

SENATE BILL NO. 28

INTRODUCED BY ECK

BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

IN THE SENATE

| | |
|-------------------|-----------------------------------------------------------------------------------------------|
| January 7, 1985 | Introduced and referred to Committee on Judiciary. |
| January 8, 1985 | Fiscal Note requested. |
| January 12, 1985 | Fiscal Note returned. |
| February 21, 1985 | Committee recommend bill do pass as amended. Report adopted. |
| February 22, 1985 | Bill printed and placed on members' desks. |
| February 23, 1985 | Second reading, do pass as amended. |
| February 25, 1985 | Correctly engrossed. Third reading, passed. Ayes, 48; Noes, 0. Transmitted to House. |

IN THE HOUSE

| | |
|-------------------|----------------------------------------------------------------------|
| February 27, 1985 | Introduced and referred to Committee on Judiciary. |
| March 23, 1985 | Committee recommend bill be concurred in as amended. Report adopted. |
| March 26, 1985 | Second reading, concurred in. |

March 28, 1985 Third reading, concurred in.
Returned to Senate with amendments.

IN THE SENATE

March 28, 1985 Received from House.
April 2, 1985 Second reading, amendments concurred in.
April 4, 1985 Third reading, amendments concurred in. Ayes, 49; Noes, 0.
Sent to enrolling.
April 10, 1985 Correctly enrolled.
April 11, 1985 Signed by President.
Signed by Speaker.
April 12, 1985 Delivered to Governor.
April 17, 1985 Returned from Governor with recommended amendments.
April 18, 1985 Second reading, Governor's amendments concurred in.
April 19, 1985 Third reading, Governor's amendments concurred in.
Governor's amendments transmitted to House.

IN THE HOUSE

April 23, 1985 Received from Senate.
Second reading, pass consideration.

April 24, 1985

Second reading, Governor's
amendments concurred in.

Third reading, Governor's
amendments concurred in.

Returned to Senate.

IN THE SENATE

April 25, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

1 SENATE BILL NO. 28
2 INTRODUCED BY ECK

3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A 2-YEAR
6 EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS
7 COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A
8 COMPACT ONLY IF LEGALLY NECESSARY; REQUIRING THAT THE TERMS
9 OF A COMPACT SET FORTH IN A PRELIMINARY DECREE BE REPRODUCED
10 UNCHANGED IN THE FINAL DECREE; EXTENDING FROM 60 DAYS TO 6
11 MONTHS THE TIME PERIOD FOR FILING IN THE WATER COURT CLAIMS
12 UNRESOLVED BY THE COMPACT COMMISSION; AMENDING SECTIONS
13 85-2-217, 85-2-231, 85-2-234, AND 85-2-702, MCA; AND
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 85-2-217, MCA, is amended to read:
18 "85-2-217. Suspension of adjudication. While
19 negotiations for the conclusion of a compact under part 7
20 are being pursued, all proceedings to generally adjudicate
21 reserved Indian water rights and federal reserved water
22 rights of those tribes and federal agencies which are
23 negotiating are suspended. The obligation to file water
24 rights claims for those reserved rights is also suspended.
25 This suspension shall be effective until July 1, 1985 1987,

1 as long as negotiations are continuing or ratification of a
2 completed compact is being sought. If approval by the state
3 legislature and tribes or federal agencies has not been
4 accomplished by July 1, ~~1985~~ 1987, the suspension shall
5 terminate on that date. Upon termination of the suspension
6 of this part, the tribes and the federal agencies shall be
7 subject to the special filing requirements of 85-2-702(3)
8 and all other requirements of the state water adjudication
9 system provided for in Title 85, chapter 2. Those tribes and
10 federal agencies that choose not to negotiate their reserved
11 water rights shall be subject to the full operation of the
12 state adjudication system and may not benefit from the
13 suspension provisions of this section."

14 Section 2. Section 85-2-231, MCA, is amended to read:
15 "85-2-231. Preliminary decree. (1) The water judge
16 shall issue a preliminary decree. The preliminary decree
17 shall be based on:

- 18 (a) the statements of claim before the water judge;
19 (b) the data submitted by the department;
20 (c) the contents of compacts approved by the Montana
21 legislature and the tribe or federal agency or, lacking an
22 approved compact, the filings for federal and Indian
23 reserved rights; and
24 (d) any additional data obtained by the water judge.
25 The preliminary decree shall be issued within 90 days after



1 the close of the special filing period set out in
 2 85-2-702(3) or as soon thereafter as is reasonably feasible.
 3 This section does not prevent the water judge from issuing
 4 an interlocutory decree or other temporary decree if such a
 5 decree is necessary for the orderly administration of water
 6 rights prior to the issuance of a preliminary decree.

7 (2) A preliminary decree may be issued for any
 8 hydrologically interrelated portion of a water division,
 9 including but not limited to a basin, subbasin, drainage,
 10 subdrainage, stream, or single source of supply of water, at
 11 a time different from the issuance of other preliminary
 12 decrees or portions of the same decree.

13 (3) The preliminary decree shall contain the
 14 information and make the determinations, findings, and
 15 conclusions required for the final decree under 85-2-234.
 16 The water judge shall include in the preliminary decree, for
 17 informational purposes, the contents of a compact negotiated
 18 under the provisions of part 7 that has been approved by the
 19 legislature and the tribe or federal agency whether or not
 20 it has been ratified by congress.

21 (4) If the water judge is satisfied that the report of
 22 the water master meets the requirements for the preliminary
 23 decree set forth in subsections (1) and (3), and is
 24 satisfied with the conclusions contained in the report, the
 25 water judge shall adopt the report as the preliminary

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

5 Section 3. Section 85-2-234, MCA, is amended to read:
 6 "85-2-234. Final decree. (1) The water judge shall, on
 7 the basis of the preliminary decree and on the basis of any
 8 hearing that may have been held, enter a final decree
 9 affirming or modifying the preliminary decree. If no
 10 request for a hearing is filed within the time allowed, the
 11 preliminary decree automatically becomes final, and the
 12 water judge shall enter it as the final decree.

13 (2) The terms of a compact negotiated and ratified
 14 under 85-2-702 must be included in the final decree without
 15 alteration.

16 ~~(2)~~(3) The final decree shall establish the existing
 17 rights and priorities within the water judge's jurisdiction
 18 of persons required by 85-2-221 to file a claim for an
 19 existing right and of persons required to file a declaration
 20 of existing rights in the Powder River Basin pursuant to an
 21 order of the department or a district court issued under
 22 sections 8 and 9 of Chapter 452, Laws of 1973.

23 ~~(3)~~(4) The final decree shall state the findings of
 24 fact, along with any conclusions of law, upon which the
 25 existing rights and priorities of each person named in the

1 decree are based.

2 ~~(4)~~(5) For each person who is found to have an
3 existing 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 Section 4. Section 85-2-702, MCA, is amended to read:

20 "85-2-702. Negotiation with Indian tribes. (1) The
21 reserved water rights compact commission, created by
22 2-15-212, may negotiate with the Indian tribes or their
23 authorized representatives jointly or severally to conclude
24 compacts authorized under 85-2-701. Compact proceedings
25 shall be commenced by the commission. The commission shall

1 serve by certified mail directed to the governing body of
2 each tribe a written request for the initiation of
3 negotiations under this part and a request for the
4 designation of an authorized representative of the tribe to
5 conduct compact negotiations. Upon receipt of such written
6 designation from the governing body of a tribe, compact
7 negotiations shall be considered to have commenced.

8 (2) When the compact commission and the Indian tribes
9 or their authorized representatives have agreed to a
10 compact, they shall sign a copy and file an original copy
11 with the department of state of the United States of America
12 and copies with the secretary of state of Montana and with
13 the governing body for the tribe involved. The compact is
14 effective and binding upon all parties upon ratification by
15 the legislature of Montana, any affected tribal governing
16 body, and, if legally necessary, the congress of the United
17 States or other appropriate federal authority.

18 (3) Upon its approval by the Montana legislature and
19 the tribe or federal agency, the terms of a compact must be
20 included in the preliminary decree for informational
21 purposes as provided by 85-2-231, and unless renegotiated,
22 the terms of the compact must be included in the final
23 decree without alteration. However, if approval of the state
24 legislature and tribe or federal agency has not been
25 accomplished by July 1, 1985 1987, all federal and Indian

LC 0037/01

1 claims for reserved water rights that have not been resolved
2 by a compact must be filed with the department within 60
3 days 6 months. These new filings shall be used in the
4 formulation of the preliminary decree and shall be given
5 treatment similar to that given to all other filings."

