

SENATE BILL NO. 223

INTRODUCED BY J. PETERSON, BALES, LAMBERT, HIMMELBERGER, ROSS, KERNS, MCGEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IF AN APPROPRIATOR HAS A POSSESSORY INTEREST IN REAL PROPERTY WHERE A COAL BED METHANE INFRASTRUCTURE IS LOCATED AND THE WATER TO BE APPROPRIATED WILL BE BENEFICIALLY USED ON THE APPROPRIATOR'S REAL PROPERTY, LEASED PROPERTY, OR PERMITTED PROPERTY, A PERMIT IS NOT REQUIRED BEFORE APPROPRIATING WATER FOR A BENEFICIAL USE WHEN THE WATER IS PRODUCED IN ASSOCIATION WITH COAL BED METHANE WELLS PRODUCTION; PROVIDING A DEADLINE FOR SUBMITTING A NOTICE OF COMPLETION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PROVIDING THAT AFTER COAL BED METHANE PRODUCTION HAS CEASED, A PERSON WHO WANTS TO CONTINUE TO USE THE WATER IS REQUIRED TO ACQUIRE AN APPROPRIATION RIGHT; AMENDING SECTION 85-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

- (a) according to a permit received pursuant to 85-2-508; or
- (b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before

appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

- (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from a source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

~~(8) A permit is not required to appropriate water for a beneficial use when the water is produced in association with coal bed methane wells.~~

(8) (A) IF AN APPROPRIATOR HAS A POSSESSORY INTEREST IN REAL PROPERTY WHERE A COAL BED METHANE INFRASTRUCTURE IS LOCATED AND THE WATER TO BE APPROPRIATED WILL BE BENEFICIALLY USED ON THE APPROPRIATOR'S REAL PROPERTY, LEASED PROPERTY, OR PERMITTED PROPERTY, A PERMIT IS NOT REQUIRED BEFORE APPROPRIATING WATER WHEN IT IS PRODUCED IN ASSOCIATION WITH COAL BED METHANE PRODUCTION.

(B) WITHIN 60 DAYS OF COMPLETION OF THE DELIVERY FACILITIES AND APPROPRIATION OF THE DEVELOPED WATER FOR BENEFICIAL USE, THE APPROPRIATOR SHALL FILE A NOTICE OF COMPLETION WITH THE DEPARTMENT ON A FORM PROVIDED BY THE DEPARTMENT THROUGH ITS OFFICES. THE DEPARTMENT SHALL ACCEPT A NOTICE OF COMPLETION AND MAY NOT REQUIRE ADDITIONAL INFORMATION IF THE NOTICE OF COMPLETION CONTAINS:

(I) THE POINT OF DISTRIBUTION FROM THE COAL BED METHANE PRODUCER'S INFRASTRUCTURE;

(II) THE PLACE OF USE, WHICH MUST BE IN MONTANA;

(III) THE MAXIMUM VOLUME, NOT TO EXCEED 750 ACRE-FEET A YEAR; AND

(IV) THE PERIOD OF USE.

(C) WITHIN 60 DAYS AFTER THE CESSATION OF COAL BED METHANE PRODUCTION, THE COAL BED METHANE PRODUCTION COMPANY OR THE LANDOWNER SHALL INFORM THE DEPARTMENT THAT PRODUCTION HAS CEASED. IF THE LANDOWNER WISHES TO CONTINUE THE USE OF THE WATER, THE LANDOWNER SHALL FILE FOR AN APPROPRIATION RIGHT.

~~(8)(9)~~ A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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