

HOUSE BILL NO. 114

INTRODUCED BY B. STORY

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; DEFINING "DEVELOPED SPRING"; ELIMINATING THE REQUIREMENT TO MAKE WATER RIGHT APPLICATION FORMS, NOTICES OF COMPLETION FORMS, AND WELL LOG FORMS AVAILABLE AT THE OFFICES OF COUNTY CLERK AND RECORDERS; CLARIFYING THAT NOTIFICATION OF INTENT TO APPROPRIATE GROUND WATER FROM GROUND WATER DEVELOPMENT WORKS DOES NOT CREATE AN EASEMENT; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-306, AND 85-2-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. (Temporary) 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;
- (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 lease water in accordance with 85-2-436; or
- (d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "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 (including 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;



1 (c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized  
2 under 85-2-436; or

3 (d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the  
4 Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program  
5 authorized under 85-2-439.

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

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

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

10 (6) "Correct and complete" means that the information required to be submitted conforms to the  
11 standard of substantial credible information and that all of the necessary parts of the form requiring the  
12 information have been filled in with the required information.

13 (7) "Declaration" means the declaration of an existing right filed with the department under section  
14 8, Chapter 452, Laws of 1973.

15 (8) "Department" means the department of natural resources and conservation provided for in Title  
16 2, chapter 15, part 33.

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

21 ~~(9)~~(10) "Existing right" or "existing water right" means a right to the use of water that would be  
22 protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian  
23 reserved water rights created under federal law and water rights created under state law.

24 ~~(10)~~(11) "Ground water" means any water that is beneath the ground surface.

25 ~~(11)~~(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive  
26 presumption of abandonment under 85-2-226.

27 ~~(12)~~(13) "Permit" means the permit to appropriate issued by the department under 85-2-301  
28 through 85-2-303 and 85-2-306 through 85-2-314.

29 ~~(13)~~(14) "Person" means an individual, association, partnership, corporation, state agency, political  
30 subdivision, the United States or any agency of the United States, or any other entity.

1           ~~(14)~~(15) "Political subdivision" means any county, incorporated city or town, public corporation,  
2 or district created pursuant to state law or other public body of the state empowered to appropriate water.  
3 The term does not mean a private corporation, association, or group.

4           ~~(15)~~(16) "Salvage" means to make water available for beneficial use from an existing valid  
5 appropriation through application of water-saving methods.

6           ~~(16)~~(17) "State water reservation" means a water right created under state law after July 1, 1973,  
7 that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality  
8 of water throughout the year or at periods or for defined lengths of time.

9           ~~(17)~~(18) "Substantial credible information" means probable, believable facts sufficient to support  
10 a reasonable legal theory upon which the department should proceed with the action requested by the  
11 person providing the information.

12           ~~(18)~~(19) "Waste" means the unreasonable loss of water through the design or negligent operation  
13 of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

14           ~~(19)~~(20) "Water" means all water of the state, surface and subsurface, regardless of its character  
15 or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage  
16 effluent.

17           ~~(20)~~(21) "Water division" means a drainage basin as defined in 3-7-102.

18           ~~(21)~~(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

19           ~~(22)~~(23) "Water master" means a master as provided for in Title 3, chapter 7.

20           ~~(23)~~(24) "Watercourse" means any naturally occurring stream or river from which water is diverted  
21 for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

22           ~~(24)~~(25) "Well" means any artificial opening or excavation in the ground, however made, by which  
23 ground water is sought or can be obtained or through which it flows under natural pressures or is  
24 artificially withdrawn. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

25           **85-2-102. (Effective July 1, 2005) Definitions.** Unless the context requires otherwise, in this  
26 chapter, the following definitions apply:

27           (1) "Appropriate" means:

28           (a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

29           (b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

30           (c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with

1 85-2-436.

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

3 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but  
4 not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining,  
5 municipal, power, and recreational uses;

6 (b) a use of water appropriated by the department for the state water leasing program under  
7 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

8 (c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized  
9 under 85-2-436.

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

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

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

14 (6) "Correct and complete" means that the information required to be submitted conforms to the  
15 standard of substantial credible information and that all of the necessary parts of the form requiring the  
16 information have been filled in with the required information.

17 (7) "Declaration" means the declaration of an existing right filed with the department under section  
18 8, Chapter 452, Laws of 1973.

19 (8) "Department" means the department of natural resources and conservation provided for in Title  
20 2, chapter 15, part 33.

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

25 ~~(9)~~(10) "Existing right" or "existing water right" means a right to the use of water that would be  
26 protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian  
27 reserved water rights created under federal law and water rights created under state law.

28 ~~(10)~~(11) "Ground water" means any water that is beneath the ground surface.

29 ~~(11)~~(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive  
30 presumption of abandonment under 85-2-226.

1           ~~(12)~~(13) "Permit" means the permit to appropriate issued by the department under 85-2-301  
2 through 85-2-303 and 85-2-306 through 85-2-314.

