

1 *House* BILL NO. *664*  
 2 INTRODUCED BY *Ray By Request* ~~Montana~~ *water subcommittee*  
 3 BY REQUEST OF

4 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS  
 7 89-867, 89-875, 89-880, 89-884, 89-885, 89-890, 89-892, AND  
 8 89-8-100, R.C.M. 1947, OF THE MONTANA WATER USE ACT TO  
 9 CLARIFY DEFINITIONS; TO REDUCE THE COST OF SERVING COPIES OF  
 10 PRELIMINARY DECREES; TO PROVIDE FOR THE PRIORITY DATE OF  
 11 CERTAIN REFILED APPLICATIONS; TO TERMINATE CERTAIN  
 12 UNCORRECTED APPLICATIONS; TO CLARIFY THE REPEALING OF NOTICES  
 13 OF COMPLETION OF SMALL WELLS; TO PROVIDE FOR THE EXTENSION  
 14 OF TIME TO ACT UPON APPLICATIONS IN EXTRAORDINARY CASES; TO  
 15 PROVIDE THAT AN APPLICANT FOR AN APPROPRIATION OF 10,000  
 16 ACRE-FEET A YEAR OR MORE MUST PROVE BY CLEAR AND CONVINCING  
 17 EVIDENCE THAT THE RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE  
 18 ADVERSELY AFFECTED; TO CLARIFY THE PERIODIC REVIEW BY THE  
 19 BOARD OF RESERVATIONS OF WATER; TO PROVIDE THAT THE  
 20 DEPARTMENT MAY APPROVE CHANGES IN APPROPRIATION RIGHTS WITH  
 21 CONDITIONS TO PROTECT OTHER APPROPRIATORS; AND TO ELIMINATE  
 22 THE RIGHT TO APPEAL A FINAL DECISION OF THE DEPARTMENT TO  
 23 THE BOARD."

24  
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

3 "89-867. Definitions. Unless the context requires  
 4 otherwise, in this chapter:

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

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

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

21 (4) "Existing right" means a right to the use of water  
 22 which would be protected under the law as it existed prior  
 23 to July 1, 1973.

24 (5) "Groundwater" means any water beneath the land  
 25 surface or beneath the bed of a stream, lake, reservoir, or

*HB 664*

1 other body of surface water, and which is not a part of that  
2 surface water.

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

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

9 (8) "Certificate" means the certificate of water right  
10 issued by the department under sections 89-879, 89-880(5),  
11 and 89-888.

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

14 (10) "Waste" means the unreasonable loss of water  
15 through the design or negligent operation of an  
16 appropriation or water distribution facility, or the  
17 application of water to anything but a beneficial use.

18 (11) ~~"Political" subdivision~~ "Political subdivision"  
19 means any county, incorporated city or town, public  
20 corporation or district created pursuant to state law, or  
21 other public body of the state empowered to appropriate  
22 water, but not a private corporation, association, or group.

23 (12) "Person" means an individual, association,  
24 partnership, corporation, state agency, political  
25 subdivision, and the United States or any agency thereof, or

1 any other entity.

2 (13) "Department" means the department of natural  
3 resources and conservation provided for in Title 82A,  
4 chapter 15.

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

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

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

11 "89-875. Preliminary decree. (1) Within a reasonable  
12 time after the department files with the district court the  
13 material required by section 89-874, the court shall issue a  
14 preliminary decree. The preliminary decree shall be based on  
15 the data submitted by the department and on any additional  
16 data obtained by the court.

17 (2) The preliminary decree shall contain the  
18 information, and make the determinations, findings, and  
19 conclusions, required for the final decree under section  
20 89-877.

21 (3) The district court shall send a copy of the  
22 preliminary decree ~~by certified mail with return receipt~~  
23 ~~requested~~ to the department, and the department shall serve  
24 by mail or by personal service a copy of the preliminary  
25 decree to each person named in the material submitted under

1 section 89-874 or named in the preliminary decree. ~~The~~  
 2 ~~return receipt shall be appended to the preliminary decree.~~  
 3 ~~The costs of mailing the copies shall be paid by the~~  
 4 ~~department. The department shall file proof of service with~~  
 5 the district court.

6 (4) A person named in the material or in the  
 7 preliminary decree may inspect the data upon which the  
 8 decree is based at any time, and he may purchase copies of  
 9 any of the data."

10 Section 3. Section 89-880, R.C.M. 1947, is amended to  
 11 read as follows:

12 "89-880. Right to appropriate — application for  
 13 permit. (1) After July 1, 1973, a person may not appropriate  
 14 water except as provided in this act. A person may only  
 15 appropriate water ~~for a~~ for a beneficial use. A right to  
 16 appropriate water may not be acquired by any other method,  
 17 including by adverse use, adverse possession, prescription  
 18 or estoppel; the method prescribed by this act is exclusive.

19 (2) Except as otherwise provided in subsection (5) of  
 20 this section, a person may not appropriate water or commence  
 21 construction of diversion, impoundment, withdrawal, or  
 22 distribution works therefor except by applying for and  
 23 receiving a permit from the department. The application  
 24 shall be made on a form prescribed by the department. The  
 25 department shall make the forms available through its

1 offices and the offices of the county clerks and recorders.  
 2 The department shall return a defective application for  
 3 correction or completion together with the reasons for  
 4 returning it. An application does not lose priority of  
 5 filing because of defects, if the application is corrected,  
 6 completed and refiled with the department within thirty (30)  
 7 days after its return to the applicant, or within a further  
 8 time as the department may allow. If an application is not  
 9 corrected and completed within 30 days or within a further  
 10 time as the department allows, up to 6 months, the priority  
 11 date of the application shall be the date of refiling the  
 12 application with the corrections with the department. An  
 13 application not corrected within 6 months shall be  
 14 terminated.

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 (4) A permit issued prior to a final determination of

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

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

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

5 (6) A person who desires to convert a nonproductive  
 6 oil or gas well to a water well may do so immediately, but  
 7 shall file a notice of completion or apply for a permit,  
 8 depending on the maximum yield of the well, as otherwise  
 9 provided in this act. The date of appropriation shall be  
 10 the date of filing the notice of completion or the  
 11 application for a permit.

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

15 Section 4. Section 89-884, R.C.M. 1947, is amended to  
 16 read as follows:

17 "89-884. Action on application. (1) The department  
 18 shall grant, deny, or condition an application for a permit  
 19 in whole or in part within one hundred twenty (120) days  
 20 after the last date of publication of the notice of  
 21 application if no hearing is held, and within one hundred  
 22 eighty (180) days if a hearing is held; however, in either  
 23 case the time may be extended upon agreement of the  
 24 applicant, or, in those cases where an environmental impact  
 25 statement must be prepared or in other extraordinary cases,

1 ~~not more than thirty (30) days~~ upon order of the department.  
 2 If the department orders the time extended it shall serve a  
 3 notice of the extension and the reasons therefor by  
 4 certified mail upon the applicant and each person who has  
 5 filed an objection as provided by section 89-882.

6 (2) However, an application may not be approved in a  
 7 modified form or upon terms, conditions, or limitations  
 8 specified by the department, nor denied, unless the  
 9 applicant is first granted an opportunity to be heard. If no  
 10 objection is filed against the application, but the  
 11 department is of the opinion that the application should be  
 12 approved in a modified form or upon terms, conditions or  
 13 limitations specified by it, or that the application should  
 14 be denied, the department shall prepare a statement of its  
 15 opinion and the reasons therefor. The department shall serve  
 16 a statement of its opinion by certified mail upon the  
 17 applicant, together with a notice that the applicant may  
 18 obtain a hearing by filing a request therefor within thirty  
 19 (30) days after the notice is mailed. The notice shall  
 20 further state that the application will be modified in a  
 21 specified manner, or denied, unless a hearing is requested."

22 Section 5. Section 89-885, R.C.M. 1947, is amended to  
 23 read as follows:

24 "89-885. Criteria for issuance of permit. The  
 25 department shall issue a permit if:

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

3 (2) the rights of a prior appropriator will not be  
 4 adversely affected;

5 (3) the proposed means of diversion or construction  
 6 are adequate;

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

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

11 (6) an applicant for an appropriation of 10,000  
 12 acre-feet a year or more or fifteen (15) cubic feet per  
 13 second or more proves by clear and convincing evidence that  
 14 the rights of a prior appropriator will not be adversely  
 15 affected."

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

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

25 (2) Upon receiving an application, the department

1 shall proceed in accordance with sections 89-881 through  
 2 89-883. After the hearing provided in section 89-883, the  
 3 board shall decide whether to reserve the water for the  
 4 applicant. The department's costs of giving notice, holding  
 5 the hearing, conducting investigations, and making records,  
 6 incurred in acting upon the application to reserve water,  
 7 except the cost of salaries of the department's personnel,  
 8 shall be paid by the applicant.

