

SENATE BILL NO. 169

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 AS AMENDED.
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, TAKEN FROM AGRICULTURE AND 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, 75; NOES, 21.

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.

1 *Sen. Bill No. 169*
 2 INTRODUCED BY *Benjamin Galt Story*
 3 *Spencer Marks* *Bradley Jensen*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER
 5 JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN THOSE
 6 BASINS IN WHICH ADJUDICATION OF CLAIMS FOR FEDERAL OR INDIAN
 7 WATER RIGHTS IS PRECLUDED BY THE SUSPENSION OF ADJUDICATION
 8 UNDER 85-2-217; PROVIDING FOR OBJECTIONS AND HEARINGS ON
 9 TEMPORARY PRELIMINARY DECREES; INCREASING THE TIME LIMIT FOR
 10 REQUESTING A HEARING ON A TEMPORARY PRELIMINARY DECREE OR A
 11 PRELIMINARY DECREE; AMENDING SECTIONS 85-2-231 THROUGH
 12 85-2-233, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
 13 APPLICABILITY DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 85-2-231, MCA, is amended to read:
 17 "85-2-231. Preliminary Temporary preliminary and
 18 preliminary decree. (1) (a) The water judge shall issue a
 19 preliminary decree. The preliminary decree shall be based
 20 on:

21 (a)(i) the statements of claim before the water judge;
 22 (b)(ii) the data submitted by the department;
 23 (c)(iii) the contents of compacts approved by the
 24 Montana legislature and the tribe or federal agency or,
 25 lacking an approved compact, the filings for federal and

1 Indian reserved rights; and
 2 (d)(iv) any additional data obtained by the water
 3 judge.
 4 (b) The preliminary decree shall be issued within 90
 5 days after the close of the special filing period set out in
 6 85-2-702(3) or as soon thereafter as is reasonably feasible.
 7 (c) This section does not prevent the water judge from
 8 issuing an interlocutory decree or other temporary decree,
 9 pursuant to 85-2-321 or as provided in subsection (5) of
 10 this section, or if such a decree is otherwise necessary for
 11 the orderly administration of water rights prior to the
 12 issuance of a preliminary decree.
 13 (2) A preliminary decree may be issued for any
 14 hydrologically interrelated portion of a water division,
 15 including but not limited to a basin, subbasin, drainage,
 16 subdrainage, stream, or single source of supply of water, at
 17 a time different from the issuance of other preliminary
 18 decrees or portions of the same decree.
 19 (3) The preliminary decree shall contain the
 20 information and make the determinations, findings, and
 21 conclusions required for the final decree under 85-2-234.
 22 The water judge shall include in the preliminary decree the
 23 contents of a compact negotiated under the provisions of
 24 part 7 that has been approved by the legislature and the
 25 tribe or federal agency.

1 (4) If the water judge is satisfied that the report of
 2 the water master meets the requirements for the preliminary
 3 decree set forth in subsections (1) and (3), and is
 4 satisfied with the conclusions contained in the report, the
 5 water judge shall adopt the report as the preliminary
 6 decree. If the water judge is not so satisfied, he may, at
 7 his option, recommit the report to the master with
 8 instructions, or modify the report and issue the preliminary
 9 decree.

10 (5) In a basin in which adjudication of claims for
 11 federal or Indian water rights is precluded by the
 12 suspension of adjudication under 85-2-217, the water judge
 13 may issue a temporary preliminary decree in accordance with
 14 the requirements of this section. The temporary preliminary
 15 decree shall address all claims in the basin except those
 16 affected by the suspension required by 85-2-217.

17 (6) In issuing a subsequent preliminary decree, the
 18 water judge shall use the temporary preliminary decree
 19 issued under subsection (5). The preliminary decree, when
 20 issued, shall supersede and replace the temporary
 21 preliminary decree."

22 **Section 2.** Section 85-2-232, MCA, is amended to read:

23 "85-2-232. Availability of temporary preliminary or
 24 preliminary decree. (1) The water judge shall send to the
 25 department a copy of the any temporary preliminary decree or

1 preliminary decree to-the-department issued for a subbasin,
 2 and the water judge shall serve by mail a notice of
 3 availability of the temporary preliminary decree or
 4 preliminary decree to each person who has filed a claim of
 5 existing right within the decreed subbasin and to the
 6 purchaser under contract for deed, as defined in 70-20-115,
 7 of property in connection with which a claim of existing
 8 right has been filed within the decreed subbasin or, in the
 9 Powder River Basin, to each person who has filed a
 10 declaration of an existing right. The water judge shall
 11 enclose with the notice an abstract of the disposition of
 12 such person's claimed or declared existing right. The notice
 13 of availability shall also be served upon those issued or
 14 having applied for and not having been denied a beneficial
 15 water--use permit to beneficially use water within the
 16 decreed subbasin pursuant to Title 85, chapter 2, part 3,
 17 those granted a reservation within the decreed subbasin
 18 pursuant to 85-2-316, or other interested persons who
 19 request service of the notice from the water judge. The
 20 clerk or person designated by the water judge to mail the
 21 notice shall make a general certificate of mailing
 22 certifying that a copy of the notice has been placed in the
 23 United States mail, postage prepaid, addressed to each party
 24 required to be served notice of the temporary preliminary
 25 decree or preliminary decree. Such certificate shall be

conclusive evidence of due and legal notice of entry of decree.

