

HOUSE BILL NO. 429

INTRODUCED BY M. CUFFE

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A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE WATER RIGHT PERMIT EXEMPTION FOR OPERATIONS OF A LOCAL GOVERNMENTAL FIRE AGENCY; AND AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-330, 85-2-341, 85-2-343, AND 85-2-344, MCA."

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

Section 1. Section 85-2-113, MCA, is amended to read:

"85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency and operational

1 appropriations, without prior application for a permit, necessary to protect lives or property.

2 (4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on
3 a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150
4 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation
5 of the watercourse or portions of the watercourse as chronically dewatered, except that when the department
6 specifically finds that the installation of measuring devices along the entire watercourse or portions of the
7 watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

8 (b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method
9 used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized
10 methods of flow measurement, as determined by the department, are in compliance with subsection (4)."

11

12 **Section 2.** Section 85-2-306, MCA, is amended to read:

13 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b), ground
14 water may be appropriated only by a person who has a possessory interest in the property where the water is
15 to be put to beneficial use and exclusive property rights in the ground water development works.

16 (b) If another person has rights in the ground water development works, water may be appropriated with
17 the written consent of the person with those property rights or, if the ground water development works are on
18 national forest system lands, with any prior written special use authorization required by federal law to occupy,
19 use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation,
20 withdrawal, use, or distribution of water under the certificate.

21 (c) If the person does not have a possessory interest in the real property from which the ground water
22 may be appropriated, the person shall provide to the owner of the real property written notification of the works
23 and the person's intent to appropriate ground water from the works. The written notification must be provided to
24 the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are
25 proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice
26 requirement only and does not create an easement in or over the real property where the ground water
27 development works are located.

28 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

29 (a) according to a permit received pursuant to 85-2-508; or

30 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.

1 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before
2 appropriating ground water by means of a well or developed spring:

3 (i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter
4 33, and the appropriation is used only for emergency fire protection, fire training, and general fire operations,
5 which may include enclosed storage;

6 (ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal
7 heating or cooling exchange applications, all of the water extracted is returned without delay to the same source
8 aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically
9 connected surface waters is more than twice the distance between the extraction well and the injection well;

10 (iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does
11 not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells
12 or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

13 (iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does
14 not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells
15 or developed springs exceeding this limitation requires a permit.

16 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water
17 for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the
18 department through its offices.

19 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate
20 of water right, return a defective notice for correction or completion, together with the reasons for returning it. A
21 notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the
22 department within 30 days of notification of defects or within a further time as the department may allow, not to
23 exceed 6 months.

24 (iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation
25 is the date of refiled a correct and complete notice with the department.

26 (c) A certificate of water right may not be issued until a correct and complete notice has been filed with
27 the department, including proof of landowner notification or a written federal special use authorization as
28 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
29 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
30 of priority of the right.

1 (4) An appropriator of ground water by means of a well or developed spring first put to beneficial use
2 between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force
3 prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
4 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
5 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing
6 of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

7 (5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the
8 department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that
9 for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue
10 a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the
11 adjudication proceedings provided for in 85-2-236.

12 (6) A permit is not required before constructing an impoundment or pit and appropriating water for use
13 by livestock if:

14 (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

15 (b) the appropriation is less than 30 acre-feet a year;

16 (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than
17 a perennial flowing stream; and

18 (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned
19 or under the control of the applicant and that is 40 acres or larger.

20 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit
21 as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a
22 stock water provisional permit, the department shall automatically issue a provisional permit. If the department
23 determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may
24 revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit
25 subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other
26 appropriators.

27 (b) If the impoundment or pit is on national forest system lands, an application is not correct and
28 complete under this section until the applicant has submitted proof of any written special use authorization
29 required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
30 impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

1 (8) A person may also appropriate water without applying for or prior to receiving a permit under rules
2 adopted by the department under 85-2-113.

3 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of
4 the Flathead Indian reservation."
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6 **Section 3.** Section 85-2-330, MCA, is amended to read:

7 **"85-2-330. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of
8 subsection (2) of this section, the department may not grant an application for a permit to appropriate water or
9 for a reservation to reserve water within the Teton River basin.

10 (2) The provisions of subsection (1) do not apply to:

11 (a) an application for a permit to appropriate ground water if the applicant complies with the provisions
12 of 85-2-360;

13 (b) an application for a permit to appropriate water for a nonconsumptive use;

14 (c) an application for a permit to appropriate water for:

15 (i) domestic use from surface water or pursuant to 85-2-306;

16 (ii) stock use; or

17 (iii) use of surface water by or for a municipality;

18 (d) an application to store water during high spring flows;

19 (e) temporary emergency and operational appropriations as provided for in 85-2-113(3); or

20 (f) an application for a permit to appropriate surface water to conduct response actions related to natural
21 resource restoration required for:

22 (i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation,
23 and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

24 (ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water
25 Act of 1977, 33 U.S.C. 1251 through 1387; or

26 (iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

27 (3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may
28 not be used for dilution.

