

MINUTES OF THE SELECT COMMITTEE ON WATER
March 10, 1981

The Select Committee on Water convened at 1:30 p.m on March 10, 1981 in Room 436 of the Capitol, with CHAIRMAN AUDREY ROTH presiding.

SB. 347

SENATOR GALT opened the hearing on SB347, a bill to create the office of chief water judge, to provide for the appointment, responsibilities, jurisdiction and administrative requirements of the chief water judge. He referred to Section 3's provisions as being the main reasons for the bill.

PROPONENTS:

JUDGE W. W. LESSLEY, representing the water courts, said this bill is a tool needed by the judges. He said that he was elected as acting chief water judge, but that this law is needed to allow the courts to organize the material established by statute. He said that the water judges are on target for having the Powder River decree ready in April.

BILL ASHER, Agricultural Preservation Association, Park County Legislative Association, Sweetgrass County Preservation Association and the Stillwater County Agricultural Preservation Association, went on record as supporting the bill. (EXHIBIT I)

JOHN SCULLY, commented that Montana has been lucky to have an aggressive water judge but he felt this law was definitely needed.

LEO BERRY, representing the Department of Natural Resources, appeared in favor of the bill.

OPPONENTS: There were none.

QUESTIONS FROM THE COMMITTEE:

CHAIRMAN ROTH said that Judge Lessley is acting judge, who has been carrying on the duties and is expected to be appointed by the Supreme Court.

SENATOR GALT said he had been requested to suggest an amendment on page 3, line 5, striking December 31, 1982 and insert January 4, 1983.

REP. NEUMAN asked if this would be an additional judge or one of the basin judges. GALT said in all probability it would be one of the basin judges.

REP. CURTISS asked if the proposed amendment was added in Senate committee. SEN. GALT said it was put on by the Senate Agriculture Committee as a request of the DNRC.

REP. ASAY, referring to the fiscal note, asked if this would be an additional judge. GALT said the additional \$50,000 would only be needed if the Supreme Court decided to appoint an additional judge. LESSLEY said that if a retired judge were used, they couldn't get more than their retirement salary.

REP. HUENNEKENS said that the Fiscal Note seemed to be confusing. CHAIRMAN ROTH said that there may be an error in the Fiscal Note, and suggested that it be researched before the committee takes action on the bill.

SEN. GALT closed the hearing on the bill.

SB 176. "An Act generally revising and clarifying the appropriation and permit provisions of Title 85, ch. 2, parts 1 and 3, MCA."

SENATOR STIMATZ opened the hearing saying the bill is a housekeeping one, introduced at the request of the DNRC. It has nothing to do with the adjudication of water rights. Amendment was made in the Senate, he said, which required the deletion of most of pages 9, 10, 11 and 12. There was also a change from certified to first class. Another change was to make the bill effective upon the governor's signing it.

LEO BERRY, DNRC, said the bill changed a provision dealing with developed springs. He said they are similar to wells and should be treated the same. He also felt there was an unduly amount of time used in correcting improperly filled out forms, so he proposed a department critique form be used, and the time frame be extended. He referred to p. 3, line 14 referring to an attorney general's opinion; to the change from certified to first class mail, to page 9, line 5 requiring those wishing to reserve water to pay part of the EIS; to page 8, line 21, approval of water rights when permits are granted for certain portions of the year adding "and operation". He said the remainder of the bill was to correctly codify it. There may be some question on page 8. How a reservoir is operated may be critical, as rights may be adversely affected, he said.

RAY BECK, representing the Montana Association of Conservation Districts, said the association would like to go on record as being in favor of the bill. However, he questioned the language on page 13, line 6 through line 8. He thought "reasonable" was unclear and suggested adding "providing funds are available" to line 13 to help the conservation districts when they are unable to pay (EXHIBIT II)

CHARLIE CRANE, representing the Montana Water Development Association, supported the bill. However, he questioned the amendment of "and operation" feeling that the term was too sweeping (p8, line 21). He offered working with the department on the language.

