

## 1 SENATE BILL NO. 82

2 INTRODUCED BY B. HAMLETT

3 BY REQUEST OF THE WATER POLICY COMMITTEE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT DELEGATING WATER-RELATED DUTIES FROM THE  
 6 ENVIRONMENTAL QUALITY COUNCIL TO THE WATER POLICY COMMITTEE; TRANSFERRING  
 7 ADMINISTRATIVE RULE REVIEW, DRAFT LEGISLATION REVIEW, PROGRAM EVALUATION, AND  
 8 MONITORING FUNCTIONS FROM THE ENVIRONMENTAL QUALITY COUNCIL TO THE WATER POLICY  
 9 COMMITTEE FOR ISSUES WHERE THE PRIMARY CONCERN IS THE QUALITY OR QUANTITY OF WATER;  
 10 TRANSFERRING VARIOUS REPORTING REQUIREMENTS FROM THE ENVIRONMENTAL QUALITY  
 11 COUNCIL TO THE WATER POLICY COMMITTEE; AMENDING SECTIONS 5-5-202, 5-5-231, 75-1-208,  
 12 75-1-324, 75-5-313, 75-5-703, 85-1-203, 85-1-621, 85-2-105, 85-2-281, 85-2-350, AND 85-2-436, MCA; AND  
 13 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
 17 **Section 1.** Section 5-5-202, MCA, is amended to read:

18 **"5-5-202. Interim committees.** (1) During an interim when the legislature is not in session, the  
 19 committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as  
 20 committees and may act in their respective areas of responsibility. The functions of the legislative council,  
 21 legislative audit committee, legislative finance committee, environmental quality council, ~~water policy committee,~~  
 22 and state-tribal relations committee are provided for in the statutes governing those committees.

23 (2) The following are the interim committees of the legislature:

- 24 (a) economic affairs committee;  
 25 (b) education and local government committee;  
 26 (c) children, families, health, and human services committee;  
 27 (d) law and justice committee;  
 28 (e) energy and telecommunications committee;  
 29 (f) revenue and transportation committee; ~~and~~  
 30 (g) state administration and veterans' affairs committee; and

1           (h) water policy committee.

2           (3) An interim committee or the environmental quality council may refer an issue to another committee  
3 that the referring committee determines to be more appropriate for the consideration of the issue. Upon the  
4 acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally  
5 within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee  
6 retains jurisdiction.

7           (4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject,  
8 the legislative council shall determine the most appropriate committee and assign the subject to that committee.  
9 If there is an entity that is attached to an agency for administrative purposes under the jurisdiction of an interim  
10 committee and another interim committee has a justification to seek jurisdiction and petitions the legislative  
11 council, the legislative council may assign that entity to the interim committee seeking jurisdiction unless  
12 otherwise provided by law."

13

14           **Section 2.** Section 5-5-231, MCA, is amended to read:

15           **"5-5-231. Water policy committee.** (1) There is a water policy committee. ~~Except as provided in~~  
16 ~~subsection (2), the committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214.~~  
17 The committee shall:

18           (a) determine which water policy issues it examines;

19           (b) conduct interim studies as assigned pursuant to 5-5-217;

20           (c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other  
21 interim committees to avoid duplication of efforts; ~~and~~

22           (d) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210;

23 and

24           (e) in accordance with 5-5-215, for issues where the primary concern is the quality or quantity of water,  
25 perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of  
26 an interim committee for the following executive branch agencies and the entities attached to the agencies for  
27 administrative purposes:

28           (i) department of environmental quality;

29           (ii) department of fish, wildlife, and parks; and

30           (iii) department of natural resources and conservation.

1 (2) At least two members of the committee must possess experience in agriculture."  
2

3 **Section 3.** Section 75-1-208, MCA, is amended to read:

4 **"75-1-208. Environmental review procedure.** (1) (a) Except as provided in 75-1-205(4) and subsection  
5 (1)(b) of this section, an agency shall comply with this section when completing any environmental review  
6 required under this part.

7 (b) To the extent that the requirements of this section are inconsistent with federal requirements, the  
8 requirements of this section do not apply to an environmental review that is being prepared jointly by a state  
9 agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an  
10 environmental review that must comply with the requirements of the National Environmental Policy Act.

