

SENATE BILL NO. 176

INTRODUCED BY STIMATZ

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

IN THE SENATE

January 17, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
February 2, 1981	Committee recommend bill do pass as amended. Report adopted.
February 3, 1981	Bill printed and placed on members' desks.
February 4, 1981	Second reading, do pass.
February 5, 1981	Correctly engrossed.
February 6, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

February 7, 1981	Introduced and referred to Committee on Water.
March 25, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on the 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 96; Nays, 1.

IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 3, 1981

Second reading, amendments concurred in.

April 6, 1981

Third reading, amendments concurred in. Ayes, 49; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *176*
 2 INTRODUCED BY *Strom*
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
 4 AND CONSERVATION

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
 7 CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE
 8 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN
 9 EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF
 10 GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A
 11 MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE;
 12 PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO
 13 THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A
 14 PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER
 15 APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY
 16 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD
 17 BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED
 18 BY FIRST-CLASS MAIL; PROVIDING FOR THE HOLDING OF A HEARING
 19 ON OBJECTIONS WITHIN A REASONABLE TIME; PROVIDING FOR ACTION
 20 ON AN APPLICATION WITHIN 240 DAYS IF A HEARING IS HELD OR
 21 OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT
 22 HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT
 23 APPROPRIATION ACCOUNT; ESTABLISHING FEES FOR AN
 24 ENVIRONMENTAL IMPACT STATEMENT ON AN APPLICATION FOR A
 25 RESERVATION OF WATER; AMENDING SECTIONS 85-2-306, 85-2-307,

1 85-2-309 THROUGH 85-2-311, AND 85-2-124, MCA; AND PROVIDING
 2 AN IMMEDIATE EFFECTIVE DATE."

3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 Section 1. Section 85-2-306, MCA, is amended to read:
 6 "85-2-306. Exceptions to permit requirements. (1)
 7 Outside the boundaries of a controlled groundwater area, a
 8 permit is not required before appropriating groundwater by
 9 means of a well or developed spring with a maximum ~~yield~~
 10 appropriation of less than 100 gallons ~~a~~ per minute. Within
 11 60 days of completion of the well or developed spring and
 12 appropriation of the groundwater for beneficial use, the
 13 appropriator shall file a notice of completion ~~with the~~
 14 department on a form provided by the department at its
 15 offices and at the offices of the county clerk and
 16 recorders. Upon receipt of the notice, the department shall
 17 ~~automatically issue a certificate of water right~~ review the
 18 notice and may, before issuing a certificate of water right,
 19 return a defective notice for correction or completion,
 20 together with the reasons for returning it. A notice does
 21 not lose priority of filing because of defects, if the
 22 notice is corrected, completed, and refiled with the
 23 department within 30 days or within a further time as the
 24 department may allow, not to exceed 6 months. If a notice is
 25 not corrected and completed within the time allowed, the

1 priority date of appropriation shall be the date of refileing
 2 a correct and complete notice with the department. A
 3 certificate of water right may not be issued until a correct
 4 and complete notice has been filed with the department. The
 5 original of the certificate shall be sent to the county
 6 clerk and recorder in the county where the point of
 7 diversion or place of use is located for recordation. The
 8 department shall keep a copy of the certificate in its
 9 office in Helena. After recordation, the clerk and recorder
 10 shall send the certificate to the appropriator. The date of
 11 filing of the notice of completion is the date of priority
 12 of the right.

13 (2) An appropriator of groundwater by means of a well
 14 or developed spring first put to beneficial use between
 15 January 1, 1962, and July 1, 1973, who did not file a notice
 16 of completion, as required by laws in force prior to [the
 17 effective date of this act], with the county clerk and
 18 recorder shall file a notice of completion, as provided in
 19 subsection (1) of this section, with the department to
 20 perfect the water right. The priority date of the
 21 appropriation shall be the date of the filing of a notice as
 22 provided in subsection (1) of this section. An
 23 appropriation under this subsection is an existing right,
 24 and a permit is not required; however, the department shall
 25 acknowledge the receipt of a correct and complete filing of

1 a notice of completion, except that for an appropriation of
 2 less than 100 gallons per minute, the department shall issue
 3 a certificate of water right.

4 ~~(2)(3)~~ A permit is not required before constructing an
 5 impoundment or pit and appropriating water for use by
 6 livestock if the maximum capacity of the impoundment or pit
 7 is less than 15 acre-feet and the appropriation is from a
 8 source other than a perennial flowing stream. As used in
 9 this subsection, a perennial flowing stream means a stream
 10 which historically has flowed continuously at all seasons of
 11 the year, during dry as well as wet years. However, before
 12 constructing the impoundment or pit, the appropriator shall
 13 apply for a permit as prescribed by this part. If the
 14 department determines after processing the application that
 15 the rights of other appropriators have been or will be
 16 adversely affected, it may require the applicant to modify
 17 the construction of the impoundment or pit and issue the
 18 permit subject to such terms, conditions, restrictions, or
 19 limitations it considers necessary to protect the rights of
 20 other appropriators.

21 ~~(3)(4)~~ A person may also appropriate water without
 22 applying for or prior to receiving a permit under rules
 23 adopted by the board under 85-2-113."

24 Section 2. Section 85-2-307, MCA, is amended to read:
 25 "85-2-307. Notice of application. (1) Upon receipt of

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

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

23 (3) The requirements of subsections (1) and (2) of
 24 this section do not apply if the department finds, on the
 25 basis of information reasonably available to it, that the

1 appropriation as proposed in the application will not
 2 adversely affect the rights of other persons."

3 Section 3. Section 85-2-309, MCA, is amended to read:
 4 "85-2-309. Hearings on objections. If the department
 5 determines that an objection to an application for a permit
 6 states a valid objection to the issuance of the permit, it
 7 shall hold a public hearing on the objection within ~~60 days~~
 8 from a reasonable time after the date set by the department
 9 for the filing of objections, after serving notice of the
 10 hearing by certified mail upon the applicant and the
 11 objector. The department may consolidate hearings if more
 12 than one objection is filed to an application. The
 13 department shall file in its records proof of the service by
 14 affidavit of the department."

15 Section 4. Section 85-2-310, MCA, is amended to read:
 16 "85-2-310. Action on application. (1) The department
 17 shall grant, deny, or condition an application for a permit
 18 in whole or in part within 120 days after the last date of
 19 publication of the notice of application if no ~~hearing is~~
 20 ~~held, objections have been received~~ and within ~~180~~ 240 days
 21 if a hearing is held or objections have been received.
 22 However, in either case the time may be extended upon
 23 agreement of the applicant, or, in those cases where an
 24 environmental impact statement must be prepared or in other
 25 extraordinary cases, not more than 60 days upon order of the

1 department. If the department orders the time extended, it
2 shall serve a notice of the extension and the reasons
3 therefor by certified mail upon the applicant and each
4 person who has filed an objection as provided by 85-2-308.

5 (2) However, an application may not be approved in a
6 modified form or upon terms, conditions, or limitations
7 specified by the department or denied, unless the applicant
8 is first granted an opportunity to be heard. If no objection
9 is filed against the application but the department is of
10 the opinion that the application should be approved in a
11 modified form or upon terms, conditions, or limitations
12 specified by it or that the application should be denied,
13 the department shall prepare a statement of its opinion and
14 the reasons therefor. The department shall serve a statement
15 of its opinion by certified mail upon the applicant,
16 together with a notice that the applicant may obtain a
17 hearing by filing a request therefor within 30 days after
18 the notice is mailed. The notice shall further state that
19 the application will be modified in a specified manner or
20 denied, unless a hearing is requested.

21 (3) The department may cease action upon an
22 application for a permit and return it to the applicant when
23 it finds that the application is not in good faith or does
24 not show a bona fide intent to appropriate water for a
25 beneficial use. An application returned for any of these

1 reasons shall be accompanied by a statement of the reasons
2 for which it was returned, and there shall be no right to a
3 priority date based upon the filing of the application.
4 Returning an application pursuant to this subsection shall
5 be deemed a final decision of the department."