OPPONENTS: There were none.

QUESTIONS FROM THE COMMITTEE:

REP. NEUMAN asked if the DNRC was presently paying for the environmental impact statements. BERRY said they did on the Yellowstone project. He was about \$50,000, he said.

CHAIRMAN ROTH asked what the purpose was in striking "yield" and inserting "appropriation". FRITZ said it doesn't make much difference about how much water that you can get from a well, but how much you are using from a well-- the yield. The size of the water right is the amount of water used.

The hearing on SB 176 was closed.

EXECUTIVE SESSION.

REP. ASAY moved that SB 110 be CONCURRED IN. Discussion was held on the intent of the bill and many of the members felt the bill needed clarification. REP. ASAY withdrew his motion. CHAIRMAN ROTH asked BOB PERSON to work with REP. KEMMIS on the bill.

BOB PERSON said the bill was originally designed to get a \$40 exemption for filing if you had a copy of the water right. Another section refers to evidence, saying that "evidence" of a water right could be reason for the exemption.

CHAIRMAN ROTH said people objected to paying again to file for water rights they already had.

BOB PERSON said that MCA 85-224, statement of claim subsection 2 already had a broad statement on the kind of evidence that is acceptable.

LEO BERRY said that all the bill says is that if a person has a decreed right, they wouldn't have to submit a certified copy. CHAIRMAN ROTH felt the person would have to submit a copy, but not a certified one.

REP. KEMMIS felt the present law was sufficient. PERSON said the bill was only to apply to old records that were lost. REP. KEMMIS said that an affidavit would have to be attached to the copy.

BERRY said the bill had been changed since he testified on it in the Senate.

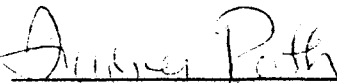
REP. ASAY felt that the bill was trying to include other things than originally intended.

DON MCINTIRE, attorney for the DNRC, said the bill doesn't go into detail on the "evidence" part. ASHER said that by striking "certified", it would return to the original intent. However, he commented that certification is handled differently in different courthouses and by different employees. Some check the records thoroughly, he said, and others don't bother to check at all. this from a personal experience in Gallatin county courthouse. He felt the certification should be uniform in price, too.

After more discussion, REP. KEMMIS moved the bill be put back in its original form, except that the immediate effective date remain. The amendment was PASSED by the COMMITTEE.

REP. ASAY moved that the bill BE CONCURRED IN AS AMENDED. The motion was seconded and PASSED with one NO vote by REP. KEMMIS. REP. ROTH will carry the bill.

The meeting adjourned at 2:30 p.m.



CHAIRMAN AUDRY ROTH

WITNESS STATEMENT

NAME BILL ASHER BILL No. SB 347
ADDRESS MANHATTAN, MT. DATE MARCH 10, 1981
WHOM DO YOU REPRESENT SEE BELOW
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

REPRESENTING: AGRICULTURAL PRESERVATION ASSOCIATION
PARK COUNTY LEGISLATIVE ASSOCIATION
SWEETENASS COUNTY PRESERVATION ASSOCIATION
STILLWATER COUNTY AGRICULTURAL PRESERVATION ASSOCIATION

11

WITNESS STATEMENT

NAME Ray Beck BILL No. SB174
ADDRESS 7 Edwards DATE 3/10/81
WHOM DO YOU REPRESENT MACI
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Mt Assoc of Conservation Districts would like to be shown in the record as in support of SB174.

The association has one concern on page 13 lines 6 thru 8. The word reasonable is far too broad and also funding may not be available.

Amendment line 8 page 13 add
Providing funds are available.

VISITORS' REGISTER

HOUSE WATER COMMITTEE

BILL Senate Bill 176 Date 3/10/81

SPONSOR Senator Stimat

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE WATER COMMITTEE

BILL Senate Bill 347

Date 3/10/81

SPONSOR Galt

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE BILL 176

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

AN ACT GENERALLY REVISING AND CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE 85, CHAPTER 2, PARTS 1 AND 3, MCA.

