

HB 845 INTRODUCED BY IVERSON, ET AL.  
AMENDS ADJUDICATION LAWS, INCLUDING DEPARTMENT OF  
NATURAL RESOURCES & CONSERVATION'S  
RELATIONSHIP TO THE WATER COURTS  
BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES &  
CONSERVATION

2/20 INTRODUCED  
2/20 REFERRED TO NATURAL RESOURCES  
2/20 FISCAL NOTE REQUESTED  
3/03 FISCAL NOTE RECEIVED  
FAILED TO MEET TRANSMITTAL DEADLINE

1 *House* BILL NO. *845*  
 2 INTRODUCED BY *Juan Randle, H. Valley Smith*  
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES  
 4 AND CONSERVATION

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE  
 7 ADJUDICATION OF WATER RIGHTS LAWS; ALLOWING FOR THE  
 8 AMENDMENT OF A CLAIM; CLARIFYING THE PRIMA FACIE EVIDENTIARY  
 9 STATUS OF A CLAIM; PROVIDING FOR TEMPORARY PRELIMINARY  
 10 DECREES AND APPEALS FROM THESE DECREES; PROVIDING FOR  
 11 ENFORCEMENT OF REISSUED TEMPORARY PRELIMINARY DECREES;  
 12 REQUIRING OWNERSHIP TO BE UPDATED PRIOR TO ISSUANCE OF A  
 13 PRELIMINARY DECREE; CLARIFYING A REQUIREMENT TO ESTABLISH A  
 14 TABULATION OF RELATIVE RIGHTS; PROVIDING THAT EXPENSES  
 15 INCURRED BY THE DEPARTMENT OF NATURAL RESOURCES AND  
 16 CONSERVATION IN ASSISTING A WATER JUDGE MUST BE PAID FROM  
 17 MONEY APPROPRIATED TO THE CHIEF WATER JUDGE; CLARIFYING  
 18 APPEALS FROM FINAL DECREES; AMENDING SECTIONS 3-7-212,  
 19 85-2-221, 85-2-227, 85-2-232, 85-2-234, 85-2-235, 85-2-243,  
 20 AND 85-5-101, MCA; REPEALING SECTION 85-2-242, MCA; AND  
 21 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

22  
 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 24 Section 1. Section 85-2-221, MCA, is amended to read:  
 25 "85-2-221. Filing of claim of existing water right.

1 (1) A person claiming an existing right, unless exempted  
 2 under 85-2-222 or unless an earlier filing date is ordered  
 3 as provided in 85-2-212, shall file with the department no  
 4 later than June 30, 1983, a statement of claim for each  
 5 water right asserted, on a form provided by the department.

6 (2) The department shall file a copy of each statement  
 7 of claim with the clerk of the district court for the  
 8 judicial district in which the diversion is made or, if  
 9 there is a claimed right with no diversion, the department  
 10 shall file a copy of the statement of claim with the clerk  
 11 of the district court of the judicial district in which the  
 12 use occurs.

13 (3) A person who has filed a claim may amend any  
 14 matter contained in the original claim, except that a person  
 15 may not amend a claim to incorporate any water right or  
 16 portion thereof abandoned by failure to file a claim as  
 17 provided in 85-2-226. An amended claim must be filed  
 18 according to the format described in subsections (1) and  
 19 (2)."

20 Section 2. Section 85-2-227, MCA, is amended to read:  
 21 "85-2-227. Claim to constitute prima facie evidence.  
 22 A claim of an existing right or an amended claim filed in  
 23 accordance with 85-2-221 constitutes prima facie proof of  
 24 its content until the---issuance---of---a---final---decree  
 25 contradicted by competent evidence admitted into the record



-2- INTRODUCED BILL  
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1 of the proceedings on the claim."

2 NEW SECTION. Section 3. Temporary preliminary decree.

3 (1) A water judge may issue a temporary preliminary decree  
4 for any hydrologically interrelated portion of a water  
5 division, as described in 85-2-231(2), if the area for which  
6 the decree is to be issued has water involving claims to  
7 either Indian reserved water rights or non-Indian reserved  
8 water rights and those rights are being negotiated pursuant  
9 to Title 85, chapter 2, part 7.

