

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By Chairman Tom Beck, on March 20, 1989, at
1:00 P.M.

ROLL CALL

Members Present: Senator Hubert Abrams, Senator Gary
Aklestad, Senator Esther Bengtson, Senator Gerry
Devlin, Senator Jack Galt, Senator Greg Jergeson,
Senator Gene Thayer, Senator Bob Williams, Chairman Tom
Beck

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 707

Discussion: Chairman Beck stated at the last meeting, the
committee discussed the Milk River amendments.

Doug Sternberg indicated that the committee adopted the
third amendment. "I don't believe that we discussed
one or two (amendments). Those are the amendments
dated March 15."

Senator Jergeson - "I didn't offer them because of the cost
to get them into the Milk River. Then, you start on
the Clark Fork and Yellowstone, Musselshell, and Milk,
Little Missouri, Teton, and the Missouri. All we have
left is the Bitterroot and the Flathead."

Chairman Beck - "Do you think that there is a real problem,
Greg, with the status of the Milk River as it is right
now?"

Senator Jergeson - "The amendments that limit it to the
fishery should not affect it."

Chairman Beck - "I guess if there is no motion to put these
two into the bill...we will not put them in...The next

proposed amendments are the Grosfield amendments."

Lorents Grosfield - "The amendment was adopted before the Galt amendments were put in. It was an alternative to Galt's amendments...We are fighting an administrative remedy, that doesn't cost the affecter anything. In other words, he can go to the Department of Natural Resources and say, 'Hey I think that there is going to be a problem there and I want to object to this lease because of that. Then, the Department of Natural Resources will determine the good possibility that he might be right. Then, they use their attorneys to go in and look at the situation. Next, they make a determination of whether or not the guy has a point. If they think that the guy may have a point, then they go to the fish and game. All this is done at no expense to the objector. All he has to do, is walk in the door of the department and make his complaint. Now, there is nothing in there that concludes this objector from going to the District Court and ask for an immediate relief, pending the departments determination...The idea of this is to get away from the expense to the objector and that is really what this is after. Then you get into the second one that talks about attorneys fees and so on."

Senator Galt - "Without any of these bills or laws, there is always a place for an objective to go to the water departments. Nobody is going to keep you from walking into the Department of Natural Resources and saying that there is something wrong with this lease...The other thing, that these amendments are doing is the other day, we adopted amendments that changed Commission for Fish and Game and the Board of Natural Resources and responsible bodies in this thing. This bill sticks it right back into the Department of Fish and Game and the Department of Natural Resources. The Democrats are going to be making all the decisions on this thing. I still think that the commission and the Board of Natural Resources should be doing it. As far as giving an objector an arena to object, that's open right now."

Senator Bengtson - "I have been looking at the amendments that we adopted on Friday and the Grosfield amendments, and they are all addressing the same thing such as settling these disputes and who is going to pay for it. I don't think we need the language in the bill to tell us--it's the same thing."

Senator Williams - "The Thoft amendment was put together on March 16. Maybe you would want to address how the

amendment you accepted Friday would affect (the Thoft amendments).

Representative Thoft - "There is additional language at the end of the amendment. This language says the objector and the Department would get together and negotiate a settlement. The attorney fees would be at cost of the objector as long as it is a negotiated settlement."

Senator Galt - "Don't you think they have that arena now?"

Representative Thoft - "They probably do. I wouldn't disagree with that Senator Galt. I guess what I'm suggesting is to make that language clearer."

Chairman Beck indicated that no one moved the Grosfield amendments nor the Thoft amendments.

Senator Aklestad - "You indicated there is enough language already on the books to take care of an individual before you get to the attorneys fees. Would you be able to give somebody a call or make a demand on somebody and say you are adversely affecting my water right? If so where?"

Senator Galt - "I think that is in the power of Natural Resources. I think it just takes a phone call as it does with the water judge. All you have to do is call the water judge.

Chairman Beck - "Let's make sure that this is clear. The leasing of water has to be by the owner with an appropriated right. There is no chance that somebody can lease a water right and turn around and sub-lease it to the Fish and Game Department."

Senator Galt - "I believe that any dealings with the fish and game on this would have to deal with the owner."

Chairman Beck - "The fish and game owns a great deal of water, plus municipalities stating that they have to lease that water from private individuals...What I am saying is, I don't want to see local government use it as a revenue source for them. I also know that the fish and game is buying more and more land all the time. Along with the land comes water rights...Maybe there is some validity in saying that in order for them to lease for themselves, they have to lease from one of the members of the stream and one of the private adjudicators of that stream.

Senator Jergeson - "If you read that entire paragraph it

would then say, 'the board may declare stream region eligible for leaking proceeding to section 4 only to find that water leaking is necessary provided that the fish and game provide for fisheries during critical low periods. That existing water rights in the stream region are not held by the state or municipalities.' There is no stream, in the state of Montana, that does not have water rights held by the state. You are flat out eliminating nearly every stream in the state of Montana with this amendment. I know what you are trying to do. You may have killed the whole bill."

Chairman Beck - "I am not trying to pull any hanky-panky."

Doug Sternberg explains the Beck amendments. See exhibit 4. "It seems to me that this kind of determination should be made before or during the process of the actual designation of the stream reach, rather than somewhere down farther in the process. It seemed to be crucial enough in the designation process that it should be included somewhere in that section (section 5)."

Senator Galt - "There might be another problem with the amendment. The Fish and Game Department, I believe, is leaking water from the Department of Natural Resources."

Senator Bengtson - "Mr. Chairman, perhaps it is really taking a lot of flexibility out of this and I think rather than do that, wait another year. They are not going to do anything until 1991."

Chairman Beck - "It is not a big deal. I just want you to be aware of what could happen to the bill."

Senator Devlin - "Is there anything to prohibit the department to sub-lease to another private group entity or anything after they lease this water. Can they sub-lease it?"

Senator Galt - "I don't think they can. I'll go back to the original amendment and that is anyone who leases his water has to lease it from a water right owner. I think if they did, they would be run out of town."

Doug Sternberg - "It would be apparent to me, that the language we adopted in the Gray Bill, does limit the use of the leased water. This is the water that would be provided for fisheries."

Senator Galt - "Somewhere in the bill, I believe that it discusses that the fish and game is the only one that can enter into that."

Doug Sternberg - "The internal reference in sub-section 4 is to sub-section 1 (b) which is on page 11, on lines 25 through 27. What it allows the department to do, is to accept contributions from public or private entities for the purpose of developing storage facilities to provide stream flows. If the department receives a contribution from a public or private entity, specifically for the purpose of developing storage facilities to provide stream flow,s sub-section 4 allows the department to spend that contribution...Really, sub-section 1 (b) is limited by the kind of contribution that the department may accept. Therefore, if the department is granted a contribution for purpose of developing storage facilities, sub-section 4 simply allows them to spend the money. Those two sub-sections work together."

Senator Galt - "If the interest is in storage facilities for any reason, you either have to list all other reasons or list none of the reasons. But, if you list just one reason for fisheries, that is exclusive of somebody accepting the money if somebody were to donate the money for something that was for wildlife or recreating storage facility."

Senator Bengtson - "I agree with that because the bill was actually addressing instream flow for a fishery leasing for instream flow. Now, this is a different subject, when you are providing contributions for storage and off-stream storage."

Senator Devlin - "If you say the off-stream storage is in use for fisheries, is that all it could ever be used for?"

Chairman Beck - "If it's fisheries, then that is all it could be used for."

Representative Iverson - "I don't think it matters that much because, if you want to be practical about this. We all know what water development costs and what it costs to build dams and storage. Nobody is going to contribute money that is going to build anything large enough to be sued as a storage unit."

Senator Aklestad - "On page 11, line 24, we will leave fisheries in there because it is a lease... The amendments that have been amended into the bill so far, do you agree with the amendments? If not, which ones don't you agree with?"

