



AN ACT GENERALLY REVISING WATER RIGHT LAWS IN CONNECTION WITH STATE LAND LEASES; DECLARING THAT THE USE OF PRIVATE WATER RIGHTS DERIVED FROM A WELL OR DEVELOPED SPRING WHOSE DIVERSION WORKS IS LOCATED ON PRIVATE LAND FOR USE ON STATE LAND IN CONNECTION WITH A STATE LAND LEASE DOES NOT RESULT IN AN OWNERSHIP INTEREST IN THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the use of water derived from a well or developed spring whose diversion works is not located on state-owned land to provide stock water on state-owned land is in the best interest of the state land lessee and the state; and

WHEREAS, the ability to manage livestock grazing and improve grazing management through the use of stock tanks generates revenue to the state through increased revenue from grazing leases; and

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

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

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

WHEREAS, the state of Montana incorrectly expanded the scope of Department of State Lands v. Pettibone to include all trusts, not just school trust lands; and

WHEREAS, the state of Montana incorrectly expanded the scope of Department of State Lands v. Pettibone to assert ownership over water rights that were diverted and developed on private land; and

WHEREAS, the state of Montana is violating 85-2-306, MCA, in asserting ownership over a ground water development in which the state does not have exclusive property rights in the ground water development works; and

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

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

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

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

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

(a) a court of competent jurisdiction determines that the state is an owner of that particular water right;  
or

(b) the state is in possession of a deed transferring ownership of the water right to the state.

(3) Before September 30, 2019, the state shall rescind any claim of ownership it asserted or acquired to satisfy trustee obligations for state trust land prior to [the effective date of this act] in a water right or ground water development works that do not meet the requirements of subsection (2).

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

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

**Section 3. Effective date.** [This act] is effective on passage and approval.

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

of this act].

- END -

I hereby certify that the within bill,  
HB 0286, originated in the House.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Chief Clerk of the House

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 286

INTRODUCED BY A. REDFIELD

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