

*Senate* BILL NO. *376*

INTRODUCED BY *Boylan, Story, Turney, Flynn, Manly, Anderson, Holt, Beggs, Overmeyer*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA WATER USE ACT TO CLARIFY EXISTING WATER RIGHTS, TRANSFER OF WATER RIGHTS, CHANGES IN WATER RIGHTS, AND ABANDONMENT OF WATER RIGHTS; AMENDING SECTIONS 89-872, 89-893, 89-894, 89-8-101, AND 89-8-104, R.C.M. 1947; AND REPEALING SECTIONS 89-892 AND 89-895, R.C.M. 1947."

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

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

"89-872. Declarations of existing rights. ~~(1) Any court decree adjudicating water rights in a proceeding commenced prior to July 1, 1974, shall be final and conclusive as to all existing rights thereby adjudicated. Upon receipt of a certified copy of any such court decree, the department shall file the decree and record the rights in the centralized record system established pursuant to 89-870.~~

~~(1)(2) As to all other rights, the the department shall obtain from the district court an order pursuant to section 89-873 requiring each person claiming an existing right within a specified area or from a specified source to~~

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

~~(2)~~ (3) The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this act, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

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

16       ~~(3)~~ (5) Declarations shall be sent to the department by  
 17 certified mail, with a return receipt requested. The return  
 18 receipt is conclusive evidence of receipt, by the  
 19 department, of the declaration."

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

22       "89-893. Transfer of appropriation right. ~~(4)~~ The  
 23 right to use water under a permit or certificate of water  
 24 right shall pass with a conveyance of the land, or transfer  
 25 by operation of law, unless specifically exempted therefrom.

1 All transfers of interests in appropriation rights shall be  
 2 without loss of priority.

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

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

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

1 "89-894. Abandonment of appropriation right. (1) If  
2 an appropriator ceases to use all or a part of his  
3 appropriation right with the intention of wholly or  
4 partially abandoning the right, or if he ceases using his  
5 appropriation right according to its terms and conditions  
6 with the intention of not complying with those terms and  
7 conditions, the appropriation right shall, to that extent,  
8 be deemed considered abandoned and shall immediately expire.

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

16 ~~(3) This section does not apply to existing rights~~  
17 ~~until they have been determined in accordance with this~~  
18 ~~act."~~

19 Section 4. Section 89-8-101, R.C.M. 1947, is amended  
20 to read as follows:

21 "89-8-101. Penalties. A person who violates or refuses  
22 or neglects to comply with ~~sections 16 (1), 28 (1), and 29~~  
23 ~~(3) [89-880 (1), 89-892 (1), and 89-892 (3)] of this act, or~~  
24 ~~of any order of the department, or of any rule of the board,~~  
25 is guilty of a misdemeanor."

1 Section 5. Section 89-8-104, R.C.M. 1947, is amended  
2 to read as follows:

3 "89-8-104. Definitions. Unless the context clearly  
4 requires otherwise, in this act:

5 (1) "Department" means the department of natural  
6 resources and conservation.

7 (2) "Basin" means the Yellowstone River Basin.

8 (3) "Application" means an application for a permit  
9 under the Montana Water Use Act to appropriate surface water  
10 from any source of supply within the basin for either or  
11 both of the following purposes:

12 (a) a reservoir with a total planned capacity of  
13 fourteen thousand (14,000) acre feet or more, or

14 (b) for a flow rate greater than twenty (20) cubic  
15 feet of water per second.

16 ~~The term also includes an application for approval~~  
17 ~~under section 89-892, R.C.M. 1947, to change the purpose of~~  
18 ~~use.~~

19 (4) "Reservation" means a reservation of water  
20 provided for by section 89-890 of the Montana Water Use  
21 Act."

22 Section 6. Repealer. Sections 89-892 and 89-895,  
23 R.C.M. 1947, are repealed.

-End-

Approved by Committee  
on Agriculture Livestock  
& Irrigation

## SENATE BILL NO. 376

INTRODUCED BY BOYLAN, STORY, TURNAGE,

MANLEY, GRAHAM, GALT, BERGREN, DOVER, MURRAY, FLYNN

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
WATER USE ACT TO CLARIFY EXISTING WATER RIGHTS, AND TRANSFER  
OF WATER RIGHTS, ~~CHANGES IN WATER RIGHTS, AND ABANDONMENT OF~~  
~~WATER RIGHTS; AMENDING SECTIONS 89-872, 89-893, 89-894,~~  
~~89-8-101, AND 89-8-104, R.C.M. 1947, AND REPEALING SECTIONS~~  
~~89-892 AND 89-895, R.C.M. 1947."~~