6 Section 5. Section 85-2-311, MCA, is amended to read:
7 "85-2-311. Criteria for issuance of permit. The
8 department shall issue a permit if:

9 (1) there are unappropriated waters in the source of
10 supply:

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

13 (b) in the amount the applicant seeks to appropriate;
14 and

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

17 (2) the rights of a prior appropriator will not be
18 adversely affected;

19 (3) the proposed means of diversion, or construction,
20 and operation are adequate;

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

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

25 (6) an applicant for an appropriation of 10,000

1 acre-feet a year or more or and 15 cubic feet per second or
2 more proves by clear and convincing evidence that the rights
3 of a prior appropriator will not be adversely affected:

4 ~~(7) except as provided in subsection (6), the~~
5 ~~applicant proves by substantial credible evidence the~~
6 ~~criteria listed in subsections (1) through (5).~~"

7 NEW SECTION. Section 6. Water right appropriation
8 account. There is established a water right appropriation
9 account in the earmarked revenue fund of the state treasury.
10 All fees collected as provided in 85-2-113 shall be
11 deposited in the account to help pay the expenses incurred
12 by the department for administering this part, part 1, part
13 4, and part 5 of chapter 2, Title 85.

14 Section 7. Section 85-2-124, MCA, is amended to read:

15 "85-2-124. Fees for environmental impact statements.

16 (1) whenever the department determines that the filing of an
17 application (or a combination of applications) for a permit,
18 or approval, or reservation of water under this chapter
19 requires the preparation of an environmental impact
20 statement as prescribed by the Montana Environmental Policy
21 Act and the application (or combination of applications)
22 involves the use of 10,000 or more acre-feet per year or 15
23 or more cubic feet per second of water, the applicant shall
24 pay to the department the fee prescribed in this section.
25 The department shall notify the applicant in writing within

1 30 days of receipt of a correct and complete application (or
2 a combination of applications) if it determines that an
3 environmental impact statement and fee is required.

4 (2) Upon notification by the department under
5 subsection (1), the applicant shall pay a fee based upon the
6 estimated cost of constructing, repairing, or changing the
7 appropriation and diversion facilities as herein provided.
8 The maximum fee that shall be paid to the department may not
9 exceed the fees set forth in the following declining scale:
10 2% of the estimated cost up to \$1 million; plus 1% of the
11 estimated cost over \$1 million and up to \$20 million; plus
12 1/2 of 1% of the estimated cost over \$20 million and up to
13 \$100 million; plus 1/4 of 1% of the estimated cost over \$100
14 million and up to \$300 million; plus 1/8 of 1% of the
15 estimated cost over \$300 million. The fee shall be deposited
16 in the earmarked revenue fund to be used by the department
17 only to comply with the Montana Environmental Policy Act in
18 connection with the application(s). Any amounts paid by the
19 applicant but not actually expended by the department shall
20 be refunded to the applicant.

21 (3) The department and the applicant may determine by
22 agreement the estimated cost of any facility for purposes of
23 computing the amount of the fee to be paid to the department
24 by the applicant. The department may contract with an
25 applicant for:

1 (a) the development of information by the applicant or
2 a third party on behalf of the department and the applicant
3 concerning the environmental impact of any proposed activity
4 under an application;

5 (b) the division of responsibility between the
6 department and an applicant for supervision over, control
7 of, and payment for the development of information by the
8 applicant or a third party on behalf of the department and
9 the applicant under any such contract or contracts;

10 (c) the use or nonuse of a fee or any part thereof
11 paid to the department by an applicant.

12 (4) Any payments made to the department or any third
13 party by an applicant under any such contract or contracts
14 shall be credited against any fee the applicant must pay
15 hereunder. The department and the applicant may agree on
16 additional credits against the fee for environmental work
17 performed by the applicant at the applicant's own expense.

18 (5) No fee as prescribed by this section may be
19 assessed against an applicant for a permit, or approval, or
20 reservation of water if the applicant has also filed an
21 application for a certificate of environmental compatibility
22 or public need pursuant to the Montana Major Facility Siting
23 Act, and the appropriation or use of water involved in the
24 application(s) for permit, or approval, or reservation of
25 water has been or will be studied by the department pursuant

1 to that act.

2 (6) This section shall apply to all applications,
3 pending or hereinafter filed, for which the department has
4 not, as of April 9, 1975, commenced writing an environmental
5 impact statement. This section shall not apply to any
6 application, the fee for which would not exceed \$2,500.

7 (7) Failure to submit the fee as required by this
8 section shall void the application(s).

9 (8) The department may, in its discretion, rely upon
10 the environmental studies, investigations, reports, and
11 assessments made by any other state agency or any person,
12 including any applicant, in the preparation of its
13 environmental impact statement."

14 NEW SECTION. Section 8. Applicability. (1)
15 Subsection (2) of [section 1] applies to all notices of
16 completion filed with the department after July 1, 1973.

17 (2) Subsection (1) of [section 1], [section 4], and
18 [section 5] apply to notices of completion and applications
19 pending before the department and to those filed with the
20 department after [the effective date of this act].

21 (3) [Section 7] applies to applications pending before
22 the board on [the effective date of this act], as well as
23 applications filed with the board after [the effective date
24 of this act].

25 Section 9. Codification instruction. Section 6 is

1 intended to be codified as an integral part of Title 35,
2 chapter 2, part 3, and the provisions of Title 35, chapter
3 2, apply to section 6.

4 Section 10. Effective date. This act is effective on
5 passage and approval.

-End-

SB 176

Approved by Committee
on Agriculture Livestock
& Irrigation

1 SENATE BILL NO. 176
 2 INTRODUCED BY STIMATZ
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
 4 AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
 7 CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE
 8 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN
 9 EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF
 10 GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A
 11 MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE;
 12 PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO
 13 THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A
 14 PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER
 15 APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY
 16 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD
 17 BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED
 18 BY FIRST-CLASS MAIL; ~~PROVIDING FOR THE HOLDING OF A HEARING~~
 19 ~~ON OBJECTIONS WITHIN A REASONABLE TIME;~~ PROVIDING FOR ACTION
 20 ON AN APPLICATION WITHIN 240 DAYS IF A HEARING ~~IS HELD~~ OR
 21 OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT
 22 HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT
 23 APPROPRIATION ACCOUNT; ~~ESTABLISHING~~ PROVIDING A
 24 PROPORTIONATE FEE FOR AN ENVIRONMENTAL IMPACT STATEMENT ON
 25 AN APPLICATION FOR A RESERVATION OF WATER; AMENDING SECTIONS

1 85-2-306, 85-2-307, ~~85-2-309 THROUGH~~ 85-2-310, 85-2-311, AND
 2 ~~85-2-124~~ 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 3 DATE."
 4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 6 Section 1. Section 85-2-306, MCA, is amended to read:
 7 "85-2-306. Exceptions to permit requirements. (1)
 8 Outside the boundaries of a controlled groundwater area, a
 9 permit is not required before appropriating groundwater by
 10 means of a well or developed spring with a maximum yield
 11 appropriation of less than 100 gallons a per minute. Within
 12 60 days of completion of the well or developed spring and
 13 appropriation of the groundwater for beneficial use, the
 14 appropriator shall file a notice of completion with the
 15 department on a form provided by the department at its
 16 offices and at the offices of the county clerk and
 17 recorders. Upon receipt of the notice, the department shall
 18 ~~automatically issue a certificate of water right~~ review the
 19 notice and may, before issuing a certificate of water right,
 20 return a defective notice for correction or completion,
 21 together with the reasons for returning it. A notice does
 22 not lose priority of filing because of defects, if the
 23 notice is corrected, completed, and refiled with the
 24 department within 30 days or within a further time as the
 25 department may allow, not to exceed 6 months. If a notice is

1 not corrected and completed within the time allowed, the
 2 priority date of appropriation shall be the date of refiling
 3 a correct and complete notice with the department. A
 4 certificate of water right may not be issued until a correct
 5 and complete notice has been filed with the department. The
 6 original of the certificate shall be sent to the county
 7 clerk and recorder in the county where the point of
 8 diversion or place of use is located for recordation. The
 9 department shall keep a copy of the certificate in its
 10 office in Helena. After recordation, the clerk and recorder
 11 shall send the certificate to the appropriator. The date of
 12 filing of the notice of completion is the date of priority
 13 of the right.

