



AN ACT GENERALLY REVISING WATER RIGHT ENFORCEMENT LAWS; ALLOWING FOR THE LIMITED APPOINTMENT OF WATER MASTERS AS SPECIAL MASTERS IN DISTRICT COURT PROCEEDINGS; REQUIRING THAT PROTECTION OF PRIOR APPROPRIATORS BE GIVEN PRIORITY IN JUDICIAL ENFORCEMENT CONSIDERATIONS; MAKING THE PURSUIT OF VOLUNTARY COMPLIANCE OPTIONAL; ELIMINATING CERTAIN CRIMINAL PENALTIES; ESTABLISHING A WATER RIGHT ENFORCEMENT PROGRAM AND A WATER RIGHT ENFORCEMENT ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 3-7-311, 17-7-502, 85-2-114, AND 85-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 3-7-311, MCA, is amended to read:

**"3-7-311. Duties of water masters.** (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

(4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief water judge."

**Section 2.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; section 5; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

**Section 3.** Section 85-2-114, MCA, is amended to read:

**"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may, ~~after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4),~~ petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may prosecute under 85-2-122(1) bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(2) 85-2-122(1) without being requested to do so by the department. The attorney general and a county attorney are subject to the voluntary compliance provisions of subsection (4).

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney

general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

~~(4)(7) The~~ After considering the provisions of subsection (6), the department shall ~~may~~ attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). ~~The attempts~~ An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days."

**Section 4.** Section 85-2-122, MCA, is amended to read:

**"85-2-122. Penalties.** ~~(1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the department is guilty of a misdemeanor.~~

~~(2)(1)~~ (1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate violation.

~~(3)(a)(2)~~ (2) Except as provided in subsection ~~(3)(b)~~ (3), fines collected by the department or a district court under subsection ~~(2)~~ (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

~~(b)(3)~~ (3) If a fine is collected by an independent action brought by:

(a) the county attorney, the fine must be deposited in the general fund of the county; or

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in [section 5] and must be used to enforce the provisions of 85-2-114."

**Section 5. Water right enforcement account -- statutory appropriation.** (1) There is a water right enforcement account in the state special revenue fund.

(2) Fines collected pursuant to 85-2-122(3)(b) must be deposited in the water right enforcement account.

(3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to enforce the provisions of 85-2-114.

**Section 6. Water right enforcement program.** There is a water right enforcement program in the

department of justice. The program staff may enforce the provisions of 85-2-114. The program is under the supervision and control of the attorney general.

**Section 7. Codification instruction.** [Sections 5 and 6] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 5 and 6].

**Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 0039, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

HOUSE BILL NO. 39  
INTRODUCED BY J. COHENOUR  
BY REQUEST OF THE WATER POLICY COMMITTEE

AN ACT GENERALLY REVISING WATER RIGHT ENFORCEMENT LAWS; ALLOWING FOR THE LIMITED APPOINTMENT OF WATER MASTERS AS SPECIAL MASTERS IN DISTRICT COURT PROCEEDINGS; REQUIRING THAT PROTECTION OF PRIOR APPROPRIATORS BE GIVEN PRIORITY IN JUDICIAL ENFORCEMENT CONSIDERATIONS; MAKING THE PURSUIT OF VOLUNTARY COMPLIANCE OPTIONAL; ELIMINATING CERTAIN CRIMINAL PENALTIES; ESTABLISHING A WATER RIGHT ENFORCEMENT PROGRAM AND A WATER RIGHT ENFORCEMENT ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 3-7-311, 17-7-502, 85-2-114, AND 85-2-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.