

1 SENATE BILL NO. 160

2 INTRODUCED BY L. GROSFIELD

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT WATER USE THAT IS NOT A BENEFICIAL
6 USE DOES NOT REQUIRE AN APPROPRIATION PERMIT; AMENDING THE DEFINITIONS OF
7 "APPROPRIATE", "BENEFICIAL USE", AND "WASTE"; DEFINING "PROTECTABLE INTEREST"; AMENDING
8 SECTIONS 85-2-102 AND 85-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9

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

11

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

13 **"85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the
14 following definitions apply:

15 (1) "Appropriate" means to obtain a legal right to use a quantity of water, including:

16 (a) to divert, impound, or withdraw (including by stock ~~for stock water~~) a quantity of water for
17 a beneficial use in accordance with a permit or an exemption authorized pursuant to part 3 of this chapter;

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

19 ~~(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with~~
20 ~~85-2-436; or~~

21 ~~—— (d) in the Upper Clark Fork River basin;~~

22 (c) to maintain and enhance streamflows to benefit the fishery resource in accordance with
23 85-2-408, 85-2-436, or 85-2-439.

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

25 (a) a use of water that requires a protectable interest and that is for the benefit of the
26 appropriator, other persons, or the public, including but not limited to agricultural (including stock water),
27 domestic, fish, ~~and~~ wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

28 (b) a use of water appropriated by the department for the state water leasing program under
29 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

30 (c) a use of water ~~by the department of fish, wildlife, and parks pursuant to a lease authorized~~

1 ~~under 85-2-436, or~~

2 ~~——— (d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the~~
 3 ~~Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program~~
 4 ~~authorized under in accordance with 85-2-408, 85-2-436, or 85-2-439.~~

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

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

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

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

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

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

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

19 (10) "Ground water" means any water that is beneath the ground surface.

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

22 (12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through
 23 85-2-303 and 85-2-306 through 85-2-314.

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

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

29 (15) "Protectable interest" means a legal interest in the use of water that allows a senior water
 30 user to make a demand on a junior water user to reduce or cease appropriation of water in order to

1 accomplish the underlying purpose of the senior water user's use of water.

2 ~~(15)~~(16) "Salvage" means to make water available for beneficial use from an existing valid
3 appropriation through application of water-saving methods.

4 ~~(16)~~(17) "State water reservation" means a water right created under state law after July 1, 1973,
5 that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality
6 of water throughout the year or at periods or for defined lengths of time.

7 ~~(17)~~(18) "Substantial credible information" means probable, believable facts sufficient to support
8 a reasonable legal theory upon which the department should proceed with the action requested by the
9 person providing the information.

10 ~~(18)~~(19) "Waste" means the unreasonable loss of water through the design or negligent operation
11 of an appropriation or water distribution facility or the application of water ~~to anything but a beneficial use~~
12 in a manner that results in an unreasonable loss of water without a substantial benefit.

13 ~~(19)~~(20) "Water" means all water of the state, surface and subsurface, regardless of its character
14 or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage
15 effluent.

16 ~~(20)~~(21) "Water division" means a drainage basin as defined in 3-7-102.

17 ~~(21)~~(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

18 ~~(22)~~(23) "Water master" means a master as provided for in Title 3, chapter 7.

19 ~~(23)~~(24) "Watercourse" means any naturally occurring stream or river from which water is diverted
20 for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

21 ~~(24)~~(25) "Well" means any artificial opening or excavation in the ground, however made, by which
22 ground water is sought or can be obtained or through which it flows under natural pressures or is
23 artificially withdrawn. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

24 **85-2-102. (Effective July 1, 2005) Definitions.** Unless the context requires otherwise, in this
25 chapter, the following definitions apply:

26 (1) "Appropriate" means to obtain a legal right to use a quantity of water, including:

27 (a) to divert, impound, or withdraw (including by stock ~~for stock water~~) a quantity of water for
28 a beneficial use in accordance with a permit or an exemption authorized pursuant to part 3 of this chapter;

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 that requires a protectable interest and that is for the benefit of the
4 appropriator, other persons, or the public, including but not limited to agricultural (including stock water),
5 domestic, fish, ~~and~~ wildlife, industrial, irrigation, mining, 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) "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) "Ground water" means any water that is beneath the ground surface.

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

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

29 (13) "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) "Political subdivision" means any county, incorporated city or town, public corporation, or
 2 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) "Protectable interest" means a legal interest in the use of water that allows a senior water
 5 user to make a demand on a junior water user to reduce or cease appropriation of water in order to
 6 accomplish the underlying purpose of the senior water user's use of water.

