

1 HOUSE BILL NO. 406  
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 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT CERTAIN PONDS MAY NOT ADVERSELY  
 6 AFFECT PRIOR APPROPRIATORS; REVISING CRITERIA FOR WATER RIGHTS PERMITS AND  
 7 CHANGES; AND AMENDING SECTIONS 85-2-311 AND 85-2-402, MCA."  
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 10

11 **Section 1.** Section 85-2-311, MCA, is amended to read:

12 **"85-2-311. Criteria for issuance of permit.** (1) A permit may be issued under this part prior to the  
 13 adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no  
 14 presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the  
 15 adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the  
 16 department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or  
 17 state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the  
 18 applicant proves by a preponderance of evidence that the following criteria are met:

19 (a) (i) there is water physically available at the proposed point of diversion in the amount that the  
 20 applicant seeks to appropriate; and

21 (ii) water can reasonably be considered legally available during the period in which the applicant  
 22 seeks to appropriate, in the amount requested, based on the records of the department and other evidence  
 23 provided to the department. Legal availability is determined using an analysis involving the following factors:

24 (A) identification of physical water availability;

25 (B) identification of existing legal demands of water rights on the source of supply throughout the  
 26 area of potential impact by the proposed use; and

27 (C) analysis of the evidence on physical water availability and the existing legal demands of water  
 28 rights, including but not limited to a comparison of the physical water supply at the proposed point of diversion

1 with the existing legal demands of water rights on the supply of water.

2 (b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a  
3 state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be  
4 determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that  
5 the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. [The  
6 applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to  
7 approval filed pursuant to subsection (9) in connection with a permit application.]

8 (c) the proposed means of diversion, construction, and operation of the appropriation works are  
9 adequate;

10 (d) the proposed use of water is a beneficial use;

11 (e) the applicant has a possessory interest or the written consent of the person with the  
12 possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a  
13 point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written  
14 special use authorization required by federal law to occupy, use, or traverse national forest system lands for the  
15 purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the  
16 permit;

17 (f) the water quality of a prior appropriator will not be adversely affected;

18 (g) the proposed use will be substantially in accordance with the classification of water set for the  
19 source of supply pursuant to 75-5-301(1); ~~and~~

20 (h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in  
21 accordance with Title 75, chapter 5, part 4, will not be adversely affected; and

22 (i) a prior appropriator will not be adversely affected by an impoundment of water diverted from a  
23 watercourse.

24 (2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been  
25 met only if a valid objection is filed. A valid objection must contain substantial credible information establishing  
26 to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not  
27 be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local  
28 water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

1           (3)     The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water  
2 a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing  
3 evidence that:

4           (a)     the criteria in subsection (1) are met;

5           (b)     the proposed appropriation is a reasonable use. A finding must be based on a consideration of  
6 the following:

7           (i)     the existing legal demands of water rights on the state water supply, as well as projected legal  
8 demands of water rights, such as reservations of water for future beneficial purposes, including municipal water  
9 supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic  
10 life;

11          (ii)     the benefits to the applicant and the state;

12          (iii)    the effects on the quantity and quality of water for existing beneficial uses in the source of  
13 supply;

14          (iv)    the availability and feasibility of using low-quality water for the purpose for which application  
15 has been made;

16          (v)     the effects on private property rights by any creation of or contribution to saline seep; and

17          (vi)    the probable significant adverse environmental impacts of the proposed use of water as  
18 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

19          (4)     (a) The state of Montana has long recognized the importance of conserving its public waters  
20 and the necessity to maintain adequate water supplies for the state's water requirements, including  
21 requirements for federal non-Indian and Indian reserved water rights held by the United States for federal  
22 reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of  
23 Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public  
24 waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in  
25 this subsection (4) must be met before out-of-state use may occur.

26          (b)     The department may not issue a permit for the appropriation of water for withdrawal and  
27 transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

28          (i)     depending on the volume of water diverted or consumed, the applicable criteria and

1 procedures of subsection (1) or (3) are met;

2 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

3 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the  
4 citizens of Montana.

5 (c) In determining whether the applicant has proved by clear and convincing evidence that the  
6 requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

7 (i) whether there are present or projected water shortages within the state of Montana;

8 (ii) whether the water that is the subject of the application could feasibly be transported to alleviate  
9 water shortages within the state of Montana;

10 (iii) the supply and sources of water available to the applicant in the state where the applicant  
11 intends to use the water; and

12 (iv) the existing legal demands of water rights placed on the applicant's supply in the state where  
13 the applicant intends to use the water.

