SENATE BILL NO. 169

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 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

FEBRUARY 20, 1989

FEBRUARY 27, 1989

MARCH 21, 1989

MARCH 27, 1989

MARCH 29, 1989

FIRST READING.

ON MOTION, TAKEN FROM AGRICULTURE AND REREFERRED TO COMMITTEE ON JUDICIARY.

INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.

COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

SECOND READING, CONCURRED IN AS AMENDED.

THIRD READING, CONCURRED IN. AYES, 75; NOES, 21.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

-

APRIL 4, 1989

APRIL 6, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC. 0683/01

E BILL NO. 1 Sta INTRODUCED BY Sun The 2 3 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

Nontana Legislative Council

1 Indian reserved rights; and

2 (d)(iv) any additional data obtained by the water 3 judge.

(b) The preliminary decree shall be issued within 90 4 days after the close of the special filing period set out in 5 85-2-702(3) or as soon thereafter as is reasonably feasible. 6 (c) This section does not prevent the water judge from 7 issuing an interlocutory decree or other temporary decree, 8 pursuant to 85-2-321 or as provided in subsection (5) of 9 this section, or if such a decree is otherwise necessary for 10 the orderly administration of water rights prior to the 11 issuance of a preliminary decree. 12

(2) 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.

decree shall contain the (3) The preliminary 19 information and make the determinations, findings, and 20 conclusions required for the final decree under 85-2-234. 21 The water judge shall include in the preliminary decree the 22 contents of a compact negotiated under the provisions of 23 part 7 that has been approved by the legislature and the 24 tribe or federal agency. 25

-2-

INTRODUCED BILL

S.R 169

LC 0683/01

1 (4) If the water judge is satisfied that the report of 2 the water master meets the requirements for the preliminary decree set forth in subsections (1) and $(3)_7$ and is 3 satisfied with the conclusions contained in the report, the 4 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."

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

LC 0683/01

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

3 (2) Notice of the availability of a temporary 4 preliminary decree or preliminary decree must also be 5 published at least once each week for 3 consecutive weeks in 6 at least three newspapers of general circulation which in 7 total cover the water division or divisions in the general 8 stream basin in which the decreed subbasin is located.

9 (2)(3) Any person may obtain a copy of the temporary
10 preliminary decree or preliminary decree upon payment of a
11 fee of \$20 or the cost of printing, whichever is greater, to
12 the water judge."

13 Section 3. Section 85-2-233, MCA, is amended to read: 14 "85-2-233. Hearing on temporary preliminary decree or 15 preliminary decree. (1) (a) Hpon-objection-to-the For good 16 cause shown, a hearing shall be held before the water judge 17 on any objection to a temporary preliminary decree or 18 preliminary decree by:

19 (i) the department;

1 2

20 (ii) a person named in the temporary preliminary decree
21 or preliminary decree₇; or

<u>(iii)</u> any other person₇--for--good--cause--shown₇-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

1	(iv) any other person who claims rights to the use of
2	water from sources in other subbasins that are
3	hydrologically connected to the sources within the decreed
4	subbasin and who would be entitled to receive notice under
5	85-2-232 if his claim or claims were from sources within the
6	decreed subbasin.
7	(b) No objection seeking to reopen and review any
8	matter previously litigated and resolved as the result of
9	any previous objection process is allowed, unless the
10	objection is by an Indian tribe or federal agency that
11	commenced negotiations pursuant to 85-2-702 or 85-2-703 at
12	the time the matter was litigated. A tribe or federal agency
13	that commenced negotiations at the time the matter was
14	litigated is entitled to the benefits of the suspension
15	provided under 85-2-217.
16	(2) If a hearing is requested, such the request must
17	be filed with the water judge within 90 180 days after
18	noticeof entry of the temporary preliminary decree or
19	preliminary decree. The water judge may, for good cause
20	shown, ext end this time limit an <u>up to two</u> additional 90
21	days <u>90-day periods</u> if application for the <u>an</u> extension is
22	made within 90 180 days after notice of entry of the
23	temporary preliminary decree or preliminary decree.
24	(2) The request for a hearing shall contain a provise

24 (3) The request for a hearing shall contain a precise25 statement of the findings and conclusions in the <u>temporary</u>

~5-

-6-

LC 0683/01

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.

