

CHAPTER NO. 561

HOUSE BILL NO. 733

INTRODUCED BY DAY, BENGTON

BY REQUEST OF THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION

IN THE HOUSE

February 10, 1979	Introduced and referred to Select Committee on Water.
February 17, 1979	Committee recommend bill do pass. Report adopted.
February 20, 1979	Second reading, do pass.
February 21, 1979	Considered correctly engrossed.
February 22, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 22, 1979	Introduced and referred to Committee on Natural Resources.
March 26, 1979	On motion bill be taken from Committee on Natural Resources as amended and be placed on second reading. Motion adopted.
March 27, 1979	Second reading, concurred in as amended.  On motion rules suspended. Bill placed on calendar for third reading this day.  Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979	Returned from second house. Concurred in as amended.
----------------	---

March 31, 1979

Second reading, amendments  
adopted.

April 2, 1979

Third reading, amendments  
adopted. Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 733  
 2 INTRODUCED BY Don Bengtson  
 3 BY REQUEST OF THE DEPARTMENT OF  
 4 NATURAL RESOURCES AND CONSERVATION

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO CONTROLLED GROUNDWATER AREAS; AMENDING  
 8 SECTIONS 85-2-501, 85-2-506, AND 85-2-507, MCA."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 85-2-501, MCA, is amended to read:

12 "85-2-501. Definitions. Unless the context requires  
 13 otherwise, in this part the following definitions apply:

14 (1) "Aquifer" means any underground geological  
 15 structure or formation which is capable of yielding water or  
 16 is capable of recharge.

17 (2) "Bureau" means the Montana state bureau of mines  
 18 and geology provided for in 20-25-211.

19 ~~(2)(3)~~ "Groundwater" means any fresh water beneath the  
 20 land surface or beneath the bed of a stream, lake,  
 21 reservoir, or other body of surface water and which is not a  
 22 part of that surface water.

23 ~~(3)(4)~~ "Groundwater area" means an area which, as  
 24 nearly as known facts permit, may be designated so as to  
 25 enclose a single and distinct body of groundwater, which

1 shall be described horizontally by surface description in  
 2 all cases and which may be limited vertically by describing  
 3 known geological formations should conditions dictate this  
 4 to be desirable.

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

8 Section 2. Section 85-2-506, MCA, is amended to read:

9 "85-2-506. Controlled groundwater areas -- designation  
 10 or modification. (1) The board may designate or modify  
 11 controlled groundwater areas as provided in this part.

12 ~~(2)~~ (2) Designation or modification of an area of  
 13 controlled groundwater use may be proposed to the board by  
 14 the department on its own motion or by petition signed by at  
 15 least 20 or one-fourth of the users (whichever is the lesser  
 16 number) of groundwater in a groundwater area wherein there  
 17 is are alleged to be ~~factu~~~~ate~~ facts showing:

18 (a) that groundwater withdrawals are in excess of  
 19 recharge to the aquifer or aquifers within such groundwater  
 20 area;

21 (b) that excessive groundwater withdrawals are very  
 22 likely to occur in the near future because of consistent and  
 23 significant increases in withdrawals from within the  
 24 groundwater area; or

25 (c) that significant disputes regarding priority of

1 rights, amounts of groundwater in use by appropriators, or  
 2 priority of type of use are in progress within the  
 3 groundwater area; or

4 (d) that groundwater levels or pressures in the area  
 5 in question are declining or have declined excessively.

6 ~~(2)~~(3) When such a proposal is thus made, the  
 7 department board shall fix a time and place for a hearing,  
 8 which time shall not be less than 30 ~~20~~ days from the making  
 9 of the proposal. The place for the hearing shall be within  
 10 or as close as practical to the controlled groundwater area.

11 ~~(4)~~ The department ~~or the petitioners (as the case may~~  
 12 ~~be)~~ shall publish a notice of the hearing, setting forth  
 13 therein:

14 (a) the names of the petitioners;

15 (b) the description by legal subdivisions ~~(sections,~~  
 16 ~~township, range)~~ of all lands included in or proposed to be  
 17 included in the groundwater area or subarea;

18 (c) the purpose of the hearing; and

19 (d) the time and place of the hearing where any  
 20 interested person may appear, either in person or by  
 21 attorney, file written objections to the granting of the  
 22 proposal, and be fully heard.

23 ~~(3)~~(5) Such notice of hearing shall be published at  
 24 least once in each week for 3 successive weeks not less than  
 25 30 days before the date of the hearing in a newspaper of

1 general circulation in the county or counties in which the  
 2 groundwater area or subarea is located. The department or  
 3 ~~the petitioners (as the case may be)~~ shall also cause a copy  
 4 of the notice, together with a copy of the petition, to be  
 5 served by mail, not less than 20 ~~30~~ days before the hearing,  
 6 ~~on all persons, other than the petitioners, who have~~  
 7 ~~theretofore filed a declaration of a claim or notice of~~  
 8 ~~appropriation to withdraw groundwater from the particular~~  
 9 ~~groundwater area or subarea involved in the proceedings,~~  
 10 upon each well driller licensed in Montana whose address is  
 11 within any county in which any part of the area in question  
 12 is located; upon each person or public agency known from an  
 13 examination of the records in the department's office to be  
 14 a claimant or appropriator of groundwater in the area in  
 15 question (claimant or appropriator meaning one who diverts,  
 16 impounds, or withdraws groundwater and not merely one who  
 17 uses or obtains groundwater from another who diverts,  
 18 impounds, or withdraws groundwater); upon the bureau; and  
 19 upon the mayor or chairman of the governing body of each  
 20 incorporated municipality located in whole or in part within  
 21 the proposed groundwater area. The department may also serve  
 22 notice upon any other person or state or federal agency that  
 23 the department feels may be interested in or affected by the  
 24 proposed designation or modification of a controlled  
 25 groundwater area. The petition need not be served on any

1 petitioner. A copy of the notice, together with a copy of  
 2 the proposal, shall be mailed to each person at his ~~best~~  
 3 known ~~last-known~~ address, and such service shall be complete  
 4 upon depositing it in the post office, postage prepaid,  
 5 addressed to each person on whom it is to be served.  
 6 Publication and mailing of such notices as prescribed  
 7 herein, when completed, shall be deemed to be sufficient  
 8 notice of such hearing to all interested persons."

