) If a hearing is requested, such request must be
 16 filed with the water judge within 90 days after notice of
 17 entry of the preliminary decree. The water judge may, for
 18 good cause shown, extend this time limit an additional 30
 19 days if application for the extension is made within 90 days
 20 after notice of entry of the preliminary decree.

21 (3) The request for a hearing shall contain a precise
 22 statement of the findings and conclusions in the preliminary
 23 decree with which the department or person requesting the
 24 hearing disagrees. The request shall specify the paragraphs
 25 and pages containing the findings and conclusions to which

1 objection is made. The request shall state the specific
 2 grounds and evidence on which the objections are based.

3 (4) Upon expiration of the time for filing objections
 4 and upon timely receipt of a request for a hearing, the
 5 water judge shall notify each party named in the preliminary
 6 decree that a hearing has been requested. The water judge
 7 shall fix a day when all parties who wish to participate in
 8 future proceedings must appear or file a statement. The
 9 water judge shall then set a date for a hearing. The water
 10 judge may conduct individual or consolidated hearings. A
 11 hearing shall be conducted as for other civil actions. At
 12 the order of the water judge a hearing may be conducted by
 13 the water master, who shall prepare a report of the hearing
 14 as provided in M.R.Civ.P., Rule 53(e).

15 NEW SECTION. Section 24. Final decree. (1) The water
 16 judge shall, on the basis of the preliminary decree and on
 17 the basis of any hearing that may have been held, enter a
 18 final decree affirming or modifying the preliminary decree.
 19 If no request for a hearing is filed within the time
 20 allowed, the preliminary decree automatically becomes final,
 21 and the water judge shall enter it as the final decree.

22 (2) The final decree shall establish the existing
 23 rights and priorities within the water judge's jurisdiction
 24 of persons required by [section 11] to file a claim for an
 25 existing right and of persons required to file a declaration

1 of existing rights in the Powder River Basin pursuant to an
2 order of the department or a district court issued under
3 sections 8 and 9 of Chapter 452, Laws of 1973.

4 (3) The final decree shall state the findings of fact,
5 along with any conclusions of law, upon which the existing
6 rights and priorities of each person named in the decree are
7 based.

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

10 (a) the name and post-office address of the owner of
11 the right;

12 (b) the amount of water, rate, and volume, included in
13 the right;

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

15 (d) the purpose for which the water included in the
16 right is used;

17 (e) the place of use and a description of the land, if
18 any, to which the right is appurtenant;

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

20 (g) the place and means of diversion;

21 (h) the inclusive dates during which the water is used
22 each year;

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

25 NEW SECTION. Section 25. Appeals from final decree.

1 A person whose existing rights and priorities are determined
2 in the final decree may appeal the determination only if:

3 (1) he requested a hearing and appeared and entered
4 objections to the preliminary decree; or

5 (2) his rights as determined in the preliminary decree
6 were altered as the result of a hearing requested by another
7 person.

8 NEW SECTION. Section 26. Certificate of water right.
9 When a final decree is entered, the water judge shall send a
10 copy to the department. The department shall on the basis of
11 the final decree issue a certificate of water right to each
12 person decreed an existing right. The original of the
13 certificate shall be sent to the county clerk and recorder
14 of the county where the point of diversion or place of use
15 is located for recordation. The department shall keep a copy
16 of the certificate in its office in Helena. After
17 recordation, the clerk and recorder shall send the
18 certificate to the person to whom the right is decreed.

19 ~~NEW SECTION. Section 27. Legislative intent regarding~~
20 ~~federal and Indian water rights compacts negotiation~~
21 ~~authorized procedures (1) it is the intent of the~~
22 ~~legislature that the attorney general include all federal~~
23 ~~and Indian interests in the petition required in section~~
24 ~~16] under authority granted the state by 43 U.S.C. 666~~
25 ~~However it is further intended that the state of Montana~~

1 proceed under the provisions of this section to conclude
 2 compacts for the equitable division and apportionment of
 3 waters between the state and its people and the several
 4 federal interests and Indian tribes claiming reserved water
 5 rights within the state. During the 3-year period from the
 6 time of filing the petition required in [section 16] and
 7 while negotiations for the conclusion of a compact under
 8 this section are being pursued, all actions to adjudicate
 9 reserved federal and Indian water rights under [this act]
 10 are suspended.

11 (2) The compact commission may negotiate with the
 12 federal government and Indian tribes jointly or severally to
 13 conclude compacts authorized under subsection (1). When the
 14 compact commission and authorized representatives of the
 15 federal government or Indian tribes have agreed to a
 16 compact, they shall sign a copy and file an original copy
 17 with the department of state of the United States of America
 18 and copies with the secretary of state of Montana and if the
 19 compact is with an Indian tribe, with the tribal council for
 20 the tribe involved. The compact is effective and binding
 21 upon all parties upon ratification by the legislature of
 22 Montana, any affected tribal council, and the congress of
 23 the United States. The water judge shall include in the
 24 preliminary decree the contents of a compact that has been
 25 agreed upon by the parties to the compact whether or not it

1 has been ratified by congress.

2 (3) (a) There is created a reserved water rights
 3 compact commission. Commissioners are appointed as follows:

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

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

9 (iii) one member designated by the governor;

10 (iv) one member designated by the attorney general; and

11 (v) one member from the department of natural
 12 resources and conservation designated by the director.

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

18 (c) The commission is attached to the governor's
 19 office for administrative purposes only. The costs of the
 20 commission shall be paid from funds appropriated for that
 21 purpose from the water right adjudication account
 22 established in [section 19].

23 (d) Members appointed to the commission shall serve
 24 until the work of the commission is completed or until they
 25 resign or are otherwise unable to serve. A vacancy must be

1 ~~filled-in-the-manner-of-the-original-appointments~~

2 THERE IS A NEW MCA SECTION THAT READS:

3 Section 27. Legislative intent regarding Indian water
4 rights -- suspension of adjudication -- negotiation of
5 compacts authorized -- procedure -- negotiation of federal
6 rights. (1) Because the water and water rights within each
7 water division are interrelated, it is the intent of the
8 legislature to conduct unified proceedings for the general
9 adjudication of existing water rights under the Montana
10 Water Use Act. Therefore, it is the intent of the
11 legislature that the attorney general's petition required in
12 [section 16] include all claimants of reserved Indian water
13 rights as necessary and indispensable parties under
14 authority granted the state by 43 U.S.C. 666. However, it is
15 further intended that the state of Montana proceed under the
16 provisions of this section in an effort to conclude compacts
17 for the equitable division and apportionment of waters
18 between the state and its people and the several Indian
19 tribes claiming reserved water rights within the state.

20 (2) From the time of filing the petition required in
21 [section 16] until July 1, 1982, and while negotiations for
22 the conclusion of a compact under this section are being
23 pursued, all actions to generally adjudicate reserved Indian
24 water rights from a source of water in question under [this
25 act] are suspended, unless an action is commenced or is

1 pending by or on behalf of an Indian tribe to adjudicate
2 water from that source other than as provided for in Title
3 85, chapter 2. In such case, the suspension is maintained
4 only if the action is dismissed or if the parties to the
5 action stipulate to the suspension during compact
6 negotiations of all further proceedings in the action except
7 the determination of jurisdictional issues and an order is
8 so issued.