6 NEW SECTION. Section 5. Effective date. This act is
7 effective on passage and approval.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN-021-85Form BD-15

In compliance with a written request received January 10, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 28 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.

BRIEF DESCRIPTION:

Senate Bill 28 proposes to extend the period for negotiating compacts with Indian tribes and federal agencies. It continues the suspension of filing reserved water rights claims in the state's water court.

ASSUMPTIONS:

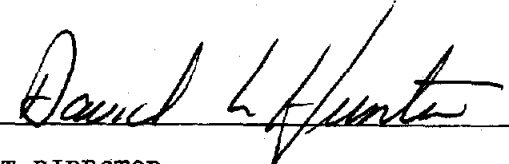
1. Nine commission members meet and travel on the average of twice monthly
2. Technical and legal staff required at existing levels
3. Special counsel required under terms of current contract
4. Substantial expense required in providing transcripts of all proceedings
5. Operating expenses are increased 10% over existing (FY 84) level, as a result of increased interest on the part of the federal government and tribes

FISCAL IMPACT:

Current law provides for expiration of the negotiation process and the state's negotiating body -- the Reserved Water Rights Compact Commission on June 30, 1985. SB 28 will continue the commission at its current level.

EXPENDITURES:

| | <u>FY 86</u> | <u>FY 87</u> |
|--------------|--------------|---------------------------|
| Current Law | \$ -0- | \$ -0- |
| Proposed Law | \$ 224,406 | \$ 224,485 - General Fund |
| Increase | \$ 224,406 | \$ 224,485 |


 BUDGET DIRECTOR
 Office of Budget and Program Planning

Date: Jan 12, 1985

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 28
2 INTRODUCED BY ECK
3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS
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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A 2-YEAR
6 EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS
7 COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A
8 COMPACT ONLY IF LEGALLY NECESSARY; ~~REQUIRING THAT THE TERMS~~
9 ~~OF A COMPACT SET FORTH IN A PRELIMINARY DECREE BE REPRODUCED~~
10 UNCHANGED PROVIDING AN ALTERNATE STATEMENT OF CLAIM FOR
11 RESERVED RIGHTS NOT YET PUT TO USE; SPECIFYING THE
12 INFORMATION RELATING TO RESERVED RIGHTS TO BE INCLUDED; IN
13 THE FINAL DECREE EXTENDING FROM 60 DAYS TO 6 MONTHS THE TIME
14 PERIOD FOR FILING IN THE WATER COURT CLAIMS UNRESOLVED BY
15 THE COMPACT COMMISSION; REQUIRING THE COMMISSION TO MAKE
16 STATUS REPORTS TO THE WATER JUDGE; AMENDING SECTIONS
17 85-2-217, 85-2-224, 85-2-231, 85-2-234, AND 85-2-702, AND
18 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21 Section 1. Section 85-2-217, MCA, is amended to read:
22 "85-2-217. Suspension of adjudication. While
23 negotiations for the conclusion of a compact under part 7
24 are being pursued, all proceedings to generally adjudicate
25 reserved Indian water rights and federal reserved water

1 rights of those tribes and federal agencies which are
2 negotiating are suspended. The obligation to file water
3 rights claims for those reserved rights is also suspended.
4 This suspension shall be effective until July 1, ~~1985~~ 1987,
5 as long as negotiations are continuing or ratification of a
6 completed compact is being sought. If approval by the state
7 legislature and tribes or federal agencies has not been
8 accomplished by July 1, ~~1985~~ 1987, the suspension shall
9 terminate on that date. Upon termination of the suspension
10 of this part, the tribes and the federal agencies shall be
11 subject to the special filing requirements of 85-2-702(3)
12 and all other requirements of the state water adjudication
13 system provided for in Title 85, chapter 2. Those tribes and
14 federal agencies that choose not to negotiate their reserved
15 water rights shall be subject to the full operation of the
16 state adjudication system and may not benefit from the
17 suspension provisions of this section."

18 SECTION 2. SECTION 85-2-224, MCA, IS AMENDED TO READ:
19 "85-2-224. Statement of claim. (1) The statement of
20 claim for each right arising under the laws of the state and
21 for each right reserved under the laws of the United States
22 which has been actually put to use shall include
23 substantially the following:
24 (a) the name and mailing address of the claimant;
25 (b) the name of the watercourse or water source from

SECOND READING

1 which the right to divert or make use of water is claimed,
2 if available;

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

4 (d) the legal description, with reasonable certainty,
5 of the point or points of diversion and places of use of
6 waters;

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

9 (f) the approximate dates of first putting water to
10 beneficial use for the various amounts and times claimed in
11 subsection (c); and

12 (g) the sworn statement that the claim set forth is
13 true and correct to the best of claimant's knowledge and
14 belief.

15 (2) The Any claimant filing a statement of claim under
16 subsection (1) shall submit maps, plats, aerial photographs,
17 decrees, or pertinent portions thereof, or other evidence in
18 support of his claim. All maps, plats, or aerial
19 photographs should show as nearly as possible to scale the
20 point of diversion, place of use, place of storage, and
21 other pertinent conveyance facilities.

22 (3) Any statement of claim for rights reserved under
23 the laws of the United States which have not yet been put to
24 use shall include substantially the following:

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

1 (b) the name of the watercourse or water source from
2 which the right to divert or make use of water is claimed,
3 if available;

4 (c) the quantities of water claimed;

5 (d) the priority date claimed;

6 (e) the laws of the United States on which the claim
7 is based; and

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

11 Section 3. Section 85-2-231, MCA, is amended to read:
12 "85-2-231. Preliminary decree. (1) The water judge
13 shall issue a preliminary decree. The preliminary decree
14 shall be based on:

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

16 (b) the data submitted by the department;

17 (c) the contents of compacts approved by the Montana
18 legislature and the tribe or federal agency or, lacking an
19 approved compact, the filings for federal and Indian
20 reserved rights; and

21 (d) any additional data obtained by the water judge.
22 The preliminary decree shall be issued within 90 days after
23 the close of the special filing period set out in
24 85-2-702(3) or as soon thereafter as is reasonably feasible.
25 This section does not prevent the water judge from issuing.

1 an interlocutory decree or other temporary decree if such a
2 decree is necessary for the orderly administration of water
3 rights prior to the issuance of a preliminary decree.

4 (2) A preliminary decree may be issued for any
5 hydrologically interrelated portion of a water division,
6 including but not limited to a basin, subbasin, drainage,
7 subdrainage, stream, or single source of supply of water, at
8 a time different from the issuance of other preliminary
9 decrees or portions of the same decree.

10 (3) The preliminary decree shall contain the
11 information and make the determinations, findings, and
12 conclusions required for the final decree under 85-2-234.
13 The water judge shall include in the preliminary decree ~~for~~
14 informational purposes, the contents of a compact negotiated
15 under the provisions of part 7 that has been approved by the
16 legislature and the tribe or federal agency ~~whether or not~~
17 ~~it has been ratified by congress~~.

18 (4) If the water judge is satisfied that the report of
19 the water master meets the requirements for the preliminary
20 decree set forth in subsections (1) and (3), and is
21 satisfied with the conclusions contained in the report, the
22 water judge shall adopt the report as the preliminary
23 decree. If the water judge is not so satisfied, he may, at
24 his option, recommit the report to the master with
25 instructions, or modify the report and issue the preliminary

1 decree."

2 Section 4. Section 85-2-234, MCA, is amended to read:
3 "85-2-234. Final decree. (1) The water judge shall, on
4 the basis of the preliminary decree and on the basis of any
5 hearing that may have been held, enter a final decree
6 affirming or modifying the preliminary decree. If no
7 request for a hearing is filed within the time allowed, the
8 preliminary decree automatically becomes final, and the
9 water judge shall enter it as the final decree.

10 (2) The terms of a compact negotiated and ratified
11 under 85-2-702 must be included in the final decree without
12 alteration.

13 ~~(3)~~ (3) The final decree shall establish the existing
14 rights and priorities within the water judge's jurisdiction
15 of persons required by 85-2-221 to file a claim for an
16 existing right, and of persons required to file a
17 declaration of existing rights in the Powder River Basin
18 pursuant to an order of the department or a district court
19 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
20 AND OF ANY FEDERAL AGENCY OR INDIAN TRIBE POSSESSING WATER
21 RIGHTS ARISING UNDER FEDERAL LAW, REQUIRED BY 85-2-702 TO
22 FILE CLAIMS.