9 Section 3. Section 85-2-507, MCA, is amended to read:

10 "85-2-507. Limiting withdrawals -- modification of  
 11 order. (1) At the time set for the hearing, the board ~~if it~~  
 12 ~~is satisfied that the notice of hearing has been duly~~  
 13 ~~published and mailed as required by 85-2-506,~~ shall proceed  
 14 to hear oral and written evidence and ~~may consider~~  
 15 ~~information which the department has duly obtained under~~  
 16 ~~this part and~~ after relevant to the designation or  
 17 modification of the controlled groundwater area presented by  
 18 the bureau, the department, and any other interested party.  
 19 A full record shall be kept of all evidence taken at the  
 20 hearing. The procedure shall be such as to secure a full;  
 21 fair, and orderly proceeding and to permit all relevant  
 22 evidence to be received. The common-law and statutory rules  
 23 of evidence shall apply only upon stipulation of all  
 24 parties.

25 (2) After the conclusion of the hearing, the board

1 shall make written findings and an order. The board shall by  
 2 order declare the area in question to be a controlled  
 3 groundwater area ~~if~~ if the board finds on the basis of the  
 4 hearing ~~and other information obtained by the department~~  
 5 ~~that the withdrawal of groundwater in such area or subarea~~  
 6 ~~exceeds the safe annual yield of groundwater as measured by~~  
 7 ~~the recharge of the area or subarea, it shall order the~~  
 8 ~~aggregate withdrawal of groundwater from such area or~~  
 9 ~~subarea decreased so that it shall not exceed such annual~~  
 10 ~~yield.~~ Except for domestic use such decrease shall conform  
 11 to the priority of the pertinent rights and shall prevail  
 12 for the term of shortage in the available supply, that:

13 (a) the public health, safety, or welfare require a  
 14 corrective control be adopted; and

15 (b) (i) there is a wasteful use of water from existing  
 16 wells or undue interference with existing wells;

17 (ii) any proposed use or well will impair or  
 18 substantially interfere with existing rights to appropriate  
 19 surface water or groundwater by others; or

20 (iii) the facts alleged in the petition as required by  
 21 85-2-506(2) are true.

22 (3) The order shall define the boundary of the  
 23 controlled groundwater area and shall indicate which of the  
 24 groundwater aquifers located within the area in question are  
 25 included within the controlled groundwater area. Any number

1 of groundwater aquifers which wholly or partially overlie  
 2 one another may be included in the same controlled  
 3 groundwater area.

4 (4) The order may include the following corrective  
 5 control provisions:

6 (a) a provision closing the controlled groundwater  
 7 area to further appropriation of groundwater, in which event  
 8 the department shall thereafter refuse to accept any  
 9 applications for beneficial water use permits to appropriate  
 10 groundwater located within such controlled area;

11 (b) a provision determining a permissible total  
 12 withdrawal of groundwater in the controlled area by days,  
 13 month, or year and permitting the board to apportion such  
 14 permissible total withdrawal among the appropriators holding  
 15 valid rights to the groundwater in the controlled area in  
 16 accordance with the relative dates of priority of such  
 17 rights;

18 (c) a provision according preference, without  
 19 reference to relative priorities, to withdrawals of  
 20 groundwater in the controlled area for domestic and  
 21 livestock purposes first and thereafter to withdrawals for  
 22 other beneficial purposes, including but not limited to  
 23 agricultural, industrial, municipal (other than domestic),  
 24 and recreational purposes, in such order as the board  
 25 considers advisable under the circumstances;

1 (d) a provision reducing the permissible withdrawal of  
 2 groundwater by any appropriator or well in the controlled  
 3 area;

4 (e) when two or more wells in the controlled area are  
 5 used by the same appropriator, a provision adjusting the  
 6 total permissible withdrawal of groundwater by the  
 7 appropriator or a provision forbidding the use of one or  
 8 more such wells;

9 (f) a provision requiring and specifying a system of  
 10 rotation of use of groundwater in the controlled area;

11 (g) provisions making such additional requirements as  
 12 are necessary to protect the public health, safety, and  
 13 welfare in accordance with the intent, purposes, and  
 14 requirements of this part and the laws of the state.

15 (5) If at the conclusion of the hearing the board  
 16 finds that sufficient facts are not available to designate  
 17 or modify a permanent controlled groundwater area, the board  
 18 may by order designate the area in question to be a  
 19 temporary controlled groundwater area. Such order may  
 20 include the corrective control provisions contained in  
 21 subsection (4). A temporary controlled groundwater area  
 22 shall be designated as such for a period not to exceed 2  
 23 years from the date of the board's order designating the  
 24 temporary controlled groundwater area. The board may, for  
 25 sufficient cause, extend the time period for an additional 2