3           ~~(13)~~(14) "Person" means an individual, association, partnership, corporation, state agency, political  
4 subdivision, the United States or any agency of the United States, or any other entity.

5           ~~(14)~~(15) "Political subdivision" means any county, incorporated city or town, public corporation,  
6 or district created pursuant to state law or other public body of the state empowered to appropriate water.  
7 The term does not mean a private corporation, association, or group.

8           ~~(15)~~(16) "Salvage" means to make water available for beneficial use from an existing valid  
9 appropriation through application of water-saving methods.

10          ~~(16)~~(17) "State water reservation" means a water right created under state law after July 1, 1973,  
11 that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality  
12 of water throughout the year or at periods or for defined lengths of time.

13          ~~(17)~~(18) "Substantial credible information" means probable, believable facts sufficient to support  
14 a reasonable legal theory upon which the department should proceed with the action requested by the  
15 person providing the information.

16          ~~(18)~~(19) "Waste" means the unreasonable loss of water through the design or negligent operation  
17 of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

18          ~~(19)~~(20) "Water" means all water of the state, surface and subsurface, regardless of its character  
19 or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage  
20 effluent.

21          ~~(20)~~(21) "Water division" means a drainage basin as defined in 3-7-102.

22          ~~(21)~~(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

23          ~~(22)~~(23) "Water master" means a master as provided for in Title 3, chapter 7.

24          ~~(23)~~(24) "Watercourse" means any naturally occurring stream or river from which water is diverted  
25 for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

26          ~~(24)~~(25) "Well" means any artificial opening or excavation in the ground, however made, by which  
27 ground water is sought or can be obtained or through which it flows under natural pressures or is  
28 artificially withdrawn. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

29           **85-2-102. (Effective July 1, 2009) Definitions.** Unless the context requires otherwise, in this  
30 chapter, the following definitions apply:

1 (1) "Appropriate" means:

2 (a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water; or

3 (b) in the case of a public agency, to reserve water in accordance with 85-2-316.

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

5 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but  
6 not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining,  
7 municipal, power, and recreational uses; or

8 (b) a use of water appropriated by the department for the state water leasing program under  
9 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

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

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

13 (5) "Correct and complete" means that the information required to be submitted conforms to the  
14 standard of substantial credible information and that all of the necessary parts of the form requiring the  
15 information have been filled in with the required information.

16 (6) "Declaration" means the declaration of an existing right filed with the department under section  
17 8, Chapter 452, Laws of 1973.

18 (7) "Department" means the department of natural resources and conservation provided for in Title  
19 2, chapter 15, part 33.

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

24 ~~(9)~~(9) "Existing right" or "existing water right" means a right to the use of water that would be  
25 protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian  
26 reserved water rights created under federal law and water rights created under state law.

27 ~~(9)~~(10) "Ground water" means any water that is beneath the ground surface.

28 ~~(10)~~(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive  
29 presumption of abandonment under 85-2-226.

30 ~~(11)~~(12) "Permit" means the permit to appropriate issued by the department under 85-2-301

1 through 85-2-303 and 85-2-306 through 85-2-314.

2 ~~(12)~~(13) "Person" means an individual, association, partnership, corporation, state agency, political  
3 subdivision, the United States or any agency of the United States, or any other entity.

4 ~~(13)~~(14) "Political subdivision" means any county, incorporated city or town, public corporation,  
5 or district created pursuant to state law or other public body of the state empowered to appropriate water.  
6 The term does not mean a private corporation, association, or group.

7 ~~(14)~~(15) "Salvage" means to make water available for beneficial use from an existing valid  
8 appropriation through application of water-saving methods.

9 ~~(15)~~(16) "State water reservation" means a water right created under state law after July 1, 1973,  
10 that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality  
11 of water throughout the year or at periods or for defined lengths of time.

12 ~~(16)~~(17) "Substantial credible information" means probable, believable facts sufficient to support  
13 a reasonable legal theory upon which the department should proceed with the action requested by the  
14 person providing the information.

15 ~~(17)~~(18) "Waste" means the unreasonable loss of water through the design or negligent operation  
16 of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

17 ~~(18)~~(19) "Water" means all water of the state, surface and subsurface, regardless of its character  
18 or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage  
19 effluent.

20 ~~(19)~~(20) "Water division" means a drainage basin as defined in 3-7-102.

21 ~~(20)~~(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

22 ~~(21)~~(22) "Water master" means a master as provided for in Title 3, chapter 7.

23 ~~(22)~~(23) "Watercourse" means any naturally occurring stream or river from which water is diverted  
24 for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

25 ~~(23)~~(24) "Well" means any artificial opening or excavation in the ground, however made, by which  
26 ground water is sought or can be obtained or through which it flows under natural pressures or is  
27 artificially withdrawn."