Senate Bill 176 was introduced at the request of the Department of Natural Resources and Conservation. The purpose of the bill is to make amendments to certain sections of Montana water law that will improve the processing of water right applications, cut costs to the taxpayer and better protect existing water rights.

Section (1)

Lines 10, 11, 12, 14 and 15: A developed spring is groundwater by definition and therefore should be clearly included with this exception to permit requirements.

Lines 18 through 25 (Page 2) and Line 1 through 5 (Page 3): The Department is required by the Constitution to maintain a centralized record of Montana water rights. Existing water law makes it difficult, if not impossible, to maintain a reasonably accurate record of groundwater rights under 100 gallons per minute. An accurate water rights record is essential to protect each water right. Exorbitant processing times and costs are now required to correct each small groundwater notice of completion. Amendments to the present law would place the burden of correcting deficiencies on the owner rather than the general taxpayer.

Lines 14 through 25 (Page 3) and Lines 1 through 4 (Page 4): This new subsection (2) would implement in law the Attorney General's opinion regarding groundwater appropriation between 1962 and 1973. It provides a mechanism for groundwater rights established between 1962 and 1973 to be perfected.

Section 2, (Page 5)

Line 8: Mailing individual notices of applications by certified mail is an unnecessary expense to the taxpayer, while first class mail is sufficient and much less expensive. This amendment will save taxpayers about \$4,500 each year. In addition, rural route delivery can be made for first class mail but not for certified mail.

Section 3, (Page 6)

Lines 20, 21, and 22: The event that triggers a longer deadline should be the receipt of objections and not a hearing being held. When objections are received the department attempts to settle them rather than let the application go to an expensive hearing. These negotiations take extra time, but reduce the hearing expenses for the parties involved.

Section 4, (Page 8)

Line 21: The operation of a project is often more important than the proposed means of diversion and construction and should be judged adequate. For example, how a reservoir is operated is important and can affect downstream senior rights.

Section 4, (Page 9)

Line 2: This change eliminates the applicant for a stock pond or spreader dike irrigation system from proving by clear and convincing evidence that other rights will not be adversely affected.

Lines 5, 6, and 7: A new subsection (7) was added to incorporate case law into Montana's statutes.

Section 5, (Page 9)

Lines 7 through 13: This new section would establish a new earmarked revenue account for all fees collected by the Department for administering water law. Monies appropriated by the Legislature from this account would reduce the Department's need from the general fund.

Section 6, (Page 13)

Lines 6, 7 and 8: This change requires applicants for a reservation of water to pay a proportionate share of the cost of the environmental impact statement. The change would primarily affect agencies applying for a large instream flow reservation.

Section 7, (Page 15)

Lines 23 through 25 (Page 15) and Lines 1 through 9 (Page 16): This section makes the referenced sections retroactive.

SENATE BILL NO. 347

INTRODUCED BY GALT, TURNAGE, BOYLAN, ROTH

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE OFFICE OF CHIEF WATER JUDGE; TO PROVIDE FOR THE APPOINTMENT, RESPONSIBILITIES, JURISDICTION, AND ADMINISTRATIVE REQUIREMENTS OF THE CHIEF WATER JUDGE."

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

Section 1. Appointment of chief water judge -- term of office. (1) The chief justice of the Montana supreme court shall appoint a chief water judge from among the district judges serving or retired as of the time of appointment.

(2) The term of office of the chief water judge is from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the water divisions by the legislature.

Section 2. Salary -- office space. (1) The chief water judge is entitled to receive the same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge shall be at the location that the chief justice of the Montana supreme court shall designate. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge, which money

may be appropriated by the legislature from the water rights adjudication account.

Section 3. Duties of the chief water judge. The chief water judge shall:

(1) supervise the activities of COORDINATE WITH the department of natural resources and conservation in compiling information submitted on water claim forms under Title 35, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division.

