

## HOUSE BILL NO. 373

INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CRITERIA FOR GROUND WATER WITHDRAWALS IN A CLOSED BASIN; DEFINING TERMS; PROVIDING FOR A REPORT; PROVIDING CRITERIA FOR DETERMINING ADVERSE EFFECT; PROVIDING FOR AUGMENTATION IN CERTAIN INSTANCES; AMENDING SECTIONS 85-2-102, 85-2-311, 85-2-329, 85-2-330, 85-2-340, 85-2-341, 85-2-342, 85-2-343, AND 85-2-506, 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 for a beneficial use;

(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) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Augment" means making water available to a prior appropriator under an augmentation plan.

(3) "Augmentation plan" means a plan to provide water to either a surface water source, its tributaries, or an aquifer source to allow out-of-priority diversion to occur so that a prior appropriator adversely affected by a permit may reasonably exercise the prior appropriator's right under any changed conditions in the source of supply caused by a new permit.

~~(2)~~(4) "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,

1 and recreational uses;

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

4 (c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under  
5 85-2-436; or

6 (d) a use of water through a temporary change in appropriation right or lease to enhance instream flow  
7 to benefit the fishery resource in accordance with 85-2-408.

8 ~~(3)~~(5) "Certificate" means a certificate of water right issued by the department.

9 ~~(4)~~(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the  
10 purpose of use, or the place of storage.

11 ~~(5)~~(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

12 ~~(6)~~(8) "Correct and complete" means that the information required to be submitted conforms to the  
13 standard of substantial credible information and that all of the necessary parts of the form requiring the  
14 information have been filled in with the required information.

15 ~~(7)~~(9) "Declaration" means the declaration of an existing right filed with the department under section  
16 8, Chapter 452, Laws of 1973.

17 ~~(8)~~(10) "Department" means the department of natural resources and conservation provided for in Title  
18 2, chapter 15, part 33.

19 ~~(9)~~(11) "Developed spring" means any artificial opening or excavation in the ground, however made,  
20 including any physical alteration at the point of discharge regardless of whether it results in any increase in the  
21 yield of ground water, from which ground water is sought or can be obtained or through which it flows under  
22 natural pressures or is artificially withdrawn.

23 ~~(10)~~(12) "Existing right" or "existing water right" means a right to the use of water that would be protected  
24 under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water  
25 rights created under federal law and water rights created under state law.

26 ~~(11)~~(13) "Ground water" means any water that is beneath the ground surface.

27 (14) "Induced infiltration or induced recharge" means the use of ground water from a well adjacent to a  
28 surface water body that causes water to be drawn from that surface water body into the source aquifer when the  
29 ground water is used at the flow rate and period of diversion as requested in the application.

30 ~~(12)~~(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption

1 of abandonment under 85-2-226.

2 ~~(13)~~(16) "Permit" means the permit to appropriate issued by the department under 85-2-301 through  
3 85-2-303 and 85-2-306 through 85-2-314.

4 ~~(14)~~(17) "Person" means an individual, association, partnership, corporation, state agency, political  
5 subdivision, the United States or any agency of the United States, or any other entity.

6 ~~(15)~~(18) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or  
7 district created pursuant to state law or other public body of the state empowered to appropriate water.

8 (b) The term does not mean a private corporation, association, or group.

9 ~~(16)~~(19) "Salvage" means to make water available for beneficial use from an existing valid appropriation  
10 through application of water-saving methods.

11 ~~(17)~~(20) "State water reservation" means a water right created under state law after July 1, 1973, that  
12 reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water  
13 throughout the year or at periods or for defined lengths of time.

14 ~~(18)~~(21) "Substantial credible information" means probable, believable facts sufficient to support a  
15 reasonable legal theory upon which the department should proceed with the action requested by the person  
16 providing the information.

17 ~~(19)~~(22) "Waste" means the unreasonable loss of water through the design or negligent operation of an  
18 appropriation or water distribution facility or the application of water to anything but a beneficial use.

