

HOUSE BILL NO. 707
INTRODUCED BY R. HAMILTON

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE BOARD OF WATER WELL CONTRACTORS TO INCLUDE PUMP INSTALLATION CONTRACTORS; ESTABLISHING LICENSE REQUIREMENTS AND DISCIPLINARY PROCEDURES FOR PUMP INSTALLATION CONTRACTORS AND PUMP INSTALLERS; AND AMENDING SECTIONS 2-15-3307, 37-43-101, 37-43-102, 37-43-201, 37-43-202, 37-43-204, 37-43-301, 37-43-302, 37-43-303, 37-43-305, 37-43-306, 37-43-307, 37-43-308, 37-43-312, 37-43-313, 37-43-314, 37-43-401, 37-43-402, 85-2-402, AND 85-2-516, MCA."

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

Section 1. Section 2-15-3307, MCA, is amended to read:

"2-15-3307. Board of water well contractors and pump installation contractors. (1) There is a board of water well contractors and pump installation contractors.

(2) The board is composed of ~~five~~ seven voting members, consisting of:

(a) one technical adviser who is a hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor with the concurrence of the senate;

(c) two pump installation contractors, who after January 1, 2009, must be licensed under the laws of this state, appointed by the governor with the concurrence of the senate;

~~(e)~~(d) one member appointed by the director of environmental quality; and

~~(d)~~(e) one member appointed by the director of natural resources and conservation.

(3) The members of the board must have been bona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the board shall serve for terms of 3 years. In case of a vacancy in the office of a member of the board, an appointment must be made to fill the vacancy in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and the oath must be filed in the office of the secretary of state.

(6) The board is allocated to the department of natural resources and conservation for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-43-101, MCA, is amended to read:

"37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste and contamination of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring wells and pump installers and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells and monitoring wells and of pump installers is in the best interest of the public, and the waste and contamination of ground water resources through inefficient or incompetent operations of drillers or makers of water wells and monitoring wells and of pump installers is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells and monitoring wells and in the installation of water well pumps in this state is obtained."

Section 3. Section 37-43-102, MCA, is amended to read:

"37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors and pump installation contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) (a) "Installation" means the placement, repair, replacement, and maintenance of:

(i) single or three-phase well pumps and wastewater pumping units, including all electrical equipment, wires, and accessories, such as fuses and breakers, from the pump motor up to the load side of the disconnecting device, that are installed by others; and

(ii) related plumbing and plumbing-related equipment necessary to provide a complete water source ending at a shutoff valve that does not include the distribution or drain system of a building that is installed by others.

(b) The term includes temporarily connecting into a power or water source to test the installation provided that all test wiring and piping is removed by the pump installer.

~~(5)(6)~~ (a) "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water quality, ground water levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of ground water.

(b) Monitoring well does not include geotechnical borings, perk test holes, and ground water exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

~~(6)(7)~~ "Monitoring well constructor" means a natural person who installs monitoring wells.

(8) "Pump installer" means a person engaged in the installation of water well pumps and waste water pumping units.

(9) "Pump installation contractor" means an individual who contracts on behalf of a firm, corporation, partnership, or other entity for the installation of water well pumps for compensation on property other than the pump installation contractor's property.

~~(7)(10)~~ (a) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(b) The term does not include:

(i) spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less; ~~or The term does not include~~

(ii) an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

~~(8)(11)~~ "Water well contractor" or "contractor" means ~~a natural person~~ an individual who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well for compensation on lands property other than his the water well contractor's property own for compensation.

~~(9)(12)~~ "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated.

(13) "Water well pump" or "well pump" means single or three-phase well pumps and wastewater pumping

units."

Section 4. Section 37-43-201, MCA, is amended to read:

"37-43-201. Organization -- seal -- compensation of members. (1) The board shall annually elect a ~~chairman presiding officer~~ and ~~vice-chairman vice presiding officer~~.

(2) The board ~~shall~~ must have a seal ~~with the words engraved thereon, "Board of Water Well Contractors",~~ and ~~such the~~ seal ~~shall~~ must be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of ~~such the~~ seal.

(3) Each appointed member of the board who is not a government employee ~~shall~~ must receive as compensation for ~~his~~ services the sum of \$50 ~~per a~~ day for each day actually engaged in the performance of the duties of ~~his~~ office, including time of travel between ~~his~~ the member's home and the places at which ~~he shall perform such the~~ duties are performed, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana ~~shall~~ may not receive ~~no~~ extra compensation for their services as members of the board."

