

HOUSE BILL NO. 814

INTRODUCED BY THOFT, BARDANOUE  
BY REQUEST OF THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION

IN THE HOUSE

FEBRUARY 13, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  
  
FIRST READING.  
  
FEBRUARY 21, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.  
  
FEBRUARY 22, 1991                   PRINTING REPORT.  
  
MARCH 8, 1991                       ON MOTION, CONSIDERATION PASSED  
  
MARCH 13, 1991                      SECOND READING, DO PASS AS AMENDED.  
  
MARCH 14, 1991                      ENGROSSING REPORT.  
  
MARCH 15, 1991                      THIRD READING, PASSED.  
AYES, 90; NOES, 8.  
  
TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 16, 1991                      INTRODUCED AND REFERRED TO COMMITTEE  
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  
  
FIRST READING.  
  
MARCH 28, 1991                      COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.  
  
APRIL 4, 1991                       SECOND READING, CONCURRED IN.  
  
APRIL 5, 1991                       THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 1.  
  
RETURNED TO HOUSE.

IN THE HOUSE

APRIL 5, 1991                       RECEIVED FROM SENATE.  
  
SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 814  
 2 INTRODUCED BY Jeff Baranoff  
 3 BY REQUEST OF THE DEPARTMENT OF  
 4 NATURAL RESOURCES AND CONSERVATION

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW  
 7 PROVIDING FOR THE DISPOSITION OF STATE-OWNED WATER PROJECTS  
 8 BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION;  
 9 ESTABLISHING A DATE FOR THE DEPARTMENT TO ATTEMPT TO DISPOSE  
 10 OF ITS CANAL PROJECTS; INCREASING THE PERCENTAGE OF AFFECTED  
 11 WATER USERS REQUIRED TO VETO A DEPARTMENT DECISION TO  
 12 DISPOSE OF A PROJECT; AMENDING SECTIONS 85-1-211 AND  
 13 85-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 85-1-211, MCA, is amended to read:

17 "85-1-211. Management of property -- water contracts.

18 (1) Subject to this chapter, the department may fix and  
 19 establish the prices, rates, and charges at which the  
 20 resources and facilities made available under this chapter  
 21 may be sold and disposed of and enter into contracts and  
 22 agreements and do those things which in its judgment are  
 23 necessary, convenient, or expedient for the accomplishment  
 24 of the purposes and objects of this chapter, under such  
 25 general rules and upon such terms, limitations, and

1 conditions as it prescribes.

2 (2) The department shall enter into the contracts and  
 3 fix and establish the prices, rates, and charges so as to  
 4 provide at all times funds which will be sufficient to pay  
 5 all costs of operation and maintenance of the works  
 6 authorized by this chapter, together with necessary repairs  
 7 thereto, and which will provide at all times sufficient  
 8 funds to meet and pay the principal and interest of all  
 9 bonds or loans as they severally become due and payable.

10 (3) This chapter does not authorize any change,  
 11 alteration, or revision of those rates, prices, or charges  
 12 as established by any contract entered into under this  
 13 chapter except as provided by the contract.

14 (4) A contract made by the department for the sale of  
 15 water, use of water, water storage, or other service or for  
 16 the sale of any property or facilities shall provide that,  
 17 in the event of a failure or default in the payment of  
 18 moneys specified in the contract to be paid to the  
 19 department, the department may, upon notice as is prescribed  
 20 in the contract, terminate the contract and all obligations  
 21 thereunder. The act of the department in ceasing on default  
 22 to furnish or deliver water, use of water, water storage, or  
 23 other service under the contract does not deprive the  
 24 department of or limit any remedy provided by the contract  
 25 or by law for the recovery of moneys due or which may become



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 HB 814

1 due under the contract.

2 (5) Subject to the approval of the board under  
3 85-1-202, the department may sell, transfer to water user  
4 associations, abandon, or otherwise dispose of any  
5 rights-of-way, easements, properties, or interests or lease  
6 or rent the same or otherwise take and receive the income or  
7 profit and revenue therefrom without regard to other laws  
8 providing for the disposition of state property. Prior to  
9 the department's sale, transfer, or other disposition, a  
10 determination shall be made by the department as to the  
11 market value of the rights-of-way, easements, properties, or  
12 interests to be sold, transferred, abandoned, or otherwise  
13 disposed of. The department's determination of market value  
14 shall consider all liens, encumbrances, and other  
15 limitations on the project properties or interests.

