

SENATE BILL NO. 167

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, 49; NOES, 0.  TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.
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 AS AMENDED.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 74; NOES, 22.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 4, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 6, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 167

INTRODUCED BY

*Spaeth* *Marks* *Broadley* *Quinn*  
A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER COURTS TO REOPEN AND REVIEW ALL TEMPORARY PRELIMINARY DECREES, PRELIMINARY DECREES, AND FINAL DECREES ACCORDING TO CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING A RETROACTIVE EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Reopening and review of decrees. (1) Within 180 days following [the effective date of this act], the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all temporary preliminary, preliminary, or final decrees that have been issued by the water courts prior to [the effective date of this act].

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the subbasin for which the decree was entered; or

(ii) in other subbasins that are hydrologically connected to sources within the subbasin for which the decree was entered.

(b) No objection seeking to reopen and review any matter previously litigated and resolved as the result of any previous objection process is allowed, unless the objection is by an Indian tribe or federal agency that commenced negotiations pursuant to 85-2-702 or 85-2-703 at the time the matter was litigated. A tribe or federal agency that commenced negotiations at the time the matter was litigated is entitled to the benefits of the suspension provided under 85-2-217.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232.

(4) Notice of the reopening and review of a temporary preliminary, preliminary, or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which in total cover the water division or divisions in the general stream basin in which the decreed subbasin is located.

(5) No objection may cause a reopening and review of a

1 claim unless the objection is filed with the appropriate  
 2 water court within 180 days after the issuance of the order  
 3 under subsection (1). This period of time may, for good  
 4 cause shown, be extended by the water judge for up to two  
 5 90-day periods if an application for extension is made  
 6 within 180 days after entry of the order under subsection  
 7 (1).

8 (6) The water judge shall notify the claimant of any  
 9 timely objection to his claim and, after further reasonable  
 10 notice to both the claimant and the objector or objectors,  
 11 set the matter for hearing. The water judge may conduct  
 12 individual or consolidated hearings, and any hearing must be  
 13 conducted according to the Montana Rules of Civil Procedure.  
 14 On an order of the water judge, a hearing may be conducted  
 15 by a water master, who shall prepare a report of the hearing  
 16 as provided in Rule 53(e), Montana Rules of Civil Procedure.

17 (7) The water judge shall, on the basis of any hearing  
 18 held on the matter, take action as warranted from the  
 19 evidence before him, including dismissal of the objection or  
 20 modification of the portion of the decree describing the  
 21 contested claim.

22 (8) An order or decree modifying a previously issued  
 23 final decree as a result of procedures described in this  
 24 section may be appealed in the same manner as provided for  
 25 an appeal taken from a final order of a district court.

1 (9) An order or decree modifying a previously issued  
 2 temporary preliminary or preliminary decree as a result of  
 3 procedures described in this section may be appealed under  
 4 85-2-235 when the temporary preliminary or preliminary  
 5 decree has been made a final decree.

6 NEW SECTION. **Section 2. Codification instruction.**  
 7 [Section 1] is intended to be codified as an integral part  
 8 of Title 85, chapter 2, part 2, and the provisions of Title  
 9 85, chapter 2, part 2, apply to [section 1].

10 NEW SECTION. **Section 3. Severability.** If a part of  
 11 [this act] is invalid, all valid parts that are severable  
 12 from the invalid part remain in effect. If a part of [this  
 13 act] is invalid in one or more of its applications, the part  
 14 remains in effect in all valid applications that are  
 15 severable from the invalid applications.

16 NEW SECTION. **Section 4. Retroactive applicability.**  
 17 [This act] applies retroactively, within the meaning of  
 18 1-2-209, to all temporary preliminary decrees, preliminary  
 19 decrees, and final decrees that have been issued by the  
 20 Montana water courts prior to [the effective date of this  
 21 act]. [This act] does not apply to a temporary preliminary  
 22 decree, preliminary decree, or final decree issued on or  
 23 after [the effective date of this act].