7 (4) Upon expiration of the time for filing objections 8 and upon timely receipt of a request for a hearing, the 9 water judge shall notify each party named in the temporary 10 preliminary decree or preliminary decree that a hearing has 11 been requested. The water judge shall fix a day when all 12 parties who wish to participate in future proceedings must 13 appear or file a statement. The water judge shall then set a 14 date for a hearing. The water judge may conduct individual 15 or consolidated hearings. A hearing shall be conducted as 16 for other civil actions. At the order of the water judge a 17 hearing may be conducted by the water master, who shall 18 prepare a report of the hearing as provided in M.R.Civ.P., 19 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.

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

. . . **. . .**

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

LC 0683/01

10 <u>NEW SECTION.</u> Section 4. Severability. If a part of 11 [this act] is invalid, all valid parts that are severable 12 from the invalid part remain in effect. If a part of [this 13 act] is invalid in one or more of its applications, the part 14 remains in effect in all valid applications that are 15 severable from the invalid applications.

16 <u>NEW SECTION.</u> Section 5. Effective date. [This act] is
17 effective on the latest date on which any of the following
18 occur:

19 (1) passage and approval of [this act], __Bill No.__ 20 [LC 684], __Bill No.__ [LC 685], or __Bill No.__ [LC 686]; 21 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].

25 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, BUDGET DIRECTOR DATE OFFICE OF BUDGET AND PROGRAM PLANNING

SPONSOR DATE

Fiscal Note for SB169, as introduced

51st Legislature

SB 0169/02

1

APPROVED BY COMMITTEE On Agriculture Livestock & Irrigation

1	SENATE BILL NO. 169
2	INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ, SPAETH,
3	MARKS, BRADLEY, IVERSON
4	
s	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER
6	JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN THOSE
7	BASINS IN WHICH ADJUDICATION OF CLAIMS FOR FEDERAL OR INDIAN
8	WATER RIGHTS IS PRECLUDED BY THE SUSPENSION OF ADJUDICATION
9	UNDER 85-2-217; PROVIDING FOR OBJECTIONS AND HEARINGS ON
10	TEMPORARY PRELIMINARY DECREES; INCREASING THE TIME LIMIT FOR
11	REQUESTING A HEARING ON A TEMPORARY PRELIMINARY DECREE OR A
12	PRELIMINARY DECREE; AMENDING SECTIONS 85-2-231 THROUGH
13	85-2-233 AND 85-2-235, MCA; AND PROVIDING AN EFFECTIVE DATE
14	AND AN APPLICABILITY DATE."
15	
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 85-2-231, MCA, is amended to read: "85-2-231. Preliminary Temporary preliminary and 18 preliminary decree. (1) A WATER JUDGE MAY ISSUE A TEMPORARY 19 20 PRELIMINARY DECREE PRIOR TO THE ISSUANCE OF A PRELIMINARY DECREE IF THE TEMPORARY PRELIMINARY DECREE IS NECESSARY FOR 21 THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS. 22 (1)(2) (a) The water judge shall issue a preliminary 23 24 decree. The preliminary decree shall be based on: (a)(i) the statements of claim before the water judge; 25

Montana Legislative Counci

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

2 (c)(iii) the contents of compacts approved by the 3 Montana legislature and the tribe or federal agency or, 4 lacking an approved compact, the filings for federal and 5 Indian reserved rights; and

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

8 (b) The preliminary decree shall be issued within 90 9 days after the close of the special filing period set out in 10 85-2-702(3) or as soon thereafter as is reasonably feasible. 11 (c) This section does not prevent the water judge from 12 issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 or as provided in subsection (5) (1) of 13 14 this section, or if such a decree is otherwise necessary for 15 the orderly administration of water rights prior to the issuance of a preliminary decree. 16 17 (2)(3) A preliminary decree may be issued for any 18 hydrologically interrelated portion of a water division, 19 including but not limited to a basin, subbasin, drainage,

20 subdrainage, stream, or single source of supply of water, at 21 a time different from the issuance of other preliminary 22 decrees or portions of the same decree.