(2) assure that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree; and

(3) assure that any contested or conflicting claims are tried and adjudicated as expeditiously as possible.

Section 4. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the determination of existing water rights, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of

1 an interested party or on his own motion, as may reasonably
2 be required to allow him to fulfill his responsibilities.

3 Section 5. Initial appointment. The chief justice of
4 the Montana supreme court shall make the initial appointment
5 of a chief water judge on or before December 31, 1982.

-End-

1 SENATE BILL NO. 176

2 INTRODUCED BY STIMATZ

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

4 AND CONSERVATION

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

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
7 CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE
8 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN
9 EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF
10 GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A
11 MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE;
12 PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO
13 THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A
14 PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER
15 APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY
16 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD
17 BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED
18 BY FIRST-CLASS MAIL; ~~PROVIDING FOR THE HEARING OF A HEARING~~
19 ~~ON AN APPLICATION WITHIN A REASONABLE TIME~~ PROVIDING FOR ACTION
20 ON AN APPLICATION WITHIN 240 DAYS IF A HEARING IS HELD--OR
21 OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT
22 HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT
23 APPROPRIATION ACCOUNT; ~~ESTABLISHING FEES~~ PROVIDING A
24 ~~PROPORTIONATE FEE~~ FOR AN ENVIRONMENTAL IMPACT STATEMENT ON
25 AN APPLICATION FOR A RESERVATION OF WATER; AMENDING SECTIONS

1 85-2-306, 85-2-307, 85-2-309-THROUGH 85-2-310, 85-2-311, AND
2 85-2-314 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
3 DATE."

4
5
6 Section 1. Section 85-2-306, MCA, is amended to read:
7 "85-2-306. Exceptions to permit requirements. (1)
8 Outside the boundaries of a controlled groundwater area, a
9 permit is not required before appropriating groundwater by
10 means of a well or developed spring with a maximum yield
11 appropriation of less than 100 gallons per minute. Within
12 60 days of completion of the well or developed spring and
13 appropriation of the groundwater for beneficial use, the
14 appropriator shall file a notice of completion with the
15 department on a form provided by the department at its
16 offices and at the offices of the county clerk and
17 recorders. Upon receipt of the notice, the department shall
18 automatically issue a certificate of water right review the
19 notice and may, before issuing a certificate of water right,
20 return a defective notice for correction or completion,
21 together with the reasons for returning it. A notice does
22 not lose priority of filing because of defects, if the
23 notice is corrected, completed, and refiled with the
24 department within 30 days or within a further time as the
25 department may allow, not to exceed 6 months, if a notice is

1 not corrected and completed within the time allowed, the
 2 priority date of appropriation shall be the date of refiling
 3 a correct and complete notice with the department. A
 4 certificate of water right may not be issued until a correct
 5 and complete notice has been filed with the department. The
 6 original of the certificate shall be sent to the county
 7 clerk and recorder in the county where the point of
 8 diversion or place of use is located for recordation. The
 9 department shall keep a copy of the certificate in its
 10 office in Helena. After recordation, the clerk and recorder
 11 shall send the certificate to the appropriator. The date of
 12 filing of the notice of completion is the date of priority
 13 of the right.

14 (2) An appropriator of groundwater by means of a well
 15 or developed spring, first put to beneficial use between
 16 January 1, 1962, and July 1, 1973, who did not file a notice
 17 of completion, as required by laws in force prior to the
 18 effective date of this act, with the county clerk and
 19 recorder shall file a notice of completion, as provided in
 20 subsection (1) of this section, with the department to
 21 perfect the water right. The priority date of the
 22 appropriation shall be the date of the filing of a notice as
 23 provided in subsection (1) of this section. An
 24 appropriation under this subsection is an existing right,
 25 and a permit is not required; however, the department shall