16 (6) (a) The department shall attempt to dispose of its  
17 canal projects by June 30, 1995. The department may dispose  
18 of a canal project by sale, transfer to a water users'  
19 association, abandonment, or other legal conveyance. If  
20 there is an existing water users' association on the canal  
21 project, the provisions of 85-6-109(5) must be complied with  
22 in the disposal of the canal project. The department shall  
23 give preference to existing water users' associations  
24 operating and maintaining the canal project.

25 (b) Upon the sale or transfer of a canal project, the

1 department may agree to pay administrative costs and the  
2 cost of operating and maintaining the canal project for a  
3 period not to exceed 2 years after the disposition of the  
4 canal project. For a canal project not disposed of by June  
5 30, 1995, the water users of the canal project are  
6 responsible for the department's administrative costs and  
7 the actual costs of operation and maintenance of the canal  
8 project. Upon the disposal of a canal project, the  
9 department may not cancel or write off accounts receivable  
10 carried on the books of the department.

11 (7) An employee or agent of the department authorized  
12 by the director may enter upon any land to carry out the  
13 purposes of this section, including but not limited to entry  
14 to make an inspection the department considers necessary of  
15 the canal project, entry to salvage or remove project  
16 property, and entry to make physical alterations to canal  
17 project property. The department shall give reasonable  
18 notice to the landowner of its intention to enter upon the  
19 land. The department is responsible for actual damages done  
20 to property."

21 **Section 2.** Section 85-6-109, MCA, is amended to read:

22 "85-6-109. Operation of projects with water users'  
23 association. (1) As used in this section, "department" means  
24 the department of natural resources and conservation  
25 provided for in Title 2, chapter 15, part 33, and

1 "association" means a water users' association.

2 (2) Whenever the department proposes a program of  
3 maintenance, repair, operation, or alteration of a project  
4 in excess of \$25,000, the cost of which will be borne by an  
5 association pursuant to the terms of a water marketing  
6 contract, the association shall be informed of the program  
7 and given an opportunity to comment. The department shall  
8 notify the association of its decision. If the association  
9 believes the program to be unnecessary or excessive in cost,  
10 it may appeal the department decision to the board of  
11 natural resources and conservation as provided for in  
12 85-1-212. The board shall notify the association of its  
13 decision. If the board's decision is adverse to the  
14 association, the association may file within 30 days of  
15 receipt of notice of the board's decision a complaint to  
16 review the board's decision in the district court in any  
17 county where all or part of the project works is located or  
18 in Lewis and Clark County.

19 (3) If a complaint is filed under subsection (2), the  
20 court shall hold a trial de novo on the question of  
21 necessity of the department program and the question of  
22 excessive costs. If the association prevails, the court may  
23 award costs to the association. The court may specify an  
24 acceptable program of maintenance, repair, operation, or  
25 alteration or may order the department and the association

1 to develop a program, subject to court approval.

2 (4) Whenever a program of maintenance, repair,  
3 operation, or alteration is proposed, the department shall  
4 assist the association in attempting to secure sources of  
5 financing, including federal funds.

6 (5) Whenever the department proposes to abandon, sell,  
7 or otherwise dispose of a project which involves a water  
8 users' association, the department shall notify the  
9 association. Before the department may take further action  
10 to abandon, sell, or otherwise dispose of a project which  
11 involves a water users' association, the department must  
12 receive a petition approving the abandonment, sale, or  
13 disposition which is signed by stockholders of the  
14 association representing 66 2/3% or more of the issued and  
15 outstanding stock of the association. If, within 30 days of  
16 receipt of the final proposal of abandonment, sale, or other  
17 disposal, stockholders of the association representing ~~45%~~  
18 30% or more of the issued and outstanding stock of the  
19 association file a petition of protest with the department,  
20 the project may not be abandoned, sold, or otherwise  
21 disposed of without the consent of the legislature."