9 (3) The compact commission may negotiate with the
10 Indian tribes or their authorized representatives jointly or
11 severally to conclude compacts authorized under subsection
12 (1). Compact proceedings shall be commenced by the
13 commission. The commission shall serve by certified mail
14 directed to the governing body of each tribe a written
15 request for the initiation of negotiations under [this act]
16 and a request for the designation of an authorized
17 representative of the tribe to conduct compact negotiations.
18 Upon receipt of such written designation from the governing
19 body of a tribe, compact negotiations shall be considered to
20 have commenced. When the compact commission and the Indian
21 tribes or their authorized representatives have agreed to a
22 compact, they shall sign a copy and file an original copy
23 with the department of state of the United States of America
24 and copies with the secretary of state of Montana and with
25 the governing body for the tribe involved. The compact is

PAGES 29-32 WERE INADVERTENTLY LEFT OUT OF THIS
VERSION OF **SB 76**. THEY ARE ALSO MISSING FROM
THE ARCHIVES COPY AT THE HISTORICAL SOCIETY.

1 ~~interruption, for the longest period of time.~~

2 ~~†12††13†~~(12) "Waste" means the unreasonable loss of
3 water through the design or negligent operation of an
4 appropriation or water distribution facility or the
5 application of water to anything but a beneficial use.

6 ~~†13††14†~~(13) "Water" means all water of the state,
7 surface and subsurface, regardless of its character or
8 manner of occurrence, including geothermal water and diffuse
9 surface water.

10 ~~†15†~~(14) "Water division" means a drainage basin as
11 defined in [section 2].

12 ~~†16†~~(15) "Water judge" means a judge as provided for in
13 [sections 1 through 10].

14 ~~†17†~~(16) "Water master" means a master as provided for
15 in [sections 1 through 10].

16 ~~†14††18†~~(17) "Well" means any artificial opening or
17 excavation in the ground, however made, by which groundwater
18 is sought or can be obtained or through which it flows under
19 natural pressures or is artificially withdrawn."

20 Section 30. Section 85-2-112, MCA, is amended to read:

21 "85-2-112. Department duties. The department shall:

22 (1) enforce and administer this chapter and rules
23 adopted by the board under 85-2-113;

24 (2) prescribe procedures, forms, and requirements for
25 applications, permits, certificates, declarations, claims of

1 existing rights, and proceedings under this chapter and
2 prescribe the information to be contained in any
3 application, declaration, claim of existing right, or other
4 document to be filed with the department under this chapter
5 not inconsistent with the requirements of this chapter;

6 (3) establish and keep in its Helena office a
7 centralized record system of all existing rights and a
8 public record of permits, certificates, declarations, claims
9 of existing rights, applications, and other documents filed
10 in its office under this chapter;

11 (4) cooperate with, assist, advise, and coordinate
12 plans and activities with the federal, state, and local
13 agencies in matters relating to this chapter;

14 (5) upon request by any person, cooperate with,
15 assist, and advise that person in matters pertaining to
16 measuring water or filing declarations with the department
17 or claims of existing rights with a district court under
18 this chapter."

19 Section 31. Section 85-2-113, MCA, is amended to read:

20 "85-2-113. Board powers and duties. (1) The board may
21 prescribe fees or service charges for any public service
22 rendered by the department under this chapter, including
23 fees for the filing of applications or for the issuance of
24 permits and certificates. There shall be no fees for the
25 filing of declarations or for any action taken by the

1 ~~department at the request of the water judge or for the~~
2 issuance of certificates of existing rights.

3 (2) The board may adopt rules necessary to implement
4 and carry out the purposes and provisions of this chapter.
5 These rules may include but are not limited to rules to:

6 (a) govern the issuance and terms of interim permits
7 authorizing an applicant for a regular permit under this
8 chapter to begin appropriating water immediately, pending
9 final approval or denial by the department of the
10 application for a regular permit;

11 (b) require the owner or operator of appropriation
12 facilities to install and maintain suitable controlling and
13 measuring devices;

14 (c) require the owner or operator of appropriation
15 facilities to report to the department the readings of
16 measuring devices at reasonable intervals and to file
17 reports on appropriations; and

18 (d) regulate the construction, use, and sealing of
19 wells to prevent the waste, contamination, or pollution of
20 groundwater.

21 (3) The board shall adopt rules providing for and
22 governing temporary emergency appropriations, without prior
23 application for a permit, necessary to protect lives or
24 property."

25 Section 32. Section 85-2-114, MCA, is amended to read:

1 "85-2-114. Prevention of waste. (1) If the department
2 ascertains, by a means reasonably considered sufficient by
3 it, that a person is wasting water, using water unlawfully,
4 or preventing water from moving to another person having a
5 prior right to use the same, it may petition the district
6 court supervising the distribution of water among
7 appropriators from the source to:

8 (a) regulate the controlling works of an appropriation
9 as may be necessary to prevent the wasting or unlawful use
10 of water or to secure water to a person having a prior right
11 to its use; or

12 (b) order the person wasting, unlawfully using, or
13 interfering with another's rightful use of the water to
14 cease and desist from doing so and to take such steps as may
15 be necessary to remedy the waste, unlawful use, or
16 interference.

17 (2) The department may attach to the controlling works
18 a written notice, properly dated and signed, setting forth
19 the fact that the controlling works have been properly
20 regulated by it, which notice shall be legal notice to all
21 persons interested in the appropriation or distribution of
22 the water.

23 (3) The department may also direct its own attorney or
24 request the attorney general or county attorney to bring
25 suit to enjoin such waste, unlawful use, or interference."

1 Section 33. Section 85-2-401, MCA, is amended to read:
 2 "85-2-401. Priority. (1) As between appropriators, the
 3 first in time is the first in right. Priority of
 4 appropriation does not include the right to prevent changes
 5 by later appropriators in the condition of water occurrence,
 6 such as the increase or decrease of streamflow or the
 7 lowering of a water table, artesian pressure, or water
 8 level, if the prior appropriator can reasonably exercise his
 9 water right under the changed conditions.

10 (2) Priority of appropriation made under this chapter
 11 dates from the filing of an application for a permit with
 12 the department, except as otherwise provided in 85-2-301
 13 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

14 (3) Priority of appropriation perfected before July 1,
 15 1973, shall be determined as provided in ~~85-2-201 through~~
 16 ~~85-2-210 part 2 of this chapter."~~

17 Section 34. Section 85-2-406, MCA, is amended to read:
 18 "85-2-406. District court supervision of water
 19 distribution. (1) The district courts shall supervise the
 20 distribution of water among all appropriators. This
 21 supervisory authority includes the supervision of all water
 22 commissioners appointed prior or subsequent to July 1, 1973.
 23 The supervision shall be governed by the principle that
 24 first in time is first in right.

