

SENATE BILL 210

Introduced by Yellowtail, et al.

1/26	Introduced
1/28	Referred to Natural Resources
1/28	First Reading
1/28	Fiscal Note Requested
2/01	Fiscal Note Received
2/05	Fiscal Note Printed
2/06	Hearing
2/19	Tabled in Committee

1 *Senate* BILL NO. *210*
 2 INTRODUCED BY *Yellowtail T. Brink* *HARP* *Raney*
 3 *Wesley* *Davis* *Robert* *Moody*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A WATER USE
 5 PERMIT FOR THE USE OF GEOTHERMAL RESOURCES; DEFINING
 6 "GEOTHERMAL RESOURCE"; CLARIFYING THAT THE MONTANA MAJOR
 7 FACILITY SITING ACT IS NOT APPLICABLE TO ANY GEOTHERMAL USE
 8 OTHER THAN FOR THE PRODUCTION OF 7.5 MEGAWATTS OR MORE OF
 9 ELECTRICITY; AMENDING SECTIONS 75-20-104, 75-20-211,
 10 75-20-225, 85-2-102, 85-2-306, AND 85-2-311, MCA; REPEALING
 11 SECTION 75-20-1001, MCA; AND PROVIDING AN IMMEDIATE
 12 EFFECTIVE DATE AND AN APPLICABILITY DATE."

13 STATEMENT OF INTENT

14 A statement of intent is required for this bill in order
 15 to provide guidance to the department of natural resources
 16 and conservation concerning the adoption of rules to protect
 17 Montana's geothermal resources. Under current Montana water
 18 law, the quantity of a geothermal resource may be protected,
 19 but the quality, that is the heat content and any byproducts
 20 associated with the geothermal resource, is not. It is the
 21 intent of the legislature to protect the amount of
 22 geothermal resource as well as the heat content and
 23 byproduct value of the resource by requiring a water use
 24 permit for all uses of ground water that are classified as a
 25

1 geothermal resource. Consequently, the department is
 2 directed to narrowly interpret the limited exceptions,
 3 outlined in 85-2-306, to this permit requirement.
 4

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

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

7 "85-2-102. (Temporary) Definitions. Unless the context
 8 requires otherwise, in this chapter the following
 9 definitions apply:

- 10 (1) "Appropriate" means to:
 - 11 (a) divert, impound, or withdraw (including by stock
 - 12 for stock water) a quantity of water;
 - 13 (b) in the case of a public agency, to reserve water in
 - 14 accordance with 85-2-316; or
 - 15 (c) in the case of the department of fish, wildlife,
 - 16 and parks, to lease water in accordance with 85-2-436.
- 17 (2) "Beneficial use", unless otherwise provided, means:
 - 18 (a) a use of water for the benefit of the appropriator,
 - 19 other persons, or the public, including but not limited to
 - 20 agricultural (including stock water), domestic, fish and
 - 21 wildlife, industrial, irrigation, mining, municipal, power,
 - 22 and recreational uses;
 - 23 (b) a use of water appropriated by the department for
 - 24 the state water leasing program under 85-2-141 and of water
 - 25 leased under a valid lease issued by the department under



1 85-2-141; and

2 (c) a use of water by the department of fish, wildlife,

3 and parks pursuant to a lease authorized under 85-2-436.

4 (3) "Board" means the board of natural resources and

5 conservation provided for in 2-15-3302.

6 (4) "Certificate" means a certificate of water right

7 issued by the department.

8 (5) "Change in appropriation right" means a change in

9 the place of diversion, the place of use, the purpose of

10 use, or the place of storage.

11 (6) "Commission" means the fish and game commission

12 provided for in 2-15-3402.

13 (7) "Declaration" means the declaration of an existing

14 right filed with the department under section 8, Chapter

15 452, Laws of 1973.

16 (8) "Department" means the department of natural

17 resources and conservation provided for in Title 2, chapter

18 15, part 33.

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

20 which would be protected under the law as it existed prior

21 to July 1, 1973.

22 (10) "Geothermal resource" means water with a

23 temperature at the wellhead or ground surface greater than

24 84 degrees F and includes:

25 (a) the energy that may be extracted from that natural

1 heat; and

2 (b) geothermal byproducts.

