

IN THE SENATE

APRIL 17, 1991

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SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 18, 1991

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CONCURRED IN.

APRIL 19, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *313*
 2 INTRODUCED BY *Garfield*
 3 *Bingham* BY REQUEST OF THE GOVERNOR *Holloman*
 4 *Swingard* *Smith* *Boyer* *T. Beck* *Thayer*
 5 *John* *Stinson* *M.A.S.* *WAD* *W. Stewart* *William* *Reichenbach*
 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING STATE WATER

6 STORAGE POLICY AND THE ROLE OF STORAGE IN SOLVING WATER
 7 PROBLEMS; ESTABLISHING GUIDELINES FOR SETTING PRIORITIES
 8 AMONG NEW STORAGE AND REHABILITATION STORAGE PROJECTS;
 9 REQUIRING A STUDY OF THE FEASIBILITY OF ASSESSING
 10 RECREATIONAL USER FEES TO REPAY WATER STORAGE PROJECT COSTS;
 11 REQUIRING A STUDY OF WATER STORAGE LAWS AND REGULATIONS BY
 12 THE WATER POLICY COMMITTEE; CREATING A WATER STORAGE STATE
 13 SPECIAL REVENUE ACCOUNT; ALLOCATING ADDITIONAL COAL
 14 SEVERANCE AND RESOURCE INDEMNITY TRUST TAX REVENUES FOR
 15 WATER DEVELOPMENT; ALLOCATING 25% OF THE MONEY AVAILABLE AS
 16 GRANTS IN THE WATER DEVELOPMENT STATE SPECIAL REVENUE
 17 ACCOUNT AND RENEWABLE RESOURCE DEVELOPMENT ACCOUNT TO THE
 18 DEVELOPMENT OF WATER STORAGE PROJECTS; ELIMINATING THE
 19 10-YEAR LIMIT ON PROJECT DEVELOPMENT PLANS REQUIRED IN
 20 APPLICATIONS FOR LARGE WATER USE PERMITS; AMENDING SECTIONS
 21 15-35-108, 15-38-202, 85-1-603, 85-1-604, 85-2-310, AND
 22 90-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE."

23
 24 STATEMENT OF INTENT
 25 A statement of intent is required for this bill to

1 provide guidance in the preparation of rules and other
 2 matters pertaining to the allocation of grants and loans
 3 from the water storage state special revenue account. This
 4 bill is introduced as a result of and should be interpreted
 5 consistently with the 1990 state water plan section on water
 6 storage. It is the legislature's intent that money may not
 7 be expended from the water storage state special revenue
 8 account during fiscal years 1992 and 1993. Rather, money
 9 deposited in the account is to accumulate for expenditure
 10 during fiscal years 1994 and 1995. Deposits to the account
 11 are to be placed in short-term investments and accrue
 12 interest, which is also to be deposited in the water storage
 13 state special revenue account.

14 Rules are to be adopted and implemented that govern the
 15 process of application, administrative application review
 16 and ranking, and conditions for the disbursement of grants and
 17 loans as soon as possible after this bill is enacted.
 18 Applications for grants and loans from the account are to be
 19 accepted by May 1992. These application and administrative
 20 recommendations will be considered during the 1993
 21 legislative session, and that legislature may appropriate
 22 money accumulated in the account for expenditure during
 23 fiscal years 1994 and 1995.

24 It is also the legislature's intent that rules governing
 25 the allocation of money from the water storage state special



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1 revenue account do not limit the amount that may be provided
2 to any one applicant. Also, private entities, as well as
3 public entities, are to be eligible for grants and loans
4 from the account.

5

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

7 NEW SECTION. Section 1. Short title. [Sections 1
8 through 4] may be cited as the "Water Storage Policy Act".

9 NEW SECTION. Section 2. Purpose. The purpose of
10 [sections 1 through 4] is to define the role of water
11 storage in solving water management problems and, if water
12 storage projects provide the best solutions to those
13 problems, to facilitate the development of the projects.

14 NEW SECTION. Section 3. Water storage policy. (1) The
15 legislature recognizes that water resource needs are
16 growing, existing water facilities are aging and in need of
17 repair, and new water storage projects have become more
18 difficult to complete. Other types of action will be needed
19 to solve many emerging problems, but if water storage is the
20 best way to meet growing water needs and solve problems,
21 then it should be actively pursued.

22 (2) In determining the best solution for a particular
23 water management problem, the state shall:

- 24 (a) carefully define the problem;
25 (b) identify all options to solve the problem,

1 including water storage;

2 (c) determine whether water is physically and legally
3 available to solve the problem; and

4 (d) select the option that best meets the following
5 criteria:

6 (i) technical feasibility;

7 (ii) financial feasibility;

8 (iii) economic feasibility;

9 (iv) political feasibility;

10 (v) legal feasibility; and

11 (vi) environmental feasibility.

12 NEW SECTION. Section 4. Prioritization of water
13 storage projects -- governor's report. (1) The governor
14 shall submit to each regular session of the legislature a
15 report identifying specific water storage projects proposed
16 for development, including the rehabilitation of existing
17 projects and new project proposals. The report must contain:

18 (a) a list of water storage project priorities;

19 (b) an implementation strategy for each priority
20 project that identifies the resources (including specific
21 budget requests), government actions, and other actions
22 needed to accomplish the project; and

23 (c) a progress report on the development of water
24 storage projects during the previous 2 years.

25 (2) In setting priorities among new water storage

1 projects, the governor shall consider whether a project:

2 (a) solves a severe water problem;

3 (b) provides multiple uses and benefits;

4 (c) provides for public uses;

5 (d) shows strong evidence of broad citizen support;

6 (e) is able to obtain nonstate sources of funding;

7 (f) protects and seeks to enhance social, ecological,

8 cultural, and aesthetic values;

9 (g) improves local and state economic development;

10 (h) could resolve Indian and federal reserved water

11 rights issues;

12 (i) supports water conservation activities; and

13 (j) promotes the use of water reserved under Montana

14 law.

15 (3) In setting priorities among water storage

16 rehabilitation projects, the governor shall consider whether

17 the project:

18 (a) is needed to protect public safety;

19 (b) has impacts if not repaired or rehabilitated; and

20 (c) accomplishes the goals listed in subsections (2)(a)

21 through (2)(j).

22 (4) In establishing budget priorities for the

23 allocation of state water storage development funds:

24 (a) first preference must be given to projects that

25 resolve threats to life and property posed by high-hazard

1 facilities that are in an unsafe condition;

2 (b) second preference must be given to projects that

3 improve or expand existing water storage facilities; and

4 (c) third preference must be given to the planning and

5 construction of new water storage facilities.

6 NEW SECTION. **Section 5. Study of recreational user**

7 **fees.** (1) The department of fish, wildlife and parks, with

8 the cooperation of the department of natural resources and

9 conservation, shall conduct and coordinate a study that

10 assesses the feasibility of charging recreational

11 beneficiaries of water storage projects fees to assist in

12 the repayment of a portion of those project development

13 costs associated with environmental mitigation or

14 enhancement and increased recreational opportunities.

15 Options to be assessed include but are not limited to:

16 (a) requiring entrance fees for the recreational use of

17 water storage facilities;

18 (b) requiring purchase of a water development stamp as

19 a prerequisite for purchase of a fishing, duck hunting,

20 boating, or other license for which water is an integral

21 part of the recreational experience;

22 (c) increasing the motorboat fuels tax;

23 (d) requiring purchase of a land and water conservation

24 license by anyone using public lands or water; and

25 (e) obtaining funding from the department of fish,

1 wildlife and parks that is derived from taxes or fees on
2 recreational activities.

3 (2) A written report of the study findings must be
4 submitted to the water policy committee by July 1, 1992.

5 NEW SECTION. **Section 6.** Study of dam safety and water
6 reservation laws and regulations. (1) The water policy
7 committee, with the cooperation of the department of natural
8 resources and conservation, shall conduct a study of the
9 Montana Dam Safety Act and implementing regulations to
10 determine:

11 (a) the acceptable degree of risk to public safety and
12 the appropriate allocation of responsibility for that risk
13 among the public, government, and dam owners;

14 (b) whether the definition of a high-hazard dam should
15 be modified;

16 (c) whether the high-hazard dam classification should
17 be expanded into a risk scale that allows structural design
18 requirements to reflect probable risk to life and property;
19 and

20 (d) whether the department of natural resources and
21 conservation should be given greater discretion to
22 substitute alternative means of addressing risks, such as
23 early warning systems, for structural design requirements.

24 (2) The water policy committee shall also conduct a
25 study to determine whether the statutory restriction against

1 allowing private entities to obtain water reservations is an
2 impediment to the development of water storage projects.
3 Specifically, the study must evaluate the desirability of:

4 (a) allowing private entities to apply for and obtain
5 water reservations; and

6 (b) designating a public entity with responsibility to
7 advance water reservation applications for private entities
8 that are precluded from applying for and receiving a water
9 reservation under 85-2-316.

10 NEW SECTION. **Section 7.** Water storage state special
11 revenue account created -- revenues allocated --
12 appropriations from account. (1) There is a water storage
13 state special revenue account within the state special
14 revenue fund established in 17-2-102.

15 (2) There must be paid into the water storage state
16 special revenue account:

17 (a) money from the water development state special
18 revenue account as provided in 85-1-604;

19 (b) money from the renewable resource development
20 account as provided in 90-2-111; and

21 (c) money from the resource indemnity trust fund in
22 excess of the \$100 million minimum balance, as provided in
23 15-38-202.

24 (3) Money that was not encumbered or expended from the
25 water storage state special revenue account during the

1 previous biennium must remain in the account.

2 (4) The purpose of the water storage state special
3 revenue account is to provide money for loans and grants
4 exclusively for water storage projects, including the
5 purchase or lease of property; planning, feasibility, and
6 design studies; and other costs related to construction,
7 rehabilitation, expansion, and modification of water storage
8 projects.

9 (5) The department shall administer this section as an
10 integral part of the water development program, using, to
11 the extent possible, the same procedures for soliciting,
12 determining eligibility, and rating water storage project
13 proposals and for administering grants and loans, subject to
14 the same limitations, as applied to other water development
15 grants and loans.

16 (6) The following preferences must be considered in
17 ranking proposals for water storage grants and loans:

18 (a) first preference is for the rehabilitation of water
19 storage projects that resolve threats to life and property;

20 (b) second preference is for the improvement or
21 expansion of existing water storage projects; and

22 (c) third preference is for the development of new
23 water storage projects.

24 **Section 8.** Section 15-35-108, MCA, is amended to read:

25 "15-35-108. (Temporary) Disposal of severance taxes.

1 Severance taxes collected under this chapter must be
2 allocated according to the provisions in effect on the date
3 the tax is due under 15-35-104. Severance taxes collected
4 under the provisions of this chapter are allocated as
5 follows:

6 (1) To the trust fund created by Article IX, section 5,
7 of the Montana constitution, 50% of total coal severance tax
8 collections. The trust fund moneys shall be deposited in the
9 fund established under 17-6-203(5) and invested by the board
10 of investments as provided by law.

11 (2) Starting July 1, 1987, and ending June 30, 1993,
12 12% of coal severance tax collections are allocated to the
13 highway reconstruction trust fund account in the state
14 special revenue fund.

15 (3) Coal severance tax collections remaining after the
16 allocations provided by subsections (1) and (2) are
17 allocated in the following percentages of the remaining
18 balance:

19 (a) 17.5% to the credit of the local impact account.
20 Unencumbered funds remaining in the local impact account at
21 the end of each biennium are allocated to the state special
22 revenue fund for state equalization aid to public schools of
23 the state.

24 (b) 30% to the state special revenue fund for state
25 equalization aid to public schools of the state;

1 (c) 1% to the state special revenue fund to the credit
2 of the county land planning account;

3 (d) 1 1/4% to the credit of the renewable resource
4 development bond fund;

5 (e) 5% to a nonexpendable trust fund for the purpose of
6 parks acquisition or management, protection of works of art
7 in the state capitol, and other cultural and aesthetic
8 projects. Income from this trust fund shall be appropriated
9 as follows:

10 (i) 1/3 for protection of works of art in the state
11 capitol and other cultural and aesthetic projects; and

12 (ii) 2/3 for the acquisition, development, operation,
13 and maintenance of any sites and areas described in
14 23-1-1027.

15 (f) 1% to the state special revenue fund to the credit
16 of the state library commission for the purposes of
17 providing basic library services for the residents of all
18 counties through library federations and for payment of the
19 costs of participating in regional and national networking;

20 (g) 1/2 of 1% to the state special revenue fund for
21 conservation districts;

22 (h) ~~1-1/4%~~ 2 1/2% to the debt service fund type to the
23 credit of the water development debt service fund;

24 (i) 2% to the state special revenue fund for the
25 Montana Growth Through Agriculture Act;

1 (j) all other revenues from severance taxes collected
2 under the provisions of this chapter to the credit of the
3 general fund of the state. (Terminates July 1, 1993--sec. 7,
4 Ch. 541, L. 1983.)

5 15-35-108. (Effective July 1, 1993) Disposal of
6 severance taxes. Severance taxes collected under this
7 chapter must be allocated according to the provisions in
8 effect on the date the tax is due under 15-35-104. Severance
9 taxes collected under the provisions of this chapter are
10 allocated as follows:

11 (1) To the trust fund created by Article IX, section 5,
12 of the Montana constitution, 50% of total coal severance tax
13 collections. The trust fund moneys shall be deposited in the
14 fund established under 17-6-203(5) and invested by the board
15 of investments as provided by law.

16 (2) Coal severance tax collections remaining after
17 allocation to the trust fund under subsection (1) are
18 allocated in the following percentages of the remaining
19 balance:

20 (a) 17.5% to the credit of the local impact account.
21 Unencumbered funds remaining in the local impact account at
22 the end of each biennium are allocated to the state special
23 revenue fund for state equalization aid to public schools of
24 the state.

25 (b) 30% to the state special revenue fund for state

1 equalization aid to public schools of the state;

2 (c) 1% to the state special revenue fund to the credit
3 of the county land planning account;

4 (d) 1 1/4% to the credit of the renewable resource
5 development bond fund;

6 (e) 5% to a nonexpendable trust fund for the purpose of
7 parks acquisition or management, protection of works of art
8 in the state capitol, and other cultural and aesthetic
9 projects. Income from this trust fund shall be appropriated
10 as follows:

11 (i) 1/3 for protection of works of art in the state
12 capitol and other cultural and aesthetic projects; and

13 (ii) 2/3 for the acquisition, development, operation,
14 and maintenance of any sites and areas described in
15 23-1-102.

16 (f) 1% to the state special revenue fund to the credit
17 of the state library commission for the purposes of
18 providing basic library services for the residents of all
19 counties through library federations and for payment of the
20 costs of participating in regional and national networking;

21 (g) 1/2 of 1% to the state special revenue fund for
22 conservation districts;

23 (h) ~~1-1/4%~~ 2 1/2% to the debt service fund type to the
24 credit of the water development debt service fund;

25 (i) 2% to the state special revenue fund for the

1 Montana Growth Through Agriculture Act;

2 (j) all other revenues from severance taxes collected
3 under the provisions of this chapter to the credit of the
4 general fund of the state."

