

HOUSE BILL NO. 667

INTRODUCED BY ROTH, GALT, IVERSON, HURWITZ, KEMMIS,  
MOORE, CURTISS, CONROY, BRIGGS, SCHULTZ,  
ERNST, ELLERD, ELLISON, McLANE

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

IN THE HOUSE

February 6, 1981	Introduced and referred to Committee on Water.
February 10, 1981	Fiscal note requested.
February 12, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.  Second reading, do pass.
February 23, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 98; Noes, 1. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
March 18, 1981	Committee recommend bill be concurrent in. Report adopted.
March 20, 1981	Second reading, concurred in.
March 23, 1981	Third reading, concurred in. Ayes, 47; Noes, 1.

IN THE HOUSE

March 24, 1981

Returned from Senate. Con-  
curred in. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 667  
 2 INTRODUCED BY *Rob Galt* *John* *McLure* *Kevin*  
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES *McLane*  
 4 AND CONSERVATION *Ernst* *Ellis*

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND  
 7 CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS OF  
 8 TITLE 3, CHAPTER 7, PART 3, AND TITLE 85, CHAPTER 2, PART 2,  
 9 MCA; ALLOWING FOR THE APPOINTMENT OF MORE THAN ONE WATER  
 10 MASTER IN EACH WATER DIVISION; PROVIDING FOR SUPERVISION AND  
 11 ADMINISTRATION BY THE SUPREME COURT; PROVIDING A FILING FEE  
 12 FOR THE FILING OF EXEMPT CLAIMS; PROVIDING THAT A  
 13 PRELIMINARY DECREE MAY BE ISSUED FOR ANY INTERRELATED  
 14 PORTION OF A WATER DIVISION; PROVIDING THAT A PRELIMINARY  
 15 DECREE MAY BE ISSUED PENDING THE NEGOTIATION OF A COMPACT;  
 16 ALLOWING A WATER JUDGE TO EXTEND THE TIME LIMIT FOR  
 17 REQUESTING A HEARING ON A PRELIMINARY DECREE; PROVIDING FOR  
 18 THE SUSPENSION OF LEGAL PROCEEDINGS, AND THE FILING OF  
 19 FEDERAL CLAIMS UPON TERMINATION OF SUSPENSION; AMENDING  
 20 SECTIONS 3-7-301, 85-2-112, 85-2-217, 85-2-225, 95-2-231,  
 21 85-2-233, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN  
 22 IMMEDIATE EFFECTIVE DATE."

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 25 NEW SECTION. Section 1. Supervision end

1 administration by supreme court. (1) The Montana supreme  
 2 court shall supervise the activities of the water judges,  
 3 water masters, and associated personnel in implementing this  
 4 chapter and Title 35, chapter 2, part 2.

5 (2) The supreme court shall pay the expenses of the  
 6 water judges and the salaries and expenses of the water  
 7 judges' staffs and the salaries and expenses of the water  
 8 masters and the water masters' staffs, from the water rights  
 9 adjudication account established by 85-2-241. "Salaries and  
 10 expenses" as used in this section include but are not  
 11 limited to the salaries and expenses of personnel, the cost  
 12 of office equipment and office space, and such other  
 13 necessary expenses as may be incurred in the administration  
 14 of this chapter and Title 85, chapter 2, part 2.

15 Section 2. Section 3-7-301, MCA, is amended to read:  
 16 "3-7-301. Appointment of water masters -- removal. (1)  
 17 The water judge in each water division shall appoint a ~~at~~  
 18 least one water master and may appoint more than one water  
 19 master.

20 (2) A water master may be appointed after July 1,  
 21 1980, and must be appointed on or before July 1, 1982.

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

25 (4) A water master shall serve at the pleasure of the

1 water judge and may be removed by the water judge."

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

3 "85-2-112. Department duties. The department shall:

4 (1) enforce and administer this chapter and rules  
5 adopted by the board under 85-2-113, subject to the powers  
6 and duties of the supreme court under [section 1];

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

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

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

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

1 this chapter."

2 Section 4. Section 85-2-217, MCA, is amended to read:

3 "85-2-217. Suspension of adjudication. ~~From the time~~  
4 ~~of filing the petition required in 85-2-211 until July 1,~~  
5 ~~1982, and while~~ while negotiations for the conclusion of a  
6 compact under part 7 are being pursued, all actions  
7 proceedings to generally adjudicate reserved Indian water  
8 ~~rights from a source of water in question under this part~~  
9 and federal reserved water rights of those tribes and  
10 federal agencies which are negotiating are suspended, ~~unless~~  
11 ~~an action is commenced or is pending by or on behalf of an~~  
12 ~~Indian tribe to adjudicate water from that source other than~~  
13 ~~as provided for in title 85, chapter 2, in such case, the~~  
14 ~~suspension is maintained only if the action is dismissed or~~  
15 ~~if the parties to the action stipulate to the suspension~~  
16 ~~during compact negotiations of all further proceedings in~~  
17 ~~the action except the determination of jurisdictional issues~~  
18 ~~and an order is so issued. The obligation to file water~~  
19 ~~rights claims for those reserved rights is also suspended.~~  
20 This suspension shall be effective until July 1, 1985, as  
21 long as negotiations are continuing or ratification of a  
22 completed compact is being sought. If approval by the state  
23 legislature and tribes or federal agencies has not been  
24 accomplished by July 1, 1985, the suspension shall terminate  
25 on that date. Upon termination of the suspension of this

1 part, the tribes and the federal agencies shall be subject  
 2 to the special filing requirements of 85-2-702(3) and all  
 3 other requirements of the state water adjudication system  
 4 provided for in Title 85, chapter 2. Those tribes and  
 5 federal agencies that choose not to negotiate their reserved  
 6 water rights shall be subject to the full operation of the  
 7 state adjudication system and may not benefit from the  
 8 suspension provisions of this section."

