

Unofficial Draft Copy

As of: June 30, 2008 (2:51pm)

LC5019

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing a water right permit application process for a subdivision water system; defining terms; allowing rulemaking; amending sections 85-2-102, 85-2-311, 85-2-360, 85-2-361, 85-2-362, 85-2-363, 85-2-369, and 85-2-370, MCA."

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

NEW SECTION. **Section 1. Application for subdivision water system in closed basins - process - judicial review.** (1) An applicant who proposes a use of ground water for a subdivision water system in a closed basin shall submit to the department a combined application consisting of a hydrogeologic assessment conducted pursuant to 85-2-361 with an analysis of net depletion, a mitigation plan or aquifer recharge plan to offset the net depletion, an application for a beneficial water use permit or permits, an application for a change in appropriation right or rights, if necessary, and any other information necessary to satisfy the requirements of this section.

(2) An application processed under this section is not subject to the provisions of 85-2-307 through 85-2-311 or 85-2-363.

(3) The department shall issue a permit and any change in

Unofficial Draft Copy

As of: June 30, 2008 (2:51pm)

LC5019

appropriation right that is part of a mitigation plan provided that:

(a) the department determines that any net depletion will be offset with an aquifer recharge or mitigation plan that meets the requirements of 85-2-362 and any change in appropriation right meets the requirements of 85-2-402;

(b) the applicant agrees as a condition of the permit that each connection to the subdivision water system will include a water use meter;

(c) the applicant agrees as a condition of the permit that the water use by each connection to the subdivision water system will be limited to ??? gpm and not more than ??? acre feet per year. **(current exempt well is 35 gpm and 10 acre feet per year)**.

(d) the applicant agrees as a condition of the permit that the use of wells exempt from permitting requirements pursuant to 85-2-306 will not be allowed in the area served by the public water system; and

(e) the applicant grants the Montana bureau of mines and geology a right of way to access for monitoring each well in a subdivision water system permitted pursuant to this section.

(f) the applicant provides a plan to monitor and enforce the uses of water as limited by this section and any permit conditions.

(4) Wells permitted pursuant to this section may be included in the ground water monitoring program pursuant to 85-2-906.

(5) A determination by the department under this section is subject to judicial review. Judicial review must be conducted by

a court without a jury and is limited to the administrative record. A court may reverse or modify the department's ruling if substantial rights of an aggrieved party have been prejudiced because the ruling is:

- (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the department;
 - (c) affected by error of law;
 - (d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion; or
 - (e) is not supported by reasonable evidence
- (6) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.

Section 2. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Appropriate" means:
 - (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;
 - (b) in the case of a public agency, to reserve water in accordance with 85-2-316;
 - (c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;
 - (d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to

agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation as provided in 85-2-360 and 85-2-362; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the

form requiring the information have been filled in with the required information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Domestic purposes" means those water uses common to a household including:

(a) food preparation;

(b) washing;

(c) drinking;

(d) bathing;

(e) waste disposal;

(f) cooling and heating; and

(g) garden and landscaping irrigation up to ??? acres.

~~(12)~~(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

Unofficial Draft Copy

As of: June 30, 2008 (2:51pm)

LC5019

~~(13)~~(14) "Ground water" means any water that is beneath the ground surface.

~~(14)~~(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(15)~~(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

~~(16)~~(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

~~(17)~~(18) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303, ~~and~~ 85-2-306 through 85-2-314, and [section 1].

~~(18)~~(19) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(19)~~(20) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(20)~~(21) "Salvage" means to make water available for beneficial use from an existing valid appropriation through

application of water-saving methods.

~~(21)~~(22) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(23) "Subdivision water system" means an appropriation of water from the same source aquifer by two or more wells or developed springs that are physically combined into the same system for domestic purposes that is estimated to supply at least ~~????~~ acre feet of water per year. (1 house and 1/4 acre = .73 acre feet) and not more than 3,000 acre feet per year. (Subject to legislative approval 85-2-317)

~~(22)~~(24) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(23)~~(25) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(24)~~(26) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(25)~~(27) "Water division" means a drainage basin as defined in 3-7-102.

~~(26)~~(28) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(27)~~(29) "Water master" means a master as provided for in Title 3, chapter 7.

~~(28)~~(30) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(29)~~(31) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{ *Internal References to 85-2-102:*

82-4-355x

85-2-141x

85-2-340x

85-2-506x }

Section 3. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant

proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and

operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has 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 water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title

7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and

Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the

application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee,

attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) ~~For~~ Except for an application processed under [section 1], for an application for ground water in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or during the period of closure for any basin that is administratively closed pursuant to 85-2-319, the applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section."

