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INTRODUCED BY Beck SENATE BILL NO. 387

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADDITIONAL FORFEITURE REMISSION FOR PERSONS FILING LATE WATER CLAIMS; IDENTIFYING CERTAIN SITUATIONS IN WHICH OBJECTIONS TO A WATER CLAIM MUST BE DISMISSED; EXPANDING THE WATER CLAIM APPEAL PROCESS; CLARIFYING STANDING FOR OBJECTIONS TO WATER CLAIMS; ESTABLISHING A WATER ADJUDICATION ADVISORY COMMITTEE; AMENDING SECTIONS 3-7-103, 85-2-214, 85-2-221, 85-2-225, 85-2-226, 85-2-233, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 1] encourages the Montana supreme court and the water court to adopt procedural rules. The legislature intends that the courts adopt abandonment relief rules that recognize the courts' existing equitable powers. These rules should consider and adopt equitable principles and existing rules of procedure, including but not limited to the equitable principles of detrimental reliance, good cause, equitable tolling, and excusable neglect and Rules 55 and 60, Montana and Federal Rules of Civil Procedure. The courts may by rule identify certain situations in which relief from abandonment will be granted after 1996 and under what terms relief will be granted in order to secure the interests of justice and may establish procedures for implementing [this act].

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

Section 1. Section 85-2-214, MCA, is amended to read:

"85-2-214. Commencement of action. (1) The action for the adjudication of all existing water rights under this part, part 7, and Title 3, chapter 7, is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. As to each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within ~~his~~ the water division

1 and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.

2 (3) The water judge may relieve a party from abandonment of a claim under 85-2-226, as follows:

3 (a) For claims filed after July 1, 1996, but before the issuance of a preliminary decree, relief may
4 be granted for good cause shown and upon those terms as are just and in accordance with 85-2-224.

5 (b) For claims filed after the entry of a preliminary decree, relief may be granted under the
6 provisions of Rule 60, Montana Rules of Civil Procedure.

7 (4) The Montana supreme court and the water court are encouraged to adopt procedural rules
8 required to implement the provisions of subsection (3)."

9
10 **Section 2.** Section 85-2-221, MCA, is amended to read:

11 **"85-2-221. Filing of claim of existing water right -- filing late claim.** (1) A person claiming an
12 existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in
13 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water
14 right asserted on a form provided by the department.

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

19 (3) Subject to certain terms and conditions, the legislature intends to provide for the remission of
20 the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1) as
21 provided under 85-2-214. Accordingly, with respect only to a basin that has not been closed to further
22 appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to July 1,
23 1993, a claim of an existing water right not filed with the department on or before April 30, 1982, may be
24 filed with the department ~~on or before July 1, 1996,~~ on forms provided by the department. This section
25 is ~~not~~ intended to ~~prevent~~ allow the filing of a late claim ~~in addition to a claim of an existing water right filed~~
26 ~~on or before April 30, 1982,~~ if and to the extent that the ~~additional~~ right claimed is not the same as the
27 right that was the subject of a previous claim and is not an abandoned right. ~~Claims must be physically~~
28 ~~submitted to the department or sent by United States mail, postmarked on or before the deadline set forth~~
29 ~~in this subsection, in order to be considered timely.~~ The Late claims are ~~then~~ subject to adjudication by the
30 district courts as any other claim of existing right. ~~The claimant is then subject to all rights and obligations~~

1 ~~of any other party, except that~~ water court, subject to the provisions of this part, rules adopted by the
 2 Montana supreme court or the water court, and the following:

3 (a) a late claim must be incorporated into the adjudication, subject to all proceedings that have
 4 taken place prior to the date of filing;

5 (b) the person filing a late claim may request that a decree previously entered be reopened or may
 6 object to matters previously determined on the merits by the water court only to the extent that the request
 7 or objection is otherwise authorized by law and is based on a claim of water right filed on or before April
 8 30, 1982;

9 (c) a person filing a late claim does not have the right or standing to object to any water rights
 10 compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to July
 11 1, 1993, except to the extent that right or standing to object exists based on a claim of water right filed
 12 on or before April 30, 1982, or to claim protection for the right represented in the late claim under any
 13 provision of ~~such~~ a compact that subordinates the use of a water right recognized in the compact to a right
 14 recognized under state law;

15 (d) if the water judge, ~~following objection under 85-2-233,~~ finds that the right represented in the
 16 late claim was the subject of a prior order or decree by the water judge or is otherwise without merit, the
 17 water judge shall award costs and reasonable attorney fees to the person or persons filing ~~the~~ an objection
 18 to a late claim;

19 (e) a right represented in a late claim is may be subordinate to ~~all federal and Indian reserved water~~
 20 ~~rights established by compact or decree under this chapter~~ other water rights upon terms that the court
 21 determines are just under the circumstances;

22 (f) ~~unless a late claim either was placed in the United States mail and postmarked on or before April~~
 23 ~~30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April~~
 24 ~~30, 1982, and actual receipt by the department on or before May 7, 1982,~~ the right represented in the
 25 claim is, in addition, subordinate to:

26 (i) ~~rights represented in all valid, timely filed claims; and~~

27 (ii) ~~rights represented in a permit or reservation of water issued under this chapter if and to the~~
 28 ~~extent that the person holding the permit or reservation files an objection under this part and proves that~~
 29 ~~the person holding the permit or reservation reasonably relied to the detriment of the person holding the~~
 30 ~~permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.~~

1 ~~(4) The department and the district courts may not accept any statements of claim physically~~
2 ~~submitted or postmarked after July 1, 1996, and shall notify a person who files a claim after July 1, 1996,~~
3 ~~that the claim will not be accepted~~ late claims filed after July 1, 1996, are subject to the provisions of
4 85-2-214(3)(a)."

5
6 **Section 3.** Section 85-2-225, MCA, is amended to read:

7 **"85-2-225. Filing fee -- processing fee for remitted claims.** (1) Each claim filed under 85-2-221
8 or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:

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

11 (b) ~~no~~ a filing fee is not required accompanying a claim of an existing right that is included in a
12 decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent
13 portion ~~thereof~~ of the decree.

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

17 (3) (a) Except as provided in subsection (3)(c), in addition to the filing fee set forth in subsection
18 (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the
19 amount of \$150, which must be deposited in the water rights adjudication account for the examination of
20 late claims by the department ~~and for the publication of notices by the department as required under~~
21 ~~85-2-213(2).~~

22 (b) The water judge ~~shall~~ may assess against the late claimant all reasonable administrative costs
23 and expenses that may be incurred by the court ~~due to the filing of the late claim and the consideration of~~
24 ~~the objection, which~~ in reaching a determination whether to relieve a party from abandonment as provided
25 in 85-2-214. The court may award other fees and expenses against the party asserting a late claim as it
26 determines just under the circumstances. Any assessment rendered by the court must be deposited in the
27 water rights adjudication account.

28 (c) For a statement of claim that was filed after April 30, 1982, but prior to July 1, 1993, or for
29 a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be
30 paid on or before a date to be established by the department by rule, but no later than July 1, 1999."

1 **Section 4.** Section 85-2-226, MCA, is amended to read:

2 **"85-2-226. Abandonment by failure to file claim.** ~~The~~ Except as provided in 85-2-214, the failure
3 to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of
4 abandonment of that right."