24 NEW SECTION. **Section 5. Effective date.** [This act] is  
 25 effective on the latest date on which any of the following

LC 0686/01

1 occur:

2 (1) passage and approval of [this act], \_\_Bill No.\_\_  
3 [LC 683], \_\_Bill No.\_\_ [LC 684], or \_\_Bill No.\_\_ [LC 685];  
4 or

5 (2) a final determination of failure to receive  
6 passage and approval of \_\_Bill No.\_\_ [LC 683], \_\_Bill No.\_\_  
7 [LC 684], or \_\_Bill No.\_\_ [LC 685].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB167, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the water court to reopen and review all temporary preliminary decrees, preliminary decrees and final decrees according to certain procedures and limitations; and providing a retroactive effective date.

ASSUMPTIONS:

1. New Section 1.(3) requires notice for the reopening and review of a decree to persons entitled to receive notice under 85-2-232, MCA. The average cost of preparing, printing and mailing a notice is \$0.28 and 52,000 owners in the 41 decreed basins will receive a notice at a total cost of \$14,560.
2. New Section 1.(4) requires notice for the reopening and review of a decree to be published for three consecutive weeks in at least three newspapers which cover the water divisions in which the decree is located and the water court will pay the costs of newspaper notices in current level appropriation.
3. New Section 1.(6) requires that notice be given to the claimant of any timely objection to his claim and it is assumed that there will be a minimum of one objection in each of the 41 decreed basin. This will result in notice to 52,000 owners at a cost of \$0.28 each for a total cost of \$14,560.
4. Section 85-2-232(2) states that a person may obtain a copy of the preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater. The average cost to print a decree is \$60 and it is assumed a minimum of three requests will be received in each of the 41 basins, for a total of 123 requests and \$7,380 increased operating costs. Money received from persons for printing is deposited to the general fund.
5. New Section 1.(7) requires the water judge to take action on the objections which may include modification of a portion of a decree. It is assumed the six final decrees may have to be reissued if objections are received. Although it is the responsibility of the Department of Natural Resources and Conservation (DNRC) to assist the water court in reissuing these decrees, the fiscal impact on DNRC cannot be estimated at this time because the extent of the modification to the decrees is unknown.

*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 SB167, as introduced

**SB 167**

Fiscal Note Request, SB167, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

Dept. of Natural Resources      Unknown at this time

Water Court						
Judiciary	Current	<u>FY90</u>		Current	<u>FY91</u>	
<u>Expenditures:</u>	<u>Law</u>	<u>Proposed</u>	<u>Difference</u>	<u>Law</u>	<u>Proposed</u>	<u>Difference</u>
Personal Services	\$236,003	\$336,003	-0-	\$336,396	\$336,396	-0-
Operating Expenses	114,093	150,593	36,500	114,090	150,590	36,500
Total	\$450,096	\$486,596	\$36,500	\$450,486	\$486,986	\$36,500
<u>Funding:</u>						
State Special Revenue						
Resource Indemnity Trust	\$450,096	\$486,596	\$36,500	\$450,486	\$486,986	\$36,500
<u>Revenues:</u>						
To General Fund	-0-	\$ 7,380	\$ 7,380	-0-	\$ 7,380	\$ 7,380

SB 167

APPROVED BY COMMITTEE  
ON AGRICULTURE LIVESTOCK  
& IRRIGATION

SENATE BILL NO. 167

INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ, SPAETH,

MARKS, BRADLEY, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER  
COURTS TO REOPEN AND REVIEW ALL ~~TEMPORARY--PRELIMINARY~~  
~~DECREES, PRELIMINARY DECREES, AND FINAL DECREES~~ ACCORDING TO  
CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING A  
~~RETROACTIVE~~ AN EFFECTIVE DATE AND RETROACTIVE  
APPLICABILITY."

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

NEW SECTION. Section 1. Reopening and review of  
decrees. (1) ~~Within 180 days following the effective date~~  
~~of this act, the~~ THE water judges shall by order reopen and  
review, within the limits set forth by the procedures  
described in this section, all ~~temporary--preliminary,~~  
~~preliminary, or final decrees that have been issued by the~~  
~~water courts prior to the effective date of this act~~ BUT  
HAVE NOT BEEN NOTICED THROUGHOUT THE WATER DIVISIONS.

(2) (a) Each order must state that the water judge  
will reopen the decree or decrees and, upon a hearing,  
review the water court's determination of any claim in the  
decree or decrees if an objection to the claim has been  
filed for the purpose of protecting rights to the use of

water from sources:

(i) within the subbasin BASIN for which the decree was  
entered; or

(ii) in other subbasins BASINS that are hydrologically  
connected to sources within the subbasin BASIN for which the  
decree was entered.

