

House Bill 432

In The House

January 23, 1981

Introduced and referred
to Committee on Water.

April 23, 1981

Died in Committee.

1 HOUSE BILL NO. 432
 2 INTRODUCED BY Menahan Hamilton Grand
 3 AGGREGA

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
 5 ACCELERATED DECLARATION OF ABANDONMENT OF INDUSTRIAL WATER
 6 RIGHTS IN CERTAIN CASES; ESTABLISHING A PRESUMPTION OF
 7 INTENTION TO ABANDON IN SUCH CASES; AND AMENDING SECTIONS
 8 85-2-404 AND 85-2-405, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 85-2-404, MCA, is amended to read:

12 "85-2-404. Abandonment of appropriation right. (1) If
 13 an appropriator ceases to use all or a part of his
 14 appropriation right with the intention of wholly or
 15 partially abandoning the right or if he ceases using his
 16 appropriation right according to its terms and conditions
 17 with the intention of not complying with those terms and
 18 conditions, the appropriation right shall, to that extent,
 19 be deemed considered abandoned and shall immediately expire.
 20 ~~Cessation of operation of an industrial facility to which an~~
 21 ~~appropriation right appertains, with the announced intent to~~
 22 ~~cease operation permanently, constitutes prima facie~~
 23 ~~evidence of intention to abandon that appropriation right.~~

24 (2) If an appropriator ceases to use all or part of
 25 his appropriation right or ceases using his appropriation

1 right according to its terms and conditions for a period of
 2 10 successive years and there was water available for his
 3 use, there shall be a prima facie presumption that the
 4 appropriator has abandoned his right in whole or for the
 5 part not used.

6 (3) This section does not apply to existing
 7 nonindustrial rights until they have been determined in
 8 accordance with part 2 of this chapter."

9 Section 2. 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 of the
 19 appropriation in question to hold a hearing to determine
 20 whether the appropriation right has been abandoned.
 21 Proceedings under this section shall be conducted in
 22 accordance with the Montana Rules of Civil Procedure, and
 23 appeal shall be taken in accordance with the Montana Rules
 24 of Appellate Civil Procedure.

25 (2) At the hearing, the burden of proof shall be on

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1 the department, which must establish by a preponderance of
2 the evidence that the appropriation has been abandoned under
3 85-2-404 unless the department has shown that the
4 appropriator has ceased to operate an industrial facility to
5 which the right appertains and has stated the intention that
6 such cessation is intended to be permanent, in which case
7 the burden of proof shall be on the appropriator.

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

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