5
6 **Section 5.** Section 3-7-103, MCA, is amended to read:

7 **"3-7-103. Promulgation of rules and prescription of forms -- advisory committee.** (1) As soon as
8 practicable the Montana supreme court may promulgate special rules of practice and procedure and shall
9 prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in
10 consultation with the water judge and the department of natural resources and conservation.

11 (2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide
12 recommendations to the water court, the Montana supreme court, the department of natural resources and
13 conservation, and the legislature on methods to improve and expedite the water adjudication process.

14 (b) The committee consists of four attorneys who practice before the water court and three water
15 users who have filed statements of claim with the department of natural resources and conservation under
16 this chapter.

17 (c) The chief water judge or the judge's designee shall serve as an ex officio member of the
18 committee. The Montana supreme court may appoint the attorney general or the attorney general's
19 designee and a representative from the department of natural resources and conservation as ex officio
20 members of the committee.

21 (d) The committee members shall serve at the pleasure of the water court and shall serve without
22 compensation.

23 (e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as
24 often as determined by the Montana supreme court."

25

26 **Section 6.** Section 85-2-233, MCA, is amended to read:

27 **"85-2-233. Hearing on temporary preliminary decree or preliminary decree.** (1) (a) For good cause
28 shown and subject to the provisions of subsection (7), a hearing ~~shall~~ must be held before the water judge
29 on any objection to a temporary preliminary decree or preliminary decree by:

30 (i) the department;

- 1 (ii) a person named in the temporary preliminary decree or preliminary decree;
- 2 (iii) any person within the basin entitled to receive notice under 85-2-232(1); or
- 3 (iv) any other person who claims rights to the use of water from sources in other basins that are
- 4 hydrologically connected to the sources within the decreed basin and who would be entitled to receive
- 5 notice under 85-2-232 if ~~his~~ the claim or claims were from sources within the decreed basin.

6 (b) For the purposes of this subsection (1), "good cause shown" means a written statement

7 showing that a person has an ownership interest in water or its use that has been affected by the decree.

8 (c) A person does not waive the right to object to a preliminary decree by failing to object to a

9 temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary

10 decree if ~~he~~ that person was a party to the matter when the matter was previously litigated and resolved

11 as the result of an objection raised in a temporary preliminary decree, unless the objection is allowed for

12 any of the following reasons:

- 13 (i) mistake, inadvertence, surprise, or excusable neglect;
- 14 (ii) newly discovered evidence that by due diligence could not have been discovered in time to move
- 15 for a new trial under Rule 59(b), Montana Rules of Civil Procedure;
- 16 (iii) fraud, misrepresentation, or other misconduct of an adverse party;
- 17 (iv) the judgment is void; or
- 18 (v) any other reason justifying relief from the operation of the judgment.

19 (2) If a hearing is requested, the request must be filed with the water judge within 180 days after

20 entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause

21 shown, extend this time limit up to two additional 90-day periods if application for an extension is made

22 prior to expiration of the original 180-day period or any extension of it.

23 (3) The request for a hearing ~~shall~~ must contain a precise statement of the findings and conclusions

24 in the temporary preliminary decree or preliminary decree with which the department or person requesting

25 the hearing disagrees. The request ~~shall~~ must specify the paragraphs and pages containing the findings

26 and conclusions to which objection is made. The request ~~shall~~ must state the specific grounds and

27 evidence on which the objections are based.

28 (4) Upon expiration of the time for filing objections and upon timely receipt of a request for a

29 hearing, the water judge shall notify each party named in the temporary preliminary decree or preliminary

30 decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to

1 participate in future proceedings must appear or file a statement. The water judge shall then set a date for
 2 a hearing. The water judge may conduct individual or consolidated hearings. A hearing ~~shall~~ must be
 3 conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the
 4 water master, who shall prepare a report of the hearing as provided in ~~M.R.Civ.P.~~ Rule 53(e), Montana
 5 Rules of Civil Procedure.

6 (5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or
 7 85-2-703 bars any subsequent cause of action in the water court.

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

15 (7) Upon petition by a claimant, the water court shall grant a motion for dismissal to an objection
 16 to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that
 17 was previously decreed and:

18 (a) the objector or the objector's predecessor in interest was a party to the previous decree;

19 (b) the claimant's water right was challenged in the previous decree litigation;

20 (c) the claimant's water right was actually litigated;

21 (d) a determination was made by the court regarding the elements of the water right that are the
 22 subject of objection; and

23 (e) the right as claimed conforms to the previous decree."

24
 25 **Section 7.** Section 85-2-235, MCA, is amended to read:

26 "**85-2-235. Appeals from final decree.** (1) A person whose existing rights and priorities are
 27 determined in ~~the~~ a final decree may appeal the determination only if:

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

30 (2)(b) ~~his~~ the person's rights or priorities as determined in the temporary preliminary decree or the

1 preliminary decree were affected as the result of an objection filed by another person.

2 (2) An interlocutory ruling by the water judge upon a motion raising a question of law may be
3 appealed by any party affected by the decision and who participated in the proceedings on the motion."

4

5 NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

6

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0387, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

This act provides additional forfeiture remission for persons filing late water right claims; identifies certain situations in which objections to water right claims must be dismissed; expands the water right claim appeal process; clarifies standing for objections to water right claims; and establishes a water adjudication advisory committee.

ASSUMPTIONS:


1. Late claims--claims of existing water right not filed with the Department of Natural Resources and Conservation by April 30, 1982--can be filed until issuance of a final decree.
2. There is no way of knowing exactly how many late claims may be filed under the terms of this act. Based on experience with late claims associated with SB310 passed by the 1993 Legislature, it is estimated that 150 claims per year would be filed each year of the 1997 biennium.
3. The Water Court is not likely to hold any hearings on late claims during the 1997 biennium, and a hearing will not be held unless an objection is filed against the claim.
4. The filing percentage of additional late claims will be similar to the percentage breakdown of the approximately 3391 late claims currently filed: 42% stockwater, 36% irrigation, 15% domestic, and 7% other.
5. Approximately 2609 additional late claims will be filed over the life of the adjudication for a total of 6,000.
6. Approximately 32% of the late claims will receive objections. Assuming 6,000 late claims are filed, then 1920 will receive an objection.
7. Every late claim receiving an objection will require the Water Court to spend one more day on the adjudication.

FISCAL IMPACT:

Department of Natural Resources and Conservation

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Processing Costs	22,500	22,500
<u>Revenues:</u>		
Water Rights Adjudication (02)	26,100	26,100
<u>Net Impact:</u>	3,600	3,600

(continued on page 2)

 2-18-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2-18-95
 TOM BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0387, as introduced
SB 387

FISCAL IMPACT:

Water Court

Based upon the current Water Court budget and staff numbers, adjudication will be extended 1.28 years and the Water Courts expenditures will be increased by \$666,880 over the term of the adjudication.

TECHNICAL NOTES:

1. Because the filing period will be extended until issuance of a final decree, the federal government may challenge Montana's adjudication program as not meeting the McCarran amendment requirements and may seek to have their claims adjudicated in federal court.
2. The passage of SB310 by the 1993 Legislature has resulted in 286 late claims being filed since July 1, 1993. SB310 extends late claim filing until July 1, 1996; this act would extend claim filing until a final decree is issued.