11 ~~(2)(2)~~ (a) Except as provided in subsection (2)(b), a project sponsor may, after providing a 30-day  
12 notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues  
13 regarding the agency's environmental review of the project. The environmental quality council shall ensure that  
14 the appropriate agency personnel are available to answer questions.

15 (b) If the primary concern of the agency's environmental review of a project is the quality or quantity of  
16 water, a project sponsor may, after providing a 30-day notice, appear before the water policy committee  
17 established in 5-5-231 at any regularly scheduled meeting to discuss issues regarding the agency's  
18 environmental review of the project. The water policy committee shall ensure that the appropriate agency  
19 personnel are available to answer questions.

20 (3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the  
21 agency regarding an environmental review, the project sponsor may submit a written request to the agency  
22 director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow  
23 the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director,  
24 the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the  
25 remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency  
26 and the board to prepare for the meeting.

27 (4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental  
28 review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are  
29 provided by law. All time limits are measured from the date the agency receives a complete application. An  
30 agency has:

- 1 (i) 60 days to complete a public scoping process, if any;
- 2 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to  
3 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and
- 4 (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).
- 5 (b) The period of time between the request for a review by a board and the completion of a review by  
6 a board under 75-1-201(9) or subsection (10) of this section may not be included for the purposes of determining  
7 compliance with the time limits established for conducting an environmental review under this subsection or the  
8 time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231,  
9 82-4-337, and 82-4-432.
- 10 (5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that  
11 an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time,  
12 and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension,  
13 the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the  
14 extension.
- 15 (6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that  
16 the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate  
17 board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.
- 18 (7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review  
19 by the expiration of the original or extended time period, the agency may not withhold a permit or other authority  
20 to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval  
21 to act would result in the violation of a statutory or regulatory requirement.
- 22 (b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82,  
23 chapter 4, parts 1 and 2.
- 24 (8) Under this part, an agency may only request ~~that~~ information from the project sponsor that is relevant  
25 to the environmental review required under this part.
- 26 (9) An agency shall ensure that the notification for any public scoping process associated with an  
27 environmental review conducted by the agency is presented in an objective and neutral manner and that the  
28 notification does not speculate on the potential impacts of the project.
- 29 (10) An agency may not require the project sponsor to provide engineering designs in greater detail than  
30 that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate

1 board, if any, review an agency's request regarding the level of design detail information that the agency believes  
2 is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an  
3 advisory recommendation to the agency regarding the issue.

4 (11) An agency shall, when appropriate, evaluate the cumulative impacts of a proposed project. However,  
5 related future actions may only be considered when these actions are under concurrent consideration by any  
6 agency through preimpact statement studies, separate impact statement evaluations, or permit processing  
7 procedures."

8

9 **Section 4.** Section 75-1-324, MCA, is amended to read:

10 **"75-1-324. Duties of environmental quality council.** The environmental quality council shall:

11 (1) gather timely and authoritative information concerning the conditions and trends in the quality of the  
12 environment, both current and prospective, analyze and interpret the information for the purpose of determining  
13 whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set  
14 forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions  
15 and trends;

16 (2) review and appraise the various programs and activities of the state agencies, in the light of the policy  
17 set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are  
18 contributing to the achievement of the policy and make recommendations to the governor and the legislature with  
19 respect to the policy;

20 (3) develop and recommend to the governor and the legislature state policies to foster and promote the  
21 improvement of environmental quality to meet the conservation, social, economic, health, and other requirements  
22 and goals of the state;

23 (4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and  
24 environmental quality;

25 (5) document and define changes in the natural environment, including the plant and animal systems,  
26 and accumulate necessary data and other information for a continuing analysis of these changes or trends and  
27 an interpretation of their underlying causes;

28 (6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy  
29 and legislation as the legislature requests;

30 (7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation

1 might have environmental consequences and assist in preparation of reports for use by legislative committees,  
2 administrative agencies, and the public;

3 (8) consult with and assist legislators who are preparing environmental legislation to clarify any  
4 deficiencies or potential conflicts with an overall ecologic plan;

