

1                                   \*\*\*\* BILL NO. \*\*\*\*  
2                                   INTRODUCED BY \*\*\*\*  
3                                   BY REQUEST OF THE \*\*\*\*  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TERMINATION DATE OF LAWS REGARDING  
6 THE WATER COURT; CONTINUING AUTHORIZATION FOR CERTAIN EXISTING WATER COURT  
7 PROCESSES; PROVIDING FOR CONTINUED FUNDING UNTIL TERMINATION; AMENDING SECTIONS 85-  
8 2-231, 85-2-237, 85-2-270, 85-2-280, 85-2-281, AND 85-2-282, MCA; AMENDING SECTION 18, CHAPTER  
9 288, LAWS OF 2005; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12

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

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

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

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

22                   (ii)    the data submitted by the department;

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

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

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

28                   (c)     In a basin in which a water judge has issued a preliminary decree prior to July 1, 2019, the

1 water judge shall issue a supplemental preliminary decree that includes but is not limited to claims for exempt  
2 rights, as defined in 85-2-222, that were not included in a preliminary decree and for which notice has not been  
3 provided under 85-2-233(6).

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

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

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

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

17 (6) The department shall examine claims in basins that were verified rather than examined as  
18 ordered by the water court. The objection and hearing provisions of Title 85, chapter 2, part 2, apply to these  
19 claims. (Subsection (6) terminates June 30, ~~2028 2038—sec. 10, Ch. 269, L. 2015.~~)"

20  
21 **Section 2.** Section 85-2-237, MCA, is amended to read:

22 **"85-2-237. (Temporary) Reopening and review of decrees.** (1) After July 1, 1996, the water judges  
23 shall by order reopen and review, within the limits set forth by the procedures described in this section, all  
24 preliminary or final decrees:

25 (a) that have been issued but have not been noticed throughout the water divisions;

26 (b) for basins for which claims have been filed under 85-2-221(3); or

27 (c) for basins that were verified and not examined for which the water court has received a petition

28 and has determined that examination is necessary as provided in 85-2-282 or the water court has issued an

1 order for reexamination on its own initiative.

2 (2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a  
3 hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim  
4 has been filed for the purpose of protecting rights to the use of water from sources:

5 (i) within the basin for which the decree was entered; or

6 (ii) in other basins that are hydrologically connected to sources within the basin for which the  
7 decree was entered.

8 (b) A person may not raise an objection to a matter in a reopened decree if the person was a party  
9 to the matter when the matter was previously litigated and resolved as the result of the previous objection  
10 process, unless the objection is allowed for any of the following reasons:

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

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

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

15 (iv) the judgment is void;

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

17 (c) The objection must be made in accordance with the procedure for filing objections under 85-2-  
18 233.

19 (3) The water judges shall serve notice by mail of the entry of the order providing for the reopening  
20 and review of a decree or decrees to the department and to the persons entitled to receive service of notice  
21 under 85-2-232(1).

22 (4) Notice of the reopening and review of a preliminary or final decree must also be published at  
23 least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the  
24 water division or divisions in which the decreed basin is located.

25 (5) An objection may not cause a reopening and review of a claim unless the objection is filed with  
26 the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of  
27 time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application  
28 for extension is made within the original 180-day period or any extension of it.

1           (6)     The water judge shall provide notice to the claimant of any timely objection to the claim and,  
2 after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the  
3 matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be  
4 conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may  
5 be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana  
6 Rules of Civil Procedure.

7           (7)     The water judge shall, on the basis of any hearing held on the matter, take action as warranted  
8 from the evidence, including dismissal of the objection or modification of the portion of the decree describing  
9 the contested claim.

10          (8)     An order or decree modifying a previously issued final decree as a result of procedures  
11 described in this section may be appealed in the same manner as provided for an appeal taken from a final  
12 order of a district court.

13          (9)     An order or decree modifying a previously issued preliminary decree as a result of procedures  
14 described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final  
15 decree.

16          (10)    An order requiring the department to examine a basin that was initially verified is limited to the  
17 types of claims in the basin that were identified in the petition as provided in 85-2-282 or the types of claims  
18 identified in an order that the water court issued on its own initiative. (Terminates June 30, ~~2028 2038-sec. 10,~~  
19 ~~Ch. 269, L. 2015.~~)

20               **85-2-237. (Effective July 1, 2028 2038) Reopening and review of decrees.** (1) After July 1, 1996,  
21 the water judges shall by order reopen and review, within the limits set forth by the procedures described in this  
22 section, all preliminary or final decrees:

23           (a)     that have been issued but have not been noticed throughout the water divisions; or

24           (b)     for basins for which claims have been filed under 85-2-221(3).

25           (2)     (a) Each order must state that the water judge will reopen the decree or decrees and, upon a  
26 hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim  
27 has been filed for the purpose of protecting rights to the use of water from sources:

28           (i)     within the basin for which the decree was entered; or

1 (ii) in other basins that are hydrologically connected to sources within the basin for which the  
2 decree was entered.

3 (b) A person may not raise an objection to a matter in a reopened decree if the person was a party  
4 to the matter when the matter was previously litigated and resolved as the result of the previous objection  
5 process, unless the objection is allowed for any of the following reasons:

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

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

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

10 (iv) the judgment is void;

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

12 (c) The objection must be made in accordance with the procedure for filing objections under 85-2-  
13 233.

