



AN ACT PROVIDING FOR REMOVAL OF A NATURAL OBSTRUCTION THAT IMPAIRS A PRIOR WATER RIGHT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, inflexible notions of private property rights in the context of real-life situations hamper the common-sense approach that competing uses of property between two interested owners should be accommodated when possible.

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

Section 1. Removal of natural obstruction to exercise water right -- consent or court ruling required. (1) A person who owns a water right but cannot exercise the right because a natural obstruction on another person's property prevents the flow of the water shall, in writing, seek consent from the landowner to remove the natural obstruction.

(2) The water right owner may remove the natural obstruction if the landowner consents in writing and the water right owner complies with applicable laws and regulations.

(3) If the landowner does not consent in writing to the removal of the natural obstruction, the water right owner may seek a declaration from district court that the removal of the natural obstruction would not harm the landowner and is necessary for the water right owner to exercise the water right.

(4) In seeking a district court declaration, the water right owner shall:

(a) agree to pay all costs of the removal;

(b) show that the utility of the landowner's property would not be lessened;

(c) show that the landowner would not incur additional, uncompensated burdens from the removal of the natural obstruction; and

(d) agree to comply with applicable laws and regulations.

(5) The landowner may present evidence showing that the removal is not necessary for the water right owner to exercise the right or that the provisions of subsection (4) could not be met if the removal is permitted.

(6) The court shall determine if the removal of the natural obstruction:

- (a) is necessary for the water right owner to exercise the right; and
- (b) would meet the provisions of subsection (4).

(7) If the court permits the removal, the court may require any conditions to ensure that the provisions of subsection (4) are met.

(8) The court may award court costs and attorney fees.

(9) Removal of a natural obstruction under this section does not impair any existing right of the landowner.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 1, and the provisions of Title 85, chapter 2, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0335, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 335

INTRODUCED BY HAMLETT, CONNELL, MCCHESENEY

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