

SENATE BILL NO. 403

INTRODUCED BY B. HAMLETT

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A BILL FOR AN ACT ENTITLED: "AN ACT DECREASING THE VOLUME OF WATER ALLOWED TO BE APPROPRIATED BY MEANS OF A WELL OR DEVELOPED SPRING WITHOUT A PERMIT; ESTABLISHING A WATER INVESTIGATION FEE ON EXEMPT WELLS; REQUIRING THAT THE FEE BE SPENT FOR GROUND WATER INVESTIGATIONS AND STREAM GAUGES; AND AMENDING SECTIONS 85-2-306 AND 85-2-318, MCA."

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

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.



1 (3) (a) ~~(i) Except as provided in subsection (3)(a)(ii), outside~~ Outside the boundaries of a controlled
 2 ground water area, a permit is not required before appropriating ground water by means of a well or developed
 3 spring:

4 ~~(A) with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year,~~
 5 ~~except that a combined appropriation from the same source from two or more wells or developed springs~~
 6 ~~exceeding this limitation requires a permit; or~~

7 ~~(B)(i)~~ when the appropriation is made by a local governmental fire agency organized under Title 7,
 8 chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed
 9 storage;

10 (ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal
 11 heating or cooling exchange applications, all of the water extracted is returned without delay to the same source
 12 aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically
 13 connected surface waters is more than twice the distance between the extraction well and the injection well;

14 (iii) when the appropriation is outside a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336,
 15 85-2-341, 85-2-343, or 85-2-344, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except
 16 that a combined appropriation from the same source by two or more wells or developed springs exceeding this
 17 limitation requires a permit; or

18 (iv) when the appropriation is within a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336,
 19 85-2-341, 85-2-343, or 85-2-344, is 35 gallons a minute or less, and does not exceed 3 acre-feet a year, except
 20 that a combined appropriation from the same source by two or more wells or developed springs exceeding this
 21 limitation requires a permit.

22 ~~(ii) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating~~
 23 ~~ground water by means of a well or developed spring with a maximum appropriation of 350 gallons a minute or~~
 24 ~~less for use in nonconsumptive geothermal heating or cooling exchange applications if all of the water extracted~~
 25 ~~is returned without delay to the same source aquifer and if the distance between the extraction well and both the~~
 26 ~~nearest existing well and the hydraulically connected surface waters is more than twice the distance between the~~
 27 ~~extraction well and the injection well.~~

28 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water
 29 for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the
 30 department through its offices.

1 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate
2 of water right, return a defective notice for correction or completion, together with the reasons for returning it. A
3 notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the
4 department within 30 days of notification of defects or within a further time as the department may allow, not to
5 exceed 6 months.

6 (iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation
7 is the date of refileing a correct and complete notice with the department.

8 (c) A certificate of water right may not be issued until a correct and complete notice has been filed with
9 the department, including proof of landowner notification or a written federal special use authorization as
10 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
11 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
12 of priority of the right.

13 (4) An appropriator of ground water by means of a well or developed spring first put to beneficial use
14 between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force
15 prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
16 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
17 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing
18 of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

19 (5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the
20 department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that
21 for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue
22 a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the
23 adjudication proceedings provided for in 85-2-236.

24 (6) A permit is not required before constructing an impoundment or pit and appropriating water for use
25 by livestock if:

26 (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

27 (b) the appropriation is less than 30 acre-feet a year;

28 (c) the appropriation is from a source other than a perennial flowing stream; and

29 (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned
30 or under the control of the applicant and that is 40 acres or larger.

1 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit
 2 as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a
 3 stock water provisional permit, the department shall automatically issue a provisional permit. If the department
 4 determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may
 5 revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit
 6 subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other
 7 appropriators.

8 (b) If the impoundment or pit is on national forest system lands, an application is not correct and
 9 complete under this section until the applicant has submitted proof of any written special use authorization
 10 required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
 11 impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

12 (8) A person may also appropriate water without applying for or prior to receiving a permit under rules
 13 adopted by the department under 85-2-113."
 14

15 **NEW SECTION. Section 2. Water investigations fee -- account.** (1) In addition to the application fee,
 16 the department shall assess a \$50 fee for each certificate filed pursuant to 85-2-306.

17 (2) There is a ground water investigations special revenue account within the state special revenue fund
 18 established in 17-2-102.

19 (3) For each fee collected pursuant to subsection (1):

20 (a) \$40 must be deposited in the ground water investigations state special revenue account established
 21 in subsection (2); and

22 (b) \$10 must be deposited in the water right appropriation account established in 85-2-318.

23 (4) Money in the ground water investigations special revenue account is available to the Montana bureau
 24 of mines and geology by appropriation and must be used to pay costs associated with the ground water
 25 investigation program established in 85-2-525.

26

27 **Section 3.** Section 85-2-318, MCA, is amended to read:

28 **"85-2-318. Water right appropriation account.** (1) There is established a water right appropriation
 29 account in the state special revenue fund ~~of the state treasury~~ established in 17-2-102. ~~##~~ Except as provided
 30 in subsection (2), all fees collected as provided in 85-2-113 ~~shall~~ must be deposited in the account to help pay

1 the expenses incurred by the department for administering and enforcing ~~this part, part 1, part 4, and part 5 of~~
2 ~~chapter 2, Title 85, and Title 37, chapter 43, Title 85, chapter 2, parts 1, 4, and 5, and this part.~~

3 (2) Fees deposited in the account pursuant to [section 2] must be spent by the department to purchase
4 and maintain stream gauges."

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6 **NEW SECTION. Section 4. Codification instruction.** [Section 2] is intended to be codified as an
7 integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 2].

8 - END -