

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

IN THE SENATE

FEBRUARY 3, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 22, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1993

PRINTING REPORT.

SECOND READING, DO PASS AS AMENDED.

ENGROSSING REPORT.

FEBRUARY 24, 1993

THIRD READING, PASSED.
AYES, 48; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993

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

FIRST READING.

MARCH 27, 1993

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

MARCH 30, 1993

SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 1, 1993

THIRD READING, CONCURRED IN.
AYES, 61; NOES, 37.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 6, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 7, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 12, 1993

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 24, 1993

FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1993

FREE CONFERENCE COMMITTEE REPORT REJECTED

ON MOTION, SEGREGATED FROM COMMITTEE OF THE
WHOLE REPORT AND PLACED ON 2ND READING.

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. 310 *Spuch*
 2 INTRODUCED BY *Rea F. Knecht* *Buck* *Burnett*
 3 *NATHE* *W. H. Hanson* *W. H. Hanson* *H. H. Hanson* *H. H. Hanson*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 5 ACCEPTANCE OF STATEMENTS OF CLAIM TO EXISTING WATER RIGHTS
 6 FILED AFTER 5 P.M., APRIL 30, 1982; ESTABLISHING A
 7 REBUTTABLE PRESUMPTION OF ABANDONMENT FOR SUCH WATER RIGHTS;
 8 PROVIDING FOR THE ESTABLISHMENT OF A PROCEDURE FOR
 9 ADJUDICATING THOSE RIGHTS; PROVIDING A DEADLINE FOR
 10 ACCEPTANCE OF STATEMENTS OF CLAIM; AMENDING SECTIONS
 11 85-2-221, 85-2-226, AND 85-2-231, MCA; AND PROVIDING AN
 12 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 13 DATE."

15 WHEREAS, Article IX, section 3, of the Montana
 16 Constitution provides that all existing rights to the use of
 17 any waters for any useful or beneficial purpose are
 18 recognized and confirmed; and

19 WHEREAS, Article IX, section 3, of the Montana
 20 Constitution provides that the Legislature shall provide for
 21 the administration, control, and regulation of water rights
 22 and shall establish a system of centralized records; and

23 WHEREAS, Article IX of the Montana Constitution was
 24 adopted to protect Montana water rights from claims by water
 25 users in downstream states; and

1 WHEREAS, in order to protect Montana water rights from
 2 downstream claims, the Montana Legislature established a
 3 procedure for the general adjudication of water rights and
 4 provided in section 85-2-226, MCA, that the failure to file
 5 a claim to an existing right in response to a general notice
 6 of adjudication and in accordance with the deadline
 7 established under section 85-2-221, MCA, would establish a
 8 conclusive presumption of abandonment of that right; and

9 WHEREAS, section 85-2-226, MCA, was enacted to
 10 facilitate the prompt filing of claims and speedy
 11 adjudication on the merits of each case; and

12 WHEREAS, the general adjudication is still pending, and
 13 through the course of the adjudication, it has come to the
 14 attention of the Legislature that the provisions of section
 15 85-2-226, MCA, may result in the loss of otherwise valid
 16 Montana water rights; and

17 WHEREAS, the Legislature determines that the summary
 18 abandonment of water rights does not afford adequate
 19 protection to Montana water rights as intended by the
 20 Montana Constitution and by the Montana Legislature and is
 21 inconsistent with long-established principles of
 22 abandonment; and

23 WHEREAS, it is the intent of the Legislature that the
 24 adjudication process must provide for the adjudication of
 25 all Montana water rights in existence on July 1, 1973; and

1 WHEREAS, because the general adjudication of water
2 rights is not completed and will be ongoing for at least 20
3 years, the Legislature finds that the acceptance of
4 additional Statements of Claim will not unduly delay the
5 adjudication; and

6 WHEREAS, the Legislature determines that section
7 85-2-226, MCA, imposes a harsh and unnecessary penalty for
8 failure to file a Statement of Claim by April 30, 1982, and
9 that the penalty is not consistent with the intent of the
10 Montana Constitution and of the Legislature and should,
11 therefore, be adjusted in a manner that will more
12 appropriately balance the interests at stake in the
13 adjudication and enable the Water Court to adjudicate all
14 existing water rights.

15 THEREFORE, the Legislature finds that it is appropriate
16 to make the following amendments to sections 85-2-221,
17 85-2-226, and 85-2-231, MCA, in order to provide for the
18 acceptance of additional Statements of Claim to existing
19 water rights under the conditions set forth below.

20 STATEMENT OF INTENT

21 A statement of intent is included with this bill to
22 provide comment to the Montana supreme court regarding the
23 adoption of rules of procedure by the court. The intent of
24 this legislation is to balance the interests of the state
25

1 and of those holding Montana water rights by establishing a
2 rebuttable, rather than a conclusive, presumption of
3 abandonment for statements of claim filed after April 30,
4 1982, and by allowing the adjudication of those claims.
5 Because the adjudication is within the jurisdiction of the
6 judicial branch, the legislature believes that the Montana
7 supreme court should adopt rules of procedure governing the
8 adjudication of these water rights. The legislature
9 recognizes that various basins within the state are in
10 different stages in the adjudication and that the
11 legislature has provided a mechanism for reopening both
12 preliminary and final decrees. It is the intent of the
13 legislature, therefore, that procedures be developed to
14 allow for the adjudication of late claims submitted prior to
15 the closure of court records preceding the date of issuance
16 of the preliminary decree or in those basins in which a
17 preliminary decree has not yet been rendered. In basins in
18 which a preliminary decree or final decree has been issued,
19 the legislature intends that the late-filed claims be
20 adjudicated when the decree is reopened in accordance with
21 85-2-237. In both cases, the late claimant should be
22 required to file a request for hearing on the late claims.

23 With respect to notice, the legislature intends that
24 notice be provided to water users that late claims will be
25 accepted, subject to a rebuttable presumption of

abandonment, and that objections to the presumption or the claim may be filed. Whenever possible, the notice must be provided in court-generated documents of general circulation, such as the temporary preliminary decree, notice of objection, preliminary decree, and order of reopening. When this is not possible, the court should devise an alternative method for notifying water users who may be affected by the late claim. In instances in which special notice is required, the claimant requesting a hearing on the late claim should reimburse the water court for the costs associated with providing the notice. In all cases, the water court may assess a fee for the filing of a request for hearing on late claims. This fee may not exceed \$300 per request, and a claimant should submit a separate request for each basin in which late claims are filed.

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

Section 1. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right. (1)

A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) (a) The department shall accept and the water court

shall adjudicate all statements of claim filed prior to the date certified by the water judge, pursuant to 85-2-231(6), as the completion date of the preliminary decree for the basin in which the claimed right is located.

(b) If a preliminary or final decree is reopened pursuant to 85-2-237, the department shall accept and the water court shall adjudicate all statements of claim filed within the time specified in 85-2-237(5) for filing of objections.

(c) Statements of claim filed after April 30, 1982, must be adjudicated by the water judge pursuant to 85-2-226.

(d) It is the sole responsibility of each claimant to monitor the progress of the water court proceedings to determine the completion date of the preliminary decree and a filing deadline under 85-2-237(5).

(2)(3) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs."

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

"85-2-226. Abandonment by failure to file claim rebuttable presumption -- adjudication procedure -- fee. (1)

1 The failure to file a claim of an existing right as required
2 by 85-2-221(1) establishes a conclusive rebuttable
3 presumption of abandonment of that right.

4 (2) The water judge may find that the rebuttable
5 presumption of abandonment is overcome if the claimant files
6 a request for hearing and demonstrates by a preponderance of
7 the evidence that the claimed right was a historical,
8 unabandoned, beneficial use of water and an existing right
9 as of July 1, 1973.

10 (3) The supreme court shall establish rules and
11 procedures to provide for the filing of requests for hearing
12 and the submission of evidence to overcome the rebuttable
13 presumption.

14 (4) The supreme court shall establish rules and
15 procedures to ensure that other claimants who may be
16 affected by the acceptance of the claimed right are notified
17 that the claimed right is presumed abandoned and that
18 objections to the presumption or the claim may be filed
19 pursuant to the rules and procedures adopted by the water
20 judge.

21 (5) The water court may assess a fee not to exceed \$300
22 for the filing of a request for hearing, and if it is
23 determined that other claimants require notification by
24 means other than through publication of the temporary
25 preliminary or preliminary decree or through other documents

1 served upon claimants in the natural course of the
2 adjudication, then the claimant filing the request for
3 hearing shall reimburse the water court for the costs
4 associated with providing the required notice."

5 **Section 3.** Section 85-2-231, MCA, is amended to read:

6 "85-2-231. Temporary preliminary and preliminary
7 decree. (1) A water judge may issue a temporary preliminary
8 decree prior to the issuance of a preliminary decree if the
9 temporary preliminary decree is necessary for the orderly
10 adjudication or administration of water rights.

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

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

14 (ii) the data submitted by the department;

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

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

20 (b) The preliminary decree shall must be issued within
21 90 days after the close of the special filing period set out
22 in 85-2-702(3) or as soon thereafter as is reasonably
23 feasible.

24 (c) This section does not prevent the water judge from
25 issuing an interlocutory decree or other temporary decree,

pursuant to 85-2-321 or as provided in subsection (1) of this section, or if ~~such-a~~ an interlocutory decree or other temporary 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 a 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~~ must 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.

(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~~ the water judge may ~~at his option~~ recommit the report to the master with

instructions, or modify the report and issue the preliminary decree.

(6) When the water judge has completed all requirements for issuance of a decree and closed the court records pertaining to the decree, the water judge shall certify to the department that the preliminary decree is completed for the basin and shall take appropriate steps to print and issue the preliminary decree.

~~†6†~~(7) In issuing a subsequent preliminary decree, the water judge shall 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 enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, ~~shall upon issuance supersede and replace when issued, supersedes and replaces~~ the temporary preliminary decree."

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. Retroactive applicability.

LC 1294/01

1 [This act] applies retroactively, within the meaning of
2 1-2-109, to all water right statements of claim filed after
3 May 11, 1979.

4 NEW SECTION. **Section 6.** **Effective date.** [This act] is
5 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

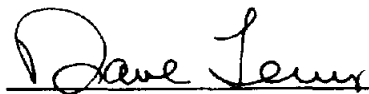
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0310, as introduced

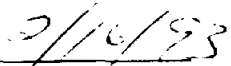
DESCRIPTION OF PROPOSED LEGISLATION: Senate Bill 310 is intended to balance the interests of the state and those holding Montana water rights by establishing a rebuttable, rather than a conclusive, presumption of abandonment for statements of claim filed after April 30, 1982. For those basins where a preliminary decree has not yet been issued, the bill allows late claims to be submitted up to a date set by the water judge as the completion date of the preliminary decree for the basin in which the late claim is located. For preliminary decrees and final decrees to be reopened pursuant to 85-2-237, late claims may be filed up to the time specified by the water judge for filing objections. The bill allows these claims to be adjudicated. The claimant must demonstrate by a preponderance of evidence that the late claim is beneficial, not abandoned, and an existing right as of July 1, 1973.

ASSUMPTIONS:

1. A total of 3,200 late claims have been filed to date.
2. Another 2,800 late claims will be submitted over the course of the adjudication process.
3. Total number of late claims will be 6,000.
4. \$70,000 in filing fees will be collected and deposited in the adjudication account for the 2,800 additional late claims.
 - a. 750 of the new late claims will be decreed rights or will be filed after the \$480 capping exemption has been reached and no fee will be required.
 - b. 600 of the new late claims will be stock and domestic on the same filing and \$12,000 will be collected in fees.
 - c. The remaining 1,450 claims will bring in \$58,000 in fees based on \$40 per claim.
5. Initial processing and inputting of new late claims into the Water Court computer data base will cost \$25 per claim. (2800 claims X \$25 per claim = \$70,000)
6. Cost for the Water Court to examine all late claims in accordance with Supreme Court Examination Rules will be \$600,000.
 - a. Examination cost per claim is \$100.
 - b. Late claims in decrees to date would be reexamined.
 - c. 6000 claims X \$100 per claim = \$600,000.
7. Cost to include the late claims in decrees will be an additional \$2,000 for computer processing and printing.
8. The duration of the adjudication program to completion will be 20 years (obtained from ninth WHEREAS statement in bill).
9. The cost of processing, inputting, examining, hearing, and deciding late claim issues will be spread evenly over the duration of the adjudication program.

(continued on next page)

 2-13-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/16/93
JACK REA, PRIMARY SPONSOR DATE

Fiscal Note for SB0310, as introduced

SB 310

- 10. The Water Court will have revenues over the term of the adjudication of \$400,000 based on an average cost of \$200 per hearing with the potential for 2,000 hearings.
- 11. The adjudication will be extended by 4.8 years and the Water Court's anticipated operating expenses will be \$529,455 (FY93 budget) per year or \$2,541,384 over the term of the adjudication.
- 12. The jurisdictional status of Montana adjudication under the McCarran Amendment, 43 U.S.C Section 666(a) will not be affected by the passage of this bill.
- 13. Compacts being negotiated by the Reserved Water Rights Compact Commission will not be placed in jeopardy by passage of this bill.
- 14. Passage of the bill will not affect a governmental taking with the scope of the Fifth Amendment or Article II, Section 29 of the Montana Constitution.
- 15. The legislature has the power to establish water rights and place those rights in a chain of priorities that may otherwise be inconsistent with the prior appropriation doctrine.
- 16. The passage of the bill will have little or no fiscal impact on any required publication of final notice required by "due process".
- 17. The comprehensiveness, finality and binding effect of the on-going adjudication will not be affected by the passage of this bill.

FISCAL IMPACT:

Department of Natural Resources and Conservation: Over the duration of the adjudication program, the total fiscal impact will require expenditures of \$602,000 more than revenue. For each biennium the expenditures will exceed revenue by \$60,200 (\$67,200 - \$7,000).

	<u>FY94</u>	<u>FY95</u>	<u>Total Biennium</u>
<u>Expenditures:</u>	33,600	33,600	67,200
<u>Revenues:</u>	3,500	3,500	7,000
<u>Net Impact:</u>	(30,100)	(30,100)	(60,200)

Water Court: There will be no fiscal impact for FY94 and FY95, but with an extended adjudication period of 4.8 years there will be associated expenses of \$2,541,384. Revenues will be \$400,000 over the term of the adjudication.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Averages over a 20 year period have been presented in the Department of Natural Resources and Conservation derivations above. However, the fiscal impact may be smaller than expected for the 1994-95 biennium because the number of claims received (revenue) may be greater than projected. The fiscal impact in later bienniums may be greater because the number of claims received (revenue) may be less than projected.

SB0310 will extend the adjudication 4.8 years.

(continued on next page)

SB 310

Fiscal Note Request, SB0310, as introduced
Form BD-15 page 3
(continued)

TECHNICAL NOTES:

The legal assumptions 12 through 17 may not be true statements of law.

Increasing the average cost per adjudication hearing from \$200 to approximately \$1,270, will generate revenues equal to the anticipated expenditures of the Water Court over the 4.8 year process.

A flat \$100 filing fee for the 6,000 projected late claims would cover the examination costs incurred during the adjudication process.

SB310

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING--FOR--THE
ACCEPTANCE--OF--STATEMENTS--OF--CLAIM--TO--EXISTING--WATER--RIGHTS
FILED--AFTER--5--P.M.--APRIL--30--1982--ESTABLISHING--A
REBUTTABLE--PRESUMPTION--OF--ABANDONMENT--FOR--SUCH--WATER--RIGHTS;
PROVIDING--FOR--THE--ESTABLISHMENT--OF--A--PROCEDURE--FOR
ADJUDICATING--THOSE--RIGHTS--PROVIDING--A--DEADLINE--FOR
ACCEPTANCE--OF--STATEMENTS--OF--CLAIM--AMENDING--SECTIONS
85-2-221, 85-2-226, AND 85-2-231, MCA; AND PROVIDING--AN
IMMEDIATE--EFFECTIVE--DATE--AND--A--RETROACTIVE--APPLICABILITY
DATE. PROVIDING FOR THE REMISSION OF CLAIMS TO EXISTING
RIGHTS TO THE USE OF WATER FORFEITED PURSUANT TO SECTION
85-2-226, MCA; PROVIDING FOR THE FILING OF CLAIMS IN THE
GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE
NOTICE OF THE RIGHT TO FILE CLAIMS; PROVIDING FOR A DEADLINE
FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR
CONDITIONS UPON THE ADJUDICATION OF SUCH CLAIMS; AMENDING
SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225,

85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND
PROVIDING AN EFFECTIVE DATE."

WHEREAS,--Article--IX,--section--3,--of--the--Montana
Constitution--provides--that--all--existing--rights--to--the--use--of
any--waters--for--any--useful--or--beneficial--purpose--are
recognized--and--confirmed--and

WHEREAS,--Article--IX,--section--3,--of--the--Montana
Constitution--provides--that--the--legislature--shall--provide--for
the--administration,--control,--and--regulation--of--water--rights
and--shall--establish--a--system--of--centralized--records--and

WHEREAS,--Article--IX--of--the--Montana--Constitution--was
adopted--to--protect--Montana--water--rights--from--claims--by--water
users--in--downstream--states--and

WHEREAS,--in--order--to--protect--Montana--water--rights--from
downstream--claims,--the--Montana--legislature--established--a
procedure--for--the--general--adjudication--of--water--rights--and
provided--in--section--85-2-226,--MCA,--that--the--failure--to--file
a--claim--to--an--existing--right--in--response--to--a--general--notice
of--adjudication--and--in--accordance--with--the--deadline
established--under--section--85-2-221,--MCA,--would--establish--a
conclusive--presumption--of--abandonment--of--that--right--and

WHEREAS,--section--85-2-226,--MCA,--was--enacted--to
facilitate--the--prompt--filing--of--claims--and--speedy
adjudication--on--the--merits--of--each--case--and

WHEREAS, the general adjudication is still pending, and through the course of the adjudication, it has come to the attention of the legislature that the provisions of section 85-2-226, MCA, may result in the loss of otherwise valid Montana water rights; and

WHEREAS, the legislature determines that the summary abandonment of water rights does not afford adequate protection to Montana water rights as intended by the Montana Constitution and by the Montana legislature and is inconsistent with long-established principles of abandonment; and

WHEREAS, it is the intent of the legislature that the adjudication process must provide for the adjudication of all Montana water rights in existence on July 17, 1973; and

WHEREAS, because the general adjudication of water rights is not completed and will be ongoing for at least 20 years, the legislature finds that the acceptance of additional Statements of Claim will not unduly delay the adjudication; and

WHEREAS, the legislature determines that section 85-2-226, MCA, imposes a harsh and unnecessary penalty for failure to file a Statement of Claim by April 30, 1982, and that the penalty is not consistent with the intent of the Montana Constitution and of the legislature and should, therefore, be adjusted in a manner that will more

appropriately balance the interests at stake in the adjudication and enable the Water Court to adjudicate all existing water rights;

THEREFORE, the legislature finds that it is appropriate to make the following amendments to sections 85-2-221, 85-2-226, and 85-2-231, MCA, in order to provide for the acceptance of additional Statements of Claim to existing water rights under the conditions set forth below:

STATEMENT OF INTENT

A statement of intent is included with this bill to provide comment to the Montana supreme court regarding the adoption of rules of procedure by the court. The intent of this legislation is to balance the interests of the state and of those holding Montana water rights by establishing a rebuttable, rather than a conclusive, presumption of abandonment for statements of claim filed after April 30, 1982, and by allowing the adjudication of those claims. Because the adjudication is within the jurisdiction of the judicial branch, the legislature believes that the Montana supreme court should adopt rules of procedure governing the adjudication of these water rights. The legislature recognizes that various basins within the state are in different stages in the adjudication and that the legislature has provided a mechanism for reopening both

preliminary--and--final--decrees--it--is--the--intent--of--the
 legislature--therefore--that--procedures--be--developed--to
 allow--for--the--adjudication--of--late--claims--submitted--prior--to
 the--closure--of--court--records--preceding--the--date--of--issuance
 of--the--preliminary--decree--or--in--those--basins--in--which--a
 preliminary--decree--has--not--yet--been--rendered--in--basins--in
 which--a--preliminary--decree--or--final--decree--has--been--issued,
 the--legislature--intends--that--the--late--filed--claims--be
 adjudicated--when--the--decree--is--reopened--in--accordance--with
 85-2-237--in--both--cases--the--late--claimant--should--be
 required--to--file--a--request--for--hearing--on--the--late--claims.

With--respect--to--notice--the--legislature--intends--that
 notice--be--provided--to--water--users--that--late--claims--will--be
 accepted--subject--to--a--rebuttable--presumption--of
 abandonment--and--that--objections--to--the--presumption--or--the
 claim--may--be--filed--Whenever--possible--the--notice--must--be
 provided--in--court--generated--documents--of--general
 circulation--such--as--the--temporary--preliminary--decree,
 notice--of--objection--preliminary--decree--and--order--of
 reopening--When--this--is--not--possible--the--court--should
 devise--an--alternative--method--for--notifying--water--users--who
 may--be--affected--by--the--late--claim--in--instances--in--which
 special--notice--is--required--the--claimant--requesting--a
 hearing--on--the--late--claim--should--reimburse--the--water--court
 for--the--costs--associated--with--providing--the--notice--in--all

cases--the--water--court--may--assess--a--fee--for--the--filing--of--a
 request--for--hearing--on--late--claims--This--fee--may--not--exceed
 \$380--per--request--and--a--claimant--should--submit--a--separate
 request--for--each--basin--in--which--late--claims--are--filed.

WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 CONSTITUTION PROVIDES THAT ALL EXISTING RIGHTS TO THE USE OF
 ANY WATERS FOR ANY USEFUL OR BENEFICIAL PURPOSE ARE
 RECOGNIZED AND CONFIRMED; AND

WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 CONSTITUTION REQUIRES THE LEGISLATURE TO PROVIDE FOR THE
 ADMINISTRATION, CONTROL, AND REGULATION OF WATER RIGHTS AND
 TO ESTABLISH A SYSTEM OF CENTRALIZED RECORDS FOR SUCH
 RIGHTS; AND

WHEREAS, THE LEGISLATURE ESTABLISHED A PROCEDURE FOR THE
 GENERAL ADJUDICATION OF EXISTING RIGHTS TO THE USE OF WATER
 AND PROVIDED IN SECTION 85-2-226, MCA, THAT THE FAILURE TO
 FILE A CLAIM OF EXISTING RIGHT ON OR BEFORE THE DEADLINE
 ESTABLISHED UNDER SECTION 85-2-221, MCA, WOULD ESTABLISH A
 CONCLUSIVE ABANDONMENT OF THE RIGHT; AND

WHEREAS, THE MONTANA SUPREME COURT, IN IN THE MATTER OF
 THE ADJUDICATION OF THE WATER RIGHTS WITHIN THE YELLOWSTONE
 RIVER, 253 MONT. 167, 832 P.2D 1210 (1992), HAS DETERMINED
 THAT THE FAILURE TO FILE A STATEMENT OF CLAIM TO AN EXISTING
 RIGHT TO THE USE OF WATER ON OR BEFORE APRIL 30, 1982,
 RESULTED IN THE FORFEITURE OF THAT RIGHT; AND

1 WHEREAS, IT HAS COME TO THE ATTENTION OF THE LEGISLATURE
 2 THAT THE FORFEITURE OF WATER RIGHTS FOR FAILURE TO TIMELY
 3 FILE A CLAIM HAS IN SOME INSTANCES CAUSED HARDSHIP, AND THE
 4 LEGISLATURE ACCORDINGLY DESIRES TO PROVIDE WATER RIGHTS
 5 CLAIMANTS WITH ONE MORE OPPORTUNITY TO ASSERT A WATER RIGHTS
 6 CLAIM IN THE GENERAL ADJUDICATION; AND

7 WHEREAS, IN SO DOING, THE LEGISLATURE RECOGNIZES THAT
 8 THE ADJUDICATION PROCESS WILL NOT BE COMPLETED FOR MANY
 9 YEARS BUT THAT A SUBSTANTIAL AMOUNT OF PROGRESS HAS ALREADY
 10 OCCURRED IN THE ADJUDICATION, SPECIFICALLY IN THE AREA OF
 11 WATER RIGHTS COMPACTS WITH INDIAN TRIBES AND THE FEDERAL
 12 GOVERNMENT AND IN DECREES AND STIPULATIONS INVOLVING
 13 INDIVIDUAL CLAIMANTS, AND THUS THE LEGISLATURE BELIEVES THAT
 14 IT IS NECESSARY TO ENSURE THAT PARTIES WHO FILED CLAIMS ON
 15 OR BEFORE APRIL 30, 1982, AND HOLDERS OF FEDERAL RESERVED
 16 WATER RIGHTS ARE NOT ADVERSELY AFFECTED BY THE INCLUSION OF
 17 NEW PARTIES IN THE ADJUDICATION BY SUBJECTING THE RIGHT TO
 18 FILE THOSE CLAIMS IN REMISSION TO CERTAIN TERMS AND
 19 CONDITIONS; AND

20 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE PROTECTION
 21 FOR TIMELY FILED CLAIMANTS FROM INCURRING ADDITIONAL COSTS
 22 OR FROM BEING ADVERSELY AFFECTED BY JUSTIFIABLE RELIANCE ON
 23 THE PRESUMPTION OF ABANDONMENT; AND

24 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE A CONCLUSIVE
 25 ADJUDICATION OF EXISTING WATER RIGHTS; AND

1 WHEREAS, THE LEGISLATURE RECOGNIZES THAT ACCORDING A
 2 PRIVILEGE TO FILE ADDITIONAL STATEMENTS OF CLAIM PRESENTS A
 3 POTENTIAL FOR ABUSE BY THOSE WHO MAY ATTEMPT TO REFILE
 4 PREVIOUSLY ADJUDICATED CLAIMS, AND THE LEGISLATURE THUS
 5 BELIEVES THAT THE COURTS SHOULD DEAL HARSHLY WITH ANY ABUSES
 6 BY SUCH MEASURES AS, WITHOUT LIMITATION, THE IMPOSITION OF
 7 SANCTIONS UNDER RULE 11, MONTANA RULES OF CIVIL PROCEDURE;
 8 AND

9 WHEREAS, THE LEGISLATURE DETERMINES THAT THE DEADLINE
 10 FOR FILING WATER RIGHT CLAIMS AS PROVIDED IN THIS BILL
 11 APPROPRIATELY BALANCES THE INTERESTS AT STAKE IN THE
 12 ADJUDICATION.

13 THEREFORE, THE LEGISLATURE FINDS IT IS APPROPRIATE TO
 14 MAKE THE FOLLOWING AMENDMENTS TO SECTIONS 85-2-102,
 15 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234,
 16 85-2-237, AND 85-2-306, MCA, IN ORDER TO PROVIDE FOR THE
 17 ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM TO EXISTING
 18 WATER RIGHTS UNDER THE CONDITIONS SET FORTH IN THIS BILL.

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 (Refer to Introduced Bill)

22 Strike everything after the enacting clause and insert:

23 **Section 1.** Section 85-2-102, MCA, is amended to read:

24 **"85-2-102. (Temporary) Definitions.** Unless the context
 25 requires otherwise, in this chapter the following

1 definitions apply:

2 (1) "Appropriate" means to:

3 (a) divert, impound, or withdraw (including by stock
4 for stock water) a quantity of water;

5 (b) in the case of a public agency, to reserve water in
6 accordance with 85-2-316; or

7 (c) in the case of the department of fish, wildlife,
8 and parks, to lease water in accordance with 85-2-436.

9 (2) "Beneficial use", unless otherwise provided, means:

10 (a) a use of water for the benefit of the appropriator,
11 other persons, or the public, including but not limited to
12 agricultural (including stock water), domestic, fish and
13 wildlife, industrial, irrigation, mining, municipal, power,
14 and recreational uses;

15 (b) a use of water appropriated by the department for
16 the state water leasing program under 85-2-141 and of water
17 leased under a valid lease issued by the department under
18 85-2-141; and

19 (c) a use of water by the department of fish, wildlife,
20 and parks pursuant to a lease authorized under 85-2-436.

21 (3) "Board" means the board of natural resources and
22 conservation provided for in 2-15-3302.

23 (4) "Certificate" means a certificate of water right
24 issued by the department.

25 (5) "Change in appropriation right" means a change in

1 the place of diversion, the place of use, the purpose of
2 use, or the place of storage.

3 (6) "Commission" means the fish, wildlife, and parks
4 commission provided for in 2-15-3402.

5 (7) "Declaration" means the declaration of an existing
6 right filed with the department under section 8, Chapter
7 452, Laws of 1973.

8 (8) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

11 (9) "Existing right" means a right to the use of water
12 which would be protected under the law as it existed prior
13 to July 1, 1973.

14 (10) "Ground water" means any water that is beneath the
15 ground surface.

16 (11) "Permit" means the permit to appropriate issued by
17 the department under 85-2-301 through 85-2-303 and 85-2-306
18 through 85-2-314.

19 (12) "Person" means an individual, association,
20 partnership, corporation, state agency, political
21 subdivision, the United States or any agency thereof, or any
22 other entity. For purposes of 85-2-221(3), person includes
23 predecessors in interest.

24 (13) "Political subdivision" means any county,
25 incorporated city or town, public corporation, or district

created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(18) "Water division" means a drainage basin as defined in 3-7-102.

(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

(20) "Water master" means a master as provided for in Title 3, chapter 7.

(21) "Well" means any artificial opening or excavation

in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

1 (5) "Change in appropriation right" means a change in
2 the place of diversion, the place of use, the purpose of
3 use, or the place of storage.

4 (6) "Declaration" means the declaration of an existing
5 right filed with the department under section 8, Chapter
6 452, Laws of 1973.

7 (7) "Department" means the department of natural
8 resources and conservation provided for in Title 2, chapter
9 15, part 33.

10 (8) "Existing right" means a right to the use of water
11 which would be protected under the law as it existed prior
12 to July 1, 1973.

13 (9) "Ground water" means any water that is beneath the
14 ground surface.

15 (10) "Permit" means the permit to appropriate issued by
16 the department under 85-2-301 through 85-2-303 and 85-2-306
17 through 85-2-314.

18 (11) "Person" means an individual, association,
19 partnership, corporation, state agency, political
20 subdivision, the United States or any agency thereof, or any
21 other entity. For purposes of 85-2-221(3), person includes
22 predecessors in interest.

23 (12) "Political subdivision" means any county,
24 incorporated city or town, public corporation, or district
25 created pursuant to state law or other public body of the

1 state empowered to appropriate water but not a private
2 corporation, association, or group.

3 (13) "Salvage" means to make water available for
4 beneficial use from an existing valid appropriation through
5 application of water-saving methods.

6 (14) "Waste" means the unreasonable loss of water
7 through the design or negligent operation of an
8 appropriation or water distribution facility or the
9 application of water to anything but a beneficial use.

10 (15) "Water" means all water of the state, surface and
11 subsurface, regardless of its character or manner of
12 occurrence, including but not limited to geothermal water,
13 diffuse surface water, and sewage effluent.

14 (16) "Watercourse" means any naturally occurring stream
15 or river from which water is diverted for beneficial uses.
16 It does not include ditches, culverts, or other manmade
17 waterways.

18 (17) "Water division" means a drainage basin as defined
19 in 3-7-102.

20 (18) "Water judge" means a judge as provided for in
21 Title 3, chapter 7.

22 (19) "Water master" means a master as provided for in
23 Title 3, chapter 7.

24 (20) "Well" means any artificial opening or excavation
25 in the ground, however made, by which ground water is sought

or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-211, MCA, is amended to read:

"85-2-211. Petition by attorney general. Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221(1)."

Section 3. Section 85-2-213, MCA, is amended to read:

"85-2-213. Notice of order -- additional filing period.

(1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the

Montana supreme court order as provided in 85-2-212.

(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

(d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

(e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(7)(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2) (a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, and April 1995, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April 1995, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person who failed to file a claim of existing right before April 30, 1982, may file such claim by physically filing it with the department on or before July 1, 1995, or sending it by United States mail, postmarked on or before July 1, 1995. Additionally, the notice must indicate that a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

Section 4. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department

1 shall file a copy of the statement of claim with the clerk
2 of the district court of the judicial district in which the
3 use occurs.

4 (3) Subject to certain terms and conditions, the
5 legislature intends to provide for the remission of the
6 forfeiture of existing rights to the use of water caused by
7 the failure to comply with subsection (1). Accordingly, a
8 person who failed to file a claim of an existing water right
9 on or before April 30, 1982, may file with the department a
10 claim of an existing water right on or before July 1, 1995,
11 on forms provided by the department. This section is not
12 intended to prevent a person who may have filed a claim of
13 an existing water right on or before April 30, 1982, from
14 filing an additional claim under this section if and to the
15 extent that the additional right claimed is not the same as
16 the right that was the subject of a previous claim. Claims
17 must be physically submitted to the department or sent by
18 United States mail, postmarked on or before the deadline set
19 forth in this subsection, in order to be considered timely.
20 Within 30 days of receipt, the department shall file copies
21 of timely filed claims with the appropriate clerk of court
22 as provided in subsection (2), and those claims are then
23 subject to adjudication by the district courts as any other
24 claim of existing right. The claimant is then subject to all
25 rights and obligations of any other party, except that:

1 (a) any claimant who has filed a claim after April 30,
2 1982, but on or before July 1, 1995, must have the claim
3 incorporated into the adjudication, subject to all prior
4 proceedings, and does not, except as otherwise provided in
5 85-2-237, have the right to reopen decrees previously
6 entered or to object to matters previously determined on the
7 merits by the water court after objection; and

8 (b) any claimant who has filed a claim after April 30,
9 1982, but on or before July 1, 1995, does not have the right
10 or standing to object to any water rights compact reached in
11 accordance with part 7 of this chapter that is ratified by
12 the legislature prior to [the effective date of this act] or
13 to claim protection under any provision of such a compact
14 that subordinates the use of a water right recognized in the
15 compact to a right recognized under state law; and

16 (c) any claimant who has filed a claim after April 30,
17 1982, but on or before July 1, 1995, is liable for any costs
18 and damages to any other claimant caused by the latter's
19 actions in reasonable reliance upon the former's failure to
20 file a claim on or before April 30, 1982, and upon the
21 conclusive presumption of abandonment provided in 85-2-226;
22 and

23 (d) any existing right to the use of water that is the
24 subject of a claim filed after April 30, 1982, is
25 subordinate to:

- 1 (i) all filed claims finally adjudicated to be valid;
 2 (ii) all reserved water right compacts negotiated
 3 pursuant to this chapter;
 4 (iii) all permits and reservations of water issued
 5 pursuant to this chapter if and to the extent that the
 6 permitholder or reservation holder files an objection under
 7 this part and proves that the permitholder or reservation
 8 holder reasonably relied upon the failure of the claimant to
 9 file a claim on or before April 30, 1982.
- 10 (4) The department and the district courts may not
 11 accept any statements of claim physically submitted or
 12 postmarked after July 1, 1995."

13 **Section 5.** Section 85-2-225, MCA, is amended to read:

14 **"85-2-225. Filing fee -- processing fee for remitted**
 15 **claims.** (1) Each claim filed under 85-2-221 or 85-2-222 must
 16 be accompanied by a filing fee in the amount of \$40, subject
 17 to the following exceptions:

18 (a) the total filing fees for all claims filed by one
 19 person in any one water court division may not exceed \$480;
 20 and

21 (b) no filing fee is required accompanying a claim of
 22 an existing right that is included in a decree of a court in
 23 the state of Montana and which that is accompanied by a copy
 24 of that decree or pertinent portion thereof.

25 (2) A claim that is exempt from the filing requirements

1 of 85-2-221(1) but that is voluntarily filed must be
 2 accompanied by a filing fee in the amount of \$40. Exempt
 3 claims for a single development with several uses if filed
 4 simultaneously may be accompanied by a filing fee in the
 5 amount of \$40.

6 (3) (a) Except as provided in subsection (3)(b), in
 7 addition to the filing fee set forth in subsection (1), each
 8 statement of claim filed under 85-2-221(3) must be
 9 accompanied by a processing fee in the amount of \$300.

10 (b) For a statement of claim that was filed after April
 11 30, 1982, but prior to [the effective date of this act] or
 12 for a statement of claim filed by a state agency, the
 13 processing fee provided for in subsection (3)(a) must be
 14 paid on or before the entry of the temporary preliminary
 15 decree or the preliminary decree for the basin for which the
 16 claim is filed."

17 **Section 6.** Section 85-2-226, MCA, is amended to read:

18 **"85-2-226. Abandonment by failure to file claim.** The
 19 failure to file a claim of an existing right as required by
 20 85-2-221(1) establishes a conclusive presumption of
 21 abandonment of that right."

22 **Section 7.** Section 85-2-234, MCA, is amended to read:

23 **"85-2-234. Final decree.** (1) The water judge shall, on
 24 the basis of the preliminary decree and on the basis of any
 25 hearing that may have been held, enter a final decree

affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

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

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

(4) The final decree ~~shall~~ must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree ~~shall~~ must state the findings of

fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

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

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

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

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

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

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

(c) the date of priority of the right;

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

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

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

(g) the place and means of diversion;

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

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

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

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

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

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

(d) the date of priority of the right;

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

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

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

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

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a

correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Section 8. Section 85-2-237, MCA, is amended to read:

"85-2-237. Reopening and review of decrees. (1) The After July 1, 1995, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued ~~by the water courts~~ but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in

1 a reopened decree if he the person was a party to the matter
 2 when the matter was previously litigated and resolved as the
 3 result of the previous objection process, unless the
 4 objection is allowed for any of the following reasons:

5 (i) mistake, inadvertence, surprise, or excusable
 6 neglect;

7 (ii) newly discovered evidence that by due diligence
 8 could not have been discovered in time to move for a new
 9 trial under Rule 59(b), Montana Rules of Civil Procedure;

10 (iii) fraud, misrepresentation, or other misconduct of
 11 an adverse party;

12 (iv) the judgment is void;

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

15 (c) The objection must be made in accordance with the
 16 procedure for filing objections under 85-2-233.

17 (3) The water judges shall serve notice by mail of the
 18 entry of the order providing for the reopening and review of
 19 a decree or decrees to the department and to the persons
 20 entitled to receive service of notice under 85-2-232(1).

21 (4) Notice of the reopening and review of a preliminary
 22 or final decree must also be published at least once each
 23 week for 3 consecutive weeks in at least three newspapers of
 24 general circulation which that cover the water division or
 25 divisions in which the decreed basin is located.

1 (5) No objection may cause a reopening and review of a
 2 claim unless the objection is filed with the appropriate
 3 water court within 180 days after the issuance of the order
 4 under subsection (1). This period of time may, for good
 5 cause shown, be extended by the water judge for up to two
 6 90-day periods if an application for extension is made
 7 within the original 180-day period or any extension of it.

8 (6) The water judge shall provide notice to the
 9 claimant of any timely objection to his the claim and, after
 10 further reasonable notice to the claimant, the objector or
 11 objectors, and other interested persons, set the matter for
 12 hearing. The water judge may conduct individual or
 13 consolidated hearings, and any hearing must be conducted
 14 according to the Montana Rules of Civil Procedure. On an
 15 order of the water judge, a hearing may be conducted by a
 16 water master, who shall prepare a report of the hearing as
 17 provided in Rule 53(e), Montana Rules of Civil Procedure.

18 (7) The water judge shall, on the basis of any hearing
 19 held on the matter, take action as warranted from the
 20 evidence before-him, including dismissal of the objection or
 21 modification of the portion of the decree describing the
 22 contested claim.

23 (8) An order or decree modifying a previously issued
 24 final decree as a result of procedures described in this
 25 section may be appealed in the same manner as provided for

1 an appeal taken from a final order of a district court.

2 (9) An order or decree modifying a previously issued
3 preliminary decree as a result of procedures described in
4 this section may be appealed under 85-2-235 when the
5 preliminary decree has been made a final decree."

6 **Section 9.** Section 85-2-306, MCA, is amended to read:

7 "85-2-306. (Temporary) Exceptions to permit
8 requirements -- fee. (1) Ground water may be appropriated
9 only by a person who has a possessory interest in the
10 property where the water is to be put to beneficial use and
11 exclusive property rights in the ground water development
12 works or, if another person has rights in the ground water
13 development works, the written consent of the person with
14 those property rights. Outside the boundaries of a
15 controlled ground water area, a permit is not required
16 before appropriating ground water by means of a well or
17 developed spring with a maximum appropriation of 35 gallons
18 per minute or less, not to exceed 10 acre-feet per year,
19 except that a combined appropriation from the same source
20 from two or more wells or developed springs exceeding this
21 limitation requires a permit. Within 60 days of completion
22 of the well or developed spring and appropriation of the
23 ground water for beneficial use, the appropriator shall file
24 a notice of completion with the department on a form
25 provided by the department at its offices and at the offices

1 of the county clerk and recorders and pay a filing fee. Upon
2 receipt of the notice, the department shall review the
3 notice and may, before issuing a certificate of water right,
4 return a defective notice for correction or completion,
5 together with the reasons for returning it. A notice does
6 not lose priority of filing because of defects if the notice
7 is corrected, completed, and refiled with the department
8 within 30 days or within a further time as the department
9 may allow, not to exceed 6 months. If a notice is not
10 corrected and completed within the time allowed, the
11 priority date of appropriation ~~shall be~~ is the date of
12 refiling a correct and complete notice with the department.
13 A certificate of water right may not be issued until a
14 correct and complete notice has been filed with the
15 department. The original of the certificate ~~shall~~ must be
16 sent to the appropriator. The department shall keep a copy
17 of the certificate in its office in Helena. The date of
18 filing of the notice of completion is the date of priority
19 of the right.

20 (2) An appropriator of ground water by means of a well
21 or developed spring first put to beneficial use between
22 January 1, 1962, and July 1, 1973, who did not file a notice
23 of completion, as required by laws in force prior to April
24 14, 1981, with the county clerk and recorder shall file a
25 notice of completion, as provided in subsection (1) ~~of this~~

section, with the department to perfect the water right. The filing of a claim of--existing--water--right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall--be is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a

perennial flowing stream means a stream which that historically has flowed continuously at during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a \$10 fee, and the department shall deposit \$10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in 85-2-905, within the state special revenue fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

1 85-2-306. (Effective July 1, 1993) Exceptions to permit
 2 requirements. (1) Ground water may be appropriated only by a
 3 person who has a possessory interest in the property where
 4 the water is to be put to beneficial use and exclusive
 5 property rights in the ground water development works or, if
 6 another person has rights in the ground water development
 7 works, the written consent of the person with those property
 8 rights. Outside the boundaries of a controlled ground water
 9 area, a permit is not required before appropriating ground
 10 water by means of a well or developed spring with a maximum
 11 appropriation of 35 gallons per minute or less, not to
 12 exceed 10 acre-feet per year, except that a combined
 13 appropriation from the same source from two or more wells or
 14 developed springs exceeding this limitation requires a
 15 permit. Within 60 days of completion of the well or
 16 developed spring and appropriation of the ground water for
 17 beneficial use, the appropriator shall file a notice of
 18 completion with the department on a form provided by the
 19 department at its offices and at the offices of the county
 20 clerk and recorders. Upon receipt of the notice, the
 21 department shall review the notice and may, before issuing a
 22 certificate of water right, return a defective notice for
 23 correction or completion, together with the reasons for
 24 returning it. A notice does not lose priority of filing
 25 because of defects if the notice is corrected, completed,

1 and refiled with the department within 30 days or within a
 2 further time as the department may allow, not to exceed 6
 3 months. If a notice is not corrected and completed within
 4 the time allowed, the priority date of appropriation ~~shall~~
 5 be is the date of refileing a correct and complete notice
 6 with the department. A certificate of water right may not be
 7 issued until a correct and complete notice has been filed
 8 with the department. The original of the certificate ~~shall~~
 9 must be sent to the appropriator. The department shall keep
 10 a copy of the certificate in its office in Helena. The date
 11 of filing of the notice of completion is the date of
 12 priority of the right.

13 (2) An appropriator of ground water by means of a well
 14 or developed spring first put to beneficial use between
 15 January 1, 1962, and July 1, 1973, who did not file a notice
 16 of completion, as required by laws in force prior to April
 17 14, 1981, with the county clerk and recorder shall file a
 18 notice of completion, as provided in subsection (1) ~~of--this~~
 19 ~~section~~, with the department to perfect the water right. The
 20 filing of a claim ~~of--existing--water--right~~ pursuant to
 21 85-2-221 is sufficient notice of completion under this
 22 subsection. The priority date of the appropriation ~~shall-be~~
 23 is the date of the filing of a notice as provided in
 24 subsection (1) of this section or the date of the filing of
 25 the claim of existing water right. An appropriation under

1 this subsection is an existing right, and a permit is not
 2 required; however, the department shall acknowledge the
 3 receipt of a correct and complete filing of a notice of
 4 completion, except that for an appropriation of 35 gallons
 5 per minute or less, not to exceed 10 acre-feet per year, the
 6 department shall issue a certificate of water right. If a
 7 certificate is issued under this section, a certificate need
 8 not be issued under the adjudication proceedings provided
 9 for in 85-2-236.

