

HOUSE BILL NO. 908
INTRODUCED BY HARPER, GRADY

IN THE HOUSE

FEBRUARY 16, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

 FIRST READING.

FEBRUARY 21, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 22, 1991 PRINTING REPORT.

FEBRUARY 25, 1991 SECOND READING, DO PASS AS AMENDED.
 ENGROSSING REPORT.

FEBRUARY 26, 1991 THIRD READING, PASSED.
 AYES, 92; NOES, 7.

 TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

 FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
 AYES, 43; NOES, 7.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS
 CONCURRED IN.

APRIL 11, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 908
 2 INTRODUCED BY [Signature] [Signature]
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF
 5 NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REQUIRING
 6 THE INSTALLATION AND MAINTENANCE OF WATER MEASURING DEVICES
 7 ON CHRONICALLY DEWATERED WATERCOURSES; PROVIDING GUIDELINES
 8 FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO
 9 IDENTIFY CHRONICALLY DEWATERED WATERCOURSES; AUTHORIZING THE
 10 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER
 11 WATER DEVELOPMENT PROGRAM GRANT AND LOAN APPLICATIONS FOR
 12 THE INSTALLATION OF REQUIRED MEASURING DEVICES; AND AMENDING
 13 SECTIONS 85-1-602, 85-1-604, AND 85-2-113, MCA."

STATEMENT OF INTENT

16 A statement of intent is required to provide guidance to
 17 the board of natural resources and conservation in adopting
 18 rules to implement the provisions of [this act]. The
 19 legislature understands that many Montana watercourses
 20 suffer chronic dewatering. The legislature further
 21 understands that this dewatering severely impairs important
 22 beneficial uses of those watercourses, including but not
 23 limited to fisheries and agricultural, industrial,
 24 municipal, and recreational uses. It is the intent of the
 25 legislature to identify those watercourses where chronic

1 dewatering significantly impairs these beneficial uses. It
 2 is also the intent of the legislature to require measuring
 3 devices on diversions in chronically dewatered watercourses
 4 to ensure that appropriators withdraw only the amounts they
 5 are entitled to withdraw under valid appropriative rights
 6 and water use permits.

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

Section 1. Section 85-2-113, MCA, is amended to read:

10 "85-2-113. Board powers and duties. (1) The board may
 11 prescribe fees or service charges for any public service
 12 rendered by the department under this chapter, including
 13 fees for the filing of applications or for the issuance of
 14 permits and certificates, for rulemaking hearings under
 15 85-2-319, for administrative hearings conducted under this
 16 chapter, for investigations concerning permit revocation,
 17 for field verification of issued and completed permits, and
 18 all change approvals. There shall be no fees for any action
 19 taken by the department at the request of the water judge or
 20 for the issuance of certificates of existing rights.

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

24 (a) govern the issuance and terms of interim permits
 25 authorizing an applicant for a regular permit under this



1 chapter to begin appropriating water immediately, pending
2 final approval or denial by the department of the
3 application for a regular permit;

4 (b) require the owner or operator of appropriation
5 facilities to install and maintain suitable controlling and
6 measuring devices, except that the board may not require a
7 meter on a water well outside of a controlled ground water
8 area or proposed controlled ground water area unless the
9 maximum appropriation of the well is in excess of 100
10 gallons a minute;

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

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

18 (3) The board shall adopt rules providing for and
19 governing temporary emergency appropriations, without prior
20 application for a permit, necessary to protect lives or
21 property.

22 (4) (a) The board shall adopt rules to require the
23 owner or operator of an appropriation facility on a
24 watercourse identified as chronically dewatered by the
25 department under [section 2] to install and maintain a

1 suitable controlling and measuring device no later than 2
2 years after designation of the watercourse as chronically
3 dewatered.

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

10 **NEW SECTION. Section 2. Chronically dewatered**
11 **watercourse -- identification.** (1) Using the factors in
12 subsection (2) as guidelines, the department, in
13 consultation with the department of fish, wildlife, and
14 parks, shall identify chronically dewatered watercourses.

15 (2) The factors the department shall consider when
16 identifying chronically dewatered watercourses include but
17 are not limited to the:

- 18 (a) extent, duration, and frequency of the dewatering;
19 (b) impact of the dewatering on fish, wildlife, or
20 other natural resources;
21 (c) particular species of fish and wildlife impacted;
22 (d) impact of dewatering on other off-stream uses,
23 including but not limited to agricultural, industrial,
24 municipal, and recreational uses; and
25 (e) probable cause of the dewatering.

1 **Section 3.** Section 85-1-602, MCA, is amended to read:
 2 **"85-1-602. Objectives.** The department shall administer
 3 a water development program to accomplish such objectives as
 4 rehabilitation of state-owned water projects and works;
 5 promotion of private, local government, and state water
 6 development; development of water-based recreation and the
 7 protection of water resources for the benefit of
 8 agriculture, flood control, and other uses; development of
 9 offstream and tributary storage; encouragement of projects
 10 or programs that improve water use efficiency, including
 11 development of new, efficient water systems, and
 12 rehabilitation of older, less efficient water systems, and
 13 installation of measuring devices required under 85-2-113;
 14 and development of state-tribal, state-federal, and
 15 state-tribal-federal water projects. The storage of water
 16 for existing and future beneficial uses shall be given the
 17 highest priority unless a water development project or
 18 activity designed to accomplish another objective is
 19 demonstrated to be more beneficial to a greater number of
 20 people. The water development program is the key
 21 implementation portion of the state water plan and shall be
 22 administered to accomplish the objectives of the plan."

23 **Section 4.** Section 85-1-604, MCA, is amended to read:
 24 **"85-1-604. Water development state special revenue**
 25 **account created -- revenues allocated -- limitations on**

1 **appropriations from account.** (1) There is created a water
 2 development state special revenue account within the state
 3 special revenue fund established in 17-2-102.

4 (2) Except to the extent that they are required to be
 5 credited to the water development debt service fund pursuant
 6 to 85-1-603, there shall be paid into the water development
 7 state special revenue account:

8 (a) all revenues of the works and other money as
 9 provided in 85-1-332;

10 (b) 30% of the interest income of the resource
 11 indemnity trust fund as provided in and subject to the
 12 conditions of 15-38-202;

13 (c) the excess of the coal severance tax proceeds
 14 allocated by 85-1-603 to the water development debt service
 15 fund above debt service requirements as provided in and
 16 subject to the conditions of 85-1-619; and

17 (d) any fees or charges collected by the department
 18 pursuant to 85-1-616 for the servicing of loans, including
 19 arrangements for obtaining security interests.

20 (3) Appropriations may be made from the water
 21 development state special revenue account for the following
 22 purposes and subject to the following conditions:

23 (a) An amount less than or equal to that paid into the
 24 account under 85-1-332 and only that amount may be
 25 appropriated for the operation and maintenance of

1 state-owned projects and works. If the amount of money
2 available for appropriation under this subsection (3)(a) is
3 greater than that necessary for operation and maintenance
4 expenses, the excess may be appropriated as provided in
5 subsection (3)(b).