23 ~~(4)~~ (4) The final decree shall state the findings of
24 fact, along with any conclusions of law, upon which the
25 existing rights and priorities of each person, FEDERAL

1 AGENCY, AND INDIAN TRIBE named in the decree are based.

2 (4)(5) For each person who is found to have an

3 existing right ARISING UNDER THE LAWS OF THE STATE OF

4 MONTANA, the final decree shall state:

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

6 the right;

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

8 the right;

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

10 (d) the purpose for which the water included in the

11 right is used;

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

13 any, to which the right is appurtenant;

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

15 (g) the place and means of diversion;

16 (h) the inclusive dates during which the water is used

17 each year;

18 (i) any other information necessary to fully define

19 the nature and extent of the right.

20 (6) FOR EACH PERSON, TRIBE, OR FEDERAL AGENCY

21 POSSESSING WATER RIGHTS ARISING UNDER THE LAWS OF THE UNITED

22 STATES, THE FINAL DECREE SHALL STATE:

23 (A) THE NAME AND MAILING ADDRESS OF THE HOLDER OF THE

24 RIGHT;

25 (B) THE SOURCE OR SOURCES OF WATER INCLUDED IN THE

1 RIGHT;

2 (C) THE QUANTITY OF WATER INCLUDED IN THE RIGHT;

3 (D) THE DATE OF PRIORITY OF THE RIGHT;

4 (E) THE PURPOSE FOR WHICH THE WATER INCLUDED IN THE

5 RIGHT IS CURRENTLY USED, IF AT ALL;

6 (F) THE PLACE OF USE AND A DESCRIPTION OF THE LAND, IF

7 ANY, TO WHICH THE RIGHT IS APPURTENANT;

8 (G) THE PLACE AND MEANS OF DIVERSION, IF ANY; AND

9 (H) ANY OTHER INFORMATION NECESSARY TO FULLY DEFINE

10 THE NATURE AND EXTENT OF THE RIGHT, INCLUDING THE TERMS OF

11 ANY COMPACTS NEGOTIATED AND RATIFIED UNDER 85-2-702."

12 Section 5. Section 85-2-702, MCA, is amended to read:

13 "85-2-702. Negotiation with Indian tribes. (1) The

14 reserved water rights compact commission, created by

15 2-15-212, may negotiate with the Indian tribes or their

16 authorized representatives jointly or severally to conclude

17 compacts authorized under 85-2-701. Compact proceedings

18 shall be commenced by the commission. The commission shall

19 serve by certified mail directed to the governing body of

20 each tribe a written request for the initiation of

21 negotiations under this part and a request for the

22 designation of an authorized representative of the tribe to

23 conduct compact negotiations. Upon receipt of such written

24 designation from the governing body of a tribe, compact

25 negotiations shall be considered to have commenced.

1 (2) When the compact commission and the Indian tribes
 2 or their authorized representatives have agreed to a
 3 compact, they shall sign a copy and file an original copy
 4 with the department of state of the United States of America
 5 and copies with the secretary of state of Montana and with
 6 the governing body for the tribe involved. The compact is
 7 effective and binding upon all parties upon ratification by
 8 the legislature of Montana, AND any affected tribal
 9 governing body,--and, if legally necessary, the congress of
 10 the United States or other appropriate federal authority.

11 (3) Upon its approval RATIFICATION by the Montana
 12 legislature and the tribe or federal agency, the terms of a
 13 compact must be included in the preliminary decree for
 14 informational purposes as provided by 85-2-231, and unless
 15 renegotiated, the terms of the compact must be included in
 16 the final decree without alteration. However, if approval of
 17 the state legislature and tribe or federal agency has not
 18 been accomplished by July 1, 1985 1987, all federal--and
 19 Indian claims for reserved water rights that have not been
 20 resolved by a compact must be filed with the department
 21 within 60 days 6 months. These new filings shall be used in
 22 the formulation of the preliminary decree and shall be given
 23 treatment similar to that given to all other filings."

24 SECTION 6. SECTION 85-2-704, MCA, IS AMENDED TO READ:

25 "85-2-704. Termination of negotiations. (1) The

1 commission or any other---party---to---the---negotiations
 2 negotiating tribe or federal agency may terminate
 3 negotiations by providing notice to all parties 30 days in
 4 advance of the termination date. On the termination date,
 5 the suspension of the application of part 2 provided for in
 6 85-2-217 shall also terminate. The tribe or federal agency
 7 shall file all of its claims for reserved rights within 60
 8 days 6 months of the termination of negotiations.

9 (2) Once negotiations have been terminated pursuant to
 10 subsection (1), they may be reopened only by mutual
 11 agreement of the parties."

12 NEW SECTION. SECTION 7. STATUS REPORTS TO CHIEF WATER
 13 JUDGE. (1) THE MONTANA RESERVED WATER RIGHTS COMPACT
 14 COMMISSION MUST SUBMIT TO THE CHIEF WATER JUDGE, APPOINTED
 15 PURSUANT TO 3-7-221, A REPORT ON THE STATUS OF ITS
 16 NEGOTIATIONS ON JULY 1, 1985, AND EVERY 6 MONTHS THEREAFTER.

17 (2) EACH REPORT MUST STATE WHICH INDIAN TRIBES AND
 18 FEDERAL AGENCIES ARE ENGAGED IN NEGOTIATIONS, WHETHER ANY
 19 NEGOTIATIONS WITH INDIAN TRIBES OR FEDERAL AGENCIES HAVE
 20 BEEN TERMINATED, AND THE PROGRESS OF NEGOTIATIONS ON A
 21 TRIBE-BY-TRIBE AND AGENCY-BY-AGENCY BASIS. THE REPORT MUST
 22 BE MADE AVAILABLE TO THE PUBLIC.

23 NEW SECTION. Section 8. Effective date. This act is
 24 effective on passage and approval.

-End-

1 SENATE BILL NO. 28

2 INTRODUCED BY ECK

3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A 2-YEAR
6 EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS
7 COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A
8 COMPACT ONLY IF LEGALLY NECESSARY; ~~REQUIRING THAT THE TERMS~~
9 ~~OF A COMPACT SET FORTH IN A PRELIMINARY DECREE BE REPRODUCED~~
10 ~~UNCHANGED~~ PROVIDING AN ALTERNATE STATEMENT OF CLAIM FOR
11 RESERVED RIGHTS NOT YET PUT TO USE; SPECIFYING THE
12 INFORMATION RELATING TO RESERVED RIGHTS TO BE INCLUDED; IN
13 THE FINAL DECREE EXTENDING FROM 60 DAYS TO 6 MONTHS THE TIME
14 PERIOD FOR FILING IN THE WATER COURT CLAIMS UNRESOLVED BY
15 THE COMPACT COMMISSION; REQUIRING THE COMMISSION TO MAKE
16 STATUS REPORTS TO THE WATER JUDGE; AMENDING SECTIONS
17 85-2-217, 85-2-224, 85-2-231, 85-2-234, AND 85-2-702, AND
18 85-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Section 85-2-217, MCA, is amended to read:

22 "85-2-217. Suspension of adjudication. While
23 negotiations for the conclusion of a compact under part 7
24 are being pursued, all proceedings to generally adjudicate
25 reserved Indian water rights and federal reserved water

1 rights of those tribes and federal agencies which are
2 negotiating are suspended. The obligation to file water
3 rights claims for those reserved rights is also suspended.
4 This suspension shall be effective until July 1, 1985 1987,
5 as long as negotiations are continuing or ratification of a
6 completed compact is being sought. If approval by the state
7 legislature and tribes or federal agencies has not been
8 accomplished by July 1, 1985 1987, the suspension shall
9 terminate on that date. Upon termination of the suspension
10 of this part, the tribes and the federal agencies shall be
11 subject to the special filing requirements of 85-2-702(3)
12 and all other requirements of the state water adjudication
13 system provided for in Title 85, chapter 2. Those tribes and
14 federal agencies that choose not to negotiate their reserved
15 water rights shall be subject to the full operation of the
16 state adjudication system and may not benefit from the
17 suspension provisions of this section."

18 SECTION 2. SECTION 85-2-224, MCA, IS AMENDED TO READ:

19 "85-2-224. Statement of claim. (1) The statement of
20 claim for each right arising under the laws of the state and
21 for each right reserved under the laws of the United States
22 which has been actually put to use shall include
23 substantially the following:

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

25 (b) the name of the watercourse or water source from

1 which the right to divert or make use of water is claimed,
2 if available;

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

4 (d) the legal description, with reasonable certainty,
5 of the point or points of diversion and places of use of
6 waters;

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

9 (f) the approximate dates of first putting water to
10 beneficial use for the various amounts and times claimed in
11 subsection (c); and

12 (g) the sworn statement that the claim set forth is
13 true and correct to the best of claimant's knowledge and
14 belief.