19 ~~(20)~~(23) "Water" means all water of the state, surface and subsurface, regardless of its character or  
20 manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

21 ~~(21)~~(24) "Water division" means a drainage basin as defined in 3-7-102.

22 ~~(22)~~(25) "Water judge" means a judge as provided for in Title 3, chapter 7.

23 ~~(23)~~(26) "Water master" means a master as provided for in Title 3, chapter 7.

24 ~~(24)~~(27) "Watercourse" means any naturally occurring stream or river from which water is diverted for  
25 beneficial uses. It does not include ditches, culverts, or other constructed waterways.

26 ~~(25)~~(28) "Well" means any artificial opening or excavation in the ground, however made, by which ground  
27 water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.  
28 (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 chapter,  
30 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 for a beneficial  
3 use;

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

5 (c) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the  
6 fishery resource in accordance with 85-2-408.

7 (2) "Augment" means making water available to a prior appropriator under an augmentation plan.

8 (3) "Augmentation plan" means a plan to provide water to either a surface water source, its tributaries,  
9 or an aquifer source to allow out-of-priority diversion to occur so that a prior appropriator adversely affected by  
10 a permit may reasonably exercise the prior appropriator's right under any changed conditions in the source of  
11 supply caused by a new permit.

12 ~~(2)~~(4) "Beneficial use", unless otherwise provided, means:

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

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

18 (c) a use of water through a temporary change in appropriation right or lease to enhance instream flow  
19 to benefit the fishery resource in accordance with 85-2-408.

20 ~~(3)~~(5) "Certificate" means a certificate of water right issued by the department.

21 ~~(4)~~(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the  
22 purpose of use, or the place of storage.

23 ~~(5)~~(7) "Correct and complete" means that the information required to be submitted conforms to the  
24 standard of substantial credible information and that all of the necessary parts of the form requiring the  
25 information have been filled in with the required information.

26 ~~(6)~~(8) "Declaration" means the declaration of an existing right filed with the department under section  
27 8, Chapter 452, Laws of 1973.

28 ~~(7)~~(9) "Department" means the department of natural resources and conservation provided for in Title  
29 2, chapter 15, part 33.

30 ~~(8)~~(10) "Developed spring" means any artificial opening or excavation in the ground, however made,

1 including any physical alteration at the point of discharge regardless of whether it results in any increase in the  
2 yield of ground water, from which ground water is sought or can be obtained or through which it flows under  
3 natural pressures or is artificially withdrawn.

4 ~~(9)~~(11) "Existing right" or "existing water right" means a right to the use of water that would be protected  
5 under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water  
6 rights created under federal law and water rights created under state law.

7 ~~(10)~~(12) "Ground water" means any water that is beneath the ground surface.

8 (13) "Induced infiltration or induced recharge" means the use of ground water from a well adjacent to a  
9 surface water body that causes water to be drawn from that surface water body into the source aquifer when the  
10 ground water is used at the flow rate and period of diversion as requested in the application.

11 ~~(11)~~(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption  
12 of abandonment under 85-2-226.

13 ~~(12)~~(15) "Permit" means the permit to appropriate issued by the department under 85-2-301 through  
14 85-2-303 and 85-2-306 through 85-2-314.

15 ~~(13)~~(16) "Person" means an individual, association, partnership, corporation, state agency, political  
16 subdivision, the United States or any agency of the United States, or any other entity.

17 ~~(14)~~(17) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or  
18 district created pursuant to state law or other public body of the state empowered to appropriate water.

19 (b) The term does not mean a private corporation, association, or group.

20 ~~(15)~~(18) "Salvage" means to make water available for beneficial use from an existing valid appropriation  
21 through application of water-saving methods.

22 ~~(16)~~(19) "State water reservation" means a water right created under state law after July 1, 1973, that  
23 reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water  
24 throughout the year or at periods or for defined lengths of time.

25 ~~(17)~~(20) "Substantial credible information" means probable, believable facts sufficient to support a  
26 reasonable legal theory upon which the department should proceed with the action requested by the person  
27 providing the information.

28 ~~(18)~~(21) "Waste" means the unreasonable loss of water through the design or negligent operation of an  
29 appropriation or water distribution facility or the application of water to anything but a beneficial use.