14 (2) An appropriator of groundwater by means of a well
 15 or developed spring, first put to beneficial use between
 16 January 1, 1962, and July 1, 1973, who did not file a notice
 17 of completion, as required by laws in force prior to [the
 18 effective date of this act], with the county clerk and
 19 recorder shall file a notice of completion, as provided in
 20 subsection (1) of this section, with the department to
 21 perfect the water right. The priority date of the
 22 appropriation shall be the date of the filing of a notice as
 23 provided in subsection (1) of this section. An
 24 appropriation under this subsection is an existing right,
 25 and a permit is not required; however, the department shall

1 acknowledge the receipt of a correct and complete filing of
 2 a notice of completion, except that for an appropriation of
 3 less than 100 gallons per minute, the department shall issue
 4 a certificate of water right.

5 ~~(2)~~(3) A permit is not required before constructing an
 6 impoundment or pit and appropriating water for use by
 7 livestock if the maximum capacity of the impoundment or pit
 8 is less than 15 acre-feet and the appropriation is from a
 9 source other than a perennial flowing stream. As used in
 10 this subsection, a perennial flowing stream means a stream
 11 which historically has flowed continuously at all seasons of
 12 the year, during dry as well as wet years. However, before
 13 constructing the impoundment or pit, the appropriator shall
 14 apply for a permit as prescribed by this part. If the
 15 department determines after processing the application that
 16 the rights of other appropriators have been or will be
 17 adversely affected, it may require the applicant to modify
 18 the construction of the impoundment or pit and issue the
 19 permit subject to such terms, conditions, restrictions, or
 20 limitations it considers necessary to protect the rights of
 21 other appropriators.

22 ~~(3)~~(4) A person may also appropriate water without
 23 applying for or prior to receiving a permit under rules
 24 adopted by the board under 85-2-113."

25 Section 2. 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 first-class mail upon an appropriator of water or
 9 applicant for or holder of a permit who, according to the
 10 records of 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 3. Section 85-2-309, MCA, is amended to read:~~
 5 ~~"85-2-309. Hearings on objections. If the department~~
 6 ~~determines that an objection to an application for a permit~~
 7 ~~states a valid objection to the issuance of the permit, it~~
 8 ~~shall hold a public hearing on the objection within 60 days~~
 9 ~~from a reasonable time after the date set by the department~~
 10 ~~for the filing of objections, after serving notice of the~~
 11 ~~hearing by certified mail upon the applicant and the~~
 12 ~~objector. The department may consolidate hearings if more~~
 13 ~~than one objection is filed to an application. The~~
 14 ~~department shall file in its records proof of the service by~~
 15 ~~affidavit of the department."~~

16 Section 3. Section 85-2-310, MCA, is amended to read:
 17 "85-2-310. Action on application. (1) The department
 18 shall grant, deny, or condition an application for a permit
 19 in whole or in part within 120 days after the last date of
 20 publication of the notice of application if no hearing is
 21 held, objections have been received and within ~~100~~ 240 ~~180~~
 22 days if a hearing is held or objections have been received.
 23 However, in either case the time may be extended upon
 24 agreement of the applicant, or, in those cases where an
 25 environmental impact statement must be prepared or in other

1 extraordinary cases, not more than 60 days upon order of the
2 department. If the department orders the time extended, it
3 shall serve a notice of the extension and the reasons
4 therefor by certified mail upon the applicant and each
5 person who has filed an objection as provided by 85-2-308.

6 (2) However, an application may not be approved in a
7 modified form or upon terms, conditions, or limitations
8 specified by the department or denied, unless the applicant
9 is first granted an opportunity to be heard. If no objection
10 is filed against the application but the department is of
11 the opinion that the application should be approved in a
12 modified form or upon terms, conditions, or limitations
13 specified by it or that the application should be denied,
14 the department shall prepare a statement of its opinion and
15 the reasons therefor. The department shall serve a statement
16 of its opinion by certified mail upon the applicants
17 together with a notice that the applicant may obtain a
18 hearing by filing a request therefor within 30 days after
19 the notice is mailed. The notice shall further state that
20 the application will be modified in a specified manner or
21 denied, unless a hearing is requested.

22 (3) The department may cease action upon an
23 application for a permit and return it to the applicant when
24 it finds that the application is not in good faith or does
25 not show a bona fide intent to appropriate water for a

1 beneficial use. An application returned for any of these
2 reasons shall be accompanied by a statement of the reasons
3 for which it was returned, and there shall be no right to a
4 priority date based upon the filing of the application.
5 Returning an application pursuant to this subsection shall
6 be deemed a final decision of the department."

7 Section 4. Section 85-2-311, MCA, is amended to read:
8 "85-2-311. Criteria for issuance of permit. The
9 department shall issue a permit if:

10 (1) there are unappropriated waters in the source of
11 supply:

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

14 (b) in the amount the applicant seeks to appropriate;
15 and

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

18 (2) the rights of a prior appropriator will not be
19 adversely affected;

20 (3) the proposed means of diversion, ~~or construction,~~
21 and operation are adequate;

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

23 (5) the proposed use will not interfere unreasonably
24 with other planned uses or developments for which a permit
25 has been issued or for which water has been reserved;

1 (6) an applicant for an appropriation of 10,000
2 acre-feet a year or more or and 15 cubic feet per second or
3 more proves by clear and convincing evidence that the rights
4 of a prior appropriator will not be adversely affected;

5 (7) except as provided in subsection (6), the
6 applicant proves by substantial credible evidence the
7 criteria listed in subsections (1) through (5)."

8 NEW SECTION. Section 5. Water right appropriation
9 account. There is established a water right appropriation
10 account in the earmarked revenue fund of the state treasury.
11 All fees collected as provided in 85-2-113 shall be
12 deposited in the account to help pay the expenses incurred
13 by the department for administering this part, part 1, part
14 4, and part 5 of chapter 2, Title 85.

15 ~~Section 7e--Section--85-2-124--MEA--is--amended--to--read--~~
16 ~~"85-2-124--Fees--for--environmental--impact--statements--~~
17 ~~(1)--Whenever--the--department--determines--that--the--filing--of--an~~
18 ~~application--(for--a--combination--of--applications)--for--a--permit~~
19 ~~or--approval--or--reservation--of--water--under--this--chapter~~
20 ~~requires--the--preparation--of--an--environmental--impact~~
21 ~~statement--as--prescribed--by--the--Montana--Environmental--Policy~~
22 ~~Act--and--the--application--(for--combination--of--applications)~~
23 ~~involves--the--use--of--10,000--or--more--acre--feet--per--year--or--15~~
24 ~~or--more--cubic--feet--per--second--of--water--the--applicant--shall~~
25 ~~pay--to--the--department--the--fee--prescribed--in--this--section--~~

1 ~~The--department--shall--notify--the--applicant--in--writing--within~~
2 ~~30--days--of--receipt--of--a--correct--and--complete--application--(for~~
3 ~~a--combination--of--applications)--if--it--determines--that--an~~
4 ~~environmental--impact--statement--and--fee--is--required--~~

5 ~~(2)--Upon--notification--by--the--department--under~~
6 ~~subsection--(1)--the--applicant--shall--pay--a--fee--based--upon--the~~
7 ~~estimated--cost--of--constructing--repairing--or--changing--the~~
8 ~~appropriation--and--diversion--facilities--as--herein--provided--~~
9 ~~The--maximum--fee--that--shall--be--paid--to--the--department--may--not~~
10 ~~exceed--the--fees--set--forth--in--the--following--declining--scales:~~
11 ~~2%--of--the--estimated--cost--up--to--\$1--million--plus--1%--of--the~~
12 ~~estimated--cost--over--\$1--million--and--up--to--\$20--million--plus~~
13 ~~1/2--of--1%--of--the--estimated--cost--over--\$20--million--and--up--to~~
14 ~~\$100--million--plus--1/4--of--1%--of--the--estimated--cost--over--\$100~~
15 ~~million--and--up--to--\$300--million--plus--1/8--of--1%--of--the~~
16 ~~estimated--cost--over--\$300--million--The--fee--shall--be--deposited~~
17 ~~in--the--earmarked--revenue--fund--to--be--used--by--the--department~~
18 ~~only--to--comply--with--the--Montana--Environmental--Policy--Act--in~~
19 ~~connection--with--the--application(s)--Any--amounts--paid--by--the~~
20 ~~applicant--but--not--actually--expended--by--the--department--shall~~
21 ~~be--refunded--to--the--applicant--~~

22 ~~(3)--The--department--and--the--applicant--may--determine--by~~
23 ~~agreement--the--estimated--cost--of--any--facility--for--purposes--of~~
24 ~~computing--the--amount--of--the--fee--to--be--paid--to--the--department~~
25 ~~by--the--applicant--The--department--may--contract--with--an~~

1 applicant for a

2 (a) the development of information by the applicant or

3 a third party on behalf of the department and the applicant

4 concerning the environmental impact of any proposed activity

5 under an application;

6 (b) the division of responsibility between the

7 department and an applicant for supervision over control

8 of and payment for the development of information by the

9 applicant or a third party on behalf of the department and

10 the applicant under any such contract or contracts;

11 (c) the use or nonuse of a fee or any part thereof

12 paid to the department by an applicant;

13 (4) Any payments made to the department or any third

14 party by an applicant under any such contract or contracts

15 shall be credited against any fee the applicant must pay

16 hereunder. The department and the applicant may agree on

17 additional credits against the fee for environmental work

18 performed by the applicant at the applicant's own expense.

