

SENATE BILL NO. 166

INTRODUCED BY BENGTON, GALT, STORY, STIMATZ,  
SPAETH, MARKS, BRADLEY, IVERSON

IN THE SENATE

JANUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.  FIRST READING.
FEBRUARY 14, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 15, 1989	PRINTING REPORT.
FEBRUARY 16, 1989	SECOND READING, DO PASS.
FEBRUARY 17, 1989	ENGROSSING REPORT.
FEBRUARY 18, 1989	THIRD READING, PASSED. AYES, 47; NOES, 2.  TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 20, 1989	FIRST READING.
FEBRUARY 27, 1989	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
MARCH 21, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1989	SECOND READING, CONCURRED IN.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 82; NOES, 16.  RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 5, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1  
2 INTRODUCED BY *Senate* BILL NO. *166*  
3 *Boughton Helf Story Stansbury*  
4 *Spaeth Marks Bradley Iverson*  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
6 ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY  
7 DECREES BY THE DISTRICT COURTS; PROVIDING THAT FOR PURPOSES  
8 OF ADMINISTERING WATER RIGHTS, THE PRIMA FACIE STATUS OF A  
9 CLAIM IS SUPERSEDED BY THE ISSUANCE OF A TEMPORARY  
10 PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND  
11 HEARINGS, OR A PRELIMINARY DECREE; AMENDING SECTIONS  
12 3-7-201, 3-7-211, 3-7-212, 3-7-501, 85-2-227, 85-2-406, AND  
13 85-5-101, MCA; REPEALING SECTION 3-7-213, MCA; AND PROVIDING  
14 AN EFFECTIVE DATE AND RETROACTIVE AND PROSPECTIVE  
15 APPLICABILITY."

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

17 **Section 1.** Section 3-7-201, MCA, is amended to read:

18 "3-7-201. Designation of water judge. (1) A water  
19 judge shall be designated within 30 days after May 11, 1979,  
20 for each water division by a majority vote of a committee  
21 composed of the district judge from each single judge  
22 judicial district and the chief district judge from each  
23 multiple judge judicial district, wholly or partly within  
24 the division. Except as provided in subsection (2) and  
25 3-7-213, a water judge must be a district judge or retired

1 district judge of a judicial district wholly or partly  
2 within the water division.

3 (2) A district judge or retired district judge may sit  
4 as a water judge in more than one division if requested by  
5 the chief justice of the supreme court or the water judge of  
6 the division in which he is requested to sit.

7 (3) A water judge, when presiding over a water  
8 division, presides as district judge in and for each  
9 judicial district wholly or partly within the water  
10 division."

11 **Section 2.** Section 3-7-211, MCA, is amended to read:

12 "3-7-211. Appointment of water commissioners. The  
13 water-judge-of-each-water--division district court having  
14 jurisdiction over the subbasin in which the controversy  
15 arises may appoint and supervise a water commissioner as  
16 provided for in Title 85, chapter 5."

17 **Section 3.** Section 3-7-212, MCA, is amended to read:

18 "3-7-212. Enforcement of final--decree decrees. The  
19 water--judge--of--each--water-division district court having  
20 jurisdiction over the subbasin in which a controversy arises  
21 may enforce the provisions of a final decree issued in for  
22 that water-division-as-provided-in-85-2-234 subbasin or, in  
23 the absence of any final decree having been issued, the  
24 provisions of a temporary preliminary decree or preliminary  
25 decree entered under 85-2-231."

**Section 4.** Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

**Section 5.** Section 85-2-227, MCA, is amended to read:

"85-2-227. Claim to constitute prima facie evidence. A For purposes of adjudicating rights pursuant to this chapter, a claim of an existing right filed in accordance with 85-2-221 constitutes prima facie proof of its content

until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree, as modified after objections and hearings, or a preliminary decree supersede a claim of existing right until a final decree is issued."

**Section 6.** Section 85-2-406, MCA, is amended to read:

"85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to part 2 of this chapter, any party to the controversy may petition the district court for relief. The district court from which relief is sought may grant ~~such injunctive or--other~~ relief which is necessary and appropriate to preserve property rights or the status quo pending the-issuance-of-the-final-decree resolution of the controversy under subsection (3).

(3) A controversy between appropriators ~~from-a-source which-has-been-the-subject-of--a--general--determination--of existing--rights--under--part--2--of--this--chapter~~ shall be

1 settled by the district court ~~which issued the final decree~~  
 2 having jurisdiction over the subbasin in which the  
 3 controversy arises. The order of the district court settling  
 4 the controversy may not alter the existing rights and  
 5 priorities established in ~~the final decree~~ a temporary  
 6 preliminary decree or preliminary decree entered under part  
 7 2 of this chapter but shall refer to the appropriate water  
 8 court any portion of the controversy involving the nature of  
 9 existing rights and priorities established in a temporary  
 10 preliminary decree or preliminary decree. The water court  
 11 shall resolve any controversy involving existing rights and  
 12 priorities established in a temporary preliminary decree or  
 13 preliminary decree. Upon rereferral from the water court,  
 14 the district court shall enter an order that it determines  
 15 to be consistent with the resolution of the issues referred  
 16 by the water court. In resolving the controversy, the  
 17 district court may alter rights and priorities contained in  
 18 a final decree only if based upon abandonment, waste, or  
 19 illegal enlargement or change of right. In cases involving  
 20 permits issued by the department, neither the water court  
 21 nor the district court may not amend the respective rights  
 22 established in the permits or alter any terms of the permits  
 23 unless the permits are inconsistent or interfere with rights  
 24 and priorities established in the a final decree entered  
 25 under part 2 of this chapter. The order settling the

1 controversy shall be appended to the ~~final~~ decree, and a  
 2 copy shall be filed with the department. The department  
 3 shall be served with process in any proceeding under this  
 4 subsection, and the department may, in its discretion,  
 5 intervene in the proceeding."

6 **Section 7.** 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, preliminary decree, or final decree  
6 issued under chapter 2 of this title, the judge of the  
7 district court shall upon application by the department of  
8 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 8. Repealer. Section 3-7-213,  
21 MCA, is repealed.

22 NEW SECTION. Section 9. Saving clause. [This act]  
23 does not affect rights and duties that matured, penalties  
24 that were incurred, or proceedings that were begun before  
25 [the effective date of this act].