25 (2) When a water distribution controversy arises upon

1 a source of water in which existing rights have not been
 2 determined according to ~~85-2-201 through 85-2-210~~ part 2 of
 3 this chapter, any party to the controversy may petition the
 4 district court for relief. ~~The department shall be served~~
 5 ~~with process in any proceeding under this subsection and~~
 6 ~~shall within a reasonable time thereafter notify the court~~
 7 ~~whether it intends in its discretion, within a reasonable~~
 8 ~~time to begin proceedings to determine existing rights in~~
 9 ~~the source in accordance with part 2 of this chapter. The~~
 10 ~~department may, if it declines to commence proceedings to~~
 11 ~~determine existing rights in the source, intervene as a~~
 12 ~~party in the proceeding. The district court from which~~
 13 ~~relief is sought may grant such injunctive or other relief~~
 14 ~~which is necessary and appropriate to preserve property~~
 15 ~~rights or the status quo pending the department's decision~~
 16 ~~whether to determine existing rights in the source or the~~
 17 ~~department's decision to intervene as a party, as the case~~
 18 ~~may be, if the department does not proceed to obtain a~~
 19 ~~determination of existing rights, the district court shall~~
 20 ~~settle only the controversy between the parties~~ issuance of
 21 the final decree.

22 (3) A controversy between appropriators from a source
 23 which has been the subject of a general determination of
 24 existing rights under ~~85-2-201 through 85-2-210~~ part 2 of
 25 this chapter shall be settled by the district court which

1 issued the final decree. The order of the district court
 2 settling the controversy may not alter the existing rights
 3 and priorities established in the final decree. In cases
 4 involving permits issued by the department, the court may
 5 not amend the respective rights established in the permits
 6 or alter any terms of the permits unless the permits are
 7 inconsistent or interfere with rights and priorities
 8 established in the final decree. The order settling the
 9 controversy shall be appended to the final decree, and a
 10 copy shall be filed with the department. The department
 11 shall be served with process in any proceeding under this
 12 subsection, and the department may, in its discretion,
 13 intervene in the proceeding.*

14 Section 35. Codification. (1) Sections 1 through 10 of
 15 this act are intended to be codified as an integral part of
 16 Title 3, and the provisions contained in Title 3 apply to
 17 this act.

18 (2) Sections 11 through 27 are intended to be codified
 19 as an integral part of Title 85, chapter 2, part 2, and the
 20 provisions contained in Title 85, chapter 2, apply to this
 21 act.

22 (3) If the provisions of this act are not codified as
 23 stated above, the code commissioner shall add to the MCA, if
 24 necessary, statutory language to convey the intent of this
 25 section.

1 Section 36. Severability. If a part of this act is
 2 invalid, all valid parts that are severable from the invalid
 3 part remain in effect. If a part of this act is invalid in
 4 one or more of its applications, the part remains in effect
 5 in all valid applications that are severable from the
 6 invalid applications.

7 Section 37. Repealer. Sections 85-2-201 through
 8 85-2-210, MCA, are repealed.

9 Section 38. Effective date. This act is effective on
 10 passage and approval.

-End-

HOUSE OF REPRESENTATIVES
 Select Committee on Water
 Committee Amendments

1. Title, line 8.
 Following: "SECTIONS"
 Strike: "3-1-101, 3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404"
 Insert: "3-5-111,"

2. Title, line 10.
 Strike: "85-2-405"

3. Pages 1 through 32.
 Strike: all of the bill following the enacting clause
 Insert: the attached substitute bill

17 **NEW SECTION.** Section 1. District court water
 18 divisions -- water judges -- creation. (1) To adjudicate
 19 existing water rights water divisions are established as
 20 defined in [section 2]. A water division shall be presided
 21 over by a water judge.
 22 (2) A water judge shall be designated effective July
 23 1, 1979, for each water division by a majority vote of a
 24 committee composed of the senior judge in each judicial
 25 district wholly or partly within the division. A water judge

1 must be a district judge of a judicial district wholly or
 2 partly within the water division. A district judge may not
 3 sit as a water judge in more than one division.

4 (3) No water judge may preside over matters concerning
 5 the determination and interpretation of existing water
 6 rights beyond the boundaries specified in [section 2] for
 7 his division.

8 (4) A water judge, when presiding over a water
 9 division, presides as district judge in and for each
 10 judicial district wholly or partly within the water
 11 division.

12 (5) The jurisdiction of each judicial district
 13 concerning the determination and interpretation of existing
 14 water rights is exercised exclusively by it through the
 15 water division or water divisions that contain the judicial
 16 district wholly or partly.

17 **NEW SECTION.** Section 2. Water divisions defined. (1)
 18 There are four water divisions whose boundaries are formed
 19 by the natural divides between drainages and the borders of
 20 the state of Montana and which are described as follows:

21 (a) The Yellowstone River Basin water division
 22 consists of those areas drained by the Yellowstone and
 23 Little Missouri Rivers and any remaining areas in Carter
 24 County.

25 (b) The Lower Missouri River Basin water division

1 consists of those areas drained by the Missouri River from
2 below the mouth of the Marias River and any remaining areas
3 in Glacier and Sheridan Counties.

4 (c) The Upper Missouri River Basin water division
5 consists of those areas drained by the Missouri River to
6 below the mouth of the Marias River.

7 (d) The Clark Fork River Basin water division consists
8 of the areas drained by the Clark Fork River, the Kootenai
9 River, and any remaining areas in Lincoln County.

10 (2) Whenever a question arises concerning which water
11 judge shall preside over adjudication of an existing right,
12 the question shall be settled by the water judges involved.

13 NEW SECTION. Section 3. Appointment of water masters
14 -- qualifications -- removal. (1) The water judge in each
15 water division shall appoint a water master.

16 (2) A water master may be appointed after July 1,
17 1980, and must be appointed on or before July 1, 1982.

18 (3) In appointing a water master, the water judge
19 shall consider a potential master's experience with water
20 law, water use, and water rights.

21 (4) A water master shall serve at the pleasure of the
22 water judge and may be removed by the water judge.

23 NEW SECTION. Section 4. Salary, expenses, and
24 retirement of water masters. (1) The water judges shall set
25 a uniform salary for water masters. Water masters shall

1 receive expenses as provided in 2-18-501 through 2-18-503.

2 (2) A water master shall participate in the Montana
3 Public Employees' Retirement System established in Title 19,
4 chapter 3.

5 (3) The salary and expenses of a water master shall be
6 paid from the water right adjudication account established
7 in [section 18].

8 NEW SECTION. Section 5. Duties of water masters. (1)
9 The water master has the general powers given to a master by
10 M.R.Civ.P., Rule 53(c).

11 (2) Within a reasonable time after June 30, 1983, the
12 water master shall issue a report to the water judge meeting
13 the requirements for the preliminary decree as specified in
14 [section 22].

15 (3) After a water judge issues a preliminary decree,
16 the water master shall assist the water judge in the
17 performance of the water division's further duties as
18 ordered by the water judge.