23 (3)(4) The preliminary decree shall contain the 24 information and make the determinations, findings, and 25 conclusions required for the final decree under 85~2-234.

-2-

SB 169 SECOND READING

SB 169

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.

5 (4)(5) If the water judge is satisfied that the report 6 of the water master meets the requirements for the 7 preliminary decree set forth in subsections (1) and $(3)_7$ and 8 is satisfied with the conclusions contained in the report. the water judge shall adopt the report as the preliminary 9 10 decree. If the water judge is not so satisfied, he may, at 11 his option, recommit the report to the master with 12 instructions, or modify the report and issue the preliminary 13 decree.

14 (5)--In-a-basin-in-which--adjudication--of--claims--for 15 federal---or---Indian--water--rights--is--precluded--by--the 16 suspension-of-adjudication-under-85-2-2177-the--water--judge 17 may--issue-a-temporary-preliminary-decree-in-accordance-with 18 the-requirements-of-this-section--The-temporary--preliminary 19 decree--shall--address--all-claims-in-the-basin-except-those 20 affected-by-the-suspension-required-by-85-2-217+ 21 (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

-3-

DECREE, AS MODIFIED AFTER OBJECTIONS AND 1 PRELIMINARY HEARINGS, IS CONCLUSIVE, ENFORCEABLE, AND ADMINISTRABLE 2 ACCORDING TO ITS TERMS AMONG PARTIES ORDERED BY THE WATER 3 4 JUDGE UNDER 85-2-406.] The preliminary decree, when--issued 5 AS MODIFIED AFTER OBJECTIONS AND HEARINGS, shall UPON ISSUANCE supersede and replace the temporary preliminary 6 7 decree." Section 2. Section 85-2-232, MCA, is amended to read: 8 "85-2-232. Availability of temporary preliminary or 9 preliminary decree. (1) The water judge shall send to the 10 11 department a copy of the any temporary preliminary decree or 12 preliminary decree to-the-department issued for a subbasin BASIN, and the water judge shall serve by mail a notice of 13 availability of the temporary preliminary decree or 14 preliminary decree to each person who has filed a claim of 15 16 existing right within the decreed subbasin BASIN and to the 17 purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing 18 right has been filed within the decreed subbasin BASIN or, 19 20 in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall 21 22 enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice 23 of availability shall also be served upon those issued or 24 having applied for and not having been denied a beneficial 25

ware durant of the second department of the second of the second frequence of the second of

-4-

SB 169

SB 0169/02

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

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

(2) (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."

~5-

SB 169

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	<u>(i)</u> the department;
8	(ii) a person named in the temporary preliminary decree
9	or preliminary decree <u>;</u> or
10	(iii) any other person;forgoodcauseshown;the
11	department-orsuch-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 subbasing 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-seekingtoreopenandreviewany
21	matterpreviouslylitigatedand-resolved-as-the-result-of
22	anypreviousobjectionprocessisallowed7unlessthe
23	objectionisbyanIndiantribeor-federal-agency-that
24	commenced-negotiations-pursuant-to-85-2-702-or85-2-703at
25	the-time-the-matter-waa-litigatedA-tribe-or-federal-agency

