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AN ACT AMENDING THE CANAL PRIVATIZATION PROGRAM TO INCLUDE THE LEWISTOWN DITCH; AMENDING SECTION 85)1)211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 85)1)211, MCA, is amended to read:

1)211. Management of property water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and ~~enter into contracts and agreements and do those things which~~ that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which that will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs thereto to the works, and which that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall must provide that, in the event of a failure or default in the payment of moneys money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any a remedy provided by the contract or by law for the recovery of moneys money due or which that may become due under the contract.

(5) Subject to the approval of the board under 85)1)202, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights of way, easements, properties, or interests or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom without regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination shall must be made by the department as to the market value of the rights of way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise

disposed of. The department's determination of market value shall must consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

- (i) Columbus canal;
- (ii) Delphia Melstone
- canals;
- (iii) Hysham pumping canals;
- (iv) Lewistown ditch;
- (v) Livingston ditch;
- (vi) Paradise canal;
- (vii) Park Branch canal;
- (viii) Sidney pumping
- canals;
- (ix) South Side canal;
- (x) Vigilante canal, and
- (xi) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85)6)109(5) must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1)year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1)year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection the department considers necessary of the canal project, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section coeective date. [This act] is effective on passage and approval.

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Senate.

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I hereby certify that the
within bill originated in _____ the
Secretary of the Senate _____

this _____ day _____ President of the Senate _____ of _____ Signed
CC _____ 1993.

_____ day _____ Speaker of the House _____ Signed this
_____ of _____ 1993.

HB 0814/enr

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AN ACT CLARIFYING THE LAW PROVIDING FOR THE DISPOSITION OF STATE)OWNED WATER PROJECTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ESTABLISHING A DATE FOR THE DEPARTMENT TO ATTEMPT TO DISPOSE OF ITS CANAL PROJECTS; INCREASING THE PERCENTAGE OF AFFECTED WATER USERS REQUIRED TO VETO A DEPARTMENT DECISION TO DISPOSE OF A PROJECT; AMENDING SECTIONS 85)1)211 AND 85)6)109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

SectionooSection 85)1)211, MCA, is amended to read:

)) 1) 211. Management of property)) water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under such general rules and upon such terms, limitations, and conditions as it prescribes.

(2)The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3)This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that, in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all

obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(5) Subject to the approval of the board under 85)1)202, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights)of)way, easements, properties, or interests or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom without regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination shall be made by the department as to the market value of the rights)of)way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value shall consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

- (i) Columbus canal;
- (ii) Delphia)Melstone canals;
- (iii) Hysham pumping canals;
- (iv) Livingston ditch;
- (v) Florence canal;
- (vi) Paradise canal;
- (vii) Park Branch canal;
- (viii) Sidney pumping canals;
- (ix) South Side canal;
- (x) Vigilante canal; and
- (xi) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85)6)109(5) must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1)year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1)year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection the department considers necessary of the canal project, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 85)6)109, MCA, is amended to read:

6)109. Operation of projects with water users' association. (1) As used in this section, "department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33, and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of \$25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association shall be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the board of natural resources and conservation as provided for in 85)1)212. The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in the district court in any county where all or part of the project works is located or in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project which involves a water users'

association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project which involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition which is signed by stockholders of the association representing 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association representing 15% 30% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature."

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

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CC I hereby certify that the _____
_____ within bill originated in _____ the
House.

CC _____
_____ Chief Clerk _____

CC _____
_____ Speaker of the House _____ Signed this
_____ day _____ of _____ 1991.

CC _____
_____ President of the Senate _____ Signed
this _____ day _____ of _____ 1991.