

HOUSE BILL NO. 470

INTRODUCED BY J. COHENOUR

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING RECOVERY OF COSTS AND ATTORNEY FEES IN WATER PROCEEDINGS; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 85-2-125, MCA, is amended to read:

**"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to district court, the district court ~~shall~~ may award the prevailing party reasonable costs and attorney fees. Costs and attorney fees accrued in the administrative process are not allowed under this subsection.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right."

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

NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to judicial and administrative proceedings pending as of [the effective date of this act].

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