

**Unofficial Draft Copy**

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LCb003

**THIS BILL DRAFT IS NOT AN EQC BILL DRAFT -- IT IS A PROPOSAL  
BEING SUBMITTED TO THE COMMITTEE FOR THEIR REVIEW AND DISCUSSION**

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act generally revising laws related to the adjudication of water rights; limiting, until related rules are promulgated, water judge authority to amend claims and the department of natural resources and conservation's ability and responsibility to assist a water judge after the issuance of certain decrees; amending sections 85-2-231, and 85-2-243, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 85-2-231, MCA, is amended to read:

**"85-2-231. Temporary preliminary and preliminary decree.**

(1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree.

The preliminary decree must be based on:

- (i) the statements of claim before the water judge;
- (ii) the data submitted by the department;
- (iii) the contents of compacts approved by the Montana

legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge in a manner consistent with subsection (6).

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

(c) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise necessary for the orderly administration of water rights.

(3) A temporary preliminary decree may be issued for any 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, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees.

(4) The temporary preliminary decree or preliminary decree must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree 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 satisfied, the water judge may recommit

the report to the master with instructions or modify the report and issue the preliminary decree.

(6) Except as provided in subsection (7) and until the Supreme Court promulgates and updates rules of procedure for water court review on its own motion of a statement of claim or settlement agreement between adverse parties, in matters concerning the determination and interpretation of existing water rights after issuance of a temporary preliminary decree or a preliminary decree, the water judge may not amend or modify a claim for an existing right unless there is associated with the claim one or more disputed issues of fact or law presented by adverse parties. For purposes of this part, an adverse party is an owner of an existing water right or an objector or appearing party under 85-2-223.

(7) When a statement of claim or claims for an existing water right previously decreed by a district court exceeds the previously decreed flow rate and if the claim or claims are not the subject of a filed objection, the water judge may proceed with setting a hearing on all these claims for resolution of the decree exceedence. All relevant claimants, as determined by the water judge, shall resolve the decree exceedence through agreement, stipulation, or the hearing process before the judge may issue a decision that adjudicates the claim or claims."

{ Internal References to 85-2-231:

3-7-211x      3-7-212x      3-7-311x      85-2-141x  
85-2-141 x      85-2-233 x      85-2-702x }

**Section 2.** Section 85-2-243, MCA, is amended to read:

"85-2-243. Department assistance to water judges. (1) The department, subject to subsection (2) and the direction of the water judge, shall:

(a) provide ~~such~~ information and assistance ~~as~~ that may be required by the water judge to adjudicate claims of existing rights;

(b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River basin.

(2) In matters concerning the determination and interpretation of existing water rights, after issuance of a temporary preliminary decree or preliminary decree and until the Supreme Court promulgates rules of procedure related to post decree department assistance to the water court, the water judge may not request department assistance and the department may not provide assistance except on claims where there remains a disputed or unresolved issue of fact raised by adverse parties consistent with 85-2-231(6).

(3) Department assistance to a water judge must be without

cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated to it for the adjudication program by the legislature to carry out its function under subsection (1). ~~and when that~~ When the appropriation is expended ~~then~~ the department is no longer required to provide ~~further~~ assistance."

{Internal References to 85-2-243: None.}

NEW SECTION. **Section 3. {standard} 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 4. {standard} Effective date.** [This act] is effective on January 1, 2006.

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