10 (3) A permit is not required before constructing an
 11 impoundment or pit and appropriating water for use by
 12 livestock if the maximum capacity of the impoundment or pit
 13 is less than 15 acre-feet and the appropriation is less than
 14 30 acre-feet per year and is from a source other than a
 15 perennial flowing stream and the impoundment or pit is to be
 16 constructed on and will be accessible to a parcel of land
 17 that is owned or under the control of the applicant and that
 18 is 40 acres or larger. As used in this subsection, a
 19 perennial flowing stream means a stream which that
 20 historically has flowed continuously at during all seasons
 21 of the year, during dry as well as wet years. However,
 22 within 60 days after constructing the impoundment or pit,
 23 the appropriator shall apply for a permit as prescribed by
 24 this part. Upon receipt of a correct and complete
 25 application for a stockwater provisional permit, the

1 department shall then automatically issue a provisional
 2 permit. If the department determines after a hearing that
 3 the rights of other appropriators have been or will be
 4 adversely affected, it may revoke the permit or require the
 5 permittee to modify the impoundment or pit and may then make
 6 the permit subject to such terms, conditions, restrictions,
 7 or limitations it considers necessary to protect the rights
 8 of other appropriators.

9 (4) A person may also appropriate water without
 10 applying for or prior to receiving a permit under rules
 11 adopted by the board under 85-2-113."

12 NEW SECTION. Section 10. Nonseverability. It is the
 13 intent of the legislature that each part of [this act] is
 14 essentially dependent upon every other part, and if one part
 15 is held unconstitutional or invalid, all other parts are
 16 invalid.

17 NEW SECTION. Section 11. Effective date. [This act] is
 18 effective July 1, 1993.

-End-

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
 KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
 WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
 GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
 SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
 TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING--FOR--THE
 ACCEPTANCE--OF--STATEMENTS--OF--CLAIM--TO--EXISTING--WATER--RIGHTS
 FILED--AFTER--5--P.M.--APRIL--30--1982--ESTABLISHING--A
 REBUTTABLE--PRESUMPTION--OF--ABANDONMENT--FOR--SUCH--WATER--RIGHTS;
 PROVIDING--FOR--THE--ESTABLISHMENT--OF--A--PROCEDURE--FOR
 ADJUDICATING--THOSE--RIGHTS;--PROVIDING--A--DEADLINE--FOR
 ACCEPTANCE--OF--STATEMENTS--OF--CLAIM;--AMENDING--SECTIONS
 85-2-221, 85-2-226, AND 85-2-231, MCA; AND PROVIDING--AN
 IMMEDIATE--EFFECTIVE--DATE--AND--A--RETROACTIVE--APPLICABILITY
 DATE; PROVIDING FOR THE REMISSION OF CLAIMS TO EXISTING
RIGHTS TO THE USE OF WATER FORFEITED PURSUANT TO SECTION
85-2-226, MCA; PROVIDING FOR THE FILING OF CLAIMS IN THE
GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE
NOTICE OF THE RIGHT TO FILE CLAIMS; PROVIDING FOR A DEADLINE
FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR
CONDITIONS UPON THE ADJUDICATION OF SUCH CLAIMS; AMENDING
SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225,

85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND
PROVIDING AN EFFECTIVE DATE."

WHEREAS,--Article--IX,--section--3,--of--the--Montana
 Constitution--provides--that--all--existing--rights--to--the--use--of
 any--waters--for--any--useful--or--beneficial--purpose--are
 recognized--and--confirmed;--and

WHEREAS,--Article--IX,--section--3,--of--the--Montana
 Constitution--provides--that--the--legislature--shall--provide--for
 the--administration,--control,--and--regulation--of--water--rights
 and--shall--establish--a--system--of--centralized--records;--and

WHEREAS,--Article--IX--of--the--Montana--Constitution--was
 adopted--to--protect--Montana--water--rights--from--claims--by--water
 users--in--downstream--states;--and

WHEREAS,--in--order--to--protect--Montana--water--rights--from
 downstream--claims,--the--Montana--legislature--established--a
 procedure--for--the--general--adjudication--of--water--rights--and
 provided--in--section--85-2-226,--MCA,--that--the--failure--to--file
 a--claim--to--an--existing--right--in--response--to--a--general--notice
 of--adjudication--and--in--accordance--with--the--deadline
 established--under--section--85-2-221,--MCA,--would--establish--a
 conclusive--presumption--of--abandonment--of--that--right;--and

WHEREAS,--section--85-2-226,--MCA,--was--enacted--to
 facilitate--the--prompt--filing--of--claims--and--speedy
 adjudication--on--the--merits--of--each--case;--and

1 WHEREAS, the general adjudication is still pending, and
 2 through the course of the adjudication, it has come to the
 3 attention of the legislature that the provisions of section
 4 85-2-226, MCA, may result in the loss of otherwise valid
 5 Montana water rights, and

6 WHEREAS, the legislature determines that the summary
 7 abandonment of water rights does not afford adequate
 8 protection to Montana water rights as intended by the
 9 Montana Constitution and by the Montana legislature and is
 10 inconsistent with long-established principles of
 11 abandonment; and

12 WHEREAS, it is the intent of the legislature that the
 13 adjudication process must provide for the adjudication of
 14 all Montana water rights in existence on July 1, 1973, and

15 WHEREAS, because the general adjudication of water
 16 rights is not completed and will be ongoing for at least 20
 17 years, the legislature finds that the acceptance of
 18 additional statements of claim will not unduly delay the
 19 adjudication; and

20 WHEREAS, the legislature determines that section
 21 85-2-226, MCA, imposes a harsh and unnecessary penalty for
 22 failure to file a statement of claim by April 30, 1982, and
 23 that the penalty is not consistent with the intent of the
 24 Montana Constitution and of the legislature and should,
 25 therefore, be adjusted in a manner that will more

1 appropriately balance the interests at stake in the
 2 adjudication and enable the Water Court to adjudicate all
 3 existing water rights;

4 THEREFORE, the legislature finds that it is appropriate
 5 to make the following amendments to sections 85-2-221,
 6 85-2-226, and 85-2-231, MCA, in order to provide for the
 7 acceptance of additional statements of claim to existing
 8 water rights under the conditions set forth below:

9 -----

10 STATEMENT OF INTENT

11 A statement of intent is included with this bill to
 12 provide comment to the Montana supreme court regarding the
 13 adoption of rules of procedure by the court. The intent of
 14 this legislation is to balance the interests of the state
 15 and of those holding Montana water rights by establishing a
 16 rebuttable, rather than a conclusive, presumption of
 17 abandonment for statements of claim filed after April 30,
 18 1982, and by allowing the adjudication of those claims.
 19 Because the adjudication is within the jurisdiction of the
 20 judicial branch, the legislature believes that the Montana
 21 supreme court should adopt rules of procedure governing the
 22 adjudication of these water rights. The legislature
 23 recognizes that various basins within the state are in
 24 different stages in the adjudication and that the
 25 legislature has provided a mechanism for reopening both

preliminary--and--final--decrees--it--is--the--intent--of--the
 legislature,--therefore,--that--procedures--be--developed--to
 allow--for--the--adjudication--of--late--claims--submitted--prior--to
 the--closure--of--court--records--preceding--the--date--of--issuance
 of--the--preliminary--decree--or--in--those--basins--in--which--a
 preliminary--decree--has--not--yet--been--rendered--in--basins--in
 which--a--preliminary--decree--or--final--decree--has--been--issued,
 the--legislature--intends--that--the--late--filed--claims--be
 adjudicated--when--the--decree--is--reopened--in--accordance--with
 85-2-237--in--both--cases,--the--late--claimant--should--be
 required--to--file--a--request--for--hearing--on--the--late--claims.

With--respect--to--notice,--the--legislature--intends--that
 notice--be--provided--to--water--users--that--late--claims--will--be
 accepted,--subject--to--a--rebuttable--presumption--of
 abandonment,--and--that--objections--to--the--presumption--or--the
 claim--may--be--filed. Whenever possible, the notice must be
 provided--in--court--generated--documents--of--general
 circulation,--such--as--the--temporary--preliminary--decree,
 notice--of--objection,--preliminary--decree,--and--order--of
 reopening. When--this--is--not--possible,--the--court--should
 devise--an--alternative--method--for--notifying--water--users--who
 may--be--affected--by--the--late--claim--in--instances--in--which
 special--notice--is--required,--the--claimant--requesting--a
 hearing--on--the--late--claim--should--reimburse--the--water--court
 for--the--costs--associated--with--providing--the--notice--in--all

cases,--the--water--court--may--assess--a--fee--for--the--filing--of--a
 request--for--hearing--on--late--claims. This fee may not exceed
 \$300 per request, and a claimant should submit a separate
 request for each basin in which late claims are filed.

WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 CONSTITUTION PROVIDES THAT ALL EXISTING RIGHTS TO THE USE OF
 ANY WATERS FOR ANY USEFUL OR BENEFICIAL PURPOSE ARE
 RECOGNIZED AND CONFIRMED; AND

WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 CONSTITUTION REQUIRES THE LEGISLATURE TO PROVIDE FOR THE
 ADMINISTRATION, CONTROL, AND REGULATION OF WATER RIGHTS AND
 TO ESTABLISH A SYSTEM OF CENTRALIZED RECORDS FOR SUCH
 RIGHTS; AND

WHEREAS, THE LEGISLATURE ESTABLISHED A PROCEDURE FOR THE
 GENERAL ADJUDICATION OF EXISTING RIGHTS TO THE USE OF WATER
 AND PROVIDED IN SECTION 85-2-226, MCA, THAT THE FAILURE TO
 FILE A CLAIM OF EXISTING RIGHT ON OR BEFORE THE DEADLINE
 ESTABLISHED UNDER SECTION 85-2-221, MCA, WOULD ESTABLISH A
 CONCLUSIVE ABANDONMENT OF THE RIGHT; AND

WHEREAS, THE MONTANA SUPREME COURT, IN THE MATTER OF
 THE ADJUDICATION OF THE WATER RIGHTS WITHIN THE YELLOWSTONE
 RIVER, 253 MONT. 167, 832 P.2D 1210 (1992), HAS DETERMINED
 THAT THE FAILURE TO FILE A STATEMENT OF CLAIM TO AN EXISTING
 RIGHT TO THE USE OF WATER ON OR BEFORE APRIL 30, 1982,
 RESULTED IN THE FORFEITURE OF THAT RIGHT; AND

1 WHEREAS, IT HAS COME TO THE ATTENTION OF THE LEGISLATURE
 2 THAT THE FORFEITURE OF WATER RIGHTS FOR FAILURE TO TIMELY
 3 FILE A CLAIM HAS IN SOME INSTANCES CAUSED HARDSHIP, AND THE
 4 LEGISLATURE ACCORDINGLY DESIRES TO PROVIDE WATER RIGHTS
 5 CLAIMANTS WITH ONE MORE OPPORTUNITY TO ASSERT A WATER RIGHTS
 6 CLAIM IN THE GENERAL ADJUDICATION; AND

7 WHEREAS, IN SO DOING, THE LEGISLATURE RECOGNIZES THAT
 8 THE ADJUDICATION PROCESS WILL NOT BE COMPLETED FOR MANY
 9 YEARS BUT THAT A SUBSTANTIAL AMOUNT OF PROGRESS HAS ALREADY
 10 OCCURRED IN THE ADJUDICATION, SPECIFICALLY IN THE AREA OF
 11 WATER RIGHTS COMPACTS WITH INDIAN TRIBES AND THE FEDERAL
 12 GOVERNMENT AND IN DECREES AND STIPULATIONS INVOLVING
 13 INDIVIDUAL CLAIMANTS, AND THUS THE LEGISLATURE BELIEVES THAT
 14 IT IS NECESSARY TO ENSURE THAT PARTIES WHO FILED CLAIMS ON
 15 OR BEFORE APRIL 30, 1982, AND HOLDERS OF FEDERAL RESERVED
 16 WATER RIGHTS ARE NOT ADVERSELY AFFECTED BY THE INCLUSION OF
 17 NEW PARTIES IN THE ADJUDICATION BY SUBJECTING THE RIGHT TO
 18 FILE THOSE CLAIMS IN REMISSION TO CERTAIN TERMS AND
 19 CONDITIONS; AND

20 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE PROTECTION
 21 FOR TIMELY FILED CLAIMANTS FROM INCURRING ADDITIONAL COSTS
 22 OR FROM BEING ADVERSELY AFFECTED BY JUSTIFIABLE RELIANCE ON
 23 THE PRESUMPTION OF ABANDONMENT; AND

24 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE A CONCLUSIVE
 25 ADJUDICATION OF EXISTING WATER RIGHTS; AND

1 WHEREAS, THE LEGISLATURE RECOGNIZES THAT ACCORDING A
 2 PRIVILEGE TO FILE ADDITIONAL STATEMENTS OF CLAIM PRESENTS A
 3 POTENTIAL FOR ABUSE BY THOSE WHO MAY ATTEMPT TO REFILE
 4 PREVIOUSLY ADJUDICATED CLAIMS, AND THE LEGISLATURE THUS
 5 BELIEVES THAT THE COURTS SHOULD DEAL HARSHLY WITH ANY ABUSES
 6 BY SUCH MEASURES AS, WITHOUT LIMITATION, THE IMPOSITION OF
 7 SANCTIONS UNDER RULE 11, MONTANA RULES OF CIVIL PROCEDURE;
 8 AND

9 WHEREAS, THE LEGISLATURE DETERMINES THAT THE DEADLINE
 10 FOR FILING WATER RIGHT CLAIMS AS PROVIDED IN THIS BILL
 11 APPROPRIATELY BALANCES THE INTERESTS AT STAKE IN THE
 12 ADJUDICATION.

13 THEREFORE, THE LEGISLATURE FINDS IT IS APPROPRIATE TO
 14 MAKE THE FOLLOWING AMENDMENTS TO SECTIONS 85-2-102,
 15 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234,
 16 85-2-237, AND 85-2-306, MCA, IN ORDER TO PROVIDE FOR THE
 17 ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM TO EXISTING
 18 WATER RIGHTS UNDER THE CONDITIONS SET FORTH IN THIS BILL.

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

21 (Refer to Introduced Bill)

22 Strike everything after the enacting clause and insert:

23 **Section 1.** Section 85-2-102, MCA, is amended to read:

24 "85-2-102. (Temporary) Definitions. Unless the context
 25 requires otherwise, in this chapter the following

1 definitions apply:

2 (1) "Appropriate" means to:

3 (a) divert, impound, or withdraw (including by stock
4 for stock water) a quantity of water;

5 (b) in the case of a public agency, to reserve water in
6 accordance with 85-2-316; or

7 (c) in the case of the department of fish, wildlife,
8 and parks, to lease water in accordance with 85-2-436.

9 (2) "Beneficial use", unless otherwise provided, means:

10 (a) a use of water for the benefit of the appropriator,
11 other persons, or the public, including but not limited to
12 agricultural (including stock water), domestic, fish and
13 wildlife, industrial, irrigation, mining, municipal, power,
14 and recreational uses;

15 (b) a use of water appropriated by the department for
16 the state water leasing program under 85-2-141 and of water
17 leased under a valid lease issued by the department under
18 85-2-141; and

19 (c) a use of water by the department of fish, wildlife,
20 and parks pursuant to a lease authorized under 85-2-436.

21 (3) "Board" means the board of natural resources and
22 conservation provided for in 2-15-3302.

23 (4) "Certificate" means a certificate of water right
24 issued by the department.

25 (5) "Change in appropriation right" means a change in

1 the place of diversion, the place of use, the purpose of
2 use, or the place of storage.

3 (6) "Commission" means the fish, wildlife, and parks
4 commission provided for in 2-15-3402.

5 (7) "Declaration" means the declaration of an existing
6 right filed with the department under section 8, Chapter
7 452, Laws of 1973.

8 (8) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

11 (9) "Existing right" means a right to the use of water
12 which would be protected under the law as it existed prior
13 to July 1, 1973.

14 (10) "Ground water" means any water that is beneath the
15 ground surface.

16 (11) "Permit" means the permit to appropriate issued by
17 the department under 85-2-301 through 85-2-303 and 85-2-306
18 through 85-2-314.

19 (12) "Person" means an individual, association,
20 partnership, corporation, state agency, political
21 subdivision, the United States or any agency thereof, or any
22 other entity. For purposes of 85-2-221(3), person includes
23 predecessors in interest.

24 (13) "Political subdivision" means any county,
25 incorporated city or town, public corporation, or district

created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(18) "Water division" means a drainage basin as defined in 3-7-102.

(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

(20) "Water master" means a master as provided for in Title 3, chapter 7.

(21) "Well" means any artificial opening or excavation

in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes predecessors in interest.

(12) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the

state empowered to appropriate water but not a private corporation, association, or group.

(13) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(14) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(15) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(16) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(17) "Water division" means a drainage basin as defined in 3-7-102.

(18) "Water judge" means a judge as provided for in Title 3, chapter 7.

(19) "Water master" means a master as provided for in Title 3, chapter 7.

(20) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought

or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-211, MCA, is amended to read:

"85-2-211. Petition by attorney general. Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221(1)."

Section 3. Section 85-2-213, MCA, is amended to read:

"85-2-213. Notice of order -- additional filing period.

(1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

{1}(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

{2}(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the

Montana supreme court order as provided in 85-2-212.

{3}(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

{4}(d) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

{5}(e) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

{6}(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

~~f77~~(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2) (a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995 1996, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, and April AND OCTOBER 1995, AND APRIL 1996, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April AND OCTOBER 1995, AND APRIL 1996, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of

85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995 1996.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person who failed to file a claim of existing right before April 30, 1982, may file such claim by physically filing it with the department on or before July 1, 1995 1996, or sending it by United States mail, postmarked on or before July 1, 1995 1996. Additionally, the notice must indicate that a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

Section 4. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if

1 there is a claimed right with no diversion, the department
2 shall file a copy of the statement of claim with the clerk
3 of the district court of the judicial district in which the
4 use occurs.

5 (3) Subject to certain terms and conditions, the
6 legislature intends to provide for the remission of the
7 forfeiture of existing rights to the use of water caused by
8 the failure to comply with subsection (1). Accordingly, a
9 person who failed to file a claim of an existing water right
10 on or before April 30, 1982, may file with the department a
11 claim of an existing water right on or before July 1, 1995
12 1996, on forms provided by the department. This section is
13 not intended to prevent a person who may have filed a claim
14 of an existing water right on or before April 30, 1982, from
15 filing an additional claim under this section if and to the
16 extent that the additional right claimed is not the same as
17 the right that was the subject of a previous claim. Claims
18 must be physically submitted to the department or sent by
19 United States mail, postmarked on or before the deadline set
20 forth in this subsection, in order to be considered timely.
21 Within 30 days of receipt, the department shall file copies
22 of timely filed claims with the appropriate clerk of court
23 as provided in subsection (2), and those claims are then
24 subject to adjudication by the district courts as any other
25 claim of existing right. The claimant is then subject to all

1 rights and obligations of any other party, except that:

2 (a) any claimant who has filed a claim after April 30,
3 1982, but on or before July 1, 1995 1996, must have the
4 claim incorporated into the adjudication, subject to all
5 prior proceedings, and does not, except as otherwise
6 provided in 85-2-237, have the right to reopen decrees
7 previously entered or to object to matters previously
8 determined on the merits by the water court after objection;
9 and

10 (b) any claimant who has filed a claim after April 30,
11 1982, but on or before July 1, 1995 1996, does not have the
12 right or standing to object to any water rights compact
13 reached in accordance with part 7 of this chapter that is
14 ratified by the legislature prior to [the effective date of
15 this act] or to claim protection under any provision of such
16 a compact that subordinates the use of a water right
17 recognized in the compact to a right recognized under state
18 law; and

19 (c) any claimant who has filed a claim after April 30,
20 1982, but on or before July 1, 1995 1996, is liable for any
21 costs and damages to any other claimant caused by the
22 latter's actions in reasonable reliance upon the former's
23 failure to file a claim on or before April 30, 1982, and
24 upon the conclusive presumption of abandonment provided in
25 85-2-226; and

(d) any existing right to the use of water that is the subject of a claim filed after April 30, 1982, is subordinate to:

(i) all filed claims finally adjudicated to be valid;

(ii) all reserved water right compacts negotiated pursuant to this chapter;

(iii) all permits and reservations of water issued pursuant to this chapter if and to the extent that the permitholder or reservation holder files an objection under this part and proves that the permitholder or reservation holder reasonably relied upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1995 1996."

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee -- processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed \$480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in

the state of Montana and which that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of \$40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of \$40.

(3) (a) Except as provided in subsection (3)(b), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of \$300.

(b) For a statement of claim that was filed after April 30, 1982, but prior to [the effective date of this act] or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before the entry of the temporary preliminary decree or the preliminary decree for the basin for which the claim is filed."

Section 6. Section 85-2-226, MCA, is amended to read:

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

Section 7. Section 85-2-234, MCA, is amended to read:

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

8 (2) The terms of a compact negotiated and ratified
9 under 85-2-702 must be included in the final decree without
10 alteration unless an objection is sustained pursuant to
11 85-2-233; provided that the court may not alter or amend any
12 of the terms of a compact except with the prior written
13 consent of the parties in accordance with applicable law.

14 (3) The final decree shall must establish the existing
15 rights and priorities within the water judge's jurisdiction
16 of persons required-by who have filed a claim in accordance
17 with 85-2-221 to file a claim--for--an--existing--right, of
18 persons required to file a declaration of existing rights in
19 the Powder River basin pursuant to an order of the
20 department or a district court issued under sections 8 and 9
21 of Chapter 452, Laws of 1973, and of any federal agency or
22 Indian tribe possessing water rights arising under federal
23 law, required by 85-2-702 to file claims.

24 (4) The final decree shall must establish, in a form
25 determined to be appropriate by the water judge, one or more

1 tabulations or lists of all water rights and their relative
2 priorities.

