

1 *Senate* BILL NO. 395  
 2 INTRODUCED BY *Roberts*  
 3 *Dept. of Natural Resources*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
 5 WATER USE ACT BY PROVIDING ADDITIONAL DEFINITIONS; DELETING  
 6 THE PROVISION THAT A USE OF WATER FOR SLURRY TO EXPORT COAL  
 7 IS NOT A BENEFICIAL USE; DELETING THE POWER OF THE BOARD OF  
 8 NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES GOVERNING  
 9 INTERIM APPROVAL OF A CHANGE OF AN APPROPRIATION RIGHT;  
 10 PROVIDING THAT THE DEPARTMENT SHALL CEASE ACTION ON  
 11 APPLICATIONS NOT IN GOOD FAITH OR NOT SHOWING A BONA FIDE  
 12 INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; REQUIRING  
 13 THE DISTRICT COURT RATHER THAN THE DEPARTMENT TO ISSUE THE  
 14 ORDER REQUIRING CLAIMANTS OF EXISTING RIGHTS TO FILE  
 15 DECLARATIONS; CLARIFYING THE PRIORITY DATE FOR CONVERTED OIL  
 16 OR GAS WELLS; ALLOWING SUSPENSION OF PUBLICATION OF NOTICE  
 17 OF CERTAIN PERMIT APPLICATIONS; PROVIDING FOR EXTENSION OF  
 18 TIME TO ACT ON AN APPLICATION; CLARIFYING THE PRIORITY DATE  
 19 FOR RESERVATIONS OF WATER; CLARIFYING THE PROCEDURE TO BE  
 20 FOLLOWED IN THE COURTS' SUPERVISION OF WATER DISTRIBUTION;  
 21 PROVIDING A NEW SECTION FOR ADMINISTRATIVE ENFORCEMENT OF  
 22 THE ACT; REQUIRING NOTIFICATION PRIOR TO HEARINGS BEFORE THE  
 23 BOARD; SPECIFYING THE APPLICABILITY OF THE RULES OF EVIDENCE  
 24 IN ADMINISTRATIVE HEARINGS; PROVIDING A SAVING CLAUSE;  
 25 AMENDING SECTIONS 89-867, 89-869, 89-872 THROUGH 89-876,

INTRODUCED BILL

1 89-880, 89-881, 89-884, 89-890, 89-896, 89-8-100, AND  
 2 89-8-101, R.C.M. 1947; AND PROVIDING FOR AN IMMEDIATE  
 3 EFFECTIVE DATE."  
 4  
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 6 Section 1. Section 89-867, R.C.M. 1947, is amended to  
 7 read as follows:  
 8 "89-867. Definitions. Unless the context requires  
 9 otherwise, in this act chapter:  
 10 (1) "Water" means all water of the state, surface and  
 11 subsurface, regardless of its character or manner of  
 12 occurrence, including geothermal water.  
 13 (2) "Beneficial use" means a use of water for the  
 14 benefit of the appropriator, other persons, or the public,  
 15 including, but not limited to, agricultural (including stock  
 16 water), domestic, fish and wildlife, industrial, irrigation,  
 17 mining, municipal power, and recreational uses; ~~provided,~~  
 18 ~~however, that a use of water for slurry to export coal from~~  
 19 ~~Montana is not a beneficial use. Slurry is a mixture of~~  
 20 ~~water and insoluble matter.~~  
 21 (3) "Appropriate" means to divert, impound, or  
 22 withdraw (including by stock for stock water) a quantity of  
 23 water, or in the case of a public agency to reserve water in  
 24 accordance with section 89-890.  
 25 (4) "Existing right" means a right to the use of water

1 which would be protected under the law as it existed prior  
2 to ~~the effective date of this act~~ July 1, 1973.

3 (5) "Groundwater" means any water beneath the land  
4 surface or beneath the bed of a stream, lake, reservoir, or  
5 other body of surface water, and which is not a part of that  
6 surface water.

7 (6) "Well" means any artificial opening or excavation  
8 in the ground, however made, by which groundwater is sought  
9 or through which it flows under natural pressures or is  
10 artificially withdrawn.

11 (7) "Permit" means the permit to appropriate issued by  
12 the department under sections 89-880 through 89-887.

13 (8) "Certificate" means the certificate of water right  
14 issued by the department under sections 89-879, 89-880  
15 ~~(4)-(5)~~, and 89-868.

16 (9) "Declaration" means the declaration of an existing  
17 right filed with the department under section 89-872.

18 (10) "Waste" means the unreasonable loss of water  
19 through the design or negligent operation of an  
20 appropriation or water distribution facility, or the  
21 application of water to anything but a beneficial use.

22 (11) "Political subdivision means any county,  
23 incorporated city or town, public corporation or district  
24 created pursuant to state law, or other public body of the  
25 state empowered to appropriate water, but not a private

1 corporation, association, or group.

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

5 ~~(12)-(13)~~ "Department" means the department of natural  
6 resources and conservation provided for in Title 82A,  
7 chapter 15.

8 ~~(13)-"Director" means the director of natural resources~~  
9 ~~and conservation, a position provided for in section~~  
10 ~~82A-1510.~~

11 (14) "Board" means the board of natural resources and  
12 conservation provided for in section 82A-1509.

13 (15) "Act" means the Montana Water Use Act and any  
14 subsequent amendments or additions thereto."

15 Section 2. Section 89-869, R.C.M. 1947, is amended to  
16 read as follows:

17 "89-869. Powers and duties of board. (1) The board may  
18 prescribe fees or service charges for any public service  
19 rendered by the department under this act or under Title 89,  
20 chapter 29, including fees for the filing of applications or  
21 for the issuance of permits and certificates. There shall be  
22 no fees for the filing of declarations or for the issuance  
23 of certificates of existing rights.

24 (2) The board may adopt rules necessary to implement  
25 and carry out the purposes and provisions of this act. These

1 rules may include, but are not limited to, rules to:  
 2 (a) govern the issuance and terms of interim permits  
 3 authorizing an applicant for a regular permit under this act  
 4 to begin appropriating water immediately, pending final  
 5 approval or denial by the department of the application for  
 6 a regular permit;  
 7 (b) require the owner or operator of appropriation  
 8 facilities to install and maintain suitable controlling and  
 9 measuring devices;  
 10 (c) require the owner or operator of appropriation  
 11 facilities to report to the department the readings of  
 12 measuring devices at reasonable intervals, and to file  
 13 reports on appropriations; and  
 14 (d) regulate the construction, use and sealing of  
 15 wells to prevent the waste, contamination or pollution of  
 16 groundwater; and  
 17 ~~(e) govern the issuance and terms of interim approval~~  
 18 ~~authorizing an appropriator to change his appropriation~~  
 19 ~~right immediately pending final approval or denial by the~~  
 20 ~~department of the application for a proposed change in~~  
 21 ~~accordance with section 89-892.~~  
 22 (3) The board shall adopt rules providing for and  
 23 governing temporary emergency appropriations, without prior  
 24 application for a permit, necessary to protect lives or  
 25 property."

1 Section 3. Section 89-872, R.C.M. 1947, is amended to  
 2 read as follows:  
 3 "89-872. Declarations of existing rights. (1) The  
 4 department shall obtain from the district court make an  
 5 order pursuant to section 89-873 requiring each person  
 6 claiming an existing right within a specified area or from a  
 7 specified source to file a declaration of existing right  
 8 within one (1) year after the effective date of the order.  
 9 The department shall publish notice of the order once a week  
 10 for four (4) consecutive weeks prior to its effective date  
 11 in a 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

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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) A declaration shall be made under oath by each  
 7 person claiming an existing right to use water within the  
 8 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) Declarations shall be sent to the department by  
 22 certified mail, with a return receipt requested. The return  
 23 receipt is conclusive evidence of receipt, by the  
 24 department, of the declaration."

25 Section 4. Section 89-873, R.C.M. 1947, is amended to

1 read as follows:

2 "89-873. Filing of petition. (1) ~~The department shall,~~  
 3 ~~within a reasonable time after gathering all data necessary~~  
 4 ~~under section 7-{89-871} of this act, file a petition for~~  
 5 ~~determination of existing rights in the source or area~~  
 6 ~~specified in the order made under section 8-{89-872}. The~~  
 7 ~~department shall file the petition in the district court of~~  
 8 ~~the judicial district in which the source or area is~~  
 9 ~~located.~~ Proceedings for the determination of existing  
 10 rights shall be commenced by the department in the district  
 11 court of the judicial district in which the source or area  
 12 is located. The department shall request by petition, and  
 13 the district court shall issue an order requiring each  
 14 person claiming an existing right within a specified area or  
 15 from a specified source to file a declaration as provided in  
 16 section 89-872.

17 (2) If the source or area is in two (2) or more  
 18 judicial districts, the department shall notify the district  
 19 court of each of the judicial districts of its intent to  
 20 file the petition. Within thirty (30) days of receipt of the  
 21 notice, the judges of those district courts shall agree on  
 22 which district judge shall hear receive the petition and  
 23 shall notify the department of their decision. If the  
 24 district judges fail to agree or to notify the department,  
 25 the department shall file the petition in the district court

1 of the judicial district in which it determines that the  
 2 greatest number of persons--named--in--the--petition--reside  
 3 existing rights are likely to be located."

4 Section 5. Section 89-874, R.C.M. 1947, is amended to  
 5 read as follows:

6 "89-874. Contents of petition. (1) Within a reasonable  
 7 time after gathering all data necessary under section  
 8 89-871, The--petition the department shall state file with  
 9 the district court the names of all persons who have filed  
 10 declarations under section ~~8-89-872~~~~of-this-act~~ and of all  
 11 other persons who appear from the data gathered by the  
 12 department to have existing rights to the use of waters  
 13 within the specified area or from the specified source.

14 (2) The department shall also file with the petition  
 15 district court all data gathered under section ~~7-89-871~~~~of~~  
 16 ~~this-act~~.

17 (3) If the district court determines that additional  
 18 data is necessary prior to issuing the preliminary decree in  
 19 order to determine the extent of an existing right, it may  
 20 direct the department or the person claiming the right to  
 21 obtain the necessary data."

22 Section 6. Section 89-875, R.C.M. 1947, is amended to  
 23 read as follows:

24 "89-875. Preliminary decree. (1) Within a reasonable  
 25 time after the ~~filing--of-a-petition-for-determination-of~~

1 ~~existing-rights~~ department files with the district court the  
 2 material required by section 89-874, the court shall issue a  
 3 preliminary decree. The preliminary decree shall be based on  
 4 the data submitted ~~with-the-petition~~ by the department and  
 5 on any additional data obtained by the court.

6 (2) The preliminary decree shall contain the  
 7 information, and make the determinations, findings, and  
 8 conclusions, required for the final decree under section ~~19~~  
 9 ~~89-877~~~~of-this-act~~.

10 (3) The district court shall send a copy of the  
 11 preliminary decree by certified mail with return receipt  
 12 requested to the department and to each person named in the  
 13 ~~petition--filed~~ material submitted under section ~~9-89-873~~  
 14 ~~89-874 of-this-act~~ or named in the preliminary decree. The  
 15 return receipt shall be appended to the preliminary decree.  
 16 The costs of mailing the copies shall be paid by the  
 17 department.

18 (4) A person named in the petition material or in the  
 19 preliminary decree may inspect the data upon which the  
 20 decree is based at any time, and he may purchase copies of  
 21 any of the data."

22 Section 7. Section 89-876, R.C.M. 1947, is amended to  
 23 read as follows:

24 "89-876. Hearing on preliminary decree. (1) The  
 25 department or a person named in the petition material filed

1 under section ~~9-169-873~~ 89-874 ~~of this act~~ or named in the  
2 preliminary decree, or any other person for good cause  
3 shown, who objects to the preliminary decree is entitled to  
4 a hearing thereon before the district court.

5 (2) A request for a hearing shall be filed with the  
6 district court, and a copy served on the department by  
7 certified mail, within ninety (90) days after receipt of the  
8 preliminary decree. The district court shall, for good cause  
9 shown, reasonably extend this time limit if application for  
10 the extension is made within ninety (90) days after receipt  
11 of the preliminary decree. A person requesting a hearing on  
12 his objections to the preliminary decree shall also serve,  
13 by certified mail with return receipt requested, a copy of  
14 his request on any person whose rights or priorities will be  
15 affected if the objections are sustained in the hearing. The  
16 rights and priorities of a person who is not served shall  
17 not be affected by the result of the hearing.

18 (3) The request for a hearing shall contain a precise  
19 statement of the findings and conclusions, in the  
20 preliminary decree, with which the person requesting the  
21 hearing disagrees. The request shall specify the paragraphs  
22 and pages containing the findings and conclusions to which  
23 objection is made. The request shall state the specific  
24 grounds and evidence on which the objections are based. The  
25 request shall also state the names of all other persons on

1 whom it is served.

2 (4) If more than one person requests a hearing on  
3 objections to the preliminary decree, the court may in its  
4 discretion hold a single hearing. Each hearing shall be  
5 conducted as are other civil actions, but the parties to the  
6 hearing may by agreement and with the court's permission  
7 waive any of the procedural or evidentiary rules, or may  
8 submit only written evidence. Only evidence which is  
9 referred to in a request may be introduced in a hearing.

10 (5) In each hearing, the department shall be a party  
11 and is entitled to be heard on objections made by any  
12 person. The department shall be granted adequate time, prior  
13 to a hearing, to gather evidence pertinent to any objection  
14 to be heard in the hearing."

15 Section 8. Section 89-880, R.C.M. 1947, is amended to  
16 read as follows:

17 "89-880. Right to appropriate -- application for  
18 permit. (1) After ~~the--effective-date-of-this-act~~ July 1,  
19 1973, a person may not appropriate water except as provided  
20 in this act. A person may only appropriate water for a  
21 beneficial use. A right to appropriate water may not be  
22 acquired by any other method, including by adverse use,  
23 adverse possession, prescription or estoppel; the method  
24 prescribed by this act is exclusive.

25 (2) Except as otherwise provided in subsection ~~(4)~~ (5)

1 of this section, a person may not appropriate water or  
 2 commence construction of diversion, impoundment, withdrawal,  
 3 or distribution works therefore except by applying for and  
 4 receiving a permit from the department. The application  
 5 shall be made on a form prescribed by the department. The  
 6 department shall make the forms available through its  
 7 offices and the offices of the county clerks and recorders.  
 8 The department shall return a defective application for  
 9 correction or completion together with the reasons for  
 10 returning it. An application does not lose priority of  
 11 filing because of defects, if the application is corrected,  
 12 completed and refiled with the department within thirty (30)  
 13 days after its return to the applicant, or within a further  
 14 time as the department may allow.