1 SENATE BILL NO. 387

2 INTRODUCED BY BECK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING ADDITIONAL FORFEITURE REMISSION FOR~~
5 ~~PERSONS FILING LATE WATER CLAIMS; IDENTIFYING CERTAIN SITUATIONS IN WHICH OBJECTIONS~~
6 ~~TO A WATER CLAIM MUST BE DISMISSED~~ CLARIFYING APPLICATION OF COMMON-LAW RULES OF
7 ISSUE AND CLAIM PRECLUSION TO THE ADJUDICATION OF EXISTING WATER RIGHTS; EXPANDING THE
8 WATER CLAIM APPEAL PROCESS; CLARIFYING STANDING FOR OBJECTIONS TO WATER CLAIMS;
9 ESTABLISHING AUTHORIZING THE GOVERNOR TO APPOINT A WATER ADJUDICATION ADVISORY
10 COMMITTEE; AMENDING SECTIONS ~~3-7-103, 85-2-214, 85-2-221, 85-2-225, 85-2-226, 85-2-233, AND~~
11 ~~85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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13 STATEMENT OF INTENT

14 ~~A statement of intent is necessary for this bill because [section 1] encourages the Montana supreme~~
15 ~~court and the water court to adopt procedural rules. The legislature intends that the courts adopt~~
16 ~~abandonment relief rules that recognize the courts' existing equitable powers. These rules should consider~~
17 ~~and adopt equitable principles and existing rules of procedure, including but not limited to the equitable~~
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20 ~~which relief from abandonment will be granted after 1996 and under what terms relief will be granted in~~
21 ~~order to secure the interests of justice and may establish procedures for implementing [this act].~~

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

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25 ~~Section 1. Section 85-2-214, MCA, is amended to read:~~

26 ~~"85-2-214. Commencement of action. (1) The action for the adjudication of all existing water~~
27 ~~rights under this part, part 7, and Title 3, chapter 7, is commenced with the issuing of the order by the~~
28 ~~Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212.~~
29 ~~As to each claim, the action is considered filed in the judicial district of the county in which the diversion~~
30 ~~is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the~~

1 ~~use occurs.~~

2 ~~(2) The water judge shall monitor the claim filing procedure for claims within his the water division~~
 3 ~~and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.~~

4 ~~(3) The water judge may relieve a party from abandonment of a claim under 85-2-226, as follows:~~

5 ~~(a) For claims filed after July 1, 1996, but before the issuance of a preliminary decree, relief may~~
 6 ~~be granted for good cause shown and upon those terms as are just and in accordance with 85-2-224.~~

7 ~~(b) For claims filed after the entry of a preliminary decree, relief may be granted under the~~
 8 ~~provisions of Rule 60, Montana Rules of Civil Procedure.~~

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 10 ~~required to implement the provisions of subsection (3)."~~

11

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

13 ~~"85-2-221. Filing of claim of existing water right — filing late claim. (1) A person claiming an~~
 14 ~~existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in~~
 15 ~~85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water~~
 16 ~~right asserted on a form provided by the department.~~

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 18 ~~for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the~~
 19 ~~department shall file a copy of the statement of claim with the clerk of the district court of the judicial~~
 20 ~~district in which the use occurs.~~

21 ~~(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of~~
 22 ~~the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1) as~~
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 24 ~~appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to July 1,~~
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1 in this subsection, in order to be considered timely. The Late claims are then subject to adjudication by the
 2 district courts as any other claim of existing right. The claimant is then subject to all rights and obligations
 3 of any other party, except that water court, subject to the provisions of this part, rules adopted by the
 4 Montana supreme court or the water court, and the following:

5 (a) ~~a late claim must be incorporated into the adjudication, subject to all proceedings that have~~
 6 ~~taken place prior to the date of filing;~~

7 (b) ~~the person filing a late claim may request that a decree previously entered be reopened or may~~
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11 (c) ~~a person filing a late claim does not have the right or standing to object to any water rights~~
 12 ~~compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to July~~
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17 (d) ~~if the water judge, following objection under 85-2-233, finds that the right represented in the~~
 18 ~~late claim was the subject of a prior order or decree by the water judge or is otherwise without merit, the~~
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 25 ~~30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April~~
 26 ~~30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the~~
 27 ~~claim is, in addition, subordinate to:~~

28 (i) ~~rights represented in all valid, timely filed claims; and~~

29 (ii) ~~rights represented in a permit or reservation of water issued under this chapter if and to the~~
 30 ~~extent that the person holding the permit or reservation files an objection under this part and proves that~~

1 the person holding the permit or reservation reasonably relied to the detriment of the person holding the
 2 permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.

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 10 ~~or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:~~

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 12 ~~exceed \$480; and~~

13 ~~(b) no a filing fee is not required accompanying a claim of an existing right that is included in a~~
 14 ~~decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent~~
 15 ~~portion thereof of the decree.~~

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 17 ~~must be accompanied by a filing fee in the amount of \$40. Exempt claims for a single development with~~
 18 ~~several uses if filed simultaneously may be accompanied by a filing fee in the amount of \$40.~~

19 ~~(3) (a) Except as provided in subsection (3)(c), in addition to the filing fee set forth in subsection~~
 20 ~~(1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the~~
 21 ~~amount of \$150, which must be deposited in the water rights adjudication account for the examination of~~
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 27 ~~in 85-2-214. The court may award other fees and expenses against the party asserting a late claim as it~~
 28 ~~determines just under the circumstances. Any assessment rendered by the court must be deposited in the~~
 29 ~~water rights adjudication account.~~

30 ~~(c) For a statement of claim that was filed after April 30, 1982, but prior to July 1, 1993, or for~~

1 a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be
 2 paid on or before a date to be established by the department by rule, but no later than July 1, 1999."

3
 4 **Section 4.** ~~Section 85-2-226, MCA, is amended to read:~~

5 ~~"85-2-226. Abandonment by failure to file claim. The Except as provided in 85-2-214, the failure~~
 6 ~~to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of~~
 7 ~~abandonment of that right."~~

8
 9 **Section 5.** ~~Section 3-7-103, MCA, is amended to read:~~

10 ~~"3-7-103. Promulgation of rules and prescription of forms -- advisory committee. (1) As soon as~~
 11 ~~practicable the Montana supreme court may promulgate special rules of practice and procedure and shall~~
 12 ~~prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in~~
 13 ~~consultation with the water judge and the department of natural resources and conservation.~~

14 ~~(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide~~
 15 ~~recommendations to the water court, the Montana supreme court, the department of natural resources and~~
 16 ~~conservation, and the legislature on methods to improve and expedite the water adjudication process.~~

17 ~~(b) The committee consists of four attorneys who practice before the water court and three water~~
 18 ~~users who have filed statements of claim with the department of natural resources and conservation under~~
 19 ~~this chapter.~~

20 ~~(c) The chief water judge or the judge's designee shall serve as an ex officio member of the~~
 21 ~~committee. The Montana supreme court may appoint the attorney general or the attorney general's~~
 22 ~~designee and a representative from the department of natural resources and conservation as ex officio~~
 23 ~~members of the committee.~~

24 ~~(d) The committee members shall serve at the pleasure of the water court and shall serve without~~
 25 ~~compensation.~~

26 ~~(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as~~
 27 ~~often as determined by the Montana supreme court."~~

28
 29 **NEW SECTION. SECTION 1. WATER ADJUDICATION ADVISORY COMMITTEE -- APPOINTMENT.**

30 **(1) THE GOVERNOR SHALL APPOINT A WATER ADJUDICATION ADVISORY COMMITTEE TO PROVIDE**

1 RECOMMENDATIONS TO THE WATER COURT, THE MONTANA SUPREME COURT, THE DEPARTMENT
 2 OF NATURAL RESOURCES AND CONSERVATION, AND THE LEGISLATURE ON METHODS TO IMPROVE
 3 AND EXPEDITE THE WATER ADJUDICATION PROCESS.