9 Section 5. Section 85-2-225, MCA, is amended to read:

10 "85-2-225. Filing fee. (1) Each claim filed under  
 11 85-2-221 or 85-2-222 ~~shall~~ must be accompanied by a filing  
 12 fee in the amount of \$40, subject to the following  
 13 exceptions:

14 ~~(1)(a)~~ the total filing fees for all claims filed by  
 15 one person in any one water court division may not exceed  
 16 \$480; and

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

22 ~~(2) a claim that is exempt from the filing~~  
 23 ~~requirements of 85-2-221(1) but that is voluntarily filed~~  
 24 ~~must be accompanied by a filing fee in the amount of \$40.~~  
 25 ~~Exempt claims for a single development with several uses if~~

1 filed simultaneously may be accompanied by a filing fee in  
 2 the amount of \$40."

3 Section 6. Section 85-2-231, MCA, is amended to read:

4 "85-2-231. Preliminary decree. (1) ~~Within a reasonable~~  
 5 ~~time after the close of the filing period, the~~ The water  
 6 judge shall issue a preliminary decree. The preliminary  
 7 decree shall be based on:

8 (a) the statements of claim before the water judge;

9 (b) the data submitted by the department;

10 ~~(c) the contents of compacts approved by the Montana~~  
 11 ~~Legislature and the tribe or federal agency or, lacking an~~  
 12 ~~approved compact, the filings for federal and Indian~~  
 13 ~~reserved rights; and~~

14 (d) any additional data obtained by the water judge.  
 15 The preliminary decree shall be issued within 90 days after  
 16 the close of the special filing period set out in  
 17 85-2-702(3) or as soon thereafter as is reasonably feasible.

18 This section does not prevent the water judge from issuing  
 19 an interlocutory decree or other temporary decree if such a  
 20 decree is necessary for the orderly administration of water  
 21 rights prior to the issuance of a preliminary decree.

22 (2) A preliminary decree may be issued for any  
 23 hydrologically interrelated portion of a water division,  
 24 including but not limited to a basin, subbasin, drainage,  
 25 subdrainage, stream, or single source of supply of water, at

1 ~~a time different from the issuance of other preliminary~~  
2 ~~decrees or portions of the same decree.~~

3 ~~(2)(3)~~ The preliminary decree shall contain the  
4 information and make the determinations, findings, and  
5 conclusions required for the final decree under 85-2-234.  
6 The water judge shall include in the preliminary decree the  
7 contents of a compact negotiated under the provisions of  
8 part 7 that has been ~~agreed--upon-by-the-parties-to-the~~  
9 ~~compact approved by the legislature and the tribe or federal~~  
10 ~~agency~~ whether or not it has been ratified by congress.

11 ~~(3)(4)~~ If the water judge is satisfied that the report  
12 of the water master meets the requirements for the  
13 preliminary decree set forth in subsections (1) and ~~(2)(3)~~  
14 and is satisfied with the conclusions contained in the  
15 report, the water judge shall adopt the report as the  
16 preliminary decree. If the water judge is not so satisfied,  
17 he may, at his option, recommit the report to the master  
18 with instructions, or modify the report and issue the  
19 preliminary decree."

20 Section 7. Section 85-2-233, MCA, is amended to read:

21 "85-2-233. Hearing on preliminary decree. (1) Upon  
22 objection to the preliminary decree by the department, a  
23 person named in the preliminary decree, or any other person,  
24 for good cause shown, the department or such person is  
25 entitled to a hearing thereon before the water judge.

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

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

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

1 Section 8. Section 85-2-702, MCA, is amended to read:

2 "85-2-702. Negotiation with Indian tribes. (1) The  
3 reserved water rights compact commission, created by  
4 2-15-212, may negotiate with the Indian tribes or their  
5 authorized representatives jointly or severally to conclude  
6 compacts authorized under 85-2-701. Compact proceedings  
7 shall be commenced by the commission. The commission shall  
8 serve by certified mail directed to the governing body of  
9 each tribe a written request for the initiation of  
10 negotiations under this part and a request for the  
11 designation of an authorized representative of the tribe to  
12 conduct compact negotiations. Upon receipt of such written  
13 designation from the governing body of a tribe, compact  
14 negotiations shall be considered to have commenced.

15 (2) When the compact commission and the Indian tribes  
16 or their authorized representatives have agreed to a  
17 compact, they shall sign a copy and file an original copy  
18 with the department of state of the United States of America  
19 and copies with the secretary of state of Montana and with  
20 the governing body for the tribe involved. The compact is  
21 effective and binding upon all parties upon ratification by  
22 the legislature of Montana, any affected tribal governing  
23 body, and the congress of the United States.