1 acknowledge the receipt of a correct and complete filing of
 2 a notice of completion, except that for an appropriation of
 3 less than 100 gallons per minute, the department shall issue
 4 a certificate of water right.
 5 (2)(3) A permit is not required before constructing an
 6 impoundment or pit and appropriating water for use by
 7 livestock if the maximum capacity of the impoundment or pit
 8 is less than 15 acre-feet and the appropriation is from a
 9 source other than a perennial flowing stream. As used in
 10 this subsection, a perennial flowing stream means a stream
 11 which historically has flowed continuously at all seasons of
 12 the year, during dry as well as wet years. However, before
 13 constructing the impoundment or pit, the appropriator shall
 14 apply for a permit as prescribed by this part. If the
 15 department determines after processing the application that
 16 the rights of other appropriators have been or will be
 17 adversely affected, it may require the applicant to modify
 18 the construction of the impoundment or pit and issue the
 19 permit subject to such terms, conditions, restrictions, or
 20 limitations it considers necessary to protect the rights of
 21 other appropriators.

22 (3)(4) A person may also appropriate water without
 23 applying for or prior to receiving a permit under rules
 24 adopted by the board under 85-2-113."

25 Section 2. Section 85-2-307, MCA, is amended to read:

1 "85-2-307. Notice of application. (1) Upon receipt of
 2 a proper application for a permit, the department shall
 3 prepare a notice containing the facts pertinent to the
 4 application and shall publish the notice in a newspaper of
 5 general circulation in the area of the source once a week
 6 for 3 consecutive weeks. Before the last date of
 7 publication, the department shall also serve the notice by
 8 certified first-class mail upon an appropriator of water or
 9 applicant for or holder of a permit who, according to the
 10 records of the department, may be affected by the proposed
 11 appropriation. A notice shall also be served upon any public
 12 agency that has reserved waters in the source under
 13 85-2-316. The department may, in its discretion, also serve
 14 notice upon any state agency or other person the department
 15 feels may be interested in or affected by the proposed
 16 appropriation. The department shall file in its records
 17 proof of service by affidavit of the publisher in the case
 18 of notice by publication and by its own affidavit in the
 19 case of service by mail.

20 (2) The notice shall state that by a date set by the
 21 department (not less than 30 days or more than 60 days after
 22 the last date of publication) persons may file with the
 23 department written objections to the application.

24 (3) The requirements of subsections (1) and (2) of
 25 this section do not apply if the department finds, on the

1 basis of information reasonably available to it, that the
 2 appropriation as proposed in the application will not
 3 adversely affect the rights of other persons."
 4 Section 3, Section 85-2-309, MCA, is amended to read:
 5 "85-2-309. Hearings on objections--if the department
 6 determines that an objection to an application for a permit
 7 states a valid objection to the issuance of the permit--it
 8 shall hold a public hearing on the objection within 60 days
 9 from a reasonable time after the date set by the department
 10 for the filing of objections after serving notice of the
 11 hearing by certified mail upon the applicant--and the
 12 objector--the department may consolidate hearings if more
 13 than one objection is filed to an application--the
 14 department shall file in its records proof of the service by
 15 affidavit of the department."

16 Section 3. Section 85-2-310, MCA, is amended to read:
 17 "85-2-310. Action on application. (1) The department
 18 shall grant, deny, or condition an application for a permit
 19 in whole or in part within 120 days after the last date of
 20 publication of the notice of application if no hearing is
 21 held. Objections have been received and within 60 days 180
 22 days if a hearing is held or objections have been received.
 23 However, in either case the time may be extended upon
 24 agreement of the applicant, or, in those cases where an
 25 environmental impact statement must be prepared or in other