19 NEW SECTION. Section 6. Jurisdiction of the water
20 division. (1) When the department of natural resources and
21 conservation files a copy of each statement of claim with
22 the clerk of the district court as required by [section 11],
23 the claim shall be considered filed in the judicial district
24 of the county in which the diversion is made or, if there is
25 a claimed right with no diversion, in the judicial district

HOUSE OF REPRESENTATIVES
Select Committee on Water
Committee Amendments

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3 sit as a water judge in more than one division.

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5 the determination and interpretation of existing water
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8 (4) A water judge, when presiding over a water
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11 division.

12 (5) The jurisdiction of each judicial district
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24 County.

25 (b) The Lower Missouri River Basin water division

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18 (3) In appointing a water master, the water judge
19 shall consider a potential master's experience with water
20 law, water use, and water rights.

21 (4) A water master shall serve at the pleasure of the
22 water judge and may be removed by the water judge.

23 NEW SECTION. Section 4. Salary, expenses, and
24 retirement of water masters. (1) The water judges shall set
25 a uniform salary for water masters. Water masters shall

1 receive expenses as provided in 2-18-501 through 2-18-503.

2 (2) A water master shall participate in the Montana
3 Public Employees' Retirement System established in Title 19,
4 chapter 3.

5 (3) The salary and expenses of a water master shall be
6 paid from the water right adjudication account established
7 in [section 18].

8 NEW SECTION. Section 5. Duties of water masters. (1)
9 The water master has the general powers given to a master by
10 M.R.Civ.P., Rule 53(c).

11 (2) Within a reasonable time after June 30, 1983, the
12 water master shall issue a report to the water judge meeting
13 the requirements for the preliminary decree as specified in
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19 NEW SECTION. Section 6. Jurisdiction of the water
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21 conservation files a copy of each statement of claim with
22 the clerk of the district court as required by [section 11],
23 the claim shall be considered filed in the judicial district
24 of the county in which the diversion was made or, if there is
25 a claimed right with no diversion, in the judicial district

1 of the county in which the use occurs.

2 (2) The water judge for each division shall exercise
3 jurisdiction over all matters concerning the determination
4 and interpretation of existing water rights within his
5 division as specified in [section 2] that are filed in a
6 judicial district wholly or partly within the division.

7 (3) The water judge may consolidate all matters
8 concerning the determination and interpretation of existing
9 water rights within the water judge's division in any
10 combination or groups of claims or matters for joint
11 hearings or proceedings conducted by the water judge or
12 water master in any location within the division. The water
13 judge may make such consolidations as are necessary to
14 administer the requirements of [this act] in adjudicating
15 claims of existing water rights.

16 (4) All matters concerning the determination and
17 interpretation of existing water rights shall be brought
18 before or immediately transferred to the water judge in the
19 proper water division unless witnesses have been sworn and
20 testimony has been taken by a district court prior to
21 October 1, 1979.

22 (5) The water judge of each water division may appoint
23 and supervise a water commissioner as provided for in Title
24 85, chapter 5.

25 (6) The water judge of each water division may enforce

1 the provisions of a final decree issued in that water
2 division as provided in [section 24].

3 NEW SECTION. Section 7. Disqualification of water
4 judges or water master. (1) A water judge may disqualify
5 himself or the water master in any proceeding or pertinent
6 portion thereof in which his or the water master's
7 impartiality might reasonably be questioned.

8 (2) A water judge may also disqualify himself or the
9 water master in the following circumstances:

10 (a) if he or the water master has a personal bias or
11 prejudice concerning a party of personal knowledge or
12 disputed evidentiary facts concerning the proceeding;

13 (b) if in private practice he or the water master
14 served as a lawyer in the matter in controversy or a lawyer
15 with whom he or the water master previously practiced law
16 served during such association as a lawyer concerning the
17 matter or the judge or the lawyer has been a material
18 witness concerning it;

19 (c) if he or the water master has served in
20 governmental employment and in such capacity participated as
21 counsel, adviser, or material witness concerning the
22 proceeding or expressed an opinion concerning the merits of
23 the particular case in controversy;

24 (d) if he or the water master knows that he or the
25 water master individually or as a fiduciary, or his or the

1 water master's spouse or minor child residing in his or the
 2 water master's household has a financial interest in the
 3 subject matter in controversy or in a party to the
 4 proceeding or any other interest that could be substantially
 5 affected by the outcome of the proceeding; or

6 (e) if he or the water master or his or the water
 7 master's spouse or a person within the third degree of
 8 relationship to any of them (as calculated according to
 9 72-11-101 through 72-11-105) or the spouse of such a person:

10 (i) is a party to the proceeding or an officer,
 11 director, or trustee of a party;

12 (ii) is known by the judge or water master to have an
 13 interest that could be substantially affected by the outcome
 14 of the proceeding;

15 (iii) is to the judge's or water master's knowledge
 16 likely to be a material witness in the proceeding.

17 (3) A water judge should inform himself about his and
 18 the water master's personal and fiduciary financial
 19 interests and make a reasonable effort to inform himself
 20 about the personal financial interests of his and the water
 21 master's spouse and minor children residing in his or the
 22 water master's respective household.

23 (4) For the purposes of this section the following
 24 definitions apply:

25 (a) "Proceeding" includes prehearing, hearing,

1 appellate review, or other stages of adjudication conducted
 2 by the water master or water judge.

3 (b) "Fiduciary" includes such relationships as
 4 executor, administrator, trustee, or guardian.

5 (c) "Financial interest" means ownership of a legal or
 6 equitable interest, however small, or a relationship as
 7 director, advisor, or other active participant in the
 8 affairs of a party, except that:

9 (i) ownership in a mutual or common investment fund
 10 that holds securities is not a financial interest in such
 11 securities unless the judge or water master participates in
 12 the management of the fund;

13 (ii) an office in an educational, religious,
 14 charitable, fraternal, or civic organization is not a
 15 financial interest in securities held by the organization;

16 (iii) the proprietary interest of a policyholder in a
 17 mutual insurance company or a depositor in a mutual savings
 18 association or a similar proprietary interest is a financial
 19 interest in the organization only if the outcome of the
 20 proceeding could substantially affect the value of the
 21 interest; and

22 (iv) ownership of government securities is a financial
 23 interest in the issuer only if the outcome of the proceeding
 24 could substantially affect the value of the securities.

25 (5) A water judge may accept from the parties to the

1 proceeding a waiver of any ground for disqualification if it
2 is preceded by a full disclosure on the record of the basis
3 for disqualification.

4 (6) The procedure for disqualification of a water
5 judge or water master specified in this section is exclusive
6 unless otherwise specifically altered by the Montana supreme
7 court.

8 NEW SECTION. Section 8. Designation of water judge to
9 fill vacancy. If a vacancy occurs, it shall be filled in the
10 manner provided in [section 1] for the initial designation
11 of a water judge. A vacancy is created when a water judge
12 dies, retires, is not elected to a subsequent term, or is
13 otherwise unable to complete his term as a district judge.

