

1 **** BILL NO. ****

2 INTRODUCED BY ****

3 BY REQUEST OF THE ****

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WATER RIGHTS ADJUDICATION LAWS; REVISING
6 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION PERFORMANCE BENCHMARKS
7 RELATED TO WATER RIGHTS ADJUDICATION; AMENDING SECTIONS 85-2-231, 85-2-271, 85-2-280, AND
8 85-2-281, MCA; PROVIDING EFFECTIVE DATES."

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

11
12 **Section 1.** Section 85-2-231, MCA, is amended to read:

13 **"85-2-231. Temporary preliminary decree, preliminary decree, and supplemental preliminary**
14 **decree.** (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary
15 decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water
16 rights.

17 (2) (a) The water judge shall issue a preliminary decree. The preliminary decree must be based on:

18 (i) the statements of claim before the water judge, including all claims filed pursuant to 85-2-222 for a
19 preliminary decree issued after June 30, 2019;

20 (ii) the data submitted by the department;

21 (iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or,
22 lacking an approved compact, the filings for federal and Indian reserved rights; and

23 (iv) any additional data obtained by the water judge.

24 (b) The preliminary decree must be issued within 90 days after the close of the special filing period
25 set out in 85-2-702(3) or as soon after the close of that period as is reasonably feasible.

26 (c) In a basin in which a water judge has issued a preliminary decree prior to July 1, 2019, the water
27 judge shall issue a supplemental preliminary decree, containing only those that includes but is not limited to
28 claims for exempt rights, as defined in 85-2-222, that were not included in a preliminary decree and for which

1 notice has not been provided under 85-2-233(6).

2 (d) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise
3 necessary for the orderly administration of water rights.

4 (3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a
5 water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of
6 supply of water, or any claim or group of claims at a time different from the issuance of other temporary
7 preliminary decrees.

8 (4) The temporary preliminary decree, preliminary decree, or supplemental preliminary decree must
9 contain the information and make the determinations, findings, and conclusions required for the final decree
10 under 85-2-234.

11 (5) If the water judge is satisfied that the report of the water master meets the requirements for the
12 preliminary decree and is satisfied with the conclusions contained in the report, the water judge shall adopt the
13 report as the preliminary decree. If the water judge is not satisfied, the water judge may recommit the report to
14 the master with instructions or modify the report and issue the preliminary decree.

15 (6) The department shall examine claims in basins that were verified rather than examined as ordered
16 by the water court. The objection and hearing provisions of Title 85, chapter 2, part 2, apply to these claims.
17 (Subsection (6) terminates June 30, 2028--sec. 10, Ch. 269, L. 2015.)"

18

19 **Section 2.** Section 85-2-271, MCA, is amended to read:

20 **"85-2-271. (Temporary) Benchmarks -- action taken if not met -- claims examination priority. (1)**

21 (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the
22 department.

23 (b) The chief water judge has the authority to order that reexamination be completed for a certain
24 basin in a higher priority than claims examination. If the chief water judge issues an order requiring the
25 department to reexamine claims rather than examining claims, the number of claims that were reexamined
26 must be counted against the amount of claims that the department is required to examine for that period.

27 (2) (a) The benchmarks that are provided in subsection (2)(b) must be met. If the benchmarks are not
28 met, money for water adjudication may not be included in the department's base budget.

1 (b) The benchmarks are as follows:

2 (i) the department shall examine or reexamine ~~40,000 verified 35,000~~ claims by June 30, ~~2017~~2022;

3 (ii) the department shall examine or reexamine ~~30,000 verified 55,000~~ claims by June 30, ~~2019~~2024;

4 (iii) the department shall examine or reexamine ~~60,000 verified 65,000~~ claims by June 30, ~~2024~~2026;

5 and

6 (iv) the department shall examine or reexamine ~~90,000 verified~~ all timely filed claims by June 30,

7 ~~2023~~2028. (Terminates June 30, 2028--secs. 10, 11, Ch. 269, L. 2015.)"

8

9 **Section 3.** Section 85-2-280, MCA, is amended to read:

10 **"85-2-280. (Temporary) Water adjudication account.** (1) There is a water adjudication account
11 within the state special revenue fund created in 17-2-102.

12 (2) On July 1 of each fiscal year, the state treasurer shall transfer the amount necessary when
13 combined with available and unencumbered fund balance, to fund the amount appropriated by the legislature in
14 the general appropriation act from the state general fund to the water adjudication account for the sole purpose
15 of funding the water adjudication program within the department and the water court.

16 (3) Interest and income earnings on the water adjudication account must be deposited in the account
17 and may not be transferred to any other account prior to June 30, ~~2028~~2033.

18 (4) Money remaining in the water adjudication account on June 30, ~~2028~~2033, must be transferred to
19 the water right appropriation account provided for in 85-2-318.

20 (5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the
21 account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102,
22 for the current biennium. (Terminates June 30, ~~2028~~ ~~secs. 10, 11, Ch. 269, L. 2015~~2033.)"

23

24 **Section 4.** Section 85-2-281, MCA, is amended to read:

25 **"85-2-281. (Temporary) Reporting requirements.** The ~~department and the~~ water court shall:

26 (1) provide quarterly reports to the water policy committee during a legislative interim on:

27 (a) the progress of the adjudication on a basin-by-basin basis;

28 ~~.(b) the number of basins for which examination was completed during the reporting period;~~

1 ~~(e)(b)~~ the number and type of decrees issued in the preceding year and in each quarter of the current
2 year ~~and an update on summary reports in review;~~

3 (d) the number of claims resolved each month in the preceding year;

4 (e) the percentage of claims resolved by basin, limited to basins under active review by the water
5 court, after issuance of a decree and passage of the deadline of the notices of intent to appear; and

6 (f) compact status describing compacts approved by the water court and pending compacts;

7 ~~(2) include a status report on the adjudication in their presentation to the applicable appropriation~~
8 ~~subcommittees during each legislative session including the number of basins for which examination was~~
9 ~~completed during the reporting period; and~~

10 (3) provide a budget that outlines how ~~each of the entities the water court~~ will be funded in the next
11 biennium, including general fund money and state special revenue funds. (Terminates June 30, ~~20332028--~~
12 ~~secs. 10, 11, Ch. 269, L. 2015.~~)"

13
14 **NEW SECTION. Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is
15 effective upon passage and approval.

16 (2) [Section 4] is effective June 30, 2028.

17
18 - END -