5 (9) review and evaluate operating programs in the environmental field in the several agencies to identify  
6 actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest  
7 legislation to remedy the situations; and

8 (10) except as provided in 5-5-231, perform the administrative rule review, draft legislation review,  
9 program evaluation, and monitoring functions of an interim committee for the following executive branch agencies  
10 and the entities attached to the agencies for administrative purposes:

11 (a) department of environmental quality;

12 (b) department of fish, wildlife, and parks; and

13 (c) department of natural resources and conservation."  
14

15 **Section 5.** Section 75-5-313, MCA, is amended to read:

16 **"75-5-313. Nutrient standards variances -- individual, general, and alternative.** (1) The department  
17 shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a discharge permit  
18 based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient  
19 standards is precluded due to economic impacts, limits of technology, or both.

20 (2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for  
21 individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards  
22 on public and private systems are equally and adequately addressed. In developing those guidelines, the  
23 department and the nutrient work group shall consider economic impacts appropriate for application within  
24 Montana, acknowledging that advanced treatment technologies for removing nutrients will result in significant and  
25 widespread economic impacts.

26 (b) The department shall consult with the nutrient work group prior to recommending base numeric  
27 nutrient standards to the board and shall continue to consult with the nutrient work group in implementing  
28 individual nutrient standards variances.

29 (3) The department shall review each application for an individual nutrient standards variance on a  
30 case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance

1 schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the individual  
2 nutrient standards variance.

3 (4) Individual nutrient standards variances approved by the department become effective and may be  
4 incorporated into a permit only after a public hearing and adoption by the department under the rulemaking  
5 procedures of Title 2, chapter 4, part 3.

6 (5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in  
7 substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements  
8 established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

9 (b) The department shall approve the use of a general nutrient standards variance for permittees with  
10 wastewater treatment facilities that discharge to surface water:

11 (i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the  
12 discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter,  
13 calculated as a monthly average during the period in which the base numeric nutrient standards apply;

14 (ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at  
15 a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a  
16 monthly average during the period in which the base numeric nutrient standards apply; or

17 (iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the  
18 performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

19 (6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b)  
20 are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

21 (b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

22 (7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with  
23 the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

24 (b) If more cost-effective and efficient treatment technologies are available, the concentration levels  
25 provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

26 (c) The updates become effective and may be incorporated into a permit only after a public hearing and  
27 adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

28 (8) An individual, general, or alternative nutrient standards variance may be established for a period not  
29 to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure  
30 that the justification for its adoption remains valid.

1 (9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall  
 2 evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze  
 3 cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial  
 4 investment in new infrastructure.

5 (b) The department may request that a permittee provide the results of an optimization study and nutrient  
 6 reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient  
 7 variance.

8 (10) (a) A permittee may request that the department provide an alternative nutrient standards variance  
 9 if the permittee demonstrates that achieving nutrient concentrations established for an individual or general  
 10 nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

11 (b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements  
 12 of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the  
 13 watershed continues to remain insignificant.

14 (11) The department shall encourage the use of alternative effluent management methods to reduce  
 15 instream nutrient loading, including reuse, recharge, land application, and trading.

16 (12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall  
 17 report to the ~~environmental quality council~~ water policy committee established in 5-5-231 by providing a summary  
 18 of the status of the base numeric nutrient standards, the nutrient standards variances, and the implementation  
 19 of those standards and variances, including estimated economic impacts.

20 (13) On or before September 1 of each year preceding the convening of a regular session of the  
 21 legislature, the department, in consultation with the nutrient work group, shall summarize the ~~previous two most~~  
 22 recent reports provided in under subsection (12) and submit to the ~~environmental quality council in accordance~~  
 23 with 5-11-210 water policy committee established in 5-5-231 this final summary in accordance with 5-11-210."  
 24

25 **Section 6.** Section 75-5-703, MCA, is amended to read:

26 **"75-5-703. Development and implementation of total maximum daily loads.** (1) The department  
 27 shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily  
 28 loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority  
 29 ranking established by the department under 75-5-702. Each TMDL must be established at a level that will  
 30 achieve compliance with applicable water quality standards and must include a reasonable margin of safety that

1 takes into account any lack of knowledge concerning the relationship between the TMDL and water quality  
2 standards. The department shall consider applicable guidance from the federal environmental protection agency,  
3 as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

4 (2) In establishing TMDLs under subsection (1), the department may establish waste load allocations  
5 for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may  
6 allow for effluent trading. The department shall, in consultation with local conservation districts and watershed  
7 advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing  
8 established practices and programs for nonpoint sources.

