

1 *Senate* BILL NO. 333
 2 INTRODUCED BY *Robert McCallister Flynn Graham*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
 5 89-880, R.C.M. 1947, TO PERMIT THE CONSTRUCTION OF STOCK
 6 DAMS OF LESS THAN 15 ACRE-FEET WITHOUT FIRST SECURING A
 7 WATER APPROPRIATION PERMIT; REQUIRING NOTICE OF COMPLETION
 8 WITHIN 60 DAYS."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 89-880, R.C.M. 1947, is amended to
 12 read as follows:

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

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

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

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

20 (4) A permit issued prior to a final determination of
 21 existing rights is provisional and is subject to that final
 22 determination. The amount of the appropriation granted in a
 23 provisional permit shall be reduced or modified where
 24 necessary to protect and guarantee existing rights
 25 determined in the final decree. A person may not obtain any

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

7 (5) ~~(a)~~ Outside the boundaries of a controlled
 8 groundwater area, a permit is not required before
 9 appropriating groundwater by means of a well with a maximum
 10 yield of less than one hundred (100) gallons a minute.

11 ~~(b) A permit is not required before appropriating~~
 12 ~~water for use of stock by means of a dam with a maximum~~
 13 ~~capacity of less than 15 acre-feet.~~

14 ~~(c)~~ Within sixty (60) days of completion of the well
 15 ~~or the dam, or both,~~ the appropriator shall file notice of
 16 completion on a form provided by the department at its
 17 offices and at the offices of the county clerks and
 18 recorders. Upon receipt of the notice, the department shall
 19 automatically issue a certificate of water right. The
 20 original of the certificate shall be sent to the county
 21 clerk and recorder, in the county where the point of
 22 diversion or place of use is located, for recordation. The
 23 department shall keep a copy of the certificate in its
 24 office in Helena. After recordation, the clerk and recorder
 25 shall send the certificate to the appropriator. The date of

1 filing of the notice of completion is the date of priority
 . of the right.

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

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

-End-

SECOND READING

MISSING

1 SENATE BILL NO. 333

2 INTRODUCED BY ETCHART, McCALLUM, FLYNN, GRAHAM

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 6 the department.

7 (5) (a) Outside the boundaries of a controlled
 8 groundwater area, a permit is not required before
 9 appropriating groundwater by means of a well with a maximum
 10 yield of less than one hundred (100) gallons a minute.

11 (b) A permit is not required before appropriating
 12 water for use of stock LIVESTOCK by means of a dam OR PIT
 13 with a maximum capacity of less than 15 acre-feet IF THE
 14 APPROPRIATION IS FROM A SOURCE OTHER THAN A PERENNIAL
 15 FLOWING STREAM. FOR THE PURPOSE OF THIS SECTION, A PERENNIAL
 16 FLOWING STREAM MEANS A STREAM WHICH HISTORICALLY HAS FLOWED
 17 CONTINUOUSLY AT ALL SEASONS OF THE YEAR AND DURING DRY AS
 18 WELL AS WET YEARS.

19 (c) Within sixty (60) days of completion of the well
 20 ~~or the dam or both~~ the appropriator shall file notice of
 21 completion on a form provided by the department at its
 22 offices and at the offices of the county clerks and
 23 recorders. Upon receipt of the notice, the department shall
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-End-

HOUSE OF REPRESENTATIVES

March 25, 1977

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 333

1. Amend title, lines 5 and 6.

Following: "STOCK"

Strike: "DAMS"

Insert: "WATER IMPOUNDMENTS OR PITS"

2. Amend title, lines 7 and 8.

Following: "WATER"

Strike: "APPROPRIATION"

Insert: "USE"

Following: "PERMIT"

Strike: lines 7 and 8 in their entirety

Insert: "."

3. Amend page 3, section 1, subsection (5)(b), lines 11 through 18.

Following: line 10

Strike: lines 11 through 18 in their entirety

4. Amend page 3, section 1, subsection (5)(c), line 19.

Following: line 18

Strike: "(c)"

5. Amend page 3, section 1, subsection (5)(c), line 20.

Following: line 19

Strike: "or the dam"

6. Amend page 4, section 1, subsection (5)(c).

Following: line 7

Insert: "(b) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre feet and the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this act. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit, and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators."

AS AMENDED CONCURRED IN

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8 ~~(B) A PERMIT IS NOT REQUIRED BEFORE CONSTRUCTING AN~~
 9 ~~IMPOUNDMENT OR PIT AND APPROPRIATING WATER FOR USE BY~~
 10 ~~LIVESTOCK IF THE MAXIMUM CAPACITY OF THE IMPOUNDMENT OR PIT~~
 11 ~~IS LESS THAN 15 ACRE FEET AND THE APPROPRIATION IS FROM A~~
 12 ~~SOURCE OTHER THAN A PERENNIAL FLOWING STREAM. AS USED IN~~
 13 ~~THIS SUBSECTION, A PERENNIAL FLOWING STREAM MEANS A STREAM~~
 14 ~~WHICH HISTORICALLY HAS FLOWED CONTINUOUSLY AT ALL SEASONS OF~~
 15 ~~THE YEAR, DURING DRY AS WELL AS WET YEARS. HOWEVER, BEFORE~~
 16 ~~CONSTRUCTING THE IMPOUNDMENT OR PIT, THE APPROPRIATOR SHALL~~
 17 ~~APPLY FOR A PERMIT AS PRESCRIBED BY THIS ACT. IF THE~~
 18 ~~DEPARTMENT DETERMINES AFTER PROCESSING THE APPLICATION THAT~~
 19 ~~THE RIGHTS OF OTHER APPROPRIATORS HAVE BEEN OR WILL BE~~
 20 ~~ADVERSELY AFFECTED, IT MAY REQUIRE THE APPLICANT TO MODIFY~~
 21 ~~THE CONSTRUCTION OF THE IMPOUNDMENT OR PIT, AND ISSUE THE~~
 22 ~~PERMIT SUBJECT TO SUCH TERMS, CONDITIONS, RESTRICTIONS, OR~~
 23 ~~LIMITATIONS IT CONSIDERS NECESSARY TO PROTECT THE RIGHTS OF~~
 24 ~~OTHER APPROPRIATORS.~~

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

1 oil or gas well to a water well may do so immediately, but
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