(2) Notice of the availability of a temporary preliminary decree or preliminary 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.

{2}(3) Any person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge."

Section 3. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on temporary preliminary decree or preliminary decree. (1) (a) Upon objection to the For good cause shown, a hearing shall be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree; or

(iii) any other person--for--good--cause--shown--the department--or--such--person--is--entitled--to--a--hearing--thereon before--the--water--judge-- within the subbasin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other subbasins that are hydrologically connected to the sources within the decreed subbasin and who would be entitled to receive notice under 85-2-232 if his claim or claims were from sources within the decreed subbasin.

(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.

(2) If a hearing is requested, such the request must be filed with the water judge within 90 180 days after notice--of entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit an up to two additional 90 days 90-day periods if application for the an extension is made within 90 180 days after notice of entry of the temporary preliminary decree or preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the temporary

preliminary decree or preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the temporary preliminary decree or preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the

tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

NEW SECTION. Section 4. 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 5. Effective date. [This act] is effective on the latest date on which any of the following occur:

(1) passage and approval of [this act], __Bill No. __ [LC 684], __Bill No. __ [LC 685], or __Bill No. __ [LC 686]; or

(2) a final determination of failure to receive passage and approval of __Bill No. __ [LC 684], __Bill No. __ [LC 685], or __Bill No. __ [LC 686].

NEW SECTION. Section 6. Applicability. [This act]

LC 0683/01

- 1 applies to any temporary preliminary decree or preliminary
- 2 decree issued on or after [the effective date of this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB169, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An Act providing that a water judge may issue a temporary preliminary decree in those basins in which adjudication of claims for federal or Indian water rights is precluded by the suspension of adjudication under 85-2-217; providing for objections and hearings on temporary preliminary decrees; increasing the time limit for requesting a hearing on a temporary preliminary decree or a preliminary decree; amending Sections 85-2-231 through 85-2-233, MCA; and providing an effective date and an applicability date.

FISCAL IMPACT: None

Ray Shackleford 1/27/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Esther G. Bengston 1-28-89
ESTHER G. BENGSTON, PRIMARY SPONSOR DATE

Fiscal Note for SB169, as introduced

SB 169

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

SENATE BILL NO. 169

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

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN THOSE BASINS IN WHICH ADJUDICATION OF CLAIMS FOR FEDERAL OR INDIAN WATER RIGHTS IS PRECLUDED BY THE SUSPENSION OF ADJUDICATION UNDER 85-2-217; PROVIDING FOR OBJECTIONS AND HEARINGS ON TEMPORARY PRELIMINARY DECREES; INCREASING THE TIME LIMIT FOR REQUESTING A HEARING ON A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE; AMENDING SECTIONS 85-2-231 THROUGH 85-2-233 AND 85-2-235, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary Temporary preliminary and preliminary decree. (1) A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE PRIOR TO THE ISSUANCE OF A PRELIMINARY DECREE IF THE TEMPORARY PRELIMINARY DECREE IS NECESSARY FOR THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

(a)(i) the statements of claim before the water judge;

(b)(ii) the data submitted by the department;

(c)(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d)(iv) any additional data obtained by the water judge.

(b) The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible.

(c) This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (5) (1) of this section, or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(2)(3) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(3)(4) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.

(4)(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (3), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

~~(5) In a basin in which adjudication of claims for federal or Indian water rights is precluded by the suspension of adjudication under 85-2-217, the water judge may issue a temporary preliminary decree in accordance with the requirements of this section. The temporary preliminary decree shall address all claims in the basin except those affected by the suspension required by 85-2-217.~~

(6) In issuing a subsequent preliminary decree, the water judge shall use the temporary preliminary decree issued under subsection (5); INCORPORATE THE TEMPORARY PRELIMINARY DECREE FOR THE BASIN AS MODIFIED BY OBJECTIONS AND HEARINGS. [THE TEMPORARY PRELIMINARY DECREE OR

PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS, IS CONCLUSIVE, ENFORCEABLE, AND ADMINISTRABLE ACCORDING TO ITS TERMS AMONG PARTIES ORDERED BY THE WATER JUDGE UNDER 85-2-406.] The preliminary decree, when issued AS MODIFIED AFTER OBJECTIONS AND HEARINGS, shall UPON ISSUANCE supersede and replace the temporary preliminary decree."

