

SENATE BILL NO. 296

INTRODUCED BY S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A WATER RIGHT OWNER MAY FILE SUIT TO PROTECT AGAINST WASTE OF WATER; UNLAWFUL USE OF WATER; AND INTERFERENCE WITH THE USE OF WATER; AMENDING SECTION 85-2-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~NEW SECTION. Section 1. Private right of action. A water right owner may file suit to enjoin waste, unlawful use, interference, or a violation of this chapter.~~

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

**SECTION 1. 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 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.



1           (2) Upon the issuance of an order or injunction, the department may attach to the controlling works a  
2 written notice, properly dated and signed, setting forth the fact that the controlling works have been properly  
3 regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of  
4 the water.

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

7           (4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use,  
8 interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

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

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

14           (7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary  
15 compliance through warning, conference, or any other appropriate means before petitioning the district court  
16 under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period  
17 of at least 7 days and may not exceed 30 working days.

18           (8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of  
19 the Flathead Indian reservation.

20           (9) The provisions of this section do not limit a water right owner from seeking relief, including injunctive  
21 relief, in district court under Title 27, chapter 19, or this chapter."

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23           NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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