15 (3) The department may cease action upon an  
 16 application for a permit and return it to the applicant when  
 17 it finds that the application is not in good faith or does  
 18 not show a bona fide intent to appropriate water for a  
 19 beneficial use. An application returned for any of these  
 20 reasons shall be accompanied by a statement of the reasons  
 21 for which it was returned, and there shall be no right to a  
 22 priority date based upon the filing of the application.  
 23 Returning an application pursuant to this subsection shall  
 24 be deemed a final decision of the department.

25 ~~(3)~~--(4) A permit issued prior to a final

1 determination of existing rights is provisional and is  
 2 subject to that final determination. The amount of the  
 3 appropriation granted in a provisional permit shall be  
 4 reduced or modified where necessary to protect and guarantee  
 5 existing rights determined in the final decree. A person may  
 6 not obtain any vested right, to an appropriation obtained  
 7 under a provisional permit, by virtue of construction of  
 8 diversion works, purchase of equipment to apply water,  
 9 planting of crops, or other action, where the permit would  
 10 have been denied or modified if the final decree had been  
 11 available to the department.

12 ~~(4)~~--(5) Outside the boundaries of a controlled  
 13 groundwater area, a permit is not required before  
 14 appropriating groundwater by means of a well with a maximum  
 15 yield of less than one hundred (100) gallons a minute.  
 16 Within sixty (60) days of completion of the well, the  
 17 appropriator shall file notice of completion on a form  
 18 provided by the department at its offices and at the offices  
 19 of the county clerks and recorders. Upon receipt of the  
 20 notice, the department shall automatically issue a  
 21 certificate of water right. The original of the certificate  
 22 shall be sent to the county clerk and recorder, in the  
 23 county where the point of diversion or place of use is  
 24 located, for recordation. The department shall keep a copy  
 25 of the certificate in its office in Helena. After

1 recordation, the clerk and recorder shall send the  
2 certificate to the appropriator. The date of filing of the  
3 notice of completion is the date of priority of the right.

4 ~~(5)--(6) Persons--required-to-file-well-logs-and-other~~  
5 ~~information-under-the-laws-governing-the-conservation-of-oil~~  
6 ~~and-gas-and-who-do-so-in-compliance-with-those--laws--shall~~  
7 ~~be--considered--to--have--complied--with--all--of-the-filing~~  
8 ~~requirements-of-this-act-to-the-extent-it-applies--to--wells~~  
9 ~~subject--to--those--laws.-The-date-of-appropriation-shall-be~~  
10 ~~the-date-that-written-notice-of-intention-to-drill-is--given~~  
11 ~~to--the--board--of--oil--and--gas--conservation.~~ A person who  
12 desires to convert a nonproductive oil or gas well to a  
13 water well may do so immediately, but shall file a notice of  
14 completion or apply for a permit, depending on the maximum  
15 yield of the well, as otherwise provided in this act. The  
16 date of appropriation shall be the date of filing the notice  
17 of completion or the application for a permit.

18 ~~(6)--(7)~~ A person may also appropriate water, without  
19 applying for or prior to receiving a permit, under rules  
20 adopted by the board under section 89-869 of this act."

21 Section 9. Section 89-881, R.C.M. 1947, is amended to  
22 read as follows:

23 "89-881. Notice of application. (1) Upon receipt of a  
24 proper application for a permit, the department shall  
25 prepare a notice containing the facts pertinent to the

1 application and shall publish the notice in a newspaper of  
2 general circulation in the area of the source once a week  
3 for three (3) consecutive weeks. Before the last date of  
4 publication, the department shall also serve the notice by  
5 certified mail upon an appropriator of water or applicant  
6 for or holder of a permit who, according to the records of  
7 the department, may be affected by the proposed  
8 appropriation. A notice shall also be served upon any public  
9 agency that has reserved waters in the source under section  
10 26--{89-890}. The department may, in its discretion, also  
11 serve notice upon any state agency or other person the  
12 department feels may be interested in or affected by the  
13 proposed appropriation. The department shall file in its  
14 records proof of service by affidavit of the publisher in  
15 the case of notice by publication, and by its own affidavit  
16 in the case of service by mail.

17 (2) The notice shall state that by a date set by the  
18 department (not less than thirty (30) days nor more than  
19 sixty (60) days after the last date of publication) persons  
20 may file with the department written objections to the  
21 application.

22 (3) The requirements of subsections (1) and (2) of  
23 this section do not apply if the department finds, on the  
24 basis of information reasonably available to it, that the  
25 appropriation as proposed in the application will not



1 adversely affect the rights of other persons."

2 Section 10. Section 89-884, R.C.M. 1947, is amended to  
3 read as follows:

4 "89-884. Action on application. (1) The department  
5 shall grant, deny, or condition an application for a permit  
6 in whole or in part within one hundred twenty (120) days  
7 after the last date of publication of the notice of  
8 application if no hearing is held, and within one hundred  
9 eighty (180) days if a hearing is held; however, in either  
10 case the time may be extended upon agreement of the  
11 applicant, or, in extraordinary cases, not more than thirty  
12 (30) days upon order of the department. If the department  
13 orders the time extended it shall serve a notice of the  
14 extension and the reasons therefor by certified mail upon  
15 the applicant and each person who has filed an objection as  
16 provided by section 89-882.

17 (2) However, an application may not be approved in a  
18 modified form or upon terms, conditions, or limitations  
19 specified by the department, nor denied, unless the  
20 applicant is first granted an opportunity to be heard. If  
21 no objection is filed against the application, but the  
22 department is of the opinion that the application should be  
23 approved in a modified form or upon terms, conditions or  
24 limitations specified by it, or that the application should  
25 be denied, the department shall prepare a statement of its

1 opinion and the reasons therefor. The department shall serve  
2 a statement of its opinion by certified mail upon the  
3 applicant, together with a notice that the applicant may  
4 obtain a hearing by filing a request therefor within thirty  
5 (30) days after the notice is mailed. The notice shall  
6 further state that the application will be modified in a  
7 specified manner, or denied, unless a hearing is requested."

8 Section 11. Section 89-890, R.C.M. 1947, is amended to  
9 read as follows:

10 "89-890. Reservation of waters. (1) The state or any  
11 political subdivision or agency thereof, or the United  
12 States or any agency thereof, may apply to the board to  
13 reserve waters for existing or future beneficial uses, or to  
14 maintain a minimum flow, level, or quality of water  
15 throughout the year or at such periods or for such length of  
16 time as the board designates.

17 (2) Upon receiving an application, the department  
18 shall proceed in accordance with sections ~~17--through--19~~  
19 ~~{89-881 through 89-883}~~. After the hearing provided in  
20 section ~~19-{89-883}~~, the board shall decide whether to  
21 reserve the water for the applicant. The department's costs  
22 of giving notice, holding the hearing, conducting  
23 investigations, and making records, incurred in acting upon  
24 the application to reserve water, except the cost of  
25 salaries of the department's personnel, shall be paid by the

1 applicant.

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

5 (a) the purpose of the reservation;

6 (b) the need for the reservation;

7 (c) the amount of water necessary for the purpose of  
8 the reservation;

9 (d) that the reservation is in the public interest. If  
10 the purpose of the reservation requires construction of a  
11 storage or diversion facility, the applicant shall establish  
12 to the satisfaction of the board that there will be progress  
13 toward completion of the facility and accomplishment of the  
14 purpose with reasonable diligence in accordance with an  
15 established plan.

16 (4) After the adoption of an order reserving waters,  
17 the department may reject an application and refuse a permit  
18 for the appropriation of reserved waters, or may, with the  
19 approval of the board, issue the permit subject to such  
20 terms and conditions it considers necessary for the  
21 protection of the objectives of the reservation.

22 (5) A reservation under this section shall date from  
23 the date the order reserving the water is adopted by the  
24 board, and shall not adversely affect any rights in  
25 existence at that time when the order reserving waters is

1 ~~is adopted.~~

2 (6) The board shall, periodically but not less than  
3 every ten (10) years, review existing reservations to ensure  
4 that the objectives of the reservation are being met. Where  
5 the objectives of the reservation are not being met, the  
6 board may extend, revoke or modify the reservation."

7 Section 12. Section 89-896, R.C.M. 1947, is amended to  
8 read as follows:

9 "89-896. Supervision of water distribution. (1) ~~As of~~  
10 ~~the effective date of this act, the~~ The district courts  
11 shall supervise the distribution of water among all  
12 appropriators. This supervisory authority includes the  
13 supervision of all water commissioners appointed prior or  
14 subsequent to the effective date of this act. The  
15 supervision shall be governed by the principle that first in  
16 time is first in right.

17 (2) When a water distribution controversy arises upon  
18 a source of water in which existing rights have not been  
19 determined according to sections ~~6 through 15~~ {89-870  
20 through 89-379} ~~of this act, any party to the controversy~~  
21 may petition the district court for relief. the The  
22 department ~~may~~ shall be served with process in any  
23 proceeding under this subsection and shall, within a  
24 reasonable time thereafter, notify the court whether it  
25 intends in its discretion, within a reasonable time, to

1 begin proceedings to determine existing rights in the  
 2 source, in accordance with this act. The department may, if  
 3 it declines to commence proceedings to determine existing  
 4 rights in the source, intervene as a party in the  
 5 proceeding. The district court from which relief is sought  
 6 may grant such injunctive or other relief which is necessary  
 7 and appropriate to preserve property rights or the status  
 8 quo pending the department's decision whether to determine  
 9 existing rights in the source, or the department's decision  
 10 to intervene as a party, as the case may be. If the  
 11 department does not proceed to obtain a determination of  
 12 existing rights, the district court shall settle only the  
 13 controversy between the parties.

14 (3) A controversy between appropriators from a source  
 15 which has been the subject of a general determination of  
 16 existing rights under sections ~~6-through-15-~~89-870 through  
 17 89-879 ~~of this act~~ shall be settled by the district court  
 18 which issued the final decree. The order of the district  
 19 court settling the controversy may not alter the existing  
 20 rights and priorities established in the final decree. In  
 21 cases involving permits issued by the department, the court  
 22 may not amend the respective rights established in the  
 23 permits or alter any terms of the permits unless the permits  
 24 are inconsistent or interfere with rights and priorities  
 25 established in the final decree. The order settling the

1 controversy shall be appended to the final decree, and a  
 2 copy shall be filed with the department. The department  
 3 shall be served with process in any proceeding under this  
 4 subsection, and the department may, in its discretion,  
 5 intervene in the proceeding.

6 ~~(4)---The department shall be named as a party in any~~  
 7 ~~proceeding under this section and shall be served with~~  
 8 ~~process."~~

9 Section 13. There is a new R.C.M. section numbered  
 10 89-879.1 that reads as follows:

11 89-879.1. Enforcement. (1) A person may not waste  
 12 water, prevent water from moving to another person having a  
 13 prior right to use the same, or otherwise use water  
 14 unlawfully.

15 (2) If the department ascertains by a means reasonably  
 16 considered sufficient by it that a person is violating  
 17 subsection (1) of this section or is otherwise violating any  
 18 provision of this act or a rule made pursuant thereto, it  
 19 may cause written notice to be served on the alleged  
 20 violator. The notice shall specify the provision of this  
 21 act or rule alleged to be violated, and the facts alleged to  
 22 constitute a violation, and it may order the violator to  
 23 take necessary corrective action within a reasonable period  
 24 of time stated in the order. The order becomes final  
 25 unless, no later than thirty (30) days after the date the

1 notice is received, the person named requests in writing a  
2 hearing before the department. Not more than fifteen (15)  
3 days after receipt of the request, the department shall hold  
4 a hearing.

5 (3) If, after a hearing held under subsection (1) of  
6 this section, the department finds that a violation has  
7 occurred, it shall either affirm or modify the order  
8 previously issued, or issue an appropriate order for the  
9 prevention or abatement of the violation involved or for the  
10 taking of other corrective action it considers appropriate.  
11 If, after hearing on an order contained in a notice, the  
12 department finds that no violation is occurring, it shall  
13 rescind the order. An order issued as part of a notice or  
14 after hearing may prescribe the date by which the violation  
15 shall cease and may prescribe time limits for particular  
16 action in preventing, abating, or controlling the violation.

17 (4) The department may direct its own attorney, or  
18 request the attorney general or the county attorney to  
19 enforce orders issued pursuant to this section by  
20 appropriate judicial proceedings.

21 (5) This act does not prevent the department from  
22 making efforts to obtain voluntary compliance through  
23 warning, conference, or any other appropriate means.

24 Section 14. Section 89-8-100, R.C.M. 1947, is amended  
25 to read as follows:

1 "89-8-100. Hearings before board -- Administrative  
2 Procedure Act. (1) A person who is aggrieved by a final  
3 decision of the department under this act is entitled to a  
4 hearing before the board. A person desiring a hearing  
5 before the board pursuant to this section shall notify the  
6 department in writing within ten (10) days of the final  
7 decision.

8 (2) The Montana Administrative Procedure Act (Title  
9 82, chapter 42, R.C.M. 1947) governs administrative  
10 proceedings conducted under this act, except that the common  
11 law and statutory rules of evidence shall apply only upon  
12 stipulation of all parties to a proceeding."

13 Section 15. Section 89-8-101, R.C.M. 1947, is amended  
14 to read as follows:

15 "89-8-101. Penalties. A person who violates or refuses  
16 or neglects to comply with sections ~~16-117-28-117~~ and 29  
17 129-880 (1), 89-892 (1), and 89-893 (3), and 89-897.1 ~~†~~  
18 ~~of this act~~, or of any order of the department, or of any  
19 rule of the board, is guilty of a misdemeanor."

20 Section 16. There is a new R.C.M. section numbered  
21 89-8-102.1 that reads as follows:

22 "89-8-102.1. Saving clause. Nothing in this act abates  
23 or otherwise adversely affects the validity of any filing,  
24 notice, or judicial proceeding commenced under the law as it  
25 existed before July 1, 1973.

1       Section 17. This act applies to applications currently  
2 pending with the department, as well as applications filed  
3 with the department after the effective date of this act.

