

SENATE BILL NO. 81

INTRODUCED BY J. COHENOUR

BY REQUEST OF THE WATER POLICY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE DEADLINE TO CORRECT AND COMPLETE AN APPLICATION FOR A PERMIT OR A CHANGE IN APPROPRIATION RIGHT; AND AMENDING SECTION 85-2-302, MCA."

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

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit or change in appropriation right. (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

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

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects

1 must be identified by reference to the rules adopted under subsection (2). If the department does not notify the
2 applicant of any defects within 180 days, the application must be treated as a correct and complete application.

3 (6) An application does not lose priority of filing because of defects if the application is corrected or
4 completed within ~~30~~ 120 days of the date of initial notification of the defects ~~or within a further time as the~~
5 ~~department may allow, but not to exceed 90 days from the date of notification. If an application is made correct~~
6 ~~and complete after the mandated time period, but within 90 days of the date of notification of the defects, the~~
7 ~~priority date of the application is the date the application is made correct and complete.~~

8 (7) An application not corrected or completed within ~~90~~ 120 days from the date of initial notification of
9 the defects is terminated.

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

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