

HOUSE BILL NO. 846

INTRODUCED BY SCHYE, BACHINI, PECK, COMPTON, H. HAMMOND,
IVERSON, BARDANOUVE, CODY, STEPHENS

IN THE HOUSE

February 15, 1985	Introduced and referred to Committee on Natural Resources.
February 21, 1985	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
February 23, 1985	Second reading, do pass. Considered correctly engrossed.
February 26, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Judiciary.
March 19, 1985	Committee recommend bill be concurrent in. Report adopted.
March 23, 1985	Second reading, pass consideration.
March 26, 1985	Second reading, concurred in.
March 28, 1985	Third reading, concurred in. Ayes, 50; Noes, 0. Returned to House.

IN THE HOUSE

March 28, 1985	Received from Senate. Sent to enrolling. Reported correctly enrolled.
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1 HOUSE BILL NO. 846
 2 INTRODUCED BY Judge Richard Beck Compton and Dennis
 3 Steven Bandmanz Cadiz STEPHENS

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT ISSUANCE
 5 OF A TEMPORARY PRELIMINARY DECREE IN THE MILK RIVER BASIN BE
 6 MADE THE HIGHEST PRIORITY IN THE ADJUDICATION PROCESS BY THE
 7 MONTANA WATER COURTS; AMENDING SECTIONS 85-2-231 AND
 8 85-2-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 10 WHEREAS, there has long been in the Milk River Basin a
 11 scarcity of water available to meet the needs of all water
 12 users; and

13 WHEREAS, the precipitation in the Milk River Basin
 14 during the past 2 years has been even lower than usual; and

15 WHEREAS, in 1981, the 47th Legislature recognized the
 16 growing problem of protection of existing water rights in
 17 the Milk River Basin, in view of continuing applications for
 18 new water rights, by enacting a law authorizing the
 19 Department of Natural Resources and Conservation to suspend
 20 action on new permits in the Basin; and

21 WHEREAS, tension has arisen among certain water users
 22 in the Milk River Basin because of uncertainty on the
 23 amounts and priorities of individual rights to the scarce
 24 water resources; and

25 WHEREAS, neither a preliminary nor temporary

1 preliminary decree has been issued to date in the Milk River
 2 Basin in the Montana Water Court's adjudication of existing
 3 water rights; and

4 WHEREAS, complicated legal issues exist with respect to
 5 water rights in the Milk River Basin because of the 1909
 6 Boundary Waters Treaty, the location in the Basin of federal
 7 Bureau of Reclamation irrigation projects, and the existence
 8 in the Basin of federal reserved water rights claims; and

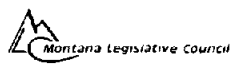
9 WHEREAS, in view of these complicated legal issues, it
 10 may not be feasible at this time to issue a preliminary
 11 decree of water rights in the Milk River Basin; however, a
 12 temporary preliminary decree can be issued; and

13 WHEREAS, the Legislature finds that it is in the
 14 interest of water users in the Milk River Basin that the
 15 Montana Water Court issue a temporary preliminary decree in
 16 the Basin as soon as practicable.

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

19 Section 1. Section 85-2-231, MCA, is amended to read:
 20 "85-2-231. Preliminary decree. (1) The water judge
 21 shall issue a preliminary decree. The preliminary decree
 22 shall be based on:

- 23 (a) the statements of claim before the water judge;
 24 (b) the data submitted by the department;
 25 (c) the contents of compacts approved by the Montana



1 legislature and the tribe or federal agency or, lacking an
2 approved compact, the filings for federal and Indian
3 reserved rights; and

4 (d) any additional data obtained by the water judge.
5 The preliminary decree shall be issued within 90 days after
6 the close of the special filing period set out in
7 85-2-702(3) or as soon thereafter as is reasonably feasible.
8 This section does not prevent the water judge from issuing
9 an interlocutory decree or other temporary decree pursuant
10 to 85-2-321 or if such a decree is otherwise necessary for
11 the orderly administration of water rights prior to the
12 issuance of a preliminary decree.

13 (2) A preliminary decree may be issued for any
14 hydrologically interrelated portion of a water division,
15 including but not limited to a basin, subbasin, drainage,
16 subdrainage, stream, or single source of supply of water, at
17 a time different from the issuance of other preliminary
18 decrees or portions of the same decree.

19 (3) The preliminary decree shall contain the
20 information and make the determinations, findings, and
21 conclusions required for the final decree under 85-2-234.
22 The water judge shall include in the preliminary decree the
23 contents of a compact negotiated under the provisions of
24 part 7 that has been approved by the legislature and the
25 tribe or federal agency whether or not it has been ratified

1 by congress.

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

11 Section 2. Section 85-2-321, MCA, is amended to read:

12 "85-2-321. Milk River Basin -- suspension of action on
13 permits -- proposal -- priority in adjudication process.

14 (1) (a) In order to balance the need for the continued
15 development of Montana's water and for protection of
16 existing rights in the Milk River Basin, the department may
17 suspend action on a class of applications or may close a
18 source in the basin and refuse to accept a class of
19 applications, or both, for a permit under this part to
20 appropriate from that source in the basin.

