

SENATE BILL 303

Introduced by Weeding, et al.

2/07	Introduced
2/07	Referred to Natural Resources
2/07	First Reading
2/07	Fiscal Note Requested
2/12	Fiscal Note Received
2/13	Fiscal Note Printed
2/18	Hearing
2/21	Committee Report--Bill Passed as Amended
2/22	2nd Reading Passed as Amended
	Transmitted to House
2/23	3rd Reading Passed
3/04	First Reading
3/04	Referred to Natural Resources
3/21	Hearing
4/02	Committee Report--Bill Concurred
4/05	2nd Reading Concurred
4/06	3rd Reading Failed

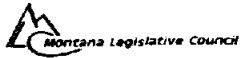
1 *Senate* BILL NO. *303*
 2 INTRODUCED BY *W. Leeding* *T. Beck*
 3 *Yellowtail* BY REQUEST OF THE ENVIRONMENTAL *Friends*
 4 QUALITY COUNCIL

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 7 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER
 8 EFFECTS ON WATER QUALITY AND AQUIFER RECHARGE RATES WHEN
 9 ISSUING PERMITS TO BENEFICIALLY USE WATER AND WHEN APPROVING
 10 CHANGES IN APPROPRIATION RIGHTS; PROVIDING THAT UNITS OF
 11 LOCAL GOVERNMENT MAY REQUEST DESIGNATION OF A CONTROLLED
 12 GROUND WATER AREA; AND AMENDING SECTIONS 85-2-311, 85-2-402,
 13 85-2-506, AND 85-2-507, MCA."

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

16 **Section 1.** Section 85-2-311, MCA, is amended to read:
 17 "85-2-311. Criteria for issuance of permit. (1) Except
 18 as provided in subsections (2) and (3), the department shall
 19 issue a permit if:
 20 (a) the applicant proves by substantial credible
 21 evidence that the following criteria are met:
 22 (i) there are unappropriated waters in the source of
 23 supply at the proposed point of diversion:
 24 (A) at times when the water can be put to the use
 25 proposed by the applicant;

1 (ii)(B) in the amount the applicant seeks to
 2 appropriate; and
 3 (iii)(C) during the period in which the applicant seeks
 4 to appropriate, the amount requested is reasonably
 5 available;
 6 (b)(ii) the water rights of a prior appropriator will
 7 not be adversely affected;
 8 (c)(iii) the proposed means of diversion, construction,
 9 and operation of the appropriation works are adequate;
 10 (d)(iv) the proposed use of water is a beneficial use;
 11 (e)(v) the proposed use will not interfere unreasonably
 12 with other planned uses or developments for which a permit
 13 has been issued or for which water has been reserved; and
 14 (f)(vi) the applicant has a possessory interest, or the
 15 written consent of the person with the possessory interest,
 16 in the property where the water is to be put to beneficial
 17 use; and
 18 (b) the department has no information from any source
 19 that constitutes substantial credible evidence indicating
 20 that:
 21 (i) for ground water, the proposed amount of water to
 22 be put to beneficial use will exceed long-term aquifer
 23 recharge rates, considering existing surface water right
 24 appropriations; and
 25 (ii) the proposed use of water will adversely affect:



1 (A) the quality of the water in the source of supply to
2 the extent that the water right of a prior appropriator is
3 rendered unusable for its prior use; or

4 (B) the holder of a permit to discharge sewage,
5 industrial wastes, or other wastes issued pursuant to Title
6 75, chapter 5, part 4.

7 (2) The department may not issue a permit for an
8 appropriation of 4,000 or more acre-feet of water a year and
9 5.5 or more cubic feet per second of water unless the
10 applicant proves by clear and convincing evidence that:

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

12 (b) the rights of a prior appropriator will not be
13 adversely affected;

14 (c) the proposed appropriation is a reasonable use.
15 Such a finding shall be based on a consideration of the
16 following:

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

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

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

25 (iv) the availability and feasibility of using

1 low-quality water for the purpose for which application has
2 been made;

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

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

9 (3) (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 criteria in this
20 subsection (3) must be met before out-of-state use may
21 occur.

22 (b) The department may not issue a permit for the
23 appropriation of water for withdrawal and transportation for
24 use outside the state unless the applicant proves by clear
25 and convincing evidence that:

1 (i) depending on the volume of water diverted or
2 consumed, the applicable criteria and procedures of
3 subsection (1) or (2) are met;

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

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

9 (c) In determining whether the applicant has proved by
10 clear and convincing evidence that the requirements of
11 subsections (3)(b)(ii) and (3)(b)(iii) are met, the
12 department shall 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 application could feasibly be transported to alleviate water
17 shortages within the state of 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 permit or a lease to withdraw
24 and transport water for use outside the state, the applicant
25 shall submit to and comply with the laws of the state of

1 Montana governing the appropriation, lease, and use of
2 water.

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

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

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

23 **"85-2-402. (Temporary) Changes in appropriation rights.**

24 (1) An appropriator may not make a change in an
25 appropriation right except as permitted under this section

1 and with the approval of the department or, if applicable,
2 of the legislature.

3 (2) Except as provided in subsections (3) through (5),
4 the department shall approve a change in appropriation right
5 if:

6 (a) the appropriator proves by substantial credible
7 evidence that the following criteria are met:

8 (i) ~~The~~ the proposed use will not adversely affect
9 the 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 (ii) ~~Except~~ except for a lease authorization pursuant
13 to 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 (iii) ~~The~~ the proposed use of water is a beneficial
17 use; and

18 (iv) ~~The~~ the applicant has a possessory interest, or
19 the written consent of the person with the possessory
20 interest, in the property where the water is to be put to
21 beneficial use; and

22 (b) the department has no information from any source
23 that constitutes substantial credible evidence indicating
24 that:

25 (i) for ground water, the change in appropriation right

1 will cause long-term aquifer withdrawal rates to exceed
2 long-term aquifer recharge rates, considering existing
3 surface water right appropriations; and

4 (ii) the change in appropriation right will adversely
5 affect:

6 (A) the quality of the water in the source of supply to
7 the extent that the water right of a prior appropriator is
8 rendered unusable for its prior use; or

9 (B) the holder of a permit to discharge sewage,
10 industrial wastes, or other wastes issued pursuant to Title
11 75, chapter 5, part 4.

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

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

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

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

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

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

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

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

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

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

16 (a) the applicant proves by clear and convincing
17 evidence and the department finds that the criteria in
18 subsections (2) and (3) 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 (5) (a) The state of Montana has long recognized the
23 importance of conserving its public waters and the necessity
24 to maintain adequate water supplies for the state's water
25 requirements, including requirements for reserved water

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

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

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

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

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

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

1 department and, if applicable, the legislature shall
2 consider the following factors:

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

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

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

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

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

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

1 hold one or more hearings upon any other proposed change if
2 it determines that a change might adversely affect the
3 rights of other persons.

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

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

19 (9) The original of a change approval issued by the
20 department must be sent to the applicant, and a duplicate
21 must be kept in the office of the department in Helena.

22 (10) A person holding an issued permit or change
23 approval that has not been perfected may change the place of
24 diversion, place of use, purpose of use, or place of storage
25 by filing an application for change pursuant to this

1 section.

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

11 85-2-402. (Effective July 1, 1993) Changes in
12 appropriation rights. (1) An appropriator may not make a
13 change in an appropriation right except as permitted under
14 this section and with the approval of the department or, if
15 applicable, of the legislature.

16 (2) Except as provided in subsections (3) through (5),
17 the department shall approve a change in appropriation
18 right:

19 (a) if the appropriator proves by substantial credible
20 evidence that the following criteria are met:

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

25 ~~(b)~~(ii) The the proposed means of diversion,

1 construction, and operation of the appropriation works are
2 adequate;

3 ~~(c)~~(iii) The the proposed use of water is a beneficial
4 use; and

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

9 (b) the department has no information from any source
10 that constitutes substantial credible evidence indicating
11 that:

12 (i) for ground water, the change in appropriation right
13 will cause long-term aquifer withdrawal rates to exceed
14 long-term aquifer recharge rates, considering existing
15 surface water right appropriations; and

16 (ii) the change in appropriation right will adversely
17 affect:

18 (A) the quality of the water in the source of supply to
19 the extent that the water right of a prior appropriator is
20 rendered unusable for its prior use; or

21 (B) the holder of a permit to discharge sewage,
22 industrial wastes, or other wastes issued pursuant to Title
23 75, chapter 5, part 4.

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) If a change is not completed as approved by the
24 department or legislature or if the terms, conditions,
25 restrictions, and limitations of the change approval are not

1 complied with, the department may, after notice and
2 opportunity for hearing, require the appropriator to show
3 cause why the change approval should not be modified or
4 revoked. If the appropriator fails to show sufficient cause,
5 the department may modify or revoke the change approval.

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

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

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

22 **Section 3.** Section 85-2-506, MCA, is amended to read:

23 "85-2-506. Controlled ground water areas -- designation
24 or modification. (1) The board may designate or modify
25 controlled ground water areas as provided in this part.

1 (2) Designation or modification of an area of
2 controlled ground water use may be proposed to the board by
3 the department on its own motion, by request of a unit of
4 local government, including a county, an incorporated city
5 or town [, or a local water quality district], or by
6 petition signed by at least 20 or one-fourth of the users
7 (whichever is the lesser number) of ground water in a-ground
8 water the area proposed for designation, or the existing
9 controlled ground water area, wherein there are alleged to
10 be facts showing:

11 (a) that ground water withdrawals are in excess of
12 recharge to the aquifer or aquifers within such ground water
13 area;

14 (b) that excessive ground water withdrawals are very
15 likely to occur in the near future because of consistent and
16 significant increases in withdrawals from within the ground
17 water area;

18 (c) that significant disputes regarding priority of
19 rights, amounts of ground water in use by appropriators, or
20 priority of type of use are in progress within the ground
21 water area;

22 (d) that ground water levels or pressures in the area
23 in question are declining or have declined excessively; or

24 (e) that excessive ground water withdrawals would cause
25 contaminant migration and a degradation of ground water

1 quality within the ground water area.

2 (3) When such a proposal is thus made, the board shall
3 fix a time and place for a hearing, which time shall not be
4 less than 90 days from the making of the proposal. The place
5 for the hearing shall be within or as close as practical to
6 the controlled ground water area.

7 (4) The department shall publish a notice of the
8 hearing, setting forth therein:

9 (a) the names of the petitioners;

10 (b) the description by legal subdivisions (section,
11 township, range) of all lands included in or proposed to be
12 included in the ground water area or subarea;

13 (c) the purpose of the hearing; and

14 (d) the time and place of the hearing where any
15 interested person may appear, either in person or by
16 attorney, file written objections to the granting of the
17 proposal, and be fully heard.

18 (5) Such notice of hearing shall be published at least
19 once in each week for 3 successive weeks not less than 30
20 days before the date of the hearing in a newspaper of
21 general circulation in the county or counties in which the
22 ground water area or subarea is located. The department
23 shall also cause a copy of the notice, together with a copy
24 of the petition, to be served by mail, not less than 30 days
25 before the hearing, upon each well driller licensed in

1 Montana whose address is within any county in which any part
2 of the area in question is located; upon each person or
3 public agency known from an examination of the records in
4 the department's office to be a claimant or appropriator of
5 ground water in the area in question (claimant or
6 appropriator meaning one who diverts, impounds, or withdraws
7 ground water and not merely one who uses or obtains ground
8 water from another who diverts, impounds, or withdraws
9 ground water); upon the bureau; and upon the mayor or
10 chairman of the governing body of each incorporated
11 municipality located in whole or in part within the proposed
12 ground water area. The department may also serve notice upon
13 any other person or state or federal agency that the
14 department feels may be interested in or affected by the
15 proposed designation or modification of a controlled ground
16 water area. The petition need not be served on any
17 petitioner. A copy of the notice, together with a copy of
18 the proposal, shall be mailed to each person at his
19 last-known address, and such service shall be complete upon
20 depositing it in the post office, postage prepaid, addressed
21 to each person on whom it is to be served. Publication and
22 mailing of such notice as prescribed herein, when completed,
23 shall be deemed to be sufficient notice of such hearing to
24 all interested persons."