-6-

1 that--commenced--negotiations--at--the--time--the-matter-was litigated-is-entitled-to--the--benefits--of--the--suspension 2 3 provided--under--85-2-217- A PERSON DOES NOT WAIVE THE RIGHT 4 TO OBJECT TO A PRELIMINARY DECREE BY FAILING TO OBJECT TO A 5 TEMPORARY PRELIMINARY DECREE. HOWEVER, A PERSON MAY NOT 6 RAISE AN OBJECTION TO A MATTER IN A PRELIMINARY DECREE IF HE WAS A PARTY TO THE MATTER PREVIOUSLY LITIGATED AND RESOLVED 7 AS THE RESULT OF AN OBJECTION RAISED IN A TEMPORARY 8 9 PRELIMINARY DECREE. 10 [(C) A PERSON WHO HAS RECEIVED NOTICE OF THE 11 AVAILABILITY OF A TEMPORARY PRELIMINARY DECREE WAIVES THE 12 RIGHT TO OBJECT TO THE ENFORCEMENT OF THE TEMPORARY 13 PRELIMINARY DECREE UNDER 85-2-406 IF HE FAILED TO OBJECT TO A TEMPORARY PRELIMINARY DECREE.] 14 15 (2) If a hearing is requested, such the request must 16 be filed with the water judge within 90 180 days after 17 notice-of entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause 18 19 shown, extend this time limit an up to two additional 90 20 days 90-day periods if application for the an extension is 21 made within-90--180--days--after--notice--of--entry--of--the 22 temporary--preliminary-decree-or-preliminary-decree PRIOR TO 23 EXPIRATION OF THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION 24 OF IT. 25 (3) The request for a hearing shall contain a precise

SB 0169/02

statement of the findings and conclusions in the <u>temporary</u> <u>preliminary decree or</u> 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 8 and upon timely receipt of a request for a hearing, the 9 water judge shall notify each party named in the temporary 10 preliminary decree or preliminary decree that a hearing has 11 been requested. The water judge shall fix a day when all 12 parties who wish to participate in future proceedings must 13 appear or file a statement. The water judge shall then set a 14 date for a hearing. The water judge may conduct individual 15 or consolidated hearings. A hearing shall be conducted as 16 for other civil actions. At the order of the water judge a 17 hearing may be conducted by the water master, who shall 18 prepare a report of the hearing as provided in M.R.Civ.P., 19 Rule 53(e). 20

(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

-8-

-7-

SB 169

SB 169

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

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 <u>the temporary preliminary decree</u> 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."

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.

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

-9-

[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.

6 <u>NEW SECTION.</u> 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----{bE-685}7 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-Nor_-14 fbe-685]7 or Bill No._ [LC 686].

15 <u>NEW SECTION.</u> 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-

-10-

decree. The preliminary decree shall be based on: SENATE BILL NO. 169 1 1 (a)(i) the statements of claim before the water judge; 2 INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ, SPAETH, 2 tb;(ii) the data submitted by the department; 3 MARKS, BRADLEY, IVERSON 3 4 (c)(iii) the contents of compacts approved by the 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER Montana legislature and the tribe or federal agency or, 5 lacking an approved compact, the filings for federal and 6 JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN-THOSE 6 7 BASING-IN-WHICH-ADJUDICATION-OF-CLAIMS-FOR-FEDERAL-OR-INDIAN 7 Indian reserved rights; and (d)(iv) any additional data obtained by the water 8 WATER-RIGHTS-IS-PRECEUDED-BY-THE-SUSPENSION-OP--ADJUDICATION 8 UNBER--85-2-217 IF THE DECREE IS NECESSARY FOR THE ORDERLY 9 9 judge. (b) The preliminary decree shall be issued within 90 10 ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS; PROVIDING 10 OBJECTIONS AND HEARINGS ON TEMPORARY PRELIMINARY 11 FOR days after the close of the special filing period set out in 11 DECREES: INCREASING THE TIME LIMIT FOR REQUESTING A HEARING 12 85-2-702(3) or as soon thereafter as is reasonably feasible. 12 13 ON A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE; (c) This section does not prevent the water judge from 13 AMENDING SECTIONS 85-2-231 THROUGH 85-2-233 AND 85-2-235, issuing an interlocutory decree or other temporary decree, 14 14 MCA: AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY 15 pursuant to 85-2-321 or as provided in subsection (5) (1) of 15 16 DATE." this section, or if such a decree is otherwise necessary for 16 the orderly administration of water rights prior to the 17 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 18 issuance of a preliminary decree. 18 (2) (3) A preliminary decree may be issued for any 19 Section 1. Section 85-2-231, MCA, is amended to read: 19 hydrologically interrelated portion of a water division, 20 *85-2-231. Preliminary Temporary preliminary and 20 including but not limited to a basin, subbasin, drainage, 21 preliminary decree. (1) A WATER JUDGE MAY ISSUE A TEMPORARY 21 subdrainage, stream, or single source of supply of water, at 22 22 PRELIMINARY DECREE PRIOR TO THE ISSUANCE OF A PRELIMINARY a time different from the issuance of other preliminary 23 DECREE IF THE TEMPORARY PRELIMINARY DECREE IS NECESSARY FOR 23 decrees or portions of the same decree. THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS. 24 24 (3)(4) The preliminary decree shall 25 contain 25 (1)(2) (a) The water judge shall issue a preliminary