(b) ~~No objection seeking to reopen and review any~~  
~~matter previously litigated and resolved as the result of~~  
~~any previous objection process is allowed, unless the~~  
~~objection is by an Indian tribe or federal agency that~~  
~~commenced negotiations pursuant to 85-2-702 or 85-2-703 at~~  
~~the time the matter was litigated. A tribe or federal agency~~  
~~that commenced negotiations at the time the matter was~~  
~~litigated is entitled to the benefits of the suspension~~  
~~provided under 85-2-217. A PERSON MAY NOT RAISE AN OBJECTION~~  
~~TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE~~  
~~MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED~~  
AS THE RESULT OF A PREVIOUS OBJECTION PROCESS.

(c) The objection must be made in accordance with the  
procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice BY MAIL of the  
entry of the order providing for the reopening and review of  
a decree or decrees to the department and to the persons  
entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a temporary



1 preliminary, preliminary, or final decree must also be  
 2 published at least once each week for 3 consecutive weeks in  
 3 at least three newspapers of general circulation which in  
 4 total cover the water division or divisions in-the-general  
 5 stream-basin in which the decreed subbasin BASIN is located.

6 (5) No objection may cause a reopening and review of a  
 7 claim unless the objection is filed with the appropriate  
 8 water court within 180 days after the issuance of the order  
 9 under subsection (1). This period of time may, for good  
 10 cause shown, be extended by the water judge for up to two  
 11 90-day periods if an application for extension is made  
 12 within 180--days--after-entry-of-the-order-under-subsection  
 13 ~~(1)~~ THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION OF IT.

14 (6) The water judge shall notify PROVIDE NOTICE TO the  
 15 claimant of any timely objection to his claim and, after  
 16 further reasonable notice to both the claimant, and the  
 17 objector or objectors, AND OTHER INTERESTED PERSONS, set the  
 18 matter for hearing. The water judge may conduct individual  
 19 or consolidated hearings, and any hearing must be conducted  
 20 according to the Montana Rules of Civil Procedure. On an  
 21 order of the water judge, a hearing may be conducted by a  
 22 water master, who shall prepare a report of the hearing as  
 23 provided in Rule 53(e), Montana Rules of Civil Procedure.

24 (7) The water judge shall, on the basis of any hearing  
 25 held on the matter, take action as warranted from the

1 evidence before him, including dismissal of the objection or  
 2 modification of the portion of the decree describing the  
 3 contested claim.

4 (8) An order or decree modifying a previously issued  
 5 final decree as a result of procedures described in this  
 6 section may be appealed in the same manner as provided for  
 7 an appeal taken from a final order of a district court.

8 (9) An order or decree modifying a previously issued  
 9 temporary--preliminary--or preliminary decree as a result of  
 10 procedures described in this section may be appealed under  
 11 85-2-235 when the temporary--preliminary--or preliminary  
 12 decree has been made a final decree.

13 NEW SECTION. Section 2. Codification instruction.  
 14 [Section 1] is intended to be codified as an integral part  
 15 of Title 85, chapter 2, part 2, and the provisions of Title  
 16 85, chapter 2, part 2, apply to [section 1].

17 NEW SECTION. Section 3. Severability. If a part of  
 18 [this act] is invalid, all valid parts that are severable  
 19 from the invalid part remain in effect. If a part of [this  
 20 act] is invalid in one or more of its applications, the part  
 21 remains in effect in all valid applications that are  
 22 severable from the invalid applications.

