

HOUSE BILL NO. 20
INTRODUCED BY W. MCNUTT
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR ENFORCEMENT OF ALL WATER RIGHTS; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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) ~~In the Upper Clark Fork River basin, as defined in 85-2-335, the prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees:~~

~~———(2) (a) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable costs and attorney fees:~~

(b) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable costs and attorney fees.

~~(3)~~(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. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

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