10 (2) The temporary preliminary decree must be based on  
11 the applicable factors listed in 85-2-231(1) and is subject  
12 to all applicable provisions of 85-2-232 and 85-2-233,  
13 except that a person does not waive the right to object to a  
14 preliminary decree by failing to object to a temporary  
15 preliminary decree. A person waives the right to object to  
16 the enforcement of the temporary preliminary decree under  
17 subsection (3) by failing to object to the temporary  
18 preliminary decree.

19 (3) The temporary preliminary decree must be reissued  
20 after all objections, hearings, and appeals have been  
21 concluded. Upon reissuance, the decree is conclusive and  
22 enforceable and may be administered according to its terms  
23 among the parties to the decree until a final decree is  
24 issued pursuant to 85-2-234.

25 (4) Upon negotiation of a compact or the termination

1 of negotiations toward a compact, a preliminary decree must  
2 be issued as provided in 85-2-231. The temporary preliminary  
3 decree, unless reissued under subsection (3), is void upon  
4 the issuance of the preliminary decree.

5 (5) A person who objects to a temporary preliminary  
6 decree is determined to have filed an objection to the  
7 preliminary decree and reserves the right to appeal from a  
8 final decree.

9 NEW SECTION. Section 4. Appeals from temporary  
10 preliminary decrees. A person whose existing rights and  
11 priorities are determined in a temporary preliminary decree  
12 may appeal the determination only if:

13 (1) the person requested a hearing and appeared and  
14 entered objections to the temporary preliminary decree; or

15 (2) the person's rights, as determined in the  
16 temporary preliminary decree, were altered.

17 Section 5. Section 85-2-232, MCA, is amended to read:

18 "85-2-232. Availability of preliminary decree. (1) The  
19 water judge shall send a copy of the preliminary decree to  
20 the department, and the water judge shall serve by mail a  
21 notice of availability of the preliminary decree to each  
22 person who has filed a claim of existing right or the person  
23 to whom the claimed water right has been transferred as  
24 indicated by department records and to the purchaser under  
25 contract for deed, as defined in 70-20-115, of property in

1 connection with which a claim of existing right has been  
 2 filed or, in the Powder River Basin, to each person who has  
 3 filed a declaration of an existing right. The water judge  
 4 shall enclose with the notice an abstract of the disposition  
 5 of such person's claimed or declared existing right. The  
 6 notice of availability shall also be served upon those  
 7 issued or having applied for and not having been denied a  
 8 beneficial water use permit pursuant to Title 85, chapter 2,  
 9 part 3, those granted a reservation pursuant to 85-2-316, or  
 10 other interested persons who request service of the notice  
 11 from the water judge. The clerk or person designated by the  
 12 water judge to mail the notice shall make a general  
 13 certificate of mailing certifying that a copy of the notice  
 14 has been placed in the United States mail, postage prepaid,  
 15 addressed to each party required to be served notice of the  
 16 preliminary decree. Such certificate shall be conclusive  
 17 evidence of due and legal notice of entry of decree.

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

21 Section 6. Section 85-2-234, MCA, is amended to read:

22 "85-2-234. Final decree. (1) The water judge shall, on  
 23 the basis of the preliminary decree and on the basis of any  
 24 hearing that may have been held, enter a final decree  
 25 affirming or modifying the preliminary decree. If no

1 request for a hearing is filed within the time allowed, the  
 2 preliminary decree automatically becomes final, and the  
 3 water judge shall enter it as the final decree.

4 (2) The terms of a compact negotiated and ratified  
 5 under 85-2-702 must be included in the final decree without  
 6 alteration unless an objection is sustained pursuant to  
 7 85-2-233; provided that the court water judge may not alter  
 8 or amend any of the terms of a compact except with the prior  
 9 written consent of the parties in accordance with applicable  
 10 law.