3 ~~(10)~~(11) "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)~~(12) "Permit" means the permit to appropriate issued

8 by the department under 85-2-301 through 85-2-303 and

9 85-2-306 through 85-2-314.

10 ~~(12)~~(13) "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)~~(14) "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)~~(15) "Waste" means the unreasonable loss of water

20 through the design or negligent operation of an

21 appropriation or water distribution facility or the

22 application of water to anything but a beneficial use.

23 ~~(15)~~(16) "Water" means all water of the state, surface

24 and subsurface, regardless of its character or manner of

25 occurrence, including but not limited to geothermal water

1 resources, diffuse surface water, and sewage effluent.

2 ~~{16}~~{17} "Water division" means a drainage basin as
3 defined in 3-7-102.

4 ~~{17}~~{18} "Water judge" means a judge as provided for in
5 Title 3, chapter 7.

6 ~~{18}~~{19} "Water master" means a master as provided for
7 in Title 3, chapter 7.

8 ~~{19}~~{20} "Well" means any artificial opening or
9 excavation in the ground, however made, by which ground
10 water is sought or can be obtained or through which it flows
11 under natural pressures or is artificially withdrawn.
12 (Terminates June 30, 1993--sec. 11, Ch. 658, L. 1989.)

13 85-2-102. (Effective July 1, 1993) Definitions. Unless
14 the context requires otherwise, in this chapter the
15 following definitions apply:

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

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

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

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

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

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

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

12 (6) "Declaration" means the declaration of an existing
13 right filed with the department under section 8, Chapter
14 452, Laws of 1973.

15 (7) "Department" means the department of natural
16 resources and conservation provided for in Title 2, chapter
17 15, part 33.

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

21 {9} "Geothermal resource" means water with a
22 temperature at the wellhead or ground surface greater than
23 84 degrees F and includes:

24 (a) the energy that may be extracted from that natural
25 heat; and

1 (b) geothermal byproducts.

2 {9}(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 {10}(11) "Permit" means the permit to appropriate issued
7 by the department under 85-2-301 through 85-2-303 and
8 85-2-306 through 85-2-314.

9 {11}(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 {12}(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 {13}(14) "Waste" means the unreasonable loss of water
19 through the design or negligent operation of an
20 appropriation or water distribution facility or the
21 application of water to anything but a beneficial use.

22 {14}(15) "Water" means all water of the state, surface
23 and subsurface, regardless of its character or manner of
24 occurrence, including but not limited to geothermal water
25 resources, diffuse surface water, and sewage effluent.

1 {15}(16) "Water division" means a drainage basin as
2 defined in 3-7-102.

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

5 {17}(18) "Water master" means a master as provided for
6 in Title 3, chapter 7.

7 {18}(19) "Well" means any artificial opening or
8 excavation in the ground, however made, by which ground
9 water is sought or can be obtained or through which it flows
10 under natural pressures or is artificially withdrawn."

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

12 **"85-2-306. Exceptions to permit requirements.** (1)
13 Ground water may be appropriated only by a person who has a
14 possessory interest in the property where the water is to be
15 put to beneficial use and exclusive property rights in the
16 ground water development works or, if another person has
17 rights in the ground water development works, the written
18 consent of the person with those property rights. Outside
19 the boundaries of a controlled ground water area, and except
20 for all ground water classified as a geothermal resource, a
21 permit is not required before appropriating ground water by
22 means of a well or developed spring with a maximum
23 appropriation of less than 100 gallons per minute, except
24 that a combined appropriation from the same source from two
25 or more wells or developed springs exceeding this limitation

1 requires a permit. Within 60 days of completion of the well
 2 or developed spring and appropriation of the ground water
 3 for beneficial use, the appropriator shall file a notice of
 4 completion with the department on a form provided by the
 5 department at its offices and at the offices of the county
 6 clerk and recorders. Upon receipt of the notice, the
 7 department shall review the notice and may, before issuing a
 8 certificate of water right, return a defective notice for
 9 correction or completion, together with the reasons for
 10 returning it. A notice does not lose priority of filing
 11 because of defects if the notice is corrected, completed,
 12 and refiled with the department within 30 days or within a
 13 further time as the department may allow, not to exceed 6
 14 months. If a notice is not corrected and completed within
 15 the time allowed, the priority date of appropriation shall
 16 be the date of refileing a correct and complete notice with
 17 the department. A certificate of water right may not be
 18 issued until a correct and complete notice has been filed
 19 with the department. The original of the certificate shall
 20 be sent to the appropriator. The department shall keep a
 21 copy of the certificate in its office in Helena. The date of
 22 filing of the notice of completion is the date of priority
 23 of the right.

