

SENATE BILL NO. 49

INTRODUCED BY J. COHENOUR

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LOCATION OF WATER MEASUREMENT FOR AN APPROPRIATION RIGHT THAT RETAINS ORIGINAL BENEFICIAL USES IN A CHANGE OF APPROPRIATION RIGHT FOR AQUIFER RECHARGE OR MITIGATION IN CERTAIN INSTANCES; AND AMENDING SECTION 85-2-420, MCA."

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

Section 1. Section 85-2-420, MCA, is amended to read:

"85-2-420. Change in appropriation right for aquifer recharge or mitigation -- marketing. (1) Subject to 85-2-402 and this section, an appropriator may apply for a change in appropriation right for the purpose of aquifer recharge or mitigation or for the purpose of marketing water for aquifer recharge or mitigation.

(2) During the completion period authorized by the department for a change pursuant to this section, the appropriator may continue to use the appropriation right for any authorized beneficial use provided that proportionate amounts of the appropriation right are retired as the mitigation or aquifer recharge beneficial use is perfected.

(3) (a) If the full amount of the appropriation right is not sold or marketed as mitigation or aquifer recharge prior to the completion date, the water right retains the beneficial uses authorized prior to the change approved pursuant to this section.

(b) For an appropriation right that retains the original beneficial uses pursuant to this section, ~~the flow rate and volume of water allowed at the point of diversion to be retained for the original beneficial uses must be equal to the flow rate and volume allowed under the initial original beneficial uses minus the amount that was sold or marketed for mitigation or aquifer recharge.~~ IF THE WATER RETAINED FOR THE ORIGINAL BENEFICIAL USES AND THE AMOUNT SOLD OR MARKETED FOR MITIGATION OR AQUIFER RECHARGE ARE:

(I) NOT DIVERTED AT A COMMON POINT OF DIVERSION, THE FLOW RATE AND VOLUME OF WATER RETAINED AT THE POINT OF DIVERSION FOR THE ORIGINAL BENEFICIAL USES MUST BE EQUAL TO THE FLOW RATE AND VOLUME ALLOWED UNDER THE ORIGINAL BENEFICIAL USES MINUS THE AMOUNT SOLD OR MARKETED FOR MITIGATION OR AQUIFER RECHARGE;



1 OR

2 (II) DIVERTED AT A COMMON POINT OF DIVERSION, THE ENTIRE FLOW RATE AND VOLUME OF THE APPROPRIATION
3 IS ALLOWED FROM THE COMMON POINT OF DIVERSION.

4 (4) As part of a change in appropriation right approved pursuant to this section, the department shall:

5 (a) determine a period for the change in appropriation right to be completed that does not exceed 20
6 years;

7 (b) determine an appropriate location for measuring the amount of water that ~~continues to be~~
8 ~~appropriated for the original beneficial uses~~ WILL BE USED FOR MITIGATION OR AQUIFER RECHARGE; and

9 ~~(b)(c)~~ require the appropriator to notify the department within 30 days each time a portion of the change
10 is completed."

11 - END -