

1 HOUSE BILL NO. 432

2 INTRODUCED BY J. DARLING, W. GALT, W. MCKAMEY, D. HARVEY, K. WALSH, R. MINER, J.

3 COHENOUR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WATER LAWS CONCERNING EXCEPTIONS TO THE
6 CHANGE IN APPROPRIATION RIGHT PROCESS; PROVIDING RULEMAKING AUTHORITY; AND
7 AMENDING SECTIONS 3-7-224, 85-2-309, 85-2-402, AND 85-2-407, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. Section 1. Changes in appropriation rights -- exceptions. (1) (a) An appropriator
12 may change an appropriation right without the prior approval of the department for the purpose of constructing
13 a redundant water supply well in a public water supply system as defined in 75-6-102 if the redundant water
14 supply well:

15 (i) withdraws water from the same source aquifer as the original well; and

16 (ii) is required by a state or federal agency.

17 (b) The priority date of the redundant water supply well is the same as the priority date of the
18 original well. Only one well may be used at one time.

19 (c) (i) Within 60 days of completion of a redundant water supply well and the infrastructure
20 necessary to use the well, the appropriator shall file a correct and complete notice of change in appropriation
21 right for redundant water supply well construction with the department on a form provided by the department. If
22 the redundant water supply well is located on national forest system lands, the notice is not correct and
23 complete under this subsection (1)(c)(i) until the appropriator has submitted proof of any written special use
24 authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of
25 constructing the redundant water supply well.

26 (ii) The department may not issue an authorization of a change in appropriation right until a correct
27 and complete notice of change in appropriation right for redundant water supply well construction has been filed
28 with the department.

(2) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and the distance between the replacement well and the well being replaced is no greater than 200 feet;

(iv) the water from the replacement well is appropriated from the same source aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct, and complete notice of change in appropriation right for a replacement well is submitted to the department as provided in subsection (2)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement well with the department on a form provided by the department within 60 days after completion of a replacement well and appropriation of ground water for a beneficial use.

(c) For each well that is replaced under this subsection (2), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(3) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening

1 water right holders;

2 (v) the replacement point of diversion is on the same surface water source and is located as close
3 as reasonably practicable to the existing point of diversion;

4 (vi) the replacement point of diversion replaces an existing point of diversion and the existing point
5 of diversion will no longer be used;

6 (vii) the existing point of diversion has been used in the 10 years prior to the notice for change of
7 appropriation right for a replacement point of diversion;

8 (viii) the change will not increase access to water availability, change the method of irrigation, if
9 applicable, or increase the amount of water diverted, used, or consumed; and

10 (ix) a timely, correct, and complete notice of change in appropriation right for a replacement point
11 of diversion is submitted to the department as provided in subsection (3)(b).

12 (b) The appropriator shall file a correct and complete notice of change in appropriation right for a
13 replacement point of diversion with the department on a form provided by the department within 60 days after
14 completion of a replacement in point of diversion.

15 (4) (a) A municipality as defined in 7-1-4121 or a county water and sewer district organized under
16 Title 7, chapter 13, part 22, may change the place of use for an unperfected municipal use permit or water
17 reservation without the prior approval of the department if:

18 (i) the flow rate authorized by the permit or water reservation will not be exceeded;

19 (ii) the volume authorized by the permit or water reservation will not be exceeded;

20 (iii) the place of use is within:

21 (A) the municipality's land use plan and future land use map boundary duly adopted by the
22 municipality pursuant to Title 76, chapter 25;

23 (B) the municipality's growth policy boundary duly adopted by the municipality pursuant to Title 76,
24 chapter 1; or

25 (C) a county water and sewer district's service area boundary adopted under Title 7, chapter 13,
26 part 23;

27 (iv) all water being diverted by the system is being measured ~~and reported annually to the~~
28 ~~department; and~~

(v) there are no other changes to the water right or rights.

(b) The appropriator shall file a correct and complete notice of change in appropriation right for municipal use with the department on a form provided by the department within 180 days of annexation by a municipality under Title 7, chapter 2, ~~part 47~~, or addition of land to a county water and sewer district under Title 7, chapter 13, part 23.

(c) A notice of change in appropriation right for municipal use may include a change in place of use for a water right that is not an unperfected permit or water reservation if:

- (i) the criteria in subsection (4)(a) are satisfied for each unperfected permit and water reservation;
- (ii) the criteria in subsection (4)(a) are satisfied for each additional water right being changed;
- (iii) the unperfected volume of the unperfected permit or water reservation is adequate to satisfy the additional water use needs of the entire additional place of use;
- (iv) the existing place of use is the same for all rights being changed; and
- (v) all rights being changed share the same common distribution system.

(5) (a) An appropriator with a water right for stock use may add, ~~or move,~~ OR REMOVE stock tanks without the prior approval of the department if:

- (i) stock tanks are added to a water right for livestock direct from source;
- (ii) ~~additional~~ stock tanks are added to OR REMOVED FROM an existing stock watering system; or
- (iii) stock tanks are moved on an existing stock watering system.

