

## SENATE BILL NO. 194

INTRODUCED BY TASH, MCCARTHY, YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING WATER ADMINISTRATION INTERIM AGREEMENTS TO PROVIDE FOR JOINT TRIBAL AND STATE ADMINISTRATION OF NEW WATER USES ON A RESERVATION PENDING FINAL ADJUDICATION OF ~~TRIBAL~~ INDIAN RESERVED WATER RIGHTS IF A COURT OF COMPETENT JURISDICTION HAS HELD THAT THE DEPARTMENT LACKS EXCLUSIVE AUTHORITY TO ISSUE NEW WATER USE PERMITS WITHIN THE EXTERIOR BOUNDARIES OF THE RESERVATION; AMENDING SECTION 85-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 85-2-708, MCA, is amended to read:

**"85-2-708. Water administration interim agreements within Indian reservations.** (1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) ~~An~~ Subject to subsection (4), an agreement entered into pursuant to subsection (1) must:

(a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;

(b) provide that any permits must be issued in accordance with the criteria established by state law; and

(c) provide that permits may be only for new uses with a date of priority in compliance with state law.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

(4) The provisions of subsection (2) do not apply if a court of competent jurisdiction has held that the department lacks exclusive authority to issue new water use permits within the exterior boundaries of an Indian reservation pending final adjudication of tribal INDIAN reserved water rights. In that case, the department, with the approval of the governor, may enter into an interim agreement that provides for joint tribal and state administration of new water uses on the reservation pending final adjudication of tribal INDIAN reserved water rights. ANY INTERIM AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION (4):

(A) MUST PROVIDE FOR ADDRESS HOW AND WHETHER NEW GROUND WATER USES FOR DOMESTIC AND MUNICIPAL PURPOSES WILL BE GRANTED. EXCEPT FOR THE CRITERION IN 85-2-311(1)(A)(II), AN INTERIM AGREEMENT THAT GRANTS NEW GROUND WATER USES MUST ESTABLISH CRITERIA FOR NEW WATER USES THAT INCORPORATE THE CRITERIA LISTED IN 85-2-311.

(B) MUST PROVIDE FOR ADDRESS HOW AND WHETHER CHANGES IN EXISTING APPROPRIATION RIGHTS WITHIN THE EXTERIOR BOUNDARIES OF THE RESERVATION WILL BE GRANTED. AN INTERIM AGREEMENT THAT GRANTS CHANGES MUST ESTABLISH CRITERIA FOR CHANGES IN EXISTING APPROPRIATION RIGHTS THAT INCORPORATE THE CRITERIA LISTED IN 85-2-402.

(C) MUST PROVIDE A SECURE RIGHT TO USE WATER TO AN APPROPRIATOR OF WATER ADDRESS HOW AND WHETHER WATER USE WILL BE AUTHORIZED UNDER THE INTERIM AGREEMENT AND HOW THE USE WILL BE SECURE AND VALID IN THE EVENT OF THE TERMINATION OF THE INTERIM AGREEMENT, QUANTIFICATION OF RESERVED WATER RIGHTS, OR TERMINATION OF NEGOTIATIONS OF RESERVED WATER RIGHTS UNDER 85-2-704;

(D) MUST MAINTAIN THE JURISDICTIONAL CLAIMS OF EACH PARTY TO THE INTERIM AGREEMENT;

(E) MUST PROTECT EACH PARTY AGAINST A WAIVER OF THE RIGHT TO CHALLENGE THE CLAIMS OF EACH PARTY AT ANY TIME;

(F) MAY NOT PREJUDICE THE REGULATORY OR ADJUDICATORY JURISDICTION OF EITHER PARTY;

(G) MUST PROVIDE THAT NONE OF THE ACTIVITIES OF EACH PARTY IN THE NEGOTIATION OR IMPLEMENTATION OF AN INTERIM AGREEMENT MAY BE USED TO AFFECT THE EQUITABLE OR LEGAL POSITION OF EITHER PARTY IN ANY FUTURE LITIGATION; AND

(H) MUST PROVIDE THAT NOTHING IN THE NEGOTIATION OR IMPLEMENTATION OF AN INTERIM AGREEMENT MAY BE CONSIDERED AS ENLARGING OR DIMINISHING THE JURISDICTION OR AUTHORITY OF EITHER PARTY WITHIN THE RESERVATION."

**NEW SECTION. Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band

of Chippewa.

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

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