SENATE BILL NO. 335

INTRODUCED BY B. HAMLETT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REMOVAL OF A NATURAL OBSTRUCTION THAT IMPAIRS A PRIOR WATER RIGHT."

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:

NEW SECTION. **Section 1. Removal of natural obstruction to exercise water right -- consent or court ruling required.** (1) A person who owns a prior 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 shall demonstrate the actual damage that the removal would cause. If the court finds that actual damage would be caused, the court shall decline to permit the removal. The court may award court costs and attorney fees to the landowner for a finding under this subsection.

1 (6) If the landowner does not demonstrate damages, the court may permit a removal of the natural
2 obstruction with or without conditions. Removal of a natural obstruction under this section does not impair any
3 existing right of the landowner.
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5 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
6 integral part of Title 85, chapter 2, part 1, and the provisions of Title 85, chapter 2, part 1, apply to [section 1].
7 - END -