15 (2) The Any claimant filing a statement of claim under
16 subsection (1) shall submit maps, plats, aerial photographs,
17 decrees, or pertinent portions thereof, or other evidence in
18 support of his claim. All maps, plats, or aerial
19 photographs should show as nearly as possible to scale the
20 point of diversion, place of use, place of storage, and
21 other pertinent conveyance facilities.

22 (3) Any statement of claim for rights reserved under
23 the laws of the United States which have not yet been put to
24 use shall include substantially the following:

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

1 (b) the name of the watercourse or water source from
2 which the right to divert or make use of water is claimed,
3 if available;

4 (c) the quantities of water claimed;

5 (d) the priority date claimed;

6 (e) the laws of the United States on which the claim
7 is based; and

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

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

12 "85-2-231. Preliminary decree. (1) The water judge
13 shall issue a preliminary decree. The preliminary decree
14 shall be based on:

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

16 (b) the data submitted by the department;

17 (c) the contents of compacts approved by the Montana
18 legislature and the tribe or federal agency or, lacking an
19 approved compact, the filings for federal and Indian
20 reserved rights; and

21 (d) any additional data obtained by the water judge.

22 The preliminary decree shall be issued within 90 days after
23 the close of the special filing period set out in
24 85-2-702(3) or as soon thereafter as is reasonably feasible.

25 This section does not prevent the water judge from issuing

1 an interlocutory decree or other temporary decree if such a
2 decree is necessary for the orderly administration of water
3 rights prior to the issuance of a preliminary decree.

4 (2) A preliminary decree may be issued for any
5 hydrologically interrelated portion of a water division,
6 including but not limited to a basin, subbasin, drainage,
7 subdrainage, stream, or single source of supply of water, at
8 a time different from the issuance of other preliminary
9 decrees or portions of the same decree.

10 (3) The preliminary decree shall contain the
11 information and make the determinations, findings, and
12 conclusions required for the final decree under 85-2-234.
13 The water judge shall include in the preliminary decree ~~for~~
14 ~~informational purposes~~ the contents of a compact negotiated
15 under the provisions of part 7 that has been approved by the
16 legislature and the tribe or federal agency ~~whether or not~~
17 ~~it has been ratified by congress~~.

18 (4) If the water judge is satisfied that the report of
19 the water master meets the requirements for the preliminary
20 decree set forth in subsections (1) and (3), and is
21 satisfied with the conclusions contained in the report, the
22 water judge shall adopt the report as the preliminary
23 decree. If the water judge is not so satisfied, he may, at
24 his option, recommit the report to the master with
25 instructions, or modify the report and issue the preliminary

1 decree."

2 Section 4. Section 85-2-234, MCA, is amended to read:

3 "85-2-234. Final decree. (1) The water judge shall, on
4 the basis of the preliminary decree and on the basis of any
5 hearing that may have been held, enter a final decree
6 affirming or modifying the preliminary decree. If no
7 request for a hearing is filed within the time allowed, the
8 preliminary decree automatically becomes final, and the
9 water judge shall enter it as the final decree.

10 (2) The terms of a compact negotiated and ratified
11 under 85-2-702 must be included in the final decree without
12 alteration.

13 ~~(3)~~ (3) The final decree shall establish the existing
14 rights and priorities within the water judge's jurisdiction
15 of persons required by 85-2-221 to file a claim for an
16 existing right, and of persons required to file a
17 declaration of existing rights in the Powder River Basin
18 pursuant to an order of the department or a district court
19 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
20 AND OF ANY FEDERAL AGENCY OR INDIAN TRIBE POSSESSING WATER
21 RIGHTS ARISING UNDER FEDERAL LAW, REQUIRED BY 85-2-702 TO
22 FILE CLAIMS.

23 ~~(4)~~ (4) The final decree shall state the findings of
24 fact, along with any conclusions of law, upon which the
25 existing rights and priorities of each person, FEDERAL

1 AGENCY, AND INDIAN TRIBE named in the decree are based.

2 ~~4~~(5) For each person who is found to have an

3 existing right ARISING UNDER THE LAWS OF THE STATE OF

4 MONTANA, the final decree shall state:

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

6 the right;

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

8 the right;

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

10 (d) the purpose for which the water included in the

11 right is used;

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

13 any, to which the right is appurtenant;

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

15 (g) the place and means of diversion;

16 (h) the inclusive dates during which the water is used

17 each year;

18 (i) any other information necessary to fully define

19 the nature and extent of the right.

20 (6) FOR EACH PERSON, TRIBE, OR FEDERAL AGENCY

21 POSSESSING WATER RIGHTS ARISING UNDER THE LAWS OF THE UNITED

22 STATES, THE FINAL DECREE SHALL STATE:

23 (A) THE NAME AND MAILING ADDRESS OF THE HOLDER OF THE

24 RIGHT;

25 (B) THE SOURCE OR SOURCES OF WATER INCLUDED IN THE

1 RIGHT;

2 (C) THE QUANTITY OF WATER INCLUDED IN THE RIGHT;

3 (D) THE DATE OF PRIORITY OF THE RIGHT;

4 (E) THE PURPOSE FOR WHICH THE WATER INCLUDED IN THE

5 RIGHT IS CURRENTLY USED, IF AT ALL;

6 (F) THE PLACE OF USE AND A DESCRIPTION OF THE LAND, IF

7 ANY, TO WHICH THE RIGHT IS APPURTENANT;

8 (G) THE PLACE AND MEANS OF DIVERSION, IF ANY; AND

9 (H) ANY OTHER INFORMATION NECESSARY TO FULLY DEFINE

10 THE NATURE AND EXTENT OF THE RIGHT, INCLUDING THE TERMS OF

11 ANY COMPACTS NEGOTIATED AND RATIFIED UNDER 85-2-702."

12 Section 5. Section 85-2-702, MCA, is amended to read:

13 "85-2-702. Negotiation with Indian tribes. (1) The

14 reserved water rights compact commission, created by

15 2-15-212, may negotiate with the Indian tribes or their

16 authorized representatives jointly or severally to conclude

17 compacts authorized under 85-2-701. Compact proceedings

18 shall be commenced by the commission. The commission shall

19 serve by certified mail directed to the governing body of

20 each tribe a written request for the initiation of

21 negotiations under this part and a request for the

22 designation of an authorized representative of the tribe to

23 conduct compact negotiations. Upon receipt of such written

24 designation from the governing body of a tribe, compact

25 negotiations shall be considered to have commenced.

1 (2) When the compact commission and the Indian tribes
 2 or their authorized representatives have agreed to a
 3 compact, they shall sign a copy and file an original copy
 4 with the department of state of the United States of America
 5 and copies with the secretary of state of Montana and with
 6 the governing body for the tribe involved. The compact is
 7 effective and binding upon all parties upon ratification by
 8 the legislature of Montana, AND any affected tribal
 9 governing body, ~~and, if legally necessary, the congress of~~
 10 ~~the United States or other appropriate federal authority.~~

11 (3) Upon its approval RATIFICATION by the Montana
 12 legislature and the tribe or federal agency, the terms of a
 13 compact must be included in the preliminary decree for
 14 informational purposes as provided by 85-2-231, and unless
 15 renegotiated, the terms of the compact must be included in
 16 the final decree without alteration. However, if approval of
 17 the state legislature and tribe or federal agency has not
 18 been accomplished by July 1, 1985 1987, all federal ~~and~~
 19 Indian claims for reserved water rights that have not been
 20 resolved by a compact must be filed with the department
 21 within ~~60 days~~ 6 months. These new filings shall be used in
 22 the formulation of the preliminary decree and shall be given
 23 treatment similar to that given to all other filings."

24 SECTION 6. SECTION 85-2-704, MCA, IS AMENDED TO READ:
 25 "85-2-704. Termination of negotiations. (1) The

1 commission or any other ~~party to the negotiations~~
 2 negotiating tribe or federal agency may terminate
 3 negotiations by providing notice to all parties 30 days in
 4 advance of the termination date. On the termination date,
 5 the suspension of the application of part 2 provided for in
 6 85-2-217 shall also terminate. The tribe or federal agency
 7 shall file all of its claims for reserved rights within 60
 8 days 6 months of the termination of negotiations.

9 (2) Once negotiations have been terminated pursuant to
 10 subsection (1), they may be reopened only by mutual
 11 agreement of the parties."