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

- 12 (a) the purpose of the reservation;
- 13 (b) the need for the reservation;
- 14 (c) the amount of water necessary for the purpose of  
 15 the reservation;
- 16 (d) that the reservation is in the public interest. If  
 17 the purpose of the reservation requires construction of a  
 18 storage or diversion facility, the applicant shall establish  
 19 to the satisfaction of the board that there will be progress  
 20 toward completion of the facility and accomplishment of the  
 21 purpose with reasonable diligence in accordance with an  
 22 established plan.

23 (4) After the adoption of an order reserving waters,  
 24 the department may reject an application and refuse a permit  
 25 for the appropriation of reserved waters, or may, with the

1 approval of the board, issue the permit subject to such  
 2 terms and conditions it considers necessary for the  
 3 protection of the objectives of the reservation.

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

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

14 Section 7. Section 89-892, R.C.M. 1947, is amended to  
 15 read as follows:

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

20 (2) The department shall approve the proposed change  
 21 if it determines that the proposed change will not adversely  
 22 affect the rights of other persons. If the department  
 23 determines that the proposed change might adversely affect  
 24 the rights of other persons, notice of the proposed change  
 25 shall be given in accordance with section 89-881. If the

1 department determines that an objection filed by a person  
 2 whose rights may be affected states a valid objection to the  
 3 proposed change, the department shall hold a hearing thereon  
 4 prior to its approval or denial of the proposed change.  
 5 Objections shall meet the requirements of section 89-882(2),  
 6 and hearings shall be held in accordance with section  
 7 89-883.

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

12 (4) The department may approve a change subject to  
 13 such terms, conditions, restrictions, and limitations it  
 14 considers necessary to protect the rights of other  
 15 appropriators, including limitations on the time for  
 16 completion of the change.

17 (5) If a change is not completed as approved by the  
 18 department or if the terms, conditions, restrictions, and  
 19 limitations of the change approval are not complied with,  
 20 the department may, after notice and opportunity for  
 21 hearing, require the appropriator to show cause why the  
 22 change approval should not be modified or revoked. If the  
 23 appropriator fails to show sufficient cause, the department  
 24 may modify or revoke the change approval."

25 Section 8. Section 89-8-100, R.C.M. 1947, is amended

1 to read as follows:

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

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

-End-

Approved by Committee  
on Judiciary

1 HOUSE BILL NO. 664  
2 INTRODUCED BY DAY  
3 BY REQUEST OF THE  
4 JUDICIARY SUBCOMMITTEE ON MONTANA WATER  
5 BY REQUEST OF  
6 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
7  
8  
9 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS  
10 89-867, 89-875, ~~89-877~~, 89-880, 89-884, 89-885, 89-890,  
11 89-892, AND 89-8-100, AND 89-8-101, R.C.M. 1947, OF THE  
12 MONTANA WATER USE ACT TO CLARIFY DEFINITIONS; TO REDUCE THE  
13 COST OF SERVING COPIES OF PRELIMINARY DECREES; TO CLARIFY  
14 THE FINDINGS TO BE MADE BY THE COURT IN THE FINAL DECREE; TO  
15 PROVIDE FOR THE PRIORITY DATE OF CERTAIN REFILED  
16 APPLICATIONS; TO TERMINATE CERTAIN UNCORRECTED APPLICATIONS;  
17 TO CLARIFY THE REFILEING OF NOTICES OF COMPLETION OF SMALL  
18 WELLS; TO PROVIDE FOR THE EXTENSION OF TIME TO ACT UPON  
19 APPLICATIONS IN EXTRAORDINARY CASES; TO PROVIDE THAT AN  
20 APPLICANT FOR AN APPROPRIATION OF 10,000 ACRE-FEET A YEAR OR  
21 MORE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE  
22 RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY  
23 AFFECTED; TO CLARIFY THE PERIODIC REVIEW BY THE BOARD OF  
24 RESERVATIONS OF WATER; TO PROVIDE THAT THE DEPARTMENT MAY  
25 APPROVE CHANGES IN APPROPRIATION RIGHTS WITH CONDITIONS TO

1 PROTECT OTHER APPROPRIATORS; AND TO ELIMINATE THE RIGHT TO  
2 APPEAL A FINAL DECISION OF THE DEPARTMENT TO THE BOARD; AND  
3 TO ALLOW THE UNITED STATES TO APPLY FOR RESERVATIONS OF  
4 WATER."

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 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 and diffuse surface  
14 water.

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

23 (3) "Appropriate" means to divert, impound, or  
24 withdraw (including by stock for stock water) a quantity of  
25 water, or in the case of a public agency to reserve water in

SECOND READING

1 accordance with section 89-890.

2 (4) "Existing right" means a right to the use of water  
3 which would be protected under the law as it existed prior  
4 to July 1, 1973.

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

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

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

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

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

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

24 (11) "~~Political~~--subdivision "Political subdivision"  
25 means any county, incorporated city or town, public

1 corporation or district created pursuant to state law, or  
2 other public body of the state empowered to appropriate  
3 water, but not a private corporation, association, or group.

4 (12) "Person" means an individual, association,  
5 partnership, corporation, state agency, political  
6 subdivision, and the United States or any agency thereof, or  
7 any other entity.

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

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 89-875, R.C.M. 1947, is amended to  
16 read as follows:

17 "89-875. Preliminary decree. (1) Within a reasonable  
18 time after the department files with the district court the  
19 material required by section 89-874, the court shall issue a  
20 preliminary decree. The preliminary decree shall be based on  
21 the data submitted by the department and on any additional  
22 data obtained by the court.

23 (2) The preliminary decree shall contain the  
24 information, and make the determinations, findings, and  
25 conclusions, required for the final decree under section

1 89-877.

2 (3) The district court shall send a copy of the  
3 preliminary decree ~~by certified mail with return receipt~~  
4 ~~requested to the department, and the department shall serve~~  
5 ~~by mail or by personal service a copy of the preliminary~~  
6 ~~decree~~ to each person named in the material submitted under  
7 section 89-874 or named in the preliminary decree. ~~The~~  
8 ~~return receipt shall be appended to the preliminary decree.~~  
9 ~~The costs of mailing the copies shall be paid by the~~  
10 ~~department. The department shall file proof of service with~~  
11 ~~the district court.~~

12 (4) A person named in the material or in the  
13 preliminary decree may inspect the data upon which the  
14 decree is based at any time, and he may purchase copies of  
15 any of the data."

16 SECTION 3. SECTION 89-877, R.C.M. 1947, IS AMENDED TO  
17 READ AS FOLLOWS:

18 "89-877. Final decree. (1) The court shall, on the  
19 basis of the preliminary decree and on the basis of any  
20 hearing that may have been held, enter a final decree  
21 affirming or modifying the preliminary decree. If no request  
22 for a hearing is filed within the time allowed, the  
23 preliminary decree automatically becomes final, and the  
24 court shall enter it as the final decree.

25 (2) The final decree shall establish the existing

1 rights and priorities, of the persons named in the petition,  
2 for the source or area under consideration.

3 (3) The final decree shall state the findings of fact,  
4 along with any conclusions of law, upon which the existing  
5 rights and priorities of each person named in the decree are  
6 based.

7 (4) For each person who is found to have an existing  
8 right, the final decree shall state:

9 (a) the name and post-office address of the owner of  
10 the right;

11 (b) the amount of water, rate and volume, included in  
12 the right;

13 (c) the date of priority of the right;

14 (d) the purpose for which the water included in the  
15 right is used;

16 (e) the place of use and a description of the land to  
17 which the right is appurtenant;

18 (f) the source of the water included in the right;

19 (g) the place and means of diversion;

20 (h) the approximate time during which the water is  
21 used each year;

22 (i) any other information necessary to fully define  
23 the nature and extent of the right.

24 (5) The final decree in each existing right  
25 determination is final and conclusive as to all existing

1 rights in the source or area under consideration. After the  
2 final decree there shall be no existing rights to water in  
3 the area or source under consideration except as stated in  
4 the decree."

5 Section 4. Section 89-880, R.C.M. 1947, is amended to  
6 read as follows:

7 "89-880. Right to appropriate -- application for  
8 permit. (1) After July 1, 1973, a person may not appropriate  
9 water except as provided in this act. A person may only  
10 appropriate water [for-a] for a beneficial use. A right to  
11 appropriate water may not be acquired by any other method,  
12 including by adverse use, adverse possession, prescription  
13 or estoppel; the method prescribed by this act is exclusive.

14 (2) Except as otherwise provided in subsection (5) of  
15 this section, a person may not appropriate water or commence  
16 construction of diversion, impoundment, withdrawal, or  
17 distribution works therefor except by applying for and  
18 receiving a permit from the department. The application  
19 shall be made on a form prescribed by the department. The  
20 department shall make the forms available through its  
21 offices and the offices of the county clerks and recorders.  
22 The department shall return a defective application for  
23 correction or completion together with the reasons for  
24 returning it. An application does not lose priority of  
25 filing because of defects, if the application is corrected,

1 completed and refiled with the department within thirty (30)  
2 days after its return to the applicant, or within a further  
3 time as the department may allow. If an application is not  
4 corrected and completed within 30 days or within a further  
5 time as the department allows, up to 6 18 months, the  
6 priority date of the application shall be the date of  
7 refiling the application with the corrections with the  
8 department. An application not corrected within 6 18 months  
9 shall be terminated.