19 (5) No fee as prescribed by this section may be

20 assessed against an applicant for a permit or approval or

21 reservation of water if the applicant has also filed an

22 application for a certificate of environmental compatibility

23 or public need pursuant to the Montana Major Facility Siting

24 Act and the appropriation or use of water involved in the

25 application(s) for permit or approval or reservation of

1 water has been or will be studied by the department pursuant

2 to that act.

3 (6) This section shall apply to all applications

4 pending or hereinafter filed for which the department has

5 not as of April 9, 1975, commenced writing an environmental

6 impact statement. This section shall not apply to any

7 application the fee for which would not exceed \$2,500.

8 (7) Failure to submit the fee as required by this

9 section shall void the application(s).

10 (8) The department may in its discretion rely upon

11 the environmental studies, investigations, reports, and

12 assessments made by any other state agency or any person

13 including any applicant in the preparation of its

14 environmental impact statements.

15 SECTION 6. SECTION 85-2-316, MCA, IS AMENDED TO READ:

16 "85-2-316. Reservation of waters. (1) The state or any

17 political subdivision or agency thereof or the United States

18 or any agency thereof may apply to the board to reserve

19 waters for existing or future beneficial uses or to maintain

20 a minimum flow, level, or quality of water throughout the

21 year or at such periods or for such length of time as the

22 board designates.

23 (2) Upon receiving an application, the department

24 shall proceed in accordance with 85-2-307 through 85-2-309.

25 After the hearing provided in 85-2-309, the board shall

1 decide whether to reserve the water for the applicant. The
 2 department's costs of giving notice, holding the hearing,
 3 conducting investigations, and making records incurred in
 4 acting upon the application to reserve water, except the
 5 cost of salaries of the department's personnel, shall be
 6 paid by the applicant. In addition, a reasonable proportion
 7 of the department's cost of preparing an environmental
 8 impact statement shall be paid by the applicant.

9 (3) The board may not adopt an order reserving water
 10 unless the applicant establishes to the satisfaction of the
 11 board:

- 12 (a) the purpose of the reservation;
- 13 (b) the need for the reservation;
- 14 (c) the amount of water necessary for the purpose of
 15 the reservation;
- 16 (d) that the reservation is in the public interest.

17 (4) If the purpose of the reservation requires
 18 construction of a storage or diversion facility, the
 19 applicant shall establish to the satisfaction of the board
 20 that there will be progress toward completion of the
 21 facility and accomplishment of the purpose with reasonable
 22 diligence in accordance with an established plan.

23 (5) The board shall limit any reservations after May
 24 9, 1979, for maintenance of minimum flow, level, or quality
 25 of water that it awards at any point on a stream or river to

1 a maximum of 50% of the average annual flow of record on
 2 gauged streams. Ungauged streams can be allocated at the
 3 discretion of the board.

4 (6) After the adoption of an order reserving waters,
 5 the department may reject an application and refuse a permit
 6 for the appropriation of reserved waters or may, with the
 7 approval of the board, issue the permit subject to such
 8 terms and conditions it considers necessary for the
 9 protection of the objectives of the reservation.

10 (7) Any person desiring to use water reserved to a
 11 conservation district for agricultural purposes shall make
 12 application for such use with the district, and the district
 13 upon approval of the application must inform the department
 14 of the approved use. The department shall maintain records
 15 of all uses of water reserved to conservation districts and
 16 be responsible for rendering technical and administrative
 17 assistance within the department's staffing and budgeting
 18 limitations in the processing of such applications for the
 19 conservation districts.

20 (8) A reservation under this section shall date from
 21 the date the order reserving the water is adopted by the
 22 board and shall not adversely affect any rights in existence
 23 at that time.

24 (9) The board shall, periodically but at least once
 25 every 10 years, review existing reservations to ensure that

1 the objectives of the reservation are being met. Where the
2 objectives of the reservation are not being met, the board
3 may extend, revoke, or modify the reservation.

4 (10) The board may modify an existing or future order
5 originally adopted to reserve water for the purpose of
6 maintaining minimum flow, level, or quality of water, so as
7 to reallocate such reservation or portion thereof to an
8 applicant who is a qualified reservant under this section.
9 Reallocation of reserved water may be made by the board
10 following notice and hearing wherein the board finds that
11 all or part of the reservation is not required for its
12 purpose and that the need for the reallocation has been
13 shown by the applicant to outweigh the need shown by the
14 original reservant. Reallocation of reserved water shall not
15 adversely affect the priority date of the reservation, and
16 the reservation shall retain its priority date despite
17 reallocation to a different entity for a different use. The
18 board may not reallocate water reserved under this section
19 on any stream or river more frequently than once every 5
20 years.

21 (11) Nothing in this section vests the board with the
22 authority to alter a water right that is not a reservation."

23 NEW SECTION. Section 7. Applicability. (1)
24 Subsection (2) of [section 1] applies to all notices of
25 completion filed with the department after July 1, 1973.

1 (2) Subsection (1) of [section 1], [section 4 3], and
2 [section 5 4] apply to notices of completion and
3 applications pending before the department and to those
4 filed with the department after [the effective date of this
5 act].

6 (3) [Section 7 6] applies to applications pending
7 before the board on [the effective date of this act], as
8 well as applications filed with the board after [the
9 effective date of this act].

10 Section 8. Codification instruction. Section 6 5 is
11 intended to be codified as an integral part of Title 85,
12 chapter 2, part 3, and the provisions of Title 85, chapter
13 2, apply to section 6 5.

14 Section 9. Effective date. This act is effective on
15 passage and approval.

-End-

1 SENATE BILL NO. 176
 2 INTRODUCED BY STIMATZ
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
 4 AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
 7 CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE
 8 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN
 9 EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF
 10 GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A
 11 MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE;
 12 PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO
 13 THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A
 14 PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER
 15 APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY
 16 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD
 17 BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED
 18 BY FIRST-CLASS MAIL; ~~PROVIDING FOR THE HOLDING OF A HEARING~~
 19 ~~ON OBJECTIONS WITHIN A REASONABLE TIME; PROVIDING FOR ACTION~~
 20 ON AN APPLICATION ~~WITHIN 240 DAYS IF A HEARING IS HELD OR~~
 21 OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT
 22 HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT
 23 APPROPRIATION ACCOUNT; ~~ESTABLISHING FEES~~ PROVIDING A
 24 PROPORTIONATE FEE FOR AN ENVIRONMENTAL IMPACT STATEMENT ON
 25 AN APPLICATION FOR A RESERVATION OF WATER; AMENDING SECTIONS

1 85-2-306, 85-2-307, ~~85-2-309 THROUGH 85-2-310~~, 85-2-311, AND
 2 85-2-~~124~~ 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 3 DATE."
 4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 6 Section 1. Section 85-2-306, MCA, is amended to read:
 7 "85-2-306. Exceptions to permit requirements. (1)
 8 Outside the boundaries of a controlled groundwater area, a
 9 permit is not required before appropriating groundwater by
 10 means of a well or developed spring with a maximum yield
 11 appropriation of less than 100 gallons a per minute. Within
 12 60 days of completion of the well or developed spring and
 13 appropriation of the groundwater for beneficial use, the
 14 appropriator shall file a notice of completion with the
 15 department on a form provided by the department at its
 16 offices and at the offices of the county clerk and
 17 recorders. Upon receipt of the notice, the department shall
 18 ~~automatically issue a certificate of water right~~ review the
 19 notice and may, before issuing a certificate of water right,
 20 return a defective notice for correction or completion,
 21 together with the reasons for returning it. A notice does
 22 not lose priority of filing because of defects, if the
 23 notice is corrected, completed, and refiled with the
 24 department within 30 days or within a further time as the
 25 department may allow, not to exceed 6 months. If a notice is

1 not corrected and completed within the time allowed, the
 2 priority date of appropriation shall be the date of refileing
 3 a correct and complete notice with the department. A
 4 certificate of water right may not be issued until a correct
 5 and complete notice has been filed with the department. The
 6 original of the certificate shall be sent to the county
 7 clerk and recorder in the county where the point of
 8 diversion or place of use is located for recordation. The
 9 department shall keep a copy of the certificate in its
 10 office in Helena. After recordation, the clerk and recorder
 11 shall send the certificate to the appropriator. The date of
 12 filing of the notice of completion is the date of priority
 13 of the right.