9 (3) The department shall establish a schedule that provides a reasonable timeframe for TMDL  
10 development for impaired and threatened water bodies that are on the most recent list prepared pursuant to  
11 75-5-702. On or before July 1 of each even-numbered year, the department shall report the progress in  
12 completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list  
13 to the ~~environmental quality council~~ water policy committee established in 5-5-231.

14 (4) The department shall provide guidance for TMDL development on any threatened or impaired water  
15 body, regardless of its priority ranking, if the necessary funding and resources from sources outside the  
16 department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The  
17 department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the  
18 department, the department shall ensure implementation of the TMDL according to the provisions of subsections  
19 (6) through (8).

20 (5) For water bodies listed under 75-5-702, the department shall provide assistance and support to  
21 landowners, local conservation districts, and watershed advisory groups for interim measures that may restore  
22 water quality and remove the need to establish a TMDL, such as informational programs regarding control of  
23 nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements  
24 voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not  
25 reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in  
26 a way that gives credit for the pollution reduction efforts.

27 (6) After development of a TMDL and upon approval of the TMDL, the department shall:

28 (a) incorporate the TMDL into its current continuing planning process;

29 (b) incorporate the waste load allocation developed for point sources during the TMDL process into  
30 appropriate water discharge permits; and

1 (c) assist and inform landowners regarding the application of a voluntary program of reasonable land,  
2 soil, and water conservation practices developed pursuant to subsection (2).

3 (7) Once the control measures identified in subsection (6) have been implemented, the department shall,  
4 in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that  
5 are subject to the TMDL to determine whether compliance with water quality standards has been attained for a  
6 particular water body or whether the water body is no longer threatened. The monitoring program must be  
7 designed based on the specific impairments or pollution sources. The department's monitoring program must  
8 include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

9 (8) The department shall support a voluntary program of reasonable land, soil, and water conservation  
10 practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that  
11 are subject to a TMDL developed and implemented pursuant to this section.

12 (9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving  
13 compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall  
14 conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and  
15 water conservation practice implementation to determine if:

16 (a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water  
17 conservation practice is necessary;

18 (b) water quality is improving but a specified time is needed for compliance with water quality standards;

19 or

20 (c) revisions to the TMDL are necessary to achieve applicable water quality standards.

21 (10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

22 (a) point source discharges to a listed water body may commence or continue, provided that:

23 (i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent  
24 applicable for the particular discharge, the provisions of 75-5-303;

25 (ii) the discharge will not cause a decline in water quality for parameters by which the water body is  
26 impaired; and

27 (iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

28 (b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

29 (c) new or expanded nonpoint source activities affecting a listed water body may commence and  
30 continue if those activities are conducted in accordance with reasonable land, soil, and water conservation

1 practices; and

2 (d) for existing nonpoint source activities, the department shall continue to use educational nonpoint  
3 source control programs and voluntary measures as provided in subsections (5) and (6).

4 (11) This section may not be construed to prevent a person from filing an application or petition under  
5 75-5-302, 75-5-310, or 75-5-312."

6

7 **Section 7.** Section 85-1-203, MCA, is amended to read:

8 **"85-1-203. State water plan.** (1) The department shall gather from any source reliable information  
9 relating to Montana's water resources and prepare from the information a continuing comprehensive inventory  
10 of the water resources of the state. In preparing this inventory, the department may:

11 (a) conduct studies;

12 (b) adopt studies made by other competent water resource groups, including federal, regional, state, or  
13 private agencies;

14 (c) perform research or employ other competent agencies to perform research on a contract basis; and

15 (d) hold public hearings in affected areas at which all interested parties must be given an opportunity to  
16 appear.