1        NEW SECTION.    **Section 10.** Severability. If a part of  
2        [this act] is invalid, all valid parts that are severable  
3        from the invalid part remain in effect. If a part of [this  
4        act] is invalid in one or more of its applications, the part  
5        remains in effect in all valid applications that are  
6        severable from the invalid applications.

7        NEW SECTION.    **Section 11.** Retroactive and prospective  
8        applicability. [This act] applies retroactively, within the  
9        meaning of 1-2-109, to all temporary preliminary decrees and  
10       preliminary decrees that have been issued by the Montana  
11       water courts and prospectively to all decrees issued on or  
12       after [the effective date of this act].

13       NEW SECTION.    **Section 12.** Effective date. [This act]  
14       becomes effective on the latest date on which any of the  
15       following occurs:

16       (1) passage and approval of [this act], \_\_ Bill No. \_\_  
17       [LC 683], \_\_ Bill No. \_\_ [LC 685], or \_\_ Bill No. \_\_ [LC  
18       686]; or

19       (2) a final determination of failure to receive  
20       passage and approval of \_\_ Bill No. \_\_ [LC 683], \_\_ Bill No.  
21       \_\_ [LC 685], or \_\_ Bill No. \_\_ [LC 686].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB166, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for administration of temporary preliminary and preliminary decrees by the district court, and providing an effective date and retroactive and prospective applicability.

ASSUMPTIONS:

1. This bill has no impact on the Department of Natural Resources and Conservation (DNRC) as currently written.
2. This bill has no impact on the Judiciary as currently written.

FISCAL IMPACT: None

TECHNICAL NOTES:

1. In Section 85-2-406, MCA, the administration of temporary preliminary and preliminary decrees could involve all parties to a decree or only those parties that petition district court for relief. This section as currently written is unclear whether modified decrees must be issued and basin-wide notice given to have an administrable decree.

If all or a portion of the parties in a basin are to be included in an administrable decree, either the district court or the water court may need to notice all or a portion of the water right owners in the particular basin where the temporary preliminary or preliminary decree will now be enforced. The water court may require that a modified temporary preliminary or preliminary decree be issued showing the resolution of the objections. If this occurs there will be a fiscal impact to the DNRC because the cost for printing and mailing the decree and notice is borne by the department.

The general fund cost to DNRC would average \$5,000 per enforceable basin decreed (average basin size of 2,000 claims x \$2.50 average cost for preparing and mailing each claim).

2. It is not possible to confidently estimate fiscal impact to the DNRC from this bill because it is unknown how often the district court will be petitioned. Therefore, it is uncertain what department assistance may be required by the water court to issue a modified enforceable temporary preliminary or preliminary decree.

*Ray Shackelford*

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

*1/28/89*

DATE

*Esther G. Bengtson*

ESTHER G. BENGTSON, PRIMARY SPONSOR

*1-28-89*

DATE

Fiscal Note for SB166, as introduced

*SB 166*



APPROVED BY COMMITTEE  
ON AGRICULTURE LIVESTOCK  
& IRRIGATION

## SENATE BILL NO. 166

INTRODUCED BY BENGTON, GALT, STORY, STIMATZ,

SPAETH, MARKS, BRADLEY, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY DECREES BY THE DISTRICT COURTS; PROVIDING THAT FOR PURPOSES OF ADMINISTERING WATER RIGHTS, THE PRIMA FACIE STATUS OF A CLAIM IS SUPERSEDED BY THE ISSUANCE OF A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS,--OR--A--PRELIMINARY--DECREE; AMENDING SECTIONS 3-7-201, 3-7-211, 3-7-212, 3-7-501, 85-2-227, 85-2-406, AND 85-5-101, MCA; REPEALING SECTION 3-7-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE AND PROSPECTIVE APPLICABILITY."

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

**Section 1.** Section 3-7-201, MCA, is amended to read:

"3-7-201. Designation of water judge. (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. Except as provided in subsection (2) and

3-7-213, a water judge must be a district judge or retired district judge of a judicial district wholly or partly within the water division.

(2) A district judge or retired district judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which he is requested to sit.

(3) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division."

**Section 2.** Section 3-7-211, MCA, is amended to read:

"3-7-211. Appointment of water commissioners. The water--judge--of--each--water-division district court having jurisdiction over the subbasin HYDROLOGICALLY INTERRELATED PORTION OF A WATER DIVISION AS DESCRIBED IN 85-2-231(2) in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

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

"3-7-212. Enforcement of final--decree decrees. The water-judge-of-each-water--division district court having jurisdiction over the subbasin in which a controversy arises may enforce the provisions of a final decree issued in for that water-division-as-provided-in-85-2-234 subbasin-or-in. IN the absence of any final decree having been issued, the

DISTRICT COURT HAVING JURISDICTION MAY ENFORCE THE provisions of a temporary preliminary decree or preliminary decree entered under 85-2-231, AS MODIFIED BY A WATER JUDGE AFTER OBJECTIONS AND HEARINGS."

**Section 4.** Section 3-7-501, MCA, is amended to read:

**"3-7-501. Jurisdiction.** (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 ~~and 3-7-213~~.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

**Section 5.** Section 85-2-227, MCA, is amended to read:

**"85-2-227. Claim to constitute prima facie evidence.**  
A For purposes of adjudicating rights pursuant to this chapter PART, a claim of an existing right filed in accordance with 85-2-221 OR AN AMENDED CLAIM OF EXISTING RIGHT constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree OR A PRELIMINARY DECREE, as modified after objections and hearings, or a preliminary decree supersede a claim of existing right until a final decree is issued."

**Section 6.** Section 85-2-406, MCA, is amended to read:

**"85-2-406. District court supervision of water distribution.** (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to part 2 of this chapter OR WHEN A BASIN IS THE SUBJECT OF A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS, any party to the controversy OR ANY PERSON WHOSE RIGHTS ARE OR MAY BE AFFECTED BY ENFORCEMENT OF THE DECREE

1 may petition the district court for relief. The district  
 2 court from which relief is sought may grant such injunctive  
 3 or other OR OTHER relief which is necessary and appropriate  
 4 to preserve property rights or the status quo pending the  
 5 issuance of the final decree resolution of the controversy  
 6 under subsection (3) THE ISSUANCE OF THE FINAL DECREE.