25 **Section 4.** Section 85-2-507, MCA, is amended to read:

1 **"85-2-507. Limiting withdrawals -- modification of**
 2 **order.** (1) At the time set for the hearing, the board shall
 3 proceed to hear oral and written evidence relevant to the
 4 designation or modification of the controlled ground water
 5 area presented by the bureau, the department, and any other
 6 interested party. A full record shall be kept of all
 7 evidence taken at the hearing. The procedure shall be such
 8 as to secure a full, fair, and orderly proceeding and to
 9 permit all relevant evidence to be received. The common-law
 10 and statutory rules of evidence shall apply only upon
 11 stipulation of all parties.

12 (2) After the conclusion of the hearing, the board
 13 shall make written findings and an order. The board shall by
 14 order declare the area in question to be a controlled ground
 15 water area if the board finds on the basis of the hearing
 16 that:

17 (a) the public health, safety, or welfare requires a
 18 corrective control be adopted; and

19 (b) (i) there is a wasteful use of water from existing
 20 wells or undue interference with existing wells;

21 (ii) any proposed use or well will impair or
 22 substantially interfere with existing rights to appropriate
 23 surface water or ground water by others; or

24 (iii) the facts alleged in the petition or the request
 25 by a unit of local government as required by 85-2-506(2) are

1 true.

2 (3) The order shall define the boundary of the
 3 controlled ground water area and shall indicate which of the
 4 ground water aquifers located within the area in question
 5 are included within the controlled ground water area. Any
 6 number of ground water aquifers which wholly or partially
 7 overlie one another may be included in the same controlled
 8 ground water area.

9 (4) The order may include the following corrective
 10 control provisions:

11 (a) a provision closing the controlled ground water
 12 area to further appropriation of ground water, in which
 13 event the department shall thereafter refuse to accept any
 14 applications for beneficial water use permits to appropriate
 15 ground water located within such controlled area;

16 (b) a provision determining a permissible total
 17 withdrawal of ground water in the controlled area by day,
 18 month, or year and permitting the board to apportion such
 19 permissible total withdrawal among the appropriators holding
 20 valid rights to the ground water in the controlled area in
 21 accordance with the relative dates of priority of such
 22 rights;

23 (c) a provision according preference, without reference
 24 to relative priorities, to withdrawals of ground water in
 25 the controlled area for domestic and livestock purposes

1 first and thereafter to withdrawals for other beneficial
 2 purposes, including but not limited to agricultural,
 3 industrial, municipal (other than domestic), and
 4 recreational purposes, in such order as the board considers
 5 advisable under the circumstances;

6 (d) a provision reducing the permissible withdrawal of
 7 ground water by any appropriator or well in the controlled
 8 area;

9 (e) when two or more wells in the controlled area are
 10 used by the same appropriator, a provision adjusting the
 11 total permissible withdrawal of ground water by the
 12 appropriator or a provision forbidding the use of one or
 13 more such wells;

14 (f) a provision requiring and specifying a system of
 15 rotation of use of ground water in the controlled area;

16 (g) provisions making such additional requirements as
 17 are necessary to protect the public health, safety, and
 18 welfare in accordance with the intent, purposes, and
 19 requirements of this part and the laws of the state.

20 (5) (a) If at the conclusion of the hearing the board
 21 finds that sufficient facts are not available to designate
 22 or modify a permanent controlled ground water area, the
 23 board may by order designate the area in question to be a
 24 temporary controlled ground water area. Such order may
 25 include the corrective control provisions contained in

1 subsection (4). A temporary controlled ground water area
 2 shall be designated as such for a period not to exceed 2
 3 years from the date of the board's order designating the
 4 temporary controlled ground water area. The board may, for
 5 sufficient cause, extend the time period for an additional 2
 6 years, and in this case all ground water appropriators in
 7 the controlled ground water area shall be notified of the
 8 extension.

9 (b) During the 2-year period, the department shall
 10 commence studies necessary to obtain the facts needed to
 11 assist in the designation or modification of a permanent
 12 controlled ground water area. Facts gathered during the
 13 study period shall be presented at a hearing prior to the
 14 designation or modification of a permanent controlled ground
 15 water area. All parties appearing at the first hearing shall
 16 be served notice of this hearing by mail at least 30 days
 17 prior to the date set for the hearing. The service shall be
 18 complete upon deposit of notice at the post office, postage
 19 prepaid, addressed to each person on whom service is to be
 20 made. Mailing of the notice, when completed, shall be
 21 considered to be sufficient notice of the hearing to all
 22 persons directly affected. The department shall file in its
 23 records proof of service by its own affidavit. The hearing
 24 shall be conducted by the board in the manner of the first
 25 hearing, and the board shall make written findings of fact

1 and conclusions of law and issue an order according to the
 2 provisions set forth in subsections (1) through (4). In the
 3 event the department does not complete the necessary study
 4 in the 2-year period or extension thereof, the temporary
 5 controlled ground water area designation will terminate at
 6 the end of the 2-year period or extension.

7 (6) The department may enforce the order and bring an
 8 action for an injunction in a district court of a district
 9 in which all or part of the area affected is located, in
 10 addition to all other remedies.

11 (7) The order of the board shall be published and
 12 mailed by the department in the manner and for the length of
 13 time as prescribed by 85-2-506 for the publication and
 14 mailing of the notice of hearing, except that a copy of the
 15 written findings and order of the board shall be mailed
 16 instead of a copy of the proposal and, except further, that
 17 a copy of the order, together with a copy of the written
 18 findings, shall be mailed to each petitioner at his
 19 last-known address. The department shall file a copy of the
 20 order with the county clerk of each county within which any
 21 part of the controlled ground water area lies, and the
 22 county clerk shall record the order without fee. The
 23 department shall file in its records proof of service by its
 24 own affidavit of service. Upon publication and mailing of
 25 such order as prescribed herein, the order shall be final

1 and conclusive unless an appeal therefrom is taken.

2 (8) The board may by order suspend, modify, or revoke
 3 any order made as provided in this section upon such notice
 4 and in such manner as is reasonable under the circumstances.
 5 A copy of each suspension, modification, or revocation shall
 6 be served or filed and recorded as provided for orders in
 7 subsection (7).

8 (9) While a matter is pending before the board, the
 9 department may restrict further development of the subarea."

10 NEW SECTION. **Section 5. Coordination instruction.** If
 11 Senate Bill No. 136 is not passed and approved, the
 12 bracketed reference in [section 3(2)] to a local water
 13 quality district is void.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0303, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


This proposed legislation generally affects three sections of the law as follows: 1) Adds permit criteria upon which the Department of Natural Resources and Conservation must assess new permit applications to determine whether the amount requested will exceed long-term aquifer recharge rates, possible effects to water quality of existing water rights, and possible effects to wastewater discharge permits. 2) Adds change criteria upon which the department must assess new change applications to determine the same issues as noted in #1. 3) Expands the controlled groundwater area statutes to allow "a unit of local government, including a county, an incorporated city or town, or a local water quality district" to petition the Board of Natural Resources and Conservation for designation of a controlled groundwater area.

ASSUMPTIONS:

1. Additional administrative processing requirements required of the will be extensive to assess the new proposed permit and change application criteria and groundwater petitions.
2. Approximately 410 permit applications and 190 change applications per year must be reviewed by the department to assess the new permit and change criteria proposed by this bill.
3. Approximately 200 permit and change applications per year involve groundwater sources.
4. One FTE would be needed to review all water quality records and wastewater discharge permits with the Department of Health and Environmental Sciences in order to process the 410 permit and 190 change applications each year.
5. One FTE would be needed to review 200 groundwater permit and change applications per year and assess long-term aquifer recharge rates and effects to surface water sources.
6. One-half FTE would be needed to process three new groundwater petitions each year, since qualified petitioners have been expanded. Also, Form No. 611-Objection to Application, and Form No. 630-Petition to the DNRC for Controlled Groundwater Area must be revised and reprinted to accommodate the new amendments.
7. Three groundwater petitions will bring in \$100 each in petition application fees and additional reasonable costs will bring in \$1,500 per year for a total of about \$1,800 additional expected funding each year.

FISCAL IMPACT:

see next page



ROD SUNDESTED, BUDGET DIRECTOR 2-12-91 DATE
Office of Budget and Program Planning

CECIL WEEDING, PRIMARY SPONSOR 2/13/91 DATE
Fiscal Note for SB0303, as introduced **SB 303**

FISCAL IMPACT:

Department of Natural Resources and Conservation:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	0.00	2.50	2.50	0.00	2.50	2.50
Personal Services	0	74,000	74,000	0	78,000	78,000
Operating Costs	<u>0</u>	<u>300</u>	<u>300</u>	<u>0</u>	<u>300</u>	<u>300</u>
Total	0	74,300	74,300	0	78,300	78,300
<u>Funding:</u>						
General Fund	0	72,500	72,500	0	76,500	76,500
Water Rights Funds (02)	<u>0</u>	<u>1,800</u>	<u>1,800</u>	<u>0</u>	<u>1,800</u>	<u>1,800</u>
Total	0	74,300	74,300	0	78,300	78,300

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is anticipated that the impact identified in this fiscal note would remain about the same for future fiscal years.

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 303

INTRODUCED BY WEEDING, T. BECK, YELLOWTAIL, GRADY
BY REQUEST OF THE ENVIRONMENTAL
QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER
EFFECTS ON WATER--QUALITY--AND AQUIFER RECHARGE RATES WHEN
ISSUING PERMITS TO BENEFICIALLY USE WATER AND WHEN APPROVING
CHANGES IN APPROPRIATION RIGHTS; PROVIDING THAT UNITS OF
LOCAL GOVERNMENT MAY REQUEST DESIGNATION OF A CONTROLLED
GROUND WATER AREA; AND AMENDING SECTIONS 85-2-311, 85-2-402,
85-2-506, AND 85-2-507, MCA."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO
PROVIDE DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION CONCERNING THE ADOPTION OF RULES. THE
DEPARTMENT IS REQUIRED TO ISSUE PERMITS TO BENEFICIALLY USE
WATER AND APPROVE CHANGES IN APPROPRIATION RIGHTS IF THE
DEPARTMENT HAS NO SUBSTANTIAL CREDIBLE EVIDENCE INDICATING
THAT THE BENEFICIAL USE OR CHANGE IN RIGHT WOULD CAUSE
LONG-TERM AQUIFER RECHARGE RATES TO BE EXCEEDED. THE
LEGISLATURE RECOGNIZES THAT NEW WATER WITHDRAWALS AND
CHANGES IN APPROPRIATION RIGHTS CAN CAUSE LONG-TERM AQUIFER

RECHARGE RATES TO BE EXCEEDED AND GROUND WATER TO BE
DIMINISHED. THE LEGISLATURE ALSO RECOGNIZES THAT THE
POTENTIAL FOR THESE PROBLEMS TO OCCUR IS NOT NECESSARILY
WIDESPREAD IN THE STATE AND MAY, IN FACT, BE LIMITED TO ONLY
A FEW DRAINAGES OR BASINS. THE DEPARTMENT SHOULD ADOPT RULES
THAT ESTABLISH CRITERIA AND A SCREENING PROCEDURE FOR:

(1) DETERMINING THE AREAS OF THE STATE IN WHICH
LONG-TERM AQUIFER DRAWDOWN AND WATER QUALITY PROBLEMS MAY
OCCUR AS A RESULT OF INCREASED WATER WITHDRAWAL OR CHANGES
IN APPROPRIATION RIGHTS; AND

(2) IDENTIFYING THOSE APPLICATIONS FOR A PERMIT TO
BENEFICIALLY USE WATER OR CHANGE APPROPRIATION RIGHTS THAT
MAY CAUSE THESE ADVERSE EFFECTS.