Section 2. Section 85-2-232, MCA, is amended to read:

"85-2-232. Availability of temporary preliminary or preliminary decree. (1) The water judge shall send to the department a copy of the any temporary preliminary decree or preliminary decree to the department issued for a subbasin BASIN, and the water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person who has filed a claim of existing right within the decreed subbasin BASIN and to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed subbasin BASIN or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a beneficial

1 ~~water--use~~ permit to beneficially use water within the
 2 decreed subbasin BASIN pursuant to Title 85, chapter 2, part
 3 3, those granted a reservation within the decreed subbasin
 4 BASIN pursuant to 85-2-316, or other interested persons who
 5 request service of the notice from the water judge. The
 6 clerk or person designated by the water judge to mail the
 7 notice shall make a general certificate of mailing
 8 certifying that a copy of the notice has been placed in the
 9 United States mail, postage prepaid, addressed to each party
 10 required to be served notice of the temporary preliminary
 11 decree or preliminary decree. Such certificate shall be
 12 conclusive evidence of due and legal notice of entry of
 13 decree.

14 (2) Notice of the availability of a temporary
 15 preliminary--decree--or preliminary decree must also be
 16 published at least once each week for 3 consecutive weeks in
 17 at least three newspapers of general circulation which in
 18 total cover the water division or divisions in--the--general
 19 stream-basin in which the decreed subbasin BASIN is located.
 20 THIS NOTICE MUST BE PROVIDED BEFORE THE FINAL DECREE FOR THE
 21 BASIN IS ISSUED.

22 ~~(2)(3)~~ Any person may obtain a copy of the temporary
 23 preliminary decree or preliminary decree upon payment of a
 24 fee of \$20 or the cost of printing, whichever is greater, to
 25 the water judge."

1 **Section 3.** Section 85-2-233, MCA, is amended to read:

2 "85-2-233. Hearing on temporary preliminary decree or
 3 preliminary decree. (1) (a) ~~Upon objection to the~~ For good
 4 cause shown, a hearing shall be held before the water judge
 5 on any objection to a temporary preliminary decree or
 6 preliminary decree by:

7 (i) the department;

8 (ii) a person named in the temporary preliminary decree
 9 or preliminary decree; or

10 (iii) any other person--for--good--cause--shown--the
 11 department--or--such-person-is-entitled-to-a-hearing-thereon
 12 before-the-water-judge; within the subbasin BASIN entitled
 13 to receive notice under 85-2-232(1); or

14 (iv) any other person who claims rights to the use of
 15 water from sources in other subbasins BASINS that are
 16 hydrologically connected to the sources within the decreed
 17 subbasin BASIN and who would be entitled to receive notice
 18 under 85-2-232 if his claim or claims were from sources
 19 within the decreed subbasin BASIN.

20 (b) No-objection-seeking--to--reopen--and--review--any
 21 matter--previously--litigated--and-resolved-as-the-result-of
 22 any--previous--objection--process--is--allowed--unless--the
 23 objection--is--by--an--indian--tribe--or-federal-agency--that
 24 commenced negotiations pursuant to 85-2-702 or 85-2-703--at
 25 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 DOES NOT WAIVE THE RIGHT
TO OBJECT TO A PRELIMINARY DECREE BY FAILING TO OBJECT TO A
TEMPORARY PRELIMINARY DECREE. HOWEVER, A PERSON MAY NOT
RAISE AN OBJECTION TO A MATTER IN A PRELIMINARY DECREE IF HE
WAS A PARTY TO THE MATTER PREVIOUSLY LITIGATED AND RESOLVED
AS THE RESULT OF AN OBJECTION RAISED IN A TEMPORARY
PRELIMINARY DECREE.~~

~~[(C) A PERSON WHO HAS RECEIVED NOTICE OF THE
AVAILABILITY OF A TEMPORARY PRELIMINARY DECREE WAIVES THE
RIGHT TO OBJECT TO THE ENFORCEMENT OF THE TEMPORARY
PRELIMINARY DECREE UNDER 85-2-406 IF HE FAILED TO OBJECT TO
A TEMPORARY PRELIMINARY DECREE.]~~

~~(2) If a hearing is requested, such the request must
be filed with the water judge within 90 180 days after
notice-of entry of the temporary preliminary decree or
preliminary decree. The water judge may, for good cause
shown, extend this time limit an up to two additional 90
days 90-day periods if application for the an extension is
made within-90--180--days--after--notice--of--entry--of--the
temporary--preliminary-decree-or-preliminary-decree PRIOR TO
EXPIRATION OF THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION
OF IT.~~

(3) The request for a hearing shall contain a precise

statement of the findings and conclusions in the temporary
preliminary decree or preliminary decree with which the
department or person requesting the hearing disagrees. The
request shall specify the paragraphs and pages containing
the findings and conclusions to which objection is made. The
request shall state the specific grounds and evidence on
which the objections are based.