7 (3) A controversy between appropriators from a source  
 8 which has been the subject of a general determination of  
 9 existing rights under part 2 of this chapter shall be  
 10 settled by the district court which issued the final decree  
 11 having jurisdiction over the subbasin in which the  
 12 controversy arises. The order of the district court settling  
 13 the controversy may not alter the existing rights and  
 14 priorities established in the final decree. A temporary  
 15 preliminary decree or preliminary decree entered under part  
 16 2 of this chapter but shall refer to the appropriate water  
 17 court any portion of the controversy involving the nature of  
 18 existing rights and priorities established in a temporary  
 19 preliminary decree or preliminary decree. The water court  
 20 shall resolve any controversy involving existing rights and  
 21 priorities established in a temporary preliminary decree or  
 22 preliminary decree. Upon rereferral from the water court,  
 23 the district court shall enter an order that it determines  
 24 to be consistent with the resolution of the issues referred  
 25 by the water court. In resolving the controversy, the

1 ~~district court may alter rights and priorities contained in~~  
 2 ~~a final decree only if based upon abandonment, waste, or~~  
 3 ~~illegal enlargement or change of right. In cases involving~~  
 4 ~~permits issued by the department, neither the water court~~  
 5 ~~nor the district court may not amend the respective rights~~  
 6 ~~established in the permits or alter any terms of the permits~~  
 7 ~~unless the permits are inconsistent or interfere with rights~~  
 8 ~~and priorities established in the a final decree entered~~  
 9 ~~under part 2 of this chapter. The order settling the~~  
 10 ~~controversy shall be appended to the final decree, and a~~  
 11 ~~copy shall be filed with the department. The department~~  
 12 ~~shall be served with process in any proceeding under this~~  
 13 ~~subsection, and the department may, in its discretion,~~  
 14 ~~intervene in the proceeding. A CONTROVERSY BETWEEN~~  
 15 ~~APPROPRIATORS FROM A SOURCE THAT HAS BEEN THE SUBJECT OF A~~  
 16 ~~FINAL DECREE UNDER PART 2 OF THIS CHAPTER MUST BE SETTLED BY~~  
 17 ~~THE DISTRICT COURT THAT ISSUED THE FINAL DECREE. THE ORDER~~  
 18 ~~OF THE DISTRICT COURT SETTLING THE CONTROVERSY MAY NOT ALTER~~  
 19 ~~THE EXISTING RIGHTS AND PRIORITIES ESTABLISHED IN THE FINAL~~  
 20 ~~DECREE EXCEPT TO THE EXTENT THE COURT ALTERS RIGHTS BASED~~  
 21 ~~UPON ABANDONMENT, WASTE, OR ILLEGAL ENLARGEMENT OR CHANGE OF~~  
 22 ~~RIGHT. IN CASES INVOLVING PERMITS ISSUED BY THE DEPARTMENT,~~  
 23 ~~THE COURT MAY NOT AMEND THE RESPECTIVE RIGHTS ESTABLISHED IN~~  
 24 ~~THE PERMITS OR ALTER ANY TERMS OF THE PERMITS UNLESS THE~~  
 25 ~~PERMITS ARE INCONSISTENT OR INTERFERE WITH RIGHTS AND~~

PRIORITIES ESTABLISHED IN THE FINAL DECREE. THE ORDER  
SETTLING THE CONTROVERSY MUST BE APPENDED TO THE FINAL  
DECREE, AND A COPY MUST BE FILED WITH THE DEPARTMENT. THE  
DEPARTMENT MUST BE SERVED WITH PROCESS IN ANY PROCEEDING  
UNDER THIS SUBSECTION, AND THE DEPARTMENT MAY, IN ITS  
DISCRETION, INTERVENE IN THE PROCEEDING.

(4) IF AN ACTION TO ENFORCE A TEMPORARY PRELIMINARY  
DECREE IS COMMENCED, THE WATER JUDGE SHALL UPON REFERRAL  
FROM THE DISTRICT COURT ESTABLISH, IN A FORM DETERMINED TO  
BE APPROPRIATE BY THE WATER JUDGE, ONE OR MORE TABULATIONS  
OR LISTS OF ALL EXISTING RIGHTS AND THEIR RELATIVE  
PRIORITIES.

(5) (A) A PERSON WHOSE EXISTING RIGHTS AND PRIORITIES  
ARE DETERMINED IN A TEMPORARY PRELIMINARY DECREE OR  
PRELIMINARY DECREE MAY APPEAL A DETERMINATION MADE PURSUANT  
TO SUBSECTION (2) IF HE REQUESTED A HEARING AND APPEARED AND  
ENTERED OBJECTIONS TO THE TEMPORARY PRELIMINARY DECREE OR  
PRELIMINARY DECREE.

(B) THE WATER JUDGE IS NOT BOUND BY A SUPREME COURT  
DETERMINATION ON AN APPEAL ENTERED UNDER THIS SUBSECTION IN  
ISSUING ANY SUBSEQUENT DECREE UNDER PART 2 OF THIS CHAPTER."

**Section 7.** Section 85-5-101, MCA, is amended to read:

**"85-5-101. Appointment of water commissioners. (1)**  
Whenever the rights of persons to use the waters of any  
stream, ditch or extension of ditch, watercourse, spring,

lake, reservoir, or other source of supply have been  
determined by a decree of a court of competent jurisdiction,  
INCLUDING TEMPORARY PRELIMINARY, PRELIMINARY, AND FINAL  
DECREES ISSUED BY A WATER JUDGE, it shall be the duty of the  
judge of the district court having jurisdiction of the  
subject matter, upon the application of the owners of at  
least 15% of the water rights affected by the decree, in the  
exercise of his discretion, to appoint one or more  
commissioners. The commissioners shall have authority to  
admeasure and distribute to the parties owning water rights  
in the source affected by the decree the waters to which  
they are entitled, according to their rights as fixed by the  
decree and by any certificates and permits issued under  
chapter 2 of this title. When petitioners make proper  
showing that they are not able to obtain the application of  
the owners of at least 15% of the water rights affected and  
they are unable to obtain the water to which they are  
entitled, the judge of the district court having  
jurisdiction may, in his discretion, appoint a water  
commissioner.

(2) When the existing rights of all appropriators from  
a source or in an area have been determined in a temporary  
preliminary decree, preliminary decree, or final decree  
issued under chapter 2 of this title, the judge of the  
district court shall upon application by the department of

1 natural resources and conservation appoint a water  
2 commissioner. The water commissioner shall distribute to the  
3 appropriators, from the source or in the area, the water to  
4 which they are entitled.

