

SENATE BILL NO. 266

INTRODUCED BY GROSFIELD, BENGTSON, SWYSGOOD,
GRADY, THOFT
BY REQUEST OF THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION

IN THE SENATE

FEBRUARY 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 21, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 44; NOES, 4.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

MARCH 20, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 6, 1991 SECOND READING, CONCURRED IN AS
AMENDED.

 ON MOTION, RULES SUSPENDED. BILL
PLACED ON THIRD READING.

 THIRD READING, CONCURRED IN.
AYES, 92; NOES, 5.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1991

RECEIVED FROM HOUSE.

APRIL 17, 1991

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

APRIL 18, 1991

CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

APRIL 20, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 23, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 23, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 24, 1991

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 25, 1991

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 25, 1991

FREE CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 25, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *266*
 2 INTRODUCED BY *Ginsfield, Benjamin*
 3 BY REQUEST OF THE DEPARTMENT OF *Natural Resources*
 4 NATURAL RESOURCES AND CONSERVATION

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
 7 WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING
 8 PERMIT EXCEPTIONS; MAKING PERMISSIVE AND AUTHORIZING FEES
 9 FOR THE SUBMISSION OF DEPARTMENT RECORDS OF WATER RIGHTS TO
 10 A COUNTY CLERK AND RECORDER; REQUIRING THE VERIFICATION OF
 11 COMPLETIONS OF PERMITS AND CHANGE APPROVALS; INCLUDING WATER
 12 QUALITY CRITERIA IN THE ISSUANCE OF A PERMIT OR CHANGE
 13 AUTHORIZATION; AMENDING SECTIONS 85-2-102, 85-2-113,
 14 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-402, 85-2-424,
 15 AND 85-2-501, MCA; REPEALING SECTION 85-2-317, MCA; AND
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
 17 APPLICABILITY DATE."

19 STATEMENT OF INTENT
 20 A statement of intent is required for this bill in order
 21 to provide a guideline on the payment of fees. Rulemaking
 22 authority is granted to the board of natural resources and
 23 conservation to establish a fee schedule for payment of fees
 24 to be paid to the department for its costs incurred in
 25 providing water rights record information to a clerk and

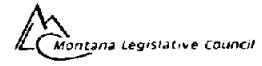
1 recorder. It is the intent of the legislature that the rules
 2 establish a reasonable fee schedule that approximates the
 3 department's actual and necessary costs. A published fee
 4 schedule will enable a clerk and recorder to know the cost
 5 prior to seeking the information from the department.

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

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

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

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



1 the state water leasing program under 85-2-141 and of water
2 leased under a valid lease issued by the department under
3 85-2-141; and

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

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

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

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

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

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

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

21 (9) "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 (10) "Ground water" means any water that is beneath the
25 ~~land---surface--or--beneath--the--bed--of--a--stream,--lake,~~

1 ~~reservoir,--or--other--body--of--surface--water,--and--which--is--not~~
2 ~~a--part--of--that--surface--water~~ ground surface.

3 (11) "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 (12) "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 (13) "Political subdivision" means any county,
11 incorporated city or town, public corporation, or district
12 created pursuant to state law or other public body of the
13 state empowered to appropriate water but not a private
14 corporation, association, or group.

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

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

23 (16) "Water division" means a drainage basin as defined
24 in 3-7-102.

25 (17) "Water judge" means a judge as provided for in

1 Title 3, chapter 7.

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

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

9 85-2-102. (Effective July 1, 1993) Definitions. Unless
10 the context requires otherwise, in this chapter the
11 following definitions apply:

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

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

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

22 (b) a use of water appropriated by the department for
23 the state water leasing program under 85-2-141 and of water
24 leased under a valid lease issued by the department under
25 85-2-141.

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

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

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

8 (6) "Declaration" means the declaration of an existing
9 right filed with the department under section 8, Chapter
10 452, Laws of 1973.

11 (7) "Department" means the department of natural
12 resources and conservation provided for in Title 2, chapter
13 15, part 33.

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

17 (9) "Ground water" means any water that is beneath the
18 ~~land--surface--or--beneath--the--bed--of--a--stream,--lake,~~
19 ~~reservoir,--or--other--body--of--surface--water,--and--which--is--not~~
20 ~~a--part--of--that--surface--water~~ ground surface.

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

24 (11) "Person" means an individual, association,
25 partnership, corporation, state agency, political

1 subdivision, the United States or any agency thereof, or any
2 other entity.

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

8 (13) "Waste" means the unreasonable loss of water
9 through the design or negligent operation of an
10 appropriation or water distribution facility or the
11 application of water to anything but a beneficial use.

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

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

18 (16) "Water judge" means a judge as provided for in
19 Title 3, chapter 7.

20 (17) "Water master" means a master as provided for in
21 Title 3, chapter 7.

22 (18) "Well" means any artificial opening or excavation
23 in the ground, however made, by which ground water is sought
24 or can be obtained or through which it flows under natural
25 pressures or is artificially withdrawn."

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

2 "85-2-113. Board powers and duties. (1) The board may
3 prescribe fees or service charges for any public service
4 rendered by the department under this chapter, including
5 fees for the filing of applications or for the issuance of
6 permits and certificates, for rulemaking hearings under
7 85-2-319, for administrative hearings conducted under this
8 chapter, for investigations concerning permit revocation,
9 for field verification of issued and completed permits, and
10 all change approvals. There shall be no fees for any action
11 taken by the department at the request of the water judge or
12 for the issuance of certificates of existing rights.

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

16 (a) govern the issuance and terms of interim permits
17 authorizing an applicant for a regular permit under this
18 chapter to begin appropriating water immediately, pending
19 final approval or denial by the department of the
20 application for a regular permit;

21 (b) require the owner or operator of appropriation
22 facilities to install and maintain suitable controlling and
23 measuring devices, except that the board may not require a
24 meter on a water well outside of a controlled ground water
25 area or proposed controlled ground water area unless the

1 maximum appropriation of the well is in excess of ~~100~~
2 gallons-a-minute the limitation contained in 85-2-306(1);

3 (c) require the owner or operator of appropriation
4 facilities to report to the department the readings of
5 measuring devices at reasonable intervals and to file
6 reports on appropriations; and

7 (d) regulate the construction, use, and sealing of
8 wells to prevent the waste, contamination, or pollution of
9 ground water.

10 (3) The board shall adopt rules providing for and
11 governing temporary emergency appropriations, without prior
12 application for a permit, necessary to protect lives or
13 property."

14 **Section 3.** Section 85-2-236, MCA, is amended to read:

15 "85-2-236. Certificate of water right. ~~{1}~~ When a final
16 decree is entered, the water judge shall send a copy to the
17 department. Except as provided in 85-2-306, the department
18 shall on the basis of the final decree issue a certificate
19 of water right to each person decreed an existing right. The
20 original of the certificate shall be sent to the person to
21 whom the right is decreed. The department shall keep a copy
22 of the certificate in its office in Helena.

23 ~~{2}--The-department-shall-provide-to--the--county--clerk
24 and-recorder-of-the-county-wherein-the-point-of-diversion-or
25 place--of--use--is--located--quarterly-reports-and-an-annual~~

1 ~~summary-report-of-all-certificates-of-water-right-issued--by
2 the-department-within-the-county."~~

3 **Section 4.** Section 85-2-308, MCA, is amended to read:

4 "85-2-308. Objections. (1) (a) An objection to an
5 application for a permit must be filed by the date specified
6 by the department under 85-2-307(2).

7 ~~{2}~~(b) The objection to an application for a permit
8 must state the name and address of the objector and facts
9 tending to show that ~~there-are-no-unappropriated--waters--in
10 the--proposed--source,--that--the--proposed--means--of
11 appropriation--are--inadequate,--that--the--property,--water
12 rights,--or-interests-of--the--objector--would--be--adversely
13 affected--by--the--proposed-appropriation,--that--the--proposed
14 use-of-water-is-not-a-beneficial-use,--or--that--the--proposed
15 use--will--interfere-unreasonably-with-other-planned-uses--or
16 developments-for-which-a-permit-has-been-issued-or-for-which
17 water-has-been-reserved~~ one or more of the criteria in
18 85-2-311 are not met.

19 (2) For an application for a change in appropriation
20 rights, the objection must state the name and address of the
21 objector and facts tending to show that one or more of the
22 criteria in 85-2-402 are not met."

23 **Section 5.** Section 85-2-312, MCA, is amended to read:

24 "85-2-312. Terms of permit. (1) The department may
25 issue a permit for less than the amount of water requested,

1 but in no case may it issue a permit for more water than is
 2 requested or than can be beneficially used without waste for
 3 the purpose stated in the application. The department may
 4 require modification of plans and specifications for the
 5 appropriation or related diversion or construction. The
 6 department may issue a permit subject to terms, conditions,
 7 restrictions, and limitations it considers necessary to
 8 satisfy the criteria listed in 85-2-311, and it may issue
 9 temporary or seasonal permits. A permit shall be issued
 10 subject to existing rights and any final determination of
 11 those rights made under this chapter.

12 (2) The department shall specify in the permit or in
 13 any authorized extension of time provided in subsection (3),
 14 the time limits for commencement of the appropriation works,
 15 completion of construction, and actual application of the
 16 water to the proposed beneficial use. In fixing those time
 17 limits, the department shall consider the cost and magnitude
 18 of the project, the engineering and physical features to be
 19 encountered, and, on projects designed for gradual
 20 development and gradually increased use of water, the time
 21 reasonably necessary for that gradual development and
 22 increased use. The department shall issue the permit or
 23 authorized extension of time subject to the terms,
 24 conditions, restrictions, and limitations it considers
 25 necessary to ensure that the work on the appropriation is

1 commenced, conducted, and completed and that the water is
 2 actually applied in a timely manner to the beneficial use
 3 specified in the permit.

4 (3) The department may, upon a showing of good cause,
 5 extend time limits specified in the permit for commencement
 6 of the appropriation works, completion of construction, and
 7 actual application of the water to the proposed beneficial
 8 use. All requests for extensions of time must be by
 9 affidavit and must be filed with the department prior to the
 10 expiration of the time limit specified in the permit or any
 11 previously authorized extension of time. The department may
 12 issue an order temporarily extending the time limit
 13 specified in the permit for 120 days or until the department
 14 has completed its action under this section, whichever is
 15 greater. Upon receipt of a proper request for extension of
 16 time, the department shall prepare a notice containing the
 17 facts pertinent to the request for extension of time and
 18 shall publish the notice in a newspaper of general
 19 circulation in the area of the source. The department may
 20 serve notice by first-class mail upon any public agency or
 21 other person the department determines may be interested in
 22 or affected by the request for extension of time. The
 23 department shall hold a hearing on the request for extension
 24 of time on its own motion or if requested by an interested
 25 party. The department may grant the extension of time in the

1 absence of a hearing if no requests for a hearing are
 2 received and the extension of time is granted as requested,
 3 or the department may grant the extension of time in a
 4 modified form by following the process established in
 5 85-2-310(2). Subsequent extensions of time may be made in
 6 the same manner.

7 (4) The original of the permit shall be sent to the
 8 permittee, and a copy shall be kept in the office of the
 9 department in Helena.

10 ~~{5}--The department shall provide to--the--county--clerk
 11 and-recorder-of-the-county-wherein-the-point-of-diversion-or
 12 place--of--use--is--located--quarterly-reports-and-an-annual
 13 summary-report-of-all-water-right-permits,certificates, and
 14 change--approvals--issued--by--the--department--within--the
 15 county--"~~

16 **Section 6.** Section 85-2-315, MCA, is amended to read:

17 "85-2-315. Certificate of water right. {1} Upon actual
 18 application of water to the proposed beneficial use within
 19 the time allowed, the permittee shall notify the department
 20 that the appropriation has been properly completed. The
 21 notification must contain a certified statement by a person
 22 with experience in the design, construction, or operation of
 23 appropriation works that the appropriation has been properly
 24 completed in substantial accordance with the terms and
 25 conditions of the permit. The department may then inspect

1 the appropriation, and if it determines that the
 2 appropriation has been completed in substantial accordance
 3 with the permit, it shall issue the permittee a certificate
 4 of water right. The original of the certificate shall be
 5 sent to the permittee, and a duplicate shall be kept in the
 6 office of the department in Helena.

7 ~~{2}--The--department--shall--provide--to--the--county--clerk
 8 and-recorder-of-the-county-wherein-the-point-of-diversion-or
 9 place-of-use-is-located--quarterly--reports--and--an--annual
 10 summary--report-of-all-certificates-of-water-right-issued-by
 11 the-department-within-the-county--"~~

12 **Section 7.** Section 85-2-402, MCA, is amended to read:

13 "85-2-402. (Temporary) Changes in appropriation rights.

14 (1) An appropriator may not make a change in an
 15 appropriation right except as permitted under this section
 16 and with the approval of the department or, if applicable,
 17 of the legislature.

18 (2) Except as provided in subsections (3) through (5),
 19 the department shall approve a change in appropriation right
 20 if the appropriator proves by substantial credible evidence
 21 that the following criteria are met:

22 (a) The proposed use will not adversely affect the
 23 water rights of other persons or other planned uses or
 24 developments for which a permit has been issued or for which
 25 water has been reserved.

1 (b) Except for a lease authorization pursuant to
2 85-2-436 that does not require appropriation works, the
3 proposed means of diversion, construction, and operation of
4 the appropriation works are adequate.

5 (c) The proposed use of water is a beneficial use.

6 (d) The applicant has a possessory interest, or the
7 written consent of the person with the possessory interest,
8 in the property where the water is to be put to beneficial
9 use.

10 (3) The department may not approve a change in purpose
11 of use or place of use of an appropriation of 4,000 or more
12 acre-feet of water a year and 5.5 or more cubic feet per
13 second of water unless the appropriator proves by
14 substantial credible evidence that:

15 (a) the criteria in subsection (2) are met;

16 (b) the proposed change is a reasonable use. A finding
17 of reasonable use must be based on a consideration of:

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

23 (ii) the benefits to the applicant and the state;

24 (iii) the effects on the quantity and quality of water
25 for existing uses in the source of supply;

1 (iv) the availability and feasibility of using
2 low-quality water for the purpose for which application has
3 been made;

4 (v) the effects on private property rights by any
5 creation of or contribution to saline seep; and

6 (vi) the probable significant adverse environmental
7 impacts of the proposed use of water as determined by the
8 department pursuant to Title 75, chapter 1, or Title 75,
9 chapter 20.

10 (4) The department may not approve a change in purpose
11 of use or place of use for a diversion that results in 4,000
12 or more acre-feet of water a year and 5.5 or more cubic feet
13 per second of water being consumed unless:

14 (a) the applicant proves by clear and convincing
15 evidence and the department finds that the criteria in
16 subsections (2) and (3) are met; and

17 (b) the department then petitions the legislature and
18 the legislature affirms the decision of the department after
19 one or more public hearings.

20 (5) (a) The state of Montana has long recognized the
21 importance of conserving its public waters and the necessity
22 to maintain adequate water supplies for the state's water
23 requirements, including requirements for reserved water
24 rights held by the United States for federal reserved lands
25 and in trust for the various Indian tribes within the

1 state's boundaries. Although the state of Montana also
 2 recognizes that, under appropriate conditions, the
 3 out-of-state transportation and use of its public waters are
 4 not in conflict with the public welfare of its citizens or
 5 the conservation of its waters, the following criteria must
 6 be met before out-of-state use may occur:

7 (b) The department and, if applicable, the legislature
 8 may not approve a change in appropriation right for the
 9 withdrawal and transportation of appropriated water for use
 10 outside the state unless the appropriator proves by clear
 11 and convincing evidence and, if applicable, the legislature
 12 approves after one or more public hearings that:

13 (i) depending on the volume of water diverted or
 14 consumed, the applicable criteria and procedures of
 15 subsection (2) or (3) are met;

16 (ii) the proposed out-of-state use of water is not
 17 contrary to water conservation in Montana; and

18 (iii) the proposed out-of-state use of water is not
 19 otherwise detrimental to the public welfare of the citizens
 20 of Montana.

21 (c) In determining whether the appropriator has proved
 22 by clear and convincing evidence that the requirements of
 23 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
 24 department and, if applicable, the legislature shall
 25 consider the following factors:

1 (i) whether there are present or projected water
 2 shortages within the state of Montana;

3 (ii) whether the water that is the subject of the
 4 proposed change in appropriation might feasibly be
 5 transported to alleviate water shortages within the state of
 6 Montana;

7 (iii) the supply and sources of water available to the
 8 applicant in the state where the applicant intends to use
 9 the water; and

10 (iv) the demands placed on the applicant's supply in the
 11 state where the applicant intends to use the water.

12 (d) When applying for a change in appropriation right
 13 to withdraw and transport water for use outside the state,
 14 the applicant shall submit to and comply with the laws of
 15 the state of Montana governing the appropriation and use of
 16 water.

17 (6) For any application for a change in appropriation
 18 right involving 4,000 or more acre-feet of water a year and
 19 5.5 or more cubic feet per second of water, the department
 20 shall give notice of the proposed change in accordance with
 21 85-2-307 and shall hold one or more hearings in accordance
 22 with 85-2-309 prior to its approval or denial of the
 23 proposed change. The department shall provide notice and may
 24 hold one or more hearings upon any other proposed change if
 25 it determines that a change might adversely affect the

1 rights of other persons.