1 years, and in this case all groundwater appropriators in the  
 2 controlled groundwater area shall be notified of the  
 3 extension. During the 2-year period, the department shall  
 4 commence studies necessary to obtain the facts needed to  
 5 assist in the designation or modification of a permanent  
 6 controlled groundwater area. Facts gathered during the study  
 7 period shall be presented at a hearing prior to the  
 8 designation or modification of a permanent controlled  
 9 groundwater area. All parties appearing at the first hearing  
 10 shall be served notice of this hearing by mail at least 30  
 11 days prior to the date set for the hearing. The service  
 12 shall be complete upon deposit of notice at the post office,  
 13 postage prepaid, addressed to each person on whom service is  
 14 to be made. Mailing of the notice, when completed, shall be  
 15 considered to be sufficient notice of the hearing to all  
 16 interested persons. The department shall file in its records  
 17 proof of service by its own affidavit. The hearing shall be  
 18 conducted by the board in the manner of the first hearing,  
 19 and the board shall make written findings of fact and  
 20 conclusions of law and issue an order according to the  
 21 provisions set forth in subsections (1) through (4). In the  
 22 event the department does not complete the necessary study  
 23 in the 2-year period or extension thereof, the temporary  
 24 controlled groundwater area designation will terminate at  
 25 the end of the 2-year period or extension.

1 ~~(6)~~ The department may enforce the order ~~require~~  
 2 ~~persons to cease such excessive withdrawals in reverse order~~  
 3 ~~of their priority of rights,~~ and bring an action for an  
 4 injunction in a district court of a district in which all or  
 5 part of the area affected is located, in addition to all  
 6 other remedies.

7 ~~(2)(1)~~ The order of the board shall be published and  
 8 mailed by the department in the manner and for the length of  
 9 time as prescribed by 85-2-506 for the publication and  
 10 mailing of the notice of hearing, except that a copy of the  
 11 written findings and order of the board shall be mailed  
 12 instead of a copy of the proposal and, except further, that  
 13 a copy of the order, together with a copy of the written  
 14 findings, shall be mailed to each petitioner at his best  
 15 known last-known address. The department shall file a copy  
 16 of the order with the county clerk of each county within  
 17 which any part of the controlled groundwater area lies, and  
 18 the county clerk shall record the order without fee. The  
 19 department shall file in its records proof of service by its  
 20 own affidavit of service. Upon publication and mailing of  
 21 such order as prescribed herein, the order shall be final  
 22 and conclusive unless an appeal therefrom is taken.

23 ~~(3) Once a petition has been filed and an order has~~  
 24 ~~been made limiting the withdrawal of groundwater from a~~  
 25 ~~particular groundwater area or subarea as provided in this~~

1 ~~section, the board may, after notice and hearing as~~  
2 ~~heretofore provided in this section, modify or revoke its~~  
3 ~~order upon a showing by any interested party and a finding~~  
4 ~~by the board that conditions have materially changed since~~  
5 ~~the prior order.~~

6 (8) The board may by order suspend, modify, or revoke  
7 any order made as provided in this section upon such notice  
8 and in such manner as is reasonable under the circumstances.  
9 A copy of each suspension, modification, or revocation shall  
10 be served or filed and recorded as provided for orders in  
11 subsection (1).

12 (9) While a matter is pending before the board, the  
13 department may restrict further development of the subarea."

14 Section 4. Severability. If a part of this act is  
15 invalid, all valid parts that are severable from the invalid  
16 part remain in effect. If a part of this act is invalid in  
17 one or more of its applications, the part remains in effect  
18 in all valid applications that are severable from the  
19 invalid applications.

-End-



## STATE OF MONTANA

REQUEST NO. 352-79

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 13, 19 79, there is hereby submitted a Fiscal Note for House Bill 733 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation:

House Bill 733 is an act generally revising the laws relating to controlled ground-water areas; amending sections 85-2-501, 85-2-506, and 85-2-507, MCA.

Assumptions:

The Bureau of Mines will receive funding as per the Executive Budget which allows the Bureau to maintain two Hydrogeologists.

Fiscal Impact:

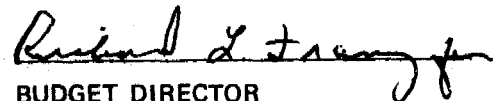
Dollar estimates have not been presented. Currently, there are no funds budgeted for this work. It is felt that there are sufficient funds available in the 1980-81 biennium to cover the costs involved. The Bureau of Mines can conduct the ground-water studies with their funding sources. DNRC will cover hearing costs.

It is difficult to predict how many or when controlled ground-water area designations may be required. It is the intention of DNRC that when a designation is requested, the Bureau of Mines will do the study and DNRC will conduct the hearings with available funds. If it is determined that available funds are not adequate, then the Department will request additional money from the next legislature. When an actual area is identified, it will be easier to obtain cost estimates.

The only area the Department has investigated is the South Pine Control Area, which encompassed 180 square miles and took three years (1965-1968) to complete. Adequate records are not available to determine the costs involved.

Local Impact:

Counties or local governments could have expenditures if they are involved in the hearing process. A dollar estimate is not provided because of the difficulty to predict their involvement.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/16/79

1 HOUSE BILL NO. 733  
 2 INTRODUCED BY Don Benton  
 3 BY REQUEST OF THE DEPARTMENT OF  
 4 NATURAL RESOURCES AND CONSERVATION

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO CONTROLLED GROUNDWATER AREAS; AMENDING  
 8 SECTIONS 85-2-501, 85-2-506, AND 85-2-507, MCA."  
 9

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

11 Section 1. Section 85-2-501, MCA, is amended to read:  
 12 "85-2-501. Definitions. Unless the context requires  
 13 otherwise, in this part the following definitions apply:

14 (1) "Aquifer" means any underground geological  
 15 structure or formation which is capable of yielding water or  
 16 is capable of recharge.

