

1 HOUSE BILL NO. 568

2 INTRODUCED BY B. WAGNER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LAWS RELATED TO THE DISPOSITION OF
5 STATE-OWNED WATER PROJECTS BY THE DEPARTMENT OF NATURAL RESOURCES AND
6 CONSERVATION; DIRECTING THE DEPARTMENT TO ATTEMPT TO DISPOSE OF THE CATARACT DAM
7 PROJECT; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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9 WHEREAS, the Cataract Creek Dam water project is a state water project operated by the Department
10 of Natural Resources and Conservation as successor to the project originally constructed by and through the
11 Montana State Water Conservation Board; and

12 WHEREAS, the State of Montana in the 1990s authorized the Department of Natural Resources and
13 Conservation to transfer and dispose of components of various state water projects throughout Montana to water
14 user associations interested in taking over the components of the projects; and

15 WHEREAS, the Cataract Creek Dam project was constructed in the 1950s by the State Water
16 Conservation Board to supply water to irrigators below the dam and resulted in the Cataract Water Users
17 Association being formed to contract with the Department to market and distribute the project's water; and

18 WHEREAS, the project has never been identified in previous disposal efforts as a project that could be
19 disposed of to the users of the system; and

20 WHEREAS, the Cataract Water Users Association has expressed interest in taking over the project from
21 the Department, if economically feasible, to own and operate the system, to make necessary repairs and
22 improvements to the project so that water from the system could be used for the benefit of the users, and to
23 address shortcomings with the project that have not been addressed by the state over the years during which
24 the project has been owned by the Department or its predecessor.

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

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28 **Section 1.** Section 85-1-211, MCA, is amended to read:

29 **"85-1-211. Management of property -- water contracts.** (1) Subject to this chapter, the department
30 may fix and establish the prices, rates, and charges at which the resources and facilities made available under

1 this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in
2 its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this
3 chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

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

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

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

17 (5) (a) The department may sell, transfer to water users' associations, abandon, lease or rent, or
18 otherwise dispose of any rights-of-way, easements, properties, or interests or otherwise take and receive the
19 income or profit and revenue from property without regard to other laws providing for the disposition of state
20 property. Except for a water project for which no water management contracts are managed by the department
21 and for which no money is collected by the department, prior to the department's sale, transfer, or other
22 disposition, a determination must be made by the department as to the market value of the rights-of-way,
23 easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The
24 department's determination of market value must consider all liens, encumbrances, and other limitations on the
25 project properties or interests. In the disposal of a project, the department shall comply with the provisions of
26 85-6-109 and shall give purchase preference to existing water users' associations operating and maintaining the
27 project proposed for disposal.

28 (b) Subject to the provisions of subsection (5)(a) the department shall attempt to dispose of the Cataract
29 Creek Dam project by June 30, 2013.

30 (6) An employee or agent of the department authorized by the director may enter upon any land to carry

1 out the purposes of this section, including but not limited to entry to make an inspection of the project that the
2 department considers necessary, entry to salvage or remove project property, and entry to make physical
3 alterations to project property. The department shall give reasonable notice to the landowner of its intention to
4 enter upon the land. The department is responsible for actual damages done to property."

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

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