2 (7) The department or the legislature, if applicable,
3 may approve a change subject to terms, conditions,
4 restrictions, and limitations as it considers necessary to
5 satisfy the criteria of this section, including limitations
6 on the time for completion of the change. The department may
7 extend time limits specified in the change approval under
8 the applicable criteria and procedures of 85-2-312(3).

9 (8) Upon actual application of water to the proposed
10 beneficial use within the time allowed, the appropriator
11 shall notify the department that the appropriation has been
12 properly completed. The notification must contain a
13 certified statement by a person with experience in the
14 design, construction, or operation of appropriation works
15 that the appropriation has been properly completed in
16 substantial accordance with the terms and conditions of the
17 change approval.

18 ~~(8)~~(9) If a change is not completed as approved by the
19 department or legislature or if the terms, conditions,
20 restrictions, and limitations of the change approval are not
21 complied with, the department may, after notice and
22 opportunity for hearing, require the appropriator to show
23 cause why the change approval should not be modified or
24 revoked. If the appropriator fails to show sufficient cause,
25 the department may modify or revoke the change approval.

1 ~~(9)~~(10) The original of a change approval issued by the
2 department must be sent to the applicant, and a duplicate
3 must be kept in the office of the department in Helena.

4 ~~(10)~~(11) A person holding an issued permit or change
5 approval that has not been perfected may change the place of
6 diversion, place of use, purpose of use, or place of storage
7 by filing an application for change pursuant to this
8 section.

9 ~~(11)~~(12) A change in appropriation right contrary to the
10 provisions of this section is invalid. An officer, agent,
11 agency, or employee of the state may not knowingly permit,
12 aid, or assist in any manner an unauthorized change in
13 appropriation right. A person or corporation may not,
14 directly or indirectly, personally or through an agent,
15 officer, or employee, attempt to change an appropriation
16 right except in accordance with this section. (Terminates
17 June 30, 1993--sec. 11, Ch. 658, L. 1989.)

18 85-2-402. (Effective July 1, 1993) Changes in
19 appropriation rights. (1) An appropriator may not make a
20 change in an appropriation right except as permitted under
21 this section and with the approval of the department or, if
22 applicable, of the legislature.

23 (2) Except as provided in subsections (3) through (5),
24 the department shall approve a change in appropriation right
25 if the appropriator proves by substantial credible evidence

1 that the following criteria are met:

2 (a) The proposed use will not adversely affect the
3 water rights of other persons or other planned uses or
4 developments for which a permit has been issued or for which
5 water has been reserved.

6 (b) The proposed means of diversion, construction, and
7 operation of the appropriation works are adequate.

8 (c) The proposed use of water is a beneficial use.

9 (d) The applicant has a possessory interest, or the
10 written consent of the person with the possessory interest,
11 in the property where the water is to be put to beneficial
12 use.

13 (3) The department may not approve a change in purpose
14 of use or place of use of an appropriation of 4,000 or more
15 acre-feet of water a year and 5.5 or more cubic feet per
16 second of water unless the appropriator proves by
17 substantial credible evidence that:

18 (a) the criteria in subsection (2) are met;

19 (b) the proposed change is a reasonable use. A finding
20 of reasonable use must be based on a consideration of:

21 (i) the existing demands on the state water supply, as
22 well as projected demands for water for future beneficial
23 purposes, including municipal water supplies, irrigation
24 systems, and minimum streamflows for the protection of
25 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 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 (4) The department may not approve a change in purpose
14 of use or place of use for a diversion that results in 4,000
15 or more acre-feet of water a year and 5.5 or more cubic feet
16 per second of water being consumed unless:

17 (a) the applicant proves by clear and convincing
18 evidence and the department finds that the criteria in
19 subsections (2) and (3) are met; and

20 (b) the department then petitions the legislature and
21 the legislature affirms the decision of the department after
22 one or more public hearings.

23 (5) (a) The state of Montana has long recognized the
24 importance of conserving its public waters and the necessity
25 to maintain adequate water supplies for the state's water

1 requirements, including requirements for reserved water
 2 rights held by the United States for federal reserved lands
 3 and in trust for the various Indian tribes within the
 4 state's boundaries. Although the state of Montana also
 5 recognizes that, under appropriate conditions, the
 6 out-of-state transportation and use of its public waters are
 7 not in conflict with the public welfare of its citizens or
 8 the conservation of its waters, the following criteria must
 9 be met before out-of-state use may occur:

10 (b) The department and, if applicable, the legislature
 11 may not approve a change in appropriation right for the
 12 withdrawal and transportation of appropriated water for use
 13 outside the state unless the appropriator proves by clear
 14 and convincing evidence and, if applicable, the legislature
 15 approves after one or more public hearings that:

16 (i) depending on the volume of water diverted or
 17 consumed, the applicable criteria and procedures of
 18 subsection (2) or (3) are met;

19 (ii) the proposed out-of-state use of water is not
 20 contrary to water conservation in Montana; and

21 (iii) the proposed out-of-state use of water is not
 22 otherwise detrimental to the public welfare of the citizens
 23 of Montana.

24 (c) In determining whether the appropriator has proved
 25 by clear and convincing evidence that the requirements of

1 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
 2 department and, if applicable, the legislature shall
 3 consider the following factors:

4 (i) whether there are present or projected water
 5 shortages within the state of Montana;

6 (ii) whether the water that is the subject of the
 7 proposed change in appropriation might feasibly be
 8 transported to alleviate water shortages within the state of
 9 Montana;

10 (iii) the supply and sources of water available to the
 11 applicant in the state where the applicant intends to use
 12 the water; and

13 (iv) the demands placed on the applicant's supply in the
 14 state where the applicant intends to use the water.

15 (d) When applying for a change in appropriation right
 16 to withdraw and transport water for use outside the state,
 17 the applicant shall submit to and comply with the laws of
 18 the state of Montana governing the appropriation and use of
 19 water.

20 (6) For any application for a change in appropriation
 21 right involving 4,000 or more acre-feet of water a year and
 22 5.5 or more cubic feet per second of water, the department
 23 shall give notice of the proposed change in accordance with
 24 85-2-307 and shall hold one or more hearings in accordance
 25 with 85-2-309 prior to its approval or denial of the

1 proposed change. The department shall provide notice and may
2 hold one or more hearings upon any other proposed change if
3 it determines that such a change might adversely affect the
4 rights of other persons.

5 (7) The department or the legislature, if applicable,
6 may approve a change subject to such terms, conditions,
7 restrictions, and limitations as it considers necessary to
8 satisfy the criteria of this section, including limitations
9 on the time for completion of the change. The department may
10 extend time limits specified in the change approval under
11 the applicable criteria and procedures of 85-2-312(3).

12 (8) Upon actual application of water to the proposed
13 beneficial use within the time allowed, the appropriator
14 shall notify the department that the appropriation has been
15 properly completed. The notification must contain a
16 certified statement by a person with experience in the
17 design, construction, or operation of appropriation works
18 that the appropriation has been properly completed in
19 substantial accordance with the terms and conditions of the
20 change approval.

21 ~~(8)(9)~~ If a change is not completed as approved by the
22 department or legislature or if the terms, conditions,
23 restrictions, and limitations of the change approval are not
24 complied with, the department may, after notice and
25 opportunity for hearing, require the appropriator to show

1 cause why the change approval should not be modified or
2 revoked. If the appropriator fails to show sufficient cause,
3 the department may modify or revoke the change approval.

4 ~~(9)(10)~~ The original of a change approval issued by the
5 department must be sent to the applicant, and a duplicate
6 must be kept in the office of the department in Helena.

7 ~~(10)(11)~~ A person holding an issued permit or change
8 approval that has not been perfected may change the place of
9 diversion, place of use, purpose of use, or place of storage
10 by filing an application for change pursuant to this
11 section.

12 ~~(11)(12)~~ A change in appropriation right contrary to the
13 provisions of this section is invalid. No officer, agent,
14 agency, or employee of the state may knowingly permit, aid,
15 or assist in any manner such unauthorized change in
16 appropriation right. No person or corporation may, directly
17 or indirectly, personally or through an agent, officer, or
18 employee, attempt to change an appropriation right except in
19 accordance with this section."

20 **Section 8.** Section 85-2-424, MCA, is amended to read:

21 "85-2-424. Filing. (1) The transferor of a water right
22 or his agent or representative shall file with the
23 department a water right transfer certificate within 60 days
24 of recording a deed or other instrument evidencing a
25 transfer of real property.

1 (2) Except in the case of a transfer of real property
 2 served by a public service water supply, when any person
 3 presents for recording a deed or other instrument evidencing
 4 a transfer of real property, the realty transfer certificate
 5 shall note whether or not the transfer includes a transfer
 6 of water rights. If the realty transfer certificate notes a
 7 transfer of water rights, the clerk and recorder shall
 8 provide such person the form prescribed under 85-2-423 for
 9 the transfer of water rights. The recording of the deed or
 10 other instrument shall not be delayed because of the
 11 transfer of the water rights.

12 (3) The county clerk and recorder shall send to the
 13 department a list of all transfers that involve transfers of
 14 water rights. The list must be sent every month and must
 15 include all transfers for the month immediately preceding
 16 the date of submittal to the department. The list must
 17 include the names and addresses of all parties to the
 18 transfer and a legal description of the land subject to the
 19 transfer.

20 ~~{4}--The department shall send a reference copy of the~~
 21 ~~water right transfer certificate to the office of the chief~~
 22 ~~water judge and to the county clerk and recorder in the~~
 23 ~~county in which the transfer occurred."~~

24 **Section 9.** Section 85-2-501, MCA, is amended to read:

25 "85-2-501. Definitions. Unless the context requires

1 otherwise, in this part the following definitions apply:

2 (1) "Aquifer" means any underground geological
 3 structure or formation which is capable of yielding water or
 4 is capable of recharge.

5 (2) "Bureau" means the Montana state bureau of mines
 6 and geology provided for in 20-25-211.

7 (3) "Ground water" means any fresh water that is
 8 ~~beneath the land--surface--or--beneath--the--bed--of--a--stream--~~
 9 ~~lake--reservoir--or--other--body--of--surface--water--and--which--is~~
 10 ~~not--a--part--of--that--surface--water~~ ground surface.

11 (4) "Ground water area" means an area which, as nearly
 12 as known facts permit, may be designated so as to enclose a
 13 single and distinct body of ground water, which shall be
 14 described horizontally by surface description in all cases
 15 and which may be limited vertically by describing known
 16 geological formations should conditions dictate this to be
 17 desirable."

18 NEW SECTION. **Section 10.** Water right records for
 19 filing with local clerk and recorder. Upon payment of a fee
 20 established pursuant to 85-2-113, a county clerk and
 21 recorder of the county where the point of diversion or place
 22 of use is located or in which a transfer of water right
 23 occurred may require the department to provide a report of
 24 all water permits, certificates, change approvals, or water
 25 right transfer certificates issued or processed by the

1 department pursuant to Title 85, chapter 2, parts 3 and 4.

2 NEW SECTION. **Section 11.** Repealer. Section 85-2-317,
3 MCA, is repealed.

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

8 NEW SECTION. **Section 13.** Retroactive applicability.

9 (1) [Sections 4 and 7, concerning water quality criteria]
10 apply retroactively, within the meaning of 1-2-109, to all
11 applications pending before the department of natural
12 resources and conservation for which a permit or change
13 authorization has not been issued on [the effective date of
14 this act].

15 (2) [Sections 6 and 7, concerning certification by a
16 professional engineer] apply retroactively, within the
17 meaning of 1-2-109, to all permits for which a notice of
18 completion has not been filed on and to change approvals
19 issued after [the effective date of this act].

20 NEW SECTION. **Section 14.** Effective date. [This act] is
21 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 SB0266, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) revises the Montana water use laws; 2) defines the term "groundwater"; 3) clarifies permit exceptions; 4) makes permissive and authorizes fees for the submission of department records of water rights to county clerks and recorders; and 5) requires the verification of completions of permits and change approvals.


ASSUMPTIONS:

Several proposed water rights changes are merged into this one legislative bill. Some of the proposed changes have fiscal considerations that need to be evaluated. Assumptions pertaining to the fiscal impacts of these proposed changes are as follows:


1. **Groundwater Definition:** By amending the groundwater definition under 85-2-102 (10), MCA; and 85-2-102 (9), MCA (Temporary) to include any water that is beneath the ground surface, there is no fiscal impact. The amendment in the groundwater definition will not substantially increase or decrease the permit processing requirements or the certificate processing requirements.
2. **Objections to Applications:** Amending the requirements for filing an objection to a permit or change application under 85-2-308(1)(2), MCA, will not substantially increase or decrease the number of objections filed against new permit or change applications.
3. **Privatize Verification:** Requiring the owners of permitted or changed water use developments to provide for verification of completion of the works by a person with experience in the design, construction, or operation of appropriation works as proposed under Sections 85-2-315, MCA; 85-2-402 (8), MCA (Temporary); and 85-2-402 (8), MCA (Effective July 1, 1993), will require the DNRC to prepare rules and monitor the qualified experienced person's verification reports. Costs to draft administrative rules to implement this legislation will be \$2,000 for each year of the biennium. Operating costs to prepare new forms to process verification of completed water use developments will be \$500 for each year of the biennium.
4. **Water Rights Records Reports:** Eliminating the requirement for the DNRC to provide quarterly and/or annual reports as currently referenced under 85-2-236 (2), MCA; 85-2-312 (5), MCA; 85-2-315 (2), MCA; and 85-2-424 (4), MCA, will save approximately \$2,500 per year.
5. **Groundwater Limitation (repeal of 85-2-317, MCA)** has no significant impact. There have been less than five groundwater applications of this type since the law was passed in 1979.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

2-7-91
DATE


LORENTS GROSFIELD, PRIMARY SPONSOR

2/11/91
DATE

Fiscal Note for SB0266, as introduced

SB 266

FISCAL IMPACT:

No fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The clerks and recorders will not have water rights records routinely available with this change in the statute. They may request reports of water rights records from the DNRC to serve their specific needs. If so, the cost of these reports will be borne by the respective clerks and recorders making the request.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is estimated that an average cost for verifying one completed permit or change by a qualified experienced person will be about \$400. Total verification expenses will cost the water users through private verifiers \$160,000 per year to complete verification of permits issued each year.

With private verification, the cost to the public water user will increase substantially, since the certified verification service will be borne directly by the water user. The state through DNRC will no longer provide verification service to water users for permits and changes issued after the effective date of this legislation. Currently, the DNRC does not have sufficient staff to maintain pace with the number of permits and changes that are issued annually. In fact, the backlog of approximately 8,000 unverified permits and changes is increasing by 200 per year.

There is an increasing trend of water users contacting water rights field offices for assistance regarding water rights data. The public is seeking and receiving more accurate and timely information from water rights field offices.

TECHNICAL NOTE:

The water quality criteria reference in the title could be deleted since there are no water quality provisions in the proposed bill.

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0266, as introduced, revised

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) revises the Montana water use laws; 2) defines the term "groundwater"; 3) clarifies permit exceptions; 4) makes permissive and authorizes fees for the submission of department records of water rights to county clerks and recorders; and 5) requires the verification of completions of permits and change approvals.


ASSUMPTIONS:

Several proposed water rights changes are merged into this one legislative bill. Some of the proposed changes have fiscal considerations that need to be evaluated. Assumptions pertaining to the fiscal impacts of these proposed changes are as follows:

1. Groundwater Definition: By amending the groundwater definition under 85-2-102 (10), MCA; and 85-2-102 (9), MCA (Temporary) to include any water that is beneath the ground surface, there is no fiscal impact. The amendment in the groundwater definition will not substantially increase or decrease the permit processing requirements or the certificate processing requirements.
2. Objections to Applications: Amending the requirements for filing an objection to a permit or change application under 85-2-308(1)(2), MCA, will not substantially increase or decrease the number of objections filed against new permit or change applications.
3. Privatize Verification: Requiring the owners of permitted or changed water use developments to provide for verification of completion of the works by a person with experience in the design, construction, or operation of appropriation works as proposed under Sections 85-2-315, MCA; 85-2-402 (8), MCA (Temporary); and 85-2-402 (8), MCA (Effective July 1, 1993), will require the DNRC to prepare rules and monitor the qualified experienced person's verification reports. Costs to draft administrative rules to implement this legislation will be \$2,000 for each year of the biennium. Operating costs to prepare new forms to process verification of completed water use developments will be \$500 for each year of the biennium.
4. Water Rights Records Reports: Eliminating the requirement for the DNRC to provide quarterly and/or annual reports as currently referenced under 85-2-236 (2), MCA; 85-2-312 (5), MCA; 85-2-315 (2), MCA; and 85-2-424 (4), MCA, will save approximately \$2,500 per year.
5. Groundwater Limitation (repeal of 85-2-317, MCA) has no significant impact. There have been less than five groundwater applications of this type since the law was passed in 1979.

