

HOUSE BILL NO. 39

INTRODUCED BY W. MCNUTT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WATER RIGHT OWNERSHIP UPDATE PROCESS; PROVIDING THAT THE DIVISION, SEVERANCE, OR EXEMPTING OF A WATER RIGHT REQUIRES THE FILING OF A FORM; PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF REVENUE WILL COORDINATE TO UPDATE OTHER WATER RIGHT OWNERSHIP RECORDS BASED ON PROPERTY TRANSFERS; PROVIDING THAT A TRANSFEREE OF A WATER RIGHT IS LIABLE FOR PAYMENT OF THE FEE AFTER RECEIVING NOTICE; PROVIDING THAT THE RECORDING OF A DEED OR OTHER INSTRUMENT MUST BE DELAYED IN CERTAIN INSTANCES; ~~INCREASING~~ ~~DECREASING~~ INCREASING THE PENALTY FOR NOT UPDATING WATER RIGHT OWNERSHIP RECORDS WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ~~AND~~ AMENDING SECTIONS 15-7-308, 85-2-421, 85-2-422, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 15-7-308, MCA, is amended to read:

"15-7-308. Disclosure of information restricted -- ~~water right ownership update form exception exceptions.~~ (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information ~~in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information~~ contained in the water right ownership update form or any other form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the

requirements of 85-2-112(3)."

Section 2. Section 85-2-421, MCA, is amended to read:

"85-2-421. Purpose. The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership ~~by requiring that water right ownership update forms be filed with the department and that the department notify the water court of each water right ownership update form filed.~~"

Section 3. Section 85-2-422, MCA, is amended to read:

"85-2-422. Definition. As used in 85-2-421 through 85-2-424 and 85-2-426, "water right" means the right to use water as documented by a claim to an existing right, a permit, ~~or~~ a certificate of water right, a state water reservation, or a compact."

Section 4. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. ~~(1) The transferor of a water right shall file with the department a water right ownership update form within 60 days of recording a deed or other instrument evidencing a transfer of real property.~~

~~————(2)(1)~~ Except in the case of a transfer of real property served by a public service water supply, when ~~any~~ a person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate ~~shall~~ must contain a water rights disclosure ~~whereby in which~~ the transferor shall acknowledge, at or before closing OR TRANSFER OF REAL PROPERTY, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

~~(2) (a) If the realty transfer certificate discloses a transfer of water rights, a water right ownership update form must be completed and filed with the department. that the water rights will transfer with the property, the department's records must be updated to reflect the purchaser of the property as the new owner of the water right based on information received from the department of revenue. The appropriate fee must be paid at closing OR UPON COMPLETION OF THE TRANSFER OF REAL PROPERTY as provided in 85-2-426.~~

~~(b) The transferee of a water right, after receiving notice provided in subsection (2)(c), is responsible for compliance with this section.~~

~~(c) If the department receives notice from the department of revenue that a property transfer has occurred and the proper fee was not received by the department, the department shall send a notice to the transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department~~

may assess a penalty against the transferee pursuant to 85-2-431.

(3) If the realty transfer certificate discloses the division of a water right among parcels, the person dividing the water right shall complete and file with the department a water right ownership update form, a map, and the required fee.

(4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department, on a form provided by the department, information describing the exempting of the water right and the appropriate fee.

(5) If a person severs a water right from appurtenant property without selling the property, the person shall file with the department, on a form provided by the department, information describing the severance and the appropriate fee.

