

HOUSE BILL NO. 505

INTRODUCED BY W. SALES

ABILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN APPLICANT FOR A WATER RIGHT OR A CHANGE IN A WATER RIGHT TO NOTICE USERS OF SHARED CONVEYANCE FACILITIES; AND AMENDING SECTION 85-2-302, MCA."

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

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit or change in appropriation right. (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

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

(c) If an application is for a permit or change in appropriation right from a shared point of a diversion or through a shared means of conveyance, the application is not correct and complete until the applicant submits



1 proof to the department that a written notice of the application was provided to each owner of an appropriation  
2 right sharing the point of diversion or means of conveyance. For purposes of this subsection (4), "conveyance"  
3 means a canal, ditch, flume, pipeline, or other constructed waterway.

4 (5) The department shall notify the applicant of any defects in an application within 180 days. The defects  
5 must be identified by reference to the rules adopted under subsection (2). If the department does not notify the  
6 applicant of any defects within 180 days, the application must be treated as a correct and complete application.

7 (6) An application does not lose priority of filing because of defects if the application is corrected or  
8 completed within 30 days of the date of notification of the defects or within a further time as the department may  
9 allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after  
10 the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the  
11 application is the date the application is made correct and complete.

12 (7) An application not corrected or completed within 90 days from the date of notification of the defects  
13 is terminated.

14 (8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of  
15 the Flathead Indian reservation."

16

- END -