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

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

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

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

14 (i) by flow rate for direct flow rights, such as
15 irrigation rights;

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

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

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

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

25 (e) the place of use and a description of the land, if

1 any, to which the right is appurtenant;
 2 (f) the source of the water included in the right;
 3 (g) the place and means of diversion;
 4 (h) the inclusive dates during which the water is used
 5 each year;
 6 (i) any other information necessary to fully define the
 7 nature and extent of the right.
 8 (7) For each person, tribe, or federal agency
 9 possessing water rights arising under the laws of the United
 10 States, the final decree shall must state:
 11 (a) the name and mailing address of the holder of the
 12 right;
 13 (b) the source or sources of water included in the
 14 right;
 15 (c) the quantity of water included in the right;
 16 (d) the date of priority of the right;
 17 (e) the purpose for which the water included in the
 18 right is currently used, if at all;
 19 (f) the place of use and a description of the land, if
 20 any, to which the right is appurtenant;
 21 (g) the place and means of diversion, if any; and
 22 (h) any other information necessary to fully define the
 23 nature and extent of the right, including the terms of any
 24 compacts negotiated and ratified under 85-2-702.
 25 (8) Clerical mistakes in a final decree may be

1 corrected at any time on the initiative of the water judge
 2 or on the petition of any person who possesses a water
 3 right. The water judge shall order the notice of a
 4 correction proceeding as he determines to be appropriate to
 5 advise all persons who may be affected by the correction. An
 6 order of the water judge making or denying a clerical
 7 correction is subject to appellate review."

8 **Section 8.** Section 85-2-237, MCA, is amended to read:

9 "85-2-237. Reopening and review of decrees. (1) The
 10 After July 1, 1995 1996, the water judges shall by order
 11 reopen and review, within the limits set forth by the
 12 procedures described in this section, all preliminary or
 13 final decrees:

14 (a) that have been issued by the water courts but have
 15 not been noticed throughout the water divisions; or

16 (b) for basins for which claims have been filed under
 17 85-2-221(3).

18 (2) (a) Each order must state that the water judge will
 19 reopen the decree or decrees and, upon a hearing, review the
 20 water court's determination of any claim in the decree or
 21 decrees if an objection to the claim has been filed for the
 22 purpose of protecting rights to the use of water from
 23 sources:

24 (i) within the basin for which the decree was entered;
 25 or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if he the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

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

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary

or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which that cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to his the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before-him, including dismissal of the objection or modification of the portion of the decree describing the

1 contested claim.

2 (8) An order or decree modifying a previously issued
3 final decree as a result of procedures described in this
4 section may be appealed in the same manner as provided for
5 an appeal taken from a final order of a district court.

6 (9) An order or decree modifying a previously issued
7 preliminary decree as a result of procedures described in
8 this section may be appealed under 85-2-235 when the
9 preliminary decree has been made a final decree."

10 **Section 9.** Section 85-2-306, MCA, is amended to read:

11 "85-2-306. (Temporary) Exceptions to permit
12 requirements -- fee. (1) Ground water may be appropriated
13 only by a person who has a possessory interest in the
14 property where the water is to be put to beneficial use and
15 exclusive property rights in the ground water development
16 works or, if another person has rights in the ground water
17 development works, the written consent of the person with
18 those property rights. Outside the boundaries of a
19 controlled ground water area, a permit is not required
20 before appropriating ground water by means of a well or
21 developed spring with a maximum appropriation of 35 gallons
22 per minute or less, not to exceed 10 acre-feet per year,
23 except that a combined appropriation from the same source
24 from two or more wells or developed springs exceeding this
25 limitation requires a permit. Within 60 days of completion

1 of the well or developed spring and appropriation of the
2 ground water for beneficial use, the appropriator shall file
3 a notice of completion with the department on a form
4 provided by the department at its offices and at the offices
5 of the county clerk and recorders and pay a filing fee. Upon
6 receipt of the notice, the department shall review the
7 notice and may, before issuing a certificate of water right,
8 return a defective notice for correction or completion,
9 together with the reasons for returning it. A notice does
10 not lose priority of filing because of defects if the notice
11 is corrected, completed, and refiled with the department
12 within 30 days or within a further time as the department
13 may allow, not to exceed 6 months. If a notice is not
14 corrected and completed within the time allowed, the
15 priority date of appropriation shall--be is the date of
16 refiling a correct and complete notice with the department.
17 A certificate of water right may not be issued until a
18 correct and complete notice has been filed with the
19 department. The original of the certificate shall must be
20 sent to the appropriator. The department shall keep a copy
21 of the certificate in its office in Helena. The date of
22 filing of the notice of completion is the date of priority
23 of the right.

24 (2) An appropriator of ground water by means of a well
25 or developed spring first put to beneficial use between

January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of ~~this section~~, with the department to perfect the water right. The filing of a claim of ~~existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a

perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which that historically has flowed continuously at during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a \$10 fee, and the department

1 shall deposit \$10 of each filing fee collected pursuant to
 2 subsection (1) in the ground water assessment account,
 3 established in 85-2-905, within the state special revenue
 4 fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

5 85-2-306. (Effective July 1, 1993) Exceptions to permit
 6 requirements. (1) Ground water may be appropriated only by a
 7 person who has a possessory interest in the property where
 8 the water is to be put to beneficial use and exclusive
 9 property rights in the ground water development works or, if
 10 another person has rights in the ground water development
 11 works, the written consent of the person with those property
 12 rights. Outside the boundaries of a controlled ground water
 13 area, a permit is not required before appropriating ground
 14 water by means of a well or developed spring with a maximum
 15 appropriation of 35 gallons per minute or less, not to
 16 exceed 10 acre-feet per year, except that a combined
 17 appropriation from the same source from two or more wells or
 18 developed springs exceeding this limitation requires a
 19 permit. Within 60 days of completion of the well or
 20 developed spring and appropriation of the ground water for
 21 beneficial use, the appropriator shall file a notice of
 22 completion with the department on a form provided by the
 23 department at its offices and at the offices of the county
 24 clerk and recorders. Upon receipt of the notice, the
 25 department shall review the notice and may, before issuing a

1 certificate of water right, return a defective notice for
 2 correction or completion, together with the reasons for
 3 returning it. A notice does not lose priority of filing
 4 because of defects if the notice is corrected, completed,
 5 and refiled with the department within 30 days or within a
 6 further time as the department may allow, not to exceed 6
 7 months. If a notice is not corrected and completed within
 8 the time allowed, the priority date of appropriation ~~shall~~
 9 be is the date of refiling a correct and complete notice
 10 with the department. A certificate of water right may not be
 11 issued until a correct and complete notice has been filed
 12 with the department. The original of the certificate ~~shall~~
 13 must be sent to the appropriator. The department shall keep
 14 a copy of the certificate in its office in Helena. The date
 15 of filing of the notice of completion is the date of
 16 priority of the right.

17 (2) An appropriator of ground water by means of a well
 18 or developed spring first put to beneficial use between
 19 January 1, 1962, and July 1, 1973, who did not file a notice
 20 of completion, as required by laws in force prior to April
 21 14, 1981, with the county clerk and recorder shall file a
 22 notice of completion, as provided in subsection (1) ~~of this~~
 23 ~~section~~, with the department to perfect the water right. The
 24 filing of a claim ~~of--existing--water--right~~ pursuant to
 25 85-2-221 is sufficient notice of completion under this

subsection. The priority date of the appropriation shall--be
 is the date of the filing of a notice as provided in
 subsection (1) of this section or the date of the filing of
 the claim of existing water right. An appropriation under
 this subsection is an existing right, and a permit is not
 required; however, the department shall acknowledge the
 receipt of a correct and complete filing of a notice of
 completion, except that for an appropriation of 35 gallons
 per minute or less, not to exceed 10 acre-feet per year, the
 department shall issue a certificate of water right. If a
 certificate is issued under this section, a certificate need
 not be issued under the adjudication proceedings provided
 for in 85-2-236.

(3) A permit is not required before constructing an
 impoundment or pit and appropriating water for use by
 livestock if the maximum capacity of the impoundment or pit
 is less than 15 acre-feet and the appropriation is less than
 30 acre-feet per year and is from a source other than a
 perennial flowing stream and the impoundment or pit is to be
 constructed on and will be accessible to a parcel of land
 that is owned or under the control of the applicant and that
 is 40 acres or larger. As used in this subsection, a
 perennial flowing stream means a stream which that
 historically has flowed continuously at during all seasons
 of the year, during dry as well as wet years. However,

within 60 days after constructing the impoundment or pit,
 the appropriator shall apply for a permit as prescribed by
 this part. Upon receipt of a correct and complete
 application for a stockwater provisional permit, the
 department shall then automatically issue a provisional
 permit. If the department determines after a hearing that
 the rights of other appropriators have been or will be
 adversely affected, it may revoke the permit or require the
 permittee to modify the impoundment or pit and may then make
 the permit subject to such terms, conditions, restrictions,
 or limitations it considers necessary to protect the rights
 of other appropriators.

(4) A person may also appropriate water without
 applying for or prior to receiving a permit under rules
 adopted by the board under 85-2-113."

NEW SECTION. Section 10. Nonseverability. It is the
 intent of the legislature that each part of [this act] is
 essentially dependent upon every other part, and if one part
 is held unconstitutional or invalid, all other parts are
 invalid.

NEW SECTION. Section 11. Effective date. [This act] is
 effective July 1, 1993.

-End-

HOUSE STANDING COMMITTEE REPORT

March 27, 1993
Page 2 of 4

March 27, 1993
Page 1 of 4

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 310 (third reading copy -- blue) be concurred in as amended.

Signed: Vern Keller
Vern Keller, Chair

And, that such amendments read:

Carried by: Rep. Anderson

1. Title, page 1, line 18.
Following: "OF"
Insert: "THE FORFEITURE OF"

2. Title, page 1, line 19.
Strike: "FORFEITED"

3. Page 10.
Following: line 15
Insert: "(11) 'Late claim' means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."
Renumber: subsequent subsections

4. Page 13.
Following: line 14
Insert: "(10) 'Late claim' means a claim forfeited pursuant to the conclusive presumption of abandonment under 85-2-226."
Renumber: subsequent subsections

5. Page 18, line 12.
Following: "that"
Insert: "under 85-2-226, as interpreted by the Montana supreme court,"

6. Page 19, line 8.
Following: "Accordingly,"
Insert: "with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to [the effective date of this act],"

7. Page 20, lines 2 through 4.

Following: "(a)"

Strike: remainder of line 2 through "claim" on line 4

Insert: "a late claim must be"

8. Page 20, line 5.

Strike: "prior"

9. Page 20, lines 5 through 8.

Strike: ", and" on line 5 through "and" on line 9

Insert: "that have taken place prior to the inclusion of the late claim in the adjudication;

(b) the person asserting a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982, unless the person asserting a late claim also has filed a claim on or before April 30, 1982;"

Renumber: subsequent subsections

10. Page 20, lines 10 and 11.

Following: "(b)" on line 10

Strike: remainder of line 10 through "1996," on line 11

Insert: "a person asserting a late claim"

11. Page 20, line 15.

Following: "I"

Insert: "except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982,"

Following: "protection"

Insert: "for the right represented in the late claim"

12. Page 20, line 18.

Strike: "and"

13. Page 20, line 19 through page 21, line 12.

Strike: subsections (c) and (d) in their entirety

Insert: "(d) if the water judge, following objection by another person asserting a claim, finds that a right represented in a late claim was the subject of a prior order or decree by the water judge, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;

(e) a person who has a late claim may be found liable for costs and damages incurred by another person who proves by a preponderance of the evidence that the costs and

Committee Vote:
Yes 12, No 1.

ROSE No

691105SC.Hpf

HOUSE
SB 310
691105SC.Hpf

March 27, 1993
Page 3 of 4

damages were incurred as a result of actions undertaken in reasonable reliance upon a late claim and the conclusive presumption of abandonment provided in 85-2-226. A claim for damages and costs under this subsection (e) must be filed in a court of general jurisdiction on or before July 1, 1998. The court of general jurisdiction in which the action is commenced may, upon motion, certify the case to the water court for subordination of the right asserted in the late claim if subordination will cure the alleged damage.

(f) the water judge may subordinate an existing right asserted in a late claim to a claim filed on or before April 30, 1982, to a reserved water right compact negotiated or to a permit issued pursuant to this chapter if and to the extent that an objection is filed under this part by a person entitled to subordination by July 1, 1998, and the objector proves by a preponderance of the evidence that the objector has reasonably relied to the objector's detriment upon the failure to file the existing right on or before April 30, 1982, and the conclusive presumption of abandonment provided in 85-2-226."

14. Page 21, line 15.

Following: "1996"

Insert: ", and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted"

15. Page 22, line 9.

Strike: "(3) (b)"

Insert: "(3) (c)"

16. Page 22, line 12.

Following: "of"

Strike: "\$300"

Insert: "\$100, which must be deposited in the water rights adjudication account"

17. Page 22.

Following: line 12

Insert: "(b) If an objection is filed to a late claim, the water judge shall assess an additional fee of \$200 against the person asserting the late claim, which fee must be deposited in the water rights adjudication account."

Renumber: subsequent subsection

March 27, 1993
Page 4 of 4

18. Page 36, lines 16 through 20.

Strike: section 10 in its entirety

Insert: "NEW SECTION Section 10. 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 11. Contingent voidness. If a part of [this act] is found to establish a condition under which the provisions of Title 85 do not provide for a general stream adjudication for which the United States has waived its immunity from suit under 43 U.S.C. 666 or if a part of 85-2-221(3) (c), as amended by [this act], is invalid, then [this act] is void."

Renumber: subsequent section

-END-

#1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 310
Representative Anderson

March 30, 1993 10:48 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 310 (Agriculture, Livestock, and Irrigation dated March 27, 1993).

Signed: *Shelly W. Anderson*
Representative Anderson

And, that such amendments to Senate Bill 310 (Agriculture, Livestock, and Irrigation dated March 27, 1993) read as follows:

1. Amendment No.13

In Insert, line 3, following: "claim"

Insert: "did not exist on July 1, 1973, or that the right represented by the late claim should be subordinated to another right under [section 3(f) of this section] or that the right represented in the late claim"

-END-

ADOPT

SB 310

HOUSE

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 310, met and considered: Senate Bill No. 310 as amended. We recommend that Senate Bill No. 310 (reference copy - salmon) be amended as follows:

1. Title, line 18.

Following: "FOR THE"

Insert: "CONDITIONAL"

Strike: "THE FORFEITURE OF"

Insert: "CERTAIN"

2. Title, line 19.

Following: "WATER"

Insert: "DETERMINED BY THE MONTANA SUPREME COURT TO HAVE BEEN FORFEITED"

3. Title, line 21.

Following: "OF"

Insert: "LATE"

4. Title, line 22.

Following: "FILE"

Insert: "LATE"

5. Title, line 25.

Following: "SUCH"

Insert: "LATE"

Following: "CLAIMS;"

Insert: "DIRECTING THE WATER POLICY COMMITTEE, IN COORDINATION WITH CERTAIN STATE AGENCIES, TO CONDUCT AN INTERIM STUDY REGARDING LATE CLAIM ISSUES;"

6. Page 7, line 5.

Strike: "ASSERT"

Insert: "file"

7. Page 7, line 14.

Following: "WHO"

Insert: "have been recognized as having"

8. Page 8, line 17.

Strike: "ADDITIONAL STATEMENTS OF CLAIM"

Insert: "late claims"

Strike: "EXISTING"

Insert: "the use of"

9. Page 8, line 18.

Strike: "RIGHTS"

10. Page 8.

Following: line 18.

Insert: "Additionally, the legislature directs the water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, to conduct an interim study regarding certain late claim issues."

11. Page 10, line 16.

Following: "A CLAIM"

Insert: "to an existing right"

12. Page 10, lines 24 and 25.

Strike: "For" on line 24 through "interest." on line 25

13. Page 13, line 17.

Following: "A CLAIM"

Insert: "to an existing right"

14. Page 13, line 25 through page 14, line 1.

Strike: "For" on page 13, line 25 through "interest." on page 14, line 1

15. Page 18, line 2.

Following: "state"

Insert: "and to be maintained in that location through July 1, 1996"

16. Page 18, line 11.

Strike: "person who failed to file a"

17. Page 18, line 12.

Following: "right"

Insert: "not filed with the department"

18. Page 18, lines 12 and 13.

Strike: "file such claim"

Insert: "be filed"

19. Page 18, line 17.

Strike: "AS" through "COURT,"

20. Page 18, line 22.

Following: "right"

Insert: "-- filing late claim"

ADOPT

REJECT

21. Page 19, line 17.
Strike: "person who failed to file a"
22. Page 19, line 18.
Following: "right"
Insert: "not filed with the department"
23. Page 19, line 19.
Strike: "file"
Insert: "be filed"
24. Page 19, lines 19 and 20.
Strike: "a claim of an existing water right"
25. Page 19, line 22.
Strike: "a person who may have filed"
Insert: "the filing of a late claim in addition to"
26. Page 19, line 23.
Following: "right"
Insert: "filed"
27. Page 19, lines 23 and 24.
Strike: "from filing an additional claim under this section"
28. Page 20, line 1.
Following: "claim"
Insert: "and is not an abandoned right"
29. Page 20, lines 4 through 7.
Strike: "Within" on line 4 through "those" on line 7
Insert: "The"
30. Page 20, line 19.
Strike: "INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION"
Insert: "date of filing"
31. Page 20, line 20.
Strike: "ASSERTING"
Insert: "Filing"
32. Page 20, line 25 through page 21, line 2.
Following: "1982" on line 25
Strike: the remainder of subsection (b) through "1982" on page 21, line 2
33. Page 21, line 5.
Strike: "ASSERTING"
Insert: "Filing"

34. Page 22, lines 9 through 13.
Strike: "BY" on line 9 through "OR" on line 13
Insert: "under 85-2-233, finds"
35. Page 22, line 15.
Following: "BY THE WATER JUDGE"
Insert: "or is otherwise without merit"
36. Page 22, line 18 through page 23, line 16.
Strike: subsections (e) and (f) in their entirety
Insert: "(e) a right represented in a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;
(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the claim is, in addition, subordinate to:
(i) rights represented in all valid, timely filed claims; and
(ii) rights represented in a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982."
37. Page 24, line 18.
Strike: "\$100"
Insert: "\$150"
38. Page 24, line 20.
Following: "ACCOUNT"
Insert: "for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2)"
39. Page 24, line 21.
Strike: "IF" through "THE"
Insert: "The"
40. Page 24, lines 22 and 23.
Strike: "AN" on line 22 through "CLAIM" on line 23
Insert: "against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to"

the filing of the late claim and the consideration of the objection"

41. Page 24, line 23.

Strike: "PEE"

Insert: "assessment"

42. Page 25, lines 4 through 6.

Strike: "the entry" on line 4 through "filed" on line 6

Insert: "a date to be established by the department by rule, but no later than July 1, 1999"

43. Page 39.

Following: line 7

Insert: "NEW SECTION. Section 10. Late claim interim study -- water policy committee. (1) The water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, shall conduct an interim study analyzing the need for and desirability and impacts of allowing the remission of forfeited water rights in addition to the remissions authorized under the provisions of [this act]. The study must analyze the impacts of additional forfeiture remission on:

(a) the general stream adjudication process, including but not limited to the issues of adequacy and Montana's and the federal government's concurrent water rights adjudication jurisdiction;

(b) the federal government and Indian tribes regarding existing and future negotiated water rights compacts, including but not limited to the issues of equal protection;

(c) timely claimants' water use;

(d) timely claimants' legal rights, including but not limited to constitutional requirements regarding the taking of property;

(e) the potential reduction in agricultural production resulting from not granting additional forfeiture remissions and the associated social and economic impacts;

(f) the issue of fairness to both late and timely claimants;

(g) the potential increased costs to the state and to late and timely claimants;

(h) potential losses in revenue to the state resulting from the state's failure to file claims to existing water rights on or before April 30, 1982;

(i) implications involving the state's trust responsibilities;

(j) potential litigation against the state by private parties; and

(k) impacts on municipal and county governments resulting from late claims.

(2) The study must include an analysis of the potential for identifying individuals or classes of individuals whose additional forfeiture remission could be authorized in a manner that would have an acceptable impact on those issues identified under subsection (1). The classes of late claimants include but are not limited to previously decreed water rights holders and classes established according to filing date.

(3) The study must be completed in consultation with other relevant state and federal agencies, relevant groups and organizations, and other interested and affected citizens.

(4) The water policy committee shall report the results of the study to the 54th legislature by October 1, 1994. The report must include any legislative or other policy options recommended by the water policy committee."

NEW SECTION. Section 11. Saving clause. [This act] does not affect proceedings that were begun before [passage and approval of this act] in which relief for damages have been sought based upon the diversion, impoundment, or withdrawal of water without a water right established under state law.

Renumber: subsequent sections

44. Page 39, line 8.

Following: "SEVERABILITY"

Insert: "-- partial nonseverability"

Following: "."

Insert: "(1)"

45. Page 39.

Following: line 13

Insert: "(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid."

April 22, 1993

Page 7 of 7

46. Page 39, lines 14 through 20.
Strike: section 12 in its entirety
Renumber: subsequent section

And that this Free Conference Committee report be adopted.