1 extraordinary cases, not more than 60 days upon order of the
 2 department. If the department orders the time extended, it
 3 shall serve a notice of the extension and the reasons
 4 therefor by certified mail upon the applicant and each
 5 person who has filed an objection as provided by 85-2-308.
 6 (2) However, an application may not be approved in a
 7 modified form or upon terms, conditions, or limitations
 8 specified by the department or denied, unless the applicant
 9 is first granted an opportunity to be heard. If no objection
 10 is filed against the application but the department is of
 11 the opinion that the application should be approved in a
 12 modified form or upon terms, conditions, or limitations
 13 specified by it or that the application should be denied,
 14 the department shall prepare a statement of its opinion and
 15 the reasons therefor. The department shall serve a statement
 16 of its opinion by certified mail upon the applicant,
 17 together with a notice that the applicant may obtain a
 18 hearing by filing a request therefor within 30 days after
 19 the notice is mailed. The notice shall further state that
 20 the application will be modified in a specified manner or
 21 denied, unless a hearing is requested.

22 (3) The department may cease action upon an
 23 application for a permit and return it to the applicant when
 24 it finds that the application is not in good faith or does
 25 not show a bona fide intent to appropriate water for a

1 beneficial use. An application returned for any of these
 2 reasons shall be accompanied by a statement of the reasons
 3 for which it was returned, and there shall be no right to a
 4 priority date based upon the filing of the application.
 5 Returning an application pursuant to this subsection shall
 6 be deemed a final decision of the department."

7 Section 4. Section 85-2-311, MCA, is amended to read:
 8 "85-2-311. Criteria for issuance of permit. The
 9 department shall issue a permit if:

10 (1) there are unappropriated waters in the source of
 11 supply;
 12 (a) at times when the water can be put to the use
 13 proposed by the applicant;

14 (b) in the amount the applicant seeks to appropriate;
 15 and

16 (c) throughout the period during which the applicant
 17 seeks to appropriate, the amount requested is available;

18 (2) the rights of a prior appropriator will not be
 19 adversely affected;

20 (3) the proposed means of diversion, or construction,
 21 and operation are adequate;

22 (4) the proposed use of water is a beneficial use;

23 (5) the proposed use will not interfere unreasonably
 24 with other planned uses or developments for which a permit
 25 has been issued or for which water has been reserved;

1 (6) an applicant for an appropriation of 10,000
 2 acre-feet a year or more or 15 cubic feet per second or
 3 more proves by clear and convincing evidence that the rights
 4 of a prior appropriator will not be adversely affected;

5 [1], except as provided in subsection (6), the
 6 applicant proves by substantial credible evidence the
 7 criteria listed in subsections (1) through (5)."

8 NEW SECTION. Section 5. Water right appropriation
 9 account. There is established a water right appropriation
 10 account in the earmarked revenue fund of the state treasury.
 11 All fees collected as provided in 85-2-113 shall be
 12 deposited in the account to help pay the expenses incurred
 13 by the department for administering this part, part 1, part
 14 4, and part 5 of chapter 2, Title 85.

15 Section 7, Section 85-2-124, MCA, is amended to read:
 16 "85-2-124. Fees for environmental impact statements.
 17 (1) Whenever the department determines that the filing of an
 18 application for a combination of applications for a permit
 19 or approval or reservation of water under this chapter
 20 requires the preparation of an environmental impact
 21 statement as prescribed by the Montana Environmental Policy
 22 Act and the application for combination of applications
 23 involves the use of 10,000 or more acre-feet per year or 15
 24 or more cubic feet per second of water, the applicant shall
 25 pay to the department the fee prescribed in this section

1 the department shall notify the applicant in writing within
 2 30 days of receipt of a correct and complete application for
 3 a combination of applications; if it determines that an
 4 environmental impact statement and fee is required
 5 (2) Upon notification by the department under
 6 subsection (1), the applicant shall pay a fee based upon the
 7 estimated cost of constructing, repairing or changing the
 8 appropriation and diversion facilities as herein provided;
 9 the maximum fee that shall be paid to the department may not
 10 exceed the fees set forth in the following declining scales:
 11 2% of the estimated cost up to \$1 million plus 1% of the
 12 estimated cost over \$1 million and up to \$20 million plus
 13 1/2 of 1% of the estimated cost over \$20 million and up to
 14 \$100 million plus 1/4 of 1% of the estimated cost over \$100
 15 million and up to \$300 million plus 1/8 of 1% of the
 16 estimated cost over \$300 million; the fee shall be deposited
 17 in the earmarked revenue fund to be used by the department
 18 only to comply with the Montana Environmental Policy Act in
 19 connection with the application(s); Any amounts paid by the
 20 applicant but not actually expended by the department shall
 21 be refunded to the applicant

