

HOUSE BILL NO. 720

INTRODUCED BY HURWITZ, BARRETT, RICE, RIPLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING WATER USE PERMITS AND CHANGES IN APPROPRIATION RIGHTS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REGARDING DETERMINATION OF WHETHER OR NOT AN APPLICATION FOR A WATER USE PERMIT ~~IS~~ AND AN OBJECTION TO AN APPLICATION FOR A WATER USE PERMIT ARE CORRECT AND COMPLETE; PROVIDING THAT AN APPLICATION MUST BE TREATED AS IF IT IS CORRECT AND COMPLETE IF DEFICIENCIES ARE NOT IDENTIFIED WITHIN ~~30 DAYS~~ THE TIME PERIOD SPECIFIED BY DEPARTMENT RULE 180 DAYS; PROVIDING REQUIREMENTS FOR A CORRECT AND COMPLETE OBJECTION TO AN APPLICATION FOR A PERMIT OR CHANGE IN APPROPRIATION RIGHT THAT IS BASED ON ADVERSE EFFECTS ON USES OF INSTREAM FLOW FOR FISH, WILDLIFE, OR RECREATIONAL PURPOSES; AND AMENDING SECTIONS ~~SECTION~~ SECTIONS 85-2-302 ~~AND 85-2-308~~ AND 85-2-308, MCA."

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

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

"85-2-302. Application for permit. (1) Except as provided in 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department.

(2) ~~The department shall adopt rules ESTABLISHING A TIMEFRAME WITHIN WHICH THE DEPARTMENT IS REQUIRED TO ISSUE ITS DECISION ON WHETHER AN APPLICATION IS CORRECT AND COMPLETE AND RULES that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part. The rules must be adopted in compliance with Title 2, chapter 4.~~

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) The applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at

1 the time the application is submitted.

2 (5) The department shall notify the applicant of any defects in an application within 30 days THE
3 TIMEFRAME ESTABLISHED BY RULE PURSUANT TO SUBSECTION (2) 180 DAYS. The defects must be identified by
4 reference to the rules adopted under subsection (2). If the department does not notify the applicant of any
5 defects within 30 days THE TIMEFRAME ESTABLISHED BY RULE PURSUANT TO SUBSECTION (2) 180 DAYS, the
6 application must be treated as a correct and complete application.

7 (6) An application does not lose priority of filing because of defects if the application is corrected or
8 completed within 30 days of the date of notification of the defects or within a further time as the department may
9 allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after
10 the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the
11 application is the date the application is made correct and complete.

12 (7) An application not corrected or completed within 90 days from the date of notification of the defects
13 is terminated."

14
15 ~~Section 2. Section 85-2-308, MCA, is amended to read:~~

16 ~~"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date~~
17 ~~specified by the department under 85-2-307(2).~~

18 ~~(b) The objection to an application for a permit must state the name and address of the objector and~~
19 ~~facts indicating that one or more of the criteria in 85-2-311 are not met.~~

20 ~~(2) For an application for a change in appropriation rights, the objection must state the name and~~
21 ~~address of the objector and facts indicating that one or more of the criteria in 85-2-402 are not met.~~

22 ~~(3) A person has standing to file an objection under this section if the property, water rights, or interests~~
23 ~~of the objector would be adversely affected by the proposed appropriation.~~

24 ~~(4) For an application for a reservation of water, the objection must state the name and address of the~~
25 ~~objector and facts indicating that one or more of the criteria in 85-2-316 are not met.~~

26 ~~(5) (a) An objector to an application under this chapter shall file a correct and complete objection on a~~
27 ~~form prescribed by the department within the time period stated on the public notice associated with the~~
28 ~~application. The department shall notify the objector of any defects in an objection. An objection not corrected~~
29 ~~or completed within 15 days from the date of notification of the defects is terminated.~~

30 ~~(b) A correct and complete objection to an application that is based on adverse effects on a use of~~

~~instream flow for fish, wildlife, or recreational purposes must:~~

~~—— (i) demonstrate the minimum quantity of water necessary for the instream use;~~

~~—— (ii) demonstrate that the proposed permit or change in appropriation right will adversely affect the minimum quantity of water necessary for the instream use;~~

~~—— (iii) identify the specific point in the water source where the instream use will be adversely affected; and~~

~~—— (iv) demonstrate the adverse effects on fish or wildlife populations or recreational use that are directly attributable to the proposed permit or change.——~~

~~—— (6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under subsection (1), (2), or (4) this section."~~

SECTION 2. SECTION 85-2-308, MCA, IS AMENDED TO READ:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application.

In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date

1 of notification of the defects is terminated.

2 (6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and
3 complete objection within the prescribed time period, and has stated the applicable information required under
4 ~~subsection (1), (2), or (4)~~ this section and rules of the department."

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6 **NEW SECTION. Section 3. Notification to tribal governments.** The secretary of state shall send a
7 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
8 band of Chippewa.

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