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 and appropriation of the  
 12 groundwater for beneficial use, the appropriator shall file  
 13 notice of completion on a form provided by the department at  
 14 its offices and at the offices of the county clerks and  
 15 recorders. Upon receipt of the notice, the department shall  
 16 automatically issue a certificate of water right. The  
 17 original of the certificate shall be sent to the county  
 18 clerk and recorder, in the county where the point of  
 19 diversion or place of use is located, for recordation. The  
 20 department shall keep a copy of the certificate in its  
 21 office in Helena. After recordation, the clerk and recorder  
 22 shall send the certificate to the appropriator. The date of  
 23 filing of the notice of completion is the date of priority  
 24 of the right.

25 (6) A person who desires to convert a nonproductive

1 oil or gas well to a water well may do so immediately, but  
 2 shall file a notice of completion or apply for a permit,  
 3 depending on the maximum yield of the well, as otherwise  
 4 provided in this act. The date of appropriation shall be  
 5 the date of filing the notice of completion or the  
 6 application for a permit.

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

10 Section 5. Section 89-884, R.C.M. 1947, is amended to  
 11 read as follows:

12 "89-884. Action on application. (1) The department  
 13 shall grant, deny, or condition an application for a permit  
 14 in whole or in part within one hundred twenty (120) days  
 15 after the last date of publication of the notice of  
 16 application if no hearing is held, and within one hundred  
 17 eighty (180) days if a hearing is held; however, in either  
 18 case the time may be extended upon agreement of the  
 19 applicant, or, in those cases where an environmental impact  
 20 statement must be prepared or in other extraordinary cases,  
 21 not more than thirty--(30)--days NOT MORE THAN 60 DAYS upon  
 22 order of the department. If the department orders the time  
 23 extended it shall serve a notice of the extension and the  
 24 reasons therefor by certified mail upon the applicant and  
 25 each person who has filed an objection as provided by

1 section 89-882.

2 (2) However, an application may not be approved in a  
3 modified form or upon terms, conditions, or limitations  
4 specified by the department, nor denied, unless the  
5 applicant is first granted an opportunity to be heard. If no  
6 objection is filed against the application, but the  
7 department is of the opinion that the application should be  
8 approved in a modified form or upon terms, conditions or  
9 limitations specified by it, or that the application should  
10 be denied, the department shall prepare a statement of its  
11 opinion and the reasons therefor. The department shall serve  
12 a statement of its opinion by certified mail upon the  
13 applicant, together with a notice that the applicant may  
14 obtain a hearing by filing a request therefor within thirty  
15 (30) days after the notice is mailed. The notice shall  
16 further state that the application will be modified in a  
17 specified manner, or denied, unless a hearing is requested."

18 Section 6. Section 89-885, R.C.M. 1947, is amended to  
19 read as follows:

20 "89-885. Criteria for issuance of permit. The  
21 department shall issue a permit if:

22 (1) there are unappropriated waters in the source of  
23 supply;

24 (2) the rights of a prior appropriator will not be  
25 adversely affected;

1 (3) the proposed means of diversion or construction  
2 are adequate;

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

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

7 (6) an applicant for an appropriation of 10,000  
8 ~~acre-feet a year or more or fifteen~~ (15) cubic feet per  
9 second or more proves by clear and convincing evidence that  
10 the rights of a prior appropriator will not be adversely  
11 affected."

12 Section 7. 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 89-881 through  
23 89-883. After the hearing provided in section 89-883, the  
24 board shall decide whether to reserve the water for the  
25 applicant. The department's costs of giving notice, holding

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

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

- 8 (a) the purpose of the reservation;
- 9 (b) the need for the reservation;
- 10 (c) the amount of water necessary for the purpose of
- 11 the reservation;
- 12 (d) that the reservation is in the public interest. If
- 13 the purpose of the reservation requires construction of a
- 14 storage or diversion facility, the applicant shall establish
- 15 to the satisfaction of the board that there will be progress
- 16 toward completion of the facility and accomplishment of the
- 17 purpose with reasonable diligence in accordance with an
- 18 established plan.

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

25 (5) A reservation under this section shall date from

1 the date the order reserving the water is adopted by the  
 2 board, and shall not adversely affect any rights in  
 3 existence at that time.

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

10 Section 8. Section 89-892, R.C.M. 1947, is amended to  
 11 read as follows:

12 "89-892. Changes in appropriation rights. (1) An  
 13 appropriator may not change the place of diversion, place of  
 14 use, purpose of use or place of storage except as permitted  
 15 under this section and approved by the department.

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

1 Objections shall meet the requirements of section 89-882(2),  
2 and hearings shall be held in accordance with section  
3 89-883.

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

8 ~~(4) The department may approve a change subject to~~  
9 ~~such terms, conditions, restrictions, and limitations it~~  
10 ~~considers necessary to protect the rights of other~~  
11 ~~appropriators, including limitations on the time for~~  
12 ~~completion of the change.~~

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

21 Section 9. Section 89-8-100, R.C.M. 1947, is amended  
22 to read as follows:

23 "89-8-100. Hearings--before--board--- Administrative  
24 Procedure Act proceedings. ~~(1) A person who is aggrieved by~~  
25 ~~a final decision of the department under this act is~~

1 ~~entitled to a hearing before the board. A person desiring a~~  
2 ~~hearing before the board pursuant to this section shall~~  
3 ~~notify the department in writing within ten (10) days of the~~  
4 ~~final decision.~~

5 (2) The Montana Administrative Procedure Act (Title  
6 82, chapter 42, R.C.M. 1947) governs administrative  
7 proceedings conducted under this act, except that the common  
8 law and statutory rules of evidence shall apply only upon  
9 stipulation of all parties to a proceeding."

10 SECTION 10. SECTION 89-8-107, R.C.M. 1947, IS AMENDED  
11 TO READ AS FOLLOWS:

12 "89-8-107. Reservations. The department may apply for  
13 reservations and shall, as rapidly as possible, assist other  
14 appropriate state agencies and political subdivisions in  
15 applying for reservations within the basin. ~~The United~~  
16 ~~States or any agency thereof may not apply for a reservation~~  
17 ~~of water in the basin under section 89-8-90, R.C.M. 1947,~~  
18 ~~until the requirements of section 3 [89-8-105] of this act~~  
19 ~~are met. Particular emphasis shall be given to applications~~  
20 ~~to reserve water for agricultural, municipal, and minimum~~  
21 ~~flow purposes for the protection of existing rights and~~  
22 ~~aquatic life."~~

-End-

1 HOUSE BILL NO. 664  
 2 INTRODUCED BY DAY  
 3 BY REQUEST OF THE  
 4 JUDICIARY SUBCOMMITTEE ON MONTANA WATER  
 5 BY REQUEST OF  
 6 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
 7  
 8  
 9 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS  
 10 89-867, 89-875, 89-877, 89-880, 89-884, 89-885, 89-890,  
 11 89-892, AND 89-8-100, AND 89-8-107, R.C.M. 1947, OF THE  
 12 MONTANA WATER USE ACT TO CLARIFY DEFINITIONS; TO REDUCE THE  
 13 COST OF SERVING COPIES OF PRELIMINARY DECREES; TO CLARIFY  
 14 THE FINDINGS TO BE MADE BY THE COURT IN THE FINAL DECREE; TO  
 15 PROVIDE FOR THE PRIORITY DATE OF CERTAIN REFILED  
 16 APPLICATIONS; TO TERMINATE CERTAIN UNCORRECTED APPLICATIONS;  
 17 TO CLARIFY THE REFILING OF NOTICES OF COMPLETION OF SMALL  
 18 WELLS; TO PROVIDE FOR THE EXTENSION OF TIME TO ACT UPON  
 19 APPLICATIONS IN EXTRAORDINARY CASES; TO PROVIDE THAT AN  
 20 APPLICANT FOR AN APPROPRIATION OF 10,000 ACRE-FEET A YEAR OR  
 21 MORE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE  
 22 RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY  
 23 AFFECTED; TO CLARIFY THE PERIODIC REVIEW BY THE BOARD OF  
 24 RESERVATIONS OF WATER; TO PROVIDE THAT THE DEPARTMENT MAY  
 25 APPROVE CHANGES IN APPROPRIATION RIGHTS WITH CONDITIONS TO

1 PROTECT OTHER APPROPRIATORS; AND TO ELIMINATE THE RIGHT TO  
 2 APPEAL A FINAL DECISION OF THE DEPARTMENT TO THE BOARD, AND  
 3 TO ALLOW THE UNITED STATES TO APPLY FOR RESERVATIONS OF  
 4 WATER."

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 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 and diffuse surface  
 14 water.

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

23 (3) "Appropriate" means to divert, impound, or  
 24 withdraw (including by stock for stock water) a quantity of  
 25 water, or in the case of a public agency to reserve water in

1 accordance with section 89-890.