IT IS THE LEGISLATURE'S INTENT THAT THE DEPARTMENT
CONSIDER ALL AVAILABLE INFORMATION CONSTITUTING SUBSTANTIAL
CREDIBLE EVIDENCE THAT IS SUBMITTED TO THE DEPARTMENT FROM
ANY SOURCE OR THAT IS AVAILABLE TO THE DEPARTMENT THAT
RELATES TO IMPACTS OF NEW WATER WITHDRAWALS OR CHANGES IN
APPROPRIATION RIGHTS UPON LONG-TERM AQUIFER RECHARGE AND
WATER QUALITY. HOWEVER, IT IS NOT THE LEGISLATURE'S INTENT
TO IMPOSE UPON THE DEPARTMENT NEW RESEARCH OR DATA
COLLECTION OBLIGATIONS TO IMPLEMENT THE BILL'S PROVISIONS
EXCEPT IN SITUATIONS IN WHICH THE DEPARTMENT DETERMINES THAT
IMPACTS UPON LONG-TERM AQUIFER RECHARGE ARE LIKELY AND THAT
ADDITIONAL EFFORT BEYOND THE DEPARTMENT'S CURRENT

1 APPLICATION EVALUATION PROCEDURES IS WARRANTED TO DOCUMENT
 2 THE PROBABLE EXTENT OF THE IMPACTS.

3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 **Section 1.** Section 85-2-311, MCA, is amended to read:

6 **"85-2-311. Criteria for issuance of permit.** (1) Except
 7 as provided in subsections (2) and (3), the department shall
 8 issue a permit if:

9 (a) the applicant proves by substantial credible
 10 evidence that the following criteria are met:

11 (i) there are unappropriated waters in the source of
 12 supply at the proposed point of diversion:

13 (A) at times when the water can be put to the use
 14 proposed by the applicant;

15 (B) in the amount the applicant seeks to
 16 appropriate; and

17 (C) during the period in which the applicant seeks
 18 to appropriate, the amount requested is reasonably
 19 available;

20 (ii) the water rights of a prior appropriator will
 21 not be adversely affected;

22 (iii) the proposed means of diversion, construction,
 23 and operation of the appropriation works are adequate;

24 (iv) the proposed use of water is a beneficial use;

25 (v) the proposed use will not interfere unreasonably

1 with other planned uses or developments for which a permit
 2 has been issued or for which water has been reserved; and

3 (vi) the applicant has a possessory interest, or the
 4 written consent of the person with the possessory interest,
 5 in the property where the water is to be put to beneficial
 6 use; and

7 (b) the department has no information from any source
 8 that constitutes substantial credible evidence indicating
 9 that:

10 (i) for ground water, the proposed amount of water to
 11 be put to beneficial use will exceed long-term aquifer
 12 recharge rates, considering existing surface water right
 13 appropriations; and

14 (ii) the proposed use of water will adversely affect:
 15 (A) the quality of the water in the source of supply to
 16 the extent that the water right of a prior appropriator is
 17 rendered unusable for its prior use; or

18 (B) the holder of a permit to discharge sewage,
 19 industrial wastes, or other wastes issued pursuant to Title
 20 757, chapter 57, part 4.

21 (2) The department may not issue a permit for an
 22 appropriation of 4,000 or more acre-feet of water a year and
 23 5.5 or more cubic feet per second of water unless the
 24 applicant proves by clear and convincing evidence that:

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

1 (b) the rights of a prior appropriator will not be
2 adversely affected;

3 (c) the proposed appropriation is a reasonable use.
4 Such a finding shall be based on a consideration of the
5 following:

6 (i) the existing demands on the state water supply, as
7 well as projected demands such as reservations of water for
8 future beneficial purposes, including municipal water
9 supplies, irrigation systems, and minimum streamflows for
10 the protection of existing water rights and aquatic life;

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

12 (iii) the effects on the quantity and quality of water
13 for existing beneficial uses in the source of supply;

14 (iv) the availability and feasibility of using
15 low-quality water for the purpose for which application has
16 been made;

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

19 (vi) the probable significant adverse environmental
20 impacts of the proposed use of water as determined by the
21 department pursuant to Title 75, chapter 1, or Title 75,
22 chapter 20.

23 (3) (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 criteria in this
9 subsection (3) must be met before out-of-state use may
10 occur.

11 (b) The department may not issue a permit for the
12 appropriation of water for withdrawal and transportation for
13 use outside the state unless the applicant proves by clear
14 and convincing evidence that:

15 (i) depending on the volume of water diverted or
16 consumed, the applicable criteria and procedures of
17 subsection (1) or (2) are met;

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

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

23 (c) In determining whether the applicant has proved by
24 clear and convincing evidence that the requirements of
25 subsections (3)(b)(ii) and (3)(b)(iii) are met, the

1 department shall 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 application could feasibly be transported to alleviate water
6 shortages within the state of 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 permit or a lease to withdraw
13 and transport water for use outside the state, the applicant
14 shall submit to and comply with the laws of the state of
15 Montana governing the appropriation, lease, and use of
16 water.

17 (4) To meet the substantial credible evidence standard
18 in this section, the applicant shall submit independent
19 hydrologic or other evidence, including water supply data,
20 field reports, and other information developed by the
21 department, the U.S. geological survey, or the U.S. soil
22 conservation service and other specific field studies,
23 demonstrating that the criteria are met.

24 (5) An appropriation, diversion, impoundment, use,
25 restraint, or attempted appropriation, diversion,

1 impoundment, use, or restraint contrary to the provisions of
2 this section is invalid. An officer, agent, agency, or
3 employee of the state may not knowingly permit, aid, or
4 assist in any manner an unauthorized appropriation,
5 diversion, impoundment, use, or other restraint. A person or
6 corporation may not, directly or indirectly, personally or
7 through an agent, officer, or employee, attempt to
8 appropriate, divert, impound, use, or otherwise restrain or
9 control waters within the boundaries of this state except in
10 accordance with this section."

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

12 **"85-2-402. (Temporary) Changes in appropriation rights.**

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

17 (2) Except as provided in subsections (3) through (5),
18 the department shall approve a change in appropriation right
19 if:

20 (a) the appropriator proves by substantial credible
21 evidence that the following criteria are met:

22 ~~(a)~~(i) The the proposed use will not adversely affect
23 the 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)(ii)~~ Except ~~except~~ for a lease authorization pursuant
2 to 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)(iii)~~ The ~~the~~ proposed use of water is a beneficial
6 use; and

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

11 (b) the department has no information from any source
12 that constitutes substantial credible evidence indicating
13 that;

14 (i) for ground water, the change in appropriation right
15 will cause long-term aquifer withdrawal rates to exceed
16 long-term aquifer recharge rates, considering existing
17 surface water right appropriations; and

18 ~~(ii) the change in appropriation right will adversely~~
19 ~~affect;~~

20 ~~(A) the quality of the water in the source of supply to~~
21 ~~the extent that the water right of a prior appropriator is~~
22 ~~rendered unusable for its prior use; or~~

23 ~~(B) the holder of a permit to discharge sewage,~~
24 ~~industrial wastes, or other wastes issued pursuant to Title~~
25 ~~75, chapter 5, part 4.~~

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

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

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

9 (i) the existing demands on the state water supply, as
10 well as projected demands for water for future beneficial
11 purposes, including municipal water supplies, irrigation
12 systems, and minimum streamflows for the protection of
13 existing water rights and aquatic life;

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

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

17 (iv) the availability and feasibility of using
18 low-quality water for the purpose for which application has
19 been made;

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

22 (vi) the probable significant adverse environmental
23 impacts of the proposed use of water as determined by the
24 department pursuant to Title 75, chapter 1, or Title 75,
25 chapter 20.

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

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

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

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

23 (b) The department and, if applicable, the legislature
24 may not approve a change in appropriation right for the
25 withdrawal and transportation of appropriated water for use

1 outside the state unless the appropriator proves by clear
2 and convincing evidence and, if applicable, the legislature
3 approves after one or more public hearings that:

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

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

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

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

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

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

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

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

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

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

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

25 (8) If a change is not completed as approved by the

1 department or legislature or if the terms, conditions,
2 restrictions, and limitations of the change approval are not
3 complied with, the department may, after notice and
4 opportunity for hearing, require the appropriator to show
5 cause why the change approval should not be modified or
6 revoked. If the appropriator fails to show sufficient cause,
7 the department may modify or revoke the change approval.

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

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

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

25 85-2-402. (Effective July 1, 1993) Changes in

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

5 (2) Except as provided in subsections (3) through (5),
6 the department shall approve a change in appropriation
7 right:

8 (a) if the appropriator proves by substantial credible
9 evidence that the following criteria are met:

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

14 (b)(ii) The the proposed means of diversion,
15 construction, and operation of the appropriation works are
16 adequate;

17 (c)(iii) The the proposed use of water is a beneficial
18 use; and

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

23 (b) the department has no information from any source
24 that constitutes substantial credible evidence indicating
25 that:

1 ~~(i) for ground water, the change in appropriation right~~
2 ~~will cause long-term aquifer withdrawal rates to exceed~~
3 ~~long-term aquifer recharge rates, considering existing~~
4 ~~surface water right appropriations; and~~

5 ~~(ii) the change in appropriation right will adversely~~
6 ~~affect:~~

7 ~~(A) the quality of the water in the source of supply to~~
8 ~~the extent that the water right of a prior appropriator is~~
9 ~~rendered unusable for its prior use; or~~

10 ~~(B) the holder of a permit to discharge sewage,~~
11 ~~industrial wastes, or other wastes issued pursuant to Title~~
12 ~~75, chapter 5, part 4.~~

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

20 (9) The original of a change approval issued by the
21 department must be sent to the applicant, and a duplicate
22 must be kept in the office of the department in Helena.

23 (10) A person holding an issued permit or change
24 approval that has not been perfected may change the place of
25 diversion, place of use, purpose of use, or place of storage

1 by filing an application for change pursuant to this
2 section.

3 (11) A change in appropriation right contrary to the
4 provisions of this section is invalid. No officer, agent,
5 agency, or employee of the state may knowingly permit, aid,
6 or assist in any manner such unauthorized change in
7 appropriation right. No person or corporation may, directly
8 or indirectly, personally or through an agent, officer, or
9 employee, attempt to change an appropriation right except in
10 accordance with this section."

11 **Section 3.** Section 85-2-506, MCA, is amended to read:

12 "85-2-506. Controlled ground water areas -- designation
13 or modification. (1) The board may designate or modify
14 controlled ground water areas as provided in this part.