6 (b) An amount less than or equal to that paid into the
7 account from the resource indemnity trust account plus any
8 excess from subsection (3)(a) and only that amount may be
9 appropriated from the account for:

10 (i) the rehabilitation of state-owned projects and
11 works, including the rehabilitation of spillways of
12 state-owned dams;

13 (ii) the formulation of downstream emergency warning and
14 evacuation plans for state-owned dams;

15 (iii) the development of the hydropower potential of
16 state-owned dams;

17 (iv) assistance in the implementation of the water
18 reservations established under 85-2-316 of conservation
19 districts;

20 (v) the promotion of the development of offstream and
21 tributary storage;

22 (vi) the promotion of joint state-tribal, state-federal,
23 and state-tribal-federal water development;

24 (vii) projects or programs that improve water use
25 efficiency, including development of new, efficient water

1 systems, and rehabilitation of older, less efficient water
2 systems, and installation of measuring devices required
3 under 85-2-113;

4 (viii) administrative expenses, including but not
5 limited to the salaries and expenses of personnel,
6 equipment, office space, and other necessities incurred in
7 the administration of the water development program except
8 the administration of loans and grants; and

9 (ix) any other expenditures that meet the policies and
10 objectives of the state water development program.

11 (c) An amount less than or equal to that paid into the
12 account from the sources provided for in (c) and (d) of
13 subsection (2) and only that amount may be appropriated from
14 the account for loans and grants for water development
15 projects and activities; for purchase of liens and operation
16 of property as provided in 85-1-615; for administrative
17 expenses, including but not limited to the salaries and
18 expenses of personnel, equipment, and office space; for the
19 servicing of loans, including arrangements for obtaining
20 security interests; and for other necessities incurred in
21 administering the loans and grants."

22 NEW SECTION. Section 5: Codification instruction.
23 [Section 2] is intended to be codified as an integral part
24 of Title 85, chapter 2, and the provisions of Title 85,
25 chapter 2, apply to [section 2].

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0908, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) requires the Board of Natural Resources and Conservation to adopt rules requiring the installation and maintenance of water measuring devices on chronically dewatered watercourses; 2) provides guidelines for the Department of Natural Resources and Conservation to identify chronically dewatered watercourses; and 3) authorizes the Department of Natural Resources and Conservation to consider water development program grant and loan applications for the installation of required measuring devices.

ASSUMPTIONS:

The Department of Natural Resources and Conservation:

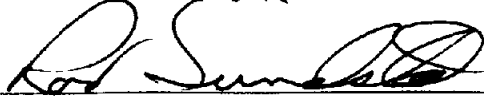
Determination of chronic dewatering of streams will include hydrological analysis of such watercourses, which is an additional responsibility. Responsibilities with respect to monitoring measurement device installation, maintenance, operation, and calibration will be slightly broadened to ensure that the Board of Natural Resources and Conservation's administrative rules are implemented and followed. This role is assumed to include randomly checking measuring devices to ensure proper installation, operation, and calibration. However, the department will expect the water users to provide data and information certifying the reasonable and proper operation of the measuring devices. Furthermore, it is assumed that the Department would be responsible for maintaining the centralized record-keeping for measuring device operations and data collected from those devices.

1. Preparations to identify watercourses where chronic dewatering significantly impairs beneficial use of water will cost \$12,000 per year.
2. Preparation and adoption of administrative rules to require measuring devices on chronically dewatered watercourses to ensure compliance with appropriative water rights will cost \$3,500 per year.
3. 2,000 new measuring devices will be installed, operated, maintained, and calibrated each year on chronically dewatered watercourses throughout Montana.
4. Random monitoring of measuring device installation, operation, maintenance, and calibration will cost \$12,000 per year.
5. Additional travel and per diem costs to randomly monitor compliance will be \$2,000 per year.
6. Additional communication costs to randomly monitor compliance will be \$500 per year.
7. Additional supplies and materials costs to randomly monitor compliance will be \$500 per year.
8. Additional record-keeping costs to receive and store measuring records will cost \$12,000 per year.

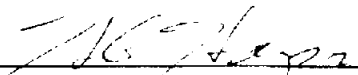
Department of Fish, Wildlife and Parks:

9. Existing resources will be used for the department involvement with DNRC in identification of chronically dewatered watercourses.

(continued on next page)


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

2-21-91
DATE


HAL HARPER, PRIMARY SPONSOR

2-23-91
DATE

Fiscal Note for HB0908, as introduced

HB 908

Fiscal Note Request, HB0908, as introduced

Form BD-15

Page 2

10. Measuring devices will be required on 50% of the 58 diversion structures managed by the department to provide water for fish hatcheries and irrigation on game ranges and state parks. Half of these 58 measuring devices will be installed each year of the biennium.
11. Minimum cost to install each measuring device is \$500.
12. Depending on the specific circumstances, additional field work may be required to identify species of fish and wildlife affected and provide an assessment of the impact. It is not possible to provide an accurate estimate of these potential costs.

FISCAL IMPACT:

	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>						
DNRC Operating Costs	0	42,500	42,500	0	39,000	39,000
DFWP Operating Costs	0	14,500	14,500	0	14,500	14,500
Total	0	57,000	57,000	0	53,500	53,500
<u>Funding:</u>						
General Fund	0	42,500	42,500	0	39,000	39,000
General License Acct (02)	0	14,500	14,500	0	14,500	14,500
Total	0	57,000	57,000	0	53,500	53,500
General Fund Impact			(42,500)			(39,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is anticipated the the fiscal impact for FY93 would remain constant for future years.

The parties requiring measuring devices can apply for the grants or loans through the water development program because this act provides that installation of water measuring devices is an objective of that program.

TECHNICAL NOTES:

The delegated authority to enforce the provisions of required measuring devices may need to be clarified.

HB 908

APPROVED BY COMM. ON
NATURAL RESOURCES

1 HOUSE BILL NO. 908
 2 INTRODUCED BY HARPER, GRADY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF
 5 NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REQUIRING
 6 THE ACQUISITION, INSTALLATION, AND MAINTENANCE OF WATER
 7 MEASURING DEVICES ON CHRONICALLY DEWATERED WATERCOURSES;
 8 PROVIDING GUIDELINES FOR THE DEPARTMENT OF NATURAL RESOURCES
 9 AND CONSERVATION TO IDENTIFY CHRONICALLY DEWATERED
 10 WATERCOURSES; AUTHORIZING THE DEPARTMENT OF NATURAL
 11 RESOURCES AND CONSERVATION TO CONSIDER WATER DEVELOPMENT
 12 PROGRAM GRANT AND LOAN APPLICATIONS FOR THE INSTALLATION OF
 13 REQUIRED MEASURING DEVICES; AND AMENDING SECTIONS 85-1-602,
 14 85-1-604, 85-2-102, AND 85-2-113, MCA."

STATEMENT OF INTENT

17 A statement of intent is required to provide guidance to
 18 the board of natural resources and conservation in adopting
 19 rules to implement the provisions of [this act]. The
 20 legislature understands that many Montana watercourses
 21 suffer chronic dewatering. The legislature further
 22 understands that this dewatering severely impairs important
 23 beneficial uses of those watercourses, including but not
 24 limited to fisheries and agricultural, industrial,
 25 municipal, and recreational uses. It is the intent of the

1 legislature, WHERE REASONABLE AND PRACTICAL, to identify
 2 those watercourses where chronic dewatering significantly
 3 impairs these beneficial uses. It is also the intent of the
 4 legislature to require measuring devices on diversions in
 5 chronically dewatered watercourses to ensure that
 6 appropriators withdraw only the amounts they are entitled to
 7 withdraw under valid appropriative rights and water use
 8 permits.