17 (2) The department shall formulate and adopt and amend, extend, or add to a comprehensive,  
18 coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be  
19 formulated and adopted in sections, with some of these sections corresponding with hydrologic divisions of the  
20 state. The state water plan must set out a progressive program for the conservation, development, utilization, and  
21 sustainability of the state's water resources and propose the most effective means by which these water  
22 resources may be applied for the benefit of the people, with due consideration of alternative uses and  
23 combinations of uses.

24 (3) Sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork  
25 River basins, submitted to the 2015 legislature, and updated at least every 20 years. These basinwide plans must  
26 include:

27 (a) an inventory of consumptive and nonconsumptive uses associated with existing water rights;

28 (b) an estimate of the amount of surface and ground water needed to satisfy new future demands;

29 (c) analysis of the effects of frequent drought and of new or increased depletions on the availability of  
30 future water supplies;

1 (d) proposals for the best means, such as an evaluation of opportunities for storage of water by both  
2 private and public entities, to satisfy existing water rights and new water demands;

3 (e) possible sources of water to meet the needs of the state; and

4 (f) any legislation necessary to address water resource concerns in these basins.

5 (4) (a) The department shall create a water user council in both the Yellowstone and Missouri River  
6 basins that is inclusive and representative of all water interests and interests in those basins. For the Clark Fork  
7 River basin, the department shall continue to utilize the Clark Fork River basin task force established pursuant  
8 to 85-2-350.

9 (b) The councils in the Missouri and Yellowstone River basins consist of representatives of existing  
10 watershed groups or councils within the basins.

11 (c) Each council may have up to 20 members.

12 (d) Each water user council shall make recommendations to the department on the basinwide plans  
13 required by subsection (3).

14 (5) Before adopting the state water plan or any section of the plan, the department shall hold public  
15 hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is  
16 proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general  
17 county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior  
18 to the hearing.

19 (6) The department shall submit to the ~~environmental quality council established in 5-16-101~~ water policy  
20 committee established in 5-5-231 and to the legislature at the beginning of each regular session the state water  
21 plan or any section of the plan or amendments, additions, or revisions to the plan that the department has  
22 formulated and adopted.

23 (7) The legislature, by joint resolution, may revise the state water plan.

24 (8) The department shall prepare a continuing inventory of the ground water resources of the state. The  
25 ground water inventory must be included in the comprehensive water resources inventory described in subsection  
26 (1) but must be a separate component of the inventory.

27 (9) The department shall publish the comprehensive inventory, the state water plan, the ground water  
28 inventory, or any part of each, and the department may assess and collect a reasonable charge for these  
29 publications.

30 (10) In developing and revising the state water plan as provided in this section, the department shall

1 consult with the ~~environmental quality council established in 5-16-101~~ water policy committee established in  
 2 5-5-231 and solicit the advice of the ~~environmental quality council~~ water policy committee in carrying out its duties  
 3 under this section."

4

5 **Section 8.** Section 85-1-621, MCA, is amended to read:

6 **"85-1-621. Report.** The department shall prepare a biennial report describing the status of the renewable  
 7 resource grant and loan program. The report must describe ongoing projects and projects that have been  
 8 completed during the biennium. The report must identify and rank in order of priority the projects for which the  
 9 department has received applications. The report must also describe proposed projects and activities for the  
 10 coming biennium and recommendations for necessary appropriations. A copy of the report must be submitted  
 11 to the ~~environmental quality council established in 5-16-101~~ water policy committee established in 5-5-231."

12

13 **Section 9.** Section 85-2-105, MCA, is amended to read:

14 **"85-2-105. Environmental quality council -- water policy Water policy committee duties.** (1) The  
 15 ~~environmental quality council~~ water policy committee established in 5-5-231 shall meet as often as necessary,  
 16 including during the interim between sessions, to perform the duties specified within this section.

17 (2) On a continuing basis, the ~~environmental quality council~~ water policy committee may:

18 (a) advise the legislature on the adequacy of the state's water policy and on important state, regional,  
 19 national, and international developments that affect Montana's water resources;

20 (b) oversee the policies and activities of the department, other state executive agencies, and other state  
 21 institutions as those policies and activities affect the water resources of the state;

22 (c) assist with interagency coordination related to Montana's water resources; and

23 (d) communicate with the public on matters of water policy as well as the water resources of the state.