2 (4) "Existing right" means a right to the use of water  
3 which would be protected under the law as it existed prior  
4 to July 1, 1973.

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

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

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

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

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

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

24 (11) ~~"Political subdivision~~ "Political subdivision"  
25 means any county, incorporated city or town, public

1 corporation or district created pursuant to state law, or  
2 other public body of the state empowered to appropriate  
3 water, but not a private corporation, association, or group.

4 (12) "Person" means an individual, association,  
5 partnership, corporation, state agency, political  
6 subdivision, and the United States or any agency thereof, or  
7 any other entity.

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

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 89-875, R.C.M. 1947, is amended to  
16 read as follows:

17 "89-875. Preliminary decree. (1) Within a reasonable  
18 time after the department files with the district court the  
19 material required by section 89-874, the court shall issue a  
20 preliminary decree. The preliminary decree shall be based on  
21 the data submitted by the department and on any additional  
22 data obtained by the court.

23 (2) The preliminary decree shall contain the  
24 information, and make the determinations, findings, and  
25 conclusions, required for the final decree under section

1 89-877.

2 (3) The district court shall send a copy of the  
 3 preliminary decree ~~by certified mail with return receipt~~  
 4 requested to the department, and ~~the department shall serve~~  
 5 ~~by mail or by personal service a copy of the preliminary~~  
 6 ~~decree~~ to each person named in the material submitted under  
 7 section 89-874 or named in the preliminary decree. ~~the~~  
 8 ~~return receipt shall be appended to the preliminary decree.~~  
 9 ~~The costs of mailing the copies shall be paid by the~~  
 10 ~~department. The department shall file proof of service with~~  
 11 ~~the district court.~~

12 (4) A person named in the material or in the  
 13 preliminary decree may inspect the data upon which the  
 14 decree is based at any time, and he may purchase copies of  
 15 any of the data."

16 SECTION 3. SECTION 89-877, R.C.M. 1947, IS AMENDED TO  
 17 READ AS FOLLOWS:

18 "89-877. Final decree. (1) The court shall, on the  
 19 basis of the preliminary decree and on the basis of any  
 20 hearing that may have been held, enter a final decree  
 21 affirming or modifying the preliminary decree. If no request  
 22 for a hearing is filed within the time allowed, the  
 23 preliminary decree automatically becomes final, and the  
 24 court shall enter it as the final decree.

25 (2) The final decree shall establish the existing

1 rights and priorities, of the persons named in the petition,  
 2 for the source or area under consideration.

3 (3) The final decree shall state the findings of fact,  
 4 along with any conclusions of law, upon which the existing  
 5 rights and priorities of each person named in the decree are  
 6 based.

7 (4) For each person who is found to have an existing  
 8 right, the final decree shall state:

9 (a) the name and post-office address of the owner of  
 10 the right;

11 (b) the amount of water, rate and volume, included in  
 12 the right;

13 (c) the date of priority of the right;

14 (d) the purpose for which the water included in the  
 15 right is used;

16 (e) the place of use and a description of the land to  
 17 which the right is appurtenant;

18 (f) the source of the water included in the right;

19 (g) the place and means of diversion;

20 (h) the approximate time during which the water is  
 21 used each year;

22 (i) any other information necessary to fully define  
 23 the nature and extent of the right.

24 (5) The final decree in each existing right  
 25 determination is final and conclusive as to all existing

1 rights in the source or area under consideration. After the  
 2 final decree there shall be no existing rights to water in  
 3 the area or source under consideration except as stated in  
 4 the decree."

5 Section 4. Section 89-880, R.C.M. 1947, is amended to  
 6 read as follows:

7 "89-880. Right to appropriate -- application for  
 8 permit. (1) After July 1, 1973, a person may not appropriate  
 9 water except as provided in this act. A person may only  
 10 appropriate water ~~[for-a]~~ for a beneficial use. A right to  
 11 appropriate water may not be acquired by any other method,  
 12 including by adverse use, adverse possession, prescription  
 13 or estoppel; the method prescribed by this act is exclusive.

14 (2) Except as otherwise provided in subsection (5) of  
 15 this section, a person may not appropriate water or commence  
 16 construction of diversion, impoundment, withdrawal, or  
 17 distribution works therefor except by applying for and  
 18 receiving a permit from the department. The application  
 19 shall be made on a form prescribed by the department. The  
 20 department shall make the forms available through its  
 21 offices and the offices of the county clerks and recorders.  
 22 The department shall return a defective application for  
 23 correction or completion together with the reasons for  
 24 returning it. An application does not lose priority of  
 25 filing because of defects, if the application is corrected,

1 completed and refiled with the department within thirty (30)  
 2 days after its return to the applicant, or within a further  
 3 time as the department may allow. If an application is not  
 4 corrected and completed within 30 days or within a further  
 5 time as the department allows, up to 6 18 months, the  
 6 priority date of the application shall be the date of  
 7 refiling the application with the corrections with the  
 8 department. An application not corrected within 6 18 months  
 9 shall be terminated.

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 and appropriation of the  
 12 groundwater for beneficial use, the appropriator shall file  
 13 notice of completion on a form provided by the department at  
 14 its offices and at the offices of the county clerks and  
 15 recorders. Upon receipt of the notice, the department shall  
 16 automatically issue a certificate of water right. The  
 17 original of the certificate shall be sent to the county  
 18 clerk and recorder, in the county where the point of  
 19 diversion or place of use is located, for recordation. The  
 20 department shall keep a copy of the certificate in its  
 21 office in Helena. After recordation, the clerk and recorder  
 22 shall send the certificate to the appropriator. The date of  
 23 filing of the notice of completion is the date of priority  
 24 of the right.

25 (6) A person who desires to convert a nonproductive

1 oil or gas well to a water well may do so immediately, but  
 2 shall file a notice of completion or apply for a permit,  
 3 depending on the maximum yield of the well, as otherwise  
 4 provided in this act. The date of appropriation shall be  
 5 the date of filing the notice of completion or the  
 6 application for a permit.

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

10 Section 5. Section 89-884, R.C.M. 1947, is amended to  
 11 read as follows:

12 "89-884. Action on application. (1) The department  
 13 shall grant, deny, or condition an application for a permit  
 14 in whole or in part within one hundred twenty (120) days  
 15 after the last date of publication of the notice of  
 16 application if no hearing is held, and within one hundred  
 17 eighty (180) days if a hearing is held; however, in either  
 18 case the time may be extended upon agreement of the  
 19 applicant, or, in those cases where an environmental impact  
 20 statement must be prepared or in other extraordinary cases,  
 21 ~~not more than thirty-(30)-days~~ NOT MORE THAN 60 DAYS upon  
 22 order of the department. If the department orders the time  
 23 extended it shall serve a notice of the extension and the  
 24 reasons therefor by certified mail upon the applicant and  
 25 each person who has filed an objection as provided by

1 section 89-882.

2 (2) However, an application may not be approved in a  
3 modified form or upon terms, conditions, or limitations  
4 specified by the department, nor denied, unless the  
5 applicant is first granted an opportunity to be heard. If no  
6 objection is filed against the application, but the  
7 department is of the opinion that the application should be  
8 approved in a modified form or upon terms, conditions or  
9 limitations specified by it, or that the application should  
10 be denied, the department shall prepare a statement of its  
11 opinion and the reasons therefor. The department shall serve  
12 a statement of its opinion by certified mail upon the  
13 applicant, together with a notice that the applicant may  
14 obtain a hearing by filing a request therefor within thirty  
15 (30) days after the notice is mailed. The notice shall  
16 further state that the application will be modified in a  
17 specified manner, or denied, unless a hearing is requested."

18 Section 6. Section 89-885, R.C.M. 1947, is amended to  
19 read as follows:

20 "89-885. Criteria for issuance of permit. The  
21 department shall issue a permit if:

22 (1) there are unappropriated waters in the source of  
23 supply;

24 (2) the rights of a prior appropriator will not be  
25 adversely affected;

1 (3) the proposed means of diversion or construction  
2 are adequate;

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

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

7 (6) an applicant for an appropriation of 10,000  
8 acre-feet a year or more or fifteen--(15) cubic feet per  
9 second or more proves by clear and convincing evidence that  
10 the rights of a prior appropriator will not be adversely  
11 affected."

12 Section 7. 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 89-881 through  
23 89-883. After the hearing provided in section 89-883, the  
24 board shall decide whether to reserve the water for the  
25 applicant. The department's costs of giving notice, holding

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

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

8 (a) the purpose of the reservation;

9 (b) the need for the reservation;

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

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

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

25 (5) A reservation under this section shall date from

1 the date the order reserving the water is adopted by the  
 2 board, and shall not adversely affect any rights in  
 3 existence at that time.

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

10 Section 8. Section 89-892, R.C.M. 1947, is amended to  
 11 read as follows:

12 "89-892. Changes in appropriation rights. (1) An  
 13 appropriator may not change the place of diversion, place of  
 14 use, purpose of use or place of storage except as permitted  
 15 under this section and approved by the department.