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

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

"89-872. Declarations of existing rights. (1) Any  
court decree adjudicating water rights in a proceeding  
commenced prior to July 1, 1974, shall be final and  
conclusive as to all existing rights thereby adjudicated.  
Upon receipt of a certified copy of any such court decree,  
TOGETHER WITH A SWORN STATEMENT BY THE PRESENT OWNER SETTING  
FOORTH THE RIGHT OF OWNERSHIP, THE PLACE OF DIVERSION, THE  
PLACE OF USE, THE NUMBER OF ACRES IRRIGATED, AND OTHER  
INFORMATION REQUIRED UNDER RULES ADOPTED BY THE DEPARTMENT,  
the department shall file the decree and record the rights  
in the centralized record system established pursuant to

~~89-870.~~

~~(2) As to all other rights, the the department~~  
~~shall obtain from the district court an order pursuant to~~  
~~section 89-873 requiring each person claiming an existing~~  
~~right within a specified area or from a specified source to~~  
~~file a declaration of existing right within one (1) year~~  
~~after the effective date of the order. The department shall~~  
~~publish notice of the order once a week for four (4)~~  
~~consecutive weeks prior to its effective date in a newspaper~~  
~~of general circulation in the affected area. Before the last~~  
~~date of publication, the department shall also serve a copy~~  
~~of the order by certified mail upon each appropriator or his~~  
~~successor in interest within the specified area or from the~~  
~~specified source who has requested mailed notice of the~~  
~~order or of whom the department can readily obtain~~  
~~knowledge, and to each person owning or being possessed of~~  
~~lands bordering on the stream or source as ascertained from~~  
~~the land ownership records of the appropriate county. The~~  
~~department shall file in its records proof of service of the~~  
~~notice by affidavit of the publisher in the case of notice~~  
~~by publication, and by its own affidavit in the case of~~  
~~service by mail.~~

~~(3) The department of fish and game may represent~~  
~~the public for purposes of establishing any prior and~~  
~~existing public recreational use in existing right~~

SECOND READING

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

6 ~~(2)(4)~~ A declaration shall be made under oath by each  
 7 person claiming an existing right to use water within the  
 8 specified area or from the specified source on a form  
 9 provided by the department. The department shall make the  
 10 forms available through its offices and the offices of the  
 11 county clerks and recorders. The information required by the  
 12 department may include, but is not limited to, the date of  
 13 appropriation, the date the water was first applied to a  
 14 beneficial use, the amount of water appropriated, the  
 15 purpose of the appropriation, the place and means of  
 16 diversion, the place of use, the time during which the water  
 17 is diverted and used each year, and a true copy or the  
 18 docket number of any judicial decree, notice, or other claim  
 19 or evidence upon which the existing right was initiated or  
 20 is based.

21 ~~(3)(5)~~ Declarations shall be sent to the department by  
 22 certified mail, with a return receipt requested. The return  
 23 receipt is conclusive evidence of receipt, by the  
 24 department, of the declaration."

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

1 read as follows:

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

8 ~~(2) The person receiving the appropriation interest~~  
 9 ~~shall file with the department notice of the transfer on a~~  
 10 ~~form prescribed by the department.~~

11 ~~(3) An appropriator may not sever all or any part of~~  
 12 ~~an appropriation right from the land to which it is~~  
 13 ~~appurtenant or sell the appropriation right for other~~  
 14 ~~purposes or to other lands or make the appropriation right~~  
 15 ~~appurtenant to other lands without obtaining prior approval~~  
 16 ~~from the department. The department shall approve the~~  
 17 ~~proposed change if it determines that the proposed change~~  
 18 ~~will not adversely affect the rights of other persons. If~~  
 19 ~~the department determines that the proposed change might~~  
 20 ~~adversely affect the rights of other persons, notice of the~~  
 21 ~~proposed change shall be given in accordance with section~~  
 22 ~~89-881. If the department then determines that an objection~~  
 23 ~~filed by a person whose rights may be affected states a~~  
 24 ~~valid objection to the proposed change, the department shall~~  
 25 ~~hold a hearing thereon prior to its approval or denial of~~

1 ~~the proposed change. Objections shall meet the requirements~~  
2 ~~of section 89-892(2) and hearings shall be held in~~  
3 ~~accordance with section 89-883.~~

4 (2) THE PERSON RECEIVING THE APPROPRIATION INTEREST  
5 SHALL FILE WITH THE DEPARTMENT NOTICE OF THE TRANSFER ON A  
6 FORM PRESCRIBED BY THE DEPARTMENT.