For the Senate:

Steve Doherty
Senator Doherty, Chair

Lorents Grosfeld
Senator Grosfeld

Senator Rea

For the House:

Keith W. Anderson
Representative S. Anderson, Chair

Bob Bachini
Representative Bachini

Ray Brandewie
Representative Brandewie

Am. Coord.
Sec. of Senate

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
ACCEPTANCE OF STATEMENTS OF CLAIM TO EXISTING WATER RIGHTS
FILED AFTER 5 P.M. APRIL 30, 1982, ESTABLISHING A
REBUTTABLE PRESUMPTION OF ABANDONMENT FOR SUCH WATER RIGHTS;
PROVIDING FOR THE ESTABLISHMENT OF A PROCEDURE FOR
ADJUDICATING THOSE RIGHTS; PROVIDING A DEADLINE FOR
ACCEPTANCE OF STATEMENTS OF CLAIM; AMENDING SECTIONS
85-2-221, 85-2-226, AND 85-2-231, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
DATE; PROVIDING FOR THE REMISSION OF THE FORFEITURE OF
CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER FORFEITED
PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING
OF CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION;
PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE CLAIMS;
PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN
REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF
SUCH CLAIMS; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213,

85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND
85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, Article IX, section 37 of the Montana
Constitution provides that all existing rights to the use of
any waters for any useful or beneficial purpose are
recognized and confirmed; and

WHEREAS, Article IX, section 37 of the Montana
Constitution provides that the legislature shall provide for
the administration, control, and regulation of water rights
and shall establish a system of centralized records; and

WHEREAS, Article IX of the Montana Constitution was
adopted to protect Montana water rights from claims by water
users in downstream states; and

WHEREAS, in order to protect Montana water rights from
downstream claims, the Montana legislature established a
procedure for the general adjudication of water rights and
provided in section 85-2-226, MCA, that the failure to file
a claim to an existing right in response to a general notice
of adjudication and in accordance with the deadline
established under section 85-2-221, MCA, would establish a
conclusive presumption of abandonment of that right; and

WHEREAS, section 85-2-226, MCA, was enacted to
facilitate the prompt filing of claims and speedy
adjudication on the merits of each case; and

1 WHEREAS, the general adjudication is still pending, and
 2 through the course of the adjudication, it has come to the
 3 attention of the Legislature that the provisions of section
 4 85-2-226, MCA, may result in the loss of otherwise valid
 5 Montana water rights, and

6 WHEREAS, the Legislature determines that the summary
 7 abandonment of water rights does not afford adequate
 8 protection to Montana water rights as intended by the
 9 Montana Constitution and by the Montana Legislature and is
 10 inconsistent with long-established principles of
 11 abandonment, and

12 WHEREAS, it is the intent of the Legislature that the
 13 adjudication process must provide for the adjudication of
 14 all Montana water rights in existence on July 1, 1973, and

15 WHEREAS, because the general adjudication of water
 16 rights is not completed and will be ongoing for at least 20
 17 years, the Legislature finds that the acceptance of
 18 additional Statements of Claim will not unduly delay the
 19 adjudication, and

20 WHEREAS, the Legislature determines that section
 21 85-2-226, MCA, imposes a harsh and unnecessary penalty for
 22 failure to file a Statement of Claim by April 30, 1982, and
 23 that the penalty is not consistent with the intent of the
 24 Montana Constitution and of the Legislature and should,
 25 therefore, be adjusted in a manner that will more

1 appropriately balance the interests at stake in the
 2 adjudication and enable the Water Court to adjudicate all
 3 existing water rights.

4 THEREFORE, the Legislature finds that it is appropriate
 5 to make the following amendments to sections 85-2-221,
 6 85-2-226, and 85-2-231, MCA, in order to provide for the
 7 acceptance of additional Statements of Claim to existing
 8 water rights under the conditions set forth below.

9 -----

10 STATEMENT OF INTENT

11 A statement of intent is included with this bill to
 12 provide comment to the Montana supreme court regarding the
 13 adoption of rules of procedure by the court. The intent of
 14 this legislation is to balance the interests of the state
 15 and of those holding Montana water rights by establishing a
 16 rebuttable, rather than a conclusive, presumption of
 17 abandonment for statements of claim filed after April 30,
 18 1982, and by allowing the adjudication of those claims.
 19 Because the adjudication is within the jurisdiction of the
 20 judicial branch, the legislature believes that the Montana
 21 supreme court should adopt rules of procedure governing the
 22 adjudication of these water rights. The legislature
 23 recognizes that various basins within the state are in
 24 different stages in the adjudication and that the
 25 legislature has provided a mechanism for reopening both

1 preliminary-and-final-decrees.--it--is--the--intent--of--the
 2 legislature,--therefore,--that--procedures--be--developed-to
 3 allow-for-the-adjudication-of-late-claims-submitted-prior-to
 4 the-closure-of-court-records-preceding-the-date-of--issuance
 5 of--the--preliminary-decree--or--in-those-basins-in-which-a
 6 preliminary-decree-has-not-yet-been-rendered,--in--basins--in
 7 which--a-preliminary-decree-or-final-decree-has-been-issued,
 8 the--legislature--intends--that--the--late-filed--claims--be
 9 adjudicated-when-the-decree-is-reopened-in--accordance--with
 10 85-2-237,--in--both--cases,--the--late--claimant--should--be
 11 required-to-file-a-request-for-hearing-on-the-late-claims.

12 With--respect--to--notice,--the-legislature-intends-that
 13 notice-be-provided-to-water-users-that-late-claims--will--be
 14 accepted,--subject---to---a---rebuttable---presumption---of
 15 abandonment,--and--that-objections-to-the-presumption-or-the
 16 claim-may-be-filed. Whenever-possible,--the--notice--must--be
 17 provided---in---court-generated---documents---of---general
 18 circulation,--such--as--the--temporary--preliminary--decree,
 19 notice--of--objection,--preliminary-decree,--and--order--of
 20 reopening. When-this--is--not--possible,--the--court--should
 21 devise--an--alternative-method-for-notifying-water-users-who
 22 may-be-affected-by-the-late-claim.--in--instances--in--which
 23 special--notice--is--required,--the--claimant--requesting--a
 24 hearing--on--the-late-claim-should-reimburse-the-water-court
 25 for-the-costs-associated-with-providing-the-notice.--in--all

1 cases,--the-water-court-may-assess-a-fee-for-the-filing-of-a
 2 request-for-hearing-on-late-claims.--This-fee-may-not--exceed
 3 \$300--per--request,--and-a-claimant-should-submit-a-separate
 4 request-for-each-basin-in-which-late-claims-are-filed.

5 WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 6 CONSTITUTION PROVIDES THAT ALL EXISTING RIGHTS TO THE USE OF
 7 ANY WATERS FOR ANY USEFUL OR BENEFICIAL PURPOSE ARE
 8 RECOGNIZED AND CONFIRMED; AND

9 WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA
 10 CONSTITUTION REQUIRES THE LEGISLATURE TO PROVIDE FOR THE
 11 ADMINISTRATION, CONTROL, AND REGULATION OF WATER RIGHTS AND
 12 TO ESTABLISH A SYSTEM OF CENTRALIZED RECORDS FOR SUCH
 13 RIGHTS; AND

14 WHEREAS, THE LEGISLATURE ESTABLISHED A PROCEDURE FOR THE
 15 GENERAL ADJUDICATION OF EXISTING RIGHTS TO THE USE OF WATER
 16 AND PROVIDED IN SECTION 85-2-226, MCA, THAT THE FAILURE TO
 17 FILE A CLAIM OF EXISTING RIGHT ON OR BEFORE THE DEADLINE
 18 ESTABLISHED UNDER SECTION 85-2-221, MCA, WOULD ESTABLISH A
 19 CONCLUSIVE ABANDONMENT OF THE RIGHT; AND

20 WHEREAS, THE MONTANA SUPREME COURT, IN IN THE MATTER OF
 21 THE ADJUDICATION OF THE WATER RIGHTS WITHIN THE YELLOWSTONE
 22 RIVER, 253 MONT. 167, 832 P.2D 1210 (1992), HAS DETERMINED
 23 THAT THE FAILURE TO FILE A STATEMENT OF CLAIM TO AN EXISTING
 24 RIGHT TO THE USE OF WATER ON OR BEFORE APRIL 30, 1982,
 25 RESULTED IN THE FORFEITURE OF THAT RIGHT; AND

1 WHEREAS, IT HAS COME TO THE ATTENTION OF THE LEGISLATURE
 2 THAT THE FORFEITURE OF WATER RIGHTS FOR FAILURE TO TIMELY
 3 FILE A CLAIM HAS IN SOME INSTANCES CAUSED HARDSHIP, AND THE
 4 LEGISLATURE ACCORDINGLY DESIRES TO PROVIDE WATER RIGHTS
 5 CLAIMANTS WITH ONE MORE OPPORTUNITY TO ASSERT A WATER RIGHTS
 6 CLAIM IN THE GENERAL ADJUDICATION; AND

7 WHEREAS, IN SO DOING, THE LEGISLATURE RECOGNIZES THAT
 8 THE ADJUDICATION PROCESS WILL NOT BE COMPLETED FOR MANY
 9 YEARS BUT THAT A SUBSTANTIAL AMOUNT OF PROGRESS HAS ALREADY
 10 OCCURRED IN THE ADJUDICATION, SPECIFICALLY IN THE AREA OF
 11 WATER RIGHTS COMPACTS WITH INDIAN TRIBES AND THE FEDERAL
 12 GOVERNMENT AND IN DECREES AND STIPULATIONS INVOLVING
 13 INDIVIDUAL CLAIMANTS, AND THUS THE LEGISLATURE BELIEVES THAT
 14 IT IS NECESSARY TO ENSURE THAT PARTIES WHO FILED CLAIMS ON
 15 OR BEFORE APRIL 30, 1982, AND HOLDERS OF FEDERAL RESERVED
 16 WATER RIGHTS ARE NOT ADVERSELY AFFECTED BY THE INCLUSION OF
 17 NEW PARTIES IN THE ADJUDICATION BY SUBJECTING THE RIGHT TO
 18 FILE THOSE CLAIMS IN REMISSION TO CERTAIN TERMS AND
 19 CONDITIONS; AND

20 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE PROTECTION
 21 FOR TIMELY FILED CLAIMANTS FROM INCURRING ADDITIONAL COSTS
 22 OR FROM BEING ADVERSELY AFFECTED BY JUSTIFIABLE RELIANCE ON
 23 THE PRESUMPTION OF ABANDONMENT; AND

24 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE A CONCLUSIVE
 25 ADJUDICATION OF EXISTING WATER RIGHTS; AND

1 WHEREAS, THE LEGISLATURE RECOGNIZES THAT ACCORDING A
 2 PRIVILEGE TO FILE ADDITIONAL STATEMENTS OF CLAIM PRESENTS A
 3 POTENTIAL FOR ABUSE BY THOSE WHO MAY ATTEMPT TO REFILE
 4 PREVIOUSLY ADJUDICATED CLAIMS, AND THE LEGISLATURE THUS
 5 BELIEVES THAT THE COURTS SHOULD DEAL HARSHLY WITH ANY ABUSES
 6 BY SUCH MEASURES AS, WITHOUT LIMITATION, THE IMPOSITION OF
 7 SANCTIONS UNDER RULE 11, MONTANA RULES OF CIVIL PROCEDURE;
 8 AND

9 WHEREAS, THE LEGISLATURE DETERMINES THAT THE DEADLINE
 10 FOR FILING WATER RIGHT CLAIMS AS PROVIDED IN THIS BILL
 11 APPROPRIATELY BALANCES THE INTERESTS AT STAKE IN THE
 12 ADJUDICATION.

13 THEREFORE, THE LEGISLATURE FINDS IT IS APPROPRIATE TO
 14 MAKE THE FOLLOWING AMENDMENTS TO SECTIONS 85-2-102,
 15 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234,
 16 85-2-237, AND 85-2-306, MCA, IN ORDER TO PROVIDE FOR THE
 17 ACCEPTANCE OF ADDITIONAL STATEMENTS OF CLAIM TO EXISTING
 18 WATER RIGHTS UNDER THE CONDITIONS SET FORTH IN THIS BILL.

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

21 (Refer to Introduced Bill)

22 Strike everything after the enacting clause and insert:

23 **Section 1.** Section 85-2-102, MCA, is amended to read:

24 **"85-2-102. (Temporary) Definitions.** Unless the context
 25 requires otherwise, in this chapter the following

1 definitions apply:

2 (1) "Appropriate" means to:

3 (a) divert, impound, or withdraw (including by stock
4 for stock water) a quantity of water;

5 (b) in the case of a public agency, to reserve water in
6 accordance with 85-2-316; or

7 (c) in the case of the department of fish, wildlife,
8 and parks, to lease water in accordance with 85-2-436.

9 (2) "Beneficial use", unless otherwise provided, means:

10 (a) a use of water for the benefit of the appropriator,
11 other persons, or the public, including but not limited to
12 agricultural (including stock water), domestic, fish and
13 wildlife, industrial, irrigation, mining, municipal, power,
14 and recreational uses;

15 (b) a use of water appropriated by the department for
16 the state water leasing program under 85-2-141 and of water
17 leased under a valid lease issued by the department under
18 85-2-141; and

19 (c) a use of water by the department of fish, wildlife,
20 and parks pursuant to a lease authorized under 85-2-436.

21 (3) "Board" means the board of natural resources and
22 conservation provided for in 2-15-3302.

23 (4) "Certificate" means a certificate of water right
24 issued by the department.

25 (5) "Change in appropriation right" means a change in

1 the place of diversion, the place of use, the purpose of
2 use, or the place of storage.

3 (6) "Commission" means the fish, wildlife, and parks
4 commission provided for in 2-15-3402.

5 (7) "Declaration" means the declaration of an existing
6 right filed with the department under section 8, Chapter
7 452, Laws of 1973.

8 (8) "Department" means the department of natural
9 resources and conservation provided for in Title 2, chapter
10 15, part 33.

11 (9) "Existing right" means a right to the use of water
12 which would be protected under the law as it existed prior
13 to July 1, 1973.

14 (10) "Ground water" means any water that is beneath the
15 ground surface.

16 (11) "LATE CLAIM" MEANS A CLAIM FORFEITED PURSUANT TO
17 THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

18 ~~(12)~~ (12) "Permit" means the permit to appropriate issued
19 by the department under 85-2-301 through 85-2-303 and
20 85-2-306 through 85-2-314.

21 ~~(13)~~ (13) "Person" means an individual, association,
22 partnership, corporation, state agency, political
23 subdivision, the United States or any agency thereof, or any
24 other entity. For purposes of 85-2-221(3), person includes
25 predecessors in interest.

~~13~~(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~14~~(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~15~~(16) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~16~~(17) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~17~~(18) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~18~~(19) "Water division" means a drainage basin as defined in 3-7-102.

~~19~~(20) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~20~~(21) "Water master" means a master as provided for

in Title 3, chapter 7.

~~21~~(22) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "LATE CLAIM" MEANS A CLAIM FORFEITED PURSUANT TO THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. For purposes of 85-2-221(3), person includes

predecessors in interest.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

(18) "Water division" means a drainage basin as defined in 3-7-102.

(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

1 ~~(19)~~(20) "Water master" means a master as provided for
2 in Title 3, chapter 7.

3 ~~(20)~~(21) "Well" means any artificial opening or
4 excavation in the ground, however made, by which ground
5 water is sought or can be obtained or through which it flows
6 under natural pressures or is artificially withdrawn."

7 **Section 2.** Section 85-2-211, MCA, is amended to read:

8 "85-2-211. Petition by attorney general. Within 20 days
9 after May 11, 1979, the state of Montana upon relation of
10 the attorney general shall petition the Montana supreme
11 court to require all persons claiming a right within a water
12 division to file a claim of the right as provided in
13 85-2-221(1)."

14 **Section 3.** Section 85-2-213, MCA, is amended to read:

15 "85-2-213. Notice of order -- additional filing period.
16 (1) To assure that all persons who may claim an existing
17 water right are notified of the requirement to file a claim
18 of that right, the Montana supreme court shall give notice
19 of the order as follows:

20 ~~(1)~~(a) It shall cause the order, printed in not less
21 than 10-point type, to be placed in a prominent and
22 conspicuous place in all daily newspapers of the state and
23 in at least one newspaper published in each county of the
24 state within 30 days after the Montana supreme court order
25 as provided in 85-2-212 and in April of 1980, 1981, 1982,

1 and 1983.

2 ~~(2)~~(b) It shall cause the order, in writing, to be
3 placed in a prominent and conspicuous location in each
4 county courthouse in the state within 30 days after the
5 Montana supreme court order as provided in 85-2-212.

6 ~~(3)~~(c) It shall provide a sufficient number of copies
7 of the order to the county treasurers before October 15,
8 1979, 1980, 1981, and 1982, and the county treasurers shall
9 enclose a copy of the order with each statement of property
10 taxes mailed in 1979, 1980, 1981, and 1982. In the
11 implementation of this subsection, the department shall
12 provide reimbursement to each county treasurer for the
13 reasonable additional costs incurred by the treasurer
14 arising from the inclusion of the order required by this
15 section. The department shall be reimbursed for such costs
16 from the water right adjudication account created by
17 85-2-241.

18 ~~(4)~~(d) It shall provide copies of the order, in
19 writing, to the press services with offices located in
20 Helena within 30 days after the Montana supreme court order
21 as provided in 85-2-212, and in April of 1980, 1981, 1982,
22 and 1983.

23 ~~(5)~~(e) It shall, under authority granted to the states
24 by 43 U.S.C. 666, provide for service of the petition and
25 order upon the United States attorney general or his

designated representative.

(f) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(g) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2) (a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1995 1996, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, and April AND OCTOBER 1995, AND APRIL 1996, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, and April AND OCTOBER 1995, AND APRIL 1996, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in

a conspicuous location in each county courthouse and department field office in the state.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1995 1996.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any person who failed to file a claim of existing right before April 30, 1982, may file such claim by physically filing it with the department on or before July 1, 1995 1996, or sending it by United States mail, postmarked on or before July 1, 1995 1996. Additionally, the notice must indicate that UNDER 85-2-226, AS INTERPRETED BY THE MONTANA SUPREME COURT, a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

Section 4. Section 85-2-221, MCA, is amended to read:

"85-2-221. Filing of claim of existing water right. (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no

1 later than June 30, 1983, a statement of claim for each
2 water right asserted on a form provided by the department.

3 (2) The department shall file a copy of each statement
4 of claim with the clerk of the district court for the
5 judicial district in which the diversion is made or, if
6 there is a claimed right with no diversion, the department
7 shall file a copy of the statement of claim with the clerk
8 of the district court of the judicial district in which the
9 use occurs.

10 (3) Subject to certain terms and conditions, the
11 legislature intends to provide for the remission of the
12 forfeiture of existing rights to the use of water caused by
13 the failure to comply with subsection (1). Accordingly, WITH
14 RESPECT ONLY TO A BASIN THAT HAS NOT BEEN CLOSED TO FURTHER
15 APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE
16 LEGISLATURE UNDER PART 7 OF THIS CHAPTER PRIOR TO [THE
17 EFFECTIVE DATE OF THIS ACT], a person who failed to file a
18 claim of an existing water right on or before April 30,
19 1982, may file with the department a claim of an existing
20 water right on or before July 1, 1995 1996, on forms
21 provided by the department. This section is not intended to
22 prevent a person who may have filed a claim of an existing
23 water right on or before April 30, 1982, from filing an
24 additional claim under this section if and to the extent
25 that the additional right claimed is not the same as the

1 right that was the subject of a previous claim. Claims must
2 be physically submitted to the department or sent by United
3 States mail, postmarked on or before the deadline set forth
4 in this subsection, in order to be considered timely. Within
5 30 days of receipt, the department shall file copies of
6 timely filed claims with the appropriate clerk of court as
7 provided in subsection (2), and those claims are then
8 subject to adjudication by the district courts as any other
9 claim of existing right. The claimant is then subject to all
10 rights and obligations of any other party, except that:

11 (a) any--claimant-who-has-filed-a-claim-after-April-30,
12 1982--but-on-or-before-July-1, 1995 1996--must--have--the
13 claim A LATE CLAIM MUST BE incorporated into the
14 adjudication, subject to all prior proceedings--and--does
15 not--except--as--otherwise--provided--in-85-2-237--have-the
16 right-to-reopen-decrees-previously-entered-or-to-object-to
17 matters--previously--determined--on--the-merits-by-the-water
18 court-after-objection--and THAT HAVE TAKEN PLACE PRIOR TO
19 THE INCLUSION OF THE LATE CLAIM IN THE ADJUDICATION;

20 (B) THE PERSON ASSERTING A LATE CLAIM MAY REQUEST THAT
21 A DECREE PREVIOUSLY ENTERED BE REOPENED OR MAY OBJECT TO
22 MATTERS PREVIOUSLY DETERMINED ON THE MERITS BY THE WATER
23 COURT ONLY TO THE EXTENT THAT THE REQUEST OR OBJECTION IS
24 OTHERWISE AUTHORIZED BY LAW AND IS BASED ON A CLAIM OF WATER
25 RIGHT FILED ON OR BEFORE APRIL 30, 1982, UNLESS THE PERSON

1 ASSERTING A LATE CLAIM ALSO HAS FILED A CLAIM ON OR BEFORE
 2 APRIL 30, 1982;

3 (b)(C) any--claimant--who--has--filed--a--claim--after--April
 4 30--1982--but--on--or--before--July--1, 1995 1996; A PERSON
 5 ASSERTING A LATE CLAIM does not have the right or standing
 6 to object to any water rights compact reached in accordance
 7 with part 7 of this chapter that is ratified by the
 8 legislature prior to [the effective date of this act] EXCEPT
 9 TO THE EXTENT THAT RIGHT OR STANDING TO OBJECT EXISTS BASED
 10 ON A CLAIM OF WATER RIGHT FILED ON OR BEFORE APRIL 30, 1982,
 11 or to claim protection FOR THE RIGHT REPRESENTED IN THE LATE
 12 CLAIM under any provision of such a compact that
 13 subordinates the use of a water right recognized in the
 14 compact to a right recognized under state law; and

15 (c)--any--claimant--who--has--filed--a--claim--after--April--30,
 16 1982--but--on--or--before--July--1, 1995 1996--is--liable--for--any
 17 costs--and--damages--to--any--other--claimant--caused--by--the
 18 latter's--actions--in--reasonable--reliance--upon--the--former's
 19 failure--to--file--a--claim--on--or--before--April--30--1982--and
 20 upon--the--conclusive--presumption--of--abandonment--provided--in
 21 85-2-226--and

22 (d)--any--existing--right--to--the--use--of--water--that--is--the
 23 subject--of--a--claim--filed--after--April--30--1982--is
 24 subordinate--to:

25 (i)--all--filed--claims--finally--adjudicated--to--be--valid;

1 (ii)--all--reserved--water--right--compacts--negotiated
 2 pursuant--to--this--chapter;

3 (iii)--all--permits--and--reservations--of--water--issued
 4 pursuant--to--this--chapter--if--and--to--the--extent--that--the
 5 permitholder--or--reservation--holder--files--an--objection--under
 6 this--part--and--proves--that--the--permitholder--or--reservation
 7 holder--reasonably--relied--upon--the--failure--of--the--claimant--to
 8 file--a--claim--on--or--before--April--30--1982;

9 (D) IF THE WATER JUDGE, FOLLOWING OBJECTION BY ANOTHER
 10 PERSON ASSERTING A CLAIM, FINDS THAT A RIGHT REPRESENTED IN
 11 A LATE CLAIM DID NOT EXIST ON JULY 1, 1973, OR THAT THE
 12 RIGHT REPRESENTED BY THE LATE CLAIM SHOULD BE SUBORDINATED
 13 TO ANOTHER RIGHT UNDER SUBSECTION (3)(F) OR THAT THE RIGHT
 14 REPRESENTED IN THE LATE CLAIM WAS THE SUBJECT OF A PRIOR
 15 ORDER OR DECREE BY THE WATER JUDGE, THE WATER JUDGE SHALL
 16 AWARD COSTS AND REASONABLE ATTORNEY FEES TO THE PERSON OR
 17 PERSONS FILING THE OBJECTION;

18 (E) A PERSON WHO HAS A LATE CLAIM MAY BE FOUND LIABLE
 19 FOR COSTS AND DAMAGES INCURRED BY ANOTHER PERSON WHO PROVES
 20 BY A PREPONDERANCE OF THE EVIDENCE THAT THE COSTS AND
 21 DAMAGES WERE INCURRED AS A RESULT OF ACTIONS UNDERTAKEN IN
 22 REASONABLE RELIANCE UPON A LATE CLAIM AND THE CONCLUSIVE
 23 PRESUMPTION OF ABANDONMENT PROVIDED IN 85-2-226. A CLAIM
 24 FOR DAMAGES AND COSTS UNDER THIS SUBSECTION (E) MUST BE
 25 FILED IN A COURT OF GENERAL JURISDICTION ON OR BEFORE JULY

1, 1998. THE COURT OF GENERAL JURISDICTION IN WHICH THE ACTION IS COMMENCED MAY, UPON MOTION, CERTIFY THE CASE TO THE WATER COURT FOR SUBORDINATION OF THE RIGHT ASSERTED IN THE LATE CLAIM IF SUBORDINATION WILL CURE THE ALLEGED DAMAGE.

