

Unofficial Draft Copy

As of: January 4, 2008 (9:47AM)

LC5008

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing that the chief water judge shall resolve all issue remarks on claims that have received an objection, whether each issue remark is subject to an objection or not; providing that prior to an enforcement action pursuant to 85-2-406, the chief water judge shall resolve all issue remarks related to flow rate or volume; providing that temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree may be enforced prior to final resolution of all issue remarks in certain instances; amending sections 85-2-249, and 85-2-406, MCA and providing an immediate effective date."

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

Section 1. Section 85-2-249, MCA, is amended to read:

"85-2-249. Prioritization of workload. The (1) Except as provided in subsections (2) and (3), the chief water judge may shall place a higher priority on hearing objections to claims in a basin than on resolving issue remarks.

(2) The chief water judge shall resolve all issue remarks on claims that have received an objection, whether each issue

remark is subject to an objection or not.

(3) Prior to an enforcement action pursuant to 85-2-406,
the chief water judge shall resolve all issue remarks related to
flow rate or volume."

{*Internal References to 85-2-249:*

85-2-250x}

Section 2. Section 85-2-406, MCA, is amended to read:

"85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the district court to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief

water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its

discretion, intervene in the proceeding.

(4) (a) Subject to subsection (4)(b), a ~~A~~ temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(b) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree may be enforced prior to final resolution of all issue remarks unless those issue remarks are

(i) the subject of an objection;

(ii) are related to the flow rate; or

(iii) are related to the volume.

(5) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2)."

{*Internal References to 85-2-406:*

85-2-344x 85-20-1001x}

Unofficial Draft Copy

As of: January 4, 2008 (9:47AM)

LC5008

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

- END -

{Name : Krista Lee Evans
Title : Resource Policy Analyst
Agency : Legislative Environmental Policy Office
Phone : 444-1640
E-Mail : kevans@mt.gov }