14 (2) An appropriator of groundwater by means of a well
 15 or developed spring, first put to beneficial use between
 16 January 1, 1962, and July 1, 1973, who did not file a notice
 17 of completion, as required by laws in force prior to [the
 18 effective date of this act], with the county clerk and
 19 recorder shall file a notice of completion, as provided in
 20 subsection (1) of this section, with the department to
 21 perfect the water right. The priority date of the
 22 appropriation shall be the date of the filing of a notice as
 23 provided in subsection (1) of this section. An
 24 appropriation under this subsection is an existing right,
 25 and a permit is not required; however, the department shall

1 acknowledge the receipt of a correct and complete filing of
 2 a notice of completion, except that for an appropriation of
 3 less than 100 gallons per minute, the department shall issue
 4 a certificate of water right.

5 ~~(2)~~(3) A permit is not required before constructing an
 6 impoundment or pit and appropriating water for use by
 7 livestock if the maximum capacity of the impoundment or pit
 8 is less than 15 acre-feet and the appropriation is from a
 9 source other than a perennial flowing stream. As used in
 10 this subsection, a perennial flowing stream means a stream
 11 which historically has flowed continuously at all seasons of
 12 the year, during dry as well as wet years. However, before
 13 constructing the impoundment or pit, the appropriator shall
 14 apply for a permit as prescribed by this part. If the
 15 department determines after processing the application that
 16 the rights of other appropriators have been or will be
 17 adversely affected, it may require the applicant to modify
 18 the construction of the impoundment or pit and issue the
 19 permit subject to such terms, conditions, restrictions, or
 20 limitations it considers necessary to protect the rights of
 21 other appropriators.

22 ~~(3)~~(4) A person may also appropriate water without
 23 applying for or prior to receiving a permit under rules
 24 adopted by the board under 85-2-113."

25 Section 2. 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 first-class mail upon an appropriator of water or
 9 applicant for or holder of a permit who, according to the
 10 records of 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 3. Section 85-2-309, MCA, is amended to read:~~
 5 ~~"85-2-309. Hearings on objections. If the department~~
 6 ~~determines that an objection to an application for a permit~~
 7 ~~states a valid objection to the issuance of the permit, it~~
 8 ~~shall hold a public hearing on the objection within 60 days~~
 9 ~~from a reasonable time after the date set by the department~~
 10 ~~for the filing of objections, after serving notice of the~~
 11 ~~hearing by certified mail upon the applicant and the~~
 12 ~~objector. The department may consolidate hearings if more~~
 13 ~~than one objection is filed to an application. The~~
 14 ~~department shall file in its records proof of the service by~~
 15 ~~affidavit of the department."~~

16 Section 3. Section 85-2-310, MCA, is amended to read:
 17 "85-2-310. Action on application. (1) The department
 18 shall grant, deny, or condition an application for a permit
 19 in whole or in part within 120 days after the last date of
 20 publication of the notice of application if no hearing is
 21 held, objections have been received and within ~~100~~ 240 180
 22 days if a hearing is held or objections have been received.
 23 However, in either case the time may be extended upon
 24 agreement of the applicant, or, in those cases where an
 25 environmental impact statement must be prepared or in other

1 extraordinary cases, not more than 60 days upon order of the
2 department. If the department orders the time extended, it
3 shall serve a notice of the extension and the reasons
4 therefor by certified mail upon the applicant and each
5 person who has filed an objection as provided by 85-2-308.

6 (2) However, an application may not be approved in a
7 modified form or upon terms, conditions, or limitations
8 specified by the department or denied, unless the applicant
9 is first granted an opportunity to be heard. If no objection
10 is filed against the application but the department is of
11 the opinion that the application should be approved in a
12 modified form or upon terms, conditions, or limitations
13 specified by it or that the application should be denied,
14 the department shall prepare a statement of its opinion and
15 the reasons therefor. The department shall serve a statement
16 of its opinion by certified mail upon the applicant,
17 together with a notice that the applicant may obtain a
18 hearing by filing a request therefor within 30 days after
19 the notice is mailed. The notice shall further state that
20 the application will be modified in a specified manner or
21 denied, unless a hearing is requested.

22 (3) The department may cease action upon an
23 application for a permit and return it to the applicant when
24 it finds that the application is not in good faith or does
25 not show a bona fide intent to appropriate water for a

1 beneficial use. An application returned for any of these
2 reasons shall be accompanied by a statement of the reasons
3 for which it was returned, and there shall be no right to a
4 priority date based upon the filing of the application.
5 Returning an application pursuant to this subsection shall
6 be deemed a final decision of the department."

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

8 "85-2-311. Criteria for issuance of permit. The
9 department shall issue a permit if:

10 (1) there are unappropriated waters in the source of
11 supply:

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

14 (b) in the amount the applicant seeks to appropriate;
15 and

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

18 (2) the rights of a prior appropriator will not be
19 adversely affected;

20 (3) the proposed means of diversion, or construction,
21 and operation are adequate;

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

23 (5) the proposed use will not interfere unreasonably
24 with other planned uses or developments for which a permit
25 has been issued or for which water has been reserved;

1 (6) an applicant for an appropriation of 10,000
2 acre-feet a year or more or and 15 cubic feet per second or
3 more proves by clear and convincing evidence that the rights
4 of a prior appropriator will not be adversely affected;

5 (7) except as provided in subsection (6), the
6 applicant proves by substantial credible evidence the
7 criteria listed in subsections (1) through (5)."

8 NEW SECTION. Section 5. Water right appropriation
9 account. There is established a water right appropriation
10 account in the earmarked revenue fund of the state treasury.
11 All fees collected as provided in 85-2-113 shall be
12 deposited in the account to help pay the expenses incurred
13 by the department for administering this part, part 1, part
14 4, and part 5 of chapter 2, Title 85.

15 ~~Section 7. Section 85-2-124, MEA, is amended to read:~~
16 ~~"85-2-124. Fees for environmental impact statements.~~
17 ~~(1) Whenever the department determines that the filing of an~~
18 ~~application for a combination of applications for a permit~~
19 ~~or approval, or reservation of water under this chapter~~
20 ~~requires the preparation of an environmental impact~~
21 ~~statement as prescribed by the Montana Environmental Policy~~
22 ~~Act and the application for combination of applications~~
23 ~~involves the use of 10,000 or more acre-feet per year or 15~~
24 ~~or more cubic feet per second of water, the applicant shall~~
25 ~~pay to the department the fee prescribed in this section.~~

1 ~~The department shall notify the applicant in writing within~~
2 ~~30 days of receipt of a correct and complete application for~~
3 ~~a combination of applications if it determines that an~~
4 ~~environmental impact statement and fee is required.~~

5 ~~(2) Upon notification by the department under~~
6 ~~subsection (1), the applicant shall pay a fee based upon the~~
7 ~~estimated cost of constructing, repairing, or changing the~~
8 ~~appropriation and diversion facilities as herein provided.~~
9 ~~The maximum fee that shall be paid to the department may not~~
10 ~~exceed the fees set forth in the following declining scale:~~
11 ~~2% of the estimated cost up to \$1 million; plus 1% of the~~
12 ~~estimated cost over \$1 million and up to \$20 million; plus~~
13 ~~1/2 of 1% of the estimated cost over \$20 million and up to~~
14 ~~\$100 million; plus 1/4 of 1% of the estimated cost over \$100~~
15 ~~million and up to \$300 million; plus 1/8 of 1% of the~~
16 ~~estimated cost over \$300 million. The fee shall be deposited~~
17 ~~in the earmarked revenue fund to be used by the department~~
18 ~~only to comply with the Montana Environmental Policy Act in~~
19 ~~connection with the application(s). Any amounts paid by the~~
20 ~~applicant but not actually expended by the department shall~~
21 ~~be refunded to the applicant.~~