5 (3) The department of natural resources and  
6 conservation or any person or corporation operating under  
7 contract with the department or any other owner of stored  
8 waters may petition the court to have such stored waters  
9 distributed by the water commissioners appointed by said  
10 court. The court may thereupon make an order requiring the  
11 commissioner or commissioners appointed by the court to  
12 distribute such stored water when and as released to water  
13 users entitled to the use thereof.

14 (4) At the time of the appointment of such water  
15 commissioner or commissioners, the district court shall fix  
16 their compensation, and the owners and users of the  
17 distributed waters, including permittees and certificate  
18 holders, shall pay their proportionate share of such fees  
19 and compensation.

20 (5) Upon the application of the board or boards of one  
21 or more irrigation districts entitled to the use of water  
22 stored in a reservoir which is turned into the natural  
23 channel of any stream and withdrawn or diverted at a point  
24 downstream for beneficial use, the district court of the  
25 judicial district wherein the most irrigable acres of the

1 irrigation district or districts are situated may appoint a  
2 water commissioner to equitably admeasure and distribute  
3 such stored water to said irrigation district or districts  
4 from the channel of the stream into which it has been  
5 turned. A commissioner appointed under this subsection has  
6 the powers of any commissioner appointed under this chapter,  
7 limited only by the purposes of this subsection. His  
8 compensation is set by the appointing judge and paid by each  
9 district and other users of stored water affected by the  
10 admeasurement and distribution of such stored water. In all  
11 other matters the provisions of this chapter apply so long  
12 as they are consistent with this subsection."

13 NEW SECTION. **Section 8.** Repealer. Section 3-7-213,  
14 MCA, is repealed.

15 NEW SECTION. **Section 9.** Saving clause. [This act]  
16 does not affect rights and duties that matured, penalties  
17 that were incurred, or proceedings that were begun before  
18 [the effective date of this act].

19 NEW SECTION. **Section 10.** Severability. If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.

25 NEW SECTION. **Section 11.** Retroactive and prospective

1 applicability. (1) [This act] applies retroactively, within  
2 the meaning of 1-2-109, to all temporary preliminary decrees  
3 and preliminary decrees that have been issued by the Montana  
4 water courts and prospectively to all decrees issued on or  
5 after [the effective date of this act].

6 (2) A PERSON WHOSE EXISTING RIGHTS ARE DETERMINED IN A  
7 TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE ISSUED  
8 BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY PETITION THE  
9 WATER JUDGE FOR RELIEF CONCERNING ANY MATTER IN THE DECREE  
10 PRIOR TO ENFORCEMENT OF THE DECREE.

11 NEW SECTION. Section 12. Effective date. [This act]  
12 becomes effective on the latest date on which any of the  
13 following occurs:

14 (1) passage and approval of [this act], \_\_ Bill No. \_\_  
15 [LC 683]; ~~---Bill---No---~~ {bE-685}; or \_\_ Bill No. \_\_ [LC  
16 686]; or

17 (2) a final determination of failure to receive  
18 passage and approval of \_\_ Bill No. \_\_ [LC 683]; ~~---Bill---No-~~  
19 ~~---{bE-685};~~ or \_\_ Bill No. \_\_ [LC 686].

-End-

## SENATE BILL NO. 166

INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ,  
SPAETH, MARKS, BRADLEY, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY  
DECREES BY THE DISTRICT COURTS; PROVIDING THAT FOR PURPOSES  
OF ADMINISTERING WATER RIGHTS, THE PRIMA FACIE STATUS OF A  
CLAIM IS SUPERSEDED BY THE ISSUANCE OF A TEMPORARY  
PRELIMINARY DECREE OR A PRELIMINARY DECREE, AS MODIFIED  
AFTER OBJECTIONS AND HEARINGS,--OR--A--PRELIMINARY--DECREE;  
AMENDING SECTIONS 3-7-201, 3-7-211, 3-7-212, 3-7-501,  
85-2-227, 85-2-406, AND 85-5-101, MCA; REPEALING SECTION  
3-7-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND  
RETROACTIVE AND PROSPECTIVE APPLICABILITY."

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

**Section 1.** Section 3-7-201, MCA, is amended to read:

"3-7-201. Designation of water judge. (1) A water  
judge shall be designated within 30 days after May 11, 1979,  
for each water division by a majority vote of a committee  
composed of the district judge from each single judge  
judicial district and the chief district judge from each  
multiple judge judicial district, wholly or partly within  
the division. Except as provided in subsection (2) and

3-7-213, a water judge must be a district judge or retired  
district judge of a judicial district wholly or partly  
within the water division.

(2) A district judge or retired district judge may sit  
as a water judge in more than one division if requested by  
the chief justice of the supreme court or the water judge of  
the division in which he is requested to sit.

(3) A water judge, when presiding over a water  
division, presides as district judge in and for each  
judicial district wholly or partly within the water  
division."

**Section 2.** Section 3-7-211, MCA, is amended to read:

"3-7-211. Appointment of water commissioners. The  
~~water--judge--of--each--water-division~~ district court having  
jurisdiction over the ~~subbasin~~ HYDROLOGICALLY INTERRELATED  
PORTION OF A WATER DIVISION AS DESCRIBED IN 85-2-231(2) in  
which the controversy arises may appoint and supervise a  
water commissioner as provided for in Title 85, chapter 5."

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

"3-7-212. Enforcement of final--decree decrees. The  
~~water-judge-of-each-water--division~~ district court having  
jurisdiction over the subbasin in which a controversy arises  
may enforce the provisions of a final decree issued in for  
that water division as provided in 85-2-234 subbasin or in.  
IN the absence of any final decree having been issued, the

1 DISTRICT COURT HAVING JURISDICTION MAY ENFORCE THE  
 2 provisions of a temporary preliminary decree or preliminary  
 3 decree entered under 85-2-231, AS MODIFIED BY A WATER JUDGE  
 4 AFTER OBJECTIONS AND HEARINGS."

5 **Section 4.** Section 3-7-501, MCA, is amended to read:

6 **"3-7-501. Jurisdiction.** (1) The jurisdiction of each  
 7 judicial district concerning the determination and  
 8 interpretation of cases certified to the court under  
 9 85-2-309 or of existing water rights is exercised  
 10 exclusively by it through the water division or water  
 11 divisions that contain the judicial district wholly or  
 12 partly.