14 NEW SECTION. Section 9. Water judges -- term of
15 office. The term of office for water judges is from July 1,
16 1979, to June 30, 1985. After June 30, 1985, the term of
17 office of a water judge is 4 years, subject to continuation
18 of the water divisions by the legislature.

19 NEW SECTION. Section 10. Promulgation of rules and
20 prescription of forms. The Montana supreme court may
21 promulgate special rules of practice and procedure and shall
22 prescribe forms for use in connection with [this act] in
23 consultation with the water judge and the department.

24 NEW SECTION. Section 11. Claim of existing water
25 right -- filing statement of claim required -- exemptions.

1 (1) A person claiming an existing right, unless exempted
2 below, shall file with the department no later than June 30,
3 1983, a statement of claim for each water right asserted on
4 a form provided by the department.

5 (2) The department shall file a copy of each statement
6 of claim with the clerk of the district court for the
7 judicial district in which the diversion is made or, if
8 there is a claimed right with no diversion, the department
9 shall file a copy of the statement of claim with the clerk
10 of the district court of the judicial district in which the
11 use occurs.

12 (3) Claims for existing rights for livestock and
13 individual as opposed to municipal domestic uses based upon
14 instream flow or groundwater sources and claims for rights
15 in the Powder River Basin included in a declaration filed
16 pursuant to the order of the department or a district court
17 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
18 are exempt from the filing requirements of subsection (1) of
19 this section. Such claims may, however, be voluntarily
20 filed.

21 NEW SECTION. Section 12. Department of fish and game
22 to represent public recreational uses. The department of
23 fish and game shall exclusively represent the public for
24 purposes of establishing any prior and existing public
25 recreational use in existing right determinations under

1 [sections 11 through 26], provided that the foregoing shall
 2 not exclude a federal governmental entity from representing
 3 the public for the purpose of establishing any prior and
 4 existing public recreational use in existing right
 5 determinations under [sections 11 through 26] and further
 6 provided that the foregoing shall not be construed in any
 7 manner as a legislative determination of whether or not a
 8 recreational use sought to be established prior to July 1,
 9 1973, is or was a beneficial use.

10 NEW SECTION. Section 13. Statement of claim --
 11 contents. (1) The statement of claim for each right shall
 12 include substantially the following:

- 13 (a) the name and mailing address of the claimant;
 14 (b) the name of the watercourse or water source from
 15 which the right to divert or make use of water is claimed,
 16 if available;
 17 (c) the quantities of water and times of use claimed;
 18 (d) the legal description, with reasonable certainty,
 19 of the point or points of diversion and places of use of
 20 waters;
 21 (e) the purpose of use, including, if for irrigation,
 22 the number of acres irrigated;
 23 (f) the approximate dates of first putting water to
 24 beneficial use for the various amounts and times claimed in
 25 subsection (c); and

1 (g) the sworn statement that the claim set forth is
 2 true and correct to the best of claimant's knowledge and
 3 belief.

4 (2) The claimant shall submit maps, plats, aerial
 5 photographs, decrees, or pertinent portions thereof, or
 6 other evidence in support of his claim. All maps, plats, or
 7 aerial photographs should show as nearly as possible to
 8 scale the point of diversion, place of use, place of
 9 storage, and other pertinent conveyance facilities.

10 NEW SECTION. Section 14. Abandonment by failure to
 11 file claim. The failure to file a claim of an existing right
 12 as required by [section 11] establishes a conclusive
 13 presumption of abandonment of that right.

14 NEW SECTION. Section 15. Claim to constitute prima
 15 facie evidence. A claim of an existing right filed in
 16 accordance with [section 11] constitutes prima facie proof
 17 of its content until the issuance of a final decree.

18 NEW SECTION. Section 16. Order to file claim. (1) The
 19 Montana supreme court shall on or before October 1, 1979,
 20 issue an order to file a statement of a claim of an existing
 21 water right in substantially the following form:

22 "WATER RIGHTS ORDER

23 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT
 24 IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
 25 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence

1 shall be printed in not less than 12-point boldface type.)
 2 This order is notice of commencement of procedures for the
 3 general adjudication of existing rights to the use of water
 4 and of the requirement to file a claim for certain existing
 5 rights to the use of water. Every person, including but not
 6 limited to an individual, partnership, association, public
 7 or private corporation, city or other municipality, county,
 8 state agency or the state of Montana, and federal agency of
 9 the United States of America, asserting a claim to an
 10 existing right to the use of water arising prior to July 1,
 11 1973, is ordered to file a statement of claim to that right
 12 with the department no later than June 30, 1983. Claims for
 13 stock and domestic uses based upon instream flow or
 14 groundwater sources are exempt from this requirement;
 15 however, claims for such uses may be voluntarily filed.
 16 Claims filed with the department in the Powder River Basin
 17 in a declaration filed pursuant to the order of the
 18 department of natural resources and conservation or a
 19 district court issued pursuant to sections 8 and 9 of
 20 Chapter 452, Laws of 1973, are also exempt.

21 For further information, contact the department of
 22 natural resources and conservation, Helena, Montana, for a
 23 copy of the law and an explanation of it."

24 (2) Upon petition of the attorney general, the Montana
 25 supreme court may issue the order called for in subsection

1 (1) with a shorter claim filing period of not less than 1
 2 year in those basins or subbasins where state adjudication
 3 jurisdiction is being or is likely to be challenged.

4 NEW SECTION. Section 17. How notice of the order to
 5 be given. To assure that all persons who may claim an
 6 existing water right are notified of the requirement to file
 7 a claim of that right, the Montana supreme court shall give
 8 notice of the order as follows:

9 (1) It shall cause the order printed in not less than
 10 10-point type to be placed in a prominent and conspicuous
 11 place in all daily newspapers of the state and in at least
 12 one newspaper published in each county of the state during
 13 the month of October 1979, and in April of 1980, 1981, 1982,
 14 and 1983.

15 (2) It shall cause the order in writing to be placed
 16 in a prominent and conspicuous location in each county
 17 courthouse in the state.

18 (3) It shall provide a sufficient number of copies of
 19 the order to the county treasurers before October 15, 1979,
 20 1980, 1981, and 1982, and the county treasurers shall
 21 enclose a copy of the order with each statement of property
 22 taxes mailed in 1979, 1980, 1981, and 1982. In the
 23 implementation of this subsection, the department shall
 24 provide reimbursement to each county treasurer for the
 25 reasonable additional costs incurred by the treasurer

1 arising from the inclusion of the order required by this
2 section. The department shall be reimbursed for such costs
3 from the water right adjudication account created by
4 [section 18].

5 (4) It shall provide copies of the order in writing to
6 the press services with offices located in Helena during
7 July, 1979, and April of 1980, 1981, 1982, and 1983.

8 (5) It may also in its discretion give notice of the
9 order in any other manner that will carry out the purposes
10 of this section.

11 (6) It may also in its discretion order that the
12 department or the water judge assist the Montana supreme
13 court in the carrying out of this section.