17 ~~(2) "Bureau" means the Montana state bureau of mines  
 18 and geology provided for in 20-25-211.~~

19 ~~(2)(1) "Groundwater" means any fresh water beneath the  
 20 land surface or beneath the bed of a stream, lake,  
 21 reservoir, or other body of surface water and which is not a  
 22 part of that surface water.~~

23 ~~(3)(4) "Groundwater area" means an area which, as  
 24 nearly as known facts permit, may be designated so as to  
 25 enclose a single and distinct body of groundwater, which~~

1 shall be described horizontally by surface description in  
 2 all cases and which may be limited vertically by describing  
 3 known geological formations should conditions dictate this  
 4 to be desirable.

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

8 Section 2. Section 85-2-506, MCA, is amended to read:

9 "85-2-506. Controlled groundwater areas -- designation  
 10 or modification. ~~(1) The board may designate or modify  
 11 controlled groundwater areas as provided in this part.~~

12 ~~(1)(2) Designation or modification of an area of  
 13 controlled groundwater use may be proposed to the board by  
 14 the department on its own motion or by petition signed by at  
 15 least 20 or one-fourth of the users (whichever is the lesser  
 16 number) of groundwater in a groundwater area wherein there  
 17 is are alleged to be factual data facts showing:~~

18 (a) that groundwater withdrawals are in excess of  
 19 recharge to the aquifer or aquifers within such groundwater  
 20 area;

21 (b) that excessive groundwater withdrawals are very  
 22 likely to occur in the near future because of consistent and  
 23 significant increases in withdrawals from within the  
 24 groundwater area; or

25 (c) that significant disputes regarding priority of

1 rights, amounts of groundwater in use by appropriators, or  
2 priority of type of use are in progress within the  
3 groundwater area; or

4 ~~(d) that groundwater levels or pressures in the area~~  
5 ~~in question are declining or have declined excessively.~~

6 ~~(2)(3)~~ When such a proposal is thus made, the  
7 department board shall fix a time and place for a hearing,  
8 which time shall not be less than 30 20 days from the making  
9 of the proposal. The place for the hearing shall be within  
10 or as close as practical to the controlled groundwater area.

11 ~~(4)~~ The department ~~or the petitioners (as the case may~~  
12 ~~be)~~ shall publish a notice of the hearing, setting forth  
13 therein:

14 (a) the names of the petitioners;

15 (b) the description by legal subdivisions ~~(sections~~  
16 ~~township, range)~~ of all lands included in or proposed to be  
17 included in the groundwater area or subarea;

18 (c) the purpose of the hearing; and

19 (d) the time and place of the hearing where any  
20 interested person may appear, either in person or by  
21 attorney, file written objections to the granting of the  
22 proposal, and be fully heard.

23 ~~(3)(5)~~ Such notice of hearing shall be published at  
24 least once in each week for 3 successive weeks not less than  
25 30 days before the date of the hearing in a newspaper of

1 general circulation in the county or counties in which the  
2 groundwater area or subarea is located. The department or  
3 ~~the petitioners (as the case may be)~~ shall also cause a copy  
4 of the notice, together with a copy of the petition, to be  
5 served by mail, not less than 20 30 days before the hearing,  
6 ~~on--it--persons--other--than--the--petitioners--who--have~~  
7 ~~theretofore--filed--a--declaration--of--a--claim--or--notice--of~~  
8 ~~appropriation--to--withdraw--groundwater--from--the--particular~~  
9 ~~groundwater--area--or--subarea--involved--in--the--proceedings--~~  
10 upon each well driller licensed in Montana whose address is  
11 within any county in which any part of the area in question  
12 is located; upon each person or public agency known from an  
13 examination of the records in the department's office to be  
14 a claimant or appropriator of groundwater in the area in  
15 question (claimant or appropriator meaning one who diverts,  
16 impounds, or withdraws groundwater and not merely one who  
17 uses or obtains groundwater from another who diverts,  
18 impounds, or withdraws groundwater); upon the bureau; and  
19 upon the mayor or chairman of the governing body of each  
20 incorporated municipality located in whole or in part within  
21 the proposed groundwater area. The department may also serve  
22 notice upon any other person or state or federal agency that  
23 the department feels may be interested in or affected by the  
24 proposed designation or modification of a controlled  
25 groundwater area. The petition need not be served on any

1 petitioners. A copy of the notice, together with a copy of  
 2 the proposal, shall be mailed to each person at his ~~last~~  
 3 known ~~last-known~~ address, and such service shall be complete  
 4 upon depositing it in the post office, postage prepaid,  
 5 addressed to each person on whom it is to be served.  
 6 Publication and mailing of such notices as prescribed  
 7 herein, when completed, shall be deemed to be sufficient  
 8 notice of such hearing to all interested persons."

9 Section 3. Section 85-2-507, MCA, is amended to read:

10 "85-2-507. Limiting withdrawals -- modification of  
 11 order. (1) At the time set for the hearing, the board ~~if it~~  
 12 ~~is satisfied that the notice of hearing has been duly~~  
 13 ~~published and mailed as required by 85-2-506,~~ shall proceed  
 14 to hear oral and written evidence and ~~may consider~~  
 15 ~~information which the department has duly obtained under~~  
 16 ~~this part and, after~~ relevant to the designation or  
 17 modification of the controlled groundwater area presented by  
 18 the bureau, the department, and any other interested party.  
 19 A full record shall be kept of all evidence taken at the  
 20 hearing. The procedure shall be such as to secure a full,  
 21 fair, and orderly proceeding and to permit all relevant  
 22 evidence to be received. The common-law and statutory rules  
 23 of evidence shall apply only upon stipulation of all  
 24 parties.