Ron Waterman - "I would like to go ahead and make a general

comment as far as us getting involved in the leasing arena. We should try to make every effort to resolve any concerns. Once we start getting involved with going to court, I guess if there are various aspects of the bill that make it more and more difficult for anyone to get involved in leasing I have a problem with that because I think if you are going to make it so complex that nobody is going to want to touch it because of the negative symbols."

Senator Aklestad - "Your impression is that the amendments that we have put on so far, would make the bill too cumbersome to actually lease water or (for a person) having any incentive to lease water. Is that right?"

Ron Waterman - "We probably don't know until we try it. But, I suggest that it makes anyone who is going to lease water very concerned."

Senator Aklestad - "I have a question for Senator Galt. There is no doubt that this bill will go to a conference or a free conference committee."

Senator Galt - "You should ask the sponsor of the bill, Representative Iverson. He would know better than I. I don't know right now."

Representative Iverson - "I really can't speak for the House entirely, but there are a few things that I am concerned about. I don't think that the bill is strapped by any means...The one thing I would mention is, I am concerned about the way the attorney fees have been addressed...I am a little concerned not with the wording attorneys fees, but probably the wording at the administrative level. I think that has some pretty serious implications."

Senator Aklestad - "Senator Galt, would it be your intention to try and keep all of the amendments on the bill except for technical changes or a free conference committee?"

Senator Galt - "As you well know Senator, you get to one of those free conference committees and that is where you trade. I wouldn't say that any of these (amendments) are written in stone."

Senator Aklestad - "I hate to put you on the spot, Mr. President...You have the power to dictate that conference committee by the make up of the conference, because it takes two on each side of each conference committee to come to a conclusion. That is why I am

asking those questions. I am trying to derive whether it is possible for me to vote for the bill at all because if there is any of this stuff taken off--it is tough to vote for it probably with it on...It doesn't really matter what happens in a conference committee or pre-conference committee. If it comes down to amendatory veto and then you try and offset that with the two bodies...I am wondering if this committee realizes that this possibly the last spot we will have a real grip on this bill. We should get an indication from the administration what their thoughts are on the amendments that we have put on."

Senator Galt - "I don't think that anyone in the room including Mr. Marks, could talk about what the Governor will do. He's not going to know until he gets the bill in front of him. Then Mr. Marks may be able to advise him."

Senator Bengtson - "Mr. Chairman, I resist that question too. This is the legislative branch. We are dealing with a bill that we are putting our stamp on. We can't anticipate what the Governor is going to do."

Chairman Beck - "I am sure that we are quite familiar that he is not going to be happy with the amendments."

Senator Jergeson - "I have a concern about the whole direction of this conversation trying to get a commitment out of our president...We should exercise our best judgment here."

Amendments and Votes: None

Recommendation and Vote: Senator Bengtson moved HB 707 BE CONCURRED IN AS AMENDED. The motion carried with Senator Thayer, Senator Galt, Senator Bengtson, Senator Jergeson, and Senator Williams voting yes. Senator Beck, Senator Abrams, Senator Aklestad, Senator Devlin voting no.

ADJOURNMENT

Adjournment At: 2:33 P.M.


TOM BECK, Chairman

TB/jj

ROLL CALL

AGRICULTURE COMMITTEE

DATE 3/20

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	/		
SENATOR GARY AKLESTAD	/		
SENATOR ESTHER BENGTSON	/		
SENATOR GERRY DEVLIN	/		
SENATOR JACK GALT	/		
SENATOR GREG JERGESON	/		
SENATOR GENE THAYER	✓		
SENATOR BOB WILLIAMS	/		
SENATOR TOM BECK	/		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

page 1 of 6
March 21, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 707 (third reading copy -- blue), respectfully report that HB 707 be amended and as so amended be concurred in:

Sponsor: Iverson ()

1. Title, lines 8 and 9.

Following: "PURPOSE OF"

Strike: "ENHANCING OR MAINTAINING"

Insert: "PROVIDING"

2. Title, line 9.

Following: "FOR"

Strike: remainder of line 9

Insert: "THE BENEFIT OF FISHERIES"

3. Title, line 17.

Strike: "DEPARTMENT"

Insert: "BOARD"

4. Page 2, line 2.

Following: "of"

Strike: "maintaining or enhancing"

Insert: "providing"

5. Page 2, line 3.

Following: line 2

Strike: "fish, wildlife, or recreation"

Insert: "the benefit of fisheries"

6. Page 2, lines 6 and 7.

Strike: "enhance" on line 6 through "recreation" on line 7

Insert: "provide for fisheries"

7. Page 2, line 9.

Following: "parks"

Insert: "that have the approval of the fish and game commission"

8. Page 3, line 4.

Following: "conservation"

Strike: "will"

Insert: ", with the consent of the board, shall"

9. Page 3, lines 23 and 24.

Following: "authorization" on line 23

Strike: remainder of line 23 through "contract" on line 24

10. Page 4, line 2.

Following: "conservation"

Strike: "should"

Insert: ", with the consent of the board, shall"

11. Page 4, line 5.

Following: "are not"

Strike: "or probably will not be"

12. Page 5, line 17.

Following: line 16

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

Renumber: subsequent subsections

13. Page 14, line 13.

Following: "to"

Strike: "enhance or maintain"

Insert: "provide"

14. Page 14, line 14.

Following: "for"

Strike: "fish, wildlife, or recreation"

Insert: "benefit of fisheries"

15. Page 14, line 16.

Following: "parks"

Insert: ", with the consent of the commission, "

16. Page 14, lines 17 and 18.

Following: "of" on line 17

Strike: "maintaining or enhancing"

Insert: "providing"

Following: "for" on line 17

Strike: "fish, wildlife, or recreation"

Insert: "the benefit of fisheries"

17. Page 14, line 22.

Following: "department"

Insert: ", with the consent of the board,"

18. Page 14, line 23.

Following: "of"

Strike: "maintaining or enhancing"

Insert: "providing"

19. Page 14, line 24.

Following: "for"

Strike: "fish, wildlife, or recreation"

Insert: "the benefit of fisheries"

20. Page 15, lines 5 and 6.

Following: "streamflow" on line 5

Strike: "will" through "enhanced" on line 6

Insert: "must be provided"

Following: "must" on line 6

Strike: "provide"

Insert: "include"

21. Page 15, line 8.

Strike: "will"

Insert: "must"

22. Page 15, line 12.

Strike: "lessor"

Insert: "lessor's crop, if applicable, and excluding water used as recharge or return flow"

23. Page 15, line 14.

Following: line 13

Strike: "enhance or maintain"

Insert: "provide"

24. Page 15, line 21.

Following: line 20

Insert: "(5) The department of fish, wildlife, and parks has the responsibility to prove to the board under 85-2-402 that a proposed lease authorization does not adversely affect existing water rights. The department of fish, wildlife, and parks shall pay the cost, including reasonable attorney fees, for any appropriator who successfully objects to a proposed department of fish, wildlife, and parks lease."

Renumber: subsequent subsections

25. Page 16, line 4.

Strike: "(9)"

Insert: "(10)"

26. Page 16, line 6.

Following: "."

Insert: "If an appropriator proves adverse effects to his water rights, the department of fish, wildlife, and parks shall pay to the appropriator an amount equal to the damages that resulted from exercise of its lease and the costs of proving the adverse effects, including reasonable attorney fees and court costs. This provision applies only to water leases entered into under this section."

27. Page 16, line 8.

Following: "department"

Insert: ", with the consent of the board,"

28. Page 16, line 10.

Strike: "(9)"

Insert: "(10)"

Following: "by"

Strike: "substantial credible"

Insert: "a preponderance of the"

29. Page 16, line 11.

Following: "."

Insert: "If an appropriator proves adverse effects to his water rights, the department of fish, wildlife, and parks shall pay to the appropriator an amount equal to the damages that resulted from exercise of its lease and the costs of proving the adverse effects, including reasonable attorney fees and court costs. This provision applies only to water leases entered into under this section."

