

1 Senate BILL NO. 338
 2 INTRODUCED BY Edwards

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
 5 89-125, R.C.M. 1947, TO CLEARLY AUTHORIZE THE DEPARTMENT OF
 6 NATURAL RESOURCES AND CONSERVATION TO ACQUIRE WATER FOR
 7 SALE, RENT, OR DISTRIBUTION FOR INDUSTRIAL USES AND AT SUCH
 8 RATES AND UNDER SUCH CONDITIONS AS IT PRESCRIBES; AND
 9 PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE."

10 Dept. of Natural Resources

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

12 Section 1. Section 89-125, R.C.M. 1947, is amended to
 13 read as follows:

14 "89-125. Powers of department concerning waters and
 15 appropriations thereof. (1) The authority of the department
 16 conferred by this act extends and applies to rights to the
 17 natural flow of the waters of this state which it may
 18 acquire, with the approval of the board, by condemnation,
 19 purchase, exchange, appropriation or agreement.

20 (2) For the purpose of regulating the diversion of
 21 those waters, the department may enter upon the means and
 22 place of use of all appropriators for making surveys of
 23 respective rights and seasonal needs.

24 (3) The department may take into consideration the
 25 decrees of the courts of this state having jurisdiction,

1 which purport to adjudicate the waters of a stream or its
 2 tributaries, and a fair, reasonable, equitable
 3 reconciliation shall be made between the claimants asserting
 4 rights under different decrees and between decreed rights
 5 and asserted rights of appropriation not adjudicated by any
 6 court.

7 (4) The department, at its discretion, may hold
 8 hearings relating to the rights of respective claimants
 9 after first giving such notice as it deems appropriate, and
 10 make findings of the date and quantity of appropriation and
 11 use of all claimants which the department will recognize and
 12 observe in diverting the waters which it owns. The
 13 department may police and distribute to the owner of the
 14 recognized appropriation the waters due him upon request and
 15 under terms agreed upon.

16 (5) The department, when engaged in controlling and
 17 dividing the natural flow of a stream under the authority
 18 granted by this act, is exercising a police power of the
 19 state, and water commissioners appointed by any court may
 20 not deprive the department of any of the waters owned or
 21 administered under agreement with respective owners, but the
 22 owner of a prior right contending that the department is not
 23 recognizing and respecting the appropriation may resort to a
 24 court for the purpose of determining whether or not the
 25 rights of the claimant have been invaded, and the department

1 shall observe the terms of the final decree.

2 (6) When the department impounds or acquires the right
3 of appropriation of the waters of a stream, it may divert or
4 authorize the diversion at any point on the stream, or any
5 portion thereof, when it is done without injury to a prior
6 appropriator.

7 (7) This act does not repeal or amend an existing
8 statute pertaining to the appropriation or use of water
9 except as expressly provided in this act, and this act does
10 not interfere with vested rights to the use of water.

11 (8) In addition to the powers conferred on the
12 department elsewhere in this chapter, the department may
13 acquire water by purchase option or agreement with any
14 public or private entity for the purpose of sale, rent, or
15 distribution for industrial use. In such cases, the
16 department is not required to construct any diversion or
17 appropriation facilities or works, and it may sell, rent, or
18 distribute such water at such rates and under such terms and
19 conditions as it considers appropriate."

20 Section 2. This act is effective upon its passage and
21 approval.

-End-

Approved by Committee
on Agriculture Livestock
& Irrigation

1 SENATE BILL NO. 338
2 INTRODUCED BY ROBERTS
3 (BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES)
4
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9 FORT PECK RESERVOIR AND AT SUCH RATES AND UNDER SUCH
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11 EFFECTIVE DATE."
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19 natural flow of the waters of this state which it may
20 acquire, with the approval of the board, by condemnation,
21 purchase, exchange, appropriation or agreement.
22 (2) For the purpose of regulating the diversion of
23 those waters, the department may enter upon the means and
24 place of use of all appropriators for making surveys of
25 respective rights and seasonal needs.

SECOND READING

1 (3) The department may take into consideration the
2 decrees of the courts of this state having jurisdiction,
3 which purport to adjudicate the waters of a stream or its
4 tributaries, and a fair, reasonable, equitable
5 reconciliation shall be made between the claimants asserting
6 rights under different decrees and between decreed rights
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18 (5) The department, when engaged in controlling and
19 dividing the natural flow of a stream under the authority
20 granted by this act, is exercising a police power of the
21 state, and water commissioners appointed by any court may
22 not deprive the department of any of the waters owned or
23 administered under agreement with respective owners, but the
24 owner of a prior right contending that the department is not
25 recognizing and respecting the appropriation may resort to a

1 court for the purpose of determining whether or not the
2 rights of the claimant have been invaded, and the department
3 shall observe the terms of the final decree.

4 (6) When the department impounds or acquires the right
5 of appropriation of the waters of a stream, it may divert or
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7 portion thereof, when it is done without injury to a prior
8 appropriator.

9 (7) This act does not repeal or amend an existing
10 statute pertaining to the appropriation or use of water
11 except as expressly provided in this act, and this act does
12 not interfere with vested rights to the use of water.

13 (8) In addition to the powers conferred on the
14 department elsewhere in this chapter, the department may
15 acquire water by purchase option or agreement with ~~any~~
16 ~~public--or--private--entity~~ THE FEDERAL GOVERNMENT FROM THE
17 FORT PECK RESERVOIR for the purpose of sale, rent, or
18 distribution for industrial use. In such cases, the
19 department is not required to construct any diversion or
20 appropriation facilities or works, and it may sell, rent, or
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23 Section 2. This act is effective upon its passage and
24 approval.

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