25 (2) After the conclusion of the hearing, the board

1 shall make written findings and an order. The board shall by  
 2 order declare the area in question to be a controlled  
 3 groundwater area ~~if~~ if the board finds on the basis of the  
 4 hearing ~~and other information obtained by the department~~  
 5 ~~that the withdrawal of groundwater in such area or subarea~~  
 6 ~~exceeds the safe annual yield of groundwater as measured by~~  
 7 ~~the recharge of the area or subarea, it shall order the~~  
 8 ~~aggregate withdrawal of groundwater from such area or~~  
 9 ~~subarea decreased so that it shall not exceed such annual~~  
 10 ~~yield.~~ ~~Except for domestic use, such decrease shall conform~~  
 11 ~~to the priority of the pertinent rights and shall prevail~~  
 12 ~~for the term of shortage in the available supply that:~~

13 (a) the public health, safety, or welfare require a  
 14 corrective control be adopted; and

15 (b) (i) there is a wasteful use of water from existing  
 16 wells or undue interference with existing wells;

17 (ii) any proposed use or well will impair or  
 18 substantially interfere with existing rights to appropriate  
 19 surface water or groundwater by others; or

20 (iii) the facts alleged in the petition as required by  
 21 85-2-506(2) are true.

22 (3) The order shall define the boundary of the  
 23 controlled groundwater area and shall indicate which of the  
 24 groundwater aquifers located within the area in question are  
 25 included within the controlled groundwater area. Any number

1 of groundwater aquifers which wholly or partially overlie  
 2 one another may be included in the same controlled  
 3 groundwater area.

4 (4) The order may include the following corrective  
 5 control provisions:

6 (a) a provision closing the controlled groundwater  
 7 area to further appropriation of groundwater, in which event  
 8 the department shall thereafter refuse to accept any  
 9 applications for beneficial water use permits to appropriate  
 10 groundwater located within such controlled area;

11 (b) a provision determining a permissible total  
 12 withdrawal of groundwater in the controlled area by day,  
 13 month, or year and permitting the board to apportion such  
 14 permissible total withdrawal among the appropriators holding  
 15 valid rights to the groundwater in the controlled area in  
 16 accordance with the relative dates of priority of such  
 17 rights;

18 (c) a provision according preference, without  
 19 reference to relative priorities, to withdrawals of  
 20 groundwater in the controlled area for domestic and  
 21 livestock purposes first and thereafter to withdrawals for  
 22 other beneficial purposes, including but not limited to  
 23 agricultural, industrial, municipal (other than domestic),  
 24 and recreational purposes, in such order as the board  
 25 considers advisable under the circumstances;

1 (d) a provision reducing the permissible withdrawal of  
 2 groundwater by any appropriator or well in the controlled  
 3 area;

4 (e) when two or more wells in the controlled area are  
 5 used by the same appropriator, a provision adjusting the  
 6 total permissible withdrawal of groundwater by the  
 7 appropriator or a provision forbidding the use of one or  
 8 more such wells;

9 (f) a provision requiring and specifying a system of  
 10 rotation of use of groundwater in the controlled area;

11 (g) provisions making such additional requirements as  
 12 are necessary to protect the public health, safety, and  
 13 welfare in accordance with the intent, purposes, and  
 14 requirements of this part and the laws of the state.

15 (5) If at the conclusion of the hearing the board  
 16 finds that sufficient facts are not available to designate  
 17 or modify a permanent controlled groundwater area, the board  
 18 may by order designate the area in question to be a  
 19 temporary controlled groundwater area. Such order may  
 20 include the corrective control provisions contained in  
 21 subsection (4). A temporary controlled groundwater area  
 22 shall be designated as such for a period not to exceed 2  
 23 years from the date of the board's order designating the  
 24 temporary controlled groundwater area. The board may, for  
 25 sufficient cause, extend the time period for an additional 2

1 years, and in this case all groundwater appropriators in the  
 2 controlled groundwater area shall be notified of the  
 3 extension. During the 2-year period, the department shall  
 4 commence studies necessary to obtain the facts needed to  
 5 assist in the designation or modification of a permanent  
 6 controlled groundwater area. Facts gathered during the study  
 7 period shall be presented at a hearing prior to the  
 8 designation or modification of a permanent controlled  
 9 groundwater area. All parties appearing at the first hearing  
 10 shall be served notice of this hearing by mail at least 30  
 11 days prior to the date set for the hearing. The service  
 12 shall be complete upon deposit of notice at the post office,  
 13 postage prepaid, addressed to each person on whom service is  
 14 to be made. Mailing of the notice, when completed, shall be  
 15 considered to be sufficient notice of the hearing to all  
 16 interested persons. The department shall file in its records  
 17 proof of service by its own affidavit. The hearing shall be  
 18 conducted by the board in the manner of the first hearings  
 19 and the board shall make written findings of fact and  
 20 conclusions of law and issue an order according to the  
 21 provisions set forth in subsections (1) through (4). In the  
 22 event the department does not complete the necessary study  
 23 in the 2-year period or extension thereof, the temporary  
 24 controlled groundwater area designation will terminate at  
 25 the end of the 2-year period or extension.