(4) Upon expiration of the time for filing objections
and upon timely receipt of a request for a hearing, the
water judge shall notify each party named in the temporary
preliminary decree or preliminary decree that a hearing has
been requested. The water judge shall fix a day when all
parties who wish to participate in future proceedings must
appear or file a statement. The water judge shall then set a
date for a hearing. The water judge may conduct individual
or consolidated hearings. A hearing shall be conducted as
for other civil actions. At the order of the water judge a
hearing may be conducted by the water master, who shall
prepare a report of the hearing as provided in M.R.Civ.P.,
Rule 53(e).

(5) Failure to object under subsection (1) to a
compact negotiated and ratified under 85-2-702 or 85-2-703
bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact,
it may declare the compact void. The agency of the United

1 States, the tribe, or the United States on behalf of the
 2 tribe party to the compact shall be permitted 6 months after
 3 the court's determination to file a statement of claim, as
 4 provided in 85-2-224, and the court shall thereafter issue a
 5 new preliminary decree in accordance with 85-2-231;
 6 provided, however, that any party to a compact declared void
 7 may appeal from such determination in accordance with those
 8 procedures applicable to 85-2-235, and the filing of a
 9 notice of appeal shall stay the period for filing a
 10 statement of claim as required under this subsection."

11 **SECTION 4. SECTION 85-2-235, MCA, IS AMENDED TO READ:**

12 "85-2-235. Appeals from final decree. A person whose
 13 existing rights and priorities are determined in the final
 14 decree may appeal the determination only if:

15 (1) he requested a hearing and appeared and entered
 16 objections to the temporary preliminary decree or the
 17 preliminary decree; or

18 (2) his rights or priorities as determined in the
 19 temporary preliminary decree or the preliminary decree were
 20 altered affected as the result of a hearing-requested an
 21 objection filed by another person."

22 **NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF**
 23 **SENATE BILL NO. 166 [LC 684] IS NOT PASSED AND APPROVED, THE**
 24 **BRACKETED LANGUAGE IN [SECTION 1 OF THIS ACT] IS VOID.**

25 **NEW SECTION. Section 6. Severability.** If a part of

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

6 **NEW SECTION. Section 7. 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 684]~~7---Bill-No-7---f6E-6857~~, or Bill No. [LC 686];
 11 or

12 (2) a final determination of failure to receive
 13 passage and approval of Bill No. [LC 684]~~7---Bill-No-7---f6E-6857~~,
 14 ~~f6E-6857~~ or Bill No. [LC 686].

15 **NEW SECTION. Section 8. Applicability.** [This act]
 16 applies to any temporary preliminary decree or preliminary
 17 decree issued on or after [the effective date of this act].

-End-

SENATE BILL NO. 169

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

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN THOSE BASINS IN WHICH ADJUDICATION OF CLAIMS FOR FEDERAL OR INDIAN WATER RIGHTS IS PRECLUDED BY THE SUSPENSION OF ADJUDICATION UNDER 85-2-217 IF THE DECREE IS NECESSARY FOR THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS; PROVIDING FOR OBJECTIONS AND HEARINGS ON TEMPORARY PRELIMINARY DECREES; INCREASING THE TIME LIMIT FOR REQUESTING A HEARING ON A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE; AMENDING SECTIONS 85-2-231 THROUGH 85-2-233 AND 85-2-235, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary Temporary preliminary and preliminary decree. (1) A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE PRIOR TO THE ISSUANCE OF A PRELIMINARY DECREE IF THE TEMPORARY PRELIMINARY DECREE IS NECESSARY FOR THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS.

(2) (a) The water judge shall issue a preliminary

decree. The preliminary decree shall be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible.

(c) This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (5) (1) of this section, or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(3) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(4) The preliminary decree shall contain the



1 information and make the determinations, findings, and
 2 conclusions required for the final decree under 85-2-234.
 3 The water judge shall include in the preliminary decree the
 4 contents of a compact negotiated under the provisions of
 5 part 7 that has been approved by the legislature and the
 6 tribe or federal agency.

7 ~~(4)~~(5) If the water judge is satisfied that the report
 8 of the water master meets the requirements for the
 9 preliminary decree set forth in subsections (1) and (3), and
 10 is satisfied with the conclusions contained in the report,
 11 the water judge shall adopt the report as the preliminary
 12 decree. If the water judge is not so satisfied, he may, at
 13 his option, recommit the report to the master with
 14 instructions, or modify the report and issue the preliminary
 15 decree.

