

HOUSE BILL NO. 286

INTRODUCED BY A. REDFIELD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WATER RIGHT LAWS IN CONNECTION  
5 WITH STATE LAND LEASES; DECLARING THAT THE USE OF PRIVATE WATER RIGHTS DERIVED FROM  
6 A WELL OR DEVELOPED SPRING WHOSE DIVERSION WORKS IS LOCATED ON PRIVATE LAND FOR USE  
7 ON STATE LAND IN CONNECTION WITH A STATE LAND LEASE DOES NOT RESULT IN AN OWNERSHIP  
8 INTEREST IN THE STATE OF MONTANA; ~~CREATING A NOTICE PROCEDURE FOR WATER RIGHTS~~  
9 ~~HOLDERS WISHING TO USE PRIVATE WATER RIGHTS ON STATE LAND; PROVIDING RULEMAKING~~  
10 ~~AUTHORITY; AMENDING SECTION 85-2-306, MCA; AND PROVIDING EFFECTIVE DATES AND~~  
11 ~~APPLICABILITY DATES~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE  
12 APPLICABILITY DATE."  
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14 WHEREAS, the use of water derived from a well or developed spring whose diversion works is not  
15 located on state-owned land to provide stock water on state-owned land is in the best interest of the state land  
16 lessee and the state; and

17 WHEREAS, the ability to manage livestock grazing and improve grazing management through the use  
18 of stock tanks ~~is a benefit to state lands and the income received by the state~~ GENERATES REVENUE TO THE STATE  
19 THROUGH INCREASED REVENUE from grazing leases; and

20 WHEREAS, the state of Montana asserting ownership over privately held water rights derived from a well  
21 or developed spring whose diversion works are located wholly on private land serves as a disincentive to  
22 improving grazing management on state-owned lands through the use of water tanks; and

23 WHEREAS, the Montana Water Court in Case No. 43A-A found that the temporary use of a privately  
24 owned water right on state land did not equate to state ownership of all or a part of the water right; and

25 WHEREAS, a water right that is diverted; AND developed; ~~and perfected~~ on private land is not subject to  
26 the holding in Department of State Lands v. Pettibone; and

27 WHEREAS, THE STATE OF MONTANA INCORRECTLY EXPANDED THE SCOPE OF DEPARTMENT OF STATE LANDS  
28 V. PETTIBONE TO INCLUDE ALL TRUSTS, NOT JUST SCHOOL TRUST LANDS; AND

29 WHEREAS, THE STATE OF MONTANA INCORRECTLY EXPANDED THE SCOPE OF DEPARTMENT OF STATE LANDS  
30 V. PETTIBONE TO ASSERT OWNERSHIP OVER WATER RIGHTS THAT WERE DIVERTED AND DEVELOPED ON PRIVATE LAND;

1 AND

2 WHEREAS, THE STATE OF MONTANA IS VIOLATING 85-2-306, MCA, IN ASSERTING OWNERSHIP OVER A GROUND  
3 WATER DEVELOPMENT IN WHICH THE STATE DOES NOT HAVE EXCLUSIVE PROPERTY RIGHTS IN THE GROUND WATER  
4 DEVELOPMENT WORKS; AND

5 WHEREAS, the right to use water is a property right that cannot be taken without due process of law.

6 THEREFORE, the Legislature of the State of Montana finds that the use of water from a well or  
7 developed springs that is diverted from a privately owned diversion works located on private land and utilized on  
8 state land does not create an ownership interest in the water right in the state of Montana.

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

11 (Refer to Introduced Bill)

12 Strike everything after the enacting clause and insert:

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14 NEW SECTION. Section 1. Temporary use of a water right on state trust land -- restrictions on  
15 state ownership -- rescinding of noncompliant ownership interests required. (1) A water right owner may  
16 put water from a well or developed spring with ground water development works located on private land to  
17 beneficial use on state trust land for the duration of a state land lease the water right owner holds.

18 ~~(2) The state may not obtain an ownership interest in a water right or the ground water development~~  
19 ~~works of a water right that is diverted from a well or developed spring exclusively based on trustee obligations~~  
20 ~~for state trust land unless:~~

21 ~~—— (a) the ground water development works are located on state trust land;~~

22 ~~—— (b) all or part of the place of use of the water right is located on state trust land;~~

23 ~~—— (c) the state owns exclusive property rights in the ground water development works; and~~

24 ~~—— (d) other statutory requirements are met.~~

25 ~~—— (3) Except as provided in subsection (2), the state may only acquire ownership interests in a water right~~  
26 ~~or ground water development works to satisfy trustee obligations for state trust land by exercising the right of~~  
27 ~~eminent domain pursuant to Title 70, chapter 30.~~

28 (2) THE STATE MAY NOT OBTAIN AN OWNERSHIP INTEREST IN A WATER RIGHT OR THE GROUND WATER  
29 DEVELOPMENT WORKS OF A WATER RIGHT THAT IS DIVERTED FROM A WELL OR DEVELOPED SPRING LOCATED ON PRIVATE  
30 LAND EXCLUSIVELY BASED ON TRUSTEE OBLIGATIONS FOR STATE TRUST LAND UNLESS:

1 (A) A COURT OF COMPETENT JURISDICTION DETERMINES THAT THE STATE IS AN OWNER OF THAT PARTICULAR  
2 WATER RIGHT; OR

3 (B) THE STATE IS IN POSSESSION OF A DEED TRANSFERRING OWNERSHIP OF THE WATER RIGHT TO THE STATE.

4 ~~(4)(3)~~ Before September 30, 2019, the state shall rescind any claim of ownership it asserted or acquired  
5 TO SATISFY TRUSTEE OBLIGATIONS FOR STATE TRUST LAND prior to [the effective date of this act] in a water right or  
6 ground water development works ~~to satisfy trustee obligations for state trust land~~ that do not meet the  
7 requirements of ~~subsections (2) or (3)~~ SUBSECTION (2).

8 ~~(5)(4)~~ For the purposes of this section, "state trust land" has the meaning provided in 77-1-101.

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10 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an  
11 integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 1].

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13 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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15 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the  
16 meaning of 1-2-109, to water from a well or developed spring with ground water development works developed  
17 prior to [the effective date of this act].

18 - END -