7 (3) (A) AN APPROPRIATOR MAY SEVER ALL OR ANY PART OF  
8 AN APPROPRIATION RIGHT FROM THE LAND TO WHICH IT IS  
9 APPURTENANT AND TRANSFER THE APPROPRIATION RIGHT TO OTHER  
10 LAND, MAKING THE APPROPRIATION APPURTENANT TO THE OTHER  
11 LAND, PROVIDED THAT THE APPROPRIATION IS USED SOLELY FOR  
12 AGRICULTURAL PURPOSES.

13 (B) AN APPROPRIATOR MAY NOT SEVER ALL OR ANY PART OF  
14 AN APPROPRIATION RIGHT FROM THE LAND TO WHICH IT IS  
15 APPURTENANT OR SELL THE APPROPRIATION RIGHT FOR ANY OTHER  
16 PURPOSES WITHOUT OBTAINING PRIOR APPROVAL FROM THE  
17 DEPARTMENT. THE DEPARTMENT SHALL APPROVE THE PROPOSED CHANGE  
18 IF IT DETERMINES THAT THE PROPOSED CHANGE WILL NOT ADVERSELY  
19 AFFECT THE RIGHTS OF OTHER PERSONS. IF THE DEPARTMENT  
20 DETERMINES THAT THE PROPOSED CHANGE MIGHT ADVERSELY AFFECT  
21 THE RIGHTS OF OTHER PERSONS, NOTICE OF THE PROPOSED CHANGE  
22 SHALL BE GIVEN IN ACCORDANCE WITH SECTION 89-881. IF THE  
23 DEPARTMENT THEN DETERMINES THAT AN OBJECTION FILED BY A  
24 PERSON WHOSE RIGHTS MAY BE AFFECTED STATES A VALID OBJECTION  
25 TO THE PROPOSED CHANGE, THE DEPARTMENT SHALL HOLD A HEARING

1 HEREON PRIOR TO ITS APPROVAL OR DENIAL OF THE PROPOSED  
2 CHANGE. OBJECTIONS SHALL MEET THE REQUIREMENTS OF SECTION  
3 89-882(2) AND HEARINGS SHALL BE HELD IN ACCORDANCE WITH  
4 SECTION 89-883."

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

7 "89-894. Abandonment of appropriation right. (1) If  
8 an appropriator ceases to use all or a part of his  
9 appropriation right with the intention of wholly or  
10 partially abandoning the right, or if he ceases using his  
11 appropriation right according to its terms and conditions  
12 with the intention of not complying with those terms and  
13 conditions, the appropriation right shall, to that extent,  
14 be deemed considered abandoned and shall immediately expire.

15 (2) If an appropriator ceases to use all or part of  
16 his appropriation right, or ceases using his appropriation  
17 right according to its terms and conditions, for a period of  
18 ten (10) successive years, and there was water available for  
19 his use, there shall be a prima facie presumption that the  
20 appropriator has abandoned his right in whole or for the  
21 part not used.

22 ~~(3) This section does not apply to existing rights~~  
23 ~~until they have been determined in accordance with this~~  
24 ~~act."~~

25 Section 4. Section 89-8-101, R.C.M. 1947, is amended

1 to read as follows:

2 "89-8-101. Penalties. A person who violates or refuses  
3 or neglects to comply with ~~sections 16-(1), 20-(1), and 29~~  
4 ~~(3) [89-880(1), 89-892-(1), and 89-893-(3)] of this act,~~  
5 89-892(1), OR 89-893(3), or of any order of the department  
6 or of any rule of the board is guilty of a misdemeanor."

7 Section 5. Section 89-8-104, R.C.M. 1947, is amended  
8 to read as follows:

9 "89-8-104. Definitions. Unless the context clearly  
10 requires otherwise, in this act:

11 (1) "Department" means the department of natural  
12 resources and conservation.

13 (2) "Basin" means the Yellowstone River Basin.

14 (3) "Application" means an application for a permit  
15 under the Montana Water Use Act to appropriate surface water  
16 from any source of supply within the basin for either or  
17 both of the following purposes:

18 (a) a reservoir with a total planned capacity of  
19 fourteen thousand (14,000) acre feet or more, or

20 (b) for a flow rate greater than twenty (20) cubic  
21 feet of water per second.

22 ~~the term also includes an application for approval~~  
23 ~~under section 89-892, R.C.M. 1947, to change the purpose of~~  
24 use. THE TERM ALSO INCLUDES AN APPLICATION FOR APPROVAL  
25 UNDER 89-892 TO CHANGE THE PURPOSE OF USE.

