

1 HOUSE BILL NO. 659

2 INTRODUCED BY B. HAMLETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE VOLUME OF WATER FOR AN EXEMPT GROUND
5 WATER RIGHT; PROVIDING AN EXEMPT APPROPRIATION FEE; CREATING THE GROUND WATER
6 INVESTIGATION PROGRAM SPECIAL REVENUE ACCOUNT; AND AMENDING SECTIONS 85-2-113,
7 85-2-123, 85-2-306, AND 85-2-318, MCA."

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

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11 NEW SECTION. **Section 1. Ground water investigation program account -- use.** (1) There is a
12 ground water investigation program account in the state special revenue fund. The account is administered by
13 the Montana bureau of mines and geology for the purpose of funding activities related to the ground water
14 investigation program, as provided in 85-2-525.

15 (2) Interest and income earnings on the account must be deposited into the account.

16 (3) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the
17 account.

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19 **Section 2.** Section 85-2-113, MCA, is amended to read:

20 **"85-2-113. Department powers and duties.** (1) ~~The Except as provided in 85-2-306(3), the~~ department
21 may prescribe fees or service charges for any public service rendered by the department under this chapter,
22 including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings
23 under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit
24 revocation, for field verification of issued and completed permits, and for all change approvals. There may not
25 be fees for any action taken by the department at the request of the water judge or for the issuance of certificates
26 of existing rights.

27 (2) The department may adopt rules necessary to implement and carry out the purposes and provisions
28 of this chapter. These rules may include but are not limited to rules to:29 (a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under
30 this chapter to begin appropriating water immediately, pending final approval or denial by the department of the

1 application for a regular permit;

2 (b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and
3 measuring devices, except that the department may not require a meter on a water well outside of a controlled
4 ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in
5 excess of the limitation contained in 85-2-306;

6 (c) require the owner or operator of appropriation facilities to report to the department the readings of
7 measuring devices at reasonable intervals and to file reports on appropriations; and

8 (d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution
9 of ground water.

10 (3) The department shall adopt rules providing for and governing temporary emergency appropriations,
11 without prior application for a permit, necessary to protect lives or property.

12 (4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on
13 a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150
14 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation
15 of the watercourse or portions of the watercourse as chronically dewatered, except that when the department
16 specifically finds that the installation of measuring devices along the entire watercourse or portions of the
17 watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

18 (b) For the purposes of this subsection (4), an appropriation facility includes but is not limited to any
19 method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using
20 recognized methods of flow measurement, as determined by the department, are in compliance with this
21 subsection (4)."

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23 **Section 3.** Section 85-2-123, MCA, is amended to read:

24 "**85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-122, ~~and~~ 85-2-124, and
25 85-2-306(3), all fees and penalties collected under this chapter must be deposited in the water right appropriation
26 account established in 85-2-318. Except for fines collected by a district court under 85-2-122, all penalties or fines
27 imposed by any court other than a justice's court for a violation of this chapter must be deposited in the general
28 fund of the county where the court presides and must be disposed of in the same manner as any other penalty
29 or fine."

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1 **Section 4.** Section 85-2-306, MCA, is amended to read:

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

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

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

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

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

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

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

22 (i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter
23 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage;

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

28 (iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does
29 not exceed ~~40 acre-feet a year, except that a combined appropriation from the same source by two or more wells~~
30 ~~or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit~~

1 (A) 2.1 acre-feet a year for domestic uses and an additional 0.4 acre-feet a year for a gray water system,
2 as defined in 15-24-3201; or

3 (B) 10 acre-feet a year for other beneficial uses and an additional 0.4 acre-feet a year for a gray water
4 system, as defined in 15-24-3201; or

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

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

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

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

18 (iv) Before the department issues a certificate of water right, the appropriator shall pay a \$40 exempt
19 appropriation fee. All fees collected under this subsection (3)(b)(iv) must be deposited in the ground water
20 investigation program account established in [section 1].

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

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

1 of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

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

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

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

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

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

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

15 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit
16 as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a
17 stock water provisional permit, the department shall automatically issue a provisional permit. If the department
18 determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may
19 revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit
20 subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other
21 appropriators.

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

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

28 (9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of
29 the Flathead Indian reservation."
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