24 (2) An appropriator of ground water by means of a well
 25 or developed spring first put to beneficial use between

1 January 1, 1962, and July 1, 1973, who did not file a notice
 2 of completion, as required by laws in force prior to April
 3 14, 1981, with the county clerk and recorder shall file a
 4 notice of completion, as provided in subsection (1) of this
 5 section, with the department to perfect the water right. The
 6 filing of a claim of existing water right pursuant to
 7 85-2-221 is sufficient notice of completion under this
 8 subsection. The priority date of the appropriation shall be
 9 the date of the filing of a notice as provided in subsection
 10 (1) of this section or the date of the filing of the claim
 11 of existing water right. An appropriation under this
 12 subsection is an existing right, and a permit is not
 13 required; however, the department shall acknowledge the
 14 receipt of a correct and complete filing of a notice of
 15 completion, except that for an appropriation of less than
 16 100 gallons per minute, the department shall issue a
 17 certificate of water right. If a certificate is issued under
 18 this section, a certificate need not be issued under the
 19 adjudication proceedings provided for in 85-2-236.

20 (3) A permit is not required before constructing an
 21 impoundment or pit and appropriating water for use by
 22 livestock if the maximum capacity of the impoundment or pit
 23 is less than 15 acre-feet and the appropriation is less than
 24 30 acre-feet per year and is from a source other than a
 25 perennial flowing stream and the impoundment or pit is to be

1 constructed on and will be accessible to a parcel of land
 2 that is owned or under the control of the applicant and that
 3 is 40 acres or larger. As used in this subsection, a
 4 perennial flowing stream means a stream which historically
 5 has flowed continuously at all seasons of the year, during
 6 dry as well as wet years. However, within 60 days after
 7 constructing the impoundment or pit, the appropriator shall
 8 apply for a permit as prescribed by this part. Upon receipt
 9 of a correct and complete application for a stockwater
 10 provisional permit, the department shall then automatically
 11 issue a provisional permit. If the department determines
 12 after a hearing that the rights of other appropriators have
 13 been or will be adversely affected, it may revoke the permit
 14 or require the permittee to modify the impoundment or pit
 15 and may then make the permit subject to such terms,
 16 conditions, restrictions, or limitations it considers
 17 necessary to protect the rights of other appropriators.

18 (4) A person may also appropriate water without
 19 applying for or prior to receiving a permit under rules
 20 adopted by the board under 85-2-113.

21 (5) Except as provided in subsection (1), a permit is
 22 not required before the development or exploration of
 23 hydrocarbons if the development or exploration is in
 24 accordance with a valid permit issued by the board of oil
 25 and gas conservation. However, within 60 days after drilling

1 an oil or gas well that produces water or a geothermal
 2 resource, the appropriator shall apply for a permit as
 3 prescribed by this part. Upon receipt of a correct and
 4 complete application for a provisional permit, the
 5 department shall issue a provisional permit. If the
 6 department determines after a hearing that the rights of
 7 other appropriators have been or will be adversely affected
 8 or that a geothermal resource is being wasted, it may
 9 require the permittee to modify the development and may make
 10 the permit subject to terms, conditions, restrictions, or
 11 limitations it considers necessary to protect the rights of
 12 other appropriators or the geothermal resource."

13 **Section 3.** Section 85-2-311, MCA, is amended to read:

14 "85-2-311. Criteria for issuance of permit. (1) Except
 15 as provided in subsections (2) and (3), the department shall
 16 issue a permit if the applicant proves by substantial
 17 credible evidence that the following criteria are met:

18 (a) there are unappropriated waters in the source of
 19 supply at the proposed point of diversion:

20 (i) at times when the water can be put to the use
 21 proposed by the applicant;

22 (ii) in the amount the applicant seeks to appropriate;
 23 and

24 (iii) during the period in which the applicant seeks to
 25 appropriate, the amount requested is reasonably available;

1 (b) the water rights of a prior appropriator, including
2 rights to a geothermal resource, will not be adversely
3 affected;

