

Unofficial Draft Copy

As of: June 30, 2008 (2:55pm)

LC5021

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act generally revising water enforcement laws; allowing for the limited appointment of water masters as special masters in district court proceedings; requiring that protection of prior appropriators be given priority in judicial enforcement considerations; making the pursuit of voluntary compliance optional; amending sections 3-7-311, and 85-2-114, MCA."

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

Section 1. Section 3-7-311, MCA, is amended to read:

"3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

(4) Subject to the approval of the chief water judge, a water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant

Unofficial Draft Copy

As of: June 30, 2008 (2:55pm)

LC5021

to 85-2-114 (1) and (3) and 85-5-301."

{*Internal References to 3-7-311: None.*}

Section 2. Section 85-2-114, MCA, is amended to read:

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may, ~~after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4),~~ petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the

Unofficial Draft Copy

As of: June 30, 2008 (2:55pm)

LC5021

department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) (a) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(b) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation without being requested to do so by the department.

(4) The county attorney or the attorney general may prosecute under 85-2-122(1) or bring an action under 85-2-122(2) without being requested to do so by the department. The attorney general and a county attorney are subject to the voluntary compliance provisions of subsection (4).

(5) A county attorney who takes action pursuant to subsections (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(4)(7) After considering the provisions of subsection (6), the department shall may attempt to obtain voluntary compliance through warning, conference, or any other appropriate

Unofficial Draft Copy

As of: June 30, 2008 (2:55pm)

LC5021

means before petitioning the district court under subsection (1).
~~The attempts~~ An attempt to obtain voluntary compliance under this
subsection must extend over a period of at least 7 days and may
not exceed 30 working days."

{ Internal References to 85-2-114:
85-2-122x 85-2-122x }

- END -

{ Name : Joe P. Kolman
Title : Research Analyst
Agency: LSD
Phone : 444-9280
E-Mail: jkolman@mt.gov }