15 (2) Designation or modification of an area of
16 controlled ground water use may be proposed to the board by
17 the department on its own motion, by request of a unit of
18 local government, including a county, an incorporated city
19 or town [, or a local water quality district], or by
20 petition signed by at least 20 or one-fourth of the users
21 (whichever is the lesser number) of ground water in a ground
22 water the area proposed for designation, or the existing
23 controlled ground water area, wherein there are alleged to
24 be facts showing:

25 (a) that ground water withdrawals are in excess of

1 recharge to the aquifer or aquifers within such ground water
2 area;

3 (b) that excessive ground water withdrawals are very
4 likely to occur in the near future because of consistent and
5 significant increases in withdrawals from within the ground
6 water area;

7 (c) that significant disputes regarding priority of
8 rights, amounts of ground water in use by appropriators, or
9 priority of type of use are in progress within the ground
10 water area;

11 (d) that ground water levels or pressures in the area
12 in question are declining or have declined excessively; or

13 (e) that excessive ground water withdrawals would cause
14 contaminant migration and a degradation of ground water
15 quality within the ground water area.

16 (3) When such a proposal is thus made, the board shall
17 fix a time and place for a hearing, which time shall not be
18 less than 90 days from the making of the proposal. The place
19 for the hearing shall be within or as close as practical to
20 the controlled ground water area.

21 (4) The department shall publish a notice of the
22 hearing, setting forth therein:

23 (a) the names of the petitioners;

24 (b) the description by legal subdivisions (section,
25 township, range) of all lands included in or proposed to be

1 included in the ground water area or subarea;

2 (c) the purpose of the hearing; and

3 (d) the time and place of the hearing where any
4 interested person may appear, either in person or by
5 attorney, file written objections to the granting of the
6 proposal, and be fully heard.

7 (5) Such notice of hearing shall be published at least
8 once in each week for 3 successive weeks not less than 30
9 days before the date of the hearing in a newspaper of
10 general circulation in the county or counties in which the
11 ground water area or subarea is located. The department
12 shall also cause a copy of the notice, together with a copy
13 of the petition, to be served by mail, not less than 30 days
14 before the hearing, upon each well driller licensed in
15 Montana whose address is within any county in which any part
16 of the area in question is located; upon each person or
17 public agency known from an examination of the records in
18 the department's office to be a claimant or appropriator of
19 ground water in the area in question (claimant or
20 appropriator meaning one who diverts, impounds, or withdraws
21 ground water and not merely one who uses or obtains ground
22 water from another who diverts, impounds, or withdraws
23 ground water); upon the bureau; and upon the mayor or
24 chairman of the governing body of each incorporated
25 municipality located in whole or in part within the proposed

1 ground water area. The department may also serve notice upon
2 any other person or state or federal agency that the
3 department feels may be interested in or affected by the
4 proposed designation or modification of a controlled ground
5 water area. The petition need not be served on any
6 petitioner. A copy of the notice, together with a copy of
7 the proposal, shall be mailed to each person at his
8 last-known address, and such service shall be complete upon
9 depositing it in the post office, postage prepaid, addressed
10 to each person on whom it is to be served. Publication and
11 mailing of such notice as prescribed herein, when completed,
12 shall be deemed to be sufficient notice of such hearing to
13 all interested persons."

14 **Section 4.** Section 85-2-507, MCA, is amended to read:

15 **"85-2-507. Limiting withdrawals -- modification of**
16 **order.** (1) At the time set for the hearing, the board shall
17 proceed to hear oral and written evidence relevant to the
18 designation or modification of the controlled ground water
19 area presented by the bureau, the department, and any other
20 interested party. A full record shall be kept of all
21 evidence taken at the hearing. The procedure shall be such
22 as to secure a full, fair, and orderly proceeding and to
23 permit all relevant evidence to be received. The common-law
24 and statutory rules of evidence shall apply only upon
25 stipulation of all parties.

1 (2) After the conclusion of the hearing, the board
2 shall make written findings and an order. The board shall by
3 order declare the area in question to be a controlled ground
4 water area if the board finds on the basis of the hearing
5 that:

6 (a) the public health, safety, or welfare requires a
7 corrective control be adopted; and

8 (b) (i) there is a wasteful use of water from existing
9 wells or undue interference with existing wells;

10 (ii) any proposed use or well will impair or
11 substantially interfere with existing rights to appropriate
12 surface water or ground water by others; or

13 (iii) the facts alleged in the petition or the request
14 by a unit of local government as required by 85-2-506(2) are
15 true.

16 (3) The order shall define the boundary of the
17 controlled ground water area and shall indicate which of the
18 ground water aquifers located within the area in question
19 are included within the controlled ground water area. Any
20 number of ground water aquifers which wholly or partially
21 overlie one another may be included in the same controlled
22 ground water area.

23 (4) The order may include the following corrective
24 control provisions:

25 (a) a provision closing the controlled ground water

1 area to further appropriation of ground water, in which
2 event the department shall thereafter refuse to accept any
3 applications for beneficial water use permits to appropriate
4 ground water located within such controlled area;

5 (b) a provision determining a permissible total
6 withdrawal of ground water in the controlled area by day,
7 month, or year and permitting the board to apportion such
8 permissible total withdrawal among the appropriators holding
9 valid rights to the ground water in the controlled area in
10 accordance with the relative dates of priority of such
11 rights;

12 (c) a provision according preference, without reference
13 to relative priorities, to withdrawals of ground water in
14 the controlled area for domestic and livestock purposes
15 first and thereafter to withdrawals for other beneficial
16 purposes, including but not limited to agricultural,
17 industrial, municipal (other than domestic), and
18 recreational purposes, in such order as the board considers
19 advisable under the circumstances;

20 (d) a provision reducing the permissible withdrawal of
21 ground water by any appropriator or well in the controlled
22 area;

23 (e) when two or more wells in the controlled area are
24 used by the same appropriator, a provision adjusting the
25 total permissible withdrawal of ground water by the

1 appropriator or a provision forbidding the use of one or
2 more such wells;

3 (f) a provision requiring and specifying a system of
4 rotation of use of ground water in the controlled area;

5 (g) provisions making such additional requirements as
6 are necessary to protect the public health, safety, and
7 welfare in accordance with the intent, purposes, and
8 requirements of this part and the laws of the state.

9 (5) (a) If at the conclusion of the hearing the board
10 finds that sufficient facts are not available to designate
11 or modify a permanent controlled ground water area, the
12 board may by order designate the area in question to be a
13 temporary controlled ground water area. Such order may
14 include the corrective control provisions contained in
15 subsection (4). A temporary controlled ground water area
16 shall be designated as such for a period not to exceed 2
17 years from the date of the board's order designating the
18 temporary controlled ground water area. The board may, for
19 sufficient cause, extend the time period for an additional 2
20 years, and in this case all ground water appropriators in
21 the controlled ground water area shall be notified of the
22 extension.

23 (b) During the 2-year period, the department shall
24 commence studies necessary to obtain the facts needed to
25 assist in the designation or modification of a permanent

1 controlled ground water area. Facts gathered during the
2 study period shall be presented at a hearing prior to the
3 designation or modification of a permanent controlled ground
4 water area. All parties appearing at the first hearing shall
5 be served notice of this hearing by mail at least 30 days
6 prior to the date set for the hearing. The service shall be
7 complete upon deposit of notice at the post office, postage
8 prepaid, addressed to each person on whom service is to be
9 made. Mailing of the notice, when completed, shall be
10 considered to be sufficient notice of the hearing to all
11 persons directly affected. The department shall file in its
12 records proof of service by its own affidavit. The hearing
13 shall be conducted by the board in the manner of the first
14 hearing, and the board shall make written findings of fact
15 and conclusions of law and issue an order according to the
16 provisions set forth in subsections (1) through (4). In the
17 event the department does not complete the necessary study
18 in the 2-year period or extension thereof, the temporary
19 controlled ground water area designation will terminate at
20 the end of the 2-year period or extension.

21 (6) The department may enforce the order and bring an
22 action for an injunction in a district court of a district
23 in which all or part of the area affected is located, in
24 addition to all other remedies.

25 (7) The order of the board shall be published and

1 mailed by the department in the manner and for the length of
 2 time as prescribed by 85-2-506 for the publication and
 3 mailing of the notice of hearing, except that a copy of the
 4 written findings and order of the board shall be mailed
 5 instead of a copy of the proposal and, except further, that
 6 a copy of the order, together with a copy of the written
 7 findings, shall be mailed to each petitioner at his
 8 last-known address. The department shall file a copy of the
 9 order with the county clerk of each county within which any
 10 part of the controlled ground water area lies, and the
 11 county clerk shall record the order without fee. The
 12 department shall file in its records proof of service by its
 13 own affidavit of service. Upon publication and mailing of
 14 such order as prescribed herein, the order shall be final
 15 and conclusive unless an appeal therefrom is taken.

16 (8) The board may by order suspend, modify, or revoke
 17 any order made as provided in this section upon such notice
 18 and in such manner as is reasonable under the circumstances.
 19 A copy of each suspension, modification, or revocation shall
 20 be served or filed and recorded as provided for orders in
 21 subsection (7).

22 (9) While a matter is pending before the board, the
 23 department may restrict further development of the subarea."

24 NEW SECTION. **Section 5.** Coordination instruction. If
 25 Senate Bill No. 136 is not passed and approved, the

1 bracketed reference in [section 3(2)] to a local water
 2 quality district is void.

-End-

SENATE BILL NO. 303

INTRODUCED BY WEEDING, T. BECK, YELLOWTAIL, GRADY

BY REQUEST OF THE ENVIRONMENTAL
QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER
EFFECTS ON ~~WATER--QUALITY--AND~~ WATER QUALITY AND AQUIFER
RECHARGE RATES WHEN ISSUING PERMITS TO BENEFICIALLY USE
WATER AND WHEN APPROVING CHANGES IN APPROPRIATION RIGHTS;
PROVIDING THAT UNITS OF LOCAL GOVERNMENT MAY REQUEST
DESIGNATION OF A CONTROLLED GROUND WATER AREA; AND AMENDING
SECTIONS 85-2-311, 85-2-402, 85-2-506, AND 85-2-507, MCA."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO
PROVIDE DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION CONCERNING THE ADOPTION OF RULES. THE
DEPARTMENT IS REQUIRED TO ISSUE PERMITS TO BENEFICIALLY USE
WATER AND APPROVE CHANGES IN APPROPRIATION RIGHTS IF THE
DEPARTMENT HAS NO SUBSTANTIAL CREDIBLE EVIDENCE INDICATING
THAT THE BENEFICIAL USE OR CHANGE IN RIGHT WOULD ADVERSELY
AFFECT WATER QUALITY OR CAUSE LONG-TERM AQUIFER RECHARGE
RATES TO BE EXCEEDED. THE LEGISLATURE RECOGNIZES THAT NEW
WATER WITHDRAWALS AND CHANGES IN APPROPRIATION RIGHTS CAN

CAUSE LONG-TERM AQUIFER RECHARGE RATES TO BE EXCEEDED OR THE
QUALITY OF RELATED SURFACE WATER AND GROUND WATER TO BE
DIMINISHED. THE LEGISLATURE ALSO RECOGNIZES THAT THE
POTENTIAL FOR THESE PROBLEMS TO OCCUR IS NOT NECESSARILY
WIDESPREAD IN THE STATE AND MAY, IN FACT, BE LIMITED TO ONLY
A FEW DRAINAGES OR BASINS. THE DEPARTMENT SHOULD ADOPT RULES
THAT ESTABLISH CRITERIA AND A SCREENING PROCEDURE FOR:

(1) DETERMINING THE AREAS OF THE STATE IN WHICH
LONG-TERM AQUIFER DRAWDOWN AND WATER QUALITY PROBLEMS MAY
OCCUR AS A RESULT OF INCREASED WATER WITHDRAWAL OR CHANGES
IN APPROPRIATION RIGHTS; AND

(2) IDENTIFYING THOSE APPLICATIONS FOR A PERMIT TO
BENEFICIALLY USE WATER OR CHANGE APPROPRIATION RIGHTS THAT
MAY CAUSE THESE ADVERSE EFFECTS.