SB 169 THIRD READING AS AMENDED

-2-

the

1

25

SB 169

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.

7 f4+(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 $(3)_7$ and is satisfied with the conclusions contained in the report, 10 11 the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at 12 13 his option, recommit the report to the master with instructions, or modify the report and issue the preliminary 14 decree. 15

+5}--in--a--basin--in--which-adjudication-of-claims-for 16 federal--or--Indian--water--rights--is--precluded---by---the 17 18 suspension--of--adjudication-under-85-2-2177-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

-3-

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 ISSUANCE supersede and replace the temporary preliminary 8 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 declaration of an existing right. The water judge shall 23 enclose with the notice an abstract of the disposition of 24

PRELIMINARY DECREE FOR THE BASIN AS MODIFIED BY OBJECTIONS

-4-

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 decreed subbasin BASIN pursuant to Title 85, chapter 2, part 5 3, those granted a reservation within the decreed subbasin BASIN pursuant to 85-2-316, or other interested persons who 6 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 United States mail, postage prepaid, addressed to each party 11 required to be served notice of the temporary preliminary 12 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 at least three newspapers of general circulation which in 19 20 total cover the water division or divisions in-the-general 21 stream-basin in which the decreed 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 <u>preliminary decree or preliminary decree upon payment of a</u>

-5-

SB 169

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	<u>or</u> preliminary decree <u>7;</u> or
12	(iii) any other personforgoodcauseshownthe
13	department-or-such-person-is-entitled-to-ahearingthereon
14	beforethewater-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 subbasing BASINS that are
18	hydrologically connected to the sources within the decreed
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 decreed subbasin BASIN.
22	(b) Noobjectionseekingtoreopenand-review-any
23	matter-previously-litigated-and-resolved-astheresultof
24	anypreviousobjectionprocessisallowed7unlessthe
25	objection-is-by-anIndiantribeorfederalagencythat

-6-

SB 169

1	commencednegotiationspursuant-to-85-2-702-or-85-2-703-at
2	the-time-the-matter-was-litigatedA-tribe-or-federal-agency
3	that-commenced-negotiationsatthetimethematterwas
4	litigatedisentitledtothebenefits-of-the-suspension
5	provided-under-05-2-217. 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 <u>180</u> days after
19	noticeof entry of the temporary preliminary decree or
20	preliminary decree. The water judge may, for good cause
2)	shows extend this time limit as up to two additional AA

20 preliminary decree. The water judge may, for good cause 21 shown, extend this time limit an <u>up to two</u> additional 90 22 days <u>90-day periods</u> if application for the <u>an</u> extension is 23 made within--90--<u>100</u>--days--after--notice--of--entry-of-the 24 <u>temporary-preliminary-decree-or</u>-preliminary-decree <u>PRIOR TO</u> 25 EXPIRATION OF THE ORIGINAL 180-DAY PERIOD OR ANY EXTENSION

1 <u>OF IT</u>.

