

SENATE BILL NO. 233

INTRODUCED BY PETERSON, HAMLETT, VINCENT

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING ENFORCEMENT PROVISIONS FOR INTERFERENCE WITH A PRIOR WATER RIGHT; AND AMENDING SECTION 85-2-114, MCA."

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

Section 1. Section 85-2-114, MCA, is amended to read:

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, including BUT NOT LIMITED TO AN INTENTIONAL failure to remove OR ALLOW THE REMOVAL OF a natural obstruction, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use,

1 interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

2 (5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from
3 the attorney general.

4 (6) When enforcing the provisions of this section, the department, the county attorney, and the attorney
5 general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a
6 certificate, a permit, or a state water reservation.

7 (7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary
8 compliance through warning, conference, or any other appropriate means before petitioning the district court
9 under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period
10 of at least 7 days and may not exceed 30 working days."

11 - END -