

## 1 HOUSE BILL NO. 168

2 INTRODUCED BY S. FITZPATRICK, CLARK, FISCUS, GLIMM, HERTZ, D. JONES, LANG, LAVIN,  
3 PINOCCI, REGIER, SCHREINER, SCHWADERER, WHITE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE APPLICABILITY OF THE DEPARTMENT OF  
6 NATURAL RESOURCES AND CONSERVATION'S DEFINITION OF "COMBINED APPROPRIATION" FOR  
7 WATER RIGHT PERMIT EXCEPTIONS IN CERTAIN CIRCUMSTANCES AND PROVIDING RETROACTIVE  
8 APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 WHEREAS, the Legislature, consistent with its constitutional duties, adopted the Montana Water Use Act  
11 in 1973, which recognizes existing water rights and provides for the orderly administration of new water right  
12 permits while protecting senior water right users; and

13 WHEREAS, the Legislature recognizes that a permit to appropriate water is not necessary in all  
14 circumstances and has created certain exceptions to the permit requirement; and

15 WHEREAS, the Legislature has provided that a permit is not required for an appropriation that is 35  
16 gallons a minute or less and does not exceed 10 acre-feet a year unless the appropriation is determined to be  
17 a combined appropriation; and

18 WHEREAS, since 1993 the Department of Natural Resources and Conservation has defined the term  
19 ~~combined appropriation~~ "COMBINED APPROPRIATION" as an appropriation of water from the same source aquifer  
20 by two or more ground water developments that are physically manifold into the same system; and

21 WHEREAS, water users in the state have relied upon the department's definition of combined  
22 appropriation for more than 20 years; and

23 WHEREAS, in ON October 17, 2014, the MONTANA First Judicial District Court IN CLARK FORK COALITION  
24 V. TUBBS, CAUSE NO. BDV-2010-874, invalidated the Department's combined appropriation definition as being  
25 inconsistent with the Water Use Act; and

26 WHEREAS, SUBSTANTIAL FINANCIAL INVESTMENT WAS MADE BY PERSONS ON THE BASIS OF THE 1993  
27 DEFINITION OF "COMBINED APPROPRIATION" PRIOR TO THE DISTRICT COURT'S OCTOBER 17, 2014, ORDER; AND

28 WHEREAS, THE DISTRICT COURT ORDERED THAT THE DEPARTMENT'S RULE DEFINING "COMBINED  
29 APPROPRIATION", IN EFFECT FROM 1987 TO 1993, BE REINSTATED; AND

30 WHEREAS, it is the intent of the Legislature to ensure that the Department's 1993 definition of combined

1 appropriation applies to all projects, developments, or subdivisions in existence or for which an application for  
2 review was pending on or before the District Court's October 17, 2014, ruling.

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

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6 NEW SECTION. **Section 1. Wells exempt from permitting -- definition of combined appropriation**  
7 **-- retroactive applicability.** For purposes of implementing the provisions of 85-2-306, the department of natural  
8 resources and conservation's definition of combined appropriation as an appropriation of water from the same  
9 source aquifer by two or more ground water developments that are physically manifold into the same system  
10 applies retroactively to any project, development, or subdivision in existence on or before October 17, 2014, and  
11 to any pending project, development, or subdivision for which ~~an~~ THE application for review was submitted AND  
12 REQUIRED FEES WERE RECEIVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN ACCORDANCE WITH 76-4-125 OR  
13 BY THE LOCAL REVIEWING AUTHORITY IN ACCORDANCE WITH 76-3-604(1)(A) on or before October 17, 2014.

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

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