5 **Section 9.** Section 15-38-202, MCA, is amended to read:

6 **"15-38-202. Investment of resource indemnity trust fund**
7 **-- expenditure -- minimum balance.** (1) All money paid into
8 the resource indemnity trust fund, including money payable
9 into the fund under the provisions of 15-37-117, shall be
10 invested at the discretion of the board of investments. All
11 the net earnings accruing to the resource indemnity trust
12 fund shall annually be added to the trust fund until it has
13 reached the sum of \$10 million. Thereafter, only the net
14 earnings may be appropriated and expended until the fund
15 reaches \$100 million. Thereafter, all net earnings and all
16 receipts shall be appropriated by the legislature and
17 expended, provided that the balance in the fund may never be
18 less than \$100 million.

19 (2) (a) At the beginning of each biennium, there is
20 allocated from the interest income of the resource indemnity
21 trust fund:

22 (i) an amount not to exceed \$175,000 to the
23 environmental contingency account pursuant to the conditions
24 of 75-1-1101; and

25 (ii) beginning in fiscal year 1992, an amount not to

1 exceed \$50,000 to the oil and gas production damage
2 mitigation account pursuant to the conditions of 82-11-161.

3 (b) The remainder of the interest income is allocated
4 as follows:

5 (i) Beginning in fiscal year 1982, provided the amount
6 in the resource indemnity trust fund is greater than \$10
7 million, 30% of the interest income of the resource
8 indemnity trust fund must be allocated to the water
9 development state special revenue account created by
10 85-1-604.

11 (ii) Beginning in fiscal year 1988, 12% of the interest
12 income of the resource indemnity trust fund must be
13 allocated to the hazardous waste/CERCLA special revenue
14 account provided for in 75-10-621.

15 (iii) Beginning in fiscal year 1990, 8% of the interest
16 income from the resource indemnity trust fund must be
17 allocated to the renewable resource development account
18 provided for in Title 90, chapter 2.

19 (iv) Beginning in fiscal year 1990, 46% of the interest
20 income from the resource indemnity trust fund must be
21 allocated to the reclamation and development grants account
22 provided for in 90-2-1104.

23 (v) Beginning in fiscal year 1990, 4% of the interest
24 income of the resource indemnity trust fund must be
25 allocated to the environmental quality protection fund

1 provided for in 75-10-704.

2 (vi) Beginning in fiscal year 1994, 25% of the receipts
3 in the resource indemnity trust fund in excess of the \$100
4 million minimum balance must be allocated to the water
5 storage state special revenue account provided for in
6 [section 7].

7 (3) Any formal budget document prepared by the
8 legislature or the executive branch that proposes to
9 appropriate funds from the resource indemnity trust interest
10 account other than as provided for by the allocations in
11 subsection (2) must specify the amount of money from each
12 allocation that is proposed to be diverted and the proposed
13 use of the diverted funds. A formal budget document includes
14 a printed and publicly distributed budget proposal or
15 recommendation, an introduced bill, or a bill developed
16 during the legislative appropriation process or otherwise
17 during a legislative session."

18 **Section 10.** Section 85-1-603, MCA, is amended to read:
19 **"85-1-603. Water development debt service fund created**
20 **-- coal severance tax allocated -- water development loan**
21 **loss reserve fund created. (1) (a) There is created a water**
22 **development debt service fund within the debt service fund**
23 **type established in 17-2-102.**

24 (b) The state pledges and allocates and directs to be
25 credited to the water development debt service fund, as

1 received:

2 (i) ~~1-1/4%~~ 2 1/2% of all money from time to time
3 received from the coal severance tax collected under Title
4 15, chapter 35, and remaining after allocation of such tax
5 under 15-35-108(1) and (2);

6 (ii) any principal and accrued interest under
7 85-1-613(3)(a) received in repayment of a loan made from the
8 proceeds of bonds issued under 85-1-617;

9 (iii) all interest income earned on proceeds of water
10 development bonds;

11 (iv) revenue or money otherwise required to be paid into
12 the water development state special revenue account pursuant
13 to 85-1-604, as determined by the board of examiners in
14 connection with the issuance of bonds pursuant to 85-1-617;
15 and

16 (v) money received from the water development loan loss
17 reserve fund as the result of a loan loss.

18 (2) (a) There is created a water development loan loss
19 reserve fund within the debt service fund type established
20 in 17-2-102.

21 (b) The state pledges and allocates and directs to be
22 credited to the water development loan loss reserve fund all
23 accrued interest under 85-1-613(3)(b) received in repayment
24 of a loan made from the proceeds of bonds issued under
25 85-1-617.

1 (c) If the department determines that a loan loss has
2 occurred on a loan made pursuant to this part, funds from
3 the water development loan loss reserve fund must be
4 transferred to the water development debt service fund in an
5 amount equal to the amount that would otherwise be available
6 for debt service under subsection (1)(b) as a result of the
7 loan loss."

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

9 **"85-1-604. Water development state special revenue**
10 **account created -- revenues allocated -- limitations on**
11 **appropriations from account.** (1) There is created a water
12 development state special revenue account within the state
13 special revenue fund established in 17-2-102.

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

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

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

23 (c) the excess of the coal severance tax proceeds
24 allocated by 85-1-603 to the water development debt service
25 fund above debt service requirements as provided in and

1 subject to the conditions of 85-1-619; and

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

5 (3) Appropriations may be made from the water
6 development state special revenue account for the following
7 purposes and subject to the following conditions:

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

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

20 (i) the rehabilitation of state-owned projects and
21 works, including the rehabilitation of spillways of
22 state-owned dams;

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

25 (iii) the development of the hydropower potential of

1 state-owned dams;

2 (iv) assistance in the implementation of the water
3 reservations established under 85-2-316 of conservation
4 districts;

5 (v) the promotion of the development of offstream and
6 tributary storage;

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

9 (vii) projects or programs that improve water use
10 efficiency, including development of new, efficient water
11 systems and rehabilitation of older, less efficient water
12 systems;

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

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

20 (c) An amount less than or equal to that paid into the
21 account from the sources provided for in (c) and (d) of
22 subsection (2) and only that amount may be appropriated from
23 the account for loans and grants for water development
24 projects and activities; for purchase of liens and operation
25 of property as provided in 85-1-615; for administrative

1 expenses, including but not limited to the salaries and
 2 expenses of personnel, equipment, and office space; for the
 3 servicing of loans, including arrangements for obtaining
 4 security interests; and for other necessities incurred in
 5 administering the loans and grants.

6 (4) An amount equal to 25% of the money available for
 7 grants under subsection (3)(c) must be transferred to the
 8 water storage state special revenue account created in
 9 [section 7]."

10 **Section 12.** Section 85-2-310, MCA, is amended to read:

11 **"85-2-310. Action on application.** (1) The department
 12 shall grant, deny, or condition an application for a permit
 13 in whole or in part within 120 days after the last date of
 14 publication of the notice of application if no objections
 15 have been received and within 180 days if a hearing is held
 16 or objections have been received. However, in either case
 17 the time may be extended upon agreement of the applicant,
 18 or, in those cases where an environmental impact statement
 19 must be prepared or in other extraordinary cases, not more
 20 than 60 days upon order of the department. If the department
 21 orders the time extended, it shall serve a notice of the
 22 extension and the reasons therefor by certified mail upon
 23 the applicant and each person who has filed an objection as
 24 provided by 85-2-308.

25 (2) However, an application may not be approved in a

1 modified form or upon terms, conditions, or limitations
 2 specified by the department or denied, unless the applicant
 3 is first granted an opportunity to be heard. If no objection
 4 is filed against the application but the department is of
 5 the opinion that the application should be approved in a
 6 modified form or upon terms, conditions, or limitations
 7 specified by it or that the application should be denied,
 8 the department shall prepare a statement of its opinion and
 9 the reasons therefor. The department shall serve a statement
 10 of its opinion by certified mail upon the applicant,
 11 together with a notice that the applicant may obtain a
 12 hearing by filing a request therefor within 30 days after
 13 the notice is mailed. The notice shall further state that
 14 the application will be modified in a specified manner or
 15 denied, unless a hearing is requested.

16 (3) The department may cease action upon an application
 17 for a permit and return it to the applicant when it finds
 18 that the application is not in good faith or does not show a
 19 bona fide intent to appropriate water for a beneficial use.
 20 An application returned for any of these reasons shall be
 21 accompanied by a statement of the reasons for which it was
 22 returned, and there shall be no right to a priority date
 23 based upon the filing of the application. Returning an
 24 application pursuant to this subsection shall be deemed a
 25 final decision of the department.

1 (4) For all applications filed after July 1, 1973, the
2 department shall find that an application is not in good
3 faith or does not show a bona fide intent to appropriate
4 water for a beneficial use if:

- 5 (a) an application is not corrected and completed as
6 required by 85-2-302;
- 7 (b) the appropriate filing fee is not paid;
- 8 (c) the application does not document:
- 9 (i) a beneficial use of water;
- 10 (ii) the proposed place of use of all water applied for;
- 11 (iii) for an appropriation of 4,000 acre-feet a year or
12 more and 5.5 cubic feet per second or more, a detailed
13 project plan describing when and how much water will be put
14 to a beneficial use. The project plan must include a
15 reasonable time line, ~~not to exceed 10 years from the time~~
16 ~~of issuance of a permit~~, for the completion of the project
17 and the actual application of the water to a beneficial use.
- 18 (iv) for appropriations not covered in subsection
19 (4)(c)(iii), a general project plan stating when and how
20 much water will be put to a beneficial use; and
- 21 (v) if the water applied for is to be appropriated
22 above that which will be used solely by the applicant or if
23 it will be marketed by the applicant to other users,
24 information detailing:

25 (A) each person who will use the water and the amount

1 of water each person will use;

2 (B) the proposed place of use of all water by each
3 person;

4 (C) the nature of the relationship between the
5 applicant and each person using the water; and

6 (D) each firm contractual agreement for the specified
7 amount of water for each person using the water; or

8 (d) the appropriate environmental impact statement fee,
9 if any, is not paid as required by 85-2-124."

10 **Section 13.** Section 90-2-111, MCA, is amended to read:

11 **"90-2-111. Grants to state and local government.** (1)
12 The department of natural resources and conservation may
13 recommend to the governor that grants from the renewable
14 resource development account provided for by this part be
15 made to any department, agency, board, commission, or other
16 division of state government or to any political subdivision
17 of state government.

18 (2) The department shall solicit and consider in its
19 evaluation of proposed projects the views of interested and
20 affected departments, boards, agencies, and other
21 subdivisions of state and federal government and of other
22 interested and affected persons.

23 (3) The governor shall submit those grant proposals
24 having his approval to the legislature by the 20th day of
25 any legislative session. Those grant proposals approved by

1 the legislature shall be administered by the department.

2 (4) The grants provided for by this section may be made
3 for the purchase, lease, or construction of projects for the
4 conservation, management, utilization, development, or
5 preservation of the land, vegetation, fish, wildlife,
6 recreational, and other renewable resources in the state;
7 for the purpose of feasibility and design studies for such
8 projects; for development of plans for the rehabilitation,
9 expansion, or modification of existing projects; and for
10 such other and further similar purposes as the legislature
11 may approve.

12 (5) In recommending grants under this section, the
13 department and the governor shall consider the special
14 requirements and benefits of proposals that provide for the
15 long-term compilation and management of information on the
16 natural resources of Montana. These proposals contribute to
17 the efficient management of renewable resources, benefit a
18 variety of public and private users, and require a
19 continuing commitment of resources to maintain currency and
20 utility. In consequence of these values and conditions,
21 projects providing for the long-term compilation and
22 management of natural resource information may be considered
23 for funding in consecutive funding cycles and may not be
24 penalized for having received funds previously from the
25 renewable resource development program.

1 (6) An amount equal to 25% of the money available for
2 grants from the renewable resource development program must
3 be transferred to the water storage state special revenue
4 account created in [section 7].

5 ~~+6~~(7) The department may adopt rules as required to
6 govern the terms and conditions for making grants pursuant
7 to this section."

8 NEW SECTION. Section 14. Codification instruction. (1)
9 [Sections 1 through 4] are intended to be codified as an
10 integral part of Title 85, chapter 1, and the provisions of
11 Title 85, chapter 1, apply to [sections 1 through 4].

12 (2) [Section 7] is intended to be codified as an
13 integral part of Title 85, chapter 1, part 6, and the
14 provisions of Title 85, chapter 1, part 6, apply to [section
15 7].

16 NEW SECTION. Section 15. Effective date. [This act] is
17 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0313, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill does the following:


1. clarifies state water storage policy and the role of storage in solving water problems;
2. establishes guidelines for setting priorities among new storage and rehabilitation storage projects;
3. requires a study of the feasibility of assessing recreational user fees to repay water storage project costs;
4. requires a study of water storage laws and regulations by the water policy committee;
5. creates a water storage state special revenue account;
6. allocates additional coal severance and resource indemnity trust tax revenues for water development;
7. allocates 25% of the money available as grants in the water development state special revenue account and renewable resource development account to the development of water storage projects; and
8. eliminates the 10-year limit on project development plans required in applications for large water use permits.

ASSUMPTIONS:

1. The proposal will have no effect on the distribution of RITT until FY94.
2. Coal severance tax receipts will be \$38,595,000 and \$37,109,000 in FY92 and FY93 respectively. (OBPP)
3. RITT receipts will be \$4,894,000 in FY94. (OBPP)
4. The RITT will reach \$100 million during FY96.
5. No water storage projects will be funded in the 1993 biennium.
6. The study to assess the feasibility of charging fees to recreational beneficiaries of water storage projects will be done by a private contractor. The Department of Fish, Wildlife and Parks estimates the cost to be approximately \$90,000.

FISCAL IMPACT:

see next page

 2-15-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/18/91
LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0313, as introduced

SB 313

FISCAL IMPACT:

Department of Fish, Wildlife, and Parks:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating Costs	0	90,000	90,000	0	0	0
<u>Funding:</u>						
State Special	0	90,000	90,000	0	0	0
<u>Coal Severance Tax Distribution:</u>						
General Fund	5,939,771	5,756,444	(183,327)	5,711,075	5,534,807	(176,268)
Conservation Districts	73,331	73,331	0	70,507	70,507	0
County Land Planning	146,661	146,661	0	141,014	141,014	0
Local Impact	2,566,568	2,566,568	0	2,467,749	2,467,749	0
Agricultural Growth	293,322	293,322	0	282,028	282,028	0
Public Schools	4,399,830	4,399,830	0	4,230,426	4,230,426	0
State Library	146,661	146,661	0	141,014	141,014	0
Renewable Resource	183,326	183,326	0	176,268	176,268	0
Parks Trust	733,305	733,305	0	705,071	705,071	0
Permanent Trust	19,297,500	19,297,500	0	18,554,500	18,554,500	0
Water Development	183,326	366,653	183,327	176,268	352,536	176,268
Highway Trust	4,631,400	4,631,400	0	4,453,080	4,453,080	0
Total	38,595,000	38,595,000	0	37,109,000	37,109,000	0

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Future costs to the Department of Fish, Wildlife and Parks and recreational users are dependent upon the results of the recreational benefit study. Beginning in FY94, 25% of RITT would be allocated to the water storage special state revenue account. The RIT trust cap of \$100 million is projected to be reached during FY96. When the cap is reached, 25% of the trust receipts would be deposited in the water storage account.