4 (c) the proposed means of diversion, construction, and
5 operation of the appropriation works are adequate;

6 (d) the proposed use of water is a beneficial use;

7 (e) the proposed use will not interfere unreasonably
8 with other planned uses or developments for which a permit
9 has been issued or for which water has been reserved; and

10 (f) the applicant has a possessory interest, or the
11 written consent of the person with the possessory interest,
12 in the property where the water is to be put to beneficial
13 use; and

14 (g) if a permit application involves a geothermal
15 resource:

16 (i) the geothermal resource will be used primarily for
17 its heat value. Usage of a geothermal resource primarily for
18 some purpose other than its heat value is not a beneficial
19 use of the resource unless:

20 (A) other water is not reasonably available;

21 (B) the water rights of a prior appropriator, including
22 the right to a geothermal resource, will not be adversely
23 affected; and

24 (C) the geothermal resource in the geothermal aquifer
25 or area will not be significantly diminished to prevent or

1 unduly restrict the future development of the geothermal
2 aquifer or area for its geothermal resource value;

3 (ii) the geothermal resource will not be wasted. For the
4 purpose of this subsection (ii), waste means any physical
5 waste, including but not limited to:

6 (A) underground waste resulting from the inefficient,
7 excessive, or improper use or dissipation of a geothermal
8 resource; or

9 (B) the inefficient aboveground transport or storage of
10 a geothermal resource.

11 (2) The department may not issue a permit for an
12 appropriation of 4,000 or more acre-feet of water a year and
13 5.5 or more cubic feet per second of water unless the
14 applicant proves by clear and convincing evidence that:

15 (a) the criteria in subsection (1) are met;

16 (b) the rights of a prior appropriator will not be
17 adversely affected;

18 (c) the proposed appropriation is a reasonable use.
19 Such a finding shall be based on a consideration of the
20 following:

21 (i) the existing demands on the state water supply, as
22 well as projected demands such as reservations of water for
23 future beneficial purposes, including municipal water
24 supplies, irrigation systems, and minimum streamflows for
25 the protection of existing water rights and aquatic life;

1 (ii) the benefits to the applicant and the state;
 2 (iii) the effects on the quantity and quality of water
 3 for existing beneficial uses in the source of supply;
 4 (iv) the availability and feasibility of using
 5 low-quality water for the purpose for which application has
 6 been made;
 7 (v) the effects on private property rights by any
 8 creation of or contribution to saline seep; and
 9 (vi) the probable significant adverse environmental
 10 impacts of the proposed use of water as determined by the
 11 department pursuant to Title 75, chapter 1, or Title 75,
 12 chapter 20.

13 (3) (a) The state of Montana has long recognized the
 14 importance of conserving its public waters and the necessity
 15 to maintain adequate water supplies for the state's water
 16 requirements, including requirements for reserved water
 17 rights held by the United States for federal reserved lands
 18 and in trust for the various Indian tribes within the
 19 state's boundaries. Although the state of Montana also
 20 recognizes that, under appropriate conditions, the
 21 out-of-state transportation and use of its public waters are
 22 not in conflict with the public welfare of its citizens or
 23 the conservation of its waters, the criteria in this
 24 subsection (3) must be met before out-of-state use may
 25 occur.

1 (b) The department may not issue a permit for the
 2 appropriation of water for withdrawal and transportation for
 3 use outside the state unless the applicant proves by clear
 4 and convincing evidence that:
 5 (i) depending on the volume of water diverted or
 6 consumed, the applicable criteria and procedures of
 7 subsection (1) or (2) are met;
 8 (ii) the proposed out-of-state use of water is not
 9 contrary to water conservation in Montana; and
 10 (iii) the proposed out-of-state use of water is not
 11 otherwise detrimental to the public welfare of the citizens
 12 of Montana.

13 (c) In determining whether the applicant has proved by
 14 clear and convincing evidence that the requirements of
 15 subsections (3)(b)(ii) and (3)(b)(iii) are met, the
 16 department shall consider the following factors:
 17 (i) whether there are present or projected water
 18 shortages within the state of Montana;
 19 (ii) whether the water that is the subject of the
 20 application could feasibly be transported to alleviate water
 21 shortages within the state of Montana;
 22 (iii) the supply and sources of water available to the
 23 applicant in the state where the applicant intends to use
 24 the water; and
 25 (iv) the demands placed on the applicant's supply in the

1 state where the applicant intends to use the water.

