

SENATE BILL NO. 345

INTRODUCED BY J. COBB

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A BILL FOR AN ACT ENTITLED: "AN ACT CONFIRMING THE ABILITY TO VOLUNTARILY SHARE IRRIGATION WATER RIGHTS AND ALLOWING VOLUNTARY POOLING OF IRRIGATION WATER RIGHTS; AMENDING SECTIONS 85-2-404 AND 85-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

10

11 NEW SECTION. **Section 1. Voluntary sharing of irrigation water rights.** Part 2 or 3 of this chapter
12 and this part do not preclude the voluntary sharing of irrigation water rights for all or part of an irrigation
13 season to irrigate the lands appurtenant to the shared irrigation rights if the use of the shared irrigation
14 rights does not:

- 15 (1) expand the cumulative acres irrigated;
- 16 (2) increase the cumulative volume of water appropriated, as determined on an annual basis;
- 17 (3) adversely affect the water rights of any other person; or
- 18 (4) interfere with the delivery of water to any other person.

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20 NEW SECTION. **Section 2. Voluntary pooling of irrigation water rights.** (1) Two or more persons
21 with an existing water right, permit, or certificate for irrigation use from a source of water, a person with
22 multiple irrigation rights on the same source of water, or any combination of these persons whose irrigation
23 rights are measured and distributed pursuant to the provisions of chapter 5 may enter into a water right
24 pooling agreement for the pooling of irrigation rights if:

- 25 (a) the lands appurtenant to the rights to be pooled are contiguous along the water source; and
- 26 (b) a water commissioner has been appointed to measure and distribute water from the water
27 source pursuant to chapter 5.

28 (2) A water right pooling agreement is a written agreement covering all or a part of an irrigation
29 season that provides for the pooling of irrigation rights so that the parties to the agreement may use the
30 pooled irrigation rights to more expeditiously and efficiently irrigate the lands appurtenant to the pooled

1 irrigation rights. The pooling of irrigation water rights is a voluntary sharing of water rights that does not
2 increase the total amount of water that would otherwise have been used.

3 (3) A water right pooling agreement must specify:

4 (a) for each irrigation right to be pooled, the owner of the right, the water right number according
5 to the department's records, the flow amount of the right, the place of diversion, the place of use, the
6 acreage irrigated with the right, the period of use, and the total volume of water currently authorized to
7 be appropriated on an annual basis;

8 (b) a description of how and where the pooled water rights will be used during the irrigation
9 season for which the agreement has been entered;

10 (c) the term of the agreement if it is for less than a full irrigation season; otherwise, the term is
11 the full irrigation season as defined by the irrigation right with the shortest irrigation period; and

12 (d) the certifications required under subsection (5).

13 (4) A water right pooling agreement may not be entered into:

14 (a) to expand the acres irrigated under a water right;

15 (b) to expand the cumulative acres irrigated or cumulative volume of water appropriated, as
16 determined on an annual basis; or

17 (c) that adversely affects the water rights or the delivery of water to other persons.

18 (5) When a water commissioner has been appointed on a source of supply pursuant to 85-5-101,
19 a water right pooling agreement may be executed and must be filed by the parties to the agreement with
20 the district court. The water right pooling agreement filed with the district court must contain a
21 certification that a copy of the agreement has been delivered to the water commissioner and the
22 department no later than 30 days before the beginning of the term of the agreement specified in
23 subsection (3)(c).

24 (6) An objection to a water right pooling agreement must be filed in accordance with 85-5-301.
25 If an objection is not filed with the district court, the water commissioner shall measure and distribute the
26 water in accordance with the terms of the water right pooling agreement until directed otherwise by order
27 of the district court judge. When relief is requested under this subsection pursuant to the filing of an
28 objection, the matter must be set for hearing at the earliest possible time and takes precedence over all
29 matters except prior matters of the same character. The district court judge may modify or nullify the
30 water right pooling agreement if the objector's water rights have been or will be adversely affected. The

1 parties to the water right pooling agreement have the burden to prove that the objector's rights will not
2 be adversely affected.

3 (7) The liability of the parties to a water right pooling agreement that when implemented results
4 in damages to a person who is not a party to the agreement is not altered or modified by this section
5 regardless of whether an objection is filed to the agreement.

6 (8) This section does not affect the rights or priority dates of any existing right, permit, or
7 certificate. This section does not imply an intent to not comply with the terms and conditions attached
8 to a pooled irrigation right.

9

10 **Section 3.** Section 85-2-404, MCA, is amended to read:

11 **"85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use
12 all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the
13 appropriator ceases using the appropriation right according to its terms and conditions with the intention
14 of not complying with those terms and conditions, the appropriation right is, to that extent, considered
15 abandoned and must immediately expire.

16 (2) If an appropriator ceases to use all or part of an appropriation right or ceases using the
17 appropriation right according to its terms and conditions for a period of 10 successive years and there was
18 water available for use, there is a prima facie presumption that the appropriator has abandoned the right
19 for the part not used.

20 (3) If an appropriator ceases to use all or part of an appropriation right because the land to which
21 the water is applied to a beneficial use is contracted under a state or federal conservation set-aside
22 program:

23 (a) the set-aside and resulting reduction in use of the appropriation right does not represent an
24 intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the
25 terms and conditions attached to the right; and

26 (b) the period of nonuse that occurs for part or all of the appropriation right as a result of the
27 contract may not create or may not be added to any previous period of nonuse to create a prima facie
28 presumption of abandonment.