16 ~~(5)--in--a--basin--in--which--adjudication--of--claims--for~~
 17 ~~federal--or--Indian--water--rights--is--precluded--by--the~~
 18 ~~suspension--of--adjudication--under--85-2-217,--the--water--judge~~
 19 ~~may--issue--a--temporary--preliminary--decree--in--accordance--with~~
 20 ~~the--requirements--of--this--section. The temporary preliminary~~
 21 ~~decree shall address all claims in the basin except those~~
 22 ~~affected by the suspension required by 85-2-217.~~

23 (6) In issuing a subsequent preliminary decree, the
 24 water judge shall ~~use--the--temporary--preliminary--decree~~
 25 ~~issued--under--subsection--(5):~~ INCORPORATE THE TEMPORARY

1 PRELIMINARY DECREE FOR THE BASIN AS MODIFIED BY OBJECTIONS
 2 AND HEARINGS. [THE TEMPORARY PRELIMINARY DECREE OR
 3 PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND
 4 HEARINGS, IS CONCLUSIVE, ENFORCEABLE, AND ADMINISTRABLE
 5 ACCORDING TO ITS TERMS AMONG PARTIES ORDERED BY THE WATER
 6 JUDGE UNDER 85-2-406.] The preliminary decree, when-issued
 7 AS MODIFIED AFTER OBJECTIONS AND HEARINGS, shall UPON
 8 ISSUANCE supersede and replace the temporary preliminary
 9 decree."

10 **Section 2.** Section 85-2-232, MCA, is amended to read:

11 **"85-2-232. Availability of temporary preliminary or**
 12 **preliminary decree.** (1) The water judge shall send to the
 13 department a copy of the any temporary preliminary decree or
 14 preliminary decree to-the-department issued for a subbasin
 15 BASIN, and the water judge shall serve by mail a notice of
 16 availability of the temporary preliminary decree or
 17 preliminary decree to each person who has filed a claim of
 18 existing right within the decreed subbasin BASIN and to the
 19 purchaser under contract for deed, as defined in 70-20-115,
 20 of property in connection with which a claim of existing
 21 right has been filed within the decreed subbasin BASIN or,
 22 in the Powder River Basin, to each person who has filed a
 23 declaration of an existing right. The water judge shall
 24 enclose with the notice an abstract of the disposition of
 25 such person's claimed or declared existing right. The notice

of availability shall also be served upon those issued or having applied for and not having been denied a beneficial water-use permit to beneficially use water within the decreed subbasin BASIN pursuant to Title 85, chapter 2, part 3, those granted a reservation within the decreed subbasin BASIN pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the temporary preliminary decree or preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(2) Notice of the availability of a temporary preliminary--decree--or preliminary 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. THIS NOTICE MUST BE PROVIDED BEFORE THE FINAL DECREE FOR THE BASIN IS ISSUED.

(2)(3) Any person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a

fee of \$20 or the cost of printing, whichever is greater, to the water judge."

Section 3. Section 85-2-233, MCA, is amended to read:

"85-2-233. Hearing on temporary preliminary decree or preliminary decree. (1) (a) Upon objection-to-the For good cause shown, a hearing shall be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree; or

(iii) any other person--for--good--cause--shown--the department-or-such-person-is-entitled-to-a--hearing--thereon before--the--water-judge; within the subbasin BASIN entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other subbasins BASINS that are hydrologically connected to the sources within the decreed subbasin BASIN and who would be entitled to receive notice under 85-2-232 if his claim or claims were from sources within the decreed subbasin BASIN.

(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

1 ~~commenced negotiations pursuant to 85-2-702 or 85-2-703 at~~
 2 ~~the time the matter was litigated. A tribe or federal agency~~
 3 ~~that commenced negotiations at the time the matter was~~
 4 ~~litigated is entitled to the benefits of the suspension~~
 5 ~~provided under 85-2-217. A PERSON DOES NOT WAIVE THE RIGHT~~
 6 ~~TO OBJECT TO A PRELIMINARY DECREE BY FAILING TO OBJECT TO A~~
 7 ~~TEMPORARY PRELIMINARY DECREE. HOWEVER, A PERSON MAY NOT~~
 8 ~~RAISE AN OBJECTION TO A MATTER IN A PRELIMINARY DECREE IF HE~~
 9 ~~WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY~~
 10 ~~LITIGATED AND RESOLVED AS THE RESULT OF AN OBJECTION RAISED~~
 11 ~~IN A TEMPORARY PRELIMINARY DECREE.~~

12 [(C) A PERSON WHO HAS RECEIVED NOTICE OF THE
 13 AVAILABILITY OF A TEMPORARY PRELIMINARY DECREE WAIVES THE
 14 RIGHT TO OBJECT TO THE ENFORCEMENT OF THE TEMPORARY
 15 PRELIMINARY DECREE UNDER 85-2-406 IF HE FAILED TO OBJECT TO
 16 A TEMPORARY PRELIMINARY DECREE.]

17 (2) If a hearing is requested, such the request must
 18 be filed with the water judge within 90 180 days after
 19 ~~notice of~~ entry of the temporary preliminary decree or
 20 preliminary decree. The water judge may, for good cause
 21 shown, extend this time limit an up to two additional 90
 22 days 90-day periods if application for the an extension is
 23 ~~made within 90 180 days after notice of entry of the~~
 24 temporary preliminary decree or preliminary decree PRIOR TO
 25 EXPIRATION OF THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION

1 OF IT.

2 (3) The request for a hearing shall contain a precise
 3 statement of the findings and conclusions in the temporary
 4 preliminary decree or preliminary decree with which the
 5 department or person requesting the hearing disagrees. The
 6 request shall specify the paragraphs and pages containing
 7 the findings and conclusions to which objection is made. The
 8 request shall state the specific grounds and evidence on
 9 which the objections are based.