1 (4) "Reservation" means a reservation of water  
2 provided for by section 89-890 of the Montana Water Use  
3 Act."

4 ~~Section 6w Repealer, Sections 89-892 and 89-895,~~  
5 ~~R.C.M. 1947 are repealed.~~

-End-

## 1 SENATE BILL NO. 376

2 INTRODUCED BY BOYLAN, STORY, TURNAGE,

3 MANLEY, GRAHAM, GALT, BERGREN, DOVER, MURRAY, FLYNN

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
6 WATER USE ACT TO CLARIFY EXISTING WATER RIGHTS, AND TRANSFER  
7 OF WATER RIGHTS, CHANGES IN WATER RIGHTS, AND ABANDONMENT OF  
8 WATER RIGHTS; AMENDING SECTIONS 89-872, 89-893, 89-894,  
9 89-8-101, AND 89-8-104, R.C.M. 1947; AND REPEALING SECTIONS  
10 89-892 AND 89-895, R.C.M. 1947."

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

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

14 "89-872. Declarations of existing rights. (1) Any  
15 court decree adjudicating water rights in a proceeding  
16 commenced prior to July 1, 1974, shall be final and  
17 conclusive as to all existing rights thereby adjudicated.  
18 Upon receipt of a certified copy of any such court decree,  
19 TOGETHER WITH A SWORN STATEMENT BY THE PRESENT OWNER SETTING  
20 FORTH THE RIGHT OF OWNERSHIP, THE PLACE OF DIVERSION, THE  
21 PLACE OF USE, THE NUMBER OF ACRES IRRIGATED, AND OTHER  
22 INFORMATION REQUIRED UNDER RULES ADOPTED BY THE DEPARTMENT,  
23 the department shall file the decree and record the rights  
24 in the centralized record system established pursuant to  
25

1 ~~89-870.~~

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

23 ~~(3)~~ The department of fish and game may represent  
24 the public for purposes of establishing any prior and  
25 existing public recreational use in existing right

THIRD READING



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

6 ~~(2)(4)~~ A declaration shall be made under oath by each  
 7 person claiming an existing right to use water within the  
 8 specified area or from the specified source on a form  
 9 provided by the department. The department shall make the  
 10 forms available through its offices and the offices of the  
 11 county clerks and recorders. The information required by the  
 12 department may include, but is not limited to, the date of  
 13 appropriation, the date the water was first applied to a  
 14 beneficial use, the amount of water appropriated, the  
 15 purpose of the appropriation, the place and means of  
 16 diversion, the place of use, the time during which the water  
 17 is diverted and used each year, and a true copy or the  
 18 docket number of any judicial decree, notice, or other claim  
 19 or evidence upon which the existing right was initiated or  
 20 is based.

21 ~~(3)(5)~~ Declarations shall be sent to the department by  
 22 certified mail, with a return receipt requested. The return  
 23 receipt is conclusive evidence of receipt, by the  
 24 department, of the declaration."

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

1 read as follows:

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

8 ~~(2) The person receiving the appropriation interest~~  
 9 ~~shall file with the department notice of the transfer on a~~  
 10 ~~form prescribed by the department.~~

11 ~~(3) An appropriator may not sever all or any part of~~  
 12 ~~an appropriation right from the land to which it is~~  
 13 ~~appurtenant, or sell the appropriation right for other~~  
 14 ~~purposes or to other lands, or make the appropriation right~~  
 15 ~~appurtenant to other lands, without obtaining prior approval~~  
 16 ~~from the department. The department shall approve the~~  
 17 ~~proposed change if it determines that the proposed change~~  
 18 ~~will not adversely affect the rights of other persons, if~~  
 19 ~~the department determines that the proposed change might~~  
 20 ~~adversely affect the rights of other persons, notice of the~~  
 21 ~~proposed change shall be given in accordance with section~~  
 22 ~~89-881. If the department then determines that an objection~~  
 23 ~~filed by a person whose rights may be affected states a~~  
 24 ~~valid objection to the proposed change, the department shall~~  
 25 ~~hold a hearing thereon prior to its approval or denial of~~

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

4 (2) THE PERSON RECEIVING THE APPROPRIATION INTEREST  
5 SHALL FILE WITH THE DEPARTMENT NOTICE OF THE TRANSFER ON A  
6 FORM PRESCRIBED BY THE DEPARTMENT.

7 (3) (A) AN APPROPRIATOR MAY SEVER ALL OR ANY PART OF  
8 AN APPROPRIATION RIGHT FROM THE LAND TO WHICH IT IS  
9 APPURTENANT AND TRANSFER THE APPROPRIATION RIGHT TO OTHER  
10 LAND, MAKING THE APPROPRIATION APPURTENANT TO THE OTHER  
11 LAND, PROVIDED THAT THE APPROPRIATION IS USED SOLELY FOR  
12 AGRICULTURAL PURPOSES.