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

1 Objections shall meet the requirements of section 89-882(2),  
 2 and hearings shall be held in accordance with section  
 3 89-883.

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

8 (4) The department may approve a change subject to  
 9 such terms, conditions, restrictions, and limitations it  
 10 considers necessary to protect the rights of other  
 11 appropriators, including limitations on the time for  
 12 completion of the change.

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

21 Section 9. Section 89-8-100, R.C.M. 1947, is amended  
 22 to read as follows:

23 "89-8-100. Hearings--before--board--- Administrative  
 24 Procedure-Act proceedings. (1)-A person who is aggrieved by  
 25 a--final--decision--of--the--department--under--this--act--is

1 ~~entitled to a hearing before the board. A person desiring a~~  
 2 ~~hearing before the board pursuant to this section shall~~  
 3 ~~notify the department in writing within ten (10) days of the~~  
 4 ~~final decision.~~

5 (2) The Montana Administrative Procedure Act (Title  
 6 82, chapter 42, R.C.M. 1947) governs administrative  
 7 proceedings conducted under this act, except that the common  
 8 law and statutory rules of evidence shall apply only upon  
 9 stipulation of all parties to a proceeding."

10 SECTION 10. SECTION 89-8-107, R.C.M. 1947, IS AMENDED  
 11 TO READ AS FOLLOWS:

12 "89-8-107. Reservations. The department may apply for  
 13 reservations and shall, as rapidly as possible, assist other  
 14 appropriate state agencies and political subdivisions in  
 15 applying for reservations within the basin. ~~The United~~  
 16 ~~States or any agency thereof may not apply for a reservation~~  
 17 ~~of water in the basin under section 89-8-105 of this act~~  
 18 ~~until the requirements of section 3 [89-8-105] of this act~~  
 19 ~~are met. Particular emphasis shall be given to applications~~  
 20 ~~to reserve water for agricultural, municipal, and minimum~~  
 21 ~~flow purposes for the protection of existing rights and~~  
 22 ~~aquatic life."~~

-End-

March 17, 1977

STANDING COMMITTEE REPORT  
Senate Committee on Agriculture, Livestock & Irrigation

That House Bill No. 664 be amended as follows:

1. Amend title, page 2, line 4.

Following: "WATER"

Insert: ", and providing attorney fees to prior appropriators who object to the issuance of a water use permit whenever the permit application is denied"

2. Amend page 11.

Following: line 17

Insert: "Section 6. There is a new R.C.M. section numbered 89-884.1 that reads as follows:

"89-884.1. Recovery of attorney fees when application denied.

(1) If an application for a permit is denied, the applicant shall pay the reasonable attorney fees of any prior appropriator who objected to the application and was represented by an attorney at the hearing.

(2) The amount of the fee recoverable under subsection (1) shall be determined by the department after the hearing. The department shall notify both the applicant and the objector of the amount. The award of attorney fees under subsection (1) is a final action of the department and may be appealed to the district court.

(3) If an applicant appeals a denial of a permit to the district court and the denial is sustained, the district court may award reasonable attorney fees to any prior appropriator who objected to the application and was represented by an attorney in the court action."

Renumber: all subsequent sections

March 21, 1977

SENATE  
COMMITTEE OF THE WHOLE

That House Bill No. 664 be amended as follows:

1. Amend page 2, section 1, line 13.

Following: "and"

Insert: "excepting"

2. Amend page 16, section 10, line 19.

Following: "~~met-~~"

Insert: "The United States or any agency thereof may apply for reservation of water in the basin under section 89-890, R.C.M. 1947, for beneficial use of that water in the State of Montana."

1 HOUSE BILL NO. 664  
 2 INTRODUCED BY DAY  
 3 BY REQUEST OF THE  
 4 JUDICIARY SUBCOMMITTEE ON MONTANA WATER  
 5 BY REQUEST OF  
 6 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
 7  
 8  
 9 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS  
 10 89-867, 89-875, ~~89-877~~, 89-880, 89-884, 89-885, 89-890,  
 11 89-892, AND 89-8-100, AND ~~89-8-107~~, R.C.M. 1947, OF THE  
 12 MONTANA WATER USE ACT TO CLARIFY DEFINITIONS; TO REDUCE THE  
 13 COST OF SERVING COPIES OF PRELIMINARY DECREES; TO CLARIFY  
 14 THE FINDINGS TO BE MADE BY THE COURT IN THE FINAL DECREE; TO  
 15 PROVIDE FOR THE PRIORITY DATE OF CERTAIN REFILED  
 16 APPLICATIONS; TO TERMINATE CERTAIN UNCORRECTED APPLICATIONS;  
 17 TO CLARIFY THE REFILEING OF NOTICES OF COMPLETION OF SMALL  
 18 WELLS; TO PROVIDE FOR THE EXTENSION OF TIME TO ACT UPON  
 19 APPLICATIONS IN EXTRAORDINARY CASES; TO PROVIDE THAT AN  
 20 APPLICANT FOR AN APPROPRIATION OF 10,000 ACRE-FEET A YEAR OR  
 21 MORE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE  
 22 RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY  
 23 AFFECTED; TO CLARIFY THE PERIODIC REVIEW BY THE BOARD OF  
 24 RESERVATIONS OF WATER; TO PROVIDE THAT THE DEPARTMENT MAY  
 25 APPROVE CHANGES IN APPROPRIATION RIGHTS WITH CONDITIONS TO

REFERENCE BILL

1 PROTECT OTHER APPROPRIATORS; ~~AND~~ TO ELIMINATE THE RIGHT TO  
 2 APPEAL A FINAL DECISION OF THE DEPARTMENT TO THE BOARD; AND  
 3 TO ALLOW THE UNITED STATES TO APPLY FOR RESERVATIONS OF  
 4 WATER, AND PROVIDING ATTORNEY FEES TO PRIOR APPROPRIATORS  
 5 WHO OBJECT TO THE ISSUANCE OF A WATER USE PERMIT WHENEVER  
 6 THE PERMIT WHENEVER THE PERMIT APPLICATION IS DENIED."  
 7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 9 Section 1. Section 89-867, R.C.M. 1947, is amended to  
 10 read as follows:  
 11 "89-867. Definitions. Unless the context requires  
 12 otherwise, in this chapter:  
 13 (1) "Water" means all water of the state, surface and  
 14 subsurface, regardless of its character or manner of  
 15 occurrence, including geothermal water and EXCEPTING diffuse  
 16 surface water.  
 17 (2) "Beneficial use" means a use of water for the  
 18 benefit of the appropriator, other persons, or the public,  
 19 including, but not limited to, agricultural (including stock  
 20 water), domestic, fish and wildlife, industrial, irrigation,  
 21 mining, municipal, power, and recreational uses; provided,  
 22 however, that a use of water for slurry to export coal from  
 23 Montana is not a beneficial use. Slurry is a mixture of  
 24 water and insoluble matter.  
 25 (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 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(5),  
 19 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~~ "Political subdivision"  
 2 means any county, incorporated city or town, public  
 3 corporation or district created pursuant to state law, or  
 4 other public body of the state empowered to appropriate  
 5 water, but not a private corporation, association, or group.

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

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

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

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

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

19 "89-875. Preliminary decree. (1) Within a reasonable  
 20 time after the department files with the district court the  
 21 material required by section 89-874, the court shall issue a  
 22 preliminary decree. The preliminary decree shall be based on  
 23 the data submitted by the department and on any additional  
 24 data obtained by the court.

25 (2) The preliminary decree shall contain the

1 information, and make the determinations, findings, and  
 2 conclusions, required for the final decree under section  
 3 89-877.

4 (3) The district court shall send a copy of the  
 5 preliminary decree ~~by certified mail with return receipt~~  
 6 ~~requested~~ to the department, and ~~the department shall serve~~  
 7 ~~by mail or by personal service a copy of the preliminary~~  
 8 ~~decree~~ to each person named in the material submitted under  
 9 section 89-874 or named in the preliminary decree. ~~The~~  
 10 ~~return receipt shall be appended to the preliminary decree.~~  
 11 ~~The costs of mailing the copies shall be paid by the~~  
 12 ~~department. The department shall file proof of service with~~  
 13 ~~the district court.~~

14 (4) A person named in the material or in the  
 15 preliminary decree may inspect the data upon which the  
 16 decree is based at any time, and he may purchase copies of  
 17 any of the data."

18 ~~SECTION 3. SECTION 89-877, R.C.M. 1947, IS AMENDED TO~~  
 19 ~~READ AS FOLLOWS:~~

20 "89-877. Final decree. (1) The court shall, on the  
 21 basis of the preliminary decree and on the basis of any  
 22 hearing that may have been held, enter a final decree  
 23 affirming or modifying the preliminary decree. If no request  
 24 for a hearing is filed within the time allowed, the  
 25 preliminary decree automatically becomes final, and the

1 court shall enter it as the final decree.

