

SENATE BILL NO. 93

INTRODUCED BY L. JENT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR GROUND WATER APPROPRIATION IN CLOSED BASINS; REQUIRING MITIGATION FOR NET DEPLETION TO SURFACE WATER; AMENDING SECTIONS 75-5-410, 85-2-360, 85-2-362, AND 85-2-370, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-5-410, MCA, is amended to read:

"75-5-410. Water quality of return flows and discharges associated with aquifer recharge plan -- minimum requirements. (1) A person who proposes to use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to 85-2-362 or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset ~~adverse effects resulting from~~ net depletion of surface water through an aquifer recharge plan pursuant to 85-2-362 shall obtain a current permit pursuant to this chapter.

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

~~(4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.~~

~~(5)~~(4) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose

1 of aquifer recharge or for an aquifer storage and recovery project."

2

3 **Section 2.** Section 85-2-360, MCA, is amended to read:

4 **"85-2-360. Ground water appropriation right in closed basins.** (1) An application for a ground water
5 appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or
6 administratively closed pursuant to 85-2-319 must be accompanied, pursuant to 85-2-361, by a hydrogeologic
7 assessment ~~that has been conducted pursuant to 85-2-361 to predict whether the proposed appropriation right~~
8 ~~will result in a~~ of net depletion of surface water. The application also and must be accompanied by a an aquifer
9 recharge or mitigation plan as provided in 85-2-362; ~~if necessary.~~

10 (2) Ground water applications for nonconsumptive uses are exempt from the requirements in subsection
11 (1), and the department shall proceed under the criteria in 85-2-311.

12 ~~(2) If the hydrogeologic assessment conducted pursuant to 85-2-361 predicts that the proposed~~
13 ~~appropriation right will not result in a net depletion of surface water, the department shall proceed under the~~
14 ~~criteria provided in 85-2-311.~~

15 ~~———(3) (a) If the hydrogeologic assessment predicts that the proposed appropriation right will result in a net~~
16 ~~depletion of surface water, the applicant shall analyze whether the net depletion results in an adverse effect on~~
17 ~~a prior appropriator. If the applicant provides a correct and complete application, the department shall proceed~~
18 ~~to process the application as provided in 85-2-363.~~

19 ~~(b)~~(3) If the applicant has used the water for the purpose of conducting the hydrogeologic assessment,
20 the applicant shall terminate the use of the water. Failure to terminate use of the water must result in a fine of not
21 more than \$1,000 for each day of the violation.

22 (4) If the hydrogeologic assessment predicts that there will be net depletion ~~as provided in subsection~~
23 ~~(3)(a)~~, the department may proceed to process the application pursuant to 85-2-363 if, in addition to other
24 applicable criteria, the applicant complies with 85-2-362.

25 ~~(5) For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that~~
26 ~~an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of~~
27 ~~net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on~~
28 ~~a prior appropriator as the result of a new appropriation right is a determination that must be made by the~~
29 ~~department based on the amount, location, and duration of the amount of net depletion that causes the adverse~~
30 ~~effect relative to the historic beneficial use of the appropriation right that may be adversely affected.~~

1 ~~(6)~~(5) The priority date for an appropriation right that is granted to an entity whose permit application was
 2 returned after April 11, 2006, and before May 3, 2007, because of the department's interpretation of a court
 3 decision is the date of the initial application to the department."
 4

5 **Section 3.** Section 85-2-362, MCA, is amended to read:

6 **"85-2-362. Aquifer recharge or mitigation plans in closed basins -- minimum requirements.** (1) An
 7 applicant whose hydrogeologic assessment conducted pursuant to 85-2-361 predicts that there will be a net
 8 depletion of surface water shall offset the net depletion ~~that results in the adverse effect~~ through a mitigation plan
 9 or an aquifer recharge plan.

10 (2) A mitigation plan must include:

- 11 (a) where and how the water in the plan will be put to beneficial use;
- 12 (b) ~~when and~~ where, generally, water reallocated through exchange or substitution will be required;
- 13 (c) the amount of water reallocated through exchange or substitution that is required;
- 14 (d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;
- 15 (e) evidence that an application for a change in appropriation right, if necessary, has been submitted;
- 16 (f) evidence of water availability; and
- 17 (g) evidence of how the mitigation plan will offset the required amount and general timing of net depletion
 18 of surface water ~~in a manner that will offset an adverse effect on a prior appropriator~~ during periods when existing
 19 appropriators within the potentially affected area do not receive their full surface water appropriations.

20 (3) An aquifer recharge plan must include:

- 21 (a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75,
 22 chapter 5, and pursuant to 75-5-410 and 85-2-364;
- 23 (b) where and how the water in the plan will be put to beneficial use;
- 24 (c) ~~when and~~ where, generally, water reallocated through exchange or substitution will be required;
- 25 (d) the amount of water reallocated through exchange or substitution that is required;
- 26 (e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be
 27 operated;
- 28 (f) evidence that an application for a change in appropriation right, if necessary, has been submitted;
- 29 (g) a description of the process by which water will be reintroduced to the aquifer;
- 30 (h) evidence of water availability; and

1 (i) evidence of how the aquifer recharge plan will offset the required amount and general timing of net
 2 depletion of surface water ~~in a manner that will offset any adverse effect on a prior appropriator during periods~~
 3 ~~when existing appropriators within the potentially affected area do not receive their full surface water~~
 4 ~~appropriations.~~

5 (4) ~~The department may not require an applicant, through a mitigation plan or an aquifer recharge plan,~~
 6 ~~to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by~~
 7 ~~the net depletion.~~

8 (5) (4) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net
 9 depletion of surface water ~~that results in an adverse effect on a prior appropriator~~ must be issued as a conditional
 10 permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation
 11 right is exercised."
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13 **Section 4.** Section 85-2-370, MCA, is amended to read:

14 "**85-2-370. Rulemaking.** The department may adopt rules to implement the provisions of 75-5-410,
 15 85-2-360 through 85-2-364, and 85-2-368. The rules must be oriented toward the protection of existing
 16 appropriation rights ~~from adverse effects from net depletions caused by new appropriation rights or changes in~~
 17 ~~appropriation rights~~ in closed basins and must be consistent with and not exceed the requirements of 75-5-410,
 18 85-2-360 through 85-2-364, and 85-2-368."
 19

20 NEW SECTION. **Section 5. Saving clause.** [This act] does not affect rights and duties that matured,
 21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
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23 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.
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