14 NEW SECTION. Section 18. Fees special account
15 created. (1) Each claim filed under [section 11] shall be
16 accompanied by a filing fee in the amount of \$40, subject to
17 the following exceptions:

18 (a) the total filing fees for all claims filed by one
19 person in any one water court district may not exceed \$400;
20 and

21 (b) no filing fee is required accompanying a claim of
22 an existing right that is included in a decree of a court in
23 the state of Montana and which is accompanied by a certified
24 copy of that decree or pertinent portion thereof or verified
25 as otherwise ordered by the court.

1 (2) There is established a water right adjudication
2 account in the earmarked revenue fund of the state treasury.
3 All fees collected under this section and [section 22] shall
4 be deposited in the account to pay the expenses incurred by
5 the state for administering [this act].

6 NEW SECTION. Section 19. Expenses to be borne by
7 state. All expenses incurred by the state as a result of
8 [this act] are to be paid from the water right adjudication
9 account in the earmarked revenue fund established in
10 [section 18]. Expenses include but are not limited to the
11 salaries and expenses of personnel, equipment, office space,
12 and other necessities incurred in administering [this act].
13 If sufficient revenue is not available from the earmarked
14 revenue fund, the expense shall be paid from the state's
15 general fund.

16 NEW SECTION. Section 20. Adjudication of existing
17 rights. (1) The state of Montana upon relation of the
18 attorney general shall petition the Montana supreme court to
19 require all persons claiming a right within a water division
20 to file a claim of the right as provided in [section 11].

21 (2) The requirement to file a claim for an existing
22 right is the first step in proceedings for the general
23 adjudication of all existing rights to the use of water.

24 (3) The water judge shall monitor the claim filing
25 procedure for claims within his water division and make any

1 orders necessary to assure timely and accurate compliance
2 with the claim filing procedure.

3 NEW SECTION. Section 21. Department assistance to
4 water judges. The department, subject to the direction of
5 the water judge, shall, without cost to the judicial
6 districts wholly or partly within his water division:

7 (1) provide such information and assistance as may be
8 required by the water judge to adjudicate claims of existing
9 rights;

10 (2) establish information and assistance programs to
11 aid claimants in the filing of claims for existing rights
12 required by [section 11];

13 (3) conduct field investigations of randomly selected
14 claims or claims that the water judge in consultation with
15 the department determines warrant investigation; and

16 (4) provide the water judge with all information in
17 its possession bearing upon existing rights, including all
18 declarations filed with and all information gathered by the
19 department with respect to existing rights in the Powder
20 River Basin.

21 NEW SECTION. Section 22. Preliminary decree. (1)
22 Within a reasonable time after the close of the filing
23 period, the water judge shall issue a preliminary decree.
24 The preliminary decree shall be based on the statements of
25 claim before the water judge, the data submitted by the

1 department, and any additional data obtained by the water
2 judge.

3 (2) The preliminary decree shall contain the
4 information and make the determinations, findings, and
5 conclusions required for the final decree under [section
6 24].

7 (3) If the water judge is satisfied that the report of
8 the water master meets the requirements for the preliminary
9 decree set forth in subsections (1) and (2), and is
10 satisfied with the conclusions contained in the report, the
11 water judge shall adopt the report as the preliminary
12 decree. If the water judge is not so satisfied, he may, at
13 his option, recommit the report to the master with
14 instructions, or modify the report and issue the preliminary
15 decree.

16 (4) The water judge shall send a copy of the
17 preliminary decree to the department, and the water judge
18 shall serve by mail a notice of availability of the
19 preliminary decree to each person who has filed a claim of
20 existing right, or, in the Powder River Basin, to each
21 person who has filed a declaration of existing right. The
22 water judge shall enclose with the notice an abstract of the
23 disposition of such person's claimed or declared existing
24 right. The notice of availability shall also be served upon
25 those issued or having applied for and not having been

1 denied a beneficial water use permit pursuant to 85-2-301,
 2 those granted a reservation pursuant to 85-2-316, or other
 3 interested persons who request service of the notice from
 4 the water judge. The clerk or person designated by the
 5 water judge to mail the notice shall make a general
 6 certificate of mailing certifying that a copy of the notice
 7 has been placed in the United States mail, postage prepaid,
 8 addressed to each party required to be served notice of the
 9 preliminary decree. Such certificate shall be conclusive
 10 evidence of due and legal notice of entry of decree.

11 (5) Any person may obtain a copy of the preliminary
 12 decree upon payment of a fee of \$20 or the cost of printing,
 13 whichever is greater, to the water judge.

14 NEW SECTION. Section 23. Hearing on preliminary
 15 decree. (1) Upon objection to the preliminary decree by the
 16 department, a person named in the preliminary decree, or any
 17 other person, for good cause shown, the department or such
 18 person is entitled to a hearing thereon before the water
 19 judge.

20 (2) If a hearing is requested, such request must be
 21 filed with the water judge within 90 days after notice of
 22 entry of the preliminary decree. The water judge may, for
 23 good cause shown, extend this time limit an additional 30
 24 days if application for the extension is made within 90 days
 25 after notice of entry of the preliminary decree.

1 (3) The request for a hearing shall contain a precise
 2 statement of the findings and conclusions in the preliminary
 3 decree with which the department or person requesting the
 4 hearing disagrees. The request shall specify the paragraphs
 5 and pages containing the findings and conclusions to which
 6 objection is made. The request shall state the specific
 7 grounds and evidence on which the objections are based.

8 (4) Upon expiration of the time for filing objections
 9 and upon timely receipt of a request for a hearing, the
 10 water judge shall notify each party named in the preliminary
 11 decree that a hearing has been requested. The water judge
 12 shall fix a day when all parties who wish to participate in
 13 future proceedings must appear or file a statement. The
 14 water judge shall then set a date for a hearing. The water
 15 judge may conduct individual or consolidated hearings. A
 16 hearing shall be conducted as for other civil actions. At
 17 the order of the water judge a hearing may be conducted by
 18 the water master, who shall prepare a report of the hearing
 19 as provided in M.R.Civ.P., Rule 53(e).

20 NEW SECTION. Section 24. Final decree. (1) The water
 21 judge shall, on the basis of the preliminary decree and on
 22 the basis of any hearing that may have been held, enter a
 23 final decree affirming or modifying the preliminary decree.
 24 If no request for a hearing is filed within the time
 25 allowed, the preliminary decree automatically becomes final.