13 (2) No water judge may preside over matters concerning  
 14 the determination and interpretation of cases certified to  
 15 the court under 85-2-309 or of existing water rights beyond  
 16 the boundaries specified in 3-7-102 for his division except  
 17 as provided in 3-7-201 and 3-7-213.

18 (3) The water judge for each division shall exercise  
 19 jurisdiction over all matters concerning cases certified to  
 20 the court under 85-2-309 or concerning the determination and  
 21 interpretation of existing water rights within his division  
 22 as specified in 3-7-102 that are considered filed in or  
 23 transferred to a judicial district wholly or partly within  
 24 the division."

25 **Section 5.** Section 85-2-227, MCA, is amended to read:

1 **"85-2-227. Claim to constitute prima facie evidence.**  
 2 **A** For purposes of adjudicating rights pursuant to this  
 3 chapter PART, a claim of an existing right filed in  
 4 accordance with 85-2-221 OR AN AMENDED CLAIM OF EXISTING  
 5 RIGHT constitutes prima facie proof of its content until the  
 6 issuance of a final decree. For purposes of administering  
 7 water rights, the provisions of a temporary preliminary  
 8 decree OR A PRELIMINARY DECREE, as modified after objections  
 9 and hearings, or a preliminary decree supersede a claim of  
 10 existing right until a final decree is issued."

11 **Section 6.** Section 85-2-406, MCA, is amended to read:

12 **"85-2-406. District court supervision of water**  
 13 **distribution.** (1) The district courts shall supervise the  
 14 distribution of water among all appropriators. This  
 15 supervisory authority includes the supervision of all water  
 16 commissioners appointed prior or subsequent to July 1, 1973.  
 17 The supervision shall be governed by the principle that  
 18 first in time is first in right.

19 (2) When a water distribution controversy arises upon  
 20 a source of water in which existing rights have not been  
 21 determined according to part 2 of this chapter OR WHEN A  
 22 BASIN IS THE SUBJECT OF A TEMPORARY PRELIMINARY DECREE OR  
 23 PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND  
 24 HEARINGS, any party to the controversy OR ANY PERSON WHOSE  
 25 RIGHTS ARE OR MAY BE AFFECTED BY ENFORCEMENT OF THE DECREE



1 may petition the district court for relief. The district  
 2 court from which relief is sought may grant such injunctive  
 3 or other OR OTHER relief which is necessary and appropriate  
 4 to preserve property rights or the status quo pending the  
 5 issuance of the final decree resolution of the controversy  
 6 under subsection (3) THE ISSUANCE OF THE FINAL DECREE.

7 (3) A controversy between appropriators from a source  
 8 which has been the subject of a general determination of  
 9 existing rights under part 2 of this chapter shall be  
 10 settled by the district court which issued the final decree  
 11 having jurisdiction over the subbasin in which the  
 12 controversy arises. The order of the district court settling  
 13 the controversy may not alter the existing rights and  
 14 priorities established in the final decree. a temporary  
 15 preliminary decree or preliminary decree entered under part  
 16 2 of this chapter but shall refer to the appropriate water  
 17 court any portion of the controversy involving the nature of  
 18 existing rights and priorities established in a temporary  
 19 preliminary decree or preliminary decree. The water court  
 20 shall resolve any controversy involving existing rights and  
 21 priorities established in a temporary preliminary decree or  
 22 preliminary decree. Upon rereferral from the water court,  
 23 the district court shall enter an order that it determines  
 24 to be consistent with the resolution of the issues referred  
 25 by the water court in resolving the controversy, the

1 ~~district court may alter rights and priorities contained in~~  
 2 ~~a final decree only if based upon abandonment, waste, or~~  
 3 ~~illegal enlargement or change of right. In cases involving~~  
 4 ~~permits issued by the department, neither the water court~~  
 5 ~~nor the district court may not amend the respective rights~~  
 6 ~~established in the permits or alter any terms of the permits~~  
 7 ~~unless the permits are inconsistent or interfere with rights~~  
 8 ~~and priorities established in the a final decree entered~~  
 9 ~~under part 2 of this chapter. The order settling the~~  
 10 ~~controversy shall be appended to the final decree, and a~~  
 11 ~~copy shall be filed with the department. The department~~  
 12 ~~shall be served with process in any proceeding under this~~  
 13 ~~subsection, and the department may, in its discretion,~~  
 14 ~~intervene in the proceeding. A CONTROVERSY BETWEEN~~  
 15 ~~APPROPRIATORS FROM A SOURCE THAT HAS BEEN THE SUBJECT OF A~~  
 16 ~~FINAL DECREE UNDER PART 2 OF THIS CHAPTER MUST BE SETTLED BY~~  
 17 ~~THE DISTRICT COURT THAT ISSUED THE FINAL DECREE. THE ORDER~~  
 18 ~~OF THE DISTRICT COURT SETTLING THE CONTROVERSY MAY NOT ALTER~~  
 19 ~~THE EXISTING RIGHTS AND PRIORITIES ESTABLISHED IN THE FINAL~~  
 20 ~~DECREE EXCEPT TO THE EXTENT THE COURT ALTERS RIGHTS BASED~~  
 21 ~~UPON ABANDONMENT, WASTE, OR ILLEGAL ENLARGEMENT OR CHANGE OF~~  
 22 ~~RIGHT. IN CASES INVOLVING PERMITS ISSUED BY THE DEPARTMENT,~~  
 23 ~~THE COURT MAY NOT AMEND THE RESPECTIVE RIGHTS ESTABLISHED IN~~  
 24 ~~THE PERMITS OR ALTER ANY TERMS OF THE PERMITS UNLESS THE~~  
 25 ~~PERMITS ARE INCONSISTENT OR INTERFERE WITH RIGHTS AND~~

PRIORITIES ESTABLISHED IN THE FINAL DECREE. THE ORDER  
SETTLING THE CONTROVERSY MUST BE APPENDED TO THE FINAL  
DECREE, AND A COPY MUST BE FILED WITH THE DEPARTMENT. THE  
DEPARTMENT MUST BE SERVED WITH PROCESS IN ANY PROCEEDING  
UNDER THIS SUBSECTION, AND THE DEPARTMENT MAY, IN ITS  
DISCRETION, INTERVENE IN THE PROCEEDING.