22 (3) The department and the applicant may determine by
 23 agreement the estimated cost of any facility for purposes of
 24 computing the amount of the fee to be paid to the department
 25 by the applicant; the department may contract with an

1 applicant-for-

2 (a)-the-development-of-information-by-the-applicant-or
3 a-third-party-on-behalf-of-the-department-and-the-applicant
4 concerning-the-environmental-impact-of-any-proposed-activity
5 under-an-applicant

6 (b)-the-division-of-responsibility-between-the
7 department-and-an-applicant-for-supervision-over-control
8 of-and-payment-for-the-development-of-information-by-the
9 applicant-or-a-third-party-on-behalf-of-the-department-and
10 the-applicant-under-any-such-contract-or-contract

11 (c)-the-use-or-nonuse-of-a-fee-or-any-part-of-the-fee
12 paid-to-the-department-by-an-applicant

13 (4)-any-payments-made-to-the-department-or-any-third
14 party-by-an-applicant-under-any-such-contract-or-contract
15 shall-be-credited-against-any-fee-the-applicant-must-pay
16 hereunder-the-department-and-the-applicant-may-agree-on
17 additional-credits-against-the-fee-for-environmental-work
18 performed-by-the-applicant-at-the-applicant's-own-expenses

19 (5)-No-fee-as-prescribed-by-this-section-may-be
20 assessed-against-an-applicant-for-a-permit or-approval-or
21 reservation-of-water if-the-applicant-has-also-fitted-an
22 application-for-a-certificate-of-environmental-compatibility
23 or-public-need-pursuant-to-the-Montana-Major-Facility-Siting
24 Act-and-the-appropriation-or-use-of-water-involved-in-the
25 application(s)-for-permit or-approval-or-reservation-of

1 water has-been-or-will-be-studied-by-the-department-pursuant
2 to-that-act

3 (6)-this-section-shall-apply-to-all-applications
4 pending-or-hereinafter-fitted-for-which-the-department-has
5 not-as-of-April-9,-1975-commenced-writing-an-environmental
6 impact-statement-this-section-shall-not-apply-to-any
7 application-the-fee-for-which-would-not-exceed-\$2,500.

8 (7)-Failure-to-submit-the-fee-as-required-by-this
9 section-shall-void-the-application(s).

10 (8)-The-department-may-in-its-discretion-rely-upon
11 the-environmental-studies-investigations-reports-and
12 assessments-made-by-any-other-state-agency-or-any-person
13 including-any-applicant-in-the-preparation-of-its
14 environmental-impact-statement.

15 SECTION 6. SECTION 85-2-316, MCA, IS AMENDED TO READ:

16 "85-2-316. Reservation of waters. (1) The state or any
17 political subdivision or agency thereof or the United States
18 or any agency thereof may apply to the board to reserve
19 waters for existing or future beneficial uses or to maintain
20 a minimum flow, level, or quality of water throughout the
21 year or at such periods or for such length of time as the
22 board designates.

23 (2) Upon receiving an application, the department
24 shall proceed in accordance with 85-2-307 through 85-2-309.
25 After the hearing provided in 85-2-309, the board shall

1 decide whether to reserve the water for the applicant. The
 2 department's costs of giving notice, holding the hearing,
 3 conducting investigations, and making records incurred in
 4 acting upon the application to reserve water, except the
 5 cost of salaries of the department's personnel, shall be
 6 paid by the applicant. In addition, a reasonable proportion
 7 of the department's cost of preparing an environmental
 8 impact statement shall be paid by the applicant.

