

SENATE BILL NO. 368

INTRODUCED BY JERGESON, BURNETT, SCHYE,  
STEPPLER, KOEHNKE

IN THE SENATE

FEBRUARY 13, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  
  
FIRST READING.  
  
FEBRUARY 21, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.  
  
FEBRUARY 22, 1991                   PRINTING REPORT.  
  
FEBRUARY 23, 1991                   ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.  
  
FEBRUARY 25, 1991                   SECOND READING, DO PASS.  
  
FEBRUARY 26, 1991                   ENGROSSING REPORT.  
  
THIRD READING, PASSED.  
AYES, 49; NOES, 0.  
  
TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  
  
FIRST READING.  
  
MARCH 20, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.  
  
APRIL 6, 1991                   SECOND READING, CONCURRED IN.  
  
ON MOTION, RULES SUSPENDED. BILL  
PLACED ON THIRD READING THIS DAY.  
  
THIRD READING, CONCURRED IN.  
AYES, 88; NOES, 8.  
  
RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 17, 1991

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 18, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

APRIL 19, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *368*  
 2 INTRODUCED BY *Jergeson Burnett*  
 3 *Schye* *Hochstetler*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING  
 5 ENFORCEMENT PROVISIONS FOR VIOLATIONS OF THE MONTANA WATER  
 6 USE LAWS; AMENDING SECTIONS 85-2-114 AND 85-2-122, MCA; AND  
 7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 8

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

10 **Section 1.** Section 85-2-114, MCA, is amended to read:

11 "85-2-114. ~~Prevention--of--waste~~ Judicial enforcement.

12 (1) If the department ascertains, by a means reasonably  
 13 considered sufficient by it, that a person is wasting water,  
 14 using water unlawfully, ~~or~~ preventing water from moving to  
 15 another person having a prior right to use the same water,  
 16 or violating a provision of this chapter, it may, after  
 17 reasonable attempts have failed to obtain voluntary  
 18 compliance as provided in subsection (4), petition the  
 19 district court supervising the distribution of water among  
 20 appropriators from the source to:

21 (a) regulate the controlling works of an appropriation  
 22 as may be necessary to prevent the wasting or unlawful use  
 23 of water or to secure water to a person having a prior right  
 24 to its use; ~~or~~

25 (b) order the person wasting, unlawfully using, or

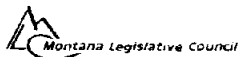
1 interfering with another's rightful use of the water to  
 2 cease and desist from doing so and to take such steps as may  
 3 be necessary to remedy the waste, unlawful use, or  
 4 interference; or

5 (c) issue a temporary, preliminary, or permanent  
 6 injunction to prevent a violation of this chapter.  
 7 Notwithstanding the provisions of Title 27, chapter 19, part  
 8 3, a temporary restraining order must be granted if it  
 9 clearly appears from the specific facts shown by affidavit  
 10 or by the verified complaint that a provision of this  
 11 chapter is being violated.

12 (2) ~~The~~ Upon the issuance of an order or injunction,  
 13 the department may attach to the controlling works a written  
 14 notice, properly dated and signed, setting forth the fact  
 15 that the controlling works have been properly regulated by  
 16 it, which notice shall be legal notice to all persons  
 17 interested in the appropriation or distribution of the  
 18 water.

19 (3) The department may also direct its own attorney or  
 20 request the attorney general or county attorney to bring  
 21 suit to enjoin such waste, unlawful use, ~~or~~ interference, or  
 22 violation.

23 (4) The department must attempt to obtain voluntary  
 24 compliance through warning, conference, or any other  
 25 appropriate means before petitioning the district court



LC 0915/01

1 under subsection (1). The attempts to obtain voluntary  
2 compliance under this subsection may not exceed 3 working  
3 days."

4 **Section 2.** Section 85-2-122, MCA, is amended to read:

5 "85-2-122. Penalties. (1) A person who violates or  
6 refuses or neglects to comply with the provisions of this  
7 chapter, any order of the department, or any rule of the  
8 board is guilty of a misdemeanor.

9 (2) A person who violates or refuses or neglects to  
10 comply with the provisions of 85-2-114, any order of the  
11 department, or any rule of the board is subject to a civil  
12 penalty not to exceed \$1,000 per violation. Each day of  
13 violation constitutes a separate violation."

14 NEW SECTION. **Section 3.** Effective date. [This act] is  
15 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0368, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill establishes enforcement provisions for violations of the Montana water use laws.