22 ~~(3) The department and the applicant may determine by~~
23 ~~agreement the estimated cost of any facility for purposes of~~
24 ~~computing the amount of the fee to be paid to the department~~
25 ~~by the applicant. The department may contract with an~~

1 applicant for+

2 (a)--the-development-of-information-by-the-applicant-or

3 a--third-party-on-behalf-of-the-department-and-the-applicant

4 concerning-the-environmental-impact-of-any-proposed-activity

5 under-an-application;

6 (b)--the-division-of-responsibility-between-the

7 department-and-an-applicant-for-supervision-over-control

8 of-and-payment-for-the-development-of-information-by-the

9 applicant-or-a-third-party-on-behalf-of-the-department-and

10 the-applicant-under-any-such-contract-or-contracts;

11 (c)--the-use-or-nonuse-of-a-fee-or-any-part-thereof

12 paid-to-the-department-by-an-applicant;

13 (4)--Any-payments-made-to-the-department-or-any-third

14 party-by-an-applicant-under-any-such-contract-or-contracts

15 shall-be-credited-against-any-fee-the-applicant-must-pay

16 hereunder. The department and the applicant may agree on

17 additional-credits-against-the-fee-for-environmental-work

18 performed-by-the-applicant-at-the-applicant's-own-expense.

19 (5)--No-fee-as-prescribed-by-this-section-may-be

20 assessed-against-an-applicant-for-a-permit or approval or

21 reservation-of-water if-the-applicant-has-also-filed-an

22 application-for-a-certificate-of-environmental-compatibility

23 or-public-need-pursuant-to-the-Montana-Major-Facility-Siting

24 Act-and-the-appropriation-or-use-of-water-involved-in-the

25 application(s)-for-permit or approval or reservation-of

1 water has-been-or-will-be-studied-by-the-department-pursuant

2 to-that-act.

3 (6)--This-section-shall-apply-to-all-applications

4 pending-or-hereafter-filed-for-which-the-department-has

5 not-as-of-April-9-1975-commenced-writing-an-environmental

6 impact-statement. This-section-shall-not-apply-to-any

7 application-the-fee-for-which-would-not-exceed-\$2,500.

8 (7)--Failure-to-submit-the-fee-as-required-by-this

9 section-shall-void-the-application(s).

10 (8)--The-department-may-in-its-discretion-rely-upon

11 the-environmental-studies-investigations-reports-and

12 assessments-made-by-any-other-state-agency-or-any-person

13 including-any-applicant-in-the-preparation-of-its

14 environmental-impact-statements."

15 SECTION 6. SECTION 85-2-316, MCA, IS AMENDED TO READ:

16 "85-2-316. Reservation of waters. (1) The state or any

17 political subdivision or agency thereof or the United States

18 or any agency thereof may apply to the board to reserve

19 waters for existing or future beneficial uses or to maintain

20 a minimum flow, level, or quality of water throughout the

21 year or at such periods or for such length of time as the

22 board designates.

23 (2) Upon receiving an application, the department

24 shall proceed in accordance with 85-2-307 through 85-2-309.

25 After the hearing provided in 85-2-309, the board shall

1 decide whether to reserve the water for the applicant. The
 2 department's costs of giving notice, holding the hearing,
 3 conducting investigations, and making records incurred in
 4 acting upon the application to reserve water, except the
 5 cost of salaries of the department's personnel, shall be
 6 paid by the applicant. In addition, a reasonable proportion
 7 of the department's cost of preparing an environmental
 8 impact statement shall be paid by the applicant.

9 (3) The board may not adopt an order reserving water
 10 unless the applicant establishes to the satisfaction of the
 11 board:

- 12 (a) the purpose of the reservation;
- 13 (b) the need for the reservation;
- 14 (c) the amount of water necessary for the purpose of
 15 the reservation;
- 16 (d) that the reservation is in the public interest.

17 (4) If the purpose of the reservation requires
 18 construction of a storage or diversion facility, the
 19 applicant shall establish to the satisfaction of the board
 20 that there will be progress toward completion of the
 21 facility and accomplishment of the purpose with reasonable
 22 diligence in accordance with an established plan.

23 (5) The board shall limit any reservations after May
 24 9, 1979, for maintenance of minimum flow, level, or quality
 25 of water that it awards at any point on a stream or river to

1 a maximum of 50% of the average annual flow of record on
 2 gauged streams. Ungauged streams can be allocated at the
 3 discretion of the board.

4 (6) After the adoption of an order reserving waters,
 5 the department may reject an application and refuse a permit
 6 for the appropriation of reserved waters or may, with the
 7 approval of the board, issue the permit subject to such
 8 terms and conditions it considers necessary for the
 9 protection of the objectives of the reservation.

10 (7) Any person desiring to use water reserved to a
 11 conservation district for agricultural purposes shall make
 12 application for such use with the district, and the district
 13 upon approval of the application must inform the department
 14 of the approved use. The department shall maintain records
 15 of all uses of water reserved to conservation districts and
 16 be responsible for rendering technical and administrative
 17 assistance within the department's staffing and budgeting
 18 limitations in the processing of such applications for the
 19 conservation districts.

20 (8) A reservation under this section shall date from
 21 the date the order reserving the water is adopted by the
 22 board and shall not adversely affect any rights in existence
 23 at that time.

24 (9) The board shall, periodically but at least once
 25 every 10 years, review existing reservations to ensure that

1 the objectives of the reservation are being met. Where the
 2 objectives of the reservation are not being met, the board
 3 may extend, revoke, or modify the reservation.

4 (10) The board may modify an existing or future order
 5 originally adopted to reserve water for the purpose of
 6 maintaining minimum flow, level, or quality of water, so as
 7 to reallocate such reservation or portion thereof to an
 8 applicant who is a qualified reservant under this section.
 9 Reallocation of reserved water may be made by the board
 10 following notice and hearing wherein the board finds that
 11 all or part of the reservation is not required for its
 12 purpose and that the need for the reallocation has been
 13 shown by the applicant to outweigh the need shown by the
 14 original reservant. Reallocation of reserved water shall not
 15 adversely affect the priority date of the reservation, and
 16 the reservation shall retain its priority date despite
 17 reallocation to a different entity for a different use. The
 18 board may not reallocate water reserved under this section
 19 on any stream or river more frequently than once every 5
 20 years.

21 (11) Nothing in this section vests the board with the
 22 authority to alter a water right that is not a reservation."

23 NEW SECTION. Section 7. Applicability. (1)
 24 Subsection (2) of [section 1] applies to all notices of
 25 completion filed with the department after July 1, 1973.

1 (2) Subsection (1) of [section 1], [section 4 3], and
 2 [section 5 4] apply to notices of completion and
 3 applications pending before the department and to those
 4 filed with the department after [the effective date of this
 5 act].

6 (3) [Section 7 6] applies to applications pending
 7 before the board on [the effective date of this act], as
 8 well as applications filed with the board after [the
 9 effective date of this act].

10 Section 8. Codification instruction. Section 6 5 is
 11 intended to be codified as an integral part of Title 85,
 12 chapter 2, part 3, and the provisions of Title 85, chapter
 13 2, apply to section 6 5.

14 Section 9. Effective date. This act is effective on
 15 passage and approval.

-End-

1 SENATE BILL NO. 176

2 INTRODUCED BY STIMATZ

3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

4 AND CONSERVATION

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
7 CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE
8 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN
9 EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF
10 GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A
11 MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE;
12 PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO
13 THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A
14 PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER
15 APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY
16 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD
17 BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED
18 BY FIRST-CLASS MAIL; ~~PROVIDING FOR THE HOLDING OF A HEARING
19 ON OBJECTIONS WITHIN A REASONABLE TIME~~ PROVIDING FOR ACTION
20 ON AN APPLICATION ~~WITHIN 240 DAYS IF A HEARING IS HELD OR~~
21 OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT
22 HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT
23 APPROPRIATION ACCOUNT; ~~ESTABLISHING~~ PROVIDING A
24 PROPORTIONATE FEE FOR AN ENVIRONMENTAL IMPACT STATEMENT ON
25 AN APPLICATION FOR A RESERVATION OF WATER; AMENDING SECTIONS

1 85-2-306, 85-2-307, ~~85-2-309 THROUGH~~ 85-2-310, 85-2-311, AND
2 ~~85-2-124~~ 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
3 DATE."

