

SENATE BILL NO. 102

INTRODUCED BY STORY, BOYLAN, GALT

IN THE SENATE

JANUARY 14, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 15, 1987 ON MOTION, REREFERRED TO COMMITTEE
ON AGRICULTURE, LIVESTOCK & IRRIGATION.

JANUARY 24, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 26, 1987 PRINTING REPORT.

JANUARY 28, 1987 SECOND READING, DO PASS.

JANUARY 29, 1987 ENGROSSING REPORT.

JANUARY 30, 1987 THIRD READING, PASSED.
AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 17, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 19, 1987 ON MOTION, TAKEN FROM SECOND READING
AND REREFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 23, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

STATEMENT OF INTENT ADOPTED.

MARCH 27, 1987 SECOND READING, CONCURRED IN.

MARCH 28, 1987

THIRD READING, CONCURRED IN.
AYES, 92; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS
AND STATEMENT OF INTENT.

IN THE SENATE

APRIL 1, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

APRIL 2, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1
2 INTRODUCED BY SENATE BILL NO. 102
3 Stacy Boyle

4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING HOW VOLUME
5 AND FLOW RATE ARE TO BE USED IN A FINAL DECREE CONCERNING
6 ADJUDICATED WATER RIGHTS; AND AMENDING SECTION 85-2-234,
7 MCA."
8

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

10 Section 1. Section 85-2-234, MCA, is amended to read:

11 "85-2-234. Final decree. (1) The water judge shall, on
12 the basis of the preliminary decree and on the basis of any
13 hearing that may have been held, enter a final decree
14 affirming or modifying the preliminary decree. If no
15 request for a hearing is filed within the time allowed, the
16 preliminary decree automatically becomes final, and the
17 water judge shall enter it as the final decree.

18 (2) The terms of a compact negotiated and ratified
19 under 85-2-702 must be included in the final decree without
20 alteration unless an objection is sustained pursuant to
21 85-2-233; provided that the court may not alter or amend any
22 of the terms of a compact except with the prior written
23 consent of the parties in accordance with applicable law.

24 (3) The final decree shall establish the existing
25 rights and priorities within the water judge's jurisdiction

1 of persons required by 85-2-221 to file a claim for an
2 existing right, of persons required to file a declaration of
3 existing rights in the Powder River Basin pursuant to an
4 order of the department or a district court issued under
5 sections 8 and 9 of Chapter 452, Laws of 1973, and of any
6 federal agency or Indian tribe possessing water rights
7 arising under federal law, required by 85-2-702 to file
8 claims.

9 (4) The final decree shall state the findings of fact,
10 along with any conclusions of law, upon which the existing
11 rights and priorities of each person, federal agency, and
12 Indian tribe named in the decree are based.

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

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

18 (b) the amount of water, ~~rate, and volume,~~ included in
19 the right, measured as follows:

20 (i) by flow rate for direct flow rights, such as
21 irrigation rights, that have historically been measured by
22 flow rate;

23 (ii) by volume for rights, such as reservoir storage
24 rights, that have historically been measured by volume; or

25 (iii) by flow rate and volume for rights that have

1 historically been measured by both flow rate and volume;
2 (c) the date of priority of the right;
3 (d) the purpose for which the water included in the
4 right is used;
5 (e) the place of use and a description of the land, if
6 any, to which the right is appurtenant;
7 (f) the source of the water included in the right;
8 (g) the place and means of diversion;
9 (h) the inclusive dates during which the water is used
10 each year;
11 (i) any other information necessary to fully define
12 the nature and extent of the right.
13 (6) For each person, tribe, or federal agency
14 possessing water rights arising under the laws of the United
15 States, the final decree shall state:
16 (a) the name and mailing address of the holder of the
17 right;
18 (b) the source or sources of water included in the
19 right;
20 (c) the quantity of water included in the right;
21 (d) the date of priority of the right;
22 (e) the purpose for which the water included in the
23 right is currently used, if at all;
24 (f) the place of use and a description of the land, if
25 any, to which the right is appurtenant;

1 (g) the place and means of diversion, if any; and
2 (h) any other information necessary to fully define
3 the nature and extent of the right, including the terms of
4 any compacts negotiated and ratified under 85-2-702."