(F) THE WATER JUDGE MAY SUBORDINATE AN EXISTING RIGHT ASSERTED IN A LATE CLAIM TO A CLAIM FILED ON OR BEFORE APRIL 30, 1982, TO A RESERVED WATER RIGHT COMPACT NEGOTIATED OR TO A PERMIT ISSUED PURSUANT TO THIS CHAPTER IF AND TO THE EXTENT THAT AN OBJECTION IS FILED UNDER THIS PART BY A PERSON ENTITLED TO SUBORDINATION BY JULY 1, 1998, AND THE OBJECTOR PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE OBJECTOR HAS REASONABLY RELIED TO THE OBJECTOR'S DETRIMENT UPON THE FAILURE TO FILE THE EXISTING RIGHT ON OR BEFORE APRIL 30, 1982, AND THE CONCLUSIVE PRESUMPTION OF ABANDONMENT PROVIDED IN 85-2-226.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1995 1996, AND SHALL NOTIFY A PERSON WHO FILES A CLAIM AFTER JULY 1, 1996, THAT THE CLAIM WILL NOT BE ACCEPTED."

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee -- processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject

to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed \$480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of \$40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of \$40.

(3) (a) Except as provided in subsection ~~(3)(b)~~ (3)(C), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of \$300 \$100, WHICH MUST BE DEPOSITED IN THE WATER RIGHTS ADJUDICATION ACCOUNT.

(B) IF AN OBJECTION IS FILED TO A LATE CLAIM, THE WATER JUDGE SHALL ASSESS AN ADDITIONAL FEE OF \$200 AGAINST THE PERSON ASSERTING THE LATE CLAIM, WHICH FEE MUST BE DEPOSITED IN THE WATER RIGHTS ADJUDICATION ACCOUNT.

~~(b)~~(C) For a statement of claim that was filed after

1 April 30, 1982, but prior to [the effective date of this
 2 act] or for a statement of claim filed by a state agency,
 3 the processing fee provided for in subsection (3)(a) must be
 4 paid on or before the entry of the temporary preliminary
 5 decree or the preliminary decree for the basin for which the
 6 claim is filed."

7 **Section 6.** Section 85-2-226, MCA, is amended to read:

8 "85-2-226. Abandonment by failure to file claim. The
 9 failure to file a claim of an existing right as required by
 10 85-2-221(1) establishes a conclusive presumption of
 11 abandonment of that right."

12 **Section 7.** Section 85-2-234, MCA, is amended to read:

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

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

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

11 (4) The final decree ~~shall~~ must establish, in a form
 12 determined to be appropriate by the water judge, one or more
 13 tabulations or lists of all water rights and their relative
 14 priorities.

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

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

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

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

1 (i) by flow rate for direct flow rights, such as
 2 irrigation rights;
 3 (ii) by volume for rights, such as stockpond and
 4 reservoir storage rights, and for rights that are not
 5 susceptible to measurement by flow rate; or
 6 (iii) by flow rate and volume for rights that a water
 7 judge determines require both volume and flow rate to
 8 adequately administer the right;
 9 (c) the date of priority of the right;
 10 (d) the purpose for which the water included in the
 11 right is used;
 12 (e) the place of use and a description of the land, if
 13 any, to which the right is appurtenant;
 14 (f) the source of the water included in the right;
 15 (g) the place and means of diversion;
 16 (h) the inclusive dates during which the water is used
 17 each year;
 18 (i) any other information necessary to fully define the
 19 nature and extent of the right.
 20 (7) For each person, tribe, or federal agency
 21 possessing water rights arising under the laws of the United
 22 States, the final decree ~~shall~~ must state:
 23 (a) the name and mailing address of the holder of the
 24 right;
 25 (b) the source or sources of water included in the

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

20 **Section 8.** Section 85-2-237, MCA, is amended to read:

21 "85-2-237. Reopening and review of decrees. (1) The
 22 After July 1, 1995 1996, the water judges shall by order
 23 reopen and review, within the limits set forth by the
 24 procedures described in this section, all preliminary or
 25 final decrees;

1 (a) that have been issued by the water courts but have
2 not been noticed throughout the water divisions; or

3 (b) for basins for which claims have been filed under
4 85-2-221(3).

5 (2) (a) Each order must state that the water judge will
6 reopen the decree or decrees and, upon a hearing, review the
7 water court's determination of any claim in the decree or
8 decrees if an objection to the claim has been filed for the
9 purpose of protecting rights to the use of water from
10 sources:

11 (i) within the basin for which the decree was entered;
12 or

13 (ii) in other basins that are hydrologically connected
14 to sources within the basin for which the decree was
15 entered.

16 (b) A person may not raise an objection to a matter in
17 a reopened decree if he the person was a party to the matter
18 when the matter was previously litigated and resolved as the
19 result of the previous objection process, unless the
20 objection is allowed for any of the following reasons:

21 (i) mistake, inadvertence, surprise, or excusable
22 neglect;

23 (ii) newly discovered evidence that by due diligence
24 could not have been discovered in time to move for a new
25 trial under Rule 59(b), Montana Rules of Civil Procedure;

1 (iii) fraud, misrepresentation, or other misconduct of
2 an adverse party;

3 (iv) the judgment is void;

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

6 (c) The objection must be made in accordance with the
7 procedure for filing objections under 85-2-233.

8 (3) The water judges shall serve notice by mail of the
9 entry of the order providing for the reopening and review of
10 a decree or decrees to the department and to the persons
11 entitled to receive service of notice under 85-2-232(1).

12 (4) Notice of the reopening and review of a preliminary
13 or final decree must also be published at least once each
14 week for 3 consecutive weeks in at least three newspapers of
15 general circulation which that cover the water division or
16 divisions in which the decreed basin is located.

17 (5) No objection may cause a reopening and review of a
18 claim unless the objection is filed with the appropriate
19 water court within 180 days after the issuance of the order
20 under subsection (1). This period of time may, for good
21 cause shown, be extended by the water judge for up to two
22 90-day periods if an application for extension is made
23 within the original 180-day period or any extension of it.

24 (6) The water judge shall provide notice to the
25 claimant of any timely objection to his the claim and, after

further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before him, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree."

Section 9. Section 85-2-306, MCA, is amended to read:

"85-2-306. (Temporary) Exceptions to permit requirements -- fee. (1) Ground water may be appropriated only by a person who has a possessory interest in the

property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders and pay a filing fee. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not

1 corrected and completed within the time allowed, the
 2 priority date of appropriation ~~shall be~~ is the date of
 3 refiling a correct and complete notice with the department.
 4 A certificate of water right may not be issued until a
 5 correct and complete notice has been filed with the
 6 department. The original of the certificate ~~shall~~ must be
 7 sent to the appropriator. The department shall keep a copy
 8 of the certificate in its office in Helena. The date of
 9 filing of the notice of completion is the date of priority
 10 of the right.

11 (2) An appropriator of ground water by means of a well
 12 or developed spring first put to beneficial use between
 13 January 1, 1962, and July 1, 1973, who did not file a notice
 14 of completion, as required by laws in force prior to April
 15 14, 1981, with the county clerk and recorder shall file a
 16 notice of completion, as provided in subsection (1) ~~of this~~
 17 ~~section~~, with the department to perfect the water right. The
 18 filing of a claim ~~of existing water right~~ pursuant to
 19 85-2-221 is sufficient notice of completion under this
 20 subsection. The priority date of the appropriation ~~shall be~~
 21 is the date of the filing of a notice as provided in
 22 subsection (1) of this section or the date of the filing of
 23 the claim of existing water right. An appropriation under
 24 this subsection is an existing right, and a permit is not
 25 required; however, the department shall acknowledge the

1 receipt of a correct and complete filing of a notice of
 2 completion, except that for an appropriation of 35 gallons
 3 per minute or less, not to exceed 10 acre-feet per year, the
 4 department shall issue a certificate of water right. If a
 5 certificate is issued under this section, a certificate need
 6 not be issued under the adjudication proceedings provided
 7 for in 85-2-236.

8 (3) A permit is not required before constructing an
 9 impoundment or pit and appropriating water for use by
 10 livestock if the maximum capacity of the impoundment or pit
 11 is less than 15 acre-feet and the appropriation is less than
 12 30 acre-feet per year and is from a source other than a
 13 perennial flowing stream and the impoundment or pit is to be
 14 constructed on and will be accessible to a parcel of land
 15 that is owned or under the control of the applicant and that
 16 is 40 acres or larger. As used in this subsection, a
 17 perennial flowing stream means a stream which that
 18 historically has flowed continuously at during all seasons
 19 of the year, during dry as well as wet years. However,
 20 within 60 days after constructing the impoundment or pit,
 21 the appropriator shall apply for a permit as prescribed by
 22 this part. Upon receipt of a correct and complete
 23 application for a stockwater provisional permit, the
 24 department shall then automatically issue a provisional
 25 permit. If the department determines after a hearing that

1 the rights of other appropriators have been or will be
 2 adversely affected, it may revoke the permit or require the
 3 permittee to modify the impoundment or pit and may then make
 4 the permit subject to such terms, conditions, restrictions,
 5 or limitations it considers necessary to protect the rights
 6 of other appropriators.

7 (4) A person may also appropriate water without
 8 applying for or prior to receiving a permit under rules
 9 adopted by the board under 85-2-113.

10 (5) In addition to the filing fee prescribed by the
 11 board by rule pursuant to 85-2-113, a person filing a notice
 12 under subsection (1) shall pay a \$10 fee, and the department
 13 shall deposit \$10 of each filing fee collected pursuant to
 14 subsection (1) in the ground water assessment account,
 15 established in 85-2-905, within the state special revenue
 16 fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

17 85-2-306. (Effective July 1, 1993) Exceptions to permit
 18 requirements. (1) Ground water may be appropriated only by a
 19 person who has a possessory interest in the property where
 20 the water is to be put to beneficial use and exclusive
 21 property rights in the ground water development works or, if
 22 another person has rights in the ground water development
 23 works, the written consent of the person with those property
 24 rights. Outside the boundaries of a controlled ground water
 25 area, a permit is not required before appropriating ground

1 water by means of a well or developed spring with a maximum
 2 appropriation of 35 gallons per minute or less, not to
 3 exceed 10 acre-feet per year, except that a combined
 4 appropriation from the same source from two or more wells or
 5 developed springs exceeding this limitation requires a
 6 permit. Within 60 days of completion of the well or
 7 developed spring and appropriation of the ground water for
 8 beneficial use, the appropriator shall file a notice of
 9 completion with the department on a form provided by the
 10 department at its offices and at the offices of the county
 11 clerk and recorders. Upon receipt of the notice, the
 12 department shall review the notice and may, before issuing a
 13 certificate of water right, return a defective notice for
 14 correction or completion, together with the reasons for
 15 returning it. A notice does not lose priority of filing
 16 because of defects if the notice is corrected, completed,
 17 and refiled with the department within 30 days or within a
 18 further time as the department may allow, not to exceed 6
 19 months. If a notice is not corrected and completed within
 20 the time allowed, the priority date of appropriation ~~shall~~
 21 be is the date of refileing a correct and complete notice
 22 with the department. A certificate of water right may not be
 23 issued until a correct and complete notice has been filed
 24 with the department. The original of the certificate ~~shall~~
 25 must be sent to the appropriator. The department shall keep

1 a copy of the certificate in its office in Helena. The date
2 of filing of the notice of completion is the date of
3 priority of the right.

4 (2) An appropriator of ground water by means of a well
5 or developed spring first put to beneficial use between
6 January 1, 1962, and July 1, 1973, who did not file a notice
7 of completion, as required by laws in force prior to April
8 14, 1981, with the county clerk and recorder shall file a
9 notice of completion, as provided in subsection (1) ~~of this~~
10 ~~section~~, with the department to perfect the water right. The
11 filing of a claim ~~of existing water right~~ pursuant to
12 85-2-221 is sufficient notice of completion under this
13 subsection. The priority date of the appropriation ~~shall be~~
14 is the date of the filing of a notice as provided in
15 subsection (1) of this section or the date of the filing of
16 the claim of existing water right. An appropriation under
17 this subsection is an existing right, and a permit is not
18 required; however, the department shall acknowledge the
19 receipt of a correct and complete filing of a notice of
20 completion, except that for an appropriation of 35 gallons
21 per minute or less, not to exceed 10 acre-feet per year, the
22 department shall issue a certificate of water right. If a
23 certificate is issued under this section, a certificate need
24 not be issued under the adjudication proceedings provided
25 for in 85-2-236.

1 (3) A permit is not required before constructing an
2 impoundment or pit and appropriating water for use by
3 livestock if the maximum capacity of the impoundment or pit
4 is less than 15 acre-feet and the appropriation is less than
5 30 acre-feet per year and is from a source other than a
6 perennial flowing stream and the impoundment or pit is to be
7 constructed on and will be accessible to a parcel of land
8 that is owned or under the control of the applicant and that
9 is 40 acres or larger. As used in this subsection, a
10 perennial flowing stream means a stream which that
11 historically has flowed continuously at during all seasons
12 of the year, during dry as well as wet years. However,
13 within 60 days after constructing the impoundment or pit,
14 the appropriator shall apply for a permit as prescribed by
15 this part. Upon receipt of a correct and complete
16 application for a stockwater provisional permit, the
17 department shall then automatically issue a provisional
18 permit. If the department determines after a hearing that
19 the rights of other appropriators have been or will be
20 adversely affected, it may revoke the permit or require the
21 permittee to modify the impoundment or pit and may then make
22 the permit subject to such terms, conditions, restrictions,
23 or limitations it considers necessary to protect the rights
24 of other appropriators.

25 (4) A person may also appropriate water without

1 applying for or prior to receiving a permit under rules
2 adopted by the board under 85-2-113."

3 ~~NEW SECTION. Section 10. Nonseverability. It is the~~
4 ~~intent of the legislature that each part of {this act} is~~
5 ~~essentially dependent upon every other part, and if one part~~
6 ~~is held unconstitutional or invalid, all other parts are~~
7 ~~invalid.~~

8 NEW SECTION. SECTION 10. SEVERABILITY. IF A PART OF
9 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
10 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
11 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
12 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
13 SEVERABLE FROM THE INVALID APPLICATIONS.

14 NEW SECTION. SECTION 11. CONTINGENT VOIDNESS. IF A
15 PART OF [THIS ACT] IS FOUND TO ESTABLISH A CONDITION UNDER
16 WHICH THE PROVISIONS OF TITLE 85 DO NOT PROVIDE FOR A
17 GENERAL STREAM ADJUDICATION FOR WHICH THE UNITED STATES HAS
18 WAIVED ITS IMMUNITY FROM SUIT UNDER 43 U.S.C. 666 OR IF A
19 PART OF 85-2-221(3)(C), AS AMENDED BY [THIS ACT], IS
20 INVALID, THEN [THIS ACT] IS VOID.

21 NEW SECTION. Section 12. Effective date. [This act] is
22 effective July 1, 1993.

-End-

SENATE BILL NO. 310

INTRODUCED BY REA, KOEHNKE, SPRING, BECK, BURNETT, LYNCH,
 KASTEN, TVEIT, NATHE, HERTEL, DEVLIN, CRIPPEN, HIBBARD,
 WALLIN, M. HANSON, SWIFT, BACHINI, QUILICI, RYE,
 GROSFIELD, MESAROS, VAN VALKENBURG, HAGER, LARSON,
 SWYSGOOD, DEBRUYCKER, GRINDE, STOVALL, ZOOK, CLARK,
 TASH, BRUSKI-MAUS, VOGEL, WEEDING, KNOX

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING--FOR--THE
 ACCEPTANCE--OF--STATEMENTS-OF-CLAIM-TO-EXISTING-WATER-RIGHTS
 FILED--AFTER--5--P.M.--APRIL--30--1982;--ESTABLISHING--A
 REBUTTABLE-PRESUMPTION-OF-ABANDONMENT-FOR-SUCH-WATER-RIGHTS;
 PROVIDING--FOR--THE--ESTABLISHMENT--OF--A--PROCEDURE--FOR
 ADJUDICATING--THOSE--RIGHTS;--PROVIDING--A--DEADLINE--FOR
 ACCEPTANCE--OF--STATEMENTS-OF-CLAIM;--AMENDING--SECTIONS
 85-2-221, 85-2-226, AND 85-2-231, MCA; AND PROVIDING AN
 IMMEDIATE--EFFECTIVE--DATE--AND--A--RETROACTIVE-APPLICABILITY
 DATE; PROVIDING FOR THE CONDITIONAL REMISSION OF THE
FORFEITURE--OF CERTAIN CLAIMS TO EXISTING RIGHTS TO THE USE
OF WATER DETERMINED BY THE MONTANA SUPREME COURT TO HAVE
BEEN FORFEITED FORFEITED PURSUANT TO SECTION 85-2-226, MCA;
PROVIDING FOR THE FILING OF LATE CLAIMS IN THE GENERAL WATER
RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE
RIGHT TO FILE LATE CLAIMS; PROVIDING FOR A DEADLINE FOR THE
ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS

UPON THE ADJUDICATION OF SUCH LATE CLAIMS; DIRECTING THE
WATER POLICY COMMITTEE, IN COORDINATION WITH CERTAIN STATE
AGENCIES, TO CONDUCT AN INTERIM STUDY REGARDING LATE CLAIM
ISSUES; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213,
85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND
85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS,---Article---IX,---section---3,---of---the---Montana
 Constitution-provides-that-all-existing-rights-to-the-use-of
 any-waters--for--any--useful--or--beneficial--purpose---are
 recognized-and-confirmed; and

WHEREAS,---Article---IX,---section---3,---of---the---Montana
 Constitution-provides-that-the-legislature-shall-provide-for
 the-administration, control, and-regulation-of-water--rights
 and-shall-establish-a-system-of-centralized-records; and

WHEREAS,---Article---IX--of--the--Montana-Constitution-was
 adopted-to-protect-Montana-water-rights-from-claims-by-water
 users-in-downstream-states; and

WHEREAS, in-order-to-protect-Montana-water--rights--from
 downstream--claims;--the--Montana--legislature-established-a
 procedure-for-the-general-adjudication-of-water--rights--and
 provided--in-section-85-2-226, MCA, that-the-failure-to-file
 a-claim-to-an-existing-right-in-response-to-a-general-notice
 of--adjudication--and--in--accordance--with--the--deadline
 established--under--section-85-2-221, MCA, would-establish-a

1 conclusive presumption of abandonment of that right; and
 2 WHEREAS, section 85-2-226, MCA, was enacted to
 3 facilitate the prompt filing of claims and speedy
 4 adjudication on the merits of each case; and
 5 WHEREAS, the general adjudication is still pending, and
 6 through the course of the adjudication, it has come to the
 7 attention of the Legislature that the provisions of section
 8 85-2-226, MCA, may result in the loss of otherwise valid
 9 Montana water rights; and
 10 WHEREAS, the Legislature determines that the summary
 11 abandonment of water rights does not afford adequate
 12 protection to Montana water rights as intended by the
 13 Montana Constitution and by the Montana Legislature and is
 14 inconsistent with long-established principles of
 15 abandonment; and
 16 WHEREAS, it is the intent of the Legislature that the
 17 adjudication process must provide for the adjudication of
 18 all Montana water rights in existence on July 17, 1973; and
 19 WHEREAS, because the general adjudication of water
 20 rights is not completed and will be ongoing for at least 20
 21 years, the Legislature finds that the acceptance of
 22 additional Statements of Claim will not unduly delay the
 23 adjudication; and
 24 WHEREAS, the Legislature determines that section
 25 85-2-226, MCA, imposes a harsh and unnecessary penalty for

1 failure to file a Statement of Claim by April 30, 1982, and
 2 that the penalty is not consistent with the intent of the
 3 Montana Constitution and of the Legislature and should,
 4 therefore, be adjusted in a manner that will more
 5 appropriately balance the interests at stake in the
 6 adjudication and enable the Water Court to adjudicate all
 7 existing water rights;
 8 THEREFORE, the Legislature finds that it is appropriate
 9 to make the following amendments to sections 85-2-221,
 10 85-2-226, and 85-2-231, MCA, in order to provide for the
 11 acceptance of additional Statements of Claim to existing
 12 water rights under the conditions set forth below:

STATEMENT OF INTENT

15 A statement of intent is included with this bill to
 16 provide comment to the Montana supreme court regarding the
 17 adoption of rules of procedure by the court. The intent of
 18 this legislation is to balance the interests of the state
 19 and of those holding Montana water rights by establishing a
 20 rebuttable, rather than a conclusive, presumption of
 21 abandonment for statements of claim filed after April 30,
 22 1982, and by allowing the adjudication of those claims.
 23 Because the adjudication is within the jurisdiction of the
 24 judicial branch, the legislature believes that the Montana
 25 supreme court should adopt rules of procedure governing the

adjudication--of---these---water--rights---The--legislature recognizes--that--various--basins--within--the--state--are--in different---stages---in---the---adjudication--and--that--the legislature--has--provided--a--mechanism--for--reopening--both preliminary--and--final--decrees---It--is--the--intent--of--the legislature--therefore--that--procedures--be--developed--to allow--for--the--adjudication--of--late--claims--submitted--prior--to the--closure--of--court--records--preceding--the--date--of--issuance of--the--preliminary--decree--or--in--those--basins--in--which--a preliminary--decree--has--not--yet--been--rendered--in--basins--in which--a--preliminary--decree--or--final--decree--has--been--issued, the--legislature--intends--that--the--late--filed--claims--be adjudicated--when--the--decree--is--reopened--in--accordance--with 85-2-237---In--both--cases,--the--late--claimant--should--be required--to--file--a--request--for--hearing--on--the--late--claims.