4       Section 18. This act is effective upon its passage and  
5 approval.

-End-

Approved by Committee  
on Agriculture Livestock  
& Irrigation

1 Senate BILL NO. 395  
 2 INTRODUCED BY Roberts  
 3 Dept. of Natural Resources  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
 5 WATER USE ACT BY PROVIDING ADDITIONAL DEFINITIONS; DELETING  
 6 THE PROVISION THAT A USE OF WATER FOR SLURRY TO EXPORT COAL  
 7 IS NOT A BENEFICIAL USE; DELETING THE POWER OF THE BOARD OF  
 8 NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES GOVERNING  
 9 INTERIM APPROVAL OF A CHANGE OF AN APPROPRIATION RIGHT;  
 10 PROVIDING THAT THE DEPARTMENT SHALL CEASE ACTION ON  
 11 APPLICATIONS NOT IN GOOD FAITH OR NOT SHOWING A BONA FIDE  
 12 INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; REQUIRING  
 13 THE DISTRICT COURT RATHER THAN THE DEPARTMENT TO ISSUE THE  
 14 ORDER REQUIRING CLAIMANTS OF EXISTING RIGHTS TO FILE  
 15 DECLARATIONS; CLARIFYING THE PRIORITY DATE FOR CONVERTED OIL  
 16 OR GAS WELLS; ALLOWING SUSPENSION OF PUBLICATION OF NOTICE  
 17 OF CERTAIN PERMIT APPLICATIONS; PROVIDING FOR EXTENSION OF  
 18 TIME TO ACT ON AN APPLICATION; CLARIFYING THE PRIORITY DATE  
 19 FOR RESERVATIONS OF WATER; CLARIFYING THE PROCEDURE TO BE  
 20 FOLLOWED IN THE COURTS' SUPERVISION OF WATER DISTRIBUTION;  
 21 PROVIDING A NEW SECTION FOR ADMINISTRATIVE ENFORCEMENT OF  
 22 THE ACT; REQUIRING NOTIFICATION PRIOR TO HEARINGS BEFORE THE  
 23 BOARD; SPECIFYING THE APPLICABILITY OF THE RULES OF EVIDENCE  
 24 IN ADMINISTRATIVE HEARINGS; PROVIDING A SAVING CLAUSE;  
 25 AMENDING SECTIONS 89-867, 89-869, 89-872 THROUGH 89-876,

1 89-880, 89-881, 89-884, 89-890, 89-896, 89-8-100, AND  
 2 89-8-101, R.C.M. 1947; AND PROVIDING FOR AN IMMEDIATE  
 3 EFFECTIVE DATE."

4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Section 89-867, R.C.M. 1947, is amended to  
7 read as follows:

8 "89-867. Definitions. Unless the context requires  
9 otherwise, in this act chapter:

10 (1) "Water" means all water of the state, surface and  
11 subsurface, regardless of its character or manner of  
12 occurrence, including geothermal water.

13 (2) "Beneficial use" means a use of water for the  
14 benefit of the appropriator, other persons, or the public,  
15 including, but not limited to, agricultural (including stock  
16 water), domestic, fish and wildlife, industrial, irrigation,  
17 mining, municipal power, and recreational uses, ~~provided,~~  
18 ~~however, that a use of water for slurry to export coal from~~  
19 ~~Montana is not a beneficial use; slurry is a mixture of~~  
20 ~~water and insoluble matter.~~

21 (3) "Appropriate" means to divert, impound, or  
22 withdraw (including by stock for stock water) a quantity of  
23 water, or in the case of a public agency to reserve water in  
24 accordance with section 89-890.

25 (4) "Existing right" means a right to the use of water

1 which would be protected under the law as it existed prior  
2 to ~~the effective date of this act~~ July 1, 1973.

3 (5) "Groundwater" means any water beneath the land  
4 surface or beneath the bed of a stream, lake, reservoir, or  
5 other body of surface water, and which is not a part of that  
6 surface water.

7 (6) "Well" means any artificial opening or excavation  
8 in the ground, however made, by which groundwater is sought  
9 or through which it flows under natural pressures or is  
10 artificially withdrawn.

11 (7) "Permit" means the permit to appropriate issued by  
12 the department under sections 89-880 through 89-887.

13 (8) "Certificate" means the certificate of water right  
14 issued by the department under sections 89-879, 89-880  
15 ~~(4)-(5)~~, and 89-888.

16 (9) "Declaration" means the declaration of an existing  
17 right filed with the department under section 89-872.

18 (10) "Waste" means the unreasonable loss of water  
19 through the design or negligent operation of an  
20 appropriation or water distribution facility, or the  
21 application of water to anything but a beneficial use.

22 (11) "Political subdivision means any county,  
23 incorporated city or town, public corporation or district  
24 created pursuant to state law, or other public body of the  
25 state empowered to appropriate water, but not a private

1 corporation, association, or group.

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

5 ~~(12)-(13)~~ "Department" means the department of natural  
6 resources and conservation provided for in Title 82A,  
7 chapter 15.

8 ~~(13)-"Director"-means-the-director-of-natural-resources~~  
9 ~~and--conservation--a--position--provided--for--in--section~~  
10 ~~82A-1510.~~

11 (14) "Board" means the board of natural resources and  
12 conservation provided for in section 82A-1509.

13 (15) "Act" means the Montana Water Use Act and any  
14 subsequent amendments or additions thereto."

15 Section 2. Section 89-869, R.C.M. 1947, is amended to  
16 read as follows:

17 "89-869. Powers and duties of board. (1) The board may  
18 prescribe fees or service charges for any public service  
19 rendered by the department under this act or under Title 89,  
20 chapter 29, including fees for the filing of applications or  
21 for the issuance of permits and certificates. There shall be  
22 no fees for the filing of declarations or for the issuance  
23 of certificates of existing rights.

24 (2) The board may adopt rules necessary to implement  
25 and carry out the purposes and provisions of this act. These

1 rules may include, but are not limited to, rules to:

2 (a) govern the issuance and terms of interim permits  
3 authorizing an applicant for a regular permit under this act  
4 to begin appropriating water immediately, pending final  
5 approval or denial by the department of the application for  
6 a regular permit;

7 (b) require the owner or operator of appropriation  
8 facilities to install and maintain suitable controlling and  
9 measuring devices;

10 (c) require the owner or operator of appropriation  
11 facilities to report to the department the readings of  
12 measuring devices at reasonable intervals, and to file  
13 reports on appropriations; and

14 (d) regulate the construction, use and sealing of  
15 wells to prevent the waste, contamination or pollution of  
16 groundwater; and

17 ~~(e) govern the issuance and terms of interim approval~~  
18 ~~authorizing an appropriator to change his appropriation~~  
19 ~~right immediately pending final approval or denial by the~~  
20 ~~department of the application for a proposed change in~~  
21 ~~accordance with section 89-892.~~

22 (3) The board shall adopt rules providing for and  
23 governing temporary emergency appropriations, without prior  
24 application for a permit, necessary to protect lives or  
25 property."

1 Section 3. Section 89-872, R.C.M. 1947, is amended to  
2 read as follows:

3 "89-872. Declarations of existing rights. (1) The  
4 department shall obtain from the district court ~~make~~ an  
5 order pursuant to section 89-873 requiring each person  
6 claiming an existing right within a specified area or from a  
97 specified source to file a declaration of existing right  
8 within one (1) year after the effective date of the order.  
9 The department shall publish notice of the order once a week  
10 for four (4) consecutive weeks prior to its effective date  
11 in a 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) A declaration shall be made under oath by each  
 7 person claiming an existing right to use water within the  
 8 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) Declarations shall be sent to the department by  
 22 certified mail, with a return receipt requested. The return  
 23 receipt is conclusive evidence of receipt, by the  
 24 department, of the declaration."

25 Section 4. Section 89-873, R.C.M. 1947, is amended to

1 read as follows:

2 "89-873. Filing of petition. (1) ~~The department shall,~~  
 3 ~~within a reasonable time after gathering all data necessary~~  
 4 ~~under section 7-189-071 of this act, file a petition for~~  
 5 ~~determination of existing rights in the source or area~~  
 6 ~~specified in the order made under section 8-189-072.~~ The  
 7 department shall file the petition in the district court of  
 8 the judicial district in which the source or area is  
 9 located. Proceedings for the determination of existing  
 10 rights shall be commenced by the department in the district  
 11 court of the judicial district in which the source or area  
 12 is located. The department shall request by petition, and  
 13 the district court shall issue an order requiring each  
 14 person claiming an existing right within a specified area or  
 15 from a specified source to file a declaration as provided in  
 16 section 89-872.

17 (2) If the source or area is in two (2) or more  
 18 judicial districts, the department shall notify the district  
 19 court of each of the judicial districts of its intent to  
 20 file the petition. Within thirty (30) days of receipt of the  
 21 notice, the judges of those district courts shall agree on  
 22 which district judge shall hear receive the petition and  
 23 shall notify the department of their decision. If the  
 24 district judges fail to agree or to notify the department,  
 25 the department shall file the petition in the district court

1 of the judicial district in which it determines that the  
2 greatest number of ~~persons--named--in--the--petition--reside~~  
3 existing rights are likely to be located."

4 Section 5. Section 89-874, R.C.M. 1947, is amended to  
5 read as follows:

6 "89-874. Contents of petition. (1) Within a reasonable  
7 time after gathering all data necessary under section  
8 89-871, ~~The--petition~~ the department shall state file with  
9 the district court the names of all persons who have filed  
10 declarations under section ~~8--{89-872}-of-this-act~~ and of all  
11 other persons who appear from the data gathered by the  
12 department to have existing rights to the use of waters  
13 within the specified area or from the specified source.

14 (2) The department shall also file with the petition  
15 district court all data gathered under section ~~7--{89-871}-of~~  
16 ~~this-act.~~

17 (3) If the district court determines that additional  
18 data is necessary prior to issuing the preliminary decree in  
19 order to determine the extent of an existing right, it may  
20 direct the department or the person claiming the right to  
21 obtain the necessary data."

22 Section 6. Section 89-875, R.C.M. 1947, is amended to  
23 read as follows:

24 "89-875. Preliminary decree. (1) Within a reasonable  
25 time after the ~~filing--of-a-petition-for-determination-of~~

1 ~~existing-rights~~ department files with the district court the  
2 material required by section 89-874, the court shall issue a  
3 preliminary decree. The preliminary decree shall be based on  
4 the data submitted ~~with-the-petition~~ by the department and  
5 on any additional data obtained by the court.

6 (2) The preliminary decree shall contain the  
7 information, and make the determinations, findings, and  
8 conclusions, required for the final decree under section ~~13~~  
9 ~~{89-877}-of-this-act.~~

10 (3) The district court shall send a copy of the  
11 preliminary decree by certified mail with return receipt  
12 requested to the department and to each person named in the  
13 ~~petition--filed~~ material submitted under section ~~9--{89-873}-~~  
14 ~~89-874 of-this-act~~ or named in the preliminary decree. The  
15 return receipt shall be appended to the preliminary decree.  
16 The costs of mailing the copies shall be paid by the  
17 department.

18 (4) A person named in the petition material or in the  
19 preliminary decree may inspect the data upon which the  
20 decree is based at any time, and he may purchase copies of  
21 any of the data."

22 Section 7. Section 89-876, R.C.M. 1947, is amended to  
23 read as follows:

24 "89-876. Hearing on preliminary decree. (1) The  
25 department or a person named in the petition material filed

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1 under section ~~9-109-073~~ 89-874 ~~of this act~~ or named in the  
2 preliminary decree, or any other person for good cause  
3 shown, who objects to the preliminary decree is entitled to  
4 a hearing thereon before the district court.

5 (2) A request for a hearing shall be filed with the  
6 district court, and a copy served on the department by  
7 certified mail, within ninety (90) days after receipt of the  
8 preliminary decree. The district court shall, for good cause  
9 shown, reasonably extend this time limit if application for  
10 the extension is made within ninety (90) days after receipt  
11 of the preliminary decree. A person requesting a hearing on  
12 his objections to the preliminary decree shall also serve,  
13 by certified mail with return receipt requested, a copy of  
14 his request on any person whose rights or priorities will be  
15 affected if the objections are sustained in the hearing. The  
16 rights and priorities of a person who is not served shall  
17 not be affected by the result of the hearing.

18 (3) The request for a hearing shall contain a precise  
19 statement of the findings and conclusions, in the  
20 preliminary decree, with which the person requesting the  
21 hearing disagrees. The request shall specify the paragraphs  
22 and pages containing the findings and conclusions to which  
23 objection is made. The request shall state the specific  
24 grounds and evidence on which the objections are based. The  
25 request shall also state the names of all other persons on

1 whom it is served.

2 (4) If more than one person requests a hearing on  
3 objections to the preliminary decree, the court may in its  
4 discretion hold a single hearing. Each hearing shall be  
5 conducted as are other civil actions, but the parties to the  
6 hearing may by agreement and with the court's permission  
7 waive any of the procedural or evidentiary rules, or may  
8 submit only written evidence. Only evidence which is  
9 referred to in a request may be introduced in a hearing.

10 (5) In each hearing, the department shall be a party  
11 and is entitled to be heard on objections made by any  
12 person. The department shall be granted adequate time, prior  
13 to a hearing, to gather evidence pertinent to any objection  
14 to be heard in the hearing."

15 Section 8. Section 89-880, R.C.M. 1947, is amended to  
16 read as follows:

17 "89-880. Right to appropriate -- application for  
18 permit. (1) After ~~the--effective-date-of-this-act~~ July 1,  
19 1973, a person may not appropriate water except as provided  
20 in\* this act. A person may only appropriate water for a  
21 beneficial use. A right to appropriate water may not be  
22 acquired by any other method, including by adverse use,  
23 adverse possession, prescription or estoppel; the method  
24 prescribed by this act is exclusive.

25 (2) Except as otherwise provided in subsection ~~4~~ (5)

1 of this section, a person may not appropriate water or  
 2 commence construction of diversion, impoundment, withdrawal,  
 3 or distribution works therefore except by applying for and  
 4 receiving a permit from the department. The application  
 5 shall be made on a form prescribed by the department. The  
 6 department shall make the forms available through its  
 7 offices and the offices of the county clerks and recorders.  
 8 The department shall return a defective application for  
 9 correction or completion together with the reasons for  
 10 returning it. An application does not lose priority of  
 11 filing because of defects, if the application is corrected,  
 12 completed and refiled with the department within thirty (30)  
 13 days after its return to the applicant, or within a further  
 14 time as the department may allow.

15 (3) The department may cease action upon an  
 16 application for a permit and return it to the applicant when  
 17 it finds that the application is not in good faith or does  
 18 not show a bona fide intent to appropriate water for a  
 19 beneficial use. An application returned for any of these  
 20 reasons shall be accompanied by a statement of the reasons  
 21 for which it was returned, and there shall be no right to a  
 22 priority date based upon the filing of the application.  
 23 Returning an application pursuant to this subsection shall  
 24 be deemed a final decision of the department.

