

SENATE BILL NO. 425
INTRODUCED BY V. JACKSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ADVERSE EFFECT MUST BE MEASURABLE WHEN ADDRESSING A NEW APPROPRIATION RIGHT OR A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTION 85-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-401, MCA, is amended to read:

"85-2-401. Priority -- recognition and confirmation of changes in appropriations issued after July 1, 1973. (1) (a) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(b) For the purpose of determining adverse effect to a prior appropriator pursuant to this chapter, the impact of any new or changed appropriation right must be measurable using standards and methods accepted by the hydrologic and engineering professions. An objector to a new appropriation or a change in appropriation right pursuant to this chapter shall demonstrate how the change in streamflow or water table occurrence prevents the objector from exercising the objector's water right under the changed provisions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department.

(5) Any rules adopted by the department that address adverse effects must be based on a measurable standard and the provisions of this part."

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

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