1 and the water judge shall enter it as the final decree.
 2 (2) The final decree shall establish the existing
 3 rights and priorities within the water judge's jurisdiction
 4 of persons required by [section 11] to file a claim for an
 5 existing right and of persons required to file a declaration
 6 of existing rights in the Powder River Basin pursuant to an
 7 order of the department or a district court issued under
 8 sections 8 and 9 of Chapter 452, Laws of 1973.
 9 (3) The final decree shall state the findings of fact,
 10 along with any conclusions of law, upon which the existing
 11 rights and priorities of each person named in the decree are
 12 based.
 13 (4) For each person who is found to have an existing
 14 right, the final decree shall state:
 15 (a) the name and post-office address of the owner of
 16 the right;
 17 (b) the amount of water, rate, and volume, included in
 18 the right;
 19 (c) the date of priority of the right;
 20 (d) the purpose for which the water included in the
 21 right is used;
 22 (e) the place of use and a description of the land, if
 23 any, to which the right is appurtenant;
 24 (f) the source of the water included in the right;
 25 (g) the place and means of diversion;

1 (h) the inclusive dates during which the water is used
 2 each year;
 3 (i) any other information necessary to fully define
 4 the nature and extent of the right.
 5 NEW SECTION. Section 25. Appeals from final decree.
 6 A person whose existing rights and priorities are determined
 7 in the final decree may appeal the determination only if:
 8 (1) he requested a hearing and appeared and entered
 9 objections to the preliminary decree; or
 10 (2) his rights as determined in the preliminary decree
 11 were altered as the result of a hearing requested by another
 12 person.
 13 NEW SECTION. Section 26. Certificate of water right.
 14 When a final decree is entered, the water judge shall send a
 15 copy to the department. The department shall on the basis of
 16 the final decree issue a certificate of water right to each
 17 person decreed an existing right. The original of the
 18 certificate shall be sent to the county clerk and recorder
 19 of the county where the point of diversion or place of use
 20 is located for recordation. The department shall keep a copy
 21 of the certificate in its office in Helena. After
 22 recordation, the clerk and recorder shall send the
 23 certificate to the person to whom the right is decreed.
 24 NEW SECTION. Section 27. Legislative intent regarding
 25 federal and Indian water rights -- compacts -- negotiation

1 authorized -- procedure. (1) It is the intent of the
 2 legislature that the attorney general include all federal
 3 and Indian interests in the petition required in [section
 4 16] under authority granted the state by 43 U.S.C. 666.
 5 However, it is further intended that the state of Montana
 6 proceed under the provisions of this section to conclude
 7 compacts for the equitable division and apportionment of
 8 waters between the state and its people and the several
 9 federal interests and Indian tribes claiming reserved water
 10 rights within the state. During the 3-year period from the
 11 time of filing the petition required in [section 16], and
 12 while negotiations for the conclusion of a compact under
 13 this section are being pursued, all actions to adjudicate
 14 reserved federal and Indian water rights under [this act]
 15 are suspended.

16 (2) The compact commission may negotiate with the
 17 federal government and Indian tribes jointly or severally to
 18 conclude compacts authorized under subsection (1). When the
 19 compact commission and authorized representatives of the
 20 federal government or Indian tribes have agreed to a
 21 compact, they shall sign a copy and file an original copy
 22 with the department of state of the United States of America
 23 and copies with the secretary of state of Montana and if the
 24 compact is with an Indian tribe, with the tribal council for
 25 the tribe involved. The compact is effective and binding

1 upon all parties upon ratification by the legislature of
 2 Montana, any affected tribal council, and the Congress of
 3 the United States. The water judge shall include in the
 4 preliminary decree the contents of a compact that has been
 5 agreed upon by the parties to the compact whether or not it
 6 has been ratified by Congress.

7 (3) (a) There is created a reserved water rights
 8 compact commission. Commissioners are appointed as follows:

9 (i) two members of the House of Representatives
 10 appointed by the speaker, each from a different political
 11 party;

12 (ii) two members of the Senate appointed by the
 13 president, each from a different political party;

14 (iii) one member designated by the governor;

15 (iv) one member designated by the attorney general; and

16 (v) one member from the department of natural
 17 resources and conservation designated by the director.

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

23 (c) The commission is attached to the governor's
 24 office for administrative purposes only. The costs of the
 25 commission shall be paid from funds appropriated for that

1 purpose from the water right adjudication account
2 established in [section 19].

3 (d) Members appointed to the commission shall serve
4 until the work of the commission is completed or until they
5 resign or otherwise unable to serve. A vacancy must be
6 filled in the manner or the original appointment.

7 Section 28. Section 3-5-111, MCA, is amended to read:

8 "3-5-111. District courts presided over by judges of
9 other districts. A judge of the district court of any
10 judicial district may hold the district court in any county
11 of another district than his own at the request of the judge
12 thereof or as otherwise provided by law. Upon the request
13 of the governor, it is his duty to do so. In either case
14 the judge holding the court has the same power either in
15 court or chambers as a judge thereof."

16 Section 29. Section 85-2-102, MCA, is amended to read:

17 "85-2-102. Definitions. Unless the context requires
18 otherwise, in this chapter the following definitions apply:

19 (1) "Appropriate" means to divert, impound, or
20 withdraw (including by stock for stock water) a quantity of
21 water or, in the case of a public agency, to reserve water
22 in accordance with 85-2-316.

23 (2) "Beneficial use" means a use of water for the
24 benefit of the appropriator, other persons, or the public,
25 including but not limited to agricultural (including stock

1 water), domestic, fish and wildlife, industrial, irrigation,
2 mining, municipal, power, and recreational uses. A use of
3 water for slurry to export coal from Montana is not a
4 beneficial use. Slurry is a mixture of water and insoluble
5 matter.

6 (3) "Board" means the board of natural resources and
7 conservation provided for in 2-15-3302.

8 (4) "Certificate" means the a certificate of water
9 right issued by the department ~~under 85-2-210, subsections~~
10 ~~(1) and (2) of 85-2-906, and 85-2-915.~~

11 (5) "Declaration" means the declaration of an existing
12 right filed with the department under ~~85-2-203~~ section 8,
13 Chapter 452, Laws of 1973.

14 (6) "Department" means the department of natural
15 resources and conservation provided for in Title 2, chapter
16 15, part 33.

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

20 (8) "Groundwater" means any water beneath the land
21 surface or beneath the bed of a stream, lake, reservoir, or
22 other body of surface water, and which is not a part of that
23 surface water.

24 (9) "Permit" means the permit to appropriate issued by
25 the department under 85-2-301 through 85-2-303 and 85-2-306

1 through 85-2-314.

2 (10) "Person" means an individual, association,
3 partnership, corporation, state agency, political
4 subdivision, the United States or any agency thereof, or any
5 other entity.

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

11 ~~(12) "Senior judge in each judicial district" means~~
12 ~~the judge in the district who has served, with or without~~
13 ~~interruption, for the longest period of time.~~

14 ~~(13)~~(13) "Waste" means the unreasonable loss of water
15 through the design or negligent operation of an
16 appropriation or water distribution facility or the
17 application of water to anything but a beneficial use.

18 ~~(14)~~(14) "Water" means all water of the state, surface
19 and subsurface, regardless of its character or manner of
20 occurrence, including geothermal water and diffuse surface
21 water.

22 ~~(15) "Water division" means a drainage basin as defined~~
23 ~~in [section 2].~~

24 ~~(16) "Water judge" means a judge as provided for in~~
25 ~~[sections 1 through 10].~~

1 ~~(17) "Water master" means a master as provided for in~~
2 ~~[sections 1 through 10].~~

3 ~~(18)~~(18) "Well" means any artificial opening or
4 excavation in the ground, however made, by which groundwater
5 is sought or can be obtained or through which it flows under
6 natural pressures or is artificially withdrawn."