2 (2) The final decree shall establish the existing  
 3 rights and priorities, of the persons named in the petition,  
 4 for the source or area under consideration.

5 (3) The final decree shall state the findings of fact,  
 6 along with any conclusions of law, upon which the existing  
 7 rights and priorities of each person named in the decree are  
 8 based.

9 (4) For each person who is found to have an existing  
 10 right, the final decree shall state:

11 (a) the name and post-office address of the owner of  
 12 the right;

13 (b) the amount of water, rate and volume, included in  
 14 the right;

15 (c) the date of priority of the right;

16 (d) the purpose for which the water included in the  
 17 right is used;

18 (e) the place of use and a description of the land to  
 19 which the right is appurtenant;

20 (f) the source of the water included in the right;

21 (g) the place and means of diversion;

22 (h) the approximate time during which the water is  
 23 used each year;

24 (i) any other information necessary to fully define  
 25 the nature and extent of the right.

1 (5) The final decree in each existing right  
 2 determination is final and conclusive as to all existing  
 3 rights in the source or area under consideration. After the  
 4 final decree there shall be no existing rights to water in  
 5 the area or source under consideration except as stated in  
 6 the decree."

7 Section 4. Section 89-880, R.C.M. 1947, is amended to  
 8 read as follows:

9 \*89-880. Right to appropriate -- application for  
 10 permit. (1) After July 1, 1973, a person may not appropriate  
 11 water except as provided in this act. A person may only  
 12 appropriate water [for-a] for a beneficial use. A right to  
 13 appropriate water may not be acquired by any other method,  
 14 including by adverse use, adverse possession, prescription  
 15 or estoppel; the method prescribed by this act is exclusive.

16 (2) Except as otherwise provided in subsection (5) of  
 17 this section, a person may not appropriate water or commence  
 18 construction of diversion, impoundment, withdrawal, or  
 19 distribution works therefor except by applying for and  
 20 receiving a permit from the department. The application  
 21 shall be made on a form prescribed by the department. The  
 22 department shall make the forms available through its  
 23 offices and the offices of the county clerks and recorders.  
 24 The department shall return a defective application for  
 25 correction or completion together with the reasons for

1 returning it. An application does not lose priority of  
 2 filing because of defects, if the application is corrected,  
 3 completed and refiled with the department within thirty (30)  
 4 days after its return to the applicant, or within a further  
 5 time as the department may allow. ~~If an application is not~~  
 6 ~~corrected and completed within 30 days or within a further~~  
 7 ~~time as the department allows, up to 6 18 months, the~~  
 8 ~~priority date of the application shall be the date of~~  
 9 ~~refiling the application with the corrections with the~~  
 10 ~~department. An application not corrected within 6 18 months~~  
 11 ~~shall be terminated.~~

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

22 (4) A permit issued prior to a final determination of  
 23 existing rights is provisional and is subject to that final  
 24 determination. The amount of the appropriation granted in a  
 25 provisional permit shall be reduced or modified where

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

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

1 of the right.

2 (6) A person who desires to convert a nonproductive  
 3 oil or gas well to a water well may do so immediately, but  
 4 shall file a notice of completion or apply for a permit,  
 5 depending on the maximum yield of the well, as otherwise  
 6 provided in this act. The date of appropriation shall be  
 7 the date of filing the notice of completion or the  
 8 application for a permit.

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

12 Section 5. Section 89-884, R.C.M. 1947, is amended to  
 13 read as follows:

14 "89-884. Action on application. (1) The department  
 15 shall grant, deny, or condition an application for a permit  
 16 in whole or in part within one hundred twenty (120) days  
 17 after the last date of publication of the notice of  
 18 application if no hearing is held, and within one hundred  
 19 eighty (180) days if a hearing is held; however, in either  
 20 case the time may be extended upon agreement of the  
 21 applicant, or, in those cases where an environmental impact  
 22 statement must be prepared or in other extraordinary cases,  
 23 not more than thirty {30} days NOT MORE THAN 60 DAYS upon  
 24 order of the department. If the department orders the time  
 25 extended it shall serve a notice of the extension and the

1 reasons therefor by certified mail upon the applicant and  
 2 each person who has filed an objection as provided by  
 3 section 89-882.

4 (2) However, an application may not be approved in a  
 5 modified form or upon terms, conditions, or limitations  
 6 specified by the department, nor denied, unless the  
 7 applicant is first granted an opportunity to be heard. If no  
 8 objection is filed against the application, but the  
 9 department is of the opinion that the application should be  
 10 approved in a modified form or upon terms, conditions or  
 11 limitations specified by it, or that the application should  
 12 be denied, the department shall prepare a statement of its  
 13 opinion and the reasons therefor. The department shall serve  
 14 a statement of its opinion by certified mail upon the  
 15 applicant, together with a notice that the applicant may  
 16 obtain a hearing by filing a request therefor within thirty  
 17 (30) days after the notice is mailed. The notice shall  
 18 further state that the application will be modified in a  
 19 specified manner, or denied, unless a hearing is requested."

20 SECTION 6. THERE IS A NEW R.C.M. SECTION NUMBERED  
 21 89-884.1 THAT READS AS FOLLOWS:

22 89-884.1. Recovery of attorney fees when application  
 23 denied. (1) If an application for a permit is denied, the  
 24 applicant shall pay the reasonable attorney fees of any  
 25 prior appropriator who objected to the application and was

1 represented by an attorney at the hearing.

2 (2) The amount of the fee recoverable under subsection  
 3 (1) shall be determined by the department after the hearing.  
 4 The department shall notify both the applicant and the  
 5 objector of the amount. The award of attorney fees under  
 6 subsection (1) is a final action of the department and may  
 7 be appealed to the district court.

8 (3) If an applicant appeals a denial of a permit to  
 9 the district court and the denial is sustained, the district  
 10 court may award reasonable attorney fees to any prior  
 11 appropriator who objected to the application and was  
 12 represented by an attorney in the court action.

13 Section 7. Section 89-885, R.C.M. 1947, is amended to  
 14 read as follows:

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

- 17 (1) there are unappropriated waters in the source of
- 18 supply;
- 19 (2) the rights of a prior appropriator will not be
- 20 adversely affected;
- 21 (3) the proposed means of diversion or construction
- 22 are adequate;
- 23 (4) the proposed use of water is a beneficial use;
- 24 (5) the proposed use will not interfere unreasonably
- 25 with other planned uses or developments for which a permit

1 has been issued or for which water has been reserved;  
 2 (6) an applicant for an appropriation of 10,000  
 3 ~~acre-feet a year or more or fifteen~~ cubic feet per  
 4 second or more proves by clear and convincing evidence that  
 5 the rights of a prior appropriator will not be adversely  
 6 affected."  
 7 Section 8. Section 89-890, R.C.M. 1947, is amended to  
 8 read as follows:  
 9 "89-890. Reservation of waters. (1) The state or any  
 10 political subdivision or agency thereof, or the United  
 11 States or any agency thereof, may apply to the board to  
 12 reserve waters for existing or future beneficial uses, or to  
 13 maintain a minimum flow, level, or quality of water  
 14 throughout the year or at such periods or for such length of  
 15 time as the board designates.  
 16 (2) Upon receiving an application, the department  
 17 shall proceed in accordance with sections 89-881 through  
 18 89-883. After the hearing provided in section 89-883, the  
 19 board shall decide whether to reserve the water for the  
 20 applicant. The department's costs of giving notice, holding  
 21 the hearing, conducting investigations, and making records,  
 22 incurred in acting upon the application to reserve water,  
 23 except the cost of salaries of the department's personnel,  
 24 shall be paid by the 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, and shall not adversely affect any rights in  
 23 existence at that time.  
 24 (6) The board shall, periodically but ~~not less than at~~  
 25 ~~least once~~ every ~~ten~~ years, review existing

1 reservations to ensure that the objectives of the  
 2 reservation are being met. Where the objectives of the  
 3 reservation are not being met, the board may extend, revoke  
 4 or modify the reservation."

5 Section 9. Section 89-892, R.C.M. 1947, is amended to  
 6 read as follows:

7 "89-892. Changes in appropriation rights. (1) An  
 8 appropriator may not change the place of diversion, place of  
 9 use, purpose of use or place of storage except as permitted  
 10 under this section and approved by the department.

11 (2) The department shall approve the proposed change  
 12 if it determines that the proposed change will not adversely  
 13 affect the rights of other persons. If the department  
 14 determines that the proposed change might adversely affect  
 15 the rights of other persons, notice of the proposed change  
 16 shall be given in accordance with section 89-881. If the  
 17 department determines that an objection filed by a person  
 18 whose rights may be affected states a valid objection to the  
 19 proposed change, the department shall hold a hearing thereon  
 20 prior to its approval or denial of the proposed change.  
 21 Objections shall meet the requirements of section 89-882(2),  
 22 and hearings shall be held in accordance with section  
 23 89-883.

24 (3) An appropriator of more than fifteen (15) cubic  
 25 feet per second may not change the purpose of use of an

1 appropriation right from an agricultural use to an  
 2 industrial use.

