SENATE BILL NO. 168

INTRODUCED BY BENGTSON, 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 13, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
- FEBRUARY 14, 1989 PRINTING REPORT.
- FEBRUARY 15, 1989 SECOND READING, DO PASS.
- FEBRUARY 16, 1989 ENGROSSING REPORT.
- FEBRUARY 17, 1989 THIRD READING, PASSED. AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 17, 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.

> COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN. AYES, 93; NOES, 2.

RETURNED TO SENATE.

MARCH 21, 1989

MARCH 27, 1989

MARCH 29, 1989

IN THE SENATE

MARCH 29, 1989

RECEIVED FROM HOUSE. SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

51st Legislature

LC 0685/01

ALT, BILL NO. 168 1 INTRODUCED BY Kends 2 ٦ BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR 4 5 CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE WATER JUDGE: AMENDING SECTION 85-2-234, MCA; AND PROVIDING 6 7 AN EFFECTIVE DATE AND RETROACTIVE AND PROSPECTIVE APPLICABILITY." 8

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

Section 1. Section 85-2-234, MCA, is amended to read: 11 12 *85-2-234. Final decree. (1) The water judge shall, on 13 the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree 14 affirming or modifying the preliminary decree. If no 15 request for a hearing is filed within the time allowed, the 16 preliminary decree automatically becomes final, and the 17 water judge shall enter it as the final decree. 18

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

25 (3) The final decree shall establish the existing



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

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

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

17 (a) the name and post-office address of the owner of18 the right;

19 (b) the amount of water included in the right, as 20 follows:

21 (i) by flow rate for direct flow rights, such as 22 irrigation rights;

(ii) by volume for rights, such as stockpond and
reservoir storage rights, and for rights that are not
susceptible to measurement by flow rate; or

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(iii) by flow rate and volume for rights that a water
 judge determines require both volume and flow rate to
 adequately administer the right;

(c) the date of priority of the right;

5 (d) the purpose for which the water included in the 6 right is used;

7 (e) the place of use and a description of the land, if8 any, to which the right is appurtenant;

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

10 (g) the place and means of diversion;

11 (h) the inclusive dates during which the water is used 12 each year;

13 (i) any other information necessary to fully define14 the nature and extent of the right.

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

18 (a) the name and mailing address of the holder of the 19 right;

20 (b) the source or sources of water included in the 21 right;

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

(d) the date of priority of the right;

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

1 (f) the place of use and a description of the land, if any, to which the right is appurtenant; 2 (g) the place and means of diversion, if any; and 3 (h) any other information necessary to fully define 4 the nature and extent of the right, including the terms of 5 any compacts negotiated and ratified under 85-2-702. 6 7 (7) Clerical mistakes in a final decree may be 8 corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water 9 right. The water judge shall order the notice of a 10 correction proceeding as he determines to be appropriate to 11 advise all persons who may be affected by the correction. An 12 13 order of the water judge making or denying a clerical correction is subject to appellate review." 14 15 NEW SECTION. Section 2. Severability. If a part of

15 [this act] is invalid, all valid parts that are severable 16 [this act] is invalid part remain in effect. If a part of [this 18 act] is invalid in one or more of its applications, the part 19 remains in effect in all valid applications that are 20 severable from the invalid applications.

21 <u>NEW SECTION.</u> Section 3. Retroactive and prospective 22 applicability. [This act] applies retroactively, within the 23 meaning of 1-2-109, to all final decrees that have been 24 issued by the Montana water courts and prospectively to all 25 final decrees issued on or after [the effective date of this

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1	act].
2	NEW SECTION. Section 4. Effective date. [This act]
3	becomes effective on the latest date on which any of the
4	following occurs:
5	(1) passage and approval of [this act], Bill No
б	[LC 683], Bill No [LC 684], or Bill No [LC
7	686]; or
8	(2) a final determination of failure to receive
9	passage and approval ofBill No [LC 683],Bill No.
10	_ [LC 684], or Bill No [LC 686].
	-End-