11 (3) The final decree shall establish the existing  
 12 rights and priorities within the water judge's jurisdiction  
 13 of persons required by 85-2-221 to file a claim for an  
 14 existing right, of persons required to file a declaration of  
 15 existing rights in the Powder River Basin pursuant to an  
 16 order of the department or a district court issued under  
 17 sections 8 and 9 of Chapter 452, Laws of 1973, and of any  
 18 federal agency or Indian tribe possessing water rights  
 19 arising under federal law, required by 85-2-702 to file  
 20 claims. A final decree and any decree issued under [section  
 21 3] shall establish, in a form determined by the water judge,  
 22 one or more tabulations or lists of all water rights and  
 23 their relative priorities.

24 (4) The final decree shall state the findings of fact,  
 25 along with any conclusions of law, upon which the existing

1 rights and priorities of each person, federal agency, and  
2 Indian tribe named in the decree are based.

3 (5) For each person who is found to have an existing  
4 right arising under the laws of the state of Montana, the  
5 final decree shall state:

6 (a) the name and post-office address of the owner of  
7 the right;

8 (b) the amount of water, rate, and volume, included in  
9 the right;

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

11 (d) the purpose for which the water included in the  
12 right is used;

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

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

16 (g) the place and means of diversion;

17 (h) the inclusive dates during which the water is used  
18 each year;

19 (i) any other information necessary to fully define  
20 the nature and extent of the right.

21 (6) For each person, tribe, or federal agency  
22 possessing water rights arising under the laws of the United  
23 States, the final decree shall state:

24 (a) the name and mailing address of the holder of the  
25 right;

1 (b) the source or sources of water included in the  
2 right;

3 (c) the quantity of water included in the right;

4 (d) the date of priority of the right;

5 (e) the purpose for which the water included in the  
6 right is currently used, if at all;

7 (f) the place of use and a description of the land, if  
8 any, to which the right is appurtenant;

9 (g) the place and means of diversion, if any; and

10 (h) any other information necessary to fully define  
11 the nature and extent of the right, including the terms of  
12 any compacts negotiated and ratified under 85-2-702."

13 Section 7. Section 85-2-235, MCA, is amended to read:

14 "85-2-235. Appeals from final decree. A person whose  
15 existing rights and priorities are determined in the final  
16 decree may appeal the determination only if:

17 (1) he requested a hearing and appeared and entered  
18 objections to the temporary preliminary decree or the  
19 preliminary decree; or

20 (2) his rights as determined in the preliminary decree  
21 were altered ~~as-the-result-of-a-hearing-requested-by-another~~  
22 ~~person.~~"

23 Section 8. Section 85-2-243, MCA, is amended to read:

24 "85-2-243. Department assistance to water judges. (1)  
25 The department, subject to the direction of the water judge,

1 shall, without cost to the judicial districts wholly or  
2 partly within his water division:

3 ~~(1)~~(a) provide such information and assistance as may  
4 be required by the water judge to adjudicate claims of  
5 existing rights;

6 ~~(2)~~(b) establish information and assistance programs  
7 to aid claimants in the filing of claims for existing rights  
8 required by 85-2-221;

9 ~~(3)~~(c) conduct field investigations of claims that the  
10 water judge in consultation with the department determines  
11 warrant investigation; and

12 ~~(4)~~(d) provide the water judge with all information in  
13 its possession bearing upon existing rights, including all  
14 declarations filed with and all information gathered by the  
15 department with respect to existing rights in the Powder  
16 River Basin.

17 (2) Department assistance to a water judge must be  
18 without cost to the judicial districts wholly or partly  
19 within the affected water division. Expenses incurred by  
20 the department under subsection (1) must be paid from the  
21 money appropriated by the legislature for the expenses of  
22 the chief water judge under 3-7-222 except to the extent a  
23 specific appropriation has been made to the department to  
24 carry out its functions under subsection (1)."