1 ~~(6) The department may enforce the order--require~~  
 2 ~~persons to cease such excessive withdrawals in reverse order~~  
 3 ~~of their priority of rights, and bring an action for an~~  
 4 ~~injunction in a district court of a district in which all or~~  
 5 ~~part of the area affected is located, in addition to all~~  
 6 ~~other remedies.~~

7 ~~(2)(1) The order of the board shall be published and~~  
 8 ~~mailed by the department in the manner and for the length of~~  
 9 ~~time as prescribed by 85-2-506 for the publication and~~  
 10 ~~mailing of the notice of hearing, except that a copy of the~~  
 11 ~~written findings and order of the board shall be mailed~~  
 12 ~~instead of a copy of the proposal and, except further, that~~  
 13 ~~a copy of the order, together with a copy of the written~~  
 14 ~~findings, shall be mailed to each petitioner at his best~~  
 15 ~~known last-known address. The department shall file a copy~~  
 16 ~~of the order with the county clerk of each county within~~  
 17 ~~which any part of the controlled groundwater area lies, and~~  
 18 ~~the county clerk shall record the order without fee. The~~  
 19 ~~department shall file in its records proof of service by its~~  
 20 ~~own affidavit of service. Upon publication and mailing of~~  
 21 ~~such order, as prescribed herein, the order shall be final~~  
 22 ~~and conclusive unless an appeal therefrom is taken.~~

23 ~~(3) Once a petition has been filed and an order has~~  
 24 ~~been made--stating the withdrawal of groundwater from a~~  
 25 ~~particular groundwater area or subarea as provided in this~~

1 ~~section; the board may, after notice and hearing as~~  
2 ~~heretofore provided in this section, modify or revoke its~~  
3 ~~order upon a showing by any interested party and a finding~~  
4 ~~by the board that conditions have materially changed since~~  
5 ~~the prior orders.~~

6 (8) The board may by order suspend, modify, or revoke  
7 any order made as provided in this section upon such notice  
8 and in such manner as is reasonable under the circumstances.  
9 A copy of each suspension, modification, or revocation shall  
10 be served or filed and recorded as provided for orders in  
11 subsection (1).

12 (9) While a matter is pending before the board, the  
13 department may restrict further development of the subarea."

14 Section 4. Severability. If a part of this act is  
15 invalid, all valid parts that are severable from the invalid  
16 part remain in effect. If a part of this act is invalid in  
17 one or more of its applications, the part remains in effect  
18 in all valid applications that are severable from the  
19 invalid applications.

-End-

HOUSE BILL NO. 733

INTRODUCED BY DAY, BENGTSO

BY REQUEST OF THE DEPARTMENT OF

NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CONTROLLED GROUNDWATER AREAS; ~~AND TO REQUIRE LEGISLATIVE APPROVAL BEFORE A PERMIT TO APPROPRIATE WATER FOR THE PURPOSE OF SALE BY THE APPROPRIATOR~~ AMENDING SECTIONS 85-2-501, 85-2-506, AND ~~AND~~ 85-2-507, ~~AND 85-2-508~~, MCA."

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

Section 1. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(2) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

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

(4) "Groundwater area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of groundwater, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable.

(5) "Person" means an individual, association, partnership, corporation, state, agency, political subdivision, or the United States or any agency thereof."

Section 2. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled groundwater areas -- designation or modification. (1) The board may designate or modify controlled groundwater areas as provided in this part.

(2) Designation or modification of an area of controlled groundwater use may be proposed to the board by the department on its own motion or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of groundwater in a groundwater area wherein there is alleged to be fact-based facts showing:

(a) that groundwater withdrawals are in excess of recharge to the aquifer or aquifers within such groundwater area;

(b) that excessive groundwater withdrawals are very likely to occur in the near future because of consistent and



1 significant increases in withdrawals from within the  
2 groundwater area; or

3 (c) that significant disputes regarding priority of  
4 rights, amounts of groundwater in use by appropriators, or  
5 priority of type of use are in progress within the  
6 groundwater area; or

7 (d) that groundwater levels or pressures in the area  
8 in question are declining or have declined excessively.

9 ~~(2)(3)~~ When such a proposal is thus made, the  
10 department ~~board~~ shall fix a time and place for a hearing,  
11 which time shall not be less than ~~30~~ 20 days from the making  
12 of the proposal. The place for the hearing shall be within  
13 or as close as practical to the controlled groundwater area.

14 ~~(4)~~ The department ~~or the petitioners for the case may~~  
15 ~~be~~ shall publish a notice of the hearing, setting forth  
16 therein:

17 (a) the names of the petitioners;

18 (b) the description by legal subdivisions ~~(sections~~  
19 ~~township, range)~~ of all lands included in or proposed to be  
20 included in the groundwater area or subarea;

21 (c) the purpose of the hearing; and

22 (d) the time and place of the hearing where any  
23 interested person may appear, either in person or by  
24 attorney, file written objections to the granting of the  
25 proposal, and be fully heard.

1 ~~(3)(5)~~ Such notice of hearing shall be published at  
2 least once in each week for 3 successive weeks not less than  
3 30 days before the date of the hearing in a newspaper of  
4 general circulation in the county or counties in which the  
5 groundwater area or subarea is located. The department or  
6 ~~the petitioners for the case may be~~ shall also cause a copy  
7 of the notice, together with a copy of the petition, to be  
8 served by mail, not less than ~~20~~ 30 days before the hearing,  
9 ~~on all persons, other than the petitioners, who have~~  
10 ~~theretofore filed a declaration of a claim or notice of~~  
11 ~~appropriation to withdraw groundwater from the particular~~  
12 ~~groundwater area or subarea involved in the proceedings,~~  
13 upon each well driller licensed in Montana whose address is  
14 within any county in which any part of the area in question  
15 is located; upon each person or public agency known from an  
16 examination of the records in the department's office to be  
17 a claimant or appropriator of groundwater in the area in  
18 question (claimant or appropriator meaning one who diverts,  
19 impounds, or withdraws groundwater and not merely one who  
20 uses or obtains groundwater from another who diverts,  
21 impounds, or withdraws groundwater); upon the bureau and  
22 upon the mayor or chairman of the governing body of each  
23 incorporated municipality located in whole or in part within  
24 the proposed groundwater area. The department may also serve  
25 notice upon any other person or state or federal agency that

1 the department feels may be interested in or affected by the  
 2 proposed designation or modification of a controlled  
 3 groundwater area. The petition need not be served on any  
 4 petitioner. A copy of the notice, together with a copy of  
 5 the proposal, shall be mailed to each person at his ~~test~~  
 6 known ~~last-known~~ address, and such service shall be complete  
 7 upon depositing it in the post office, postage prepaid,  
 8 addressed to each person on whom it is to be served.  
 9 Publication and mailing of such notice, as prescribed  
 10 herein, when completed, shall be deemed to be sufficient  
 11 notice of such hearing to all interested persons."

