

1 SENATE BILL NO. 207

2 INTRODUCED BY B. BROWN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE ~~FINAL~~ DECREE PROCESS FOR CERTAIN  
5 WATER COMPACTS; CLARIFYING THE OBJECTIONS PERIOD; AMENDING SECTIONS 85-2-233 AND 85-  
6 2-270, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY  
7 DATE, AND A TERMINATION DATE."

8

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

10

11 **Section 1.** Section 85-2-233, MCA, is amended to read:

12 **"85-2-233. Hearing on decrees or petition -- procedure.** (1) (a) For good cause shown and subject  
13 to the provisions of subsection (9), a hearing must be held before the water judge on any objection to a  
14 temporary preliminary decree, a preliminary decree, or a supplemental preliminary decree by:

15 (i) the department;

16 (ii) a person named in the temporary preliminary decree, preliminary decree, or supplemental  
17 preliminary decree;

18 (iii) any person within the basin entitled to receive notice under 85-2-232(1); or

19 (iv) any other person who claims rights to the use of water from sources in other basins that are  
20 hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice  
21 under 85-2-232 if the claim or claims were from sources within the decreed basin.

22 (b) For the purposes of this subsection (1), "good cause shown" means a written statement  
23 showing that a person has an ownership, leasehold, economic, or clearly demonstrated particularized interest  
24 in an existing water right, permit, certificate, state water reservation under 85-2-316, or right to receive water  
25 through an irrigation project and that the person's interest has been affected by the decree.

26 (c) A person does not waive the right to object to a preliminary decree by failing to object to a  
27 temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a  
28 matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated

1 and resolved as the result of an objection raised in a temporary preliminary decree unless the objection is  
2 allowed for any of the following reasons:

3 (i) mistake, inadvertence, surprise, or excusable neglect;

4 (ii) newly discovered evidence that by due diligence could not have been discovered in time to  
5 move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

6 (iii) fraud, misrepresentation, or other misconduct of an adverse party;

7 (iv) the judgment is void; or

8 (v) any other reason justifying relief from the operation of the judgment.

9 (d) After March 28, 1997, a person may not raise an objection or counterobjection to a matter

10 contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued  
11 under this part for which there was an objection and counterobjection period unless the objection is allowed for  
12 any of the following reasons:

13 (i) mistake, inadvertence, surprise, or excusable neglect;

14 (ii) newly discovered evidence that by due diligence could not have been discovered at the close  
15 of the objection period set forth in subsection (2);

16 (iii) fraud, misrepresentation, or other misconduct of an adverse party;

17 (iv) the temporary preliminary decree is void; or

18 (v) any other reason justifying relief from the operation of the prior decree issued under this part.

19 The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a  
20 basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the  
21 provisions in this subsection (1)(d) applies.

22 (2) Objections must be filed with the water judge within 180 days after entry of the temporary  
23 preliminary decree, preliminary decree, or supplemental preliminary decree. The water judge may, for good  
24 cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made  
25 prior to expiration of the original 180-day period or any extension of it. For a final-preliminary decree issued  
26 pursuant to Title 85, chapter 20, the legislature finds good cause shown to extend the objections time limit for  
27 an additional 180 days beyond the initial 180-day period.

28 (3) Upon expiration of the time for filing objections under subsection (2), the water judge shall

**Amendment - 1st Reading-white - Requested by: Walt Sales - (S) Natural Resources**

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Drafter: Jason Mohr, 406-444-1640

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1 notify each party whose claim received an objection that an objection was filed. The notice must set forth the  
2 name of each objector and must allow an additional 60 days for the party whose claim received an objection to  
3 file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims  
4 that are included within the particular decree issued by the court.

5 (4) Objections and counterobjections must specify the paragraphs and pages containing the  
6 findings and conclusions to which objection is made. The request must state the specific grounds and evidence  
7 on which the objections are based.

8 (5) (a) Upon expiration of the time for filing counterobjections under subsection (3), the water judge  
9 shall notify each party named in the temporary preliminary decree, preliminary decree, or supplemental  
10 preliminary decree or that person's successor as documented in the department records and shall notify the  
11 attorney general that objections and counterobjections have been filed. The water judge shall fix a day when all  
12 parties who wish to participate in future proceedings are required to appear or file a statement. The water judge  
13 shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing  
14 must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may  
15 be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(e),  
16 Montana Rules of Civil Procedure.

17 (b) In conducting hearings pursuant to this chapter, a water judge may require the parties to  
18 participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the  
19 parties is subject to review and approval by a water judge.

20 (6) (a) After the issuance of a temporary preliminary decree or preliminary decree, notice must be  
21 published once a week for 3 consecutive weeks in two newspapers of general circulation in the basin where the  
22 decree was issued for:

23 (i) a motion to amend a statement of claim that may adversely affect other water rights; or

24 (ii) a motion to amend a timely objection that may adversely affect other water rights.

25 (b) The notice must specify that any response or objection to the proposed amendment must be  
26 filed within 45 days of the date of the last notice.

27 (c) The water judge may order any additional notice of the motion as the water judge considers  
28 necessary.

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1 (d) The costs of the notice required pursuant to this subsection must be borne by the moving party.

2 (7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or  
3 85-2-703 bars any subsequent cause of action in the water court.

4 (8) If the court sustains an objection to a compact, it may declare the compact void. The agency of  
5 the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6  
6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall  
7 issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void  
8 may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing  
9 of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

10 (9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to  
11 a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was  
12 previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

13 (10) The provisions of subsection (9) do not apply to issues arising after entry of the previous  
14 decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable  
15 diligence.

16 (11) All issue remarks, as defined in 85-2-250, must be finally resolved before the issuance of a final  
17 decree."

18

19 **Section 2.** Section 85-2-270, MCA, is amended to read:

20 **"85-2-270. (Temporary) Findings -- purpose.** (1) The purpose of 85-2-271, 85-2-280 through 85-2-  
21 282, and this section is to:

22 (a) complete claims examination and the initial decree phase;

23 (b) reexamine claims in basins that were verified and were not subject to the supreme court  
24 examination rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the  
25 water court has issued an order on its own initiative; and

26 (c) ensure that the product of the adjudication is enforceable decrees.

27 (2) With adequate funding, it is realistic and feasible for the department to complete claims  
28 examination and reexamination of verified basins for which the water court has received a petition and issued

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1 an order pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is  
2 also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30,  
3 2024 2026, for all basins in Montana. (Terminates June 30, 2028--secs. 10, 11, Ch. 269, L. 2015.)"

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5 **NEW SECTION. Section 3. Notification to tribal governments.** The secretary of state shall send a  
6 copy of [this act] to each federally recognized tribal government in Montana.

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8 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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10 **NEW SECTION. Section 5. Retroactive applicability.** [This act] applies retroactively, within the  
11 meaning of 1-2-109, to final-preliminary decree objections filed on or after June 9, 2022.

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13 **NEW SECTION. Section 6. Termination.** [Section 1] terminates June 4, 2023.

14 - END -