7 ~~(15)~~(16) "Salvage" means to make water available for beneficial use from an existing valid
 8 appropriation through application of water-saving methods.

9 ~~(16)~~(17) "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 ~~(17)~~(18) "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 ~~(18)~~(19) "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 in a manner that results in an unreasonable loss of water without a substantial benefit.

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 to obtain a legal right to use a quantity of water, including:
2 (a) to divert, impound, or withdraw (including by stock ~~for stock water~~) a quantity of water for
3 a beneficial use in accordance with a permit or an exemption authorized pursuant to part 3 of this chapter;
4 or
5 (b) in the case of a public agency, to reserve water in accordance with 85-2-316.
- 6 (2) "Beneficial use", unless otherwise provided, means:
7 (a) a use of water that requires a protectable interest and that is for the benefit of the
8 appropriator, other persons, or the public, including but not limited to agricultural (including stock water),
9 domestic, fish, ~~and~~ wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; or
10 (b) a use of water appropriated by the department for the state water leasing program under
11 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.
- 12 (3) "Certificate" means a certificate of water right issued by the department.
- 13 (4) "Change in appropriation right" means a change in the place of diversion, the place of use, the
14 purpose of use, or the place of storage.
- 15 (5) "Correct and complete" means that the information required to be submitted conforms to the
16 standard of substantial credible information and that all of the necessary parts of the form requiring the
17 information have been filled in with the required information.
- 18 (6) "Declaration" means the declaration of an existing right filed with the department under section
19 8, Chapter 452, Laws of 1973.
- 20 (7) "Department" means the department of natural resources and conservation provided for in Title
21 2, chapter 15, part 33.
- 22 (8) "Existing right" or "existing water right" means a right to the use of water that would be
23 protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian
24 reserved water rights created under federal law and water rights created under state law.
- 25 (9) "Ground water" means any water that is beneath the ground surface.
- 26 (10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive
27 presumption of abandonment under 85-2-226.
- 28 (11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through
29 85-2-303 and 85-2-306 through 85-2-314.
- 30 (12) "Person" means an individual, association, partnership, corporation, state agency, political

1 subdivision, the United States or any agency of the United States, or any other entity.

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

4 The term does not mean a private corporation, association, or group.

5 (14) "Protectable interest" means a legal interest in the use of water that allows a senior water
6 user to make a demand on a junior water user to reduce or cease appropriation of water in order to
7 accomplish the underlying purpose of the senior water user's use of water.

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

10 ~~(15)~~(16) "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 ~~(16)~~(17) "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 ~~(17)~~(18) "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 in a manner that results in an unreasonable loss of water without a substantial benefit.

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

22 ~~(19)~~(20) "Water division" means a drainage basin as defined in 3-7-102.

23 ~~(20)~~(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

24 ~~(21)~~(22) "Water master" means a master as provided for in Title 3, chapter 7.

25 ~~(22)~~(23) "Watercourse" means any naturally occurring stream or river from which water is diverted
26 for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

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

30

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

2 "**85-2-302. Application for permit.** ~~(1) Except as otherwise provided in 85-2-306(1) through (3)~~
3 ~~and subject to subsection (2) of this section,~~ a person may not appropriate water or commence
4 construction of diversion, impoundment, withdrawal, or related distribution works for a beneficial use
5 except by applying for and receiving a permit from the department. The application must be made on a
6 form prescribed by the department. The department shall make the forms available through its offices and
7 the offices of the county clerk and recorders. The applicant shall submit a correct and complete
8 application. The department shall notify the applicant of any defects in an application. An application does
9 not lose priority of filing because of defects if the application is corrected or completed within 30 days of
10 the date of notification of the defects or within a further time as the department may allow, but not to
11 exceed 90 days from the date of notification. If an application is made correct and complete after the
12 mandated time period, but within 90 days of the date of notification of the defects, the priority date of
13 the application is the date the application is made correct and complete. An application not corrected or
14 completed within 90 days from the date of notification of the defects is terminated.

15 (2) A permit to appropriate water is not required for the diversion, impoundment, or withdrawal
16 of water when the use of the water is not a beneficial use. The underlying purpose of use of water may
17 not be waste. This subsection does not limit the remedies available to a prior appropriator to enjoin or to
18 seek damages from a person who is not required to obtain a permit to appropriate water under this
19 section."

20

21 NEW SECTION. **Section 3. Notification to tribal governments.** The secretary of state shall send
22 a copy of [this act] to each tribal government located on the seven Montana reservations.

23

24 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

25

- END -