SB 313

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 313

INTRODUCED BY GROSFIELD, NOBLE, SCHYE, STEPPLER,
BENGTSON, GILBERT, ELLISON, MAZUREK, SWYSGOOD, SVRCEK,
THOFT, HOCKETT, T. BECK, HARPER, ZOOK, STIMATZ,
AKLESTAD, YELLOWTAIL, WILLIAMS, KOEHNKE
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING STATE WATER
STORAGE POLICY AND THE ROLE OF STORAGE IN SOLVING WATER
PROBLEMS; ESTABLISHING GUIDELINES FOR SETTING PRIORITIES
AMONG NEW STORAGE AND REHABILITATION STORAGE PROJECTS;
REQUIRING A STUDY OF THE FEASIBILITY OF ASSESSING
RECREATIONAL USER FEES TO REPAY WATER STORAGE PROJECT COSTS;
REQUIRING A STUDY OF WATER STORAGE LAWS AND REGULATIONS BY
THE WATER POLICY COMMITTEE; CREATING A WATER STORAGE STATE
SPECIAL REVENUE ACCOUNT; ALLOCATING ADDITIONAL ~~SOA~~
SEVERANCE--AND--RESOURCE--INDEMNITY--TRUST TAX REVENUES FOR
WATER DEVELOPMENT; ALLOCATING 25% OF THE MONEY AVAILABLE AS
GRANTS IN THE WATER DEVELOPMENT STATE SPECIAL REVENUE
ACCOUNT AND RENEWABLE RESOURCE DEVELOPMENT ACCOUNT TO THE
DEVELOPMENT OF WATER STORAGE PROJECTS; ELIMINATING THE
10-YEAR LIMIT ON PROJECT DEVELOPMENT PLANS REQUIRED IN
APPLICATIONS FOR LARGE WATER USE PERMITS; AMENDING SECTIONS
~~15-35-1007--15-38-2027~~ 85-1-603, 85-1-604, 85-2-310, AND
90-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to
provide guidance in the preparation of rules and other
matters pertaining to the allocation of grants and loans
from the water storage state special revenue account. This
bill is introduced as a result of and should be interpreted
consistently with the 1990 state water plan section on water
storage. It is the legislature's intent that money may not
be expended from the water storage state special revenue
account during fiscal years 1992 and 1993. Rather, money
deposited in the account is to accumulate for expenditure
during fiscal years 1994 and 1995. Deposits to the account
are to be placed in short-term investments and accrue
interest, which is also to be deposited in the water storage
state special revenue account.

Rules are to be adopted and implemented that govern the
process of application, administrative application review
and ranking, and conditions for the disbursement of grants and
loans as soon as possible after this bill is enacted.
Applications for grants and loans from the account are to be
accepted by May 1992. These application and administrative
recommendations will be considered during the 1993
legislative session, and that legislature may appropriate
money accumulated in the account for expenditure during



1 fiscal years 1994 and 1995.

2 It is also the legislature's intent that rules governing
3 the allocation of money from the water storage state special
4 revenue account do not limit the amount that may be provided
5 to any one applicant. Also, private entities, as well as
6 public entities, are to be eligible for grants and loans
7 from the account.

8

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

10 NEW SECTION. **Section 1. Short title.** (Sections 1
11 through 4] may be cited as the "Water Storage Policy Act".

12 NEW SECTION. **Section 2. Purpose.** The purpose of
13 [sections 1 through 4] is to define the role of water
14 storage in solving water management problems and, if water
15 storage projects provide the best solutions to those
16 problems, to facilitate the development of the projects.

17 NEW SECTION. **Section 3. Water storage policy.** (1) The
18 legislature recognizes that water resource needs are
19 growing, existing water facilities are aging and in need of
20 repair, and new water storage projects have become more
21 difficult to complete. Other types of action will be needed
22 to solve many emerging problems, but if water storage is the
23 best way to meet growing water needs and solve problems,
24 then it should be actively pursued.

25 (2) In determining the best solution for a particular

1 water management problem, the state shall:

2 (a) carefully define the problem;

3 (b) identify all options to solve the problem,
4 including water storage;

5 (c) determine whether water is physically and legally
6 available to solve the problem; and

7 (d) select the option that best meets the following
8 criteria:

9 (i) technical feasibility;

10 (ii) financial feasibility;

11 (iii) economic feasibility;

12 (iv) political feasibility;

13 (v) legal feasibility; and

14 (vi) environmental feasibility.

15 NEW SECTION. **Section 4. Prioritization of water**
16 **storage projects -- governor's report.** (1) The governor
17 shall submit to each regular session of the legislature a
18 report identifying specific water storage projects proposed
19 for development, including the rehabilitation of existing
20 projects and new project proposals. The report must contain:

21 (a) a list of water storage project priorities;

22 (b) an implementation strategy for each priority
23 project that identifies the resources (including specific
24 budget requests), government actions, and other actions
25 needed to accomplish the project; and

1 (c) a progress report on the development of water
2 storage projects during the previous 2 years.

3 (2) In setting priorities among new water storage
4 projects, the governor shall consider whether a project:

- 5 (a) solves a severe water problem;
- 6 (b) provides multiple uses and benefits;
- 7 (c) provides for public uses;
- 8 (d) shows strong evidence of broad citizen support;
- 9 (e) is able to obtain nonstate sources of funding;
- 10 (f) protects and seeks to enhance social, ecological,
11 cultural, and aesthetic values;
- 12 (g) improves local and state economic development;
- 13 (h) could resolve Indian and federal reserved water
14 rights issues;
- 15 (i) supports water conservation activities; and
- 16 (j) promotes the use of water reserved under Montana
17 law.

18 (3) In setting priorities among water storage
19 rehabilitation projects, the governor shall consider whether
20 the project:

- 21 (a) is needed to protect public safety;
- 22 (b) has impacts if not repaired or rehabilitated; and
- 23 (c) accomplishes the goals listed in subsections (2)(a)
24 through (2)(j).
- 25 (4) In establishing budget priorities for the

1 allocation of state water storage development funds:

2 (a) first preference must be given to projects that
3 resolve threats to life and property posed by high-hazard
4 facilities that are in an unsafe condition;

5 (b) second preference must be given to projects that
6 improve or expand existing water storage facilities; and

7 (c) third preference must be given to the planning and
8 construction of new water storage facilities.

9 **NEW SECTION. Section 5. Study of recreational user**
10 **fees.** (1) The department of fish, wildlife and parks, with
11 the cooperation of the department of natural resources and
12 conservation, shall conduct and coordinate a study that
13 assesses the feasibility of charging recreational
14 beneficiaries of water storage projects fees to assist in
15 the repayment of a portion of those project development
16 costs associated with ~~environmental---mitigation---~~ or
17 ~~enhancement---and---increased~~ recreational opportunities.
18 Options to be assessed include but are not limited to:

19 (a) requiring entrance fees for the recreational use of
20 water storage facilities;

21 (b) requiring purchase of a water development stamp as
22 a prerequisite for purchase of a fishing, duck hunting,
23 boating, or other license for which water is an integral
24 part of the recreational experience;

25 (c) increasing the motorboat fuels tax;

1 (d) requiring purchase of a land and water conservation
2 license by anyone using public lands or water; and

3 (e) obtaining funding from the department of fish,
4 wildlife and parks that is derived from taxes or fees on
5 recreational activities.

6 (2) A written report of the study findings must be
7 submitted to the water policy committee by July 1, 1992.

8 **NEW SECTION. Section 6. Study of dam safety and water**
9 **reservation laws and regulations.** (1) The water policy
10 committee, with the cooperation of the department of natural
11 resources and conservation, shall conduct a study of the
12 Montana Dam Safety Act and implementing regulations to
13 determine:

14 (a) the acceptable degree of risk to public safety and
15 the appropriate allocation of responsibility for that risk
16 among the public, government, and dam owners;

17 (b) whether the definition of a high-hazard dam should
18 be modified;

19 (c) whether the high-hazard dam classification should
20 be expanded into a risk scale that allows structural design
21 requirements to reflect probable risk to life and property;
22 and

23 (d) whether the department of natural resources and
24 conservation should be given greater discretion to
25 substitute alternative means of addressing risks, such as

1 early warning systems, for structural design requirements.

2 (2) The water policy committee shall also conduct a
3 study to determine whether the statutory restriction against
4 allowing private entities to obtain water reservations is an
5 impediment to the development of water storage projects.
6 Specifically, the study must evaluate the desirability of:

7 (a) allowing private entities to apply for and obtain
8 water reservations; and

9 (b) designating a public entity with responsibility to
10 advance water reservation applications for private entities
11 that are precluded from applying for and receiving a water
12 reservation under 85-2-316.

13 **NEW SECTION. Section 7. Water storage state special**
14 **revenue account created -- revenues allocated --**
15 **appropriations from account.** (1) There is a water storage
16 state special revenue account within the state special
17 revenue fund established in 17-2-102.

18 (2) There must be paid into the water storage state
19 special revenue account:

20 (a) money from the water development state special
21 revenue account as provided in 85-1-604;

22 (b) money from the renewable resource development
23 account as provided in 90-2-111; and

24 (c) money from the resource indemnity trust fund in
25 excess of the \$100 million minimum balance, as provided in

1 15-38-202.

2 (3) Money that was not encumbered or expended from the
3 water storage state special revenue account during the
4 previous biennium must remain in the account.

5 (4) The purpose of the water storage state special
6 revenue account is to provide money for loans and grants
7 exclusively for water storage projects, including the
8 purchase or lease of property; planning, feasibility, and
9 design studies; and other costs related to construction,
10 rehabilitation, expansion, and modification of water storage
11 projects.

12 (5) The department shall administer this section as an
13 integral part of the water development program, using, to
14 the extent possible, the same procedures for soliciting,
15 determining eligibility, and rating water storage project
16 proposals and for administering grants and loans, subject to
17 the same limitations, as applied to other water development
18 grants and loans.

19 (6) The following preferences must be considered in
20 ranking proposals for water storage grants and loans:

21 (a) first preference is for the rehabilitation of water
22 storage projects that resolve threats to life and property;

23 (b) second preference is for the improvement or
24 expansion of existing water storage projects; and

25 (c) third preference is for the development of new

1 water storage projects.

2 ~~Section 8. Section 15-35-100, MCA, is amended to read:~~
3 ~~"15-35-100. (Temporary) Disposal of severance taxes.~~
4 ~~Severance taxes collected under this chapter must be~~
5 ~~allocated according to the provisions in effect on the date~~
6 ~~the tax is due under 15-35-104. Severance taxes collected~~
7 ~~under the provisions of this chapter are allocated as~~
8 ~~follows:~~

9 ~~(1) To the trust fund created by Article IX, section 5,~~
10 ~~of the Montana constitution, 50% of total coal severance tax~~
11 ~~collections. The trust fund moneys shall be deposited in the~~
12 ~~fund established under 17-6-203(5) and invested by the board~~
13 ~~of investments as provided by law.~~

14 ~~(2) Starting July 1, 1987, and ending June 30, 1993,~~
15 ~~12% of coal severance tax collections are allocated to the~~
16 ~~highway reconstruction trust fund account in the state~~
17 ~~special revenue fund.~~

18 ~~(3) Coal severance tax collections remaining after the~~
19 ~~allocations provided by subsections (1) and (2) are~~
20 ~~allocated in the following percentages of the remaining~~
21 ~~balance:~~

22 ~~(a) 17.5% to the credit of the local impact account,~~
23 ~~Unencumbered funds remaining in the local impact account at~~
24 ~~the end of each biennium are allocated to the state special~~
25 ~~revenue fund for state equalization aid to public schools of~~

1 the-state;

2 (b)--30%--to--the--state--special-revenue-fund-for-state
3 equalization-aid-to-public-schools-of-the-state;

4 (c)--1%--to--the--state--special-revenue-fund-to--the--credit
5 of--the--county-land-planning-account;

6 (d)--1-1/4%--to--the--credit--of--the--renewable-resource
7 development-bond-fund;

8 (e)--5%--to--a--nonexpendable-trust-fund-for-the-purpose-of
9 parks-acquisition-or-management,protection-of-works-of--art
10 in--the--state--capitol,--and--other--cultural-and-aesthetic
11 projects,--income-from-this-trust-fund-shall-be--appropriated
12 as--follows:

13 (i)--1/3--for--protection--of--works-of-art-in-the-state
14 capitol-and-other-cultural-and-aesthetic-projects,--and

15 (ii)--2/3--for--the--acquisition,--development,--operation,
16 and--maintenance--of--any--sites--and--areas--described--in
17 23-1-102,;

18 (f)--1%--to--the--state--special-revenue-fund-to--the--credit
19 of--the--state--library--commission--for--the--purposes--of
20 providing-basic-library-services-for-the--residents--of--all
21 counties--through-library-federations-and-for-payment-of-the
22 costs-of-participating-in-regional-and-national-networking;

23 (g)--1/2--of--1%--to--the--state--special--revenue--fund--for
24 conservation-districts;

25 (h)--1-1/4% 2-1/2% to--the--debt-service-fund-type-to--the

1 credit-of-the-water-development-debt-service-fund;

2 (i)--2%--to--the--state--special--revenue--fund--for--the
3 Montana-Growth-Through-Agriculture-Act;

4 (j)--all--other--revenues-from-severance-taxes-collected
5 under-the-provisions-of-this-chapter-to--the--credit--of--the
6 general-fund-of-the-state,--(Terminates-July-17-1993--sec-7,
7 Ch-5417-57-1983,)

8 15-35-108,--(Effective--July--17--1993)--Disposal--of
9 severance--taxes,--Severance--taxes--collected--under--this
10 chapter--must--be--allocated--according-to-the-provisions-in
11 effect-on-the-date-the-tax-is-due-under-15-35-104,--Severance
12 taxes-collected-under-the-provisions--of--this--chapter--are
13 allocated-as-follows:

14 (1)--To--the--trust-fund-created-by-Article-IX,section-57
15 of-the-Montana-constitution,--50%--of--total-coal-severance-tax
16 collections,--The-trust-fund-moneys-shall-be-deposited-in-the
17 fund-established-under-17-6-203(5)-and-invested-by-the-board
18 of-investments-as-provided-by-law;

19 (2)--Coal-severance-tax-collections--remaining--after
20 allocation--to--the--trust--fund--under--subsection--(1)--are
21 allocated-in-the--following--percentages--of--the--remaining
22 balance:

23 (a)--17.5%--to--the--credit-of-the-local-impact-account;
24 Unencumbered-funds-remaining-in-the-local-impact-account--at
25 the--end-of--each--biennium--are--allocated--to--the--state--special

1 revenue-fund-for-state-equalization-aid-to-public-schools-of
2 the-state;

3 (b)--30%--to--the--state--special--revenue--fund--for--state
4 equalization-aid-to-public-schools-of-the-state;