29 (4) The lease of an existing right pursuant to 85-2-436, the use of water pursuant to 85-2-439,
30 the participation in a water right pooling agreement pursuant to [section 2], or a temporary change

1 pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to
2 establish an abandonment of any part of the right.

3 (5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined
4 in accordance with part 2 of this chapter. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

5 **85-2-404. (Effective July 1, 2005) Abandonment of appropriation right.** (1) If an appropriator
6 ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the
7 right or if the appropriator ceases using the appropriation right according to its terms and conditions with
8 the intention of not complying with those terms and conditions, the appropriation right is, to that extent,
9 considered abandoned and must immediately expire.

10 (2) If an appropriator ceases to use all or part of an appropriation right or ceases using the
11 appropriation right according to its terms and conditions for a period of 10 successive years and there was
12 water available for use, there is a prima facie presumption that the appropriator has abandoned the right
13 for the part not used.

14 (3) If an appropriator ceases to use all or part of an appropriation right because the land to which
15 the water is applied to a beneficial use is contracted under a state or federal conservation set-aside
16 program:

17 (a) the set-aside and resulting reduction in use of the appropriation right does not represent an
18 intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the
19 terms and conditions attached to the right; and

20 (b) the period of nonuse that occurs for part or all of the appropriation right as a result of the
21 contract may not create or may not be added to any previous period of nonuse to create a prima facie
22 presumption of abandonment.

23 (4) The lease of an existing right pursuant to 85-2-436, the participation in a water right pooling
24 agreement pursuant to [section 2], or a temporary change pursuant to 85-2-407 does not constitute an
25 abandonment or serve as evidence that could be used to establish an abandonment of any part of the
26 right.

27 (5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined
28 in accordance with part 2 of this chapter. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

29 **85-2-404. (Effective July 1, 2009) Abandonment of appropriation right.** (1) If an appropriator
30 ceases to use all or a part of ~~his~~ an appropriation right with the intention of wholly or partially abandoning

1 the right or if ~~he~~ the appropriator ceases using ~~his~~ the appropriation right according to its terms and
 2 conditions with the intention of not complying with those terms and conditions, the appropriation right
 3 ~~shall is~~, to that extent, ~~be deemed~~ considered abandoned and ~~shall~~ must immediately expire.

4 (2) If an appropriator ceases to use all or part of ~~his~~ an appropriation right or ceases using ~~his~~ the
 5 appropriation right according to its terms and conditions for a period of 10 successive years and there was
 6 water available for ~~his~~ use, there ~~shall be is~~ a prima facie presumption that the appropriator has abandoned
 7 ~~his~~ the right for the part not used.

8 (3) If an appropriator ceases to use all or part of ~~his~~ an appropriation right because the land to
 9 which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside
 10 program:

11 (a) the set-aside and resulting reduction in use of the appropriation right does not represent an
 12 intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the
 13 terms and conditions attached to the right; and

14 (b) the period of nonuse that occurs for part or all of the appropriation right as a result of the
 15 contract may not create or may not be added to any previous period of nonuse to create a prima facie
 16 presumption of abandonment.

17 (4) A temporary change pursuant to 85-2-407 or the participation in a water right pooling
 18 agreement pursuant to [section 2] does not constitute an abandonment or serve as evidence that could
 19 be used to establish an abandonment of any part of the right.

20 (5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined
 21 in accordance with part 2 of this chapter."

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23 **Section 4.** Section 85-2-407, MCA, is amended to read:

24 **"85-2-407. Temporary changes in appropriation right.** (1) ~~An~~ Except as provided in [section 2],
 25 an appropriator may not make a temporary change in appropriation right for the appropriator's use or
 26 another's use except with department approval in accordance with 85-2-402 and this section.

27 (2) A temporary change in appropriation right may be approved for a period not to exceed 10
 28 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

29 (3) An authorization for a temporary change in appropriation right may be renewed by the
 30 department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in

1 appropriation right requires application to the department by the appropriator. Upon application, the
2 department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for
3 submission of new evidence of adverse effects to other water rights. A temporary change authorization
4 may not be renewed by the department if it determines that the right of an appropriator, other than an
5 appropriator described in subsection (7), is adversely affected.

6 (4) (a) During the term of the original temporary change authorization, the department may modify
7 or revoke its authorization for a temporary change if it determines that the right of an appropriator, other
8 than an appropriator described in subsection (7), is adversely affected.

9 (b) An appropriator, other than an appropriator identified in subsection (7), may object:

10 (i) during the initial temporary change application process;

11 (ii) during the temporary change renewal process; and

12 (iii) once during the term of the temporary change permit.

13 (5) The priority of appropriation for a temporary change in appropriation right is the same as the
14 priority of appropriation of the right that is temporarily changed.

15 (6) Neither a change in appropriation right nor any other authorization right is required for reversion
16 of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage
17 after the period for which a temporary change was authorized expires.

18 (7) A person issued a water use permit with a priority of appropriation after the date of filing of
19 an application for a temporary change in appropriation right under this section may not object to the
20 exercise of the temporary change according to its terms, the renewal of the authorization for the
21 temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point
22 of diversion, or place of storage. Persons described in this subsection must be notified of the existence
23 of any temporary change authorizations from the same source of supply.

24 (8) If a water right for which a temporary change has been approved is transferred as an
25 appurtenance of real property, the temporary change remains in effect unless another change in
26 appropriation right is authorized by the department."

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28 NEW SECTION. Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified
29 as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply
30 to [sections 1 and 2].

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

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4 NEW SECTION. **Section 7. Termination.** [This act] terminates October 1, 2006.

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