

SENATE BILL NO. 370  
INTRODUCED BY TASH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN APPROPRIATION RIGHT IS NOT  
5 ABANDONED IF AN APPROPRIATOR CEASES TO USE ALL OR PART OF AN APPROPRIATION RIGHT TO  
6 COMPLY WITH A CANDIDATE CONSERVATION AGREEMENT; AMENDING SECTION 85-2-404, MCA; AND  
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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11 **Section 1.** Section 85-2-404, MCA, is amended to read:

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

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

20 (3) If an appropriator ceases to use all or part of an appropriation right in compliance with a candidate  
21 conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to  
22 a beneficial use is contracted under a state or federal conservation set-aside program:

23 (a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent  
24 by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and  
25 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 contract may  
27 not create or may not be added to any previous period of nonuse to create a prima facie presumption of  
28 abandonment.

29 (4) The lease of an existing right pursuant to 85-2-436 or a temporary change in appropriation right  
30 pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used

1 to establish an abandonment of any part of the right.

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

4 **85-2-404. (Effective July 1, 2009) Abandonment of appropriation right.** (1) If an appropriator ceases  
5 to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the  
6 appropriator ceases using the appropriation right according to its terms and conditions with the intention of not  
7 complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and  
8 must immediately expire.

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

12 (3) If an appropriator ceases to use all or part of an appropriation right in compliance with a candidate  
13 conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to  
14 a beneficial use is contracted under a state or federal conservation set-aside program:

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

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

21 (4) A temporary change in appropriation right pursuant to 85-2-407 or 85-2-408 does not constitute an  
22 abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

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

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

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