

SENATE BILL NO. 358

INTRODUCED BY W. GALT, J. SECKINGER, K. WALSH, R. MINER, J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING GROUND WATER LAWS; REVISING EXCEPTIONS FROM WATER RIGHT PERMITTING; PROVIDING FOR CLOSURE AND MONITORING OF AQUIFERS; REVISING DESIGNATION OF CONTROLLED GROUND WATER AREAS; REVISING DEPARTMENT DUTIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING A DEFINITION; AMENDING SECTIONS 85-2-102, 85-2-113, 85-2-306, 85-2-381, 85-2-506, AND 85-2-524, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Appropriate" or "appropriation" means:
 - (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;
 - (b) in the case of a public agency, to reserve water in accordance with 85-2-316;
 - (c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;
 - (d) in the case of the United States department of agriculture, forest service:
 - (i) instream flows and in situ use of water created in 85-20-1401, Article V; or
 - (ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;
 - (e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Appropriation right" has the same meaning as "water right" as defined in this section.

(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(5) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(6) "Certificate" means a certificate of water right issued by the department.

(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) The term does not include a change in water use related to the method of irrigation.

(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(10) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(11) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(14) "Ground water" means any water that is beneath the ground surface.

(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(18) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

(19) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the

source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(21) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(22) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(24) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(26) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(28) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(29) "Water division" means a drainage basin as defined in 3-7-102.

(30) "Water judge" means a judge as provided for in Title 3, chapter 7.

(31) "Water master" means a master as provided for in Title 3, chapter 7.

(32) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

(33) "Water right holder" means a certificate of water right holder and includes an exempt well filed under 85-2-306 and the shareholders of a ditch company or canal.

(34) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(34)~~(35) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

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

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

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

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

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

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

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, including for emergency fire training and emergency fire-related operations, without prior application for a permit, necessary to protect lives or property.

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

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

Section 3. Section 85-2-306, MCA, is amended to read:

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

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior 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 certificate.

(c) If the person does not have a possessory interest in the real property from which the ground

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

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

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

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

11 (3) A permit is not required for an appropriation within the Rye Creek stream depletion zone in
12 Ravalli County by means of a well or developed spring if the appropriation is 20 gallons a minute or less and
13 does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more
14 wells or developed springs exceeding 20 gallons a minute or 2 acre-feet a year requires a permit.

15 (4) (a) Outside the boundaries of a controlled ground water area, a stream depletion zone, or a
16 legislative aquifer closure, a permit is not required before appropriating ground water by means of a well or
17 developed spring:

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

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

26 (iii) for an appropriation on a parcel of land not being divided pursuant to Title 76, chapter 3 or 4,
27 when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed
28 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or

developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; ~~or. The department shall consider the following factors when evaluating if two or more wells or developed springs is a combined appropriation:~~

(A) ~~a physically manifold water system;~~

(B) ~~the purpose or purposes of use;~~

(C) ~~the place of use;~~

(D) ~~tract information;~~

(E) ~~ownership;~~

(F) ~~proximity of wells or developed springs;~~

(G) ~~source of water; and~~

(H) ~~topography;~~

(iv) ~~for a parcel with a certificate of subdivision approval from the department of environmental quality before February 14, 2024. The water uses for the subdivision lots and volumes allocated by the department predetermination letter define the amount of water allowed to be appropriated without a permit under this subsection (4).~~

(v) ~~for an appropriation on a parcel of land divided pursuant to Title 76, chapter 3 or 4, when the appropriation is 35 gallons a minute or less and:~~

(A) (I) ~~the parcel was created through a division of a tract of record as defined in 76-3-103 and in existence on October 17, 2014;~~

(II) ~~water use is limited to use on no more than 24 parcels created pursuant to subsection (4)(a)(v)(I);~~

(III) ~~the volume of water appropriated for a parcel does not exceed 0.5 acre-feet a year for each acre of land and does not exceed 1 acre-foot a year for the parcel, except in legislative monitoring areas, where the volume of water appropriated for a parcel does not exceed 0.5 acre-feet a year for each acre of land and does not exceed 0.75 acre-feet a year for the parcel; and~~

(IV) ~~the cumulative volume appropriated for a tract of record in subsection (4)(a)(v)(I)(A) may not exceed 24-20 acre-feet a year, except in legislative monitoring areas, where cumulative volume may not exceed 18 acre-feet a year; or~~

1 (B) if the parcel was divided from a tract of record as defined in 76-3-103 and in existence on or
2 before October 17, 2014, and received a certificate of subdivision approval from the department of
3 environmental quality and a predetermination letter from the department of natural resources and conservation
4 before February 14, 2024, then the water uses for the subdivision lots and volumes allocated in the
5 predetermination letter define the amount of water allowed without a permit under the exception in this
6 subsection (4) and will count toward the maximum cumulative volume limit in subsection (4)(a)(v)(A)(IV).