ASSUMPTIONS:

The DNRC receives approximately 100 water rights-related complaints each year. Many of these complaints are repeated from previous weeks or previous years. The DNRC typically field-investigates written complaints that are received. The DNRC attempts to negotiate among the affected water users to resolve the alleged wrongdoing. The recent drought conditions increase the number and exacerbate the severity of the complaints. The DNRC assumes that when alleged violations go uncorrected, repeated complaints will frequently continue. The DNRC assumes that no additional staff commitment will be needed to respond to complaints. A grade 15 compliance specialist will be hired to enforce compliance. The compliance position will be formed from a current level position because less commitment will be needed to respond to a reduced number of complaints after compliance is demonstrated.

1. 100 water right complaints will be received by the DNRC each year.
2. 10% of the field investigations will, in the future, require district court action with DNRC participation.
3. District court action, including preparing recommendations, issuing an injunction, and preparing litigation strategy will cost the DNRC \$500 per case.


FISCAL IMPACT:

Department of Natural Resources and Conservation:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Costs	0	2,500	2,500	0	2,500	2,500
<u>Funding:</u>						
General Fund	0	2,500	2,500	0	2,500	2,500
Impact to General Fund			(2,500)			(2,500)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

If fines are levied and collected from violators, the county where the violation occurs may receive such fines as revenue.

  
 \_\_\_\_\_ 2-18-91  
 ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
 Office of Budget and Program Planning

  
 \_\_\_\_\_ 2/19/91  
 GREG JERGESON, PRIMARY SPONSOR                      DATE

Fiscal Note for SB0368, as introduced

SB 368

APPROVED BY COMMITTEE  
ON AGRICULTURE LIVESTOCK  
AND IRRIGATION

SENATE BILL NO. 368

INTRODUCED BY JERGESON, BURNETT, SCHYE,  
STEPPLER, KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING  
ENFORCEMENT PROVISIONS FOR VIOLATIONS OF THE MONTANA WATER  
USE LAWS; PROVIDING FOR DISPOSITION OF PENALTIES; AMENDING  
SECTIONS 85-2-114 AND, 85-2-122, AND 85-2-123, MCA; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 85-2-114, MCA, is amended to read:

~~"85-2-114. Prevention-of--waste~~ Judicial enforcement.

(1) If the department ascertains, by a means reasonably  
considered sufficient by it, that a person is wasting water,  
using water unlawfully, ~~or~~ preventing water from moving to  
another person having a prior right to use the ~~same water,~~  
or violating a provision of this chapter, it may, after  
reasonable attempts have failed to obtain voluntary  
compliance as provided in subsection (4), petition the  
district court supervising the distribution of water among  
appropriators from the source to:

(a) regulate the controlling works of an appropriation  
as may be necessary to prevent the wasting or unlawful use  
of water or to secure water to a person having a prior right

to its use; ~~or~~

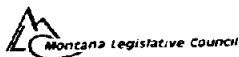
(b) order the person wasting, unlawfully using, or  
interfering with another's rightful use of the water to  
cease and desist from doing so and to take such steps as may  
be necessary to remedy the waste, unlawful use, or  
interference; or

(c) issue a temporary, preliminary, or permanent  
injunction to prevent a violation of this chapter.  
Notwithstanding the provisions of Title 27, chapter 19, part  
3, a temporary restraining order must be granted if it  
clearly appears from the specific facts shown by affidavit  
or by the verified complaint that a provision of this  
chapter is being violated.

(2) ~~The~~ Upon the issuance of an order or injunction,  
the department may attach to the controlling works a written  
notice, properly dated and signed, setting forth the fact  
that the controlling works have been properly regulated by  
it, which notice shall be legal notice to all persons  
interested in the appropriation or distribution of the  
water.

(3) The department may also direct its own attorney or  
request the attorney general or county attorney to bring  
suit to enjoin such waste, unlawful use, or interference, or  
violation.

(4) The department must attempt to obtain voluntary



1 compliance through warning, conference, or any other  
 2 appropriate means before petitioning the district court  
 3 under subsection (1). The attempts to obtain voluntary  
 4 compliance under this subsection may not exceed 3 working  
 5 days."

6 **Section 2.** Section 85-2-122, MCA, is amended to read:

7 "85-2-122. Penalties. (1) A person who violates or  
 8 refuses or neglects to comply with the provisions of this  
 9 chapter, any order of the department, or any rule of the  
 10 board is guilty of a misdemeanor.

11 (2) A person who violates or refuses or neglects to  
 12 comply with the provisions of 85-2-114, any order of the  
 13 department, or any rule of the board is subject to a civil  
 14 penalty not to exceed \$1,000 per violation. Each day of  
 15 violation constitutes a separate violation.

16 (3) FINES COLLECTED BY A DISTRICT COURT UNDER  
 17 SUBSECTION (2) MUST BE DEPOSITED IN THE ACCOUNT ESTABLISHED  
 18 IN 85-2-318 FOR USE BY THE DEPARTMENT IN THE ENFORCEMENT OF  
 19 85-2-114."