30. Page 17, line 5.

Following: "parks,"

Strike: "in consultation with the department"

Insert: "with the consent of the commission"

31. Page 17, line 7.

Following: "to"

Strike: "maintain or enhance"

Insert: "provide"

32. Page 17, line 12.

Following: line 11

Strike: "maintain" through "recreation"

Insert: "provide for fisheries"

33. Page 17, line 14.

Insert: "(3) Upon declaring a stream reach eligible for leasing, the board shall request the department to prepare an analysis concerning whether longer term solutions to the critical low flows in the stream reach are feasible. Longer term solutions to be considered include storage enhancement or development and recharge from ground water sources. The preparation of or recommendations resulting from the analysis may not preclude, inhibit, or delay the negotiation or implementation of leases on the stream reach as provided in [section 4]."

Re-number: subsequent subsection

34. Page 17, lines 21 through 23.

Following: "to" on line 21

Strike: "maintain" on line 21 through "enhance" on line 22

Insert: "provide"

Following: "for" on line 22

Strike: remainder of line 22 through "purposes" on line 23

Insert: "the benefit of fisheries"

35. Page 17, line 24 through page 18, line 1.

Following: "TO" on line 24

Strike: remainder of line 24 through "ENHANCE" on line 25

Insert: "provide"

Following: "STREAMFLOWS" on line 25

Strike: remainder of line 25 through "PURPOSES" page 18, line 1

36. Page 18, line 8.

Following: "of"

Strike: "maintaining or enhancing"

Insert: "providing"

37. Page 18, line 9.

Following: "flows"

Strike: "for" through "recreation"

38. Page 18, lines 14 and 15.

Following: "TO" on line 14

Strike: "MAINTAIN OR ENHANCE"

Insert: "provide"

Following: "STREAMFLOWS" on line 14

Strike: remainder of line 14 through "PURPOSES" on line 15

39. Page 18, line 19.

Strike: "DEPARTMENT" in two places

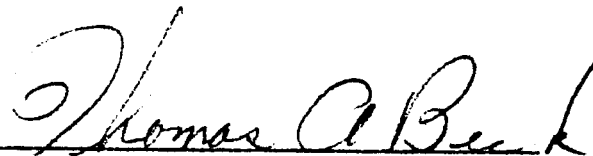
Insert: "board"

40. Page 19, line 2.
Following: "4"
Strike: "and"
Insert: ", "
Following: "5"
Insert: ", and 7"

41. Page 19, line 5.
Following: "4"
Strike: "and"
Insert: ", "
Following: "5"
Insert: ", and 7"

AND AS AMENDED BE CONCURRED IN

Signed:



Thomas A. Beck, Chairman

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LEASING OF
2 EXISTING WATER RIGHTS FOR THE PURPOSE OF ENHANCING OR
3 MAINTAINING PROVIDING STREAMFLOWS FOR FISH, WILDLIFE, OR
4 REGREATION THE BENEFIT OF FISHERIES DURING CRITICAL LOW FLOW
5 PERIODS IN STREAM REACHES DESIGNATED BY THE BOARD OF NATURAL
6 RESOURCES AND CONSERVATION; SPECIFYING THAT THE DEPARTMENT OF
7 FISH, WILDLIFE, AND PARKS IS THE LESSEE AND ALLOWING THE
8 DEPARTMENT TO ACCEPT CONTRIBUTIONS FROM PUBLIC OR PRIVATE
9 ENTITIES FOR THE PURPOSE OF ACQUIRING LEASES OR FOR DEVELOPING
10 STORAGE FACILITIES; SPECIFYING THAT THE DEPARTMENT BOARD OF
11 NATURAL RESOURCES AND CONSERVATION SHALL MAKE A REPORT TO
12 EACH REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS 85-
13 2-102, 85-2-402, AND 85-2-404, MCA; AND PROVIDING A TERMINATION DATE."
14
15

16 STATEMENT OF INTENT

17 A statement of intent is provided for this bill in order to give additional
18 guidance to the board of natural resources and conservation and the involved
19 state agencies concerning the review and processing of lease applications for
20 the purpose of ~~maintaining or enhancing~~ PROVIDING stream flows for fish;
21 ~~wildlife, or recreation~~ THE BENEFIT OF FISHERIES.

22 The legislature intends that the board designate stream reaches eligible for
23 water leasing in areas where leasing is necessary ~~or likely to be necessary~~ to
24 ~~enhance or maintain fish, wildlife, or recreation~~ PROVIDE FOR FISHERIES.

25 Upon receipt of a list of stream reaches from the department of fish, wildlife,
26 and parks THAT HAVE THE APPROVAL OF THE FISH AND GAME
27 COMMISSION, the board shall act expeditiously to designate eligible stream
28 reaches. However, the legislature also encourages the board to select stream
29 reaches where leasing has a good chance of success and where all interests
30 may be satisfied.

31 The legislature also intends that the review process for lease applications be
32 thorough and provide ample opportunity for consideration and input by concerned
33 persons. As required in [section 4], the process should involve notice and
34 opportunity for objections and hearing in the same manner provided for proposed

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 changes in appropriation rights. The legislature contemplates that the department
2 of fish, wildlife, and parks will meet with appropriators along each designated
3 stream reach to assess and consider any concerns before filing applications for
4 lease authorizations. The legislature also encourages the department of fish,
5 wildlife, and parks to assemble lease applications for filing at the same time to
6 minimize costs to potential objectors. Moreover, the legislature anticipates that
7 the department of natural resources and conservation will WITH THE
8 CONSENT OF THE BOARD, SHALL review the proposed leases for a single
9 stream reach in one proceeding, though the potential for another set of lease
10 applications at a future date is recognized.

11 The accurate identification of the stream reach in both the application and
12 lease authorization is critical to a successful leasing program. Upon issuance of
13 a lease authorization with an identified stream reach, the legislature intends that
14 the entire leased appropriation may be protected to the extent provided under
15 Title 85, chapter 2, in any part of the stream reach that is above the lessor's
16 point of diversion. However, only the historical consumptive use of the right, or a
17 smaller amount if specified in the lease authorization by the department of
18 natural resources and conservation, may be protected in any part of the stream
19 reach that is below the lessor's point of diversion. Finally, the legislature intends
20 for the lessor to be responsible for taking action, if necessary, to protect the
21 instream flow amount specified in the lease authorization, ~~though the lessor and~~
22 ~~lessee may specify otherwise by contract.~~

23 From a broad policy perspective, the legislature desires to emphasize that
24 the department of natural resources and conservation should WITH THE
25 CONSENT OF THE BOARD, SHALL consider and, if potentially feasible,
26 recommend supplemental or alternative strategies that provide long-term solutions
27 to problems that are not ~~or probably will not be~~ addressed adequately by water
28 leasing in the board-designated stream reaches. These strategies may include
29 storage enhancement or development and recharge from ground water sources.

30

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

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

33 "85-2-102. Definitions. Unless the context requires otherwise, in this chapter
34 the following definitions apply:

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 (1) "Appropriate" means to:

2 (a) divert, impound, or withdraw (including by stock for stock water) a
3 quantity of water; or;

4 (b) in the case of a public agency, to reserve water in accordance with 85-
5 2-316; or

6 (c) in the case of the department of fish, wildlife, and parks, to lease water
7 in accordance with [section 4].

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

9 (a) a use of water for the benefit of the appropriator, other persons, or the
10 public, including but not limited to agricultural (including stock water), domestic,
11 fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational
12 uses; and

13 (b) a use of water appropriated by the department for the state water
14 leasing program under 85-2-141 and of water leased under a valid lease issued
15 by the department under 85-2-141; AND

16 (C) A USE OF WATER BY THE DEPARTMENT OF FISH, WILDLIFE, AND
17 PARKS PURSUANT TO A LEASE AUTHORIZED UNDER [SECTION 4].

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

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

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

23 (6) "COMMISSION" MEANS THE FISH AND GAME COMMISSION PROVIDED
24 FOR IN 2-15-3402.

25 (6)(7) "Declaration" means the declaration of an existing right filed with the
26 department under section 8, Chapter 452, Laws of 1973.

27 (7)(8) "Department" means the department of natural resources and
28 conservation provided for in Title 2, chapter 15, part 33.