30 ~~(19)~~(22) "Water" means all water of the state, surface and subsurface, regardless of its character or

manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~(23) "Water division" means a drainage basin as defined in 3-7-102.

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

~~(22)~~(25) "Water master" means a master as provided for in Title 3, chapter 7.

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

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

**Section 2.** Section 85-2-311, MCA, is amended to read:

**"85-2-311. Criteria for issuance of permit.** (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined

1 based on:

2 (i) a consideration of an applicant's plan for the exercise of the permit that demonstrates that the  
3 applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

4 (ii) a recognition that a priority of appropriation does not include the right to prevent changes in the  
5 condition of water occurrence, such as the increase or decrease in stream flow or the lowering of a water table,  
6 artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the  
7 changed conditions; and

8 (iii) a consideration of whether a cessation of diversion under the permit applied for would result in an  
9 increase in the source of supply necessary for a prior appropriator to reasonably exercise a senior water right.

10 (c) the proposed means of diversion, construction, and operation of the appropriation works are  
11 adequate;

12 (d) the proposed use of water is a beneficial use;

13 (e) the applicant has a possessory interest, or the written consent of the person with the possessory  
14 interest, in the property where the water is to be put to beneficial use;

15 (f) the water quality of a prior appropriator will not be adversely affected;

16 (g) the proposed use will be substantially in accordance with the classification of water set for the source  
17 of supply pursuant to 75-5-301(1); and

18 (h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance  
19 with Title 75, chapter 5, part 4, will not be adversely affected.

20 (2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met  
21 only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the  
22 satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met.  
23 For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality  
24 district established under Title 7, chapter 13, part 45, may file a valid objection.

25 (3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a  
26 year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence  
27 that:

28 (a) the criteria in subsection (1) are met;

29 (b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the  
30 following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1; or ~~Title 75, chapter 20.~~

(4) (a) ~~The state of Montana~~ has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although ~~the state of Montana~~ also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to



1 use the water; and

2 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
3 water.

4 (d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the  
5 applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and  
6 use of water.

7 (5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other  
8 evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other  
9 evidence, including but not limited to water supply data, field reports, and other information developed by the  
10 applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and  
11 other specific field studies.

12 (6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion,  
13 impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or  
14 employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation,  
15 diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally  
16 or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or  
17 control waters within the boundaries of this state except in accordance with this section.

18 (7) The department may adopt rules to implement the provisions of this section."  
19

20 **Section 3.** Section 85-2-329, MCA, is amended to read:

21 **"85-2-329. Definitions.** Unless the context requires otherwise, in 85-2-330 and this section, the following  
22 definitions apply:

23 (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state  
24 water reservation pursuant to 85-2-316.

25 (2) "Ground water" ~~means water that is beneath the land surface or beneath the bed of a stream, lake,~~  
26 ~~reservoir, or other body of surface water and that is not immediately or directly connected to surface water~~ has  
27 the meaning provided in 85-2-102.

28 (3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source  
29 of supply and in which substantially all of the water returns without delay to the source of supply, causing little  
30 or no disruption in stream conditions.

(4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers."

**Section 4.** 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) subject to subsections (3) and (4), an application for a permit to appropriate ground water;
- (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).

(3) (a) An application for a permit to appropriate ground water must be accompanied by a report prepared by a professional engineer or hydrologist addressing the effect, if any, of the proposed ground water appropriation on prior appropriators of ground water or surface water within the area of influence of the proposed ground water development. If the applicant fails to submit a report, the application must be returned to the applicant as an incomplete application.

(b) The report must include a determination of whether or not the proposed pumping of ground water will result in induced infiltration or induced recharge.

(4) (a) The department shall process the application pursuant to 85-2-311 if the report demonstrates to the department that the pumping of ground water:

- (i) will not result in induced infiltration or induced recharge; or
- (ii) will result in induced infiltration or induced recharge, but there is no adverse effect, as provided in 85-2-311(1)(b), to a senior water right.

