

SENATE BILL NO. 376

INTRODUCED BY JACKSON, HENDRICK, O'NEIL, ROSS, HEINERT, SESSO, MUSGROVE, KAUFMANN,
BARKUS, VINCENT, CURTISS, LAMBERT, JOPEK, GEBHARDT, J. PETERSON, GLASER, ERICKSON,
CALLAHAN, MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENTER INTO A CONTRACT WITH THE UNITED STATES FOR WATER HELD IN FEDERAL RESERVOIRS AS A MEANS OF PROTECTING THE STATE'S INTEREST IN THOSE WATERS; PROVIDING THAT THE STATE MAY CONTRACT FOR WATER FROM EXISTING FEDERAL RESERVOIRS IF WHEN THE WATER IS PUT TO BENEFICIAL USE, IT IS USED WITHIN THE BASIN IN WHICH THE RESERVOIR IS LOCATED; LIMITING THE AMOUNT OF WATER THAT CAN BE LEASED FROM THE STATE AS THE RESULT OF CONTRACTS FOR WATER FROM FEDERAL RESERVOIRS WHEN THE WATER WILL BE PUT TO BENEFICIAL USE IN A BASIN OTHER THAN THE BASIN WHERE THE FEDERAL RESERVOIR IS LOCATED; PROVIDING THAT THERE IS NO LIMIT TO THE AMOUNT OF WATER FOR WHICH THE DEPARTMENT MAY CONTRACT FROM ANY FEDERAL RESERVOIR; AMENDING SECTION 85-2-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-141, MCA, is amended to read:

"85-2-141. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana.

(2) The department may acquire rights to water needed for leasing under this program:

(a) through appropriation of water in its own name; or

(b) by agreement with or purchase from another holder of water rights; or

(c) by contract with the United States for water held in federal reservoirs as a means of protecting the state's interest in those waters.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck, Tiber, Canyon Ferry, Hungry Horse, KOOCANUSA, or Yellowtail reservoir, if ~~an agreement~~

a contract between the department and the federal government concerning the acquisition of water ~~and the sharing of revenue with the state~~ is in effect; and

~~(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail reservoir if and as long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of revenue with the state from one or more of these reservoirs; and~~

~~(d)~~(c) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is ~~an agreement~~ a contract between the department and the federal government concerning the acquisition of water ~~and the sharing of revenue with the state~~.

~~———— (4) (a) Water may be leased. The department may lease water to Montana water users for any beneficial use. The Except as provided in subsection (4)(b), the amount of water that can be leased under this program for all beneficial uses may not exceed 50,000 acre-feet.~~

~~———— (b) (i) Subject to subsection (4)(b)(ii), the department may lease up to 1 million acre-feet of water from each existing federal reservoir to Montana water users if when the water is put to beneficial use, it is used within the basin in which the reservoir is located.~~

~~———— (ii) Leases between the department and Montana water users that involve water from federal reservoirs that would result in water being put to beneficial use in a basin other than the basin in which the federal reservoir is located may not exceed 50,000 acre-feet.~~

~~———— (5) There is no limit to the amount of water for which the department may contract from any federal reservoir.~~

(4) (A) SUBJECT TO SUBSECTIONS (4)(B) AND (4)(C), THE DEPARTMENT MAY LEASE UP TO 1 MILLION ACRE-FEET OF WATER FROM THE RESERVOIRS IDENTIFIED IN SUBSECTION (3)(B) TO WATER USERS FOR BENEFICIAL USES IN MONTANA.

(B) THE DEPARTMENT MAY LEASE UP TO 50,000 ACRE-FEET OF WATER FROM THE RESERVOIRS IDENTIFIED IN SUBSECTION (3)(B) TO WATER USERS FOR BENEFICIAL USES OUTSIDE MONTANA.

(C) THE TOTAL AMOUNT OF WATER LEASED UNDER THIS SUBSECTION (4) MAY NOT EXCEED 1 MILLION ACRE-FEET.

~~(5)(6)(5)~~ The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations in subsection ~~(7) (8) (7)~~ (7). In making a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection ~~(6) (7) (6)~~ (6).

~~(6)(7)(6)~~ The department shall require the completion of an environmental impact statement under the

provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

~~(7)(8)(7)~~ Upon application by a person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. The determination of desirability must be made solely on the following considerations:

- (a) the content of the environmental impact statement, if required;
- (b) whether there is sufficient water available under the water leasing program; and
- (c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

~~(8)(9)(8)~~ The department shall for any lease agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by the user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

~~(9)(10)(9)~~ The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

~~(10)(11)(10)~~ For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor."

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

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