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

SECTION 1. SECTION 85-2-102, MCA, IS AMENDED TO READ:

12 **"85-2-102. (Temporary) Definitions.** Unless the context
 13 requires otherwise, in this chapter the following
 14 definitions apply:

15 (1) "Appropriate" means to:

16 (a) divert, impound, or withdraw (including by stock
 17 for stock water) a quantity of water;

18 (b) in the case of a public agency, to reserve water in
 19 accordance with 85-2-316; or

20 (c) in the case of the department of fish, wildlife,
 21 and parks, to lease water in accordance with 85-2-436.

22 (2) "Beneficial use", unless otherwise provided, means:

23 (a) a use of water for the benefit of the appropriator,
 24 other persons, or the public, including but not limited to
 25 agricultural (including stock water), domestic, fish and



1 wildlife, industrial, irrigation, mining, municipal, power,
2 and recreational uses;

3 (b) a use of water appropriated by the department for
4 the state water leasing program under 85-2-141 and of water
5 leased under a valid lease issued by the department under
6 85-2-141; and

7 (c) a use of water by the department of fish, wildlife,
8 and parks pursuant to a lease authorized under 85-2-436.

9 (3) "Board" means the board of natural resources and
10 conservation provided for in 2-15-3302.

11 (4) "Certificate" means a certificate of water right
12 issued by the department.

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

16 (6) "Commission" means the fish and game commission
17 provided for in 2-15-3402.

18 (7) "Declaration" means the declaration of an existing
19 right filed with the department under section 8, Chapter
20 452, Laws of 1973.

21 (8) "Department" means the department of natural
22 resources and conservation provided for in Title 2, chapter
23 15, part 33.

24 (9) "Existing right" means a right to the use of water
25 which would be protected under the law as it existed prior

1 to July 1, 1973.

2 (10) "Ground water" means any water beneath the land
3 surface or beneath the bed of a stream, lake, reservoir, or
4 other body of surface water, and which is not a part of that
5 surface water.

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

9 (12) "Person" means an individual, association,
10 partnership, corporation, state agency, political
11 subdivision, the United States or any agency thereof, or any
12 other entity.

13 (13) "Political subdivision" means any county,
14 incorporated city or town, public corporation, or district
15 created pursuant to state law or other public body of the
16 state empowered to appropriate water but not a private
17 corporation, association, or group.

18 (14) "Watercourse" means any naturally occurring stream
19 or river from which water is diverted for beneficial uses.
20 It does not include ditches, culverts, or other manmade
21 waterways.

22 ~~(14)~~ (15) "Waste" means the unreasonable loss of water
23 through the design or negligent operation of an
24 appropriation or water distribution facility or the
25 application of water to anything but a beneficial use.

1 ~~{15}~~(16) "Water" means all water of the state, surface
 2 and subsurface, regardless of its character or manner of
 3 occurrence, including but not limited to geothermal water,
 4 diffuse surface water, and sewage effluent.

5 ~~{16}~~(17) "Water division" means a drainage basin as
 6 defined in 3-7-102.

7 ~~{17}~~(18) "Water judge" means a judge as provided for in
 8 Title 3, chapter 7.

9 ~~{18}~~(19) "Water master" means a master as provided for
 10 in Title 3, chapter 7.

11 ~~{19}~~(20) "Well" means any artificial opening or
 12 excavation in the ground, however made, by which ground
 13 water is sought or can be obtained or through which it flows
 14 under natural pressures or is artificially withdrawn.
 15 (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

16 **85-2-102. (Effective July 1, 1993) Definitions.** Unless
 17 the context requires otherwise, in this chapter the
 18 following definitions apply:

19 (1) "Appropriate" means to divert, impound, or withdraw
 20 (including by stock for stock water) a quantity of water or,
 21 in the case of a public agency, to reserve water in
 22 accordance with 85-2-316.

23 (2) "Beneficial use", unless otherwise provided, means:

24 (a) a use of water for the benefit of the appropriator,
 25 other persons, or the public, including but not limited to

1 agricultural (including stock water), domestic, fish and
 2 wildlife, industrial, irrigation, mining, municipal, power,
 3 and recreational uses; and

4 (b) a use of water appropriated by the department for
 5 the state water leasing program under 85-2-141 and of water
 6 leased under a valid lease issued by the department under
 7 85-2-141.

8 (3) "Board" means the board of natural resources and
 9 conservation provided for in 2-15-3302.

10 (4) "Certificate" means a certificate of water right
 11 issued by the department.

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

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 16 right filed with the department under section 8, Chapter
 17 452, Laws of 1973.

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 19 resources and conservation provided for in Title 2, chapter
 20 15, part 33.

21 (8) "Existing right" means a right to the use of water
 22 which would be protected under the law as it existed prior
 23 to July 1, 1973.

24 (9) "Ground water" means any water beneath the land
 25 surface or beneath the bed of a stream, lake, reservoir, or

1 other body of surface water, and which is not a part of that
2 surface water.

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

6 (11) "Person" means an individual, association,
7 partnership, corporation, state agency, political
8 subdivision, the United States or any agency thereof, or any
9 other entity.

10 (12) "Political subdivision" means any county,
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21 occurrence, including but not limited to geothermal water,
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24 or river from which water is diverted for beneficial uses.
25 It does not include ditches, culverts, or other manmade

1 waterways.

2 ~~(15)~~ (16) "Water division" means a drainage basin as
3 defined in 3-7-102.

4 ~~(16)~~ (17) "Water judge" means a judge as provided for in
5 Title 3, chapter 7.

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8 ~~(18)~~ (19) "Well" means any artificial opening or
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16 fees for the filing of applications or for the issuance of
17 permits and certificates, for rulemaking hearings under
18 85-2-319, for administrative hearings conducted under this
19 chapter, for investigations concerning permit revocation,
20 for field verification of issued and completed permits, and
21 all change approvals. There shall be no fees for any action
22 taken by the department at the request of the water judge or
23 for the issuance of certificates of existing rights.

24 (2) The board may adopt rules necessary to implement
25 and carry out the purposes and provisions of this chapter.

1 These rules may include but are not limited to rules to:

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

7 (b) require the owner or operator of appropriation
 8 facilities to install and maintain suitable controlling and
 9 measuring devices, except that the board may not require a
 10 meter on a water well outside of a controlled ground water
 11 area or proposed controlled ground water area unless the
 12 maximum appropriation of the well is in excess of 100
 13 gallons a minute;

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

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

21 (3) The board shall adopt rules providing for and
 22 governing temporary emergency appropriations, without prior
 23 application for a permit, necessary to protect lives or
 24 property.

25 (4) (a) The board shall adopt rules to require the

1 owner or operator of an appropriation facility on a
 2 watercourse identified as chronically dewatered by the
 3 department under [section 2 3] to ACQUIRE, install, and
 4 maintain a suitable controlling and measuring device no
 5 later than 2 years after designation of the watercourse as
 6 chronically dewatered, EXCEPT THAT WHERE THE BOARD
 7 SPECIFICALLY FINDS THAT THE INSTALLATION OF MEASURING
 8 DEVICES ALONG THE ENTIRE WATERCOURSE IS NOT PRACTICABLE
 9 WITHIN THE 2-YEAR DEADLINE, IT MAY ESTABLISH A LATER
 10 DEADLINE.

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

17 NEW SECTION. Section 3. Chronically dewatered
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 20 consultation with the department of fish, wildlife, and
 21 parks, shall identify chronically dewatered watercourses.