12 NEW SECTION. SECTION 7. STATUS REPORTS TO CHIEF WATER
 13 JUDGE. (1) THE MONTANA RESERVED WATER RIGHTS COMPACT
 14 COMMISSION MUST SUBMIT TO THE CHIEF WATER JUDGE, APPOINTED
 15 PURSUANT TO 3-7-221, A REPORT ON THE STATUS OF ITS
 16 NEGOTIATIONS ON JULY 1, 1985, AND EVERY 6 MONTHS THEREAFTER.

17 (2) EACH REPORT MUST STATE WHICH INDIAN TRIBES AND
 18 FEDERAL AGENCIES ARE ENGAGED IN NEGOTIATIONS, WHETHER ANY
 19 NEGOTIATIONS WITH INDIAN TRIBES OR FEDERAL AGENCIES HAVE
 20 BEEN TERMINATED, AND THE PROGRESS OF NEGOTIATIONS ON A
 21 TRIBE-BY-TRIBE AND AGENCY-BY-AGENCY BASIS. THE REPORT MUST
 22 BE MADE AVAILABLE TO THE PUBLIC.

23 NEW SECTION. Section 8. Effective date. This act is
 24 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

HOUSE

March 22 19 85

page 1 of 3

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 28

Third reading copy (Blue)
color

EXTENDING RES. WATER RIGHTS COMPACT COMMISSION & CHANGES IN
WATER ADJUDICATION

Respectfully report as follows: That Senate Bill No. 28

be amended as follows:

1. Title, line 8.
Following: "NECESSARY,"
Insert: "LIMITING THE OBJECTIONS THAT MAY BE MADE TO A COMPACT
IN THE WATER COURTS;"

2. Title, line 12.
Following: "INCLUDED"
Strike: " ; "

3. Title, line 13.
Following: "DECREE"
Insert: " ; "

XXXXXX

Jan 7/2-

(continued)

Chairman.

March 22

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4. Title, line 17.
Following: "85-2-231,"
Insert: "85-2-233,"

5. Page 6, following line 1.
Insert: "Section 4. Section 85-2-233, MCA, is amended to read:
"85-2-233. Hearing on preliminary decree. (1) Upon
objection to the preliminary decree by the department, a
person named in the preliminary decree, or any other person,
for good cause shown, the department or such person is
entitled to a hearing thereon before the water judge.

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

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

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

(5) Objections to a compact negotiated and ratified
under 85-2-702 or 85-2-703 shall be limited to:

(a) the authority of the state;
(i) to determine Indian or other federally reserved
water rights through the procedure set forth in 85-2-702 and
85-2-703; and

(ii) to bind through such determination, for purposes
of a final decree under 85-2-234, all persons whose existing
rights are or may be affected by the compact; or

(b) the process by which the compact was negotiated or
ratified.

(continued)

Chairman.

March 22

19 85

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SB 28

(6) Failure to object under subsection (2) to a compact bars any subsequent cause of action based in whole or in part on those grounds for objection stated in subsection (5).

(7) If the court sustains an objection under subsection (5), it shall declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231, provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

Renumber: subsequent sections

6. Page 6, line 11.

Following: "decree"

Insert: "without alteration unless an objection is sustained pursuant to 85-2-233"

7. Page 9, line 14.

Following: "and"

Insert: "unless an objection to the compact is sustained under 85-2-233,"

8. Page 9, line 16.

Following: "decree"

Insert: "without alteration"

KMF
3/22

AND AS AMENDED,
BE CONCURRED IN

Tom Hannah

TOM HANNAH,

Chairman.

1 SENATE BILL NO. 28

2 INTRODUCED BY ECK

3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A 2-YEAR
6 EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS
7 COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A
8 COMPACT ONLY IF LEGALLY NECESSARY; LIMITING THE OBJECTIONS
9 THAT MAY BE MADE TO A COMPACT IN THE WATER COURTS; REQUIRING
10 THAT-THE-TERMS-OF-A-COMPACT-SET-PORTH-IN-A-PRELIMINARY
11 DECREE---BE---REPRODUCED---UNCHANGED PROVIDING AN ALTERNATE
12 STATEMENT OF CLAIM FOR RESERVED RIGHTS NOT YET PUT TO USE;
13 SPECIFYING THE INFORMATION RELATING TO RESERVED RIGHTS TO BE
14 INCLUDED; IN THE FINAL DECREE; EXTENDING FROM 60 DAYS TO 6
15 MONTHS THE TIME PERIOD FOR FILING IN THE WATER COURT CLAIMS
16 UNRESOLVED BY THE COMPACT COMMISSION; REQUIRING THE
17 COMMISSION TO MAKE STATUS REPORTS TO THE WATER JUDGE;
18 AMENDING SECTIONS 85-2-217, 85-2-224, 85-2-231, 85-2-233,
19 85-2-234, AND 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN
20 IMMEDIATE EFFECTIVE DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 85-2-217, MCA, is amended to read:

24 "85-2-217. Suspension of adjudication. While
25 negotiations for the conclusion of a compact under part 7

1 are being pursued, all proceedings to generally adjudicate
2 reserved Indian water rights and federal reserved water
3 rights of those tribes and federal agencies which are
4 negotiating are suspended. The obligation to file water
5 rights claims for those reserved rights is also suspended.
6 This suspension shall be effective until July 1, ~~1985~~ 1987,
7 as long as negotiations are continuing or ratification of a
8 completed compact is being sought. If approval by the state
9 legislature and tribes or federal agencies has not been
10 accomplished by July 1, ~~1985~~ 1987, the suspension shall
11 terminate on that date. Upon termination of the suspension
12 of this part, the tribes and the federal agencies shall be
13 subject to the special filing requirements of 85-2-702(3)
14 and all other requirements of the state water adjudication
15 system provided for in Title 85, chapter 2. Those tribes and
16 federal agencies that choose not to negotiate their reserved
17 water rights shall be subject to the full operation of the
18 state adjudication system and may not benefit from the
19 suspension provisions of this section."

20 SECTION 2. SECTION 85-2-224, MCA, IS AMENDED TO READ:

21 "85-2-224. Statement of claim. (1) The statement of
22 claim for each right arising under the laws of the state and
23 for each right reserved under the laws of the United States
24 which has been actually put to use shall include
25 substantially the following:

REFERENCE BILL

- 1 (a) the name and mailing address of the claimant;
- 2 (b) the name of the watercourse or water source from
3 which the right to divert or make use of water is claimed,
4 if available;
- 5 (c) the quantities of water and times of use claimed;
- 6 (d) the legal description, with reasonable certainty,
7 of the point or points of diversion and places of use of
8 waters;
- 9 (e) the purpose of use, including, if for irrigation,
10 the number of acres irrigated;
- 11 (f) the approximate dates of first putting water to
12 beneficial use for the various amounts and times claimed in
13 subsection (c); and
- 14 (g) the sworn statement that the claim set forth is
15 true and correct to the best of claimant's knowledge and
16 belief.
- 17 (2) The Any claimant filing a statement of claim under
18 subsection (1) shall submit maps, plats, aerial photographs,
19 decrees, or pertinent portions thereof, or other evidence in
20 support of his claim. All maps, plats, or aerial
21 photographs should show as nearly as possible to scale the
22 point of diversion, place of use, place of storage, and
23 other pertinent conveyance facilities.
- 24 (3) Any statement of claim for rights reserved under
25 the laws of the United States which have not yet been put to

- 1 use shall include substantially the following:
- 2 (a) the name and mailing address of the claimant;
- 3 (b) the name of the watercourse or water source from
4 which the right to divert or make use of water is claimed,
5 if available;
- 6 (c) the quantities of water claimed;
- 7 (d) the priority date claimed;
- 8 (e) the laws of the United States on which the claim
9 is based; and
- 10 (f) the sworn statement that the claim set forth is
11 true and correct to the best of claimant's knowledge and
12 belief."
- 13 Section 3. Section 85-2-231, MCA, is amended to read:
- 14 "85-2-231. Preliminary decree. (1) The water judge
15 shall issue a preliminary decree. The preliminary decree
16 shall be based on:
- 17 (a) the statements of claim before the water judge;
- 18 (b) the data submitted by the department;
- 19 (c) the contents of compacts approved by the Montana
20 legislature and the tribe or federal agency or, lacking an
21 approved compact, the filings for federal and Indian
22 reserved rights; and
- 23 (d) any additional data obtained by the water judge.
- 24 The preliminary decree shall be issued within 90 days after
25 the close of the special filing period set out in

1 85-2-702(3) or as soon thereafter as is reasonably feasible.
 2 This section does not prevent the water judge from issuing
 3 an interlocutory decree or other temporary decree if such a
 4 decree is necessary for the orderly administration of water
 5 rights prior to the issuance of a preliminary decree.