12 Section 3. Section 85-2-507, MCA, is amended to read:  
 13 "85-2-507. Limiting withdrawals -- modification of  
 14 order. (1) At the time set for the hearing, the board ~~if it~~  
 15 ~~is satisfied that the notice of hearing has been duly~~  
 16 ~~published and mailed as required by 85-2-506v~~ shall proceed  
 17 to hear oral and written evidence ~~and may consider~~  
 18 ~~information which the department has duty obtained under~~  
 19 ~~this part and after~~ relevant to the designation or  
 20 modification of the controlled groundwater area presented by  
 21 the bureau, the department, and any other interested party.  
 22 A full record shall be kept of all evidence taken at the  
 23 hearing. The procedure shall be such as to secure a full,  
 24 fair, and orderly proceeding and to permit all relevant  
 25 evidence to be received. The common-law and statutory rules

1 of evidence shall apply only upon stipulation of all  
 2 parties.

3 (2) After the conclusion of the hearing, the board  
 4 shall make written findings and an order. The board shall by  
 5 order declare the area in question to be a controlled  
 6 groundwater area if if the board finds on the basis of the  
 7 hearing and other information obtained by the department  
 8 that the withdrawal of groundwater in such area or subarea  
 9 exceeds the safe annual yield of groundwater as measured by  
 10 the recharge of the area or subarea, it shall order the  
 11 aggregate withdrawal of groundwater from such area or  
 12 subarea decreased so that it shall not exceed such annual  
 13 yield. Except for domestic use, such decrease shall conform  
 14 to the priority of the pertinent rights and shall prevent  
 15 for the term of shortage in the available supply, that:

16 (a) the public health, safety, or welfare require a  
 17 corrective control be adopted; and

18 (b) (i) there is a wasteful use of water from existing  
 19 wells or undue interference with existing wells;

20 (iii) any proposed use or well will impair or  
 21 substantially interfere with existing rights to appropriate  
 22 surface water or groundwater by others; or

23 (iii) the facts alleged in the petition as required by  
 24 85-2-506(2) are true.

25 (3) The order shall define the boundary of the

1 controlled groundwater area and shall indicate which of the  
 2 groundwater aquifers located within the area in question are  
 3 included within the controlled groundwater area. Any number  
 4 of groundwater aquifers which wholly or partially overlap  
 5 one another may be included in the same controlled  
 6 groundwater area.

7 (4) The order may include the following corrective  
 8 control provisions:

9 (a) a provision closing the controlled groundwater  
 10 area to further appropriation of groundwater, in which event  
 11 the department shall thereafter refuse to accept any  
 12 applications for beneficial water use permits to appropriate  
 13 groundwater located within such controlled area;

14 (b) a provision determining a permissible total  
 15 withdrawal of groundwater in the controlled area by day,  
 16 month, or year and permitting the board to apportion such  
 17 permissible total withdrawal among the appropriators holding  
 18 valid rights to the groundwater in the controlled area in  
 19 accordance with the relative dates of priority of such  
 20 rights;

21 (c) a provision according preference, without  
 22 reference to relative priorities, to withdrawals of  
 23 groundwater in the controlled area for domestic and  
 24 livestock purposes first and thereafter to withdrawals for  
 25 other beneficial purposes, including but not limited to

1 agricultural, industrial, municipal (other than domestic),  
 2 and recreational purposes, in such order as the board  
 3 considers advisable under the circumstances;

4 (d) a provision reducing the permissible withdrawal of  
 5 groundwater by any appropriator or well in the controlled  
 6 area;

7 (e) when two or more wells in the controlled area are  
 8 used by the same appropriator, a provision adjusting the  
 9 total permissible withdrawal of groundwater by the  
 10 appropriator or a provision forbidding the use of one or  
 11 more such wells;

12 (f) a provision requiring and specifying a system of  
 13 rotation of use of groundwater in the controlled area;

14 (g) provisions making such additional requirements as  
 15 are necessary to protect the public health, safety, and  
 16 welfare in accordance with the intent, purposes, and  
 17 requirements of this part and the laws of the state.

18 (5) If at the conclusion of the hearing the board  
 19 finds that sufficient facts are not available to designate  
 20 or modify a permanent controlled groundwater area, the board  
 21 may by order designate the area in question to be a  
 22 temporary controlled groundwater area. Such order may  
 23 include the corrective control provisions contained in  
 24 subsection (4). A temporary controlled groundwater area  
 25 shall be designated as such for a period not to exceed 2

1 years from the date of the board's order designating the  
 2 temporary controlled groundwater area. The board may, for  
 3 sufficient cause, extend the time period for an additional 2  
 4 years, and in this case all groundwater appropriators in the  
 5 controlled groundwater area shall be notified of the  
 6 extension. During the 2-year period, the department shall  
 7 commence studies necessary to obtain the facts needed to  
 8 assist in the designation or modification of a permanent  
 9 controlled groundwater area. Facts gathered during the study  
 10 period shall be presented at a hearing prior to the  
 11 designation or modification of a permanent controlled  
 12 groundwater area. All parties appearing at the first hearing  
 13 shall be served notice of this hearing by mail at least 30  
 14 days prior to the date set for the hearing. The service  
 15 shall be complete upon deposit of notice at the post office  
 16 postage prepaid, addressed to each person on whom service is  
 17 to be made. Mailing of the notice, when completed, shall be  
 18 considered to be sufficient notice of the hearing to all  
 19 interested persons DIRECTLY AFFECTED. The department shall  
 20 file in its records proof of service by its own affidavit.  
 21 The hearing shall be conducted by the board in the manner of  
 22 the first hearing, and the board shall make written findings  
 23 of fact and conclusions of law and issue an order according  
 24 to the provisions set forth in subsections (1) through (4).  
 25 In the event the department does not complete the necessary

1 study in the 2-year period or extension thereof, the  
 2 temporary controlled groundwater area designation will  
 3 terminate at the end of the 2-year period or extension.