25 ~~(3)~~--(4) A permit issued prior to a final

1 determination of existing rights is provisional and is  
 2 subject to that final determination. The amount of the  
 3 appropriation granted in a provisional permit shall be  
 4 reduced or modified where necessary to protect and guarantee  
 5 existing rights determined in the final decree. A person may  
 6 not obtain any vested right, to an appropriation obtained  
 7 under a provisional permit, by virtue of construction of  
 8 diversion works, purchase of equipment to apply water,  
 9 planting of crops, or other action, where the permit would  
 10 have been denied or modified if the final decree had been  
 11 available to the department.

12 ~~(4)~~--(5) Outside the boundaries of a controlled  
 13 groundwater area, a permit is not required before  
 14 appropriating groundwater by means of a well with a maximum  
 15 yield of less than one hundred (100) gallons a minute.  
 16 Within sixty (60) days of completion of the well, the  
 17 appropriator shall file notice of completion on a form  
 18 provided by the department at its offices and at the offices  
 19 of the county clerks and recorders. Upon receipt of the  
 20 notice, the department shall automatically issue a  
 21 certificate of water right. The original of the certificate  
 22 shall be sent to the county clerk and recorder, in the  
 23 county where the point of diversion or place of use is  
 24 located, for recordation. The department shall keep a copy  
 25 of the certificate in its office in Helena. After

1 recordation, the clerk and recorder shall send the  
2 certificate to the appropriator. The date of filing of the  
3 notice of completion is the date of priority of the right.

4 ~~{5}~~--(6) ~~Persons--required-to-file-well-logs-and-other~~  
5 ~~information-under-the-laws-governing-the-conservation-of-oil~~  
6 ~~and-gas-and-who-do-so-in-compliance-with-these--laws,--shall~~  
7 ~~be--considered--to--have--complied--with--all--of--the--filing~~  
8 ~~requirements-of-this-act-to-the-extent-it-applies--to--wells~~  
9 ~~subject--to--these--laws. The date of appropriation shall be~~  
10 ~~the date that written notice of intention to drill is given~~  
11 ~~to the board of oil and gas conservation. A person who~~  
12 ~~desires to convert a nonproductive oil or gas well to a~~  
13 ~~water well may do so immediately, but shall file a notice of~~  
14 ~~completion or apply for a permit, depending on the maximum~~  
15 ~~yield of the well, as otherwise provided in this act. The~~  
16 ~~date of appropriation shall be the date of filing the notice~~  
17 ~~of completion or the application for a permit.~~

18 ~~{6}~~--(7) A person may also appropriate water, without  
19 applying for or prior to receiving a permit, under rules  
20 adopted by the board under section 89-869 of this act."

21 Section 9. Section 89-881, R.C.M. 1947, is amended to  
22 read as follows:

23 "89-881. Notice of application. (1) Upon receipt of a  
24 proper application for a permit, the department shall  
25 prepare a notice containing the facts pertinent to the

1 application and shall publish the notice in a newspaper of  
2 general circulation in the area of the source once a week  
3 for three (3) consecutive weeks. Before the last date of  
4 publication, the department shall also serve the notice by  
5 certified mail upon an appropriator of water or applicant  
6 for or holder of a permit who, according to the records of  
7 the department, may be affected by the proposed  
8 appropriation. A notice shall also be served upon any public  
9 agency that has reserved waters in the source under section  
10 ~~26--{89-890}~~. The department may, in its discretion, also  
11 serve notice upon any state agency or other person the  
12 department feels may be interested in or affected by the  
13 proposed appropriation. The department shall file in its  
14 records proof of service by affidavit of the publisher in  
15 the case of notice by publication, and by its own affidavit  
16 in the case of service by mail.

17 (2) The notice shall state that by a date set by the  
18 department (not less than thirty (30) days nor more than  
19 sixty (60) days after the last date of publication) persons  
20 may file with the department written objections to the  
21 application.

22 (3) The requirements of subsections (1) and (2) of  
23 this section do not apply if the department finds, on the  
24 basis of information reasonably available to it, that the  
25 appropriation as proposed in the application will not

1 adversely affect the rights of other persons."

2 Section 10. Section 89-884, R.C.M. 1947, is amended to  
3 read as follows:

4 "89-884. Action on application. (1) The department  
5 shall grant, deny, or condition an application for a permit  
6 in whole or in part within one hundred twenty (120) days  
7 after the last date of publication of the notice of  
8 application if no hearing is held, and within one hundred  
9 eighty (180) days if a hearing is held; however, in either  
10 case the time may be extended upon agreement of the  
11 applicant, or, in extraordinary cases, not more than thirty  
12 (30) days upon order of the department. If the department  
13 orders the time extended it shall serve a notice of the  
14 extension and the reasons therefor by certified mail upon  
15 the applicant and each person who has filed an objection as  
16 provided by section 89-882.

17 (2) However, an application may not be approved in a  
18 modified form or upon terms, conditions, or limitations  
19 specified by the department, nor denied, unless the  
20 applicant is first granted an opportunity to be heard. If  
21 no objection is filed against the application, but the  
22 department is of the opinion that the application should be  
23 approved in a modified form or upon terms, conditions or  
24 limitations specified by it, or that the application should  
25 be denied, the department shall prepare a statement of its

1 opinion and the reasons therefor. The department shall serve  
2 a statement of its opinion by certified mail upon the  
3 applicant, together with a notice that the applicant may  
4 obtain a hearing by filing a request therefor within thirty  
5 (30) days after the notice is mailed. The notice shall  
6 further state that the application will be modified in a  
7 specified manner, or denied, unless a hearing is requested."

8 Section 11. Section 99-890, R.C.M. 1947, is amended to  
9 read as follows:

10 "89-890. Reservation of waters. (1) The state or any  
11 political subdivision or agency thereof, or the United  
12 States or any agency thereof, may apply to the board to  
13 reserve waters for existing or future beneficial uses, or to  
14 maintain a minimum flow, level, or quality of water  
15 throughout the year or at such periods or for such length of  
16 time as the board designates.

17 (2) Upon receiving an application, the department  
18 shall proceed in accordance with sections ~~17--through--19~~  
19 ~~89-881 through 89-883~~. After the hearing provided in  
20 section ~~19-89-883~~, the board shall decide whether to  
21 reserve the water for the applicant. The department's costs  
22 of giving notice, holding the hearing, conducting  
23 investigations, and making records, incurred in acting upon  
24 the application to reserve water, except the cost of  
25 salaries of the department's personnel, shall be paid by the

1 applicant.

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

- 5 (a) the purpose of the reservation;
- 6 (b) the need for the reservation;
- 7 (c) the amount of water necessary for the purpose of  
8 the reservation;

9 (d) that the reservation is in the public interest. If  
10 the purpose of the reservation requires construction of a  
11 storage or diversion facility, the applicant shall establish  
12 to the satisfaction of the board that there will be progress  
13 toward completion of the facility and accomplishment of the  
14 purpose with reasonable diligence in accordance with an  
15 established plan.

16 (4) After the adoption of an order reserving waters,  
17 the department may reject an application and refuse a permit  
18 for the appropriation of reserved waters, or may, with the  
19 approval of the board, issue the permit subject to such  
20 terms and conditions it considers necessary for the  
21 protection of the objectives of the reservation.

22 (5) A reservation under this section shall date from  
23 the date the order reserving the water is adopted by the  
24 board, and shall not adversely affect any rights in  
25 existence at that time ~~when the order reserving waters is~~

1 ~~is adopted.~~

2 (6) The board shall, periodically but not less than  
3 every ten (10) years, review existing reservations to ensure  
4 that the objectives of the reservation are being met. Where  
5 the objectives of the reservation are not being met, the  
6 board may extend, revoke or modify the reservation."

7 Section 12. Section 89-896, R.C.M. 1947, is amended to  
8 read as follows:

9 "89-896. Supervision of water distribution. (1) ~~As of~~  
10 ~~the effective date of this act, the~~ The district courts  
11 shall supervise the distribution of water among all  
12 appropriators. This supervisory authority includes the  
13 supervision of all water commissioners appointed prior or  
14 subsequent to the effective date of this act. The  
15 supervision shall be governed by the principle that first in  
16 time is first in right.

17 (2) When a water distribution controversy arises upon  
18 a source of water in which existing rights have not been  
19 determined according to sections ~~6 through 15~~ 89-870  
20 through 89-879 ~~of this act, any party to the controversy~~  
21 may petition the district court for relief. the The  
22 department ~~may~~ shall be served with process in any  
23 proceeding under this subsection and shall, within a  
24 reasonable time thereafter, notify the court whether it  
25 intends in its discretion, within a reasonable time, to

1 begin proceedings to determine existing rights in the  
 2 source, in accordance with this act. The department may, if  
 3 it declines to commence proceedings to determine existing  
 4 rights in the source, intervene as a party in the  
 5 proceeding. The district court from which relief is sought  
 6 may grant such injunctive or other relief which is necessary  
 7 and appropriate to preserve property rights or the status  
 8 quo pending the department's decision whether to determine  
 9 existing rights in the source, or the department's decision  
 10 to intervene as a party, as the case may be. If the  
 11 department does not proceed to obtain a determination of  
 12 existing rights, the district court shall settle only the  
 13 controversy between the parties.

14 (3) A controversy between appropriators from a source  
 15 which has been the subject of a general determination of  
 16 existing rights under sections ~~6-through-15~~ 89-870 through  
 17 ~~89-879~~ ~~of this act~~ shall be settled by the district court  
 18 which issued the final decree. The order of the district  
 19 court settling the controversy may not alter the existing  
 20 rights and priorities established in the final decree. In  
 21 cases involving permits issued by the department, the court  
 22 may not amend the respective rights established in the  
 23 permits or alter any terms of the permits unless the permits  
 24 are inconsistent or interfere with rights and priorities  
 25 established in the final decree. The order settling the

1 controversy shall be appended to the final decree, and a  
 2 copy shall be filed with the department. The department  
 3 shall be served with process in any proceeding under this  
 4 subsection, and the department may, in its discretion,  
 5 intervene in the proceeding.

6 ~~(4) The department shall be named as a party in any~~  
 7 ~~proceeding under this section and shall be served with~~  
 8 ~~process."~~

9 Section 13. There is a new R.C.M. section numbered  
 10 89-879.1 that reads as follows:

11 89-879.1. Enforcement. (1) A person may not waste  
 12 water, prevent water from moving to another person having a  
 13 prior right to use the same, or otherwise use water  
 14 unlawfully.

15 (2) If the department ascertains by a means reasonably  
 16 considered sufficient by it that a person is violating  
 17 subsection (1) of this section or is otherwise violating any  
 18 provision of this act or a rule made pursuant thereto, it  
 19 may cause written notice to be served on the alleged  
 20 violator. The notice shall specify the provision of this  
 21 act or rule alleged to be violated, and the facts alleged to  
 22 constitute a violation, and it may order the violator to  
 23 take necessary corrective action within a reasonable period  
 24 of time stated in the order. The order becomes final  
 25 unless, no later than thirty (30) days after the date the



1 notice is received, the person named requests in writing a  
 2 hearing before the department. Not more than fifteen (15)  
 3 days after receipt of the request, the department shall hold  
 4 a hearing.

5 (3) If, after a hearing held under subsection (1) of  
 6 this section, the department finds that a violation has  
 7 occurred, it shall either affirm or modify the order  
 8 previously issued, or issue an appropriate order for the  
 9 prevention or abatement of the violation involved or for the  
 10 taking of other corrective action it considers appropriate.  
 11 If, after hearing on an order contained in a notice, the  
 12 department finds that no violation is occurring, it shall  
 13 rescind the order. An order issued as part of a notice or  
 14 after hearing may prescribe the date by which the violation  
 15 shall cease and may prescribe time limits for particular  
 16 action in preventing, abating, or controlling the violation.

17 (4) The department may direct its own attorney, or  
 18 request the attorney general or the county attorney to  
 19 enforce orders issued pursuant to this section by  
 20 appropriate judicial proceedings.

21 (5) This act does not prevent the department from  
 22 making efforts to obtain voluntary compliance through  
 23 warning, conference, or any other appropriate means.

24 Section 14. Section 89-8-100, R.C.M. 1947, is amended  
 25 to read as follows:

1 "89-8-100. Hearings before board -- Administrative  
 2 Procedure Act. (1) A person who is aggrieved by a final  
 3 decision of the department under this act is entitled to a  
 4 hearing before the board. A person desiring a hearing  
 5 before the board pursuant to this section shall notify the  
 6 department in writing within ten (10) days of the final  
 7 decision.

8 (2) The Montana Administrative Procedure Act (Title  
 9 82, chapter 42, R.C.M. 1947) governs administrative  
 10 proceedings conducted under this act, except that the common  
 11 law and statutory rules of evidence shall apply only upon  
 12 stipulation of all parties to a proceeding."

13 Section 15. Section 89-8-101, R.C.M. 1947, is amended  
 14 to read as follows:

15 "89-8-101. Penalties. A person who violates or refuses  
 16 or neglects to comply with sections ~~16-117-28-117~~ ~~and 29~~  
 17 ~~13~~ ~~89-880 (1), 89-892 (1), and 89-893 (3), and 89-897.1~~ ~~†~~  
 18 ~~of this act~~, or of any order of the department, or of any  
 19 rule of the board, is guilty of a misdemeanor."

20 Section 16. There is a new R.C.M. section numbered  
 21 89-8-102.1 that reads as follows:

22 "89-8-102.1. Saving clause. Nothing in this act abates  
 23 or otherwise adversely affects the validity of any filing,  
 24 notice, or judicial proceeding commenced under the law as it  
 25 existed before July 1, 1973.

1           Section 17. This act applies to applications currently  
2 pending with the department, as well as applications filed  
3 with the department after the effective date of this act.