22 (2) The factors the department shall consider when
 23 identifying chronically dewatered watercourses include but
 24 are not limited to the:

25 (a) extent, duration, and frequency of the dewatering;

1 (b) impact of the dewatering on fish, wildlife, or
2 other natural resources;

3 (c) particular species of fish and wildlife impacted;

4 (d) impact of dewatering on other off-stream uses,
5 including but not limited to agricultural, industrial,
6 municipal, and recreational uses; and

7 (e) probable cause of the dewatering;

8 (F) EXISTENCE OF TEMPORARY OR FINAL DECREES;

9 (G) HISTORY, IF ANY, OF CONFLICT AMONG WATER RIGHTS
10 HOLDERS ON THE WATERCOURSE; AND

11 (H) PRACTICALITY AND REASONABLENESS OF INSTALLING
12 MEASURING DEVICES ON DIVERSIONS ALONG THE WATERCOURSE.

13 **Section 4.** Section 85-1-602, MCA, is amended to read:

14 "85-1-602. Objectives. The department shall administer
15 a water development program to accomplish such objectives as
16 rehabilitation of state-owned water projects and works;
17 promotion of private, local government, and state water
18 development; development of water-based recreation and the
19 protection of water resources for the benefit of
20 agriculture, flood control, and other uses; development of
21 offstream and tributary storage; encouragement of projects
22 or programs that improve water use efficiency, including
23 development of new, efficient water systems, and
24 rehabilitation of older, less efficient water systems, and
25 ACQUISITION AND installation of measuring devices required

1 under 85-2-113; and development of state-tribal,
2 state-federal, and state-tribal-federal water projects. The
3 storage of water for existing and future beneficial uses
4 shall be given the highest priority unless a water
5 development project or activity designed to accomplish
6 another objective is demonstrated to be more beneficial to a
7 greater number of people. The water development program is
8 the key implementation portion of the state water plan and
9 shall be administered to accomplish the objectives of the
10 plan."

11 **Section 5.** Section 85-1-604, MCA, is amended to read:

12 "85-1-604. Water development state special revenue
13 account created -- revenues allocated -- limitations on
14 appropriations from account. (1) There is created a water
15 development state special revenue account within the state
16 special revenue fund established in 17-2-102.

17 (2) Except to the extent that they are required to be
18 credited to the water development debt service fund pursuant
19 to 85-1-603, there shall be paid into the water development
20 state special revenue account:

21 (a) all revenues of the works and other money as
22 provided in 85-1-332;

23 (b) 30% of the interest income of the resource
24 indemnity trust fund as provided in and subject to the
25 conditions of 15-38-202;

1 (c) the excess of the coal severance tax proceeds
2 allocated by 85-1-603 to the water development debt service
3 fund above debt service requirements as provided in and
4 subject to the conditions of 85-1-619; and

5 (d) any fees or charges collected by the department
6 pursuant to 85-1-616 for the servicing of loans, including
7 arrangements for obtaining security interests.

8 (3) Appropriations may be made from the water
9 development state special revenue account for the following
10 purposes and subject to the following conditions:

11 (a) An amount less than or equal to that paid into the
12 account under 85-1-332 and only that amount may be
13 appropriated for the operation and maintenance of
14 state-owned projects and works. If the amount of money
15 available for appropriation under this subsection (3)(a) is
16 greater than that necessary for operation and maintenance
17 expenses, the excess may be appropriated as provided in
18 subsection (3)(b).

19 (b) An amount less than or equal to that paid into the
20 account from the resource indemnity trust account plus any
21 excess from subsection (3)(a) and only that amount may be
22 appropriated from the account for:

23 (i) the rehabilitation of state-owned projects and
24 works, including the rehabilitation of spillways of
25 state-owned dams;

1 (ii) the formulation of downstream emergency warning and
2 evacuation plans for state-owned dams;

3 (iii) the development of the hydropower potential of
4 state-owned dams;

5 (iv) assistance in the implementation of the water
6 reservations established under 85-2-316 of conservation
7 districts;

8 (v) the promotion of the development of offstream and
9 tributary storage;

10 (vi) the promotion of joint state-tribal, state-federal,
11 and state-tribal-federal water development;

12 (vii) projects or programs that improve water use
13 efficiency, including development of new, efficient water
14 systems, and rehabilitation of older, less efficient water
15 systems, and ACQUISITION AND installation of measuring
16 devices required under 85-2-113;

17 (viii) administrative expenses, including but not
18 limited to the salaries and expenses of personnel,
19 equipment, office space, and other necessities incurred in
20 the administration of the water development program except
21 the administration of loans and grants; and

22 (ix) any other expenditures that meet the policies and
23 objectives of the state water development program.

24 (c) An amount less than or equal to that paid into the
25 account from the sources provided for in (c) and (d) of

1 subsection (2) and only that amount may be appropriated from
2 the account for loans and grants for water development
3 projects and activities; for purchase of liens and operation
4 of property as provided in 85-1-615; for administrative
5 expenses, including but not limited to the salaries and
6 expenses of personnel, equipment, and office space; for the
7 servicing of loans, including arrangements for obtaining
8 security interests; and for other necessities incurred in
9 administering the loans and grants."

10 NEW SECTION. **Section 6.** Codification instruction.
11 [Section 2 3] is intended to be codified as an integral part
12 of Title 85, chapter 2, and the provisions of Title 85,
13 chapter 2, apply to [section 2 3].

-End-

HOUSE BILL NO. 908

INTRODUCED BY HARPER, GRADY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REQUIRING THE ACQUISITION, INSTALLATION, AND MAINTENANCE OF WATER MEASURING DEVICES ON CHRONICALLY DEWATERED WATERCOURSES OR PORTIONS OF WATERCOURSES; PROVIDING GUIDELINES FOR THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO IDENTIFY CHRONICALLY DEWATERED WATERCOURSES; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER WATER DEVELOPMENT PROGRAM GRANT AND LOAN APPLICATIONS FOR THE INSTALLATION OF REQUIRED MEASURING DEVICES; AND AMENDING SECTIONS 85-1-602, 85-1-604, 85-2-102, AND 85-2-113, MCA."

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the board of natural resources and conservation in adopting rules to implement the provisions of [this act]. The legislature understands that many Montana watercourses OR PORTIONS OF WATERCOURSES suffer chronic dewatering. The legislature further understands that this dewatering severely impairs important beneficial uses of those watercourses, including but not limited to fisheries and agricultural, industrial, municipal, and recreational uses.

It is the intent of the legislature, WHERE REASONABLE AND PRACTICAL, to identify those watercourses OR PORTIONS OF WATERCOURSES where chronic dewatering significantly impairs these beneficial uses. It is also the intent of the legislature to require measuring devices on diversions in chronically dewatered watercourses OR PORTIONS OF WATERCOURSES to ensure that appropriators withdraw only the amounts they are entitled to withdraw under valid appropriative rights and water use permits.

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. (Temporary) Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "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



1 agricultural (including stock water), domestic, fish and
2 wildlife, industrial, irrigation, mining, municipal, power,
3 and recreational uses;

4 (b) a use of water appropriated by the department for
5 the state water leasing program under 85-2-141 and of water
6 leased under a valid lease issued by the department under
7 85-2-141; and

8 (c) a use of water by the department of fish, wildlife,
9 and parks pursuant to a lease authorized under 85-2-436.

10 (3) "Board" means the board of natural resources and
11 conservation provided for in 2-15-3302.

12 (4) "Certificate" means a certificate of water right
13 issued by the department.