29 (8)(9) "Existing right" means a right to the use of water which would be
30 protected under the law as it existed prior to July 1, 1973.

31 (9)(10) "Groundwater" means any water beneath the land surface or beneath
32 the bed of a stream, lake, reservoir, or other body of surface water, and which
33 is not a part of that surface water.

34 (10)(11) "Permit" means the permit to appropriate issued by the department

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

2 ~~(11)~~(12) "Person" means an individual, association, partnership, corporation,
3 state agency, political subdivision, the United States or any agency thereof, or
4 any other entity.

5 ~~(12)~~(13) "Political subdivision" means any county, incorporated city or town,
6 public corporation, or district created pursuant to state law or other public body
7 of the state empowered to appropriate water but not a private corporation,
8 association, or group.

9 ~~(13)~~(14) "Waste" means the unreasonable loss of water through the design or
10 negligent operation of an appropriation or water distribution facility or the
11 application of water to anything but a beneficial use.

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

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

16 ~~(16)~~(17) "Water judge" means a judge as provided for in Title 3, chapter 7.

17 ~~(17)~~(18) "Water master" means a master as provided for in Title 3, chapter
18 7.

19 ~~(18)~~(19) "Well" means any artificial opening or excavation in the ground,
20 however made, by which groundwater is sought or can be obtained or through
21 which it flows under natural pressures or is artificially withdrawn."

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

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

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

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

32 (b) ~~The~~ Except for a lease authorization pursuant to [section 4] that does
33 not require appropriation works, the proposed means of diversion, construction,
34 and operation of the appropriation works are adequate.

Gray House Bill No. 707 -- Unofficial
March 17, 1989

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (5) (a) The state of Montana has long recognized the importance of
31 conserving its public waters and the necessity to maintain adequate water
32 supplies for the state's water requirements, including requirements for reserved
33 water rights held by the United States for federal reserved lands and in trust for
34 the various Indian tribes within the state's boundaries. Although the state of

Gray House Bill No. 707 -- Unofficial
March 17, 1989

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

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

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

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

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

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

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

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

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

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

29 (d) When applying for a change in appropriation right to withdraw and
30 transport water for use outside the state, the applicant shall submit to and
31 comply with the laws of the state of Montana governing the appropriation and
32 use of water.

33 (6) For any application for a change in appropriation right involving 4,000 or
34 more acre-feet of water a year and 5.5 or more cubic feet per second of water,

Gray House Bill No. 707 -- Unofficial
March 17, 1989

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

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

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

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

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

26 (11) A change in appropriation right contrary to the provisions of this section
27 is invalid. ~~No~~ An officer, agent, agency, or employee of the state may not
28 knowingly permit, aid, or assist in any manner ~~such~~ an unauthorized change in
29 appropriation right. ~~No~~ A person or corporation may not, directly or indirectly,
30 personally or through an agent, officer, or employee, attempt to change an
31 appropriation right except in accordance with this section."

32 Section 3. Section 85-2-404, MCA, is amended to read:

33 "85-2-404. Abandonment of appropriation right. (1) If an appropriator ceases
34 to use all or a part of his appropriation right with the intention of wholly or

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 partially abandoning the right or if he ceases using his appropriation right
2 according to its terms and conditions with the intention of not complying with
3 those terms and conditions, the appropriation right shall, to that extent, be
4 ~~deemed~~ considered abandoned and shall immediately expire.

5 (2) If an appropriator ceases to use all or part of his appropriation right or
6 ceases using his appropriation right according to its terms and conditions for a
7 period of 10 successive years and there was water available for his use, there
8 ~~shall be~~ is a prima facie presumption that the appropriator has abandoned his
9 right in whole or for the part not used.

10 (3) If an appropriator ceases to use all or part of his appropriation right
11 because the land to which the water is applied to a beneficial use is contracted
12 under a state or federal conservation set-aside program:

13 (a) the set-aside and resulting reduction in use of the appropriation right
14 does not represent an intent by the appropriator to wholly or partially abandon
15 the appropriation right or to not comply with the terms and conditions attached
16 to the right; and

17 (b) the period of nonuse that occurs for part or all of the appropriation right
18 as a result of the contract may not create or may not be added to any
19 previous period of nonuse to create a prima facie presumption of abandonment.

20 (4) The lease of an existing right pursuant to [section 4] does not constitute
21 an abandonment by the lessor or serve as evidence that could be used to
22 establish an abandonment by the lessor of any part of the right.

23 ~~(4)(5)~~ Subsections (1) and (2) do not apply to existing rights until they have
24 been determined in accordance with part 2 of this chapter."

25 NEW SECTION. Section 4. Leases to ~~enhance or maintain~~ PROVIDE
26 streamflows for fish, wildlife, or recreation THE BENEFIT OF FISHERIES --
27 department authorization. (1) The AFTER JULY 1, 1991, THE department of fish,
28 wildlife, and parks WITH THE CONSENT OF THE COMMISSION, may lease
29 existing rights for the purpose of ~~maintaining or enhancing~~ PROVIDING
30 streamflows for fish, wildlife, or recreation THE BENEFIT OF FISHERIES DURING
31 CRITICAL LOW FLOW PERIODS in stream reaches determined eligible by the
32 board pursuant to [section 5]. This section is the exclusive means by which
33 appropriations may be changed to an instream flow purpose.

34 (2) The department WITH THE CONSENT OF THE BOARD, shall authorize

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 a lease of an existing right for the purpose of ~~maintaining or enhancing~~
2 PROVIDING streamflows for fish, wildlife, or recreation THE BENEFIT OF
3 FISHERIES DURING CRITICAL LOW FLOW PERIODS in an eligible stream
4 reach if the applicant submits a completed application and meets the
5 requirements of 85-2-402.

6 (3) The application for a lease authorization must include specific information
7 on the length and location of the stream reach in which the streamflow ~~will be~~
8 ~~maintained or enhanced~~ MUST BE PROVIDED and must provide INCLUDE a
9 detailed streamflow measuring plan that describes the points where and the
10 manner in which the streamflow ~~will~~ MUST be measured.

11 (4) The maximum quantity of water that may be leased is the amount
12 historically diverted by the lessor. However, OF THE AMOUNT LEASED, only the
13 amount historically consumed by the ~~lessor~~ LESSOR'S CROP, IF APPLICABLE,
14 AND EXCLUDING WATER USED AS RECHARGE OR RETURN FLOW, or a
15 smaller amount if specified by the department in the lease authorization, may be
16 used to ~~enhance or maintain~~ PROVIDE streamflows below the lessor's point of
17 diversion. THE LEASE MUST TAKE INTO ACCOUNT THE HISTORICAL USE OF
18 THE WATER RIGHT, INCLUDING BUT NOT LIMITED TO THE USUAL SHUTOFF
19 OF ALL OR A PORTION OF THE WATER SUBJECT TO THE WATER RIGHT
20 DUE TO NORMAL IRRIGATION PRACTICES, HARVESTING, NORMAL CLIMATE
21 CONDITIONS, AND COOPERATIVE PRACTICES WITH OTHER IRRIGATORS.

22 (5) THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS HAS THE
23 RESPONSIBILITY TO PROVE TO THE BOARD UNDER 85-2-402 THAT A
24 PROPOSED LEASE AUTHORIZATION DOES NOT ADVERSELY AFFECT
25 EXISTING WATER RIGHTS. THE DEPARTMENT OF FISH, WILDLIFE, AND
26 PARKS SHALL PAY THE COST, INCLUDING REASONABLE ATTORNEY FEES,
27 FOR ANY APPROPRIATOR WHO SUCCESSFULLY OBJECTS TO A PROPOSED
28 DEPARTMENT OF FISH, WILDLIFE, AND PARKS LEASE.

