

House Bill 120

In The House

January 8, 1981

Introduced and referred
to Select Committee on Water.

April 23, 1981

Died in Committee.

1 HOUSE BILL NO. 120
2 INTRODUCED BY Conroy _____
3

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 AND TO REPEAL THE
7 YELLOWSTONE RIVER BASIN MORATORIUM PROVISIONS REGARDING
8 RESERVATIONS; AMENDING SECTIONS 85-2-102, 85-2-232,
9 85-2-307, AND 85-2-311, MCA; AND REPEALING SECTIONS 85-2-316
10 AND 85-2-601 THROUGH 85-2-608, MCA."
11

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

13 Section 1. Section 85-2-102, MCA, is amended to read:
14 "85-2-102. Definitions. Unless the context requires
15 otherwise, in this chapter the following definitions apply:
16 (1) "Appropriate" means to divert, impound, or
17 withdraw (including by stock for stock water) a quantity of
18 water ~~or, in the case of a public agency, to reserve water~~
19 ~~in accordance with 85-2-316.~~

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

1 (3) "Board" means the board of natural resources and
2 conservation provided for in 2-15-3302.

3 (4) "Certificate" means a certificate of water right
4 issued by the department.

5 (5) "Declaration" means the declaration of an existing
6 right filed with the department under section 8, Chapter
7 452, Laws of 1973.

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) "Slurry" means a mixture of water and insoluble
6 material.

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

11 (14) "Water" means all water of the state, surface and
12 subsurface, regardless of its character or manner of
13 occurrence, including but not limited to geothermal water,
14 diffuse surface water, and sewage effluent.

15 (15) "Water division" means a drainage basin as defined
16 in 3-7-102.

17 (16) "Water judge" means a judge as provided for in
18 Title 3, chapter 7.

19 (17) "Water master" means a master as provided for in
20 Title 3, chapter 7.

21 (18) "Well" means any artificial opening or excavation
22 in the ground, however made, by which groundwater is sought
23 or can be obtained or through which it flows under natural
24 pressures or is artificially withdrawn."

25 Section 2. Section 85-2-232, MCA, is amended to read:

1 *85-2-232. Availability of preliminary decree. (1) The
2 water judge shall send a copy of the preliminary decree to
3 the department, and the water judge shall serve by mail a
4 notice of availability of the preliminary decree to each
5 person who has filed a claim of existing right, or, in the
6 Powder River Basin, to each person who has filed a
7 declaration of an existing right. The water judge shall
8 enclose with the notice an abstract of the disposition of
9 such person's claimed or declared existing right. The notice
10 of availability shall also be served upon those issued or
11 having applied for and not having been denied a beneficial
12 water use permit pursuant to Title 85, chapter 2, part 3,
13 ~~those granted a reservation pursuant to 85-2-316~~ or other
14 interested persons who request service of the notice from
15 the water judge. The clerk or person designated by the water
16 judge to mail the notice shall make a general certificate of
17 mailing certifying that a copy of the notice has been placed
18 in the United States mail, postage prepaid, addressed to
19 each party required to be served notice of the preliminary
20 decree. Such certificate shall be conclusive evidence of due
21 and legal notice of entry of decree.

22 (2) Any person may obtain a copy of the preliminary
23 decree upon payment of a fee of \$20 or the cost of printing,
24 whichever is greater, to the water judge."

25 Section 3. Section 85-2-307, MCA, is amended to read:

1 "85-2-307. Notice of application. (1) Upon receipt of
 2 a proper application for a permit, the department shall
 3 prepare a notice containing the facts pertinent to the
 4 application and shall publish the notice in a newspaper of
 5 general circulation in the area of the source once a week
 6 for 3 consecutive weeks. Before the last date of
 7 publication, the department shall also serve the notice by
 8 certified mail upon an appropriator of water or applicant
 9 for or holder of a permit who, according to the records of
 10 the department, may be affected by the proposed
 11 appropriation. ~~A notice shall also be served upon any public~~
 12 ~~agency that has reserved waters in the source under~~
 13 ~~85-2-316.~~ The department may, in its discretion, also serve
 14 notice upon any state agency or other person the department
 15 feels may be interested in or affected by the proposed
 16 appropriation. The department shall file in its records
 17 proof of service by affidavit of the publisher in the case
 18 of notice by publication and by its own affidavit in the
 19 case of service by mail.

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

24 (3) The requirements of subsections (1) and (2) of
 25 this section do not apply if the department finds, on the

1 basis of information reasonably available to it, that the
 2 appropriation as proposed in the application will not
 3 adversely affect the rights of other persons."

4 Section 4. Section 85-2-311, MCA, is amended to read:

5 "85-2-311. Criteria for issuance of permit. The
 6 department shall issue a permit if:

7 (1) there are unappropriated waters in the source of
 8 supply:

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

11 (b) in the amount the applicant seeks to appropriate;
 12 and

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

15 (2) the rights of a prior appropriator will not be
 16 adversely affected;

17 (3) the proposed means of diversion or construction
 18 are adequate;

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

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

23 (6) an applicant for an appropriation of 10,000
 24 acre-feet a year or more or 15 cubic feet per second or more
 25 proves by clear and convincing evidence that the rights of a

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1 prior appropriator will not be adversely affected.■
2 Section 5. Repealer. Sections 85-2-316 and 85-2-601
3 through 85-2-608, MCA, are repealed.

-End-