

SENATE BILL NO. 32

INTRODUCED BY J. SESSO

BY REQUEST OF THE WATER POLICY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A STREAM GAUGE OVERSIGHT WORK GROUP; REVISING DUTIES OF THE DROUGHT AND WATER SUPPLY ADVISORY COMMITTEE; PROVIDING FOR A FEE ON APPLICANTS FOR SURFACE WATER APPROPRIATIONS; AMENDING SECTION 2-15-3308 SECTIONS 2-15-3308 AND 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Policy considerations.** (1) Article IX, section 3(3), of the Montana constitution declares that all surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(2) The legal appropriation of water requires that the water be legally and physically available for appropriation.

(3) Measurement and monitoring of streamflow supports the state's ability to determine when water is physically and legally available to meet new demands while protecting existing water rights.

(4) The effective management and distribution of water depends on accurate real-time measurement of streamflow.

NEW SECTION. **Section 2. Purpose INTENT.** (1) The 2015 state water plan recognizes that improving Montana's water supply and distribution monitoring network will improve the ability of water managers and water users to adjust to seasonal supply and demand imbalances as well as plan for longer term imbalances associated with climate variability.

(2) It is the intent of the legislature to support local, state, and federal efforts and programs to collect and distribute timely and accurate information on Montana streamflows.

(3) The legislature recognizes that streamflow information is collected by numerous state and federal



1 agencies and tribes to meet their statutory responsibilities.

2 (4) The legislature recognizes that streamflow information collected by state, tribal, and federal entities
3 is critical to administration of the Montana Water Use Act, distribution of water by decree, water supply planning
4 for municipalities, and implementation of plans and agreements that address locally developed drought, fish
5 habitat, or water supply objectives.

6 (5) The legislature recognizes it is in the public interest to support and encourage coordination in the
7 collection and distribution of streamflow information.

8 ~~(6) The purpose of [sections 1 through 3] is to establish a stream gauge oversight work group supported
9 by the department of natural resources and conservation:~~

10
11 ~~NEW SECTION. Section 3. Stream gauge oversight work group. (1) There is a stream gauge
12 oversight work group supported by the department of natural resources and conservation:~~

13 ~~(2) The work group is composed of those with a stake in the collection and distribution of streamflow
14 information, including but not limited to state and federal agencies, conservation districts, irrigators, municipalities,
15 tribes, water commissioners, watershed groups, and citizens WITH NO FEWER THAN 12 MEMBERS AND NO MORE THAN
16 20 MEMBERS, INCLUDING AT LEAST ONE AND NO MORE THAN:~~

17 ~~(A) TWO MEMBERS FROM STATE AGENCIES;~~

18 ~~(B) TWO MEMBERS FROM FEDERAL GOVERNMENT AGENCIES;~~

19 ~~(C) TWO MEMBERS FROM CONSERVATION DISTRICTS;~~

20 ~~(D) TWO MEMBERS WHO ARE IRRIGATORS;~~

21 ~~(E) TWO MEMBERS FROM MUNICIPALITIES;~~

22 ~~(F) TWO MEMBERS FROM INDIAN TRIBES;~~

23 ~~(G) TWO WATER COMMISSIONERS;~~

24 ~~(H) TWO MEMBERS FROM WATERSHED GROUPS;~~

25 ~~(I) TWO MEMBERS OF THE RECREATION INDUSTRY; AND~~

26 ~~(J) TWO CITIZEN MEMBERS.~~

27 ~~(3) The work group shall meet at least semiannually to review:~~

28 ~~(a) locations, uses, and funding arrangements for the stream gauge network of the U.S. geological
29 survey; and~~

30 ~~(b) priorities, needs, and expectations of those funding the maintenance and operations of these stream~~

1 gauges and those using data measured by these stream gauges.
 2 ~~———— (4) The work group shall create annually a stream gauge infrastructure work plan, which may include:~~
 3 ~~———— (a) a comprehensive overview of the existing stream gauge network;~~
 4 ~~———— (b) a review of options for funding the maintenance and operations of the stream gauge network,~~
 5 ~~including use of private funds, consolidated agreements, or multipayer payments;~~
 6 ~~———— (c) a proposal for stream gauge priorities;~~
 7 ~~———— (d) cost-effective and reasonable alternatives to stream gauges, including gauges that are not part of~~
 8 ~~the U.S. geological survey's stream gauge network, if applicable;~~
 9 ~~———— (e) oversight of recommendations and activities related to any legislative study of stream gauges; and~~
 10 ~~———— (f) coordination of information regarding stream gauge funding recommendations and requests from state~~
 11 ~~and federal agencies.~~
 12 ~~———— (5) The work group shall report to every meeting of the water policy interim committee established in~~
 13 ~~5-5-231 and at least semiannually to the drought and water supply advisory committee established in 2-15-3308.~~
 14 ~~———— (6) The department shall provide staff support to the stream gauge oversight work group. The~~
 15 ~~department may designate a professional consultant or advisor to convene and facilitate the work group's~~
 16 ~~activities. The department and the consultant or advisor shall identify SHALL APPOINT the individuals and~~
 17 ~~organizations to participate in the work group BASED ON RECOMMENDATIONS FROM THE GROUPS IDENTIFIED IN~~
 18 ~~SUBSECTION (2).~~