(b) The following requirements must be met for a change filed under this subsection (5):

(i) the diverted flow rate of the stock watering system may not exceed the historical diverted flow rate of the stock watering system. If stock tanks are being added to a livestock direct from source water right, the maximum flow rate for the diversion to the tanks may not exceed 35 gallons a minute.

(ii) the number of stock animal units that will be watered on the system may not exceed the historical number of stock animal units watered;

(iii) the stock watering system infrastructure is adequate to control diversions and prevent waste of water; and

(iv) the appropriator has a possessory interest or the written consent of a person with a possessory interest in the property where the water is to be put to beneficial use or, if the proposed change involves a point

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

4 (c) The appropriator shall file a correct and complete notice of change in appropriation right for
5 stock tanks with the department on a form provided by the department within 60 days after stock tanks are
6 added or moved.

7 (d) A temporary change in appropriation right for stock tanks may be authorized in accordance with
8 85-2-407.

9 (6) (a) If the department determines a notice of change in appropriation filed pursuant to
10 subsections (1) through (5) is not correct and complete, the department shall return the notice to the
11 appropriator, along with a notification describing the defects. A notice of change in appropriation right that is not
12 corrected and completed within 60 days of the notification is terminated.

13 (b) Within 90 days of determining a notice of change in appropriation right is correct and complete,
14 the department shall determine if the applicable criteria for issuance of a change in appropriation right are
15 satisfied, and:

16 (i) if the department determines that the notice of change in appropriation right satisfies the
17 applicable criteria in subsection (1), (2), (3), (4), or (5), the department shall issue an authorization of a change
18 in appropriation right; or

19 (ii) if the department determines that the notice of change in appropriation right does not satisfy
20 the criteria in subsection (1), (2), (3), (4), or (5), the department shall notify the appropriator, and the
21 appropriator shall submit an application for a change in appropriation right to the department pursuant to 85-2-
22 402.

23 (7) (a) If an authorization of a change in appropriation right is issued under subsection ~~(3), (4), or~~
24 ~~(5)~~, the department shall prepare a public notice that includes a summary of the change in appropriation right.
25 The public notice must state that within no more than 45 days after the date of publication, a person may file
26 with the department a written objection to the authorization of the change in appropriation right. The department
27 shall publish the notice once in a newspaper of general circulation in the area of the source.

28 (b) The department shall also serve the notice by first-class mail on:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed as defined in 70-20-115 of property that according to the records of the department may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in the department's discretion, also serve notice on any state agency or other person the department believes may be interested in or affected by the proposed appropriation.

(d) The department shall file in the department's records proof of service by affidavit of the publisher in cases of notice by publication and by affidavit of the department in cases of service by mail.

(8) (a) An objector to a change authorization issued under subsection ~~(3), (4), or (5)~~ shall file a correct and complete objection on a form prescribed by the department on or before the date specified in the notice provided under subsection (7).

(i) A person has standing to file an objection under this subsection (8) if the property, water rights, or interests of the person would be adversely affected by the proposed change.

(ii) The department shall adopt rules delineating the components of a correct and complete objection.

(iii) The department shall notify the objector of any defect in an objection. An objection not corrected or completed within 15 business days from the date of notification of the defect is terminated.

(iv) An objection is valid if the objector has standing, has filed a correct and complete objection within the prescribed time, and has stated the applicable information required under this subsection (8) and the rules of the department.

(v) An objection must state facts indicating that the change in appropriation right:

(A) will adversely affect the use of the water rights of the objector or of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3; or

(B) does not satisfy the applicable criteria set forth in subsection ~~(3), (4), or (5)~~.

(b) If a valid objection is filed, the department shall hold a contested case hearing pursuant to 85-2-309. The contested case hearing is limited to those issues for which a correct and complete objection is filed.

1 The appropriator changing the water right bears the burden of proof of lack of adverse effect or any of the
2 criteria for which a correct and complete objection is filed.

3 (c) If the department determines after a contested case hearing on the objection that the rights of
4 other appropriators have been or will be adversely affected or that the change in appropriation right does not
5 satisfy the criteria set forth in subsection ~~(3), (4), or (5)~~, the department may revoke the change in appropriation
6 right or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights
7 of other appropriators.

8
9 **Section 2.** Section 3-7-224, MCA, is amended to read:

10 **"3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge.** (1) The chief
11 water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme
12 court, also serve as water judge for one of the water divisions.

13 (2) The chief water judge and the associate water judge have jurisdiction over cases certified to
14 the district court under 85-2-309, all matters relating to the determination of existing water rights within the
15 boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.

16 (3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief
17 water judge and the associate water judge have the same powers as a district court judge. The chief water
18 judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's
19 own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including
20 but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by
21 the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue
22 certified pursuant to 85-2-309(2). (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)

23 **3-7-224. (Effective October 1, 2025) Jurisdiction of chief water judge and associate water**
24 **judge.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the
25 Montana supreme court, also serve as water judge for one of the water divisions.

26 (2) The chief water judge and the associate water judge have jurisdiction over cases certified to
27 the district court under 85-2-309 and all matters relating to the determination of existing water rights within the
28 boundaries of the state of Montana.