-End-

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

SENATE BILL NO. 102

INTRODUCED BY STORY, BOYLAN, GALT

A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING HOW VOLUME AND FLOW RATE ARE TO BE USED IN A FINAL DECREE CONCERNING ADJUDICATED WATER RIGHTS; AND AMENDING SECTION 85-2-234, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-234, MCA, is amended to read:

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

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; 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.

(3) The final decree shall establish the existing rights and priorities within the water judge's jurisdiction

of persons required by 85-2-221 to file a claim for an existing right, of persons required to file a declaration of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

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

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

(b) the amount of water, rate, and volume included in the right, measured as follows:

(i) by flow rate for direct flow rights, such as irrigation rights, that have historically been measured by flow rate;

(ii) by volume for rights, such as reservoir storage rights, that have historically been measured by volume; or

(iii) by flow rate and volume for rights that have



1 historically been measured by both flow rate and volume;
 2 (c) the date of priority of the right;
 3 (d) the purpose for which the water included in the
 4 right is used;
 5 (e) the place of use and a description of the land, if
 6 any, to which the right is appurtenant;
 7 (f) the source of the water included in the right;
 8 (g) the place and means of diversion;
 9 (h) the inclusive dates during which the water is used
 10 each year;
 11 (i) any other information necessary to fully define
 12 the nature and extent of the right.
 13 (6) For each person, tribe, or federal agency
 14 possessing water rights arising under the laws of the United
 15 States, the final decree shall state:
 16 (a) the name and mailing address of the holder of the
 17 right;
 18 (b) the source or sources of water included in the
 19 right;
 20 (c) the quantity of water included in the right;
 21 (d) the date of priority of the right;
 22 (e) the purpose for which the water included in the
 23 right is currently used, if at all;
 24 (f) the place of use and a description of the land, if
 25 any, to which the right is appurtenant;

1 (g) the place and means of diversion, if any; and
 2 (h) any other information necessary to fully define
 3 the nature and extent of the right, including the terms of
 4 any compacts negotiated and ratified under 85-2-702."
 5 NEW SECTION. SECTION 2. EFFECTIVE DATE. THIS ACT IS
 6 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1 SENATE BILL NO. 102

2 INTRODUCED BY STORY, BOYLAN, GALT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING HOW VOLUME
5 AND FLOW RATE ARE TO BE USED IN A FINAL DECREE CONCERNING
6 ADJUDICATED WATER RIGHTS; AND AMENDING SECTION 85-2-234,
7 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
8

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

10 Section 1. Section 85-2-234, MCA, is amended to read:

11 "85-2-234. Final decree. (1) The water judge shall, on
12 the basis of the preliminary decree and on the basis of any
13 hearing that may have been held, enter a final decree
14 affirming or modifying the preliminary decree. If no
15 request for a hearing is filed within the time allowed, the
16 preliminary decree automatically becomes final, and the
17 water judge shall enter it as the final decree.

18 (2) The terms of a compact negotiated and ratified
19 under 85-2-702 must be included in the final decree without
20 alteration unless an objection is sustained pursuant to
21 85-2-233; provided that the court may not alter or amend any
22 of the terms of a compact except with the prior written
23 consent of the parties in accordance with applicable law.

24 (3) The final decree shall establish the existing
25 rights and priorities within the water judge's jurisdiction

1 of persons required by 85-2-221 to file a claim for an
2 existing right, of persons required to file a declaration of
3 existing rights in the Powder River Basin pursuant to an
4 order of the department or a district court issued under
5 sections 8 and 9 of Chapter 452, Laws of 1973, and of any
6 federal agency or Indian tribe possessing water rights
7 arising under federal law, required by 85-2-702 to file
8 claims.

9 (4) The final decree shall state the findings of fact,
10 along with any conclusions of law, upon which the existing
11 rights and priorities of each person, federal agency, and
12 Indian tribe named in the decree are based.