24 ~~(3) Upon its approval by the Montana legislature and~~  
25 ~~the tribe or federal agency, the terms of a compact must be~~

1 ~~included in the preliminary decree as provided by 85-2-231.~~  
2 ~~However, if approval of the state legislature and tribe or~~  
3 ~~federal agency has not been accomplished by July 1, 1985,~~  
4 ~~all federal and Indian claims for reserved water rights that~~  
5 ~~have not been resolved by a compact must be filed with the~~  
6 ~~department within 60 days. These new filings shall be used~~  
7 ~~in the formulation of the preliminary decree and shall be~~  
8 ~~given treatment similar to that given to all other filings."~~

9 Section 9. Section 85-2-704, MCA, is amended to read:

10 "85-2-704. Termination of negotiations. The commission  
11 or any other party to the negotiations may terminate  
12 negotiations by providing notice to all parties 30 days in  
13 advance of the termination date. On the termination date,  
14 the suspension of the application of part 2 provided for in  
15 85-2-217 shall also terminate. ~~The tribe or federal agency~~  
16 ~~shall file all of its claims for reserved rights within 60~~  
17 ~~days of the termination of negotiations."~~

18 Section 10. Codification instruction. Section 1 is  
19 intended to be codified as an integral part of Title 3,  
20 chapter 7, part 2, and the provisions of section 1 apply to  
21 Title 3, chapter 7.

22 Section 11. Effective date. This act is effective on  
23 passage and approval.

-End-

HB 617

## STATE OF MONTANA

REQUEST NO. 346-81

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 81, there is hereby submitted a Fiscal Note for House Bill 667 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

Description of Proposed Legislation

House Bill 667 is an act generally revising and clarifying the adjudication of water rights provisions of Title 3, Chapter 7, Part 3, and Title 35, Chapter 2, Part 2, MCA; allowing for the appointment of more than one water master in each water division; providing for supervision and administration by the Supreme Court; providing a filing fee for the filing of exempt claims; providing that a preliminary decree may be issued pending the negotiation of a compact; allowing a water judge to extend the time limit for requesting a hearing on a preliminary decree; providing for the suspension of legal proceedings, and the filing of federal claims upon termination of suspension; and providing an immediate effective date.

Fiscal Impact

<u>Proposed Law</u>	<u>FY 1982</u>	<u>FY 1983</u>
Personal Services	\$156,043	\$258,362
Operating Expenses	70,500	74,400
Capital Outlay	<u>51,000</u>	<u>17,000</u>
Expenditure Increase to Supreme Court	\$277,543	\$349,762
Expenditure Decrease to Department of Natural Resources & Conservation	\$277,543	\$349,762

Comment

The fiscal impact indicated above is that portion of the expenditures that would be the responsibility of the Supreme Court under the section proposing for the supervision and administration of the water courts by the Supreme Court. The expenditures are transferred from the Department of Natural Resources and Conservation to the Supreme Court. This fiscal impact was included on the Fiscal Note for Senate Bill 347, which is an act to create the Office of Chief Water Judge.

*David M Lewis*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-12-81



Approved by the Select Committee on Water

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HOUSE BILL NO. 667

INTRODUCED BY *Rob Galt* *John* *Neuwitz* *Kammin*  
*Curtis*  
BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES *McLane*  
*Conroy* *Brigg* *Seibert* *Ernst* *Ellison*  
AND CONSERVATION *Ellison*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS OF TITLE 3, CHAPTER 7, PART 3, AND TITLE 85, CHAPTER 2, PART 2, MCA; ALLOWING FOR THE APPOINTMENT OF MORE THAN ONE WATER MASTER IN EACH WATER DIVISION; PROVIDING FOR SUPERVISION AND ADMINISTRATION BY THE SUPREME COURT; PROVIDING A FILING FEE FOR THE FILING OF EXEMPT CLAIMS; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED FOR ANY INTERRELATED PORTION OF A WATER DIVISION; PROVIDING THAT A PRELIMINARY DECREE MAY BE ISSUED PENDING THE NEGOTIATION OF A COMPACT; ALLOWING A WATER JUDGE TO EXTEND THE TIME LIMIT FOR REQUESTING A HEARING ON A PRELIMINARY DECREE; PROVIDING FOR THE SUSPENSION OF LEGAL PROCEEDINGS, AND THE FILING OF FEDERAL CLAIMS UPON TERMINATION OF SUSPENSION; AMENDING SECTIONS 3-7-301, 85-2-112, 85-2-217, 85-2-225, 85-2-231, 85-2-233, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Supervision and

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administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from the water rights adjudication account established by 85-2-241. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and such other necessary expenses as may be incurred in the administration of this chapter and Title 85, chapter 2, part 2.

Section 2. Section 3-7-301, MCA, is amended to read:

"3-7-301. Appointment of water masters -- removal. (1) The water judge in each water division shall appoint ~~a~~ at least one water master ~~and may appoint more than one water master.~~

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

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

(4) A water master shall serve at the pleasure of the

1 water judge and may be removed by the water judge."

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

3 "85-2-112. Department duties. The department shall:

4 (1) enforce and administer this chapter and rules  
5 adopted by the board under 85-2-113, subject to the powers  
6 and duties of the supreme court under [section 1];

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

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

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

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

1 this chapter."