IT IS THE LEGISLATURE'S INTENT THAT THE DEPARTMENT
CONSIDER ALL AVAILABLE INFORMATION CONSTITUTING SUBSTANTIAL
CREDIBLE EVIDENCE THAT IS SUBMITTED TO THE DEPARTMENT FROM
ANY SOURCE OR THAT IS AVAILABLE TO THE DEPARTMENT THAT
RELATES TO IMPACTS OF NEW WATER WITHDRAWALS OR CHANGES IN
APPROPRIATION RIGHTS UPON LONG-TERM AQUIFER RECHARGE AND
WATER QUALITY. HOWEVER, IT IS NOT THE LEGISLATURE'S INTENT
TO IMPOSE UPON THE DEPARTMENT NEW RESEARCH OR DATA
COLLECTION OBLIGATIONS TO IMPLEMENT THE BILL'S PROVISIONS
EXCEPT IN SITUATIONS IN WHICH THE DEPARTMENT DETERMINES THAT
IMPACTS UPON LONG-TERM AQUIFER RECHARGE OR WATER QUALITY ARE

1 LIKELY AND THAT ADDITIONAL EFFORT BEYOND THE DEPARTMENT'S
 2 CURRENT APPLICATION EVALUATION PROCEDURES IS WARRANTED TO
 3 DOCUMENT THE PROBABLE EXTENT OF THE IMPACTS.

4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 **Section 1.** Section 85-2-311, MCA, is amended to read:

7 ***85-2-311. Criteria for issuance of permit.** (1) Except
 8 as provided in subsections (2) and (3), the department shall
 9 issue a permit if:

10 (a) the applicant proves by substantial credible
 11 evidence that the following criteria are met:

12 ~~(e)~~(i) there are unappropriated waters in the source of
 13 supply at the proposed point of diversion:

14 ~~(i)~~(A) at times when the water can be put to the use
 15 proposed by the applicant;

16 ~~(ii)~~(B) in the amount the applicant seeks to
 17 appropriate; and

18 ~~(iii)~~(C) during the period in which the applicant seeks
 19 to appropriate, the amount requested is reasonably
 20 available;

21 ~~(b)~~(ii) the water rights of a prior appropriator will
 22 not be adversely affected;

23 ~~(c)~~(iii) the proposed means of diversion, construction,
 24 and operation of the appropriation works are adequate;

25 ~~(d)~~(iv) the proposed use of water is a beneficial use;

1 ~~(e)~~(v) the proposed use will not interfere unreasonably
 2 with other planned uses or developments for which a permit
 3 has been issued or for which water has been reserved; and

4 ~~(f)~~(vi) 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; and

8 ~~(b)~~ the department has no information from any source
 9 that constitutes substantial credible evidence indicating
 10 that:

11 ~~(i)~~(I) for ground water, the proposed amount of water
 12 to be put to beneficial use will exceed long-term aquifer
 13 recharge rates, considering existing surface water right
 14 appropriations; and

15 ~~(ii) the proposed use of water will adversely affect:~~

16 ~~(A) the quality of the water in the source of supply to~~
 17 ~~the extent that the water right of a prior appropriator is~~
 18 ~~rendered unusable for its prior use; or~~

19 ~~(B) the holder of a permit to discharge sewage,~~
 20 ~~industrial wastes, or other wastes issued pursuant to Title~~
 21 ~~75, chapter 5, part 4; AND~~

22 (II) THE PROPOSED USE OF WATER WILL ADVERSELY AFFECT:

23 (A) THE QUALITY OF THE WATER IN THE SOURCE OF SUPPLY TO
 24 THE EXTENT THAT THE WATER RIGHT OF A PRIOR APPROPRIATOR IS
 25 RENDERED UNUSABLE FOR ITS PRIOR USE; OR

1 (B) THE HOLDER OF A PERMIT TO DISCHARGE SEWAGE,
 2 INDUSTRIAL WASTES, OR OTHER WASTES ISSUED PURSUANT TO TITLE
 3 75, CHAPTER 5, PART 4.

4 (2) The department may not issue a permit for an
 5 appropriation of 4,000 or more acre-feet of water a year and
 6 5.5 or more cubic feet per second of water unless the
 7 applicant proves by clear and convincing evidence that:

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

9 (b) the rights of a prior appropriator will not be
 10 adversely affected;

11 (c) the proposed appropriation is a reasonable use.
 12 Such a finding shall be based on a consideration of the
 13 following:

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

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

20 (iii) the effects on the quantity and quality of water
 21 for existing beneficial uses in the source of supply;

22 (iv) the availability and feasibility of using
 23 low-quality water for the purpose for which application has
 24 been made;

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

1 creation of or contribution to saline seep; and

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

6 (3) (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 criteria in this
 17 subsection (3) must be met before out-of-state use may
 18 occur.

19 (b) The department may not issue a permit for the
 20 appropriation of water for withdrawal and transportation for
 21 use outside the state unless the applicant proves by clear
 22 and convincing evidence that:

23 (i) depending on the volume of water diverted or
 24 consumed, the applicable criteria and procedures of
 25 subsection (1) or (2) are met;

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

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

6 (c) In determining whether the applicant has proved by
7 clear and convincing evidence that the requirements of
8 subsections (3)(b)(ii) and (3)(b)(iii) are met, the
9 department shall 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 application could feasibly be transported to alleviate water
14 shortages within the state of Montana;

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

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

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

25 (4) To meet the substantial credible evidence standard

1 in this section, the applicant shall submit independent
2 hydrologic or other evidence, including water supply data,
3 field reports, and other information developed by the
4 department, the U.S. geological survey, or the U.S. soil
5 conservation service and other specific field studies,
6 demonstrating that the criteria are met.

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

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

20 **"85-2-402. (Temporary) Changes in appropriation rights.**

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

25 (2) Except as provided in subsections (3) through (5),

1 the department shall approve a change in appropriation right
2 if:

3 (a) the appropriator proves by substantial credible
4 evidence that the following criteria are met:

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

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

13 (c)(iii) The the proposed use of water is a beneficial
14 use; and

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

19 (b) the department has no information from any source
20 that constitutes substantial credible evidence indicating
21 that:

22 (i)(I) for ground water, the change in appropriation
23 right will cause long-term aquifer withdrawal rates to
24 exceed long-term aquifer recharge rates, considering
25 existing surface water right appropriations; and

1 ~~(ii) the change in appropriation right will adversely~~
2 ~~affect;~~

3 ~~(A) the quality of the water in the source of supply to~~
4 ~~the extent that the water right of a prior appropriator is~~
5 ~~rendered unusable for its prior use; or~~

6 ~~(B) the holder of a permit to discharge sewage,~~
7 ~~industrial wastes, or other wastes issued pursuant to Title~~
8 ~~75, chapter 5, part 4; AND~~

9 (II) THE CHANGE IN APPROPRIATION RIGHT WILL ADVERSELY
10 AFFECT:

11 (A) THE QUALITY OF THE WATER IN THE SOURCE OF SUPPLY TO
12 THE EXTENT THAT THE WATER RIGHT OF A PRIOR APPROPRIATOR IS
13 RENDERED UNUSABLE FOR ITS PRIOR USE; OR

14 (B) THE HOLDER OF A PERMIT TO DISCHARGE SEWAGE,
15 INDUSTRIAL WASTES, OR OTHER WASTES ISSUED PURSUANT TO TITLE
16 75, CHAPTER 5, PART 4.

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

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

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

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

1 well as projected demands for water for future beneficial
2 purposes, including municipal water supplies, irrigation
3 systems, and minimum streamflows for the protection of
4 existing water rights and aquatic life;

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

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

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

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

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

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

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

24 (b) the department then petitions the legislature and
25 the legislature affirms the decision of the department after

1 one or more public hearings.

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

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

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

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

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

1 otherwise detrimental to the public welfare of the citizens
2 of Montana.

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

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

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

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

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

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

24 (6) For any application for a change in appropriation
25 right involving 4,000 or more acre-feet of water a year and

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

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

16 (8) 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) 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) 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) 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
23 right:

24 (a) if the appropriator proves by substantial credible
25 evidence that the following criteria are met:

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

5 ~~(b)(ii)~~ The the proposed means of diversion,
6 construction, and operation of the appropriation works are
7 adequate;

8 ~~(c)(iii)~~ The the proposed use of water is a beneficial
9 use; and

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

14 (b) the department has no information from any source
15 that constitutes substantial credible evidence indicating
16 that:

17 (i)(I) for ground water, the change in appropriation
18 right will cause long-term aquifer withdrawal rates to
19 exceed long-term aquifer recharge rates, considering
20 existing surface water right appropriations; and

21 ~~(ii) the change in appropriation right will adversely~~
22 ~~affect;~~

23 ~~(A) the quality of the water in the source of supply to~~
24 ~~the extent that the water right of a prior appropriator is~~
25 ~~rendered unusable for its prior use; or~~

1 ~~(B) the holder of a permit to discharge sewage,~~
2 ~~industrial wastes, or other wastes issued pursuant to Title~~
3 ~~75, chapter 5, part 4; AND~~

4 (II) THE CHANGE IN APPROPRIATION RIGHT WILL ADVERSELY
5 AFFECT:

6 (A) THE QUALITY OF THE WATER IN THE SOURCE OF SUPPLY TO
7 THE EXTENT THAT THE WATER RIGHT OF A PRIOR APPROPRIATOR IS
8 RENDERED UNUSABLE FOR ITS PRIOR USE; OR

9 (B) THE HOLDER OF A PERMIT TO DISCHARGE SEWAGE,
10 INDUSTRIAL WASTES, OR OTHER WASTES ISSUED PURSUANT TO TITLE
11 75, CHAPTER 5, PART 4.

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

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

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

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

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

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

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

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

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

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

16 (a) the applicant proves by clear and convincing
17 evidence and the department finds that the criteria in
18 subsections (2) and (3) 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 (5) (a) The state of Montana has long recognized the
23 importance of conserving its public waters and the necessity
24 to maintain adequate water supplies for the state's water
25 requirements, including requirements for reserved water

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

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

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

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

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

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

1 department and, if applicable, the legislature shall
 2 consider the following factors:

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

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

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

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

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

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

1 hold one or more hearings upon any other proposed change if
 2 it determines that such a change might adversely affect the
 3 rights of other persons.

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

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

19 (9) The original of a change approval issued by the
 20 department must be sent to the applicant, and a duplicate
 21 must be kept in the office of the department in Helena.

22 (10) A person holding an issued permit or change
 23 approval that has not been perfected may change the place of
 24 diversion, place of use, purpose of use, or place of storage
 25 by filing an application for change pursuant to this

1 section.

2 (11) A change in appropriation right contrary to the
 3 provisions of this section is invalid. No officer, agent,
 4 agency, or employee of the state may knowingly permit, aid,
 5 or assist in any manner such unauthorized change in
 6 appropriation right. No person or corporation may, directly
 7 or indirectly, personally or through an agent, officer, or
 8 employee, attempt to change an appropriation right except in
 9 accordance with this section."

10 **Section 3.** Section 85-2-506, MCA, is amended to read:

11 **"85-2-506. Controlled ground water areas -- designation**
 12 **or modification.** (1) The board may designate or modify
 13 controlled ground water areas as provided in this part.