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

17 (6) "Commission" means the fish and game commission
18 provided for in 2-15-3402.

19 (7) "Declaration" means the declaration of an existing
20 right filed with the department under section 8, Chapter
21 452, Laws of 1973.

22 (8) "Department" means the department of natural
23 resources and conservation provided for in Title 2, chapter
24 15, part 33.

25 (9) "Existing right" means a right to the use of water

1 which would be protected under the law as it existed prior
2 to July 1, 1973.

3 (10) "Ground water" means any water beneath the land
4 surface or beneath the bed of a stream, lake, reservoir, or
5 other body of surface water, and which is not a part of that
6 surface water.

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

10 (12) "Person" means an individual, association,
11 partnership, corporation, state agency, political
12 subdivision, the United States or any agency thereof, or any
13 other entity.

14 (13) "Political subdivision" means any county,
15 incorporated city or town, public corporation, or district
16 created pursuant to state law or other public body of the
17 state empowered to appropriate water but not a private
18 corporation, association, or group.

19 (14) "Watercourse" means any naturally occurring stream
20 or river from which water is diverted for beneficial uses.
21 It does not include ditches, culverts, or other manmade
22 waterways.

23 ~~(14)~~(15) "Waste" means the unreasonable loss of water
24 through the design or negligent operation of an
25 appropriation or water distribution facility or the

1 application of water to anything but a beneficial use.

2 ~~†15~~(16) "Water" means all water of the state, surface
3 and subsurface, regardless of its character or manner of
4 occurrence, including but not limited to geothermal water,
5 diffuse surface water, and sewage effluent.

6 ~~†16~~(17) "Water division" means a drainage basin as
7 defined in 3-7-102.

8 ~~†17~~(18) "Water judge" means a judge as provided for in
9 Title 3, chapter 7.

10 ~~†18~~(19) "Water master" means a master as provided for
11 in Title 3, chapter 7.

12 ~~†19~~(20) "Well" means any artificial opening or
13 excavation in the ground, however made, by which ground
14 water is sought or can be obtained or through which it flows
15 under natural pressures or is artificially withdrawn.
16 (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

17 85-2-102. (Effective July 1, 1993) Definitions. Unless
18 the context requires otherwise, in this chapter the
19 following definitions apply:

20 (1) "Appropriate" means to divert, impound, or withdraw
21 (including by stock for stock water) a quantity of water or,
22 in the case of a public agency, to reserve water in
23 accordance with 85-2-316.

24 (2) "Beneficial use", unless otherwise provided, means:

25 (a) a use of water for the benefit of the appropriator,

1 other persons, or the public, including but not limited to
2 agricultural (including stock water), domestic, fish and
3 wildlife, industrial, irrigation, mining, municipal, power,
4 and recreational uses; and

5 (b) a use of water appropriated by the department for
6 the state water leasing program under 85-2-141 and of water
7 leased under a valid lease issued by the department under
8 85-2-141.

9 (3) "Board" means the board of natural resources and
10 conservation provided for in 2-15-3302.

11 (4) "Certificate" means a certificate of water right
12 issued by the department.

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

16 (6) "Declaration" means the declaration of an existing
17 right filed with the department under section 8, Chapter
18 452, Laws of 1973.

19 (7) "Department" means the department of natural
20 resources and conservation provided for in Title 2, chapter
21 15, part 33.

22 (8) "Existing right" means a right to the use of water
23 which would be protected under the law as it existed prior
24 to July 1, 1973.

25 (9) "Ground water" means any water beneath the land

1 surface or beneath the bed of a stream, lake, reservoir, or
 2 other body of surface water, and which is not a part of that
 3 surface water.

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

7 (11) "Person" means an individual, association,
 8 partnership, corporation, state agency, political
 9 subdivision, the United States or any agency thereof, or any
 10 other entity.

11 (12) "Political subdivision" means any county,
 12 incorporated city or town, public corporation, or district
 13 created pursuant to state law or other public body of the
 14 state empowered to appropriate water but not a private
 15 corporation, association, or group.

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

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

24 (15) "Watercourse" means any naturally occurring stream
 25 or river from which water is diverted for beneficial uses.

1 It does not include ditches, culverts, or other manmade
 2 waterways.

3 ~~(15)~~(16) "Water division" means a drainage basin as
 4 defined in 3-7-102.

5 ~~(16)~~(17) "Water judge" means a judge as provided for in
 6 Title 3, chapter 7.

7 ~~(17)~~(18) "Water master" means a master as provided for
 8 in Title 3, chapter 7.

9 ~~(18)~~(19) "Well" means any artificial opening or
 10 excavation in the ground, however made, by which ground
 11 water is sought or can be obtained or through which it flows
 12 under natural pressures or is artificially withdrawn."

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

14 **"85-2-113. Board powers and duties.** (1) The board may
 15 prescribe fees or service charges for any public service
 16 rendered by the department under this chapter, including
 17 fees for the filing of applications or for the issuance of
 18 permits and certificates, for rulemaking hearings under
 19 85-2-319, for administrative hearings conducted under this
 20 chapter, for investigations concerning permit revocation,
 21 for field verification of issued and completed permits, and
 22 all change approvals. There shall be no fees for any action
 23 taken by the department at the request of the water judge or
 24 for the issuance of certificates of existing rights.

25 (2) The board may adopt rules necessary to implement

1 and carry out the purposes and provisions of this chapter.
 2 These rules may include but are not limited to rules to:

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

8 (b) require the owner or operator of appropriation
 9 facilities to install and maintain suitable controlling and
 10 measuring devices, except that the board may not require a
 11 meter on a water well outside of a controlled ground water
 12 area or proposed controlled ground water area unless the
 13 maximum appropriation of the well is in excess of 100
 14 gallons a minute;

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

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

22 (3) The board shall adopt rules providing for and
 23 governing temporary emergency appropriations, without prior
 24 application for a permit, necessary to protect lives or
 25 property.

1 (4) (a) The board shall adopt rules to require the
 2 owner or operator of an appropriation facility on a
 3 watercourse OR PORTIONS OF A WATERCOURSE identified as
 4 chronically dewatered by the department under [section 2 3]
 5 to ACQUIRE, install, and maintain a suitable controlling and
 6 measuring device no later than 2 years after designation of
 7 the watercourse OR PORTIONS OF THE WATERCOURSE as
 8 chronically dewatered, EXCEPT THAT WHERE THE BOARD
 9 SPECIFICALLY FINDS THAT THE INSTALLATION OF MEASURING
 10 DEVICES ALONG THE ENTIRE WATERCOURSE OR PORTIONS OF THE
 11 WATERCOURSE IS NOT PRACTICABLE WITHIN THE 2-YEAR DEADLINE,
 12 IT MAY ESTABLISH A LATER DEADLINE.

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

19 NEW SECTION. Section 3. Chronically dewatered
 20 watercourse -- identification. (1) Using the factors in
 21 subsection (2) as guidelines, the department, in
 22 consultation with the department of fish, wildlife, and
 23 parks, shall identify chronically dewatered watercourses OR
 24 PORTIONS OF WATERCOURSES.