14 (d) When applying for a permit or a lease to withdraw and transport water for use outside the state,  
15 the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation,  
16 lease, and use of water.

17 (5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the  
18 applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall  
19 submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other  
20 information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural  
21 resources conservation service and other specific field studies.

22 (6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion,  
23 impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or  
24 employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation,  
25 diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly,  
26 personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise  
27 restrain or control waters within the boundaries of this state except in accordance with this section.

28 (7) The department may adopt rules to implement the provisions of this section.

1 (8) For an application for ground water in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-  
 2 330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, the applicant shall comply with the provisions of 85-2-360 in  
 3 addition to the requirements of this section.

4 [(9) The department may not conduct an adverse effects analysis on a water right if the water right  
 5 holder files a written consent to approval of an application for a permit.] (Bracketed language in subsections  
 6 (1)(b) and (9) terminates September 30, 2023--sec. 8, Ch. 243, L. 2017.)"

7

8 **Section 2.** Section 85-2-402, MCA, is amended to read:

9 **"85-2-402. Changes in appropriation rights -- definition.** (1) (a) The right to make a change in  
 10 appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water  
 11 reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there  
 12 is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect  
 13 prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in  
 14 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an  
 15 appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall  
 16 submit a correct and complete application.

17 (b) If an application involves a change in a point of diversion, conveyance, or place of use located  
 18 on national forest system lands, the application is not correct and complete until the applicant has submitted  
 19 proof to the department of any written special use authorization required by federal law for the proposed  
 20 change in occupancy, use, or traverse of national forest system lands for the purpose of diversion,  
 21 impoundment, storage, transportation, withdrawal, use, or distribution of water.

22 [(c) The applicant is not required to prove a lack of adverse effect for any water right identified on a  
 23 written consent to approval filed pursuant to subsection (19) in connection with an application.]

24 (2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable,  
 25 subject to subsection[s (1)(c) and] (17), the department shall approve a change in appropriation right if the  
 26 appropriator proves by a preponderance of evidence that the following criteria are met:

27 (a) The proposed change in appropriation right will not adversely affect the use of the existing  
 28 water rights of other persons or other perfected or planned uses or developments for which a permit or

1 certificate has been issued or for which a state water reservation has been issued under part 3. For purposes of  
2 this section, adverse effects analysis is specific to the proposed change in appropriation right and a  
3 determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an  
4 adverse effect will occur.

5 (b) The proposed means of diversion, construction, and operation of the appropriation works are  
6 adequate, except for:

7 (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

8 (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

9 (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

10 (c) The proposed use of water is a beneficial use.

11 (d) The applicant has a possessory interest, or the written consent of the person with the  
12 possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change  
13 involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any  
14 written special use authorization required by federal law to occupy, use, or traverse national forest system lands  
15 for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

16 This subsection (2)(d) does not apply to:

17 (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

18 (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

19 (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

20 (e) If the change in appropriation right involves salvaged water, the proposed water-saving  
21 methods will salvage at least the amount of water asserted by the applicant.

22 (f) The water quality of an appropriator will not be adversely affected.

23 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in  
24 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

25 (h) An impoundment of water diverted from a watercourse will not adversely affect a prior  
26 appropriator.

27 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been  
28 met only if a valid objection is filed. A valid objection must contain substantial credible information establishing

1 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

2 (4) The department may not approve a change in purpose of use or place of use of an  
3 appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless  
4 the appropriator proves by a preponderance of evidence that:

5 (a) the criteria in subsection (2) are met; and

6 (b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use  
7 must be based on a consideration of:

8 (i) the existing legal demands of water rights on the state water supply, as well as projected legal  
9 demands of water rights for future beneficial purposes, including municipal water supplies, irrigation systems,  
10 and minimum streamflows for the protection of existing water rights and aquatic life;

11 (ii) the benefits to the applicant and the state;

12 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

13 (iv) the availability and feasibility of using low-quality water for the purpose for which application  
14 has been made;

15 (v) the effects on private property rights by any creation of or contribution to saline seep; and

16 (vi) the probable significant adverse environmental impacts of the proposed use of water as  
17 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

18 (5) The department may not approve a change in purpose of use or place of use for a diversion  
19 that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being  
20 consumed unless:

21 (a) the applicant proves by clear and convincing evidence and the department finds that the  
22 criteria in subsections (2) and (4) are met; and

23 (b) for the withdrawal and transportation of appropriated water for out-of-state use, the department  
24 then petitions the legislature and the legislature affirms the decision of the department after one or more public  
25 hearings.