(4) IF AN ACTION TO ENFORCE A TEMPORARY PRELIMINARY  
DECREE IS COMMENCED, THE WATER JUDGE SHALL UPON REFERRAL  
FROM THE DISTRICT COURT ESTABLISH, IN A FORM DETERMINED TO  
BE APPROPRIATE BY THE WATER JUDGE, ONE OR MORE TABULATIONS  
OR LISTS OF ALL EXISTING RIGHTS AND THEIR RELATIVE  
PRIORITIES.

(5) (A) A PERSON WHOSE EXISTING RIGHTS AND PRIORITIES  
ARE DETERMINED IN A TEMPORARY PRELIMINARY DECREE OR  
PRELIMINARY DECREE MAY APPEAL A DETERMINATION MADE PURSUANT  
TO SUBSECTION (2) IF HE REQUESTED A HEARING AND APPEARED AND  
ENTERED OBJECTIONS TO THE TEMPORARY PRELIMINARY DECREE OR  
PRELIMINARY DECREE.

(B) THE WATER JUDGE IS NOT BOUND BY A SUPREME COURT  
DETERMINATION ON AN APPEAL ENTERED UNDER THIS SUBSECTION IN  
ISSUING ANY SUBSEQUENT DECREE UNDER PART 2 OF THIS CHAPTER."

**Section 7.** Section 85-5-101, MCA, is amended to read:

**"85-5-101. Appointment of water commissioners. (1)**  
Whenever the rights of persons to use the waters of any  
stream, ditch or extension of ditch, watercourse, spring,

lake, reservoir, or other source of supply have been  
determined by a decree of a court of competent jurisdiction,  
INCLUDING TEMPORARY PRELIMINARY, PRELIMINARY, AND FINAL  
DECREES ISSUED BY A WATER JUDGE, it shall be the duty of the  
judge of the district court having jurisdiction of the  
subject matter, upon the application of the owners of at  
least 15% of the water rights affected by the decree, in the  
exercise of his discretion, to appoint one or more  
commissioners. The commissioners shall have authority to  
admeasure and distribute to the parties owning water rights  
in the source affected by the decree the waters to which  
they are entitled, according to their rights as fixed by the  
decree and by any certificates and permits issued under  
chapter 2 of this title. When petitioners make proper  
showing that they are not able to obtain the application of  
the owners of at least 15% of the water rights affected and  
they are unable to obtain the water to which they are  
entitled, the judge of the district court having  
jurisdiction may, in his discretion, appoint a water  
commissioner.

(2) When the existing rights of all appropriators from  
a source or in an area have been determined in a temporary  
preliminary decree, preliminary decree, or final decree  
issued under chapter 2 of this title, the judge of the  
district court shall upon application by the department of

1 natural resources and conservation appoint a water  
2 commissioner. The water commissioner shall distribute to the  
3 appropriators, from the source or in the area, the water to  
4 which they are entitled.

5 (3) The department of natural resources and  
6 conservation or any person or corporation operating under  
7 contract with the department or any other owner of stored  
8 waters may petition the court to have such stored waters  
9 distributed by the water commissioners appointed by said  
10 court. The court may thereupon make an order requiring the  
11 commissioner or commissioners appointed by the court to  
12 distribute such stored water when and as released to water  
13 users entitled to the use thereof.

14 (4) At the time of the appointment of such water  
15 commissioner or commissioners, the district court shall fix  
16 their compensation, and the owners and users of the  
17 distributed waters, including permittees and certificate  
18 holders, shall pay their proportionate share of such fees  
19 and compensation.

20 (5) Upon the application of the board or boards of one  
21 or more irrigation districts entitled to the use of water  
22 stored in a reservoir which is turned into the natural  
23 channel of any stream and withdrawn or diverted at a point  
24 downstream for beneficial use, the district court of the  
25 judicial district wherein the most irrigable acres of the

1 irrigation district or districts are situated may appoint a  
2 water commissioner to equitably admeasure and distribute  
3 such stored water to said irrigation district or districts  
4 from the channel of the stream into which it has been  
5 turned. A commissioner appointed under this subsection has  
6 the powers of any commissioner appointed under this chapter,  
7 limited only by the purposes of this subsection. His  
8 compensation is set by the appointing judge and paid by each  
9 district and other users of stored water affected by the  
10 admeasurement and distribution of such stored water. In all  
11 other matters the provisions of this chapter apply so long  
12 as they are consistent with this subsection."

13 NEW SECTION. Section 8. Repealer. Section 3-7-213,  
14 MCA, is repealed.

15 NEW SECTION. Section 9. Saving clause. [This act]  
16 does not affect rights and duties that matured, penalties  
17 that were incurred, or proceedings that were begun before  
18 [the effective date of this act].

19 NEW SECTION. Section 10. Severability. If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.

25 NEW SECTION. Section 11. Retroactive and prospective

1 applicability. (1) [This act] applies retroactively, within  
2 the meaning of 1-2-109, to all temporary preliminary decrees  
3 and preliminary decrees that have been issued by the Montana  
4 water courts and prospectively to all decrees issued on or  
5 after [the effective date of this act].

6 (2) A PERSON WHOSE EXISTING RIGHTS ARE DETERMINED IN A  
7 TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE ISSUED  
8 BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY PETITION THE  
9 WATER JUDGE FOR RELIEF CONCERNING ANY MATTER IN THE DECREE  
10 PRIOR TO ENFORCEMENT OF THE DECREE.

11 NEW SECTION. Section 12. Effective date. [This act]  
12 becomes effective on the latest date on which any of the  
13 following occurs:

14 (1) passage and approval of [this act], \_\_ Bill No. \_\_  
15 [LC 683],~~7~~----~~Bill~~--~~No~~:-~~---~~{~~LC-685~~}, or \_\_ Bill No. \_\_ [LC  
16 686]; or

17 (2) a final determination of failure to receive  
18 passage and approval of \_\_ Bill No. \_\_ [LC 683],~~7~~----~~Bill~~--~~No~~:-  
19 ~~---~~{~~LC-685~~}, or \_\_ Bill No. \_\_ [LC 686].

-End-

STANDING COMMITTEE REPORT

March 20, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
SENATE BILL 166 (third reading copy -- blue) be concurred in  
as amended .