28

29 **Section 2.** Section 85-2-302, MCA, is amended to read:

30 **"85-2-302. Application for permit.** Except as otherwise provided in 85-2-306~~(1)~~ through ~~(3)~~, a

1 person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or  
 2 related distribution works except by applying for and receiving a permit from the department. The  
 3 application must be made on a form prescribed by the department. ~~The department shall make the forms~~  
 4 ~~available through its offices and the offices of the county clerk and recorders.~~ THE DEPARTMENT SHALL MAKE  
 5 THE FORMS AVAILABLE THROUGH ITS OFFICES. The applicant shall submit a correct and complete application. The  
 6 department shall notify the applicant of any defects in an application. An application does not lose priority  
 7 of filing because of defects if the application is corrected or completed within 30 days of the date of  
 8 notification of the defects or within a further time as the department may allow, but not to exceed 90 days  
 9 from the date of notification. If an application is made correct and complete after the mandated time  
 10 period, but within 90 days of the date of notification of the defects, the priority date of the application is  
 11 the date the application is made correct and complete. An application not corrected or completed within  
 12 90 days from the date of notification of the defects is terminated."

13

14 **Section 3.** Section 85-2-306, MCA, is amended to read:

15 **"85-2-306. Exceptions to permit requirements.** (1) Ground water may be appropriated only by a  
 16 person who has a possessory interest in the property where the water is to be put to beneficial use and  
 17 exclusive property rights in the ground water development works or, if another person has rights in the  
 18 ground water development works, with the written consent of the person with those property rights. If  
 19 the person does not have a possessory interest in the real property from which the ground water may be  
 20 appropriated, the person shall provide to the owner of the real property written notification of the works  
 21 and the person's intent to appropriate ground water from the works. The written notification must be  
 22 provided to the landowner at least 30 days prior to constructing any associated works or, if no new or  
 23 expanded works are proposed, 30 days prior to appropriating the water. The written notification under this  
 24 subsection is a notice requirement only and does not create an easement in or over the real property where  
 25 the ground water development works are located. Outside the boundaries of a controlled ground water  
 26 area, a permit is not required before appropriating ground water by means of a well or developed spring  
 27 with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except  
 28 that a combined appropriation from the same source from two or more wells or developed springs  
 29 exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring  
 30 and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion

1 with the department on a form provided by the department ~~at its offices and at the offices of the county~~  
2 ~~clerk and recorders~~ THROUGH ITS OFFICES. Upon receipt of the notice, the department shall review the notice  
3 and may, before issuing a certificate of water right, return a defective notice for correction or completion,  
4 together with the reasons for returning it. A notice does not lose priority of filing because of defects if the  
5 notice is corrected, completed, and refiled with the department within 30 days of notification of defects  
6 or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected  
7 and completed within the time allowed, the priority date of appropriation is the date of refiling a correct  
8 and complete notice with the department. A certificate of water right may not be issued until a correct  
9 and complete notice has been filed with the department, including proof of landowner notification as  
10 necessary under this subsection. The original of the certificate must be sent to the appropriator. The  
11 department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of  
12 completion is the date of priority of the right.

13 (2) An appropriator of ground water by means of a well or developed spring first put to beneficial  
14 use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by  
15 laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion,  
16 as provided in subsection (1), with the department to perfect the water right. The filing of a claim pursuant  
17 to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation  
18 is the date of the filing of a notice, as provided in subsection (1), or the date of the filing of the claim of  
19 existing water right. An appropriation under this subsection is an existing right, and a permit is not  
20 required. However, the department shall acknowledge the receipt of a correct and complete filing of a  
21 notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10  
22 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this  
23 section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

24 (3) A permit is not required before constructing an impoundment or pit and appropriating water  
25 for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the  
26 appropriation is less than 30 acre-feet a year and is from a source other than a perennial flowing stream  
27 and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned  
28 or under the control of the applicant and that is 40 acres or larger. As used in this subsection, "perennial  
29 flowing stream" means a stream that historically has flowed continuously during all seasons of the year,  
30 during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the

1 appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete  
2 application for a stockwater provisional permit, the department shall then automatically issue a provisional  
3 permit. If the department determines after a hearing that the rights of other appropriators have been or  
4 will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment  
5 or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it  
6 considers necessary to protect the rights of other appropriators.

7 (4) A person may also appropriate water without applying for or prior to receiving a permit under  
8 rules adopted by the department under 85-2-113."

9

10 **Section 4.** Section 85-2-516, MCA, is amended to read:

11 **"85-2-516. Well logs.** Within 60 days after any well is completed, the driller shall file with the  
12 department a well log report on a form provided by the department ~~at its offices and at the offices of the~~  
13 ~~county clerk and recorder~~ THROUGH ITS OFFICES. The department may return the report for refiling if it is  
14 incomplete or incorrect. The department shall provide a copy of the complete and correct well log to the  
15 Montana bureau of mines and geology."

16

17 NEW SECTION. **Section 5. Notification to tribal governments.** The secretary of state shall send  
18 a copy of [this act] to each tribal government located on the seven Montana reservations.

19

20 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

21

- END -