2 (d) When applying for a permit or a lease to withdraw
3 and transport water for use outside the state, the applicant
4 shall submit to and comply with the laws of the state of
5 Montana governing the appropriation, lease, and use of
6 water.

7 (4) To meet the substantial credible evidence standard
8 in this section, the applicant shall submit independent
9 hydrologic or other evidence, including water supply data,
10 field reports, and other information developed by the
11 department, the U.S. geological survey, or the U.S. soil
12 conservation service and other specific field studies,
13 demonstrating that the criteria are met.

14 (5) An appropriation, diversion, impoundment, use,
15 restraint, or attempted appropriation, diversion,
16 impoundment, use, or restraint contrary to the provisions of
17 this section is invalid. An officer, agent, agency, or
18 employee of the state may not knowingly permit, aid, or
19 assist in any manner an unauthorized appropriation,
20 diversion, impoundment, use, or other restraint. A person or
21 corporation may not, directly or indirectly, personally or
22 through an agent, officer, or employee, attempt to
23 appropriate, divert, impound, use, or otherwise restrain or
24 control waters within the boundaries of this state except in
25 accordance with this section."

1 **Section 4.** Section 75-20-104, MCA, is amended to read:

2 **"75-20-104. Definitions.** In this chapter, unless the
3 context requires otherwise, the following definitions apply:

4 (1) "Addition thereto" means the installation of new
5 machinery and equipment which would significantly change the
6 conditions under which the facility is operated.

7 (2) "Application" means an application for a
8 certificate submitted in accordance with this chapter and
9 the rules adopted hereunder.

10 (3) "Associated facilities" includes but is not limited
11 to transportation links of any kind, aqueducts, diversion
12 dams, pipelines, transmission substations, storage ponds,
13 reservoirs, and any other device or equipment associated
14 with the production or delivery of the energy form or
15 product produced by a facility, except that the term does
16 not include a facility or a natural gas or crude oil
17 gathering line 17 inches or less in inside diameter.

18 (4) "Board" means the board of natural resources and
19 conservation provided for in 2-15-3302.

20 (5) "Board of health" means the board of health and
21 environmental sciences provided for in 2-15-2104.

22 (6) "Certificate" means the certificate of
23 environmental compatibility and public need issued by the
24 board under this chapter that is required for the
25 construction or operation of a facility.

1 (7) "Commence to construct" means:

2 (a) any clearing of land, excavation, construction, or
3 other action that would affect the environment of the site
4 or route of a facility but does not mean changes needed for
5 temporary use of sites or routes for nonutility purposes or
6 uses in securing geological data, including necessary
7 borings to ascertain foundation conditions;

8 (b) the fracturing of underground formations by any
9 means if such activity is related to the possible future
10 development of a gasification facility or a facility
11 employing geothermal resources but does not include the
12 gathering of geological data by boring of test holes or
13 other underground exploration, investigation, or
14 experimentation;

15 (c) the commencement of eminent domain proceedings
16 under Title 70, chapter 30, for land or rights-of-way upon
17 or over which a facility may be constructed;

18 (d) the relocation or upgrading of an existing facility
19 defined by (b) or (c) of subsection (10), including
20 upgrading to a design capacity covered by subsection
21 (10)(b), except that the term does not include normal
22 maintenance or repair of an existing facility.

23 (8) "Department" means the department of natural
24 resources and conservation provided for in Title 2, chapter
25 15, part 33.

1 (9) "Department of health" means the department of
2 health and environmental sciences provided for in Title 2,
3 chapter 15, part 21.