4 (2) THE COMMITTEE CONSISTS OF THREE NONGOVERNMENTAL ATTORNEYS WHO PRACTICE
 5 BEFORE THE WATER COURT, ONE DISTRICT COURT JUDGE, AND THREE WATER USERS WHO HAVE
 6 FILED STATEMENTS OF CLAIM WITH THE DEPARTMENT OF NATURAL RESOURCES AND
 7 CONSERVATION UNDER TITLE 3, CHAPTER 7.

8 (3) THE CHIEF WATER JUDGE OR THE JUDGE'S DESIGNEE SHALL SERVE AS AN EX OFFICIO
 9 MEMBER OF THE COMMITTEE. THE GOVERNOR MAY APPOINT THE ATTORNEY GENERAL OR THE
 10 ATTORNEY GENERAL'S DESIGNEE, A REPRESENTATIVE FROM THE DEPARTMENT OF NATURAL
 11 RESOURCES AND CONSERVATION, AND A REPRESENTATIVE OF THE UNITED STATES GOVERNMENT
 12 AS EX OFFICIO MEMBERS OF THE COMMITTEE.

13 (4) THE COMMITTEE MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND
 14 SHALL SERVE WITHOUT COMPENSATION.

15 (5) THE COMMITTEE SHALL FILE A REPORT WITH THE GOVERNOR BY OCTOBER 1, 1996, AND
 16 AS OFTEN THEREAFTER AS DETERMINED BY THE GOVERNOR.

17
 18 **Section 2.** Section 85-2-233, MCA, is amended to read:

19 **"85-2-233. Hearing on temporary preliminary decree or preliminary decree.** (1) (a) For good cause
 20 shown and subject to the provisions of subsection (7), a hearing ~~shall~~ must be held before the water judge
 21 on any objection to a temporary preliminary decree or preliminary decree by:

22 (i) the department;

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

24 (iii) any person within the basin entitled to receive notice under 85-2-232(1); or

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

28 (b) For the purposes of this subsection (1), "good cause shown" means a written statement
 29 showing that a person has an ownership interest in water or its use that has been affected by the decree.

30 (c) A person does not waive the right to object to a preliminary decree by failing to object to a

1 temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary
2 decree if ~~he~~ that person was a party to the matter when the matter was previously litigated and resolved
3 as the result of an objection raised in a temporary preliminary decree, unless the objection is allowed for
4 any of the following reasons:

- 5 (i) mistake, inadvertence, surprise, or excusable neglect;
6 (ii) newly discovered evidence that by due diligence could not have been discovered in time to move
7 for a new trial under Rule 59(b), Montana Rules of Civil Procedure;
8 (iii) fraud, misrepresentation, or other misconduct of an adverse party;
9 (iv) the judgment is void; or
10 (v) any other reason justifying relief from the operation of the judgment.

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

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

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

28 (5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or
29 85-2-703 bars any subsequent cause of action in the water court.

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

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

7 (7) Upon petition by a claimant, the water court shall MAY grant a motion for dismissal to an
 8 objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water
 9 right that was previously decreed and: IF DISMISSAL IS CONSISTENT WITH COMMON-LAW PRINCIPLES
 10 OF ISSUE AND CLAIM PRECLUSION.

11 ~~(a) the objector or the objector's predecessor in interest was a party to the previous decree;~~

12 ~~(b) the claimant's water right was challenged in the previous decree litigation;~~

13 ~~(c) the claimant's water right was actually litigated;~~

14 ~~(d) a determination was made by the court regarding the elements of the water right that are the~~
 15 ~~subject of objection; and~~

16 ~~(e) the right as claimed conforms to the previous decree.~~

17 (8) THE PROVISIONS OF SUBSECTION (7) DO NOT APPLY TO ISSUES ARISING AFTER ENTRY
 18 OF THE PREVIOUS DECREE, INCLUDING BUT NOT LIMITED TO THE ISSUES OF ABANDONMENT,
 19 EXPANSION OF THE WATER RIGHT, AND REASONABLE DILIGENCE."

20
 21 **Section 3.** Section 85-2-235, MCA, is amended to read:

22 **"85-2-235. Appeals from final decree.** (1) A person whose existing rights and priorities are
 23 determined in ~~the~~ a final decree may appeal the determination only if:

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

26 ~~(2)(b) his~~ the person's rights or priorities as determined in the temporary preliminary decree or the
 27 preliminary decree were affected as the result of an objection filed by another person.

28 (2) An interlocutory ruling by the water judge upon a motion raising a question of law may be
 29 appealed by any party affected by the decision and who participated in the proceedings on the motion
 30 MATTER IN WHICH THE RULING WAS ISSUED."

SENATE BILL NO. 387

INTRODUCED BY BECK

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING ADDITIONAL FORFEITURE REMISSION FOR~~
5 ~~PERSONS FILING LATE WATER CLAIMS; IDENTIFYING CERTAIN SITUATIONS IN WHICH OBJECTIONS~~
6 ~~TO A WATER CLAIM MUST BE DISMISSED~~ CLARIFYING APPLICATION OF COMMON-LAW RULES OF
7 ISSUE AND CLAIM PRECLUSION TO THE ADJUDICATION OF EXISTING WATER RIGHTS; EXPANDING THE
8 WATER CLAIM APPEAL PROCESS; CLARIFYING STANDING FOR OBJECTIONS TO WATER CLAIMS;
9 ~~ESTABLISHING~~ AUTHORIZING THE GOVERNOR TO APPOINT A WATER ADJUDICATION ADVISORY
10 COMMITTEE; AMENDING SECTIONS ~~3-7-103, 85-2-214, 85-2-221, 85-2-225, 85-2-226, 85-2-233,~~ AND
11 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

12
13
14 A statement of intent is necessary for this bill because ~~[section 1] encourages the Montana supreme~~
15 ~~court and the water court to adopt procedural rules. The legislature intends that the courts adopt~~
16 ~~abandonment relief rules that recognize the courts' existing equitable powers. These rules should consider~~
17 ~~and adopt equitable principles and existing rules of procedure, including but not limited to the equitable~~
18 ~~principles of detrimental reliance, good cause, equitable tolling, and excusable neglect and Rules 55 and~~
19 ~~60, Montana and Federal Rules of Civil Procedure. The courts may by rule identify certain situations in~~
20 ~~which relief from abandonment will be granted after 1996 and under what terms relief will be granted in~~
21 ~~order to secure the interests of justice and may establish procedures for implementing [this act].~~

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24
25 ~~Section 1. Section 85-2-214, MCA, is amended to read:~~

26 ~~"85-2-214. Commencement of action. (1) The action for the adjudication of all existing water~~
27 ~~rights under this part, part 7, and Title 3, chapter 7, is commenced with the issuing of the order by the~~
28 ~~Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212.~~
29 ~~As to each claim, the action is considered filed in the judicial district of the county in which the diversion~~
30 ~~is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the~~

1 use occurs.