10 (4) Upon expiration of the time for filing objections
 11 and upon timely receipt of a request for a hearing, the
 12 water judge shall notify each party named in the temporary
 13 preliminary decree or preliminary decree that a hearing has
 14 been requested. The water judge shall fix a day when all
 15 parties who wish to participate in future proceedings must
 16 appear or file a statement. The water judge shall then set a
 17 date for a hearing. The water judge may conduct individual
 18 or consolidated hearings. A hearing shall be conducted as
 19 for other civil actions. At the order of the water judge a
 20 hearing may be conducted by the water master, who shall
 21 prepare a report of the hearing as provided in M.R.Civ.P.,
 22 Rule 53(e).

23 (5) Failure to object under subsection (1) to a
 24 compact negotiated and ratified under 85-2-702 or 85-2-703
 25 bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

SECTION 4. SECTION 85-2-235, MCA, IS AMENDED TO READ:

"85-2-235. Appeals from final decree. A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; or

(2) his rights or priorities as determined in the temporary preliminary decree or the preliminary decree were altered affected as the result of a--hearing--requested an objection filed by another person."

NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF SENATE BILL NO. 166 [LC 684] IS NOT PASSED AND APPROVED, THE

BRACKETED LANGUAGE IN [SECTION 1 OF THIS ACT] IS VOID.

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

(1) passage and approval of [this act], Bill No. [LC 684], ~~Bill No.~~ ~~{bE-685}~~, or Bill No. [LC 686]; or

(2) a final determination of failure to receive passage and approval of Bill No. [LC 684], ~~Bill No.~~ ~~{bE-685}~~, or Bill No. [LC 686].

NEW SECTION. Section 8. Applicability. [This act] applies to any temporary preliminary decree or preliminary decree issued on or after [the effective date of this act].

-End-

STANDING COMMITTEE REPORT

March 20, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 169 (third reading copy -- blue) be concurred in
as amended.

Signed: 
Dave Brown, Chairman

And, that such amendments read:

1. Page 7, lines 7 through 16.
Strike: "HOWEVER," on line 7 through end of line 16

HOUSE
SB 169

COMMITTEE OF THE WHOLE AMENDMENT
SENATE BILL 169
Representative Gary Spaeth

March 27, 1989 1:35 pm
Page 1 of 1

Mr. Chairman: I move to amend SENATE BILL 169 (third reading copy -- blue).

Signed: 
Representative Gary Spaeth

And, that such amendments to SENATE BILL 169 read as follows:

1. Page 4, line 4.

Strike: "CONCLUSIVE"

Following: "ENFORCEABLE"

Strike: "L"

2. Page 4, lines 5 and 6.

Strike: "BY THE WATER JUDGE"

3. Page 7.

Following: "DECREE." on line 7

Strike: remainder of line 7 through end of line 11.

Insert: " However, a person may not raise an objection to a matter in a preliminary decree if he was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree, 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; or

(v) any other reason justifying relief from the operation of the judgment."

ADOPT

REJECT

SB 169
HOUSE

SENATE BILL NO. 169

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

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN THOSE BASINS IN WHICH ADJUDICATION OF CLAIMS FOR FEDERAL OR INDIAN WATER RIGHTS IS PRECLUDED BY THE SUSPENSION OF ADJUDICATION UNDER 85-2-217 IF THE DECREE IS NECESSARY FOR THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS; PROVIDING FOR OBJECTIONS AND HEARINGS ON TEMPORARY PRELIMINARY DECREES; INCREASING THE TIME LIMIT FOR REQUESTING A HEARING ON A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE; AMENDING SECTIONS 85-2-231 THROUGH 85-2-233 AND 85-2-235, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 85-2-231, MCA, is amended to read:

"85-2-231. Preliminary Temporary preliminary and preliminary decree. (1) A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE PRIOR TO THE ISSUANCE OF A PRELIMINARY DECREE IF THE TEMPORARY PRELIMINARY DECREE IS NECESSARY FOR THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS.

(2) (a) The water judge shall issue a preliminary

decree. The preliminary decree shall be based on:

(a)(i) the statements of claim before the water judge;

(b)(ii) the data submitted by the department;

(c)(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(d)(iv) any additional data obtained by the water judge.

(b) The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible.

(c) This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (5) (1) of this section, or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

(2)(3) A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

(3)(4) The preliminary decree shall contain the

1 information and make the determinations, findings, and
2 conclusions required for the final decree under 85-2-234.
3 The water judge shall include in the preliminary decree the
4 contents of a compact negotiated under the provisions of
5 part 7 that has been approved by the legislature and the
6 tribe or federal agency.