<REP. SPAETH>

Signed:   
Dave Brown, Chairman

And, that such amendments read:

1. Page 7, line 15.

Following: "DECREE"

Insert: ", or a person exercising a suspension under 85-2-217 and  
part 7 of this chapter,"

2. Page 7, lines 16 through 18.

Strike: "IF HE" on line 16 through "DECREE" on line 18

HOUSE  
SB 166

## SENATE BILL NO. 166

INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ,  
SPAETH, MARKS, BRADLEY, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR  
ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY  
DECREES BY THE DISTRICT COURTS; PROVIDING THAT FOR PURPOSES  
OF ADMINISTERING WATER RIGHTS, THE PRIMA FACIE STATUS OF A  
CLAIM IS SUPERSEDED BY THE ISSUANCE OF A TEMPORARY  
PRELIMINARY DECREE OR A PRELIMINARY DECREE, AS MODIFIED  
AFTER OBJECTIONS AND HEARINGS;--OR--A--PRELIMINARY--DECREE;  
AMENDING SECTIONS 3-7-201, 3-7-211, 3-7-212, 3-7-501,  
85-2-227, 85-2-406, AND 85-5-101, MCA; REPEALING SECTION  
3-7-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND  
RETROACTIVE AND PROSPECTIVE APPLICABILITY."

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

**Section 1.** Section 3-7-201, MCA, is amended to read:

"3-7-201. Designation of water judge. (1) A water  
judge shall be designated within 30 days after May 11, 1979,  
for each water division by a majority vote of a committee  
composed of the district judge from each single judge  
judicial district and the chief district judge from each  
multiple judge judicial district, wholly or partly within  
the division. Except as provided in subsection (2) and

3-7-213, a water judge must be a district judge or retired  
district judge of a judicial district wholly or partly  
within the water division.

(2) A district judge or retired district judge may sit  
as a water judge in more than one division if requested by  
the chief justice of the supreme court or the water judge of  
the division in which he is requested to sit.

(3) A water judge, when presiding over a water  
division, presides as district judge in and for each  
judicial district wholly or partly within the water  
division."

**Section 2.** Section 3-7-211, MCA, is amended to read:

"3-7-211. Appointment of water commissioners. The  
water--judge--of--each--water-division district court having  
jurisdiction over the subbasin HYDROLOGICALLY INTERRELATED  
PORTION OF A WATER DIVISION AS DESCRIBED IN 85-2-231(2) in  
which the controversy arises may appoint and supervise a  
water commissioner as provided for in Title 85, chapter 5."

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

"3-7-212. Enforcement of final--decree decrees. The  
water-judge-of-each-water--division district court having  
jurisdiction over-the-subbasin-in-which-a-controversy-arises  
may enforce the provisions of a final decree issued-in for  
that-water-division-as-provided-in-85-2-234 subbasin-or-in.  
IN the absence of any final decree having been issued, the

DISTRICT COURT HAVING JURISDICTION MAY ENFORCE THE provisions of a temporary preliminary decree or preliminary decree entered under 85-2-231, AS MODIFIED BY A WATER JUDGE AFTER OBJECTIONS AND HEARINGS."

**Section 4.** Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

**Section 5.** Section 85-2-227, MCA, is amended to read:

"85-2-227. Claim to constitute prima facie evidence. A For purposes of adjudicating rights pursuant to this chapter PART, a claim of an existing right filed in accordance with 85-2-221 OR AN AMENDED CLAIM OF EXISTING RIGHT constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree OR A PRELIMINARY DECREE, as modified after objections and hearings, or a preliminary decree supersede a claim of existing right until a final decree is issued."

**Section 6.** Section 85-2-406, MCA, is amended to read:

"85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to part 2 of this chapter OR WHEN A BASIN IS THE SUBJECT OF A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS, any party to the controversy OR ANY PERSON WHOSE RIGHTS ARE OR MAY BE AFFECTED BY ENFORCEMENT OF THE DECREE

may petition the district court for relief. The district court from which relief is sought may grant such injunctive or other OR OTHER relief which is necessary and appropriate to preserve property rights or the status quo pending the issuance of the final decree resolution of the controversy under subsection (3) THE ISSUANCE OF THE FINAL DECREE.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under part 2 of this chapter shall be settled by the district court which issued the final decree having jurisdiction over the subbasin in which the controversy arises. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree; a temporary preliminary decree or preliminary decree entered under part 2 of this chapter but shall refer to the appropriate water court any portion of the controversy involving the nature of existing rights and priorities established in a temporary preliminary decree or preliminary decree. The water court shall resolve any controversy involving existing rights and priorities established in a temporary preliminary decree or preliminary decree. Upon rereferral from the water court, the district court shall enter an order that it determines to be consistent with the resolution of the issues referred by the water court. In resolving the controversy, the

district court may alter rights and priorities contained in a final decree only if based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, neither the water court nor the district court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the a final decree entered under part 2 of this chapter. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding. A CONTROVERSY BETWEEN APPROPRIATORS FROM A SOURCE THAT HAS BEEN THE SUBJECT OF A FINAL DECREE UNDER PART 2 OF THIS CHAPTER MUST BE SETTLED BY THE DISTRICT COURT THAT ISSUED THE FINAL DECREE. THE ORDER OF THE DISTRICT COURT SETTLING THE CONTROVERSY MAY NOT ALTER THE EXISTING RIGHTS AND PRIORITIES ESTABLISHED IN THE FINAL DECREE EXCEPT TO THE EXTENT THE COURT ALTERS RIGHTS BASED UPON ABANDONMENT, WASTE, OR ILLEGAL ENLARGEMENT OR CHANGE OF RIGHT. IN CASES INVOLVING PERMITS ISSUED BY THE DEPARTMENT, THE COURT MAY NOT AMEND THE RESPECTIVE RIGHTS ESTABLISHED IN THE PERMITS OR ALTER ANY TERMS OF THE PERMITS UNLESS THE PERMITS ARE INCONSISTENT OR INTERFERE WITH RIGHTS AND



1 PRIORITIES ESTABLISHED IN THE FINAL DECREE. THE ORDER  
 2 SETTLING THE CONTROVERSY MUST BE APPENDED TO THE FINAL  
 3 DECREE, AND A COPY MUST BE FILED WITH THE DEPARTMENT. THE  
 4 DEPARTMENT MUST BE SERVED WITH PROCESS IN ANY PROCEEDING  
 5 UNDER THIS SUBSECTION, AND THE DEPARTMENT MAY, IN ITS  
 6 DISCRETION, INTERVENE IN THE PROCEEDING.