FISCAL IMPACT:

none


ROD SUNDSTED, BUDGET DIRECTOR 2-16-91
Office of Budget and Program Planning DATE


LORENTS GROSFIELD, PRIMARY SPONSOR 2/18/91
DATE

Fiscal Note for SB0266, as introduced, revised **SB266**

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The clerks and recorders will not have water rights records routinely available with this change in the statute. They may request reports of water rights records from the DNRC to serve their specific needs. If so, the cost of these reports will be borne by the respective clerks and recorders making the request.

There is an increasing trend of water users contacting water rights field offices for assistance regarding water rights data. The public is seeking and receiving more accurate and timely information from water rights field offices.

TECHNICAL NOTE:

The water quality criteria reference in the title could be deleted since there are no water quality provisions in the proposed bill.

APPROVED BY COMM. ON
NATURAL RESOURCES

1 SENATE BILL NO. 266
2 INTRODUCED BY GROSFIELD, BENGTSON, SWYSGOOD,
3 GRADY, THOFT
4 BY REQUEST OF THE DEPARTMENT OF
5 NATURAL RESOURCES AND CONSERVATION
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
8 WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING
9 PERMIT---EXCEPTIONS OBJECTIONS; MAKING PERMISSIVE AND
10 AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF
11 WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE
12 VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS;
13 ~~INCLUDING WATER QUALITY CRITERIA IN THE ISSUANCE OF A PERMIT~~
14 ~~OR---CHANGE---AUTHORIZATION~~; AMENDING SECTIONS 85-2-102,
15 85-2-113, 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-402,
16 85-2-424, AND 85-2-501, MCA; REPEALING SECTION 85-2-317,
17 MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND A
18 RETROACTIVE AN APPLICABILITY DATE."
19

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill in order
22 to provide a guideline on the payment of fees. Rulemaking
23 authority is granted to the board of natural resources and
24 conservation to establish a fee schedule for payment of fees
25 to be paid to the department for its costs incurred in

1 providing water rights record information to a clerk and
2 recorder. It is the intent of the legislature that the rules
3 establish a reasonable fee schedule that approximates the
4 department's actual and necessary costs. A published fee
5 schedule will enable a clerk and recorder to know the cost
6 prior to seeking the information from the department.
7

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

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

10 "85-2-102. (Temporary) Definitions. Unless the context
11 requires otherwise, in this chapter the following
12 definitions apply:

13 (1) "Appropriate" means to:

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

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;

SECOND READING

SB 266



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; and

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

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

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

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

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

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

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

22 (9) "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 (10) "Ground water" means any water that is beneath the

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

4 (11) "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 (12) "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 (13) "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 (14) "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 (15) "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 (16) "Water division" means a drainage basin as defined
25 in 3-7-102.

1 (17) "Water judge" means a judge as provided for in
2 Title 3, chapter 7.

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

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

10 **85-2-102. (Effective July 1, 1993) Definitions.** Unless
11 the context requires otherwise, in this chapter the
12 following definitions apply:

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

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; and

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.

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

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

6 (5) "Change in appropriation right" means a change in
7 the place of diversion, the place of use, the purpose of
8 use, or the place of storage.

9 (6) "Declaration" means the declaration of an existing
10 right filed with the department under section 8, Chapter
11 452, Laws of 1973.

12 (7) "Department" means the department of natural
13 resources and conservation provided for in Title 2, chapter
14 15, part 33.

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

18 (9) "Ground water" means any water that is beneath the
19 ~~land--surface--or--beneath--the--bed--of--a--stream,--lake,~~
20 ~~reservoir,--or--other--body--of--surface--water,--and--which--is--not~~
21 ~~a--part--of--that--surface--water~~ ground surface.

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

25 (11) "Person" means an individual, association,

1 partnership, corporation, state agency, political
2 subdivision, the United States or any agency thereof, or any
3 other entity.

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

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

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

17 (15) "Water division" means a drainage basin as defined
18 in 3-7-102.

19 (16) "Water judge" means a judge as provided for in
20 Title 3, chapter 7.

21 (17) "Water master" means a master as provided for in
22 Title 3, chapter 7.

23 (18) "Well" means any artificial opening or excavation
24 in the ground, however made, by which ground water is sought
25 or can be obtained or through which it flows under natural

1 pressures or is artificially withdrawn."

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

3 **"85-2-113. Board powers and duties.** (1) The board may
4 prescribe fees or service charges for any public service
5 rendered by the department under this chapter, including
6 fees for the filing of applications or for the issuance of
7 permits and certificates, for rulemaking hearings under
8 85-2-319, for administrative hearings conducted under this
9 chapter, for investigations concerning permit revocation,
10 for field verification of issued and completed permits, and
11 all change approvals. There shall be no fees for any action
12 taken by the department at the request of the water judge or
13 for the issuance of certificates of existing rights.

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

17 (a) govern the issuance and terms of interim permits
18 authorizing an applicant for a regular permit under this
19 chapter to begin appropriating water immediately, pending
20 final approval or denial by the department of the
21 application for a regular permit;

22 (b) require the owner or operator of appropriation
23 facilities to install and maintain suitable controlling and
24 measuring devices, except that the board may not require a
25 meter on a water well outside of a controlled ground water

1 area or proposed controlled ground water area unless the
 2 maximum appropriation of the well is in excess of 100
 3 gallons-a-minute the limitation contained in 85-2-306(1);

4 (c) require the owner or operator of appropriation
 5 facilities to report to the department the readings of
 6 measuring devices at reasonable intervals and to file
 7 reports on appropriations; and

8 (d) regulate the construction, use, and sealing of
 9 wells to prevent the waste, contamination, or pollution of
 10 ground water.

11 (3) The board shall adopt rules providing for and
 12 governing temporary emergency appropriations, without prior
 13 application for a permit, necessary to protect lives or
 14 property."

15 **Section 3.** Section 85-2-236, MCA, is amended to read:

16 "85-2-236. Certificate of water right. ~~{1}~~ When a final
 17 decree is entered, the water judge shall send a copy to the
 18 department. Except as provided in 85-2-306, the department
 19 shall on the basis of the final decree issue a certificate
 20 of water right to each person decreed an existing right. The
 21 original of the certificate shall be sent to the person to
 22 whom the right is decreed. The department shall keep a copy
 23 of the certificate in its office in Helena.

24 ~~{2}--The-department-shall-provide-to--the--county--clerk~~
 25 ~~and-recorder-of-the-county-wherein-the-point-of-diversion-or~~

1 ~~place--of--use--is--located--quarterly-reports-and-an-annual~~
 2 ~~summary-report-of-all-certificates-of-water-right-issued--by~~
 3 ~~the-department-within-the-county."~~

4 **Section 4.** Section 85-2-308, MCA, is amended to read:

5 "85-2-308. Objections. (1) (a) An objection to an
 6 application for a permit must be filed by the date specified
 7 by the department under 85-2-307(2).

8 ~~{2}~~(b) The objection to an application for a permit
 9 must state the name and address of the objector and facts
 10 tending to show that ~~there-are-no-unappropriated--waters--in~~
 11 ~~the--proposed--source,--that--the--proposed--means--of~~
 12 ~~appropriation--are--inadequate,--that--the--property,--water~~
 13 ~~rights,--or-interests-of--the--objector--would--be--adversely~~
 14 ~~affected--by--the--proposed-appropriation,--that--the--proposed~~
 15 ~~use-of-water-is-not-a-beneficial-use,--or--that--the--proposed~~
 16 ~~use--will--interfere-unreasonably-with-other-planned-uses-or~~
 17 ~~developments-for-which-a-permit-has-been-issued-or-for-which~~
 18 ~~water-has-been-reserved~~ one or more of the criteria in
 19 85-2-311 are not met.

20 (2) For an application for a change in appropriation
 21 rights, the objection must state the name and address of the
 22 objector and facts tending to show that one or more of the
 23 criteria in 85-2-402 are not met.

24 (3) A PERSON HAS STANDING TO FILE AN OBJECTION UNDER
 25 THIS SECTION IF THE PROPERTY, WATER RIGHTS, OR INTERESTS OF

1 THE OBJECTOR WOULD BE ADVERSELY AFFECTED BY THE PROPOSED
2 APPROPRIATION.

3 (4) FOR AN APPLICATION FOR A RESERVATION OF WATER, THE
4 OBJECTION MUST STATE THE NAME AND ADDRESS OF THE OBJECTOR
5 AND FACTS TENDING TO SHOW THAT ONE OR MORE OF THE CRITERIA
6 IN 85-2-316 ARE NOT MET."

7 **Section 5.** Section 85-2-312, MCA, is amended to read:

8 "85-2-312. **Terms of permit.** (1) The department may
9 issue a permit for less than the amount of water requested,
10 but in no case may it issue a permit for more water than is
11 requested or than can be beneficially used without waste for
12 the purpose stated in the application. The department may
13 require modification of plans and specifications for the
14 appropriation or related diversion or construction. The
15 department may issue a permit subject to terms, conditions,
16 restrictions, and limitations it considers necessary to
17 satisfy the criteria listed in 85-2-311, and it may issue
18 temporary or seasonal permits. A permit shall be issued
19 subject to existing rights and any final determination of
20 those rights made under this chapter.

21 (2) The department shall specify in the permit or in
22 any authorized extension of time provided in subsection (3),
23 the time limits for commencement of the appropriation works,
24 completion of construction, and actual application of the
25 water to the proposed beneficial use. In fixing those time

1 limits, the department shall consider the cost and magnitude
2 of the project, the engineering and physical features to be
3 encountered, and, on projects designed for gradual
4 development and gradually increased use of water, the time
5 reasonably necessary for that gradual development and
6 increased use. The department shall issue the permit or
7 authorized extension of time subject to the terms,
8 conditions, restrictions, and limitations it considers
9 necessary to ensure that the work on the appropriation is
10 commenced, conducted, and completed and that the water is
11 actually applied in a timely manner to the beneficial use
12 specified in the permit.

13 (3) The department may, upon a showing of good cause,
14 extend time limits specified in the permit for commencement
15 of the appropriation works, completion of construction, and
16 actual application of the water to the proposed beneficial
17 use. All requests for extensions of time must be by
18 affidavit and must be filed with the department prior to the
19 expiration of the time limit specified in the permit or any
20 previously authorized extension of time. The department may
21 issue an order temporarily extending the time limit
22 specified in the permit for 120 days or until the department
23 has completed its action under this section, whichever is
24 greater. Upon receipt of a proper request for extension of
25 time, the department shall prepare a notice containing the

1 facts pertinent to the request for extension of time and
 2 shall publish the notice in a newspaper of general
 3 circulation in the area of the source. The department may
 4 serve notice by first-class mail upon any public agency or
 5 other person the department determines may be interested in
 6 or affected by the request for extension of time. The
 7 department shall hold a hearing on the request for extension
 8 of time on its own motion or if requested by an interested
 9 party. The department may grant the extension of time in the
 10 absence of a hearing if no requests for a hearing are
 11 received and the extension of time is granted as requested,
 12 or the department may grant the extension of time in a
 13 modified form by following the process established in
 14 85-2-310(2). Subsequent extensions of time may be made in
 15 the same manner.

16 (4) The original of the permit shall be sent to the
 17 permittee, and a copy shall be kept in the office of the
 18 department in Helena.

19 ~~{5}--The department shall provide to--the--county--clerk
 20 and-recorder-of-the-county-wherein-the-point-of-diversion-or
 21 place--of--use--is--located--quarterly-reports-and-an-annual
 22 summary-report-of-all-water-right-permits,certificates, and
 23 change--approvals--issued--by--the--department--within--the
 24 county."~~

25 **Section 6.** Section 85-2-315, MCA, is amended to read:

1 **"85-2-315. Certificate of water right.** ~~{1}~~ Upon actual
 2 application of water to the proposed beneficial use within
 3 the time allowed, the permittee shall notify the department
 4 that the appropriation has been properly completed. The
 5 notification must contain a certified statement by a person
 6 with experience in the design, construction, or operation of
 7 appropriation works that the appropriation has been properly
 8 completed in substantial accordance with the terms and
 9 conditions of the permit. The department may then inspect
 10 the appropriation, and if it determines that the
 11 appropriation has been completed in substantial accordance
 12 with the permit, it shall issue the permittee a certificate
 13 of water right. The original of the certificate shall be
 14 sent to the permittee, and a duplicate shall be kept in the
 15 office of the department in Helena.

16 ~~{2}--The--department--shall--provide-to-the-county-clerk
 17 and-recorder-of-the-county-wherein-the-point-of-diversion-or
 18 place-of-use-is-located--quarterly--reports--and--an--annual
 19 summary--report-of-all-certificates-of-water-right-issued-by
 20 the-department-within-the-county."~~

21 **Section 7.** Section 85-2-402, MCA, is amended to read:

22 **"85-2-402. (Temporary) Changes in appropriation rights.**
 23 (1) An appropriator may not make a change in an
 24 appropriation right except as permitted under this section
 25 and with the approval of the department or, if applicable,

1 of the legislature.

2 (2) Except as provided in subsections (3) through (5),
3 the department shall approve a change in appropriation right
4 if the appropriator proves by substantial credible evidence
5 that the following criteria are met:

6 (a) The proposed use will not adversely affect the
7 water rights of other persons or other planned uses or
8 developments for which a permit has been issued or for which
9 water has been reserved.

10 (b) Except for a lease authorization pursuant to
11 85-2-436 that does not require appropriation works, the
12 proposed means of diversion, construction, and operation of
13 the appropriation works are adequate.

14 (c) The proposed use of water is a beneficial use.

15 (d) The applicant has a possessory interest, or the
16 written consent of the person with the possessory interest,
17 in the property where the water is to be put to beneficial
18 use.

19 (3) The department may not approve a change in purpose
20 of use or place of use of an appropriation of 4,000 or more
21 acre-feet of water a year and 5.5 or more cubic feet per
22 second of water unless the appropriator proves by
23 substantial credible evidence that:

24 (a) the criteria in subsection (2) are met;

25 (b) the proposed change is a reasonable use. A finding

1 of reasonable use must be based on a consideration of:

2 (i) the existing demands on the state water supply, as
3 well as projected demands for water for future beneficial
4 purposes, including municipal water supplies, irrigation
5 systems, and minimum streamflows for the protection of
6 existing water rights and aquatic life;

7 (ii) the benefits to the applicant and the state;

8 (iii) the effects on the quantity and quality of water
9 for existing uses in the source of supply;

10 (iv) the availability and feasibility of using
11 low-quality water for the purpose for which application has
12 been made;

13 (v) the effects on private property rights by any
14 creation of or contribution to saline seep; and

15 (vi) the probable significant adverse environmental
16 impacts of the proposed use of water as determined by the
17 department pursuant to Title 75, chapter 1, or Title 75,
18 chapter 20.

19 (4) The department may not approve a change in purpose
20 of use or place of use for a diversion that results in 4,000
21 or more acre-feet of water a year and 5.5 or more cubic feet
22 per second of water being consumed unless:

23 (a) the applicant proves by clear and convincing
24 evidence and the department finds that the criteria in
25 subsections (2) and (3) are met; and

1 (b) the department then petitions the legislature and
 2 the legislature affirms the decision of the department after
 3 one or more public hearings.

4 (5) (a) The state of Montana has long recognized the
 5 importance of conserving its public waters and the necessity
 6 to maintain adequate water supplies for the state's water
 7 requirements, including requirements for reserved water
 8 rights held by the United States for federal reserved lands
 9 and in trust for the various Indian tribes within the
 10 state's boundaries. Although the state of Montana also
 11 recognizes that, under appropriate conditions, the
 12 out-of-state transportation and use of its public waters are
 13 not in conflict with the public welfare of its citizens or
 14 the conservation of its waters, the following criteria must
 15 be met before out-of-state use may occur:

16 (b) The department and, if applicable, the legislature
 17 may not approve a change in appropriation right for the
 18 withdrawal and transportation of appropriated water for use
 19 outside the state unless the appropriator proves by clear
 20 and convincing evidence and, if applicable, the legislature
 21 approves after one or more public hearings that:

22 (i) depending on the volume of water diverted or
 23 consumed, the applicable criteria and procedures of
 24 subsection (2) or (3) are met;

25 (ii) the proposed out-of-state use of water is not

1 contrary to water conservation in Montana; and

2 (iii) the proposed out-of-state use of water is not
 3 otherwise detrimental to the public welfare of the citizens
 4 of Montana.

5 (c) In determining whether the appropriator has proved
 6 by clear and convincing evidence that the requirements of
 7 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
 8 department and, if applicable, the legislature shall
 9 consider the following factors:

10 (i) whether there are present or projected water
 11 shortages within the state of Montana;

12 (ii) whether the water that is the subject of the
 13 proposed change in appropriation might feasibly be
 14 transported to alleviate water shortages within the state of
 15 Montana;

16 (iii) the supply and sources of water available to the
 17 applicant in the state where the applicant intends to use
 18 the water; and

19 (iv) the demands placed on the applicant's supply in the
 20 state where the applicant intends to use the water.

21 (d) When applying for a change in appropriation right
 22 to withdraw and transport water for use outside the state,
 23 the applicant shall submit to and comply with the laws of
 24 the state of Montana governing the appropriation and use of
 25 water.

