

SENATE BILL NO. 30

Introduced: 1/3/83

Referred to Committee on State Administration: 1/3/83
Died in Committee.

1 SENATE BILL NO. 30
 2 INTRODUCED BY HAGER
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING THE ISSUANCE
 5 OF A PRELIMINARY DECREE BEFORE JULY 1, 1985, WHEN THERE ARE
 6 NO RESERVED INDIAN OR FEDERAL WATER RIGHTS CLAIMS IN THE
 7 DECREED AREA; AND LIMITING THE WATER COURT'S DUTY OF
 8 NOTIFICATION CONCERNING THE AVAILABILITY OF A PRELIMINARY
 9 DECREE; AMENDING SECTIONS 85-2-231 AND 85-2-232, MCA."
 10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 85-2-231, MCA, is amended to read:
 13 "85-2-231. Preliminary decree. (1) The water judge
 14 shall issue a preliminary decree. The preliminary decree
 15 shall be based on:
 16 (a) the statements of claim before the water judge;
 17 (b) the data submitted by the department;
 18 (c) the contents of compacts approved by the Montana
 19 legislature and the tribe or federal agency or, lacking an
 20 approved compact, the filings for federal and Indian
 21 reserved rights; and
 22 (d) any additional data obtained by the water judge.
 23 (2) The preliminary decree shall be issued within 90
 24 days after the close of the special filing period set out in
 25 85-2-702(3) or as soon thereafter as is reasonably feasible.

1 ~~A preliminary decree may be issued before July 1, 1985, if~~
 2 ~~the water court finds that the decree will not be directly~~
 3 ~~affected by a compact or its negotiation pursuant to Title~~
 4 ~~85, chapter 2, part 7.~~ This section does not prevent the
 5 water judge from issuing an interlocutory decree or other
 6 temporary decree if such a decree is necessary for the
 7 orderly administration of water rights prior to the issuance
 8 of a preliminary decree.
 9 ~~(2)(3)~~ A preliminary decree may be issued for any
 10 hydrologically interrelated portion of a water division,
 11 including but not limited to a basin, subbasin, drainage,
 12 subdrainage, stream, or single source of supply of water, at
 13 a time different from the issuance of other preliminary
 14 decrees or portions of the same decree.
 15 ~~(3)(4)~~ The preliminary decree shall contain the
 16 information and make the determinations, findings, and
 17 conclusions required for the final decree under 85-2-234.
 18 The water judge shall include in the preliminary decree the
 19 contents of a compact negotiated under the provisions of
 20 part 7 that has been approved by the legislature and the
 21 tribe or federal agency whether or not it has been ratified
 22 by congress.
 23 ~~(4)(5)~~ If the water judge is satisfied that the report
 24 of the water master meets the requirements for the
 25 preliminary decree set forth in subsections (1) and ~~(3) (4)~~,

INTRODUCED BILL

1 and is satisfied with the conclusions contained in the
2 report, the water judge shall adopt the report as the
3 preliminary decree. If the water judge is not so satisfied,
4 he may, at his option, recommit the report to the master
5 with instructions, or modify the report and issue the
6 preliminary decree."

7 Section 2. Section 85-2-232, MCA, is amended to read:

8 "85-2-232. Availability of preliminary decree. (1) The
9 water judge shall send a copy of the preliminary decree to
10 the department, and the water judge shall serve by mail a
11 notice of availability of the preliminary decree to each
12 person ~~who has filed a claim of existing right, is named in~~
13 ~~the decree or who has requested notice~~ or, in the Powder
14 River Basin, to each person who has filed a declaration of
15 an existing right. The water judge shall enclose with the
16 notice an abstract of the disposition of such person's
17 claimed or declared existing right. The notice of
18 availability shall also be served upon those issued or
19 having applied for and not having been denied a beneficial
20 water use permit pursuant to Title 85, chapter 2, part 3,
21 those granted a reservation pursuant to 85-2-316, or other
22 interested persons who request service of the notice from
23 the water judge. The clerk or person designated by the water
24 judge to mail the notice shall make a general certificate of
25 mailing certifying that a copy of the notice has been placed

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

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

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