2 ~~(2) The water judge shall monitor the claim filing procedure for claims within his the water division~~
3 ~~and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.~~

4 ~~(3) The water judge may relieve a party from abandonment of a claim under 85-2-226, as follows:~~

5 ~~(a) For claims filed after July 1, 1996, but before the issuance of a preliminary decree, relief may~~
6 ~~be granted for good cause shown and upon those terms as are just and in accordance with 85-2-224.~~

7 ~~(b) For claims filed after the entry of a preliminary decree, relief may be granted under the~~
8 ~~provisions of Rule 60, Montana Rules of Civil Procedure.~~

9 ~~(4) The Montana supreme court and the water court are encouraged to adopt procedural rules~~
10 ~~required to implement the provisions of subsection (3)."~~

11
12 **Section 2.** Section 85-2-221, MCA, is amended to read:

13 **"85-2-221. Filing of claim of existing water right filing late claim.** (1) A person claiming an
14 existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in
15 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water
16 right asserted on a form provided by the department.

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

21 (3) Subject to certain terms and conditions, the legislature intends to provide for the remission of
22 the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1) as
23 provided under 85-2-214. Accordingly, with respect only to a basin that has not been closed to further
24 appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to July 1,
25 1993, a claim of an existing water right not filed with the department on or before April 30, 1992, may be
26 filed with the department on or before July 1, 1996, on forms provided by the department. This section
27 is not intended to prevent allow the filing of a late claim in addition to a claim of an existing water right filed
28 on or before April 30, 1992, if and to the extent that the additional right claimed is not the same as the
29 right that was the subject of a previous claim and is not an abandoned right. Claims must be physically
30 submitted to the department or sent by United States mail, postmarked on or before the deadline set forth

1 in this subsection, in order to be considered timely. The Late claims are then subject to adjudication by the
2 district courts as any other claim of existing right. The claimant is then subject to all rights and obligations
3 of any other party, except that water court, subject to the provisions of this part, rules adopted by the
4 Montana supreme court or the water court, and the following:

5 (a) ~~a late claim must be incorporated into the adjudication, subject to all proceedings that have~~
6 ~~taken place prior to the date of filing;~~

7 (b) ~~the person filing a late claim may request that a decree previously entered be reopened or may~~
8 ~~object to matters previously determined on the merits by the water court only to the extent that the request~~
9 ~~or objection is otherwise authorized by law and is based on a claim of water right filed on or before April~~
10 ~~30, 1982;~~

11 (c) ~~a person filing a late claim does not have the right or standing to object to any water rights~~
12 ~~compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to July~~
13 ~~1, 1993, except to the extent that right or standing to object exists based on a claim of water right filed~~
14 ~~on or before April 30, 1982, or to claim protection for the right represented in the late claim under any~~
15 ~~provision of such a compact that subordinates the use of a water right recognized in the compact to a right~~
16 ~~recognized under state law;~~

17 (d) ~~if the water judge, following objection under 85-2-233, finds that the right represented in the~~
18 ~~late claim was the subject of a prior order or decree by the water judge or is otherwise without merit, the~~
19 ~~water judge shall award costs and reasonable attorney fees to the person or persons filing the an objection~~
20 ~~to a late claim;~~

21 (e) ~~a right represented in a late claim is may be subordinate to all federal and Indian reserved water~~
22 ~~rights established by compact or decree under this chapter other water rights upon terms that the court~~
23 ~~determines are just under the circumstances;~~

24 (f) ~~unless a late claim either was placed in the United States mail and postmarked on or before April~~
25 ~~30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April~~
26 ~~30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the~~
27 ~~claim is, in addition, subordinate to:~~

28 (i) ~~rights represented in all valid, timely filed claims; and~~

29 (ii) ~~rights represented in a permit or reservation of water issued under this chapter if and to the~~
30 ~~extent that the person holding the permit or reservation files an objection under this part and proves that~~

1 ~~the person holding the permit or reservation reasonably relied to the detriment of the person holding the~~
 2 ~~permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.~~

3 ~~(4) The department and the district courts may not accept any statements of claim physically~~
 4 ~~submitted or postmarked after July 1, 1996, and shall notify a person who files a claim after July 1, 1996,~~
 5 ~~that the claim will not be accepted late claims filed after July 1, 1996, are subject to the provisions of~~
 6 ~~85-2-214(3)(a).~~"

7
 8 ~~Section 3. Section 85-2-225, MCA, is amended to read:~~

9 ~~"85-2-225. Filing fee — processing fee for remitted claims. (1) Each claim filed under 85-2-221~~
 10 ~~or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:~~

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

13 ~~(b) no a filing fee is not required accompanying a claim of an existing right that is included in a~~
 14 ~~decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent~~
 15 ~~portion thereof of the decree.~~

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

19 ~~(3) (a) Except as provided in subsection (3)(e), in addition to the filing fee set forth in subsection~~
 20 ~~(1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the~~
 21 ~~amount of \$150, which must be deposited in the water rights adjudication account for the examination of~~
 22 ~~late claims by the department and for the publication of notices by the department as required under~~
 23 ~~85-2-213(2).~~

24 ~~(b) The water judge shall may assess against the late claimant all reasonable administrative costs~~
 25 ~~and expenses that may be incurred by the court due to the filing of the late claim and the consideration of~~
 26 ~~the objection, which in reaching a determination whether to relieve a party from abandonment as provided~~
 27 ~~in 85-2-214. The court may award other fees and expenses against the party asserting a late claim as it~~
 28 ~~determines just under the circumstances. Any assessment rendered by the court must be deposited in the~~
 29 ~~water rights adjudication account.~~

30 ~~(c) For a statement of claim that was filed after April 30, 1982, but prior to July 1, 1993, or for~~

1 ~~a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be~~
 2 ~~paid on or before a date to be established by the department by rule, but no later than July 1, 1999."~~

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 4 ~~Section 4. Section 85-2-226, MCA, is amended to read:~~

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 11 ~~practicable the Montana supreme court may promulgate special rules of practice and procedure and shall~~
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 13 ~~consultation with the water judge and the department of natural resources and conservation.~~

14 ~~(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide~~
 15 ~~recommendations to the water court, the Montana supreme court, the department of natural resources and~~
 16 ~~conservation, and the legislature on methods to improve and expedite the water adjudication process.~~

17 ~~(b) The committee consists of four attorneys who practice before the water court and three water~~
 18 ~~users who have filed statements of claim with the department of natural resources and conservation under~~
 19 ~~this chapter.~~

20 ~~(c) The chief water judge or the judge's designee shall serve as an ex officio member of the~~
 21 ~~committee. The Montana supreme court may appoint the attorney general or the attorney general's~~
 22 ~~designee and a representative from the department of natural resources and conservation as ex officio~~
 23 ~~members of the committee.~~

24 ~~(d) The committee members shall serve at the pleasure of the water court and shall serve without~~
 25 ~~compensation.~~

26 ~~(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as~~
 27 ~~often as determined by the Montana supreme court."~~

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 29 ~~**NEW SECTION. SECTION 1. WATER ADJUDICATION ADVISORY COMMITTEE-- APPOINTMENT.**~~

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 2 OF NATURAL RESOURCES AND CONSERVATION, AND THE LEGISLATURE ON METHODS TO IMPROVE
 3 AND EXPEDITE THE WATER ADJUDICATION PROCESS.