24 (3) On a regular basis, the ~~environmental quality council~~ water policy committee shall:

25 (a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

26 (b) analyze and comment on the report of the status of the state's renewable resource grant and loan  
 27 program required by 85-1-621, when filed by the department;

28 (c) analyze and comment on water-related research undertaken by any state agency, institution, college,  
 29 or university;

30 (d) analyze, verify, and comment on the adequacy of and information contained in the water information

1 system maintained by the natural resource information system under 90-15-305; and

2 (e) report to the legislature as provided in 5-11-210.

3 ~~(4) The legislative services division shall provide staff assistance to the environmental quality council~~  
4 ~~to carry out its water policy duties."~~

5

6 **Section 10.** Section 85-2-281, MCA, is amended to read:

7 **"85-2-281. (Temporary) Reporting requirements.** The department and the water court shall:

8 (1) provide reports to the ~~environmental quality council~~ water policy committee established in 5-5-231  
9 at each meeting during a legislative interim on:

10 (a) the progress of the adjudication on a basin-by-basin basis; and

11 (b) the number of basins for which examination was completed during the reporting period;

12 (2) include a status report on the adjudication in their presentation to the applicable appropriation  
13 subcommittees during each legislative session including the number of basins for which examination was  
14 completed during the reporting period; and

15 (3) provide a budget that outlines how each of the entities will be funded in the next biennium, including  
16 general fund money and state special revenue funds. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005; sec.  
17 11, Ch. 319, L. 2007.)"

18

19 **Section 11.** Section 85-2-350, MCA, is amended to read:

20 **"85-2-350. Clark Fork River basin task force -- duties -- water management plan.** (1) The governor's  
21 office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to  
22 prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River  
23 basin. The designated appropriate entity shall:

24 (a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected  
25 by water management in the Clark Fork River basin;

26 (b) provide advice and assistance in selecting representatives to serve on the task force;

27 (c) develop, in consultation with the task force, appropriate opportunities for public participation in studies  
28 of water management in the Clark Fork River basin; and

29 (d) ensure that all ~~watershed~~ watersheds and viewpoints within the basin are adequately represented  
30 on the task force, including a representation from the following:

- 1 (i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;
- 2 (ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the  
3 Flathead River and the Clark Fork River;
- 4 (iii) the Flathead River basin upstream from Flathead Lake;
- 5 (iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork  
6 River and the confluence of the Clark Fork River and the Flathead River;
- 7 (v) the Bitterroot River basin as defined in 85-2-344; and
- 8 (vi) the Upper Clark Fork River basin as defined in 85-2-335.
- 9 (2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated  
10 Salish and Kootenai tribal government has the right to appoint a representative to the task force.
- 11 (3) The task force shall:
- 12 (a) identify short-term and long-term water management issues and problems and alternatives for  
13 resolving any issues or problems identified;
- 14 (b) identify data gaps regarding basin water resources, especially ground water;
- 15 (c) coordinate water management by local basin watershed groups, water user organizations, and  
16 individual water users to ensure long-term sustainable water use;
- 17 (d) provide a forum for all interests to communicate about water issues;
- 18 (e) advise government agencies about water management and permitting activities in the Clark Fork  
19 River basin;
- 20 (f) consult with local and tribal governments within the Clark Fork River basin;
- 21 (g) make recommendations, if recommendations are considered necessary, to the department for  
22 consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River  
23 basin; and
- 24 (h) report to:
- 25 (i) the department on a periodic basis;
- 26 (ii) the ~~environmental quality council~~ water policy committee established in 5-5-231 annually; and
- 27 (iii) the appropriations subcommittee that deals with natural resources and commerce each legislative  
28 session."
- 29

30 **Section 12.** Section 85-2-436, MCA, is amended to read:

1           **"85-2-436. Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource**  
2 **-- change in appropriation rights by department of fish, wildlife, and parks until June 30, 2019.** (1) The  
3 department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or  
4 leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance  
5 streamflows to benefit the fishery resource.

6           (2) The change in purpose of use or place of use must meet all of the criteria and process ~~of~~ outlined  
7 in 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process described in  
8 subsection (3) of this section to protect the rights of other appropriators from adverse impacts.