2 Section 4. Section 85-2-217, MCA, is amended to read:

3 "85-2-217. Suspension of adjudication. ~~From the time~~  
4 ~~of filing the petition required in 85-2-211 until duty in~~  
5 ~~1982, and while~~ While negotiations for the conclusion of a  
6 compact under part 7 are being pursued, all actions  
7 proceedings to generally adjudicate reserved Indian water  
8 ~~rights from a source of water in question under this part~~  
9 and federal reserved water rights of those tribes and  
10 federal agencies which are negotiating are suspended, unless  
11 ~~an action is commenced or is pending by or on behalf of an~~  
12 ~~Indian tribe to adjudicate water from that source other than~~  
13 ~~as provided for in Title 85, Chapter 2, in such case, the~~  
14 ~~suspension is maintained only if the action is dismissed or~~  
15 ~~if the parties to the action stipulate to the suspension~~  
16 ~~during compact negotiations of all further proceedings in~~  
17 ~~the action except the determination of jurisdictional issues~~  
18 ~~and an order is so issued. The obligation to file water~~  
19 rights claims for those reserved rights is also suspended.  
20 This suspension shall be effective until July 1, 1985, as  
21 long as negotiations are continuing or ratification of a  
22 completed compact is being sought. If approval by the state  
23 legislature and tribes or federal agencies has not been  
24 accomplished by July 1, 1985, the suspension shall terminate  
25 on that date. Upon termination of the suspension of this

1 part, the tribes and the federal agencies shall be subject  
 2 to the special filing requirements of 85-2-702(3) and all  
 3 other requirements of the state water adjudication system  
 4 provided for in Title 85, chapter 2. Those tribes and  
 5 federal agencies that choose not to negotiate their reserved  
 6 water rights shall be subject to the full operation of the  
 7 state adjudication system and may not benefit from the  
 8 suspension provisions of this section."

9 Section 5. Section 85-2-225, MCA, is amended to read:  
 10 "85-2-225. Filing fee. (1) Each claim filed under  
 11 85-2-221 or 85-2-222 shall must be accompanied by a filing  
 12 fee in the amount of \$40, subject to the following  
 13 exceptions:

14 ~~(1)(a)~~ the total filing fees for all claims filed by  
 15 one person in any one water court division may not exceed  
 16 \$480; and

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

22 ~~(2) a claim that is exempt from the filing~~  
 23 ~~requirements of 85-2-221(1) but that is voluntarily filed~~  
 24 ~~must be accompanied by a filing fee in the amount of \$40.~~  
 25 ~~Exempt claims for a single development with several uses if~~

1 filed simultaneously may be accompanied by a filing fee in  
 2 the amount of \$40."

3 Section 6. Section 85-2-231, MCA, is amended to read:

4 "85-2-231. Preliminary decree. (1) ~~Within a reasonable~~  
 5 ~~time after the close of the filing period, the~~ The water  
 6 judge shall issue a preliminary decree. The preliminary  
 7 decree shall be based on:

8 (a) the statements of claim before the water judge;

9 (b) the data submitted by the department;

10 ~~(c) the contents of compacts approved by the Montana~~  
 11 ~~legislature and the tribe or federal agency or, lacking an~~  
 12 ~~approved compact, the filings for federal and Indian~~  
 13 ~~reserved rights; and~~

14 (d) any additional data obtained by the water judge.  
 15 ~~The preliminary decree shall be issued within 90 days after~~  
 16 ~~the close of the special filing period set out in~~  
 17 ~~85-2-702(3) or as soon thereafter as is reasonably feasible.~~  
 18 ~~This section does not prevent the water judge from issuing~~  
 19 ~~an interlocutory decree or other temporary decree if such a~~  
 20 ~~decree is necessary for the orderly administration of water~~  
 21 ~~rights prior to the issuance of a preliminary decree.~~

22 (2) ~~A preliminary decree may be issued for any~~  
 23 ~~hydrologically interrelated portion of a water division,~~  
 24 ~~including but not limited to a basin, subbasin, drainage,~~  
 25 ~~subdrainage, stream, or single source of supply of water, at~~

1 a time different from the issuance of other preliminary  
 2 decrees or portions of the same decree.

3 ~~(2)(3)~~ The preliminary decree shall contain the  
 4 information and make the determinations, findings, and  
 5 conclusions required for the final decree under 85-2-234.  
 6 The water judge shall include in the preliminary decree the  
 7 contents of a compact negotiated under the provisions of  
 8 part 7 that has been ~~agreed-upon-by-the-parties-to-the~~  
 9 compact approved by the legislature and the tribe or federal  
 10 agency whether or not it has been ratified by congress.

11 ~~(3)(4)~~ If the water judge is satisfied that the report  
 12 of the water master meets the requirements for the  
 13 preliminary decree set forth in subsections (1) and ~~(2)(3)~~  
 14 and is satisfied with the conclusions contained in the  
 15 report, the water judge shall adopt the report as the  
 16 preliminary decree. If the water judge is not so satisfied,  
 17 he may, at his option, recommit the report to the master  
 18 with instructions, or modify the report and issue the  
 19 preliminary decree."

20 Section 7. Section 85-2-233, MCA, is amended to read:  
 21 ~~"85-2-233. Hearing on preliminary decree. (1) Upon~~  
 22 objection to the preliminary decree by the department, a  
 23 person named in the preliminary decree, or any other person,  
 24 for good cause shown, the department or such person is  
 25 entitled to a hearing thereon before the water judge.