22 NEW SECTION. **Section 3.** Effective date. [This act] is  
23 effective on passage and approval.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0814, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) clarifies the law providing for the disposition of state-owned water projects by the Department of Natural Resources and Conservation; 2) establishes a date for the department to attempt to dispose of its canal projects; and 3) increases the percentage of affected water users required to veto a department decision to dispose of a project.

ASSUMPTIONS:

1. Fiscal impacts are calculated assuming transfers of ownership of 11 state-owned canal projects. It is assumed that these 11 projects will be transferred by June 30, 1995.
2. Ownership transfers are expected to cost \$10,000 per project for a total of \$110,000. These expenses will include primarily contracted services associated with appraisals, engineering analysis, attorney fees, and title transfers.
3. It is assumed that the \$110,000 cost will be incurred over three years with an average annual cost of \$36,667. While some preparatory work would be conducted in FY92, it is assumed that the additional annual operating costs of \$36,667 would not be needed until FY93 (then again in FY94 and FY95).
4. This administrative cost does not include legal or court costs from challenges to the ownership transfers, and it does not include costs associated with assisting the transferee organizations to establish political-subdivisions status.
5. It is assumed that current DNRC staff and appropriations would be used to conduct and pay for transfer administration, except those costs identified in assumptions 2 and 3.
6. It is assumed that environmental impact statements will not be necessary.
7. After FY95, it is estimated that the state will save \$36,500 per year for administrative costs associated with these projects.

FISCAL IMPACT:Department of Natural Resources and Conservation:

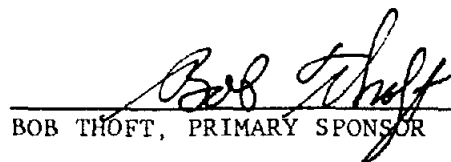
	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Costs	0	0	0	0	36,667	36,667
<u>Funding:</u>						
State Special	0	0	0	0	36,667	36,667



ROD SUNDSTED, BUDGET DIRECTOR  
Office of Budget and Program Planning

2-18-91

DATE



BOB THOFT, PRIMARY SPONSOR

2/21/91

DATE

Fiscal Note for HB0814, as introduced

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Fiscal Note Request, HB0814, as introduced  
Form BD-15  
Page 2

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Newly created canal companies, if not established as tax-exempt political subdivisions, would pay taxes on their canal facilities.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The department will require approximately \$36,667 in additional funds for administrative costs in FY94 and FY95.
2. Severance payments to the new project owners are estimated to be \$170,625 for O&M in FY95, and \$179,155 for O&M in FY96.
3. Estimated annual savings to DNRC for administrative costs associated with the operation and maintenance of these projects are expected to be \$36,500 per year beginning in FY96, or an estimated present value of \$367,287 at 8% over 30 years.

TECHNICAL NOTES:

The sponsor has indicated that Section 1(6)(b) of this bill will be amended to stipulate that the department would pay the cost of operating and maintaining the project for one year. Therefore, the "Long-Range Effects of the Proposed Legislation" is based on this anticipated amendment.

APPROVED BY COMMITTEE  
ON AGRICULTURE LIVESTOCK  
& IRRIGATION

HOUSE BILL NO. 814

INTRODUCED BY THOFT, BARDANOUVE  
BY REQUEST OF THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW  
PROVIDING FOR THE DISPOSITION OF STATE-OWNED WATER PROJECTS  
BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION;  
ESTABLISHING A DATE FOR THE DEPARTMENT TO ATTEMPT TO DISPOSE  
OF ITS CANAL PROJECTS; INCREASING THE PERCENTAGE OF AFFECTED  
WATER USERS REQUIRED TO VETO A DEPARTMENT DECISION TO  
DISPOSE OF A PROJECT; AMENDING SECTIONS 85-1-211 AND  
85-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 85-1-211, MCA, is amended to read:

**"85-1-211. Management of property -- water contracts.**

(1) Subject to this chapter, the department may fix and  
establish the prices, rates, and charges at which the  
resources and facilities made available under this chapter  
may be sold and disposed of and enter into contracts and  
agreements and do those things which in its judgment are  
necessary, convenient, or expedient for the accomplishment  
of the purposes and objects of this chapter, under such  
general rules and upon such terms, limitations, and

conditions as it prescribes.

