

## 1 HOUSE BILL NO. 78

2 INTRODUCED BY R. LYNCH

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING A TEMPORARY LEASE OF WATER RIGHTS;  
 6 LIMITING THE VOLUME OF A LEASED WATER RIGHT; PROVIDING FOR A PLAN OF OPERATION TO  
 7 EXERCISE A LEASED WATER RIGHT; CLARIFYING TIME PERIOD AND NOTICE REQUIREMENTS;  
 8 REPEALING A SUNSET DATE; AMENDING SECTION 85-2-427, MCA; AND REPEALING SECTION 4,  
 9 CHAPTER 236, LAWS OF 2013."

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

12  
 13 **Section 1.** Section 85-2-427, MCA, is amended to read:

14 **"85-2-427. (Temporary) Temporary lease of appropriation right -- requirements -- rulemaking. (1)**

15 Applications to temporarily lease an appropriation right that comply with the requirements of this section are not  
 16 subject to the provisions of 85-2-402, 85-2-407, 85-2-408, or 85-2-436. After obtaining department approval  
 17 pursuant to this section, an appropriator may temporarily lease an appropriation right.

18 (2) The amount of water leased may not exceed ~~the total consumptive use of the appropriation right a~~  
 19 total consumptive use of 180 acre-feet a year. For an irrigation right, the consumptive volume may not exceed  
 20 1 acre-foot per acre irrigated. The department shall determine the consumptive volume limits for other uses by  
 21 rule.

22 (3) (a) Each appropriation right leased pursuant to this section:

23 (i) must have been used within 5 years prior to the application date;

24 (ii) may be leased only during the period of diversion for the appropriation right; and

25 (iii) may not be leased for more than 2 consecutive or nonconsecutive years ~~one-time~~ during any  
 26 consecutive 10-year period.

27 (b) The volume of water leased may not exceed a total consumptive use of 180 acre-feet per year.

28 (c) The point of diversion for the appropriation right may not be changed.

29 (4) The use of any appropriation rights on the place of use associated with a leased appropriation right  
 30 is forbidden during the term of the lease.

1 (5) Storage may not be added to the leased appropriation right at the point of diversion or the original  
2 place of use.

3 (6) This section does not apply to changes in an appropriation right that would result in leased water  
4 being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

5 (7) Water leased pursuant to this section must be measured at the point of diversion by a meter  
6 approved by the department. The appropriator shall report the amount of water measured at the end of the year  
7 in which the lease occurred or upon request of the department.

8 (8) An applicant proposing to lease an appropriation right pursuant to this section shall submit a correct  
9 and complete application on a form provided by the department and a fee as established by rule. The application  
10 must include:

11 (a) the name and address of each lessee;

12 (b) the name of all owners of each appropriation right;

13 (c) the number of each appropriation right;

14 (d) the proposed use and the place of use for the leased water;

15 (e) the source of water to be appropriated;

16 (f) the start and end dates of the proposed lease;

17 (g) the proposed diversion flow rate and volume of water to be used during the lease;

18 (h) evidence that the appropriation right has been used within the last 5 years;

19 (i) a description of how the existing use of the appropriation rights would cease at the place of use during  
20 the lease period, including the number and location of acres to be removed from irrigation, if applicable; and

21 ~~(j) an analysis of potential adverse effects and a description of planned actions to mitigate potential~~  
22 ~~adverse effects~~ a plan for the exercise of the lease in priority to:

23 (i) other existing water rights, certificates, permits, or state water reservations; or

24 (ii) other perfected or planned uses or developments of water for which a permit or certificate has been  
25 issued.

26 (9) Within 30 days of receiving the application, the department shall approve or deny the application. An  
27 approved application must be correct and complete and meet the requirements of this section. The department  
28 may approve an application with conditions.

29 (10) (a) After approval but prior to the exercise of the lease, the department shall provide notice of the  
30 proposed lease that includes the information in subsections (8)(a) through (8)(g). The department shall:

1           ~~(a)~~(i) mail individual notice to potentially affected appropriators identified by the department in the area  
2 of the point of diversion; and

3           ~~(b)~~(ii) post the notice on the department's website.

4           **(b) The notice must state that a person may file written objections to a lease application by a date set**  
5 **by the department. That date may not be less than 15 days or more than 60 days after the date of publication**  
6 **pursuant to this subsection (10).**

7           (11) (a) ~~For 60 days from the date that notice is mailed pursuant to subsection (10), the~~ The department  
8 shall accept correct and complete objections to the proposed lease from any person whose property, water rights,  
9 or interests would be adversely affected by the proposed appropriation. The objection must be made on a form  
10 provided by the department.

11           (b) The department shall determine if an objection is valid. A valid objection contains facts indicating that  
12 the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the  
13 department determines that an objection is valid, the approval for the use of the appropriation right under the  
14 lease is canceled and no water may be used pursuant to the lease.

15           (c) The owner of an appropriation right whose approval is canceled under subsection (11)(b) may  
16 request a hearing on the objection pursuant to 2-4-604 within 15 days of notice of the cancellation. The  
17 department shall issue an order reinstating approval for the use of the appropriation right under the lease if the  
18 applicant proves by a preponderance of the evidence that the water rights of other appropriators will not be  
19 adversely affected by the lease.

20           (12) Leased water may not be put to use until a final determination is made pursuant to subsection (11).  
21 The lessee shall provide the department with a copy of the executed lease agreement before the leased water  
22 is put to use. The lessee shall notify the department no more than 14 days after the leased water is put to use.

23           (13) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection  
24 does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an  
25 appropriation right who leased the water or from a lessee.

26           (14) The department shall adopt rules to implement this section. The rules must include definitions of  
27 consumptive uses and criteria for determining if an appropriation right has been used in the 5 years prior to the  
28 temporary lease application.

29           (15) The department shall report annually to the water policy interim committee provided for in 5-5-231.  
30 The report must include the number of leases, the amount of water leased, and the number of irrigated acres

1 taken out of production.

2 (16) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries  
3 of the Flathead Indian reservation. (~~Terminates July 1, 2019--sec. 4, Ch. 236, L. 2013.~~)"

4

5 NEW SECTION. **Section 2. Repealer.** Section 4, Chapter 236, Laws of 2013, is repealed.

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