4           Section 18. This act is effective upon its passage and  
5 approval.

-End-

1 SENATE BILL NO. 395  
 2 INTRODUCED BY ROBERTS  
 3 (BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES)  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
 6 WATER USE ACT BY PROVIDING ADDITIONAL DEFINITIONS; ~~DELETING~~  
 7 ~~THE PROVISION THAT A USE OF WATER FOR SLURRY TO EXPORT COAL~~  
 8 ~~IS NOT A BENEFICIAL USE~~; DELETING THE POWER OF THE BOARD OF  
 9 NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES GOVERNING  
 10 INTERIM APPROVAL OF A CHANGE OF AN APPROPRIATION RIGHT;  
 11 PROVIDING THAT THE DEPARTMENT SHALL CEASE ACTION ON  
 12 APPLICATIONS NOT IN GOOD FAITH OR NOT SHOWING A BONA FIDE  
 13 INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; REQUIRING  
 14 THE DISTRICT COURT RATHER THAN THE DEPARTMENT TO ISSUE THE  
 15 ORDER REQUIRING CLAIMANTS OF EXISTING RIGHTS TO FILE  
 16 DECLARATIONS; CLARIFYING THE PRIORITY DATE FOR CONVERTED OIL  
 17 OR GAS WELLS; ALLOWING SUSPENSION OF PUBLICATION OF NOTICE  
 18 OF CERTAIN PERMIT APPLICATIONS; PROVIDING FOR EXTENSION OF  
 19 TIME TO ACT ON AN APPLICATION; CLARIFYING THE PRIORITY DATE  
 20 FOR RESERVATIONS OF WATER; CLARIFYING THE PROCEDURE TO BE  
 21 FOLLOWED IN THE COURTS' SUPERVISION OF WATER DISTRIBUTION;  
 22 PROVIDING A NEW SECTION FOR ADMINISTRATIVE ENFORCEMENT OF  
 23 THE ACT; REQUIRING NOTIFICATION PRIOR TO HEARINGS BEFORE THE  
 24 BOARD; SPECIFYING THE APPLICABILITY OF THE RULES OF EVIDENCE  
 25 IN ADMINISTRATIVE HEARINGS; PROVIDING A SAVING CLAUSE;

1 AMENDING SECTIONS 89-867, 89-869, 89-872 THROUGH 89-876,  
 2 89-880, 89-881, 89-884, 89-890, 89-896, 89-8-100, AND  
 3 89-8-101, R.C.M. 1947; AND PROVIDING FOR AN IMMEDIATE  
 4 EFFECTIVE DATE."  
 5  
 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 7 Section 1. Section 89-867, R.C.M. 1947, is amended to  
 8 read as follows:  
 9 "89-867. Definitions. Unless the context requires  
 10 otherwise, in this ~~act~~ chapter:  
 11 (1) "Water" means all water of the state, surface and  
 12 subsurface, regardless of its character or manner of  
 13 occurrence, including geothermal water.  
 14 (2) "Beneficial use" means a use of water for the  
 15 benefit of the appropriator, other persons, or the public,  
 16 including, but not limited to, agricultural (including stock  
 17 water), domestic, fish and wildlife, industrial, irrigation,  
 18 mining, municipal power, and recreational uses; ~~provided,~~  
 19 ~~however, that a use of water for slurry to export coal from~~  
 20 ~~Montana is not a beneficial use. Slurry is a mixture of~~  
 21 ~~water and insoluble matter; PROVIDED, HOWEVER, THAT A USE OF~~  
 22 WATER FOR SLURRY TO EXPORT COAL FROM MONTANA IS NOT A  
 23 BENEFICIAL USE. SLURRY IS A MIXTURE OF WATER AND INSOLUBLE  
 24 MATTER.  
 25 (3) "Appropriate" means to divert, impound, or

THIRD READING

1 withdraw (including by stock for stock water) a quantity of  
2 water, or in the case of a public agency to reserve water in  
3 accordance with section 89-890.

4 (4) "Existing right" means a right to the use of water  
5 which would be protected under the law as it existed prior  
6 to the effective date of this act July 1, 1973.

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

11 (6) "Well" means any artificial opening or excavation  
12 in the ground, however made, by which groundwater is sought  
13 or through which it flows under natural pressures or is  
14 artificially withdrawn.

15 (7) "Permit" means the permit to appropriate issued by  
16 the department under sections 89-880 through 89-887.

17 (8) "Certificate" means the certificate of water right  
18 issued by the department under sections 89-879, 89-880  
19 ~~(4)-(5)~~, and 89-888.

20 (9) "Declaration" means the declaration of an existing  
21 right filed with the department under section 89-872.

22 (10) "Waste" means the unreasonable loss of water  
23 through the design or negligent operation of an  
24 appropriation or water distribution facility, or the  
25 application of water to anything but a beneficial use.

1 (11) "Political" subdivision means any county,  
2 incorporated city or town, public corporation or district  
3 created pursuant to state law, or other public body of the  
4 state empowered to appropriate water, but not a private  
5 corporation, association, or group.

6 ~~(11)-(12)~~ (12) "Person" means an individual, association,  
7 partnership, corporation, state agency, political  
8 subdivision, and the United States or any agency thereof.

9 ~~(12)-(13)~~ (13) "Department" means the department of natural  
10 resources and conservation provided for in Title 82A,  
11 chapter 15.

12 ~~(13)-"Director"-means-the-director-of-natural-resources~~  
13 ~~and--conservation,--a--position--provided--for--in--section~~  
14 ~~82A-1510.~~

15 (14) "Board" means the board of natural resources and  
16 conservation provided for in section 82A-1509.

17 (15) "Act" means the Montana Water Use Act and any  
18 subsequent amendments or additions thereto."

19 Section 2. Section 89-869, R.C.M. 1947, is amended to  
20 read as follows:

21 "89-869. Powers and duties of board. (1) The board may  
22 prescribe fees or service charges for any public service  
23 rendered by the department under this act or under Title 89,  
24 chapter 29, including fees for the filing of applications or  
25 for the issuance of permits and certificates. There shall be

1 no fees for the filing of declarations or for the issuance  
2 of certificates of existing rights.

3 (2) The board may adopt rules necessary to implement  
4 and carry out the purposes and provisions of this act. These  
5 rules may include, but are not limited to, rules to:

6 (a) govern the issuance and terms of interim permits  
7 authorizing an applicant for a regular permit under this act  
8 to begin appropriating water immediately, pending final  
9 approval or denial by the department of the application for  
10 a regular permit;

11 (b) require the owner or operator of appropriation  
12 facilities to install and maintain suitable controlling and  
13 measuring devices;

14 (c) require the owner or operator of appropriation  
15 facilities to report to the department the readings of  
16 measuring devices at reasonable intervals, and to file  
17 reports on appropriations; and

18 (d) regulate the construction, use and sealing of  
19 wells to prevent the waste, contamination or pollution of  
20 groundwater; and

21 ~~(e) govern the issuance and terms of interim approval,~~  
22 ~~authorizing an appropriator to change his appropriation~~  
23 ~~right immediately pending final approval or denial by the~~  
24 ~~department of the application for a proposed change in~~  
25 ~~accordance with section 89-892.~~

1 (3) The board shall adopt rules providing for and  
2 governing temporary emergency appropriations, without prior  
3 application for a permit, necessary to protect lives or  
4 property."

5 Section 3. Section 89-872, R.C.M. 1947, is amended to  
6 read as follows:

7 "89-872. Declarations of existing rights. (1) The  
8 department shall obtain from the district court ~~make~~ an  
9 order pursuant to section 89-873 requiring each person  
10 claiming an existing right within a specified area or from a  
11 specified source to file a declaration of existing right  
12 within one (1) year after the effective date of the order.  
13 The department shall publish notice of the order once a week  
14 for four (4) consecutive weeks prior to its effective date  
15 in a newspaper of general circulation in the affected area.  
16 Before the last date of publication, the department shall  
17 also serve a copy of the order by certified mail upon each  
18 appropriator or his successor in interest within the  
19 specified area or from the specified source who has  
20 requested mailed notice of the order or of whom the  
21 department can readily obtain knowledge, and to each person  
22 owning or being possessed of lands bordering on the stream  
23 or source as ascertained from the land ownership records of  
24 the appropriate county. The department shall file in its  
25 records proof of service of the notice by affidavit of the

1 publisher in the case of notice by publication, and by its  
2 own affidavit in the case of service by mail.

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

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

25 (3) Declarations shall be sent to the department by

1 certified mail, with a return receipt requested. The return  
2 receipt is conclusive evidence of receipt, by the  
3 department, of the declaration."

4 Section 4. Section 89-873, R.C.M. 1947, is amended to  
5 read as follows:

6 "89-873. Filing of petition. (1) ~~The department shall,~~  
7 ~~within a reasonable time after gathering all data necessary~~  
8 ~~under section 7 [89-871] of this act, file a petition for~~  
9 ~~determination of existing rights in the source or area~~  
10 ~~specified in the order made under section 8 [89-872]. The~~  
11 ~~department shall file the petition in the district court of~~  
12 ~~the judicial district in which the source or area is~~  
13 ~~located. Proceedings for the determination of existing~~  
14 rights shall be commenced by the department in the district  
15 court of the judicial district in which the source or area  
16 is located. The department shall request by petition, and  
17 the district court shall issue an order requiring each  
18 person claiming an existing right within a specified area or  
19 from a specified source to file a declaration as provided in  
20 section 89-872.

21 (2) If the source or area is in two (2) or more  
22 judicial districts, the department shall notify the district  
23 court of each of the judicial districts of its intent to  
24 file the petition. Within thirty (30) days of receipt of the  
25 notice, the judges of those district courts shall agree on

1 which district judge shall ~~hear~~ receive the petition and  
 2 shall notify the department of their decision. If the  
 3 district judges fail to agree or to notify the department,  
 4 the department shall file the petition in the district court  
 5 of the judicial district in which it determines that the  
 6 greatest number of persons named in the petition reside  
 7 existing rights are likely to be located."

8 Section 5. Section 89-874, R.C.M. 1947, is amended to  
 9 read as follows:

10 "89-874. Contents of petition. (1) within a reasonable  
 11 time after gathering all data necessary under section  
 12 89-871, the petition the department shall state file with  
 13 the district court the names of all persons who have filed  
 14 declarations under section 8 ~~[89-872] of this act~~ and of all  
 15 other persons who appear from the data gathered by the  
 16 department to have existing rights to the use of waters  
 17 within the specified area or from the specified source.

18 (2) The department shall also file with the petition  
 19 district court all data gathered under section 7 ~~[89-871] of~~  
 20 ~~this act.~~

21 (3) If the district court determines that additional  
 22 data is necessary prior to issuing the preliminary decree in  
 23 order to determine the extent of an existing right, it may  
 24 direct the department or the person claiming the right to  
 25 obtain the necessary data."

1 Section 6. Section 89-875, R.C.M. 1947, is amended to  
 2 read as follows:

3 "89-875. Preliminary decree. (1) Within a reasonable  
 4 time after the ~~filing of a petition for determination of~~  
 5 ~~existing rights~~ department files with the district court the  
 6 material required by section 89-874, the court shall issue a  
 7 preliminary decree. The preliminary decree shall be based on  
 8 the data submitted ~~with the petition by the department~~ and  
 9 on any additional data obtained by the court.

10 (2) The preliminary decree shall contain the  
 11 information, and make the determinations, findings, and  
 12 conclusions, required for the final decree under section 13  
 13 ~~[89-877] of this act.~~

14 (3) The district court shall send a copy of the  
 15 preliminary decree by certified mail with return receipt  
 16 requested to the department and to each person named in the  
 17 ~~petition filed~~ material submitted under section 9 ~~[89-873]~~  
 18 ~~89-874 of this act~~ or named in the preliminary decree. The  
 19 return receipt shall be appended to the preliminary decree.  
 20 The costs of mailing the copies shall be paid by the  
 21 department.

22 (4) A person named in the ~~petition~~ material or in the  
 23 preliminary decree may inspect the data upon which the  
 24 decree is based at any time, and he may purchase copies of  
 25 any of the data."

1 Section 7. Section 89-876, R.C.M. 1947, is amended to  
2 read as follows:

3 "89-876. Hearing on preliminary decree. (1) The  
4 department or a person named in the petition material filed  
5 under section ~~9-[89-873]~~ 89-874 of this act or named in the  
6 preliminary decree, or any other person for good cause  
7 shown, who objects to the preliminary decree is entitled to  
8 a hearing thereon before the district court.

9 (2) A request for a hearing shall be filed with the  
10 district court, and a copy served on the department by  
11 certified mail, within ninety (90) days after receipt of the  
12 preliminary decree. The district court shall, for good cause  
13 shown, reasonably extend this time limit if application for  
14 the extension is made within ninety (90) days after receipt  
15 of the preliminary decree. A person requesting a hearing on  
16 his objections to the preliminary decree shall also serve,  
17 by certified mail with return receipt requested, a copy of  
18 his request on any person whose rights or priorities will be  
19 affected if the objections are sustained in the hearing. The  
20 rights and priorities of a person who is not served shall  
21 not be affected by the result of the hearing.

22 (3) The request for a hearing shall contain a precise  
23 statement of the findings and conclusions, in the  
24 preliminary decree, with which the person requesting the  
25 hearing disagrees. The request shall specify the paragraphs

1 and pages containing the findings and conclusions to which  
2 objection is made. The request shall state the specific  
3 grounds and evidence on which the objections are based. The  
4 request shall also state the names of all other persons on  
5 whom it is served.

6 (4) If more than one person requests a hearing on  
7 objections to the preliminary decree, the court may in its  
8 discretion hold a single hearing. Each hearing shall be  
9 conducted as are other civil actions, but the parties to the  
10 hearing may by agreement and with the court's permission  
11 waive any of the procedural or evidentiary rules, or may  
12 submit only written evidence. Only evidence which is  
13 referred to in a request may be introduced in a hearing.

14 (5) In each hearing, the department shall be a party  
15 and is entitled to be heard on objections made by any  
16 person. The department shall be granted adequate time, prior  
17 to a hearing, to gather evidence pertinent to any objection  
18 to be heard in the hearing."

19 Section 8. Section 89-880, R.C.M. 1947, is amended to  
20 read as follows:

21 "89-880. Right to appropriate — application for  
22 permit. (1) After ~~the effective date of this act~~ July 1,  
23 1973, a person may not appropriate water except as provided  
24 in this act. A person may only appropriate water for a  
25 beneficial use. A right to appropriate water may not be



1 acquired by any other method, including by adverse use,  
2 adverse possession, prescription or estoppel; the method  
3 prescribed by this act is exclusive.

4 (2) Except as otherwise provided in subsection ~~(4)~~ (5)  
5 of this section, a person may not appropriate water or  
6 commence construction of diversion, impoundment, withdrawal,  
7 or distribution works therefore except by applying for and  
8 receiving a permit from the department. The application  
9 shall be made on a form prescribed by the department. The  
10 department shall make the forms available through its  
11 offices and the offices of the county clerks and recorders.  
12 The department shall return a defective application for  
13 correction or completion together with the reasons for  
14 returning it. An application does not lose priority of  
15 filing because of defects, if the application is corrected,  
16 completed and refiled with the department within thirty (30)  
17 days after its return to the applicant, or within a further  
18 time as the department may allow.