29 (5)(6) The lease may not be issued for a term of more than 10 years but
30 may be renewed for up to 10 years per renewal upon notification to the
31 department. Upon receiving notice of a lease renewal, the department shall notify
32 other appropriators potentially affected by the lease and shall allow 30 days for
33 submission of new evidence of adverse effects to other water rights. A lease
34 authorization is not required for a renewal unless an appropriator, other than an

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 appropriator described in subsection ~~(9)~~(10), submits evidence of adverse effects
2 to his rights that has not been considered previously. IF AN APPROPRIATOR
3 PROVES ADVERSE EFFECTS TO HIS WATER RIGHTS, THE DEPARTMENT OF
4 FISH, WILDLIFE, AND PARKS SHALL PAY TO THE APPROPRIATOR AN
5 AMOUNT EQUAL TO THE DAMAGES THAT RESULTED FROM EXERCISE OF
6 ITS LEASE AND THE COSTS OF PROVING THE ADVERSE EFFECTS,
7 INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS. THIS
8 PROVISION APPLIES ONLY TO WATER LEASES ENTERED INTO UNDER THIS
9 SECTION.

10 ~~(6)~~(7) During the term of the original lease, the department, WITH THE
11 CONSENT OF THE BOARD, may modify or revoke the lease authorization if an
12 appropriator, other than an appropriator described in subsection ~~(9)~~(10), proves
13 by ~~substantial credible~~ A PREPONDERANCE OF THE evidence that his water
14 right is adversely affected. IF AN APPROPRIATOR PROVES ADVERSE EFFECTS
15 TO HIS WATER RIGHTS, THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
16 SHALL PAY TO THE APPROPRIATOR AN AMOUNT EQUAL TO THE DAMAGES
17 THAT RESULTED FROM EXERCISE OF ITS LEASE AND THE COSTS OF
18 PROVING THE ADVERSE EFFECTS, INCLUDING REASONABLE ATTORNEY
19 FEES AND COURT COSTS. THIS PROVISION APPLIES ONLY TO WATER
20 LEASES ENTERED INTO UNDER THIS SECTION.

21 ~~(7)~~(8) The priority of appropriation for a lease under this section is the
22 same as the priority of appropriation of the right that is leased.

23 ~~(8)~~(9) Neither a change in appropriation right nor any other authorization is
24 required for the reversion of the appropriation right to the lessor's previous use.

25 ~~(9)~~(10) A person issued a water use permit with a priority of appropriation
26 after the date of filing of an application for a lease authorization under this
27 section may not object to the exercise of the lease according to its terms, the
28 renewal of the lease, or the reversion of the appropriation right to the lessor
29 according to the lessor's previous use.

30 ~~(10)~~(11) THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS SHALL PAY
31 ALL COSTS ASSOCIATED WITH INSTALLING MEASURING DEVICES OR
32 PROVIDING PERSONNEL TO MEASURE STREAMFLOWS ACCORDING TO THE
33 MEASURING PLAN SUBMITTED UNDER THIS SECTION.

34 NEW SECTION. Section 5. Board designation of eligible stream reaches.

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 (1) The department of fish, wildlife, and parks, ~~in consultation with the department~~
2 WITH THE CONSENT OF THE COMMISSION, may apply to the board for
3 designation of stream reaches for which water leasing to ~~maintain or enhance~~
4 PROVIDE streamflows pursuant to [section 4] may occur.

5 (2) The board may declare a stream reach eligible for leasing pursuant to
6 [section 4] only if it finds that water leasing is necessary ~~or is likely to be~~
7 ~~necessary to maintain or enhance fish, wildlife, or recreation~~ PROVIDE FOR
8 FISHERIES DURING CRITICAL LOW FLOW PERIODS.

9 (3) UPON DECLARING A STREAM REACH ELIGIBLE FOR LEASING, THE
10 BOARD SHALL REQUEST THE DEPARTMENT TO PREPARE AN ANALYSIS
11 CONCERNING WHETHER LONGER TERM SOLUTIONS TO THE CRITICAL LOW
12 FLOWS IN THE STREAM REACH ARE FEASIBLE. LONGER TERM SOLUTIONS
13 TO BE CONSIDERED INCLUDE STORAGE ENHANCEMENT OR DEVELOPMENT
14 AND RECHARGE FROM GROUND WATER SOURCES. THE PREPARATION OF
15 OR RECOMMENDATIONS RESULTING FROM THE ANALYSIS MAY NOT
16 PRECLUDE, INHIBIT, OR DELAY THE NEGOTIATION OR IMPLEMENTATION OF
17 LEASES ON THE STREAM REACH AS PROVIDED IN [SECTION 4].

18 ~~(3)(4)~~ (4) The board may designate no more than 10 stream reaches in the
19 state where water leasing pursuant to [section 4] may occur.

20 NEW SECTION. Section 6. Contributions for leasing appropriation rights
21 OR DEVELOPING STORAGE FACILITIES. (1) The department may accept
22 contributions from public or private entities for the purpose of:

23 (A) leasing appropriation rights to ~~maintain or enhance~~ PROVIDE instream
24 flows for ~~fish, wildlife, or recreation purposes~~ THE BENEFIT OF FISHERIES; OR

25 (B) DEVELOPING STORAGE FACILITIES TO MAINTAIN OR ENHANCE
26 PROVIDE STREAMFLOWS FOR FISH, WILDLIFE, RECREATION, AND OTHER
27 PURPOSES.

28 (2) Any contributions accepted by the department under this section must be
29 deposited in the fish and wildlife mitigation trust fund established in 87-1-611.

30 (3) The department shall expend money obtained under ~~this section~~
31 SUBSECTION (1)(A) and deposited in the fish and wildlife mitigation trust fund
32 EXCLUSIVELY to lease existing rights for the purpose of ~~maintaining or~~
33 ~~enhancing~~ PROVIDING instream flows for ~~fish, wildlife, or recreation~~ UNLESS
34 EXPENDITURE FOR A DIFFERENT PURPOSE IS AUTHORIZED PURSUANT TO

Gray House Bill No. 707 -- Unofficial
March 17, 1989

1 87-1-614.

2 (4) THE DEPARTMENT SHALL EXPEND MONEY OBTAINED UNDER
3 SUBSECTION (1)(B) AND DEPOSITED IN THE FISH AND WILDLIFE
4 MITIGATION TRUST FUND EXCLUSIVELY TO DEVELOP STORAGE FACILITIES
5 TO MAINTAIN OR ENHANCE PROVIDE STREAMFLOWS FOR FISH, WILDLIFE,
6 RECREATION, AND OTHER PURPOSES UNLESS AN EXPENDITURE FOR
7 OTHER PURPOSES IS AUTHORIZED PURSUANT TO 87-1-614.

8 NEW SECTION. Section 7. REPORT TO THE LEGISLATURE -- BY THE
9 DEPARTMENT BOARD. THE DEPARTMENT BOARD SHALL REPORT TO EACH
10 REGULAR SESSION OF THE LEGISLATURE AS TO THE OPERATION OF [THIS
11 ACT].

12 NEW SECTION. Section 8. Extension of authority. Any existing authority to
13 make rules on the subject of the provisions of [this act] is extended to the
14 provisions of [this act].

15 NEW SECTION. Section 9. Codification instruction. (1) [Sections 4, and 5,
16 AND 7] are intended to be codified as an integral part of Title 85, chapter 2,
17 part 4, and the provisions of Title 85, chapter 2, part 4, apply to [sections 4,
18 and 5, AND 7].

19 (2) [Section 6] is intended to be codified as an integral part of Title 87,
20 chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to
21 [section 6].

22 NEW SECTION. Section 10. Termination. [This act] terminates October 1,
23 1999.

24 -END-
25

Amendments to House Bill No. 707
Third Reading CopyFor the Committee on Senate Agriculture
(Grossfield Amendments)Prepared by Doug Sternberg, Committee Staff
March 16, 1989

1. Page 16, line 7.

Following: "(6)"

Strike: the remainder of line 7 through "affected." on line 11

Insert: "If during the term of a lease or a renewal of a lease under subsection (5) the water right of an appropriator, other than an appropriator described in subsection (9), is adversely affected by the exercise of the lease, the appropriator may file a complaint with or submit new evidence to the department as provided in subsection (5). Upon receipt of a complaint or new evidence under subsection (5), the department shall investigate the allegations contained in the complaint or new evidence. If as a result of the investigation the department determines that the terms of the lease are not being followed or that exercise of the lease is creating an adverse effect, the department shall, after notice, require the department of fish, wildlife, and parks to show cause why the lease should not be modified or revoked. If the department of fish, wildlife, and parks fails to show sufficient cause, the department shall modify or revoke the lease."

