

HOUSE BILL NO. 537

INTRODUCED BY J. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A WATER RIGHT PERMIT EXCEPTION FOR BENEFICIAL USE OF WATER PRODUCED BY OIL AND GAS OPERATIONS; PROVIDING RULEMAKING AUTHORITY TO THE BOARD OF OIL AND GAS CONSERVATION; AND AMENDING SECTIONS 82-11-111 AND 85-2-306, MCA."

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

**Section 1.** Section 82-11-111, MCA, is amended to read:

**"82-11-111. (Temporary) Powers and duties of board.** (1) The board shall make investigations that it considers proper to determine whether waste exists or is imminent or whether other facts exist that justify any action by the board under the authority granted by this chapter.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;

(b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to implement this chapter and 85-2-306(8).

(3) The board shall determine and prescribe which producing wells are defined as "stripper wells" and which wells are defined as "wildcat wells" and make orders that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the interest of conservation.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less

1 than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately  
2 recoverable by the well.

3 (5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in  
4 relation to those injection wells. The board may:

5 (a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells consistent  
6 with rules made by it;

7 (b) examine plans and other information needed to determine whether a permit should be issued  
8 or require changes in plans as a condition to the issuance of a permit;

9 (c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the  
10 fluids to be injected and the operation of the well;

11 (d) authorize its staff to enter upon any public or private property at reasonable times to:

12 (i) investigate conditions relating to violations of permit conditions;

13 (ii) have access to and copy records required under this chapter;

14 (iii) inspect monitoring equipment or methods; and

15 (iv) sample fluids that the operator is required to sample; and

16 (e) adopt standards for the design, construction, testing, and operation of class II injection wells.

17 (6) The board shall determine, for the purposes of using the oil and gas production damage  
18 mitigation account established in 82-11-161:

19 (a) when the person responsible for an abandoned well, sump, or hole cannot be identified or  
20 located or, if the person is identified or located, when the person does not have sufficient financial resources to  
21 properly plug the well, sump, or hole; or

22 (b) when a previously abandoned well, sump, or hole is the cause of potential environmental  
23 problems and no responsible party can be identified or located or, if a responsible party can be identified and  
24 located, when the person does not have sufficient financial resources to correct the problems.

25 (7) The board may take measures to demonstrate to the general public the importance of the  
26 state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of  
27 energy, to promote environmentally sound exploration and production methods and technologies, to develop  
28 the state's oil and gas resources, and to support research and educational activities concerning the oil and

1 natural gas exploration and production industry. The board may:

2 (a) make grants or loans and provide other forms of financial assistance as necessary or  
3 appropriate from available funds to qualified persons for research, development, marketing, educational  
4 projects, and processes or activities directly related to the state's oil and gas exploration and production  
5 industry;

6 (b) enter into contracts or agreements to carry out the purposes of this subsection (7), including  
7 the authority to contract for the administration of an oil and gas research, development, marketing, and  
8 educational program;

9 (c) cooperate with any private, local, state, or national commission, organization, agent, or group  
10 and enter into contracts and agreements for programs benefiting the oil and gas exploration and production  
11 industry;

12 (d) coordinate with the Montana university system, including Montana technological university or  
13 any of its affiliated research programs;

14 (e) accept donations, grants, contributions, and gifts from any public or private source for deposit  
15 in the oil and gas education and research account established in 82-11-110;

16 (f) distribute funds from the oil and gas education and research account to carry out the provisions  
17 of this subsection (7); and

18 (g) make orders and rules to implement the provisions of this subsection (7).

19 **82-11-111. (Effective on occurrence of contingency) Powers and duties of board.** (1) The board  
20 shall investigate matters it considers proper to determine whether waste exists or is imminent or whether other  
21 facts exist that justify any action by the board under the authority granted by this chapter.

22 (2) Subject to the administrative control of the department under 2-15-121, the board shall:

23 (a) require measures to be taken to prevent contamination of or damage to surrounding land or  
24 underground strata caused by drilling operations and production, including but not limited to regulating the  
25 disposal or injection of water or carbon dioxide and disposal of oil field wastes;

26 (b) classify wells as oil or gas wells, carbon dioxide injection wells, or class II injection wells for  
27 purposes material to the interpretation or enforcement of this chapter;

28 (c) adopt and enforce rules and orders to implement this chapter and 85-2-306(8).

1           (3)     The board shall determine and prescribe which producing wells are defined as "stripper wells"  
 2     and which wells are defined as "wildcat wells" and make orders that in its judgment are required to protect  
 3     those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the  
 4     interest of conservation.

5           (4)     With respect to any pool with gas being produced by a gas well on or prior to April 1, 1953, this  
 6     chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from  
 7     that pool by any existing well or a well drilled after that date and producing from that pool to less than the rate at  
 8     which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the  
 9     well.