4 (4) The department may enforce the order, require  
 5 persons to cease such excessive withdrawals in reverse order  
 6 of their priority of rights, and bring an action for an  
 7 injunction in a district court of a district in which all or  
 8 part of the area affected is located, in addition to all  
 9 other remedies.

10 (2)(17) The order of the board shall be published and  
 11 mailed by the department in the manner and for the length of  
 12 time as prescribed by 85-2-506 for the publication and  
 13 mailing of the notice of hearing, except that a copy of the  
 14 written findings and order of the board shall be mailed  
 15 instead of a copy of the proposal and, except further, that  
 16 a copy of the order, together with a copy of the written  
 17 findings, shall be mailed to each petitioner at his best  
 18 known last-known address. The department shall file a copy  
 19 of the order with the county clerk of each county within  
 20 which any part of the controlled groundwater area lies, and  
 21 the county clerk shall record the order without fee. The  
 22 department shall file in its records proof of service by its  
 23 own affidavit of service. Upon publication and mailing of  
 24 such order as prescribed herein, the order shall be final  
 25 and conclusive unless an appeal therefrom is taken.

1        ~~{3}--Once a petition has been filed and an order has~~  
 2 ~~been made limiting the withdrawal of groundwater from a~~  
 3 ~~particular groundwater area or subarea, as provided in this~~  
 4 ~~section, the board may, after notice and hearing, as~~  
 5 ~~heretofore provided in this section, modify or revoke its~~  
 6 ~~order upon a showing by any interested party and a finding~~  
 7 ~~by the board that conditions have materially changed since~~  
 8 ~~the prior orders.~~

9        ~~{8} The board may by order suspend, modify, or revoke~~  
 10 ~~any order made as provided in this section upon such notice~~  
 11 ~~and in such manner as is reasonable under the circumstances.~~  
 12 ~~A copy of each suspension, modification, or revocation shall~~  
 13 ~~be served or filed and recorded as provided for orders in~~  
 14 ~~subsection (1).~~

15        ~~{9} While a matter is pending before the board, the~~  
 16 ~~department may restrict further development of the subarea."~~

17        ~~SECTION 4--SECTION 05-2-500, MCA, IS AMENDED TO READ:~~  
 18        ~~"05-2-500--Controlled groundwater areas---permits to~~  
 19 ~~appropriate. iii-A person may appropriate groundwater in a~~  
 20 ~~controlled area only by applying for and receiving a permit~~  
 21 ~~from the department in accordance with part 3 of this~~  
 22 ~~chapter. The department may not grant a permit if the~~  
 23 ~~withdrawal would be beyond the capacity of the aquifer or~~  
 24 ~~aquifers in the groundwater area to yield groundwater within~~  
 25 ~~a reasonable or feasible pumping lift in the case of~~

1        ~~pumping developments) or within a reasonable or feasible~~  
 2 ~~reduction of pressure (in the case of artesian~~  
 3 ~~developments).~~

4        ~~{2}--No permit to appropriate water for the purpose of~~  
 5 ~~sale by the appropriator may be granted except pursuant to a~~  
 6 ~~petition to and an act of the legislature of the state of~~  
 7 ~~Montana permitting such actions."~~

8        Section 4. Severability. If a part of this act is  
 9 invalid, all valid parts that are severable from the invalid  
 10 part remain in effect. If a part of this act is invalid in  
 11 one or more of its applications, the part remains in effect  
 12 in all valid applications that are severable from the  
 13 invalid applications.

-End-

March 26, 1979

SENATE STANDING COMMITTEE REPORT  
(Natural Resources)

That House Bill No. 733, third reading bill, be amended as follows:

1. Title, line 7.

Following: "AREAS;"

Insert: "AND TO REQUIRE LEGISLATIVE APPROVAL BEFORE A PERMIT  
TO APPROPRIATE WATER FOR THE PURPOSE OF SALE BY THE APPRO-  
PRIATOR;"

Following: "85-2-506,"

Strike: "AND"

Following: "85-2-507,"

Insert: "AND 85-2-508,"

2. Page 9, line 16.

Strike: "interested"

Following: "persons"

Insert: "directly affected"

3. Page 11.

Following: line 13

Insert: "Section 4. Section 85-2-508, MCA, is amended to read:  
"85-2-508. Controlled groundwater areas - permits to appro-  
priate.

(1) A person may appropriate groundwater in a controlled area only by applying for and receiving a permit from the department in accordance with part 3 of this chapter. The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the groundwater area to yield groundwater within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments).

(2) No permit to appropriate water for the purpose of sale by the appropriator may be granted except pursuant to a petition to and an act of the legislature of the State of Montana permitting such action.

Renumber all subsequent sections.

March 27, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 733, third reading bill, be amended as follows:

1. Senate Natural Resources Committee Amendments of March 26, 1979:  
Strike: Amendments 1 and 3 in their entirety.