1 (6) For any application for a change in appropriation
 2 right involving 4,000 or more acre-feet of water a year and
 3 5.5 or more cubic feet per second of water, the department
 4 shall give notice of the proposed change in accordance with
 5 85-2-307 and shall hold one or more hearings in accordance
 6 with 85-2-309 prior to its approval or denial of the
 7 proposed change. The department shall provide notice and may
 8 hold one or more hearings upon any other proposed change if
 9 it determines that a change might adversely affect the
 10 rights of other persons.

11 (7) The department or the legislature, if applicable,
 12 may approve a change subject to terms, conditions,
 13 restrictions, and limitations as it considers necessary to
 14 satisfy the criteria of this section, including limitations
 15 on the time for completion of the change. The department may
 16 extend time limits specified in the change approval under
 17 the applicable criteria and procedures of 85-2-312(3).

18 (8) Upon actual application of water to the proposed
 19 beneficial use within the time allowed, the appropriator
 20 shall notify the department that the appropriation has been
 21 properly completed. The notification must contain a
 22 certified statement by a person with experience in the
 23 design, construction, or operation of appropriation works
 24 that the appropriation has been properly completed in
 25 substantial accordance with the terms and conditions of the

1 change approval.

2 ~~(9)~~ If a change is not completed as approved by the
 3 department or legislature or if the terms, conditions,
 4 restrictions, and limitations of the change approval are not
 5 complied with, the department may, after notice and
 6 opportunity for hearing, require the appropriator to show
 7 cause why the change approval should not be modified or
 8 revoked. If the appropriator fails to show sufficient cause,
 9 the department may modify or revoke the change approval.

10 ~~(10)~~ The original of a change approval issued by the
 11 department must be sent to the applicant, and a duplicate
 12 must be kept in the office of the department in Helena.

13 ~~(11)~~ A person holding an issued permit or change
 14 approval that has not been perfected may change the place of
 15 diversion, place of use, purpose of use, or place of storage
 16 by filing an application for change pursuant to this
 17 section.

18 ~~(12)~~ A change in appropriation right contrary to the
 19 provisions of this section is invalid. An officer, agent,
 20 agency, or employee of the state may not knowingly permit,
 21 aid, or assist in any manner an unauthorized change in
 22 appropriation right. A person or corporation may not,
 23 directly or indirectly, personally or through an agent,
 24 officer, or employee, attempt to change an appropriation
 25 right except in accordance with this section. (Terminates

1 June 30, 1993--sec. 11, Ch. 658, L. 1989.)
 2 85-2-402. (Effective July 1, 1993) Changes in
 3 appropriation rights. (1) An appropriator may not make a
 4 change in an appropriation right except as permitted under
 5 this section and with the approval of the department or, if
 6 applicable, of the legislature.
 7 (2) Except as provided in subsections (3) through (5),
 8 the department shall approve a change in appropriation right
 9 if the appropriator proves by substantial credible evidence
 10 that the following criteria are met:
 11 (a) The proposed use will not adversely affect the
 12 water rights of other persons or other planned uses or
 13 developments for which a permit has been issued or for which
 14 water has been reserved.
 15 (b) The proposed means of diversion, construction, and
 16 operation of the appropriation works are adequate.
 17 (c) The proposed use of water is a beneficial use.
 18 (d) The applicant has a possessory interest, or the
 19 written consent of the person with the possessory interest,
 20 in the property where the water is to be put to beneficial
 21 use.
 22 (3) The department may not approve a change in purpose
 23 of use or place of use of an appropriation of 4,000 or more
 24 acre-feet of water a year and 5.5 or more cubic feet per
 25 second of water unless the appropriator proves by

1 substantial credible evidence that:
 2 (a) the criteria in subsection (2) are met;
 3 (b) the proposed change is a reasonable use. A finding
 4 of reasonable use must be based on a consideration of:
 5 (i) the existing demands on the state water supply, as
 6 well as projected demands for water for future beneficial
 7 purposes, including municipal water supplies, irrigation
 8 systems, and minimum streamflows for the protection of
 9 existing water rights and aquatic life;
 10 (ii) the benefits to the applicant and the state;
 11 (iii) the effects on the quantity and quality of water
 12 for existing uses in the source of supply;
 13 (iv) the availability and feasibility of using
 14 low-quality water for the purpose for which application has
 15 been made;
 16 (v) the effects on private property rights by any
 17 creation of or contribution to saline seep; and
 18 (vi) the probable significant adverse environmental
 19 impacts of the proposed use of water as determined by the
 20 department pursuant to Title 75, chapter 1, or Title 75,
 21 chapter 20.
 22 (4) The department may not approve a change in purpose
 23 of use or place of use for a diversion that results in 4,000
 24 or more acre-feet of water a year and 5.5 or more cubic feet
 25 per second of water being consumed unless:

1 (a) the applicant proves by clear and convincing
2 evidence and the department finds that the criteria in
3 subsections (2) and (3) are met; and

4 (b) the department then petitions the legislature and
5 the legislature affirms the decision of the department after
6 one or more public hearings.

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

19 (b) The department and, if applicable, the legislature
20 may not approve a change in appropriation right for the
21 withdrawal and transportation of appropriated water for use
22 outside the state unless the appropriator proves by clear
23 and convincing evidence and, if applicable, the legislature
24 approves after one or more public hearings that:

25 (i) depending on the volume of water diverted or

1 consumed, the applicable criteria and procedures of
2 subsection (2) or (3) are met;

3 (ii) the proposed out-of-state use of water is not
4 contrary to water conservation in Montana; and

5 (iii) the proposed out-of-state use of water is not
6 otherwise detrimental to the public welfare of the citizens
7 of Montana.

8 (c) In determining whether the appropriator has proved
9 by clear and convincing evidence that the requirements of
10 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
11 department and, if applicable, the legislature shall
12 consider the following factors:

13 (i) whether there are present or projected water
14 shortages within the state of Montana;

15 (ii) whether the water that is the subject of the
16 proposed change in appropriation might feasibly be
17 transported to alleviate water shortages within the state of
18 Montana;

19 (iii) the supply and sources of water available to the
20 applicant in the state where the applicant intends to use
21 the water; and

22 (iv) the demands placed on the applicant's supply in the
23 state where the applicant intends to use the water.

24 (d) When applying for a change in appropriation right
25 to withdraw and transport water for use outside the state,

1 the applicant shall submit to and comply with the laws of
2 the state of Montana governing the appropriation and use of
3 water.

4 (6) For any application for a change in appropriation
5 right involving 4,000 or more acre-feet of water a year and
6 5.5 or more cubic feet per second of water, the department
7 shall give notice of the proposed change in accordance with
8 85-2-307 and shall hold one or more hearings in accordance
9 with 85-2-309 prior to its approval or denial of the
10 proposed change. The department shall provide notice and may
11 hold one or more hearings upon any other proposed change if
12 it determines that such a change might adversely affect the
13 rights of other persons.

14 (7) The department or the legislature, if applicable,
15 may approve a change subject to such terms, conditions,
16 restrictions, and limitations as it considers necessary to
17 satisfy the criteria of this section, including limitations
18 on the time for completion of the change. The department may
19 extend time limits specified in the change approval under
20 the applicable criteria and procedures of 85-2-312(3).

21 (8) Upon actual application of water to the proposed
22 beneficial use within the time allowed, the appropriator
23 shall notify the department that the appropriation has been
24 properly completed. The notification must contain a
25 certified statement by a person with experience in the

1 design, construction, or operation of appropriation works
2 that the appropriation has been properly completed in
3 substantial accordance with the terms and conditions of the
4 change approval.

5 ~~(8)~~(9) If a change is not completed as approved by the
6 department or legislature or if the terms, conditions,
7 restrictions, and limitations of the change approval are not
8 complied with, the department may, after notice and
9 opportunity for hearing, require the appropriator to show
10 cause why the change approval should not be modified or
11 revoked. If the appropriator fails to show sufficient cause,
12 the department may modify or revoke the change approval.

13 ~~(9)~~(10) The original of a change approval issued by the
14 department must be sent to the applicant, and a duplicate
15 must be kept in the office of the department in Helena.

16 ~~(10)~~(11) A person holding an issued permit or change
17 approval that has not been perfected may change the place of
18 diversion, place of use, purpose of use, or place of storage
19 by filing an application for change pursuant to this
20 section.

21 ~~(11)~~(12) A change in appropriation right contrary to the
22 provisions of this section is invalid. No officer, agent,
23 agency, or employee of the state may knowingly permit, aid,
24 or assist in any manner such unauthorized change in
25 appropriation right. No person or corporation may, directly

1 or indirectly, personally or through an agent, officer, or
2 employee, attempt to change an appropriation right except in
3 accordance with this section."

4 **Section 8.** Section 85-2-424, MCA, is amended to read:

5 **"85-2-424. Filing.** (1) The transferor of a water right
6 or his agent or representative shall file with the
7 department a water right transfer certificate within 60 days
8 of recording a deed or other instrument evidencing a
9 transfer of real property.

10 (2) Except in the case of a transfer of real property
11 served by a public service water supply, when any person
12 presents for recording a deed or other instrument evidencing
13 a transfer of real property, the realty transfer certificate
14 shall note whether or not the transfer includes a transfer
15 of water rights. If the realty transfer certificate notes a
16 transfer of water rights, the clerk and recorder shall
17 provide such person the form prescribed under 85-2-423 for
18 the transfer of water rights. The recording of the deed or
19 other instrument shall not be delayed because of the
20 transfer of the water rights.

21 (3) The county clerk and recorder shall send to the
22 department a list of all transfers that involve transfers of
23 water rights. The list must be sent every month and must
24 include all transfers for the month immediately preceding
25 the date of submittal to the department. The list must

1 include the names and addresses of all parties to the
2 transfer and a legal description of the land subject to the
3 transfer.

4 ~~(4) --The department shall send a reference copy of the~~
5 ~~water right transfer certificate to the office of the chief~~
6 ~~water judge and to the county clerk and recorder in the~~
7 ~~county in which the transfer occurred."~~

8 **Section 9.** Section 85-2-501, MCA, is amended to read:

9 **"85-2-501. Definitions.** Unless the context requires
10 otherwise, in this part the following definitions apply:

11 (1) "Aquifer" means any underground geological
12 structure or formation which is capable of yielding water or
13 is capable of recharge.

14 (2) "Bureau" means the Montana state bureau of mines
15 and geology provided for in 20-25-211.

16 (3) "Ground water" means any fresh water that is
17 beneath the land surface or beneath the bed of a stream,
18 lake, reservoir, or other body of surface water and which is
19 not a part of that surface water ground surface.

20 (4) "Ground water area" means an area which, as nearly
21 as known facts permit, may be designated so as to enclose a
22 single and distinct body of ground water, which shall be
23 described horizontally by surface description in all cases
24 and which may be limited vertically by describing known
25 geological formations should conditions dictate this to be

1 desirable."

2 NEW SECTION. Section 10. Water right records for
3 filing with local clerk and recorder. Upon payment of a fee
4 established pursuant to 85-2-113, a county clerk and
5 recorder of the county where the point of diversion or place
6 of use is located or in which a transfer of water right
7 occurred may require the department to provide a report of
8 all water permits, certificates, change approvals, or water
9 right transfer certificates issued or processed by the
10 department pursuant to Title 85, chapter 2, parts 3 and 4.

11 NEW SECTION. Section 11. Repealer. Section 85-2-317,
12 MCA, is repealed.

13 NEW SECTION. Section 12. Codification instruction.
14 [Section 10] 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 10].

17 NEW SECTION. Section 13. ~~retroactive~~ ~~applicability~~
18 APPLICABILITY. ~~{1}~~ ~~{Sections 4 and 7 concerning water~~
19 ~~quality criteria}~~ ~~apply retroactively, within the meaning of~~
20 ~~1-2-109, to all applications pending before the department~~
21 ~~of natural resources and conservation for which a permit or~~
22 ~~change authorization has not been issued on {the effective~~
23 ~~date of this act}.~~

24 ~~{2}~~ [Sections 6 and 7], concerning certification by a
25 ~~professional engineer}~~ PERSON WITH EXPERIENCE IN THE DESIGN,

1 CONSTRUCTION, OR OPERATION OF APPROPRIATION WORKS, apply
2 ~~retroactively, within the meaning of 1-2-109,~~ to all permits
3 ~~for which a notice of completion has not been filed on~~ and
4 to change approvals issued after {the effective date of this
5 act}.

6 NEW SECTION. Section 14. Effective date. {This act} is
7 effective ~~on passage and approval~~ JULY 1, 1991.

-End-

1 SENATE BILL NO. 266

2 INTRODUCED BY GROSFIELD, BENGTON, SWYSGOOD,

3 GRADY, THOFT

4 BY REQUEST OF THE DEPARTMENT OF
5 NATURAL RESOURCES AND CONSERVATION

6

7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
8 WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING
9 PERMIT---EXCEPTIONS OBJECTIONS; MAKING PERMISSIVE AND
10 AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF
11 WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE
12 VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS;
13 ~~INCLUDING WATER QUALITY CRITERIA IN THE ISSUANCE OF A PERMIT~~
14 ~~OR CHANGE AUTHORIZATION~~; AMENDING SECTIONS 85-2-102,
15 85-2-113, 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-402,
16 85-2-424, AND 85-2-501, MCA; REPEALING SECTION 85-2-317,
17 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
18 RETROACTIVE AN APPLICABILITY DATE."

19

20

STATEMENT OF INTENT

21 A statement of intent is required for this bill in order
22 to provide a guideline on the payment of fees. Rulemaking
23 authority is granted to the board of natural resources and
24 conservation to establish a fee schedule for payment of fees
25 to be paid to the department for its costs incurred in

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.

THIRD READING

HOUSE STANDING COMMITTEE REPORT

March 20, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 266 (third reading copy -- blue) be concurred in as amended .

Signed: Bob Raney
Bob Raney, Chairman

Carried by: Rep. Grady

And, that such amendments read:

1. Title, lines 16 and 17.
Following: "MCA;" on line 16
Strike: "REPEALING SECTION 85-2-317, MCA;"
2. Page 29, lines 11 and 12.
Strike: section 11 in its entirety
Renumber: subsequent sections

SB 266

HOUSE

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 266
Representative Grady

April 6, 1991
Page 2 of 2

April 6, 1991 9:27 am
Page 1 of 2

Mr. Chairman: I move to amend Senate Bill 266 (third reading copy -- blue).

Signed: Rep. Ed Grady
Representative Grady

3. Page 29, line 16.
Following: "section"
Strike: "10"
Insert: "11"

4. Page 29, line 24.
Following: "and"
Strike: "7"
Insert: "8"

And, that such amendments to Senate Bill 266 read as follows:

1. Title, line 15.
Following: "85-2-315"
Insert: "85-2-317"

Insert: " Section 7. Section 85-2-317, MCA, is amended to read:
"85-2-317. Limitation on appropriation of ground water. (1)
After May 7, 1979, no application for a permit to appropriate
ground water in excess of 3,000 acre feet per year may be
granted, except pursuant to an act of the legislature permitting
the specific appropriation [the effective date of this act], the
department may not approve a permit to appropriate ground water
in excess of 3,000 acre feet per year unless:

(a) the applicant proves and the department finds that the
applicable criteria in 85-2-311 are met; and

(b) the department then petitions the legislature and the
legislature affirms the decision of the department after one or
more public hearings.

(2) Subsection (1) applies to any permit to appropriate
ground water for which application has been made but which has
not been granted as of May 7, 1979.

(3) This section does not apply to appropriations by
municipalities for municipal use or to appropriations for public
water supplies as defined in 75-6-102 or to appropriations for
the irrigation of cropland owned and operated by the applicant.

(4) Any person, association, corporation, or other entity
that applies for a permit to appropriate ground water, singularly
or collectively, for the purpose of circumventing this section is
punishable by a fine not exceeding \$5,000."

2. Page 29, line 14.
Following: "Section"
Strike: "10"
Insert: "11"

ADOPT

REJECT

SB 266-1
730927CW.Hpd

HOUSE
SB 266

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 266
Representative O'Keefe

April 6, 1991 1:01 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 266 (third reading copy -- blue).