5 (c)--1%--to--the--state--special-revenue-fund-to-the-credit
6 of-the-county-land-planning-account;

7 (d)--1-1/4%--to--the--credit--of--the--renewable--resource
8 development-bond-fund;

9 (e)--5%--to--a--nonexpendable-trust-fund-for-the-purpose-of
10 parks--acquisition-or-management; protection-of-works-of-art
11 in-the-state--capitol;--and--other--cultural--and--aesthetic
12 projects.--Income-from-this-trust-fund-shall-be-appropriated
13 as-follows:

14 (i)--1/3--for--protection-of-works-of--art--in--the--state
15 capitol--and--other--cultural--and--aesthetic--projects;--and

16 (ii)--2/3--for--the--acquisition; development; operation;
17 and--maintenance--of--any--sites--and--areas--described--in
18 23-1-1027;

19 (f)--1%--to--the--state--special-revenue-fund-to-the-credit
20 of--the--state--library--commission--for--the--purposes--of
21 providing--basic--library--services--for--the--residents--of--all
22 counties--through--library--federations--and--for--payment--of--the
23 costs--of--participating--in--regional--and--national--networking;

24 (g)--1/2--of--1%--to--the--state--special-revenue-fund-for
25 conservation-districts;

1 (h)--1-1/4% 2-1/2% to-the-debt-service-fund-type-to--the
2 credit-of-the-water-development-debt-service-fund;

3 (i)--2%--to--the--state--special--revenue--fund--for--the
4 Montana-Growth-Through-Agriculture-Act;

5 (j)--all--other--revenues--from--severance--taxes--collected
6 under--the--provisions--of--this--chapter--to--the--credit--of--the
7 general-fund-of-the-state.4

8 Section-9--Section-15-38-202-MCA--is-amended-to-read:

9 "15-38-202--Investment-of-resource-indemnity-trust-fund
10 ---expenditure---minimum-balance--(i)-All-money--paid--into
11 the--resource--indemnity-trust-fund;--including--money--payable
12 into--the--fund--under--the--provisions--of--15-37-117;--shall--be
13 invested--at--the--discretion--of--the--board--of--investments--All
14 the--net--earnings--accruing--to--the--resource--indemnity--trust
15 fund--shall--annually--be--added--to--the--trust--fund--until--it--has
16 reached--the--sum--of--\$10-million;--Thereafter;--only--the--net
17 earnings--may--be--appropriated--and--expended--until--the--fund
18 reaches--\$100-million;--Thereafter;--all--net--earnings--and--all
19 receipts--shall--be--appropriated--by--the--legislature--and
20 expended;--provided--that--the--balance--in--the--fund--may--never--be
21 less--than--\$100-million;

22 (2)--(a)-At--the--beginning--of--each--biennium;--there--is
23 allocated--from--the--interest--income--of--the--resource--indemnity
24 trust--fund;

25 (i)--an--amount--not--to--exceed--\$1757000--to--the

1 environmental contingency account pursuant to the conditions
2 of 75-1-1101, and

3 (ii) beginning in fiscal year 1992, an amount not to
4 exceed \$50,000 to the oil and gas production damage
5 mitigation account pursuant to the conditions of 82-1-161.

6 (b) The remainder of the interest income is allocated
7 as follows:

8 (i) Beginning in fiscal year 1982, provided the amount
9 in the resource indemnity trust fund is greater than \$10
10 million, 36% of the interest income of the resource
11 indemnity trust fund must be allocated to the water
12 development state special revenue account created by
13 85-1-604.

14 (ii) Beginning in fiscal year 1988, 12% of the interest
15 income of the resource indemnity trust fund must be
16 allocated to the hazardous waste/EBREBA special revenue
17 account provided for in 75-10-621.

18 (iii) Beginning in fiscal year 1990, 8% of the interest
19 income from the resource indemnity trust fund must be
20 allocated to the renewable resource development account
21 provided for in Title 90, chapter 2.

22 (iv) Beginning in fiscal year 1990, 46% of the interest
23 income from the resource indemnity trust fund must be
24 allocated to the reclamation and development grants account
25 provided for in 90-2-1104.

1 (v) Beginning in fiscal year 1990, 4% of the interest
2 income of the resource indemnity trust fund must be
3 allocated to the environmental quality protection fund
4 provided for in 75-10-704.

5 (vi) Beginning in fiscal year 1994, 25% of the receipts
6 in the resource indemnity trust fund in excess of the \$100
7 million minimum balance must be allocated to the water
8 storage state special revenue account provided for in
9 (section 7).

10 (3) Any formal budget document prepared by the
11 legislature or the executive branch that proposes to
12 appropriate funds from the resource indemnity trust interest
13 account other than as provided for by the allocations in
14 subsection (2) must specify the amount of money from each
15 allocation that is proposed to be diverted and the proposed
16 use of the diverted funds. A formal budget document includes
17 a printed and publicly distributed budget proposal or
18 recommendation, an introduced bill, or a bill developed
19 during the legislative appropriation process or otherwise
20 during a legislative session."

21 **Section 8.** Section 85-1-603, MCA, is amended to read:

22 "85-1-603. Water development debt service fund created
23 -- coal severance tax allocated -- water development loan
24 loss reserve fund created. (1) (a) There is created a water
25 development debt service fund within the debt service fund

1 type established in 17-2-102.

2 (b) The state pledges and allocates and directs to be
3 credited to the water development debt service fund, as
4 received:

5 (i) ~~1-1/4%~~ 2 1/2% of all money from time to time
6 received from the coal severance tax collected under Title
7 15, chapter 35, and remaining after allocation of such tax
8 under 15-35-108(1) and (2);

9 (ii) any principal and accrued interest under
10 85-1-613(3)(a) received in repayment of a loan made from the
11 proceeds of bonds issued under 85-1-617;

12 (iii) all interest income earned on proceeds of water
13 development bonds;

14 (iv) revenue or money otherwise required to be paid into
15 the water development state special revenue account pursuant
16 to 85-1-604, as determined by the board of examiners in
17 connection with the issuance of bonds pursuant to 85-1-617;
18 and

19 (v) money received from the water development loan loss
20 reserve fund as the result of a loan loss.

21 (2) (a) There is created a water development loan loss
22 reserve fund within the debt service fund type established
23 in 17-2-102.

24 (b) The state pledges and allocates and directs to be
25 credited to the water development loan loss reserve fund all

1 accrued interest under 85-1-613(3)(b) received in repayment
2 of a loan made from the proceeds of bonds issued under
3 85-1-617.

4 (c) If the department determines that a loan loss has
5 occurred on a loan made pursuant to this part, funds from
6 the water development loan loss reserve fund must be
7 transferred to the water development debt service fund in an
8 amount equal to the amount that would otherwise be available
9 for debt service under subsection (1)(b) as a result of the
10 loan loss."

11 **Section 9.** Section 85-1-604, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (vii) projects or programs that improve water use
13 efficiency, including development of new, efficient water
14 systems and rehabilitation of older, less efficient water
15 systems;

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

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

23 (c) An amount less than or equal to that paid into the
24 account from the sources provided for in (c) and (d) of
25 subsection (2) and only that amount may be appropriated from

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

9 (4) An amount equal to 25% of the money available for
 10 grants under subsection (3)(c) must be transferred to the
 11 water storage state special revenue account created in
 12 [section 7]."

13 **Section 10.** Section 85-2-310, MCA, is amended to read:

14 **"85-2-310. Action on application.** (1) The department
 15 shall grant, deny, or condition an application for a permit
 16 in whole or in part within 120 days after the last date of
 17 publication of the notice of application if no objections
 18 have been received and within 180 days if a hearing is held
 19 or objections have been received. However, in either case
 20 the time may be extended upon agreement of the applicant,
 21 or, in those cases where an environmental impact statement
 22 must be prepared or in other extraordinary cases, not more
 23 than 60 days upon order of the department. If the department
 24 orders the time extended, it shall serve a notice of the
 25 extension and the reasons therefor by certified mail upon

1 the applicant and each person who has filed an objection as
 2 provided by 85-2-308.

3 (2) However, an application may not be approved in a
 4 modified form or upon terms, conditions, or limitations
 5 specified by the department or denied, unless the applicant
 6 is first granted an opportunity to be heard. If no objection
 7 is filed against the application but the department is of
 8 the opinion that the application should be approved in a
 9 modified form or upon terms, conditions, or limitations
 10 specified by it or that the application should be denied,
 11 the department shall prepare a statement of its opinion and
 12 the reasons therefor. The department shall serve a statement
 13 of its opinion by certified mail upon the applicant,
 14 together with a notice that the applicant may obtain a
 15 hearing by filing a request therefor within 30 days after
 16 the notice is mailed. The notice shall further state that
 17 the application will be modified in a specified manner or
 18 denied, unless a hearing is requested.

19 (3) The department may cease action upon an application
 20 for a permit and return it to the applicant when it finds
 21 that the application is not in good faith or does not show a
 22 bona fide intent to appropriate water for a beneficial use.
 23 An application returned for any of these reasons shall be
 24 accompanied by a statement of the reasons for which it was
 25 returned, and there shall be no right to a priority date

1 based upon the filing of the application. Returning an
2 application pursuant to this subsection shall be deemed a
3 final decision of the department.

4 (4) For all applications filed after July 1, 1973, the
5 department shall find that an application is not in good
6 faith or does not show a bona fide intent to appropriate
7 water for a beneficial use if:

8 (a) an application is not corrected and completed as
9 required by 85-2-302;

10 (b) the appropriate filing fee is not paid;

11 (c) the application does not document:

12 (i) a beneficial use of water;

13 (ii) the proposed place of use of all water applied for;

14 (iii) for an appropriation of 4,000 acre-feet a year or
15 more and 5.5 cubic feet per second or more, a detailed
16 project plan describing when and how much water will be put
17 to a beneficial use. The project plan must include a
18 reasonable time line, ~~not to exceed 10 years from the time~~
19 ~~of issuance of a permit~~, for the completion of the project
20 and the actual application of the water to a beneficial use.

21 (iv) for appropriations not covered in subsection
22 (4)(c)(iii), a general project plan stating when and how
23 much water will be put to a beneficial use; and

24 (v) if the water applied for is to be appropriated
25 above that which will be used solely by the applicant or if

1 it will be marketed by the applicant to other users,
2 information detailing:

3 (A) each person who will use the water and the amount
4 of water each person will use;

5 (B) the proposed place of use of all water by each
6 person;

7 (C) the nature of the relationship between the
8 applicant and each person using the water; and

9 (D) each firm contractual agreement for the specified
10 amount of water for each person using the water; or

11 (d) the appropriate environmental impact statement fee,
12 if any, is not paid as required by 85-2-124."

13 **Section 11.** Section 90-2-111, MCA, is amended to read:

14 **"90-2-111. Grants to state and local government.** (1)

15 The department of natural resources and conservation may
16 recommend to the governor that grants from the renewable
17 resource development account provided for by this part be
18 made to any department, agency, board, commission, or other
19 division of state government or to any political subdivision
20 of state government.

21 (2) The department shall solicit and consider in its
22 evaluation of proposed projects the views of interested and
23 affected departments, boards, agencies, and other
24 subdivisions of state and federal government and of other
25 interested and affected persons.

1 (3) The governor shall submit those grant proposals
 2 having his approval to the legislature by the 20th day of
 3 any legislative session. Those grant proposals approved by
 4 the legislature shall be administered by the department.

5 (4) The grants provided for by this section may be made
 6 for the purchase, lease, or construction of projects for the
 7 conservation, management, utilization, development, or
 8 preservation of the land, vegetation, fish, wildlife,
 9 recreational, and other renewable resources in the state;
 10 for the purpose of feasibility and design studies for such
 11 projects; for development of plans for the rehabilitation,
 12 expansion, or modification of existing projects; and for
 13 such other and further similar purposes as the legislature
 14 may approve.

15 (5) In recommending grants under this section, the
 16 department and the governor shall consider the special
 17 requirements and benefits of proposals that provide for the
 18 long-term compilation and management of information on the
 19 natural resources of Montana. These proposals contribute to
 20 the efficient management of renewable resources, benefit a
 21 variety of public and private users, and require a
 22 continuing commitment of resources to maintain currency and
 23 utility. In consequence of these values and conditions,
 24 projects providing for the long-term compilation and
 25 management of natural resource information may be considered

1 for funding in consecutive funding cycles and may not be
 2 penalized for having received funds previously from the
 3 renewable resource development program.

4 (6) An amount equal to 25% of the money available for
 5 grants from the renewable resource development program must
 6 be transferred to the water storage state special revenue
 7 account created in [section 7].

8 ~~(6)~~(7) The department may adopt rules as required to
 9 govern the terms and conditions for making grants pursuant
 10 to this section."

11 NEW SECTION. Section 12. Codification instruction. (1)
 12 [Sections 1 through 4] are intended to be codified as an
 13 integral part of Title 85, chapter 1, and the provisions of
 14 Title 85, chapter 1, apply to [sections 1 through 4].

15 (2) [Section 7] is intended to be codified as an
 16 integral part of Title 85, chapter 1, part 6, and the
 17 provisions of Title 85, chapter 1, part 6, apply to [section
 18 7].

19 NEW SECTION. Section 13. Effective date. [This act] is
 20 effective July 1, 1991.

-End-

1 SENATE BILL NO. 313

2 INTRODUCED BY GROSFIELD, NOBLE, SCHYE, STEPPLER,
3 BENGTON, GILBERT, ELLISON, MAZUREK, SWYSGOOD, SVRCEK,
4 THOFT, HOCKETT, T. BECK, HARPER, ZOOK, STIMATZ,
5 AKLESTAD, YELLOWTAIL, WILLIAMS, KOEHNKE

6 BY REQUEST OF THE GOVERNOR
7

8 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING STATE WATER
9 STORAGE POLICY AND THE ROLE OF STORAGE IN SOLVING WATER
10 PROBLEMS; ESTABLISHING GUIDELINES FOR SETTING PRIORITIES
11 AMONG NEW STORAGE AND REHABILITATION STORAGE PROJECTS;
12 REQUIRING A STUDY OF THE FEASIBILITY OF ASSESSING
13 RECREATIONAL USER FEES TO REPAY WATER STORAGE PROJECT COSTS;
14 REQUIRING A STUDY OF WATER STORAGE LAWS AND REGULATIONS BY
15 THE WATER POLICY COMMITTEE; CREATING A WATER STORAGE STATE
16 SPECIAL REVENUE ACCOUNT; ALLOCATING ADDITIONAL ~~60%~~
17 SEVERANCE--AND--RESOURCE--INDEMNITY--TRUST TAX REVENUES FOR
18 WATER DEVELOPMENT; ALLOCATING 25% OF THE MONEY AVAILABLE AS
19 GRANTS IN THE WATER DEVELOPMENT STATE SPECIAL REVENUE
20 ACCOUNT AND RENEWABLE RESOURCE DEVELOPMENT ACCOUNT TO THE
21 DEVELOPMENT OF WATER STORAGE PROJECTS; ELIMINATING THE
22 10-YEAR LIMIT ON PROJECT DEVELOPMENT PLANS REQUIRED IN
23 APPLICATIONS FOR LARGE WATER USE PERMITS; AMENDING SECTIONS
24 15-35-1087--15-38-202, 85-1-603, 85-1-604, 85-2-310, AND
25 90-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE."