6 (2) A preliminary decree may be issued for any
 7 hydrologically interrelated portion of a water division,
 8 including but not limited to a basin, subbasin, drainage,
 9 subdrainage, stream, or single source of supply of water, at
 10 a time different from the issuance of other preliminary
 11 decrees or portions of the same decree.

12 (3) The preliminary decree shall contain the
 13 information and make the determinations, findings, and
 14 conclusions required for the final decree under 85-2-234.
 15 The water judge shall include in the preliminary decree ~~7-for~~
 16 ~~informational purposes~~ the contents of a compact negotiated
 17 under the provisions of part 7 that has been approved by the
 18 legislature and the tribe or federal agency ~~whether--or--not~~
 19 ~~it-has-been-ratified-by-congress~~.

20 (4) If the water judge is satisfied that the report of
 21 the water master meets the requirements for the preliminary
 22 decree set forth in subsections (1) and (3), and is
 23 satisfied with the conclusions contained in the report, the
 24 water judge shall adopt the report as the preliminary
 25 decree. If the water judge is not so satisfied, he may, at

1 his option, recommit the report to the master with
 2 instructions, or modify the report and issue the preliminary
 3 decree."

4 SECTION 4. SECTION 85-2-233, MCA, IS AMENDED TO READ:

5 "85-2-233. Hearing on preliminary decree. (1) Upon
 6 objection to the preliminary decree by the department, a
 7 person named in the preliminary decree, or any other person,
 8 for good cause shown, the department or such person is
 9 entitled to a hearing thereon before the water judge.

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

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

23 (4) Upon expiration of the time for filing objections
 24 and upon timely receipt of a request for a hearing, the
 25 water judge shall notify each party named in the preliminary

1 decree that a hearing has been requested. The water judge
 2 shall fix a day when all parties who wish to participate in
 3 future proceedings must appear or file a statement. The
 4 water judge shall then set a date for a hearing. The water
 5 judge may conduct individual or consolidated hearings. A
 6 hearing shall be conducted as for other civil actions. At
 7 the order of the water judge a hearing may be conducted by
 8 the water master, who shall prepare a report of the hearing
 9 as provided in M.R.Civ.P., Rule 53(e).

10 (5) Objections to a compact negotiated and ratified
 11 under 85-2-702 or 85-2-703 shall be limited to:

12 (a) the authority of the state:

13 (i) to determine Indian or other federally reserved
 14 water rights through the procedure set forth in 85-2-702 and
 15 85-2-703; and

16 (ii) to bind through such determination, for purposes
 17 of a final decree under 85-2-234, all persons whose existing
 18 rights are or may be affected by the compact; or

19 (b) the process by which the compact was negotiated or
 20 ratified.

21 (6) Failure to object under subsection (1) to a
 22 compact bars any subsequent cause of action based in whole
 23 or in part on those grounds for objection stated in
 24 subsection (5).

25 (7) If the court sustains an objection under

1 subsection (5), it shall declare the compact void. The
 2 agency of the United States, the tribe, or the United States
 3 on behalf of the tribe party to the compact shall be
 4 permitted 6 months after the court's determination to file a
 5 statement of claim, as provided in 85-2-224, and the court
 6 shall thereafter issue a new preliminary decree in
 7 accordance with 85-2-231; provided, however, that any party
 8 to a compact declared void may appeal from such
 9 determination in accordance with those procedures applicable
 10 to 85-2-235, and the filing of a notice of appeal shall stay
 11 the period for filing a statement of claim as required under
 12 this subsection."

13 Section 5. Section 85-2-234, MCA, is amended to read:

14 "85-2-234. Final decree. (1) The water judge shall, on
 15 the basis of the preliminary decree and on the basis of any
 16 hearing that may have been held, enter a final decree
 17 affirming or modifying the preliminary decree. If no
 18 request for a hearing is filed within the time allowed, the
 19 preliminary decree automatically becomes final, and the
 20 water judge shall enter it as the final decree.

21 (2) The terms of a compact negotiated and ratified
 22 under 85-2-702 must be included in the final decree without
 23 alteration WITHOUT ALTERATION UNLESS AN OBJECTION IS
 24 SUSTAINED PURSUANT TO 85-2-233.

25 †2†(3) The final decree shall establish the existing

1 rights and priorities within the water judge's jurisdiction
 2 of persons required by 85-2-221 to file a claim for an
 3 existing right, and of persons required to file a
 4 declaration of existing rights in the Powder River Basin
 5 pursuant to an order of the department or a district court
 6 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
 7 AND OF ANY FEDERAL AGENCY OR INDIAN TRIBE POSSESSING WATER
 8 RIGHTS ARISING UNDER FEDERAL LAW, REQUIRED BY 85-2-702 TO
 9 FILE CLAIMS.

10 (3)(4) The final decree shall state the findings of
 11 fact, along with any conclusions of law, upon which the
 12 existing rights and priorities of each person, FEDERAL
 13 AGENCY, AND INDIAN TRIBE named in the decree are based.

14 (4)(5) For each person who is found to have an
 15 existing right ARISING UNDER THE LAWS OF THE STATE OF
 16 MONTANA, the final decree shall state:

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

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

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

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

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

1 (f) the source of the water included in the right;
 2 (g) the place and means of diversion;
 3 (h) the inclusive dates during which the water is used
 4 each year;
 5 (i) any other information necessary to fully define
 6 the nature and extent of the right.
 7 (6) FOR EACH PERSON, TRIBE, OR FEDERAL AGENCY
 8 POSSESSING WATER RIGHTS ARISING UNDER THE LAWS OF THE UNITED
 9 STATES, THE FINAL DECREE SHALL STATE:
 10 (A) THE NAME AND MAILING ADDRESS OF THE HOLDER OF THE
 11 RIGHT;
 12 (B) THE SOURCE OR SOURCES OF WATER INCLUDED IN THE
 13 RIGHT;
 14 (C) THE QUANTITY OF WATER INCLUDED IN THE RIGHT;
 15 (D) THE DATE OF PRIORITY OF THE RIGHT;
 16 (E) THE PURPOSE FOR WHICH THE WATER INCLUDED IN THE
 17 RIGHT IS CURRENTLY USED, IF AT ALL;
 18 (F) THE PLACE OF USE AND A DESCRIPTION OF THE LAND, IF
 19 ANY, TO WHICH THE RIGHT IS APPURTENANT;
 20 (G) THE PLACE AND MEANS OF DIVERSION, IF ANY; AND
 21 (H) ANY OTHER INFORMATION NECESSARY TO FULLY DEFINE
 22 THE NATURE AND EXTENT OF THE RIGHT, INCLUDING THE TERMS OF
 23 ANY COMPACTS NEGOTIATED AND RATIFIED UNDER 85-2-702."

24 Section 6. Section 85-2-702, MCA, is amended to read:
 25 "85-2-702. Negotiation with Indian tribes. (1) The

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

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

23 (3) Upon its approval RATIFICATION by the Montana
 24 legislature and the tribe ~~or federal agency~~, the terms of a
 25 compact must be included in the preliminary decree for

1 ~~informational purposes~~ as provided by 85-2-231, and ~~unless~~
 2 ~~renegotiated~~, UNLESS AN OBJECTION TO THE COMPACT IS
 3 SUSTAINED UNDER 85-2-233, the terms of the compact must be
 4 included in the final decree without alteration WITHOUT
 5 ALTERATION. However, if approval of the state legislature
 6 and tribe ~~or federal agency~~ has not been accomplished by
 7 July 1, 1985 1987, all ~~federal~~ ~~and~~ Indian claims for
 8 reserved water rights that have not been resolved by a
 9 compact must be filed with the department within ~~60 days~~ 6
 10 months. These new filings shall be used in the formulation
 11 of the preliminary decree and shall be given treatment
 12 similar to that given to all other filings."

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 14 "85-2-704. Termination of negotiations. (1) The
 15 commission or any ~~other party to the negotiations~~
 16 negotiating tribe or federal agency may terminate
 17 negotiations by providing notice to all parties 30 days in
 18 advance of the termination date. On the termination date,
 19 the suspension of the application of part 2 provided for in
 20 85-2-217 shall also terminate. The tribe or federal agency
 21 shall file all of its claims for reserved rights within ~~60~~
 22 days 6 months of the termination of negotiations.

23 (2) Once negotiations have been terminated pursuant to
 24 subsection (1), they may be reopened only by mutual
 25 agreement of the parties."