2. Page 18, line 18.

Following: line 17

Insert: "NEW SECTION. Section 7. Recovery of attorney fees. If a final decision of the department to lease, renew a lease, or modify or revoke a lease pursuant to [section 4] is appealed to district court, the court shall, in addition to damages resulting from the exercise of a lease that has caused adverse effect to a water right, award reasonable attorney fees and court costs to the adversely affected party if he prevails in the appeal, unless the court finds that the position of the department of fish, wildlife, and parks was substantially justified or that special circumstances make an award of attorney fees and court costs unjust."

Renumber: subsequent sections

3. Page 19, lines 2 and 5.

Following: "4"

Strike: "and"

Insert: ", "

Following: "5"

Insert: ", and 7"

Amendments to House Bill No. 707
Third Reading Copy

Requested by Rep. Thoft
For the Committee on Senate Agriculture

Prepared by Deborah Schmidt
March 16, 1989

1. Page 16, 11.

Following "."

Insert: "If an appropriator proves adverse effects to his water rights, the department of fish, wildlife, and parks shall pay to the appropriator an amount equal to the damages that resulted from exercise of its lease, and the costs of proving the adverse effects, including reasonable attorney fees and court costs.

This provision applies only to water leases entered into under this section. However, nothing in this subsection precludes the negotiation of a reasonable settlement for damages between the department of fish, wildlife, and parks and an appropriator whose water rights may be adversely affected by the exercise of the lease."

8:00

SENATE AGRICULTURE

EXHIBIT NO. 4

DATE 3/20/89

BILL NO. HB 707

Amendments to House Bill No. 707
Third Reading Copy

Requested by Senator Beck
For the Committee on Senate Agriculture

Prepared by Doug Sternberg, Committee Staff
March 20, 1989

1. Page 17, line 13.

Following: "PERIODS"

Insert: "and that existing water rights in the stream reach
are not held by the state or a municipality"

Gray House Bill No. 707 -- Unofficial DATE 3/20/89

March 20, 1989

BILL NO. HB 707

1 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LEASING OF
2 EXISTING WATER RIGHTS FOR THE PURPOSE OF ENHANCING OR
3 MAINTAINING PROVIDING STREAMFLOWS FOR FISH, WILDLIFE, OR
4 REGREATION THE BENEFIT OF FISHERIES DURING CRITICAL LOW FLOW
5 PERIODS IN STREAM REACHES DESIGNATED BY THE BOARD OF NATURAL
6 RESOURCES AND CONSERVATION; SPECIFYING THAT THE DEPARTMENT OF
7 FISH, WILDLIFE, AND PARKS IS THE LESSEE AND ALLOWING THE
8 DEPARTMENT TO ACCEPT CONTRIBUTIONS FROM PUBLIC OR PRIVATE
9 ENTITIES FOR THE PURPOSE OF ACQUIRING LEASES OR FOR DEVELOPING
10 STORAGE FACILITIES; SPECIFYING THAT THE DEPARTMENT BOARD OF
11 NATURAL RESOURCES AND CONSERVATION SHALL MAKE A REPORT TO
12 EACH REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS 85-
13 2-102, 85-2-402, AND 85-2-404, MCA; AND PROVIDING A TERMINATION DATE."

14

15

16 STATEMENT OF INTENT

17 A statement of intent is provided for this bill in order to give additional
18 guidance to the board of natural resources and conservation and the involved
19 state agencies concerning the review and processing of lease applications for
20 the purpose of ~~maintaining or enhancing~~ PROVIDING stream flows for fish,
21 ~~wildlife, or recreation~~ THE BENEFIT OF FISHERIES.

22 The legislature intends that the board designate stream reaches eligible for
23 water leasing in areas where leasing is necessary ~~or likely to be necessary~~ to
24 ~~enhance or maintain fish, wildlife, or recreation~~ PROVIDE FOR FISHERIES.

25 Upon receipt of a list of stream reaches from the department of fish, wildlife,
26 and parks THAT HAVE THE APPROVAL OF THE FISH AND GAME
27 COMMISSION, the board shall act expeditiously to designate eligible stream
28 reaches. However, the legislature also encourages the board to select stream
29 reaches where leasing has a good chance of success and where all interests
30 may be satisfied.

31 The legislature also intends that the review process for lease applications be
32 thorough and provide ample opportunity for consideration and input by concerned
33 persons. As required in [section 4], the process should involve notice and
34 opportunity for objections and hearing in the same manner provided for proposed

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 changes in appropriation rights. The legislature contemplates that the department
2 of fish, wildlife, and parks will meet with appropriators along each designated
3 stream reach to assess and consider any concerns before filing applications for
4 lease authorizations. The legislature also encourages the department of fish,
5 wildlife, and parks to assemble lease applications for filing at the same time to
6 minimize costs to potential objectors. Moreover, the legislature anticipates that
7 the department of natural resources and conservation ~~will~~, WITH THE CONSENT
8 OF THE BOARD, SHALL review the proposed leases for a single stream reach
9 in one proceeding, though the potential for another set of lease applications at a
10 future date is recognized.

11 The accurate identification of the stream reach in both the application and
12 lease authorization is critical to a successful leasing program. Upon issuance of
13 a lease authorization with an identified stream reach, the legislature intends that
14 the entire leased appropriation may be protected to the extent provided under
15 Title 85, chapter 2, in any part of the stream reach that is above the lessor's
16 point of diversion. However, only the historical consumptive use of the right, or a
17 smaller amount if specified in the lease authorization by the department of
18 natural resources and conservation, may be protected in any part of the stream
19 reach that is below the lessor's point of diversion. Finally, the legislature intends
20 for the lessor to be responsible for taking action, if necessary, to protect the
21 instream flow amount specified in the lease authorization, ~~though the lessor and~~
22 ~~lessee may specify otherwise by contract.~~

23 From a broad policy perspective, the legislature desires to emphasize that
24 the department of natural resources and conservation ~~should~~, WITH THE
25 CONSENT OF THE BOARD, SHALL consider and, if potentially feasible,
26 recommend supplemental or alternative strategies that provide long-term solutions
27 to problems that are not ~~or probably will not be~~ addressed adequately by water
28 leasing in the board-designated stream reaches. These strategies may include
29 storage enhancement or development and recharge from ground water sources.
30

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

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

33 "85-2-102. Definitions. Unless the context requires otherwise, in this chapter
34 the following definitions apply:

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 (1) "Appropriate" means to:

2 (a) divert, impound, or withdraw (including by stock for stock water) a
3 quantity of water; or,

4 (b) in the case of a public agency, to reserve water in accordance with 85-
5 2-316; or

6 (c) in the case of the department of fish, wildlife, and parks, to lease water
7 in accordance with [section 4].

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

9 (a) a use of water for the benefit of the appropriator, other persons, or the
10 public, including but not limited to agricultural (including stock water), domestic,
11 fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational
12 uses; and

13 (b) a use of water appropriated by the department for the state water
14 leasing program under 85-2-141 and of water leased under a valid lease issued
15 by the department under 85-2-141; AND

16 (C) A USE OF WATER BY THE DEPARTMENT OF FISH, WILDLIFE, AND
17 PARKS PURSUANT TO A LEASE AUTHORIZED UNDER [SECTION 4].

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

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

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

23 (6) "COMMISSION" MEANS THE FISH AND GAME COMMISSION PROVIDED
24 FOR IN 2-15-3402.

25 (6)(7) "Declaration" means the declaration of an existing right filed with the
26 department under section 8, Chapter 452, Laws of 1973.

27 (7)(8) "Department" means the department of natural resources and
28 conservation provided for in Title 2, chapter 15, part 33.