Section 5. Section 37-43-202, MCA, is amended to read:

"37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction and pump installation standards and enforcement procedures. The standards, with respect to water well construction, must address:

- (a) the protection of the drilling site;
- (b) specifications for casing materials;
- (c) materials and specifications for well screens;
- (d) casing perforations;
- (e) well development procedures;
- (f) proper sealing and grouting;
- (g) temporary capping;
- (h) cleaning and disinfecting;
- (i) bonds;
- (j) guaranties;
- (k) contractors' and drillers' qualifications;

- (l) tests for yield and drawdown;
- (m) reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions;
- (n) well filters;
- (o) access ports;
- (p) gravel packing;
- (q) sampling methods;
- (r) plumbness and alignment of the hole and casing;
- (s) well abandonment procedures; and
- (t) other necessary and appropriate standards.

(4) The board shall adopt minimum standards regarding the construction, use, and abandonment of monitoring wells. The standards must be designed to protect the state's ground water resource from degradation by contamination and loss of hydrostatic pressure. ~~A~~ It is not a violation of the standards does not occur if it can be shown that the noncompliance results in equal or greater protection of the ground water resource.

(5) The board may request the department to inspect water wells or monitoring wells drilled or being drilled and water well pumps that are installed or being installed, and the department has access to these wells at reasonable times.

(6) The board may establish a program for training apprentices and licensed or prospective water well contractors, water well drillers, ~~and~~ monitoring well constructors, pump installation contractors, and pump installers to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, ~~and~~ monitoring well constructors, pump installation contractors, and pump installers.

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board must be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales must be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

- (a) authorize the department to issue licenses to qualified water well contractors, water well drillers, ~~and~~ monitoring well constructors, pump installation contractors, and pump installers in this state;
- (b) ~~cause examinations~~ provide for the examination to be made of applicants for licenses;
- (c) take disciplinary action and issue orders pursuant to this chapter; and
- (d) generally perform duties that will carry out this chapter.
- (11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter."

Section 6. Section 37-43-204, MCA, is amended to read:

"37-43-204. Earmarked money for board expenses -- expenditure of funds from bonds. (1) All money collected under this chapter must be deposited in the state special revenue fund and may be used only for the purpose of paying expenses of the board. Except for funds received from bonds in subsection (2), the money must be appropriated by the legislature before it may be expended by the board. Income and interest from investment of the money in the state special revenue fund that are collected under this chapter must be credited to the board.

(2) The board may accept and expend all funds received from bonds required by 37-43-306. The funds must be used to remedy defects in water wells, including defects related to pump installation, to compensate for damages caused by violations of this chapter or the rules of the board, or to pay any administrative costs incurred by the board under 37-43-309, 37-43-310, and 37-43-313. These funds, other than those to pay any administrative costs, are statutorily appropriated as provided in 17-7-502."

Section 7. Section 37-43-301, MCA, is amended to read:

"37-43-301. Licensed person to supervise all construction. (1) Any firm, corporation, or partnership may engage in the business of constructing water wells or installing water well pumps provided that a licensed water well contractor or pump installation contractor is placed in charge of all water well construction or pump installation.

(2) The licensed water well contractor or licensed pump installation contractor must be the individual who contracts on behalf of the firm, corporation, or partnership.

(3) A licensed water well driller or licensed pump installer, ~~pursuant to 37-43-305~~, must be employed by a licensed water well contractor or licensed pump installation contractor."

Section 8. Section 37-43-302, MCA, is amended to read:

"37-43-302. License required. (1) The drilling, making, or construction of water wells and monitoring wells or the installation of water well pumps is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, ~~or monitoring well constructor, pump installation contractor, or pump installer,~~ as defined in this chapter, to construct, alter, or rehabilitate a water well or a monitoring well or to engage in pump installation without first having obtained a valid license ~~therefor~~ as provided for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well or a separate license to install monitoring wells. An individual licensed as a pump installation contractor is not required to have a separate license to install water well pumps.

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well or who installs a water well pump on land that is owned or leased by ~~him~~, provided the person if:

(i) the land is used by ~~him~~ the person for farming, ranching, or agricultural purposes or as ~~his~~ the person's residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well or the installation of the water well pump conforms to the minimum construction standards for water or monitoring wells or water well pump installation set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name; and mailing address, the location of the proposed well or water well pump, the nature of the applicant's ownership interest in the property on which the well or water well pump is to be located, the construction or installation method to be used, and the use for the proposed well or water well pump.