25 (2) The factors the department shall consider when

1 identifying chronically dewatered watercourses OR PORTIONS
 2 OF WATERCOURSES include but are not limited to the:

3 (a) extent, duration, and frequency of the dewatering;
 4 (b) impact of the dewatering on fish, wildlife, or
 5 other natural resources;
 6 (c) particular species of fish and wildlife impacted;
 7 (d) impact of dewatering on other off-stream uses,
 8 including but not limited to agricultural, industrial,
 9 municipal, and recreational uses; and
 10 (e) probable cause of the dewatering;
 11 (F) EXISTENCE OF TEMPORARY OR FINAL DECREES;
 12 (G) HISTORY, IF ANY, OF CONFLICT AMONG WATER RIGHTS
 13 HOLDERS ON THE WATERCOURSE; AND
 14 (H) PRACTICALITY AND REASONABLENESS OF INSTALLING
 15 MEASURING DEVICES ON DIVERSIONS ALONG THE WATERCOURSE.

16 **Section 4.** Section 85-1-602, MCA, is amended to read:
 17 "85-1-602. Objectives. The department shall administer
 18 a water development program to accomplish such objectives as
 19 rehabilitation of state-owned water projects and works;
 20 promotion of private, local government, and state water
 21 development; development of water-based recreation and the
 22 protection of water resources for the benefit of
 23 agriculture, flood control, and other uses; development of
 24 offstream and tributary storage; encouragement of projects
 25 or programs that improve water use efficiency, including

1 development of new, efficient water systems, and
 2 rehabilitation of older, less efficient water systems, and
 3 ACQUISITION AND installation of measuring devices required
 4 under 85-2-113; and development of state-tribal,
 5 state-federal, and state-tribal-federal water projects. The
 6 storage of water for existing and future beneficial uses
 7 shall be given the highest priority unless a water
 8 development project or activity designed to accomplish
 9 another objective is demonstrated to be more beneficial to a
 10 greater number of people. The water development program is
 11 the key implementation portion of the state water plan and
 12 shall be administered to accomplish the objectives of the
 13 plan."

14 **Section 5.** Section 85-1-604, MCA, is amended to read:

15 "85-1-604. Water development state special revenue
 16 account created -- revenues allocated -- limitations on
 17 appropriations from account. (1) There is created a water
 18 development state special revenue account within the state
 19 special revenue fund established in 17-2-102.

20 (2) Except to the extent that they are required to be
 21 credited to the water development debt service fund pursuant
 22 to 85-1-603, there shall be paid into the water development
 23 state special revenue account:

24 (a) all revenues of the works and other money as
 25 provided in 85-1-332;

1 (b) 30% of the interest income of the resource
 2 indemnity trust fund as provided in and subject to the
 3 conditions of 15-38-202;

4 (c) the excess of the coal severance tax proceeds
 5 allocated by 85-1-603 to the water development debt service
 6 fund above debt service requirements as provided in and
 7 subject to the conditions of 85-1-619; and

8 (d) any fees or charges collected by the department
 9 pursuant to 85-1-616 for the servicing of loans, including
 10 arrangements for obtaining security interests.

11 (3) Appropriations may be made from the water
 12 development state special revenue account for the following
 13 purposes and subject to the following conditions:

14 (a) An amount less than or equal to that paid into the
 15 account under 85-1-332 and only that amount may be
 16 appropriated for the operation and maintenance of
 17 state-owned projects and works. If the amount of money
 18 available for appropriation under this subsection (3)(a) is
 19 greater than that necessary for operation and maintenance
 20 expenses, the excess may be appropriated as provided in
 21 subsection (3)(b).

22 (b) An amount less than or equal to that paid into the
 23 account from the resource indemnity trust account plus any
 24 excess from subsection (3)(a) and only that amount may be
 25 appropriated from the account for:

1 (i) the rehabilitation of state-owned projects and
 2 works, including the rehabilitation of spillways of
 3 state-owned dams;

4 (ii) the formulation of downstream emergency warning and
 5 evacuation plans for state-owned dams;

6 (iii) the development of the hydropower potential of
 7 state-owned dams;

8 (iv) assistance in the implementation of the water
 9 reservations established under 85-2-316 of conservation
 10 districts;

11 (v) the promotion of the development of offstream and
 12 tributary storage;

13 (vi) the promotion of joint state-tribal, state-federal,
 14 and state-tribal-federal water development;

15 (vii) projects or programs that improve water use
 16 efficiency, including development of new, efficient water
 17 systems, and rehabilitation of older, less efficient water
 18 systems, and ACQUISITION AND installation of measuring
 19 devices required under 85-2-113;

20 (viii) administrative expenses, including but not
 21 limited to the salaries and expenses of personnel,
 22 equipment, office space, and other necessities incurred in
 23 the administration of the water development program except
 24 the administration of loans and grants; and

25 (ix) any other expenditures that meet the policies and

1 objectives of the state water development program.

2 (c) An amount less than or equal to that paid into the
3 account from the sources provided for in (c) and (d) of
4 subsection (2) and only that amount may be appropriated from
5 the account for loans and grants for water development
6 projects and activities; for purchase of liens and operation
7 of property as provided in 85-1-615; for administrative
8 expenses, including but not limited to the salaries and
9 expenses of personnel, equipment, and office space; for the
10 servicing of loans, including arrangements for obtaining
11 security interests; and for other necessities incurred in
12 administering the loans and grants."

13 NEW SECTION. Section 6. Codification instruction.
14 [Section 2 3] is intended to be codified as an integral part
15 of Title 85, chapter 2, and the provisions of Title 85,
16 chapter 2, apply to [section 2 3].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 908 (third reading copy -- blue), respectfully report that House Bill No. 908 be amended and as so amended be concurred in:

1. Page 10, lines 22 and 23.

Following: "with" on line 22

Strike: the remainder of line 22 through "parks" on line 23

Insert: "other agencies and groups"

2. Page 11, line 13.

Following: "WATERCOURSE;"

Strike: "AND"

3. Page 11, line 15.

Following: "WATERCOURSE"

Insert: "; and

(i) likelihood that the installation of measuring devices will significantly help to;

(i) solve the chronically dewatered condition of the watercourse; or

(ii) resolve conflicts among water rights holders on the watercourse"

Signed: Lawrence G. Stimatz
Lawrence G. Stimatz, Chairman

jgi 4-2-91
And. Coord.

SB 4-291 12:50
Sec. of Senate

SENATE
HB 908

1 HOUSE BILL NO. 908

2 INTRODUCED BY HARPER, GRADY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE BOARD OF
5 NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REQUIRING
6 THE ACQUISITION, INSTALLATION, AND MAINTENANCE OF WATER
7 MEASURING DEVICES ON CHRONICALLY DEWATERED WATERCOURSES OR
8 PORTIONS OF WATERCOURSES; PROVIDING GUIDELINES FOR THE
9 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO IDENTIFY
10 CHRONICALLY DEWATERED WATERCOURSES; AUTHORIZING THE
11 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER
12 WATER DEVELOPMENT PROGRAM GRANT AND LOAN APPLICATIONS FOR
13 THE INSTALLATION OF REQUIRED MEASURING DEVICES; AND AMENDING
14 SECTIONS 85-1-602, 85-1-604, 85-2-102, AND 85-2-113, MCA."
15

16 STATEMENT OF INTENT

17 A statement of intent is required to provide guidance to
18 the board of natural resources and conservation in adopting
19 rules to implement the provisions of [this act]. The
20 legislature understands that many Montana watercourses OR
21 PORTIONS OF WATERCOURSES suffer chronic dewatering. The
22 legislature further understands that this dewatering
23 severely impairs important beneficial uses of those
24 watercourses, including but not limited to fisheries and
25 agricultural, industrial, municipal, and recreational uses.