26 (6) The state of Montana has long recognized the importance of conserving its public waters and  
27 the necessity to maintain adequate water supplies for the state's water requirements, including requirements for  
28 federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in

1 trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes  
2 that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict  
3 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before  
4 out-of-state use may occur:

5 (a) The department and, if applicable, the legislature may not approve a change in appropriation  
6 right for the withdrawal and transportation of appropriated water for use outside the state unless the  
7 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or  
8 more public hearings that:

9 (i) depending on the volume of water diverted or consumed, the applicable criteria and  
10 procedures of subsection (2) or (4) are met;

11 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

12 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the  
13 citizens of Montana.

14 (b) In determining whether the appropriator has proved by clear and convincing evidence that the  
15 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature  
16 shall consider the following factors:

17 (i) whether there are present or projected water shortages within the state of Montana;

18 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be  
19 transported to alleviate water shortages within the state of Montana;

20 (iii) the supply and sources of water available to the applicant in the state where the applicant  
21 intends to use the water; and

22 (iv) the existing legal demands of water rights placed on the applicant's supply in the state where  
23 the applicant intends to use the water.

24 (c) When applying for a change in appropriation right to withdraw and transport water for use  
25 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the  
26 appropriation and use of water.

27 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of  
28 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed



1 change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance  
2 with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall  
3 provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it  
4 determines that the proposed change in appropriation right might adversely affect the rights of other persons[,  
5 except for any right for which a written consent to approval has been filed pursuant to subsection (19) in  
6 connection with the application].

7 (8) The department or the legislature, if applicable, may approve a change in appropriation right  
8 subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of  
9 this section, including limitations on the time for completion of the change in appropriation right. The department  
10 may extend time limits specified in the change in appropriation right approval under the applicable criteria and  
11 procedures of 85-2-312.

12 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the  
13 appropriator shall notify the department that the appropriation has been completed. The notification must  
14 contain a certified statement by a person with experience in the design, construction, or operation of  
15 appropriation works describing how the appropriation was completed.

16 (10) If a change in appropriation right is not completed as approved by the department or legislature  
17 or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not  
18 complied with, the department may, after notice and opportunity for hearing, require the appropriator to show  
19 cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails  
20 to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

21 (11) The original of a change in appropriation right approval issued by the department must be sent  
22 to the applicant, and a duplicate must be kept in the office of the department in Helena.

23 (12) A person holding an issued permit or change in appropriation right approval that has not been  
24 perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an  
25 application for change in appropriation right pursuant to this section.

26 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,  
27 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized  
28 change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an

1 agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

2 (14) The department may adopt rules to implement the provisions of this section.

3 (15) (a) An appropriator may change an appropriation right for a replacement well without the prior  
4 approval of the department if:

5 (i) the appropriation right is for:

6 (A) ground water outside the boundaries of a controlled ground water area; or

7 (B) ground water inside the boundaries of a controlled ground water area and if the provisions of  
8 the rule establishing the controlled ground water area do not restrict a change in appropriation right;

9 (ii) the change in appropriation right is to replace an existing well and the existing well will no  
10 longer be used;

11 (iii) the rate and volume of the appropriation from the replacement well are equal to or less than  
12 that of the well being replaced and do not exceed:

13 (A) 450 gallons a minute for a municipal well; or

14 (B) 35 gallons a minute and 10 acre-feet a year for all other wells;

15 (iv) the water from the replacement well is appropriated from the same aquifer as the water  
16 appropriated from the well being replaced; and

17 (v) a timely, correct and complete notice of replacement well is submitted to the department as  
18 provided in subsection (15)(b).

19 (b) (i) After completion of a replacement well and appropriation of ground water for a beneficial  
20 use, the appropriator shall file a notice of replacement well with the department on a form provided by the  
21 department.

22 (ii) (A) The department shall review the notice of replacement well and shall issue an authorization  
23 of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is  
24 correct and complete.

25 (B) If the replacement well is located on national forest system lands, the notice is not correct and  
26 complete under this subsection (15) until the appropriator has submitted proof of any written special use  
27 authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of  
28 constructing the replacement well.