10          (5)     Subject to subsection (8), the board has exclusive jurisdiction over carbon dioxide injection  
 11     wells, geologic storage reservoirs, all class II injection wells, and all pits and ponds in relation to those injection  
 12     wells. The board may:

13          (a)     issue, suspend, revoke, modify, or deny permits to operate carbon dioxide injection wells and  
 14     class II injection wells, consistent with rules made by it and pursuant to 82-11-123. If a permit for a carbon  
 15     dioxide injection well is revoked, an operator may not seek a refund of application or permitting fees or fees  
 16     paid pursuant to 82-11-181 or 82-11-184(2)(b).

17          (b)     examine plans and other information needed to determine whether a permit should be issued  
 18     or require changes in plans as a condition to the issuance of a permit;

19          (c)     clearly specify in a permit any limitations imposed as to the volume and characteristics of the  
 20     fluids to be injected and the operation of the well;

21          (d)     authorize its staff to enter upon any public or private property at reasonable times to:

22                 (i)     investigate conditions relating to violations of permit conditions;

23                 (ii)    have access to and copy records required under this chapter;

24                 (iii)  inspect monitoring equipment or methods; and

25                 (iv)  sample fluids that the operator or geologic storage operator is required to sample; and

26          (e)     adopt standards for the design, construction, testing, and operation of carbon dioxide injection  
 27     wells and class II injection wells.

28          (6)     The board shall determine, for the purposes of using the oil and gas production damage

1 mitigation account established in 82-11-161 or the geologic storage reservoir program account established in  
2 82-11-181:

3 (a) when the person responsible for an abandoned well, sump, or hole cannot be identified or  
4 located or, if the person is identified or located, when the person does not have sufficient financial resources to  
5 properly plug the well, sump, or hole; or

6 (b) when a previously abandoned well, sump, or hole is the cause of potential environmental  
7 problems and a responsible party cannot be identified or located or, if a responsible party can be identified and  
8 located, when the person does not have sufficient financial resources to correct the problems.

9 (7) The board may take measures to demonstrate to the general public the importance of the  
10 state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of  
11 energy, to promote environmentally sound exploration and production methods and technologies, to develop  
12 the state's oil and gas resources, and to support research and educational activities concerning the oil and  
13 natural gas exploration and production industry. The board may:

14 (a) make grants or loans and provide other forms of financial assistance as necessary or  
15 appropriate from available funds to qualified persons for research, development, marketing, educational  
16 projects, and processes or activities directly related to the state's oil and gas exploration and production  
17 industry;

18 (b) enter into contracts or agreements to carry out the purposes of this subsection (7), including  
19 the authority to contract for the administration of an oil and gas research, development, marketing, and  
20 educational program;

21 (c) cooperate with any private, local, state, or national commission, organization, agent, or group  
22 and enter into contracts and agreements for programs benefiting the oil and gas exploration and production  
23 industry;

24 (d) coordinate with the Montana university system, including Montana technological university or  
25 any of its affiliated research programs;

26 (e) accept donations, grants, contributions, and gifts from any public or private source for deposit  
27 in the oil and gas education and research account established in 82-11-110;

28 (f) distribute funds from the oil and gas education and research account to carry out the provisions

1 of this subsection (7); and

2 (g) make orders and rules to implement the provisions of this subsection (7).

3 (8) (a) Before holding a hearing on a proposed permit for a carbon dioxide injection well, the board  
4 shall solicit, document, consider, and address comments from the department of environmental quality on the  
5 proposal.

6 (b) Notwithstanding the provisions of subsection (8)(a), the board makes the final decision on  
7 issuance of a permit.

8 (9) Solely for the purposes of administering carbon dioxide injection wells under this part, carbon  
9 dioxide within a geologic storage reservoir is not a pollutant, a nuisance, or a hazardous or deleterious  
10 substance."  
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12 **Section 2.** Section 85-2-306, MCA, is amended to read:

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

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

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

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

1 only:

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

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

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

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

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

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

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

20 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground  
21 water for beneficial use, the appropriator shall file a notice of completion with the department on a form  
22 provided by the department through its offices.

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

28 (iii) If a notice is not corrected and completed within the time allowed, the priority date of

1 appropriation is the date of refiling a correct and complete notice with the department.

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

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

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

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

20 (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

21 (b) the appropriation is less than 30 acre-feet a year;

22 (c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other  
23 than a perennial flowing stream; and

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

26 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a  
27 permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete  
28 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If



1 the department determines after a hearing that the rights of other appropriators have been or will be adversely  
2 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make  
3 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights  
4 of other appropriators. [For purposes of an adverse effects determination under this subsection, the department  
5 may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to  
6 85-2-311.]

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

11 (8) A person may also appropriate water without applying for or prior to receiving a permit under  
12 rules adopted by the board of oil and gas conservation under 82-11-111 for the beneficial use of water  
13 produced from withdrawals of either oil or gas or both. The board of oil and gas conservation has jurisdiction  
14 over the use of such water.

15 ~~(8)~~(9) A person may also appropriate water without applying for or prior to receiving a permit under  
16 rules adopted by the department under 85-2-113.

17 ~~(9)~~(10) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior  
18 boundaries of the Flathead Indian reservation. (Bracketed language in subsection (7)(a) terminates September  
19 30, 2023--sec. 8, Ch. 243, L. 2017.)"

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- END -