

1 SENATE BILL NO. 335

2 INTRODUCED BY HAMLETT, CONNELL, MCCHESENEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REMOVAL OF A NATURAL OBSTRUCTION
5 THAT IMPAIRS A PRIOR WATER RIGHT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

6

7 WHEREAS, inflexible notions of private property rights in the context of real-life situations hamper the
8 common-sense approach that competing uses of property between two interested owners should be
9 accommodated when possible.

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 NEW SECTION. **Section 1. Removal of natural obstruction to exercise water right -- consent or**
14 **court ruling required.** (1) A person who owns a prior water right but cannot exercise the right because a natural
15 obstruction on another person's property prevents the flow of the water shall, in writing, seek consent from the
16 landowner to remove the natural obstruction.17 (2) The water right owner may remove the natural obstruction if the landowner consents in writing and
18 the water right owner complies with applicable laws and regulations.19 (3) If the landowner does not consent in writing to the removal of the natural obstruction, the water right
20 owner may seek a declaration from district court that the removal of the natural obstruction would not harm the
21 landowner and is necessary for the water right owner to exercise the water right.

22 (4) In seeking a district court declaration, the water right owner shall:

23 (a) agree to pay all costs of the removal;

24 (b) show that the utility of the landowner's property would not be lessened;

25 (c) show that the landowner would not incur additional, uncompensated burdens from the removal of the
26 natural obstruction; and

27 (d) agree to comply with applicable laws and regulations.

28 ~~——(5) The landowner shall demonstrate the actual damage that the removal would cause. If the court finds~~
29 ~~that actual damage would be caused, the court shall decline to permit the removal. The court may award court~~
30 ~~costs and attorney fees to the landowner for a finding under this subsection.~~

1 (5) THE LANDOWNER MAY PRESENT EVIDENCE SHOWING THAT THE REMOVAL IS NOT NECESSARY FOR THE WATER
2 RIGHT OWNER TO EXERCISE THE RIGHT OR THAT THE PROVISIONS OF SUBSECTION (4) COULD NOT BE MET IF THE REMOVAL
3 IS PERMITTED.

4 (6) THE COURT SHALL DETERMINE IF THE REMOVAL OF THE NATURAL OBSTRUCTION:

5 (A) IS NECESSARY FOR THE WATER RIGHT OWNER TO EXERCISE THE RIGHT; AND

6 (B) WOULD MEET THE PROVISIONS OF SUBSECTION (4).

7 (7) IF THE COURT PERMITS THE REMOVAL, THE COURT MAY REQUIRE ANY CONDITIONS TO ENSURE THAT THE
8 PROVISIONS OF SUBSECTION (4) ARE MET.

9 (8) THE COURT MAY AWARD COURT COSTS AND ATTORNEY FEES.

10 ~~(6)(9) If the landowner does not demonstrate damages, the court may permit a removal of the natural~~
11 ~~obstruction with or without conditions.~~ Removal of a natural obstruction under this section does not impair any
12 existing right of the landowner.

13
14 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
15 integral part of Title 85, chapter 2, part 1, and the provisions of Title 85, chapter 2, part 1, apply to [section 1].

16
17 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

18 - END -