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HOUSE BILL NO. 355

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INTRODUCED BY K. WALSH, M. NIKOLAKAKOS, C. SCHOMER, E. TILLEMAN, L. JONES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT RELATED EASEMENTS RIGHTS ARE
5 RETAINED WHEN A CANAL OR DITCH IS CONVERTED INTO A PIPELINE; AND AMENDING SECTION 70-
6 17-112, MCA."

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

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10 **Section 1.** Section 70-17-112, MCA, is amended to read:

11 **"70-17-112. Interference with canal or ditch easements prohibited.** (1) A person with a canal or
12 ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch or to operate
13 the appropriation works. A person retains this secondary easement if the canal or ditch is converted into a
14 pipeline and the pipeline is conspicuously marked.

15 (2) A person may not encroach upon on or otherwise impair any easement for a canal or ditch
16 used for irrigation or any other lawful domestic or commercial purpose, including carrying return water. A
17 person may not encroach on or otherwise impair any easement for a canal or ditch under this subsection th
18 has been converted into a pipeline.

19 (3) The provisions of subsection (2) do not apply if the holder of the canal or, ditch, or pipeline
20 easement consents in writing to the encroachment or impairment.

21 (4) Each canal or ditch easement obtained by prescription or conveyance is included within the
22 scope of this section. Nothing in this section establishes a secondary easement where none existed prior to
23 April 14, 1981. This section does not affect contracts or agreements concluded prior to April 14, 1981.

24 (5) If a legal action is brought to enforce the provisions of this section, the prevailing party is
25 entitled to costs and reasonable attorney fees."

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