1 NEW SECTION. SECTION 8. STATUS REPORTS TO CHIEF WATER
2 JUDGE. (1) THE MONTANA RESERVED WATER RIGHTS COMPACT
3 COMMISSION MUST SUBMIT TO THE CHIEF WATER JUDGE, APPOINTED
4 PURSUANT TO 3-7-221, A REPORT ON THE STATUS OF ITS
5 NEGOTIATIONS ON JULY 1, 1985, AND EVERY 6 MONTHS THEREAFTER.

6 (2) EACH REPORT MUST STATE WHICH INDIAN TRIBES AND
7 FEDERAL AGENCIES ARE ENGAGED IN NEGOTIATIONS, WHETHER ANY
8 NEGOTIATIONS WITH INDIAN TRIBES OR FEDERAL AGENCIES HAVE
9 BEEN TERMINATED, AND THE PROGRESS OF NEGOTIATIONS ON A
10 TRIBE-BY-TRIBE AND AGENCY-BY-AGENCY BASIS. THE REPORT MUST
11 BE MADE AVAILABLE TO THE PUBLIC.

12 NEW SECTION. Section 9. Effective date. This act is
13 effective on passage and approval.

-End-

GOVERNOR'S PROPOSED AMENDMENTS
TO SENATE BILL NO. 28
REFERENCE COPY,
April 17, 1985

1. Page 1, line 8 through line 9.
Following: "NECESSARY"
Strike: "LIMITING THE OBJECTIONS THAT MAY BE
MADE TO A COMPACT IN THE WATER COURTS;"

2. Page 7, line 10 through line 20.
Strike: Subsection (5) in its entirety - renumber
subsequent subsections

3. Page 7, line 22.
Following: "compact"
Insert: "negotiated and ratified under 85-2-702 or
85-2-703

4. Page 7, line 22.
Following: "action"
Strike: "based in whole or in part on those grounds for
objection stated in subsection (5)."
Insert: "in the water court."

5. Page 7, line 25 through page 8, line 1.
Following: "objection"
Strike: "under subsection (5)"
Insert: "to a compact"

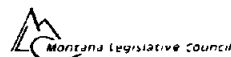
6. Page 8, line 1.
Following: "it"
Strike: "shall"
Insert: "may"

7. Page 8, line 24.
Following: "85-2-233"
Strike: "."
Insert: "; provided that the court may not alter or amend
any of the terms of a compact except with the prior
written consent of the parties in accordance with
applicable law."

8. Page 11, line 21.
Following: "body"
Insert: ", and approval by the appropriate federal
authority."

1 SENATE BILL NO. 28
2 INTRODUCED BY ECK
3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A 2-YEAR
6 EXTENSION OF THE EXISTENCE OF THE RESERVED WATER RIGHTS
7 COMPACT COMMISSION; PROVIDING FOR FEDERAL APPROVAL OF A
8 COMPACT ONLY IF LEGALLY NECESSARY; ~~LIMITING THE OBJECTIONS~~
9 ~~THAT MAY BE MADE TO A COMPACT IN THE WATER COURTS;~~ REQUIRING
10 ~~THAT THE TERMS OF A COMPACT SET FORTH IN A PRELIMINARY~~
11 ~~DECREE BE REPRODUCED UNCHANGED~~ PROVIDING AN ALTERNATE
12 STATEMENT OF CLAIM FOR RESERVED RIGHTS NOT YET PUT TO USE;
13 SPECIFYING THE INFORMATION RELATING TO RESERVED RIGHTS TO BE
14 INCLUDED; IN THE FINAL DECREE; EXTENDING FROM 60 DAYS TO 6
15 MONTHS THE TIME PERIOD FOR FILING IN THE WATER COURT CLAIMS
16 UNRESOLVED BY THE COMPACT COMMISSION; REQUIRING THE
17 COMMISSION TO MAKE STATUS REPORTS TO THE WATER JUDGE;
18 AMENDING SECTIONS 85-2-217, 85-2-224, 85-2-231, 85-2-233,
19 85-2-234, AND 85-2-702, AND 85-2-704, MCA; AND PROVIDING AN
20 IMMEDIATE EFFECTIVE DATE."
21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
23 Section 1. Section 85-2-217, MCA, is amended to read:
24 "85-2-217. Suspension of adjudication. While
25 negotiations for the conclusion of a compact under part 7

1 are being pursued, all proceedings to generally adjudicate
2 reserved Indian water rights and federal reserved water
3 rights of those tribes and federal agencies which are
4 negotiating are suspended. The obligation to file water
5 rights claims for those reserved rights is also suspended.
6 This suspension shall be effective until July 1, 1985 1987,
7 as long as negotiations are continuing or ratification of a
8 completed compact is being sought. If approval by the state
9 legislature and tribes or federal agencies has not been
10 accomplished by July 1, 1985 1987, the suspension shall
11 terminate on that date. Upon termination of the suspension
12 of this part, the tribes and the federal agencies shall be
13 subject to the special filing requirements of 85-2-702(3)
14 and all other requirements of the state water adjudication
15 system provided for in Title 85, chapter 2. Those tribes and
16 federal agencies that choose not to negotiate their reserved
17 water rights shall be subject to the full operation of the
18 state adjudication system and may not benefit from the
19 suspension provisions of this section."
20 SECTION 2. SECTION 85-2-224, MCA, IS AMENDED TO READ:
21 "85-2-224. Statement of claim. (1) The statement of
22 claim for each right arising under the laws of the state and
23 for each right reserved under the laws of the United States
24 which has been actually put to use shall include
25 substantially the following:



1 (a) the name and mailing address of the claimant;
 2 (b) the name of the watercourse or water source from
 3 which the right to divert or make use of water is claimed,
 4 if available;
 5 (c) the quantities of water and times of use claimed;
 6 (d) the legal description, with reasonable certainty,
 7 of the point or points of diversion and places of use of
 8 waters;
 9 (e) the purpose of use, including, if for irrigation,
 10 the number of acres irrigated;
 11 (f) the approximate dates of first putting water to
 12 beneficial use for the various amounts and times claimed in
 13 subsection (c); and
 14 (g) the sworn statement that the claim set forth is
 15 true and correct to the best of claimant's knowledge and
 16 belief.
 17 (2) The Any claimant filing a statement of claim under
 18 subsection (1) shall submit maps, plats, aerial photographs,
 19 decrees, or pertinent portions thereof, or other evidence in
 20 support of his claim. All maps, plats, or aerial
 21 photographs should show as nearly as possible to scale the
 22 point of diversion, place of use, place of storage, and
 23 other pertinent conveyance facilities.
 24 (3) Any statement of claim for rights reserved under
 25 the laws of the United States which have not yet been put to

1 use shall include substantially the following:
 2 (a) the name and mailing address of the claimant;
 3 (b) the name of the watercourse or water source from
 4 which the right to divert or make use of water is claimed,
 5 if available;
 6 (c) the quantities of water claimed;
 7 (d) the priority date claimed;
 8 (e) the laws of the United States on which the claim
 9 is based; and
 10 (f) the sworn statement that the claim set forth is
 11 true and correct to the best of claimant's knowledge and
 12 belief."
 13 Section 3. Section 85-2-231, MCA, is amended to read:
 14 "85-2-231. Preliminary decree. (1) The water judge
 15 shall issue a preliminary decree. The preliminary decree
 16 shall be based on:
 17 (a) the statements of claim before the water judge;
 18 (b) the data submitted by the department;
 19 (c) the contents of compacts approved by the Montana
 20 legislature and the tribe or federal agency or, lacking an
 21 approved compact, the filings for federal and Indian
 22 reserved rights; and
 23 (d) any additional data obtained by the water judge.
 24 The preliminary decree shall be issued within 90 days after
 25 the close of the special filing period set out in

1 85-2-702(3) or as soon thereafter as is reasonably feasible.
 2 This section does not prevent the water judge from issuing
 3 an interlocutory decree or other temporary decree if such a
 4 decree is necessary for the orderly administration of water
 5 rights prior to the issuance of a preliminary decree.

6 (2) A preliminary decree may be issued for any
 7 hydrologically interrelated portion of a water division,
 8 including but not limited to a basin, subbasin, drainage,
 9 subdrainage, stream, or single source of supply of water, at
 10 a time different from the issuance of other preliminary
 11 decrees or portions of the same decree.