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

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

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

1 Section 8. Section 85-2-702, MCA, is amended to read:  
 2 "85-2-702. Negotiation with Indian tribes. (1) The  
 3 reserved water rights compact commission, created by  
 4 2-15-212, may negotiate with the Indian tribes or their  
 5 authorized representatives jointly or severally to conclude  
 6 compacts authorized under 85-2-701. Compact proceedings  
 7 shall be commenced by the commission. The commission shall  
 8 serve by certified mail directed to the governing body of  
 9 each tribe a written request for the initiation of  
 10 negotiations under this part and a request for the  
 11 designation of an authorized representative of the tribe to  
 12 conduct compact negotiations. Upon receipt of such written  
 13 designation from the governing body of a tribe, compact  
 14 negotiations shall be considered to have commenced.  
 15 (2) When the compact commission and the Indian tribes  
 16 or their authorized representatives have agreed to a  
 17 compact, they shall sign a copy and file an original copy  
 18 with the department of state of the United States of America  
 19 and copies with the secretary of state of Montana and with  
 20 the governing body for the tribe involved. The compact is  
 21 effective and binding upon all parties upon ratification by  
 22 the legislature of Montana, any affected tribal governing  
 23 body, and the congress of the United States.  
 24 (3) Upon its approval by the Montana legislature and  
 25 the tribe or federal agency, the terms of a compact must be

1 included in the preliminary decree as provided by 85-2-231.  
 2 However, if approval of the state legislature and tribe or  
 3 federal agency has not been accomplished by July 1, 1985,  
 4 all federal and Indian claims for reserved water rights that  
 5 have not been resolved by a compact must be filed with the  
 6 department within 60 days. These new filings shall be used  
 7 in the formulation of the preliminary decree and shall be  
 8 given treatment similar to that given to all other filings."  
 9 Section 9. Section 85-2-704, MCA, is amended to read:  
 10 "85-2-704. Termination of negotiations. The commission  
 11 or any other party to the negotiations may terminate  
 12 negotiations by providing notice to all parties 30 days in  
 13 advance of the termination date. On the termination date,  
 14 the suspension of the application of part 2 provided for in  
 15 85-2-217 shall also terminate. The tribe or federal agency  
 16 shall file all of its claims for reserved rights within 60  
 17 days of the termination of negotiations."  
 18 Section 10. Codification instruction. Section 1 is  
 19 intended to be codified as an integral part of Title 3,  
 20 chapter 7, part 2, and the provisions of section 1 apply to  
 21 Title 3, chapter 7.  
 22 Section 11. Effective date. This act is effective on  
 23 passage and approval.

-End-



1 water judge and may be removed by the water judge."

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

3 "85-2-112. Department duties. The department shall:

4 (1) enforce and administer this chapter and rules

5 adopted by the board under 85-2-113, subject to the powers

6 and duties of the supreme court under [section 1];

7 (2) prescribe procedures, forms, and requirements for

8 applications, permits, certificates, declarations, claims of

9 existing rights, and proceedings under this chapter and

10 prescribe the information to be contained in any

11 application, declaration, claim of existing right, or other

12 document to be filed with the department under this chapter

13 not inconsistent with the requirements of this chapter;

14 (3) establish and keep in its Helena office a

15 centralized record system of all existing rights and a

16 public record of permits, certificates, declarations, claims

17 of existing rights, applications, and other documents filed

18 in its office under this chapter;

19 (4) cooperate with, assist, advise, and coordinate

20 plans and activities with the federal, state, and local

21 agencies in matters relating to this chapter;

22 (5) upon request by any person, cooperate with,

23 assist, and advise that person in matters pertaining to

24 measuring water or filing declarations with the department

25 or claims of existing rights with a district court under

1 this chapter."

2 Section 4. Section 85-2-217, MCA, is amended to read:

3 "85-2-217. Suspension of adjudication. ~~From the time~~

4 ~~of filing the petition required in 85-2-211 until July 1,~~

5 ~~1982, and while~~ While negotiations for the conclusion of a

6 compact under part 7 are being pursued, all actions

7 proceedings to generally adjudicate reserved Indian water

8 rights ~~from a source of water in question under this part~~

9 ~~and federal reserved water rights of those tribes and~~

10 ~~federal agencies which are negotiating~~ are suspended ~~unless~~

11 ~~an action is commenced or is pending by or on behalf of an~~

12 ~~Indian tribe to adjudicate water from that source other than~~

13 ~~as provided for in title 85, chapter 2, in such case, the~~

14 ~~suspension is maintained only if the action is dismissed or~~

15 ~~if the parties to the action stipulate to the suspension~~

16 ~~during compact negotiations of all further proceedings in~~

17 ~~the action except the determination of jurisdictional issues~~

18 ~~and an order is so issued. The obligation to file water~~

19 ~~rights claims for those reserved rights is also suspended.~~

20 This suspension shall be effective until July 1, 1985, as

21 long as negotiations are continuing or ratification of a

22 completed compact is being sought. If approval by the state

23 legislature and tribes or federal agencies has not been

24 accomplished by July 1, 1985, the suspension shall terminate

25 on that date. Upon termination of the suspension of this

1 part, the tribes and the federal agencies shall be subject  
 2 to the special filing requirements of 85-2-702(3) and all  
 3 other requirements of the state water adjudication system  
 4 provided for in Title 85, chapter 2. Those tribes and  
 5 federal agencies that choose not to negotiate their reserved  
 6 water rights shall be subject to the full operation of the  
 7 state adjudication system and may not benefit from the  
 8 suspension provisions of this section."