14 (2) Designation or modification of an area of
 15 controlled ground water use may be proposed to the board by
 16 the department on its own motion, by request of a unit of
 17 local government, including a county, an incorporated city
 18 or town [, or a local water quality district], or by
 19 petition signed by at least 20 or one-fourth of the users
 20 (whichever is the lesser number) of ground water in a-ground
 21 water the area proposed for designation, or the existing
 22 controlled ground water area, wherein there are alleged to
 23 be facts showing:

24 (a) that ground water withdrawals are in excess of
 25 recharge to the aquifer or aquifers within such ground water

1 area;

2 (b) that excessive ground water withdrawals are very
3 likely to occur in the near future because of consistent and
4 significant increases in withdrawals from within the ground
5 water area;

6 (c) that significant disputes regarding priority of
7 rights, amounts of ground water in use by appropriators, or
8 priority of type of use are in progress within the ground
9 water area;

10 (d) that ground water levels or pressures in the area
11 in question are declining or have declined excessively; or

12 (e) that excessive ground water withdrawals would cause
13 contaminant migration and a degradation of ground water
14 quality within the ground water area.

15 (3) When such a proposal is thus made, the board shall
16 fix a time and place for a hearing, which time shall not be
17 less than 90 days from the making of the proposal. The place
18 for the hearing shall be within or as close as practical to
19 the controlled ground water area.

20 (4) The department shall publish a notice of the
21 hearing, setting forth therein:

22 (a) the names of the petitioners;

23 (b) the description by legal subdivisions (section,
24 township, range) of all lands included in or proposed to be
25 included in the ground water area or subarea;

1 (c) the purpose of the hearing; and

2 (d) the time and place of the hearing where any
3 interested person may appear, either in person or by
4 attorney, file written objections to the granting of the
5 proposal, and be fully heard.

6 (5) Such notice of hearing shall be published at least
7 once in each week for 3 successive weeks not less than 30
8 days before the date of the hearing in a newspaper of
9 general circulation in the county or counties in which the
10 ground water area or subarea is located. The department
11 shall also cause a copy of the notice, together with a copy
12 of the petition, to be served by mail, not less than 30 days
13 before the hearing, upon each well driller licensed in
14 Montana whose address is within any county in which any part
15 of the area in question is located; upon each person or
16 public agency known from an examination of the records in
17 the department's office to be a claimant or appropriator of
18 ground water in the area in question (claimant or
19 appropriator meaning one who diverts, impounds, or withdraws
20 ground water and not merely one who uses or obtains ground
21 water from another who diverts, impounds, or withdraws
22 ground water); upon the bureau; and upon the mayor or
23 chairman of the governing body of each incorporated
24 municipality located in whole or in part within the proposed
25 ground water area. The department may also serve notice upon

1 any other person or state or federal agency that the
 2 department feels may be interested in or affected by the
 3 proposed designation or modification of a controlled ground
 4 water area. The petition need not be served on any
 5 petitioner. A copy of the notice, together with a copy of
 6 the proposal, shall be mailed to each person at his
 7 last-known address, and such service shall be complete upon
 8 depositing it in the post office, postage prepaid, addressed
 9 to each person on whom it is to be served. Publication and
 10 mailing of such notice as prescribed herein, when completed,
 11 shall be deemed to be sufficient notice of such hearing to
 12 all interested persons."

13 **Section 4.** Section 85-2-507, MCA, is amended to read:

14 "85-2-507. Limiting withdrawals -- modification of
 15 order. (1) At the time set for the hearing, the board shall
 16 proceed to hear oral and written evidence relevant to the
 17 designation or modification of the controlled ground water
 18 area presented by the bureau, the department, and any other
 19 interested party. A full record shall be kept of all
 20 evidence taken at the hearing. The procedure shall be such
 21 as to secure a full, fair, and orderly proceeding and to
 22 permit all relevant evidence to be received. The common-law
 23 and statutory rules of evidence shall apply only upon
 24 stipulation of all parties.

25 (2) After the conclusion of the hearing, the board

1 shall make written findings and an order. The board shall by
 2 order declare the area in question to be a controlled ground
 3 water area if the board finds on the basis of the hearing
 4 that:

5 (a) the public health, safety, or welfare requires a
 6 corrective control be adopted; and

7 (b) (i) there is a wasteful use of water from existing
 8 wells or undue interference with existing wells;

9 (ii) any proposed use or well will impair or
 10 substantially interfere with existing rights to appropriate
 11 surface water or ground water by others; or

12 (iii) the facts alleged in the petition or the request
 13 by a unit of local government as required by 85-2-506(2) are
 14 true.

15 (3) The order shall define the boundary of the
 16 controlled ground water area and shall indicate which of the
 17 ground water aquifers located within the area in question
 18 are included within the controlled ground water area. Any
 19 number of ground water aquifers which wholly or partially
 20 overlie one another may be included in the same controlled
 21 ground water area.

22 (4) The order may include the following corrective
 23 control provisions:

24 (a) a provision closing the controlled ground water
 25 area to further appropriation of ground water, in which

1 event the department shall thereafter refuse to accept any
2 applications for beneficial water use permits to appropriate
3 ground water located within such controlled area;

4 (b) a provision determining a permissible total
5 withdrawal of ground water in the controlled area by day,
6 month, or year and permitting the board to apportion such
7 permissible total withdrawal among the appropriators holding
8 valid rights to the ground water in the controlled area in
9 accordance with the relative dates of priority of such
10 rights;

11 (c) a provision according preference, without reference
12 to relative priorities, to withdrawals of ground water in
13 the controlled area for domestic and livestock purposes
14 first and thereafter to withdrawals for other beneficial
15 purposes, including but not limited to agricultural,
16 industrial, municipal (other than domestic), and
17 recreational purposes, in such order as the board considers
18 advisable under the circumstances;

19 (d) a provision reducing the permissible withdrawal of
20 ground water by any appropriator or well in the controlled
21 area;

22 (e) when two or more wells in the controlled area are
23 used by the same appropriator, a provision adjusting the
24 total permissible withdrawal of ground water by the
25 appropriator or a provision forbidding the use of one or

1 more such wells;

2 (f) a provision requiring and specifying a system of
3 rotation of use of ground water in the controlled area;

4 (g) provisions making such additional requirements as
5 are necessary to protect the public health, safety, and
6 welfare in accordance with the intent, purposes, and
7 requirements of this part and the laws of the state.

8 (5) (a) If at the conclusion of the hearing the board
9 finds that sufficient facts are not available to designate
10 or modify a permanent controlled ground water area, the
11 board may by order designate the area in question to be a
12 temporary controlled ground water area. Such order may
13 include the corrective control provisions contained in
14 subsection (4). A temporary controlled ground water area
15 shall be designated as such for a period not to exceed 2
16 years from the date of the board's order designating the
17 temporary controlled ground water area. The board may, for
18 sufficient cause, extend the time period for an additional 2
19 years, and in this case all ground water appropriators in
20 the controlled ground water area shall be notified of the
21 extension.

22 (b) During the 2-year period, the department shall
23 commence studies necessary to obtain the facts needed to
24 assist in the designation or modification of a permanent
25 controlled ground water area. Facts gathered during the

1 study period shall be presented at a hearing prior to the
 2 designation or modification of a permanent controlled ground
 3 water area. All parties appearing at the first hearing shall
 4 be served notice of this hearing by mail at least 30 days
 5 prior to the date set for the hearing. The service shall be
 6 complete upon deposit of notice at the post office, postage
 7 prepaid, addressed to each person on whom service is to be
 8 made. Mailing of the notice, when completed, shall be
 9 considered to be sufficient notice of the hearing to all
 10 persons directly affected. The department shall file in its
 11 records proof of service by its own affidavit. The hearing
 12 shall be conducted by the board in the manner of the first
 13 hearing, and the board shall make written findings of fact
 14 and conclusions of law and issue an order according to the
 15 provisions set forth in subsections (1) through (4). In the
 16 event the department does not complete the necessary study
 17 in the 2-year period or extension thereof, the temporary
 18 controlled ground water area designation will terminate at
 19 the end of the 2-year period or extension.

20 (6) The department may enforce the order and bring an
 21 action for an injunction in a district court of a district
 22 in which all or part of the area affected is located, in
 23 addition to all other remedies.

24 (7) The order of the board shall be published and
 25 mailed by the department in the manner and for the length of

1 time as prescribed by 85-2-506 for the publication and
 2 mailing of the notice of hearing, except that a copy of the
 3 written findings and order of the board shall be mailed
 4 instead of a copy of the proposal and, except further, that
 5 a copy of the order, together with a copy of the written
 6 findings, shall be mailed to each petitioner at his
 7 last-known address. The department shall file a copy of the
 8 order with the county clerk of each county within which any
 9 part of the controlled ground water area lies, and the
 10 county clerk shall record the order without fee. The
 11 department shall file in its records proof of service by its
 12 own affidavit of service. Upon publication and mailing of
 13 such order as prescribed herein, the order shall be final
 14 and conclusive unless an appeal therefrom is taken.

15 (8) The board may by order suspend, modify, or revoke
 16 any order made as provided in this section upon such notice
 17 and in such manner as is reasonable under the circumstances.
 18 A copy of each suspension, modification, or revocation shall
 19 be served or filed and recorded as provided for orders in
 20 subsection (7).

21 (9) While a matter is pending before the board, the
 22 department may restrict further development of the subarea."

23 NEW SECTION. **Section 5. Coordination instruction.** If
 24 Senate Bill No. 136 is not passed and approved, the
 25 bracketed reference in {section 3(2)} to a local water

SB 0303/03

1 quality district is void.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 19, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 303 (third reading copy -- blue), respectfully report that House Bill No. 303 be amended and as so amended be concurred in:

1. Title, lines 8 and 9.

Following: "COMPANY" on line 8

Strike: "OR TELECOMMUNICATIONS PROVIDER"

2. Title, line 12.

Strike: "ENTITIES"

Insert: "LOCAL EXCHANGE TELEPHONE COMPANIES"

3. Page 2, line 14.

Following: "numbers"

Insert: ", provided that the subscriber information is released only in response to an emergency call involving an immediate threat to personal safety or property"

4. Page 3, lines 4 and 5.

Following: "COMPANY" on line 4

Strike: "OR OTHER TELECOMMUNICATIONS ENTITY"

Signed: 
Richard Pinsoneault, Chairman

LB 3/19/91
Amd. Coord.