Signed: *Mark O'Keefe*
Representative O'Keefe

And, that such amendments to Senate Bill 266 read as follows:

1. Page 28, line 16.

Following: "fresh"

Insert: "fresh"

Strike: "that is"

2. Page 28, line 19.

Strike: "ground surface"

Insert: "land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water"

ADOPT

REJECT

SB 266
HOUSE

731300CW.HSP

1 SENATE BILL NO. 266

2 INTRODUCED BY GROSFIELD, BENGTON, SWYSGOOD,

3 GRADY, THOFT

4 BY REQUEST OF THE DEPARTMENT OF
5 NATURAL RESOURCES AND CONSERVATION
67 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
8 WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING
9 PERMIT---EXCEPTIONS OBJECTIONS; MAKING PERMISSIVE AND
10 AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF
11 WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE
12 VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS;
13 ~~INCLUDING WATER QUALITY CRITERIA IN THE ISSUANCE OF A PERMIT~~
14 ~~OR---CHANGE---AUTHORIZATION~~; AMENDING SECTIONS 85-2-102,
15 85-2-113, 85-2-236, 85-2-308, 85-2-312, 85-2-315, 85-2-317,
16 85-2-402, AND 85-2-424, ~~AND 85-2-501~~, MCA; ~~REPEALING SECTION~~
17 ~~85-2-317-MCA~~; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND
18 A ~~RETROACTIVE~~ AN APPLICABILITY DATE."
19

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill in order
22 to provide a guideline on the payment of fees. Rulemaking
23 authority is granted to the board of natural resources and
24 conservation to establish a fee schedule for payment of fees
25 to be paid to the department for its costs incurred in1 providing water rights record information to a clerk and
2 recorder. It is the intent of the legislature that the rules
3 establish a reasonable fee schedule that approximates the
4 department's actual and necessary costs. A published fee
5 schedule will enable a clerk and recorder to know the cost
6 prior to seeking the information from the department.
7

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

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

10 "85-2-102. (Temporary) Definitions. Unless the context
11 requires otherwise, in this chapter the following
12 definitions apply:

13 (1) "Appropriate" means to:

14 (a) divert, impound, or withdraw (including by stock
15 for stock water) a quantity of water;16 (b) in the case of a public agency, to reserve water in
17 accordance with 85-2-316; or18 (c) in the case of the department of fish, wildlife,
19 and parks, to lease water in accordance with 85-2-436.

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;

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; and

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

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

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

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

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

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

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

22 (9) "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 (10) "Ground water" means any water that is beneath the

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

4 (11) "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 (12) "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 (13) "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 (14) "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 (15) "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 (16) "Water division" means a drainage basin as defined
25 in 3-7-102.

1 (17) "Water judge" means a judge as provided for in
2 Title 3, chapter 7.

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

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

10 85-2-102. (Effective July 1, 1993) Definitions. Unless
11 the context requires otherwise, in this chapter the
12 following definitions apply:

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

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; and

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.

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

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

6 (5) "Change in appropriation right" means a change in
7 the place of diversion, the place of use, the purpose of
8 use, or the place of storage.

9 (6) "Declaration" means the declaration of an existing
10 right filed with the department under section 8, Chapter
11 452, Laws of 1973.

12 (7) "Department" means the department of natural
13 resources and conservation provided for in Title 2, chapter
14 15, part 33.

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

18 (9) "Ground water" means any water that is beneath the
19 land--surface--or--beneath--the--bed--of--a--stream,--lake,
20 reservoir,--or--other--body--of--surface--water,--and--which--is--not
21 a--part--of--that--surface--water ground surface.

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

25 (11) "Person" means an individual, association,

1 partnership, corporation, state agency, political
2 subdivision, the United States or any agency thereof, or any
3 other entity.

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

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

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

17 (15) "Water division" means a drainage basin as defined
18 in 3-7-102.

19 (16) "Water judge" means a judge as provided for in
20 Title 3, chapter 7.

21 (17) "Water master" means a master as provided for in
22 Title 3, chapter 7.

23 (18) "Well" means any artificial opening or excavation
24 in the ground, however made, by which ground water is sought
25 or can be obtained or through which it flows under natural

1 pressures or is artificially withdrawn."

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

3 **"85-2-113. Board powers and duties.** (1) The board may
4 prescribe fees or service charges for any public service
5 rendered by the department under this chapter, including
6 fees for the filing of applications or for the issuance of
7 permits and certificates, for rulemaking hearings under
8 85-2-319, for administrative hearings conducted under this
9 chapter, for investigations concerning permit revocation,
10 for field verification of issued and completed permits, and
11 all change approvals. There shall be no fees for any action
12 taken by the department at the request of the water judge or
13 for the issuance of certificates of existing rights.

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

17 (a) govern the issuance and terms of interim permits
18 authorizing an applicant for a regular permit under this
19 chapter to begin appropriating water immediately, pending
20 final approval or denial by the department of the
21 application for a regular permit;

22 (b) require the owner or operator of appropriation
23 facilities to install and maintain suitable controlling and
24 measuring devices, except that the board may not require a
25 meter on a water well outside of a controlled ground water

1 area or proposed controlled ground water area unless the
2 maximum appropriation of the well is in excess of 100
3 gallons-a-minute the limitation contained in 85-2-306(1);

4 (c) require the owner or operator of appropriation
5 facilities to report to the department the readings of
6 measuring devices at reasonable intervals and to file
7 reports on appropriations; and

8 (d) regulate the construction, use, and sealing of
9 wells to prevent the waste, contamination, or pollution of
10 ground water.

11 (3) The board shall adopt rules providing for and
12 governing temporary emergency appropriations, without prior
13 application for a permit, necessary to protect lives or
14 property."

15 **Section 3.** Section 85-2-236, MCA, is amended to read:

16 "85-2-236. Certificate of water right. ~~(1)~~ When a final
17 decree is entered, the water judge shall send a copy to the
18 department. Except as provided in 85-2-306, the department
19 shall on the basis of the final decree issue a certificate
20 of water right to each person decreed an existing right. The
21 original of the certificate shall be sent to the person to
22 whom the right is decreed. The department shall keep a copy
23 of the certificate in its office in Helena.

24 ~~(2) The department shall provide to the county clerk~~
25 ~~and recorder of the county wherein the point of diversion or~~

1 ~~place of use is located quarterly reports and an annual~~
2 ~~summary report of all certificates of water right issued by~~
3 ~~the department within the county."~~

4 **Section 4.** Section 85-2-308, MCA, is amended to read:

5 "85-2-308. Objections. (1) (a) An objection to an
6 application for a permit must be filed by the date specified
7 by the department under 85-2-307(2).

8 ~~(2)(b)~~ The objection to an application for a permit
9 must state the name and address of the objector and facts
10 tending to show that there are no unappropriated waters in
11 the proposed source, that the proposed means of
12 appropriation are inadequate, that the property, water
13 rights, or interests of the objector would be adversely
14 affected by the proposed appropriation, that the proposed
15 use of water is not a beneficial use, or that the proposed
16 use will interfere unreasonably with other planned uses or
17 developments for which a permit has been issued or for which
18 water has been reserved one or more of the criteria in
19 85-2-311 are not met.

20 (2) For an application for a change in appropriation
21 rights, the objection must state the name and address of the
22 objector and facts tending to show that one or more of the
23 criteria in 85-2-402 are not met.

24 (3) A PERSON HAS STANDING TO FILE AN OBJECTION UNDER
25 THIS SECTION IF THE PROPERTY, WATER RIGHTS, OR INTERESTS OF

1 THE OBJECTOR WOULD BE ADVERSELY AFFECTED BY THE PROPOSED
2 APPROPRIATION.

3 (4) FOR AN APPLICATION FOR A RESERVATION OF WATER, THE
4 OBJECTION MUST STATE THE NAME AND ADDRESS OF THE OBJECTOR
5 AND FACTS TENDING TO SHOW THAT ONE OR MORE OF THE CRITERIA
6 IN 85-2-316 ARE NOT MET."

7 **Section 5.** Section 85-2-312, MCA, is amended to read:

8 "85-2-312. **Terms of permit.** (1) The department may
9 issue a permit for less than the amount of water requested,
10 but in no case may it issue a permit for more water than is
11 requested or than can be beneficially used without waste for
12 the purpose stated in the application. The department may
13 require modification of plans and specifications for the
14 appropriation or related diversion or construction. The
15 department may issue a permit subject to terms, conditions,
16 restrictions, and limitations it considers necessary to
17 satisfy the criteria listed in 85-2-311, and it may issue
18 temporary or seasonal permits. A permit shall be issued
19 subject to existing rights and any final determination of
20 those rights made under this chapter.

21 (2) The department shall specify in the permit or in
22 any authorized extension of time provided in subsection (3),
23 the time limits for commencement of the appropriation works,
24 completion of construction, and actual application of the
25 water to the proposed beneficial use. In fixing those time

1 limits, the department shall consider the cost and magnitude
2 of the project, the engineering and physical features to be
3 encountered, and, on projects designed for gradual
4 development and gradually increased use of water, the time
5 reasonably necessary for that gradual development and
6 increased use. The department shall issue the permit or
7 authorized extension of time subject to the terms,
8 conditions, restrictions, and limitations it considers
9 necessary to ensure that the work on the appropriation is
10 commenced, conducted, and completed and that the water is
11 actually applied in a timely manner to the beneficial use
12 specified in the permit.

13 (3) The department may, upon a showing of good cause,
14 extend time limits specified in the permit for commencement
15 of the appropriation works, completion of construction, and
16 actual application of the water to the proposed beneficial
17 use. All requests for extensions of time must be by
18 affidavit and must be filed with the department prior to the
19 expiration of the time limit specified in the permit or any
20 previously authorized extension of time. The department may
21 issue an order temporarily extending the time limit
22 specified in the permit for 120 days or until the department
23 has completed its action under this section, whichever is
24 greater. Upon receipt of a proper request for extension of
25 time, the department shall prepare a notice containing the

1 facts pertinent to the request for extension of time and
 2 shall publish the notice in a newspaper of general
 3 circulation in the area of the source. The department may
 4 serve notice by first-class mail upon any public agency or
 5 other person the department determines may be interested in
 6 or affected by the request for extension of time. The
 7 department shall hold a hearing on the request for extension
 8 of time on its own motion or if requested by an interested
 9 party. The department may grant the extension of time in the
 10 absence of a hearing if no requests for a hearing are
 11 received and the extension of time is granted as requested,
 12 or the department may grant the extension of time in a
 13 modified form by following the process established in
 14 85-2-310(2). Subsequent extensions of time may be made in
 15 the same manner.

16 (4) The original of the permit shall be sent to the
 17 permittee, and a copy shall be kept in the office of the
 18 department in Helena.

19 ~~(5)--The--department--shall--provide--to--the--county--clerk
 20 and--recorder--of--the--county--wherein--the--point--of--diversion--or
 21 place--of--use--is--located--quarterly--reports--and--an--annual
 22 summary--report--of--all--water--right--permits,--certificates,--and
 23 change--approvals--issued--by--the--department--within--the
 24 county--"~~

25 **Section 6.** Section 85-2-315, MCA, is amended to read:

1 **"85-2-315. Certificate of water right.** (1) Upon actual
 2 application of water to the proposed beneficial use within
 3 the time allowed, the permittee shall notify the department
 4 that the appropriation has been properly completed. The
 5 notification must contain a certified statement by a person
 6 with experience in the design, construction, or operation of
 7 appropriation works that the appropriation has been properly
 8 completed in substantial accordance with the terms and
 9 conditions of the permit. The department may then inspect
 10 the appropriation, and if it determines that the
 11 appropriation has been completed in substantial accordance
 12 with the permit, it shall issue the permittee a certificate
 13 of water right. The original of the certificate shall be
 14 sent to the permittee, and a duplicate shall be kept in the
 15 office of the department in Helena.

16 ~~(2)--The--department--shall--provide--to--the--county--clerk
 17 and--recorder--of--the--county--wherein--the--point--of--diversion--or
 18 place--of--use--is--located--quarterly--reports--and--an--annual
 19 summary--report--of--all--certificates--of--water--right--issued--by
 20 the--department--within--the--county--"~~

21 **SECTION 7. SECTION 85-2-317, MCA, IS AMENDED TO READ:**

22 **"85-2-317. Limitation on appropriation of ground water.**
 23 (1) After May 7, 1979, no application for a permit to
 24 appropriate ground water in excess of 3,000 acre-feet per
 25 year may be granted, except pursuant to an act of the

1 legislature---permitting--the--specific--appropriation [the
 2 effective date of this act], the department may not approve
 3 a permit to appropriate ground water in excess of 3,000 acre
 4 feet per year unless:

5 (a) the applicant proves and the department finds that
 6 the applicable criteria in 85-2-311 are met; and

7 (b) the department then petitions the legislature and
 8 the legislature affirms the decision of the department after
 9 one or more public hearings.

10 (2) Subsection (1) applies to any permit to appropriate
 11 ground water for which application has been made but which
 12 has not been granted as of May 7, 1979.

13 (3) This section does not apply to appropriations by
 14 municipalities for municipal use or to appropriations for
 15 public water supplies as defined in 75-6-102 or to
 16 appropriations for the irrigation of cropland owned and
 17 operated by the applicant.

18 (4) Any person, association, corporation, or other
 19 entity that applies for a permit to appropriate ground
 20 water, singularly or collectively, for the purpose of
 21 circumventing this section is punishable by a fine not
 22 exceeding \$5,000."

23 **Section 8.** Section 85-2-402, MCA, is amended to read:

24 "85-2-402. (Temporary) Changes in appropriation rights.

25 (1) An appropriator may not make a change in an

1 appropriation right except as permitted under this section
 2 and with the approval of the department or, if applicable,
 3 of the legislature.

4 (2) Except as provided in subsections (3) through (5),
 5 the department shall approve a change in appropriation right
 6 if the appropriator proves by substantial credible evidence
 7 that the following criteria are met:

8 (a) The proposed use will not adversely affect the
 9 water rights of other persons or other planned uses or
 10 developments for which a permit has been issued or for which
 11 water has been reserved.

12 (b) Except for a lease authorization pursuant to
 13 85-2-436 that does not require appropriation works, the
 14 proposed means of diversion, construction, and operation of
 15 the appropriation works are adequate.

16 (c) The proposed use of water is a beneficial use.

17 (d) The applicant has a possessory interest, or the
 18 written consent of the person with the possessory interest,
 19 in the property where the water is to be put to beneficial
 20 use.

21 (3) The department may not approve a change in purpose
 22 of use or place of use of an appropriation of 4,000 or more
 23 acre-feet of water a year and 5.5 or more cubic feet per
 24 second of water unless the appropriator proves by
 25 substantial credible evidence that:

1 (a) the criteria in subsection (2) are met;

2 (b) the proposed change is a reasonable use. A finding

3 of reasonable use must be based on a consideration of:

4 (i) the existing demands on the state water supply, as

5 well as projected demands for water for future beneficial

6 purposes, including municipal water supplies, irrigation

7 systems, and minimum streamflows for the protection of

8 existing water rights and aquatic life;

9 (ii) the benefits to the applicant and the state;

10 (iii) the effects on the quantity and quality of water

11 for existing uses in the source of supply;

12 (iv) the availability and feasibility of using

13 low-quality water for the purpose for which application has

14 been made;

15 (v) the effects on private property rights by any

16 creation of or contribution to saline seep; and

17 (vi) the probable significant adverse environmental

18 impacts of the proposed use of water as determined by the

19 department pursuant to Title 75, chapter 1, or Title 75,

20 chapter 20.

21 (4) The department may not approve a change in purpose

22 of use or place of use for a diversion that results in 4,000

23 or more acre-feet of water a year and 5.5 or more cubic feet

24 per second of water being consumed unless:

25 (a) the applicant proves by clear and convincing

1 evidence and the department finds that the criteria in

2 subsections (2) and (3) are met; and

3 (b) the department then petitions the legislature and

4 the legislature affirms the decision of the department after

5 one or more public hearings.

6 (5) (a) The state of Montana has long recognized the

7 importance of conserving its public waters and the necessity

8 to maintain adequate water supplies for the state's water

9 requirements, including requirements for reserved water

10 rights held by the United States for federal reserved lands

11 and in trust for the various Indian tribes within the

12 state's boundaries. Although the state of Montana also

13 recognizes that, under appropriate conditions, the

14 out-of-state transportation and use of its public waters are

15 not in conflict with the public welfare of its citizens or

16 the conservation of its waters, the following criteria must

17 be met before out-of-state use may occur:

18 (b) The department and, if applicable, the legislature

19 may not approve a change in appropriation right for the

20 withdrawal and transportation of appropriated water for use

21 outside the state unless the appropriator proves by clear

22 and convincing evidence and, if applicable, the legislature

23 approves after one or more public hearings that:

24 (i) depending on the volume of water diverted or

25 consumed, the applicable criteria and procedures of

1 subsection (2) or (3) are met;

2 (ii) the proposed out-of-state use of water is not
3 contrary to water conservation in Montana; and

4 (iii) the proposed out-of-state use of water is not
5 otherwise detrimental to the public welfare of the citizens
6 of Montana.

7 (c) In determining whether the appropriator has proved
8 by clear and convincing evidence that the requirements of
9 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
10 department and, if applicable, the legislature shall
11 consider the following factors:

12 (i) whether there are present or projected water
13 shortages within the state of Montana;

14 (ii) whether the water that is the subject of the
15 proposed change in appropriation might feasibly be
16 transported to alleviate water shortages within the state of
17 Montana;

18 (iii) the supply and sources of water available to the
19 applicant in the state where the applicant intends to use
20 the water; and

21 (iv) the demands placed on the applicant's supply in the
22 state where the applicant intends to use the water.

23 (d) When applying for a change in appropriation right
24 to withdraw and transport water for use outside the state,
25 the applicant shall submit to and comply with the laws of

1 the state of Montana governing the appropriation and use of
2 water.

3 (6) For any application for a change in appropriation
4 right involving 4,000 or more acre-feet of water a year and
5 5.5 or more cubic feet per second of water, the department
6 shall give notice of the proposed change in accordance with
7 85-2-307 and shall hold one or more hearings in accordance
8 with 85-2-309 prior to its approval or denial of the
9 proposed change. The department shall provide notice and may
10 hold one or more hearings upon any other proposed change if
11 it determines that a change might adversely affect the
12 rights of other persons.