20 **SECTION 3.** SECTION 85-2-123, MCA, IS AMENDED TO READ:

21 "85-2-123. Deposit of fees and penalties. Except as  
 22 provided in 85-2-124 and 85-2-241, all fees and penalties  
 23 collected under this chapter shall be deposited in the water  
 24 right appropriation account established in 85-2-318. ~~At~~  
 25 Except for fines collected by a district court under

1 85-2-122, all penalties or fines imposed by any court other  
 2 than a justice's court for a violation of this chapter shall  
 3 be deposited in the general fund of the county where the  
 4 court presides and shall be disposed of in the same manner  
 5 as any other penalty or fine."

6 **NEW SECTION. Section 4.** Effective date. [This act] is  
 7 effective on passage and approval.

-End-

SENATE BILL NO. 368

INTRODUCED BY JERGESON, BURNETT, SCHYE,

STEPPLER, KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING ENFORCEMENT PROVISIONS FOR VIOLATIONS OF THE MONTANA WATER USE LAWS; PROVIDING FOR DISPOSITION OF PENALTIES; AMENDING SECTIONS 85-2-114 AND, 85-2-122, AND 85-2-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-2-114, MCA, is amended to read:

"85-2-114. Prevention-of--waste Judicial enforcement.

(1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same water, or violating a provision of this chapter, it may, after reasonable attempts have failed to obtain voluntary compliance as provided in subsection (4), petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right

to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) The Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference, or violation.

(4) The department must attempt to obtain voluntary





1 compliance through warning, conference, or any other  
 2 appropriate means before petitioning the district court  
 3 under subsection (1). The attempts to obtain voluntary  
 4 compliance under this subsection may not exceed 3 working  
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 25 Except for fines collected by a district court under

1 85-2-122, all penalties or fines imposed by any court other  
 2 than a justice's court for a violation of this chapter shall  
 3 be deposited in the general fund of the county where the  
 4 court presides and shall be disposed of in the same manner  
 5 as any other penalty or fine."

6 **NEW SECTION. Section 4.** Effective date. [This act] is  
 7 effective on passage and approval.

-End-

HOUSE STANDING COMMITTEE REPORT

March 19, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Agriculture, Livestock, and Irrigation report that Senate Bill 368 (third reading copy -- blue) be concurred in as amended .

Signed:   
Linda Nelson, Chairman

Carried by: Rep. Schye

And, that such amendments read:

1. Page 3, line 16.  
Following: "BY"  
Insert: "the department or"

HOUSE  
SB 368

591639SC.HSF

SENATE BILL NO. 368

INTRODUCED BY JERGSON, BURNETT, SCHYE,  
STEPPLER, KOEHNKE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING  
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compliance as provided in subsection (4), petition the  
district court supervising the distribution of water among  
appropriators from the source to:

(a) regulate the controlling works of an appropriation  
as may be necessary to prevent the wasting or unlawful use  
of water or to secure water to a person having a prior right

to its use; ~~or~~

(b) order the person wasting, unlawfully using, or  
interfering with another's rightful use of the water to  
cease and desist from doing so and to take such steps as may  
be necessary to remedy the waste, unlawful use, or  
interference; or

(c) issue a temporary, preliminary, or permanent  
injunction to prevent a violation of this chapter.  
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notice, properly dated and signed, setting forth the fact  
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interested in the appropriation or distribution of the  
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request the attorney general or county attorney to bring  
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 12 comply with the provisions of 85-2-114, any order of the  
 13 department, or any rule of the board is subject to a civil  
 14 penalty not to exceed \$1,000 per violation. Each day of  
 15 violation constitutes a separate violation.

16 (3) FINES COLLECTED BY THE DEPARTMENT OR A DISTRICT  
 17 COURT UNDER SUBSECTION (2) MUST BE DEPOSITED IN THE ACCOUNT  
 18 ESTABLISHED IN 85-2-318 FOR USE BY THE DEPARTMENT IN THE  
 19 ENFORCEMENT OF 85-2-114."

20 **SECTION 3.** SECTION 85-2-123, MCA, IS AMENDED TO READ:

21 "85-2-123. Deposit of fees and penalties. Except as  
 22 provided in 85-2-124 and 85-2-241, all fees and penalties  
 23 collected under this chapter shall be deposited in the water  
 24 right appropriation account established in 85-2-318. Att  
 25 Except for fines collected by a district court under

1 85-2-122, all penalties or fines imposed by any court other  
 2 than a justice's court for a violation of this chapter shall  
 3 be deposited in the general fund of the county where the  
 4 court presides and shall be disposed of in the same manner  
 5 as any other penalty or fine."

6 **NEW SECTION. Section 4.** Effective date. [This act] is  
 7 effective on passage and approval.

-End-