

1 HOUSE BILL NO. 486

2 INTRODUCED BY FRATES, WALDRON, OHDE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
5 WATER USE ACT TO FACILITATE APPROPRIATION OF WATER RIGHTS
6 FOR WILDLIFE OR RECREATIONAL USES, AMENDING SECTIONS 89-880,
7 89-890, AND 89-892, R.C.M. 1947, AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11 Section 1. Section 89-880, R.C.M. 1947, is amended to
12 read as follows:13 "89-880. Right to appropriate -- application for
14 permit. (1) After July 1, 1973, a person may not appropriate
15 water except as provided in this act. A person may only
16 appropriate water [for a] beneficial use. A right to
17 appropriate water may not be acquired by any other method,
18 including by adverse use, adverse possession, prescription
19 or estoppel; the method prescribed by this act is exclusive.20 (2) Except as otherwise provided in subsection (5) of
21 this section, a person may not appropriate water or commence
22 construction of diversion, impoundment, withdrawal, or
23 distribution works therefor except by applying for and
24 receiving a permit from the department. The application
25 shall be made on a form prescribed by the department. The

1 department shall make the forms available through its
2 offices and the offices of the county clerks and recorders.
3 The department shall return a defective application for
4 correction or completion together with the reasons for
5 returning it. An application does not lose priority of
6 filing because of defects, if the application is corrected,
7 completed and refiled with the department within thirty (30)
8 days after its return to the applicant, or within a further
9 time as the department may allow.

10 (3) The department may cease action upon an
11 application for a permit and return it to the applicant when
12 it finds that the application is not in good faith or does
13 not show a bona fide intent to appropriate water for a
14 beneficial use. An application returned for any of these
15 reasons shall be accompanied by a statement of the reasons
16 for which it was returned, and there shall be no right to a
17 priority date based upon the filing of the application.
18 Returning an application pursuant to this subsection shall
19 be deemed a final decision of the department.20 (4) A permit issued prior to a final determination of
21 existing rights is provisional and is subject to that final
22 determination. The amount of the appropriation granted in a
23 provisional permit shall be reduced or modified where
24 necessary to protect and guarantee existing rights
25 determined in the final decree. A person may not obtain any

1 vested right, to an appropriation obtained under a
 2 provisional permit, by virtue of construction of diversion
 3 works, purchase of equipment to apply water, planting of
 4 crops, or other action, where the permit would have been
 5 denied or modified if the final decree had been available to
 6 the department.

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

24 (6) A person who desires to convert a nonproductive
 25 oil or gas well to a water well may do so immediately, but

1 shall file a notice of completion or apply for a permit,
 2 depending on the maximum yield of the well, as otherwise
 3 provided in this act. The date of appropriation shall be
 4 the date of filing the notice of completion or the
 5 application for a permit.

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

9 (8) When the department of fish and game appropriates
 10 water for fish and wildlife or recreational uses, it is not
 11 necessary for that department to divert, impound, or
 12 withdraw the appropriated water."

13 Section 2. Section 89-890, R.C.M. 1947, is amended to
 14 read as follows:

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

22 (2) Upon receiving an application, the department
 23 shall proceed in accordance with sections 89-881 through
 24 89-883. After the hearing provided in section 89-883, the
 25 board shall decide whether to reserve the water for the

1 applicant. The department's costs of giving notice, holding
 2 the hearing, conducting investigations, and making records,
 3 incurred in acting upon the application to reserve water,
 4 except the cost of salaries of the department's personnel,
 5 shall be paid by the 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 in the same manner and at the same~~
 5 time as application to appropriate water under section
 6 89-880.

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

12 Section 3. Section 89-892, R.C.M. 1947, is amended to
 13 read as follows:

14 "89-892. Changes in appropriation rights. (1) An
 15 appropriator may not change the place of diversion, place of
 16 use, purpose of use or place of storage except as permitted
 17 under this section and approved by the department.

18 (2) The department shall approve the proposed change
 19 if it determines that the proposed change will not adversely
 20 affect the rights of other persons. If the department
 21 determines that the proposed change might adversely affect
 22 the rights of other persons, notice of the proposed change
 23 shall be given in accordance with section 89-881. If the
 24 department determines that an objection filed by a person
 25 whose rights may be affected states a valid objection to the

1 proposed change, the department shall hold a hearing thereon
2 prior to its approval or denial of the proposed change.
3 Objections shall meet the requirements of section 89-882
4 (2), and hearings shall be held in accordance with section
5 89-883.

6 (3) An appropriator of more than fifteen (15) cubic
7 feet per second may not change the purpose of use of an
8 appropriation right from an agricultural use to an
9 industrial use.

10 (4) The department of fish and game may change the
11 purpose of use of an appropriation right to fish and
12 wildlife or recreational uses without the requirement of a
13 diversion, impoundment, or withdrawal of the appropriated
14 water."

15 Section 4. Effective date. This act is effective on
16 its passage and approval.

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