4 (2) THE COMMITTEE CONSISTS OF THREE NONGOVERNMENTAL ATTORNEYS WHO PRACTICE
 5 BEFORE THE WATER COURT, ONE DISTRICT COURT JUDGE, AND THREE WATER USERS WHO HAVE
 6 FILED STATEMENTS OF CLAIM WITH THE DEPARTMENT OF NATURAL RESOURCES AND
 7 CONSERVATION UNDER TITLE 3, CHAPTER 7.

8 (3) THE CHIEF WATER JUDGE OR THE JUDGE'S DESIGNEE SHALL SERVE AS AN EX OFFICIO
 9 MEMBER OF THE COMMITTEE. THE GOVERNOR MAY APPOINT THE ATTORNEY GENERAL OR THE
 10 ATTORNEY GENERAL'S DESIGNEE, A REPRESENTATIVE FROM THE DEPARTMENT OF NATURAL
 11 RESOURCES AND CONSERVATION, AND A REPRESENTATIVE OF THE UNITED STATES GOVERNMENT
 12 AS EX OFFICIO MEMBERS OF THE COMMITTEE.

13 (4) THE COMMITTEE MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND
 14 SHALL SERVE WITHOUT COMPENSATION.

15 (5) THE COMMITTEE SHALL FILE A REPORT WITH THE GOVERNOR BY OCTOBER 1, 1996, AND
 16 AS OFTEN THEREAFTER AS DETERMINED BY THE GOVERNOR.

17
 18 **Section 2.** Section 85-2-233, MCA, is amended to read:

19 **"85-2-233. Hearing on temporary preliminary decree or preliminary decree.** (1) (a) For good cause
 20 shown and subject to the provisions of subsection (7), a hearing shall must be held before the water judge
 21 on any objection to a temporary preliminary decree or preliminary decree by:

22 (i) the department;

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

24 (iii) any person within the basin entitled to receive notice under 85-2-232(1); or

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

28 (b) For the purposes of this subsection (1), "good cause shown" means a written statement
 29 showing that a person has an ownership interest in water or its use that has been affected by the decree.

30 (c) A person does not waive the right to object to a preliminary decree by failing to object to a

1 temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary
 2 decree if ~~he~~ that person was a party to the matter when the matter was previously litigated and resolved
 3 as the result of an objection raised in a temporary preliminary decree, unless the objection is allowed for
 4 any of the following reasons:

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

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

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

9 (iv) the judgment is void; or

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

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

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

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

28 (5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or
 29 85-2-703 bars any subsequent cause of action in the water court.

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

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

7 (7) Upon petition by a claimant, the water court shall MAY grant a motion for dismissal to an
 8 objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water
 9 right that was previously decreed and: IF DISMISSAL IS CONSISTENT WITH COMMON-LAW PRINCIPLES
 10 OF ISSUE AND CLAIM PRECLUSION.

11 (a) the objector or the objector's predecessor in interest was a party to the previous decree;

12 (b) the claimant's water right was challenged in the previous decree litigation;

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 15 subject of objection; and

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 18 OF THE PREVIOUS DECREE, INCLUDING BUT NOT LIMITED TO THE ISSUES OF ABANDONMENT,
 19 EXPANSION OF THE WATER RIGHT, AND REASONABLE DILIGENCE."

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22 **"85-2-235. Appeals from final decree.** (1) A person whose existing rights and priorities are
 23 determined in ~~the~~ a final decree may appeal the determination only if:

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

26 ~~(2)(b)~~ (b) ~~his~~ the person's rights or priorities as determined in the temporary preliminary decree or the
 27 preliminary decree were affected as the result of an objection filed by another person.

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 29 appealed by any party affected by the decision and who participated in the proceedings on the motion
 30 MATTER IN WHICH THE RULING WAS ISSUED."



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 387 (third reading copy -- blue) be concurred in as amended.

Signed: _____


Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Story

1. Title, line 9.

Strike: "AUTHORIZING" through "APPOINT"

Insert: "ESTABLISHING"

2. Title, line 10.

Following: "~~85-2-226,~~"

Insert: "3-7-103,"

Following: "85-2-233~~7~~"

Insert: ", "

3. Page 5, line 29 through page 6, line 16.

Strike: section 1 in its entirety

Insert: "Section 1. Section 3-7-103, MCA, is amended to read:

"3-7-103. Promulgation of rules and prescription of forms -- advisory committee. (1) As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department of natural resources and conservation.

(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide recommendations to the water court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental

Committee Vote:
Yes 18, No 0.

SB 387

HOUSE

attorneys who practice before the water court, one district court judge, and three water users who have filed statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief water judge or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the water court and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as often as determined by the Montana supreme court."

Renumber: subsequent sections

4. Page 9, lines 1 through 3.

Strike: section 4 in its entirety

Renumber: subsequent section

-END-

1 SENATE BILL NO. 387

2 INTRODUCED BY BECK

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROVIDING ADDITIONAL FORFEITURE REMISSION FOR~~
 5 ~~PERSONS FILING LATE WATER CLAIMS; IDENTIFYING CERTAIN SITUATIONS IN WHICH OBJECTIONS~~
 6 ~~TO A WATER CLAIM MUST BE DISMISSED~~ CLARIFYING APPLICATION OF COMMON-LAW RULES OF
 7 ISSUE AND CLAIM PRECLUSION TO THE ADJUDICATION OF EXISTING WATER RIGHTS; EXPANDING THE
 8 WATER CLAIM APPEAL PROCESS; CLARIFYING STANDING FOR OBJECTIONS TO WATER CLAIMS;
 9 ~~ESTABLISHING~~ AUTHORIZING THE GOVERNOR TO APPOINT ~~ESTABLISHING~~ A WATER ADJUDICATION
 10 ADVISORY COMMITTEE; AMENDING SECTIONS ~~3-7-103, 85-2-214, 85-2-221, 85-2-225, 85-2-226,~~
 11 3-7-103, 85-2-233, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 STATEMENT OF INTENT

14 A statement of intent is necessary for this bill because ~~[section 1] encourages the Montana supreme~~
 15 ~~court and the water court to adopt procedural rules. The legislature intends that the courts adopt~~
 16 ~~abandonment relief rules that recognize the courts' existing equitable powers. These rules should consider~~
 17 ~~and adopt equitable principles and existing rules of procedure, including but not limited to the equitable~~
 18 ~~principles of detrimental reliance, good cause, equitable tolling, and excusable neglect and Rules 55 and~~
 19 ~~60, Montana and Federal Rules of Civil Procedure. The courts may by rule identify certain situations in~~
 20 ~~which relief from abandonment will be granted after 1996 and under what terms relief will be granted in~~
 21 ~~order to secure the interests of justice and may establish procedures for implementing [this act].~~

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:24
25 ~~Section 1. Section 85-2-214, MCA, is amended to read:~~

26 ~~"85-2-214. Commencement of action. (1) The action for the adjudication of all existing water~~
 27 ~~rights under this part, part 7, and Title 3, chapter 7, is commenced with the issuing of the order by the~~
 28 ~~Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212.~~
 29 ~~As to each claim, the action is considered filed in the judicial district of the county in which the diversion~~
 30 ~~is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the~~

1 use occurs.