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

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

-7-

-8-

SB 169

SB 0169/03

(6) If the court sustains an objection to a compact, 1 2 it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the 3 4 tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as 5 6 provided in 85-2-224, and the court shall thereafter issue a 7 preliminary decree in accordance with 85-2-231; new 8 provided, however, that any party to a compact declared void 9 may appeal from such determination in accordance with those 10 procedures applicable to 85-2-235, and the filing of a 11 notice of appeal shall stay the period for filing a statement of claim as required under this subsection." 12

13 14

15 16 **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:

17 (1) he requested a hearing and appeared and entered
18 objections to the temporary preliminary decree or the
19 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."

 24
 NEW SECTION.
 SECTION 5.
 COORDINATION
 INSTRUCTION.
 IF

 25
 SENATE BILL NO.
 166 [LC 684] IS NOT PASSED AND APPROVED, THE

-9-

1	BRACKETED LANGUAGE IN (SECTION 1 OF THIS ACT) IS VOID.
2	NEW SECTION. Section 6. Severability. If a part of
3	[this act] is invalid, all valid parts that are severable
4	from the invalid part remain in effect. If a part of [this
5	act] is invalid in one or more of its applications, the part
6	remains in effect in all valid applications that are
7	severable from the invalid applications.
8	NEW SECTION. Section 7. Effective date. [This act] is
9	effective on the latest date on which any of the following
10	occur:
11	(1) passage and approval of [this act],Bill No
12	[LC 684]7- <u>Bill-No</u> -{bE-685}7 orBill No [LC 686];
13	or
14	(2) a final determination of failure to receive
15	passage and approval ofBill No [LC 684]7BillNo
16	{be-685}7 orBill No [LC 686].
17	NEW SECTION. Section 8. Applicability. [This act]
18	applies to any temporary preliminary decree or preliminary
19	decree issued on or after [the effective date of this act].
	-End-

SB 0169/03

-10-

STANDING COMMITTEE REPORT

March 20, 1989 Page 1 of 1

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

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 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:

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

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; newly discovered evidence which by due diligence (ii) 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."

SB 169

HOUSE

REJECT

ADOPT

1. Page 4, line 4.
Strike: "CONCLUSIVE"
Following: "ENFORCEABLE"

Strike: ",'

×

SB 0169/04

REFERENCE BILL

AS AMENDED

	SENATE BILL NO. 169	1	decree. The preliminary decree shall be based on:
	INTRODUCED BY BENGTSON, GALT, STORY, STIMATZ, SPAETH,	2	<pre>(a)(i) the statements of claim before the water judge;</pre>
	MARKS, BRADLEY, IVERSON	3	<pre>(b)(ii) the data submitted by the department;</pre>
		4	(c)(iii) the contents of compacts approved by the
ŀ	A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER	5	Montana legislature and the tribe or federal agency or,
	JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IN-THOSE	6	lacking an approved compact, the filings for federal and
•	BASINS-IN-WHICH-ADJUDICATION-OF-CLAIMS-POR-FEDERAL-OR-INDIAN	7	Indian reserved rights; and
L	WATER-RIGHTS-IS-PRECLUBED-BY-THE-SUSPENSION-OFADJUDICATION	8	d
•	UNDER85-2-217 IF THE DECREE IS NECESSARY FOR THE ORDERLY	9	judge.
)	ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS; PROVIDING	10	(b) The preliminary decree shall be issued within 90
	FOR OBJECTIONS AND HEARINGS ON TEMPORARY PRELIMINARY	11	days after the close of the special filing period set out in
2	DECREES; INCREASING THE TIME LIMIT FOR REQUESTING A HEARING	12	85-2-702(3) or as soon thereafter as is reasonably feasible.
3	ON A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE;	13	(c) This section does not prevent the water judge from
1	AMENDING SECTIONS 85-2-231 THROUGH 85-2-233 AND 85-2-235,	14	issuing an interlocutory decree or other temporary decree,
5	MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY	15	pursuant to 85-2-321 or as provided in subsection (5) (1) of
5	DATE."	16	this section, or if such a decree is otherwise necessary for
7		17	the orderly administration of water rights prior to the
3	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	18	issuance of a preliminary decree.
9	Section 1. Section 85-2-231, MCA, is amended to read:	19	<pre>(3) A preliminary decree may be issued for any</pre>
D	*85-2-231. Pretiminary Temporary preliminary and	20	hydrologically interrelated portion of a water division,
1	preliminary decree. (1) A WATER JUDGE MAY ISSUE A TEMPORARY	21	including but not limited to a basin, subbasin, drainage,
2	PRELIMINARY DECREE PRIOR TO THE ISSUANCE OF A PRELIMINARY	22	subdrainage, stream, or single source of supply of water, at
3	DECREE IF THE TEMPORARY PRELIMINARY DECREE IS NECESSARY FOR	23	a time different from the issuance of other preliminary
4	THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS.	24	decrees or portions of the same decree.
5	<pre>tit(2) (a) The water judge shall issue a preliminary</pre>	25	(3)(4) The preliminary decree shall contain the
	Δ		-2- SB 169