7 (b) (i) The water appropriated under subsection (4)(a)(v) must be measured and reported annually
8 to the department. A totalizing metering device must be used and the measurements must be reported annually
9 on a form provided by the department. The department may issue a fine for noncompliance with this metering
10 and reporting requirement.

11 (ii) An appropriation exceeding the amounts or conditions in subsection (4)(a)(v) requires a permit.

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

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

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

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

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

1 of priority of the right.

2 ~~(d)~~(e) (i) Construction of a water supply system subject to Title 75, chapter 6, part 1, and use of a
3 permit exception for the appropriation of water pursuant to this section is proof of beneficial use.

4 (ii) The department shall allocate a volume of 10 acre-feet a year to the system and issue a
5 certificate of water right after the conditions in subsection ~~(3)(d)(i)~~ (4)(e)(i) are met.

6 (iii) The department shall consider a water right as perfected after the conditions in subsection
7 ~~(3)(d)(i)~~ (4)(e)(i) are met.

8 (iv) When the appropriation is for a water supply system that is subject to Title 75, chapter 6, part 1,
9 and is located outside of a stream depletion zone and does not exceed 10 acre-feet a year:

10 (A) For the purposes of subsection ~~(3)(b)(i)~~ (4)(c)(i), the appropriation will be considered perfected
11 upon completion of construction of the water supply system.

12 (B) A copy of the department of environmental quality approval for the water supply system must
13 be submitted with the notice of completion. This section does not preclude the public water supply developer or
14 any subsequent owners from expanding the water system or from revising the water use restrictions within the
15 subdivision, provided that the total amount does not exceed 10 acre-feet per year.

16 (C) Water appropriated under this exception must be measured and reported annually to the
17 department.

18 ~~(4)~~(5) An appropriator of ground water by means of a well or developed spring first put to beneficial
19 use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in
20 force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
21 subsection ~~(3)~~ (4), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
22 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the
23 filing of a notice, as provided in subsection ~~(3)~~ (4), or the date of the filing of the claim of existing water right.

24 ~~(5)~~(6) An appropriation under subsection ~~(4)~~ (5) is an existing right, and a permit is not required.
25 However, the department shall acknowledge the receipt of a correct and complete filing of a notice of
26 completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year,
27 the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate
28 need not be issued under the adjudication proceedings provided for in 85-2-236.

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

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

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

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

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

(7)(8) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b) (8)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an 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.

(c) The purpose of use authorized for a provisional permit pursuant to subsection (9) may not be changed pursuant to 85-2-402.

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

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

NEW SECTION. Section 4. Legislative aquifer closures and monitoring areas. (1) Subject to subsection (2), ground water may only be appropriated by a permit issued pursuant to 85-2-302 in the following

1 legislative aquifer closure areas as designated by the department:

2 (a) the Gallatin Valley aquifer within the department administrative boundary 41H, including the
3 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the
4 surface hydrologic divide between major subbasins;

5 (b) the Helena Valley aquifer within the department administrative boundary 41I, including the
6 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the
7 surface hydrologic divide between major subbasins;

8 (c) the Bitterroot Valley aquifer within the department administrative boundary 76H, including the
9 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the
10 surface hydrologic divide between major basins; and

11 (d) the Missoula Valley aquifer within the department administrative boundary 76M, including the
12 unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the
13 surface hydrologic divide between major basins.

14 (2) In a legislative aquifer closure area pursuant to subsection (1), a ground water appropriation:

15 (a) must appropriate ground water by a permit issued pursuant to 85-2-302, except the department
16 may authorize an appropriation for up to 0.5 acre-feet a year without a permit that is authorized by the
17 department for:

18 (i) a single living unit on a tract of record in existence on January 1, 2025, when connection to a
19 public water system and mitigation is infeasible; or

20 (ii) stockwater.

21 (b) may not change the purpose of a water right excepted from permitting pursuant to subsection
22 (2)(a);

23 (c) must meter and report all new water rights and authorizations pursuant to 85-2-306, 85-2-311,
24 and 85-2-402. A totalizing metering device must be used and measurements must be reported annually on a
25 form provided by the department. The department may issue a fine for noncompliance with this metering and
26 reporting requirement.