14 (3) The water judges shall serve notice by mail of the entry of the order providing for the reopening  
15 and review of a decree or decrees to the department and to the persons entitled to receive service of notice  
16 under 85-2-232(1).

17 (4) Notice of the reopening and review of a preliminary or final decree must also be published at  
18 least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the  
19 water division or divisions in which the decreed basin is located.

20 (5) No objection may cause a reopening and review of a claim unless the objection is filed with the  
21 appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time  
22 may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for  
23 extension is made within the original 180-day period or any extension of it.

24 (6) The water judge shall provide notice to the claimant of any timely objection to the claim and,  
25 after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the  
26 matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be  
27 conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may  
28 be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana

1 Rules of Civil Procedure.

2 (7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted  
3 from the evidence, including dismissal of the objection or modification of the portion of the decree describing  
4 the contested claim.

5 (8) An order or decree modifying a previously issued final decree as a result of procedures  
6 described in this section may be appealed in the same manner as provided for an appeal taken from a final  
7 order of a district court.

8 (9) An order or decree modifying a previously issued preliminary decree as a result of procedures  
9 described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final  
10 decree."  
11

12 **Section 3.** Section 85-2-270, MCA, is amended to read:

13 **"85-2-270. (Temporary) Findings -- purpose.** (1) The purpose of 85-2-271, 85-2-280 through 85-2-  
14 282, and this section is to:

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

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

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

20 (2) With adequate funding, it is realistic and feasible for the department to complete claims  
21 examination and reexamination of verified basins for which the water court has received a petition and issued  
22 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  
23 also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30,  
24 2024, for all basins in Montana. (Terminates June 30, ~~2028 2038--secs. 10, 11, Ch. 269, L. 2015.~~)"

25

26 **Section 4.** Section 85-2-280, MCA, is amended to read:

27 **"85-2-280. (Temporary) Water adjudication account.** (1) There is a water adjudication account  
28 within the state special revenue fund created in 17-2-102.

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

5 (3) Interest and income earnings on the water adjudication account must be deposited in the  
6 account and may not be transferred to any other account prior to June 30, ~~2028~~ 2038.

7 (4) Money remaining in the water adjudication account on June 30, ~~2028~~ 2038, must be  
8 transferred to the water right appropriation account provided for in 85-2-318.

9 ~~(5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the~~  
10 ~~account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102,~~  
11 ~~for the current biennium. (Terminates June 30, ~~2028~~ 2038—secs. 10, 11, Ch. 269, L. 2015.)"~~

12

13 **Section 5.** Section 85-2-281, MCA, is amended to read:

14 **"85-2-281. (Temporary) Reporting requirements.** The department and the water court shall:

15 (1) provide quarterly reports to the water policy interim committee in accordance with 5-11-210 on:

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

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

18 (c) the number and type of decrees issued in the preceding year and in each quarter of the current  
19 year and an update on summary reports in review;

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

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

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

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

27 (3) provide a budget that outlines how each of the entities will be funded in the next biennium,

28 including general fund money and state special revenue funds. (Terminates June 30, ~~2028~~ 2038—secs. 10, 11,

1 ~~Ch. 269, L. 2015.)"~~

2

3 **Section 6.** Section 85-2-282, MCA, is amended to read:

4 **"85-2-282. (Temporary) Examination of claims in verified basins.** (1) At any time prior to the  
5 issuance of a final decree, in basins that were evaluated using the verification process rather than the  
6 examination process, the owners of water rights in the basin or a specified area in the basin may petition the  
7 water court to examine claims in the basin or an area in the basin pursuant to the supreme court rules.

8 (2) The owners of at least 15% of the number of water rights affected by the proposed  
9 reexamination shall sign the petition.

10 (3) At a minimum, the petition must provide:

11 (a) the specific water right purpose or water right purposes to be examined; and

12 (b) the elements to be examined.

13 (4) (a) The water judge shall evaluate each petition and determine if reexamination is necessary to  
14 provide greater accuracy to the adjudication.

15 (b) The water judge may request public comment on the petition.

16 (5) If the water judge determines reexamination should be conducted, the water judge shall issue  
17 an order that provides:

18 (a) what water right purpose or water right purposes must be examined by the department;

19 (b) the elements to be examined;

20 (c) final disposition of the reexamination information developed by the department; and

21 (d) the timeframe in which the reexamination must be completed.

22 (6) The water court may issue an order requiring reexamination on its own initiative. The order  
23 must provide the information contained in subsection (5).

24 (7) Upon receipt of the reexamination information from the department, the water court shall notify  
25 the users in the basin or the specified area in the basin identified in the petition of the final results of the  
26 reexamination and shall notify them regarding further steps or actions being taken as a result of the  
27 reexamination.

28 (8) Any actions taken as a result of the reexamination must be conducted in accordance with this

1 part. (Terminates June 30, ~~2028 2038—sec. 10, Ch. 269, L. 2015.~~)"

2

3 **Section 7.** Section 18, Chapter 288, Laws of 2005, is amended to read:

4 **"Section 18. Termination** [This act] terminates June 30, ~~2020 2028~~ 2038."

5

6 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2027.

7

8 NEW SECTION. **Section 9. Termination.** [This act] terminates June 30, 2038.

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- END -

DRAFT