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51st Legislature

SB 0168/02

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APPROVED BY COMMITTEE ON AGRICULTURE LIVESTOCK & IRRIGATION

SENATE BILL NO. 168 1 INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ, 2 3 SPAETH, MARKS, BRADLEY, IVERSON 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING 5 FOR CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE 6 WATER JUDGE; REQUIRING THAT THE FINAL DECREE ESTABLISH A 7 TABULATION OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES; 8 9 AMENDING SECTION 85-2-234, MCA; AND PROVIDING AN--EPPECTIVE BATE-AND RETROACTIVE AND PROSPECTIVE APPLICABILITY." 10 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 13 Section 1. Section 85-2-234, MCA, is amended to read: "85-2-234. Final decree. (1) The water judge shall, on 14 the basis of the preliminary decree and on the basis of any 15 hearing that may have been held, enter a final decree 16 affirming or modifying the preliminary decree. If no 17 request for a hearing is filed within the time allowed, the 18

preliminary decree automatically becomes final, and the 19 water judge shall enter it as the final decree. 20

21 (2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without 22 23 alteration unless an objection is sustained pursuant to 85-2-233: provided that the court may not alter or amend any 24 of the terms of a compact except with the prior written 25

Montana Legislative Counce

consent of the parties in accordance with applicable law.

2 (3) The final decree shall establish the existing 3 rights and priorities within the water judge's jurisdiction of persons required by 85-2-221 to file a claim for an 4 existing right, of persons required to file a declaration of 5 6 existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under 7 8 sections 8 and 9 of Chapter 452, Laws of 1973, and of any 9 federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file 10 11 claims. (4) THE FINAL DECREE SHALL ESTABLISH IN A FORM 12 13 DETERMINED TO BE APPROPRIATE BY THE WATER JUDGE ONE OR MORE TABULATIONS OR LISTS OF ALL WATER RIGHTS AND THEIR RELATIVE 14 15 PRIORITIES. 16 +4+(5) The final decree shall state the findings of fact, along with any conclusions of law, upon which the 17 existing rights and priorities of each person, federal 18 19 agency, and Indian tribe named in the decree are based. (5)(6) For each person who is found to have an 20 21 existing right arising under the laws of the state of 22 Montana, the final decree shall state: (a) the name and post-office address of the owner of 23 24 the right; 25 (b) the amount of water included in the right, as

> ~2-SB 168 SECOND READING

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1	follows:	1 (b) the source or sources of water included in the
2	(i) by flow rate for direct flow rights, such as	2 right;
3	irrigation rights;	3 (c) the quantity of water included in the right;
4	(ii) by volume for rights, such as stockpond and	4 (d) the date of priority of the right;
5	reservoir storage rights, and for rights that are not	5 (e) the purpose for which the water included in the
6	susceptible to measurement by flow rate; or	6 right is currently used, if at all;
7	(iii) by flow rate and volume for rights that a water	7 (f) the place of use and a description of the land, if
8	judge determines require both volume and flow rate to	<pre>8 any, to which the right is appurtenant;</pre>
9	adequately administer the right;	9 (g) the place and means of diversion, if any; and
10	(c) the date of priority of the right;	10 (h) any other information necessary to fully define
11	(d) the purpose for which the water included in the	11 the nature and extent of the right, including the terms of
12	right is used;	12 any compacts negotiated and ratified under 85-2-702.
13	(e) the place of use and a description of the land, if	13 (7)(8) Clerical mistakes in a final decree may be
14	any, to which the right is appurtenant;	14 corrected at any time on the initiative of the water judge
15	(f) the source of the water included in the right;	15 or on the petition of any person who possesses a water
16	(g) the place and means of diversion;	16 right. The water judge shall order the notice of a
17	(h) the inclusive dates during which the water is used	17 correction proceeding as he determines to be appropriate to
18	each year;	18 advise all persons who may be affected by the correction. An
19	(i) any other information necessary to fully define	19 order of the water judge making or denying a clerical
20	the nature and extent of the right.	20 correction is subject to appellate review."
21	<pre>f6;(7) For each person, tribe, or federal agency</pre>	21 NEW SECTION. Section 2. Severability. If a part of
22	possessing water rights arising under the laws of the United	22 [this act] is invalid, all valid parts that are severable
23	States, the final decree shall state:	23 from the invalid part remain in effect. If a part of [this
24	(a) the name and mailing address of the holder of the	24 act] is invalid in one or more of its applications, the part
25	right;	25 remains in effect in all valid applications that are
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1 severable from the invalid applications.

