



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

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

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

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

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

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

WHEREAS, on October 17, 2014, the Montana First Judicial District Court in Clark Fork Coalition v. Tubbs, Cause No. BDV-2010-874, invalidated the Department's combined appropriation definition as being inconsistent with the Water Use Act; and

WHEREAS, substantial financial investment was made by persons on the basis of the 1993 definition of "combined appropriation" prior to the District Court's October 17, 2014, order; and

WHEREAS, the District Court ordered that the Department's rule defining "combined appropriation", in effect from 1987 to 1993, be reinstated; and

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

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

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

**Section 1. Wells exempt from permitting -- definition of combined appropriation -- retroactive applicability.** For purposes of implementing the provisions of 85-2-306, the department of natural resources and conservation's definition of combined appropriation as an appropriation of water from the same source aquifer by two or more ground water developments that are physically manifold into the same system applies retroactively to any project, development, or subdivision in existence on or before October 17, 2014, and to any pending project, development, or subdivision for which the application and required fees were received by the department of environmental quality in accordance with 76-4-125 or by the local reviewing authority in accordance with 76-3-604(1)(a) on or before October 17, 2014.

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

- END -

I hereby certify that the within bill,  
HB 0168, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

HOUSE BILL NO. 168

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

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