(2) The department shall enter into the contracts and  
fix and establish the prices, rates, and charges so as to  
provide at all times funds which will be sufficient to pay  
all costs of operation and maintenance of the works  
authorized by this chapter, together with necessary repairs  
thereto, and which will provide at all times sufficient  
funds to meet and pay the principal and interest of all  
bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change,  
alteration, or revision of those rates, prices, or charges  
as established by any contract entered into under this  
chapter except as provided by the contract.

(4) A contract made by the department for the sale of  
water, use of water, water storage, or other service or for  
the sale of any property or facilities shall provide that,  
in the event of a failure or default in the payment of  
moneys specified in the contract to be paid to the  
department, the department may, upon notice as is prescribed  
in the contract, terminate the contract and all obligations  
thereunder. The act of the department in ceasing on default  
to furnish or deliver water, use of water, water storage, or  
other service under the contract does not deprive the  
department of or limit any remedy provided by the contract  
or by law for the recovery of moneys due or which may become



1 due under the contract.

2 (5) Subject to the approval of the board under  
3 85-1-202, the department may sell, transfer to water user  
4 associations, abandon, or otherwise dispose of any  
5 rights-of-way, easements, properties, or interests or lease  
6 or rent the same or otherwise take and receive the income or  
7 profit and revenue therefrom without regard to other laws  
8 providing for the disposition of state property. Prior to  
9 the department's sale, transfer, or other disposition, a  
10 determination shall be made by the department as to the  
11 market value of the rights-of-way, easements, properties, or  
12 interests to be sold, transferred, abandoned, or otherwise  
13 disposed of. The department's determination of market value  
14 shall consider all liens, encumbrances, and other  
15 limitations on the project properties or interests.

16 (6) (a) The department shall attempt to dispose of its  
17 canal projects by June 30, 1995. THE CANAL PROJECTS TO BE  
18 DISPOSED OF INCLUDE THE:

- 19 (I) COLUMBUS CANAL;  
20 (II) DELPHIA-MELSTONE CANALS;  
21 (III) HYSHAM PUMPING CANALS;  
22 (IV) LIVINGSTON DITCH;  
23 (V) FLORENCE CANAL;  
24 (VI) PARADISE CANAL;  
25 (VII) PARK BRANCH CANAL;

1 (VIII) SIDNEY PUMPING CANALS;

2 (IX) SOUTH SIDE CANAL;

3 (X) VIGILANTE CANAL; AND

4 (XI) WEST BENCH CANAL.

5 (B) The department may dispose of a canal project by  
6 sale, transfer to a water users' association, abandonment,  
7 or other legal conveyance. If there is an existing water  
8 users' association on the canal project, the provisions of  
9 85-6-109(5) must be complied with in the disposal of the  
10 canal project. The department shall give preference to  
11 existing water users' associations operating and maintaining  
12 the canal project.

13 ~~(b)(C) Upon the sale or transfer of a canal project,~~  
14 ~~the department may agree to pay administrative costs and the~~  
15 ~~cost--of--operating--and--maintaining--the--canal--project--for--a~~  
16 ~~period--not--to--exceed--2--years--after--the--disposition--of--the~~  
17 ~~canal--project SHALL MAKE A PAYMENT NOT TO EXCEED ANY~~  
18 ~~PREVIOUS 1-YEAR COST OF OPERATING AND MAINTAINING THE CANAL~~  
19 ~~PROJECT. For a canal project not disposed of by June 30,~~  
20 ~~1995, the water users of the canal project are responsible~~  
21 ~~for the department's administrative costs and the actual~~  
22 ~~costs of operation and maintenance of the canal project.~~  
23 ~~Upon the disposal of a canal project, the department may not~~  
24 ~~cancel or write off accounts receivable carried on the books~~  
25 ~~of the department.~~

1       (7) An employee or agent of the department authorized  
 2 by the director may enter upon any land to carry out the  
 3 purposes of this section, including but not limited to entry  
 4 to make an inspection the department considers necessary of  
 5 the canal project, entry to salvage or remove project  
 6 property, and entry to make physical alterations to canal  
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 8 notice to the landowner of its intention to enter upon the  
 9 land. The department is responsible for actual damages done  
 10 to property."