1 STATEMENT OF INTENT

2
3 A statement of intent is required for this bill to
4 provide guidance in the preparation of rules and other
5 matters pertaining to the allocation of grants and loans
6 from the water storage state special revenue account. This
7 bill is introduced as a result of and should be interpreted
8 consistently with the 1990 state water plan section on water
9 storage. It is the legislature's intent that money may not
10 be expended from the water storage state special revenue
11 account during fiscal years 1992 and 1993. Rather, money
12 deposited in the account is to accumulate for expenditure
13 during fiscal years 1994 and 1995. Deposits to the account
14 are to be placed in short-term investments and accrue
15 interest, which is also to be deposited in the water storage
16 state special revenue account.

17 Rules are to be adopted and implemented that govern the
18 process of application, administrative application review
19 and ranking, and conditions for the disbursement of grants and
20 loans as soon as possible after this bill is enacted.
21 Applications for grants and loans from the account are to be
22 accepted by May 1992. These application and administrative
23 recommendations will be considered during the 1993
24 legislative session, and that legislature may appropriate
25 money accumulated in the account for expenditure during

1 fiscal years 1994 and 1995.

2 It is also the legislature's intent that rules governing
3 the allocation of money from the water storage state special
4 revenue account do not limit the amount that may be provided
5 to any one applicant. Also, private entities, as well as
6 public entities, are to be eligible for grants and loans
7 from the account.

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

10 NEW SECTION. **Section 1.** Short title. [Sections 1
11 through 4] may be cited as the "Water Storage Policy Act".

12 NEW SECTION. **Section 2.** Purpose. The purpose of
13 [sections 1 through 4] is to define the role of water
14 storage in solving water management problems and, if water
15 storage projects provide the best solutions to those
16 problems, to facilitate the development of the projects.

17 NEW SECTION. **Section 3.** Water storage policy. (1) The
18 legislature recognizes that water resource needs are
19 growing, existing water facilities are aging and in need of
20 repair, and new water storage projects have become more
21 difficult to complete. Other types of action will be needed
22 to solve many emerging problems, but if water storage is the
23 best way to meet growing water needs and solve problems,
24 then it should be actively pursued.

25 (2) In determining the best solution for a particular

1 water management problem, the state shall:

- 2 (a) carefully define the problem;
- 3 (b) identify all options to solve the problem,
- 4 including water storage;
- 5 (c) determine whether water is physically and legally
- 6 available to solve the problem; and
- 7 (d) select the option that best meets the following
- 8 criteria:
 - 9 (i) technical feasibility;
 - 10 (ii) financial feasibility;
 - 11 (iii) economic feasibility;
 - 12 (iv) political feasibility;
 - 13 (v) legal feasibility; and
 - 14 (vi) environmental feasibility.

15 NEW SECTION. **Section 4.** Prioritization of water
16 storage projects -- governor's report. (1) The governor
17 shall submit to each regular session of the legislature a
18 report identifying specific water storage projects proposed
19 for development, including the rehabilitation of existing
20 projects and new project proposals. The report must contain:

- 21 (a) a list of water storage project priorities;
- 22 (b) an implementation strategy for each priority
- 23 project that identifies the resources (including specific
- 24 budget requests), government actions, and other actions
- 25 needed to accomplish the project; and

1 (c) a progress report on the development of water
 2 storage projects during the previous 2 years.

3 (2) In setting priorities among new water storage
 4 projects, the governor shall consider whether a project:

5 (a) solves a severe water problem;
 6 (b) provides multiple uses and benefits;
 7 (c) provides for public uses;
 8 (d) shows strong evidence of broad citizen support;
 9 (e) is able to obtain nonstate sources of funding;
 10 (f) protects and seeks to enhance social, ecological,
 11 cultural, and aesthetic values;
 12 (g) improves local and state economic development;
 13 (h) could resolve Indian and federal reserved water
 14 rights issues;
 15 (i) supports water conservation activities; and
 16 (j) promotes the use of water reserved under Montana
 17 law.

18 (3) In setting priorities among water storage
 19 rehabilitation projects, the governor shall consider whether
 20 the project:

21 (a) is needed to protect public safety;
 22 (b) has impacts if not repaired or rehabilitated; and
 23 (c) accomplishes the goals listed in subsections (2)(a)
 24 through (2)(j).

25 (4) In establishing budget priorities for the

1 allocation of state water storage development funds:

2 (a) first preference must be given to projects that
 3 resolve threats to life and property posed by high-hazard
 4 facilities that are in an unsafe condition;

5 (b) second preference must be given to projects that
 6 improve or expand existing water storage facilities; and
 7 (c) third preference must be given to the planning and
 8 construction of new water storage facilities.

9 NEW SECTION. Section 5. Study of recreational user
 10 fees. (1) The department of fish, wildlife and parks, with
 11 the cooperation of the department of natural resources and
 12 conservation, shall conduct and coordinate a study that
 13 assesses the feasibility of charging recreational
 14 beneficiaries of water storage projects fees to assist in
 15 the repayment of a portion of those project development
 16 costs associated with ~~environmental~~---mitigation---or
 17 ~~enhancement~~---and---increased recreational opportunities.
 18 Options to be assessed include but are not limited to:

19 (a) requiring entrance fees for the recreational use of
 20 water storage facilities;

21 (b) requiring purchase of a water development stamp as
 22 a prerequisite for purchase of a fishing, duck hunting,
 23 boating, or other license for which water is an integral
 24 part of the recreational experience;

25 (c) increasing the motorboat fuels tax;

1 (d) requiring purchase of a land and water conservation
2 license by anyone using public lands or water; and

3 (e) obtaining funding from the department of fish,
4 wildlife and parks that is derived from taxes or fees on
5 recreational activities.

6 (2) A written report of the study findings must be
7 submitted to the water policy committee by July 1, 1992.

8 NEW SECTION. Section 6. Study of dam safety and water
9 reservation laws and regulations. (1) The water policy
10 committee, with the cooperation of the department of natural
11 resources and conservation, shall conduct a study of the
12 Montana Dam Safety Act and implementing regulations to
13 determine:

14 (a) the acceptable degree of risk to public safety and
15 the appropriate allocation of responsibility for that risk
16 among the public, government, and dam owners;

17 (b) whether the definition of a high-hazard dam should
18 be modified;

19 (c) whether the high-hazard dam classification should
20 be expanded into a risk scale that allows structural design
21 requirements to reflect probable risk to life and property;
22 and

23 (d) whether the department of natural resources and
24 conservation should be given greater discretion to
25 substitute alternative means of addressing risks, such as

1 early warning systems, for structural design requirements.

2 (2) The water policy committee shall also conduct a
3 study to determine whether the statutory restriction against
4 allowing private entities to obtain water reservations is an
5 impediment to the development of water storage projects.
6 Specifically, the study must evaluate the desirability of:

7 (a) allowing private entities to apply for and obtain
8 water reservations; and

9 (b) designating a public entity with responsibility to
10 advance water reservation applications for private entities
11 that are precluded from applying for and receiving a water
12 reservation under 85-2-316.

13 NEW SECTION. Section 7. Water storage state special
14 revenue account created -- revenues allocated --
15 appropriations from account. (1) There is a water storage
16 state special revenue account within the state special
17 revenue fund established in 17-2-102.

18 (2) There must be paid into the water storage state
19 special revenue account:

20 (a) money from the water development state special
21 revenue account as provided in 85-1-604; AND

22 (b) money from the renewable resource development
23 account as provided in 90-2-111~~7~~ and.

24 ~~(c) money from the resource indemnity trust fund in~~
25 ~~excess of the \$100 million minimum balance, as provided in~~

1 ~~15-38-202.~~

2 (3) Money that was not encumbered or expended from the
3 water storage state special revenue account during the
4 previous biennium must remain in the account.

5 (4) The purpose of the water storage state special
6 revenue account is to provide money for loans and grants
7 exclusively for water storage projects, including the
8 purchase or lease of property; planning, feasibility, and
9 design studies; and other costs related to construction,
10 rehabilitation, expansion, and modification of water storage
11 projects.

12 (5) The department shall administer this section as an
13 integral part of the water development program, using, to
14 the extent possible, the same procedures for soliciting,
15 determining eligibility, and rating water storage project
16 proposals and for administering grants and loans, subject to
17 the same limitations, as applied to other water development
18 grants and loans.

19 (6) The following preferences must be considered in
20 ranking proposals for water storage grants and loans:

21 (a) first preference is for the rehabilitation of water
22 storage projects that resolve threats to life and property;

23 (b) second preference is for the improvement or
24 expansion of existing water storage projects; and

25 (c) third preference is for the development of new

1 water storage projects.

2 Section 8, Section 15-35-100, MCA, is amended to read:
3 "15-35-100. (Temporary) Disposal of severance taxes.
4 Severance taxes collected under this chapter must be
5 allocated according to the provisions in effect on the date
6 the tax is due under 15-35-104. Severance taxes collected
7 under the provisions of this chapter are allocated as
8 follows:

9 (1) To the trust fund created by Article IX, section 5,
10 of the Montana constitution, 50% of total coal severance tax
11 collections. The trust fund moneys shall be deposited in the
12 fund established under 17-6-203(5) and invested by the board
13 of investments as provided by law.

14 (2) Starting July 1, 1987, and ending June 30, 1993,
15 12% of coal severance tax collections are allocated to the
16 highway reconstruction trust fund account in the state
17 special revenue fund.

18 (3) Coal severance tax collections remaining after the
19 allocations provided by subsections (1) and (2) are
20 allocated in the following percentages of the remaining
21 balance:

22 (a) 17.5% to the credit of the local impact account,
23 unencumbered funds remaining in the local impact account at
24 the end of each biennium are allocated to the state special
25 revenue fund for state equalization aid to public schools of

1 the-state;

2 (b)--30%--to--the--state--special--revenue--fund--for--state
3 equalization--aid--to--public--schools--of--the--state;

4 (c)--1%--to--the--state--special--revenue--fund--to--the--credit
5 of--the--county--land--planning--account;

6 (d)--1-1/4%--to--the--credit--of--the--renewable--resource
7 development--bond--fund;

8 (e)--5%--to--a--nonexpendable--trust--fund--for--the--purpose--of
9 parks--acquisition--or--management;--protection--of--works--of--art
10 in--the--state--capitol;--and--other--cultural--and--aesthetic
11 projects.--Income--from--this--trust--fund--shall--be--appropriated
12 as--follows:

13 (i)--1/3--for--protection--of--works--of--art--in--the--state
14 capitol--and--other--cultural--and--aesthetic--projects;--and

15 (ii)--2/3--for--the--acquisition;--development;--operation;
16 and--maintenance--of--any--sites--and--areas--described--in
17 23-1-102;.

18 (f)--1%--to--the--state--special--revenue--fund--to--the--credit
19 of--the--state--library--commission--for--the--purposes--of
20 providing--basic--library--services--for--the--residents--of--all
21 counties--through--library--federations--and--for--payment--of--the
22 costs--of--participating--in--regional--and--national--networking;

23 (g)--1/2--of--1%--to--the--state--special--revenue--fund--for
24 conservation--districts;

25 (h)--1-1/4% 2-1/2% to--the--debt--service--fund--type--to--the

1 credit--of--the--water--development--debt--service--fund;

2 (i)--2%--to--the--state--special--revenue--fund--for--the
3 Montana--Growth--Through--Agriculture--Act;

4 (j)--all--other--revenues--from--severance--taxes--collected
5 under--the--provisions--of--this--chapter--to--the--credit--of--the
6 general--fund--of--the--state;--(Terminates--July--17--1993--Sec--77
7 Ch--5417--H--1983;)

8 15-35-108;--(Effective--July--17--1993)--Disposal--of
9 severance--taxes;--Severance--taxes--collected--under--this
10 chapter--must--be--allocated--according--to--the--provisions--in
11 effect--on--the--date--the--tax--is--due--under--15-35-104;--Severance
12 taxes--collected--under--the--provisions--of--this--chapter--are
13 allocated--as--follows:

14 (1)--To--the--trust--fund--created--by--Article--IX;--section--5,
15 of--the--Montana--constitution;--50%--of--total--coal--severance--tax
16 collections;--The--trust--fund--moneys--shall--be--deposited--in--the
17 fund--established--under--17-6-203(5)--and--invested--by--the--board
18 of--investments--as--provided--by--law;

19 (2)--Coal--severance--tax--collections--remaining--after
20 allocation--to--the--trust--fund--under--subsection--(1)--are
21 allocated--in--the--following--percentages--of--the--remaining
22 balance:

23 (a)--17.5%--to--the--credit--of--the--local--impact--account;
24 Unencumbered--funds--remaining--in--the--local--impact--account--at
25 the--end--of--each--biennium--are--allocated--to--the--state--special

1 revenue fund for state equalization aid to public schools of
2 the state;

3 (b) 30% to the state special revenue fund for state
4 equalization aid to public schools of the state;

5 (c) 1% to the state special revenue fund to the credit
6 of the county land planning account;

7 (d) 1-1/4% to the credit of the renewable resource
8 development bond fund;

9 (e) 5% to a nonexpendable trust fund for the purpose of
10 parks acquisition or management, protection of works of art
11 in the state capitol, and other cultural and aesthetic
12 projects. Income from this trust fund shall be appropriated
13 as follows:

14 (i) 1/3 for protection of works of art in the state
15 capitol and other cultural and aesthetic projects; and

16 (ii) 2/3 for the acquisition, development, operation,
17 and maintenance of any sites and areas described in
18 23-1-102;

19 (f) 1% to the state special revenue fund to the credit
20 of the state library commission for the purposes of
21 providing basic library services for the residents of all
22 counties through library federations and for payment of the
23 costs of participating in regional and national networking;

24 (g) 1/2 of 1% to the state special revenue fund for
25 conservation districts;

1 (h) 1-1/4% 2-1/2% to the debt service fund type to the
2 credit of the water development debt service fund;

3 (i) 2% to the state special revenue fund for the
4 Montana Growth Through Agriculture Act;

5 (j) all other revenues from severance taxes collected
6 under the provisions of this chapter to the credit of the
7 general fund of the state."

8 Section 9, Section 15-38-202, MCA, is amended to read:

9 "15-38-202. Investment of resource indemnity trust fund
10 --- expenditure --- minimum balance. (i) All money paid into
11 the resource indemnity trust fund, including money payable
12 into the fund under the provisions of 15-37-117, shall be
13 invested at the discretion of the board of investments. All
14 the net earnings accruing to the resource indemnity trust
15 fund shall annually be added to the trust fund until it has
16 reached the sum of \$10 million. Thereafter, only the net
17 earnings may be appropriated and expended until the fund
18 reaches \$100 million. Thereafter, all net earnings and all
19 receipts shall be appropriated by the legislature and
20 expended, provided that the balance in the fund may never be
21 less than \$100 million.

