





## SENATE STANDING COMMITTEE REPORT

February 4, 2005

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Mr. President:

We, your committee on Natural Resources recommend that **Senate Bill 269** (first reading copy -- white) **do pass as amended.**

Signed:

  
*Senator Glenn Roush, Chair*

**And, that such amendments read:**

1. Title, line 6.

**Following:** "STATUTES;"

**Insert:** "PROVIDING FOR THE PROCESSING OF GROUND WATER APPLICATIONS IN THE UPPER MISSOURI RIVER BASIN, JEFFERSON RIVER BASIN, MADISON RIVER BASIN, AND TETON RIVER BASIN;"

2. Title, line 7.

**Following:** "85-2-329,"

**Insert:** "85-2-330,"

**Following:** "85-2-340,"

**Strike:** "AND"

**Insert:** "85-2-341,"

**Following:** "85-2-342,"

**Insert:** "AND 85-2-343,"

3. Page 1.

**Following:** line 9

**Insert:** "NEW SECTION. Section 1. Ground water permit applications in the upper Missouri, Jefferson, Madison, and Teton River basins. (1) In addition to the criteria provided in 85-2-311, the department may grant a permit to appropriate ground water, as defined in 85-2-102, in the upper Missouri River basin, Jefferson River basin, Madison River basin, and Teton River basin only if the applicant proves by a preponderance of evidence that:

(a) the proposed appropriation of ground water:

(i) will not induce surface water infiltration; and

**Committee Vote:**

Yes 9, No 0.

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(ii) will not reduce ground water discharge to surface water within 1 year; or

(b) the augmentation plan submitted by the applicant provides surface flow rate and volume replacement water, for the same reach as the depletion, substantially corresponding to the timing, flow rate, volume, and quality of reduction in surface flows resulting from operation of the proposed diversion. If needed, an application for a beneficial water use permit or for a change in appropriation right must be submitted with the augmentation plan.

(2) An applicant who concludes that subsections (1)(a)(i) and (1)(a)(ii) cannot be met may file an augmentation plan with the initial application and proceed as provided in subsection (9).

(3) An application to appropriate ground water under this section must be processed as provided in this section.

(4)(a) An application for ground water without an augmentation plan must contain a report prepared by a hydrologist or professional engineer that concludes in the professional opinion of the preparer that the proposed appropriation of ground water:

(i) will not induce surface water infiltration; and  
(ii) will not reduce ground water discharge to surface water within 1 year.

(b) If an applicant fails to submit the report with the application, the application may not be accepted.

(5) Upon receipt of a correct and complete ground water application pursuant to the requirements of 85-2-302, the department shall provide notice of the receipt of the application pursuant to 85-2-307(1) and include a statement that any person who desires further notice of the department's actions in processing the ground water application containing the report has 10 days to file a request with the department for further notification.

(6)(a) A department hydrologist or a hydrologist under contract with the department shall review the report submitted with the ground water application in subsection (4) and in a written decision shall state if the report has proven that the proposed appropriation of ground water:

(i) will not induce surface water infiltration; and  
(ii) will not reduce ground water discharge to surface water within 1 year.

(b) The hydrologist's written decision must be mailed to any person who requested further notice of the department's actions pursuant to subsection (5).

(c) The applicant or any person with standing pursuant to 85-2-308(3) has 30 days to request a hearing before a department hearing examiner to show cause by a preponderance of the evidence why that determination was incorrect. After the deadline in this subsection (6)(c) has passed, any person with standing pursuant to 85-2-308 has 10 days to intervene as a party, as a matter of

right, in the show cause hearing. The applicant, any other person who requested a hearing, and any timely intervenors are considered parties and may present evidence to the department at the show cause hearing.

(7) The provisions of Title 2, chapter 4, part 6, apply to the hearing before the department, and the provisions of Title 2, chapter 4, part 7, apply to judicial review of the department's decision.

(8) If the department determines that the requirements of subsection (1)(a) are not met, the department shall terminate the application unless the applicant submits an augmentation plan as provided in subsection (1)(b) within 90 days that provides surface flow rate and volume replacement water, for the same reach as the depletion, substantially corresponding to the timing, flow rate, volume, and quality of reduction in surface flows resulting from operation of the proposed diversion.

(9) If an augmentation plan is received pursuant to subsection (8) or is received initially with the ground water application and the application is correct and complete, the department shall provide notice of the application and augmentation plan following the procedures in 85-2-307. Objections to the application and augmentation plan must be filed pursuant to 85-2-308, and the provisions of 85-2-309 through 85-2-315 apply."

**Renumber:** subsequent sections

4. Page 1, line 17 through line 18.

**Strike:** "and that" on line 17 through "any time" on line 18

**Insert:** "for which a permit is necessary as provided in [section 1]"

5. Page 1.

**Following:** line 23

**Insert:** "Section 3. Section 85-2-330, MCA, is amended to read:

"85-2-330. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water as provided in [section 1];

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

or

(e) emergency temporary appropriations as provided for in 85-2-113(3)."

**Renumber:** subsequent sections

6. Page 2, line 1 through line 2.

**Strike:** "and that" on line 1 through "any time" on line 2

**Insert:** "for which a permit is necessary as provided in [section 1]"

7. Page 2.

**Following:** line 9

**Insert:** "Section 5. Section 85-2-341, MCA, is amended to read:

"85-2-341. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water as provided in [section 1];

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

**Renumber:** subsequent sections

8. Page 2, line 17 through line 18.

**Strike:** "and that" on line 17 through "at any time" on line 18

**Insert:** "for which a permit is necessary as provided in [section 1]"

9. Page 2.

**Following:** line 23

**Insert:** "Section 7. Section 85-2-343, MCA, is amended to read:

"85-2-343. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this

section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water as provided in [section 1];

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; or

(f) temporary emergency appropriations as provided for in 85-2-113(3)."

**Insert:** "NEW SECTION. Section 8. 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]."

**Renumber:** subsequent sections

- END -



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Mr. President:

We, your committee on **Natural Resources** recommend that **Senate Joint Resolution 9** (first reading copy -- white) do pass.

Signed:

A handwritten signature in cursive script, appearing to read "Glenn A. Roush".

*Senator Glenn Roush, Chair*

- END -

**Committee Vote:**  
**Yes 9, No 0.**

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