23 NEW SECTION. Section 4. Retroactive applicability.  
 24 [This act] applies retroactively, within the meaning of  
 25 1-2-209, to all temporary-preliminary-decrees, preliminary

1 decrees, and final decrees that have been issued by the  
2 Montana water courts prior to [the effective date of this  
3 act]. ~~{This act} does not apply to a temporary preliminary~~  
4 ~~decree, preliminary decree, or final decree issued on or~~  
5 ~~after the effective date of this act}.~~

6 NEW SECTION. **Section 5.** Effective date. [This act] is  
7 effective on the latest date on which any of the following  
8 occur:

9 (1) passage and approval of [this act], \_\_Bill No. \_\_  
10 [LC 683], OR \_\_Bill No. \_\_ [LC 684], ~~or \_\_Bill No. \_\_ {LC~~  
11 ~~685}; or~~

12 (2) a final determination of failure to receive  
13 passage and approval of \_\_Bill No. \_\_ [LC 683], OR \_\_Bill  
14 No. \_\_ [LC 684], ~~or \_\_Bill No. \_\_ {LC-685}.~~

-End-

## SENATE BILL NO. 167

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

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER  
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DECREES, PRELIMINARY DECREES, AND FINAL DECREES ACCORDING TO  
CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING A  
RETROACTIVE AN EFFECTIVE DATE AND RETROACTIVE  
APPLICABILITY."

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

NEW SECTION. Section 1. Reopening and review of  
decrees. (1) Within 180 days following {the effective date  
of this act}, the THE water judges shall by order reopen and  
review, within the limits set forth by the procedures  
described in this section, all temporary--preliminary,  
preliminary, or final decrees that have been issued by the  
water courts prior to {the effective date of this act} BUT  
HAVE NOT BEEN NOTICED THROUGHOUT THE WATER DIVISIONS.

(2) (a) Each order must state that the water judge  
will reopen the decree or decrees and, upon a hearing,  
review the water court's determination of any claim in the  
decree or decrees if an objection to the claim has been  
filed for the purpose of protecting rights to the use of

water from sources:

(i) within the subbasin BASIN for which the decree was  
entered; or

(ii) in other subbasins BASINS that are hydrologically  
connected to sources within the subbasin BASIN for which the  
decree was entered.

(b) No objection-seeking--to--reopen--and--review--any  
matter--previously--litigated--and--resolved--as--the--result--of  
any--previous--objection--process--is--allowed,--unless--the  
objection--is--by--an--Indian--tribe--or--federal--agency--that  
commenced--negotiations--pursuant--to--85-2-702--or--85-2-703--at  
the--time--the--matter--was--litigated. A tribe or federal agency  
that--commenced--negotiations--at--the--time--the--matter--was  
litigated is entitled to the benefits of the suspension  
provided under 85-2-217. A PERSON MAY NOT RAISE AN OBJECTION  
TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE  
MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED  
AS THE RESULT OF A PREVIOUS OBJECTION PROCESS.

(c) The objection must be made in accordance with the  
procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice BY MAIL of the  
entry of the order providing for the reopening and review of  
a decree or decrees to the department and to the persons  
entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a temporary

1 preliminary, preliminary, or final decree must also be  
2 published at least once each week for 3 consecutive weeks in  
3 at least three newspapers of general circulation which in  
4 total cover the water division or divisions in the general  
5 stream-basin in which the decreed subbasin BASIN is located.

6 (5) No objection may cause a reopening and review of a  
7 claim unless the objection is filed with the appropriate  
8 water court within 180 days after the issuance of the order  
9 under subsection (1). This period of time may, for good  
10 cause shown, be extended by the water judge for up to two  
11 90-day periods if an application for extension is made  
12 within 180--days--after--entry--of--the--order--under--subsection  
13 (1) THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION OF IT.

14 (6) The water judge shall notify PROVIDE NOTICE TO the  
15 claimant of any timely objection to his claim and, after  
16 further reasonable notice to both the claimant, and the  
17 objector or objectors, AND OTHER INTERESTED PERSONS, set the  
18 matter for hearing. The water judge may conduct individual  
19 or consolidated hearings, and any hearing must be conducted  
20 according to the Montana Rules of Civil Procedure. On an  
21 order of the water judge, a hearing may be conducted by a  
22 water master, who shall prepare a report of the hearing as  
23 provided in Rule 53(e), Montana Rules of Civil Procedure.

24 (7) The water judge shall, on the basis of any hearing  
25 held on the matter, take action as warranted from the

1 evidence before him, including dismissal of the objection or  
2 modification of the portion of the decree describing the  
3 contested claim.

4 (8) An order or decree modifying a previously issued  
5 final decree as a result of procedures described in this  
6 section may be appealed in the same manner as provided for  
7 an appeal taken from a final order of a district court.

