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Senate BILL NO. 383
Boylan *Stony* *Furness* *Woolly*

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA WATER USE ACT TO CLARIFY EXISTING WATER RIGHTS; THE TRANSFER OF RIGHTS, CHANGES IN APPROPRIATION RIGHTS, AND THE ABANDONMENT OF RIGHTS; AMENDING SECTIONS 89-872, 89-893, AND 89-894, R.C.M. 1947; REPEALING SECTIONS 89-892 AND 89-895, R.C.M. 1947."

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

Section 1. Section 89-872, R.C.M. 1947, is amended to read as follows:

"89-872. Declarations of existing rights. (1) Any court decree adjudicating water rights in a proceeding commenced prior to July 1, 1974, shall be final and conclusive as to all existing rights thereby adjudicated. Upon receipt of a certified copy of any such court decree, the department shall file the decree and record such rights in the centralized record system established for such purpose.

~~††~~ (2) As to all other rights, the ~~The~~ department shall make an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one

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(1) year after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(a) The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this act, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

~~††~~ (3) A declaration shall be made under oath by each person claiming an existing right to use water within

1 the specified area or from the specified source on a form
 2 provided by the department. The department shall make the
 3 forms available through its offices and the offices of the
 4 county clerks and recorders. The information required by the
 5 department may include, but is not limited to, the date of
 6 appropriation, the date the water was first applied to a
 7 beneficial use, the amount of water appropriated, the
 8 purpose of the appropriation, the place and means of
 9 diversion, the place of use, the time during which the water
 10 is diverted and used each year, and a true copy or the
 11 docket number of any judicial decree, notice, or other claim
 12 or evidence upon which the existing right was initiated or
 13 is based.

14 ~~(3)~~ (4) Declarations shall be sent to the department
 15 by certified mail, with a return receipt requested. The
 16 return receipt is conclusive evidence of receipt, by the
 17 department, of the declaration."

18 Section 2. Section 89-893, R.C.M. 1947, is amended to
 19 read as follows:

20 "89-893. Transfer of appropriation right. ~~(1)~~ The
 21 right to use water under a permit or certificate of water
 22 right shall pass with a conveyance of the land, or transfer
 23 by operation of law, unless specifically exempted therefrom.
 24 All transfers of interests in appropriation rights shall be
 25 without loss of priority.

1 ~~(2)~~--The person receiving the appropriation interest
 2 shall file with the department notice of the transfer on a
 3 form prescribed by the department.

4 ~~(3)~~--An appropriator may not sever all or any part of
 5 an appropriation right from the land to which it is
 6 appurtenant, or sell the appropriation right for other
 7 purposes or to other lands, or make the appropriation right
 8 appurtenant to other lands, without obtaining prior approval
 9 from the department. The department shall approve the
 10 proposed change if it determines that the proposed change
 11 will not adversely affect the rights of other persons. If
 12 the department determines that the proposed change might
 13 adversely affect the rights of other persons, notice of the
 14 proposed change shall be given in accordance with section
 15 89-881. If the department then determines that an objection
 16 filed by a person whose rights may be affected states a
 17 valid objection to the proposed change, the department shall
 18 hold a hearing thereon prior to its approval or denial of
 19 the proposed change. Objections shall meet the requirements
 20 of section 89-882 ~~(2)~~ and hearings shall be held in
 21 accordance with section 89-883."

22 Section 3. Section 89-894, R.C.M. 1947, is amended to
 23 read as follows:

24 "89-894. Abandonment of appropriation right. ~~(1)~~ If
 25 an appropriator ceases to use all or a part of his

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

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

14 ~~{3}--This-section-does-not--apply--to--existing--rights~~
15 ~~until--they--have--been--determined--in-accordance-with-this~~
16 ~~act."~~

17 Section 4. Sections 89-892 and 89-895, R.C.M. 1947,
18 are repealed.

-End-

SB 383

Approved by Committee
on Agriculture Livestock
& Irrigation

1 SENATE BILL NO. 383
 2 INTRODUCED BY BOYLAN, STORY, TURNAGE, MANLEY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
 5 WATER USE ACT TO CLARIFY EXISTING WATER RIGHTS; THE TRANSFER
 6 OF RIGHTS, CHANGES IN APPROPRIATION RIGHTS, AND THE
 7 ABANDONMENT OF RIGHTS; AMENDING SECTIONS 89-872, 89-893, AND
 8 89-894, R.C.M. 1947; REPEALING SECTIONS 89-892 AND 89-895,
 9 R.C.M. 1947."
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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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 13 read as follows:
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 15 court decree adjudicating water rights in a proceeding
 16 commenced prior to July 1, 1974, shall be final and
 17 conclusive as to all existing rights thereby adjudicated.
 18 Upon receipt of a certified copy of any such court decree,
 19 the department shall file the decree and record such rights
 20 in the centralized record system established for such
 21 purpose AND SHALL ISSUE TO EACH PERSON DECREED AN EXISTING
 22 RIGHT A CERTIFICATE OF WATER RIGHT. THE ORIGINAL OF THE
 23 CERTIFICATE SHALL BE SENT TO THE COUNTY CLERK AND RECORDER,
 24 IN THE COUNTY WHERE THE POINT OF DIVERSION OR PLACE OF USE
 25 IS LOCATED, FOR RECORDATION. THE DEPARTMENT SHALL KEEP A