9 (3) The board may not adopt an order reserving water
 10 unless the applicant establishes to the satisfaction of the
 11 board:

12 (a) the purpose of the reservation;

13 (b) the need for the reservation;

14 (c) the amount of water necessary for the purpose of
 15 the reservation;

16 (d) that the reservation is in the public interest.

17 (4) If the purpose of the reservation requires
 18 construction of a storage or diversion facility, the
 19 applicant shall establish to the satisfaction of the board
 20 that there will be progress toward completion of the
 21 facility and accomplishment of the purpose with reasonable
 22 diligence in accordance with an established plan.

23 (5) The board shall limit any reservations after May
 24 9, 1979, for maintenance of minimum flow, level, or quality
 25 of water that it awards at any point on a stream or river to

1 a maximum of 50% of the average annual flow of record on
 2 gauged streams. Ungauged streams can be allocated at the
 3 discretion of the board.

4 (6) After the adoption of an order reserving waters,
 5 the department may reject an application and refuse a permit
 6 for the appropriation of reserved waters or may, with the
 7 approval of the board, issue the permit subject to such
 8 terms and conditions it considers necessary for the
 9 protection of the objectives of the reservation.

10 (7) Any person desiring to use water reserved to a
 11 conservation district for agricultural purposes shall make
 12 application for such use with the district, and the district
 13 upon approval of the application must inform the department
 14 of the approved use. The department shall maintain records
 15 of all uses of water reserved to conservation districts and
 16 be responsible for rendering technical and administrative
 17 assistance within the department's staffing and budgeting
 18 limitations in the processing of such applications for the
 19 conservation districts.

20 (8) A reservation under this section shall date from
 21 the date the order reserving the water is adopted by the
 22 board and shall not adversely affect any rights in existence
 23 at that time.

24 (9) The board shall, periodically but at least once
 25 every 10 years, review existing reservations to ensure that

1 the objectives of the reservation are being met. Where the
 2 objectives of the reservation are not being met, the board
 3 may extend, revoke, or modify the reservation.

4 (10) The board may modify an existing or future order
 5 originally adopted to reserve water for the purpose of
 6 maintaining minimum flow, level, or quality of water, so as
 7 to reallocate such reservation or portion thereof to an
 8 applicant who is a qualified reservant under this section.
 9 Reallocation of reserved water may be made by the board
 10 following notice and hearing wherein the board finds that
 11 all or part of the reservation is not required for its
 12 purpose and that the need for the reallocation has been
 13 shown by the applicant to outweigh the need shown by the
 14 original reservant. Reallocation of reserved water shall not
 15 adversely affect the priority date of the reservation, and
 16 the reservation shall retain its priority date despite
 17 reallocation to a different entity for a different use. The
 18 board may not reallocate water reserved under this section
 19 on any stream or river more frequently than once every 5
 20 years.

21 (11) Nothing in this section vests the board with the
 22 authority to alter a water right that is not a reservation."
 23 NEW SECTION. Section 7. Applicability. (1)
 24 Subsection (2) of [section 1] applies to all notices of
 25 completion filed with the department after July 1, 1973.

1 (2) Subsection (1) of [section 1], [section 4 3], and
 2 [section 5 4] apply to notices of completion and
 3 applications pending before the department and to those
 4 filed with the department after [the effective date of this
 5 act].

6 (3) [Section 7 6] applies to applications pending
 7 before the board on [the effective date of this act], as
 8 well as applications filed with the board after [the
 9 effective date of this act].

10 Section 8. Codification instruction. Section 6 5 is
 11 intended to be codified as an integral part of Title 85,
 12 chapter 2, part 3, and the provisions of Title 85, chapter
 13 2, apply to section 6 5.

14 Section 9. Effective date. This act is effective on
 15 passage and approval.

-End-