27 (d) may not appropriate ground water pursuant to 85-2-306, except for the completion of
28 appropriation for parcels created after October 17, 2014, that have received a certificate of subdivision approval

from the department of environmental quality and a predetermination letter from the department of natural resources and conservation before February 14, 2024.

(3) Subject to subsection (4), the following areas are established as legislative aquifer monitoring areas as defined by the department:

(a) Flathead Valley deep and shallow aquifers within the department administrative boundary 76LJ, including the unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the surface hydrologic divide between major basins; and

(b) Billings terrace level 3 aquifer within the department administrative boundary 43Q up to the consolidated bedrock contact and where it is not present to the terrace level 2 contact as described in literature published by the Montana bureau of mines and geology;

(c) adjacent valley fill aquifers between Helena Valley and Gallatin Valley within the department administrative boundary 41I, 41G, and 41F;

(d) adjacent valley fill aquifer to Missoula aquifer within the department administrative boundary 76M; and

(e) except for the Musselshell river administrative closure, administrative rule closure basins pursuant to 85-2-319.

(4) A legislative aquifer monitoring area must include:

(a) a provision requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-306, 85-2-311, and 85-2-402 in a legislative aquifer monitoring area. A totalizing metering device must be used and measurements must be reported annually on a form provided by the department. The department may issue a fine for noncompliance with this metering and reporting requirement.

(b) a department review of the monitoring data at least once each biennium to determine if a change in status is needed.

Section 5. Section 85-2-381, MCA, is amended to read:

"85-2-381. Water right enforcement of ground water uses exempt from permitting -- findings and purpose. (1) The legislature finds that:

(a) the state of Montana has managed the allocation of water under the prior appropriation

doctrine for more than 100 years;

(b) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;

(c) the right to the use of water through a water right is a recognized property right;

(d) the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;

(e) the Water Use Act requires the department to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and

(f) the ability to develop ground water wells that are exempt from permitting contributes to the full utilization of the water resources of the state.

(2) The establishment of a stream depletion zone pursuant to 85-2-380 provides a conclusive, scientific basis for determining where ground water rights that are exempt from permitting are affecting senior surface water rights.

(3) The purpose of this section is to continue allocating water under the exemptions provided for in 85-2-306 while providing a process by which senior water right holders may protect their rights under the prior appropriation doctrine. Nothing in this section is intended to limit the ability of a senior water right holder to enforce a water right or limit that enforcement to a specific area. Creation of a stream depletion zone is not a prerequisite to an enforcement action.

(4) Any use of water granted by a certificate of water right pursuant to 85-2-306(3)(a) is subject to enforcement according to priority by:

(a) any remedy legally available;

(b) the department, upon receiving a complaint, through the provisions of 85-2-114 and 85-2-122;

or

(c) a water commissioner appointed pursuant to 85-5-101.

(5) For each certificate issued pursuant to 85-2-306(3)(a) after October 1, 2013, the department shall include written notice of the provisions of this section."

Section 6. Section 85-2-506, MCA, is amended to read:

1 **"85-2-506. Controlled ground water areas -- designation or modification.** (1) The department may

2 by rule designate or modify ~~permanent or temporary~~ controlled ground water areas as provided in this part. The
3 rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

4 (2) There are six types of controlled ground water areas for:

5 (a) public health, safety, and welfare;

6 (b) temporary public health, safety, and welfare;

7 (c) water quantity;

8 (d) ground water monitoring for water quantity;

9 (e) water quality; or

10 (f) ground water monitoring for water quality.

11 ~~(2)(3)~~ The department may initiate the rulemaking process for designation or modification of a
12 controlled ground water area may be initiated by after the submission of a correct and complete petition for:

13 (a) the department a public health, safety, and welfare controlled ground water area pursuant to
14 subsection (6), by the department, a state or local public health agency, a municipality, county, conservation
15 district, or local water quality district formed under Title 7, chapter 13, part 45, the department of environmental
16 quality, or at least one-third of the water right holders in a proposed area;

17 (b) submission of a correct and complete petition from a state or local public health agency for
18 identified public health risks a water quantity controlled ground water area pursuant to subsections (8) and (9),
19 by the department or at least one-third of the water right holders in a proposed area; or

20 (c) submission of a correct and complete petition:

21 (i) by a municipality, county, conservation district, or local water quality district formed under Title
22 7, chapter 13, part 45; or

23 (ii) signed by at least one-third of the water right holders in a proposed controlled ground water
24 area a water quality controlled groundwater area pursuant to subsections (10) and (11), by a municipality,
25 county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45, the
26 department of environmental quality, or at least one-third of the water right holders in a proposed area.