9           (3) (a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing  
10 rights for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource.

11           (b) Upon receipt of a correct and complete application for a change in purpose of use or place of use  
12 from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided  
13 in 85-2-307. Parties who believe that they may be adversely affected by the proposed change in appropriation  
14 right may file an objection as provided in 85-2-308. A change in appropriation right may not be approved until all  
15 objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a  
16 change of an existing appropriation right for the purpose of protecting, maintaining, or enhancing streamflows to  
17 benefit the fishery resource if the applicant submits a correct and complete application and meets the  
18 requirements of 85-2-402.

19           (c) The application for a change in appropriation right authorization must include specific information on  
20 the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced  
21 and must provide a detailed streamflow measuring plan that describes the points where and the manner in which  
22 the streamflow must be measured.

23           (d) The maximum quantity of water that may be changed to instream flow is the amount historically  
24 diverted. However, only the amount historically consumed, or a smaller amount if specified by the department  
25 in the change in appropriation right authorization, may be used to protect, maintain, or enhance streamflows  
26 below the point of diversion that existed prior to the change in appropriation right.

27           (e) A lease for instream flow purposes may be entered for a term of up to 10 years, except that a lease  
28 of water made available from the development of a water conservation or storage project may be for a term equal  
29 to the expected life of the project but not more than 30 years. All leases may be renewed an indefinite number  
30 of times but not for more than 10 years for each term. Upon receiving notice of a lease renewal, the department

1 shall notify other appropriators potentially affected by the lease and shall allow 90 days for submission of new  
2 evidence of adverse effects to other water rights. A change in appropriation right authorization is not required for  
3 a renewal unless an appropriator other than an appropriator described in subsection (3)(i) submits evidence of  
4 adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted,  
5 a change in appropriation right authorization must be obtained according to the requirements of 85-2-402.

6 (f) The department may modify or revoke the change in appropriation right authorization up to 10 years  
7 after it is approved if an appropriator other than an appropriator described in subsection (3)(i) submits new  
8 evidence not available at the time the change in appropriation right was approved that proves by a preponderance  
9 of evidence that the appropriator's water right is adversely affected.

10 (g) The priority of appropriation for a lease or change in appropriation right under this section is the same  
11 as the priority of appropriation of the right that is changed to an instream flow purpose.

12 (h) Neither a change in appropriation right nor any other authorization is required for the reversion of a  
13 leased appropriation right to the lessor's previous use.

14 (i) A person issued a water use permit with a priority of appropriation after the date of filing of an  
15 application for a change in appropriation right authorization under this section may not object to the exercise of  
16 the changed water right according to its terms or to the reversion of a leased appropriation right to the lessor  
17 according to the lessor's previous use.

18 (j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or  
19 providing personnel to measure streamflows according to the measuring plan required under this section.

20 (4) (a) The department of fish, wildlife, and parks shall complete and submit to the department,  
21 commission, and ~~environmental quality council~~ water policy committee established in 5-5-231 a biennial progress  
22 report by December 1 of odd-numbered years. This report must include a summary of all appropriation rights  
23 changed to an instream flow purpose in the last 2 years.

24 (b) For each change in appropriation right to an instream flow purpose, the report must include a copy  
25 of the change authorization issued by the department and must address:

26 (i) the length of the stream reach and how it is determined;

27 (ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery  
28 resource;

29 (iii) the amount of water available for instream flow as a result of the change in appropriation right;

30 (iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation

1 right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and

2 (v) methods used to monitor use of water under each change in appropriation right.

3 (5) This section does not create the right for a person to bring suit to compel the renewal of a lease that  
4 has expired.

5 (6) (a) From May 8, 2007, through June 30, 2019, the department of fish, wildlife, and parks may change,  
6 pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more  
7 than 12 stream reaches.

8 (b) After June 30, 2019, the department of fish, wildlife, and parks may not change the appropriation  
9 rights that it holds in fee simple to instream flow purposes on any stream reaches.

10 (7) After June 30, 2019, the department of fish, wildlife, and parks may not enter into any new lease  
11 agreements pursuant to this section or renew any leases that expire after that date."

12

13 NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

14

- END -