2 <u>NEW SECTION.</u> Section 3. Retroactive and prospective 3 applicability. [This act] applies retroactively, within the 4 meaning of 1-2-109, to all final decrees that have been 5 issued by the Montana water courts and prospectively to all 6 final decrees issued on or after [the effective date of this 7 act].

8 <u>NEW-SECTION:</u>--Section-4.--Effective-date.---{This--act} 9 becomes--effective--on--the--latest-date-on-which-any-of-the 10 following-occurs:

15 passage-and-approval-of-___Bill-Not-___{bC-683};-___Bill-Not

16 ____{be-604];-or____Bill-No;-___{be-606];

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SB 0168/02

1	SENATE BILL NO. 168	1	consent of the parties in accordance with applicable law.
2	INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ,	2	(3) The final decree shall establish the existing
3	SPAETH, MARKS, BRADLEY, IVERSON	3	rights and priorities within the water judge's jurisdiction
4		4	of persons required by 85-2-221 to file a claim for an
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR	. 5	existing right, of persons required to file a declaration of
6	CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE	6	existing rights in the Powder River Basin pursuant to an
7	WATER JUDGE; REQUIRING THAT THE FINAL DECREE ESTABLISH A	7	order of the department or a district court issued under
8	TABULATION OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES;	8	sections 8 and 9 of Chapter 452, Laws of 1973, and of any
9	AMENDING SECTION 85-2-234, MCA; AND PROVIDING ANEPPECTIVE	9	federal agency or Indian tribe possessing water rights
10	BATE-AND RETROACTIVE AND PROSPECTIVE APPLICABILITY."	10	arising under federal law, required by 85-2-702 to file
11		11	claims.
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	(4) THE FINAL DECREE SHALL ESTABLISH IN A FORM
13	Section 1. Section 85-2-234, MCA, is amended to read:	13	DETERMINED TO BE APPROPRIATE BY THE WATER JUDGE ONE OR MORE
14	*85-2-234. Final decree. (1) The water judge shall, on	14	TABULATIONS OR LISTS OF ALL WATER RIGHTS AND THEIR RELATIVE
15	the basis of the preliminary decree and on the basis of any	15	PRIORITIES.
16	hearing that may have been held, enter a final decree	16	{\$}(5) The final decree shall state the findings of
17	affirming or modifying the preliminary decree. If no	17	fact, along with any conclusions of law, upon which the
18	request for a hearing is filed within the time allowed, the	18	existing rights and priorities of each person, federal
19	preliminary decree automatically becomes final, and the	19	agency, and Indian tribe named in the decree are based.
20	water judge shall enter it as the final decree.	20	(5)(6) For each person who is found to have an
21	(2) The terms of a compact negotiated and ratified	21	existing right arising under the laws of the state of
22	under 85-2-702 must be included in the final decree without	22	Montana, the final decree shall state:
23	alteration unless an objection is sustained pursuant to	23	(a) the name and post-office address of the owner of
24	85-2-233; provided that the court may not alter or amend any	24	the right;
25	of the terms of a compact except with the prior written	25	(b) the amount of water included in the right, as
	A		-2- SB 168