13 (B) AN APPROPRIATOR MAY NOT SEVER ALL OR ANY PART OF  
14 AN APPROPRIATION RIGHT FROM THE LAND TO WHICH IT IS  
15 APPURTENANT OR SELL THE APPROPRIATION RIGHT FOR ANY OTHER  
16 PURPOSES WITHOUT OBTAINING PRIOR APPROVAL FROM THE  
17 DEPARTMENT. THE DEPARTMENT SHALL APPROVE THE PROPOSED CHANGE  
18 IF IT DETERMINES THAT THE PROPOSED CHANGE WILL NOT ADVERSELY  
19 AFFECT THE RIGHTS OF OTHER PERSONS. IF THE DEPARTMENT  
20 DETERMINES THAT THE PROPOSED CHANGE MIGHT ADVERSELY AFFECT  
21 THE RIGHTS OF OTHER PERSONS, NOTICE OF THE PROPOSED CHANGE  
22 SHALL BE GIVEN IN ACCORDANCE WITH SECTION 89-881. IF THE  
23 DEPARTMENT THEN DETERMINES THAT AN OBJECTION FILED BY A  
24 PERSON WHOSE RIGHTS MAY BE AFFECTED STATES A VALID OBJECTION  
25 TO THE PROPOSED CHANGE, THE DEPARTMENT SHALL HOLD A HEARING

1 THEREON PRIOR TO ITS APPROVAL OR DENIAL OF THE PROPOSED  
2 CHANGE. OBJECTIONS SHALL MEET THE REQUIREMENTS OF SECTION  
3 89-882(2) AND HEARINGS SHALL BE HELD IN ACCORDANCE WITH  
4 SECTION 89-883."

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

7 "89-894. Abandonment of appropriation right. (1) If  
8 an appropriator ceases to use all or a part of his  
9 appropriation right with the intention of wholly or  
10 partially abandoning the right, or if he ceases using his  
11 appropriation right according to its terms and conditions  
12 with the intention of not complying with those terms and  
13 conditions, the appropriation right shall, to that extent,  
14 be deemed considered abandoned and shall immediately expire.

15 (2) If an appropriator ceases to use all or part of  
16 his appropriation right, or ceases using his appropriation  
17 right according to its terms and conditions, for a period of  
18 ten (10) successive years, and there was water available for  
19 his use, there shall be a prima facie presumption that the  
20 appropriator has abandoned his right in whole or for the  
21 part not used.

22 ~~(3) This section does not apply to existing rights~~  
23 ~~until they have been determined in accordance with this~~  
24 ~~act."~~

25 Section 4. Section 89-8-101, R.C.M. 1947, is amended

1 to read as follows:

2 "89-8-101. Penalties. A person who violates or refuses  
3 or neglects to comply with ~~sections 16 (1), 28 (1), and 29~~  
4 ~~(3), 89-880(1), 89-892 (1), and 89-893 (3)~~ of this act,  
5 ~~89-897(1), OR 89-893(3)~~, or of any order of the department,  
6 or of any rule of the board, is guilty of a misdemeanor."

7 Section 5. Section 89-8-104, R.C.M. 1947, is amended  
8 to read as follows:

9 "89-8-104. Definitions. Unless the context clearly  
10 requires otherwise, in this act:

11 (1) "Department" means the department of natural  
12 resources and conservation.

13 (2) "Basin" means the Yellowstone River Basin.

14 (3) "Application" means an application for a permit  
15 under the Montana Water Use Act to appropriate surface water  
16 from any source of supply within the basin for either or  
17 both of the following purposes:

18 (a) a reservoir with a total planned capacity of  
19 fourteen thousand (14,000) acre feet or more, or

20 (b) for a flow rate greater than twenty (20) cubic  
21 feet of water per second.

22 ~~the term also includes an application for approval~~  
23 ~~under section 89-892, R.C.M. 1947, to change the purpose of~~  
24 use. THE TERM ALSO INCLUDES AN APPLICATION FOR APPROVAL  
25 UNDER 89-892 TO CHANGE THE PURPOSE OF USE.

1 (4) "Reservation" means a reservation of water  
2 provided for by section 89-890 of the Montana Water Use  
3 Act."

4 ~~Section 6, Repeater, Sections 89-892 and 89-895,~~  
5 ~~R.C.M. 1947, are repealed.~~

-End-