13 (7) The department or the legislature, if applicable,
14 may approve a change subject to terms, conditions,
15 restrictions, and limitations as it considers necessary to
16 satisfy the criteria of this section, including limitations
17 on the time for completion of the change. The department may
18 extend time limits specified in the change approval under
19 the applicable criteria and procedures of 85-2-312(3).

20 (8) Upon actual application of water to the proposed
21 beneficial use within the time allowed, the appropriator
22 shall notify the department that the appropriation has been
23 properly completed. The notification must contain a
24 certified statement by a person with experience in the
25 design, construction, or operation of appropriation works

1 that the appropriation has been properly completed in
 2 substantial accordance with the terms and conditions of the
 3 change approval.

4 †8†(9) If a change is not completed as approved by the
 5 department or legislature or if the terms, conditions,
 6 restrictions, and limitations of the change approval are not
 7 complied with, the department may, after notice and
 8 opportunity for hearing, require the appropriator to show
 9 cause why the change approval should not be modified or
 10 revoked. If the appropriator fails to show sufficient cause,
 11 the department may modify or revoke the change approval.

12 †9†(10) The original of a change approval issued by the
 13 department must be sent to the applicant, and a duplicate
 14 must be kept in the office of the department in Helena.

15 †10†(11) A person holding an issued permit or change
 16 approval that has not been perfected may change the place of
 17 diversion, place of use, purpose of use, or place of storage
 18 by filing an application for change pursuant to this
 19 section.

20 †11†(12) A change in appropriation right contrary to the
 21 provisions of this section is invalid. An officer, agent,
 22 agency, or employee of the state may not knowingly permit,
 23 aid, or assist in any manner an unauthorized change in
 24 appropriation right. A person or corporation may not,
 25 directly or indirectly, personally or through an agent,

1 officer, or employee, attempt to change an appropriation
 2 right except in accordance with this section. (Terminates
 3 June 30, 1993--sec. 11, Ch. 658, L. 1989.)

4 85-2-402. (Effective July 1, 1993) Changes in
 5 appropriation rights. (1) An appropriator may not make a
 6 change in an appropriation right except as permitted under
 7 this section and with the approval of the department or, if
 8 applicable, of the legislature.

9 (2) Except as provided in subsections (3) through (5),
 10 the department shall approve a change in appropriation right
 11 if the appropriator proves by substantial credible evidence
 12 that the following criteria are met:

13 (a) The proposed use will not adversely affect the
 14 water rights of other persons or other planned uses or
 15 developments for which a permit has been issued or for which
 16 water has been reserved.

17 (b) The proposed means of diversion, construction, and
 18 operation of the appropriation works are adequate.

19 (c) The proposed use of water is a beneficial use.

20 (d) The applicant has a possessory interest, or the
 21 written consent of the person with the possessory interest,
 22 in the property where the water is to be put to beneficial
 23 use.

24 (3) The department may not approve a change in purpose
 25 of use or place of use of an appropriation of 4,000 or more

1 acre-feet of water a year and 5.5 or more cubic feet per
2 second of water unless the appropriator proves by
3 substantial credible evidence that:

- 4 (a) the criteria in subsection (2) are met;
- 5 (b) the proposed change is a reasonable use. A finding
6 of reasonable use must be based on a consideration of:
- 7 (i) the existing demands on the state water supply, as
8 well as projected demands for water for future beneficial
9 purposes, including municipal water supplies, irrigation
10 systems, and minimum streamflows for the protection of
11 existing water rights and aquatic life;
- 12 (ii) the benefits to the applicant and the state;
- 13 (iii) the effects on the quantity and quality of water
14 for existing uses in the source of supply;
- 15 (iv) the availability and feasibility of using
16 low-quality water for the purpose for which application has
17 been made;
- 18 (v) the effects on private property rights by any
19 creation of or contribution to saline seep; and
- 20 (vi) the probable significant adverse environmental
21 impacts of the proposed use of water as determined by the
22 department pursuant to Title 75, chapter 1, or Title 75,
23 chapter 20.
- 24 (4) The department may not approve a change in purpose
25 of use or place of use for a diversion that results in 4,000

1 or more acre-feet of water a year and 5.5 or more cubic feet
2 per second of water being consumed unless:

- 3 (a) the applicant proves by clear and convincing
4 evidence and the department finds that the criteria in
5 subsections (2) and (3) are met; and
- 6 (b) the department then petitions the legislature and
7 the legislature affirms the decision of the department after
8 one or more public hearings.
- 9 (5) (a) The state of Montana has long recognized the
10 importance of conserving its public waters and the necessity
11 to maintain adequate water supplies for the state's water
12 requirements, including requirements for reserved water
13 rights held by the United States for federal reserved lands
14 and in trust for the various Indian tribes within the
15 state's boundaries. Although the state of Montana also
16 recognizes that, under appropriate conditions, the
17 out-of-state transportation and use of its public waters are
18 not in conflict with the public welfare of its citizens or
19 the conservation of its waters, the following criteria must
20 be met before out-of-state use may occur:
- 21 (b) The department and, if applicable, the legislature
22 may not approve a change in appropriation right for the
23 withdrawal and transportation of appropriated water for use
24 outside the state unless the appropriator proves by clear
25 and convincing evidence and, if applicable, the legislature

1 approves after one or more public hearings that:

2 (i) depending on the volume of water diverted or
3 consumed, the applicable criteria and procedures of
4 subsection (2) or (3) are met;

5 (ii) the proposed out-of-state use of water is not
6 contrary to water conservation in Montana; and

7 (iii) the proposed out-of-state use of water is not
8 otherwise detrimental to the public welfare of the citizens
9 of Montana.

10 (c) In determining whether the appropriator has proved
11 by clear and convincing evidence that the requirements of
12 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
13 department and, if applicable, the legislature shall
14 consider the following factors:

15 (i) whether there are present or projected water
16 shortages within the state of Montana;

17 (ii) whether the water that is the subject of the
18 proposed change in appropriation might feasibly be
19 transported to alleviate water shortages within the state of
20 Montana;

21 (iii) the supply and sources of water available to the
22 applicant in the state where the applicant intends to use
23 the water; and

24 (iv) the demands placed on the applicant's supply in the
25 state where the applicant intends to use the water.

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

6 (6) For any application for a change in appropriation
7 right involving 4,000 or more acre-feet of water a year and
8 5.5 or more cubic feet per second of water, the department
9 shall give notice of the proposed change in accordance with
10 85-2-307 and shall hold one or more hearings in accordance
11 with 85-2-309 prior to its approval or denial of the
12 proposed change. The department shall provide notice and may
13 hold one or more hearings upon any other proposed change if
14 it determines that such a change might adversely affect the
15 rights of other persons.

16 (7) The department or the legislature, if applicable,
17 may approve a change subject to such terms, conditions,
18 restrictions, and limitations as it considers necessary to
19 satisfy the criteria of this section, including limitations
20 on the time for completion of the change. The department may
21 extend time limits specified in the change approval under
22 the applicable criteria and procedures of 85-2-312(3).

23 (8) Upon actual application of water to the proposed
24 beneficial use within the time allowed, the appropriator
25 shall notify the department that the appropriation has been

1 properly completed. The notification must contain a
 2 certified statement by a person with experience in the
 3 design, construction, or operation of appropriation works
 4 that the appropriation has been properly completed in
 5 substantial accordance with the terms and conditions of the
 6 change approval.

7 ~~†8†~~(9) If a change is not completed as approved by the
 8 department or legislature or if the terms, conditions,
 9 restrictions, and limitations of the change approval are not
 10 complied with, the department may, after notice and
 11 opportunity for hearing, require the appropriator to show
 12 cause why the change approval should not be modified or
 13 revoked. If the appropriator fails to show sufficient cause,
 14 the department may modify or revoke the change approval.

15 ~~†9†~~(10) The original of a change approval issued by the
 16 department must be sent to the applicant, and a duplicate
 17 must be kept in the office of the department in Helena.

18 ~~†10†~~(11) A person holding an issued permit or change
 19 approval that has not been perfected may change the place of
 20 diversion, place of use, purpose of use, or place of storage
 21 by filing an application for change pursuant to this
 22 section.

23 ~~†11†~~(12) A change in appropriation right contrary to the
 24 provisions of this section is invalid. No officer, agent,
 25 agency, or employee of the state may knowingly permit, aid,

1 or assist in any manner such unauthorized change in
 2 appropriation right. No person or corporation may, directly
 3 or indirectly, personally or through an agent, officer, or
 4 employee, attempt to change an appropriation right except in
 5 accordance with this section."

6 **Section 9.** Section 85-2-424, MCA, is amended to read:

7 "85-2-424. Filing. (1) The transferor of a water right
 8 or his agent or representative shall file with the
 9 department a water right transfer certificate within 60 days
 10 of recording a deed or other instrument evidencing a
 11 transfer of real property.

12 (2) Except in the case of a transfer of real property
 13 served by a public service water supply, when any person
 14 presents for recording a deed or other instrument evidencing
 15 a transfer of real property, the realty transfer certificate
 16 shall note whether or not the transfer includes a transfer
 17 of water rights. If the realty transfer certificate notes a
 18 transfer of water rights, the clerk and recorder shall
 19 provide such person the form prescribed under 85-2-423 for
 20 the transfer of water rights. The recording of the deed or
 21 other instrument shall not be delayed because of the
 22 transfer of the water rights.

23 (3) The county clerk and recorder shall send to the
 24 department a list of all transfers that involve transfers of
 25 water rights. The list must be sent every month and must

1 include all transfers for the month immediately preceding
 2 the date of submittal to the department. The list must
 3 include the names and addresses of all parties to the
 4 transfer and a legal description of the land subject to the
 5 transfer.

6 {4}--The--department--shall--send--a--reference--copy--of--the
 7 water--right--transfer--certificate--to--the--office--of--the--chief
 8 water--judge--and--to--the--county--clerk--and--recorder--in--the
 9 county--in--which--the--transfer--occurred: "

10 Section-9---Section-85-2-501-MEA-is-amended-to-read:

11 "85-2-501---Definitions---Unless--the--context--requires
 12 otherwise,--in--this--part--the--following--definitions--apply:

13 {1}--"Aquifer"--means--any--underground--geological
 14 structure--or--formation--which--is--capable--of--yielding--water--or
 15 is--capable--of--recharge:

16 {2}--"Bureau"--means--the--Montana--state--bureau--of--mines
 17 and--geology--provided--for--in--20-25-211:

18 {3}--"Ground-water"--means--any--fresh FRESH-water-that-is
 19 beneath--the--land--surface--or--beneath--the--bed--of--a--stream,
 20 lake,--reservoir,--or--other--body--of--surface--water--and--which--is
 21 not--a--part--of--that--surface--water ground-surface LAND-SURFACE
 22 OR--BENEATH--THE--BED--OF--A--STREAM,--LAKE,--RESERVOIR,--OR--OTHER
 23 BODY--OF--SURFACE--WATER--AND--WHICH--IS--NOT--A--PART--OF--THAT
 24 SURFACE-WATER.

25 {4}--"Ground-water-area"--means--an--area--which,--as--nearly

1 as--known--facts--permit,--may--be--designated--so--as--to--enclose--a
 2 single--and--distinct--body--of--ground--water,--which--shall--be
 3 described--horizontally--by--surface--description--in--all--cases
 4 and--which--may--be--limited--vertically--by--describing--known
 5 geological--formations--should--conditions--dictate--this--to--be
 6 desirable."

7 NEW SECTION. Section 10. Water right records for
 8 filing with local clerk and recorder. Upon payment of a fee
 9 established pursuant to 85-2-113, a county clerk and
 10 recorder of the county where the point of diversion or place
 11 of use is located or in which a transfer of water right
 12 occurred may require the department to provide a report of
 13 all water permits, certificates, change approvals, or water
 14 right transfer certificates issued or processed by the
 15 department pursuant to Title 85, chapter 2, parts 3 and 4.

16 NEW SECTION. Section 11. Repealer. Section 85-2-317
 17 MEA, is repealed.

18 NEW SECTION. Section 11. Codification instruction.
 19 [Section 10 11 10] is intended to be codified as an integral
 20 part of Title 85, chapter 2, and the provisions of Title 85,
 21 chapter 2, apply to [section 10 11 10].

22 NEW SECTION. Section 12. Retrospective applicability
 23 APPLICABILITY. {1}--{Sections--4--and--7,--concerning--water
 24 quality--criteria}--apply--retroactively,--within--the--meaning--of
 25 1-2-109,--to--all--applications--pending--before--the--department

1 ~~of natural resources and conservation for which a permit or~~
2 ~~change authorization has not been issued on the effective~~
3 ~~date of this act};~~

4 †2† [Sections 6 and 7 § 7], concerning certification by
5 a ~~professional engineer~~; PERSON WITH EXPERIENCE IN THE
6 DESIGN, CONSTRUCTION, OR OPERATION OF APPROPRIATION WORKS,
7 ~~apply retroactively, within the meaning of 1-2-109,~~ to all
8 permits ~~for which a notice of completion has not been filed~~
9 ~~on and to change approvals issued after [the effective date~~
10 ~~of this act].~~

11 NEW SECTION. Section 13. Effective date. [This act] is
12 ~~effective on passage and approval~~ JULY 1, 1991.

-End-

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 266, met and considered:

1. House Committee of the Whole Amendment to the third reading copy, dated April 6, 1991, 1:01 p.m., sponsored by O'Keefe.

We recommend that Senate Bill No. 266, reference copy, be amended as indicated in the INSTRUCTIONS.

INSTRUCTIONS:

1. Title, line 15.
Following: "85-2-236,"
Insert: "85-2-306"

2. Title, line 16.
Following: "85-2-402"
Strike: "AND"
Following: "~~85-2-501~~"
Insert: "AND 85-2-501"

3. Page 10.
Following: line 3
Insert: "Section 4. Section 85-2-306, MCA, is amended to read:
"85-2-306. Exceptions to permit requirements. (1)
Groundwater may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the groundwater development works or, if another person has rights in the groundwater development works, the written consent of the person with those property rights. Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of ~~less than 100 35~~ gallons per minute or less not to exceed 10 acre feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a

form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiled a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of ~~less than 100 35~~ gallons per minute or less not to exceed 10 acre feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if

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the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

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

Renumber subsequent sections

4. Page 30.

Following: line 6

Insert: "Section 10. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

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

ground surface.

(4) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of groundwater, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable."

Renumber: subsequent sections


and we recommend that Senate Bill No. 266 (reference copy - salmon) be amended as follows:

And that this Free Conference Committee report be adopted.

For the Senate:


Chair, Sen. Koehnke

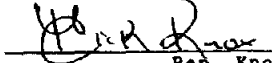

Sen. Stinatz


Sen. Grosfield

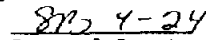
For the House:


Chair, Rep. O'Keefe


Rep. Barnhart


Rep. Knox


4-24-91
Ad. Coord.


872 4-24
Sec. of Senate

1 SENATE BILL NO. 266

2 INTRODUCED BY GROSFIELD, BENGTSON, SWYSGOOD,

3 GRADY, THOFT

4 BY REQUEST OF THE DEPARTMENT OF
5 NATURAL RESOURCES AND CONSERVATION
67 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
8 WATER USE LAWS; DEFINING THE TERM "GROUND WATER"; CLARIFYING
9 PERMIT---EXCEPTIONS OBJECTIONS; MAKING PERMISSIVE AND
10 AUTHORIZING FEES FOR THE SUBMISSION OF DEPARTMENT RECORDS OF
11 WATER RIGHTS TO A COUNTY CLERK AND RECORDER; REQUIRING THE
12 VERIFICATION OF COMPLETIONS OF PERMITS AND CHANGE APPROVALS;
13 ~~INCLUDING WATER QUALITY CRITERIA IN THE ISSUANCE OF A PERMIT~~
14 ~~OR---CHANGE---AUTHORIZATION~~; AMENDING SECTIONS 85-2-102,
15 85-2-113, 85-2-236, 85-2-306, 85-2-308, 85-2-312, 85-2-315,
16 85-2-317, 85-2-402, AND 85-2-424, ~~AND--85-2-501~~ AND
17 85-2-501, MCA; ~~REPEALING--SECTION---85-2-317---~~MCA; AND
18 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A-RETROACTIVE AN
19 APPLICABILITY DATE."
20

21 STATEMENT OF INTENT

22 A statement of intent is required for this bill in order
23 to provide a guideline on the payment of fees. Rulemaking
24 authority is granted to the board of natural resources and
25 conservation to establish a fee schedule for payment of fees1 to be paid to the department for its costs incurred in
2 providing water rights record information to a clerk and
3 recorder. It is the intent of the legislature that the rules
4 establish a reasonable fee schedule that approximates the
5 department's actual and necessary costs. A published fee
6 schedule will enable a clerk and recorder to know the cost
7 prior to seeking the information from the department.
8

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

10 **Section 1.** Section 85-2-102, MCA, is amended to read:11 **"85-2-102. (Temporary) Definitions.** Unless the context
12 requires otherwise, in this chapter the following
13 definitions apply:

14 (1) "Appropriate" means to:

15 (a) divert, impound, or withdraw (including by stock
16 for stock water) a quantity of water;17 (b) in the case of a public agency, to reserve water in
18 accordance with 85-2-316; or19 (c) in the case of the department of fish, wildlife,
20 and parks, to lease water in accordance with 85-2-436.