7 (4) IF AN ACTION TO ENFORCE A TEMPORARY PRELIMINARY  
 8 DECREE IS COMMENCED, THE WATER JUDGE SHALL UPON REFERRAL  
 9 FROM THE DISTRICT COURT ESTABLISH, IN A FORM DETERMINED TO  
 10 BE APPROPRIATE BY THE WATER JUDGE, ONE OR MORE TABULATIONS  
 11 OR LISTS OF ALL EXISTING RIGHTS AND THEIR RELATIVE  
 12 PRIORITIES.

13 (5) (A) A PERSON WHOSE EXISTING RIGHTS AND PRIORITIES  
 14 ARE DETERMINED IN A TEMPORARY PRELIMINARY DECREE OR  
 15 PRELIMINARY DECREE OR A PERSON EXERCISING A SUSPENSION UNDER  
 16 85-2-217 AND PART 7 OF THIS CHAPTER MAY APPEAL A  
 17 DETERMINATION MADE PURSUANT TO SUBSECTION (2) IF--HE  
 18 REQUESTED--A--HEARING--AND--APPEARED--AND--ENTERED--OBJECTIONS--TO  
 19 THE--TEMPORARY--PRELIMINARY--DECREE--OR--PRELIMINARY--DECREE.

20 (B) THE WATER JUDGE IS NOT BOUND BY A SUPREME COURT  
 21 DETERMINATION ON AN APPEAL ENTERED UNDER THIS SUBSECTION IN  
 22 ISSUING ANY SUBSEQUENT DECREE UNDER PART 2 OF THIS CHAPTER."

23 **Section 7.** Section 85-5-101, MCA, is amended to read:

24 "85-5-101. Appointment of water commissioners. (1)  
 25 Whenever the rights of persons to use the waters of any

1 stream, ditch or extension of ditch, watercourse, spring,  
 2 lake, reservoir, or other source of supply have been  
 3 determined by a decree of a court of competent jurisdiction,  
 4 INCLUDING TEMPORARY PRELIMINARY, PRELIMINARY, AND FINAL  
 5 DECREES ISSUED BY A WATER JUDGE, it shall be the duty of the  
 6 judge of the district court having jurisdiction of the  
 7 subject matter, upon the application of the owners of at  
 8 least 15% of the water rights affected by the decree, in the  
 9 exercise of his discretion, to appoint one or more  
 10 commissioners. The commissioners shall have authority to  
 11 admeasure and distribute to the parties owning water rights  
 12 in the source affected by the decree the waters to which  
 13 they are entitled, according to their rights as fixed by the  
 14 decree and by any certificates and permits issued under  
 15 chapter 2 of this title. When petitioners make proper  
 16 showing that they are not able to obtain the application of  
 17 the owners of at least 15% of the water rights affected and  
 18 they are unable to obtain the water to which they are  
 19 entitled, the judge of the district court having  
 20 jurisdiction may, in his discretion, appoint a water  
 21 commissioner.

22 (2) When the existing rights of all appropriators from  
 23 a source or in an area have been determined in a temporary  
 24 preliminary decree, preliminary decree, or final decree  
 25 issued under chapter 2 of this title, the judge of the

1 district court shall upon application by the department of  
2 natural resources and conservation appoint a water  
3 commissioner. The water commissioner shall distribute to the  
4 appropriators, from the source or in the area, the water to  
5 which they are entitled.

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

15 (4) At the time of the appointment of such water  
16 commissioner or commissioners, the district court shall fix  
17 their compensation, and the owners and users of the  
18 distributed waters, including permittees and certificate  
19 holders, shall pay their proportionate share of such fees  
20 and compensation.

21 (5) Upon the application of the board or boards of one  
22 or more irrigation districts entitled to the use of water  
23 stored in a reservoir which is turned into the natural  
24 channel of any stream and withdrawn or diverted at a point  
25 downstream for beneficial use, the district court of the

1 judicial district wherein the most irrigable acres of the  
2 irrigation district or districts are situated may appoint a  
3 water commissioner to equitably admeasure and distribute  
4 such stored water to said irrigation district or districts  
5 from the channel of the stream into which it has been  
6 turned. A commissioner appointed under this subsection has  
7 the powers of any commissioner appointed under this chapter,  
8 limited only by the purposes of this subsection. His  
9 compensation is set by the appointing judge and paid by each  
10 district and other users of stored water affected by the  
11 admeasurement and distribution of such stored water. In all  
12 other matters the provisions of this chapter apply so long  
13 as they are consistent with this subsection."

14 NEW SECTION. **Section 8. Repealer.** Section 3-7-213,  
15 MCA, is repealed.

16 NEW SECTION. **Section 9. Saving clause.** [This act]  
17 does not affect rights and duties that matured, penalties  
18 that were incurred, or proceedings that were begun before  
19 [the effective date of this act].

20 NEW SECTION. **Section 10. Severability.** If a part of  
21 [this act] is invalid, all valid parts that are severable  
22 from the invalid part remain in effect. If a part of [this  
23 act] is invalid in one or more of its applications, the part  
24 remains in effect in all valid applications that are  
25 severable from the invalid applications.

1        NEW SECTION. Section 11. Retroactive and prospective  
2        applicability. (1) [This act] applies retroactively, within  
3        the meaning of 1-2-109, to all temporary preliminary decrees  
4        and preliminary decrees that have been issued by the Montana  
5        water courts and prospectively to all decrees issued on or  
6        after [the effective date of this act].

7        (2) A PERSON WHOSE EXISTING RIGHTS ARE DETERMINED IN A  
8        TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE ISSUED  
9        BEFORE [THE EFFECTIVE DATE OF THIS ACT] MAY PETITION THE  
10       WATER JUDGE FOR RELIEF CONCERNING ANY MATTER IN THE DECREE  
11       PRIOR TO ENFORCEMENT OF THE DECREE.

12       NEW SECTION. Section 12. Effective date. [This act]  
13       becomes effective on the latest date on which any of the  
14       following occurs:

15       (1) passage and approval of [this act], \_\_ Bill No. \_\_  
16       [LC 683], ~~7~~ ~~-----Bill--No--~~ ~~{LC-685}~~, or \_\_ Bill No. \_\_ [LC  
17       686]; or

18       (2) a final determination of failure to receive  
19       passage and approval of \_\_ Bill No. \_\_ [LC 683], ~~7~~ ~~-----Bill--No--~~  
20       ~~---{LC-685}~~, or \_\_ Bill No. \_\_ [LC 686].

-End-