19

20 **Section 3.** Section 2-15-3308, MCA, is amended to read:

21 **"2-15-3308. Drought and water supply advisory committee --STREAM GAUGE OVERSIGHT WORK GROUP.**

22 (1) There is a drought and water supply advisory committee in the department of natural resources and
 23 conservation.

24 (2) The drought and water supply advisory committee is chaired by a representative of the governor and
 25 consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish,
 26 wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be
 27 appointed by the governor, and the representative of each department must be appointed by the head of that
 28 department. Additional, nonvoting members who represent federal and local government agencies and public
 29 and private interests affected by drought or flooding may also be appointed by the governor.

30 (3) The drought and water supply advisory committee shall:

1 (a) with the approval of the governor, develop and implement a state plan that considers drought and
2 flooding;

3 (b) review and report drought and water supply monitoring information to the public;

4 (c) coordinate timely drought and flooding impact assessments;

5 (d) identify areas of the state with a high probability of drought or flooding and target reporting and
6 assistance efforts to those areas;

7 (e) upon request, assist in organizing local advisory committees for the areas identified under subsection
8 (3)(d);

9 (f) request state agency staff to provide technical assistance to local advisory committees; ~~and~~

10 (g) promote ideas and activities for groups and individuals to consider that may reduce drought or
11 flooding vulnerability; and

12 ~~(h) provide oversight of the stream gauge oversight work group provided for in [section 3].~~

13 (H) SELECT MEMBERS OF THE COMMITTEE TO SERVE ON A STREAM GAUGE OVERSIGHT WORK GROUP.

14 (4) The drought and water supply advisory committee shall meet, at a minimum, on or around October
15 15 and March 15 of each year to assess moisture conditions and forecasts and, as appropriate, begin
16 preparations for drought or flood mitigation.

17 (5) By April 15 of each year, the drought and water supply advisory committee shall submit a report to
18 the governor describing the potential for drought or flooding in the coming year. If the potential for drought or
19 flooding merits additional activity by the drought and water supply advisory committee, the report must also
20 describe:

21 (a) activities to be taken by the drought and water supply advisory committee for informing the public
22 about the potential impacts of drought or flooding;

23 (b) a schedule for completing activities;

24 (c) geographic areas for which the creation of local drought and water supply advisory committees will
25 be suggested to local governments and citizens; and

26 (d) requests for the use of any available state resources that may be necessary to prevent or minimize
27 drought or flood impacts.

28 (6) (A) THE STREAM GAUGE OVERSIGHT WORK GROUP SHALL MEET AT LEAST SEMIANNUALLY TO REVIEW:

29 (I) LOCATIONS, USES, AND FUNDING ARRANGEMENTS FOR THE STREAM GAUGE NETWORK OF THE U.S.
30 GEOLOGICAL SURVEY; AND

1 (II) PRIORITIES, NEEDS, AND EXPECTATIONS OF THOSE FUNDING THE MAINTENANCE AND OPERATIONS OF THESE
 2 STREAM GAUGES AND THOSE USING DATA MEASURED BY THESE STREAM GAUGES.

3 (B) THE WORK GROUP SHALL CREATE ANNUALLY A STREAM GAUGE INFRASTRUCTURE WORK PLAN, WHICH MAY
 4 INCLUDE:

5 (I) A COMPREHENSIVE OVERVIEW OF THE EXISTING STREAM GAUGE NETWORK;

6 (II) A REVIEW OF OPTIONS FOR FUNDING THE MAINTENANCE AND OPERATIONS OF THE STREAM GAUGE NETWORK,
 7 INCLUDING USE OF PRIVATE FUNDS, CONSOLIDATED AGREEMENTS, OR MULTIPAYER PAYMENTS;

8 (III) A PROPOSAL FOR STREAM GAUGE PRIORITIES;

9 (IV) COST-EFFECTIVE AND REASONABLE ALTERNATIVES TO STREAM GAUGES, INCLUDING GAUGES THAT ARE NOT
 10 PART OF THE U.S. GEOLOGICAL SURVEY'S STREAM GAUGE NETWORK, IF APPLICABLE;

11 (V) OVERSIGHT OF RECOMMENDATIONS AND ACTIVITIES RELATED TO ANY LEGISLATIVE STUDY OF STREAM GAUGES;

12 AND

13 (VI) COORDINATION OF INFORMATION REGARDING STREAM GAUGE FUNDING RECOMMENDATIONS AND REQUESTS
 14 FROM STATE AND FEDERAL AGENCIES.

