

Unofficial Draft Copy

As of: August 31, 2006 (7:50am)

LC8282

**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act providing that injunctive relief is available for a person trying to enforce a water right across the state not just the upper clark fork basin; providing that a person trying to enforce a water right must be awarded reasonable costs and attorney fees; amending section 85-2-125, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-125, MCA, is amended to read:

"85-2-125. Recovery of attorney fees by prevailing party.

~~(1) In the Upper Clark Fork River basin, as defined in 85-2-335, the prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees.~~

~~—— (2) (a) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable costs and attorney fees.~~

(b) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable costs and attorney

fees.

~~(3)~~(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right."

{Internal References to 85-2-125: None.}

NEW SECTION. **Section 2. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 3. {standard} Effective date.** [This act] is effective on passage and approval.

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