19 (3) The department may cease action upon an  
20 application for a permit and return it to the applicant when  
21 it finds that the application is not in good faith or does  
22 not show a bona fide intent to appropriate water for a  
23 beneficial use. An application returned for any of these  
24 reasons shall be accompanied by a statement of the reasons  
25 for which it was returned, and there shall be no right to a

1 priority date based upon the filing of the application.  
2 Returning an application pursuant to this subsection shall  
3 be deemed a final decision of the department.

4 ~~(3)~~ (4) A permit issued prior to a final  
5 determination of existing rights is provisional and is  
6 subject to that final determination. The amount of the  
7 appropriation granted in a provisional permit shall be  
8 reduced or modified where necessary to protect and guarantee  
9 existing rights determined in the final decree. A person may  
10 not obtain any vested right, to an appropriation obtained  
11 under a provisional permit, by virtue of construction of  
12 diversion works, purchase of equipment to apply water,  
13 planting of crops, or other action, where the permit would  
14 have been denied or modified if the final decree had been  
15 available to the department.

16 ~~(4)~~ (5) Outside the boundaries of a controlled  
17 groundwater area, a permit is not required before  
18 appropriating groundwater by means of a well with a maximum  
19 yield of less than one hundred (100) gallons a minute.  
20 Within sixty (60) days of completion of the well, the  
21 appropriator shall file notice of completion on a form  
22 provided by the department at its offices and at the offices  
23 of the county clerks and recorders. Upon receipt of the  
24 notice, the department shall automatically issue a  
25 certificate of water right. The original of the certificate

1 shall be sent to the county clerk and recorder, in the  
 2 county where the point of diversion or place of use is  
 3 located, for recordation. The department shall keep a copy  
 4 of the certificate in its office in Helena. After  
 5 recordation, the clerk and recorder shall send the  
 6 certificate to the appropriator. The date of filing of the  
 7 notice of completion is the date of priority of the right.

8 ~~(5) (6) Persons required to file well logs and other~~  
 9 ~~information under the laws governing the conservation of oil~~  
 10 ~~and gas and who do so in compliance with those laws, shall~~  
 11 ~~be considered to have complied with all of the filing~~  
 12 ~~requirements of this act to the extent it applies to wells~~  
 13 ~~subject to those laws. The date of appropriation shall be~~  
 14 ~~the date that written notice of intention to drill is given~~  
 15 ~~to the board of oil and gas conservation. A person who~~  
 16 ~~desires to convert a nonproductive oil or gas well to a~~  
 17 ~~water well may do so immediately, but shall file a notice of~~  
 18 ~~completion or apply for a permit, depending on the maximum~~  
 19 ~~yield of the well, as otherwise provided in this act. The~~  
 20 ~~date of appropriation shall be the date of filing the notice~~  
 21 ~~of completion or the application for a permit.~~

22 ~~(6) (7) A person may also appropriate water, without~~  
 23 ~~applying for or prior to receiving a permit, under rules~~  
 24 ~~adopted by the board under section 89-869 of this act."~~

25 Section 9. Section 89-881, R.C.M. 1947, is amended to

1 read as follows:

2 \*89-881. Notice of application. (1) Upon receipt of a  
 3 proper application for a permit, the department shall  
 4 prepare a notice containing the facts pertinent to the  
 5 application and shall publish the notice in a newspaper of  
 6 general circulation in the area of the source once a week  
 7 for three (3) consecutive weeks. Before the last date of  
 8 publication, the department shall also serve the notice by  
 9 certified mail upon an appropriator of water or applicant  
 10 for or holder of a permit who, according to the records of  
 11 the department, may be affected by the proposed  
 12 appropriation. A notice shall also be served upon any public  
 13 agency that has reserved waters in the source under section  
 14 26 [89-890]. The department may, in its discretion, also  
 15 serve notice upon any state agency or other person the  
 16 department feels may be interested in or affected by the  
 17 proposed appropriation. The department shall file in its  
 18 records proof of service by affidavit of the publisher in  
 19 the case of notice by publication, and by its own affidavit  
 20 in the case of service by mail.

21 (2) The notice shall state that by a date set by the  
 22 department (not less than thirty (30) days nor more than  
 23 sixty (60) days after the last date of publication) persons  
 24 may file with the department written objections to the  
 25 application.

1       (3) The requirements of subsections (1) and (2) of  
 2 this section do not apply if the department finds, on the  
 3 basis of information reasonably available to it, that the  
 4 appropriation as proposed in the application will not  
 5 adversely affect the rights of other persons."

6       Section 10. Section 89-884, R.C.M. 1947, is amended to  
 7 read as follows:

8       "89-884. Action on application. (1) The department  
 9 shall grant, deny, or condition an application for a permit  
 10 in whole or in part within one hundred twenty (120) days  
 11 after the last date of publication of the notice of  
 12 application if no hearing is held, and within one hundred  
 13 eighty (180) days if a hearing is held; however, in either  
 14 case the time may be extended upon agreement of the  
 15 applicant, or, in extraordinary cases, not more than thirty  
 16 (30) days upon order of the department. If the department  
 17 orders the time extended it shall serve a notice of the  
 18 extension and the reasons therefor by certified mail upon  
 19 the applicant and each person who has filed an objection as  
 20 provided by section 89-882.

21       (2) However, an application may not be approved in a  
 22 modified form or upon terms, conditions, or limitations  
 23 specified by the department, nor denied, unless the  
 24 applicant is first granted an opportunity to be heard. If  
 25 no objection is filed against the application, but the

1       department is of the opinion that the application should be  
 2 approved in a modified form or upon terms, conditions or  
 3 limitations specified by it, or that the application should  
 4 be denied, the department shall prepare a statement of its  
 5 opinion and the reasons therefor. The department shall serve  
 6 a statement of its opinion by certified mail upon the  
 7 applicant, together with a notice that the applicant may  
 8 obtain a hearing by filing a request therefor within thirty  
 9 (30) days after the notice is mailed. The notice shall  
 10 further state that the application will be modified in a  
 11 specified manner, or denied, unless a hearing is requested."

12       Section 11. Section 89-890, R.C.M. 1947, is amended to  
 13 read as follows:

14       "89-890. Reservation of waters. (1) The state or any  
 15 political subdivision or agency thereof, or the United  
 16 States or any agency thereof, may apply to the board to  
 17 reserve waters for existing or future beneficial uses, or to  
 18 maintain a minimum flow, level, or quality of water  
 19 throughout the year or at such periods or for such length of  
 20 time as the board designates.

21       (2) Upon receiving an application, the department  
 22 shall proceed in accordance with sections ~~47 through 49~~  
 23 ~~[89-881 through 89-883]~~. After the hearing provided in  
 24 section ~~49~~ ~~[89-883]~~, the board shall decide whether to  
 25 reserve the water for the applicant. The department's costs

1 of giving notice, holding the hearing, conducting  
2 investigations, and making records, incurred in acting upon  
3 the application to reserve water, except the cost of  
4 salaries of the department's personnel, shall be paid by the  
5 applicant.

6 (3) The board may not adopt an order reserving water  
7 unless the applicant establishes to the satisfaction of the  
8 board:

9 (a) the purpose of the reservation;

10 (b) the need for the reservation;

11 (c) the amount of water necessary for the purpose of  
12 the reservation;

13 (d) that the reservation is in the public interest. If  
14 the purpose of the reservation requires construction of a  
15 storage or diversion facility, the applicant shall establish  
16 to the satisfaction of the board that there will be progress  
17 toward completion of the facility and accomplishment of the  
18 purpose with reasonable diligence in accordance with an  
19 established plan.

20 (4) After the adoption of an order reserving waters,  
21 the department may reject an application and refuse a permit  
22 for the appropriation of reserved waters, or may, with the  
23 approval of the board, issue the permit subject to such  
24 terms and conditions it considers necessary for the  
25 protection of the objectives of the reservation.

1 (5) A reservation under this section shall date from  
2 the date the order reserving the water is adopted by the  
3 board, and shall not adversely affect any rights in  
4 existence at that time when the order reserving waters is  
5 adopted.

6 (6) The board shall, periodically but not less than  
7 every ten (10) years, review existing reservations to ensure  
8 that the objectives of the reservation are being met. Where  
9 the objectives of the reservation are not being met, the  
10 board may extend, revoke or modify the reservation."

11 Section 12. Section 89-896, R.C.M. 1947, is amended to  
12 read as follows:

13 \*89-896. Supervision of water distribution. (1) ~~As of~~  
14 ~~the effective date of this act, the~~ The district courts  
15 shall supervise the distribution of water among all  
16 appropriators. This supervisory authority includes the  
17 supervision of all water commissioners appointed prior or  
18 subsequent to the effective date of this act. The  
19 supervision shall be governed by the principle that first in  
20 time is first in right.

21 (2) When a water distribution controversy arises upon  
22 a source of water in which existing rights have not been  
23 determined according to sections ~~6 through 15~~ [89-870  
24 through 89-879] ~~of this act, any party to the controversy~~  
25 may petition the district court for relief. the The

1 department ~~may~~, shall be served with process in any  
 2 proceeding under this subsection and shall, within a  
 3 reasonable time thereafter, notify the court whether it  
 4 intends in its discretion, within a reasonable time, to  
 5 begin proceedings to determine existing rights in the  
 6 source, in accordance with this act. The department may, if  
 7 it declines to commence proceedings to determine existing  
 8 rights in the source, intervene as a party in the  
 9 proceeding. The district court from which relief is sought  
 10 may grant such injunctive or other relief which is necessary  
 11 and appropriate to preserve property rights or the status  
 12 and pending the department's decision whether to determine  
 13 existing rights in the source, or the department's decision  
 14 to intervene as a party, as the case may be. If the  
 15 department does not proceed to obtain a determination of  
 16 existing rights, the district court shall settle only the  
 17 controversy between the parties.

18 (3) A controversy between appropriators from a source  
 19 which has been the subject of a general determination of  
 20 existing rights under sections 6 through 15 [~~89-870 through~~  
 21 ~~89-879]~~ of this act shall be settled by the district court  
 22 which issued the final decree. The order of the district  
 23 court settling the controversy may not alter the existing  
 24 rights and priorities established in the final decree. In  
 25 cases involving permits issued by the department, the court

1 may not amend the respective rights established in the  
 2 permits or alter any terms of the permits unless the permits  
 3 are inconsistent or interfere with rights and priorities  
 4 established in the final decree. The order settling the  
 5 controversy shall be appended to the final decree, and a  
 6 copy shall be filed with the department. The department  
 7 shall be served with process in any proceeding under this  
 8 subsection, and the department may, in its discretion,  
 9 intervene in the proceeding.

10 ~~(4) The department shall be named as a party in any~~  
 11 ~~proceeding under this section and shall be served with~~  
 12 ~~process."~~

13 ~~Section 13. There is a new R.C.M. section numbered~~  
 14 ~~89-879.1 that reads as follows:~~

15 ~~89-879.1. Enforcement. (1) A person may not waste~~  
 16 ~~water, prevent water from moving to another person having a~~  
 17 ~~prior right to use the same, or otherwise use water~~  
 18 ~~unlawfully.~~

19 ~~(2) If the department ascertains by a means reasonably~~  
 20 ~~considered sufficient by it that a person is violating~~  
 21 ~~subsection (1) of this section or is otherwise violating any~~  
 22 ~~provision of this act or a rule made pursuant thereto, it~~  
 23 ~~may cause written notice to be served on the alleged~~  
 24 ~~violation. The notice shall specify the provision of this~~  
 25 ~~act or rule alleged to be violated, and the facts alleged to~~

~~constitute a violation, and it may order the violator to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, no later than thirty (30) days after the date the notice is received, the person named requests in writing a hearing before the department. Not more than fifteen (15) days after receipt of the request, the department shall hold a hearing.~~

~~(3) If, after a hearing held under subsection (1) of this section, the department finds that a violation has occurred, it shall either affirm or modify the order previously issued, or issue an appropriate order for the prevention or abatement of the violation involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the department finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the violation.~~

~~(4) The department may direct its own attorney, or request the attorney general or the county attorney to enforce orders issued pursuant to this section by appropriate judicial proceedings.~~

~~(5) This act does not prevent the department from~~

~~making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.~~

Section 13. Section 89-8-100, R.C.M. 1947, is amended to read as follows:

"89-8-100. Hearings before board — Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the department under this act is entitled to a hearing before the board. A person desiring a hearing before the board pursuant to this section shall notify the department in writing within ten (10) days of the final decision.

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act, except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding."

~~Section 15. Section 89-8-101, R.C.M. 1947, is amended to read as follows:~~

~~"89-8-101. Penalties. A person who violates or refuses or neglects to comply with sections 16 (1), 28 (1), and 29 (3) [89-800 (1), 89-892 (1), and 89-853 (3), and 89-897.1] of this act, or of any order of the department, or of any rule of the board, is guilty of a misdemeanor."~~

Section 14. There is a new R.C.M. section numbered 89-8-102.1 that reads as follows:

1        "89-8-102.1. Saving clause. Nothing in this act abates  
2 or otherwise adversely affects the validity of any filing,  
3 notice, or judicial proceeding commenced under the law as it  
4 existed before July 1, 1973.

5        Section 15. This act applies to applications currently  
6 pending with the department, as well as applications filed  
7 with the department after the effective date of this act.

8        Section 16. This act is effective upon its passage and  
9 approval.

-End-

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 395.

Be amended in the third reading copy as follows:

1. Amend the title, page 2, line 2.

Following: "89-884,"

Insert: "89-885,"

2. Amend page 18, following line 11.

Insert: A new section 11 to read as follows and renumber subsequent sections.

"Section 11. Section 89-885, R.C.M. 1947, is amended to read as follows:

"89-885. Criteria for issuance of permit. The department shall issue a permit if:

- (1) there are unappropriated waters in the source of supply;
- (2) the rights of a prior appropriator will not be adversely affected;
- (3) the proposed means of diversion or construction are adequate;
- (4) the proposed use of water is a beneficial use;
- (5) the proposed use will not interfere unreasonably with other

planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) the proposed use will not adversely affect fish, wildlife or recreational values in existence at the time of the application as may be determined by the department upon submission of evidence by any person asserting that value."

