

1 HOUSE BILL NO. 37

2 INTRODUCED BY B. MCCHESENEY

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TEMPORARY CHANGE OF USE OF A WATER
6 RIGHT THROUGH A LEASE; ESTABLISHING REQUIREMENTS FOR A TEMPORARY LEASE; REQUIRING
7 PUBLIC NOTICE; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE."

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

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11 NEW SECTION. **Section 1. Temporary lease of appropriation right -- requirements -- rulemaking.**

12 (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are
13 not subject to the provisions of 85-2-402, 85-2-407, ~~or 85-2-408,~~ OR 85-2-436. After obtaining department
14 approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

15 (2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For
16 an irrigation right, the consumptive volume may not exceed 1 acre-foot per acre irrigated. The department shall
17 determine the consumptive volume limits for other uses by rule.

18 (3) (a) Each appropriation right leased pursuant to this section:

19 (i) must have been used within the ~~10~~ 5 years prior to the application date;

20 (ii) may be leased only during the period of diversion for the appropriation right; and

21 (iii) may not be leased for more than 2 years one time during any consecutive 10-year period.

22 (b) The volume of water leased may not exceed 180 acre-feet per year.

23 (c) THE POINT OF DIVERSION FOR THE APPROPRIATION RIGHT MAY NOT BE CHANGED.

24 (4) The use of any appropriation rights on the place of use associated with a leased appropriation right
25 is forbidden during the term of the lease.

26 (5) Storage may not be added to the leased appropriation right at the point of diversion or the original
27 place of use.

28 (6) This section does not apply to changes in an appropriation right that would result in leased water
29 being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

30 (7) Water leased pursuant to this section must be measured at the point of diversion by a meter

1 approved by the department. The appropriator shall report the amount of water measured at the end of the year
2 in which the lease occurred or upon request of the department.

3 (8) An applicant proposing to lease an appropriation right pursuant to this section shall submit a correct
4 and complete application on a form provided by the department and a fee as established by rule. The application
5 must include:

6 (a) the name and address of each lessee;

7 (b) the name of all owners of each appropriation right;

8 (c) the number of each appropriation right;

9 (d) the proposed use and the place of use for the leased water;

10 (e) the source of water to be appropriated;

11 (f) the start and end dates of the proposed lease;

12 (g) the proposed diversion flow rate and volume of water to be used during the lease;

13 (h) evidence that the appropriation right has been used within the last 10 years;

14 (i) a description of how the existing use of the appropriation rights would cease at the place of use during
15 the lease period, including the number and location of acres to be removed from irrigation, if applicable; and

16 (j) an analysis of potential adverse effects and description of planned actions to mitigate potential
17 adverse effects.

18 (9) Within 30 days of receiving the application, the department shall approve or deny the application. An
19 approved application must be correct and complete and meet the requirements of this section. The department
20 may approve an application with conditions.

21 (10) After approval, the department shall provide notice of the proposed lease that includes the
22 information in subsections (8)(a) through (8)(g). The department shall:

23 (a) mail individual notice to potentially affected appropriators identified by the department in the area of
24 the point of diversion; and

25 (b) post the notice on the department's website.

26 (11) (a) For 60 days from the date that notice is mailed pursuant to subsection (10), the department shall
27 accept correct and complete objections to the proposed lease from any person whose property, water rights, or
28 interests would be adversely affected by the proposed appropriation. The objection must be made on a form
29 provided by the department.

30 (b) The department shall determine if an objection is valid. A valid objection contains facts indicating that

1 the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the
 2 department determines that an objection is valid, the approval for the use of the appropriation right under the
 3 lease is canceled and no water may be used pursuant to the lease.

4 (c) The owner of an appropriation right whose approval is canceled under subsection (11)(b) may
 5 request a hearing on the objection pursuant to 2-4-604 within 15 days of notice of the cancellation. ~~If the~~
 6 ~~department finds that the rights of other appropriators would not be adversely affected by the lease, the~~
 7 ~~department shall issue an order reinstating approval for the use of the appropriation right under the lease. THE~~
 8 DEPARTMENT SHALL ISSUE AN ORDER REINSTATING APPROVAL FOR THE USE OF THE APPROPRIATION RIGHT UNDER THE
 9 LEASE IF THE APPLICANT PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE WATER RIGHTS OF OTHER
 10 APPROPRIATORS WILL NOT BE ADVERSELY AFFECTED BY THE LEASE.

11 (12) Leased water may not be put to use until a final determination is made pursuant to subsection (11).
 12 The lessee shall provide the department with a copy of the executed lease agreement before the leased water
 13 is put to use.

14 (13) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection
 15 does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an
 16 appropriation right who leased the water or from a lessee.

17 (14) The department shall adopt rules to implement this section. The rules must include definitions of
 18 consumptive uses and criteria for determining if an appropriation right has been used in the 10 years prior to the
 19 temporary lease application.

20 (15) THE DEPARTMENT SHALL REPORT ANNUALLY TO THE WATER POLICY INTERIM COMMITTEE PROVIDED FOR IN
 21 5-5-231. THE REPORT MUST INCLUDE THE NUMBER OF LEASES, THE AMOUNT OF WATER LEASED, AND THE NUMBER OF
 22 IRRIGATED ACRES TAKEN OUT OF PRODUCTION.

23
 24 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
 25 integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

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 27 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2013.

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