7 Section 30. Section 85-2-112, MCA, is amended to read:
8 "85-2-112. Department duties. The department shall:

9 (1) enforce and administer this chapter and rules
10 adopted by the board under 85-2-113;

11 (2) prescribe procedures, forms, and requirements for
12 applications, permits, certificates, declarations, ~~claims of~~
13 ~~existing rights,~~ and proceedings under this chapter and
14 prescribe the information to be contained in any
15 application, declaration, ~~claim of existing rights,~~ or other
16 document to be filed with the department under this chapter
17 ~~not inconsistent with the requirements of this chapter;~~

18 (3) ~~establish and~~ keep in its Helena office a
19 centralized ~~record system of all existing rights and a~~
20 public record of permits, certificates, declarations, ~~claims~~
21 ~~of existing rights,~~ applications, and other documents filed
22 in its office under this chapter;

23 (4) cooperate with, assist, advise, and coordinate
24 plans and activities with the federal, state, and local
25 agencies in matters relating to this chapter;

1 (5) upon request by any person, cooperate with,
2 assist, and advise that person in matters pertaining to
3 measuring water or filing declarations with the department
4 ~~or claims of existing rights with a district court~~ under
5 this chapter."

6 Section 31. Section 85-2-113, MCA, is amended to read:
7 "85-2-113. Board powers and duties. (1) The board may
8 prescribe fees or service charges for any public service
9 rendered by the department under this chapter, including
10 fees for the filing of applications or for the issuance of
11 permits and certificates. There shall be no fees for the
12 filing of declarations or for ~~any action taken by the~~
13 ~~department at the request of the water judge or for the~~
14 issuance of certificates of existing rights.

15 (2) The board may adopt rules necessary to implement
16 and carry out the purposes and provisions of this chapter.
17 These 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
20 chapter to begin appropriating water immediately, pending
21 final approval or denial by the department of the
22 application for 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 32. Section 85-2-114, MCA, is amended to read:

13 "85-2-114. Prevention of waste. (1) If the department
14 ascertains, by a means reasonably considered sufficient by
15 it, that a person is wasting water, using water unlawfully,
16 or preventing water from moving to another person having a
17 prior right to use the same, it may petition the district
18 court ~~supervising the distribution of water among~~
19 ~~appropriators from the source to:~~

20 (a) regulate the controlling works of an appropriation
21 as may be necessary to prevent the wasting or unlawful use
22 of water or to secure water to a person having a prior right
23 to its use; or

24 (b) order the person wasting, unlawfully using, or
25 interfering with another's rightful use of the water to

1 cease and desist from doing so and to take such steps as may
2 be necessary to remedy the waste, unlawful use, or
3 interference.

4 (2) The department may attach to the controlling works
5 a written notice, properly dated and signed, setting forth
6 the fact that the controlling works have been properly
7 regulated by it, which notice shall be legal notice to all
8 persons interested in the appropriation or distribution of
9 the water.

10 (3) The department may also direct its own attorney or
11 request the attorney general or county attorney to bring
12 suit to enjoin such waste, unlawful use, or interference."

13 Section 33. Section 85-2-401, MCA, is amended to read:

14 "85-2-401. 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
20 level, if the prior appropriator can reasonably exercise his
21 water right under the changed conditions.

22 (2) Priority of appropriation made under this chapter
23 dates from the filing of an application for a permit with
24 the department, except as otherwise provided in 85-2-301
25 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

1 (3) Priority of appropriation perfected before July 1,
2 1973, shall be determined as provided in ~~85-2-201 through~~
3 ~~85-2-210 part 2 of this chapter."~~

4 Section 34. Section 85-2-406, MCA, is amended to read:

5 "85-2-406. District court supervision of water
6 distribution. (1) The district courts shall supervise the
7 distribution of water among all appropriators. This
8 supervisory authority includes the supervision of all water
9 commissioners appointed prior or subsequent to July 1, 1973.
10 The supervision shall be governed by the principle that
11 first in time is first in right.

12 (2) When a water distribution controversy arises upon
13 a source of water in which existing rights have not been
14 determined according to ~~85-2-201 through 85-2-210 part 2 of~~
15 ~~this chapter~~, any party to the controversy may petition the
16 district court for relief. ~~The department shall be served~~
17 ~~with process in any proceeding under this subsection and~~
18 ~~shall, within a reasonable time thereafter, notify the court~~
19 ~~whether it intends in its discretion, within a reasonable~~
20 ~~time, to begin proceedings to determine existing rights in~~
21 ~~the source in accordance with part 2 of this chapter. The~~
22 ~~department may, if it declines to commence proceedings to~~
23 ~~determine existing rights in the source, intervene as a~~
24 ~~party in the proceeding. The district court from which~~
25 relief is sought may grant such injunctive or other relief

1 which is necessary and appropriate to preserve property
 2 rights or the status quo pending the department's decision
 3 ~~whether to determine existing rights in the source or the~~
 4 ~~department's decision to intervene as a party as the case~~
 5 ~~may be if the department does not proceed to obtain a~~
 6 ~~determination of existing rights, the district court shall~~
 7 ~~settle only the controversy between the parties~~ issuance of
 8 the final decree.

9 (3) A controversy between appropriators from a source
 10 which has been the subject of a general determination of
 11 existing rights under ~~85-2-201 through 85-2-210~~ part 2 of
 12 this chapter shall be settled by the district court which
 13 issued the final decree. The order of the district court
 14 settling the controversy may not alter the existing rights
 15 and priorities established in the final decree. In cases
 16 involving permits issued by the department, the court may
 17 not amend the respective rights established in the permits
 18 or alter any terms of the permits unless the permits are
 19 inconsistent or interfere with rights and priorities
 20 established in the final decree. The order settling the
 21 controversy shall be appended to the final decree, and a
 22 copy shall be filed with the department. The department
 23 shall be served with process in any proceeding under this
 24 subsection, and the department may, in its discretion,
 25 intervene in the proceeding."

1 Section 35. Codification. (1) Sections 1 through 10 of
 2 this act are intended to be codified as an integral part of
 3 Title 3, and the provisions contained in Title 3 apply to
 4 this act.

5 (2) Sections 11 through 27 are intended to be codified
 6 as an integral part of Title 85, chapter 2, part 2, and the
 7 provisions contained in Title 85, chapter 2, apply to this
 8 act.

9 (3) If the provisions of this act are not codified as
 10 stated above, the code commissioner shall add to the MCA, if
 11 necessary, statutory language to convey the intent of this
 12 section.

13 Section 36. Severability. If a part of this act is
 14 invalid, all valid parts that are severable from the invalid
 15 part remain in effect. If a part of this act is invalid in
 16 one or more of its applications, the part remains in effect
 17 in all valid applications that are severable from the
 18 invalid applications.

19 Section 37. Repealer. Sections 85-2-201 through
 20 85-2-210, MCA, are repealed.

21 Section 38. Effective date. This act is effective on
 22 passage and approval.

-End-