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

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

1 and recreational uses;

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

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

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.

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

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

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

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

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

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

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

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

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

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

25 (16) "Water division" means a drainage basin as defined

1 in 3-7-102.

2 (17) "Water judge" means a judge as provided for in
3 Title 3, chapter 7.

4 (18) "Water master" means a master as provided for in
5 Title 3, chapter 7.

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

11 85-2-102. (Effective July 1, 1993) Definitions. Unless
12 the context requires otherwise, in this chapter the
13 following definitions apply:

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

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

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

24 (b) a use of water appropriated by the department for
25 the state water leasing program under 85-2-141 and of water

1 leased under a valid lease issued by the department under
2 85-2-141.

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

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

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

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

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

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

19 (9) "Ground water" means any water that is beneath the
20 ~~land--surface--or--beneath--the--bed--of--a--stream;--lake;~~
21 ~~reservoir;--or--other--body--of--surface--water;--and--which--is--not~~
22 ~~a--part--of--that--surface--water~~ ground surface.

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

1 (11) "Person" means an individual, association,
 2 partnership, corporation, state agency, political
 3 subdivision, the United States or any agency thereof, or any
 4 other entity.

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

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

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

18 (15) "Water division" means a drainage basin as defined
 19 in 3-7-102.

20 (16) "Water judge" means a judge as provided for in
 21 Title 3, chapter 7.

22 (17) "Water master" means a master as provided for in
 23 Title 3, chapter 7.

24 (18) "Well" means any artificial opening or excavation
 25 in the ground, however made, by which ground water is sought

1 or can be obtained or through which it flows under natural
 2 pressures or is artificially withdrawn."

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

4 **"85-2-113. Board powers and duties.** (1) The board may
 5 prescribe fees or service charges for any public service
 6 rendered by the department under this chapter, including
 7 fees for the filing of applications or for the issuance of
 8 permits and certificates, for rulemaking hearings under
 9 85-2-319, for administrative hearings conducted under this
 10 chapter, for investigations concerning permit revocation,
 11 for field verification of issued and completed permits, and
 12 all change approvals. There shall be no fees for any action
 13 taken by the department at the request of the water judge or
 14 for the issuance of certificates of existing rights.

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

18 (a) govern the issuance and terms of interim permits
 19 authorizing an applicant for a regular permit under this
 20 chapter to begin appropriating water immediately, pending
 21 final approval or denial by the department of the
 22 application for a regular permit;

23 (b) require the owner or operator of appropriation
 24 facilities to install and maintain suitable controlling and
 25 measuring devices, except that the board may not require a

1 meter on a water well outside of a controlled ground water
2 area or proposed controlled ground water area unless the
3 maximum appropriation of the well is in excess of 100
4 gallons-a-minute the limitation contained in 85-2-306(1);

5 (c) require the owner or operator of appropriation
6 facilities to report to the department the readings of
7 measuring devices at reasonable intervals and to file
8 reports on appropriations; and

9 (d) regulate the construction, use, and sealing of
10 wells to prevent the waste, contamination, or pollution of
11 ground water.

12 (3) The board shall adopt rules providing for and
13 governing temporary emergency appropriations, without prior
14 application for a permit, necessary to protect lives or
15 property."

16 **Section 3.** Section 85-2-236, MCA, is amended to read:

17 **"85-2-236. Certificate of water right.** ~~(1)~~ When a final
18 decree is entered, the water judge shall send a copy to the
19 department. Except as provided in 85-2-306, the department
20 shall on the basis of the final decree issue a certificate
21 of water right to each person decreed an existing right. The
22 original of the certificate shall be sent to the person to
23 whom the right is decreed. The department shall keep a copy
24 of the certificate in its office in Helena.

25 ~~(2)--The-department-shall-provide-to--the--county--clerk~~

1 ~~and-recorder-of-the-county-wherein-the-point-of-diversion-or~~
2 ~~place--of--use--is--located--quarterly-reports-and-an-annual~~
3 ~~summary-report-of-all-certificates-of-water-right-issued--by~~
4 ~~the-department-within-the-county--"~~

5 **SECTION 4. SECTION 85-2-306, MCA, IS AMENDED TO READ:**

6 **"85-2-306. Exceptions to permit requirements.** (1)
7 Ground water may be appropriated only by a person who has a
8 possessory interest in the property where the water is to be
9 put to beneficial use and exclusive property rights in the
10 ground water development works or, if another person has
11 rights in the ground water development works, the written
12 consent of the person with those property rights. Outside
13 the boundaries of a controlled ground water area, a permit
14 is not required before appropriating ground water by means
15 of a well or developed spring with a maximum appropriation
16 of ~~less-than-100~~ 35 gallons per minute or less, not to
17 exceed 10 acre feet per year, except that a combined
18 appropriation from the same source from two or more wells or
19 developed springs exceeding this limitation requires a
20 permit. Within 60 days of completion of the well or
21 developed spring and appropriation of the ground water for
22 beneficial use, the appropriator shall file a notice of
23 completion with the department on a form provided by the
24 department at its offices and at the offices of the county
25 clerk and recorders. Upon receipt of the notice, the

1 department shall review the notice and may, before issuing a
 2 certificate of water right, return a defective notice for
 3 correction or completion, together with the reasons for
 4 returning it. A notice does not lose priority of filing
 5 because of defects if the notice is corrected, completed,
 6 and refiled with the department within 30 days or within a
 7 further time as the department may allow, not to exceed 6
 8 months. If a notice is not corrected and completed within
 9 the time allowed, the priority date of appropriation shall
 10 be the date of refiling a correct and complete notice with
 11 the department. A certificate of water right may not be
 12 issued until a correct and complete notice has been filed
 13 with the department. The original of the certificate shall
 14 be sent to the appropriator. The department shall keep a
 15 copy of the certificate in its office in Helena. The date of
 16 filing of the notice of completion is the date of priority
 17 of the right.

18 (2) An appropriator of ground water by means of a well
 19 or developed spring first put to beneficial use between
 20 January 1, 1962, and July 1, 1973, who did not file a notice
 21 of completion, as required by laws in force prior to April
 22 14, 1981, with the county clerk and recorder shall file a
 23 notice of completion, as provided in subsection (1) of this
 24 section, with the department to perfect the water right. The
 25 filing of a claim of existing water right pursuant to

1 85-2-221 is sufficient notice of completion under this
 2 subsection. The priority date of the appropriation shall be
 3 the date of the filing of a notice as provided in subsection
 4 (1) of this section or the date of the filing of the claim
 5 of existing water right. An appropriation under this
 6 subsection is an existing right, and a permit is not
 7 required; however, the department shall acknowledge the
 8 receipt of a correct and complete filing of a notice of
 9 completion, except that for an appropriation of ~~less--than~~
 10 100 35 gallons per minute or less, not to exceed 10 acre
 11 feet per year, the department shall issue a certificate of
 12 water right. If a certificate is issued under this section,
 13 a certificate need not be issued under the adjudication
 14 proceedings provided for in 85-2-236.

15 (3) A permit is not required before constructing an
 16 impoundment or pit and appropriating water for use by
 17 livestock if the maximum capacity of the impoundment or pit
 18 is less than 15 acre-feet and the appropriation is less than
 19 30 acre-feet per year and is from a source other than a
 20 perennial flowing stream and the impoundment or pit is to be
 21 constructed on and will be accessible to a parcel of land
 22 that is owned or under the control of the applicant and that
 23 is 40 acres or larger. As used in this subsection, a
 24 perennial flowing stream means a stream which historically
 25 has flowed continuously at all seasons of the year, during

1 dry as well as wet years. However, within 60 days after
 2 constructing the impoundment or pit, the appropriator shall
 3 apply for a permit as prescribed by this part. Upon receipt
 4 of a correct and complete application for a stockwater
 5 provisional permit, the department shall then automatically
 6 issue a provisional permit. If the department determines
 7 after a hearing that the rights of other appropriators have
 8 been or will be adversely affected, it may revoke the permit
 9 or require the permittee to modify the impoundment or pit
 10 and may then make the permit subject to such terms,
 11 conditions, restrictions, or limitations it considers
 12 necessary to protect the rights of other appropriators.

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

16 **Section 5.** Section 85-2-308, MCA, is amended to read:

17 "85-2-308. Objections. (1) (a) An objection to an
 18 application for a permit must be filed by the date specified
 19 by the department under 85-2-307(2).

20 {2}(b) The objection to an application for a permit
 21 must state the name and address of the objector and facts
 22 tending to show that ~~there are no unappropriated waters in~~
 23 ~~the proposed source, that the proposed means of~~
 24 ~~appropriation are inadequate, that the property water~~
 25 ~~rights or interests of the objector would be adversely~~

1 ~~affected by the proposed appropriation, that the proposed~~
 2 ~~use of water is not a beneficial use, or that the proposed~~
 3 ~~use will interfere unreasonably with other planned uses or~~
 4 ~~developments for which a permit has been issued or for which~~
 5 ~~water has been reserved one or more of the criteria in~~
 6 ~~85-2-311 are not met.~~

7 (2) For an application for a change in appropriation
 8 rights, the objection must state the name and address of the
 9 objector and facts tending to show that one or more of the
 10 criteria in 85-2-402 are not met.

11 (3) A PERSON HAS STANDING TO FILE AN OBJECTION UNDER
 12 THIS SECTION IF THE PROPERTY, WATER RIGHTS, OR INTERESTS OF
 13 THE OBJECTOR WOULD BE ADVERSELY AFFECTED BY THE PROPOSED
 14 APPROPRIATION.

15 (4) FOR AN APPLICATION FOR A RESERVATION OF WATER, THE
 16 OBJECTION MUST STATE THE NAME AND ADDRESS OF THE OBJECTOR
 17 AND FACTS TENDING TO SHOW THAT ONE OR MORE OF THE CRITERIA
 18 IN 85-2-316 ARE NOT MET."

19 **Section 6.** Section 85-2-312, MCA, is amended to read:

20 "85-2-312. Terms of permit. (1) The department may
 21 issue a permit for less than the amount of water requested,
 22 but in no case may it issue a permit for more water than is
 23 requested or than can be beneficially used without waste for
 24 the purpose stated in the application. The department may
 25 require modification of plans and specifications for the

1 appropriation or related diversion or construction. The
 2 department may issue a permit subject to terms, conditions,
 3 restrictions, and limitations it considers necessary to
 4 satisfy the criteria listed in 85-2-311, and it may issue
 5 temporary or seasonal permits. A permit shall be issued
 6 subject to existing rights and any final determination of
 7 those rights made under this chapter.

8 (2) The department shall specify in the permit or in
 9 any authorized extension of time provided in subsection (3),
 10 the time limits for commencement of the appropriation works,
 11 completion of construction, and actual application of the
 12 water to the proposed beneficial use. In fixing those time
 13 limits, the department shall consider the cost and magnitude
 14 of the project, the engineering and physical features to be
 15 encountered, and, on projects designed for gradual
 16 development and gradually increased use of water, the time
 17 reasonably necessary for that gradual development and
 18 increased use. The department shall issue the permit or
 19 authorized extension of time subject to the terms,
 20 conditions, restrictions, and limitations it considers
 21 necessary to ensure that the work on the appropriation is
 22 commenced, conducted, and completed and that the water is
 23 actually applied in a timely manner to the beneficial use
 24 specified in the permit.

25 (3) The department may, upon a showing of good cause,

1 extend time limits specified in the permit for commencement
 2 of the appropriation works, completion of construction, and
 3 actual application of the water to the proposed beneficial
 4 use. All requests for extensions of time must be by
 5 affidavit and must be filed with the department prior to the
 6 expiration of the time limit specified in the permit or any
 7 previously authorized extension of time. The department may
 8 issue an order temporarily extending the time limit
 9 specified in the permit for 120 days or until the department
 10 has completed its action under this section, whichever is
 11 greater. Upon receipt of a proper request for extension of
 12 time, the department shall prepare a notice containing the
 13 facts pertinent to the request for extension of time and
 14 shall publish the notice in a newspaper of general
 15 circulation in the area of the source. The department may
 16 serve notice by first-class mail upon any public agency or
 17 other person the department determines may be interested in
 18 or affected by the request for extension of time. The
 19 department shall hold a hearing on the request for extension
 20 of time on its own motion or if requested by an interested
 21 party. The department may grant the extension of time in the
 22 absence of a hearing if no requests for a hearing are
 23 received and the extension of time is granted as requested,
 24 or the department may grant the extension of time in a
 25 modified form by following the process established in

1 85-2-310(2). Subsequent extensions of time may be made in
2 the same manner.

3 (4) The original of the permit shall be sent to the
4 permittee, and a copy shall be kept in the office of the
5 department in Helena.

6 ~~{5}--The department shall provide to--the--county--clerk
7 and-recorder-of-the-county-wherein-the-point-of-diversion-or
8 place--of--use--is--located--quarterly-reports-and-an-annual
9 summary-report-of-all-water-right-permits,-certificates,-and
10 change-approvals-issued-by-the-department-within--the
11 county--"~~

12 **Section 7.** Section 85-2-315, MCA, is amended to read:

13 **"85-2-315. Certificate of water right.** ~~{1}~~ Upon actual
14 application of water to the proposed beneficial use within
15 the time allowed, the permittee shall notify the department
16 that the appropriation has been properly completed. The
17 notification must contain a certified statement by a person
18 with experience in the design, construction, or operation of
19 appropriation works that the appropriation has been properly
20 completed in substantial accordance with the terms and
21 conditions of the permit. The department may then inspect
22 the appropriation, and if it determines that the
23 appropriation has been completed in substantial accordance
24 with the permit, it shall issue the permittee a certificate
25 of water right. The original of the certificate shall be

1 sent to the permittee, and a duplicate shall be kept in the
2 office of the department in Helena.

3 ~~{2}--The--department--shall--provide--to--the--county--clerk
4 and-recorder-of-the-county-wherein-the-point-of-diversion-or
5 place-of-use-is-located--quarterly--reports--and--an--annual
6 summary--report-of-all-certificates-of-water-right-issued-by
7 the-department-within-the-county--"~~

8 **SECTION 8.** SECTION 85-2-317, MCA, IS AMENDED TO READ:

9 **"85-2-317. Limitation on appropriation of ground water.**

10 (1) ~~After May-7,-1979,-no-application-for-a-permit-to~~
11 ~~appropriate-ground-water-in-excess-of-3,000-acre-feet-per~~
12 ~~year-may-be-granted,-except-pursuant-to-an-act-of-the~~
13 ~~legislature--permitting--the--specific--appropriation~~ [the
14 effective date of this act], the department may not approve
15 a permit to appropriate ground water in excess of 3,000 acre
16 feet per year unless:

17 (a) the applicant proves and the department finds that
18 the applicable criteria in 85-2-311 are met; and

19 (b) the department then petitions the legislature and
20 the legislature affirms the decision of the department after
21 one or more public hearings.

22 (2) Subsection (1) applies to any permit to appropriate
23 ground water for which application has been made but which
24 has not been granted as of May 7, 1979.

25 (3) This section does not apply to appropriations by

1 municipalities for municipal use or to appropriations for
 2 public water supplies as defined in 75-6-102 or to
 3 appropriations for the irrigation of cropland owned and
 4 operated by the applicant.

5 (4) Any person, association, corporation, or other
 6 entity that applies for a permit to appropriate ground
 7 water, singularly or collectively, for the purpose of
 8 circumventing this section is punishable by a fine not
 9 exceeding \$5,000."

10 **Section 9.** Section 85-2-402, MCA, is amended to read:

11 **"85-2-402. (Temporary) Changes in appropriation rights.**

12 (1) An appropriator may not make a change in an
 13 appropriation right except as permitted under this section
 14 and with the approval of the department or, if applicable,
 15 of the legislature.

16 (2) Except as provided in subsections (3) through (5),
 17 the department shall approve a change in appropriation right
 18 if the appropriator proves by substantial credible evidence
 19 that the following criteria are met:

20 (a) The proposed use will not adversely affect the
 21 water rights of other persons or other planned uses or
 22 developments for which a permit has been issued or for which
 23 water has been reserved.

24 (b) Except for a lease authorization pursuant to
 25 85-2-436 that does not require appropriation works, the

1 proposed means of diversion, construction, and operation of
 2 the appropriation works are adequate.

3 (c) The proposed use of water is a beneficial use.

4 (d) The applicant has a possessory interest, or the
 5 written consent of the person with the possessory interest,
 6 in the property where the water is to be put to beneficial
 7 use.