27 ~~(3)(4)~~ (a) A correct and complete petition must:

28 (i) be in a form prescribed by the department and must contain analysis prepared by a

hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in ~~subsection (5)~~ subsections (6) through (11) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in ~~subsection (5)~~ subsections (6) or (7) that are alleged in the petition;

(b) For petitions submitted pursuant to subsection (8) or (9), the department shall conduct the data collection and analysis if more than 50% of the water right holders whose point of diversion falls within the proposed area sign the petition. The department may not conduct more than two analyses a year for a petition.

(b)(c) When the department proposes a rule pursuant to this section, the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.

(e)(d) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4)(5) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection ~~(4)(a)~~ (5)(a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area is located;

(ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each

1 person or public agency known from an examination of the records of the department to be a water right holder
2 with a diversion within the proposed controlled ground water area, all landowners of record within the proposed
3 controlled ground water area, and each well driller licensed in Montana whose address is within any county in
4 which any part of the proposed controlled ground water area is located; and

5 (iii) serving by mail a copy of the notice upon any other person or state or federal agency that the
6 department feels may be interested in or affected by the proposed designation or modification of a controlled
7 ground water area.

8 (d) The notice under subsection ~~(4)(e)~~ (5)(c) must include a summary of the basis for the proposed
9 rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be
10 sufficient notice of the hearing to all interested persons.

11 ~~(5)(6)~~ (a) The department may designate a permanent public health, safety, and welfare controlled
12 ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have
13 been met and cannot be appropriately mitigated:

14 ~~(a)~~(i) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled
15 ground water area will cause ground water levels to decline to the extent that water right holders cannot
16 reasonably exercise their water rights;

17 ~~(b)~~(ii) current or projected ground water withdrawals from the aquifer or aquifers in the proposed
18 controlled ground water area have reduced or will reduce ground water levels or surface water availability
19 necessary for water right holders to reasonably exercise their water rights;

20 ~~(e)~~(iii) current or projected ground water withdrawals from the aquifer or aquifers in the proposed
21 controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding
22 relevant water quality standards;

23 ~~(d)~~(iv) current or projected ground water withdrawals from the aquifer or aquifers in the proposed
24 controlled ground water area have impaired or will impair ground water quality necessary for water right holders
25 to reasonably exercise their water rights based on relevant water quality standards;

26 ~~(e)~~(v) ground water within the proposed controlled ground water area is not suited for beneficial use;
27 or

28 ~~(f)~~(vi) public health, safety, or welfare is or will become at risk.

(b) A public health, safety, and welfare controlled ground water area may include provisions for:

(i) closing a controlled ground water area to further appropriation of ground water;

(ii) restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria the department determines are necessary;

(iii) requiring measurement of future ground water or surface water appropriations;

(iv) requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. This notice of the designation must be removed or modified as necessary to accurately reflect the modification or repeal of a permanent designation within 60 days.

(v) well spacing requirements, well construction constraints, and prior department approval before well drilling unless the well is regulated pursuant to Title 82, chapter 11;

(vi) mitigation of ground water withdrawals;

(vii) water quality testing;

(viii) data reporting to the department; and

(ix) other provisions the department determines are appropriate and adopts through rulemaking.

~~(6)~~(7) (a) If the department finds that sufficient facts are not available to designate a permanent public health, safety, and welfare controlled ground water area, it may designate by rule a temporary public health, safety, and welfare controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary ~~controlled ground water area~~ will be in effect. Subject to subsection ~~(6)~~ ~~(7)~~(c), the term of a temporary ~~controlled ground water area~~ may be extended by rule.

(b) A temporary public health, safety, and welfare controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection ~~(7)~~ ~~(6)~~, other than measurement, water quality testing, and reporting requirements.

(c) A temporary public health, safety, and welfare controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary public health, safety, and welfare controlled ground water

1 area, the department may amend or repeal the rule establishing the temporary controlled ground water area or
2 may designate a permanent controlled ground water area through the rulemaking process under this section.