9 Section 5. Section 85-2-225, MCA, is amended to read:  
 10 "85-2-225. Filing fee. (1) Each claim filed under  
 11 85-2-221 or 85-2-222 ~~shall~~ must be accompanied by a filing  
 12 fee in the amount of \$40, subject to the following  
 13 exceptions:

14 ~~(1)(a)~~ (a) the total filing fees for all claims filed by  
 15 one person in any one water court division may not exceed  
 16 \$480; and

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

22 ~~(2) a claim that is exempt from the filing~~  
 23 ~~requirements of 85-2-221(1) but that is voluntarily filed~~  
 24 ~~must be accompanied by a filing fee in the amount of \$40.~~  
 25 ~~Exempt claims for a single development with several uses if~~

1 filed simultaneously may be accompanied by a filing fee in  
 2 the amount of \$40."

3 Section 6. Section 85-2-231, MCA, is amended to read:  
 4 "85-2-231. Preliminary decree. (1) ~~Within a reasonable~~  
 5 ~~time after the close of the filing period,~~ the ~~the~~ water  
 6 judge shall issue a preliminary decree. The preliminary  
 7 decree shall be based on:

8 (a) the statements of claim before the water judge;

9 (b) the data submitted by the department;

10 ~~(c) the contents of compacts approved by the Montana~~  
 11 ~~legislature and the tribe or federal agency or, lacking an~~  
 12 ~~approved compact, the filings for federal and Indian~~  
 13 ~~reserved rights; and~~

14 (d) any additional data obtained by the water judge.  
 15 ~~The preliminary decree shall be issued within 90 days after~~  
 16 ~~the close of the special filing period set out in~~  
 17 ~~85-2-702(3) or as soon thereafter as is reasonably feasible.~~  
 18 ~~This section does not prevent the water judge from issuing~~  
 19 ~~an interlocutory decree or other temporary decree if such a~~  
 20 ~~decree is necessary for the orderly administration of water~~  
 21 ~~rights prior to the issuance of a preliminary decree.~~

22 (2) ~~A preliminary decree may be issued for any~~  
 23 ~~hydrologically interrelated portion of a water division,~~  
 24 ~~including but not limited to a basin, subbasin, drainage,~~  
 25 ~~subdrainage, stream, or single source of supply of water, at~~



1 a time different from the issuance of other preliminary  
 2 decrees or portions of the same decree.

3 ~~(2)(3)~~ The preliminary decree shall contain the  
 4 information and make the determinations, findings, and  
 5 conclusions required for the final decree under 85-2-234.  
 6 The water judge shall include in the preliminary decree the  
 7 contents of a compact negotiated under the provisions of  
 8 part 7 that has been ~~agreed upon by the parties to the~~  
 9 compact approved by the legislature and the tribe or federal  
 10 agency whether or not it has been ratified by congress.

11 ~~(3)(4)~~ If the water judge is satisfied that the report  
 12 of the water master meets the requirements for the  
 13 preliminary decree set forth in subsections (1) and ~~(2)(3)~~  
 14 and is satisfied with the conclusions contained in the  
 15 report, the water judge shall adopt the report as the  
 16 preliminary decree. If the water judge is not so satisfied,  
 17 he may, at his option, recommit the report to the master  
 18 with instructions, or modify the report and issue the  
 19 preliminary decree."

20 Section 7. Section 85-2-233, MCA, is amended to read:  
 21 "85-2-233. Hearing on preliminary decree. (1) Upon  
 22 objection to the preliminary decree by the department, a  
 23 person named in the preliminary decree, or any other person,  
 24 for good cause shown, the department or such person is  
 25 entitled to a hearing thereon before the water judge.

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

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

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

1 Section 8. Section 85-2-702, MCA, is amended to read:

2 "85-2-702. Negotiation with Indian tribes. (1) The  
3 reserved water rights compact commission, created by  
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5 authorized representatives jointly or severally to conclude  
6 compacts authorized under 85-2-701. Compact proceedings  
7 shall be commenced by the commission. The commission shall  
8 serve by certified mail directed to the governing body of  
9 each tribe a written request for the initiation of  
10 negotiations under this part and a request for the  
11 designation of an authorized representative of the tribe to  
12 conduct compact negotiations. Upon receipt of such written  
13 designation from the governing body of a tribe, compact  
14 negotiations shall be considered to have commenced.

15 (2) When the compact commission and the Indian tribes  
16 or their authorized representatives have agreed to a  
17 compact, they shall sign a copy and file an original copy  
18 with the department of state of the United States of America  
19 and copies with the secretary of state of Montana and with  
20 the governing body for the tribe involved. The compact is  
21 effective and binding upon all parties upon ratification by  
22 the legislature of Montana, any affected tribal governing  
23 body, and the congress of the United States.

24 (3) Upon its approval by the Montana legislature and  
25 the tribe or federal agency, the terms of a compact must be

1 included in the preliminary decree as provided by 85-2-231.  
2 However, if approval of the state legislature and tribe or  
3 federal agency has not been accomplished by July 1, 1985,  
4 all federal and Indian claims for reserved water rights that  
5 have not been resolved by a compact must be filed with the  
6 department within 60 days. These new filings shall be used  
7 in the formulation of the preliminary decree and shall be  
8 given treatment similar to that given to all other filings."