22 (2) (a) At the beginning of each biennium, there is
23 allocated from the interest income of the resource indemnity
24 trust fund:

25 (i) an amount not to exceed \$175,000 to the

1 environmental-contingency-account-pursuant-to-the-conditions
2 of-75-1-1101; and

3 (ii) Beginning in fiscal year 1992, an amount not to
4 exceed \$50,000 to the oil and gas production damage
5 mitigation account pursuant to the conditions of 82-11-161;

6 (b) The remainder of the interest income is allocated
7 as follows:

8 (i) Beginning in fiscal year 1982, provided the amount
9 in the resource indemnity trust fund is greater than \$10
10 million, 30% of the interest income of the resource
11 indemnity trust fund must be allocated to the water
12 development state special revenue account created by
13 85-1-604;

14 (ii) Beginning in fiscal year 1988, 12% of the interest
15 income of the resource indemnity trust fund must be
16 allocated to the hazardous waste/ERCBA special revenue
17 account provided for in 75-10-621;

18 (iii) Beginning in fiscal year 1990, 8% of the interest
19 income from the resource indemnity trust fund must be
20 allocated to the renewable resource development account
21 provided for in Title 90, chapter 2;

22 (iv) Beginning in fiscal year 1990, 46% of the interest
23 income from the resource indemnity trust fund must be
24 allocated to the reclamation and development grants account
25 provided for in 90-2-1104;

1 (v) Beginning in fiscal year 1990, 4% of the interest
2 income of the resource indemnity trust fund must be
3 allocated to the environmental quality protection fund
4 provided for in 75-10-704;

5 (vi) Beginning in fiscal year 1994, 25% of the receipts
6 in the resource indemnity trust fund in excess of the \$100
7 million minimum balance must be allocated to the water
8 storage state special revenue account provided for in
9 (section 7);

10 (3) Any formal budget document prepared by the
11 legislature or the executive branch that proposes to
12 appropriate funds from the resource indemnity trust interest
13 account other than as provided for by the allocations in
14 subsection (2) must specify the amount of money from each
15 allocation that is proposed to be diverted and the proposed
16 use of the diverted funds. A formal budget document includes
17 a printed and publicly distributed budget proposal or
18 recommendation, an introduced bill, or a bill developed
19 during the legislative appropriation process or otherwise
20 during a legislative session."

21 Section 8, Section 85-1-603, MCA, is amended to read:

22 "85-1-603. Water development debt service fund created
23 coal severance tax allocated water development loan
24 loss reserve fund created. (1) (a) There is created a water
25 development debt service fund within the debt service fund

1 type-established-in-17-2-102.

2 (b)--The-state-pledges-and-allocates-and-directs--to--be
3 credited--to--the--water--development--debt-service-fund, as
4 received:

5 (i)--1-1/4% ~~2-1/2%~~ of--all--money--from--time--to--time
6 received--from--the--coal-severance-tax-collected-under-Title
7 15, chapter-357-and-remaining-after-allocation-of--such--tax
8 under-15-35-100(1)-and-(2);

9 (ii)--any---principal---and---accrued---interest---under
10 85-1-613(3)(a)-received-in-repayment-of-a-loan-made-from-the
11 proceeds-of-bonds-issued-under-85-1-617;

12 (iii)--all-interest-income-earned-on--proceeds--of--water
13 development-bonds;

14 (iv)--revenue-or-money-otherwise-required-to-be-paid-into
15 the-water-development-state-special-revenue-account-pursuant
16 to--85-1-604,--as--determined--by--the-board-of-examiners-in
17 connection-with-the-issuance-of-bonds-pursuant-to--85-1-617;
18 and

19 (v)--money-received-from-the-water-development-loan-loss
20 reserve-fund-as-the-result-of-a-loan-loss;

21 (2)--(a)--There--is-created-a-water-development-loan-loss
22 reserve-fund-within-the-debt-service-fund--type--established
23 in-17-2-102.

24 (b)--The--state--pledges-and-allocates-and-directs-to-be
25 credited-to-the-water-development-loan-loss-reserve-fund-all

1 accrued-interest-under-85-1-613(3)(b)-received-in--repayment
2 of--a--loan--made--from--the--proceeds-of-bonds-issued-under
3 85-1-617.

4 (c)--If-the-department-determines-that-a-loan--loss--has
5 occurred--on--a--loan-made-pursuant-to-this-part, funds-from
6 the--water--development--loan--loss--reserve--fund--must--be
7 transferred-to-the-water-development-debt-service-fund-in-an
8 amount-equal-to-the-amount-that-would-otherwise-be-available
9 for-debt-service-under-subsection-(1)(b)-as-a-result-of--the
10 loan-loss."

11 **Section 8.** Section 85-1-604, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (vii) projects or programs that improve water use
13 efficiency, including development of new, efficient water
14 systems and rehabilitation of older, less efficient water
15 systems;

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

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

23 (c) An amount less than or equal to that paid into the
24 account from the sources provided for in (c) and (d) of
25 subsection (2) and only that amount may be appropriated from

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

9 (4) An amount equal to 25% of the money available for
 10 grants under subsection (3)(c) must be transferred to the
 11 water storage state special revenue account created in
 12 [section 7]."

13 **Section 9.** Section 85-2-310, MCA, is amended to read:

14 **"85-2-310. Action on application.** (1) The department
 15 shall grant, deny, or condition an application for a permit
 16 in whole or in part within 120 days after the last date of
 17 publication of the notice of application if no objections
 18 have been received and within 180 days if a hearing is held
 19 or objections have been received. However, in either case
 20 the time may be extended upon agreement of the applicant,
 21 or, in those cases where an environmental impact statement
 22 must be prepared or in other extraordinary cases, not more
 23 than 60 days upon order of the department. If the department
 24 orders the time extended, it shall serve a notice of the
 25 extension and the reasons therefor by certified mail upon

1 the applicant and each person who has filed an objection as
 2 provided by 85-2-308.

3 (2) However, an application may not be approved in a
 4 modified form or upon terms, conditions, or limitations
 5 specified by the department or denied, unless the applicant
 6 is first granted an opportunity to be heard. If no objection
 7 is filed against the application but the department is of
 8 the opinion that the application should be approved in a
 9 modified form or upon terms, conditions, or limitations
 10 specified by it or that the application should be denied,
 11 the department shall prepare a statement of its opinion and
 12 the reasons therefor. The department shall serve a statement
 13 of its opinion by certified mail upon the applicant,
 14 together with a notice that the applicant may obtain a
 15 hearing by filing a request therefor within 30 days after
 16 the notice is mailed. The notice shall further state that
 17 the application will be modified in a specified manner or
 18 denied, unless a hearing is requested.

19 (3) The department may cease action upon an application
 20 for a permit and return it to the applicant when it finds
 21 that the application is not in good faith or does not show a
 22 bona fide intent to appropriate water for a beneficial use.
 23 An application returned for any of these reasons shall be
 24 accompanied by a statement of the reasons for which it was
 25 returned, and there shall be no right to a priority date

1 based upon the filing of the application. Returning an
 2 application pursuant to this subsection shall be deemed a
 3 final decision of the department.

4 (4) For all applications filed after July 1, 1973, the
 5 department shall find that an application is not in good
 6 faith or does not show a bona fide intent to appropriate
 7 water for a beneficial use if:

8 (a) an application is not corrected and completed as
 9 required by 85-2-302;

10 (b) the appropriate filing fee is not paid;

11 (c) the application does not document:

12 (i) a beneficial use of water;

13 (ii) the proposed place of use of all water applied for;

14 (iii) for an appropriation of 4,000 acre-feet a year or
 15 more and 5.5 cubic feet per second or more, a detailed
 16 project plan describing when and how much water will be put
 17 to a beneficial use. The project plan must include a
 18 reasonable time line; ~~not-to-exceed-10-years-from-the-time~~
 19 ~~of-issuance-of-a-permit~~; for the completion of the project
 20 and the actual application of the water to a beneficial use.

21 (iv) for appropriations not covered in subsection
 22 (4)(c)(iii), a general project plan stating when and how
 23 much water will be put to a beneficial use; and

24 (v) if the water applied for is to be appropriated
 25 above that which will be used solely by the applicant or if

1 it will be marketed by the applicant to other users,
 2 information detailing:

3 (A) each person who will use the water and the amount
 4 of water each person will use;

5 (B) the proposed place of use of all water by each
 6 person;

7 (C) the nature of the relationship between the
 8 applicant and each person using the water; and

9 (D) each firm contractual agreement for the specified
 10 amount of water for each person using the water; or

11 (d) the appropriate environmental impact statement fee,
 12 if any, is not paid as required by 85-2-124."

13 **Section 10.** Section 90-2-111, MCA, is amended to read:

14 **"90-2-111. Grants to state and local government.** (1)
 15 The department of natural resources and conservation may
 16 recommend to the governor that grants from the renewable
 17 resource development account provided for by this part be
 18 made to any department, agency, board, commission, or other
 19 division of state government or to any political subdivision
 20 of state government.

21 (2) The department shall solicit and consider in its
 22 evaluation of proposed projects the views of interested and
 23 affected departments, boards, agencies, and other
 24 subdivisions of state and federal government and of other
 25 interested and affected persons.

1 (3) The governor shall submit those grant proposals
2 having his approval to the legislature by the 20th day of
3 any legislative session. Those grant proposals approved by
4 the legislature shall be administered by the department.

5 (4) The grants provided for by this section may be made
6 for the purchase, lease, or construction of projects for the
7 conservation, management, utilization, development, or
8 preservation of the land, vegetation, fish, wildlife,
9 recreational, and other renewable resources in the state;
10 for the purpose of feasibility and design studies for such
11 projects; for development of plans for the rehabilitation,
12 expansion, or modification of existing projects; and for
13 such other and further similar purposes as the legislature
14 may approve.

15 (5) In recommending grants under this section, the
16 department and the governor shall consider the special
17 requirements and benefits of proposals that provide for the
18 long-term compilation and management of information on the
19 natural resources of Montana. These proposals contribute to
20 the efficient management of renewable resources, benefit a
21 variety of public and private users, and require a
22 continuing commitment of resources to maintain currency and
23 utility. In consequence of these values and conditions,
24 projects providing for the long-term compilation and
25 management of natural resource information may be considered

1 for funding in consecutive funding cycles and may not be
2 penalized for having received funds previously from the
3 renewable resource development program.

4 (6) An amount equal to 25% of the money available for
5 grants from the renewable resource development program must
6 be transferred to the water storage state special revenue
7 account created in [section 7].

8 ~~(6)(7)~~ The department may adopt rules as required to
9 govern the terms and conditions for making grants pursuant
10 to this section."

11 **NEW SECTION. Section 11.** Codification instruction. (1)
12 [Sections 1 through 4] are intended to be codified as an
13 integral part of Title 85, chapter 1, and the provisions of
14 Title 85, chapter 1, apply to [sections 1 through 4].

15 (2) [Section 7] is intended to be codified as an
16 integral part of Title 85, chapter 1, part 6, and the
17 provisions of Title 85, chapter 1, part 6, apply to [section
18 7].

19 **NEW SECTION. Section 12.** Effective date. [This act] is
20 effective July 1, 1991.

-End-

HOUSE STANDING COMMITTEE REPORT

March 23, 1991
Page 2 of 2

March 23, 1991
Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 313 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Raney
Bob Raney, Chairman

Carried by: Rep. Schye

And, that such amendments read:

1. Title, line 14.
Following: line 13
Insert: "REQUIRING A STUDY OF THE FEASIBILITY OF INCREASING WATER USER FEES TO PAY FOR CONSTRUCTION AND REHABILITATION OF STORAGE STRUCTURES AND TO IMPROVE COORDINATION AND ACCOUNTING OF THE FEES;"
2. Page 7, line 8.
Following: line 7
Insert: "NEW SECTION. Section 6. Study of water user fees. (1) The department of natural resources and conservation shall conduct and coordinate a study to assess the feasibility of increasing the fees charged to diversionary water users to assist in the repayment of a greater portion of water storage project costs associated with diversionary benefits and to assess opportunities for improving coordination and accounting of those fees. The options the department must assess include but are not limited to requiring diversionary water users to pay standardized fees to the department for the use of public water that is provided by water storage projects:
(a) on a per-volume-used basis; and
(b) according to the amount of water appropriated to the user by the department and the priority date of the appropriation.
(2) A written report of the study findings must be submitted to the water policy committee by July 1, 1992."
Renumber: subsequent sections
3. Page 21, line 12.
Following: "section"
Strike: "7"
Insert: "8"

4. Page 26, line 7.
Following: "section"
Strike: "7"
Insert: "8"

5. Page 26, line 15.
Following: "Section"
Strike: "7"
Insert: "8"

6. Page 26, line 18.
Strike: "7"
Insert: "8"

HOUSE
SO 3/3

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 313
Representative Raney

April 5, 1991 11:59 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 313 (third reading copy -- blue).

Signed: Bob Raney
Representative Raney

And, that such amendments to Senate Bill 313 read as follows:

1. Amend the House Committee on Natural Resources report dated 23 March, 1991 as follows:
Strike: amendments 1 and 2.

2. Amend Senate Bill 313 (third reading copy -- blue) as follows:

1. Title, line 14.

Following: line 13

Insert: "REQUIRING A STUDY OF THE FEASIBILITY OF COLLECTING LARGER FEES FROM CONSUMPTIVE WATER USERS WHO BENEFIT FROM THE DEVELOPMENT OF NEW STATE-OWNED WATER STORAGE PROJECTS OR FROM THE REHABILITATION OF EXISTING STATE-OWNED WATER STORAGE PROJECTS;"

2. Page 7, line 8.

Following: line 7

Insert: "NEW SECTION. Section 6. Study of water user fees.

(1) The department of natural resources and conservation shall conduct and coordinate a study to assess the feasibility of increasing the fee charged to diversionary water users to assist in the repayment of a greater portion of new state-owned water storage project costs or existing state-owned water storage project rehabilitation costs. This study should include an historical analysis of existing state-owned water storage projects costs and associated fees.

(2) A written report of the study findings must be submitted to the water policy committee by July 1, 1992."

