

1 SENATE BILL NO. 36

2 INTRODUCED BY B. HAMLETT

3 BY REQUEST OF THE WATER POLICY COMMITTEE

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A DISTRICT COURT DISCRETION TO AWARD
 6 REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL
 7 DECISION ON A PERMIT APPLICATION OR A CHANGE IN APPROPRIATION RIGHT; PROHIBITING THE
 8 AWARD OF COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF ADMINISTRATIVE PROCEEDINGS;
 9 AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
 10 RETROACTIVE APPLICABILITY DATE."
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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14 **Section 1.** Section 85-2-125, MCA, is amended to read:

15 **"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the
 16 department on an application for a permit or a change in appropriation right is appealed to district court, the
 17 district court ~~shall~~ may award the prevailing party reasonable costs and attorney fees. THE DISTRICT COURT MAY
 18 NOT AWARD COSTS OR ATTORNEY FEES INCURRED AS A RESULT OF ADMINISTRATIVE PROCEEDINGS.

19 (2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable
 20 costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with
 21 a water right to enjoin the use of water by a person that does not have a water right."
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23 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.
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25 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the
 26 meaning of 1-2-109, to pending applications for a permit or a change in appropriation right for which a district
 27 court judgment has not been entered prior to [the effective date of this act].
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