29 (8)(9) "Existing right" means a right to the use of water which would be
30 protected under the law as it existed prior to July 1, 1973.

31 (9)(10) "Groundwater" means any water beneath the land surface or beneath
32 the bed of a stream, lake, reservoir, or other body of surface water, and which
33 is not a part of that surface water.

34 (10)(11) "Permit" means the permit to appropriate issued by the department

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

2 ~~(11)~~(12) "Person" means an individual, association, partnership, corporation,
3 state agency, political subdivision, the United States or any agency thereof, or
4 any other entity.

5 ~~(12)~~(13) "Political subdivision" means any county, incorporated city or town,
6 public corporation, or district created pursuant to state law or other public body
7 of the state empowered to appropriate water but not a private corporation,
8 association, or group.

9 ~~(13)~~(14) "Waste" means the unreasonable loss of water through the design or
10 negligent operation of an appropriation or water distribution facility or the
11 application of water to anything but a beneficial use.

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

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

16 ~~(16)~~(17) "Water judge" means a judge as provided for in Title 3, chapter 7.

17 ~~(17)~~(18) "Water master" means a master as provided for in Title 3, chapter
18 7.

19 ~~(18)~~(19) "Well" means any artificial opening or excavation in the ground,
20 however made, by which groundwater is sought or can be obtained or through
21 which it flows under natural pressures or is artificially withdrawn."

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

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

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

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

32 (b) The Except for a lease authorization pursuant to [section 4] that does
33 not require appropriation works, the proposed means of diversion, construction,
34 and operation of the appropriation works are adequate.

Gray House Bill No. 707 -- Unofficial
March 20, 1989

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (5) (a) The state of Montana has long recognized the importance of
31 conserving its public waters and the necessity to maintain adequate water
32 supplies for the state's water requirements, including requirements for reserved
33 water rights held by the United States for federal reserved lands and in trust for
34 the various Indian tribes within the state's boundaries. Although the state of

Gray House Bill No. 707 -- Unofficial
March 20, 1989

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

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

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

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

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

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

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

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

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

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

29 (d) When applying for a change in appropriation right to withdraw and
30 transport water for use outside the state, the applicant shall submit to and
31 comply with the laws of the state of Montana governing the appropriation and
32 use of water.

33 (6) For any application for a change in appropriation right involving 4,000 or
34 more acre-feet of water a year and 5.5 or more cubic feet per second of water,

Gray House Bill No. 707 -- Unofficial
March 20, 1989

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

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

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

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

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

26 (11) A change in appropriation right contrary to the provisions of this section
27 is invalid. ~~No~~ An officer, agent, agency, or employee of the state may not
28 knowingly permit, aid, or assist in any manner ~~such~~ an unauthorized change in
29 appropriation right. ~~No~~ A person or corporation may not, directly or indirectly,
30 personally or through an agent, officer, or employee, attempt to change an
31 appropriation right except in accordance with this section."

32 Section 3. Section 85-2-404, MCA, is amended to read:

33 "85-2-404. Abandonment of appropriation right. (1) If an appropriator ceases
34 to use all or a part of his appropriation right with the intention of wholly or

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 partially abandoning the right or if he ceases using his appropriation right
2 according to its terms and conditions with the intention of not complying with
3 those terms and conditions, the appropriation right shall, to that extent, be
4 deemed considered abandoned and shall immediately expire.

5 (2) If an appropriator ceases to use all or part of his appropriation right or
6 ceases using his appropriation right according to its terms and conditions for a
7 period of 10 successive years and there was water available for his use, there
8 ~~shall be~~ is a prima facie presumption that the appropriator has abandoned his
9 right in whole or for the part not used.

10 (3) If an appropriator ceases to use all or part of his appropriation right
11 because the land to which the water is applied to a beneficial use is contracted
12 under a state or federal conservation set-aside program:

13 (a) the set-aside and resulting reduction in use of the appropriation right
14 does not represent an intent by the appropriator to wholly or partially abandon
15 the appropriation right or to not comply with the terms and conditions attached
16 to the right; and

17 (b) the period of nonuse that occurs for part or all of the appropriation right
18 as a result of the contract may not create or may not be added to any
19 previous period of nonuse to create a prima facie presumption of abandonment.

20 (4) The lease of an existing right pursuant to [section 4] does not constitute
21 an abandonment by the lessor or serve as evidence that could be used to
22 establish an abandonment by the lessor of any part of the right.

23 ~~(4)(5)~~ Subsections (1) and (2) do not apply to existing rights until they have
24 been determined in accordance with part 2 of this chapter."

25 NEW SECTION. Section 4. Leases to enhance or maintain PROVIDE
26 streamflows for fish, wildlife, or recreation THE BENEFIT OF FISHERIES --
27 department authorization. (1) The AFTER JULY 1, 1991, THE department of fish,
28 wildlife, and parks, WITH THE CONSENT OF THE COMMISSION, may lease
29 existing rights for the purpose of ~~maintaining or enhancing~~ PROVIDING
30 streamflows for fish, wildlife, or recreation THE BENEFIT OF FISHERIES DURING
31 CRITICAL LOW FLOW PERIODS in stream reaches determined eligible by the
32 board pursuant to [section 5]. This section is the exclusive means by which
33 appropriations may be changed to an instream flow purpose.

34 (2) The department, WITH THE CONSENT OF THE BOARD, shall authorize

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 a lease of an existing right for the purpose of ~~maintaining or enhancing~~
2 PROVIDING streamflows for fish, wildlife, or recreation THE BENEFIT OF
3 FISHERIES DURING CRITICAL LOW FLOW PERIODS in an eligible stream
4 reach if the applicant submits a completed application and meets the
5 requirements of 85-2-402.

6 (3) The application for a lease authorization must include specific information
7 on the length and location of the stream reach in which the streamflow ~~will be~~
8 ~~maintained or enhanced~~ MUST BE PROVIDED and must provide INCLUDE a
9 detailed streamflow measuring plan that describes the points where and the
10 manner in which the streamflow ~~will~~ MUST be measured.

11 (4) The maximum quantity of water that may be leased is the amount
12 historically diverted by the lessor. However, OF THE AMOUNT LEASED, only the
13 amount historically consumed by the lessor LESSOR'S CROP, IF APPLICABLE,
14 AND EXCLUDING WATER USED AS RECHARGE OR RETURN FLOW, or a
15 smaller amount if specified by the department in the lease authorization, may be
16 used to ~~enhance or maintain~~ PROVIDE streamflows below the lessor's point of
17 diversion. THE LEASE MUST TAKE INTO ACCOUNT THE HISTORICAL USE OF
18 THE WATER RIGHT, INCLUDING BUT NOT LIMITED TO THE USUAL SHUTOFF
19 OF ALL OR A PORTION OF THE WATER SUBJECT TO THE WATER RIGHT
20 DUE TO NORMAL IRRIGATION PRACTICES, HARVESTING, NORMAL CLIMATE
21 CONDITIONS, AND COOPERATIVE PRACTICES WITH OTHER IRRIGATORS.

22 (5) THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS HAS THE
23 RESPONSIBILITY TO PROVE TO THE BOARD UNDER 85-2-402 THAT A
24 PROPOSED LEASE AUTHORIZATION DOES NOT ADVERSELY AFFECT
25 EXISTING WATER RIGHTS. THE DEPARTMENT OF FISH, WILDLIFE, AND
26 PARKS SHALL PAY THE COST, INCLUDING REASONABLE ATTORNEY FEES,
27 FOR ANY APPROPRIATOR WHO SUCCESSFULLY OBJECTS TO A PROPOSED
28 DEPARTMENT OF FISH, WILDLIFE, AND PARKS LEASE.

