

SENATE BILL NO. 58

INTRODUCED BY P. CONNELL

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REVISED NOTICE REQUIREMENTS FOR CERTAIN WATER RIGHTS APPLICATIONS OR CHANGES; AMENDING SECTIONS 85-2-307 AND 85-2-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 85-2-307, MCA, is amended to read:

**"85-2-307. Notice of application for permit or change in appropriation right.** (1) Upon receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website.

(2) (a) Within 120 days of the receipt of a correct and complete application for a permit or change in appropriation right, the department:

(i) may meet informally with the applicant, the persons listed in subsection (2)(d), and persons who may claim standing pursuant to 85-2-308 to discuss the application;

(ii) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(iii) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

(b) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice once in a newspaper of general circulation in the area of the source.

(c) If the preliminary determination proposes to deny an application, the process provided in 85-2-310 must be followed.

(d) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the



1 department, may be affected by the proposed appropriation;

2 (ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the  
3 records of the department, may be affected by the proposed appropriation; and

4 (iii) any public agency that has reserved waters in the source under 85-2-316.

5 (e) The department may, in its discretion, also serve notice upon any state agency or other person the  
6 department feels may be interested in or affected by the proposed appropriation.

7 (f) The department shall file in its records proof of service by affidavit of the publisher in the case of  
8 notice by publication and by its own affidavit in the case of service by mail.

9 (3) The notice must state that by a date set by the department, not less than 15 days or more than 60  
10 days after the date of publication, persons may file with the department written objections to the application.

11 ~~(4) The requirements of subsections (2) and (3) do not apply if the department finds, on the basis of~~  
12 ~~information reasonably available to it, that the appropriation as proposed in the application will not adversely affect~~  
13 ~~the rights of other persons."~~

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15 **Section 2.** Section 85-2-804, MCA, is amended to read:

16 **"85-2-804. Application -- notice -- objections -- hearing.** (1) An appropriator proposing to divert from  
17 the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated  
18 compact water within Montana shall file an application with the department. The application must state the name  
19 and address of the applicant and facts tending to show that:

20 (a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;

21 (b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

22 (c) the proposed means of diversion, construction, and operation are adequate;

23 (d) the diversion and ultimate use will not interfere unreasonably with other planned uses or  
24 developments for which a water right has been established or a permit has been issued or for which water has  
25 been reserved;

26 (e) the diversion and ultimate use of the water will not exceed the allocated share under the compact  
27 of any of the signatory states;

28 (f) the diversion and ultimate use of the water are in the public interest of Montana; and

29 (g) the applicant intends to comply with the laws of the signatory states to the compact.

30 (2) An appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under

1 the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming  
2 shall file an application with the department. The application must state the name and address of the applicant  
3 and facts tending to show that:

4 (a) the proposed means of diversion, construction, and operation are adequate;

5 (b) the diversion and ultimate use of the water will not exceed the allocated share under the compact  
6 of any of the signatory states; and

7 (c) the applicant intends to comply with the compact.

8 (3) Notice of the proposed diversion must be given by the department in the same manner as provided  
9 in 85-2-307~~(1) through (3)~~.

10 (4) An objection to an application must be filed by the date specified by the department in the notice.

11 (5) The objector to an application under subsection (1) shall state the objector's name and address and  
12 facts tending to show that:

13 (a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

14 (b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion  
15 or ultimate use of the water;

16 (c) the proposed means of diversion, construction, and operation are not adequate;

17 (d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or  
18 development for which the objector has a water right, a permit, or a reserved water right;

19 (e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any  
20 signatory state; or

21 (f) the diversion and ultimate use of the water are not in the public interest of Montana.

22 (6) The objector to an application under subsection (2) shall state the objector's name and address and  
23 facts tending to show that:

24 (a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion  
25 or ultimate use of the water;

26 (b) the proposed means of diversion, construction, and operation are not adequate; or

27 (c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any  
28 signatory state.

29 (7) If the department receives an objection to an application, it shall hold a hearing on the application  
30 within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be

1 made by certified mail upon the applicant and the objector.

2 (8) The hearing must be conducted under the contested case procedures of the Montana Administrative  
3 Procedure Act in Title 2, chapter 4, part 6."

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5 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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