With--respect--to--notice,--the--legislature--intends--that notice--be--provided--to--water--users--that--late--claims--will--be accepted,---subject---to---a---rebuttable---presumption---of abandonment,--and--that--objections--to--the--presumption--or--the claim--may--be--filed---Whenever--possible,--the--notice--must--be provided---in---court--generated---documents---of---general circulation,--such--as--the--temporary--preliminary--decree, notice--of--objection,--preliminary--decree,--and--order--of reopening---When--this--is--not--possible,--the--court--should devise--an--alternative--method--for--notifying--water--users--who

may--be--affected--by--the--late--claim,--in--instances--in--which special--notice--is--required,--the--claimant--requesting--a hearing--on--the--late--claim--should--reimburse--the--water--court for--the--costs--associated--with--providing--the--notice--in--all cases,--the--water--court--may--assess--a--fee--for--the--filing--of--a request--for--hearing--on--late--claims---This--fee--may--not--exceed \$300--per--request,--and--a--claimant--should--submit--a--separate request--for--each--basin--in--which--late--claims--are--filed.

WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA CONSTITUTION PROVIDES THAT ALL EXISTING RIGHTS TO THE USE OF ANY WATERS FOR ANY USEFUL OR BENEFICIAL PURPOSE ARE RECOGNIZED AND CONFIRMED; AND

WHEREAS, ARTICLE IX, SECTION 3, OF THE MONTANA CONSTITUTION REQUIRES THE LEGISLATURE TO PROVIDE FOR THE ADMINISTRATION, CONTROL, AND REGULATION OF WATER RIGHTS AND TO ESTABLISH A SYSTEM OF CENTRALIZED RECORDS FOR SUCH RIGHTS; AND

WHEREAS, THE LEGISLATURE ESTABLISHED A PROCEDURE FOR THE GENERAL ADJUDICATION OF EXISTING RIGHTS TO THE USE OF WATER AND PROVIDED IN SECTION 85-2-226, MCA, THAT THE FAILURE TO FILE A CLAIM OF EXISTING RIGHT ON OR BEFORE THE DEADLINE ESTABLISHED UNDER SECTION 85-2-221, MCA, WOULD ESTABLISH A CONCLUSIVE ABANDONMENT OF THE RIGHT; AND

WHEREAS, THE MONTANA SUPREME COURT, IN IN THE MATTER OF THE ADJUDICATION OF THE WATER RIGHTS WITHIN THE YELLOWSTONE

1 RIVER, 253 MONT. 167, 832 P.2D 1210 (1992), HAS DETERMINED
 2 THAT THE FAILURE TO FILE A STATEMENT OF CLAIM TO AN EXISTING
 3 RIGHT TO THE USE OF WATER ON OR BEFORE APRIL 30, 1982,
 4 RESULTED IN THE FORFEITURE OF THAT RIGHT; AND

5 WHEREAS, IT HAS COME TO THE ATTENTION OF THE LEGISLATURE
 6 THAT THE FORFEITURE OF WATER RIGHTS FOR FAILURE TO TIMELY
 7 FILE A CLAIM HAS IN SOME INSTANCES CAUSED HARDSHIP, AND THE
 8 LEGISLATURE ACCORDINGLY DESIRES TO PROVIDE WATER RIGHTS
 9 CLAIMANTS WITH ONE MORE OPPORTUNITY TO ASSERT FILE A WATER
 10 RIGHTS CLAIM IN THE GENERAL ADJUDICATION; AND

11 WHEREAS, IN SO DOING, THE LEGISLATURE RECOGNIZES THAT
 12 THE ADJUDICATION PROCESS WILL NOT BE COMPLETED FOR MANY
 13 YEARS BUT THAT A SUBSTANTIAL AMOUNT OF PROGRESS HAS ALREADY
 14 OCCURRED IN THE ADJUDICATION, SPECIFICALLY IN THE AREA OF
 15 WATER RIGHTS COMPACTS WITH INDIAN TRIBES AND THE FEDERAL
 16 GOVERNMENT AND IN DECREES AND STIPULATIONS INVOLVING
 17 INDIVIDUAL CLAIMANTS, AND THUS THE LEGISLATURE BELIEVES THAT
 18 IT IS NECESSARY TO ENSURE THAT PARTIES WHO HAVE BEEN
 19 RECOGNIZED AS HAVING FILED CLAIMS ON OR BEFORE APRIL 30,
 20 1982, AND HOLDERS OF FEDERAL RESERVED WATER RIGHTS ARE NOT
 21 ADVERSELY AFFECTED BY THE INCLUSION OF NEW PARTIES IN THE
 22 ADJUDICATION BY SUBJECTING THE RIGHT TO FILE THOSE CLAIMS IN
 23 REMISSION TO CERTAIN TERMS AND CONDITIONS; AND

24 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE PROTECTION
 25 FOR TIMELY FILED CLAIMANTS FROM INCURRING ADDITIONAL COSTS

1 OR FROM BEING ADVERSELY AFFECTED BY JUSTIFIABLE RELIANCE ON
 2 THE PRESUMPTION OF ABANDONMENT; AND

3 WHEREAS, THE LEGISLATURE WISHES TO PROVIDE A CONCLUSIVE
 4 ADJUDICATION OF EXISTING WATER RIGHTS; AND

5 WHEREAS, THE LEGISLATURE RECOGNIZES THAT ACCORDING A
 6 PRIVILEGE TO FILE ADDITIONAL STATEMENTS OF CLAIM PRESENTS A
 7 POTENTIAL FOR ABUSE BY THOSE WHO MAY ATTEMPT TO REFILE
 8 PREVIOUSLY ADJUDICATED CLAIMS, AND THE LEGISLATURE THUS
 9 BELIEVES THAT THE COURTS SHOULD DEAL HARSHLY WITH ANY ABUSES
 10 BY SUCH MEASURES AS, WITHOUT LIMITATION, THE IMPOSITION OF
 11 SANCTIONS UNDER RULE 11, MONTANA RULES OF CIVIL PROCEDURE;
 12 AND

13 WHEREAS, THE LEGISLATURE DETERMINES THAT THE DEADLINE
 14 FOR FILING WATER RIGHT CLAIMS AS PROVIDED IN THIS BILL
 15 APPROPRIATELY BALANCES THE INTERESTS AT STAKE IN THE
 16 ADJUDICATION.

17 THEREFORE, THE LEGISLATURE FINDS IT IS APPROPRIATE TO
 18 MAKE THE FOLLOWING AMENDMENTS TO SECTIONS 85-2-102,
 19 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234,
 20 85-2-237, AND 85-2-306, MCA, IN ORDER TO PROVIDE FOR THE
 21 ACCEPTANCE OF ~~ADDITIONAL STATEMENTS OF CLAIM~~ LATE CLAIMS TO
 22 ~~EXISTING~~ THE USE OF WATER RIGHTS UNDER THE CONDITIONS SET
 23 FORTH IN THIS BILL. ADDITIONALLY, THE LEGISLATURE DIRECTS
 24 THE WATER POLICY COMMITTEE, IN COORDINATION WITH THE
 25 DEPARTMENT OF JUSTICE, THE DEPARTMENT OF NATURAL RESOURCES

1 AND CONSERVATION, AND THE RESERVED WATER RIGHTS COMPACT
 2 COMMISSION, TO CONDUCT AN INTERIM STUDY REGARDING CERTAIN
 3 LATE CLAIM ISSUES.

4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 (Refer to Introduced Bill)

7 Strike everything after the enacting clause and insert:

8 **Section 1.** Section 85-2-102, MCA, is amended to read:

9 "85-2-102. (Temporary) Definitions. Unless the context
 10 requires otherwise, in this chapter the following
 11 definitions apply:

12 (1) "Appropriate" means to:

13 (a) divert, impound, or withdraw (including by stock
 14 for stock water) a quantity of water;

15 (b) in the case of a public agency, to reserve water in
 16 accordance with 85-2-316; or

17 (c) in the case of the department of fish, wildlife,
 18 and parks, to lease water in accordance with 85-2-436.

19 (2) "Beneficial use", unless otherwise provided, means:

20 (a) a use of water for the benefit of the appropriator,
 21 other persons, or the public, including but not limited to
 22 agricultural (including stock water), domestic, fish and
 23 wildlife, industrial, irrigation, mining, municipal, power,
 24 and recreational uses;

25 (b) a use of water appropriated by the department for

1 the state water leasing program under 85-2-141 and of water
 2 leased under a valid lease issued by the department under
 3 85-2-141; and

4 (c) a use of water by the department of fish, wildlife,
 5 and parks pursuant to a lease authorized under 85-2-436.

6 (3) "Board" means the board of natural resources and
 7 conservation provided for in 2-15-3302.

8 (4) "Certificate" means a certificate of water right
 9 issued by the department.

10 (5) "Change in appropriation right" means a change in
 11 the place of diversion, the place of use, the purpose of
 12 use, or the place of storage.

13 (6) "Commission" means the fish, wildlife, and parks
 14 commission provided for in 2-15-3402.

15 (7) "Declaration" means the declaration of an existing
 16 right filed with the department under section 8, Chapter
 17 452, Laws of 1973.

18 (8) "Department" means the department of natural
 19 resources and conservation provided for in Title 2, chapter
 20 15, part 33.

21 (9) "Existing right" means a right to the use of water
 22 which would be protected under the law as it existed prior
 23 to July 1, 1973.

24 (10) "Ground water" means any water that is beneath the
 25 ground surface.

(11) "LATE CLAIM" MEANS A CLAIM TO AN EXISTING RIGHT FORFEITED PURSUANT TO THE CONCLUSIVE PRESUMPTION OF ABANDONMENT UNDER 85-2-226.

~~(12)~~ (12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~ (13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity. ~~For purposes of 85-2-221(3), person includes predecessors-in-interest.~~

~~(14)~~ (14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(15)~~ (15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~ (16) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(17)~~ (17) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of

occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(18)~~ (18) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(19)~~ (19) "Water division" means a drainage basin as defined in 3-7-102.

~~(20)~~ (20) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(21)~~ (21) "Water master" means a master as provided for in Title 3, chapter 7.

~~(22)~~ (22) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

1 (a) a use of water for the benefit of the appropriator,
2 other persons, or the public, including but not limited to
3 agricultural (including stock water), domestic, fish and
4 wildlife, industrial, irrigation, mining, municipal, power,
5 and recreational uses; and

6 (b) a use of water appropriated by the department for
7 the state water leasing program under 85-2-141 and of water
8 leased under a valid lease issued by the department under
9 85-2-141.

10 (3) "Board" means the board of natural resources and
11 conservation provided for in 2-15-3302.

12 (4) "Certificate" means a certificate of water right
13 issued by the department.

14 (5) "Change in appropriation right" means a change in
15 the place of diversion, the place of use, the purpose of
16 use, or the place of storage.

17 (6) "Declaration" means the declaration of an existing
18 right filed with the department under section 8, Chapter
19 452, Laws of 1973.

20 (7) "Department" means the department of natural
21 resources and conservation provided for in Title 2, chapter
22 15, part 33.

23 (8) "Existing right" means a right to the use of water
24 which would be protected under the law as it existed prior
25 to July 1, 1973.

1 (9) "Ground water" means any water that is beneath the
2 ground surface.

3 (10) "LATE CLAIM" MEANS A CLAIM TO AN EXISTING RIGHT
4 FORFEITED PURSUANT TO THE CONCLUSIVE PRESUMPTION OF
5 ABANDONMENT UNDER 85-2-226.

6 ~~(10)~~(11) "Permit" means the permit to appropriate issued
7 by the department under 85-2-301 through 85-2-303 and
8 85-2-306 through 85-2-314.

9 ~~(11)~~(12) "Person" means an individual, association,
10 partnership, corporation, state agency, political
11 subdivision, the United States or any agency thereof, or any
12 other entity. ~~For purposes of 85-2-221(3), person includes~~
13 predecessors-in-interest.

14 ~~(12)~~(13) "Political subdivision" means any county,
15 incorporated city or town, public corporation, or district
16 created pursuant to state law or other public body of the
17 state empowered to appropriate water but not a private
18 corporation, association, or group.

19 ~~(13)~~(14) "Salvage" means to make water available for
20 beneficial use from an existing valid appropriation through
21 application of water-saving methods.

22 ~~(14)~~(15) "Waste" means the unreasonable loss of water
23 through the design or negligent operation of an
24 appropriation or water distribution facility or the
25 application of water to anything but a beneficial use.

{15}(16) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

{16}(17) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

{17}(18) "Water division" means a drainage basin as defined in 3-7-102.

{18}(19) "Water judge" means a judge as provided for in Title 3, chapter 7.

{19}(20) "Water master" means a master as provided for in Title 3, chapter 7.

{20}(21) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-211, MCA, is amended to read:

"85-2-211. Petition by attorney general. Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221(1)."

Section 3. Section 85-2-213, MCA, is amended to read:

"85-2-213. Notice of order -- additional filing period.

(1) To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

{1}(a) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

{2}(b) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

{3}(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer

1 arising from the inclusion of the order required by this
2 section. The department shall be reimbursed for such costs
3 from the water right adjudication account created by
4 85-2-241.

5 ~~(4)~~(d) It shall provide copies of the order, in
6 writing, to the press services with offices located in
7 Helena within 30 days after the Montana supreme court order
8 as provided in 85-2-212, and in April of 1980, 1981, 1982,
9 and 1983.

10 ~~(5)~~(e) It shall, under authority granted to the states
11 by 43 U.S.C. 666, provide for service of the petition and
12 order upon the United States attorney general or his
13 designated representative.

14 ~~(6)~~(f) It may also in its discretion give notice of the
15 order in any other manner that will carry out the purposes
16 of this section.

17 ~~(7)~~(g) It may also in its discretion order that the
18 department or the water judge assist the Montana supreme
19 court in the carrying out of this section.

20 (2) (a) To assure that all persons who failed to file a
21 claim of existing right under 85-2-221(1) are provided
22 notice of the opportunity to file a claim on or before July
23 1, 1995 1996, as provided in 85-2-221(3), the department
24 shall provide notice as follows:

25 (i) It shall, in October 1993, April and October 1994,

1 and April AND OCTOBER 1995, AND APRIL 1996, cause a notice
2 of the right to file a claim in accordance with 85-2-221(3)
3 to be published in all daily newspapers in the state and in
4 at least one newspaper in each county in the state.

5 (ii) It shall, in October 1993, April and October 1994,
6 and April AND OCTOBER 1995, AND APRIL 1996, provide copies
7 of the notice, in writing, to the press services with
8 offices located in Helena.

9 (iii) It shall, by October 1993, provide copies of the
10 notice to the United States attorney general and to all
11 Indian tribes in Montana.

12 (iv) It shall cause copies of the notice to be posted in
13 a conspicuous location in each county courthouse and
14 department field office in the state AND TO BE MAINTAINED IN
15 THAT LOCATION THROUGH JULY 1, 1996.

16 (v) It may also, in its discretion, provide notice in
17 any other manner that will effectuate the purposes of
18 85-2-221(3).

19 (b) The water court shall include notice of 85-2-221(3)
20 in all notices, decrees, or orders issued pursuant to
21 85-2-231 or 85-2-232 after [the effective date of this act]
22 until July 1, 1995 1996.

23 (3) Notice given in accordance with subsection (2) must
24 at a minimum indicate that any person-who-failed-to-file-a
25 claim of existing right NOT FILED WITH THE DEPARTMENT before

1 April 30, 1982, may ~~file such claim~~ BE FILED by physically
 2 filing it with the department on or before July 1, 1995
 3 1996, or sending it by United States mail, postmarked on or
 4 before July 1, 1995 1996. Additionally, the notice must
 5 indicate that UNDER 85-2-226, ~~AS INTERPRETED BY THE MONTANA~~
 6 ~~SUPREME COURT~~, a failure to file or mail the claim results
 7 in the forfeiture for all time of any existing rights to the
 8 use of water that are not claimed in accordance with the
 9 provisions of 85-2-221."

10 **Section 4.** Section 85-2-221, MCA, is amended to read:

11 **"85-2-221. Filing of claim of existing water right --**
 12 **FILING LATE CLAIM.** (1) A person claiming an existing right,
 13 unless exempted under 85-2-222 or unless an earlier filing
 14 date is ordered as provided in 85-2-212, shall file with the
 15 department no later than June 30, 1983 a statement of claim
 16 for each water right asserted on a form provided by the
 17 department.

18 (2) The department shall file a copy of each statement
 19 of claim with the clerk of the district court for the
 20 judicial district in which the diversion is made or, if
 21 there is a claimed right with no diversion, the department
 22 shall file a copy of the statement of claim with the clerk
 23 of the district court of the judicial district in which the
 24 use occurs.

25 (3) Subject to certain terms and conditions, the

1 legislature intends to provide for the remission of the
 2 forfeiture of existing rights to the use of water caused by
 3 the failure to comply with subsection (1). Accordingly, WITH
 4 RESPECT ONLY TO A BASIN THAT HAS NOT BEEN CLOSED TO FURTHER
 5 APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE
 6 LEGISLATURE UNDER PART 7 OF THIS CHAPTER PRIOR TO [THE
 7 EFFECTIVE DATE OF THIS ACT], a person who failed to file a
 8 claim of an existing water right NOT FILED WITH THE
 9 DEPARTMENT on or before April 30, 1982, may ~~file~~ BE FILED
 10 with the department ~~a claim of an existing water right~~ on or
 11 before July 1, 1995 1996, on forms provided by the
 12 department. This section is not intended to prevent a person
 13 who may have filed THE FILING OF A LATE CLAIM IN ADDITION TO
 14 a claim of an existing water right FILED on or before April
 15 30, 1982, ~~from filing an additional claim under this section~~
 16 if and to the extent that the additional right claimed is
 17 not the same as the right that was the subject of a previous
 18 claim AND IS NOT AN ABANDONED RIGHT. Claims must be
 19 physically submitted to the department or sent by United
 20 States mail, postmarked on or before the deadline set forth
 21 in this subsection, in order to be considered timely. Within
 22 ~~30 days of receipt, the department shall file copies of~~
 23 ~~timely filed claims with the appropriate clerk of court as~~
 24 ~~provided in subsection (2), and those~~ THE claims are then
 25 subject to adjudication by the district courts as any other

claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) ~~any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995 1996, must have the~~ claim A LATE CLAIM MUST BE incorporated into the adjudication, subject to all prior proceedings, ~~and does not, except as otherwise provided in 85-2-237, have the right to reopen decrees previously entered or to object to matters previously determined on the merits by the water court after objection; and~~ THAT HAVE TAKEN PLACE PRIOR TO THE ~~INCCLUSION OF THE LATE CLAIM IN THE ADJUDICATION DATE OF~~ FILING;

(B) THE PERSON ASSERTING FILING A LATE CLAIM MAY REQUEST THAT A DECREE PREVIOUSLY ENTERED BE REOPENED OR MAY OBJECT TO MATTERS PREVIOUSLY DETERMINED ON THE MERITS BY THE WATER COURT ONLY TO THE EXTENT THAT THE REQUEST OR OBJECTION IS OTHERWISE AUTHORIZED BY LAW AND IS BASED ON A CLAIM OF WATER RIGHT FILED ON OR BEFORE APRIL 30, 1982, ~~UNLESS THE PERSON ASSERTING A LATE CLAIM ALSO HAS FILED A CLAIM ON OR BEFORE APRIL 30, 1982;~~

(b)(C) ~~any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995 1996, a person~~ ASSERTING FILING A LATE CLAIM does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by

the legislature prior to [the effective date of this act] EXCEPT TO THE EXTENT THAT RIGHT OR STANDING TO OBJECT EXISTS BASED ON A CLAIM OF WATER RIGHT FILED ON OR BEFORE APRIL 30, 1982, or to claim protection FOR THE RIGHT REPRESENTED IN THE LATE CLAIM under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law; and

~~(c) any claimant who has filed a claim after April 30, 1982, but on or before July 1, 1995 1996, is liable for any costs and damages to any other claimant caused by the latter's actions in reasonable reliance upon the former's failure to file a claim on or before April 30, 1982, and upon the conclusive presumption of abandonment provided in 85-2-226, and~~

~~(d) any existing right to the use of water that is the subject of a claim filed after April 30, 1982, is subordinate to:~~

~~(i) all filed claims finally adjudicated to be valid;~~
~~(ii) all reserved water right compacts negotiated pursuant to this chapter;~~

~~(iii) all permits and reservations of water issued pursuant to this chapter if and to the extent that the permit holder or reservation holder files an objection under this part and proves that the permit holder or reservation holder reasonably relied upon the failure of the claimant to~~