(b) For an application in which the applicant or the department determines that pumping of ground water will result in induced infiltration or induced recharge and in adverse effect, as provided in 85-2-311(1)(b), to a senior water right, the applicant shall submit an augmentation plan to the department when the application is filed or within 60 days of the date upon which the department notifies the applicant that the application is subject to this subsection (4)(b). The augmentation plan must identify:

1 (i) the source of water from which the applicant proposes to augment the affected senior water right;  
2 (ii) the quantity of water that the applicant proposes to augment the affected senior water right; and  
3 (iii) the point of measurement or point of delivery where the applicant proposes to augment the affected  
4 senior water right.

5 (5) For any application subject to subsection (4)(b), upon receipt of an augmentation plan consistent with  
6 the requirements of subsections (4)(b)(i) through (4)(b)(iii), the department shall process the application and the  
7 augmentation plan under the criteria provided in 85-2-311 and 85-2-402, if applicable."

8  
9 **Section 5.** Section 85-2-340, MCA, is amended to read:

10 **"85-2-340. Definitions.** Unless the context requires otherwise, in 85-2-341 and this section, the following  
11 definitions apply:

12 (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state  
13 water reservation pursuant to 85-2-316.

14 (2) "Ground water" ~~means water that is beneath the land surface or beneath the bed of a stream, lake,~~  
15 ~~reservoir, or other body of surface water and that is not immediately or directly connected to surface water~~ has  
16 the meaning provided in 85-2-102.

17 (3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the  
18 confluence of the Jefferson and Missouri Rivers.

19 (4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the  
20 confluence of the Madison and Jefferson Rivers.

21 (5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source  
22 of supply and in which substantially all of the water returns without delay to the source of supply, causing little  
23 or no disruption in stream conditions."

24  
25 **Section 6.** Section 85-2-341, MCA, is amended to read:

26 **"85-2-341. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of  
27 subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate  
28 water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

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

30 (a) subject to subsections (3) and (4), an application for a permit to appropriate ground water;

- 1 (b) an application for a permit to appropriate water for a nonconsumptive use;  
2 (c) an application for a permit to appropriate water for domestic, municipal, or stock use;  
3 (d) an application to store water during high spring flows; or  
4 (e) temporary emergency appropriations as provided for in 85-2-113(3).

5 (3) (a) An application for a permit to appropriate ground water must be accompanied by a report  
6 prepared by a professional engineer or hydrologist addressing the effect, if any, of the proposed ground water  
7 appropriation on prior appropriators of ground water or surface water within the area of influence of the proposed  
8 ground water development. If the applicant fails to submit a report, the application must be returned to the  
9 applicant as an incomplete application.

10 (b) The report must include a determination of whether or not the proposed pumping of ground water  
11 will result in induced infiltration or induced recharge.

12 (4) (a) The department shall process the application pursuant to 85-2-311 if the report demonstrates to  
13 the department that the pumping of ground water:

14 (i) will not result in induced infiltration or induced recharge; or

15 (ii) will result in induced infiltration or induced recharge, but there is no adverse effect, as provided in  
16 85-2-311(1)(b), to a senior water right.

17 (b) For an application in which the applicant or the department determines that pumping of ground water  
18 will result in induced infiltration or induced recharge and in adverse effect, as provided in 85-2-311(1)(b), to a  
19 senior water right, the applicant shall submit an augmentation plan to the department when the application is filed  
20 or within 60 days of the date upon which the department notifies the applicant that the application is subject to  
21 this subsection (4)(b). The augmentation plan must identify:

22 (i) the source of water from which the applicant proposes to augment the affected senior water right;

23 (ii) the quantity of water that the applicant proposes to augment the affected senior water right; and

24 (iii) the point of measurement or point of delivery where the applicant proposes to augment the affected  
25 senior water right.

26 (5) For any application subject to subsection (4)(b), upon receipt of an augmentation plan consistent with  
27 the requirements of subsections (4)(b)(i) through (4)(b)(iii), the department shall process the application and the  
28 augmentation plan under the criteria provided in 85-2-311 and 85-2-402, if applicable."