L Montana Legislative Council

ne de la compañse esta en la compañsión de la compañse de la compañsión de la compañsión de la compañsión de l

1

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 7 of the water master meets the requirements for the 8 9 preliminary decree set forth in subsections (1) and (3)7 and 10 is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary 11 12 decree. If the water judge is not so satisfied, he may, at 13 his option, recommit the report to the master with instructions, or modify the report and issue the preliminary 14 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-85-2-2177-the-water-judge 19 may-issue-a-temporary-preliminary-decree-in-accordance--with 20 the--requirements-of-this-section--The-temporary-preliminary decree-shall-address-all-claims-in-the--basin--except--those 21 affected-by-the-suspension-required-by-85-2-217-22 23 (6) In issuing a subsequent preliminary decree, the water judge shall use--the--temporary--preliminary--decree 24

25 <u>issued--under--subsection--(5)</u> INCORPORATE THE TEMPORARY

-3-

SB 169

2 AND HEARINGS. [THE TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND ٦. HEARINGS. IS CONCLUSIVET ENFORCEABLET AND ADMINISTRABLE 4 ACCORDING TO ITS TERMS AMONG PARTIES ORDERED BY--THE--WATER 5 6 JUBGE UNDER 85-2-406.] The preliminary decree, when-issued AS MODIFIED AFTER OBJECTIONS AND HEARINGS, shall UPON 7 ISSUANCE supersede and replace the temporary preliminary 8 decree." 9 Section 2. Section 85-2-232, MCA, is amended to read: 10 11 "85-2-232. Availability of temporary preliminary or 12 preliminary decree. (1) The water judge shall send to the department a copy of the any temporary preliminary decree or 13 preliminary decree to-the-department issued for a subbasin 14 BASIN, and the water judge shall serve by mail a notice of 15 availability of the temporary preliminary decree or 16 17 preliminary decree to each person who has filed a claim of existing right within the decreed subbasin BASIN and to the 18 19 purchaser under contract for deed, as defined in 70-20-115, 20 of property in connection with which a claim of existing

PRELIMINARY DECREE FOR THE BASIN AS MODIFIED BY OBJECTIONS

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

-4-

SB 169

SB 0169/04

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

(2) Notice of the availability of a temporary 16 preliminary-decree--or preliminary decree must also be 17 published at least once each week for 3 consecutive weeks in 18 at least three newspapers of general circulation which in 19 total cover the water division or divisions in-the-general 20 stream-basin in which the decreed subbasin BASIN is located. 21 THIS NOTICE MUST BE PROVIDED BEFORE THE FINAL DECREE FOR THE 22 BASIN IS ISSUED. 23 (2)(3) Any person may obtain a copy of the temporary 24

