

**Unofficial Draft Copy**

As of: June 29, 2016 (2:41pm)

LCwp05

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act allowing the assistance of a water master for certain water right appeals to a district court; requiring the appointment of a water master after a request; expanding the duties of water masters; and amending sections 3-7-311 and 85-2-310, MCA."

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

**Section 1.** Section 3-7-311, MCA, is amended to read:

**"3-7-311. Duties of water masters.** (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

(4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3), or 85-5-301, or 85-2-310, if the appointment is approved by the chief water judge."

{*Internal References to 3-7-311: None.*}

**Section 2.** Section 85-2-310, MCA, is amended to read:

**"85-2-310. Action on application for permit or change in appropriation right.** (1) (a) If the department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.

(b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

(2) A proposal to grant a permit or change in appropriation right with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the permit or change in appropriation right in its preliminary determination pursuant to 85-2-307.

(3) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary

determination pursuant to 85-2-307.

(4) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(7) (a) Except as provided in subsection (6), if the department proposes to grant a permit or change in appropriation right in modified form, the applicant must be given an opportunity to be heard. The addition of conditions or changes to conditions required for approval does not constitute a modification of the application.

(b) The department shall serve notice of a preliminary determination to grant a permit or change in appropriation right in a modified form by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing pursuant to 2-4-604 to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be preliminarily determined to be granted in the modified form by filing a request within 30 days after the notice is mailed. The notice must state that the permit or change in appropriation right will be preliminarily determined to be granted as modified unless a hearing is requested.

(8) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(9) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

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(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (9)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) except as provided in subsection (10), if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.

(10) If water applied for is to be marketed by the applicant

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to other users for the purpose of aquifer recharge or mitigation, the applicant is exempt from the provisions of subsection (9) (c) (v). The applicant must provide information detailing the proposed place of use.

(11) An applicant who is aggrieved by a decision of the hearing examiner may petition a district court for judicial review pursuant to Title 2, chapter 4, part 7. The applicant may request water court assistance to the district court. After this request, the district court shall appoint a water master to serve as special master to the district court for proceedings related to this section."

{ Internal References to 85-2-310:

x85-2-102 \* x85-2-307 x85-2-314 x85-2-322  
x85-2-401 x85-20-1401 x85-20-1901 x85-20-1901  
x85-20-1901 }

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