SB 3-19-91 2:50
Sec. of Senate

SENATE
HB 303

SENATE BILL NO. 303

INTRODUCED BY WEEDING, T. BECK, YELLOWTAIL, GRADY

BY REQUEST OF THE ENVIRONMENTAL

QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONSIDER EFFECTS ON WATER--QUALITY--AND WATER QUALITY AND AQUIFER RECHARGE RATES WHEN ISSUING PERMITS TO BENEFICIALLY USE WATER AND WHEN APPROVING CHANGES IN APPROPRIATION RIGHTS; PROVIDING THAT UNITS OF LOCAL GOVERNMENT MAY REQUEST DESIGNATION OF A CONTROLLED GROUND WATER AREA; AND AMENDING SECTIONS 85-2-311, 85-2-402, 85-2-506, AND 85-2-507, MCA."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL TO PROVIDE DIRECTION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION CONCERNING THE ADOPTION OF RULES. THE DEPARTMENT IS REQUIRED TO ISSUE PERMITS TO BENEFICIALLY USE WATER AND APPROVE CHANGES IN APPROPRIATION RIGHTS IF THE DEPARTMENT HAS NO SUBSTANTIAL CREDIBLE EVIDENCE INDICATING THAT THE BENEFICIAL USE OR CHANGE IN RIGHT WOULD ADVERSELY AFFECT WATER QUALITY OR CAUSE LONG-TERM AQUIFER RECHARGE RATES TO BE EXCEEDED. THE LEGISLATURE RECOGNIZES THAT NEW WATER WITHDRAWALS AND CHANGES IN APPROPRIATION RIGHTS CAN

CAUSE LONG-TERM AQUIFER RECHARGE RATES TO BE EXCEEDED OR THE QUALITY OF RELATED SURFACE WATER AND GROUND WATER TO BE DIMINISHED. THE LEGISLATURE ALSO RECOGNIZES THAT THE POTENTIAL FOR THESE PROBLEMS TO OCCUR IS NOT NECESSARILY WIDESPREAD IN THE STATE AND MAY, IN FACT, BE LIMITED TO ONLY A FEW DRAINAGES OR BASINS. THE DEPARTMENT SHOULD ADOPT RULES THAT ESTABLISH CRITERIA AND A SCREENING PROCEDURE FOR:

(1) DETERMINING THE AREAS OF THE STATE IN WHICH LONG-TERM AQUIFER DRAWDOWN AND WATER QUALITY PROBLEMS MAY OCCUR AS A RESULT OF INCREASED WATER WITHDRAWAL OR CHANGES IN APPROPRIATION RIGHTS; AND

(2) IDENTIFYING THOSE APPLICATIONS FOR A PERMIT TO BENEFICIALLY USE WATER OR CHANGE APPROPRIATION RIGHTS THAT MAY CAUSE THESE ADVERSE EFFECTS.

IT IS THE LEGISLATURE'S INTENT THAT THE DEPARTMENT CONSIDER ALL AVAILABLE INFORMATION CONSTITUTING SUBSTANTIAL CREDIBLE EVIDENCE THAT IS SUBMITTED TO THE DEPARTMENT FROM ANY SOURCE OR THAT IS AVAILABLE TO THE DEPARTMENT THAT RELATES TO IMPACTS OF NEW WATER WITHDRAWALS OR CHANGES IN APPROPRIATION RIGHTS UPON LONG-TERM AQUIFER RECHARGE AND WATER QUALITY. HOWEVER, IT IS NOT THE LEGISLATURE'S INTENT TO IMPOSE UPON THE DEPARTMENT NEW RESEARCH OR DATA COLLECTION OBLIGATIONS TO IMPLEMENT THE BILL'S PROVISIONS EXCEPT IN SITUATIONS IN WHICH THE DEPARTMENT DETERMINES THAT IMPACTS UPON LONG-TERM AQUIFER RECHARGE OR WATER QUALITY ARE



1 LIKELY AND THAT ADDITIONAL EFFORT BEYOND THE DEPARTMENT'S
 2 CURRENT APPLICATION EVALUATION PROCEDURES IS WARRANTED TO
 3 DOCUMENT THE PROBABLE EXTENT OF THE IMPACTS.

4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 **Section 1.** Section 85-2-311, MCA, is amended to read:

7 **"85-2-311. Criteria for issuance of permit.** (1) Except
 8 as provided in subsections (2) and (3), the department shall
 9 issue a permit if:

10 (a) the applicant proves by substantial credible
 11 evidence that the following criteria are met:

12 (e)(i) there are unappropriated waters in the source of
 13 supply at the proposed point of diversion:

14 (i)(A) at times when the water can be put to the use
 15 proposed by the applicant;

16 (ii)(B) in the amount the applicant seeks to
 17 appropriate; and

18 (iii)(C) during the period in which the applicant seeks
 19 to appropriate, the amount requested is reasonably
 20 available;

21 (b)(ii) the water rights of a prior appropriator will
 22 not be adversely affected;

23 (c)(iii) the proposed means of diversion, construction,
 24 and operation of the appropriation works are adequate;

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

1 (e)(v) the proposed use will not interfere unreasonably
 2 with other planned uses or developments for which a permit
 3 has been issued or for which water has been reserved; and

4 (f)(vi) 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; and

8 (b) the department has no information from any source
 9 that constitutes substantial credible evidence indicating
 10 that:

11 (i)(I) for ground water, the proposed amount of water
 12 to be put to beneficial use will exceed long-term aquifer
 13 recharge rates, considering existing surface water right
 14 appropriations; and

15 ~~(ii) the proposed use of water will adversely affect:~~

16 ~~(A) the quality of the water in the source of supply to~~
 17 ~~the extent that the water right of a prior appropriator is~~
 18 ~~rendered unusable for its prior use; or~~

19 ~~(B) the holder of a permit to discharge sewage~~
 20 ~~industrial wastes, or other wastes issued pursuant to Title~~
 21 ~~75, chapter 5, part 4; AND~~

22 (II) THE PROPOSED USE OF WATER WILL ADVERSELY AFFECT:

23 (A) THE QUALITY OF THE WATER IN THE SOURCE OF SUPPLY TO
 24 THE EXTENT THAT THE WATER RIGHT OF A PRIOR APPROPRIATOR IS
 25 RENDERED UNUSABLE FOR ITS PRIOR USE; OR

1 (B) THE HOLDER OF A PERMIT TO DISCHARGE SEWAGE,
2 INDUSTRIAL WASTES, OR OTHER WASTES ISSUED PURSUANT TO TITLE
3 75, CHAPTER 5, PART 4.

4 (2) The department may not issue a permit for an
5 appropriation of 4,000 or more acre-feet of water a year and
6 5.5 or more cubic feet per second of water unless the
7 applicant proves by clear and convincing evidence that:

- 8 (a) the criteria in subsection (1) are met;
- 9 (b) the rights of a prior appropriator will not be
10 adversely affected;

11 (c) the proposed appropriation is a reasonable use.
12 Such a finding shall be based on a consideration of the
13 following:

- 14 (i) the existing demands on the state water supply, as
15 well as projected demands such as reservations of water for
16 future beneficial purposes, including municipal water
17 supplies, irrigation systems, and minimum streamflows for
18 the protection of existing water rights and aquatic life;
- 19 (ii) the benefits to the applicant and the state;
- 20 (iii) the effects on the quantity and quality of water
21 for existing beneficial uses in the source of supply;
- 22 (iv) the availability and feasibility of using
23 low-quality water for the purpose for which application has
24 been made;
- 25 (v) the effects on private property rights by any

1 creation of or contribution to saline seep; and
2 (vi) the probable significant adverse environmental
3 impacts of the proposed use of water as determined by the
4 department pursuant to Title 75, chapter 1, or Title 75,
5 chapter 20.

6 (3) (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 criteria in this
17 subsection (3) must be met before out-of-state use may
18 occur.

19 (b) The department may not issue a permit for the
20 appropriation of water for withdrawal and transportation for
21 use outside the state unless the applicant proves by clear
22 and convincing evidence that:

- 23 (i) depending on the volume of water diverted or
24 consumed, the applicable criteria and procedures of
25 subsection (1) or (2) are met;

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

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

6 (c) In determining whether the applicant has proved by
7 clear and convincing evidence that the requirements of
8 subsections (3)(b)(ii) and (3)(b)(iii) are met, the
9 department shall 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 application could feasibly be transported to alleviate water
14 shortages within the state of Montana;

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

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

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

25 (4) To meet the substantial credible evidence standard

1 in this section, the applicant shall submit independent
2 hydrologic or other evidence, including water supply data,
3 field reports, and other information developed by the
4 department, the U.S. geological survey, or the U.S. soil
5 conservation service and other specific field studies,
6 demonstrating that the criteria are met.

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

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

20 **"85-2-402. (Temporary) Changes in appropriation rights.**

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

25 (2) Except as provided in subsections (3) through (5),

1 the department shall approve a change in appropriation right
2 if:

3 (a) the appropriator proves by substantial credible
4 evidence that the following criteria are met:

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

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

13 (c)(iii) The the proposed use of water is a beneficial
14 use; and

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

19 (b) the department has no information from any source
20 that constitutes substantial credible evidence indicating
21 that:

22 (i)(I) for ground water, the change in appropriation
23 right will cause long-term aquifer withdrawal rates to
24 exceed long-term aquifer recharge rates, considering
25 existing surface water right appropriations, and

1 ~~(i) the change in appropriation right will adversely~~
2 ~~affect:~~

3 ~~(A) the quality of the water in the source of supply to~~
4 ~~the extent that the water right of a prior appropriator is~~
5 ~~rendered unusable for its prior use; or~~

6 ~~(B) the holder of a permit to discharge sewage,~~
7 ~~industrial wastes, or other wastes issued pursuant to Title~~
8 ~~75, chapter 5, part 4; AND~~

9 (II) THE CHANGE IN APPROPRIATION RIGHT WILL ADVERSELY
10 AFFECT:

11 (A) THE QUALITY OF THE WATER IN THE SOURCE OF SUPPLY TO
12 THE EXTENT THAT THE WATER RIGHT OF A PRIOR APPROPRIATOR IS
13 RENDERED UNUSABLE FOR ITS PRIOR USE; OR

14 (B) THE HOLDER OF A PERMIT TO DISCHARGE SEWAGE,
15 INDUSTRIAL WASTES, OR OTHER WASTES ISSUED PURSUANT TO TITLE
16 75, CHAPTER 5, PART 4.

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

22 (a) the criteria in subsection (2) are met;
23 (b) the proposed change is a reasonable use. A finding
24 of reasonable use must be based on a consideration of:

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

1 well as projected demands for water for future beneficial
2 purposes, including municipal water supplies, irrigation
3 systems, and minimum streamflows for the protection of
4 existing water rights and aquatic life;

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

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

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

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

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

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

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

24 (b) the department then petitions the legislature and
25 the legislature affirms the decision of the department after

1 one or more public hearings.

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

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

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

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

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

1 otherwise detrimental to the public welfare of the citizens
2 of Montana.

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

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

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

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

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

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

24 (6) For any application for a change in appropriation
25 right involving 4,000 or more acre-feet of water a year and

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

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

16 (8) 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) 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) 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) 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
23 right:

24 (a) if the appropriator proves by substantial credible
25 evidence that the following criteria are met:

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

5 ~~(b)(ii) The the~~ proposed means of diversion,
6 construction, and operation of the appropriation works are
7 adequate;

8 ~~(c)(iii) The the~~ proposed use of water is a beneficial
9 use; and

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

14 ~~(b) the department has no information from any source~~
15 ~~that constitutes substantial credible evidence indicating~~
16 ~~that:~~

17 ~~(i)(I) for ground water, the change in appropriation~~
18 ~~right will cause long-term aquifer withdrawal rates to~~
19 ~~exceed long-term aquifer recharge rates, considering~~
20 ~~existing surface water right appropriations; and~~

21 ~~(ii) the change in appropriation right will adversely~~
22 ~~affect:~~

23 ~~(A) the quality of the water in the source of supply to~~
24 ~~the extent that the water right of a prior appropriator is~~
25 ~~rendered unusable for its prior use; or~~

1 ~~(B) the holder of a permit to discharge sewage,~~
 2 ~~industrial wastes, or other wastes issued pursuant to Title~~
 3 ~~75, chapter 5, part 4; AND~~

4 (1) THE CHANGE IN APPROPRIATION RIGHT WILL ADVERSELY
 5 AFFECT:

6 (A) THE QUALITY OF THE WATER IN THE SOURCE OF SUPPLY TO
 7 THE EXTENT THAT THE WATER RIGHT OF A PRIOR APPROPRIATOR IS
 8 RENDERED UNUSABLE FOR ITS PRIOR USE; OR

9 (B) THE HOLDER OF A PERMIT TO DISCHARGE SEWAGE,
 10 INDUSTRIAL WASTES, OR OTHER WASTES ISSUED PURSUANT TO TITLE
 11 75, CHAPTER 5, PART 4.