{*Internal References to 85-2-311:*

85-2-102* a	85-2-141x	85-2-308x	85-2-312x
85-2-313x	85-2-317x	85-2-322x	85-2-323x
85-2-360a	85-2-363a	85-2-363x	85-2-363x
85-2-363x	85-2-708x	85-2-708x	85-20-1301???
85-20-1401???			

Section 4. Section 85-2-360, MCA, is amended to read:

"85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 must be accompanied by a hydrogeologic assessment that has been conducted pursuant to 85-2-361 to predict whether the proposed appropriation right will result in a net depletion of surface water and must be accompanied by a plan as provided in 85-2-362, if necessary.

(2) If the hydrogeologic assessment conducted pursuant to 85-2-361 predicts that the proposed appropriation right will not result in a net depletion of surface water, the department shall proceed under the criteria provided in 85-2-311.

(3) (a) ~~If Except as provided in (6), if~~ the hydrogeologic assessment predicts that the proposed appropriation right will result in a net depletion of surface water, the applicant shall analyze whether the net depletion results in an adverse effect on a prior appropriator. If the applicant provides a correct and complete application, the department shall proceed to process the application as provided in 85-2-363.

(b) If the applicant has used the water for the purpose of conducting the hydrogeologic assessment, the applicant shall terminate the use of the water. Failure to terminate use of the water must result in a fine of not more than \$1,000 for each day of the violation.

(4) ~~If Except as provided in (6), if~~ the hydrogeologic assessment predicts that there will be net depletion as provided in subsection (3)(a), the department may proceed to process the application pursuant to 85-2-363 if, in addition to other applicable criteria, the applicant complies with 85-2-362.

(5) For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new

appropriation right is a determination that must be made by the department based on the amount, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(6) If the applicant proposes to use the water for a subdivision water system, the application may be processed pursuant to [section 1].

(7) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court decision is the date of the initial application to the department."

{Internal References to 85-2-360:

85-2-102x	85-2-102x	85-2-311x	85-2-311a
85-2-330x	85-2-336x	85-2-341x	85-2-343x
85-2-344x	85-2-360x*	85-2-361x*	85-2-364x
85-2-364x	85-2-368*x	85-2-369x*	85-2-370*a
85-2-370a*}			

Section 5. Section 85-2-361, MCA, is amended to read:

"85-2-361. Hydrogeologic assessment -- definition -- minimum requirements. (1) (a) For the purposes of 85-2-360 through 85-2-362 and [section 1], "hydrogeologic assessment" means a report for the project for or through which water will be put to beneficial use, the point of diversion, and the place of use that describes the geology, hydrogeologic environment, water quality with regard to the provisions of 75-5-410 and 85-2-364, and predicted net depletion, if any, including the timing of any

net depletion, for surface water within the area described in subsection (2)(a)(i) within the closed basins that are subject to an appropriation right, including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right and any predicted water quality changes that may result.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

(i) the actual amount diverted for like beneficial uses;

(ii) any amounts that will likely be lost in conveyance, if any, and whether any lost amounts are lost to the system through evaporation or other means or whether those amounts are returned to the system through percolation or other means; and

(iii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of 75-5-410 and 85-2-364.

(2) (a) A hydrogeologic assessment that will be used to predict net depletion of surface water resulting from a new appropriation right must include hydrogeologic data or a model developed by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that incorporates for the new appropriation:

(i) the area or estimated area of ground water that will be affected, not to exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the

water court, unless the applicant chooses to expand the boundaries;

(ii) the geology in the area identified in subsection (2) (a) (i), including stratigraphy and structure;

(iii) the parameters of the aquifer system within the area identified in subsection (2) (a) (i) to include, at a minimum, estimates for:

(A) the lateral and vertical extent of the aquifer;

(B) whether the aquifer is confined or unconfined;

(C) the effective hydraulic conductivity of the aquifer;

(D) transmissivity and storage coefficient related to the aquifer; and

(E) the estimated flow direction or directions of ground water and the rate of movement;

(iv) the locations of surface waters within the area described in subsection (2) (a) (i) that are subject to an appropriation right, including but not limited to springs, creeks, streams, or rivers that may or may not show a net depletion;

(v) evidence of water availability; and

(vi) the locations of all wells or other sources of ground water of record within the area identified in subsection (2) (a) (i).

(b) A hydrogeologic assessment must also include a water quality report that includes:

(i) the location of existing documented hazards that could be affected or exacerbated by the appropriation right, such as

areas of subsidence, along with a plan to mitigate any conditions or impacts;

(ii) other water quality information necessary to comply with 75-5-410 and 85-2-364; and

(iii) a description of any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410 and 85-2-364 and the water quality laws under Title 75, chapter 5.

