

## 1 SENATE BILL NO. 203

2 INTRODUCED BY B. HAMLETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE EXCEPTIONS TO PERMIT REQUIREMENTS FOR  
5 GROUND WATER DEVELOPMENTS; ESTABLISHING CRITERIA FOR EXEMPTED USES BY NUMBER OF  
6 USERS; DEFINING THE TERM "PROJECT"; AMENDING SECTION 85-2-306, MCA; AND PROVIDING AN  
7 IMMEDIATE EFFECTIVE DATE."

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

10

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

12 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground  
13 water may be appropriated only by a person who has a possessory interest in the property where the water is  
14 to be put to beneficial use and exclusive property rights in the ground water development works.

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

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

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

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

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

30 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before

1 appropriating ground water by means of a well or developed spring:

2 (i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter  
3 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

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

8 (iii) when the appropriation is outside a stream depletion zone, ~~is 35 gallons a minute or less, and does~~  
9 ~~not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells~~  
10 ~~or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or and the conditions~~  
11 in subsection (3)(b) are met;

12 (iv) when the appropriation is within a stream depletion zone, ~~is 20 gallons a minute or less, and does~~  
13 ~~not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells~~  
14 ~~or developed springs exceeding this limitation requires a permit and the conditions in subsection (3)(b) are met,~~  
15 except that:

16 (A) the individual and the shared uses must be at a flow rate of 20 gallons a minute or less with an annual  
17 volume of 2 acre-feet or less; and

18 (B) the project use must be at 35 gallons a minute or less with an annual volume of 7 acre-feet or less.

19 (b) For an appropriation under subsections (3)(a)(iii) and (3)(a)(iv):

20 (i) an individual use:

21 (A) must be at a flow rate of 35 gallons a minute or less with an annual volume of 2.4 acre-feet or less;

22 (B) must be diverted from a single well or developed spring that is physically connected to only one home  
23 or business;

24 (C) may be used to irrigate 0.7 acres or less; and

25 (D) may be used to water stock, but only through use of a stock tank;

26 (ii) a shared use:

27 (A) must be at a flow rate of 35 gallons a minute or less with an annual volume of 2.4 acre-feet or less;

28 (B) must be diverted from a single well or developed spring that is physically connected to two or three  
29 homes or businesses;

30 (C) may be used to irrigate 0.75 acres or less; and

- 1           (D) may be used to water stock, but only through use of a stock tank; and  
2           (iii) a project use:  
3           (A) must be at a flow rate of 35 gallons a minute or less with an annual volume of 10 acre-feet or less;  
4           (B) may be diverted from multiple wells or developed springs within the development, except that no  
5 home or business may be served by more than one well or developed spring;  
6           (C) may be used to irrigate 0.25 acres or less for each home or business in the development; and  
7           (D) may be used to water stock, but only through use of a stock tank.
- 8           ~~(b)~~(c) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground  
9 water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided  
10 by the department through its offices.
- 11           (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate  
12 of water right, return a defective notice for correction or completion, together with the reasons for returning it. A  
13 notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the  
14 department within 30 days of notification of defects or within a further time as the department may allow, not to  
15 exceed 6 months.
- 16           (iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation  
17 is the date of refiled a correct and complete notice with the department.
- 18           ~~(e)~~(d) A certificate of water right may not be issued until a correct and complete notice has been filed with  
19 the department, including proof of landowner notification or a written federal special use authorization as  
20 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department  
21 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date  
22 of priority of the right.
- 23           (4) An appropriator of ground water by means of a well or developed spring first put to beneficial use  
24 between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force  
25 prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in  
26 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is  
27 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing  
28 of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.
- 29           (5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the  
30 department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that

1 for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue  
2 a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the  
3 adjudication proceedings provided for in 85-2-236.

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

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

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

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

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

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

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

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

24 (9) For the purposes of this section, "project" means contiguous or closely grouped parcels of land under  
25 the same or affiliated ownership, including but not limited to housing subdivisions or any combination of business  
26 and residential units."

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

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