29  
30 **Section 7.** Section 85-2-342, MCA, is amended to read:

1       **"85-2-342. Definitions.** Unless the context requires otherwise, in 85-2-343 and this section, the following  
2 definitions apply:

3       (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state  
4 water reservation pursuant to 85-2-316.

5       (2) "Ground water" ~~means water that is beneath the land surface or beneath the bed of a stream, lake,~~  
6 ~~reservoir, or other body of surface water and that is not immediately or directly connected to surface water~~ has  
7 the meaning provided in 85-2-102.

8       (3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source  
9 of supply and in which substantially all of the water returns without delay to the source of supply, causing little  
10 or no disruption in stream conditions.

11       (4) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above  
12 Morony dam."

13  
14       **Section 8.** Section 85-2-343, MCA, is amended to read:

15       **"85-2-343. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of  
16 subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate  
17 water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been  
18 issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

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

20       (a) subject to subsections (3) and (4), an application for a permit to appropriate ground water;

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

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

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

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

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

27       (3) (a) An application for a permit to appropriate ground water must be accompanied by a report  
28 prepared by a professional engineer or hydrologist addressing the effect, if any, of the proposed ground water  
29 appropriation on prior appropriators of ground water or surface water within the area of influence of the proposed  
30 ground water development. If the applicant fails to submit a report, the application must be returned to the

1 applicant as an incomplete application.

2 (b) The report must include a determination of whether or not the proposed pumping of ground water  
3 will result in induced infiltration or induced recharge.

4 (4) (a) The department shall process the application pursuant to 85-2-311 if the report demonstrates to  
5 the department that the pumping of ground water:

6 (i) will not result in induced infiltration or induced recharge; or

7 (ii) will result in induced infiltration or induced recharge, but there is no adverse effect, as provided in  
8 85-2-311(1)(b), to a senior water right.

9 (b) For an application in which the applicant or the department determines that pumping of ground water  
10 will result in induced infiltration or induced recharge and in adverse effect, as provided in 85-2-311(1)(b), to a  
11 senior water right, the applicant shall submit an augmentation plan to the department when the application is filed  
12 or within 60 days of the date upon which the department notifies the applicant that the application is subject to  
13 this subsection (4)(b). The augmentation plan must identify:

14 (i) the source of water from which the applicant proposes to augment the affected senior water right;

15 (ii) the quantity of water that the applicant proposes to augment the affected senior water right; and

16 (iii) the point of measurement or point of delivery where the applicant proposes to augment the affected  
17 senior water right.

18 (5) For any application subject to subsection (4)(b), upon receipt of an augmentation plan consistent with  
19 the requirements of subsections (4)(b)(i) through (4)(b)(iii), the department shall process the application and the  
20 augmentation plan under the criteria provided in 85-2-311 and 85-2-402, if applicable."

21  
22 **Section 9.** Section 85-2-506, MCA, is amended to read:

23 **"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may  
24 designate or modify controlled ground water areas as provided in this part.

25 (2) Designation or modification of an area of controlled ground water use may be proposed to the  
26 department on its own motion, by petition of a state or local public health agency for identified public health risks,  
27 or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of ground water  
28 in a ground water area in which there are alleged to be facts showing:

29 (a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground  
30 water area;

(b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) that ground water levels or pressures in the area in question are declining or have declined excessively;

(e) that excessive ground water withdrawals would cause contaminant migration;

(f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) that water quality within the ground water area is not suited for a specific beneficial use defined by ~~85-2-102(2)(a)~~ 85-2-102.

(3) When a proposal is made, the department shall fix a time and place for a hearing, which time may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) The notice of hearing must be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water); upon the bureau; and upon the mayor or presiding officer

1 of the governing body of each incorporated municipality located in whole or in part within the proposed ground  
2 water area. The department may also serve notice upon any other person or state or federal agency that the  
3 department feels may be interested in or affected by the proposed designation or modification of a controlled  
4 ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy  
5 of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon  
6 depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication  
7 and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of  
8 the hearing to all interested persons."

9  
10 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

11 - END -