1 file a claim on or before April 30, 1982.
 2 (D) IF THE WATER JUDGE, FOLLOWING OBJECTION BY ANOTHER
 3 PERSON ASSERTING A CLAIM, FINDS THAT A RIGHT REPRESENTED IN
 4 A LATE CLAIM DID NOT EXIST ON JULY 1, 1973, OR THAT THE
 5 RIGHT REPRESENTED BY THE LATE CLAIM SHOULD BE SUBORDINATED
 6 TO ANOTHER RIGHT UNDER SUBSECTION (3)(F) OR UNDER B5-2-233,
 7 FINDS THAT THE RIGHT REPRESENTED IN THE LATE CLAIM WAS THE
 8 SUBJECT OF A PRIOR ORDER OR DECREE BY THE WATER JUDGE OR IS
 9 OTHERWISE WITHOUT MERIT, THE WATER JUDGE SHALL AWARD COSTS
 10 AND REASONABLE ATTORNEY FEES TO THE PERSON OR PERSONS FILING
 11 THE OBJECTION;
 12 (E) A PERSON WHO HAS A LATE CLAIM MAY BE FOUND LIABLE
 13 FOR COSTS AND DAMAGES INCURRED BY ANOTHER PERSON WHO PROVES
 14 BY A PREPONDERANCE OF THE EVIDENCE THAT THE COSTS AND
 15 DAMAGES WERE INCURRED AS A RESULT OF ACTIONS UNDERTAKEN IN
 16 REASONABLE RELIANCE UPON A LATE CLAIM AND THE CONCLUSIVE
 17 PRESUMPTION OF ABANDONMENT PROVIDED IN B5-2-226. A CLAIM
 18 FOR DAMAGES AND COSTS UNDER THIS SUBSECTION (E) MUST BE
 19 FILED IN A COURT OF GENERAL JURISDICTION ON OR BEFORE JULY
 20 1, 1998. THE COURT OF GENERAL JURISDICTION IN WHICH THE
 21 ACTION IS COMMENCED MAY, UPON MOTION, CERTIFY THE CASE TO
 22 THE WATER COURT FOR SUBORDINATION OF THE RIGHT ASSERTED IN
 23 THE LATE CLAIM IF SUBORDINATION WILL CURE THE ALLEGED
 24 DAMAGE.
 25 (F) THE WATER JUDGE MAY SUBORDINATE AN EXISTING RIGHT

1 ASSERTED IN A LATE CLAIM TO A CLAIM FILED ON OR BEFORE APRIL
 2 30, 1982, TO A RESERVED WATER RIGHT COMPACT NEGOTIATED OR TO
 3 A PERMIT ISSUED PURSUANT TO THIS CHAPTER IF AND TO THE
 4 EXTENT THAT AN OBJECTION IS FILED UNDER THIS PART BY A
 5 PERSON ENTITLED TO SUBORDINATION BY JULY 1, 1998, AND THE
 6 OBJECTOR PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE
 7 OBJECTOR HAS REASONABLY RELIED TO THE OBJECTOR'S DETRIMENT
 8 UPON THE FAILURE TO FILE THE EXISTING RIGHT ON OR BEFORE
 9 APRIL 30, 1982, AND THE CONCLUSIVE PRESUMPTION OF
 10 ABANDONMENT PROVIDED IN B5-2-226.
 11 (E) A RIGHT REPRESENTED IN A LATE CLAIM IS SUBORDINATE
 12 TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS ESTABLISHED
 13 BY COMPACT OR DECREE UNDER THIS CHAPTER;
 14 (F) UNLESS A LATE CLAIM EITHER WAS PLACED IN THE UNITED
 15 STATES MAIL AND POSTMARKED ON OR BEFORE APRIL 30, 1982, OR,
 16 IF THERE IS NO EVIDENCE OF THE DATE OF MAILING, THERE IS
 17 EVIDENCE OF EXECUTION ON OR BEFORE APRIL 30, 1982, AND
 18 ACTUAL RECEIPT BY THE DEPARTMENT ON OR BEFORE MAY 7, 1982,
 19 THE RIGHT REPRESENTED IN THE CLAIM IS, IN ADDITION,
 20 SUBORDINATE TO:
 21 (I) RIGHTS REPRESENTED IN ALL VALID, TIMELY FILED
 22 CLAIMS; AND
 23 (II) RIGHTS REPRESENTED IN A PERMIT OR RESERVATION OF
 24 WATER ISSUED UNDER THIS CHAPTER IF AND TO THE EXTENT THAT
 25 THE PERSON HOLDING THE PERMIT OR RESERVATION FILES AN

OBJECTION UNDER THIS PART AND PROVES THAT THE PERSON HOLDING THE PERMIT OR RESERVATION REASONABLY RELIED TO THE DETRIMENT OF THE PERSON HOLDING THE PERMIT OR RESERVATION UPON THE FAILURE OF THE CLAIMANT TO FILE A CLAIM ON OR BEFORE APRIL 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1995 1996, AND SHALL NOTIFY A PERSON WHO FILES A CLAIM AFTER JULY 1, 1996, THAT THE CLAIM WILL NOT BE ACCEPTED."

Section 5. Section 85-2-225, MCA, is amended to read:

"85-2-225. Filing fee -- processing fee for remitted claims. (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed \$480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which that is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of \$40. Exempt

claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of \$40.

(3) (a) Except as provided in subsection (3)(b) (3)(C), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of \$300 \$100 \$150, WHICH MUST BE DEPOSITED IN THE WATER RIGHTS ADJUDICATION ACCOUNT FOR THE EXAMINATION OF LATE CLAIMS BY THE DEPARTMENT AND FOR THE PUBLICATION OF NOTICES BY THE DEPARTMENT AS REQUIRED UNDER 85-2-213(2).

(B) IF AN OBJECTION IS FILED TO A LATE CLAIM, THE WATER JUDGE SHALL ASSESS AN ADDITIONAL FEE OF \$200 AGAINST THE PERSON ASSERTING THE LATE CLAIM AGAINST THE LATE CLAIMANT ALL REASONABLE ADMINISTRATIVE COSTS AND EXPENSES THAT MAY BE INCURRED BY THE COURT DUE TO THE FILING OF THE LATE CLAIM AND THE CONSIDERATION OF THE OBJECTION, WHICH FEE ASSESSMENT MUST BE DEPOSITED IN THE WATER RIGHTS ADJUDICATION ACCOUNT.

(b)(C) For a statement of claim that was filed after April 30, 1982, but prior to [the effective date of this act] or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before the entry of the temporary preliminary decree or the preliminary decree for the basin for which the

claim-is-filed A DATE TO BE ESTABLISHED BY THE DEPARTMENT BY
RULE, BUT NO LATER THAN JULY 1, 1999."

Section 6. Section 85-2-226, MCA, is amended to read:

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

Section 7. Section 85-2-234, MCA, is amended to read:

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

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

(3) The final decree ~~shall~~ must establish the existing rights and priorities within the water judge's jurisdiction of persons required-by who have filed a claim in accordance with 85-2-221 to--file--a--claim-for-an-existing-right, of

persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree ~~shall~~ must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

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

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

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

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

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

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not

1 susceptible to measurement by flow rate; or

2 (iii) by flow rate and volume for rights that a water

3 judge determines require both volume and flow rate to

4 adequately administer the right;

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

6 (d) the purpose for which the water included in the

7 right is used;

8 (e) the place of use and a description of the land, if

9 any, to which the right is appurtenant;

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

11 (g) the place and means of diversion;

12 (h) the inclusive dates during which the water is used

13 each year;

14 (i) any other information necessary to fully define the

15 nature and extent of the right.

16 (7) For each person, tribe, or federal agency

17 possessing water rights arising under the laws of the United

18 States, the final decree ~~shall~~ must state:

19 (a) the name and mailing address of the holder of the

20 right;

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

22 right;

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

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

25 (e) the purpose for which the water included in the

1 right is currently used, if at all;

2 (f) the place of use and a description of the land, if

3 any, to which the right is appurtenant;

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

5 (h) any other information necessary to fully define the

6 nature and extent of the right, including the terms of any

7 compacts negotiated and ratified under 85-2-702.

8 (8) Clerical mistakes in a final decree may be

9 corrected at any time on the initiative of the water judge

10 or on the petition of any person who possesses a water

11 right. The water judge shall order the notice of a

12 correction proceeding as he determines to be appropriate to

13 advise all persons who may be affected by the correction. An

14 order of the water judge making or denying a clerical

15 correction is subject to appellate review."

16 **Section 8.** Section 85-2-237, MCA, is amended to read:

17 "85-2-237. Reopening and review of decrees. (1) The

18 After July 1, 1995 1996, the water judges shall by order

19 reopen and review, within the limits set forth by the

20 procedures described in this section, all preliminary or

21 final decrees:

22 (a) that have been issued by the water courts but have

23 not been noticed throughout the water divisions; or

24 (b) for basins for which claims have been filed under

25 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if he the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the

operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which that cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to ~~his~~ the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted

1 according to the Montana Rules of Civil Procedure. On an
2 order of the water judge, a hearing may be conducted by a
3 water master, who shall prepare a report of the hearing as
4 provided in Rule 53(e), Montana Rules of Civil Procedure.

5 (7) The water judge shall, on the basis of any hearing
6 held on the matter, take action as warranted from the
7 evidence before-him, including dismissal of the objection or
8 modification of the portion of the decree describing the
9 contested claim.

10 (8) An order or decree modifying a previously issued
11 final decree as a result of procedures described in this
12 section may be appealed in the same manner as provided for
13 an appeal taken from a final order of a district court.

14 (9) An order or decree modifying a previously issued
15 preliminary decree as a result of procedures described in
16 this section may be appealed under 85-2-235 when the
17 preliminary decree has been made a final decree."

18 **Section 9.** Section 85-2-306, MCA, is amended to read:

19 "85-2-306. (Temporary) Exceptions to permit
20 requirements -- fee. (1) Ground water may be appropriated
21 only by a person who has a possessory interest in the
22 property where the water is to be put to beneficial use and
23 exclusive property rights in the ground water development
24 works or, if another person has rights in the ground water
25 development works, the written consent of the person with

1 those property rights. Outside the boundaries of a
2 controlled ground water area, a permit is not required
3 before appropriating ground water by means of a well or
4 developed spring with a maximum appropriation of 35 gallons
5 per minute or less, not to exceed 10 acre-feet per year,
6 except that a combined appropriation from the same source
7 from two or more wells or developed springs exceeding this
8 limitation requires a permit. Within 60 days of completion
9 of the well or developed spring and appropriation of the
10 ground water for beneficial use, the appropriator shall file
11 a notice of completion with the department on a form
12 provided by the department at its offices and at the offices
13 of the county clerk and recorders and pay a filing fee. Upon
14 receipt of the notice, the department shall review the
15 notice and may, before issuing a certificate of water right,
16 return a defective notice for correction or completion,
17 together with the reasons for returning it. A notice does
18 not lose priority of filing because of defects if the notice
19 is corrected, completed, and refiled with the department
20 within 30 days or within a further time as the department
21 may allow, not to exceed 6 months. If a notice is not
22 corrected and completed within the time allowed, the
23 priority date of appropriation ~~shall--be~~ is the date of
24 refiling a correct and complete notice with the department.
25 A certificate of water right may not be issued until a

1 correct and complete notice has been filed with the
2 department. The original of the certificate ~~shall~~ must be
3 sent to the appropriator. The department shall keep a copy
4 of the certificate in its office in Helena. The date of
5 filing of the notice of completion is the date of priority
6 of the right.

7 (2) An appropriator of ground water by means of a well
8 or developed spring first put to beneficial use between
9 January 1, 1962, and July 1, 1973, who did not file a notice
10 of completion, as required by laws in force prior to April
11 14, 1981, with the county clerk and recorder shall file a
12 notice of completion, as provided in subsection (1) ~~of this~~
13 ~~section~~, with the department to perfect the water right. The
14 filing of a claim ~~of--existing--water--right~~ pursuant to
15 85-2-221 is sufficient notice of completion under this
16 subsection. The priority date of the appropriation ~~shall--be~~
17 is the date of the filing of a notice as provided in
18 subsection (1) of this section or the date of the filing of
19 the claim of existing water right. An appropriation under
20 this subsection is an existing right, and a permit is not
21 required; however, the department shall acknowledge the
22 receipt of a correct and complete filing of a notice of
23 completion, except that for an appropriation of 35 gallons
24 per minute or less, not to exceed 10 acre-feet per year, the
25 department shall issue a certificate of water right. If a

1 certificate is issued under this section, a certificate need
2 not be issued under the adjudication proceedings provided
3 for in 85-2-236.

4 (3) A permit is not required before constructing an
5 impoundment or pit and appropriating water for use by
6 livestock if the maximum capacity of the impoundment or pit
7 is less than 15 acre-feet and the appropriation is less than
8 30 acre-feet per year and is from a source other than a
9 perennial flowing stream and the impoundment or pit is to be
10 constructed on and will be accessible to a parcel of land
11 that is owned or under the control of the applicant and that
12 is 40 acres or larger. As used in this subsection, a
13 perennial flowing stream means a stream which that
14 historically has flowed continuously at during all seasons
15 of the year, during dry as well as wet years. However,
16 within 60 days after constructing the impoundment or pit,
17 the appropriator shall apply for a permit as prescribed by
18 this part. Upon receipt of a correct and complete
19 application for a stockwater provisional permit, the
20 department shall then automatically issue a provisional
21 permit. If the department determines after a hearing that
22 the rights of other appropriators have been or will be
23 adversely affected, it may revoke the permit or require the
24 permittee to modify the impoundment or pit and may then make
25 the permit subject to such terms, conditions, restrictions,

or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a \$10 fee, and the department shall deposit \$10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in 85-2-905, within the state special revenue fund. (Terminates July 1, 1993--sec. 22, Ch. 769, L. 1991.)

85-2-306. (Effective July 1, 1993) Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or

developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall~~ be is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well

1 or developed spring first put to beneficial use between
 2 January 1, 1962, and July 1, 1973, who did not file a notice
 3 of completion, as required by laws in force prior to April
 4 14, 1981, with the county clerk and recorder shall file a
 5 notice of completion, as provided in subsection (1) ~~of--this~~
 6 ~~section~~, with the department to perfect the water right. The
 7 filing of a claim ~~of--existing--water--right~~ pursuant to
 8 85-2-221 is sufficient notice of completion under this
 9 subsection. The priority date of the appropriation ~~shall-be~~
 10 is the date of the filing of a notice as provided in
 11 subsection (1) of this section or the date of the filing of
 12 the claim of existing water right. An appropriation under
 13 this subsection is an existing right, and a permit is not
 14 required; however, the department shall acknowledge the
 15 receipt of a correct and complete filing of a notice of
 16 completion, except that for an appropriation of 35 gallons
 17 per minute or less, not to exceed 10 acre-feet per year, the
 18 department shall issue a certificate of water right. If a
 19 certificate is issued under this section, a certificate need
 20 not be issued under the adjudication proceedings provided
 21 for in 85-2-236.

22 (3) A permit is not required before constructing an
 23 impoundment or pit and appropriating water for use by
 24 livestock if the maximum capacity of the impoundment or pit
 25 is less than 15 acre-feet and the appropriation is less than

1 30 acre-feet per year and is from a source other than a
 2 perennial flowing stream and the impoundment or pit is to be
 3 constructed on and will be accessible to a parcel of land
 4 that is owned or under the control of the applicant and that
 5 is 40 acres or larger. As used in this subsection, a
 6 perennial flowing stream means a stream which that
 7 historically has flowed continuously at during all seasons
 8 of the year, during dry as well as wet years. However,
 9 within 60 days after constructing the impoundment or pit,
 10 the appropriator shall apply for a permit as prescribed by
 11 this part. Upon receipt of a correct and complete
 12 application for a stockwater provisional permit, the
 13 department shall then automatically issue a provisional
 14 permit. If the department determines after a hearing that
 15 the rights of other appropriators have been or will be
 16 adversely affected, it may revoke the permit or require the
 17 permittee to modify the impoundment or pit and may then make
 18 the permit subject to such terms, conditions, restrictions,
 19 or limitations it considers necessary to protect the rights
 20 of other appropriators.

21 (4) A person may also appropriate water without
 22 applying for or prior to receiving a permit under rules
 23 adopted by the board under 85-2-113."

24 ~~NEW SECTION--Section 10--Nonseverability--It--is--the--~~
 25 ~~intent-of-the-legislature-that-each-part-of--(this--act)--is~~

1 ~~essentially dependent upon every other part, and if one part~~
 2 ~~is held unconstitutional or invalid, all other parts are~~
 3 ~~invalid.~~

4 NEW SECTION. SECTION 10. LATE CLAIM INTERIM STUDY --
 5 WATER POLICY COMMITTEE. (1) THE WATER POLICY COMMITTEE, IN
 6 COORDINATION WITH THE DEPARTMENT OF JUSTICE, THE DEPARTMENT
 7 OF NATURAL RESOURCES AND CONSERVATION, AND THE RESERVED
 8 WATER RIGHTS COMPACT COMMISSION, SHALL CONDUCT AN INTERIM
 9 STUDY ANALYZING THE NEED FOR AND DESIRABILITY AND IMPACTS OF
 10 ALLOWING THE REMISSION OF FORFEITED WATER RIGHTS IN ADDITION
 11 TO THE REMISSIONS AUTHORIZED UNDER THE PROVISIONS OF [THIS
 12 ACT]. THE STUDY MUST ANALYZE THE IMPACTS OF ADDITIONAL
 13 FORFEITURE REMISSION ON:

14 (A) THE GENERAL STREAM ADJUDICATION PROCESS, INCLUDING
 15 BUT NOT LIMITED TO THE ISSUES OF ADEQUACY AND MONTANA'S AND
 16 THE FEDERAL GOVERNMENT'S CONCURRENT WATER RIGHTS
 17 ADJUDICATION JURISDICTION;

18 (B) THE FEDERAL GOVERNMENT AND INDIAN TRIBES REGARDING
 19 EXISTING AND FUTURE NEGOTIATED WATER RIGHTS COMPACTS,
 20 INCLUDING BUT NOT LIMITED TO THE ISSUES OF EQUAL PROTECTION;

21 (C) TIMELY CLAIMANTS' WATER USE;

22 (D) TIMELY CLAIMANTS' LEGAL RIGHTS, INCLUDING BUT NOT
 23 LIMITED TO CONSTITUTIONAL REQUIREMENTS REGARDING THE TAKING
 24 OF PROPERTY;

25 (E) THE POTENTIAL REDUCTION IN AGRICULTURAL PRODUCTION

1 RESULTING FROM NOT GRANTING ADDITIONAL FORFEITURE REMISSIONS
 2 AND THE ASSOCIATED SOCIAL AND ECONOMIC IMPACTS;

3 (F) THE ISSUE OF FAIRNESS TO BOTH LATE AND TIMELY
 4 CLAIMANTS;

5 (G) THE POTENTIAL INCREASED COSTS TO THE STATE AND TO
 6 LATE AND TIMELY CLAIMANTS;

7 (H) POTENTIAL LOSSES IN REVENUE TO THE STATE RESULTING
 8 FROM THE STATE'S FAILURE TO FILE CLAIMS TO EXISTING WATER
 9 RIGHTS ON OR BEFORE APRIL 30, 1982;

10 (I) IMPLICATIONS INVOLVING THE STATE'S TRUST
 11 RESPONSIBILITIES;

12 (J) POTENTIAL LITIGATION AGAINST THE STATE BY PRIVATE
 13 PARTIES; AND

14 (K) IMPACTS ON MUNICIPAL AND COUNTY GOVERNMENTS
 15 RESULTING FROM LATE CLAIMS.

16 (2) THE STUDY MUST INCLUDE AN ANALYSIS OF THE POTENTIAL
 17 FOR IDENTIFYING INDIVIDUALS OR CLASSES OF INDIVIDUALS WHOSE
 18 ADDITIONAL FORFEITURE REMISSION COULD BE AUTHORIZED IN A
 19 MANNER THAT WOULD HAVE AN ACCEPTABLE IMPACT ON THOSE ISSUES
 20 IDENTIFIED UNDER SUBSECTION (1). THE CLASSES OF LATE
 21 CLAIMANTS INCLUDE BUT ARE NOT LIMITED TO PREVIOUSLY DECREED
 22 WATER RIGHTS HOLDERS AND CLASSES ESTABLISHED ACCORDING TO
 23 FILING DATE.

24 (3) THE STUDY MUST BE COMPLETED IN CONSULTATION WITH
 25 OTHER RELEVANT STATE AND FEDERAL AGENCIES, RELEVANT GROUPS

1 AND ORGANIZATIONS, AND OTHER INTERESTED AND AFFECTED
2 CITIZENS.

3 (4) THE WATER POLICY COMMITTEE SHALL REPORT THE RESULTS
4 OF THE STUDY TO THE 54TH LEGISLATURE BY OCTOBER 1, 1994. THE
5 REPORT MUST INCLUDE ANY LEGISLATIVE OR OTHER POLICY OPTIONS
6 RECOMMENDED BY THE WATER POLICY COMMITTEE.

7 NEW SECTION. SECTION 11. SAVING CLAUSE. [THIS ACT]
8 DOES NOT AFFECT PROCEEDINGS THAT WERE BEGUN BEFORE [PASSAGE
9 AND APPROVAL OF THIS ACT] IN WHICH RELIEF FOR DAMAGES HAVE
10 BEEN SOUGHT BASED UPON THE DIVERSION, IMPOUNDMENT, OR
11 WITHDRAWAL OF WATER WITHOUT A WATER RIGHT ESTABLISHED UNDER
12 STATE LAW.

13 NEW SECTION. SECTION 12. SEVERABILITY -- PARTIAL
14 NONSEVERABILITY. (1) IF A PART OF [THIS ACT] IS INVALID, ALL
15 VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN
16 IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE
17 OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
18 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
19 APPLICATIONS.

20 (2) IT IS THE INTENT OF THE LEGISLATURE THAT EACH PART
21 OF [THIS ACT] IS ESSENTIALLY DEPENDENT UPON [SECTION 4],
22 WHICH AMENDS 85-2-221, AND THAT IF ONE PART OF [SECTION 4],
23 EXCEPT SUBSECTION (3)(F)(II), IS HELD UNCONSTITUTIONAL OR
24 INVALID, ALL OTHER PARTS OF [THIS ACT] ARE INVALID.

25 ~~NEW SECTION. SECTION 11. CONTINGENT VOIDNESS. IF A~~

1 ~~PART OF [THIS ACT] IS FOUND TO ESTABLISH A CONDITION UNDER~~
2 ~~WHICH THE PROVISIONS OF TITLE 85 DO NOT PROVIDE FOR A~~
3 ~~GENERAL STREAM ADJUDICATION FOR WHICH THE UNITED STATES HAS~~
4 ~~WAIVED ITS IMMUNITY FROM SUIT UNDER 43 U.S.C. 666 OR IF A~~
5 ~~PART OF 85-2-221(3)(C) AS AMENDED BY [THIS ACT] IS~~
6 ~~INVALID THEN [THIS ACT] IS VOID.~~

7 NEW SECTION. Section 13. Effective date. [This act] is
8 effective July 1, 1993.

-End-