29 (5)(6) The lease may not be issued for a term of more than 10 years but
30 may be renewed for up to 10 years per renewal upon notification to the
31 department. Upon receiving notice of a lease renewal, the department shall notify
32 other appropriators potentially affected by the lease and shall allow 30 days for
33 submission of new evidence of adverse effects to other water rights. A lease
34 authorization is not required for a renewal unless an appropriator, other than an

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 appropriator described in subsection (9)(10), submits evidence of adverse effects
2 to his rights that has not been considered previously. IF AN APPROPRIATOR
3 PROVES ADVERSE EFFECTS TO HIS WATER RIGHTS, THE DEPARTMENT OF
4 FISH, WILDLIFE, AND PARKS SHALL PAY TO THE APPROPRIATOR AN
5 AMOUNT EQUAL TO THE DAMAGES THAT RESULTED FROM EXERCISE OF
6 ITS LEASE AND THE COSTS OF PROVING THE ADVERSE EFFECTS,
7 INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS. THIS
8 PROVISION APPLIES ONLY TO WATER LEASES ENTERED INTO UNDER THIS
9 SECTION.

10 (6)(7) During the term of the original lease, the department, WITH THE
11 CONSENT OF THE BOARD, may modify or revoke the lease authorization if an
12 appropriator, other than an appropriator described in subsection (9)(10), proves
13 by ~~substantial-credible~~ A PREPONDERANCE OF THE evidence that his water
14 right is adversely affected. IF AN APPROPRIATOR PROVES ADVERSE EFFECTS
15 TO HIS WATER RIGHTS, THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
16 SHALL PAY TO THE APPROPRIATOR AN AMOUNT EQUAL TO THE DAMAGES
17 THAT RESULTED FROM EXERCISE OF ITS LEASE AND THE COSTS OF
18 PROVING THE ADVERSE EFFECTS, INCLUDING REASONABLE ATTORNEY
19 FEES AND COURT COSTS. THIS PROVISION APPLIES ONLY TO WATER
20 LEASES ENTERED INTO UNDER THIS SECTION.

21 (7)(8) The priority of appropriation for a lease under this section is the
22 same as the priority of appropriation of the right that is leased.

23 (8)(9) Neither a change in appropriation right nor any other authorization is
24 required for the reversion of the appropriation right to the lessor's previous use.

25 (9)(10) A person issued a water use permit with a priority of appropriation
26 after the date of filing of an application for a lease authorization under this
27 section may not object to the exercise of the lease according to its terms, the
28 renewal of the lease, or the reversion of the appropriation right to the lessor
29 according to the lessor's previous use.

30 (10)(11) THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS SHALL PAY
31 ALL COSTS ASSOCIATED WITH INSTALLING MEASURING DEVICES OR
32 PROVIDING PERSONNEL TO MEASURE STREAMFLOWS ACCORDING TO THE
33 MEASURING PLAN SUBMITTED UNDER THIS SECTION.

34 NEW SECTION. Section 5. Board designation of eligible stream reaches.

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 (1) The department of fish, wildlife, and parks, ~~in consultation with the department~~
2 WITH THE CONSENT OF THE COMMISSION, may apply to the board for
3 designation of stream reaches for which water leasing to ~~maintain or enhance~~
4 PROVIDE streamflows pursuant to [section 4] may occur.

5 (2) The board may declare a stream reach eligible for leasing pursuant to
6 [section 4] only if it finds that water leasing is necessary ~~or is likely to be~~
7 ~~necessary to maintain or enhance fish, wildlife, or recreation~~ PROVIDE FOR
8 FISHERIES DURING CRITICAL LOW FLOW PERIODS.

9 (3) UPON DECLARING A STREAM REACH ELIGIBLE FOR LEASING, THE
10 BOARD SHALL REQUEST THE DEPARTMENT TO PREPARE AN ANALYSIS
11 CONCERNING WHETHER LONGER TERM SOLUTIONS TO THE CRITICAL LOW
12 FLOWS IN THE STREAM REACH ARE FEASIBLE. LONGER TERM SOLUTIONS
13 TO BE CONSIDERED INCLUDE STORAGE ENHANCEMENT OR DEVELOPMENT
14 AND RECHARGE FROM GROUND WATER SOURCES. THE PREPARATION OF
15 OR RECOMMENDATIONS RESULTING FROM THE ANALYSIS MAY NOT
16 PRECLUDE, INHIBIT, OR DELAY THE NEGOTIATION OR IMPLEMENTATION OF
17 LEASES ON THE STREAM REACH AS PROVIDED IN [SECTION 4].

18 ~~(3)(4)~~ The board may designate no more than 10 stream reaches in the
19 state where water leasing pursuant to [section 4] may occur.

20 NEW SECTION. Section 6. Contributions for leasing appropriation rights
21 OR DEVELOPING STORAGE FACILITIES. (1) The department may accept
22 contributions from public or private entities for the purpose of:—

23 (A) leasing appropriation rights to ~~maintain or enhance~~ PROVIDE instream
24 flows for ~~fish, wildlife, or recreation purposes~~ THE BENEFIT OF FISHERIES; OR

25 (B) DEVELOPING STORAGE FACILITIES TO MAINTAIN OR ENHANCE
26 PROVIDE STREAMFLOWS FOR FISH, WILDLIFE, RECREATION, AND OTHER
27 PURPOSES.

28 (2) Any contributions accepted by the department under this section must be
29 deposited in the fish and wildlife mitigation trust fund established in 87-1-611.

30 (3) The department shall expend money obtained under ~~this section~~
31 SUBSECTION (1)(A) and deposited in the fish and wildlife mitigation trust fund
32 EXCLUSIVELY to lease existing rights for the purpose of ~~maintaining or~~
33 ~~enhancing~~ PROVIDING instream flows for ~~fish, wildlife, or recreation~~ UNLESS
34 EXPENDITURE FOR A DIFFERENT PURPOSE IS AUTHORIZED PURSUANT TO

Gray House Bill No. 707 -- Unofficial
March 20, 1989

1 87-1-614.

2 (4) THE DEPARTMENT SHALL EXPEND MONEY OBTAINED UNDER
3 SUBSECTION (1)(B) AND DEPOSITED IN THE FISH AND WILDLIFE
4 MITIGATION TRUST FUND EXCLUSIVELY TO DEVELOP STORAGE FACILITIES
5 TO MAINTAIN OR ENHANCE PROVIDE STREAMFLOWS FOR FISH, WILDLIFE,
6 RECREATION, AND OTHER PURPOSES UNLESS AN EXPENDITURE FOR
7 OTHER PURPOSES IS AUTHORIZED PURSUANT TO 87-1-614.

8 NEW SECTION. Section 7. REPORT TO THE LEGISLATURE -- BY THE
9 DEPARTMENT BOARD. THE DEPARTMENT BOARD SHALL REPORT TO EACH
10 REGULAR SESSION OF THE LEGISLATURE AS TO THE OPERATION OF [THIS
11 ACT].

12 NEW SECTION. Section 8. Extension of authority. Any existing authority to
13 make rules on the subject of the provisions of [this act] is extended to the
14 provisions of [this act].

15 NEW SECTION. Section 9. Codification instruction. (1) [Sections 4, and 5,
16 AND 7] are intended to be codified as an integral part of Title 85, chapter 2,
17 part 4, and the provisions of Title 85, chapter 2, part 4, apply to [sections 4,
18 and 5, AND 7].

19 (2) [Section 6] is intended to be codified as an integral part of Title 87,
20 chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to
21 [section 6].

22 NEW SECTION. Section 10. Termination. [This act] terminates October 1,
23 1999.

24 -END-
25

ROLL CALL VOTE

SENATE COMMITTEE AGRICULTURE

Date 3/20 Bill No. 418707 Time _____

NAME	YES	NO
Senator Hubert Abrams #8		✓
Senator Gary Aklestad #1		✓
Senator Esther Bengtson #27	✓	
Senator Gerry Devlin #47		✓
Senator Jack Galt #46	✓	
Senator Greg Jergeson #48	✓	
Senator Gene Thayer #23	✓	
Senator Bob Williams #39	✓	
Senator Tom Beck #44		✓

5 . 4

Jaelene Johnson
Secretary

Tom Beck
Chairman

Motion: BE CONCURRED IN AS
AMENDED - PASSED