25 Section 9. Section 3-7-212, MCA, is amended to read:

1 "3-7-212. Enforcement of temporary preliminary or  
2 final decree. The water judge of each water division may  
3 enforce the provisions of a temporary preliminary decree or  
4 a final decree issued in that water division as provided in  
5 [section 3] or 85-2-234."

6 Section 10. Section 85-5-101, MCA, is amended to read:

7 "85-5-101. Appointment of water commissioners. (1)  
8 Whenever the rights of persons to use the waters of any  
9 stream, ditch or extension of ditch, watercourse, spring,  
10 lake, reservoir, or other source of supply have been  
11 determined by a decree of a court of competent jurisdiction,  
12 it shall be the duty of the judge of the district court  
13 having jurisdiction of the subject matter, upon the  
14 application of the owners of at least 15% of the water  
15 rights affected by the decree, in the exercise of his  
16 discretion, to appoint one or more commissioners. The  
17 commissioners shall have authority to admeasure and  
18 distribute to the parties owning water rights in the source  
19 affected by the decree the waters to which they are  
20 entitled, according to their rights as fixed by the decree  
21 and by any certificates and permits issued under chapter 2  
22 of this title. When petitioners make proper showing that  
23 they are not able to obtain the application of the owners of  
24 at least 15% of the water rights affected and they are  
25 unable to obtain the water to which they are entitled, the

1 judge of the district court having jurisdiction may, in his  
2 discretion, appoint a water commissioner.

3 (2) When the existing rights of all appropriators from  
4 a source or in an area have been determined in a temporary  
5 preliminary decree issued pursuant to [section 3] or a final  
6 decree issued under chapter 2 of this title, the judge of  
7 the district court shall upon application by the department  
8 of natural resources and conservation appoint a water  
9 commissioner. The water commissioner shall distribute to the  
10 appropriators, from the source or in the area, the water to  
11 which they are entitled.

12 (3) The department of natural resources and  
13 conservation or any person or corporation operating under  
14 contract with the department or any other owner of stored  
15 waters may petition the court to have such stored waters  
16 distributed by the water commissioners appointed by said  
17 court. The court may thereupon make an order requiring the  
18 commissioner or commissioners appointed by the court to  
19 distribute such stored water when and as released to water  
20 users entitled to the use thereof.

21 (4) At the time of the appointment of such water  
22 commissioner or commissioners, the district court shall fix  
23 their compensation, and the owners and users of the  
24 distributed waters, including permittees and certificate  
25 holders, shall pay their proportionate share of such fees

1 and compensation.

2 (5) Upon the application of the board or boards of one  
3 or more irrigation districts entitled to the use of water  
4 stored in a reservoir which is turned into the natural  
5 channel of any stream and withdrawn or diverted at a point  
6 downstream for beneficial use, the district court of the  
7 judicial district wherein the most irrigable acres of the  
8 irrigation district or districts are situated may appoint a  
9 water commissioner to equitably admeasure and distribute  
10 such stored water to said irrigation district or districts  
11 from the channel of the stream into which it has been  
12 turned. A commissioner appointed under this subsection has  
13 the powers of any commissioner appointed under this chapter,  
14 limited only by the purposes of this subsection. His  
15 compensation is set by the appointing judge and paid by each  
16 district and other users of stored water affected by the  
17 admeasurement and distribution of such stored water. In all  
18 other matters the provisions of this chapter apply so long  
19 as they are consistent with this subsection."

20 NEW SECTION. Section 11. Repealer. Section 85-2-242,  
21 MCA, is repealed.

22 NEW SECTION. Section 12. Extension of authority. Any  
23 existing authority of the board of natural resources and  
24 conservation to make rules on the subject of the provisions  
25 of this act is extended to the provisions of this act.

1        NEW SECTION. Section 13. Codification instruction.  
2 Sections 3 and 4 are intended to be codified as an integral  
3 part of Title 85, chapter 2, part 2, and the provisions of  
4 Title 85, chapter 2, part 2, apply to sections 3 and 4.  
5        NEW SECTION. Section 14. Effective date. This act is  
6 effective on passage and approval.