7 ~~(4)~~(5) If the water judge is satisfied that the report
8 of the water master meets the requirements for the
9 preliminary decree set forth in subsections (1) and (3), and
10 is satisfied with the conclusions contained in the report,
11 the water judge shall adopt the report as the preliminary
12 decree. If the water judge is not so satisfied, he may, at
13 his option, recommit the report to the master with
14 instructions, or modify the report and issue the preliminary
15 decree.

16 ~~(5) In a basin in which adjudication of claims for~~
17 ~~federal or Indian water rights is precluded by the~~
18 ~~suspension of adjudication under 85-2-217, the water judge~~
19 ~~may issue a temporary preliminary decree in accordance with~~
20 ~~the requirements of this section. The temporary preliminary~~
21 ~~decree shall address all claims in the basin except those~~
22 ~~affected by the suspension required by 85-2-217.~~

23 (6) In issuing a subsequent preliminary decree, the
24 water judge shall ~~use the temporary preliminary decree~~
25 ~~issued under subsection (5).~~ INCORPORATE THE TEMPORARY

1 PRELIMINARY DECREE FOR THE BASIN AS MODIFIED BY OBJECTIONS
2 AND HEARINGS. [THE TEMPORARY PRELIMINARY DECREE OR
3 PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND
4 HEARINGS, IS CONCLUSIVE, ENFORCEABLE, AND ADMINISTRABLE
5 ACCORDING TO ITS TERMS AMONG PARTIES ORDERED BY--THE--WATER
6 JUDGE UNDER 85-2-406.] The preliminary decree, when issued
7 AS MODIFIED AFTER OBJECTIONS AND HEARINGS, shall UPON
8 ISSUANCE supersede and replace the temporary preliminary
9 decree."

10 **Section 2.** Section 85-2-232, MCA, is amended to read:

11 "85-2-232. Availability of temporary preliminary or
12 preliminary decree. (1) The water judge shall send to the
13 department a copy of the any temporary preliminary decree or
14 preliminary decree to the department issued for a subbasin
15 BASIN, and the water judge shall serve by mail a notice of
16 availability of the temporary preliminary decree or
17 preliminary decree to each person who has filed a claim of
18 existing right within the decreed subbasin BASIN and to the
19 purchaser under contract for deed, as defined in 70-20-115,
20 of property in connection with which a claim of existing
21 right has been filed within the decreed subbasin BASIN or,
22 in the Powder River Basin, to each person who has filed a
23 declaration of an existing right. The water judge shall
24 enclose with the notice an abstract of the disposition of
25 such person's claimed or declared existing right. The notice

1 of availability shall also be served upon those issued or
 2 having applied for and not having been denied a beneficial
 3 water-use permit to beneficially use water within the
 4 decree subbasin BASIN pursuant to Title 85, chapter 2, part
 5 3, those granted a reservation within the decree subbasin
 6 BASIN pursuant to 85-2-316, or other interested persons who
 7 request service of the notice from the water judge. The
 8 clerk or person designated by the water judge to mail the
 9 notice shall make a general certificate of mailing
 10 certifying that a copy of the notice has been placed in the
 11 United States mail, postage prepaid, addressed to each party
 12 required to be served notice of the temporary preliminary
 13 decree or preliminary decree. Such certificate shall be
 14 conclusive evidence of due and legal notice of entry of
 15 decree.

16 (2) Notice of the availability of a temporary
 17 preliminary--decree--or preliminary decree must also be
 18 published at least once each week for 3 consecutive weeks in
 19 at least three newspapers of general circulation which in
 20 total cover the water division or divisions in-the-general
 21 stream-basin in which the decree subbasin BASIN is located.
 22 THIS NOTICE MUST BE PROVIDED BEFORE THE FINAL DECREE FOR THE
 23 BASIN IS ISSUED.

24 (2)(3) Any person may obtain a copy of the temporary
 25 preliminary decree or preliminary decree upon payment of a

1 fee of \$20 or the cost of printing, whichever is greater, to
 2 the water judge."

3 **Section 3.** Section 85-2-233, MCA, is amended to read:

4 "85-2-233. Hearing on temporary preliminary decree or
 5 preliminary decree. (1) (a) Upon objection-to-the For good
 6 cause shown, a hearing shall be held before the water judge
 7 on any objection to a temporary preliminary decree or
 8 preliminary decree by:

9 (i) the department;

10 (ii) a person named in the temporary preliminary decree
 11 or preliminary decree; or

12 (iii) any other person--for--good--cause--shown--the
 13 department--or--such--person--is--entitled--to--a--hearing--thereon
 14 before--the--water--judge--within the subbasin BASIN entitled
 15 to receive notice under 85-2-232(1); or

16 (iv) any other person who claims rights to the use of
 17 water from sources in other subbasins BASINS that are
 18 hydrologically connected to the sources within the decree
 19 subbasin BASIN and who would be entitled to receive notice
 20 under 85-2-232 if his claim or claims were from sources
 21 within the decree subbasin BASIN.