29 (4) A change of use authorization for changing the purpose of use may not be issued for any permit
30 issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f)."

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2 **Section 4.** Section 85-2-341, MCA, is amended to read:

3 **"85-2-341. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of
4 subsection (2) of this section, the department may not grant an application for a permit to appropriate water or
5 for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

6 (2) The provisions of subsection (1) do not apply to:

7 (a) an application for a permit to appropriate ground water if the applicant complies with the provisions
8 of 85-2-360;

9 (b) an application for a permit to appropriate water for a nonconsumptive use;

10 (c) an application for a permit to appropriate water for:

11 (i) domestic use from surface water or pursuant to 85-2-306;

12 (ii) stock use; or

13 (iii) use of surface water by or for a municipality;

14 (d) an application to store water during high spring flows;

15 (e) an application submitted pursuant to 85-20-1401, Article VI;

16 (f) temporary emergency and operational appropriations as provided for in 85-2-113(3);

17 (g) an application for a permit to appropriate surface water to conduct response actions related to natural
18 resource restoration required for:

19 (i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation,
20 and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

21 (ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water
22 Act of 1977, 33 U.S.C. 1251 through 1387; or

23 (iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

24 (3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(g)
25 may not be used for dilution.

26 (4) A change of use authorization for changing the purpose of use may not be issued for any permit
27 issued pursuant to subsection (2)(b), (2)(c), (2)(f), or (2)(g)."

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29 **Section 5.** Section 85-2-343, MCA, is amended to read:

30 **"85-2-343. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of

1 subsection (2) of this section, the department may not grant an application for a permit to appropriate water or
2 for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued
3 in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

4 (2) The provisions of subsection (1) do not apply to:

5 (a) an application for a permit to appropriate ground water if the applicant complies with the provisions
6 of 85-2-360;

7 (b) an application for a permit to appropriate water for a nonconsumptive use;

8 (c) an application for a permit to appropriate water for:

9 (i) domestic use from surface water or pursuant to 85-2-306;

10 (ii) stock use; or

11 (iii) use of surface water by or for a municipality;

12 (d) an application to store water during high spring flows;

13 (e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun
14 River, if the proposed use of water will help control erosion in the Muddy Creek drainage;

15 (f) an application submitted pursuant to 85-20-1401, Article VI;

16 (g) temporary emergency and operational appropriations as provided for in 85-2-113(3); or

17 (h) an application for a permit to appropriate surface water to conduct response actions related to natural
18 resource restoration required for:

19 (i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation,
20 and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

21 (ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water
22 Act of 1977, 33 U.S.C. 1251 through 1387; or

23 (iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

24 (3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(h)
25 may not be used for dilution.

26 (4) A change of use authorization for changing the purpose of use may not be issued for any permit
27 issued pursuant to subsection (2)(b), (2)(c), (2)(e), (2)(g), or (2)(h)."

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29 **Section 6.** Section 85-2-344, MCA, is amended to read:

30 **"85-2-344. Bitterroot River subbasin temporary closure -- definitions -- exceptions.** (1) Unless the

1 context requires otherwise, in this section, the following definitions apply:

2 (a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state
3 water reservation pursuant to 85-2-316.

4 (b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the
5 confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

6 (c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot
7 River basin:

8 (i) the mainstem subbasin, designated as "Subbasin 76HA";

9 (ii) the north end subbasin, designated as "Subbasin 76HB";

10 (iii) the east side subbasin, designated as "Subbasin 76HC";

11 (iv) the southeast subbasin, designated as "Subbasin 76HD";

12 (v) the south end subbasin, designated as "Subbasin 76HE";

13 (vi) the southwest subbasin, designated as "Subbasin 76HF";

14 (vii) the west central subbasin, designated as "Subbasin 76HG"; or

15 (viii) the northwest subbasin, designated as "Subbasin 76HH".

16 (2) As provided in 85-2-319, the department may not grant an application for a permit to appropriate
17 water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated
18 pursuant to subsection (5) of this section, except for:

19 (a) an application for a permit to appropriate ground water if the applicant complies with the provisions
20 of 85-2-360;

21 (b) an application for a permit to appropriate water for use of surface water by or for a municipality;

22 (c) temporary emergency and operational appropriations pursuant to 85-2-113(3);

23 (d) an application submitted pursuant to 85-20-1401, Article VI;

24 (e) an application to store water during high spring flow in an impoundment with a capacity of 50
25 acre-feet or more; or

26 (f) an application for a permit to appropriate surface water to conduct response actions related to natural
27 resource restoration required for:

28 (i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation,
29 and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

30 (ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water

1 Act of 1977, 33 U.S.C. 1251 through 1387; or

2 (iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

3 (3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may
4 not be used for dilution.

5 (4) A change of use authorization for changing the purpose of use may not be issued for any permit
6 issued pursuant to subsection (2)(b), (2)(c), or (2)(f).

7 (5) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until
8 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and
9 administrable decree as provided in 85-2-406(4)."

10 - END -