1 (iii) The department may not issue an authorization of a change in appropriation right until a correct  
2 and complete notice of replacement well has been filed with the department. The department shall return a  
3 defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall  
4 refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a  
5 further time as the department may allow, not to exceed 6 months.

6 (iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

7 (A) cease appropriation of water from the replacement well pending approval by the department;

8 and

9 (B) submit an application for a change in appropriation right to the department pursuant to  
10 subsections (1) through (3).

11 (c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under  
12 85-2-404.

13 (d) For each well that is replaced under this subsection (15), the appropriator shall follow the well  
14 abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-  
15 43-202.

16 (e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation  
17 right that meets the requirements of subsection (15)(a).

18 (16) (a) An appropriator may change an appropriation right without the prior approval of the  
19 department for the purpose of constructing a redundant water supply well in a public water supply system, as  
20 defined in 75-6-102, if the redundant water supply well:

21 (i) withdraws water from the same ground water source as the original well; and

22 (ii) is required by a state or federal agency.

23 (b) The priority date of the redundant water supply well is the same as the priority date of the  
24 original well. Only one well may be used at one time.

25 (c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a  
26 notice of construction of the well with the department on a form provided by the department. The department  
27 may return a defective notice of construction to the appropriator for correction and completion. If the redundant  
28 water supply well is located on national forest system lands, the notice is not correct and complete under this

1 subsection until the appropriator has submitted proof of any written special use authorization required by  
2 federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the  
3 redundant water supply well.

4 (d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that  
5 meets the requirements of this subsection (16).

6 (17) The department shall accept and process an application for a change in appropriation right for  
7 instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit  
8 the fishery resource pursuant to 85-2-436 and this section.

9 (18) (a) An appropriator may change an appropriation right for a replacement point of diversion  
10 without the prior approval of the department if:

11 (i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

12 (ii) there are no other changes to the water right;

13 (iii) the capacity of the diversion is not increased;

14 (iv) there are no points of diversion or intervening water rights between the existing point of  
15 diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening  
16 water right holders;

17 (v) the replacement point of diversion is on the same surface water source and is located as close  
18 as reasonably practicable to the existing point of diversion;

19 (vi) the replacement point of diversion replaces an existing point of diversion and the existing point  
20 of diversion will no longer be used;

21 (vii) the appropriator can show that the existing point of diversion has been used in the 10 years  
22 prior to the notice for change of appropriation right for a replacement point of diversion;

23 (viii) the appropriator can show the change will not increase access to water availability, change the  
24 method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

25 (ix) a timely, correct and complete notice of replacement point of diversion is submitted to the  
26 department as provided in subsection (18)(b).

27 (b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file  
28 a notice of replacement point of diversion with the department on a form provided by the department.

1           (ii)     The department shall review the notice of replacement point of diversion and shall issue an  
2 authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and  
3 the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under  
4 subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation  
5 right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide  
6 notice of the authorization in the same manner as required in 85-2-307 for applications.

7           (iii)    The department may not issue an authorization of a change in appropriation right until a correct  
8 and complete notice of replacement point of diversion has been filed with the department. The department shall  
9 return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator  
10 shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of  
11 defects or within a further time as the department may allow, not to exceed 6 months.

12           (iv)     If a notice of replacement point of diversion is not filed and completed within the time allowed or  
13 if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:

14           (A)     cease appropriation of water from the replacement point of diversion pending approval by the  
15 department; and

16           (B)     submit an application for a change in appropriation right to the department pursuant to  
17 subsections (1) through (3).

18           (c)     The provisions of this subsection (18) do not apply to an appropriation right abandoned under  
19 85-2-404.

20           (d)     The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation  
21 right that meets the requirements of subsection (18)(a).

22           (e)     (i) An appropriator may file a correct and complete objection with the department alleging that  
23 the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing  
24 water rights of other persons or other perfected or planned uses or developments for which a permit or  
25 certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2,  
26 part 3.

27           (ii)    If the department determines after a contested case hearing between the appropriator and the  
28 objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change

1 or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of  
2 other appropriators.

3 (iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator  
4 changing the point of diversion.

5 [(19) The department may not conduct an adverse effects analysis on a water right if the water right  
6 holder files a written consent to approval of an application for a change in appropriation right.] (Bracketed  
7 language in subsections (1)(c), (2), (7), and (19) terminates September 30, 2023--sec. 8, Ch. 243, L. 2017.)"

8 - END -