

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; AMENDING SECTIONS 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 85-2-113, 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 2. 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

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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~~ 0.83 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; or

(B) if the parcel was divided from a tract of record as defined in 76-3-103 and in existence on or
before October 17, 2014, and received a certificate of subdivision approval from the department of
environmental quality and a predetermination letter from the department of natural resources and conservation

1 before February 14, 2024, then the water uses for the subdivision lots and volumes allocated in the
2 predetermination letter define the amount of water allowed without a permit under the exception in this
3 subsection (4) and will count toward the maximum cumulative volume limit in subsection (4)(a)(v)(A)(IV).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(5)(6)~~ An appropriation under subsection ~~(4)~~ (5) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate 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 3. 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 legislative aquifer closure areas as designated by the department:

(a) the Gallatin Valley aquifer within the department administrative boundary 41H, including the unconsolidated basin-fill sediments up to the consolidated bedrock contact and where it is not present to the