1 It is the intent of the legislature, WHERE REASONABLE AND
2 PRACTICAL, to identify those watercourses OR PORTIONS OF
3 WATERCOURSES where chronic dewatering significantly impairs
4 these beneficial uses. It is also the intent of the
5 legislature to require measuring devices on diversions in
6 chronically dewatered watercourses OR PORTIONS OF
7 WATERCOURSES to ensure that appropriators withdraw only the
8 amounts they are entitled to withdraw under valid
9 appropriative rights and water use permits.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **SECTION 1. SECTION 85-2-102, MCA, IS AMENDED TO READ:**

13 **"85-2-102. (Temporary) Definitions.** Unless the context
14 requires otherwise, in this chapter the following
15 definitions apply:

16 (1) "Appropriate" means to:

17 (a) divert, impound, or withdraw (including by stock
18 for stock water) a quantity of water;19 (b) in the case of a public agency, to reserve water in
20 accordance with 85-2-316; or21 (c) in the case of the department of fish, wildlife,
22 and parks, to lease water in accordance with 85-2-436.

23 (2) "Beneficial use", unless otherwise provided, means:

24 (a) a use of water for the benefit of the appropriator,
25 other persons, or the public, including but not limited to

1 agricultural (including stock water), domestic, fish and
2 wildlife, industrial, irrigation, mining, municipal, power,
3 and recreational uses;

4 (b) a use of water appropriated by the department for
5 the state water leasing program under 85-2-141 and of water
6 leased under a valid lease issued by the department under
7 85-2-141; and

8 (c) a use of water by the department of fish, wildlife,
9 and parks pursuant to a lease authorized under 85-2-436.

10 (3) "Board" means the board of natural resources and
11 conservation provided for in 2-15-3302.

12 (4) "Certificate" means a certificate of water right
13 issued by the department.

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

17 (6) "Commission" means the fish and game commission
18 provided for in 2-15-3402.

19 (7) "Declaration" means the declaration of an existing
20 right filed with the department under section 8, Chapter
21 452, Laws of 1973.

22 (8) "Department" means the department of natural
23 resources and conservation provided for in Title 2, chapter
24 15, part 33.

25 (9) "Existing right" means a right to the use of water

1 which would be protected under the law as it existed prior
2 to July 1, 1973.

3 (10) "Ground water" means any water beneath the land
4 surface or beneath the bed of a stream, lake, reservoir, or
5 other body of surface water, and which is not a part of that
6 surface water.

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

10 (12) "Person" means an individual, association,
11 partnership, corporation, state agency, political
12 subdivision, the United States or any agency thereof, or any
13 other entity.

14 (13) "Political subdivision" means any county,
15 incorporated city or town, public corporation, or district
16 created pursuant to state law or other public body of the
17 state empowered to appropriate water but not a private
18 corporation, association, or group.

19 (14) "Watercourse" means any naturally occurring stream
20 or river from which water is diverted for beneficial uses.
21 It does not include ditches, culverts, or other manmade
22 waterways.

23 ~~(14)~~ (15) "Waste" means the unreasonable loss of water
24 through the design or negligent operation of an
25 appropriation or water distribution facility or the

1 application of water to anything but a beneficial use.

2 ~~15~~16 "Water" means all water of the state, surface
3 and subsurface, regardless of its character or manner of
4 occurrence, including but not limited to geothermal water,
5 diffuse surface water, and sewage effluent.

6 ~~16~~17 "Water division" means a drainage basin as
7 defined in 3-7-102.

8 ~~17~~18 "Water judge" means a judge as provided for in
9 Title 3, chapter 7.

10 ~~18~~19 "Water master" means a master as provided for
11 in Title 3, chapter 7.

12 ~~19~~20 "Well" means any artificial opening or
13 excavation in the ground, however made, by which ground
14 water is sought or can be obtained or through which it flows
15 under natural pressures or is artificially withdrawn.
16 (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

17 85-2-102. (Effective July 1, 1993) Definitions. Unless
18 the context requires otherwise, in this chapter the
19 following definitions apply:

20 (1) "Appropriate" means to divert, impound, or withdraw
21 (including by stock for stock water) a quantity of water or,
22 in the case of a public agency, to reserve water in
23 accordance with 85-2-316.

24 (2) "Beneficial use", unless otherwise provided, means:

25 (a) a use of water for the benefit of the appropriator,

1 other persons, or the public, including but not limited to
2 agricultural (including stock water), domestic, fish and
3 wildlife, industrial, irrigation, mining, municipal, power,
4 and recreational uses; and

5 (b) a use of water appropriated by the department for
6 the state water leasing program under 85-2-141 and of water
7 leased under a valid lease issued by the department under
8 85-2-141.

9 (3) "Board" means the board of natural resources and
10 conservation provided for in 2-15-3302.

11 (4) "Certificate" means a certificate of water right
12 issued by the department.

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

16 (6) "Declaration" means the declaration of an existing
17 right filed with the department under section 8, Chapter
18 452, Laws of 1973.

19 (7) "Department" means the department of natural
20 resources and conservation provided for in Title 2, chapter
21 15, part 33.

22 (8) "Existing right" means a right to the use of water
23 which would be protected under the law as it existed prior
24 to July 1, 1973.

25 (9) "Ground water" means any water beneath the land

1 surface or beneath the bed of a stream, lake, reservoir, or
 2 other body of surface water, and which is not a part of that
 3 surface water.

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

7 (11) "Person" means an individual, association,
 8 partnership, corporation, state agency, political
 9 subdivision, the United States or any agency thereof, or any
 10 other entity.

11 (12) "Political subdivision" means any county,
 12 incorporated city or town, public corporation, or district
 13 created pursuant to state law or other public body of the
 14 state empowered to appropriate water but not a private
 15 corporation, association, or group.

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

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

24 (15) "Watercourse" means any naturally occurring stream
 25 or river from which water is diverted for beneficial uses.

1 It does not include ditches, culverts, or other manmade
 2 waterways.

3 †15†(16) "Water division" means a drainage basin as
 4 defined in 3-7-102.

5 †16†(17) "Water judge" means a judge as provided for in
 6 Title 3, chapter 7.

7 †17†(18) "Water master" means a master as provided for
 8 in Title 3, chapter 7.

9 †18†(19) "Well" means any artificial opening or
 10 excavation in the ground, however made, by which ground
 11 water is sought or can be obtained or through which it flows
 12 under natural pressures or is artificially withdrawn."

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

14 "85-2-113. Board powers and duties. (1) The board may
 15 prescribe fees or service charges for any public service
 16 rendered by the department under this chapter, including
 17 fees for the filing of applications or for the issuance of
 18 permits and certificates, for rulemaking hearings under
 19 85-2-319, for administrative hearings conducted under this
 20 chapter, for investigations concerning permit revocation,
 21 for field verification of issued and completed permits, and
 22 all change approvals. There shall be no fees for any action
 23 taken by the department at the request of the water judge or
 24 for the issuance of certificates of existing rights.

25 (2) The board may adopt rules necessary to implement

1 and carry out the purposes and provisions of this chapter.
 2 These rules may include but are not limited to rules to:

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

8 (b) require the owner or operator of appropriation
 9 facilities to install and maintain suitable controlling and
 10 measuring devices, except that the board may not require a
 11 meter on a water well outside of a controlled ground water
 12 area or proposed controlled ground water area unless the
 13 maximum appropriation of the well is in excess of 100
 14 gallons a minute;

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

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

22 (3) The board shall adopt rules providing for and
 23 governing temporary emergency appropriations, without prior
 24 application for a permit, necessary to protect lives or
 25 property.