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

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

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

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

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

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

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

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

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

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

16 (a) the applicant proves by clear and convincing
 17 evidence and the department finds that the criteria in
 18 subsections (2) and (3) 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 (5) (a) The state of Montana has long recognized the
 23 importance of conserving its public waters and the necessity
 24 to maintain adequate water supplies for the state's water
 25 requirements, including requirements for reserved water

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

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

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

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

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

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

1 department and, if applicable, the legislature shall
 2 consider the following factors:

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

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

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

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

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

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

1 hold one or more hearings upon any other proposed change if
 2 it determines that such a change might adversely affect the
 3 rights of other persons.

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

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

19 (9) The original of a change approval issued by the
 20 department must be sent to the applicant, and a duplicate
 21 must be kept in the office of the department in Helena.

22 (10) A person holding an issued permit or change
 23 approval that has not been perfected may change the place of
 24 diversion, place of use, purpose of use, or place of storage
 25 by filing an application for change pursuant to this

1 section.

2 (11) A change in appropriation right contrary to the
 3 provisions of this section is invalid. No officer, agent,
 4 agency, or employee of the state may knowingly permit, aid,
 5 or assist in any manner such unauthorized change in
 6 appropriation right. No person or corporation may, directly
 7 or indirectly, personally or through an agent, officer, or
 8 employee, attempt to change an appropriation right except in
 9 accordance with this section."

10 **Section 3.** Section 85-2-506, MCA, is amended to read:

11 **"85-2-506. Controlled ground water areas -- designation**
 12 **or modification.** (1) The board may designate or modify
 13 controlled ground water areas as provided in this part.

14 (2) Designation or modification of an area of
 15 controlled ground water use may be proposed to the board by
 16 the department on its own motion, by request of a unit of
 17 local government, including a county, an incorporated city
 18 or town [, or a local water quality district], or by
 19 petition signed by at least 20 or one-fourth of the users
 20 (whichever is the lesser number) of ground water in a-ground
 21 water the area proposed for designation, or the existing
 22 controlled ground water area, wherein there are alleged to
 23 be facts showing:

24 (a) that ground water withdrawals are in excess of
 25 recharge to the aquifer or aquifers within such ground water

1 area;

2 (b) that excessive ground water withdrawals are very
3 likely to occur in the near future because of consistent and
4 significant increases in withdrawals from within the ground
5 water area;

6 (c) that significant disputes regarding priority of
7 rights, amounts of ground water in use by appropriators, or
8 priority of type of use are in progress within the ground
9 water area;

10 (d) that ground water levels or pressures in the area
11 in question are declining or have declined excessively; or

12 (e) that excessive ground water withdrawals would cause
13 contaminant migration and a degradation of ground water
14 quality within the ground water area.

15 (3) When such a proposal is thus made, the board shall
16 fix a time and place for a hearing, which time shall not be
17 less than 90 days from the making of the proposal. The place
18 for the hearing shall be within or as close as practical to
19 the controlled ground water area.

20 (4) The department shall publish a notice of the
21 hearing, setting forth therein:

22 (a) the names of the petitioners;

23 (b) the description by legal subdivisions (section,
24 township, range) of all lands included in or proposed to be
25 included in the ground water area or subarea;

1 (c) the purpose of the hearing; and

2 (d) the time and place of the hearing where any
3 interested person may appear, either in person or by
4 attorney, file written objections to the granting of the
5 proposal, and be fully heard.

6 (5) Such notice of hearing shall be published at least
7 once in each week for 3 successive weeks not less than 30
8 days before the date of the hearing in a newspaper of
9 general circulation in the county or counties in which the
10 ground water area or subarea is located. The department
11 shall also cause a copy of the notice, together with a copy
12 of the petition, to be served by mail, not less than 30 days
13 before the hearing, upon each well driller licensed in
14 Montana whose address is within any county in which any part
15 of the area in question is located; upon each person or
16 public agency known from an examination of the records in
17 the department's office to be a claimant or appropriator of
18 ground water in the area in question (claimant or
19 appropriator meaning one who diverts, impounds, or withdraws
20 ground water and not merely one who uses or obtains ground
21 water from another who diverts, impounds, or withdraws
22 ground water); upon the bureau; and upon the mayor or
23 chairman of the governing body of each incorporated
24 municipality located in whole or in part within the proposed
25 ground water area. The department may also serve notice upon

1 any other person or state or federal agency that the
 2 department feels may be interested in or affected by the
 3 proposed designation or modification of a controlled ground
 4 water area. The petition need not be served on any
 5 petitioner. A copy of the notice, together with a copy of
 6 the proposal, shall be mailed to each person at his
 7 last-known address, and such service shall be complete upon
 8 depositing it in the post office, postage prepaid, addressed
 9 to each person on whom it is to be served. Publication and
 10 mailing of such notice as prescribed herein, when completed,
 11 shall be deemed to be sufficient notice of such hearing to
 12 all interested persons."

13 **Section 4.** Section 85-2-507, MCA, is amended to read:

14 "85-2-507. Limiting withdrawals -- modification of
 15 order. (1) At the time set for the hearing, the board shall
 16 proceed to hear oral and written evidence relevant to the
 17 designation or modification of the controlled ground water
 18 area presented by the bureau, the department, and any other
 19 interested party. A full record shall be kept of all
 20 evidence taken at the hearing. The procedure shall be such
 21 as to secure a full, fair, and orderly proceeding and to
 22 permit all relevant evidence to be received. The common-law
 23 and statutory rules of evidence shall apply only upon
 24 stipulation of all parties.

25 (2) After the conclusion of the hearing, the board

1 shall make written findings and an order. The board shall by
 2 order declare the area in question to be a controlled ground
 3 water area if the board finds on the basis of the hearing
 4 that:

5 (a) the public health, safety, or welfare requires a
 6 corrective control be adopted; and

7 (b) (i) there is a wasteful use of water from existing
 8 wells or undue interference with existing wells;

9 (ii) any proposed use or well will impair or
 10 substantially interfere with existing rights to appropriate
 11 surface water or ground water by others; or

12 (iii) the facts alleged in the petition or the request
 13 by a unit of local government as required by 85-2-506(2) are
 14 true.

15 (3) The order shall define the boundary of the
 16 controlled ground water area and shall indicate which of the
 17 ground water aquifers located within the area in question
 18 are included within the controlled ground water area. Any
 19 number of ground water aquifers which wholly or partially
 20 overlie one another may be included in the same controlled
 21 ground water area.

22 (4) The order may include the following corrective
 23 control provisions:

24 (a) a provision closing the controlled ground water
 25 area to further appropriation of ground water, in which

1 event the department shall thereafter refuse to accept any
2 applications for beneficial water use permits to appropriate
3 ground water located within such controlled area;

4 (b) a provision determining a permissible total
5 withdrawal of ground water in the controlled area by day,
6 month, or year and permitting the board to apportion such
7 permissible total withdrawal among the appropriators holding
8 valid rights to the ground water in the controlled area in
9 accordance with the relative dates of priority of such
10 rights;

11 (c) a provision according preference, without reference
12 to relative priorities, to withdrawals of ground water in
13 the controlled area for domestic and livestock purposes
14 first and thereafter to withdrawals for other beneficial
15 purposes, including but not limited to agricultural,
16 industrial, municipal (other than domestic), and
17 recreational purposes, in such order as the board considers
18 advisable under the circumstances;

19 (d) a provision reducing the permissible withdrawal of
20 ground water by any appropriator or well in the controlled
21 area;

22 (e) when two or more wells in the controlled area are
23 used by the same appropriator, a provision adjusting the
24 total permissible withdrawal of ground water by the
25 appropriator or a provision forbidding the use of one or

1 more such wells;

2 (f) a provision requiring and specifying a system of
3 rotation of use of ground water in the controlled area;

4 (g) provisions making such additional requirements as
5 are necessary to protect the public health, safety, and
6 welfare in accordance with the intent, purposes, and
7 requirements of this part and the laws of the state.

8 (5) (a) If at the conclusion of the hearing the board
9 finds that sufficient facts are not available to designate
10 or modify a permanent controlled ground water area, the
11 board may by order designate the area in question to be a
12 temporary controlled ground water area. Such order may
13 include the corrective control provisions contained in
14 subsection (4). A temporary controlled ground water area
15 shall be designated as such for a period not to exceed 2
16 years from the date of the board's order designating the
17 temporary controlled ground water area. The board may, for
18 sufficient cause, extend the time period for an additional 2
19 years, and in this case all ground water appropriators in
20 the controlled ground water area shall be notified of the
21 extension.

22 (b) During the 2-year period, the department shall
23 commence studies necessary to obtain the facts needed to
24 assist in the designation or modification of a permanent
25 controlled ground water area. Facts gathered during the

1 study period shall be presented at a hearing prior to the
 2 designation or modification of a permanent controlled ground
 3 water area. All parties appearing at the first hearing shall
 4 be served notice of this hearing by mail at least 30 days
 5 prior to the date set for the hearing. The service shall be
 6 complete upon deposit of notice at the post office, postage
 7 prepaid, addressed to each person on whom service is to be
 8 made. Mailing of the notice, when completed, shall be
 9 considered to be sufficient notice of the hearing to all
 10 persons directly affected. The department shall file in its
 11 records proof of service by its own affidavit. The hearing
 12 shall be conducted by the board in the manner of the first
 13 hearing, and the board shall make written findings of fact
 14 and conclusions of law and issue an order according to the
 15 provisions set forth in subsections (1) through (4). In the
 16 event the department does not complete the necessary study
 17 in the 2-year period or extension thereof, the temporary
 18 controlled ground water area designation will terminate at
 19 the end of the 2-year period or extension.

20 (6) The department may enforce the order and bring an
 21 action for an injunction in a district court of a district
 22 in which all or part of the area affected is located, in
 23 addition to all other remedies.

24 (7) The order of the board shall be published and
 25 mailed by the department in the manner and for the length of

1 time as prescribed by 85-2-506 for the publication and
 2 mailing of the notice of hearing, except that a copy of the
 3 written findings and order of the board shall be mailed
 4 instead of a copy of the proposal and, except further, that
 5 a copy of the order, together with a copy of the written
 6 findings, shall be mailed to each petitioner at his
 7 last-known address. The department shall file a copy of the
 8 order with the county clerk of each county within which any
 9 part of the controlled ground water area lies, and the
 10 county clerk shall record the order without fee. The
 11 department shall file in its records proof of service by its
 12 own affidavit of service. Upon publication and mailing of
 13 such order as prescribed herein, the order shall be final
 14 and conclusive unless an appeal therefrom is taken.

15 (8) The board may by order suspend, modify, or revoke
 16 any order made as provided in this section upon such notice
 17 and in such manner as is reasonable under the circumstances.
 18 A copy of each suspension, modification, or revocation shall
 19 be served or filed and recorded as provided for orders in
 20 subsection (7).

21 (9) While a matter is pending before the board, the
 22 department may restrict further development of the subarea."

23 NEW SECTION. **Section 5. Coordination instruction.** If
 24 Senate Bill No. 136 is not passed and approved, the
 25 bracketed reference in [section 3(2)] to a local water

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1 quality district is void.

-End-