

SENATE BILL 464

IN THE SENATE

February 12, 1979	Introduced and referred to Committee on Natural Resources.
February 19, 1979	Committee recommend bill, do pass.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, not passed.  On motion, Senate reconsider its action taken on third reading this Legislative Day. Previous Motion laid on the table. Motion adopted.

1 *Schradin* *Anger* BILL NO. *464* *Prescott*  
 2 INTRODUCED BY *Matt Curtiss* *Richard Four*  
 3 *Boyer* *Kooker* *Sevenson* *Richard* STEPHENS  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE LAW  
 5 PROVIDING FOR RESERVATION OF WATER BY GOVERNMENTAL ENTITIES  
 6 FOR EXISTING OR FUTURE BENEFICIAL USES; AMENDING SECTIONS  
 7 85-2-102, 85-2-307, AND 85-2-311, MCA; AND REPEALING  
 8 SECTIONS 85-2-316 AND 85-2-601 THROUGH 85-2-608, MCA."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Section 85-2-102, MCA, is amended to read:  
 12 "85-2-102. Definitions. Unless the context requires  
 13 otherwise, in this chapter the following definitions apply:  
 14 (1) "Appropriate" means to divert, impound, or  
 15 withdraw (including by stock for stock water) a quantity of  
 16 water--ory--in-the-case-of-a-public-agency--to-reserve-water  
 17 in-accordance-with-85-2-316.  
 18 (2) "Beneficial use" means a use of water for the  
 19 benefit of the appropriator, other persons, or the public,  
 20 including but not limited to agricultural (including stock  
 21 water), domestic, fish and wildlife, industrial, irrigation,  
 22 mining, municipal, power, and recreational uses. A use of  
 23 water for slurry to export coal from Montana is not a  
 24 beneficial use. Slurry is a mixture of water and insoluble  
 25 matter.

*Prescott*  
*Richard Four*  
*STEPHENS*  
*Boyer*  
*Kooker*  
*Sevenson*  
*Richard*  
*Boyer*  
*Smith*  
*Stacy*  
*Marble*  
*Nelbort*  
*Hager*  
*Metz*

1 (3) "Board" means the board of natural resources and  
 2 conservation provided for in 2-15-3302.  
 3 (4) "Certificate" means the certificate of water right  
 4 issued by the department under 85-2-210, subsections (1) and  
 5 (2) of 85-2-306, and 85-2-315.  
 6 (5) "Declaration" means the declaration of an existing  
 7 right filed with the department under 85-2-203.  
 8 (6) "Department" means the department of natural  
 9 resources and conservation provided for in Title 2, chapter  
 10 15, part 33.  
 11 (7) "Existing right" means a right to the use of water  
 12 which would be protected under the law as it existed prior  
 13 to July 1, 1973.  
 14 (8) "Groundwater" means any water beneath the land  
 15 surface or beneath the bed of a stream, lake, reservoir, or  
 16 other body of surface water, and which is not a part of that  
 17 surface water.  
 18 (9) "Permit" means the permit to appropriate issued by  
 19 the department under 85-2-301 through 85-2-303 and 85-2-306  
 20 through 85-2-314.  
 21 (10) "Person" means an individual, association,  
 22 partnership, corporation, state agency, political  
 23 subdivision, the United States or any agency thereof, or any  
 24 other entity.  
 25 (11) "Political subdivision" means any county,

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

5 (12) "Waste" means the unreasonable loss of water  
 6 through the design or negligent operation of an  
 7 appropriation or water distribution facility or the  
 8 application of water to anything but a beneficial use.

9 (13) "Water" means all water of the state, surface and  
 10 subsurface, regardless of its character or manner of  
 11 occurrence, including geothermal water and diffuse surface  
 12 water.

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

17 Section 2. Section 85-2-307, MCA, is amended to read:

18 "85-2-307. Notice of application. (1) Upon receipt of  
 19 a proper application for a permit, the department shall  
 20 prepare a notice containing the facts pertinent to the  
 21 application and shall publish the notice in a newspaper of  
 22 general circulation in the area of the source once a week  
 23 for 3 consecutive weeks. Before the last date of  
 24 publication, the department shall also serve the notice by  
 25 certified mail upon an appropriator of water or applicant

1 for or holder of a permit who, according to the records of  
 2 the department, may be affected by the proposed  
 3 appropriation. ~~A notice shall also be served upon any public~~  
 4 ~~agency that has reserved waters in the source under~~  
 5 ~~85-2-316.~~ The department may, in its discretion, also serve  
 6 notice upon any state agency or other person the department  
 7 feels may be interested in or affected by the proposed  
 8 appropriation. The department shall file in its records  
 9 proof of service by affidavit of the publisher in the case  
 10 of notice by publication and by its own affidavit in the  
 11 case of service by mail.

12 (2) The notice shall state that by a date set by the  
 13 department (not less than 30 days or more than 60 days after  
 14 the last date of publication) persons may file with the  
 15 department written objections to the application.

16 (3) The requirements of subsections (1) and (2) of  
 17 this section do not apply if the department finds, on the  
 18 basis of information reasonably available to it, that the  
 19 appropriation as proposed in the application will not  
 20 adversely affect the rights of other persons."

21 Section 3. Section 85-2-311, MCA, is amended to read:

22 "85-2-311. Criteria for issuance of permit. The  
 23 department shall issue a permit if:

24 (1) there are unappropriated waters in the source of  
 25 supply:

1 (a) at times when the water can be put to the use  
2 proposed by the applicant;

3 (b) in the amount the applicant seeks to appropriate;  
4 and

5 (c) throughout the period during which the applicant  
6 seeks to appropriate, the amount requested is available;

7 (2) the rights of a prior appropriator will not be  
8 adversely affected;

9 (3) the proposed means of diversion or construction  
10 are adequate;

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

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

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

19 Section 4. Repealer. Sections 85-2-316 and 85-2-601  
20 through 85-2-608, MCA, are repealed.

-End-

SE 444

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 19 benefit of the appropriator, other persons, or the public,  
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SE 404