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

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

18 (b) the amount of water, ~~rate, and volume~~, included in
19 the right, measured as follows:

20 (i) by flow rate for direct flow rights, such as
21 irrigation rights, that have historically been measured by
22 flow rate;

23 (ii) by volume for rights, such as reservoir storage
24 rights, that have historically been measured by volume; or

25 (iii) by flow rate and volume for rights that have

THIRD READING

1 historically been measured by both flow rate and volume;
 2 (c) the date of priority of the right;
 3 (d) the purpose for which the water included in the
 4 right is used;
 5 (e) the place of use and a description of the land, if
 6 any, to which the right is appurtenant;
 7 (f) the source of the water included in the right;
 8 (g) the place and means of diversion;
 9 (h) the inclusive dates during which the water is used
 10 each year;
 11 (i) any other information necessary to fully define
 12 the nature and extent of the right.
 13 (6) For each person, tribe, or federal agency
 14 possessing water rights arising under the laws of the United
 15 States, the final decree shall state:
 16 (a) the name and mailing address of the holder of the
 17 right;
 18 (b) the source or sources of water included in the
 19 right;
 20 (c) the quantity of water included in the right;
 21 (d) the date of priority of the right;
 22 (e) the purpose for which the water included in the
 23 right is currently used, if at all;
 24 (f) the place of use and a description of the land, if
 25 any, to which the right is appurtenant;

1 (g) the place and means of diversion, if any; and
 2 (h) any other information necessary to fully define
 3 the nature and extent of the right, including the terms of
 4 any compacts negotiated and ratified under 85-2-702."
 5 NEW SECTION. SECTION 2. EFFECTIVE DATE. THIS ACT IS
 6 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 102

3 House Judiciary Committee

4
5 The legislature intends that water rights should not be
6 quantified in a temporary preliminary, preliminary, or final
7 decree except as historically defined in Montana and except
8 where a water judge determines that quantification of both
9 volume and flow rate are required to adequately administer
10 the right. For example, most irrigation water rights have
11 been defined in Montana only by flow rate, reservoir rights
12 have been commonly defined by volume, and hydropower rights
13 have been defined by both flow rate and volume. The courts
14 retain discretionary power to quantify water rights in terms
15 of their historic definitions. It is the intent of the
16 legislature that the water judges exercise their
17 discretionary power on all existing and future decrees to
18 reduce, to the extent possible, objections to water rights
19 that have not historically been defined by volume.

REFERENCE BILL

SB-102



1 SENATE BILL NO. 102

2 INTRODUCED BY STORY, BOYLAN, GALT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING HOW VOLUME
5 AND FLOW RATE ARE TO BE USED IN A FINAL DECREE CONCERNING
6 ADJUDICATED WATER RIGHTS; AND AMENDING SECTION 85-2-234,
7 MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN
8 IMMEDIATE EFFECTIVE DATE."
9

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

11 Section 1. Section 85-2-234, MCA, is amended to read:

12 "85-2-234. Final decree. (1) The water judge shall, on
13 the basis of the preliminary decree and on the basis of any
14 hearing that may have been held, enter a final decree
15 affirming or modifying the preliminary decree. If no
16 request for a hearing is filed within the time allowed, the
17 preliminary decree automatically becomes final, and the
18 water judge shall enter it as the final decree.

19 (2) The terms of a compact negotiated and ratified
20 under 85-2-702 must be included in the final decree without
21 alteration unless an objection is sustained pursuant to
22 85-2-233; provided that the court may not alter or amend any
23 of the terms of a compact except with the prior written
24 consent of the parties in accordance with applicable law.

25 (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, of persons required to file a declaration of
4 existing rights in the Powder River Basin pursuant to an
5 order of the department or a district court issued under
6 sections 8 and 9 of Chapter 452, Laws of 1973, and of any
7 federal agency or Indian tribe possessing water rights
8 arising under federal law, required by 85-2-702 to file
9 claims.

10 (4) The final decree shall state the findings of fact,
11 along with any conclusions of law, upon which the existing
12 rights and priorities of each person, federal agency, and
13 Indian tribe named in the decree are based.