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

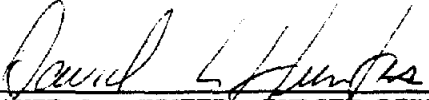
In compliance with a written request, there is hereby submitted a Fiscal Note for HB845, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill would revise the adjudication of water rights laws; allowing for the amendment of a claim; clarifying the prima facie evidentiary status of a claim; providing for temporary preliminary decrees and appeals from these decrees; providing for enforcement of reissued temporary preliminary decrees; requiring ownership to be updated prior to issuance of a preliminary decree; clarifying a requirement to establish a tabulation of relative rights; providing that expenses incurred by the department in assisting a water judge must be paid from money appropriated to the chief water judge.

ASSUMPTIONS:

- A. Amending Section 85-2-221 will reduce Department of Natural Resources and Conservation (DNRC) objection workload, but will increase the processing activity for amending claims.
1. 4,000 claim amendments per year.
  2. \$5.00 processing cost per claim amendment.
  3. 4,000 claim amendments/yr. x \$5.00 Processing/claim amendment = \$20,000/yr. operating cost.
  4. 600 fewer department claim objections.
  5. \$35.00 department legal handling required per claim objection.
  6. 600 fewer claim objections x \$35.00/claim objection = \$21,000/yr. less personal services cost.
- B. Amending 85-2-232 will require less non-computerized monitoring of water right ownership changes. All ownership transfers can be updated on the centralized computer records.
1. 75 water right transfers per basin per year occur that will not need to be monitored.
  2. 40 basins have decrees issued.
  3. Ownership monitoring list requires 10 /transfer.
  4. 75 transfers/basin x 40 basins x 10 /transfers = \$300.00 less costs.
- C. Amending 85-2-243 will transfer the DNRC's decree preparation and mailing costs to the Water Court.
1. Decree preparation and mailing costs averages approximately \$2.50/claim.
  2. 20,000 claims per year are decreed.
  3. 10 basins per year are decreed or post decreed. Basin size averages 2,000 claims/basin.
  4. 20,000 claims/yr. x \$2.50/claim = \$50,000 less DNRC cost and \$50,000 more Water Court cost.
- D. Assume that no presently adjudicated basins are redone by DNRC or the Water Courts.

  
DATE 3/2/87  
DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning

  
DATE \_\_\_\_\_  
DENNIS IVERSON, PRIMARY SPONSOR

Fiscal Note for HB845, as introduced.

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ASSUMPTIONS (continued):

- E. Concerning Section 85-2-243(2): assuming the passage of this subsection and assuming that the legislature does not specifically appropriate funds to the DNRC to carry out the functions set forth in 85-2-243(1), the Water Court would assume responsibility for the expenses.
- F. Assume that the only those functions specified in assumption C above will be transferred from the DNRC to the Water Court.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	\$399,751	\$378,751	\$(21,000)	\$399,197	\$378,197	\$(21,000)
Operating Expenses	406,911	426,611	19,700	405,823	425,523	19,700
Capital Outlay	2,600	2,600	0	0	0	0
TOTAL	<u>\$809,262</u>	<u>\$807,962</u>	<u>\$( 1,300)</u>	<u>\$805,020</u>	<u>\$803,720</u>	<u>\$( 1,300)</u>
<u>Funding:</u>						
General Fund	\$316,056	\$264,756	\$(51,300)	\$316,056	\$264,756	\$(51,300)
Water Development	493,206	543,206	50,000	488,964	538,964	50,000
TOTAL	<u>\$809,262</u>	<u>\$807,962</u>	<u>\$( 1,300)</u>	<u>\$805,020</u>	<u>\$803,720</u>	<u>\$( 1,300)</u>

A net expenditure decrease of \$1,300 annually would result with the passage of HB845. However, \$51,300 less of DNRC general fund expenditures would likely occur while an additional \$50,000 of Water Court expenditures from the Water Development Account would result.