25 preliminary decree or preliminary decree upon payment of a

-5-

SB 169

SB 0169/04

fee of \$20 or the cost of printing, whichever is greater, to 1 the water judge." 2 3 Section 3. Section 85-2-233, MCA, is amended to read: ۵ "85-2-233. Rearing 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 decree7; or 12 (iii) any other person---for--good--gauge--shown--the 13 department-or-such-person-is-entitled-to-a--hearing--thereon 14 before--the--water-judger 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 decreed 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 decreed 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--allowed7--unless--the 25 objection-is-by-an--Indian--tribe--or--federal--agency--that

-6-

al the conservation of the conservation of the construction of the

Qualitative encoded as a statement of the statement of statement of the statem

1	commencednegotiationspursuant-to-85-2-702-or-85-2-703-at
2	the-time-the-matter-was-litigatedA-tribe-or-federal-agency
3	that-commenced-negotiationsatthetimethematterwas
4	litigatedisentitledtothebenefits-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, HOWEVER7APERSONMAYNOT
8	RAISE-AN-OBJECTION-TO-A-MATTER-IN-A-PRELIMINARY-DECREE-IP-HE
9	WASAPARTYTOTHE-MATTER-WHEN-THE-MATTER-WAS-PREVIOUSLY
10	LITIGATED-AND-RESOLVED-AS-THE-RESULT-OF-AN-OBJECTIONRAISED
11	IN-A-TEMPORARY-PRELIMINARY-DECREE.
12	tc;apersonwhohasreceivednoticeopthe
13	AVAILABILITY-OP-A-TEMPORARY-PRELIMINARYDECREEWAIVESTHE
14	RIGHTTOOBJECTTOTHEENFORCEMENTOFTHETEMPORARY
15	PRELIMINARY-DECREE-UNDER-05-2-406-IF-HE-FAILED-TO-OBJECTTO
16	APEMPORARYPRESIMINARY-BECREE: 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
	-7- SB 169

 $(h,h) = \{(h,h),($

.

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 <u>180</u> 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 <u>90-day periods</u> if application for the <u>an</u> extension is
13	made within-90 <u>180</u> daysafternoticeofentryofthe
14	temporarypreliminary-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

SB 0169/04

,

-8- .

and upon timely receipt of a request for a hearing, the 1 water judge shall notify each party named in the temporary 2 preliminary decree or preliminary decree that a hearing has 3 been requested. The water judge shall fix a day when all 4 parties who wish to participate in future proceedings must 5 appear or file a statement. The water judge shall then set a 6 7 date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as 8 for other civil actions. At the order of the water judge a 9 10 hearing may be conducted by the water master, who shall 11 prepare a report of the hearing as provided in M.R.Civ.P., 12 Rule 53(e).

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

16 (6) If the court sustains an objection to a compact, 17 it may declare the compact void. The agency of the United 18 States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after 19 the court's determination to file a statement of claim, as 20 provided in 85-2-224, and the court shall thereafter issue a 21 22 new preliminary decree in accordance with 85-2-231; 23 provided, however, that any party to a compact declared void 24 may appeal from such determination in accordance with those 25 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

4 "85-2-235. Appeals from final decree. A person whose
5 existing rights and priorities are determined in the final
6 decree may appeal the determination only if:

7 (1) he requested a hearing and appeared and entered
8 objections to <u>the temporary preliminary decree</u> or the
9 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.

17 <u>NEW SECTION.</u> Section 6. Severability. If a part of 18 [this act] is invalid, all valid parts that are severable 19 from the invalid part remain in effect. If a part of [this 20 act] is invalid in one or more of its applications, the part 21 remains in effect in all valid applications that are 22 severable from the invalid applications.

23 <u>NEW SECTION.</u> Section 7. Effective date. [This act] is
24 effective on the latest date on which any of the following
25 occur:

-9-

SB 169

SB 0159/04

-10-

ne de les mense en désense de manuel de manuel de manuel de manuel de la manuel de manuel de

1 (1) passage and approval of [this act], __Bill No.__
2 [LC 684]7---Bill-Nor---{be-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-Not---6 fbE-605]7 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-