

SENATE BILL 416

Introduced by Anderson, et al.

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| 2/13 | Introduced |
| 2/13 | Referred to Agriculture, Livestock & Irrig. |
| 2/14 | Fiscal Note Requested |
| 2/15 | Hearing |
| 2/20 | Fiscal Note Received |
| 2/20 | Fiscal Note Printed |
| | Died in Committee |

1 *Senate* BILL NO. *416*
2 INTRODUCED BY *Andrew Hoffman*
3 *Story*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
5 ACCEPTANCE OF STATEMENTS OF CLAIM TO EXISTING WATER RIGHTS
6 FILED AFTER 5 P.M., APRIL 30, 1982; ESTABLISHING A BASIS FOR
7 REBUTTAL OF A PRESUMPTION OF ABANDONMENT OF THOSE WATER
8 RIGHTS; AMENDING SECTION 85-2-226, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND RETROACTIVE AND PROSPECTIVE
10 APPLICABILITY."
11

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

13 **Section 1.** Section 85-2-226, MCA, is amended to read:

14 "85-2-226. Abandonment by failure to file claim. (1)
15 The failure to file a claim of an existing right as required
16 by 85-2-221 establishes a conclusive rebuttable presumption
17 of abandonment of that right.

18 (2) A claimant who filed a statement of claim of an
19 existing right after 5 p.m., April 30, 1982, may file an
20 affidavit with the department stating:

21 (a) the reason for failure to file the claim prior to 5
22 p.m., April 30, 1982; and

23 (b) a factual basis for the water court to consider to
24 establish the rebuttal of the presumption of the
25 abandonment.

1 (3) The department shall file a copy of the affidavit
2 with the clerk of the district court for the judicial
3 district in which the water right is claimed and with the
4 water judge.

5 (4) The water judge may find that the rebuttable
6 presumption of abandonment is rebutted by the affidavit or
7 other proof that demonstrates that:

8 (a) the existing right has been in continuous use since
9 July 1, 1979;

10 (b) the failure to file the claim before 5 p.m., April
11 30, 1982, was the result of mistake, inadvertence, surprise,
12 or excusable neglect;

13 (c) new evidence establishing the basis for the claim
14 has been discovered that, despite due diligence, was not
15 discovered in time to file the claim prior to 5 p.m., April
16 30, 1982;

17 (d) an adverse or competing claimant by fraud,
18 misrepresentation, or misconduct prevented the claimant from
19 filing his claim in a timely manner; or

20 (e) other reasons exist that justify relief from the
21 rebuttable presumption of abandonment.

22 (5) The water judge shall determine preliminarily if
23 the basis for the rebuttal of the presumption of abandonment
24 of the existing right is satisfactory. If the presumption
25 is removed, the court shall process the claim as if it had

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1 been filed before 5 p.m., April 30, 1982, and shall include
2 the claim in the appropriate temporary preliminary decree,
3 if issued, the appropriate preliminary decree, or both.

4 (6) If the evidence used to rebut a presumption of
5 abandonment is found insufficient, the court shall review
6 the finding and claim after notice to the claimant.

7 (7) The water judge may establish rules and procedures
8 to review applications for relief from the rebuttable
9 presumption of abandonment that are not summarily granted by
10 the court pursuant to subsection (5). The rules must
11 provide for notice to the claimant and the taking of
12 evidence in written or oral form or both."

13 NEW SECTION. Section 2. Effective date. [This act] is
14 effective on passage and approval.

15 NEW SECTION. Section 3. Retroactive and prospective
16 applicability. [This act] applies retroactively, within the
17 meaning of 1-2-109, to any claim of existing right filed
18 after 5 p.m., April 30, 1982, and within 30 days after the
19 date of issuance of the preliminary decree for the basin in
20 which the claim is located.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB416, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB416 would provide for the acceptance of statements of claim to existing water rights filed after 5 p.m. April 30, 1982, by establishing a procedure by which the presumption of abandonment of these water rights may be rebutted.

ASSUMPTIONS:

1. The Department of Natural Resources and Conservation (DNRC) will send a letters to each of the 5,200 owners who submitted a claim after 5 p.m., April 30, 1982, to advise them of the new procedure pursuant to 85-2-226(2). The one-time FY90 DNRC cost would be \$1,820.
2. Approximately 3,000 affidavits with supporting documents will be received. DNRC will enter the affidavits into the centralized records system, update microfiche and distribute to the appropriate clerks of court, the water court and the water rights field offices, with one copy maintained in the Helena central office. The one-time FY90 DNRC cost would be \$1,920.
3. There is no fiscal impact on the water courts.
4. The increased costs will be paid with general fund.

FISCAL IMPACT:Expenditures:

| | Current | FY90 | | Current | FY91 | |
|--------------------|---------|----------|------------|---------|----------|------------|
| | Law | Proposed | | Law | Proposed | |
| | | Law | Difference | | Law | Difference |
| DNRC | | | | | | |
| Operating Expenses | \$ -0- | \$ 3,740 | \$ 3,740 | \$ -0- | \$ -0- | \$ -0- |

Funding:

| | | | | | | |
|--------------|--------|----------|---------|--------|--------|--------|
| General Fund | \$ -0- | \$ 3,740 | \$3,740 | \$ -0- | \$ -0- | \$ -0- |
|--------------|--------|----------|---------|--------|--------|--------|

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The clerks of court will be required to file the copies of the affidavits sent by DNRC. Estimated costs are unknown.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Upon passage of the bill, additional claims to existing rights may be filed by claimants up to 30 days after the date of issuance of the preliminary decree for the basin in which the claim is located. It is anticipated that this will increase significantly the work of the water rights bureau staff in providing assistance to claimants on how to use and research the water right records and, once a late claim is filed, an additional five hours of time entering the claim into the computer data base, microfilming the claim and filing copies.

Ray Shackleford
 RAY SHACKLEFORD, BUDGET DIRECTOR
 OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/20/89

John H. Anderson Jr.
 JOHN H. ANDERSON JR. PRIMARY SPONSOR

DATE 2/20/89Fiscal Note for SB416, as introduced**SB 416**

TECHNICAL NOTES:

1. New Section 3 permits the filing of claims to within 30 days after the issuance of the preliminary decree for the basin in which the claim is located. Section 85-2-226(5) of the proposed law requires the water judge to include satisfactory claims in the preliminary decree. Together these sections create a problem with respect to notice of and opportunity to object to the preliminary decree as required in current law 85-2-232 and 233, MCA. It appears that a special notice and an objection period would be necessary for claims received after the preliminary decree has been issued. It is assumed that the costs of such a post-decree notice would be borne by the water court as has been the practice in the past. It appears this problem of special notice and objection period could be eliminated if the cut-off date for filing late claims were established at some point prior to the issuance of the preliminary decree.
2. Pursuant to current law 85-2-212 and 213, MCA, all owners of property in the state were notified individually or by publications and postings that all claims to existing water rights had to be filed by 5:00 p.m., April 30, 1982. It may be necessary to serve notice on the same parties served under 85-2-212 and 213 that the claim filing parameters as proposed in this bill have changed. This would give all claimants in the state an equal opportunity to file additional claims if they have inadvertently omitted any.
3. This bill appears to need further clarification with respect to existing preliminary and final decrees. Some mechanism may need to be included to allow these decrees to be reopened so that the claimants may have an equal opportunity to file additional claims. Also, these decrees need to be reopened so that the late claims already in the decrees may be addressed by the new procedures. As of July 26, 1988, there were 220 late claims in preliminary and final decrees.

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