3 (e) Studies for temporary public health, safety, and welfare controlled ground water areas may be
4 considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

5 (f) If there is a ground water investigation program within the bureau, the ground water
6 assessment steering committee established by 2-15-1523 shall consider temporary public health, safety, and
7 welfare controlled ground water areas for study.

8 (7) — A controlled ground water area may include but is not limited to the following control provisions:

9 (a) — a provision closing the controlled ground water area to further appropriation of ground water;

10 (b) — a provision restricting the development of future ground water appropriations in the controlled
11 ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other
12 criteria that the department determines necessary;

13 (c) — a provision requiring measurement of future ground water or surface water appropriations;

14 (d) — a provision requiring the filing of notice on land records within the boundary of a permanent
15 controlled ground water area to inform prospective holders of an interest in the property of the existence of a
16 permanent controlled ground water area. Notice of the designation must be removed or modified as necessary
17 to accurately reflect modification or repeal of a permanent designation within 60 days.

18 (e) — a provision for well spacing requirements, well construction constraints, and prior department
19 approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

20 (f) — a provision for mitigation of ground water withdrawals;

21 (g) — a provision for water quality testing;

22 (h) — a provision for data reporting to the department; and

23 (i) — other control provisions that the department determines are appropriate and adopts through
24 rulemaking

25 (8) (a) The department shall designate or modify a water quantity controlled ground water area by
26 rule if it finds by a preponderance of the evidence that there is a high concentration of ground water use exempt
27 from permitting pursuant to 85-2-306(4), and the department determines:

28 (i) the ground water level is declining or is projected to decline due to pumping based on a review

1 of the most recent 10-year period of record that demonstrates a chronic lowering of the ground water table or
2 permanent loss of aquifer storage. This review must be based on available data or in consultation with the
3 Montana bureau of mines and geology or other relevant agencies;

4 (ii) that 80% or more of the ground water in the aquifer has been appropriated; or

5 (iii) that 100% or more of the hydraulically connected surface water has been appropriated during
6 any month. Ground water that is hydrologically connected to surface water is all ground water that, if extracted,
7 may cause stream depletion by induced infiltration or pre-stream capture of tributary ground water.

8 (b) Control provisions for a water quantity controlled ground water area must include but are not
9 limited to:

10 (i) closing the water quantity controlled ground water area to all exceptions from the permitting
11 process pursuant to 85-2-306, except for those specific appropriations authorized by rule pursuant to this
12 section;

13 (ii) requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-
14 306, 85-2-311, and 85-2-402 in water quantity controlled ground water areas. A totalizing metering device must
15 be used and measurements must be reported annually on a form provided by the department. The department
16 may issue a fine for noncompliance with this metering and reporting requirement;

17 (iii) allowing for the completion of appropriations on parcels created after October 17, 2014, that
18 received a certificate of subdivision approval from the department of environmental quality and a
19 predetermination letter from the department of natural resources and conservation before February 14, 2024;

20 (iv) closing an aquifer area to all exceptions from the permitting process pursuant to 85-2-306,
21 except for appropriations pursuant to subsection (8)(b)(iii) or one exception allowing for up to 0.5 acre-feet a
22 year without a permit that is authorized by the department for a single living unit on a tract of record in existence
23 on January 1, 2025, when connection to a public water system and mitigation is infeasible or for stockwater. A
24 change in the purpose of a water right excepted from permitting pursuant to this subsection (8)(b)(iv) is
25 prohibited;

26 (v) other control provisions the department determines are appropriate and adopts through
27 administrative rule.

28 (9) (a) The department shall designate or modify a water quantity ground water monitoring area by

rule if it finds by a preponderance of the evidence that there is a high concentration of ground water use exempt from permitting pursuant to 85-2-306(4), and the department:

(i) determines the ground water level is declining or is projected to decline due to pumping based on a review of the most recent 10-year period of record that demonstrates a chronic lowering of the ground water table or permanent loss of aquifer storage. This review must be based on available data or in consultation with the Montana bureau of mines and geology or other relevant agencies.

(ii) determines that 70% or more of the ground water in the aquifer has been appropriated;

(iii) determines that aquifer recharge is reliant on irrigation losses or where the geologic structure or formation has limited storage or limited storage potential based on available data or in consultation with the Montana bureau of mines and geology or other relevant agencies; or

(iv) determines that 90% or more of the hydraulically connected surface water has been appropriated during any month.