14 (5) For each person who is found to have an existing
15 right arising under the laws of the state of Montana, the
16 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, measured as follows:

21 (i) by flow rate for direct flow rights, such as
22 irrigation rights, that have historically been measured by
23 flow rate;

24 (ii) by volume for rights, such as STOCKPOND AND
25 reservoir storage rights, that have historically been

1 measured--by--volume AND FOR RIGHTS THAT ARE NOT SUSCEPTIBLE
 2 TO MEASUREMENT BY FLOW RATE; or
 3 (iii) by flow rate and volume for rights that have
 4 historically--been--measured--by--both--flow--rate--and--volume A
 5 WATER JUDGE DETERMINES REQUIRE BOTH VOLUME AND FLOW RATE TO
 6 ADEQUATELY ADMINISTER THE RIGHT;

7 (c) the date of priority of the right;
 8 (d) the purpose for which the water included in the
 9 right is used;
 10 (e) the place of use and a description of the land, if
 11 any, to which the right is appurtenant;
 12 (f) the source of the water included in the right;
 13 (g) the place and means of diversion;
 14 (h) the inclusive dates during which the water' is used
 15 each year;
 16 (i) any other information necessary to fully define
 17 the nature and extent of the right.

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

21 (a) the name and mailing address of the holder of the
 22 right;
 23 (b) the source or sources of water included in the
 24 right;
 25 (c) the quantity of water included in the right;

1 (d) the date of priority of the right;
 2 (e) the purpose for which the water included in the
 3 right is currently used, if at all;
 4 (f) the place of use and a description of the land, if
 5 any, to which the right is appurtenant;
 6 (g) the place and means of diversion, if any; and
 7 (h) any other information necessary to fully define
 8 the nature and extent of the right, including the terms of
 9 any compacts negotiated and ratified under 85-2-702."

10 NEW SECTION. SECTION 2. APPLICABILITY. THIS ACT
 11 APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO ALL
 12 DECREES ISSUED BY A WATER JUDGE UNDER TITLE 85, CHAPTER 2,
 13 PART 2, AFTER APRIL 30, 1982.

14 NEW SECTION. SECTION 3. EFFECTIVE DATE. THIS ACT IS
 15 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 17, 1987

Mr. Speaker: We, the committee on JUDICIARY
report SENATE BILL NO. 102

- do pass be concurred in as amended
 do not pass be not concurred in statement of intent attached

E. Lee Long

Chairman

1. Title, line 7.

Following: "PROVIDING"

Insert: "A RETROACTIVE APPLICABILITY DATE AND"

2. Page 2, line 19.

Strike: "measured"

3. Page 2, lines 21 and 22.

Strike: ", that" on line 21 through "rate" on line 22

4. Page 2, line 23.

Following: "as"

Insert: "stockpond and"

5. Page 2, line 24.

Strike: "that have historically been measured by volume"

Insert: "and for rights that are not susceptible to measurement by flow rate"

6. Page 2, line 25 through line 1 on page 3.

Strike: "have" on page 2, line 25 through "volume" on line 1 of page 3

Insert: "a water judge determines require both volume and flow rate to adequately administer the right"

7. Page 4, line 5.

Following: line 4

Insert: "NEW SECTION. Section 2. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all decrees issued by a water judge under Title 85, chapter 2, part 2, after April 30, 1982."

Renumber: subsequent section

ASB102/JM/JM2

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REP. KELLER WILL CARRY THE BILL!

STANDING COMMITTEE REPORT

(75)

HOUSE

MARCH 23,

1987

JUDICIARY

Mr. Speaker: We, the committee on _____
report SENATE BILL NO. 102

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached

Earl
Chairman

STATEMENT OF INTENT
SENATE BILL NO. 102

The legislature intends that water rights should not be quantified in a temporary preliminary, preliminary, or final decree except as historically defined in Montana and except where a water judge determines that quantification of both volume and flow rate are required to adequately administer the right. For example, most irrigation water rights have been defined in Montana only by flow rate, reservoir rights have been commonly defined by volume, and hydropower rights have been defined by both flow rate and volume. The courts retain discretionary power to quantify water rights in terms of their historic definitions. It is the intent of the legislature that the water judges exercise their discretionary power on all existing and future decrees to reduce, to the extent possible, objections to water rights that have not historically been defined by volume.

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KELLER