9 Section 9. Section 85-2-704, MCA, is amended to read:

10 "85-2-704. Termination of negotiations. The commission  
11 or any other party to the negotiations may terminate  
12 negotiations by providing notice to all parties 30 days in  
13 advance of the termination date. On the termination date,  
14 the suspension of the application of part 2 provided for in  
15 85-2-217 shall also terminate. The tribe or federal agency  
16 shall file all of its claims for reserved rights within 60  
17 days of the termination of negotiations."

18 Section 10. Codification instruction. Section 1 is  
19 intended to be codified as an integral part of Title 3,  
20 chapter 7, part 2, and the provisions of section 1 apply to  
21 Title 3, chapter 7.

22 Section 11. Effective date. This act is effective on  
23 passage and approval.

-End-

## 1 HOUSE BILL NO. 667

2 INTRODUCED BY ROTH, GALT, IVERSON, HURWITZ, KEMMIS,

3 MOORE, CURTISS, CONROY, BRIGGS, SCHULTZ,

4 ERNST, ELLERD, ELLISON, McLANE

5 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

6 AND CONSERVATION

7

8 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND

9 CLARIFYING THE ADJUDICATION OF WATER RIGHTS PROVISIONS OF

10 TITLE 3, CHAPTER 7, PART 3, AND TITLE 85, CHAPTER 2, PART 2,

11 MCA; ALLOWING FOR THE APPOINTMENT OF MORE THAN ONE WATER

12 MASTER IN EACH WATER DIVISION; PROVIDING FOR SUPERVISION AND

13 ADMINISTRATION BY THE SUPREME COURT; PROVIDING A FILING FEE

14 FOR THE FILING OF EXEMPT CLAIMS; PROVIDING THAT A

15 PRELIMINARY DECREE MAY BE ISSUED FOR ANY INTERRELATED

16 PORTION OF A WATER DIVISION; PROVIDING THAT A PRELIMINARY

17 DECREE MAY BE ISSUED PENDING THE NEGOTIATION OF A COMPACT;

18 ALLOWING A WATER JUDGE TO EXTEND THE TIME LIMIT FOR

19 REQUESTING A HEARING ON A PRELIMINARY DECREE; PROVIDING FOR

20 THE SUSPENSION OF LEGAL PROCEEDINGS AND THE FILING OF

21 FEDERAL CLAIMS UPON TERMINATION OF SUSPENSION; AMENDING

22 SECTIONS 3-7-301, 85-2-112, 85-2-217, 85-2-225, 85-2-231,

23 85-2-233, 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN

24 IMMEDIATE EFFECTIVE DATE."

25

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

2 NEW SECTION. Section 1. Supervision and

3 administration by supreme court. (1) The Montana supreme

4 court shall supervise the activities of the water judges,

5 water masters, and associated personnel in implementing this

6 chapter and Title 85, chapter 2, part 2.

7 (2) The supreme court shall pay the expenses of the

8 water judges and the salaries and expenses of the water

9 judges' staffs and the salaries and expenses of the water

10 masters and the water masters' staffs, from the water rights

11 adjudication account established by 85-2-241. "Salaries and

12 expenses" as used in this section include but are not

13 limited to the salaries and expenses of personnel, the cost

14 of office equipment and office space, and such other

15 necessary expenses as may be incurred in the administration

16 of this chapter and Title 85, chapter 2, part 2.

17 Section 2. Section 3-7-301, MCA, is amended to read:

18 "3-7-301. Appointment of water masters -- removal. (1)

19 The water judge in each water division shall appoint a at

20 least one water master and may appoint more than one water

21 master.

22 (2) A water master may be appointed after July 1,

23 1980, and must be appointed on or before July 1, 1982.

24 (3) In appointing a water master, the water judge

25 shall consider a potential master's experience with water

1 law, water use, and water rights.

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

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

5 "85-2-112. Department duties. The department shall:

6 (1) enforce and administer this chapter and rules  
7 adopted by the board under 85-2-113, subject to the powers  
8 and duties of the supreme court under [section 1];

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

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

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

24 (5) upon request by any person, cooperate with,  
25 assist, and advise that person in matters pertaining to

1 measuring water or filing declarations with the department  
2 or claims of existing rights with a district court under  
3 this chapter."

4 Section 4. Section 85-2-217, MCA, is amended to read:

5 "85-2-217. Suspension of adjudication. ~~From--the--time~~  
6 ~~of--filing--the--petition--required--in--85-2-211--until--July--1,~~  
7 ~~1985--and--while~~ While negotiations for the conclusion of a  
8 compact under part 7 are being pursued, all actions  
9 proceedings to generally adjudicate reserved Indian water  
10 rights ~~from--a--source--of--water--in--question--under--this--part~~  
11 and federal reserved water rights of those tribes and  
12 federal agencies which are negotiating are suspended, ~~unless~~  
13 ~~an--action--is--commenced--or--is--pending--by--or--on--behalf--of--an~~  
14 ~~Indian--tribe--to--adjudicate--water--from--that--source--other--than~~  
15 ~~as--provided--for--in--Title--85--chapter--2--in--such--case--the~~  
16 ~~suspension--is--maintained--only--if--the--action--is--dismissed--or~~  
17 ~~if--the--parties--to--the--action--stipulate--to--the--suspension~~  
18 ~~during--compact--negotiations--of--all--further--proceedings--in~~  
19 ~~the--action--except--the--determination--of--jurisdictional--issues~~  
20 ~~and--an--order--is--so--issued.~~ The obligation to file water  
21 rights claims for those reserved rights is also suspended.  
22 This suspension shall be effective until July 1, 1985, as  
23 long as negotiations are continuing or ratification of a  
24 completed compact is being sought. If approval by the state  
25 legislature and tribes or federal agencies has not been

1 accomplished by July 1, 1985, the suspension shall terminate  
 2 on that date. Upon termination of the suspension of this  
 3 part, the tribes and the federal agencies shall be subject  
 4 to the special filing requirements of 85-2-702(3) and all  
 5 other requirements of the state water adjudication system  
 6 provided for in Title 85, chapter 2. Those tribes and  
 7 federal agencies that choose not to negotiate their reserved  
 8 water rights shall be subject to the full operation of the  
 9 state adjudication system and may not benefit from the  
 10 suspension provisions of this section."