8 (3) The department may not approve a change in purpose
 9 of use or place of use of an appropriation of 4,000 or more
 10 acre-feet of water a year and 5.5 or more cubic feet per
 11 second of water unless the appropriator proves by
 12 substantial credible evidence that:

13 (a) the criteria in subsection (2) are met;

14 (b) the proposed change is a reasonable use. A finding
 15 of reasonable use must be based on a consideration of:

16 (i) the existing demands on the state water supply, as
 17 well as projected demands for water for future beneficial
 18 purposes, including municipal water supplies, irrigation
 19 systems, and minimum streamflows for the protection of
 20 existing water rights and aquatic life;

21 (ii) the benefits to the applicant and the state;

22 (iii) the effects on the quantity and quality of water
 23 for existing uses in the source of supply;

24 (iv) the availability and feasibility of using
 25 low-quality water for the purpose for which application has

1 been made;

2 (v) the effects on private property rights by any
3 creation of or contribution to saline seep; and

4 (vi) the probable significant adverse environmental
5 impacts of the proposed use of water as determined by the
6 department pursuant to Title 75, chapter 1, or Title 75,
7 chapter 20.

8 (4) The department may not approve a change in purpose
9 of use or place of use for a diversion that results in 4,000
10 or more acre-feet of water a year and 5.5 or more cubic feet
11 per second of water being consumed unless:

12 (a) the applicant proves by clear and convincing
13 evidence and the department finds that the criteria in
14 subsections (2) and (3) are met; and

15 (b) the department then petitions the legislature and
16 the legislature affirms the decision of the department after
17 one or more public hearings.

18 (5) (a) The state of Montana has long recognized the
19 importance of conserving its public waters and the necessity
20 to maintain adequate water supplies for the state's water
21 requirements, including requirements for reserved water
22 rights held by the United States for federal reserved lands
23 and in trust for the various Indian tribes within the
24 state's boundaries. Although the state of Montana also
25 recognizes that, under appropriate conditions, the

1 out-of-state transportation and use of its public waters are
2 not in conflict with the public welfare of its citizens or
3 the conservation of its waters, the following criteria must
4 be met before out-of-state use may occur:

5 (b) The department and, if applicable, the legislature
6 may not approve a change in appropriation right for the
7 withdrawal and transportation of appropriated water for use
8 outside the state unless the appropriator proves by clear
9 and convincing evidence and, if applicable, the legislature
10 approves after one or more public hearings that:

11 (i) depending on the volume of water diverted or
12 consumed, the applicable criteria and procedures of
13 subsection (2) or (3) are met;

14 (ii) the proposed out-of-state use of water is not
15 contrary to water conservation in Montana; and

16 (iii) the proposed out-of-state use of water is not
17 otherwise detrimental to the public welfare of the citizens
18 of Montana.

19 (c) In determining whether the appropriator has proved
20 by clear and convincing evidence that the requirements of
21 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
22 department and, if applicable, the legislature shall
23 consider the following factors:

24 (i) whether there are present or projected water
25 shortages within the state of Montana;

1 (ii) whether the water that is the subject of the
2 proposed change in appropriation might feasibly be
3 transported to alleviate water shortages within the state of
4 Montana;

5 (iii) the supply and sources of water available to the
6 applicant in the state where the applicant intends to use
7 the water; and

8 (iv) the demands placed on the applicant's supply in the
9 state where the applicant intends to use the water.

10 (d) When applying for a change in appropriation right
11 to withdraw and transport water for use outside the state,
12 the applicant shall submit to and comply with the laws of
13 the state of Montana governing the appropriation and use of
14 water.

15 (6) For any application for a change in appropriation
16 right involving 4,000 or more acre-feet of water a year and
17 5.5 or more cubic feet per second of water, the department
18 shall give notice of the proposed change in accordance with
19 85-2-307 and shall hold one or more hearings in accordance
20 with 85-2-309 prior to its approval or denial of the
21 proposed change. The department shall provide notice and may
22 hold one or more hearings upon any other proposed change if
23 it determines that a change might adversely affect the
24 rights of other persons.

25 (7) The department or the legislature, if applicable,

1 may approve a change subject to terms, conditions,
2 restrictions, and limitations as it considers necessary to
3 satisfy the criteria of this section, including limitations
4 on the time for completion of the change. The department may
5 extend time limits specified in the change approval under
6 the applicable criteria and procedures of 85-2-312(3).

7 (8) Upon actual application of water to the proposed
8 beneficial use within the time allowed, the appropriator
9 shall notify the department that the appropriation has been
10 properly completed. The notification must contain a
11 certified statement by a person with experience in the
12 design, construction, or operation of appropriation works
13 that the appropriation has been properly completed in
14 substantial accordance with the terms and conditions of the
15 change approval.

16 ~~(8)~~(9) If a change is not completed as approved by the
17 department or legislature or if the terms, conditions,
18 restrictions, and limitations of the change approval are not
19 complied with, the department may, after notice and
20 opportunity for hearing, require the appropriator to show
21 cause why the change approval should not be modified or
22 revoked. If the appropriator fails to show sufficient cause,
23 the department may modify or revoke the change approval.

24 ~~(9)~~(10) The original of a change approval issued by the
25 department must be sent to the applicant, and a duplicate

1 must be kept in the office of the department in Helena.

2 ~~{10}~~(11) A person holding an issued permit or change
3 approval that has not been perfected may change the place of
4 diversion, place of use, purpose of use, or place of storage
5 by filing an application for change pursuant to this
6 section.

7 ~~{11}~~(12) A change in appropriation right contrary to the
8 provisions of this section is invalid. An officer, agent,
9 agency, or employee of the state may not knowingly permit,
10 aid, or assist in any manner an unauthorized change in
11 appropriation right. A person or corporation may not,
12 directly or indirectly, personally or through an agent,
13 officer, or employee, attempt to change an appropriation
14 right except in accordance with this section. (Terminates
15 June 30, 1993--sec. 11, Ch. 658, L. 1989.)

16 **85-2-402. (Effective July 1, 1993) Changes in**
17 **appropriation rights. (1) An appropriator may not make a**
18 **change in an appropriation right except as permitted under**
19 **this section and with the approval of the department or, if**
20 **applicable, of the legislature.**

21 (2) Except as provided in subsections (3) through (5),
22 the department shall approve a change in appropriation right
23 if the appropriator proves by substantial credible evidence
24 that the following criteria are met:

25 (a) The proposed use will not adversely affect the

1 water rights of other persons or other planned uses or
2 developments for which a permit has been issued or for which
3 water has been reserved.

4 (b) The proposed means of diversion, construction, and
5 operation of the appropriation works are adequate.

6 (c) The proposed use of water is a beneficial use.

7 (d) The applicant has a possessory interest, or the
8 written consent of the person with the possessory interest,
9 in the property where the water is to be put to beneficial
10 use.

11 (3) The department may not approve a change in purpose
12 of use or place of use of an appropriation of 4,000 or more
13 acre-feet of water a year and 5.5 or more cubic feet per
14 second of water unless the appropriator proves by
15 substantial credible evidence that:

16 (a) the criteria in subsection (2) are met;

17 (b) the proposed change is a reasonable use. A finding
18 of reasonable use must be based on a consideration of:

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

24 (ii) the benefits to the applicant and the state;

25 (iii) the effects on the quantity and quality of water

1 for existing uses in the source of supply;

2 (iv) the availability and feasibility of using
3 low-quality water for the purpose for which application has
4 been made;

5 (v) the effects on private property rights by any
6 creation of or contribution to saline seep; and

7 (vi) the probable significant adverse environmental
8 impacts of the proposed use of water as determined by the
9 department pursuant to Title 75, chapter 1, or Title 75,
10 chapter 20.

11 (4) The department may not approve a change in purpose
12 of use or place of use for a diversion that results in 4,000
13 or more acre-feet of water a year and 5.5 or more cubic feet
14 per second of water being consumed unless:

15 (a) the applicant proves by clear and convincing
16 evidence and the department finds that the criteria in
17 subsections (2) and (3) are met; and

18 (b) the department then petitions the legislature and
19 the legislature affirms the decision of the department after
20 one or more public hearings.

21 (5) (a) The state of Montana has long recognized the
22 importance of conserving its public waters and the necessity
23 to maintain adequate water supplies for the state's water
24 requirements, including requirements for reserved water
25 rights held by the United States for federal reserved lands

1 and in trust for the various Indian tribes within the
2 state's boundaries. Although the state of Montana also
3 recognizes that, under appropriate conditions, the
4 out-of-state transportation and use of its public waters are
5 not in conflict with the public welfare of its citizens or
6 the conservation of its waters, the following criteria must
7 be met before out-of-state use may occur:

8 (b) The department and, if applicable, the legislature
9 may not approve a change in appropriation right for the
10 withdrawal and transportation of appropriated water for use
11 outside the state unless the appropriator proves by clear
12 and convincing evidence and, if applicable, the legislature
13 approves after one or more public hearings that:

14 (i) depending on the volume of water diverted or
15 consumed, the applicable criteria and procedures of
16 subsection (2) or (3) are met;

17 (ii) the proposed out-of-state use of water is not
18 contrary to water conservation in Montana; and

19 (iii) the proposed out-of-state use of water is not
20 otherwise detrimental to the public welfare of the citizens
21 of Montana.

22 (c) In determining whether the appropriator has proved
23 by clear and convincing evidence that the requirements of
24 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
25 department and, if applicable, the legislature shall

1 consider the following factors:

2 (i) whether there are present or projected water
3 shortages within the state of Montana;

4 (ii) whether the water that is the subject of the
5 proposed change in appropriation might feasibly be
6 transported to alleviate water shortages within the state of
7 Montana;

8 (iii) the supply and sources of water available to the
9 applicant in the state where the applicant intends to use
10 the water; and

11 (iv) the demands placed on the applicant's supply in the
12 state where the applicant intends to use the water.

13 (d) When applying for a change in appropriation right
14 to withdraw and transport water for use outside the state,
15 the applicant shall submit to and comply with the laws of
16 the state of Montana governing the appropriation and use of
17 water.

18 (6) For any application for a change in appropriation
19 right involving 4,000 or more acre-feet of water a year and
20 5.5 or more cubic feet per second of water, the department
21 shall give notice of the proposed change in accordance with
22 85-2-307 and shall hold one or more hearings in accordance
23 with 85-2-309 prior to its approval or denial of the
24 proposed change. The department shall provide notice and may
25 hold one or more hearings upon any other proposed change if

1 it determines that such a change might adversely affect the
2 rights of other persons.

3 (7) The department or the legislature, if applicable,
4 may approve a change subject to such terms, conditions,
5 restrictions, and limitations as it considers necessary to
6 satisfy the criteria of this section, including limitations
7 on the time for completion of the change. The department may
8 extend time limits specified in the change approval under
9 the applicable criteria and procedures of 85-2-312(3).

10 (8) Upon actual application of water to the proposed
11 beneficial use within the time allowed, the appropriator
12 shall notify the department that the appropriation has been
13 properly completed. The notification must contain a
14 certified statement by a person with experience in the
15 design, construction, or operation of appropriation works
16 that the appropriation has been properly completed in
17 substantial accordance with the terms and conditions of the
18 change approval.

19 ~~(8)~~(9) If a change is not completed as approved by the
20 department or legislature or if the terms, conditions,
21 restrictions, and limitations of the change approval are not
22 complied with, the department may, after notice and
23 opportunity for hearing, require the appropriator to show
24 cause why the change approval should not be modified or
25 revoked. If the appropriator fails to show sufficient cause,

1 the department may modify or revoke the change approval.
 2 ~~(9)~~(10) The original of a change approval issued by the
 3 department must be sent to the applicant, and a duplicate
 4 must be kept in the office of the department in Helena.
 5 ~~(10)~~(11) A person holding an issued permit or change
 6 approval that has not been perfected may change the place of
 7 diversion, place of use, purpose of use, or place of storage
 8 by filing an application for change pursuant to this
 9 section.
 10 ~~(11)~~(12) A change in appropriation right contrary to the
 11 provisions of this section is invalid. No officer, agent,
 12 agency, or employee of the state may knowingly permit, aid,
 13 or assist in any manner such unauthorized change in
 14 appropriation right. No person or corporation may, directly
 15 or indirectly, personally or through an agent, officer, or
 16 employee, attempt to change an appropriation right except in
 17 accordance with this section."
 18 **Section 10.** Section 85-2-424, MCA, is amended to read:
 19 **"85-2-424. Filing.** (1) The transferor of a water right
 20 or his agent or representative shall file with the
 21 department a water right transfer certificate within 60 days
 22 of recording a deed or other instrument evidencing a
 23 transfer of real property.
 24 (2) Except in the case of a transfer of real property
 25 served by a public service water supply, when any person

1 presents for recording a deed or other instrument evidencing
 2 a transfer of real property, the realty transfer certificate
 3 shall note whether or not the transfer includes a transfer
 4 of water rights. If the realty transfer certificate notes a
 5 transfer of water rights, the clerk and recorder shall
 6 provide such person the form prescribed under 85-2-423 for
 7 the transfer of water rights. The recording of the deed or
 8 other instrument shall not be delayed because of the
 9 transfer of the water rights.
 10 (3) The county clerk and recorder shall send to the
 11 department a list of all transfers that involve transfers of
 12 water rights. The list must be sent every month and must
 13 include all transfers for the month immediately preceding
 14 the date of submittal to the department. The list must
 15 include the names and addresses of all parties to the
 16 transfer and a legal description of the land subject to the
 17 transfer.
 18 ~~(4) The department shall send a reference copy of the~~
 19 ~~water right transfer certificate to the office of the chief~~
 20 ~~water judge and to the county clerk and recorder in the~~
 21 ~~county in which the transfer occurred."~~
 22 ~~Section 9: Section 85-2-501, MCA, is amended to read:~~
 23 ~~"85-2-501: Definitions: Unless the context requires~~
 24 ~~otherwise, in this part the following definitions apply:~~
 25 ~~(i) "Aquifer" means any underground geological~~

1 structure or formation which is capable of yielding water or
2 is capable of recharge.

3 (2) "Bureau" means the Montana state bureau of mines
4 and geology provided for in 20-25-211.

5 (3) "Ground water" means any fresh FRESH water that is
6 beneath the land surface or beneath the bed of a stream,
7 lake, reservoir, or other body of surface water and which is
8 not a part of that surface water ground surface LAND SURFACE
9 OR BENEATH THE BED OF A STREAM, LAKE, RESERVOIR, OR OTHER
10 BODY OF SURFACE WATER AND WHICH IS NOT A PART OF THAT
11 SURFACE WATER.

12 (4) "Ground water area" means an area which, as nearly
13 as known facts permit, may be designated so as to enclose a
14 single and distinct body of ground water, which shall be
15 described horizontally by surface description in all cases
16 and which may be limited vertically by describing known
17 geological formations should conditions dictate this to be
18 desirable."

19 **SECTION 11. SECTION 85-2-501, MCA, IS AMENDED TO READ:**

20 "85-2-501. Definitions. Unless the context requires
21 otherwise, in this part the following definitions apply:

22 (1) "Aquifer" means any underground geological
23 structure or formation which is capable of yielding water or
24 is capable of recharge.

25 (2) "Bureau" means the Montana state bureau of mines

1 and geology provided for in 20-25-211.

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

6 (4) "Ground water area" means an area which, as nearly
7 as known facts permit, may be designated so as to enclose a
8 single and distinct body of ground water, which shall be
9 described horizontally by surface description in all cases
10 and which may be limited vertically by describing known
11 geological formations should conditions dictate this to be
12 desirable."

13 **NEW SECTION. Section 12. Water right records for**
14 **filing with local clerk and recorder. Upon payment of a fee**
15 **established pursuant to 85-2-113, a county clerk and**
16 **recorder of the county where the point of diversion or place**
17 **of use is located or in which a transfer of water right**
18 **occurred may require the department to provide a report of**
19 **all water permits, certificates, change approvals, or water**
20 **right transfer certificates issued or processed by the**
21 **department pursuant to Title 85, chapter 2, parts 3 and 4.**

22 ~~NEW SECTION. Section 11. Repealer. Section 85-2-317,~~
23 ~~MCA, is repealed.~~

24 **NEW SECTION. Section 13. Codification instruction.**
25 [Section ~~10~~ ~~11~~ ~~12~~] is intended to be codified as an

1 integral part of Title 85, chapter 2, and the provisions of
2 Title 85, chapter 2, apply to [section 10 ~~11~~ 12].

3 NEW SECTION. Section 14. ~~retroactive~~ ~~applicability~~
4 APPLICABILITY. ~~(1)~~ ~~{Sections 4 and 7 concerning water~~
5 ~~quality criteria} apply retroactively, within the meaning of~~
6 ~~1-2-1997, to all applications pending before the department~~
7 ~~of natural resources and conservation for which a permit or~~
8 ~~change authorization has not been issued on {the effective~~
9 ~~date of this act}.~~

10 ~~(2)~~ [Sections 6 7 and 7 8 7 8], concerning
11 certification by a ~~professional engineer~~ PERSON WITH
12 EXPERIENCE IN THE DESIGN, CONSTRUCTION, OR OPERATION OF
13 APPROPRIATION WORKS, apply retroactively, ~~within the meaning~~
14 ~~of 1-2-1997~~ to all permits ~~for which a notice of completion~~
15 ~~has not been filed on~~ and to change approvals issued after
16 [the effective date of this act].

17 NEW SECTION. Section 15. Effective date. [This act] is
18 effective ~~on passage and approval~~ JULY 1, 1991.

-End-