8 (9) An order or decree modifying a previously issued  
9 temporary--preliminary--or preliminary decree as a result of  
10 procedures described in this section may be appealed under  
11 85-2-235 when the temporary--preliminary--or preliminary  
12 decree has been made a final decree.

13 NEW SECTION. Section 2. Codification instruction.  
14 [Section 1] is intended to be codified as an integral part  
15 of Title 85, chapter 2, part 2, and the provisions of Title  
16 85, chapter 2, part 2, apply to [section 1].

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18 [this act] is invalid, all valid parts that are severable  
19 from the invalid part remain in effect. If a part of [this  
20 act] is invalid in one or more of its applications, the part  
21 remains in effect in all valid applications that are  
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24 [This act] applies retroactively, within the meaning of  
25 1-2-209, to all temporary-preliminary-decrees, preliminary

1 decrees, and final decrees that have been issued by the  
2 Montana water courts prior to [the effective date of this  
3 act]. ~~{This act} does not apply to a temporary preliminary~~  
4 ~~decree, preliminary decree, or final decree issued on or~~  
5 ~~after the effective date of this act}.~~

6 NEW SECTION. Section 5. Effective date. [This act] is  
7 effective on the latest date on which any of the following  
8 occur:

9 (1) passage and approval of [this act], \_\_ Bill No. \_\_  
10 [LC 683], OR \_\_ Bill No. \_\_ [LC 684], ~~or --- Bill No. --- {BE~~  
11 ~~685}; or~~

12 (2) a final determination of failure to receive  
13 passage and approval of \_\_ Bill No. \_\_ [LC 683], OR \_\_ Bill  
14 No. \_\_ [LC 684], ~~or --- Bill No. --- {BE-685}.~~

-End-

STANDING COMMITTEE REPORT

March 20, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
SENATE BILL 167 (third reading copy -- blue) be concurred in  
as amended .

<REP. SPAETH>

Signed: 

Dave Brown, Chairman

And, that such amendments read:

1. Page 2, lines 15 through 18.

Strike: "A PERSON" on line 15 through end of line 18

HOUSE  
SB 167

COMMITTEE OF THE WHOLE AMENDMENT  
SENATE BILL 167  
Representative Gary Spaeth

March 27, 1989 1:26 pm  
Page 1 of 1

Mr. Chairman: I move to amend SENATE BILL 167 (third reading copy -- blue).

Signed:   
Representative Gary Spaeth

And, that such amendment to SENATE BILL 167 read as follows:

1. Page 2, line 18.

Following: "PROCESS."

Insert: " A person may not raise an objection to a matter in a reopened decree if he was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

- (i) mistake, inadvertence, surprise, or excusable neglect;
- (ii) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under M.R.Civ.P. Rule 59(b);
- (iii) fraud, misrepresentation, or other misconduct of an adverse party;
- (iv) the judgment is void;
- (v) any other reason justifying relief from the operation of the judgment."

ADOPT

REJECT

SB 167

HOUSE

## SENATE BILL NO. 167

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

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER  
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preliminary, or final decrees that have been issued by the  
water courts prior to the effective date of this act BUT  
HAVE NOT BEEN NOTICED THROUGHOUT THE WATER DIVISIONS.

(2) (a) Each order must state that the water judge  
will reopen the decree or decrees and, upon a hearing,  
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decree or decrees if an objection to the claim has been  
filed for the purpose of protecting rights to the use of

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entered; or

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matter previously litigated and resolved as the result of  
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objection is by an Indian tribe or federal agency that  
commenced negotiations pursuant to 85-2-702 or 85-2-703 at  
the time the matter was litigated. A tribe or federal agency  
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provided under 85-2-217. A PERSON MAY NOT RAISE AN OBJECTION  
TO A MATTER IN A REOPENED DECREE IF HE WAS A PARTY TO THE  
MATTER WHEN THE MATTER WAS PREVIOUSLY LITIGATED AND RESOLVED  
AS THE RESULT OF A PREVIOUS OBJECTION PROCESS. A PERSON MAY  
NOT RAISE AN OBJECTION TO A MATTER IN A REOPENED DECREE IF  
HE WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY  
LITIGATED AND RESOLVED AS THE RESULT OF THE PREVIOUS  
OBJECTION PROCESS, UNLESS THE OBJECTION IS ALLOWED FOR ANY  
OF THE FOLLOWING REASONS:

(1) MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE  
NEGLECT;



(II) NEWLY DISCOVERED EVIDENCE THAT BY DUE DILIGENCE  
COULD NOT HAVE BEEN DISCOVERED IN TIME TO MOVE FOR A NEW  
TRIAL UNDER RULE 59(B), MONTANA RULES OF CIVIL PROCEDURE;

(III) FRAUD, MISREPRESENTATION, OR OTHER MISCONDUCT OF  
AN ADVERSE PARTY;

(IV) THE JUDGMENT IS VOID;

(V) ANY OTHER REASON JUSTIFYING RELIEF FROM THE  
OPERATION OF THE JUDGMENT.

(c) The objection must be made in accordance with the  
procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice BY MAIL of the  
entry of the order providing for the reopening and review of  
a decree or decrees to the department and to the persons  
entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a temporary  
preliminary, preliminary, or final decree must also be  
published at least once each week for 3 consecutive weeks in  
at least three newspapers of general circulation which in  
~~total~~ cover the water division or divisions ~~in the general~~  
~~stream-basin~~ in which the decreed subbasin BASIN is located.

(5) No objection may cause a reopening and review of a  
claim unless the objection is filed with the appropriate  
water court within 180 days after the issuance of the order  
under subsection (1). This period of time may, for good  
cause shown, be extended by the water judge for up to two

90-day periods if an application for extension is made  
within ~~180--days--after--entry--of--the--order--under--subsection~~  
~~{1}~~ THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION OF IT.

(6) The water judge shall notify PROVIDE NOTICE TO the  
claimant of any timely objection to his claim and, after  
further reasonable notice to ~~both~~ the claimant, ~~and~~ the  
objector or objectors, AND OTHER INTERESTED PERSONS, set the  
matter for hearing. The water judge may conduct individual  
or consolidated hearings, and any hearing must be conducted  
according to the Montana Rules of Civil Procedure. On an  
order of the water judge, a hearing may be conducted by a  
water master, who shall prepare a report of the hearing as  
provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing  
held on the matter, take action as warranted from the  
evidence before him, including dismissal of the objection or  
modification of the portion of the decree describing the  
contested claim.

(8) An order or decree modifying a previously issued  
final decree as a result of procedures described in this  
section may be appealed in the same manner as provided for  
an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued  
~~temporary--preliminary--or~~ preliminary decree as a result of  
procedures described in this section may be appealed under

1 85-2-235 when the temporary--preliminary--or preliminary  
2 decree has been made a final decree.

3 NEW SECTION. Section 2. Codification instruction.  
4 [Section 1] is intended to be codified as an integral part  
5 of Title 85, chapter 2, part 2, and the provisions of Title  
6 85, chapter 2, part 2, apply to [section 1].

7 NEW SECTION. Section 3. Severability. If a part of  
8 [this act] is invalid, all valid parts that are severable  
9 from the invalid part remain in effect. If a part of [this  
10 act] is invalid in one or more of its applications, the part  
11 remains in effect in all valid applications that are  
12 severable from the invalid applications.

13 NEW SECTION. Section 4. Retroactive applicability.  
14 [This act] applies retroactively, within the meaning of  
15 1-2-209, to all temporary-preliminary-decrees, preliminary  
16 decrees, and final decrees that have been issued by the  
17 Montana water courts prior to [the effective date of this  
18 act]. {This-act}-does-not-apply-to-a--temporary--preliminary  
19 decree,--preliminary--decree,--or--final-decree-issued-on-or  
20 after-[the-effective-date-of-this-act]}.

21 NEW SECTION. Section 5. Effective date. [This act] is  
22 effective on the latest date on which any of the following  
23 occur:

24 (1) passage and approval of [this act], \_\_Bill No.\_\_  
25 [LC 683], OR \_\_Bill No. [LC 684],--or---Bill--No---{bE

1 685}; or

2 (2) a final determination of failure to receive  
3 passage and approval of \_\_Bill No. [LC 683], OR \_\_Bill  
4 No. [LC 684],--or---Bill--No---{bE-685}.

-End-