3 (4) The department may approve a change subject to  
 4 such terms, conditions, restrictions, and limitations it  
 5 considers necessary to protect the rights of other  
 6 appropriators, including limitations on the time for  
 7 completion of the change.

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

16 Section 10. Section 89-8-100, R.C.M. 1947, is amended  
 17 to read as follows:

18 "~~89-8-100. Hearings--before--board--- Administrative~~  
 19 ~~Procedure-Act proceedings. (1)-A-person-who-is-aggrieved-by~~  
 20 ~~a-final-decision-of-the-department-under-this-act-is~~  
 21 ~~entitled-to-a-hearing-before-the-board--A-person-desiring-a~~  
 22 ~~hearing-before-the-board-pursuant-to-this-section-shall~~  
 23 ~~notify-the-department-in-writing-within-ten-(10)-days-of-the~~  
 24 ~~final-decision~~

25 (2) The Montana Administrative Procedure Act (Title

1 82, chapter 42, R.C.M. 1947) governs administrative  
2 proceedings conducted under this act, except that the common  
3 law and statutory rules of evidence shall apply only upon  
4 stipulation of all parties to a proceeding."

5 SECTION 11. SECTION 89-8-107, R.C.M. 1947, IS AMENDED  
6 TO READ AS FOLLOWS:

7 "89-8-107. Reservations. The department may apply for  
8 reservations and shall, as rapidly as possible, assist other  
9 appropriate state agencies and political subdivisions in  
10 applying for reservations within the basin. ~~The United~~  
11 ~~States or any agency thereof may not apply for a reservation~~  
12 ~~of water in the basin under section 89-890, R.C.M. 1947,~~  
13 ~~until the requirements of section 3 [89-8-105] of this act~~  
14 ~~are met. THE UNITED STATES OR ANY AGENCY THEREOF MAY APPLY~~  
15 ~~FOR RESERVATION OF WATER IN THE BASIN UNDER SECTION 89-890,~~  
16 ~~R.C.M. 1947, FOR BENEFICIAL USE OF THAT WATER IN THE STATE~~  
17 ~~OF MONTANA.~~ Particular emphasis shall be given to  
18 applications to reserve water for agricultural, municipal,  
19 and minimum flow purposes for the protection of existing  
20 rights and aquatic life."

-End-

1 HOUSE BILL NO. 664  
 2 INTRODUCED BY DAY  
 3 BY REQUEST OF THE  
 4 JUDICIARY SUBCOMMITTEE ON MONTANA WATER  
 5 BY REQUEST OF  
 6 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
 7  
 8  
 9 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS  
 10 89-867, 89-875, ~~89-877~~, 89-880, 89-884, 89-885, 89-890,  
 11 89-892, ~~AND 89-8-100, AND 89-8-107~~, R.C.M. 1947, OF THE  
 12 MONTANA WATER USE ACT TO CLARIFY DEFINITIONS; TO REDUCE THE  
 13 COST OF SERVING COPIES OF PRELIMINARY DECREES; TO CLARIFY  
 14 THE FINDINGS TO BE MADE BY THE COURT IN THE FINAL DECREE; TO  
 15 PROVIDE FOR THE PRIORITY DATE OF CERTAIN REFILED  
 16 APPLICATIONS; TO TERMINATE CERTAIN UNCORRECTED APPLICATIONS;  
 17 TO CLARIFY THE REFILEING OF NOTICES OF COMPLETION OF SMALL  
 18 WELLS; TO PROVIDE FOR THE EXTENSION OF TIME TO ACT UPON  
 19 APPLICATIONS IN EXTRAORDINARY CASES; TO PROVIDE THAT AN  
 20 APPLICANT FOR AN APPROPRIATION OF 10,000 ACRE-FEET A YEAR OR  
 21 MORE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE  
 22 RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY  
 23 AFFECTED; TO CLARIFY THE PERIODIC REVIEW BY THE BOARD OF  
 24 RESERVATIONS OF WATER; TO PROVIDE THAT THE DEPARTMENT MAY  
 25 APPROVE CHANGES IN APPROPRIATION RIGHTS WITH CONDITIONS TO

1 PROTECT OTHER APPROPRIATORS; ~~AND TO ELIMINATE THE RIGHT TO~~  
 2 ~~APPEAL A FINAL DECISION OF THE DEPARTMENT TO THE BOARD; AND~~  
 3 ~~TO ALLOW THE UNITED STATES TO APPLY FOR RESERVATIONS OF~~  
 4 ~~WATER; TO PROVIDE THAT ATTORNEY FEES SHALL BE AWARDED TO THE~~  
 5 ~~PREVAILING PARTY IN ANY COURT LITIGATION ON AN APPLICATION~~  
 6 ~~FOR A PERMIT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE~~  
 7 ~~AND PROVIDING--ATTORNEY--FEES--TO--PRIOR--APPROPRIATORS--WHO~~  
 8 ~~OBJECT TO THE ISSUANCE OF A WATER USE PERMIT WHENEVER THE~~  
 9 ~~PERMIT WHENEVER THE PERMIT APPLICATION IS DENIED."~~

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

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

14 "89-867. Definitions. Unless the context requires  
 15 otherwise, in this chapter:

16 (1) "Water" means all water of the state, surface and  
 17 subsurface, regardless of its character or manner of  
 18 occurrence, including geothermal water and ~~EXCEPTING diffuse~~  
 19 ~~surface water.~~

20 (2) "Beneficial use" means a use of water for the  
 21 benefit of the appropriator, other persons, or the public,  
 22 including, but not limited to, agricultural (including stock  
 23 water), domestic, fish and wildlife, industrial, irrigation,  
 24 mining, municipal, power, and recreational uses; provided,  
 25 however, that a use of water for slurry to export coal from

FINAL PRINTING

ADOPTED BY  
 HOUSE OF REPRESENTATIVES  
 AND SENATE

1 Montana is not a beneficial use. Slurry is a mixture of  
2 water and insoluble matter.

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

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

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

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

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

20 (8) "Certificate" means the certificate of water right  
21 issued by the department under sections 89-879, 89-880(5),  
22 and 89-888.

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

25 (10) "Waste" means the unreasonable loss of water

1 through the design or negligent operation of an  
2 appropriation or water distribution facility, or the  
3 application of water to anything but a beneficial use.

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

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

13 (13) "Department" means the department of natural  
14 resources and conservation provided for in title 82A,  
15 chapter 15.

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

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

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

22 "89-875. Preliminary decree. (1) Within a reasonable  
23 time after the department files with the district court the  
24 material required by section 89-874, the court shall issue a  
25 preliminary decree. The preliminary decree shall be based on

1 the data submitted by the department and on any additional  
2 data obtained by the court.

3 (2) The preliminary decree shall contain the  
4 information, and make the determinations, findings, and  
5 conclusions, required for the final decree under section  
6 89-877.

7 (3) The district court shall send a copy of the  
8 preliminary decree ~~by certified mail with return receipt~~  
9 ~~requested to the department, and the department shall serve~~  
10 ~~by mail or by personal service a copy of the preliminary~~  
11 ~~decree~~ to each person named in the material submitted under  
12 section 89-874 or named in the preliminary decree. ~~The~~  
13 ~~return receipt shall be appended to the preliminary decree.~~  
14 ~~The costs of mailing the copies shall be paid by the~~  
15 ~~department.~~ The department shall file proof of service with  
16 the district court.

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

21 SECTION 3. SECTION 89-877, R.C.M. 1947, IS AMENDED TO  
22 READ AS FOLLOWS:

23 "89-877. Final decree. (1) The court shall, on the  
24 basis of the preliminary decree and on the basis of any  
25 hearing that may have been held, enter a final decree

1 affirming or modifying the preliminary decree. If no request  
2 for a hearing is filed within the time allowed, the  
3 preliminary decree automatically becomes final, and the  
4 court shall enter it as the final decree.

5 (2) The final decree shall establish the existing  
6 rights and priorities, of the persons named in the petition,  
7 for the source or area under consideration.

8 (3) The final decree shall state the findings of fact,  
9 along with any conclusions of law, upon which the existing  
10 rights and priorities of each person named in the decree are  
11 based.

12 (4) For each person who is found to have an existing  
13 right, the final decree shall state:

14 (a) the name and post-office address of the owner of  
15 the right;

16 (b) the amount of water, rate and volume, included in  
17 the right;

18 (c) the date of priority of the right;

19 (d) the purpose for which the water included in the  
20 right is used;

21 (e) the place of use and a description of the land to  
22 which the right is appurtenant;

23 (f) the source of the water included in the right;

24 (g) the place and means of diversion;

25 (h) the approximate time during which the water is

1 used each year;

2 (i) any other information necessary to fully define  
3 the nature and extent of the right.

4 (5) The final decree in each existing right  
5 determination is final and conclusive as to all existing  
6 rights in the source or area under consideration. After the  
7 final decree there shall be no existing rights to water in  
8 the area or source under consideration except as stated in  
9 the decree."