(b) The board shall promptly issue a permit if it finds that:

(i) the well or water well pump is located on ~~land~~ property that the applicant owns or leases and that ~~he~~ the applicant uses for farming, ranching, or agricultural purposes or as ~~his~~ the applicant's residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells or monitoring wells and water well pump installations set by board rule."

Section 9. Section 37-43-303, MCA, is amended to read:

"37-43-303. Application -- fee. (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, construction, alteration, or rehabilitation of one or more water or monitoring wells for underground water or in water well pump installation in this state shall first file an application with the department for a license. The application must set forth the applicant's qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing an application. The application ~~shall~~ may not be acted on until the fee has been paid. Fees collected under this section ~~shall~~ must be deposited in the state special revenue fund for the use of the board.

(3) An appropriate license ~~shall~~ must be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well or monitoring well construction operations or water well pump installations. In the granting of licenses, the board shall ~~have~~ give due regard ~~for~~ to the interest of this state in the protection of its underground waters."

Section 10. Section 37-43-305, MCA, is amended to read:

"37-43-305. Examination and qualifications. (1) Under board rules pertaining to the business of drilling and contracting for the drilling of water wells and monitoring wells and the installation and contracting for the installation of water well pumps, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or equivalent education, experience, or both, as determined by the board.

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller or equivalent education, experience or both, as determined by the board; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 year or more ~~years~~ of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) (a) The qualifications for a pump installation contractor's license are:

(i) knowledge of ground water laws of this state and sanitary standards for construction of wells and water well pump installation;

(ii) knowledge of types of water well pumps;

(iii) knowledge of types of tools and equipment used for installing water well pumps;

(iv) financial responsibility of the applicant;

(v) 4,000 hours or more of experience in installing water well pumps under the direct supervision of a licensed pump installation contractor or equivalent education, experience, or both, as determined by the board; and

(vi) the successful completion of an examination related specifically to the installation of water well pumps given by the department.

(b) The board shall adopt rules for the licensure, without examination, of an applicant who can demonstrate that the applicant has worked as a pump installation contractor for 2 years prior to October 1, 2007, and has the requisite experience for licensure. An applicant under this subsection (5)(b) shall pay the required application fee and shall submit any required proof under oath.

(6) (a) The qualifications for a pump installer's license are:

(i) familiar knowledge of ground water laws of this state and sanitary standards for water well pump installation;

(ii) knowledge of types of water well pump installation;

(iii) knowledge of types of water well pump installation tools and equipment and their uses;

(iv) employment by a licensed pump installation contractor;

(v) completion of 2,000 hours or more under the direct supervision of a licensed pump installation contractor or equivalent education and experience, or both, as determined by the board; and

(vi) successful completion of an examination given by the department.

(b) The board shall adopt rules for the licensure, without examination, of an applicant who can demonstrate that the applicant has worked as a pump installer for 1 year prior to October 1, 2007, and has the requisite experience for licensure. An applicant under this subsection (6)(b) shall pay the required application fee and shall submit any required proof under oath.

~~(5)(7)~~ The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies ~~him~~ the applicant from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application ~~shall~~ must be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee."

Section 11. Section 37-43-306, MCA, is amended to read:

"37-43-306. Bond to be required. (1) The department, on issuance of a water well contractor's, or monitoring well constructor's, or pump installation contractor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of \$4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for \$4,000.

(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of his employment with the state or federal government. A bond is required if the person ceases government employment.

(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors, ~~or~~ monitoring well constructors, or pump installation contractors may submit one bond in the amount of \$10,000 for the entire firm, corporation, or partnership."

Section 12. Section 37-43-307, MCA, is amended to read:

"37-43-307. Annual renewal -- fee -- revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) Subject to subsection (3), if a licensee does not apply for renewal of the license before the first day of a license year and remit to the department the renewal fee, the license must be suspended by the board. Subject to subsection (3), if the license remains suspended for a period of more than 30 days after the first day of a license year, it must be revoked by the board. However, the department, prior to ~~this~~ revocation, shall notify the licensee of the board's intention to revoke the license at least 10 days prior to the time set for action to be taken by the board on the license; by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through the person's own fault desires to engage in the business of water well drilling, ~~or~~ monitoring well construction, or water well pump installation in this state or contracting for those services, the person shall apply under 37-43-303. Notice of suspension must be given to a licensee when the suspension occurs.

(3) This section may not be interpreted to conflict with the provisions of 37-1-138."