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Section 85-2-306, MCA, is amended to read:

7 "85-2-306. Exceptions to permit requirements. (1)
8 Outside the boundaries of a controlled groundwater area, a
9 permit is not required before appropriating groundwater by
10 means of a well or developed spring with a maximum yield
11 appropriation of less than 100 gallons a per minute. Within
12 60 days of completion of the well or developed spring and
13 appropriation of the groundwater for beneficial use, the
14 appropriator shall file a notice of completion with the
15 department on a form provided by the department at its
16 offices and at the offices of the county clerk and
17 recorders. Upon receipt of the notice, the department shall
18 ~~automatically issue a certificate of water right~~ review the
19 notice and may, before issuing a certificate of water right,
20 return a defective notice for correction or completion,
21 together with the reasons for returning it. A notice does
22 not lose priority of filing because of defects, if the
23 notice is corrected, completed, and refiled with the
24 department within 30 days or within a further time as the
25 department may allow, not to exceed 6 months, if a notice is

1 not corrected and completed within the time allowed, the
 2 priority date of appropriation shall be the date of refileing
 3 a correct and complete notice with the department. A
 4 certificate of water right may not be issued until a correct
 5 and complete notice has been filed with the department. The
 6 original of the certificate shall be sent to the county
 7 clerk and recorder in the county where the point of
 8 diversion or place of use is located for recordation. The
 9 department shall keep a copy of the certificate in its
 10 office in Helena. After recordation, the clerk and recorder
 11 shall send the certificate to the appropriator. The date of
 12 filing of the notice of completion is the date of priority
 13 of the right.

14 (2) An appropriator of groundwater by means of a well
 15 or developed spring first put to beneficial use between
 16 January 1, 1962, and July 1, 1973, who did not file a notice
 17 of completion, as required by laws in force prior to [the
 18 effective date of this act], with the county clerk and
 19 recorder shall file a notice of completion, as provided in
 20 subsection (1) of this section, with the department to
 21 perfect the water right. The priority date of the
 22 appropriation shall be the date of the filing of a notice as
 23 provided in subsection (1) of this section. An
 24 appropriation under this subsection is an existing right,
 25 and a permit is not required; however, the department shall

1 acknowledge the receipt of a correct and complete filing of
 2 a notice of completion, except that for an appropriation of
 3 less than 100 gallons per minute, the department shall issue
 4 a certificate of water right.

5 ~~(2)~~(3) A permit is not required before constructing an
 6 impoundment or pit and appropriating water for use by
 7 livestock if the maximum capacity of the impoundment or pit
 8 is less than 15 acre-feet and the appropriation is from a
 9 source other than a perennial flowing stream. As used in
 10 this subsection, a perennial flowing stream means a stream
 11 which historically has flowed continuously at all seasons of
 12 the year, during dry as well as wet years. However, before
 13 constructing the impoundment or pit, the appropriator shall
 14 apply for a permit as prescribed by this part. If the
 15 department determines after processing the application that
 16 the rights of other appropriators have been or will be
 17 adversely affected, it may require the applicant to modify
 18 the construction of the impoundment or pit and issue the
 19 permit subject to such terms, conditions, restrictions, or
 20 limitations it considers necessary to protect the rights of
 21 other appropriators.

22 ~~(3)~~(4) A person may also appropriate water without
 23 applying for or prior to receiving a permit under rules
 24 adopted by the board under 85-2-113."

25 Section 2. 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 first-class mail upon an appropriator of water or
 9 applicant for or holder of a permit who, according to the
 10 records of 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 3. Section 85-2-309, MCA, is amended to read:~~
 5 ~~"85-2-309. Hearings on objections. If the department~~
 6 ~~determines that an objection to an application for a permit~~
 7 ~~states a valid objection to the issuance of the permit, it~~
 8 ~~shall hold a public hearing on the objection within 60 days~~
 9 ~~from a reasonable time after the date set by the department~~
 10 ~~for the filing of objections, after serving notice of the~~
 11 ~~hearing by certified mail upon the applicant and the~~
 12 ~~objector. The department may consolidate hearings if more~~
 13 ~~than one objection is filed to an application. The~~
 14 ~~department shall file in its records proof of the service by~~
 15 ~~affidavit of the department."~~

16 Section 3. Section 85-2-310, MCA, is amended to read:
 17 "85-2-310. Action on application. (1) The department
 18 shall grant, deny, or condition an application for a permit
 19 in whole or in part within 120 days after the last date of
 20 publication of the notice of application if no hearing is
 21 held, objections have been received and within ~~180~~ 240 180
 22 days if a hearing is held or objections have been received.
 23 However, in either case the time may be extended upon
 24 agreement of the applicant, or, in those cases where an
 25 environmental impact statement must be prepared or in other

1 extraordinary cases, not more than 60 days upon order of the
2 department. If the department orders the time extended, it
3 shall serve a notice of the extension and the reasons
4 therefor by certified mail upon the applicant and each
5 person who has filed an objection as provided by 85-2-308.

6 (2) However, an application may not be approved in a
7 modified form or upon terms, conditions, or limitations
8 specified by the department or denied, unless the applicant
9 is first granted an opportunity to be heard. If no objection
10 is filed against the application but the department is of
11 the opinion that the application should be approved in a
12 modified form or upon terms, conditions, or limitations
13 specified by it or that the application should be denied,
14 the department shall prepare a statement of its opinion and
15 the reasons therefor. The department shall serve a statement
16 of its opinion by certified mail upon the applicant,
17 together with a notice that the applicant may obtain a
18 hearing by filing a request therefor within 30 days after
19 the notice is mailed. The notice shall further state that
20 the application will be modified in a specified manner or
21 denied, unless a hearing is requested.

22 (3) The department may cease action upon an
23 application for a permit and return it to the applicant when
24 it finds that the application is not in good faith or does
25 not show a bona fide intent to appropriate water for a

1 beneficial use. An application returned for any of these
2 reasons shall be accompanied by a statement of the reasons
3 for which it was returned, and there shall be no right to a
4 priority date based upon the filing of the application.
5 Returning an application pursuant to this subsection shall
6 be deemed a final decision of the department."

7 Section 4. Section 85-2-311, MCA, is amended to read:
8 "85-2-311. Criteria for issuance of permit. The
9 department shall issue a permit if:

10 (1) there are unappropriated waters in the source of
11 supply:

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

14 (b) in the amount the applicant seeks to appropriate;
15 and

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

18 (2) the rights of a prior appropriator will not be
19 adversely affected;

20 (3) the proposed means of diversion, or construction,
21 and operation OF THE APPROPRIATION WORKS are adequate;

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

23 (5) the proposed use will not interfere unreasonably
24 with other planned uses or developments for which a permit
25 has been issued or for which water has been reserved;

1 (6) an applicant for an appropriation of 10,000
2 acre-feet a year or more ~~or~~ and 15 cubic feet per second or
3 more proves by clear and convincing evidence that the rights
4 of a prior appropriator will not be adversely affected;

5 (7) except as provided in subsection (6), the
6 applicant proves by substantial credible evidence the
7 criteria listed in subsections (1) through (5)."

8 NEW SECTION. Section 5. Water right appropriation
9 account. There is established a water right appropriation
10 account in the earmarked revenue fund of the state treasury.
11 All fees collected as provided in 85-2-113 shall be
12 deposited in the account to help pay the expenses incurred
13 by the department for administering this part, part 1, part
14 4, and part 5 of chapter 2, Title 85.