15 (C) THE WORK GROUP SHALL REPORT TO EVERY MEETING OF THE WATER POLICY INTERIM COMMITTEE
 16 ESTABLISHED IN 5-5-231.

17 ~~(6)~~(7) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the
 18 governor or the division of disaster and emergency services for disaster coordination and emergency response,
 19 as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought and water supply advisory
 20 committee supplement and are consistent with those of the division of disaster and emergency services for
 21 drought or flood planning, preparation, coordination, and mitigation."

22

23 **SECTION 4. SECTION 85-2-310, MCA, IS AMENDED TO READ:**

24 **"85-2-310. Action on application for permit or change in appropriation right.** (1) (a) If the
 25 department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless
 26 the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving
 27 notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance
 28 of the evidence as to why the permit or change in appropriation right should not be denied.

29 (b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not
 30 participate in the preliminary determination.

1 (ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing
2 examiner.

3 (2) A proposal to grant a permit or change in appropriation right with or without conditions following a
4 hearing on a proposal to deny the application must proceed as if the department proposed to grant the permit
5 or change in appropriation right in its preliminary determination pursuant to 85-2-307.

6 (3) If valid objections are not received on an application or if valid objections are unconditionally
7 withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the
8 department shall grant the permit or change in appropriation right as proposed in the preliminary determination
9 pursuant to 85-2-307.

10 (4) If valid objections to an application are received and withdrawn with conditions stipulated with the
11 applicant and the department preliminarily determined to grant the permit or change in appropriation right, the
12 department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy
13 applicable criteria.

14 (5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change
15 in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

16 (6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on
17 national forest system lands, any application approved by the department is subject to any written special use
18 authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of
19 diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any
20 terms, conditions, and limitations related to the use of water contained in any special use authorization required
21 by federal law.

22 (7) (a) Except as provided in subsection (6), if the department proposes to grant a permit or change in
23 appropriation right in modified form, the applicant must be given an opportunity to be heard. The addition of
24 conditions or changes to conditions required for approval does not constitute a modification of the application.

25 (b) The department shall serve notice of a preliminary determination to grant a permit or change in
26 appropriation right in a modified form by first-class mail upon the applicant, with a notice that the applicant may
27 obtain a hearing pursuant to 2-4-604 to show cause by a preponderance of the evidence as to why the permit
28 or change in appropriation right should not be preliminarily determined to be granted in the modified form by filing
29 a request within 30 days after the notice is mailed. The notice must state that the permit or change in
30 appropriation right will be preliminarily determined to be granted as modified unless a hearing is requested.

1 (8) The department may cease action upon an application for a permit or change in appropriation right
2 and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide
3 intent to appropriate water for a beneficial use. An application returned for either of these reasons must be
4 accompanied by a statement of the reasons for which it was returned, and for a permit application there is not
5 a right to a priority date based upon the filing of the application. Returning an application pursuant to this
6 subsection is a final decision of the department.

7 (9) For all applications filed after July 1, 1973, the department shall find that an application is not in good
8 faith or does not show a bona fide intent to appropriate water for a beneficial use if:

9 (a) an application is not corrected and completed as required by 85-2-302;

10 (b) the appropriate filing fee is not paid, including a stream gauge fee of \$10 for each application for a
11 surface water appropriation;

12 (c) the application does not document:

13 (i) a beneficial use of water;

14 (ii) the proposed place of use of all water applied for;

15 (iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a
16 detailed project plan describing when and how much water will be put to a beneficial use. The project plan must
17 include a reasonable timeline for the completion of the project and the actual application of the water to a
18 beneficial use.

19 (iv) for appropriations not covered in subsection (9)(c)(iii), a general project plan stating when and how
20 much water will be put to a beneficial use; and

21 (v) except as provided in subsection (10), if the water applied for is to be appropriated above that which
22 will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

23 (A) each person who will use the water and the amount of water each person will use;

24 (B) the proposed place of use of all water by each person;

25 (C) the nature of the relationship between the applicant and each person using the water; and

26 (D) each firm contractual agreement for the specified amount of water for each person using the water;

27 or

28 (d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by
29 85-2-124.

30 (10) If water applied for is to be marketed by the applicant to other users for the purpose of aquifer

1 recharge or mitigation, the applicant is exempt from the provisions of subsection (9)(c)(v). The applicant must
2 provide information detailing the proposed place of use."

3
4 NEW SECTION. Section 5. Notification to tribal governments. The secretary of state shall send a
5 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
6 Chippewa tribe.

7
8 NEW SECTION. Section 6. Codification instruction. [Sections 1 ~~through 3~~ AND 2] are intended to be
9 codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [sections 1
10 ~~through 3~~ AND 2].

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12 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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14 NEW SECTION. SECTION 8. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2023.

15 - END -