1 COPY OF THE CERTIFICATE IN ITS OFFICE IN HELENA. AFTER
 2 RECORDATION, THE CLERK AND RECORDER SHALL SEND THE
 3 CERTIFICATE TO THE PERSON TO WHOM THE RIGHT IS DECREED.
 4 ~~(1)~~ (2) As to all other rights, the ~~the~~ department
 5 shall make an order requiring each person claiming an
 6 existing right within a specified area or from a specified
 7 source to file a declaration of existing right within one
 8 (1) year after the effective date of the order. The
 9 department shall publish notice of the order once a week for
 10 four (4) consecutive weeks prior to its effective date in a
 11 newspaper of general circulation in the affected area.
 12 Before the last date of publication, the department shall
 13 also serve a copy of the order by certified mail upon each
 14 appropriator or his successor in interest within the
 15 specified area or from the specified source who has
 16 requested mailed notice of the order or of whom the
 17 department can readily obtain knowledge, and to each person
 18 owning or being possessed of lands bordering on the stream
 19 or source as ascertained from the land ownership records of
 20 the appropriate county. The department shall file in its
 21 records proof of service of the notice by affidavit of the
 22 publisher in the case of notice by publication, and by its
 23 own affidavit in the case of service by mail.
 24 (a) The department of fish and game may represent the
 25 public for purposes of establishing any prior and existing

1 public recreational use in existing right determinations
2 under this act, provided that the foregoing shall not be
3 construed in any manner as a legislative determination of
4 whether or not a recreational use sought to be established
5 prior to July 1, 1973, is or was a beneficial use.

6 ~~(2)~~ (3) A declaration shall be made under oath by
7 each person claiming an existing right to use water within
8 the specified area or from the specified source on a form
9 provided by the department. The department shall make the
10 forms available through its offices and the offices of the
11 county clerks and recorders. The information required by the
12 department may include, but is not limited to, the date of
13 appropriation, the date the water was first applied to a
14 beneficial use, the amount of water appropriated, the
15 purpose of the appropriation, the place and means of
16 diversion, the place of use, the time during which the water
17 is diverted and used each year, and a true copy or the
18 docket number of any judicial decree, notice, or other claim
19 or evidence upon which the existing right was initiated or
20 is based.

21 ~~(3)~~ (4) Declarations shall be sent to the department
22 by certified mail, with a return receipt requested. The
23 return receipt is conclusive evidence of receipt, by the
24 department, of the declaration."

25 Section 2. Section 89-893, R.C.M. 1947, is amended to

1 read as follows:

2 "89-893. Transfer of appropriation right. ~~(1)~~ (1) The
3 right to use water under a permit or certificate of water
4 right shall pass with a conveyance of the land, or transfer
5 by operation of law, unless specifically exempted therefrom.
6 All transfers of interests in appropriation rights shall be
7 without loss of priority.

8 (2) IF AN APPROPRIATOR SHALL SEVER ALL OR ANY PART OF
9 AN APPROPRIATION RIGHT FROM THE LAND TO WHICH IT IS
10 APPURTENANT, OR SELL THE APPROPRIATION RIGHT FOR OTHER
11 PURPOSES FOR ANY BENEFICIAL PURPOSE, OR TO OTHER LANDS, OR
12 MAKE THE APPROPRIATION RIGHT APPURTENANT TO OTHER LANDS THE
13 APPROPRIATOR SHALL WITHIN NINETY (90) DAYS OF SUCH
14 SEVERANCE, SALE OR TRANSFER, NOTIFY THE DEPARTMENT OF SUCH
15 ACTION.

16 ~~(2)--The--person--receiving--the--appropriation--interest~~
17 ~~shall--file--with--the--department--notice--of--the--transfer--on--a~~
18 ~~form--prescribed--by--the--department.~~

19 ~~(3)--An--appropriator--may--not--sever--all--or--any--part--of~~
20 ~~an--appropriation--right--from--the--land--to--which--it--is~~
21 ~~appurtenant,--or--sell--the--appropriation--right--for--other~~
22 ~~purposes--or--to--other--lands,--or--make--the--appropriation--right~~
23 ~~appurtenant--to--other--lands,--without--obtaining--prior--approval~~
24 ~~from--the--department.--The--department--shall--approve--the~~
25 ~~proposed--change--if--it--determines--that--the--proposed--change~~

1 will not adversely affect the rights of other persons; if
 2 the department determines that the proposed change might
 3 adversely affect the rights of other persons, notice of the
 4 proposed change shall be given in accordance with section
 5 89-881. If the department then determines that an objection
 6 filed by a person whose rights may be affected states a
 7 valid objection to the proposed change, the department shall
 8 hold a hearing thereon prior to its approval or denial of
 9 the proposed change. Objections shall meet the requirements
 10 of section 89-882 (2) and hearings shall be held in
 11 accordance with section 89-883."

12 Section 3. Section 89-894, R.C.M. 1947, is amended to
 13 read as follows:

14 "89-894. Abandonment of appropriation right. (1) If
 15 an appropriator ceases to use all or a part of his
 16 appropriation right with the intention of wholly or
 17 partially abandoning the right, or if he ceases using his
 18 appropriation right according to its terms and conditions
 19 with the intention of not complying with those terms and
 20 conditions, the appropriation right shall, to that extent,
 21 be deemed considered abandoned and shall immediately expire;
 22 BUT QUESTIONS OF ABANDONMENT SHALL BE QUESTIONS OF FACT, AND
 23 SHALL BE DETERMINED AS OTHER QUESTIONS OF FACT.

24 (2) If an appropriator ceases to use all or part of
 25 his appropriation right, or ceases using his appropriation

1 right according to its terms and conditions, for a period of
 2 ten (10) successive years, and there was water available for
 3 his use, there shall be a prima facie presumption that the
 4 appropriator has abandoned his right in whole or for the
 5 part not used.

6 (3) This section does not apply to existing rights
 7 until they have been determined in accordance with this
 8 act."

9 Section 4. Sections 89-892 and 89-895, R.C.M. 1947,
 10 are repealed.

-End-