~~———— (6) The recording of the deed or other instrument may not must be delayed because of the transfer of the water rights until the clerk and recorder is given proper notice that:~~

~~———— (a) for a water right that is divided, the ownership update form, a map, and the required fee have been received by the department or are held in escrow; or~~

~~———— (b) for a water right that has been severed or for a water right the owner is exempting pursuant to 85-2-403, the form describing the severance or exempting of the water right required in subsections (4) and (5) has been filed with the department and the appropriate fee has been received by the department or is held in escrow:~~

(6) IF THE REALTY TRANSFER CERTIFICATE SUBMITTED WITH A DEED OR OTHER INSTRUMENT INDICATES THAT A WATER RIGHT IS BEING SEVERED, DIVIDED, OR EXEMPTED, THE CLERK AND RECORDER MAY NOT RECORD THE DEED OR INSTRUMENT UNLESS THERE IS SUBMITTED WITH THE DEED OR INSTRUMENT A CERTIFICATION UNDER PENALTY OF FALSE SWEARING, ON A FORM PROVIDED BY THE DEPARTMENT AND SIGNED BY THE TRANSFEROR AND TRANSFEREE, THAT EITHER STATES:

(A) THAT THE DOCUMENTS AND FEE NECESSARY TO COMPLY WITH THIS SECTION ARE HELD IN ESCROW, IN WHICH CASE THE CERTIFICATION MUST ALSO BE SIGNED BY THE ESCROW AGENT; OR

(B) IF THERE IS NO ESCROW, THAT THE TRANSFEROR AND TRANSFEREE CERTIFY THAT THEY HAVE PREPARED THE REQUIRED DOCUMENTS AND WILL SEND THE REQUIRED DOCUMENTS AND FEE TO THE DEPARTMENT WITHIN 5 BUSINESS DAYS OF RECORDING, IN WHICH CASE THE CERTIFICATION MUST ALSO REQUIRE THE TRANSFEREE TO ACKNOWLEDGE THAT FAILURE TO FILE THE APPROPRIATE DOCUMENTS AND FEE WITH THE DEPARTMENT WILL RESULT IN THE DEPARTMENT ASSESSING THE PENALTY IN 85-2-431 AGAINST THE TRANSFEREE.

(7) ANY WRITTEN AGREEMENT TO TRANSFER LAND THAT HAS APPURTENANT WATER RIGHTS ON RECORD WITH

THE DEPARTMENT MUST CONTAIN THE FOLLOWING DISCLOSURE OR WORDS OF A SIMILAR NATURE:

"WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

BY MONTANA LAW, FAILURE OF THE PARTIES AT CLOSING OR TRANSFER OF REAL PROPERTY TO PAY THE REQUIRED FEE TO THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR UPDATING WATER RIGHT OWNERSHIP MAY RESULT IN THE TRANSFEREE OF THE PROPERTY BEING SUBJECT TO A PENALTY. ADDITIONALLY, IN THE CASE OF WATER RIGHTS BEING EXEMPTED, SEVERED, OR DIVIDED, THE FAILURE OF THE PARTIES TO COMPLY WITH SECTION 85-2-424, MCA, COULD RESULT IN A PENALTY AGAINST THE TRANSFEREE AND REJECTION OF THE DEED FOR RECORDING."

Section 5. Section 85-2-426, MCA, is amended to read:

"85-2-426. Fee. (1) ~~The department shall by rule prescribe a fee that will may not be no higher than necessary to cover the cost to the department of processing the updating its water right ownership update form records. The A fee ~~of \$5~~ must be paid:~~

- ~~(a) at closing when the real estate REALTY transfer certificate discloses the transfer of a water right; or~~
 - ~~(b) at the time of filing of the water right ownership update form or the form describing the severance or exempting of the water right.~~
- (2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

Section 6. Section 85-2-431, MCA, is amended to read:

"85-2-431. Penalty. (1) ~~The transferor of a water right is responsible for the filing of a water right ownership update form with the department in accordance with 85-2-424.~~

~~———(2) The transferor of a water right who violates 85-2-424(1)~~ (1) A person who fails to comply with the requirements of 85-2-424 is liable for a civil penalty of not more than \$50 ~~\$500~~ \$7.50 ~~\$75~~.

~~(3)(2)~~ (2) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district. AT THE DISCRETION OF THE DEPARTMENT, THE JUDGMENT MAY BE CERTIFIED TO THE DISTRICT COURT IN THE COUNTY WHERE THE REAL PROPERTY IS LOCATED.

~~(4)(3)~~ (3) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318."

NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2008.

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