3. Amend page 20, former section 11, subsection (5), lines 2 and 3.

Following: The first "the"

Strike: "date the order reserving the water is adopted by the board"

Insert: "filing of an application for a reservation with the department"

AS SO AMENDED BE CONCURRED IN



March 28, 1975

HOUSE OF REPRESENTATIVES

Committee of the Whole Amendment to NATURAL RESOURCES COMMITTEE  
AMENDMENTS, dated March 20, 1975, to Senate Bill No. 395, third  
reading copy as follows:

Amend amendment No. 2 (Section 11 (6))

1. Following: "will not"

Strike: "adversely affect"

Insert: "substantially destroy"

AND AS SO AMENDED

BE CONCURRED IN

SENATE BILL NO. 395

INTRODUCED BY ROBERTS

(BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA WATER USE ACT BY PROVIDING ADDITIONAL DEFINITIONS; ~~DELETING THE PROVISION THAT A USE OF WATER FOR SLURRY TO EXPORT COAL IS NOT A BENEFICIAL USE~~; DELETING THE POWER OF THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES GOVERNING INTERIM APPROVAL OF A CHANGE OF AN APPROPRIATION RIGHT; PROVIDING THAT THE DEPARTMENT SHALL CEASE ACTION ON APPLICATIONS NOT IN GOOD FAITH OR NOT SHOWING A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; REQUIRING THE DISTRICT COURT RATHER THAN THE DEPARTMENT TO ISSUE THE ORDER REQUIRING CLAIMANTS OF EXISTING RIGHTS TO FILE DECLARATIONS; CLARIFYING THE PRIORITY DATE FOR CONVERTED OIL OR GAS WELLS; ALLOWING SUSPENSION OF PUBLICATION OF NOTICE OF CERTAIN PERMIT APPLICATIONS; PROVIDING FOR EXTENSION OF TIME TO ACT ON AN APPLICATION; CLARIFYING THE PRIORITY DATE FOR RESERVATIONS OF WATER; CLARIFYING THE PROCEDURE TO BE FOLLOWED IN THE COURTS' SUPERVISION OF WATER DISTRIBUTION; PROVIDING A NEW SECTION FOR ADMINISTRATIVE ENFORCEMENT OF THE ACT; REQUIRING NOTIFICATION PRIOR TO HEARINGS BEFORE THE BOARD; SPECIFYING THE APPLICABILITY OF THE RULES OF EVIDENCE IN ADMINISTRATIVE HEARINGS; PROVIDING A SAVING CLAUSE;

AMENDING SECTIONS 89-867, 89-869, 89-872 THROUGH 89-876, 89-880, 89-881, 89-884, 89-885, 89-890, 89-896, 89-8-100, AND 89-8-101, R.C.M. 1947; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 89-867, R.C.M. 1947, is amended to read as follows:

"89-867. Definitions. Unless the context requires otherwise, in this act chapter:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal power, and recreational uses; ~~provided, however, that a use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter~~; PROVIDED, HOWEVER, THAT A USE OF WATER FOR SLURRY TO EXPORT COAL FROM MONTANA IS NOT A BENEFICIAL USE. SLURRY IS A MIXTURE OF WATER AND INSOLUBLE MATTER.

(3) "Appropriate" means to divert, impound, or

1 withdraw (including by stock for stock water) a quantity of  
2 water, or in the case of a public agency to reserve water in  
3 accordance with section 89-890.

4 (4) "Existing right" means a right to the use of water  
5 which would be protected under the law as it existed prior  
6 to ~~the effective date of this act~~ July 1, 1973.

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

11 (6) "Well" means any artificial opening or excavation  
12 in the ground, however made, by which groundwater is sought  
13 or through which it flows under natural pressures or is  
14 artificially withdrawn.

15 (7) "Permit" means the permit to appropriate issued by  
16 the department under sections 89-880 through 89-887.

17 (8) "Certificate" means the certificate of water right  
18 issued by the department under sections 89-879, 89-880  
19 ~~(4)-(5)~~, and 89-888.

20 (9) "Declaration" means the declaration of an existing  
21 right filed with the department under section 89-872.

22 (10) "Waste" means the unreasonable loss of water  
23 through the design or negligent operation of an  
24 appropriation or water distribution facility, or the  
25 application of water to anything but a beneficial use.

1 (11) "Political" subdivision means any county,  
2 incorporated city or town, public corporation or district  
3 created pursuant to state law, or other public body of the  
4 state empowered to appropriate water, but not a private  
5 corporation, association, or group.

6 ~~(11)-(12)~~ (12) "Person" means an individual, association,  
7 partnership, corporation, state agency, political  
8 subdivision, and the United States or any agency thereof.

9 ~~(12)-(13)~~ (13) "Department" means the department of natural  
10 resources and conservation provided for in Title 82A,  
11 chapter 15.

12 ~~(13)-"Director"-means-the-director-of-natural-resources~~  
13 ~~and--conservation;--a--position--provided--for--in--section~~  
14 ~~82A-1510.~~

15 (14) "Board" means the board of natural resources and  
16 conservation provided for in section 82A-1509.

17 (15) "Act" means the Montana Water Use Act and any  
18 subsequent amendments or additions thereto."

19 Section 2. Section 89-869, R.C.M. 1947, is amended to  
20 read as follows:

21 "89-869. Powers and duties of board. (1) The board may  
22 prescribe fees or service charges for any public service  
23 rendered by the department under this act or under Title 89,  
24 chapter 29, including fees for the filing of applications or  
25 for the issuance of permits and certificates. There shall be

1 no fees for the filing of declarations or for the issuance  
2 of certificates of existing rights.

3 (2) The board may adopt rules necessary to implement  
4 and carry out the purposes and provisions of this act. These  
5 rules may include, but are not limited to, rules to:

6 (a) govern the issuance and terms of interim permits  
7 authorizing an applicant for a regular permit under this act  
8 to begin appropriating water immediately, pending final  
9 approval or denial by the department of the application for  
10 a regular permit;

11 (b) require the owner or operator of appropriation  
12 facilities to install and maintain suitable controlling and  
13 measuring devices;

14 (c) require the owner or operator of appropriation  
15 facilities to report to the department the readings of  
16 measuring devices at reasonable intervals, and to file  
17 reports on appropriations; and

18 (d) regulate the construction, use and sealing of  
19 wells to prevent the waste, contamination or pollution of  
20 groundwater; and

21 ~~(e) govern the issuance and terms of interim approval,~~  
22 ~~authorizing an appropriator to change his appropriation~~  
23 ~~right immediately pending final approval or denial by the~~  
24 ~~department of the application for a proposed change in~~  
25 ~~accordance with section 89-892.~~

1 (3) The board shall adopt rules providing for and  
2 governing temporary emergency appropriations, without prior  
3 application for a permit, necessary to protect lives or  
4 property."

5 Section 3. Section 89-872, R.C.M. 1947, is amended to  
6 read as follows:

7 "89-872. Declarations of existing rights. (1) The  
8 department shall obtain from the district court ~~make~~ an  
9 order pursuant to section 89-873 requiring each person  
10 claiming an existing right within a specified area or from a  
11 specified source to file a declaration of existing right  
12 within one (1) year after the effective date of the order.  
13 The department shall publish notice of the order once a week  
14 for four (4) consecutive weeks prior to its effective date  
15 in a newspaper of general circulation in the affected area.  
16 Before the last date of publication, the department shall  
17 also serve a copy of the order by certified mail upon each  
18 appropriator or his successor in interest within the  
19 specified area or from the specified source who has  
20 requested mailed notice of the order or of whom the  
21 department can readily obtain knowledge, and to each person  
22 owning or being possessed of lands bordering on the stream  
23 or source as ascertained from the land ownership records of  
24 the appropriate county. The department shall file in its  
25 records proof of service of the notice by affidavit of the

1 publisher in the case of notice by publication, and by its  
2 own affidavit in the case of service by mail.

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

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

25 (3) Declarations shall be sent to the department by

1 certified mail, with a return receipt requested. The return  
2 receipt is conclusive evidence of receipt, by the  
3 department, of the declaration."

4 Section 4. Section 89-873, R.C.M. 1947, is amended to  
5 read as follows:

6 "89-873. Filing of petition. (1) ~~The department shall~~  
7 ~~within a reasonable time after gathering all data necessary~~  
8 ~~under section 7-{09-071}-of this act, file a petition for~~  
9 ~~determination of existing rights in the source or area~~  
10 ~~specified in the order made under section 0-{09-072}, The~~  
11 ~~department shall file the petition in the district court of~~  
12 ~~the judicial district in which the source or area is~~  
13 ~~located.~~ Proceedings for the determination of existing  
14 rights shall be commenced by the department in the district  
15 court of the judicial district in which the source or area  
16 is located. The department shall request by petition, and  
17 the district court shall issue an order requiring each  
18 person claiming an existing right within a specified area or  
19 from a specified source to file a declaration as provided in  
20 section 89-872.

21 (2) If the source or area is in two (2) or more  
22 judicial districts, the department shall notify the district  
23 court of each of the judicial districts of its intent to  
24 file the petition. Within thirty (30) days of receipt of the  
25 notice, the judges of those district courts shall agree on

1 which district judge shall hear receive the petition and  
 2 shall notify the department of their decision. If the  
 3 district judges fail to agree or to notify the department,  
 4 the department shall file the petition in the district court  
 5 of the judicial district in which it determines that the  
 6 greatest number of ~~persons--named--in-the-petition-reside~~  
 7 existing rights are likely to be located."

8 Section 5. Section 89-874, R.C.M. 1947, is amended to  
 9 read as follows:

10 "89-874. Contents of petition. (1) Within a reasonable  
 11 time after gathering all data necessary under section  
 12 89-871, The petition the department shall state file with  
 13 the district court the names of all persons who have filed  
 14 declarations under section ~~8-89-872}-of-this-act~~ and of all  
 15 other persons who appear from the data gathered by the  
 16 department to have existing rights to the use of waters  
 17 within the specified area or from the specified source.

18 (2) The department shall also file with the petition  
 19 district court all data gathered under section ~~7-89-871}-of~~  
 20 this-act.

21 (3) If the district court determines that additional  
 22 data is necessary prior to issuing the preliminary decree in  
 23 order to determine the extent of an existing right, it may  
 24 direct the department or the person claiming the right to  
 25 obtain the necessary data."

1 Section 6. Section 89-875, R.C.M. 1947, is amended to  
 2 read as follows:

3 "89-875. Preliminary decree. (1) Within a reasonable  
 4 time after the ~~filing-of-a-petition--for--determination--of~~  
 5 existing-rights department files with the district court the  
 6 material required by section 89-874, the court shall issue a  
 7 preliminary decree. The preliminary decree shall be based on  
 8 the data submitted ~~with-the-petition~~ by the department and  
 9 on any additional data obtained by the court.

10 (2) The preliminary decree shall contain the  
 11 information, and make the determinations, findings, and  
 12 conclusions, required for the final decree under section ~~19~~  
 13 ~~89-877}-of-this-act.~~

14 (3) The district court shall send a copy of the  
 15 preliminary decree by certified mail with return receipt  
 16 requested to the department and to each person named in the  
 17 ~~petition-filed~~ material submitted under section ~~9--89-873}~~  
 18 89-874 of--this-act or named in the preliminary decree. The  
 19 return receipt shall be appended to the preliminary decree.  
 20 The costs of mailing the copies shall be paid by the  
 21 department.

22 (4) A person named in the petition material or in the  
 23 preliminary decree may inspect the data upon which the  
 24 decree is based at any time, and he may purchase copies of  
 25 any of the data."

1 Section 7. Section 89-876, R.C.M. 1947, is amended to  
2 read as follows:

3 "89-876. Hearing on preliminary decree. (1) The  
4 department or a person named in the petition material filed  
5 under section 9-~~19-679~~ 39-874 of this act or named in the  
6 preliminary decree, or any other person for good cause  
7 shown, who objects to the preliminary decree is entitled to  
8 a hearing thereon before the district court.

9 (2) A request for a hearing shall be filed with the  
10 district court, and a copy served on the department by  
11 certified mail, within ninety (90) days after receipt of the  
12 preliminary decree. The district court shall, for good cause  
13 shown, reasonably extend this time limit if application for  
14 the extension is made within ninety (90) days after receipt  
15 of the preliminary decree. A person requesting a hearing on  
16 his objections to the preliminary decree shall also serve,  
17 by certified mail with return receipt requested, a copy of  
18 his request on any person whose rights or priorities will be  
19 affected if the objections are sustained in the hearing. The  
20 rights and priorities of a person who is not served shall  
21 not be affected by the result of the hearing.

22 (3) The request for a hearing shall contain a precise  
23 statement of the findings and conclusions, in the  
24 preliminary decree, with which the person requesting the  
25 hearing disagrees. The request shall specify the paragraphs

1 and pages containing the findings and conclusions to which  
2 objection is made. The request shall state the specific  
3 grounds and evidence on which the objections are based. The  
4 request shall also state the names of all other persons on  
5 whom it is served.

6 (4) If more than one person requests a hearing on  
7 objections to the preliminary decree, the court may in its  
8 discretion hold a single hearing. Each hearing shall be  
9 conducted as are other civil actions, but the parties to the  
10 hearing may by agreement and with the court's permission  
11 waive any of the procedural or evidentiary rules, or may  
12 submit only written evidence. Only evidence which is  
13 referred to in a request may be introduced in a hearing.

14 (5) In each hearing, the department shall be a party  
15 and is entitled to be heard on objections made by any  
16 person. The department shall be granted adequate time, prior  
17 to a hearing, to gather evidence pertinent to any objection  
18 to be heard in the hearing."

19 Section 8. Section 89-880, R.C.M. 1947, is amended to  
20 read as follows:

21 "89-880. Right to appropriate -- application for  
22 permit. (1) After ~~the-effective-date-of--this--act~~ July 1,  
23 1973, a person may not appropriate water except as provided  
24 in this act. A person may only appropriate water for a  
25 beneficial use. A right to appropriate water may not be

1 acquired by any other method, including by adverse use,  
2 adverse possession, prescription or estoppel; the method  
3 prescribed by this act is exclusive.

4 (2) Except as otherwise provided in subsection ~~(4)~~ (5)  
5 of this section, a person may not appropriate water or  
6 commence construction of diversion, impoundment, withdrawal,  
7 or distribution works therefore except by applying for and  
8 receiving a permit from the department. The application  
9 shall be made on a form prescribed by the department. The  
10 department shall make the forms available through its  
11 offices and the offices of the county clerks and recorders.  
12 The department shall return a defective application for  
13 correction or completion together with the reasons for  
14 returning it. An application does not lose priority of  
15 filing because of defects, if the application is corrected,  
16 completed and refiled with the department within thirty (30)  
17 days after its return to the applicant, or within a further  
18 time as the department may allow.

