

HOUSE BILL NO. 57

INTRODUCED BY Z. BROWN

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PLACEMENT OF THE DEFINITIONS OF "APPROPRIATION RIGHT", "NONCONSUMPTIVE USE", AND "WATER RIGHT" IN STATE LAW; AMENDING SECTIONS 85-2-102, 85-2-329, 85-2-340, AND 85-2-342, MCA; AND REPEALING SECTION 85-2-422, MCA."

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

**Section 1.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" or "appropriation" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Appropriation right" has the same meaning as "water right" as defined in this section.

~~(2)~~(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset

1 adverse effects resulting from net depletion of surface water.

2 ~~(3)~~(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to  
3 temporarily store water through various means, including but not limited to injection, surface spreading and  
4 infiltration, drain fields, or another department-approved method. The stored water may be either pumped from  
5 the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

6 ~~(4)~~(5) "Beneficial use", unless otherwise provided, means:

7 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited  
8 to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and  
9 recreational uses;

10 (b) a use of water appropriated by the department for the state water leasing program under 85-2-141  
11 and of water leased under a valid lease issued by the department under 85-2-141;

12 (c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right  
13 for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under  
14 85-2-436;

15 (d) a use of water through a temporary change in appropriation right or lease to enhance instream flow  
16 to benefit the fishery resource in accordance with 85-2-408;

17 (e) a use of water for aquifer recharge or mitigation; or

18 (f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

19 ~~(5)~~(6) "Certificate" means a certificate of water right issued by the department.

20 ~~(6)~~(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the  
21 purpose of use, or the place of storage.

22 (b) The term does not include a change in water use related to the method of irrigation.

23 ~~(7)~~(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

24 ~~(8)~~(9) "Correct and complete" means that the information required to be submitted conforms to the  
25 standard of substantial credible information and that all of the necessary parts of the form requiring the  
26 information have been filled in with the required information for the department to begin evaluating the  
27 information.

28 ~~(9)~~(10) "Declaration" means the declaration of an existing right filed with the department under section  
29 8, Chapter 452, Laws of 1973.

30 ~~(10)~~(11) "Department" means the department of natural resources and conservation provided for in Title

1 2, chapter 15, part 33.

2 ~~(11)~~(12) "Developed spring" means any point where ground water emerges naturally, that has  
3 subsequently been physically altered, and from which ground water flows under natural pressures or is artificially  
4 withdrawn.

5 ~~(12)~~(13) "Existing right" or "existing water right" means a right to the use of water that would be protected  
6 under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water  
7 rights created under federal law and water rights created under state law.

8 ~~(13)~~(14) "Ground water" means any water that is beneath the ground surface.

9 ~~(14)~~(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption  
10 of abandonment under 85-2-226.

11 ~~(15)~~(16) "Mitigation" means the reallocation of surface water or ground water through a change in  
12 appropriation right or other means that does not result in surface water being introduced into an aquifer through  
13 aquifer recharge to offset adverse effects resulting from net depletion of surface water.

14 ~~(16)~~(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7,  
15 chapter 2.

16 ~~(17)~~(18) (a) "National forest system lands" means all lands within Montana that are owned by the United  
17 States and administered by the secretary of agriculture through the forest service.

18 (b) The term does not include any lands within the exterior boundaries of national forest system units  
19 that are not owned by the United States and administered by the secretary of agriculture through the forest  
20 service.

21 (19) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source  
22 of supply and in which substantially all of the water returns without delay to the source of supply, causing little  
23 or no disruption in stream conditions.

24 ~~(18)~~(20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through  
25 85-2-303 and 85-2-306 through 85-2-314.

26 ~~(19)~~(21) "Person" means an individual, association, partnership, corporation, state agency, political  
27 subdivision, the United States or any agency of the United States, or any other entity.

28 ~~(20)~~(22) (a) "Political subdivision" means any ~~(county,~~ incorporated city or town, public corporation, or  
29 district created pursuant to state law or other public body of the state empowered to appropriate water.

30 (b) The term does not mean a private corporation, association, or group.

1           ~~(21)~~(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation  
2 through application of water-saving methods.

3           ~~(22)~~(24) "State water reservation" means a water right created under state law after July 1, 1973, that  
4 reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water  
5 throughout the year or at periods or for defined lengths of time.

6           ~~(23)~~(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a  
7 result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the  
8 ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35  
9 gallons a minute.

10          ~~(24)~~(26) "Substantial credible information" means probable, believable facts sufficient to support a  
11 reasonable legal theory upon which the department should proceed with the action requested by the person  
12 providing the information.

13          ~~(25)~~(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an  
14 appropriation or water distribution facility or the application of water to anything but a beneficial use.

15          ~~(26)~~(28) "Water" means all water of the state, surface and subsurface, regardless of its character or  
16 manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

17          ~~(27)~~(29) "Water division" means a drainage basin as defined in 3-7-102.

18          ~~(28)~~(30) "Water judge" means a judge as provided for in Title 3, chapter 7.

19          ~~(29)~~(31) "Water master" means a master as provided for in Title 3, chapter 7.

20          ~~(30)~~(32) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate  
21 of water right, a state water reservation, or a compact.

22          ~~(31)~~(33) "Watercourse" means any naturally occurring stream or river from which water is diverted for  
23 beneficial uses. It does not include ditches, culverts, or other constructed waterways.

24          ~~(32)~~(34) "Well" means any artificial opening or excavation in the ground, however made, by which ground  
25 water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."  
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27          **Section 2.** Section 85-2-329, MCA, is amended to read:

28          **"85-2-329. Definitions.** Unless the context requires otherwise, in 85-2-330 and this section, the following  
29 definitions apply:

30          (1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state

1 water reservation pursuant to 85-2-316.

2 ~~(2) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source~~  
3 ~~of supply and in which substantially all of the water returns without delay to the source of supply, causing little~~  
4 ~~or no disruption in stream conditions.~~

5 ~~(3)~~(2) "Teton River basin" means the drainage area of the Teton River and its tributaries above the  
6 confluence of the Teton and Marias Rivers."

7

8 **Section 3.** Section 85-2-340, MCA, is amended to read:

9 **"85-2-340. Definitions.** Unless the context requires otherwise, in 85-2-341 and this section, the following  
10 definitions apply:

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

13 (2) "Ground water" has the meaning provided in 85-2-102.

14 (3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the  
15 confluence of the Jefferson and Missouri Rivers.

16 (4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the  
17 confluence of the Madison and Jefferson Rivers.

18 ~~(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source~~  
19 ~~of supply and in which substantially all of the water returns without delay to the source of supply, causing little~~  
20 ~~or no disruption in stream conditions."~~

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22 **Section 4.** Section 85-2-342, MCA, is amended to read:

23 **"85-2-342. Definitions.** Unless the context requires otherwise, in 85-2-343 and this section, the following  
24 definitions apply:

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

27 ~~(2) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source~~  
28 ~~of supply and in which substantially all of the water returns without delay to the source of supply, causing little~~  
29 ~~or no disruption in stream conditions.~~

30 ~~(3)~~(2) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries

1 above Morony dam."

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3 NEW SECTION. **Section 5. Repealer.** The following section of the Montana Code Annotated is

4 repealed:

5 85-2-422. Definition.

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