11 Section 5. Section 85-2-225, MCA, is amended to read:  
 12 "85-2-225. Filing fee. (1) Each claim filed under  
 13 85-2-221 or 85-2-222 ~~shall~~ must be accompanied by a filing  
 14 fee in the amount of \$40, subject to the following  
 15 exceptions:

16 ~~(a)~~ (a) the total filing fees for all claims filed by  
 17 one person in any one water court division may not exceed  
 18 \$480; and

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

24 (2) a claim that is exempt from the filing  
 25 requirements of 85-2-221(1) but that is voluntarily filed

1 must be accompanied by a filing fee in the amount of \$40.  
 2 Exempt claims for a single development with several uses if  
 3 filed simultaneously may be accompanied by a filing fee in  
 4 the amount of \$40."

5 Section 6. Section 85-2-231, MCA, is amended to read:  
 6 "85-2-231. Preliminary decree. (1) ~~Within a reasonable~~  
 7 ~~time after the close of the filing period, the~~ The water  
 8 judge shall issue a preliminary decree. The preliminary  
 9 decree shall be based on:

10 (a) the statements of claim before the water judge;

11 (b) the data submitted by the department;

12 (c) the contents of compacts approved by the Montana  
 13 legislature and the tribe or federal agency or, lacking an  
 14 approved compact, the filings for federal and Indian  
 15 reserved rights; and

16 (d) any additional data obtained by the water judge.  
 17 The preliminary decree shall be issued within 90 days after  
 18 the close of the special filing period set out in  
 19 85-2-702(3) or as soon thereafter as is reasonably feasible.

20 This section does not prevent the water judge from issuing  
 21 an interlocutory decree or other temporary decree if such a  
 22 decree is necessary for the orderly administration of water  
 23 rights prior to the issuance of a preliminary decree.

24 (2) A preliminary decree may be issued for any  
 25 hydrologically interrelated portion of a water division,

1 including but not limited to a basin, subbasin, drainage,  
 2 subdrainage, stream, or single source of supply of water, at  
 3 a time different from the issuance of other preliminary  
 4 decrees or portions of the same decree.

5       ~~(2)~~(3) The preliminary decree shall contain the  
 6 information and make the determinations, findings, and  
 7 conclusions required for the final decree under 85-2-234.  
 8 The water judge shall include in the preliminary decree the  
 9 contents of a compact negotiated under the provisions of  
 10 part 7 that has been agreed--upon-by-the-parties-to-the  
 11 compact approved by the legislature and the tribe or federal  
 12 agency whether or not it has been ratified by congress.

13       ~~(3)~~(4) If the water judge is satisfied that the report  
 14 of the water master meets the requirements for the  
 15 preliminary decree set forth in subsections (1) and ~~(2)~~(3),  
 16 and is satisfied with the conclusions contained in the  
 17 report, the water judge shall adopt the report as the  
 18 preliminary decree. If the water judge is not so satisfied,  
 19 he may, at his option, recommit the report to the master  
 20 with instructions, or modify the report and issue the  
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 23       "85-2-233. Hearing on preliminary decree. (1) Upon  
 24 objection to the preliminary decree by the department, a  
 25 person named in the preliminary decree, or any other person,

1 for good cause shown, the department or such person is  
 2 entitled to a hearing thereon before the water judge.

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

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

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

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10 serve by certified mail directed to the governing body of  
11 each tribe a written request for the initiation of  
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13 designation of an authorized representative of the tribe to  
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15 designation from the governing body of a tribe, compact  
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18 or their authorized representatives have agreed to a  
19 compact, they shall sign a copy and file an original copy  
20 with the department of state of the United States of America  
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22 the governing body for the tribe involved. The compact is  
23 effective and binding upon all parties upon ratification by  
24 the legislature of Montana, any affected tribal governing  
25 body, and the congress of the United States.

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2 the tribe or federal agency, the terms of a compact must be  
3 included in the preliminary decree as provided by 85-2-231.  
4 However, if approval of the state legislature and tribe or  
5 federal agency has not been accomplished by July 1, 1985,  
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7 have not been resolved by a compact must be filed with the  
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10 given treatment similar to that given to all other filings."

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13 or any other party to the negotiations may terminate  
14 negotiations by providing notice to all parties 30 days in  
15 advance of the termination date. On the termination date,  
16 the suspension of the application of part 2 provided for in  
17 85-2-217 shall also terminate. The tribe or federal agency  
18 shall file all of its claims for reserved rights within 60  
19 days of the termination of negotiations."

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21 intended to be codified as an integral part of Title 3,  
22 chapter 7, part 2, and the provisions of section 1 apply to  
23 Title 3, chapter 7.

24 Section 11. Effective date. This act is effective on  
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