Renumber: subsequent sections

ADOPT

REJECT

HOUSE

SB 313

1 SENATE BILL NO. 313

2 INTRODUCED BY GROSFIELD, NOBLE, SCHYE, STEPLER,
 3 BENGTON, GILBERT, ELLISON, MAZUREK, SWYSGOOD, SVRCEK,
 4 THOFT, HOCKETT, T. BECK, HARPER, ZOOK, STIMATZ,
 5 AKLESTAD, YELLOWTAIL, WILLIAMS, KOEHNKE
 6 BY REQUEST OF THE GOVERNOR

7
 8 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING STATE WATER
 9 STORAGE POLICY AND THE ROLE OF STORAGE IN SOLVING WATER
 10 PROBLEMS; ESTABLISHING GUIDELINES FOR SETTING PRIORITIES
 11 AMONG NEW STORAGE AND REHABILITATION STORAGE PROJECTS;
 12 REQUIRING A STUDY OF THE FEASIBILITY OF ASSESSING
 13 RECREATIONAL USER FEES TO REPAY WATER STORAGE PROJECT COSTS;
 14 ~~REQUIRING A STUDY OF THE FEASIBILITY OF INCREASING WATER~~
 15 ~~USER FEES TO PAY FOR CONSTRUCTION AND REHABILITATION OF~~
 16 ~~STORAGE STRUCTURES AND TO IMPROVE COORDINATION AND~~
 17 ~~ACCOUNTING OF THE FEES;~~ REQUIRING A STUDY OF THE FEASIBILITY
 18 OF COLLECTING LARGER FEES FROM CONSUMPTIVE WATER USERS WHO
 19 BENEFIT FROM THE DEVELOPMENT OF NEW STATE-OWNED WATER
 20 STORAGE PROJECTS OR FROM THE REHABILITATION OF EXISTING
 21 STATE-OWNED WATER STORAGE PROJECTS; REQUIRING A STUDY OF
 22 WATER STORAGE LAWS AND REGULATIONS BY THE WATER POLICY
 23 COMMITTEE; CREATING A WATER STORAGE STATE SPECIAL REVENUE
 24 ACCOUNT; ALLOCATING ADDITIONAL ~~COAL SEVERANCE AND RESOURCE~~
 25 ~~INDEMNITY TRUST~~ TAX REVENUES FOR WATER DEVELOPMENT;

1 ALLOCATING 25% OF THE MONEY AVAILABLE AS GRANTS IN THE WATER
 2 DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND RENEWABLE
 3 RESOURCE DEVELOPMENT ACCOUNT TO THE DEVELOPMENT OF WATER
 4 STORAGE PROJECTS; ELIMINATING THE 10-YEAR LIMIT ON PROJECT
 5 DEVELOPMENT PLANS REQUIRED IN APPLICATIONS FOR LARGE WATER
 6 USE PERMITS; AMENDING SECTIONS ~~15-35-108, 15-30-202,~~
 7 ~~85-1-603,~~ 85-1-604, 85-2-310, AND 90-2-111, MCA; AND
 8 PROVIDING AN EFFECTIVE DATE."

10 STATEMENT OF INTENT

11 A statement of intent is required for this bill to
 12 provide guidance in the preparation of rules and other
 13 matters pertaining to the allocation of grants and loans
 14 from the water storage state special revenue account. This
 15 bill is introduced as a result of and should be interpreted
 16 consistently with the 1990 state water plan section on water
 17 storage. It is the legislature's intent that money may not
 18 be expended from the water storage state special revenue
 19 account during fiscal years 1992 and 1993. Rather, money
 20 deposited in the account is to accumulate for expenditure
 21 during fiscal years 1994 and 1995. Deposits to the account
 22 are to be placed in short-term investments and accrue
 23 interest, which is also to be deposited in the water storage
 24 state special revenue account.

25 Rules are to be adopted and implemented that govern the



1 process of application, administrative application review
 2 and ranking, and conditions for the disbursement of grants and
 3 loans as soon as possible after this bill is enacted.
 4 Applications for grants and loans from the account are to be
 5 accepted by May 1992. These application and administrative
 6 recommendations will be considered during the 1993
 7 legislative session, and that legislature may appropriate
 8 money accumulated in the account for expenditure during
 9 fiscal years 1994 and 1995.

10 It is also the legislature's intent that rules governing
 11 the allocation of money from the water storage state special
 12 revenue account do not limit the amount that may be provided
 13 to any one applicant. Also, private entities, as well as
 14 public entities, are to be eligible for grants and loans
 15 from the account.

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. Section 1. Short title. [Sections 1
 19 through 4] may be cited as the "Water Storage Policy Act".

20 NEW SECTION. Section 2. Purpose. The purpose of
 21 [sections 1 through 4] is to define the role of water
 22 storage in solving water management problems and, if water
 23 storage projects provide the best solutions to those
 24 problems, to facilitate the development of the projects.

25 NEW SECTION. Section 3. Water storage policy. (1) The

1 legislature recognizes that water resource needs are
 2 growing, existing water facilities are aging and in need of
 3 repair, and new water storage projects have become more
 4 difficult to complete. Other types of action will be needed
 5 to solve many emerging problems, but if water storage is the
 6 best way to meet growing water needs and solve problems,
 7 then it should be actively pursued.

8 (2) In determining the best solution for a particular
 9 water management problem, the state shall:

10 (a) carefully define the problem;

11 (b) identify all options to solve the problem,
 12 including water storage;

13 (c) determine whether water is physically and legally
 14 available to solve the problem; and

15 (d) select the option that best meets the following
 16 criteria:

17 (i) technical feasibility;

18 (ii) financial feasibility;

19 (iii) economic feasibility;

20 (iv) political feasibility;

21 (v) legal feasibility; and

22 (vi) environmental feasibility.

23 NEW SECTION. Section 4. Prioritization of water
 24 storage projects -- governor's report. (1) The governor
 25 shall submit to each regular session of the legislature a

1 report identifying specific water storage projects proposed
2 for development, including the rehabilitation of existing
3 projects and new project proposals. The report must contain:

- 4 (a) a list of water storage project priorities;
- 5 (b) an implementation strategy for each priority
6 project that identifies the resources (including specific
7 budget requests), government actions, and other actions
8 needed to accomplish the project; and
- 9 (c) a progress report on the development of water
10 storage projects during the previous 2 years.

11 (2) In setting priorities among new water storage
12 projects, the governor shall consider whether a project:

- 13 (a) solves a severe water problem;
- 14 (b) provides multiple uses and benefits;
- 15 (c) provides for public uses;
- 16 (d) shows strong evidence of broad citizen support;
- 17 (e) is able to obtain nonstate sources of funding;
- 18 (f) protects and seeks to enhance social, ecological,
19 cultural, and aesthetic values;
- 20 (g) improves local and state economic development;
- 21 (h) could resolve Indian and federal reserved water
22 rights issues;
- 23 (i) supports water conservation activities; and
- 24 (j) promotes the use of water reserved under Montana
25 law.

1 (3) In setting priorities among water storage
2 rehabilitation projects, the governor shall consider whether
3 the project:

- 4 (a) is needed to protect public safety;
- 5 (b) has impacts if not repaired or rehabilitated; and
- 6 (c) accomplishes the goals listed in subsections (2)(a)
7 through (2)(j).

8 (4) In establishing budget priorities for the
9 allocation of state water storage development funds:

- 10 (a) first preference must be given to projects that
11 resolve threats to life and property posed by high-hazard
12 facilities that are in an unsafe condition;
- 13 (b) second preference must be given to projects that
14 improve or expand existing water storage facilities; and
- 15 (c) third preference must be given to the planning and
16 construction of new water storage facilities.

17 NEW SECTION. **Section 5.** Study of recreational user
18 fees. (1) The department of fish, wildlife and parks, with
19 the cooperation of the department of natural resources and
20 conservation, shall conduct and coordinate a study that
21 assesses the feasibility of charging recreational
22 beneficiaries of water storage projects fees to assist in
23 the repayment of a portion of those project development
24 costs associated with ~~environmental mitigation~~ or
25 ~~enhancement~~ and ~~increased~~ recreational opportunities.

1 Options to be assessed include but are not limited to:

2 (a) requiring entrance fees for the recreational use of
3 water storage facilities;

4 (b) requiring purchase of a water development stamp as
5 a prerequisite for purchase of a fishing, duck hunting,
6 boating, or other license for which water is an integral
7 part of the recreational experience;

8 (c) increasing the motorboat fuels tax;

9 (d) requiring purchase of a land and water conservation
10 license by anyone using public lands or water; and

11 (e) obtaining funding from the department of fish,
12 wildlife and parks that is derived from taxes or fees on
13 recreational activities.

14 (2) A written report of the study findings must be
15 submitted to the water policy committee by July 1, 1992.

16 ~~NEW SECTION. SECTION 6. STUDY OF WATER USER FEES. (1)~~
17 ~~THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL~~
18 ~~CONDUCT AND COORDINATE A STUDY TO ASSESS THE FEASIBILITY OF~~
19 ~~INCREASING THE FEES CHARGED TO DIVERSIONARY WATER USERS TO~~
20 ~~ASSIST IN THE REPAYMENT OF A GREATER PORTION OF WATER~~
21 ~~STORAGE PROJECT COSTS ASSOCIATED WITH DIVERSIONARY BENEFITS~~
22 ~~AND TO ASSESS OPPORTUNITIES FOR IMPROVING COORDINATION AND~~
23 ~~ACCOUNTING OF THOSE FEES. THE OPTIONS THE DEPARTMENT MUST~~
24 ~~ASSESS INCLUDE BUT ARE NOT LIMITED TO REQUIRING DIVERSIONARY~~
25 ~~WATER USERS TO PAY STANDARDIZED FEES TO THE DEPARTMENT FOR~~

1 ~~THE USE OF PUBLIC WATER THAT IS PROVIDED BY WATER STORAGE~~
2 ~~PROJECTS:~~

3 ~~(A) ON A PER VOLUME USED BASIS, AND~~

4 ~~(B) ACCORDING TO THE AMOUNT OF WATER APPROPRIATED TO~~
5 ~~THE USER BY THE DEPARTMENT AND THE PRIORITY DATE OF THE~~
6 ~~APPROPRIATION:~~

7 ~~(2) A WRITTEN REPORT OF THE STUDY FINDINGS MUST BE~~
8 ~~SUBMITTED TO THE WATER POLICY COMMITTEE BY JULY 1, 1992.~~

9 NEW SECTION. SECTION 6. STUDY OF WATER USER FEES. (1)
10 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL
11 CONDUCT AND COORDINATE A STUDY TO ASSESS THE FEASIBILITY OF
12 INCREASING THE FEES CHARGED TO DIVERSIONARY WATER USERS TO
13 ASSIST IN THE REPAYMENT OF A GREATER PORTION OF NEW
14 STATE-OWNED WATER STORAGE PROJECTS' COSTS OR EXISTING
15 STATE-OWNED WATER STORAGE PROJECTS' REHABILITATION COSTS.
16 THIS STUDY SHOULD INCLUDE A HISTORICAL ANALYSIS OF EXISTING
17 STATE-OWNED WATER STORAGE PROJECTS' COSTS AND ASSOCIATED
18 FEES.

19 (2) A WRITTEN REPORT OF THE STUDY FINDINGS MUST BE
20 SUBMITTED TO THE WATER POLICY COMMITTEE BY JULY 1, 1992.

21 NEW SECTION. Section 7. Study of dam safety and water
22 reservation laws and regulations. (1) The water policy
23 committee, with the cooperation of the department of natural
24 resources and conservation, shall conduct a study of the
25 Montana Dam Safety Act and implementing regulations to

1 determine:

2 (a) the acceptable degree of risk to public safety and
3 the appropriate allocation of responsibility for that risk
4 among the public, government, and dam owners;

5 (b) whether the definition of a high-hazard dam should
6 be modified;

7 (c) whether the high-hazard dam classification should
8 be expanded into a risk scale that allows structural design
9 requirements to reflect probable risk to life and property;
10 and

11 (d) whether the department of natural resources and
12 conservation should be given greater discretion to
13 substitute alternative means of addressing risks, such as
14 early warning systems, for structural design requirements.

15 (2) The water policy committee shall also conduct a
16 study to determine whether the statutory restriction against
17 allowing private entities to obtain water reservations is an
18 impediment to the development of water storage projects.
19 Specifically, the study must evaluate the desirability of:

20 (a) allowing private entities to apply for and obtain
21 water reservations; and

22 (b) designating a public entity with responsibility to
23 advance water reservation applications for private entities
24 that are precluded from applying for and receiving a water
25 reservation under 85-2-316.

1 NEW SECTION. **Section 8.** water storage state special
2 revenue account created -- revenues allocated --
3 appropriations from account. (1) There is a water storage
4 state special revenue account within the state special
5 revenue fund established in 17-2-102.

6 (2) There must be paid into the water storage state
7 special revenue account:

8 (a) money from the water development state special
9 revenue account as provided in 85-1-604; AND

10 (b) money from the renewable resource development
11 account as provided in 90-2-111; and

12 ~~(c) money from the resource indemnity trust fund in~~
13 ~~excess of the \$100 million minimum balance, as provided in~~
14 ~~15-30-202.~~

15 (3) Money that was not encumbered or expended from the
16 water storage state special revenue account during the
17 previous biennium must remain in the account.

18 (4) The purpose of the water storage state special
19 revenue account is to provide money for loans and grants
20 exclusively for water storage projects, including the
21 purchase or lease of property; planning, feasibility, and
22 design studies; and other costs related to construction,
23 rehabilitation, expansion, and modification of water storage
24 projects.

25 (5) The department shall administer this section as an

1 integral part of the water development program, using, to
 2 the extent possible, the same procedures for soliciting,
 3 determining eligibility, and rating water storage project
 4 proposals and for administering grants and loans, subject to
 5 the same limitations, as applied to other water development
 6 grants and loans.

7 (6) The following preferences must be considered in
 8 ranking proposals for water storage grants and loans:

9 (a) first preference is for the rehabilitation of water
 10 storage projects that resolve threats to life and property;

11 (b) second preference is for the improvement or
 12 expansion of existing water storage projects; and

13 (c) third preference is for the development of new
 14 water storage projects.

15 Section 8. Section 15-35-100, MCA, is amended to read:

16 "15-35-100. (Temporary) Disposal of severance taxes:

17 Severance taxes collected under this chapter must be
 18 allocated according to the provisions in effect on the date
 19 the tax is due under 15-35-104. Severance taxes collected
 20 under the provisions of this chapter are allocated as
 21 follows:

22 (1) To the trust fund created by Article IX, section 5,
 23 of the Montana Constitution, 50% of total coal severance tax
 24 collections. The trust fund moneys shall be deposited in the
 25 fund established under 17-6-203(5) and invested by the board

1 of investments as provided by law.

2 (2) Starting July 1, 1987, and ending June 30, 1993,
 3 12% of coal severance tax collections are allocated to the
 4 highway reconstruction trust fund account in the state
 5 special revenue fund.

6 (3) Coal severance tax collections remaining after the
 7 allocations provided by subsections (1) and (2) are
 8 allocated in the following percentages of the remaining
 9 balance:

10 (a) 17.5% to the credit of the local impact account.
 11 Unencumbered funds remaining in the local impact account at
 12 the end of each biennium are allocated to the state special
 13 revenue fund for state equalization aid to public schools of
 14 the state.

15 (b) 30% to the state special revenue fund for state
 16 equalization aid to public schools of the state.