(b) (i) Control provisions for water quantity ground water monitoring areas must include but are not limited to:

(A) requiring the department to develop a monitoring plan for each designated ground water monitoring area in consultation with the Montana bureau of mines and geology or other relevant agencies;

(B) requiring metering and reporting for all new water rights and authorizations pursuant to 85-2-306, 85-2-311, and 85-2-402 in water quantity ground water monitoring areas. A totalizing metering device must be used and measurements must be reported annually on a form provided by the department. The department may issue a fine for noncompliance with this metering and reporting requirement;

(ii) The department shall review the monitoring data and plan provided for in subsection (8)(b)(i)(A) each biennium to determine if a change in area status is necessary.

(10) (a) The department shall designate or modify a water quality controlled ground water area by rule if it finds by a preponderance of the evidence that using site-specific data, 50% of the designated area is classified as high septic system density, as defined in department circular PWS 6 from the department of environmental quality, and one of these criteria is met:

(i) nitrate concentrations exceed standards in department circular DEQ-7, department circular DEQ-12A, or department circular DEQ-4 from the department of environmental quality;

(ii) exceedance of a ground water human health standard in department circular DEQ-7 in more than 25% of a set of no fewer than 30 ground water wells;

(iii) exceedance of a U.S. environmental protection agency human health advisory for a toxic or carcinogenic compound is more than 25% of a set of no fewer than 30 ground water wells; or

(iv) (A) if the aquifer is known or may be demonstrated to be interconnected with surface water:

(I) aquatic life or recreation beneficial uses of the connected surface water are listed as impaired by the department of environmental quality pursuant to Title 75, chapter 5; and

(II) impaired by total nitrogen or total phosphorus attributable to on-site subsurface wastewater treatment and disposal systems sources at a source contribution rate equal to or greater than 10%; or

(B) if a connected surface water is not listed as impaired by the department of environmental quality, the petitioner may provide substantial credible data and analysis conducted in accordance with water quality assessment methods prescribed by the department of environmental quality to demonstrate an impairment:

(I) to aquatic life or recreation beneficial uses; and

(II) based on total nitrogen or total phosphorous attributable to on-site subsurface wastewater treatment and disposal system sources at a source contribution rate of equal to or greater than 10%.

(b) The department shall determine appropriate control provisions for a water quality controlled ground water area by rule.

(11) (a) The department shall designate or modify a water quality ground water monitoring areas by rule if it finds by a preponderance of the evidence that using site-specific data, 50% of the designated area is classified as moderate septic system density, as defined in department circular PWS 6 from the department of environmental quality, and one of these criteria is met;

(i) background nitrate as nitrogen levels are 5.0 micrograms a liter or more using nondegradation methods for drainfields that are not required to get a discharge permit;

(ii) exceedance of a ground water human health standard in department circular DEQ-7 in more than 10% of a set of no fewer than 30 ground water wells; or

(iii) exceedance of a U.S. environmental protection agency human health advisory for a toxic or carcinogenic compound is more than 10% of a set of no fewer than 30 ground water wells.

(b) The department shall determine appropriate control provisions for a water quality ground water monitoring area by rule.

(12) (a) The department may initiate rulemaking for the modification or removal of an area designated pursuant to subsections (6) and (8) through (11) if the area no longer meets the designation criteria.

(b) A petition may be filed pursuant to subsection (3) to modify or remove an area designated pursuant to subsections (6) and (8) through (11). The petitioners shall provide facts of how the area no longer meets the designation criteria. If the petitioners prove the criteria are no longer being met, the department shall modify or remove the designation.

(c) The entities in subsection (3) may file a petition to modify or remove a designated area to the department.

~~(8)~~(13) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation."

Section 7. Section 85-2-524, MCA, is amended to read:

"85-2-524. Criteria for petition applications. Municipalities, counties, conservation districts, and local water quality districts may establish specific criteria for acceptance of an application to the municipality, county, conservation district, or local water quality district to petition for creation of a controlled ground water area and other criteria necessary to implement this part. Those criteria may include but are not limited to:

(1) the submission of substantial credible evidence that one or more of the criteria provided in 85-2-506~~(5)~~ are met;

(2) a description of proposed measures, if any, to mitigate effects of the criteria identified in 85-2-506~~(5)~~;

(3) a description of proposed studies for a temporary controlled ground water area;

(4) a requirement that an application be supported by owners of at least one-fourth of the water rights with a point of diversion of water within the boundaries of the proposed controlled ground water area;

(5) a requirement that an applicant pay an application or processing fee for the application; and

(6) a description of proposed funding for studies for a controlled ground water area."

- 2025

Drafter: Toni Henneman,

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- END -