

1 HOUSE BILL NO. 642

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12 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EXCEPTIONS TO WATER RIGHT PERMIT

13 REQUIREMENTS; REQUIRING A STAKEHOLDER GROUP AND ESTABLISHING REPORTING

14 REQUIREMENTS; CREATING AN EXEMPTION FOR FAMILY TRANSFERS; REQUIRING A FILING FEE;

15 AMENDING SECTIONS SECTION 85-2-306 AND 85-2-381, MCA; AND PROVIDING AN IMMEDIATE

16 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY A TERMINATION DATE."

17

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

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20 (Refer to Introduced Bill)

21 Strike everything after the enacting clause and insert:

22

23 **NEW SECTION. Section 1. Exempt well stakeholder group -- duties -- termination.** (1) The

24 department of natural resources and conservation shall convene a stakeholder group. The group shall:

25 (a) evaluate what constitutes a de minimis amount of water that exempt wells may appropriate with

26 minimal impact to existing water users;

27 (b) assess options to evaluate cumulative impacts of multiple exemptions;

28 (c) determine the role of mitigation to offset the impact of exempt wells on existing users;

1 (d) suggest metering, reporting, and enforcement requirements for exempt wells used for
2 agriculture, domestic, and commercial purposes;

3 (e) evaluate how the department may implement changes to the exempt well process and its effect
4 on water users; and

5 (f) consider how making policy changes retroactive would affect exiting exempt well water right
6 holders.

7 (2) Before September 1, 2024, the department shall report to the water policy interim committee.

8 The report must include:

9 (a) an overview of the stakeholder work group process, including what stakeholder interests were
10 represented; and

11 (b) recommendations to better assess the need and role of exemptions to water permitting,
12 including recommended changes to statutes, rules, or guidance documents.

13

14 **Section 2.** Section 85-2-306, MCA, is amended to read:

15 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b),
16 ground water may be appropriated only by a person who has a possessory interest in the property where the
17 water is to be put to beneficial use and exclusive property rights in the ground water development works.

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

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

1 development works are located.

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

4 (a) according to a permit received pursuant to 85-2-508; or

5 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.

6 (3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before
7 appropriating ground water by means of a well or developed spring:

8 (i) when the appropriation is made by a local governmental fire agency organized under Title 7,
9 chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and
10 emergency fire-related operations, which may include enclosed storage;

11 (ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive
12 geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the
13 same source aquifer, and the distance between the extraction well and both the nearest existing well and the
14 hydraulically connected surface waters is more than twice the distance between the extraction well and the
15 injection well;

16 (iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and
17 does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or
18 more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; ~~or~~

19 (iv) when outside a stream depletion zone, the exempt appropriation is 35 gallons a minute or less
20 and does not exceed 2 acre-feet a year for a new lot or parcel created by order of court pursuant to 76-3-
21 201(1)(a) or a family transfer division of land provided for in 76-3-207(1)(b); or

22 ~~(iv)~~(v) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and
23 does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more
24 wells or developed springs exceeding this limitation requires a permit.

25 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground
26 water for beneficial use, the appropriator shall file a notice of completion with the department on a form
27 provided by the department through its offices. A notice of completion must be accompanied by a \$150 filing
28 fee.

1 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a
2 certificate of water right, return a defective notice for correction or completion, together with the reasons for
3 returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and
4 refiled with the department within 30 days of notification of defects or within a further time as the department
5 may allow, not to exceed 6 months.

6 (iii) If a notice is not corrected and completed within the time allowed, the priority date of
7 appropriation is the date of refiled a correct and complete notice with the department.

8 (c) A certificate of water right may not be issued until a correct and complete notice has been filed
9 with the department, including proof of landowner notification or a written federal special use authorization as
10 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
11 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
12 of priority of the right.

13 (4) An appropriator of ground water by means of a well or developed spring first put to beneficial
14 use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in
15 force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
16 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
17 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the
18 filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

19 (5) An appropriation under subsection (4) is an existing right, and a permit is not required.
20 However, the department shall acknowledge the receipt of a correct and complete filing of a notice of
21 completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year,
22 the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate
23 need not be issued under the adjudication proceedings provided for in 85-2-236.

24 (6) A permit is not required before constructing an impoundment or pit and appropriating water for
25 use by livestock if:

- 26 (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
- 27 (b) the appropriation is less than 30 acre-feet a year;
- 28 (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other

1 than a perennial flowing stream; and

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

4 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a
5 permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete
6 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If
7 the department determines after a hearing that the rights of other appropriators have been or will be adversely
8 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make
9 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights
10 of other appropriators. [For purposes of an adverse effects determination under this subsection, the department
11 may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to
12 85-2-311.]

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

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

19 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior
20 boundaries of the Flathead Indian reservation. (Bracketed language in subsection (7)(a) terminates September
21 30, 2023--sec. 8, Ch. 243, L. 2017.)"

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23 NEW SECTION. **Section 3. Termination.** [Section 1] terminates December 31, 2024.

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