

HOUSE BILL NO. 275

INTRODUCED BY R. HAMILTON

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A STATEMENT OF PURPOSE AND FINDINGS FOR A DECLARATION OF EMERGENCY STREAMFLOW; CLASSIFYING AN EMERGENCY STREAMFLOW AS AN EMERGENCY APPROPRIATION ENFORCEABLE BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTION 85-2-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Statement of purpose -- findings. (1) The purposes of [sections 1 through 3] are to:

(a) ensure that the public trust doctrine is upheld in Montana and that the waters of the state are reserved for public use; and

(b) maintain the constitutional right to a clean and healthful environment, which includes minimum streamflows for healthy fisheries and water quality.

(2) The legislature finds that:

(a) all waters of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law;

(b) a use of water by the department for instream flow to protect or maintain streamflows to benefit the fishery resource is a beneficial use as provided by law;

(c) the state supreme court has ruled that:

(i) while any person is permitted to appropriate water for a useful purpose, it must be used with some regard for the rights of the public;

(ii) the state has inherent power to enact reasonable legislation for the health, safety, welfare, or morals of the public, even though the legislation is an infringement of individual rights; and

(iii) the police power of the state, which enables the state to pass laws for the health, safety, and general welfare of the people, must be reasonably adapted to its purpose and may injure or impair property rights only to the extent reasonably necessary to preserve the public welfare;

1 (d) to fulfill the purposes in subsection (1), the state shall exercise its power to maintain minimum
2 streamflows in emergency situations; and

3 (e) the declaration of an emergency streamflow is not a taking of a property right. The public trust doctrine
4 takes precedence over water rights.

5
6 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 3], "emergency streamflow"
7 means up to 25% of the average annual flow of record on gauged streams. It does not apply to ungauged
8 streams.

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10 **NEW SECTION. Section 3. Emergency streamflow -- declaration -- enforcement.** (1) The
11 department may declare the need for an emergency streamflow and curtail water use to maintain streamflows
12 in accordance with the purposes in [section 1].

13 (2) Upon declaration of an emergency streamflow, the department shall order the immediate curtailment
14 of water use starting with the most junior water appropriator and proceed until the department determines the
15 amount of emergency streamflow is met.

16
17 **Section 4.** Section 85-2-113, MCA, is amended to read:

18 **"85-2-113. Department powers and duties.** (1) The department may prescribe fees or service charges
19 for any public service rendered by the department under this chapter, including fees for the filing of applications
20 or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings
21 conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and
22 completed permits, and for all change approvals. There may not be fees for any action taken by the department
23 at the request of the water judge or for the issuance of certificates of existing rights.

24 (2) The department may adopt rules necessary to implement and carry out the purposes and provisions
25 of this chapter. These rules may include but are not limited to rules to:

26 (a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under
27 this chapter to begin appropriating water immediately, pending final approval or denial by the department of the
28 application for a regular permit;

29 (b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and
30 measuring devices, except that the department may not require a meter on a water well outside of a controlled

1 ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in
2 excess of the limitation contained in 85-2-306;

3 (c) require the owner or operator of appropriation facilities to report to the department the readings of
4 measuring devices at reasonable intervals and to file reports on appropriations; and

5 (d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution
6 of ground water.

7 (3) The department shall adopt rules providing for and governing temporary emergency appropriations,
8 without prior application for a permit, that are necessary to protect lives or property or to maintain streamflow
9 pursuant to a declaration issued under [section 3].

10 (4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on
11 a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150
12 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation
13 of the watercourse or portions of the watercourse as chronically dewatered, except that when the department
14 specifically finds that the installation of measuring devices along the entire watercourse or portions of the
15 watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

16 (b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method
17 used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized
18 methods of flow measurement, as determined by the department, are in compliance with subsection (4)."

19
20 **NEW SECTION. Section 5. Notification to tribal governments.** The secretary of state shall send a
21 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
22 Chippewa tribe.

23
24 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified
25 as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [sections 1 through 3].

26
27 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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