12 (3) The preliminary decree shall contain the
 13 information and make the determinations, findings, and
 14 conclusions required for the final decree under 85-2-234.
 15 The water judge shall include in the preliminary decree ~~for~~
 16 ~~informational purposes,~~ the contents of a compact negotiated
 17 under the provisions of part 7 that has been approved by the
 18 legislature and the tribe or federal agency ~~whether--or--not~~
 19 ~~it has been ratified by congress.~~

20 (4) If the water judge is satisfied that the report of
 21 the water master meets the requirements for the preliminary
 22 decree set forth in subsections (1) and (3), and is
 23 satisfied with the conclusions contained in the report, the
 24 water judge shall adopt the report as the preliminary
 25 decree. If the water judge is not so satisfied, he may, at

1 his option, recommit the report to the master with
 2 instructions, or modify the report and issue the preliminary
 3 decree."

4 SECTION 4. SECTION 85-2-233, MCA, IS AMENDED TO READ:

5 "85-2-233. Hearing on preliminary decree. (1) Upon
 6 objection to the preliminary decree by the department, a
 7 person named in the preliminary decree, or any other person,
 8 for good cause shown, the department or such person is
 9 entitled to a hearing thereon before the water judge.

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

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

23 (4) Upon expiration of the time for filing objections
 24 and upon timely receipt of a request for a hearing, the
 25 water judge shall notify each party named in the preliminary

1 decree that a hearing has been requested. The water judge
2 shall fix a day when all parties who wish to participate in
3 future proceedings must appear or file a statement. The
4 water judge shall then set a date for a hearing. The water
5 judge may conduct individual or consolidated hearings. A
6 hearing shall be conducted as for other civil actions. At
7 the order of the water judge a hearing may be conducted by
8 the water master, who shall prepare a report of the hearing
9 as provided in M.R.Civ.P., Rule 53(e).

10 ~~{5}-Objections-to-a-compact--negotiated--and--ratified~~
11 ~~under-85-2-702-or-85-2-703-shall-be-limited-to:~~

12 ~~{a)--the-authority-of-the-state:~~

13 ~~{i)--to--determine--Indian--or--other--federally--reserved~~
14 ~~water-rights-through-the-procedure-set-forth-in-85-2-702-and~~
15 ~~85-2-703;-and~~

16 ~~{ii)--to-bind-through-such-determination;-for--purposes~~
17 ~~of-a-final-decree-under-85-2-234;-all-persons-whose-existing~~
18 ~~rights-are-or-may-be-affected-by-the-compact;-or~~

19 ~~{b)--the-process-by-which-the-compact-was-negotiated-or~~
20 ~~ratified;~~

21 {6}(5) Failure to object under subsection (1) to a
22 compact NEGOTIATED AND RATIFIED UNDER 85-2-702 OR 85-2-703
23 bars any subsequent cause of action based-in-whole-or-in
24 part-on-these-grounds-for--objection--stated--in--subsection
25 {5}; IN THE WATER COURT.

1 {7}(6) If the court sustains an objection under
2 subsection {5} TO A COMPACT, it shall MAY declare the
3 compact void. The agency of the United States, the tribe, or
4 the United States on behalf of the tribe party to the
5 compact shall be permitted 6 months after the court's
6 determination to file a statement of claim, as provided in
7 85-2-224, and the court shall thereafter issue a new
8 preliminary decree in accordance with 85-2-231; provided,
9 however, that any party to a compact declared void may
10 appeal from such determination in accordance with those
11 procedures applicable to 85-2-235, and the filing of a
12 notice of appeal shall stay the period for filing a
13 statement of claim as required under this subsection."

14 Section 5. Section 85-2-234, MCA, is amended to read:

15 "85-2-234. Final decree. (1) The water judge shall, on
16 the basis of the preliminary decree and on the basis of any
17 hearing that may have been held, enter a final decree
18 affirming or modifying the preliminary decree. If no
19 request for a hearing is filed within the time allowed, the
20 preliminary decree automatically becomes final, and the
21 water judge shall enter it as the final decree.

22 (2) The terms of a compact negotiated and ratified
23 under 85-2-702 must be included in the final decree without
24 alteration WITHOUT ALTERATION UNLESS AN OBJECTION IS
25 SUSTAINED PURSUANT TO 85-2-233; PROVIDED THAT THE COURT MAY

1 NOT ALTER OR AMEND ANY OF THE TERMS OF A COMPACT EXCEPT WITH
2 THE PRIOR WRITTEN CONSENT OF THE PARTIES IN ACCORDANCE WITH
3 APPLICABLE LAW.

4 {2}(3) The final decree shall establish the existing
5 rights and priorities within the water judge's jurisdiction
6 of persons required by 85-2-221 to file a claim for an
7 existing right, and of persons required to file a
8 declaration of existing rights in the Powder River Basin
9 pursuant to an order of the department or a district court
10 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
11 AND OF ANY FEDERAL AGENCY OR INDIAN TRIBE POSSESSING WATER
12 RIGHTS ARISING UNDER FEDERAL LAW, REQUIRED BY 85-2-702 TO
13 FILE CLAIMS.

14 {3}(4) The final decree shall state the findings of
15 fact, along with any conclusions of law, upon which the
16 existing rights and priorities of each person, FEDERAL
17 AGENCY, AND INDIAN TRIBE named in the decree are based.

18 {4}(5) For each person who is found to have an
19 existing right ARISING UNDER THE LAWS OF THE STATE OF
20 MONTANA, the final decree shall state:

- 21 (a) the name and post-office address of the owner of
- 22 the right;
- 23 (b) the amount of water, rate, and volume, included in
- 24 the right;
- 25 (c) the date of priority of the right;

- 1 (d) the purpose for which the water included in the
- 2 right is used;
- 3 (e) the place of use and a description of the land, if
- 4 any, to which the right is appurtenant;
- 5 (f) the source of the water included in the right;
- 6 (g) the place and means of diversion;
- 7 (h) the inclusive dates during which the water is used
- 8 each year;
- 9 (i) any other information necessary to fully define
- 10 the nature and extent of the right.

11 (6) FOR EACH PERSON, TRIBE, OR FEDERAL AGENCY
12 POSSESSING WATER RIGHTS ARISING UNDER THE LAWS OF THE UNITED
13 STATES, THE FINAL DECREE SHALL STATE:

- 14 (A) THE NAME AND MAILING ADDRESS OF THE HOLDER OF THE
- 15 RIGHT;
- 16 (B) THE SOURCE OR SOURCES OF WATER INCLUDED IN THE
- 17 RIGHT;
- 18 (C) THE QUANTITY OF WATER INCLUDED IN THE RIGHT;
- 19 (D) THE DATE OF PRIORITY OF THE RIGHT;
- 20 (E) THE PURPOSE FOR WHICH THE WATER INCLUDED IN THE
- 21 RIGHT IS CURRENTLY USED, IF AT ALL;
- 22 (F) THE PLACE OF USE AND A DESCRIPTION OF THE LAND, IF
- 23 ANY, TO WHICH THE RIGHT IS APPURTENANT;
- 24 (G) THE PLACE AND MEANS OF DIVERSION, IF ANY; AND
- 25 (H) ANY OTHER INFORMATION NECESSARY TO FULLY DEFINE

1 THE NATURE AND EXTENT OF THE RIGHT, INCLUDING THE TERMS OF
2 ANY COMPACTS NEGOTIATED AND RATIFIED UNDER 85-2-702."

3 Section 6. Section 85-2-702, MCA, is amended to read:

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

17 (2) When the compact commission and the Indian tribes
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
21 and copies with the secretary of state of Montana and with
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, AND any affected tribal
25 governing body, and, if legally necessary, the congress of

1 the United States or other appropriate federal authority,
2 AND APPROVAL BY THE APPROPRIATE FEDERAL AUTHORITY.

3 (3) Upon its approval RATIFICATION by the Montana
4 legislature and the tribe or federal agency, the terms of a
5 compact must be included in the preliminary decree for
6 informational purposes as provided by 85-2-231, and unless
7 renegotiated, UNLESS AN OBJECTION TO THE COMPACT IS
8 SUSTAINED UNDER 85-2-233, the terms of the compact must be
9 included in the final decree without alteration WITHOUT
10 ALTERATION. However, if approval of the state legislature
11 and tribe or federal agency has not been accomplished by
12 July 1, ~~1985~~ 1987, all federal and Indian claims for
13 reserved water rights that have not been resolved by a
14 compact must be filed with the department within ~~60~~ 6
15 months. These new filings shall be used in the formulation
16 of the preliminary decree and shall be given treatment
17 similar to that given to all other filings."

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25 85-2-217 shall also terminate. The tribe or federal agency

1 shall file all of its claims for reserved rights within 60
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11 (2) EACH REPORT MUST STATE WHICH INDIAN TRIBES AND
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-End-