21 ~~(2)~~(b) Suspension or closure, or both, may only be
22 proposed by the department.

23 ~~(3)~~(c) The proposal must state the source in the basin
24 and class of applications for which suspension or closure,
25 or both, is being proposed and any of the following

1 allegations:

2 ~~(a)~~(i) that the frequency of occurrence of
3 unappropriated waters is such that:

4 ~~(+)~~(A) any new appropriation from the source for the
5 class of applications will adversely affect the rights of a
6 prior appropriation from the source; or

7 ~~(+)~~(B) any new appropriation from the source for the
8 class of applications will interfere unreasonably with
9 another planned use or development for which a permit has
10 been given or for which water has been reserved in the
11 source; or

12 ~~(b)~~(ii) that significant disputes or enforcement
13 problems regarding priority of rights or amounts or duration
14 of water in use by appropriators are in progress or will
15 arise.

16 (2) After [the effective date of this act], the chief
17 water judge shall make issuance of a temporary preliminary
18 decree in the Milk River Basin the highest priority in the
19 adjudication of existing water rights pursuant to Title 85,
20 chapter 2, part 2."

21 NEW SECTION. Section 3. Effective date. This act is
22 effective on passage and approval.

-End-

APPROVED BY COMM. ON NATURAL RESOURCES

1 HOUSE BILL NO. 846
2 INTRODUCED BY *John Buchanan Peck Compton W. Hammond*
3 *John Paulsen Cody STEPHENS*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT ISSUANCE
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6 MADE THE HIGHEST PRIORITY IN THE ADJUDICATION PROCESS BY THE
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11 scarcity of water available to meet the needs of all water
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13 WHEREAS, the precipitation in the Milk River Basin
14 during the past 2 years has been even lower than usual; and

15 WHEREAS, in 1981, the 47th Legislature recognized the
16 growing problem of protection of existing water rights in
17 the Milk River Basin, in view of continuing applications for
18 new water rights, by enacting a law authorizing the
19 Department of Natural Resources and Conservation to suspend
20 action on new permits in the Basin; and

21 WHEREAS, tension has arisen among certain water users
22 in the Milk River Basin because of uncertainty on the
23 amounts and priorities of individual rights to the scarce
24 water resources; and

25 WHEREAS, neither a preliminary nor temporary

1 preliminary decree has been issued to date in the Milk River
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4 WHEREAS, complicated legal issues exist with respect to
5 water rights in the Milk River Basin because of the 1909
6 Boundary Waters Treaty, the location in the Basin of federal
7 Bureau of Reclamation irrigation projects, and the existence
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9 WHEREAS, in view of these complicated legal issues, it
10 may not be feasible at this time to issue a preliminary
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13 WHEREAS, the Legislature finds that it is in the
14 interest of water users in the Milk River Basin that the
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16 the Basin as soon as practicable.
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1 legislature and the tribe or federal agency or, lacking an
 2 approved compact, the filings for federal and Indian
 3 reserved rights; and

4 (d) any additional data obtained by the water judge.
 5 The preliminary decree shall be issued within 90 days after
 6 the close of the special filing period set out in
 7 85-2-702(3) or as soon thereafter as is reasonably feasible.
 8 This section does not prevent the water judge from issuing
 9 an interlocutory decree or other temporary decree pursuant
 10 to 85-2-321 or if such a decree is otherwise necessary for
 11 the orderly administration of water rights prior to the
 12 issuance of a preliminary decree.

13 (2) A preliminary decree may be issued for any
 14 hydrologically interrelated portion of a water division,
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 20 information and make the determinations, findings, and
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 23 contents of a compact negotiated under the provisions of
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 3 the water master meets the requirements for the preliminary
 4 decree set forth in subsections (1) and (3), and is
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11 Section 2. Section 85-2-321, MCA, is amended to read:

12 "85-2-321. Milk River Basin -- suspension of action on
 13 permits -- proposal -- priority in adjudication process.

14 (1) (a) In order to balance the need for the continued
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 18 source in the basin and refuse to accept a class of
 19 applications, or both, for a permit under this part to
 20 appropriate from that source in the basin.

21 ~~††~~(b) Suspension or closure, or both, may only be
 22 proposed by the department.

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 24 and class of applications for which suspension or closure,
 25 or both, is being proposed and any of the following

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3 unappropriated waters is such that:

4 ~~(i)(A)~~ any new appropriation from the source for the
5 class of applications will adversely affect the rights of a
6 prior appropriation from the source; or

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8 class of applications will interfere unreasonably with
9 another planned use or development for which a permit has
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15 arise.

16 (2) After [the effective date of this act], the chief
17 water judge shall make issuance of a temporary preliminary
18 decree in the Milk River Basin the highest priority in the
19 adjudication of existing water rights pursuant to Title 85,
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21 NEW SECTION. Section 3. Effective date. This act is
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 3 Steve Bandman Cady STEPHENS

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 11 scarcity of water available to meet the needs of all water
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