11       **Section 2.** Section 85-6-109, MCA, is amended to read:

12       **"85-6-109. Operation of projects with water users'**  
 13 **association.** (1) As used in this section, "department" means  
 14 the department of natural resources and conservation  
 15 provided for in Title 2, chapter 15, part 33, and  
 16 "association" means a water users' association.

17       (2) Whenever the department proposes a program of  
 18 maintenance, repair, operation, or alteration of a project  
 19 in excess of \$25,000, the cost of which will be borne by an  
 20 association pursuant to the terms of a water marketing  
 21 contract, the association shall be informed of the program  
 22 and given an opportunity to comment. The department shall  
 23 notify the association of its decision. If the association  
 24 believes the program to be unnecessary or excessive in cost,  
 25 it may appeal the department decision to the board of

1 natural resources and conservation as provided for in  
 2 85-1-212. The board shall notify the association of its  
 3 decision. If the board's decision is adverse to the  
 4 association, the association may file within 30 days of  
 5 receipt of notice of the board's decision a complaint to  
 6 review the board's decision in the district court in any  
 7 county where all or part of the project works is located or  
 8 in Lewis and Clark County.

9       (3) If a complaint is filed under subsection (2), the  
 10 court shall hold a trial de novo on the question of  
 11 necessity of the department program and the question of  
 12 excessive costs. If the association prevails, the court may  
 13 award costs to the association. The court may specify an  
 14 acceptable program of maintenance, repair, operation, or  
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 22 or otherwise dispose of a project which involves a water  
 23 users' association, the department shall notify the  
 24 association. Before the department may take further action  
 25 to abandon, sell, or otherwise dispose of a project which

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1 involves a water users' association, the department must  
2 receive a petition approving the abandonment, sale, or  
3 disposition which is signed by stockholders of the  
4 association representing 66 2/3% or more of the issued and  
5 outstanding stock of the association. If, within 30 days of  
6 receipt of the final proposal of abandonment, sale, or other  
7 disposal, stockholders of the association representing ~~15%~~  
8 30% or more of the issued and outstanding stock of the  
9 association file a petition of protest with the department,  
10 the project may not be abandoned, sold, or otherwise  
11 disposed of without the consent of the legislature."

12 NEW SECTION. **Section 3.** Effective date. [This act] is  
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 17 ~~canal project SHALL EITHER CANCEL OR WRITE OFF FROM THE~~  
 18 ~~ACCOUNTS RECEIVABLE CARRIED ON THE BOOKS OF THE DEPARTMENT A~~  
 19 ~~SUM NOT TO EXCEED ANY PREVIOUS 1-YEAR COST OF OPERATING AND~~  
 20 ~~MAINTAINING THE CANAL PROJECT OR MAKE A PAYMENT NOT TO~~  
 21 ~~EXCEED ANY PREVIOUS 1-YEAR COST OF OPERATING AND MAINTAINING~~  
 22 ~~THE CANAL PROJECT. For a canal project not disposed of by~~  
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 12 land. The department is responsible for actual damages done  
 13 to property."

14 **Section 2.** Section 85-6-109, MCA, is amended to read:

15 **"85-6-109. Operation of projects with water users'**  
 16 **association.** (1) As used in this section, "department" means  
 17 the department of natural resources and conservation  
 18 provided for in Title 2, chapter 15, part 33, and  
 19 "association" means a water users' association.

20 (2) Whenever the department proposes a program of  
 21 maintenance, repair, operation, or alteration of a project  
 22 in excess of \$25,000, the cost of which will be borne by an  
 23 association pursuant to the terms of a water marketing  
 24 contract, the association shall be informed of the program  
 25 and given an opportunity to comment. The department shall

1 notify the association of its decision. If the association  
 2 believes the program to be unnecessary or excessive in cost,  
 3 it may appeal the department decision to the board of  
 4 natural resources and conservation as provided for in  
 5 85-1-212. The board shall notify the association of its  
 6 decision. If the board's decision is adverse to the  
 7 association, the association may file within 30 days of  
 8 receipt of notice of the board's decision a complaint to  
 9 review the board's decision in the district court in any  
 10 county where all or part of the project works is located or  
 11 in Lewis and Clark County.