15 ~~Section 7. Section 85-2-124, MEA, is amended to read:~~
16 ~~"85-2-124. Fees for environmental impact statements.~~
17 ~~(1) Whenever the department determines that the filing of an~~
18 ~~application (for a combination of applications) for a permit,~~
19 ~~or approval, or reservation of water under this chapter~~
20 ~~requires the preparation of an environmental impact~~
21 ~~statement as prescribed by the Montana Environmental Policy~~
22 ~~Act and the application (for combination of applications)~~
23 ~~involves the use of 10,000 or more acre-feet per year or 15~~
24 ~~or more cubic feet per second of water, the applicant shall~~
25 ~~pay to the department the fee prescribed in this section.~~

1 ~~The department shall notify the applicant in writing within~~
2 ~~30 days of receipt of a correct and complete application (or~~
3 ~~a combination of applications) if it determines that an~~
4 ~~environmental impact statement and fee is required.~~

5 ~~(2) Upon notification by the department under~~
6 ~~subsection (1), the applicant shall pay a fee based upon the~~
7 ~~estimated cost of constructing, repairing, or changing the~~
8 ~~appropriation and diversion facilities as herein provided.~~
9 ~~The maximum fee that shall be paid to the department may not~~
10 ~~exceed the fees set forth in the following declining scales:~~
11 ~~2% of the estimated cost up to \$1 million; plus 1% of the~~
12 ~~estimated cost over \$1 million and up to \$20 million; plus~~
13 ~~1/2 of 1% of the estimated cost over \$20 million and up to~~
14 ~~\$100 million; plus 1/4 of 1% of the estimated cost over \$100~~
15 ~~million and up to \$300 million; plus 1/8 of 1% of the~~
16 ~~estimated cost over \$300 million. The fee shall be deposited~~
17 ~~in the earmarked revenue fund to be used by the department~~
18 ~~only to comply with the Montana Environmental Policy Act in~~
19 ~~connection with the application(s). Any amounts paid by the~~
20 ~~applicant but not actually expended by the department shall~~
21 ~~be refunded to the applicant.~~

22 ~~(3) The department and the applicant may determine by~~
23 ~~agreement the estimated cost of any facility for purposes of~~
24 ~~computing the amount of the fee to be paid to the department~~
25 ~~by the applicant. The department may contract with an~~

1 applicant for

2 (a) the development of information by the applicant or

3 a third party on behalf of the department and the applicant

4 concerning the environmental impact of any proposed activity

5 under an application;

6 (b) the division of responsibility between the

7 department and an applicant for supervision over control

8 of and payment for the development of information by the

9 applicant or a third party on behalf of the department and

10 the applicant under any such contract or contracts;

11 (c) the use or nonuse of a fee or any part thereof

12 paid to the department by an applicant;

13 (4) Any payments made to the department or any third

14 party by an applicant under any such contract or contracts

15 shall be credited against any fee the applicant must pay

16 hereunder. The department and the applicant may agree on

17 additional credits against the fee for environmental work

18 performed by the applicant at the applicant's own expense.

19 (5) No fee as prescribed by this section may be

20 assessed against an applicant for a permit or approval or

21 reservation of water if the applicant has also filed an

22 application for a certificate of environmental compatibility

23 or public need pursuant to the Montana Major Facility Siting

24 Act and the appropriation or use of water involved in the

25 application(s) for permit or approval or reservation of

1 water has been or will be studied by the department pursuant

2 to that act.

3 (6) This section shall apply to all applications

4 pending or hereinafter filed for which the department has

5 not as of April 9, 1975, commenced writing an environmental

6 impact statement. This section shall not apply to any

7 applications the fee for which would not exceed \$2,500.

8 (7) Failure to submit the fee as required by this

9 section shall void the application(s).

10 (8) The department may in its discretion rely upon

11 the environmental studies, investigations, reports, and

12 assessments made by any other state agency or any person

13 including any applicant in the preparation of its

14 environmental impact statement."

15 SECTION 6. SECTION 85-2-316, MCA, IS AMENDED TO READ:

16 "85-2-316. Reservation of waters. (1) The state or any

17 political subdivision or agency thereof or the United States

18 or any agency thereof may apply to the board to reserve

19 waters for existing or future beneficial uses or to maintain

20 a minimum flow, level, or quality of water throughout the

21 year or at such periods or for such length of time as the

22 board designates.

23 (2) Upon receiving an application, the department

24 shall proceed in accordance with 85-2-307 through 85-2-309.

25 After the hearing provided in 85-2-309, the board shall

1 decide whether to reserve the water for the applicant. The
 2 department's costs of giving notice, holding the hearing,
 3 conducting investigations, and making records incurred in
 4 acting upon the application to reserve water, except the
 5 cost of salaries of the department's personnel, shall be
 6 paid by the applicant. In addition, a reasonable proportion
 7 of the department's cost of preparing an environmental
 8 impact statement shall be paid by the applicant UNLESS
 9 WAIVED BY THE DEPARTMENT UPON A SHOWING OF GOOD CAUSE BY THE
 10 APPLICANT.

11 (3) The board may not adopt an order reserving water
 12 unless the applicant establishes to the satisfaction of the
 13 board:

- 14 (a) the purpose of the reservation;
- 15 (b) the need for the reservation;
- 16 (c) the amount of water necessary for the purpose of
 17 the reservation;
- 18 (d) that the reservation is in the public interest.

19 (4) If the purpose of the reservation requires
 20 construction of a storage or diversion facility, the
 21 applicant shall establish to the satisfaction of the board
 22 that there will be progress toward completion of the
 23 facility and accomplishment of the purpose with reasonable
 24 diligence in accordance with an established plan.

25 (5) The board shall limit any reservations after May

1 9, 1979, for maintenance of minimum flow, level, or quality
 2 of water that it awards at any point on a stream or river to
 3 a maximum of 50% of the average annual flow of record on
 4 gauged streams. Ungauged streams can be allocated at the
 5 discretion of the board.

6 (6) After the adoption of an order reserving waters,
 7 the department may reject an application and refuse a permit
 8 for the appropriation of reserved waters or may, with the
 9 approval of the board, issue the permit subject to such
 10 terms and conditions it considers necessary for the
 11 protection of the objectives of the reservation.

12 (7) Any person desiring to use water reserved to a
 13 conservation district for agricultural purposes shall make
 14 application for such use with the district, and the district
 15 upon approval of the application must inform the department
 16 of the approved use. The department shall maintain records
 17 of all uses of water reserved to conservation districts and
 18 be responsible for rendering technical and administrative
 19 assistance within the department's staffing and budgeting
 20 limitations in the processing of such applications for the
 21 conservation districts.

22 (8) A reservation under this section shall date from
 23 the date the order reserving the water is adopted by the
 24 board and shall not adversely affect any rights in existence
 25 at that time.

1 (9) The board shall, periodically but at least once
 2 every 10 years, review existing reservations to ensure that
 3 the objectives of the reservation are being met. Where the
 4 objectives of the reservation are not being met, the board
 5 may extend, revoke, or modify the reservation.

6 (10) The board may modify an existing or future order
 7 originally adopted to reserve water for the purpose of
 8 maintaining minimum flow, level, or quality of water, so as
 9 to reallocate such reservation or portion thereof to an
 10 applicant who is a qualified reservant under this section.
 11 Reallocation of reserved water may be made by the board
 12 following notice and hearing wherein the board finds that
 13 all or part of the reservation is not required for its
 14 purpose and that the need for the reallocation has been
 15 shown by the applicant to outweigh the need shown by the
 16 original reservant. Reallocation of reserved water shall not
 17 adversely affect the priority date of the reservation, and
 18 the reservation shall retain its priority date despite
 19 reallocation to a different entity for a different use. The
 20 board may not reallocate water reserved under this section
 21 on any stream or river more frequently than once every 5
 22 years.

23 (11) Nothing in this section vests the board with the
 24 authority to alter a water right that is not a reservation."

25 NEW SECTION. Section 7. Applicability. (1)

1 Subsection (2) of [section 1] applies to all notices of
 2 completion filed with the department after July 1, 1973.

3 (2) Subsection (1) of [section 1], [section 4 3], and
 4 [section 5 4] apply to notices of completion and
 5 applications pending before the department and to those
 6 filed with the department after [the effective date of this
 7 act].

8 (3) [Section 7 6] applies to applications pending
 9 before the board on [the effective date of this act], as
 10 well as applications filed with the board after [the
 11 effective date of this act].

12 Section 8. Codification instruction. Section 6 5 is
 13 intended to be codified as an integral part of Title 85,
 14 chapter 2, part 3, and the provisions of Title 85, chapter
 15 2, apply to section 6 5.

16 Section 9. Effective date. This act is effective on
 17 passage and approval.

-End-

HUMAN SERVICES COMMITTEE OF THE HOUSE
HOUSE AMENDMENTS TO SB 176
March 24, 1981

1. Page 8, line 21.

Following: "operation"

Insert: "of the appropriation works"

2. Page 13, line 8.

Following: "applicant"

Insert: "unless waived by the department upon a showing of good
cause by the applicant"