2 ~~(2) The water judge shall monitor the claim filing procedure for claims within his the water division~~
3 ~~and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.~~

4 ~~(3) The water judge may relieve a party from abandonment of a claim under 85-2-226, as follows:~~

5 ~~(a) For claims filed after July 1, 1996, but before the issuance of a preliminary decree, relief may~~
6 ~~be granted for good cause shown and upon those terms as are just and in accordance with 85-2-224.~~

7 ~~(b) For claims filed after the entry of a preliminary decree, relief may be granted under the~~
8 ~~provisions of Rule 60, Montana Rules of Civil Procedure.~~

9 ~~(4) The Montana supreme court and the water court are encouraged to adopt procedural rules~~
10 ~~required to implement the provisions of subsection (3)."~~

11
12 **Section 2.** ~~Section 85-2-221, MCA, is amended to read:~~

13 ~~"85-2-221. Filing of claim of existing water right — filing late claim. (1) A person claiming an~~
14 ~~existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in~~
15 ~~85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water~~
16 ~~right asserted on a form provided by the department.~~

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

21 ~~(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of~~
22 ~~the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1) as~~
23 ~~provided under 85-2-214. Accordingly, with respect only to a basin that has not been closed to further~~
24 ~~appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to July 1,~~
25 ~~1993, a claim of an existing water right not filed with the department on or before April 30, 1982, may be~~
26 ~~filed with the department on or before July 1, 1996, on forms provided by the department. This section~~
27 ~~is not intended to prevent allow the filing of a late claim in addition to a claim of an existing water right filed~~
28 ~~on or before April 30, 1982, if and to the extent that the additional right claimed is not the same as the~~
29 ~~right that was the subject of a previous claim and is not an abandoned right. Claims must be physically~~
30 ~~submitted to the department or sent by United States mail, postmarked on or before the deadline set forth~~

1 in this subsection, in order to be considered timely. ~~The Late claims are then subject to adjudication by the~~
 2 ~~district courts as any other claim of existing right. The claimant is then subject to all rights and obligations~~
 3 ~~of any other party, except that water court, subject to the provisions of this part, rules adopted by the~~
 4 ~~Montana supreme court or the water court, and the following:~~

5 ~~(a) a late claim must be incorporated into the adjudication, subject to all proceedings that have~~
 6 ~~taken place prior to the date of filing;~~

7 ~~(b) the person filing a late claim may request that a decree previously entered be reopened or may~~
 8 ~~object to matters previously determined on the merits by the water court only to the extent that the request~~
 9 ~~or objection is otherwise authorized by law and is based on a claim of water right filed on or before April~~
 10 ~~30, 1982;~~

11 ~~(c) a person filing a late claim does not have the right or standing to object to any water rights~~
 12 ~~compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to July~~
 13 ~~1, 1993, except to the extent that right or standing to object exists based on a claim of water right filed~~
 14 ~~on or before April 30, 1982, or to claim protection for the right represented in the late claim under any~~
 15 ~~provision of such a compact that subordinates the use of a water right recognized in the compact to a right~~
 16 ~~recognized under state law;~~

17 ~~(d) if the water judge, following objection under 85-2-233, finds that the right represented in the~~
 18 ~~late claim was the subject of a prior order or decree by the water judge or is otherwise without merit, the~~
 19 ~~water judge shall award costs and reasonable attorney fees to the person or persons filing the an objection~~
 20 ~~to a late claim;~~

21 ~~(e) a right represented in a late claim is may be subordinate to all federal and Indian reserved water~~
 22 ~~rights established by compact or decree under this chapter other water rights upon terms that the court~~
 23 ~~determines are just under the circumstances;~~

24 ~~(f) unless a late claim either was placed in the United States mail and postmarked on or before April~~
 25 ~~30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April~~
 26 ~~30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the~~
 27 ~~claim is, in addition, subordinate to:~~

28 ~~(i) rights represented in all valid, timely filed claims; and~~

29 ~~(ii) rights represented in a permit or reservation of water issued under this chapter if and to the~~
 30 ~~extent that the person holding the permit or reservation files an objection under this part and proves that~~

1 the person holding the permit or reservation reasonably relied to the detriment of the person holding the
 2 permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.

3 ~~(4) The department and the district courts may not accept any statements of claim physically~~
 4 ~~submitted or postmarked after July 1, 1996, and shall notify a person who files a claim after July 1, 1996,~~
 5 ~~that the claim will not be accepted late claims filed after July 1, 1996, are subject to the provisions of~~
 6 ~~85-2-214(3)(a).~~"

7
 8 **Section 3.** Section 85-2-225, MCA, is amended to read:

9 ~~"85-2-225. Filing fee—processing fee for remitted claims. (1) Each claim filed under 85-2-221~~
 10 ~~or 85-2-222 must be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:~~

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

13 ~~(b) no a filing fee is not required accompanying a claim of an existing right that is included in a~~
 14 ~~decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent~~
 15 ~~portion thereof of the decree.~~

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

19 ~~(3) (a) Except as provided in subsection (3)(c), in addition to the filing fee set forth in subsection~~
 20 ~~(1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the~~
 21 ~~amount of \$150, which must be deposited in the water rights adjudication account for the examination of~~
 22 ~~late claims by the department and for the publication of notices by the department as required under~~
 23 ~~85-2-213(2).~~

24 ~~(b) The water judge shall may assess against the late claimant all reasonable administrative costs~~
 25 ~~and expenses that may be incurred by the court due to the filing of the late claim and the consideration of~~
 26 ~~the objection, which in reaching a determination whether to relieve a party from abandonment as provided~~
 27 ~~in 85-2-214. The court may award other fees and expenses against the party asserting a late claim as it~~
 28 ~~determines just under the circumstances. Any assessment rendered by the court must be deposited in the~~
 29 ~~water rights adjudication account.~~

30 ~~(c) For a statement of claim that was filed after April 30, 1982, but prior to July 1, 1993, or for~~

1 a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be
 2 paid on or before a date to be established by the department by rule, but no later than July 1, 1999."

3
 4 **Section 4.** ~~Section 85-2-226, MCA, is amended to read:~~

5 "~~85-2-226. Abandonment by failure to file claim. The Except as provided in 85-2-214, the failure~~
 6 ~~to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of~~
 7 ~~abandonment of that right."~~

8
 9 **Section 5.** ~~Section 3-7-103, MCA, is amended to read:~~

10 "~~3-7-103. Promulgation of rules and prescription of forms advisory committee. (1) As soon as~~
 11 ~~practicable the Montana supreme court may promulgate special rules of practice and procedure and shall~~
 12 ~~prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in~~
 13 ~~consultation with the water judge and the department of natural resources and conservation.~~

14 ~~(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide~~
 15 ~~recommendations to the water court, the Montana supreme court, the department of natural resources and~~
 16 ~~conservation, and the legislature on methods to improve and expedite the water adjudication process.~~

17 ~~(b) The committee consists of four attorneys who practice before the water court and three water~~
 18 ~~users who have filed statements of claim with the department of natural resources and conservation under~~
 19 ~~this chapter.~~

20 ~~(c) The chief water judge or the judge's designee shall serve as an ex officio member of the~~
 21 ~~committee. The Montana supreme court may appoint the attorney general or the attorney general's~~
 22 ~~designee and a representative from the department of natural resources and conservation as ex officio~~
 23 ~~members of the committee.~~