12 (3) If a complaint is filed under subsection (2), the  
 13 court shall hold a trial de novo on the question of  
 14 necessity of the department program and the question of  
 15 excessive costs. If the association prevails, the court may  
 16 award costs to the association. The court may specify an  
 17 acceptable program of maintenance, repair, operation, or  
 18 alteration or may order the department and the association  
 19 to develop a program, subject to court approval.

20 (4) Whenever a program of maintenance, repair,  
 21 operation, or alteration is proposed, the department shall  
 22 assist the association in attempting to secure sources of  
 23 financing, including federal funds.

24 (5) Whenever the department proposes to abandon, sell,  
 25 or otherwise dispose of a project which involves a water

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1 users' association, the department shall notify the  
2 association. Before the department may take further action  
3 to abandon, sell, or otherwise dispose of a project which  
4 involves a water users' association, the department must  
5 receive a petition approving the abandonment, sale, or  
6 disposition which is signed by stockholders of the  
7 association representing 66 2/3% or more of the issued and  
8 outstanding stock of the association. If, within 30 days of  
9 receipt of the final proposal of abandonment, sale, or other  
10 disposal, stockholders of the association representing ~~±5%~~  
11 30% or more of the issued and outstanding stock of the  
12 association file a petition of protest with the department,  
13 the project may not be abandoned, sold, or otherwise  
14 disposed of without the consent of the legislature."

15 NEW SECTION. **Section 3.** Effective date. [This act] is  
16 effective on passage and approval.

-End-

## 1 HOUSE BILL NO. 814

2 INTRODUCED BY THOFT, BARDANOUE  
3 BY REQUEST OF THE DEPARTMENT OF  
4 NATURAL RESOURCES AND CONSERVATION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW  
7 PROVIDING FOR THE DISPOSITION OF STATE-OWNED WATER PROJECTS  
8 BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION;  
9 ESTABLISHING A DATE FOR THE DEPARTMENT TO ATTEMPT TO DISPOSE  
10 OF ITS CANAL PROJECTS; INCREASING THE PERCENTAGE OF AFFECTED  
11 WATER USERS REQUIRED TO VETO A DEPARTMENT DECISION TO  
12 DISPOSE OF A PROJECT; AMENDING SECTIONS 85-1-211 AND  
13 85-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 85-1-211, MCA, is amended to read:

17 **\*85-1-211. Management of property -- water contracts.**

18 (1) Subject to this chapter, the department may fix and  
19 establish the prices, rates, and charges at which the  
20 resources and facilities made available under this chapter  
21 may be sold and disposed of and enter into contracts and  
22 agreements and do those things which in its judgment are  
23 necessary, convenient, or expedient for the accomplishment  
24 of the purposes and objects of this chapter, under such  
25 general rules and upon such terms, limitations, and

1 conditions as it prescribes.

2 (2) The department shall enter into the contracts and  
3 fix and establish the prices, rates, and charges so as to  
4 provide at all times funds which will be sufficient to pay  
5 all costs of operation and maintenance of the works  
6 authorized by this chapter, together with necessary repairs  
7 thereto, and which will provide at all times sufficient  
8 funds to meet and pay the principal and interest of all  
9 bonds or loans as they severally become due and payable.

10 (3) This chapter does not authorize any change,  
11 alteration, or revision of those rates, prices, or charges  
12 as established by any contract entered into under this  
13 chapter except as provided by the contract.

14 (4) A contract made by the department for the sale of  
15 water, use of water, water storage, or other service or for  
16 the sale of any property or facilities shall provide that,  
17 in the event of a failure or default in the payment of  
18 moneys specified in the contract to be paid to the  
19 department, the department may, upon notice as is prescribed  
20 in the contract, terminate the contract and all obligations  
21 thereunder. The act of the department in ceasing on default  
22 to furnish or deliver water, use of water, water storage, or  
23 other service under the contract does not deprive the  
24 department of or limit any remedy provided by the contract  
25 or by law for the recovery of moneys due or which may become



1 due under the contract.