17 (c) 1% to the state special revenue fund to the credit
 18 of the county land planning account;

19 (d) 1 1/4% to the credit of the renewable resource
 20 development bond fund;

21 (e) 5% to a nonexpendable trust fund for the purpose of
 22 parks acquisition or management, protection of works of art
 23 in the state capitol, and other cultural and aesthetic
 24 projects. Income from this trust fund shall be appropriated
 25 as follows:

1 (i) 1/3 for protection of works of art in the state
 2 capitol and other cultural and aesthetic projects; and
 3 (ii) 2/3 for the acquisition, development, operation,
 4 and maintenance of any sites and areas described in
 5 23-1-102;
 6 (f) 1% to the state special revenue fund to the credit
 7 of the state library commission for the purposes of
 8 providing basic library services for the residents of all
 9 counties through library federations and for payment of the
 10 costs of participating in regional and national networking;
 11 (g) 1/2 of 1% to the state special revenue fund for
 12 conservation districts;
 13 (h) 1-1/4% 2-1/2% to the debt service fund type to the
 14 credit of the water development debt service fund;
 15 (i) 2% to the state special revenue fund for the
 16 Montana Growth Through Agriculture Act;
 17 (j) all other revenues from severance taxes collected
 18 under the provisions of this chapter to the credit of the
 19 general fund of the state; (Terminates July 1, 1993 - sec. 7,
 20 Ch. 5417-b, 1983;
 21 15-35-108, (Effective July 1, 1993) Disposal of
 22 severance taxes. Severance taxes collected under this
 23 chapter must be allocated according to the provisions in
 24 effect on the date the tax is due under 15-35-104. Severance
 25 taxes collected under the provisions of this chapter are

1 allocated as follows:
 2 (1) To the trust fund created by Article IX, section 5,
 3 of the Montana constitution, 50% of total coal severance tax
 4 collections. The trust fund moneys shall be deposited in the
 5 fund established under 17-6-203(5) and invested by the board
 6 of investments as provided by law.
 7 (2) Coal severance tax collections remaining after
 8 allocation to the trust fund under subsection (1) are
 9 allocated in the following percentages of the remaining
 10 balance:
 11 (a) 17.5% to the credit of the local impact account.
 12 Unencumbered funds remaining in the local impact account at
 13 the end of each biennium are allocated to the state special
 14 revenue fund for state equalization aid to public schools of
 15 the state.
 16 (b) 30% to the state special revenue fund for state
 17 equalization aid to public schools of the state;
 18 (c) 1% to the state special revenue fund to the credit
 19 of the county land planning account;
 20 (d) 1-1/4% to the credit of the renewable resource
 21 development bond fund;
 22 (e) 5% to a nonexpendable trust fund for the purpose of
 23 parks acquisition or management, protection of works of art
 24 in the state capitol, and other cultural and aesthetic
 25 projects. Income from this trust fund shall be appropriated

1 as follows:

- 2 (i) ~~1/3~~ for protection of works of art in the state
3 capitol and other cultural and aesthetic projects; and
4 (ii) ~~2/3~~ for the acquisition, development, operation,
5 and maintenance of any sites and areas described in
6 ~~23-1-102~~;
- 7 (f) ~~1%~~ to the state special revenue fund to the credit
8 of the state library commission for the purposes of
9 providing basic library services for the residents of all
10 counties through library federations and for payment of the
11 costs of participating in regional and national networking;
- 12 (g) ~~1/2~~ of ~~1%~~ to the state special revenue fund for
13 conservation districts;
- 14 (h) ~~1-1/4%~~ 2-1/2% to the debt service fund type to the
15 credit of the water development debt service fund;
- 16 (i) ~~2%~~ to the state special revenue fund for the
17 Montana Growth Through Agriculture Act;
- 18 (j) all other revenues from severance taxes collected
19 under the provisions of this chapter to the credit of the
20 general fund of the state."
- 21 Section 9, Section 15-38-202, MCA, is amended to read:
22 "15-38-202. Investment of resource indemnity trust fund
23 expenditure - minimum balance. (1) All money paid into
24 the resource indemnity trust fund, including money payable
25 into the fund under the provisions of 15-37-117, shall be

1 invested at the discretion of the board of investments. All
2 the net earnings accruing to the resource indemnity trust
3 fund shall annually be added to the trust fund until it has
4 reached the sum of \$10 million. Thereafter, only the net
5 earnings may be appropriated and expended until the fund
6 reaches \$100 million. Thereafter, all net earnings and all
7 receipts shall be appropriated by the legislature and
8 expended, provided that the balance in the fund may never be
9 less than \$100 million.

10 (2) (a) At the beginning of each biennium, there is
11 allocated from the interest income of the resource indemnity
12 trust fund:

13 (i) an amount not to exceed \$175,000 to the
14 environmental contingency account pursuant to the conditions
15 of 75-1-1101, and

16 (ii) beginning in fiscal year 1992, an amount not to
17 exceed \$50,000 to the oil and gas production damage
18 mitigation account pursuant to the conditions of 82-1-161.

19 (b) The remainder of the interest income is allocated
20 as follows:

21 (i) Beginning in fiscal year 1982, provided the amount
22 in the resource indemnity trust fund is greater than \$10
23 million, 30% of the interest income of the resource
24 indemnity trust fund must be allocated to the water
25 development state special revenue account created by

1 ~~85-1-604.~~

2 ~~{ii}-Beginning-in-fiscal-year-1988, 12% of the interest~~

3 ~~income-of-the-resource-indemnity-trust-fund-must-be~~

4 ~~allocated-to-the-hazardous-waste/ERREbA-special-revenue~~

5 ~~account-provided-for-in-75-10-621.~~

6 ~~{iii}-Beginning-in-fiscal-year-1990, 8% of the interest~~

7 ~~income-from-the-resource-indemnity-trust-fund-must-be~~

8 ~~allocated-to-the-renewable-resource-development-account~~

9 ~~provided-for-in-Title-90, chapter-2.~~

10 ~~{iv}-Beginning-in-fiscal-year-1990, 46% of the interest~~

11 ~~income-from-the-resource-indemnity-trust-fund-must-be~~

12 ~~allocated-to-the-reclamation-and-development-grants-account~~

13 ~~provided-for-in-90-2-1104.~~

14 ~~{v}-Beginning-in-fiscal-year-1990, 4% of the interest~~

15 ~~income-of-the-resource-indemnity-trust-fund-must-be~~

16 ~~allocated-to-the-environmental-quality-protection-fund~~

17 ~~provided-for-in-75-10-704.~~

18 ~~{vi}-Beginning-in-fiscal-year-1994, 25% of the receipts~~

19 ~~in-the-resource-indemnity-trust-fund-in-excess-of-the-\$100~~

20 ~~million-minimum-balance-must-be-allocated-to-the-water~~

21 ~~storage-state-special-revenue-account-provided-for-in~~

22 ~~section-7.~~

23 ~~{3}-Any-formal-budget-document-prepared-by-the~~

24 ~~legislature-or-the-executive-branch-that-proposes-to~~

25 ~~appropriate-funds-from-the-resource-indemnity-trust-interest~~

1 account-other-than-as-provided-for-by-the-allocations-in

2 subsection-(2)-must-specify-the-amount-of-money-from-each

3 allocation-that-is-proposed-to-be-diverted-and-the-proposed

4 use-of-the-diverted-funds. A formal budget document includes

5 a-printed-and-publicly-distributed-budget-proposal-or

6 recommendation, an-introduced-bill, or-a-bill-developed

7 during-the-legislative-appropriation-process-or-otherwise

8 during-a-legislative-session."

9 Section-8--Section-85-1-603, MEA, is amended to read:

10 "85-1-603--Water-development-debt-service-fund--created

11 ---coal-severance-tax-allocated---water-development-loan

12 loss-reserve-fund-created. (1)-(a)-There-is-created-a-water

13 development-debt-service-fund-within-the-debt-service-fund

14 type-established-in-17-2-102.

15 (b)-The-state-pledges-and-allocates-and-directs-to-be

16 credited-to-the-water-development-debt-service-fund, as

17 received:

18 (i)-1-1/4% 2-1/2% of-all-money-from-time-to-time

19 received-from-the-coal-severance-tax-collected-under-Title

20 15, chapter-35, and-remaining-after-allocation-of-such-tax

21 under-15-35-108(1)-and-(2);

22 (ii)-any---principal---and---accrued---interest---under

23 85-1-613(3)(a)-received-in-repayment-of-a-loan-made-from-the

24 proceeds-of-bonds-issued-under-85-1-617;

25 (iii)-all-interest-income-earned-on-proceeds-of-water

1 development bonds;

2 (iv) revenue or money otherwise required to be paid into
3 the water development state special revenue account pursuant
4 to 85-1-604, as determined by the board of examiners in
5 connection with the issuance of bonds pursuant to 85-1-617;
6 and

7 (v) money received from the water development loan loss
8 reserve fund as the result of a loan loss.

9 (2) (a) There is created a water development loan loss
10 reserve fund within the debt service fund type established
11 in 17-2-102.

12 (b) The state pledges and allocates and directs to be
13 credited to the water development loan loss reserve fund all
14 accrued interest under 85-1-613(3)(b) received in repayment
15 of a loan made from the proceeds of bonds issued under
16 85-1-617.

17 (c) If the department determines that a loan loss has
18 occurred on a loan made pursuant to this part, funds from
19 the water development loan loss reserve fund must be
20 transferred to the water development debt service fund in an
21 amount equal to the amount that would otherwise be available
22 for debt service under subsection (1)(b) as a result of the
23 loan loss.

24 **Section 9.** Section 85-1-604, MCA, is amended to read:

25 "85-1-604. Water development state special revenue

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (vii) projects or programs that improve water use

1 efficiency, including development of new, efficient water
 2 systems and rehabilitation of older, less efficient water
 3 systems;

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

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

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

22 (4) An amount equal to 25% of the money available for
 23 grants under subsection (3)(c) must be transferred to the
 24 water storage state special revenue account created in
 25 [section 7 8]."

1 **Section 10.** Section 85-2-310, MCA, is amended to read:

2 **"85-2-310. Action on application.** (1) The department
3 shall grant, deny, or condition an application for a permit
4 in whole or in part within 120 days after the last date of
5 publication of the notice of application if no objections
6 have been received and within 180 days if a hearing is held
7 or objections have been received. However, in either case
8 the time may be extended upon agreement of the applicant,
9 or, in those cases where an environmental impact statement
10 must be prepared or in other extraordinary cases, not more
11 than 60 days upon order of the department. If the department
12 orders the time extended, it shall serve a notice of the
13 extension and the reasons therefor by certified mail upon
14 the applicant and each person who has filed an objection as
15 provided by 85-2-308.

16 (2) However, an application may not be approved in a
17 modified form or upon terms, conditions, or limitations
18 specified by the department or denied, unless the applicant
19 is first granted an opportunity to be heard. If no objection
20 is filed against the application but the department is of
21 the opinion that the application should be approved in a
22 modified form or upon terms, conditions, or limitations
23 specified by it or that the application should be denied,
24 the department shall prepare a statement of its opinion and
25 the reasons therefor. The department shall serve a statement

1 of its opinion by certified mail upon the applicant,
2 together with a notice that the applicant may obtain a
3 hearing by filing a request therefor within 30 days after
4 the notice is mailed. The notice shall further state that
5 the application will be modified in a specified manner or
6 denied, unless a hearing is requested.

7 (3) The department may cease action upon an application
8 for a permit and return it to the applicant when it finds
9 that the application is not in good faith or does not show a
10 bona fide intent to appropriate water for a beneficial use.
11 An application returned for any of these reasons shall be
12 accompanied by a statement of the reasons for which it was
13 returned, and there shall be no right to a priority date
14 based upon the filing of the application. Returning an
15 application pursuant to this subsection shall be deemed a
16 final decision of the department.

17 (4) For all applications filed after July 1, 1973, the
18 department shall find that an application is not in good
19 faith or does not show a bona fide intent to appropriate
20 water for a beneficial use if:

- 21 (a) an application is not corrected and completed as
22 required by 85-2-302;
- 23 (b) the appropriate filing fee is not paid;
- 24 (c) the application does not document:
- 25 (i) a beneficial use of water;

1 (ii) the proposed place of use of all water applied for;
 2 (iii) for an appropriation of 4,000 acre-feet a year or
 3 more and 5.5 cubic feet per second or more, a detailed
 4 project plan describing when and how much water will be put
 5 to a beneficial use. The project plan must include a
 6 reasonable time line, ~~not to exceed 10 years from the time~~
 7 ~~of issuance of a permit~~, for the completion of the project
 8 and the actual application of the water to a beneficial use.
 9 (iv) for appropriations not covered in subsection
 10 (4)(c)(iii), a general project plan stating when and how
 11 much water will be put to a beneficial use; and
 12 (v) if the water applied for is to be appropriated
 13 above that which will be used solely by the applicant or if
 14 it will be marketed by the applicant to other users,
 15 information detailing:
 16 (A) each person who will use the water and the amount
 17 of water each person will use;
 18 (B) the proposed place of use of all water by each
 19 person;
 20 (C) the nature of the relationship between the
 21 applicant and each person using the water; and
 22 (D) each firm contractual agreement for the specified
 23 amount of water for each person using the water; or
 24 (d) the appropriate environmental impact statement fee,
 25 if any, is not paid as required by 85-2-124."

1 **Section 11.** Section 90-2-111, MCA, is amended to read:
 2 ***90-2-111. Grants to state and local government.** (1)
 3 The department of natural resources and conservation may
 4 recommend to the governor that grants from the renewable
 5 resource development account provided for by this part be
 6 made to any department, agency, board, commission, or other
 7 division of state government or to any political subdivision
 8 of state government.
 9 (2) The department shall solicit and consider in its
 10 evaluation of proposed projects the views of interested and
 11 affected departments, boards, agencies, and other
 12 subdivisions of state and federal government and of other
 13 interested and affected persons.
 14 (3) The governor shall submit those grant proposals
 15 having his approval to the legislature by the 20th day of
 16 any legislative session. Those grant proposals approved by
 17 the legislature shall be administered by the department.
 18 (4) The grants provided for by this section may be made
 19 for the purchase, lease, or construction of projects for the
 20 conservation, management, utilization, development, or
 21 preservation of the land, vegetation, fish, wildlife,
 22 recreational, and other renewable resources in the state;
 23 for the purpose of feasibility and design studies for such
 24 projects; for development of plans for the rehabilitation,
 25 expansion, or modification of existing projects; and for

1 such other and further similar purposes as the legislature
2 may approve.

3 (5) In recommending grants under this section, the
4 department and the governor shall consider the special
5 requirements and benefits of proposals that provide for the
6 long-term compilation and management of information on the
7 natural resources of Montana. These proposals contribute to
8 the efficient management of renewable resources, benefit a
9 variety of public and private users, and require a
10 continuing commitment of resources to maintain currency and
11 utility. In consequence of these values and conditions,
12 projects providing for the long-term compilation and
13 management of natural resource information may be considered
14 for funding in consecutive funding cycles and may not be
15 penalized for having received funds previously from the
16 renewable resource development program.

17 (6) An amount equal to 25% of the money available for
18 grants from the renewable resource development program must
19 be transferred to the water storage state special revenue
20 account created in [section 7 8].

21 ~~(6)(7)~~ The department may adopt rules as required to
22 govern the terms and conditions for making grants pursuant
23 to this section."

24 NEW SECTION. Section 12. codification instruction. (1)
25 [Sections 1 through 4] are intended to be codified as an

1 integral part of Title 85, chapter 1, and the provisions of
2 Title 85, chapter 1, apply to [sections 1 through 4].

3 (2) [Section 7 8] is intended to be codified as an
4 integral part of Title 85, chapter 1, part 6, and the
5 provisions of Title 85, chapter 1, part 6, apply to [section
6 7 8].

7 NEW SECTION. Section 13. Effective date. [This act] is
8 effective July 1, 1991.

-End-