19 (3) The department may cease action upon an  
20 application for a permit and return it to the applicant when  
21 it finds that the application is not in good faith or does  
22 not show a bona fide intent to appropriate water for a  
23 beneficial use. An application returned for any of these  
24 reasons shall be accompanied by a statement of the reasons  
25 for which it was returned, and there shall be no right to a

1 priority date based upon the filing of the application.  
2 Returning an application pursuant to this subsection shall  
3 be deemed a final decision of the department.

4 ~~(3)~~--(4) A permit issued prior to a final  
5 determination of existing rights is provisional and is  
6 subject to that final determination. The amount of the  
7 appropriation granted in a provisional permit shall be  
8 reduced or modified where necessary to protect and guarantee  
9 existing rights determined in the final decree. A person may  
10 not obtain any vested right, to an appropriation obtained  
11 under a provisional permit, by virtue of construction of  
12 diversion works, purchase of equipment to apply water,  
13 planting of crops, or other action, where the permit would  
14 have been denied or modified if the final decree had been  
15 available to the department.

16 ~~(4)~~--(5) Outside the boundaries of a controlled  
17 groundwater area, a permit is not required before  
18 appropriating groundwater by means of a well with a maximum  
19 yield of less than one hundred (100) gallons a minute.  
20 Within sixty (60) days of completion of the well, the  
21 appropriator shall file notice of completion on a form  
22 provided by the department at its offices and at the offices  
23 of the county clerks and recorders. Upon receipt of the  
24 notice, the department shall automatically issue a  
25 certificate of water right. The original of the certificate



1 shall be sent to the county clerk and recorder, in the  
 2 county where the point of diversion or place of use is  
 3 located, for recordation. The department shall keep a copy  
 4 of the certificate in its office in Helena. After  
 5 recordation, the clerk and recorder shall send the  
 6 certificate to the appropriator. The date of filing of the  
 7 notice of completion is the date of priority of the right.

8 ~~{5}--(6) Persons--required-to-file-well-logs-and-other~~  
 9 ~~information-under-the-laws-governing-the-conservation-of-oil~~  
 10 ~~and-gas-and-who-do-so-in-compliance-with-these--laws,--shall~~  
 11 ~~be--considered--to--have--complied--with--all--of--the--filing~~  
 12 ~~requirements-of-this-act-to-the-extent-it-applies--to--wells~~  
 13 ~~subject--to--those--laws.--The-date-of-appropriation-shall-be~~  
 14 ~~the-date-that-written-notice-of-intention-to-drill-is--given~~  
 15 ~~to--the--board--of--oil--and--gas-conservation.~~ A person who  
 16 desires to convert a nonproductive oil or gas well to a  
 17 water well may do so immediately, but shall file a notice of  
 18 completion or apply for a permit, depending on the maximum  
 19 yield of the well, as otherwise provided in this act. The  
 20 date of appropriation shall be the date of filing the notice  
 21 of completion or the application for a permit.

22 ~~{6}--(7)~~ A person may also appropriate water, without  
 23 applying for or prior to receiving a permit, under rules  
 24 adopted by the board under section 89-869 of this act."

25 Section 9. Section 89-881, R.C.M. 1947, is amended to

1 read as follows:

2 "89-881. Notice of application. (1) Upon receipt of a  
 3 proper application for a permit, the department shall  
 4 prepare a notice containing the facts pertinent to the  
 5 application and shall publish the notice in a newspaper of  
 6 general circulation in the area of the source once a week  
 7 for three (3) consecutive weeks. Before the last date of  
 8 publication, the department shall also serve the notice by  
 9 certified mail upon an appropriator of water or applicant  
 10 for or holder of a permit who, according to the records of  
 11 the department, may be affected by the proposed  
 12 appropriation. A notice shall also be served upon any public  
 13 agency that has reserved waters in the source under section  
 14 ~~26--{89-890}~~. The department may, in its discretion, also  
 15 serve notice upon any state agency or other person the  
 16 department feels may be interested in or affected by the  
 17 proposed appropriation. The department shall file in its  
 18 records proof of service by affidavit of the publisher in  
 19 the case of notice by publication, and by its own affidavit  
 20 in the case of service by mail.

21 (2) The notice shall state that by a date set by the  
 22 department (not less than thirty (30) days nor more than  
 23 sixty (60) days after the last date of publication) persons  
 24 may file with the department written objections to the  
 25 application.

1       (3) The requirements of subsections (1) and (2) of  
 2 this section do not apply if the department finds, on the  
 3 basis of information reasonably available to it, that the  
 4 appropriation as proposed in the application will not  
 5 adversely affect the rights of other persons."

6       Section 10. Section 89-884, R.C.M. 1947, is amended to  
 7 read as follows:

8       "89-884. Action on application. (1) The department  
 9 shall grant, deny, or condition an application for a permit  
 10 in whole or in part within one hundred twenty (120) days  
 11 after the last date of publication of the notice of  
 12 application if no hearing is held, and within one hundred  
 13 eighty (180) days if a hearing is held; however, in either  
 14 case the time may be extended upon agreement of the  
 15 applicant, or, in extraordinary cases, not more than thirty  
 16 (30) days upon order of the department. If the department  
 17 orders the time extended it shall serve a notice of the  
 18 extension and the reasons therefor by certified mail upon  
 19 the applicant and each person who has filed an objection as  
 20 provided by section 89-882.

21       (2) However, an application may not be approved in a  
 22 modified form or upon terms, conditions, or limitations  
 23 specified by the department, nor denied, unless the  
 24 applicant is first granted an opportunity to be heard. If  
 25 no objection is filed against the application, but the

1       department is of the opinion that the application should be  
 2 approved in a modified form or upon terms, conditions or  
 3 limitations specified by it, or that the application should  
 4 be denied, the department shall prepare a statement of its  
 5 opinion and the reasons therefor. The department shall serve  
 6 a statement of its opinion by certified mail upon the  
 7 applicant, together with a notice that the applicant may  
 8 obtain a hearing by filing a request therefor within thirty  
 9 (30) days after the notice is mailed. The notice shall  
 10 further state that the application will be modified in a  
 11 specified manner, or denied, unless a hearing is requested."

12       SECTION 11. SECTION 89-885, R.C.M. 1947, IS AMENDED TO  
 13 READ AS FOLLOWS:

14       "89-885. Criteria for issuance of permit. The  
 15 department shall issue a permit if:

16       (1) there are unappropriated waters in the source of  
 17 supply;

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

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

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

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

1 (6) the proposed use will not adversely---affect  
 2 SUBSTANTIALLY DESTROY fish, wildlife or recreational values  
 3 in existence at the time of the application as may be  
 4 determined by the department upon submission of evidence by  
 5 any person asserting that value."

6 Section 12. Section 89-890, R.C.M. 1947, is amended to  
 7 read as follows:

8 "89-890. Reservation of waters. (1) The state or any  
 9 political subdivision or agency thereof, or the United  
 10 States or any agency thereof, may apply to the board to  
 11 reserve waters for existing or future beneficial uses, or to  
 12 maintain a minimum flow, level, or quality of water  
 13 throughout the year or at such periods or for such length of  
 14 time as the board designates.

15 (2) Upon receiving an application, the department  
 16 shall proceed in accordance with sections ~~17 through 19~~  
 17 ~~{89-881 through 89-883}~~. After the hearing provided in  
 18 section ~~19--{89-883}~~, the board shall decide whether to  
 19 reserve the water for the applicant. The department's costs  
 20 of giving notice, holding the hearing, conducting  
 21 investigations, and making records, incurred in acting upon  
 22 the application to reserve water, except the cost of  
 23 salaries of the department's personnel, shall be paid by the  
 24 applicant.

25 (3) The board may not adopt an order reserving water

1 unless the applicant establishes to the satisfaction of the  
 2 board:

3 (a) the purpose of the reservation;

4 (b) the need for the reservation;

5 (c) the amount of water necessary for the purpose of  
 6 the reservation;

7 (d) that the reservation is in the public interest. If  
 8 the purpose of the reservation requires construction of a  
 9 storage or diversion facility, the applicant shall establish  
 10 to the satisfaction of the board that there will be progress  
 11 toward completion of the facility and accomplishment of the  
 12 purpose with reasonable diligence in accordance with an  
 13 established plan.

14 (4) After the adoption of an order reserving waters,  
 15 the department may reject an application and refuse a permit  
 16 for the appropriation of reserved waters, or may, with the  
 17 approval of the board, issue the permit subject to such  
 18 terms and conditions it considers necessary for the  
 19 protection of the objectives of the reservation.

20 (5) A reservation under this section shall date from  
 21 the date--the--order--reserving--the--water--is--adopted--by--the  
 22 board FILING OF AN APPLICATION FOR A RESERVATION WITH THE  
 23 DEPARTMENT, and shall not adversely affect any rights in  
 24 existence at that time when--the--order--reserving--waters--is  
 25 adopted.

1 (6) The board shall, periodically but not less than  
 2 every ten (10) years, review existing reservations to ensure  
 3 that the objectives of the reservation are being met. Where  
 4 the objectives of the reservation are not being met, the  
 5 board may extend, revoke or modify the reservation."

6 Section 13. Section 89-896, R.C.M. 1947, is amended to  
 7 read as follows:

8 "89-896. Supervision of water distribution. (1) ~~As of~~  
 9 ~~the effective date of this act, the~~ The district courts  
 10 shall supervise the distribution of water among all  
 11 appropriators. This supervisory authority includes the  
 12 supervision of all water commissioners appointed prior or  
 13 subsequent to the effective date of this act. The  
 14 supervision shall be governed by the principle that first in  
 15 time is first in right.

16 (2) When a water distribution controversy arises upon  
 17 a source of water in which existing rights have not been  
 18 determined according to sections ~~6 through 15~~ 89-870  
 19 through ~~89-879~~ of this act, any party to the controversy  
 20 may petition the district court for relief. the The  
 21 department ~~may~~ shall be served with process in any  
 22 proceeding under this subsection and shall, within a  
 23 reasonable time thereafter, notify the court whether it  
 24 intends in its discretion, within a reasonable time, to  
 25 begin proceedings to determine existing rights in the

1 source, in accordance with this act. The department may, if  
 2 it declines to commence proceedings to determine existing  
 3 rights in the source, intervene as a party in the  
 4 proceeding. The district court from which relief is sought  
 5 may grant such injunctive or other relief which is necessary  
 6 and appropriate to preserve property rights or the status  
 7 quo pending the department's decision whether to determine  
 8 existing rights in the source, or the department's decision  
 9 to intervene as a party, as the case may be. If the  
 10 department does not proceed to obtain a determination of  
 11 existing rights, the district court shall settle only the  
 12 controversy between the parties.

13 (3) A controversy between appropriators from a source  
 14 which has been the subject of a general determination of  
 15 existing rights under sections ~~6 through 15~~ 89-870 through  
 16 ~~89-879~~ of this act shall be settled by the district court  
 17 which issued the final decree. The order of the district  
 18 court settling the controversy may not alter the existing  
 19 rights and priorities established in the final decree. In  
 20 cases involving permits issued by the department, the court  
 21 may not amend the respective rights established in the  
 22 permits or alter any terms of the permits unless the permits  
 23 are inconsistent or interfere with rights and priorities  
 24 established in the final decree. The order settling the  
 25 controversy shall be appended to the final decree, and a

copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

~~{4}--The department shall be named as a party in any proceeding under this section and shall be served with process."~~

~~Section 13. There is a new R.C.M. section numbered 89-879.1 that reads as follows:~~

~~89-879.1. Enforcement. (1) A person may not waste water, prevent water from moving to another person having a prior right to use the same, or otherwise use water unlawfully.~~

~~{2}--If the department ascertains by a means reasonably considered sufficient by it that a person is violating subsection (1) of this section or is otherwise violating any provision of this act or a rule made pursuant thereto, it may cause written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation, and it may order the violator to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, no later than thirty (30) days after the date the notice is received, the person named requests in writing a~~

~~hearing before the department. Not more than fifteen (15) days after receipt of the request, the department shall hold a hearing.~~

~~{3}--If after a hearing held under subsection (1) of this section, the department finds that a violation has occurred, it shall either affirm or modify the order previously issued, or issue an appropriate order for the prevention or abatement of the violation involved or for the taking of other corrective action it considers appropriate. If after hearing on an order contained in a notice, the department finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the violation.~~

~~{4}--The department may direct its own attorney, or request the attorney general or the county attorney to enforce orders issued pursuant to this section by appropriate judicial proceedings.~~

~~{5}--This act does not prevent the department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.~~

Section 14. Section 89-8-100, R.C.M. 1947, is amended to read as follows:

"89-8-100. Hearings before board -- Administrative

1 Procedure Act. (1) A person who is aggrieved by a final  
 2 decision of the department under this act is entitled to a  
 3 hearing before the board. A person desiring a hearing  
 4 before the board pursuant to this section shall notify the  
 5 department in writing within ten (10) days of the final  
 6 decision.

7 (2) The Montana Administrative Procedure Act (Title  
 8 82, chapter 42, R.C.M. 1947) governs administrative  
 9 proceedings conducted under this act, except that the common  
 10 law and statutory rules of evidence shall apply only upon  
 11 stipulation of all parties to a proceeding."

12 ~~Section 15. Section 89-8-101, R.C.M., 1947, is amended~~  
 13 ~~to read as follows:~~

14 ~~"89-8-101. Penalties. A person who violates or~~  
 15 ~~refuses or neglects to comply with sections 16-(1), 28-(1),~~  
 16 ~~and 29-(3), 89-800-(1), 89-892-(1), and 89-893-(3), and~~  
 17 ~~89-897, 1--} of this act, or of any order of the department,~~  
 18 ~~or of any rule of the board, is guilty of a misdemeanor."~~

19 Section 15. There is a new R.C.M. section numbered  
 20 89-8-102.1 that reads as follows:

21 "89-8-102.1. Saving clause. Nothing in this act abates  
 22 or otherwise adversely affects the validity of any filing,  
 23 notice, or judicial proceeding commenced under the law as it  
 24 existed before July 1, 1973.

25 Section 16. This act applies to applications currently

1 pending with the department, as well as applications filed  
 2 with the department after the effective date of this act.

3 Section 17. This act is effective upon its passage and  
 4 approval.

-End-