2 (5) Subject to the approval of the board under  
 3 85-1-202, the department may sell, transfer to water user  
 4 associations, abandon, or otherwise dispose of any  
 5 rights-of-way, easements, properties, or interests or lease  
 6 or rent the same or otherwise take and receive the income or  
 7 profit and revenue therefrom without regard to other laws  
 8 providing for the disposition of state property. Prior to  
 9 the department's sale, transfer, or other disposition, a  
 10 determination shall be made by the department as to the  
 11 market value of the rights-of-way, easements, properties, or  
 12 interests to be sold, transferred, abandoned, or otherwise  
 13 disposed of. The department's determination of market value  
 14 shall consider all liens, encumbrances, and other  
 15 limitations on the project properties or interests.

16 (6) (a) The department shall attempt to dispose of its  
 17 canal projects by June 30, 1995. THE CANAL PROJECTS TO BE  
 18 DISPOSED OF INCLUDE THE:

- 19 (I) COLUMBUS CANAL;
- 20 (II) DELPHIA-MELSTONE CANALS;
- 21 (III) HYSHAM PUMPING CANALS;
- 22 (IV) LIVINGSTON DITCH;
- 23 (V) FLORENCE CANAL;
- 24 (VI) PARADISE CANAL;
- 25 (VII) PARK BRANCH CANAL;

1 (VIII) SIDNEY PUMPING CANALS;

2 (IX) SOUTH SIDE CANAL;

3 (X) VIGILANTE CANAL; AND

4 (XI) WEST BENCH CANAL.

5 (B) The department may dispose of a canal project by  
 6 sale, transfer to a water users' association, abandonment,  
 7 or other legal conveyance. If there is an existing water  
 8 users' association on the canal project, the provisions of  
 9 85-6-109(5) must be complied with in the disposal of the  
 10 canal project. The department shall give preference to  
 11 existing water users' associations operating and maintaining  
 12 the canal project.

13 (b)(C) Upon the sale or transfer of a canal project,  
 14 the department may agree to pay administrative costs and the  
 15 cost of operating and maintaining the canal project for a  
 16 period not to exceed 2 years after the disposition of the  
 17 canal project SHALL EITHER CANCEL OR WRITE OFF FROM THE  
 18 ACCOUNTS RECEIVABLE CARRIED ON THE BOOKS OF THE DEPARTMENT A  
 19 SUM NOT TO EXCEED ANY PREVIOUS 1-YEAR COST OF OPERATING AND  
 20 MAINTAINING THE CANAL PROJECT OR MAKE A PAYMENT NOT TO  
 21 EXCEED ANY PREVIOUS 1-YEAR COST OF OPERATING AND MAINTAINING  
 22 THE CANAL PROJECT. For a canal project not disposed of by  
 23 June 30, 1995, the water users of the canal project are  
 24 responsible for the department's administrative costs and  
 25 the actual costs of operation and maintenance of the canal

1 ~~project. Upon the disposal of a canal project, the~~  
 2 ~~department may not cancel or write off accounts receivable~~  
 3 ~~carried on the books of the department.~~

4 (7) An employee or agent of the department authorized  
 5 by the director may enter upon any land to carry out the  
 6 purposes of this section, including but not limited to entry  
 7 to make an inspection the department considers necessary of  
 8 the canal project, entry to salvage or remove project  
 9 property, and entry to make physical alterations to canal  
 10 project property. The department shall give reasonable  
 11 notice to the landowner of its intention to enter upon the  
 12 land. The department is responsible for actual damages done  
 13 to property."

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15 **"85-6-109. Operation of projects with water users'**  
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2 association. Before the department may take further action  
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4 involves a water users' association, the department must  
5 receive a petition approving the abandonment, sale, or  
6 disposition which is signed by stockholders of the  
7 association representing 66 2/3% or more of the issued and  
8 outstanding stock of the association. If, within 30 days of  
9 receipt of the final proposal of abandonment, sale, or other  
10 disposal, stockholders of the association representing 15%  
11 30% or more of the issued and outstanding stock of the  
12 association file a petition of protest with the department,  
13 the project may not be abandoned, sold, or otherwise  
14 disposed of without the consent of the legislature."

15 NEW SECTION. Section 3. Effective date. [This act] is  
16 effective on passage and approval.

-End-