1 (4) (a) The board shall adopt rules to require the
 2 owner or operator of an appropriation facility on a
 3 watercourse OR PORTIONS OF A WATERCOURSE identified as
 4 chronically dewatered by the department under [section 2 3]
 5 to ACQUIRE, install, and maintain a suitable controlling and
 6 measuring device no later than 2 years after designation of
 7 the watercourse OR PORTIONS OF THE WATERCOURSE as
 8 chronically dewatered, EXCEPT THAT WHERE THE BOARD
 9 SPECIFICALLY FINDS THAT THE INSTALLATION OF MEASURING
 10 DEVICES ALONG THE ENTIRE WATERCOURSE OR PORTIONS OF THE
 11 WATERCOURSE IS NOT PRACTICABLE WITHIN THE 2-YEAR DEADLINE,
 12 IT MAY ESTABLISH A LATER DEADLINE.

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

19 NEW SECTION. Section 3. Chronically dewatered
 20 watercourse -- identification. (1) Using the factors in
 21 subsection (2) as guidelines, the department, in
 22 consultation with the--department--of--fish,--wildlife,--and
 23 parks OTHER AGENCIES AND GROUPS, shall identify chronically
 24 dewatered watercourses OR PORTIONS OF WATERCOURSES.

25 (2) The factors the department shall consider when

1 identifying chronically dewatered watercourses OR PORTIONS
 2 OF WATERCOURSES include but are not limited to the:

- 3 (a) extent, duration, and frequency of the dewatering;
- 4 (b) impact of the dewatering on fish, wildlife, or
 5 other natural resources;
- 6 (c) particular species of fish and wildlife impacted;
- 7 (d) impact of dewatering on other off-stream uses,
 8 including but not limited to agricultural, industrial,
 9 municipal, and recreational uses; and
- 10 (e) probable cause of the dewatering;
- 11 (F) EXISTENCE OF TEMPORARY OR FINAL DECREES;
- 12 (G) HISTORY, IF ANY, OF CONFLICT AMONG WATER RIGHTS
 13 HOLDERS ON THE WATERCOURSE; AND
- 14 (H) PRACTICALITY AND REASONABLENESS OF INSTALLING
 15 MEASURING DEVICES ON DIVERSIONS ALONG THE WATERCOURSE; AND
- 16 (I) LIKELIHOOD THAT THE INSTALLATION OF MEASURING
 17 DEVICES WILL SIGNIFICANTLY HELP TO:
- 18 (I) SOLVE THE CHRONICALLY DEWATERED CONDITION OF THE
 19 WATERCOURSE; OR
- 20 (II) RESOLVE CONFLICTS AMONG WATER RIGHTS HOLDERS ON THE
 21 WATERCOURSE.

22 **Section 4.** Section 85-1-602, MCA, is amended to read:

23 "85-1-602. Objectives. The department shall administer
 24 a water development program to accomplish such objectives as
 25 rehabilitation of state-owned water projects and works;

1 promotion of private, local government, and state water
 2 development; development of water-based recreation and the
 3 protection of water resources for the benefit of
 4 agriculture, flood control, and other uses; development of
 5 offstream and tributary storage; encouragement of projects
 6 or programs that improve water use efficiency, including
 7 development of new, efficient water systems, and
 8 rehabilitation of older, less efficient water systems, and
 9 ACQUISITION AND installation of measuring devices required
 10 under 85-2-113; and development of state-tribal,
 11 state-federal, and state-tribal-federal water projects. The
 12 storage of water for existing and future beneficial uses
 13 shall be given the highest priority unless a water
 14 development project or activity designed to accomplish
 15 another objective is demonstrated to be more beneficial to a
 16 greater number of people. The water development program is
 17 the key implementation portion of the state water plan and
 18 shall be administered to accomplish the objectives of the
 19 plan."

20 **Section 5.** Section 85-1-604, MCA, is amended to read:

21 "85-1-604. Water development state special revenue
 22 account created -- revenues allocated -- limitations on
 23 appropriations from account. (1) There is created a water
 24 development state special revenue account within the state
 25 special revenue fund established in 17-2-102.

1 (2) Except to the extent that they are required to be
2 credited to the water development debt service fund pursuant
3 to 85-1-603, there shall be paid into the water development
4 state special revenue account:

5 (a) all revenues of the works and other money as
6 provided in 85-1-332;

7 (b) 30% of the interest income of the resource
8 indemnity trust fund as provided in and subject to the
9 conditions of 15-38-202;

10 (c) the excess of the coal severance tax proceeds
11 allocated by 85-1-603 to the water development debt service
12 fund above debt service requirements as provided in and
13 subject to the conditions of 85-1-619; and

14 (d) any fees or charges collected by the department
15 pursuant to 85-1-616 for the servicing of loans, including
16 arrangements for obtaining security interests.

17 (3) Appropriations may be made from the water
18 development state special revenue account for the following
19 purposes and subject to the following conditions:

20 (a) An amount less than or equal to that paid into the
21 account under 85-1-332 and only that amount may be
22 appropriated for the operation and maintenance of
23 state-owned projects and works. If the amount of money
24 available for appropriation under this subsection (3)(a) is
25 greater than that necessary for operation and maintenance

1 expenses, the excess may be appropriated as provided in
2 subsection (3)(b).

3 (b) An amount less than or equal to that paid into the
4 account from the resource indemnity trust account plus any
5 excess from subsection (3)(a) and only that amount may be
6 appropriated from the account for:

7 (i) the rehabilitation of state-owned projects and
8 works, including the rehabilitation of spillways of
9 state-owned dams;

10 (ii) the formulation of downstream emergency warning and
11 evacuation plans for state-owned dams;

12 (iii) the development of the hydropower potential of
13 state-owned dams;

14 (iv) assistance in the implementation of the water
15 reservations established under 85-2-316 of conservation
16 districts;

17 (v) the promotion of the development of offstream and
18 tributary storage;

19 (vi) the promotion of joint state-tribal, state-federal,
20 and state-tribal-federal water development;

21 (vii) projects or programs that improve water use
22 efficiency, including development of new, efficient water
23 systems, and rehabilitation of older, less efficient water
24 systems, and ACQUISITION AND installation of measuring
25 devices required under 85-2-113;

1 (viii) administrative expenses, including but not
2 limited to the salaries and expenses of personnel,
3 equipment, office space, and other necessities incurred in
4 the administration of the water development program except
5 the administration of loans and grants; and

6 (ix) any other expenditures that meet the policies and
7 objectives of the state water development program.

8 (c) An amount less than or equal to that paid into the
9 account from the sources provided for in (c) and (d) of
10 subsection (2) and only that amount may be appropriated from
11 the account for loans and grants for water development
12 projects and activities; for purchase of liens and operation
13 of property as provided in 85-1-615; for administrative
14 expenses, including but not limited to the salaries and
15 expenses of personnel, equipment, and office space; for the
16 servicing of loans, including arrangements for obtaining
17 security interests; and for other necessities incurred in
18 administering the loans and grants."

19 NEW SECTION. **Section 6.** Codification instruction.
20 [Section 2 3] is intended to be codified as an integral part
21 of Title 85, chapter 2, and the provisions of Title 85,
22 chapter 2, apply to [section 2 3].

-End-