(3) The hydrogeologic assessment must include an analysis of whether the information required by subsection (2) predicts that there may be a net depletion of surface water in the area described in subsection (2)(a)(i) and the extent of the depletion, if any.

(4) The hydrogeologic assessment, the model if provided, the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit this information to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(5) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section."

{*Internal References to 85-2-361:*

Unofficial Draft Copy

As of: June 30, 2008 (2:51pm)

LC5019

85-2-360x	85-2-360 x	85-2-360*x	85-2-361x*
85-2-362x	85-2-368x*	85-2-369*x	85-2-370x*
85-2-370x*}			

Section 6. Section 85-2-362, MCA, is amended to read:

"85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements. (1) Am Except as provided in [section 1], an applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water reallocated through exchange or substitution will be required;

(c) the amount of water reallocated through exchange or substitution that is required;

(d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability; and

(g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.

(3) An aquifer recharge plan must include:

(a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to 75-5-410 and 85-2-364;

(b) where and how the water in the plan will be put to beneficial use;

(c) when and where, generally, water reallocated through exchange or substitution will be required;

(d) the amount of water reallocated through exchange or substitution that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(g) a description of the process by which water will be reintroduced to the aquifer;

(h) evidence of water availability; and

(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

(4) ~~The~~ Except for an application processed pursuant to [section 1], the department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator, or an

appropriation right issued pursuant to [section 1], must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised."

{Internal References to 85-2-362:

75-5-410x	75-5-410x	85-2-102x	85-2-102x
85-2-360 x	85-2-360 x	85-2-360x	85-2-361x
85-2-368x*	85-2-369x	85-2-370a*	85-2-370a*}

Section 7. Section 85-2-363, MCA, is amended to read:

"85-2-363. Process for combining decisions on ground water permit applications in closed basins. (1) ~~An~~ Except for applications processed under [section 1], an applicant for a permit to appropriate ground water in a closed basin shall submit to the department a combined application consisting of a hydrogeologic assessment with an analysis of net depletion, a mitigation plan or aquifer recharge plan if required, an application for a beneficial water use permit or permits, and an application for a change in appropriation right or rights if necessary.

(2) The department shall review the application to determine if it is correct and complete under the process and requirements of 85-2-302.

(3) (a) Once an application has been determined to be correct and complete, the department shall prepare a notice and publish it as provided under 85-2-307.

(b) If no valid objection to the application is filed and the applicant proves that the criteria of 85-2-311 or 85-2-402,

if necessary, have been satisfied, the application must be granted or approved in a modified form or upon terms, conditions, or limitations specified by the department.

(c) If no valid objection to the application is filed and the applicant has not proved that the criteria of 85-2-311 or 85-2-402, if necessary, have been satisfied, the application must be denied.

(d) If a valid objection to the application is filed, the department shall proceed to process the application pursuant to 85-2-308 through 85-2-311. If the applicant satisfies the criteria of 85-2-311 or 85-2-402, if necessary, and proves by a preponderance of the evidence that net depletion, if any, will not adversely affect a prior appropriator based on the applicant's mitigation plan or aquifer recharge plan, the department shall issue the permit."

{ Internal References to 85-2-363:

85-2-360 x 85-2-360x 85-2-368*x 85-2-370*x
85-2-370*x }

Section 8. Section 85-2-369, MCA, is amended to read:

"85-2-369. Aquifer testing, test well, or monitoring well data submission -- not beneficial use. (1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right pursuant to 85-2-360 through 85-2-362 and [section 1] must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of

mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source."

{Internal References to 85-2-369:
85-2-302x}

Section 9. Section 85-2-370, MCA, is amended to read:

"85-2-370. Rulemaking. The department may adopt rules to implement the provisions of 75-5-410, 85-2-360 through 85-2-364, [section 1], and 85-2-368. The rules must be oriented toward the protection of existing rights from adverse effects from net depletions caused by new appropriation rights or changes in appropriation rights in closed basins and must be consistent with and not exceed the requirements of 75-5-410, 85-2-360 through 85-2-364, [section 1], and 85-2-368."

{Internal References to 85-2-370: None.}

NEW SECTION. Section 10. {standard} Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

Unofficial Draft Copy

As of: June 30, 2008 (2:51pm)

LC5019

- END -

{Name : Joe P. Kolman
Title : Research Analyst
Agency : LSD
Phone : 444-9280
E-Mail : jkolman@mt.gov}