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THIRD READING

SB 0168/02

1	follows:	1 (b) the source or sources of water included in the
2	(i) by flow rate for direct flow rights, such as	2 right;
3	irrigation rights;	3 (c) the guantity of water included in the right;
4	(ii) by volume for rights, such as stockpond and	4 (d) the date of priority of the right;
5	reservoir storage rights, and for rights that are not	5 (e) the purpose for which the water included in the
6	susceptible to measurement by flow rate; or	6 right is currently used, if at all;
7	(iii) by flow rate and volume for rights that a water	7 (f) the place of use and a description of the land, if
8	judge determines require both volume and flow rate to	<pre>8 any, to which the right is appurtenant;</pre>
9	adequately administer the right;	9 (g) the place and means of diversion, if any; and
10	(C) the date of priority of the right;	10 (h) any other information necessary to fully define
11	(d) the purpose for which the water included in the	ll the nature and extent of the right, including the terms of
12	right is used;	12 any compacts negotiated and ratified under 85-2-702.
13	(e) the place of use and a description of the land, if	13 <u>(7)(8)</u> <u>Clerical mistakes in a final decree may be</u>
14	any, to which the right is appurtenant;	14 corrected at any time on the initiative of the water judge
15	(f) the source of the water included in the right;	15 or on the petition of any person who possesses a water
16	(g) the place and means of diversion;	16 right. The water judge shall order the notice of a
17	(h) the inclusive dates during which the water is used	17 correction proceeding as he determines to be appropriate to
18	each year;	18 advise all persons who may be affected by the correction. An
19	(i) any other information necessary to fully define	19 order of the water judge making or denying a clerical
20	the nature and extent of the right.	20 correction is subject to appellate review."
21	<pre>{6;[7] For each person, tribe, or federal agency</pre>	21 <u>NEW SECTION.</u> Section 2. Severability. If a part of
22	possessing water rights arising under the laws of the United	22 [this act] is invalid, all valid parts that are severable
23	States, the final decree shall state:	23 from the invalid part remain in effect. If a part of [this
24	(a) the name and mailing address of the holder of the	24 act is invalid in one or more of its applications, the part
25	right;	25 remains in effect in all valid applications that are
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1 severable from the invalid applications.

2 <u>NEW SECTION.</u> Section 3. Retroactive and prospective 3 applicability. [This act] applies retroactively, within the 4 meaning of 1-2-109, to all final decrees that have been 5 issued by the Montana water courts and prospectively to all 6 final decrees issued on or after [the effective date of this 7 act].

8 <u>NEW-SECTION:</u>--Scotion-4.--Effective-date.---[This--act]
9 becomes--effective--on--the--latest-date-on-which-any-of-the
10 following-occurs:

 14
 (2)--a---final--determination--of--failure--to--receive

 15
 passage-and-approval-of----Bill-No-----fbe-603}7----Bill-No

 16
 ----fbe-604}7-or----Bill-No------fbe-606}7

-End-

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SB 168

1	SENATE BILL NO. 168	1	consent o
2	INTRODUCED BY BENGTSON, GALT, STORY, STIMAT2,	2	(3)
3	SPAETH, MARKS, BRADLEY, IVERSON	3	rights an
4		4	of perso
5	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR	5	existing
6	CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE	6	existing
7	WATER JUDGE; REQUIRING THAT THE FINAL DECREE ESTABLISH A	7	order of
8	TABULATION OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES;	8	sections
9	AMENDING SECTION 85-2-234, MCA; AND PROVIDING ANEPPEETIVE	9	federal
10	BATE-AND RETROACTIVE AND PROSPECTIVE APPLICABILITY."	10	arising u
11		11	claims.
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	<u>(4)</u>
13	Section 1. Section 85-2-234, MCA, is amended to read:	13	DETERMINE
14	*85-2-234. Final decree. (1) The water judge shall, on	14	TABULATIC
15	the basis of the preliminary decree and on the basis of any	15	PRIORITIE
16	hearing that may have been held, enter a final decree	16	t4} <u>(</u>
17	affirming or modifying the preliminary decree. If no	17	fact, al
18	request for a hearing is filed within the time allowed, the	18	existing
19	preliminary decree automatically becomes final, and the	19	agency, a
20	water judge shall enter it as the final decree.	20	(57
21	(2) The terms of a compact negotiated and ratified	21	existing
22	under 85-2-702 must be included in the final decree without	22	Montana,
23	alteration unless an objection is sustained pursuant to	23	(a)

24 85-2-233; provided that the court may not alter or amend any 25 of the terms of a compact except with the prior written

onsent of the parties in accordance with applicable law.

