

SENATE BILL NO. 168

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 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.
MARCH 21, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 27, 1989	SECOND READING, CONCURRED IN.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 93; NOES, 2. RETURNED TO SENATE.

MARCH 29, 1989

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

BILL NO. 168

INTRODUCED BY

Benjamin Hall Story
Spencer Marks *Bradley Iverson*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE WATER JUDGE; AMENDING SECTION 85-2-234, 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 85-2-234, MCA, is amended to read:

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

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

(3) The final decree shall establish the existing

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

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

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

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

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

(i) by flow rate for direct flow rights, such as 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

(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;

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

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

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

(g) the place and means of diversion;

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

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

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

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

(b) the source or sources of water included in the 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 the right is currently used, if at all;

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

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

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

(7) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review.

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

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

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. __
6 [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 of __ Bill No. __ [LC 683], __ Bill No.
10 __ [LC 684], or __ Bill No. __ [LC 686].

-End-

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

SENATE BILL NO. 168

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

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE
WATER JUDGE; REQUIRING THAT THE FINAL DECREE ESTABLISH A
TABULATION OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES;
AMENDING SECTION 85-2-234, 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 85-2-234, MCA, is amended to read:

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

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

consent of the parties in accordance with applicable law.

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

(4) THE FINAL DECREE SHALL ESTABLISH IN A FORM
DETERMINED TO BE APPROPRIATE BY THE WATER JUDGE ONE OR MORE
TABULATIONS OR LISTS OF ALL WATER RIGHTS AND THEIR RELATIVE
PRIORITIES.

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

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

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

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

1 follows:

2 (i) by flow rate for direct flow rights, such as
3 irrigation rights;

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

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

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

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

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

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

16 (g) the place and means of diversion;

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

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

21 ~~(6)~~(7) For each person, tribe, or federal agency
22 possessing water rights arising under the laws of the United
23 States, the final decree shall state:

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

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

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

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

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

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

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

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

13 ~~(7)~~(8) Clerical mistakes in a final decree may be
14 corrected at any time on the initiative of the water judge
15 or on the petition of any person who possesses a water
16 right. The water judge shall order the notice of a
17 correction proceeding as he determines to be appropriate to
18 advise all persons who may be affected by the correction. An
19 order of the water judge making or denying a clerical
20 correction is subject to appellate review."

21 NEW SECTION. Section 2. Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. **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 ~~NEW SECTION.~~ **Section 4.** ~~Effective date.---[This act]~~
9 ~~becomes effective on the latest date on which any of the~~
10 ~~following occurs:~~

11 {1} ~~passage and approval of [this act], --- Bill No. ---~~
12 ~~{LC-683}, --- Bill No., --- {LC-684}, or --- Bill No. --- {LC~~
13 ~~686}, or~~

14 {2} ~~a final determination of failure to receive~~
15 ~~passage and approval of --- Bill No. --- {LC-683}, --- Bill No.~~
16 ~~--- {LC-684}, or --- Bill No. --- {LC-686}.~~

-End-

SENATE BILL NO. 168

INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ,

SPAETH, MARKS, BRADLEY, IVERSON

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

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

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

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

consent of the parties in accordance with applicable law.

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

(4) THE FINAL DECREE SHALL ESTABLISH IN A FORM DETERMINED TO BE APPROPRIATE BY THE WATER JUDGE ONE OR MORE TABULATIONS OR LISTS OF ALL WATER RIGHTS AND THEIR RELATIVE PRIORITIES.

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1 follows:

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3 irrigation rights;

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5 reservoir storage rights, and for rights that are not
6 susceptible to measurement by flow rate; or

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

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

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

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

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

16 (g) the place and means of diversion;

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

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

21 ~~{6}~~{7} For each person, tribe, or federal agency
22 possessing water rights arising under the laws of the United
23 States, the final decree shall state:

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25 right;

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12 any compacts negotiated and ratified under 85-2-702.

13 ~~{7}~~{8} Clerical mistakes in a final decree may be
14 corrected at any time on the initiative of the water judge
15 or on the petition of any person who possesses a water
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17 correction proceeding as he determines to be appropriate to
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9 ~~becomes effective on the latest date on which any of the~~
10 ~~following occurs:~~

11 ~~{1}--passage-and-approval-of-[this-act],---Bill-No---~~
12 ~~{bE-603},---Bill-No.---{bE-604},-or---Bill-No.---{bE~~
13 ~~606},-or~~

14 ~~{2}--a---final--determination--of--failure--to--receive~~
15 ~~passage-and-approval-of---Bill-No.---{bE-603},---Bill-No-~~
16 ~~---{bE-604},-or---Bill-No.---{bE-606}.~~

-End-

SENATE BILL NO. 168

INTRODUCED BY BENGTON, GALT, STORY, STIMATZ,

SPAETH, MARKS, BRADLEY, IVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE WATER JUDGE; REQUIRING THAT THE FINAL DECREE ESTABLISH A TABULATION OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES; AMENDING SECTION 85-2-234, MCA; AND PROVIDING AN--EFFECTIVE DATE-AND RETROACTIVE AND PROSPECTIVE APPLICABILITY."

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12 ~~{bE-683};~~ ~~--- Bill No. --- {bE-684};~~ ~~or --- Bill No. --- {bE~~
13 ~~686};~~ ~~or~~

14 {2} ~~a final determination of failure to receive~~
15 ~~passage and approval of --- Bill No. --- {bE-683};~~ ~~--- Bill No.~~
16 ~~--- {bE-684};~~ ~~or --- Bill No. --- {bE-686};~~

-End-