22 (b) No--objection--seeking--to--reopen--and--review--any
 23 matter--previously--litigated--and--resolved--as--the--result--of
 24 any--previous--objection--process--is--allowed;--unless--the
 25 objection--is--by--an--Indian--tribe--or--federal--agency--that

1 commenced--negotiations--pursuant-to-85-2-702-or-85-2-703-at
 2 the-time-the-matter-was-litigated;-A-tribe-or-federal-agency
 3 that-commenced-negotiations--at--the--time--the--matter--was
 4 litigated--is--entitled--to--the--benefits-of-the-suspension
 5 provided-under-85-2-217. A PERSON DOES NOT WAIVE THE RIGHT
 6 TO OBJECT TO A PRELIMINARY DECREE BY FAILING TO OBJECT TO A
 7 TEMPORARY PRELIMINARY DECREE. HOWEVER,--A--PERSON--MAY--NOT
 8 RAISE-AN-OBJECTION-TO-A-MATTER-IN-A-PRELIMINARY-DECREE-IF-HE
 9 WAS--A--PARTY--TO--THE-MATTER-WHEN-THE-MATTER-WAS-PREVIOUSLY
 10 LITIGATED-AND-RESOLVED-AS-THE-RESULT-OF-AN-OBJECTION--RAISED
 11 IN-A-TEMPORARY-PRELIMINARY-DECREE;

12 {(C)}--A--PERSON---WHO---HAS--RECEIVED--NOTICE--OF--THE
 13 AVAILABILITY-OF-A-TEMPORARY-PRELIMINARY--DECREE--WAIVES--THE
 14 RIGHT---TO--OBJECT--TO--THE--ENFORCEMENT--OF--THE--TEMPORARY
 15 PRELIMINARY-DECREE-UNDER-85-2-406-IF-HE-FAILED-TO-OBJECT--TO
 16 A--TEMPORARY--PRELIMINARY-DECREE.} HOWEVER, A PERSON MAY NOT
 17 RAISE AN OBJECTION TO A MATTER IN A PRELIMINARY DECREE IF HE
 18 WAS A PARTY TO THE MATTER WHEN THE MATTER WAS PREVIOUSLY
 19 LITIGATED AND RESOLVED AS THE RESULT OF AN OBJECTION RAISED
 20 IN A TEMPORARY PRELIMINARY DECREE, UNLESS THE OBJECTION IS
 21 ALLOWED FOR ANY OF THE FOLLOWING REASONS:

22 (I) MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE
 23 NEGLECT;

24 (II) NEWLY DISCOVERED EVIDENCE THAT BY DUE DILIGENCE
 25 COULD NOT HAVE BEEN DISCOVERED IN TIME TO MOVE FOR A NEW

1 TRIAL UNDER RULE 59(B) MONTANA RULES OF CIVIL PROCEDURE;

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

4 (IV) THE JUDGMENT IS VOID; OR

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

7 (2) If a hearing is requested, such the request must
 8 be filed with the water judge within 90 180 days after
 9 notice of entry of the temporary preliminary decree or
 10 preliminary decree. The water judge may, for good cause
 11 shown, extend this time limit an up to two additional 90
 12 days 90-day periods if application for the an extension is
 13 made within-90--180--days--after--notice--of--entry--of--the
 14 temporary--preliminary-decree-or-preliminary-decree PRIOR TO
 15 EXPIRATION OF THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION
 16 OF IT.

17 (3) The request for a hearing shall contain a precise
 18 statement of the findings and conclusions in the temporary
 19 preliminary decree or preliminary decree with which the
 20 department or person requesting the hearing disagrees. The
 21 request shall specify the paragraphs and pages containing
 22 the findings and conclusions to which objection is made. The
 23 request shall state the specific grounds and evidence on
 24 which the objections are based.

25 (4) Upon expiration of the time for filing objections

and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the temporary preliminary decree or preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a

notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

SECTION 4. SECTION 85-2-235, MCA, IS AMENDED TO READ:

"85-2-235. Appeals from final decree. A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; or

(2) his rights or priorities as determined in the temporary preliminary decree or the preliminary decree were altered affected as the result of a hearing requested an objection filed by another person."

NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. IF SENATE BILL NO. 166 [LC 684] IS NOT PASSED AND APPROVED, THE BRACKETED LANGUAGE IN [SECTION 1 OF THIS ACT] IS VOID.

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

1 (1) passage and approval of [this act], __Bill No.__
2 [LC 684]~~7---Bill No.---{LE-685}7~~ or __Bill No.__ [LC 686];
3 or

4 (2) a final determination of failure to receive
5 passage and approval of __Bill No.__ [LC 684]~~7---Bill No.---{LE-685}7~~ or __Bill No.__ [LC 686].

7 NEW SECTION. Section 8. Applicability. [This act]
8 applies to any temporary preliminary decree or preliminary
9 decree issued on or after [the effective date of this act].

-End-