2 (3) The final decree shall establish the existing 3 rights and priorities within the water judge's jurisdiction 4 of persons required by 85-2-221 to file a claim for an 5 existing right, of persons required to file a declaration of 6 existing rights in the Powder River Basin pursuant to an 7 order of the department or a district court issued under 8 sections 8 and 9 of Chapter 452, Laws of 1973, and of any 9 federal agency or Indian tribe possessing water rights 10 arising under federal law, required by 85-2-702 to file 11 claims.

 12
 (4) THE FINAL DECREE SHALL ESTABLISH IN A FORM

 13
 DETERMINED TO BE APPROPRIATE BY THE WATER JUDGE ONE OR MORE

 14
 TABULATIONS OR LISTS OF ALL WATER RIGHTS AND THEIR RELATIVE

 15
 PRIORITIES.

16 (4)(5) The final decree shall state the findings of
17 fact, along with any conclusions of law, upon which the
18 existing rights and priorities of each person, federal
19 agency, and Indian tribe named in the decree are based.

20 (5)(6) For each person who is found to have an
21 existing right arising under the laws of the state of
22 Montana, the final decree shall state:

23 (a) the name and post-office address of the owner of24 the right;

25 (b) the amount of water included in the right, as

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REFERENCE BILL

SB 0168/02

1	follows:	1	(b) the source or sources of water included in the
2	(i) by flow rate for direct flow rights, such as	2	right;
3	irrigation rights;	3	(c) the guantity of water included in the right;
4	(ii) by volumme for rights, such as stockpond and	4	(d) the date of priority of the right;
5	reservoir storage rights, and for rights that are not	5	(e) the purpose for which the water included in the
6	susceptible to measurement by flow rate; or	6	right is currently used, if at all;
7	(iii) by flow rate and volume for rights that a water	7	(f) the place of use and a description of the land, if
8	judge determines require both volume and flow rate to	8	any, to which the right is appurtenant;
9	adequately administer the right;	9	(g) the place and means of diversion, if any; and
10	(c) the date of priority of the right;	10	(h) any other information necessary to fully define
11	(d) the purpose for which the water included in the	11	the nature and extent of the right, including the terms of
12	right is used;	12	any compacts negotiated and ratified under 85-2-702.
13	(e) the place of use and a description of the land, if	13	{7}(8) <u>Clerical mistakes in a final decree may be</u>
14	any, to which the right is appurtenant;	14	corrected at any time on the initiative of the water judge
15	(f) the source of the water included in the right;	15	or on the petition of any person who possesses a water
16	(g) the place and means of diversion;	16	right. The water judge shall order the notice of a
17	(h) the inclusive dates during which the water is used	17	correction proceeding as he determines to be appropriate to
18	each year;	18	advise all persons who may be affected by the correction. An
19	(i) any other information necessary to fully define	19	order of the water judge making or denying a clerical
20	the nature and extent of the right.	20	correction is subject to appellate review."
21	<pre>f6;(7) For each person, tribe, or federal agency</pre>	21	NEW SECTION. Section 2. Severability. If a part of
22	possessing water rights arising under the laws of the United	22	[this act] is invalid, all valid parts that are severable
23	States, the final decree shall state:	23	from the invalid part remain in effect. If a part of {this
24	(a) the name and mailing address of the holder of the	24	act) is invalid in one or more of its applications, the part
25	right;	25	remains in effect in all valid applications that are
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1 severable from the invalid applications.

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2 <u>NEW SECTION.</u> Section 3. Retroactive and prospective 3 applicability. [This act] applies retroactively, within the 4 meaning of 1-2-109, to all final decrees that have been 5 issued by the Montana water courts and prospectively to all 6 final decrees issued on or after [the effective date of this 7 act].

8 <u>NEW-SECTION:</u>--Section-4.--Effective-date.---[This--act] 9 becomes--effective--on--the--latest-date-on-which-any-of-the 10 following-occurs:

-End-

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