

1 SENATE BILL NO. 304

2 INTRODUCED BY M. LANG

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO STOCK WATER
 5 RIGHTS LOCATED ON FEDERAL LAND; PROVIDING LIMITATIONS ON A FEDERAL AGENCY'S ABILITY
 6 TO CHANGE STOCK WATER RIGHTS ON TAYLOR GRAZING ACT LANDS; PROVIDING THAT A GRAZING
 7 PERMIT PURSUANT TO THE TAYLOR GRAZING ACT CONSTITUTES PROOF OF CONTROL OF A LAND
 8 PARCEL; PROVIDING THAT GRAZING ALLOTTEES ARE ELIGIBLE TO OBTAIN PERMITS FOR
 9 IMPOUNDMENTS OR PITS ON BUREAU OF LAND MANAGEMENT LAND; AND AMENDING SECTION 85-
 10 2-306, MCA."

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

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14 NEW SECTION. **Section 1. Water rights held by agencies of federal government with place of**
 15 **use on Taylor Grazing Act lands -- limitations.** An agency of the federal government that owns a water right
 16 arising under state law that was originally appropriated for stock water use with a place of use on land
 17 withdrawn pursuant to the Taylor Grazing Act may not change the stock water right pursuant to 85-2-402 with
 18 respect to:

19 (1) purpose of use; or

20 (2) place of use, to the extent that a change in the place of use would include land outside the Taylor
 21 Grazing Act allotment in which the right was originally perfected.

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

24 **"85-2-306. Exceptions to permit requirements.** (1) (a) Except as provided in subsection (1)(b),
 25 ground water may be appropriated only by a person who has a possessory interest in the property where the
 26 water is to be put to beneficial use and exclusive property rights in the ground water development works.

27 (b) If another person has rights in the ground water development works, water may be appropriated
 28 with the written consent of the person with those property rights or, if the ground water development works are

1 on national forest system lands, with any prior written special use authorization required by federal law to
2 occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage,
3 transportation, withdrawal, use, or distribution of water under the certificate.

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

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

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

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

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

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

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

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

27 (iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does
28 not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells

1 or developed springs exceeding this limitation requires a permit.

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

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

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

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

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

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

28 (6) A permit is not required before constructing an impoundment or pit and appropriating water for use

1 by livestock if:

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

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

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

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

8 (7) For the purposes of subsection (6)(d), where the place of use is located on land reserved pursuant
9 to the Taylor Grazing Act, a grazing permit may serve as proof of control of the parcel of land. A water right
10 acquired pursuant to subsection (6)(d):

11 (a) is appurtenant to the permittee's base property; and

12 (b) transfers with the permit.

13 ~~(7)~~(8) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a
14 permit as prescribed by this part. Subject to subsection ~~(7)(b)~~ (8)(b), upon receipt of a correct and complete
15 application for a stock water provisional permit, the department shall automatically issue a provisional permit. If
16 the department determines after a hearing that the rights of other appropriators have been or will be adversely
17 affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make
18 the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights
19 of other appropriators. [For purposes of an adverse effects determination under this subsection, the department
20 may not consider adverse effects on any water right identified in a written consent to approval filed pursuant to
21 85-2-311.]

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

27 ~~(8)~~(9) A person may also appropriate water without applying for or prior to receiving a permit under
28 rules adopted by the department under 85-2-113.

