

1 HOUSE BILL NO. 435

2 INTRODUCED BY J. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE CONSTRUCTION OF A WATER SUPPLY  
5 SYSTEM USING AN EXEMPT WATER RIGHT IS PROOF OF BENEFICIAL USE FOR ISSUANCE OF A  
6 CERTIFICATE OF WATER RIGHT; AMENDING SECTION 85-2-306, MCA; AND PROVIDING AN IMMEDIATE  
7 EFFECTIVE DATE ~~AND A RETROACTIVE APPLICABILITY DATE.~~"

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

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11 Section 1. Section 85-2-306, MCA, is amended to read:

12 "85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b),  
13 ground water may be appropriated only by a person who has a possessory interest in the property where the  
14 water is to be put to beneficial use and exclusive property rights in the ground water development works.

15 (b) If another person has rights in the ground water development works, water may be  
16 appropriated with the written consent of the person with those property rights or, if the ground water  
17 development works are on national forest system lands, with any prior written special use authorization required  
18 by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,  
19 impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

20 (c) If the person does not have a possessory interest in the real property from which the ground  
21 water may be appropriated, the person shall provide to the owner of the real property written notification of the  
22 works and the person's intent to appropriate ground water from the works. The written notification must be  
23 provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded  
24 works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a  
25 notice requirement only and does not create an easement in or over the real property where the ground water  
26 development works are located.

27 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated  
28 only:

1 (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is  
2 owned or under the control of the applicant and that is 40 acres or larger.

3 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a  
4 permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete  
5 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If  
6 the department determines after a hearing that the rights of other appropriators have been or will be adversely  
7 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make  
8 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights  
9 of other appropriators. [For purposes of an adverse effects determination under this subsection, the department  
10 may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to  
11 85-2-311.]

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

16 (8) A person may also appropriate water without applying for or prior to receiving a permit under  
17 rules adopted by the department under 85-2-113.

18 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior  
19 boundaries of the Flathead Indian reservation. (Bracketed language in subsection (7)(a) terminates September  
20 30, 2023--sec. 8, Ch. 243, L. 2017.)"

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22 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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24 ~~NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the~~  
25 ~~meaning of 1-2-109, to water supply systems constructed after December 31, 2000.~~

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