4 (10) "Facility" means:

5 (a) except for crude oil and natural gas refineries and
6 those facilities subject to The Montana Strip and
7 Underground Mine Reclamation Act, each plant, unit, or other
8 facility and associated facilities designed for or capable
9 of:

10 (i) generating 50 megawatts of electricity or more from
11 any source other than a geothermal resource or any addition
12 thereto (except pollution control facilities approved by the
13 department of health and environmental sciences added to an
14 existing plant) having an estimated cost in excess of \$10
15 million;

16 (ii) generating 7.5 megawatts or more of electricity
17 from a geothermal resource or any addition thereto having an
18 estimated cost in excess of \$10 million;

19 ~~(iii)~~ (iii) producing 25 million cubic feet or more of gas
20 derived from coal per day or any addition thereto having an
21 estimated cost in excess of \$10 million;

22 ~~(iv)~~ (iv) producing 25,000 barrels of liquid hydrocarbon
23 products per day or more or any addition thereto having an
24 estimated cost in excess of \$10 million;

25 ~~(v)~~ (v) enriching uranium minerals or any addition

1 thereto having an estimated cost in excess of \$10 million;
2 or

3 ~~(v)~~(vi) utilizing or converting 500,000 tons of coal per
4 year or more or any addition thereto having an estimated
5 cost in excess of \$10 million;

6 (b) each electric transmission line and associated
7 facilities of a design capacity of more than 69 kilovolts,
8 except that the term:

9 (i) does not include an electric transmission line and
10 associated facilities of a design capacity of 230 kilovolts
11 or less and 10 miles or less in length; and

12 (ii) does not include an electric transmission line with
13 a design capacity of more than 69 kilovolts and up to and
14 including 115 kilovolts for which the person planning to
15 construct the line has obtained right-of-way agreements or
16 options for a right-of-way from more than 75% of the owners
17 who collectively own more than 75% of the property along the
18 centerline;

19 (c) each pipeline, whether partially or wholly within
20 the state, greater than 17 inches in inside diameter and 30
21 miles in length, and associated facilities;

22 ~~(d)--any--use--of--geothermal--resources--including--the--use~~
23 ~~of--underground--space--in--existence--or--to--be--created--for--the~~
24 ~~creation--use--or--conversion--of--energy--designed--for--or~~
25 ~~capable--of--producing--geothermally--derived--power--equivalent~~

1 ~~to--25--million-Btu-per-hour--or--more--or--any--addition--thereto~~
2 ~~having--an--estimated--cost--in--excess--of--\$750,000;~~

3 ~~(e)~~(d) any underground in situ gasification of coal.

4 (11) "Person" means any individual, group, firm,
5 partnership, corporation, cooperative, association,
6 government subdivision, government agency, local government,
7 or other organization or entity.

8 (12) "Transmission substation" means any structure,
9 device, or equipment assemblage, commonly located and
10 designed for voltage regulation, circuit protection, or
11 switching necessary for the construction or operation of a
12 proposed transmission line.

13 (13) "Utility" means any person engaged in any aspect of
14 the production, storage, sale, delivery, or furnishing of
15 heat, electricity, gas, hydrocarbon products, or energy in
16 any form for ultimate public use."

17 **Section 5.** Section 75-20-211, MCA, is amended to read:

18 "75-20-211. **Application -- filing and contents -- proof**
19 **of service and notice.** (1) (a) An applicant shall file with
20 the department and department of health a joint application
21 for a certificate under this chapter and for the permits
22 required under the laws administered by the department of
23 health and the board of health in such form as the board
24 requires under applicable rules, containing the following
25 information:

1 (i) a description of the proposed location and of the
 2 facility to be built thereon;

3 (ii) a summary of any studies which have been made of
 4 the environmental impact of the facility;

5 (iii) a statement explaining the need for the facility;

6 (iv) for facilities defined in 75-20-104(10)(b) and
 7 (10)(c), a description of reasonable alternate locations for
 8 the facility, a general description of the comparative
 9 merits and detriments of each location submitted, and a
 10 statement of the reasons why the proposed location is best
 11 suited for the facility;

12 (v) (A) for facilities as defined in 75-20-104(10)(b)
 13 and (10)(c), baseline data for the primary and reasonable
 14 alternate locations; or

15 (B) for facilities as defined in 75-20-104(10)(a) and
 16 (10)(d) ~~and (10)(e)~~, baseline data for the proposed
 17 location and, at the applicant's option, any alternative
 18 locations acceptable to the applicant for siting the
 19 facility;

20 (vi) at the applicant's option, an environmental study
 21 plan to satisfy the requirements of this chapter; and

22 (vii) such other information as the applicant considers
 23 relevant or as the board and board of health by order or
 24 rule or the department and department of health by order or
 25 rule may require.

1 (b) A copy or copies of the studies referred to in
 2 subsection (1)(a)(ii) above shall be filed with the
 3 department, if ordered, and shall be available for public
 4 inspection.