Section 13. Section 37-43-308, MCA, is amended to read:

"37-43-308. Reciprocity. If a person holding a license entitling ~~him~~ the person to drill water wells or

monitoring wells or to engage in pump installation in another state applies for a Montana water well contractor's, water well driller's, ~~or monitoring well constructor's, pump installation contractor's, or pump installer's~~ license, the board may waive the applicable apprenticeship requirements and examination requirements if ~~it~~ the board finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells or monitoring wells or the installation of water well pumps in this state."

Section 14. Section 37-43-312, MCA, is amended to read:

"37-43-312. Penalty. Any person who ~~shall willfully violate~~ violates any lawful rule or order of the board, ~~or who shall engage~~ engages in the business of drilling, making, altering, or rehabilitating water wells or monitoring wells or engages in the installation of water well pumps without first having obtained a license as in ~~this chapter~~ required by this chapter, or who ~~shall violate~~ violates any provision of this chapter ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than \$500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter ~~shall~~ must be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial ~~thereof shall~~ must be held in that county."

Section 15. Section 37-43-313, MCA, is amended to read:

"37-43-313. Disciplinary authority. (1) If the board finds grounds for disciplinary action, as provided in subsection (2), the board may by order:

(a) require a licensee to repair or reconstruct substandard wells or pump installations at the licensee's expense to meet board standards;

(b) require a licensee to take further training or education;

(c) place probationary terms and conditions on a license;

(d) suspend a license for a period not to exceed 1 year; or

(e) revoke a license, specifying that the licensee may not reapply for licensure for a period of 3 years from the date of revocation.

(2) Grounds for disciplinary action include:

(a) violating the rules, construction standards, or laws established by the board and this chapter;

(b) disobeying an order from the board to repair or reconstruct a substandard well;

- (c) violating probationary terms of or conditions on a license;
 - (d) misrepresenting facts on well log reports, license or renewal applications, or apprenticeship records or in response to board inquiries; or
 - (e) failing to maintain qualifications for licensure as specified in 37-43-305.
- (3) This section may not be interpreted to conflict with the provisions of 37-1-138."

Section 16. Section 37-43-314, MCA, is amended to read:

"37-43-314. Injunctions. The board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells or monitoring wells or engaging in the installation of water well pumps until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court."

Section 17. Section 37-43-401, MCA, is amended to read:

"37-43-401. ~~No action~~ Action or counterclaim not to be maintained except by licensee. ~~No~~ An action or counterclaim ~~shall~~ may not be maintained by any water well contractor, water well driller, ~~or~~ monitoring well constructor, pump installation contractor, or pump installer in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any ~~such~~ agreement or for any ~~such~~ work, labor, or materials for which a license is required by this chapter without alleging and proving that ~~such~~ the water well contractor, water well driller, ~~or~~ monitoring well constructor, pump installation contractor, or pump installer had a valid license at the time of making ~~such~~ the agreement ~~and or~~ of supplying ~~such~~ the labor, work, or materials."

Section 18. Section 37-43-402, MCA, is amended to read:

"37-43-402. Completion of contracts by successor in interest of licensee. Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's₁ ~~or~~ monitoring well constructor's₁ or pump installation contractor's rights under a contract or agreement for the drilling, making, or construction of a water well or monitoring well; or the installation of a water well pump, the successor in interest ~~to such rights~~ ~~shall~~ must be permitted to engage in the business of drilling, making, or construction of water wells or monitoring wells or in the installation of water pumps to the extent necessary to perform the obligations of ~~said~~ the licensee under ~~such~~ the contract or agreement, provided that ~~such~~ the engagement in business ~~shall~~ must be under the supervision of a licensed water well contractor₁ ~~or~~ monitoring well constructor, or pump installation contractor."

Section 19. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator

proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator

proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the

appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated

from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors and pump installation contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

85-2-402. (Effective July 1, 2009) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only

if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict

with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject

to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of

the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors and pump installation contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

- (i) withdraws water from the same ground water source as the original well; and
- (ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section."

Section 20. Section 85-2-516, MCA, is amended to read:

"85-2-516. Well logs. (1) Within 60 days after any well is completed, the driller shall file with the bureau a well log report.

(2) Except as provided in subsection (3), the well log report must be filed on a form specified by the department in consultation with the board of water well contractors and pump installation contractors provided for in 2-15-3307 and the bureau.

(3) The bureau may allow submission of the well log report in an electronic format that is in accordance with the form specified as provided in subsection (2).

(4) The bureau may return the report for refiling if it is incomplete or incorrect."

- END -