24 ~~(d) The committee members shall serve at the pleasure of the water court and shall serve without~~
 25 ~~compensation.~~

26 ~~(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as~~
 27 ~~often as determined by the Montana supreme court."~~

28
 29 ~~NEW SECTION. SECTION 1. WATER ADJUDICATION ADVISORY COMMITTEE APPOINTMENT.~~
 30 ~~(1) THE GOVERNOR SHALL APPOINT A WATER ADJUDICATION ADVISORY COMMITTEE TO PROVIDE~~

1 ~~RECOMMENDATIONS TO THE WATER COURT, THE MONTANA SUPREME COURT, THE DEPARTMENT~~
 2 ~~OF NATURAL RESOURCES AND CONSERVATION, AND THE LEGISLATURE ON METHODS TO IMPROVE~~
 3 ~~AND EXPEDITE THE WATER ADJUDICATION PROCESS.~~

4 ~~(2) THE COMMITTEE CONSISTS OF THREE NONGOVERNMENTAL ATTORNEYS WHO PRACTICE~~
 5 ~~BEFORE THE WATER COURT, ONE DISTRICT COURT JUDGE, AND THREE WATER USERS WHO HAVE~~
 6 ~~FILED STATEMENTS OF CLAIM WITH THE DEPARTMENT OF NATURAL RESOURCES AND~~
 7 ~~CONSERVATION UNDER TITLE 3, CHAPTER 7.~~

8 ~~(3) THE CHIEF WATER JUDGE OR THE JUDGE'S DESIGNEE SHALL SERVE AS AN EX OFFICIO~~
 9 ~~MEMBER OF THE COMMITTEE. THE GOVERNOR MAY APPOINT THE ATTORNEY GENERAL OR THE~~
 10 ~~ATTORNEY GENERAL'S DESIGNEE, A REPRESENTATIVE FROM THE DEPARTMENT OF NATURAL~~
 11 ~~RESOURCES AND CONSERVATION, AND A REPRESENTATIVE OF THE UNITED STATES GOVERNMENT~~
 12 ~~AS EX OFFICIO MEMBERS OF THE COMMITTEE.~~

13 ~~(4) THE COMMITTEE MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND~~
 14 ~~SHALL SERVE WITHOUT COMPENSATION.~~

15 ~~(5) THE COMMITTEE SHALL FILE A REPORT WITH THE GOVERNOR BY OCTOBER 1, 1996, AND~~
 16 ~~AS OFTEN THEREAFTER AS DETERMINED BY THE GOVERNOR.~~

17
 18 **SECTION 1. SECTION 3-7-103, MCA, IS AMENDED TO READ:**

19 **"3-7-103. Promulgation of rules and prescription of forms -- advisory committee.** (1) As soon as
 20 practicable the Montana supreme court may promulgate special rules of practice and procedure and shall
 21 prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in
 22 consultation with the water judge and the department of natural resources and conservation.

23 (2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide
 24 recommendations to the water court, the Montana supreme court, the department of natural resources and
 25 conservation, and the legislature on methods to improve and expedite the water adjudication process.

26 (b) The committee consists of three nongovernmental attorneys who practice before the water
 27 court, one district court judge, and three water users who have filed statements of claim with the
 28 department of natural resources and conservation under this chapter.

29 (c) The chief water judge or the judge's designee shall serve as an ex officio member of the
 30 committee. The Montana supreme court may appoint the attorney general or the attorney general's

1 designee, a representative from the department of natural resources and conservation, and a representative
 2 of the United States government as ex officio members of the committee.

3 (d) The committee members shall serve at the pleasure of the water court and shall serve without
 4 compensation.

5 (e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as
 6 often as determined by the Montana supreme court."

7
 8 **Section 2.** Section 85-2-233, MCA, is amended to read:

9 **"85-2-233. Hearing on temporary preliminary decree or preliminary decree.** (1) (a) For good cause
 10 shown and subject to the provisions of subsection (7), a hearing shall must be held before the water judge
 11 on any objection to a temporary preliminary decree or preliminary decree by:

12 (i) the department;

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

14 (iii) any person within the basin entitled to receive notice under 85-2-232(1); or

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

18 (b) For the purposes of this subsection (1), "good cause shown" means a written statement
 19 showing that a person has an ownership interest in water or its use that has been affected by the decree.

20 (c) A person does not waive the right to object to a preliminary decree by failing to object to a
 21 temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary
 22 decree if ~~he~~ that person was a party to the matter when the matter was previously litigated and resolved
 23 as the result of an objection raised in a temporary preliminary decree, unless the objection is allowed for
 24 any of the following reasons:

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

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

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

29 (iv) the judgment is void; or

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

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

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

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

18 (5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or
 19 85-2-703 bars any subsequent cause of action in the water court.

20 (6) If the court sustains an objection to a compact, it may declare the compact void. The agency
 21 of the United States, the tribe, or the United States on behalf of the tribe party to the compact ~~shall be is~~
 22 permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224,
 23 and the court shall ~~thereafter~~ issue a new preliminary decree in accordance with 85-2-231^{1/2}; ~~provided,~~
 24 ~~however~~ However, that any party to a compact declared void may appeal from ~~such~~ that determination in
 25 accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal ~~shall stay~~
 26 stays the period for filing a statement of claim as required under this subsection.

27 (7) Upon petition by a claimant, the water court shall MAY grant a motion for dismissal to an
 28 objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water
 29 right that was previously decreed and: IF DISMISSAL IS CONSISTENT WITH COMMON-LAW PRINCIPLES
 30 OF ISSUE AND CLAIM PRECLUSION.

1 ~~(a) the objector or the objector's predecessor in interest was a party to the previous decree;~~

2 ~~(b) the claimant's water right was challenged in the previous decree litigation;~~

3 ~~(c) the claimant's water right was actually litigated;~~

4 ~~(d) a determination was made by the court regarding the elements of the water right that are the~~
5 ~~subject of objection; and~~

6 ~~(e) the right as claimed conforms to the previous decree.~~

7 (8) THE PROVISIONS OF SUBSECTION (7) DO NOT APPLY TO ISSUES ARISING AFTER ENTRY
8 OF THE PREVIOUS DECREE, INCLUDING BUT NOT LIMITED TO THE ISSUES OF ABANDONMENT,
9 EXPANSION OF THE WATER RIGHT, AND REASONABLE DILIGENCE."

10
11 **Section 3.** Section 85-2-235, MCA, is amended to read:

12 **"85-2-235. Appeals from final decree.** (1) A person whose existing rights and priorities are
13 determined in ~~the~~ a final decree may appeal the determination only if:

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

16 ~~(2)(b) his~~ the person's rights or priorities as determined in the temporary preliminary decree or the
17 preliminary decree were affected as the result of an objection filed by another person.

18 (2) An interlocutory ruling by the water judge upon a motion raising a question of law may be
19 appealed by any party affected by the decision and who participated in the proceedings on the motion
20 MATTER IN WHICH THE RULING WAS ISSUED."

21
22 ~~NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE~~
23 ~~CODIFIED AS AN INTEGRAL PART OF TITLE 2, CHAPTER 15, PART 2, AND THE PROVISIONS OF TITLE~~
24 ~~2, CHAPTER 15, PART 2, APPLY TO [SECTION 1].~~

25
26 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

27 -END-