5 (2) An application may consist of an application for
 6 two or more facilities in combination which are physically
 7 and directly attached to each other and are operationally a
 8 single operating entity.

9 (3) An application shall be accompanied by proof of
 10 service of a copy of the application on the chief executive
 11 officer of each unit of local government, county
 12 commissioner, city or county planning boards, and federal
 13 agencies charged with the duty of protecting the environment
 14 or of planning land use in the area in which any portion of
 15 the proposed facility is proposed or is alternatively
 16 proposed to be located and on the following state government
 17 agencies:

18 (a) environmental quality council;

19 (b) department of public service regulation;

20 (c) department of fish, wildlife, and parks;

21 (d) department of state lands;

22 (e) department of commerce;

23 (f) department of highways;

24 (g) department of revenue.

25 (4) The copy of the application shall be accompanied by

1 a notice specifying the date on or about which the
2 application is to be filed.

3 (5) An application shall also be accompanied by proof
4 that public notice thereof was given to persons residing in
5 the area in which any portion of the proposed facility is
6 proposed or is alternatively proposed to be located, by
7 publication of a summary of the application in those
8 newspapers that will substantially inform those persons of
9 the application."

10 **Section 6.** Section 75-20-225, MCA, is amended to read:

11 "75-20-225. Certificate renewal -- application --
12 contents -- filing fee. (1) Any certificate holder for a
13 facility, as defined in 75-20-104(10)(a)(i) or (10)(a)(ii),
14 may apply for renewal of a certificate prior to the
15 certificate lapsing.

16 (2) An applicant for a renewal of a certificate shall
17 file with the department and department of health a joint
18 application in such form as the board requires by rule.

19 (3) An application for renewal of a certificate must
20 include updated information on the matters listed in
21 75-20-211(1)(a) that have changed since the original
22 application and such other information as the board requires
23 by rule for certification. The matters listed in
24 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate
25 locations must be updated only if the board determines that

1 within the certified location significant changes have
2 occurred to warrant a review of alternate locations.

3 (4) An application filed under subsection (1) must
4 comply with the provisions of 75-20-211(3) through (5).

5 (5) Except as provided in this subsection, the
6 applicant shall pay a filing fee to the department in
7 accordance with 75-20-215(2). The fee is in addition to any
8 previous filing fee paid for processing the original
9 application for a certificate pursuant to 75-20-215. The fee
10 may not exceed the following scale:

11 (a) 0.125% of any estimated cost up to \$300 million;
12 plus
13 (b) 0.063% of any estimated cost over \$300 million."

14 **NEW SECTION. Section 7. Repealer.** Section 75-20-1001,
15 MCA, is repealed.

16 **NEW SECTION. Section 8. Applicability.** [This act]
17 applies to water permit and change in appropriation
18 application proceedings commenced after [the effective date
19 of this act].

20 **NEW SECTION. Section 9. Saving clause.** All permits,
21 certificates, decreed rights, and valid claims to a right to
22 the use of water that are classified as a geothermal
23 resource under [this act] having a priority date prior to
24 [the effective date of this act] are valid.

25 **NEW SECTION. Section 10. Effective date.** [This act] is

LC 0959/01

1 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 SB0210, as introduced.


DESCRIPTION OF PROPOSED LEGISLATION:

This legislation would require a water use permit for the use of geothermal resources and clarifies that the Montana Major Facility Siting Act is not applicable to any geothermal use other than for the production of 7.5 megawatts or more of electricity.


Assumptions:

1. This legislation would have no fiscal impact upon the DNRC Energy Division. The sponsor of any project reviewed under the Major Facility Siting Act is required to fund the division's efforts by the payment of a fee. The fee is used to pay for all of the Department's direct and indirect costs incurred in the processing of the application. It is anticipated that the division's review of any geothermal generation project under the sections of MFSA proposed for change in SB0210 would be supported by such a fee. The Energy Division is not aware of any geothermal generation projects presently under consideration in Montana.
2. Geothermal resource appropriations or beneficial uses of water resulting from approved oil and gas explorations or developments will require a water use permit or water right change authorization. No exceptions for geothermal resource appropriations withdrawing less than 100 gallons per minute from a well or for any water uses developed from an oil or gas well of less than 100 gallons per minute will be granted. The 85-2-311, MCA, criteria to be proven by an applicant for appropriation of water will now include an additional criterium for geothermal resources. The fiscal impact for modifying the criteria to include geothermal considerations is described below.
 - 2.1. Six wells (less than 100 gallons per minute flow rate) for geothermal resource appropriations will be developed each year.
 - 2.2. Each year two oil and gas exploration or development wells will appropriate water for beneficial use purposes.
 - 2.3. No geothermal resource development of more than 7.5 megawatts of electricity will occur.
 - 2.4. Objections will be received from potential adversely affected users for one-half of the geothermal resource applications for appropriation.
 - 2.5. One-half of geothermal resource applications with objections will proceed to contested case hearings each year to determine whether the criteria for a beneficial water use permit have been met.
 - 2.6. The DNRC cost to administratively process one application for beneficial use purposes is \$300 (\$50 operating expense and \$250 personal services).
 - 2.7. The DNRC cost to address and handle objections to a beneficial use application is \$500 (\$50 operating expense and \$450 personal services).

continued on next page



ROD SUNDSTED, BUDGET DIRECTOR 2-1-91 DATE
Office of Budget and Program Planning



WILLIAM YELLOWTAIL, SPONSOR 2/5/91 DATE
Fiscal Note for SB0210, as introduced **SB 210**

- 2.8. The DNRC cost to hold one contested case hearing for determining whether to grant, modify, or deny a permit application for geothermal resource appropriation is \$1200 (\$120 operating expense and \$1,080 personal services).
- 2.9. The DNRC collects \$10 for each groundwater certificate issued for wells appropriating less than 100 gallons per minute.
- 2.10. The DNRC collects \$50 for permit applications seeking to appropriate less than 25 acre-feet per year.
- 2.11. The DNRC cost to adopt and publish administrative rules to implement this legislation will be \$1,500 for FY92 (\$1,000 OE & \$500 PS).
- 2.12. The DNRC cost to prepare and print new forms to implement this legislation will be \$1,225 for FY92.

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>						
Personal Services	1,325,558	1,332,018	6,460	1,323,539	1,329,499	5,960
Operating Costs	224,816	227,881	3,065	224,175	226,240	2,065
Equipment	<u>23,315</u>	<u>23,315</u>	<u>0</u>	<u>23,315</u>	<u>23,315</u>	<u>0</u>
Total	1,573,689	1,583,214	9,525	1,571,029	1,579,054	8,025
<u>Funding:</u>						
General Fund	1,493,710	1,502,895	9,185	1,491,118	1,498,803	7,685
Water Rights Account (02)	<u>79,979</u>	<u>80,319</u>	<u>340</u>	<u>79,911</u>	<u>80,251</u>	<u>340</u>
Total	1,573,689	1,583,214	9,525	1,571,029	1,579,054	8,025
<u>Revenues:</u>						
Water Rights Account (02)	79,979	80,319	340	79,911	80,251	340

Long-Range Effects of Proposed Legislation:

If a major application for geothermal resource use involving generation of electricity greater than 7.5 megawatts is received, the Department of Natural Resources and Conservation may need to assess the applicant a fee as prescribed under Section 85-2-124, MCA, to prepare an environmental impact statement. Some of the Department's cost for determining whether the criteria for issuing a beneficial use permit have been proven will be covered in that prescribed fee. Therefore, the water rights administrative cost for processing a large application for geothermal resource development of electricity for an amount greater than 7.5 megawatts of electricity will be similar to that for other applications. The additional cost for assessing environmental impacts will be substantially greater, but will be covered by the prescribed fee paid by the applicant.

Technical or Mechanical Defects or Conflicts with Existing Legislation:

Several new terms are referenced in this proposed legislation that may require extensive administrative rule-making to clarify their meaning. Other terms may conflict with these terms as they apply to the geothermal resource. Examples include:

- geothermal resource waste;
- primarily for some purpose other than its heat value is not a beneficial use;
- other water is not *reasonably available*;
- a right to a geothermal resource will not be *adversely affected*;
- *significantly diminished*;
- *unduly restrict*;
- *geothermal resource value*;
- *underground waste*;
- *inefficient, excessive, or improper use or dissipation*;
- *inefficient aboveground transport or storage*.