10 Section 4. Section 89-880, R.C.M. 1947, is amended to  
11 read as follows:

12 "89-880. Right to appropriate -- application for  
13 permit. (1) After July 1, 1973, a person may not appropriate  
14 water except as provided in this act. A person may only  
15 appropriate water ~~{for-a}~~ for a beneficial use. A right to  
16 appropriate water may not be acquired by any other method,  
17 including by adverse use, adverse possession, prescription  
18 or estoppel; the method prescribed by this act is exclusive.

19 (2) Except as otherwise provided in subsection (5) of  
20 this section, a person may not appropriate water or commence  
21 construction of diversion, impoundment, withdrawal, or  
22 distribution works therefor except by applying for and  
23 receiving a permit from the department. The application  
24 shall be made on a form prescribed by the department. The  
25 department shall make the forms available through its

1 offices and the offices of the county clerks and recorders.  
2 The department shall return a defective application for  
3 correction or completion together with the reasons for  
4 returning it. An application does not lose priority of  
5 filing because of defects, if the application is corrected,  
6 completed and refiled with the department within thirty (30)  
7 days after its return to the applicant, or within a further  
8 time as the department may allow. If an application is not  
9 corrected and completed within 30 days or within a further  
10 time as the department allows, up to 6 18 months, the  
11 priority date of the application shall be the date of  
12 refiling the application with the corrections with the  
13 department. An application not corrected within 6 18 months  
14 shall be terminated.

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 (4) A permit issued prior to a final determination of

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

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

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

5 (6) A person who desires to convert a nonproductive  
 6 oil or gas well to a water well may do so immediately, but  
 7 shall file a notice of completion or apply for a permit,  
 8 depending on the maximum yield of the well, as otherwise  
 9 provided in this act. The date of appropriation shall be  
 10 the date of filing the notice of completion or the  
 11 application for a permit.

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

15 Section 5. Section 89-884, R.C.M. 1947, is amended to  
 16 read as follows:

17 \*89-884. Action on application. (1) The department  
 18 shall grant, deny, or condition an application for a permit  
 19 in whole or in part within one hundred twenty (120) days  
 20 after the last date of publication of the notice of  
 21 application if no hearing is held, and within one hundred  
 22 eighty (180) days if a hearing is held; however, in either  
 23 case the time may be extended upon agreement of the  
 24 applicant, or, in those cases where an environmental impact  
 25 statement must be prepared or in other extraordinary cases,

1 ~~not more than thirty (30) days~~ NOT MORE THAN 60 DAYS upon  
 2 order of the department. If the department orders the time  
 3 extended it shall serve a notice of the extension and the  
 4 reasons therefor by certified mail upon the applicant and  
 5 each person who has filed an objection as provided by  
 6 section 89-882.

7 (2) However, an application may not be approved in a  
 8 modified form or upon terms, conditions, or limitations  
 9 specified by the department, nor denied, unless the  
 10 applicant is first granted an opportunity to be heard. If no  
 11 objection is filed against the application, but the  
 12 department is of the opinion that the application should be  
 13 approved in a modified form or upon terms, conditions or  
 14 limitations specified by it, or that the application should  
 15 be denied, the department shall prepare a statement of its  
 16 opinion and the reasons therefor. The department shall serve  
 17 a statement of its opinion by certified mail upon the  
 18 applicant, together with a notice that the applicant may  
 19 obtain a hearing by filing a request therefor within thirty  
 20 (30) days after the notice is mailed. The notice shall  
 21 further state that the application will be modified in a  
 22 specified manner, or denied, unless a hearing is requested."

23 ~~SECTION 6. THERE IS A NEW R.C.M. SECTION NUMBERED~~  
 24 ~~89-884.1 THAT READS AS FOLLOWS:~~  
 25 ~~89-884.1. Recovery of attorney fees when application~~

1 ~~denied. (1) If an application for a permit is denied, the~~  
 2 ~~applicant shall pay the reasonable attorney fees of any~~  
 3 ~~prior appropriator who objected to the application and was~~  
 4 ~~represented by an attorney at the hearing.~~

5 ~~(2) The amount of the fee recoverable under subsection~~  
 6 ~~(1) shall be determined by the department after the hearing.~~  
 7 ~~The department shall notify both the applicant and the~~  
 8 ~~objector of the amount of the award of attorney fees under~~  
 9 ~~subsection (1) is a final action of the department and may~~  
 10 ~~be appealed to the district court.~~

11 ~~(3) If an applicant appeals a denial of a permit to~~  
 12 ~~the district court and the denial is sustained, the district~~  
 13 ~~court may award reasonable attorney fees to any prior~~  
 14 ~~appropriator who objected to the application and was~~  
 15 ~~represented by an attorney in the court action.~~

16 Section 6. Section 89-885, R.C.M. 1947, is amended to  
 17 read as follows:

18 \*89-885. Criteria for issuance of permit. The  
 19 department shall issue a permit if:

20 (1) there are unappropriated waters in the source of  
 21 supply;

22 (2) the rights of a prior appropriator will not be  
 23 adversely affected;

24 (3) the proposed means of diversion or construction  
 25 are adequate;

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

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

5 (6) an applicant for an appropriation of 10,000  
6 acre-feet a year or more or fifteen-(15) cubic feet per  
7 second or more proves by clear and convincing evidence that  
8 the rights of a prior appropriator will not be adversely  
9 affected."

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

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

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

1 except the cost of salaries of the department's personnel,  
2 shall be paid by the applicant.

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

6 (a) the purpose of the reservation;

7 (b) the need for the reservation;

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

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

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

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

1 existence at that time.

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

8 Section 8. Section 89-892, R.C.M. 1947, is amended to  
9 read as follows:

10 "89-892. Changes in appropriation rights. (1) An  
11 appropriator may not change the place of diversion, place of  
12 use, purpose of use or place of storage except as permitted  
13 under this section and approved by the department.

14 (2) The department shall approve the proposed change  
15 if it determines that the proposed change will not adversely  
16 affect the rights of other persons. If the department  
17 determines that the proposed change might adversely affect  
18 the rights of other persons, notice of the proposed change  
19 shall be given in accordance with section 89-881. If the  
20 department determines that an objection filed by a person  
21 whose rights may be affected states a valid objection to the  
22 proposed change, the department shall hold a hearing thereon  
23 prior to its approval or denial of the proposed change.  
24 Objections shall meet the requirements of section 89-882(2),  
25 and hearings shall be held in accordance with section

1 89-883.

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

6 (4) The department may approve a change subject to  
7 such terms, conditions, restrictions, and limitations it  
8 considers necessary to protect the rights of other  
9 appropriators, including limitations on the time for  
10 completion of the change.

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

19 Section 9. Section 89-8-100, R.C.M. 1947, is amended  
20 to read as follows:

21 "~~89-8-100. Hearings--before--board--- Administrative~~  
22 ~~Procedure--Act proceedings. (1) A person who is aggrieved by~~  
23 ~~a final decision of the department under this act is~~  
24 ~~entitled to a hearing before the board. A person desiring a~~  
25 ~~hearing before the board pursuant to this section shall~~

1 ~~notify the department in writing within ten (10) days of the~~  
2 ~~final decision.~~

3 {2} The Montana Administrative Procedure Act (Title  
4 82, chapter 42, R.C.M. 1947) governs administrative  
5 proceedings conducted under this act, except that the common  
6 law and statutory rules of evidence shall apply only upon  
7 stipulation of all parties to a proceeding."

8 SECTION 10. SECTION 89-8-107, R.C.M. 1947, IS AMENDED  
9 TO READ AS FOLLOWS:

10 "89-8-107. Reservations. The department may apply for  
11 reservations and shall, as rapidly as possible, assist other  
12 appropriate state agencies and political subdivisions in  
13 applying for reservations within the basin. ~~The United~~  
14 ~~States or any agency thereof may not apply for a reservation~~  
15 ~~of water in the basin under section 89-890, R.C.M. 1947,~~  
16 ~~until the requirements of section 3 [89-8-105] of this act~~  
17 ~~are met.~~ THE UNITED STATES OR ANY AGENCY THEREOF MAY APPLY  
18 FOR RESERVATION OF WATER IN THE BASIN UNDER SECTION 89-890,  
19 R.C.M. 1947, FOR BENEFICIAL USE OF THAT WATER IN THE STATE  
20 OF MONTANA. Particular emphasis shall be given to  
21 applications to reserve water for agricultural, municipal,  
22 and minimum flow purposes for the protection of existing  
23 rights and aquatic life."

24 SECTION 11. THERE IS A NEW R.C.M. SECTION NUMBERED  
25 89-8-100.1 THAT READS AS FOLLOWS:

1 89-8-100.1 Recovery of attorney fees by prevailing  
2 party. If a final decision of the department on an  
3 application for a permit is appealed to district court, the  
4 district court shall award the prevailing party reasonable  
5 attorney fees.

6 SECTION 12. EFFECTIVE DATE. THIS ACT IS EFFECTIVE  
7 UPON ITS PASSAGE AND APPROVAL.

-End-